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# FOOD CHAIN PRICING ACTIVITIES

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## HEARINGS

BEFORE THE

## JOINT ECONOMIC COMMITTEE
## CONGRESS OF THE UNITED STATES

NINETY-THIRD CONGRESS

SECOND SESSION

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# FOOD CHAIN PRICING ACTIVITIES

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MONDAY, DECEMBER 9, 1974

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
*Washington, D.C.*

The committee met, pursuant to notice, at 10:10 a.m., in room 318, Russell Senate Office Building, Hon. William Proxmire (vice chairman of the committee) presiding.

Present: Senators Proxmire and Schweiker.

Also present: John R. Stark, executive director; Loughlin F. McHugh, senior economist; Peter Stockton and Larry Yuspeh, professional staff members; and Michael J. Runde, administrative assistant.

## OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. The committee will come to order.

This morning we begin the hearings on price activities in the distribution of food. I think that many people in this country are very disturbed about what has happened to food prices in the last year. We have had a sharp increase in food prices and this is perhaps the cruelest aspect of inflation and the one that is most familiar to the overwhelming majority of the American people. People are concerned about the price of shelter and the price of automobiles, and so forth, but where they may buy an automobile once every other year or a house once or twice in a lifetime, they buy food once a week or twice a week and are very familiar and very conscious and sensitive to price increases.

The most puzzling aspect of this increase in food prices is the fact that it has occurred when farm prices, the price that farmers have been getting, has been going down. We have had an increase roughly about 11 percent in food prices in the past year, and a drop of the price the farmer receives of about 7 percent; a widening margin. The farmer last year was getting a substantial portion of the housewife's dollar, about half, and now he is getting much less than half.

In the course of pursuing this investigation, the committee has taken advantage of the authority given to it by the Congress and has subpenaed documents from 17 largest retail food stores to support our position.

Before I introduce our leadoff witness, I am going to call on Senator Schweiker for whatever remarks he may like to make.

Senator SCHWEIKER. Thank you very much. I would like to compliment the chairman for holding this series of hearings. I am very much concerned, as is he, about some of these pricing policies. Just a couple of months ago, I sent a member of my staff into the Philadelphia area to shop at the shelf to see what was happening at retail pricing of various items. Within half an hour after my staffer went out to purchase grocery items, he came back with five; three of which had been increased in price three times while they were sitting on the shelf, and two of which had been increased twice. It was just unbelievable to me that an item could go up three times just sitting on a shelf.

Obviously the same piece of mechandise that had been bought at a lower price was marked up two additional times, and in addition, one of those items had increased in price 30 percent while sitting on the shelf doing nothing, and three other items had increased 20 percent while sitting on the shelf doing nothing. It is just this kind of irresponsible pricing practices that drives the housewife up the wall and brings a severe question into all of our pricing and distribution policies and whether they are being conducted in the best interests of this country, or whether in fact some small groups are selectively taking advantage of the very unfortunate inflationary situation. So I commend the chairman for these hearings and I look forward to participating.

Thank you.

Senator Proxmire. Thank you.

Our first witness this morning, besides being the mayor of San Francisco, is also one of the most highly regarded antitrust lawyers in the country. He has testified on a number of occasions before the Congress on antitrust matters.

In August of 1974, Mayor Alioto's law firm successfully prosecuted A. & P. for price fixing conspiracy, along with other major chains in the beef market. This is the only major successful antitrust case brought in the food retailing industry I know of. Subsequently the cattlemen who brought this suit, including Mr. Bray, who I am happy to see is accompanying Mayor Alioto today, were awarded over $32 million in damages. Safeway and Kroger settled out of court just prior to the trial.

In the course of this nearly 6-year investigation and trial, the mayor and his law firm learned as much about how the major food chains operate as anyone in this country. We are delighted to have the mayor and Mr. Bray with us today to discuss the competitive nature of the food retailing industry.

I understand, Mayor, that you telexed copies of the statement to the committee on Friday, however, you have now elected to depart from that statement. We are happy to have you present the statement however you wish. So go right ahead.

Once again, I want to thank you for appearing. You not only are an eminent antitrust lawyer, but an outstanding public servant that we are honored to have.

## STATEMENT OF HON. JOSEPH L. ALIOTO, MAYOR OF SAN FRANCISCO, ACCOMPANIED BY IRVIN BRAY

Mayor Alioto. Thank you very much, Senator Proxmire, and distinquished members of the Senate. Mr. Bray and I want to thank you for the opportunity of making a presentation on this very vital matter. Mr. Bray, who sits with me, is one of the plaintiffs in the case to which you refer. He is a cattleman who has been active not only in

California, but actually in connection with this case, Senator he was active in a type of association in terms of financing the case, putting up the litigation expenses, by the cattlemen from South Dakota, Iowa, Wyoming, Colorado, and the State of Washington. Now there have been additional lawsuits, not just by beef producers in those States, but beef producers in the Texas Panhandle, the Oklahoma Panhandle, Kansas, and producers in the Clovis, N. Mex. area. So what we have is a representation of a group of cattlemen who have been decrying the fact that for the past 40 years, many high officials in Government made the charge that prices have been fixed conspiratorially low to producers of beef, and conspiratorially high to consumers. But no one had ever proved these charges until the last week of July of this year when a jury in San Francisco found that the A. & P. Co. had fixed low prices to producers while fixing high prices to consumers. That is the actual finding of that jury's verdict.

Let me say there are post-trial motions pending at the present time. Those motions are being heard Thursday of this week. On Thursday of this week a Federal judge in San Francisco will decide what injunctive relief, if any, should be awarded: whether the verdict should stand; and whether that particular action should be opened as a class action to all the other beef producers. There have been approximately four other cases filed since that time and three more are about to be filed, and the question of whether they consolidate all of those actions by the device of a class action on Thursday will be decided by the Federal judge in San Francisco.

Now in order to be sure that no one thinks this committee is getting a one-sided slant on what the evidence was in that case, I am going to leave with this committee a statement prepared by the attorneys for A. & P., giving their full version of the facts in this controversy. Some of those facts, I think, are important admissions, but nevertheless, this is a statement prepared by their advocate. It is an advocate's statement. I am going to leave it with this committee so it can never be said we gave simply a slanted presentation of this evidence.

Let me say first of all that if anybody wonders what a big city mayor is doing talking about what looks like a rural problem, I would like to explain it isn't a rural problem; it is a big city problem. The principal victims of inflation, as we see it, Senator Proxmire, are those who dwell in the city and particularly those who dwell in the inner city. Furthermore, city governments themselves are very important purchasers of beef products so that we may run our hospitals, run our institutions, run our schools generally. So we are very important purchasers of beef products, and we talk from that standpoint. Now, in addition to that, my office has represented farm producers over a long period of time, beginning in 1945 until the present time, and we have brought actions against chain stores. I think that we have an insight into chain store practices that very, very few offices in this country have, and we have that insight on the basis of having the subpena power to get some rather confidential documents that do not ordinarily see the light of day.

I want to make an analogy. Until December of 1959, there were a lot of congressional hearings about the prices of electrical equipment. Lots of them. As a matter of fact, in May of 1959, just 3 months before the dike broke, Senator Kefauver summoned all of the executive of

Westinghouse and General Electric to come down to Washington and tell him why there was a $17 million uniform bid by GE and Westinghouse on TVA equipment while a British company, operating through a tariff barrier, bid $12 million, which was $5 million less.

He listened to a lot of conversation from the president of GE to the effect that if you go into a town and you try to buy a bag of peanuts, generally all bags of peanuts are the same price. That is the kind of conversation we got in 1959. Three months later, when a witness connected with the electrical industry installations was called before the grand jury—a fellow who constitutionally couldn't tell a lie—his testimoney started to open up information on collusive meetings between the principal manufacturers of electrical equipment. And the whole thing broke open. But one thing was very evident, Senator, everything you heard from congressional committees after that date was radically different from everything you heard prior to that date. As a matter of fact, prior to that date, the assistanct Attorney General in charge of the Antitrust Division went up to General Electric specifically to commend them for the fact that they had an antitrust policy in which they exerted their employees not to engage in collusive practices. And when my office filed a lawsuit back in 1942 against General Electric, we were accused by the defense lawyers—who were very, very active in the American Bar Association and who used to sit on committees to determine who should be Federal judges—my office was accused of filing baseless suits against General Electric. But when that dike finally broke, we all knew the obvious truth that for 20 years prior to that time, indeed for 70 years prior to that time, with respect to some equipment, there had been collusive meetings and what the Congress was getting at that time was pretty bland stuff compared to what the truth was.

Now, I have been attentive to the testimony before the Congress, and I don't know how much longer folks are going to be able to get away with the kind of nonsense that they can't tell you what their retail profits are on beef. They have been getting away with it up to this very moment. I don't know how much longer that should last. I don't know how much longer representatives of chainstores can appear before Congress within 20 days of this date I am talking about and give legislators some bland stuff about what their associations are doing. They are associations solely for the purpose of promoting legislation and promoting lobbying, but up to this moment, they have been getting away with that kind of business.

We got our peek into this industry, and we want to talk to you about our version of this industry. After I am through with this statement, I will be delighted to have questions from you directed to me or Mr. Bray. Mr. Bray is a practical man who has dealt with this industry over many, many years. He knows the fact that the chainstores representatives themselves admit. That is that beef producers are forced to sell these days below their cost of production. And even in their own councils the chainstore representatives talk about the fact—well, for example, take one of the minutes of the National Association of Food Chains. The minutes revealed that the Secretary of the organization advised his membership that one of the key problems of the industry was to keep the cattlemen alive until they were able to get higher prices. So they are aware of the beef producers' plight.

In addition to that, when viewing on television the horrible spectacle of beef producers shooting live cattle—and that was just a horrible spectacle—we were shocked. But those cattlemen weren't insane. Their actions came from real desperation and the fact that the price to the beef producers at the same time when food prices were soaring—that the prices to the beef producers were below the cost of production. Mr. Bray can answer very practical questions, like when he asked a packer out in California on Monday: "What is the price of beef today?" The packer said, "I can't tell you until Safeway gives me the word on Wednesday." He has to listen to that kind of conservation today at a time when the demand for beef is such that we have to import it and that is the kind of conversation he has to listen to today, let along any other day.

Here is our view of this industry. We want to answer your question number four of your press release, which asks: "Does the enormous buying power of the chains lead to anticompetitive activities?" We think that the enormous power of the chains plus the collaboration that they are able to achieve through the National Association of Food Chains—their trade organization—plus the collaboration they are able to achieve by private contracts—that all of these things do in fact constitute anticompetitive activities, or monopolistic activities, if you will.

Now, here is our view of this industry. The three big chains—and I want to say that the period of time that we addressed ourselves to, as far as the complaint was concerned, was 1964 through 1968. The evidence was permitted all the way up to 1972 in order to show the effect on the industry, the temporary effect after Safeway and Kroger agreed to an injunction, Senator, and that is all they were looking for at that time; nobody was looking for big damages. We just wanted relief from the way beef was being purchased.

In any event, we think that there is such a huge concentration of buying power in these three chains. Particularly and incidentally the three of them today are doing about $20 billion of sales and in 1968, did something like $12 billion of sales. Also the dropoff from the number three chains, to the number four chains is a very, very substantial dropoff. We named as coconspirators 6 other chains so that we had 10 of them that we were examining as far as the evidence was concerned. And quite aside from what you are listening to these days from their representatives, Senator, here is what we think is the real story on this.

There are 20 billion pounds of beef bought per year, 20 billion pounds. The price over the years has been from 22 cents to 28 cents to producers. In the past 20 years, beginning, say approximately in 1954, that sread between what the producer received and what the consumer paid at the retail level has been broadened, but the producers' share of that dollar hasn't increased with it, except for a temporary period of approximately eight or nine months after the Safeway and Kroger injunctions. And we claim that those injunctions were the real cause of that price increase. That is one of the items in dispute, and now it is being repeated.

Now, every Tuesday A. & P. out of a central office in Chicago buys 20 million pounds of beef, every Tuesday. This central office buys for all of the more than 4,000 stores of A. & P. The A. & P. organizational expansion has been largely by building new stores, by internal growth, rather than acquisitions. Safeway's organization has been principally by acquisitions.

I think at this juncture, we are on the threshold of getting into these buying practices and the mechanics by which beef is brought into this country. I think I would like to talk a word about history, not very much, but it is a fact we have to deal with.

There was a time when the bottleneck, or the funnel, was in the hands of five major packers in this country. At the turn of the century, we had a series of antitrust prosecutions that finally led to legislation and this is significant, Senator, because we think the answer to what is happening here lies in legislation rather than in court action alone. I don't think the courts are geared to act quickly enough in what I think is a very, very important matter. In any event, these five packers stood as kind of a bottleneck between a lot of producers on one side—and today we have approximately 1 million cattle feed producers, 1 million of them—and the packers as at that time also stood on the other side with a lot of independent stores. So you had great diversity as far as the retail stores were concerned, and great diversity so far as the producers were concerned, and then you had this bottleneck right in the middle—the five packers. So we knew what was going on. That is a rather sordid history, and has been documented many times.

But now that thing has changed, Senator. Instead of those five packers in the middle, you have about 2,000 packers throughout this country at that stage of this distribution system, and on the other side, instead of a lot of mom and pop stores or independent stores—and indeed, at the time of the Packers' Act, A. & P. was something like a group of clerks who sold on commission—anyway, you had a great deal of these "mom and pop" stores, but instead of that now, you have this tremendous concentration of the chains.

Now the chains, you know, they have told you 1,000 and one times in these congressional hearings that they only control 20 percent of the market combined; that they only control 20 percent of the beef market, but that only tells half the story, because the other 80 percent is a lot of institutions, governments, hotels, restaurants, and things like that. In terms of effectively being able to fix the price of beef, it is the chain buying that does it today. Now, let me get back to this matter of centralized buying.

Every Tuesday, not Wednesday, not Thursday, not Friday, not Monday, but every Tuesday, A. & P. starts a buying program at the Chicago office. That Chicago office buys 90 percent of the beef used by A. & P., 90 percent, and then they buy on a local basis, but only within their divisions.

Now, remember A. & P. operates in 30 States and about 180 metropolitan market areas. The local buying is only within the geographic areas of that particular division. The Chicago office takes offers on Monday from all over the country. They get the low offer and concentrate their buying there, which has the effect of bringing down the price everywhere else in the country when you are buying 20 million pounds of beef. Now, that night, the A. & P. purchases are printed out by an organization known as the Provisioner and results are published on Wednesday morning with everybody winding up with something called—and this notebook is appropriate—with something called the "yellow sheets," and the yellow sheets have the price of that transaction.

Winn Dixie, the chain that operates in the South, its president makes no bones about the fact that "I buy off the yellow sheets. That is my method of buying; right off the yellow sheets." He makes no bones about the fact that is the way he buys.

So those prices set by A. & P. on Tuesday, buying 20 million pounds of beef: those prices then get to the so-called yellow sheets, which become a kind of price guide for the rest of the industry. Safeway goes into the market on Wednesday—as I have noted, when Mr. Bray on Monday says to the packer: What is the price? And the packer then tells him: "I will let you know on Wednesday when Safeway gives us the word out in California." And they go into the market on Wednesday with knowledge of what has been done the day before. Now, up until now I have not mentioned any collaboration on discussions of costs, prices, margins, things of that nature, up to this moment, but there is such collaboration. So Safeway follows on Wednesday, after A. & P. has bought 20 million pounds on Tuesday, and you don't have to be particularly intelligent to see that that staggered buying is an effective means of stabilizing price and literally setting the pace for all of the beef producers throughout the country.

Now, the Safeway's centralized buying office for years was in the building next to the one that A. & P. had in Chicago. Chicago is not the natural place to buy beef any more in this country, that changed many, many years ago. So the presence in Chicago is not because that happens to be the beef capital of the world, because that isn't true any more. As you know, the stockyards are no more. The famous Chicago stockyards are no more, but that is where these two offices are set up. Part of the injunction against Safeway was that they get out of that Chicago office, and they have moved out of that Chicago office, and it was right in the building next door. I am still not saying a word about collaboration. We will reach that a little later. I am just talking about the actual mechanics of buying. And in that mechanical set up, there is not a free interplay of competitive prices at all, in my opinion.

Now, when you look at the statistics of this industry, you observe that there is no relationship between the price paid to the beef producer, Mr. Bray here, and the price charged to the consumer at the retail level. In ordinary circumstances, the price of wheat, the price of rice, the price of corn has an effect on corn products or wheat products or rice products; all the basic commodities themselves. The price paid to the producer is in fact the governing feature of price trends there, but not so in the case of beef, and you have to wonder why. The wonder, I think, stops when you look and analyze what is being done so far as actual buying practices are concerned.

Let me put aside the actual buying practice and get into an organization known as the National Association of Food Chains. The National Association of Food Chains is the instrumentality and the vehicle by which the chief executives of the chief chainstores of this country have an opportunity to meet with each other on a regular basis. They are the members of the boards of directors and members of the executive committees. They don't send down technical men, and they don't send down men who aren't involved in basic policy or basic pricing policy. They send down the chief executives, in other words, those who are involved in basic pricing policy.

Then let me make sure I stated that correctly for the record. They don't send down technical men, who are not involved in policy; they send down chief executives who make the policy and who make the pricing, and they are members of this particular organization.

A. & P. joined the organization in 1965 or 1966. It was in that particular era. Just before that period, 6 years before that period, the Safeway Co., which had 120 stores in New York City, got out of New York City at approximately the beginning of the 1960's. Now, A. & P. had a lot of stores in Los Angeles, and it got out of Los Angeles. Now, here are the two largest markets in the country where these chains were competitive at one juncture, but when we get down to the period we are talking about, they are geographically noncompetitive.

In the motion picture industry, no one had any difficulty noting the way the country was split up. Markets like New York City were split up between RKO and Lowe's, for example, in New York City, and nobody had a problem deciding that the geographic situation that took place was anticompetitive. And as a matter of fact, Senator, yielded the permissible inference that it was done collusively; nobody had any problem at all with that situation in the motion picture industry, and I don't think anybody ought to have a problem here in noting that Safeway abandoned New York City with 120 markets, and that A&P removed its operations from the burgeoning Los Angeles market during the 1960's.

With that background, Senator, they are in this association. Now, what does this association do? This association has a series of meetings at which they admittedly discuss things like cost margins. The president of Winn Dixie, the southern chain, says it is a "perennial" discussion. They admittedly discuss things like at what level there will be consumer resistance to bacon at the retail level—they say to themselves, if you charge more than 99 cents, you are going to meet consumer resistance; they admittedly compile profit statistics on gross profit margins. All of them, to the man, continue the fiction—and I say it is doing by a concerted action—that they don't know what their retail profits are.

Just within the last couple of months, the president of Jewel Tea Co. said, of course, we know what our profits are. And I hope one thing will come out of these hearings, Mr. Chairman. I hope that this committee will press, and press hard, to get the chief executives to admit to you that they have seen studies which set out their retail profits on beef, instead of continuing this fiction that they don't know what their retail margins are. For example, here is a letter that went out to the National Association of Food chains—and this was way back in 1967, when they were going to a National Cattlemen's meeting, where the cattlemen are complaining about the fact that they are being robbed on beef prices—and they were going out there and purported to write a paper for a Congressman from Iowa where they said: "Net profits on beef are not attainable, but overall, food chain profits have historically been very modest." You see, this is the kind of business we are getting right up to today, that they don't know their net profits, and we don't believe it. We have had a lot of experience with a lot of industries where we ask, for instance, the electric companies, or others, to tell us what were their net profits on hydrogenerators, tell us what your net profits are on steam generators, or on power transformers, or on circuit breakers, and they always replied by telling us there was no way they could do it, but before we were through, we finally got a key executive document that the key executive kept right there on his desk, which informed him with the very essential facts he needed to make his judgments.

Now, if this committee works hard at this point, I am sure you can achieve what we finally achieved in court by blood, sweat, and tears, and always by fighting up to the last minute despite the fact of motions being filed, and so on, mainly that the president of Safeway indeed knows what his profits are on beef, and the president of A. & P. indeed knows what his profits are on beef, and that the president of Kroger, indeed, knows what his profits are on beef. And I think if this committee presses hard and gets that figure on the table and gets an acknowledgement like a month ago by the president of Jewel Tea that they in fact know their profits, and then we stop this myth that they can't tell us what their profits are so we can talk about gross profits and their overall profits in terms of sales, a percent of sales, I think we will be accomplishing a great deal.

Now, we had one little insight into this, Senator, just one little insight, and that insight came from a Safeway document dated back in 1964, in which they pointed out that the gross profits—that is, the gross profit being the difference between the delivered cost at the store and what the consumer pays on beef—and they said the gross profits in that year of 1963 or 1964 were something like $485 million, a half billion gross profits, and Safeway document went on to point out that what they called the "net gain"—and I don't know what that language means—that the net gain was about 45 percent—was about 45 to 49 percent of that gross profit.

The A. & P. expert at the trial and before all congressional hearings, and also before the national food conference that was set up 4 or 5 years ago, the A. & P. expert said that he had that document and didn't present it before the national food conference. He is the same expert who, when the judge pressed him hard on economic behavior, and just looking at the statistics in the industry, the production and the prices and the spreads, just looking at those statistics, the judge said, "Doesn't that yield the permissible inference that these prices are collusive?" And after stuttering and puttering, he finally said, "Yes, it does." "It is questionable," is the way he put it, but the point is it does yield that inference.

Now, you know it is really disgraceful, but here we are in 1974 and nobody can tell you what the net profits are on beef with all that we know about cost accounting and with all the computers we are supposed to have. Now, I just don't believe that stuff. I think we are about to make a major breakthrough if this committee can force a statement as to what they the supermarket chains, really believe their beef profits are, and whether they have seen any kind of a document that purports to show those profits. I think those net beef profits are being suppressed in a concert of action with the association, you know, what does an association have to do with net profits? Why should a trade association composed of these kinds of competitive forces—and, incidentally, they don't admit independent grocers who have common buying cooperatives, and they don't admit independent grocers—so what do they have to do with net profits, and why should they be talking about it at all amongst these competitors?

Now, there is another matter. This association gives them the opportunity to meet. Let me show you some of the subject matters that they talk about at these association meetings.

In 1969, in the minutes of the NAFC Meat Committee for its annual meeting of October of 1969, here are some of the subject matters they are going to be talking about:

> The net profit against gross profit aspects; start talking profits in dollars and not in percent; quit saying the profits will go down. We proved it can go right up from the start.

This is a trade association, not supposed to have anything to do with prices. It goes on:

> Formula for pricing at wholesale; pricing formulas at wholesale; the pricing of primal cuts against carcass at retail.

Let me read that again:

> The pricing of primal cuts at retail.

"Pricing structure of cuts over provision," and "provision" is the yellow price sheets I talked to you about earlier.

Now, when the trade association comes here and when some executive comes here and says, "Yes, we go down to the trade association and talk about baseball and we talk about lobbying activities and what is doing in Congress," ask him about this. Here is the subject matter, dated October of 1969, and ask him, Did you or didn't you discuss this subject matter?

Now, every 2 years they have something called the meat clinic. At this meat clinic, it is not just the association, but certain packers join, too, and this is what they claim their defense is. They say:

> Sure, we have a meat clinic, and our chief executives are there, and our pricing executives are there, but when we have the Government people, and we have professors, and we have other people, and we have packers, there, as well.

And this is the same conversation we heard about the electrical convention meetings, you know, where they had government people, professors, and the rest of them, and where they had an opportunity to meet and did meet in private conferences to stabilize prices.

Now, at these meetings, they identified certain groups by colors. They promised themselves anonymity that they wouldn't be reporting by names. There was what I think was known as the Red Badge Group, and another the Green Badge Group. We asked them, "Why the colors?" And they said, "Because we want it"—and listen to this explanation, and remember the kinds of explanations they used to give in the electrical cases—they said:

> The colors were because we wanted the people to speak freely, and we didn't want them to be inhibited by their own superior officers.

Now, to assign a reason like that, an obviously spurious reason, is in itself on a courtroom basis fairly substantial evidence that the reasons are otherwise, and the reasons are ulterior. But the point is, this is their explanation of why they coded themselves and promised themselves anonymity so that they could give free expression and give free expression on the subject matters I talked to you about, which I already mentioned to you.

Now, when we talk in addition to the opportunity to meet at this trade association and discuss the things I talked to you about, you know, formulas for pricing at wholesale or pricing of primal cuts against carcass, I mean, here are these people with this kind of economic power I have already discussed, but in addition to that, talking to the president of Winn Dixie, which is one of the chains, you say, "Do you have a private telephone number?" And he said, "Yes, I've got a private telephone number." "You give it to the president of the other chain stores?" Answer, "Yes, I have given it to the president of Safeway,"—and Safeway he mentioned specifically, and he mentioned the other folks he gave it to. "What do you give him your private telephone number for?"

"Well," he says, "it would be cheaper for them to call me. They won't have to call person-to-person because they can call station-to-station." You ask, "What do you talk about?" And he says, "Well, we talk about general industry matters and all of that."

Now finally, Senator, he admits he does at least talk about the business about whether or not they are all going ahead jointly to sell or to feature specials when a glut is likely to develop on the market.

Now, they will tell you, isn't that a wonderful thing where there might be a glut developing. And that it might hurt the farmer, and so we ought to all get together and push it, but the point is, why should the president of Winn Dixie be talking to the president of Safeway or the pricing officers of A. & P. or the others talk about what is basically a marketing situation that affects the competitive situation?

You see, if we have an industry in which everybody acknowledges there is no price relationship between what the producer gets and what the retailer price is, where there is no price relationship, it means that in between, just as there own experts said, there may be collusion or administered prices, which really explains what is going on. And if you have an industry like that, then the thing to do with that industry is to see to it that the pricing executives don't have any opportunity to talk to each other about any kind of a market situation, any kind of a market situation at all. You are not really going to do that either, unless you outlaw this trade association. This trade association has now become the instrumentality by which, even the eyes of certain innocent governmental officials, there is too much conversation among chief executives.

Now, when you have the kind of concentrated buying power I am talking about, it takes very little collaboration among sophisticated people, who not only are conversant with the antitrust laws, but who have gone through antiturust cases over a long period of time—oh, and one of the things that A. & P. objected to at the trial was that the Judge told the jury that while size is not a violation of the antitrust laws and doesn't constitute a monopoly for the violation of those laws, but size which has been abused in the past—and he cited a series of antitrust matters and governmental and private actions in which A. & P. had been involved—he said size that has been abused in the past may be taken into consideration by you as to whether or not it is being abused at the present time. That is true, Senator.

And I think with the kind of sophistication you have in this industry, that one part of the legislation to come out of this committee is to outlaw that National Association of Food Chains; just outlaw it.

If they want to start otherwise to do what are legitimate lobbying activities, fine, but I think there has been such an incursion of price activities, discussions of profits, discussions of formulas, discussions of even retail prices at which consumers will find, well, I think that stuff shouldn't be talked about by pricing executives or chief executives if you are going to have a truly free enterprise economy.

Now, that is a general statement, and now I would like to get down to what I think are remedies that this committee ought to be thinking about. In this area, I think that direct outlawing of that association is important. You've got to remove the opportunity for the chief executives and the pricing authorities to be meeting on anything. That old dictum, you know, of Adam Smith, that businessmen can hardly meet for a long period of time that they don't somehow or other turn their meetings into a price conspiracy against the public, that old dictum of Adam Smith's I think has a lot of validity.

Let me give you one other episode. I already talked about the private telephone business. We had an episode in which the president of Safeway decided to meet with the president of Lucky and the meeting coincides at or about the time Safeway is commencing what it calls the discount policy. They both have elaborate and important offices in Oakland, but they meet at a hotel in San Leandro and the president of Safeway doesn't remember the motel, but he is meeting there with the president of Lucky at or about this time. You ask, "What did you talk about there?" He said, "I wanted to talk about selling a store." "Well, what do you mean by meeting in a hotel room when you have elaborate offices you could meet in to talk about the sale of the store, and you are the presidents of two important food chains, perhaps the most important in that particular area?"

This is why I say I think we would be terribly justified in removing the opportunity for those chief executives to be meeting on business matters.

Now, here is another matter. I don't think that you can have that kind of buying with A. & P. sitting in Chicago buying 20 million pounds a week and Safeway saying to the packers, "We will let you know Wednesday what we are going to pay," even though the method of negotiating, according to the president of Safeway, is that Safeway never suggests a price, and the packer suggests the price, and Safeway says yes or no, but regardless of that, they are not going to tell them until Wednesday, and I don't think you can have a situation where those yellow sheets come out on Tuesday night or Wednesday morning, and the other people say they buy them right off those yellow sheets, I don't think as long as you have that kind of centralized buying with the opportunity for association which these folks have in their national association, I don't think you can get competitive pricing and a free enterprise system. You just can't get it. I think there ought to be come serious thought given—as we legislated in the Packers' Act—serious thought given as to whether or not the chain stores shouldn't be broken up, at least into their geographical divisions. A. & P. is operating in 3 States and 182 metropolitan markets, and not operating in Los Angeles, and Safeway is not operating in New York, and I just wonder whether you shouldn't break the chains up to at least the geographical divisions on the theory that they have now a concentrated buying power which makes it impossible for the laws of supply and demand to operate in that particular industry.

Finally, one other subject. When there was a time when the bottleneck or funnel or the toll gate, whichever expression you wish to use, or whichever analogy you want to use, when there was a time when five packers held that toll gate, we told those five packers, you can't get into the retail business. We figured that would be the ultimate monopolistic control, and forward integration—and forward integration, incidentally, is part of the settlement in that Safeway and Kroger in this case promised or said it was their policy—and we didn't care how they expressed it—that there wouldn't be any backward integration as they have in many other areas of the food area, you know, integrated backwards right to the farmer. They said, as part of that stipulation, that they wouldn't do that. But you stopped the packers from going into the retail business, and I just wonder if the time hasn't come that maybe you should encourage the packers to go into the retail meat business now that the competitive balance has changed away from the packers to the large retail chains.

So those are three suggestions I would make in terms of legislation: Outlaw that association. Just outlaw that association. There is too much talk about cost and profits and margins. There is just too much opportunity for that, and I don't care how many professors or other government people are there. There is too much price talk among pricing executives and you've got to outlaw that or you are not going to get competitive pricing.

Second, you should think about breaking up those chains into at least their geographic division. In the injunction on Thursday, we are asking the court to force those stores to buy store-by-store. Remember the old theater decree where you had to buy motion pictures theater-by-theater instead of in blocks? I don't know what the court is going to do, and I don't want to comment, but I think the chains ought to be broken up, at least as far as buying units are concerned, that ought to be broken up into their geographic divisions. And I think maybe the packers ought to be encouraged to go into the retail business now instead of being prohibited from going into the retail business.

Mr. Bray, who has had a substantial experience, with your kind permission, Senator, can give a short statement of his background, who he is, what he does, and the general frustrations he has experienced in this business.

Senator PROXMIRE. All right, Mr. Bray. Would you speak briefly on it? We have some questions. Senator Schweiker will be right back. He stepped out of the room.

Mr. BRAY. Thank you, Senator. I was born and raised on a ranch in California in Monterey County. At the age of 17, I went with my father to San Francisco with small lots of livestock in the early thirties. At the age of 19, I commenced a business of my own, carrying on with the buying and selling with markets and producers and packers throughout California, and then in late years, I expanded to coverage in Montana, and the Western States.

As this time progressed, we began to notice a change in the packer demand or their practices. As the chains in our area, for example, Safeway is a huge one, and as they acquired more markets, what they had to say and what they would tell us through the packer, well, it became more prevalent. As the years went by, more stores and more stores, as Mr. Alioto has explained, although Safeway says that is not the way they do it, we would call 10 packers today about what would be available to be offered on Monday, and they would say, "We don't know because we have to wait until Wednesday to see what Safeway comes out with."

Now, this is the position we find ourselves in, Senator, and it has been increasingly more like that as each year goes by.

Probably in many people's mind, they would question why we are still in the business after all these years with this history in the livestock business. We were born and raised on a farm, on a ranch, and we like it, and it is our life. The reason we have been able to carry on is that we had income from other industries, for example, the real estate business, the buying and selling of livestock, the brokerage business, and on the ranch properties. You see, as inflation carried forth each year, we were able to show our ranch property as a greater amount of collateral as inflation increased. Now, through those three: the real estate busines, in my case; the livestock brokerage business, and the inflation value on our home ranch that we bought in 1945, we were able to remain operating. This is the case of many, many of the ranchers.

I will quote a banker from Colorado, who is with production credit, and he explained that the only way he was able to keep his customers in business is that each year he would add to the value of their property to make their statement appear correct. In other words, a loan that they carry on for another year. He said that one day this policy would not be able to be used any further because there is going to be a limit to what that property will be worth.

I might add too, Senator, Mr. Alioto covered a great many of the points very well, but there was one I wanted to mention. It was pointed out during the 8 weeks of trial in San Francisco that the demand for our product has exceeded the supply since 1956. The reason for this is that our imports have pyramided each year. In other words, our country here has been able to absorb more meat and the customer is ready to pay for it. So that our production was below the demand, but here during this same period, our people in the livestock business had a very bad record, and many of them have gone out of business, and you will see many more of them going out of business this year.

In our situation, our home ranch was paid for at one time, and we ran into some bad trouble with droughts, and the market, and so forth, and so we put a mortgage on the property. That has been coasting along for a few years. This year, we have to put a huge second mortgage on the ranch. I bring this out to explain what our position is as a producer and many of our neighbors and friends over this country are in the same predicament.

Senator PROXMIRE. Thank you very much, Mr. Bray, and Mr. Alioto, for your excellent statements. I think one of the most useful aspects of what you said is your stress on the long-term impact on the consumer of having the producer so seriously damaged, having the farmer producer hit so seriously. The farm producer, if he has to go out of business, or if he has to function in a way that is far, far less efficient because you destroy the very efficient family operation, and so forth, then the consumer is going to be hit again. I think many people feel well, if these powerful chains can drag down prices to the farmer, that is tough to the farmer, but the consumer isn't going to be hurt by that. Well, he is going to be hurt, and hurt badly. I think you make that case very strongly.

Now, one of the functions that this committee can perform and the Federal Government ought to perform is to try to learn a lesson and take advantage of the successful action that you had. As I understand it, you were able to prove to the satisfaction of the judge and jury that there were anticompetitive activities, that prices were fixed artificially high to the consumer, and artificially low to the producer, is that correct?

Mayor ALIOTO. Correct.

### FEDERAL AGENCIES HAVE SHOWN SOME INTEREST IN ALIOTO'S CASE AGAINST THE FOOD CHAINS

Senator PROXMIRE. Now, in view of that, did the relevant antitrust agencies of the Federal Government, the Antitrust Division of the Department of Justice, the Federal Trade Commission, the Agriculture Department, did they meet with your law firm to develop information in order to bring a Federal case against the chain?

Mayor ALIOTO. The answer is that some of them have shown some interest about getting the transcripts.

Let me talk to that broader question.

Senator PROXMIRE. Yes. Well, actually, you know, it is fine to have the producers fight as they have, but it seems to me also we ought to have the Federal Government get into this act. It is their job.

Mayor ALIOTO. There is no reason why they should have to go to private law firms on a subject that has dragged on for 40 years.

Senator PROXMIRE. That is exactly correct.

### ALIOTO FEELS THAT JUSTICE AND THE FTC DO NOT AGGRESSIVELY INVESTIGATE ANTITRUST SUITS

Mayor ALIOTO. But let me say a word on that because people ask me sometimes when they come to me, they have come to my office over the years, before I was mayor and was doing an extensive practice, but of course, I am now basically arguing appellate cases, where my time is fixed and I can do it, they come and ask me sometimes, "Well, I have this complaint, so should I go to the Department of Justice or go to the Federal Trade Commission?"

And I tell them very frankly, go ahead and do it, but it won't do you any good. You will be back here, but go ahead and do it, and satisfy yourself it isn't going to do you any good.

Now, why should a national case against the gypsum people have to be brought by private practitioners, as happened?

Senator PROXMIRE. That is why we have an Antitrust Dvision. That is what they are supposed to be doing.

EXAMPLE OF PASSIVE FEDERAL ANTITRUST ACTIVITY

Mayor ALIOTO. Why should my office have to start a concrete pipe case, a national fixing of concrete pipe and steel pipe cases, and those cases go on for years, before the Federal Government comes in 3 years later? I just think that as much as you say about the devotion to antitrust cases that unless you have heads of departments and Attorney Generals who are strong advocates of antitrst, unless you have Thurmond Arnold types running these divisions, I just don't think you are are going to have the kind of drive behind an antitrust situation that you are going to succeed with. Sure, you know, some of these exotic antitrust cases are fine, but in Theodore Roosevelt's time, you had five lawyers in the Antitrust Division when they were taking on the Standard Oil Co., the tobacco trust, the corn products trust, the beef trust, just five lawyers and two secretaries in that Antitrust Division. Thurmond Arnold came along, and I guess we had about 100 people or so. During that period of time, I was with Mr. Arnold and Tom Clark when they were head of this Antitrust Division, but now they have maybe 250 to 300 lawyers. I am not sure of the exact number. I would put every damn one of those lawyers on national price fixing cases of food and chemicals, every damn one of them.

COURTS NOT ADEQUATE FOR BREAKING UP MAJOR INDUSTRIES—CONGRESS SHOULD DO THAT

I think when you start talking about breaking up telephone companies, and breaking up General Motors, you ought to do it right here in the Congress. The courts are simply not adequate to do that kind of job. Furthermore, there is a tremendous resistance in the Court of Appeals to antitrust plaintiffs, tremendous resistance.

We had to get into the Supreme Court eight times in a row, reversing lower courts, to get the law established on private antitrust action, beginning with Continental Oil, the *Beacon* case, to establish our right to have a jury, the Utah pilots, just eight cases in a row, in which we got reversals on lower court decisions.

SECRETARY OF AGRICULTURE SHOULD PROVIDE GREATER PROTECTION FOR BEEF PRODUCERS

This is a long answer, Senator, but until you get a Secretary of Agriculture who is devoted to protecting that beef producer and not the agricultural financier, not the exporters, not the bankers, but protecting that beef producer, you are not going to have a good thing going for ranchers (and you know, there are plenty of things for a Secretary of Agriculture to do; he can always go on television and imitate Italian comics). But until you get a Secretary of Agriculture who actually is devoted to seeing to it that these kind of buying practices out of Chicago, his own hometown, are going to be broken up, then I don't think it means anything. You have to have those two things— rough, tough Secretaries of Agriculture, and rough, tough heads of Antitrust Division, to really to get this job done.

Sometimes they are more bothersome than anything else. That is a hard thing to say, but it happens to be a fact. They ought to be right in the middle of this, and we invite them into it all the time.

Senator PROXMIRE. Well, I think that is most welcome and useful, because after all, you have had success. You represent an excellent firm. But I am sure your resources are limited. You don't have 200 or 300 lawyers working with you?

Mayor ALIOTO. We have 10 lawyers.

Senator PROXMIRE. Ten lawyers? You have achieved some success in this area.

Mayor ALIOTO. There are five——

Senator PROXMIRE. The Federal Trade Commissioner testified before this committee a few days ago, and they were unable to show a single instance in the last 10 years, since 1964, and they had a couple instances then, but not a single instance since then when they have had any action that has resulted in lower prices to the consumer of any kind at any level, to any extent. So it is obvious that we aren't doing the job we ought to be.

UNREASONABLE THAT FOOD CHAINS ARE NOT AWARE OF THEIR NET PROFITS ON BEEF

Let me ask you this. I was appalled by the assertion that you made that the chains cannot tell what the retail profit is on beef. That doesn't make any sense. If you were the director of a corporation and the chief executive officer said he didn't know what the profit is on his major product, you would certainly do your best to get a new chief executive officer. How can you operate efficiently if you don't know what your profit is?

Mayor ALIOTO. Senator, you are hitting on a very critical point. It is my opinion that the story that they don't know their net profits on beef is a product of a concert of actions through that trade association. That is my opinion. They all agree they have to say this story.

Now, I think you should explore that. I don't know why the trade association has to write letters saying net profits on beef are not attainable. I mean, this is ridiculous. And to say that you can't get a net profit with all of the cost accounting techniques we have and the sophistication we have developed on those technhiques, to say you don't know what your retail beef profits are, your net profits are, is in my opinion an affront to the intelligence of the Congress of the United States, but they have been telling you that for the last 30 years, you know.

Now, we get it all the time in other litigation. The chief executive, right up until the last day, will tell me he doesn't know what his net profits are on one product against the other, and by the time we are through, we find that book in the right hand corner of his little desk in which he has those figures right before him. He has to have that as a tool for making business judgments. I think if you press hard enough, you can finally break that dike. It is a very important one.

RETURN ON EQUITY PROFITS OF FOOD CHAINS SHOULD BE MORE WIDELY SHOWN

Senator PROXMIRE. And why shouldn't the food chain's profits in relation to equity be shown? Now, what they argue is that their profit margins on sales are thin, especially at the retail level. Of course, that's subject to very easy manipulation because they have several levels of operation, and they can move their profits back and forth. They have control of their accounting system. But if you can get their overall return on their equity, you have a different kind of a picture.

The statistics we have indicate a return of up to 20 percent or more on equity, which is a very handsome return. They get all their capital back in 5 years, or so. It would seem to me that it would be very helpful for the public not only to get the rate of return on sales, but also the rate of return on equity, and certainly the profit on something as big and important as on beef and divisional profits, so that we have some notion of the fairness and equity and justice on which the pricing policies are based.

Mayor ALIOTO. Well, Senator, I think you are right at the heart of something that is of critical importance and once you make that breakthrough, all of this nonsense we have been listening to is going to be put in proper perspective.

In the course of this trial, we had a document that came out of Safeway that showed for the years 1955 through 1963 for the grocery, meat and produce departments—and that is basically the only departments, you know, they have a grocery department, they have a produce department, and they have a meat department, and the notion they can't tell you what their net profits are on meat is just nonsense, just so much nonsense—anyway, they had this thing for these particular departments, and they had the total store sales, the cost of sales, the gross profits, the director of the department expense, department gain on a per-pound basis for all of the articles and commodities of the store. With respect to the meat department, using 1963 as an example, which is the year closest to the damage period in the case, the so-called direct department gain was approximately 45 percent of the gross profits; it was 45 percent of the gross profits.

The big expert that A. & P. has been using all around the country is a fellow named Mr. Farris out of one of the Texas universities.

And you remember they had that national convention on food marketing and we all got excited about the margins back in 1964 or 1965, whenever it was. Farris admitted that he had that particular document, but he was forced to admit in the course of the trial that he did not include that figure in that National Commission on Food Marketing that he was supposed to be presenting this evidence for. He didn't include that figure.

ALIOTO BELIEVES THAT FOOD CHAINS HAVE AGREED NOT TO RELEASE BEEF PROFITS

I think you have an agreement among the food chains that they are not going to disclose their retail beef net profits. I think you have that. And if you press hard enough on this thing, if you press those executives hard enough, if you ask them: "You say that you have never in your whole life seen a document which purported to reflect your net profits on beef" then I don't think in the light of what is happening with Watergate and others with some of these executives now getting frightened—and that is one of the big, great side benefits or fringe benefits of Watergate, because the chief executives are getting a little scary about lying as quickly as they used to lie in connection with what they actually had or didn't have as documentary records—and I don't think they would be so quick to do that.

Senator PROXMIRE. My time is up. I will be back.
Senator Schweiker.
Senator SCHWEIKER. Thank you very much, Mr. Chairman.
Following up that point, Mayor, I can't understand how any food chain could even price an item if they didn't know the profit on it. It escapes me how they would know the price of each item on the shelf and how they wouldn't be able to figure out the profit on the item, because they couldn't set the price, which obviously they have to do.
So, I agree with your concern that there is more here than we are being told and I hope this committee can find it out.
Second, you mentioned in your case with Mr. Bray that one of the chains bought on Tuesday, and I believe you went on to say in your formal statement that other days of the week were reserved for other members of the chain to purchase. Is that correct?

### HOW FOOD CHAINS PURCHASE MEAT

Mayor ALIOTO. Right. The way it worked out, is this way. It is very important to get this concept. A. & P. moves into the market on Tuesday, based on Monday offers received from all over the country. When Mr. Bray inquired, "what is Safeway going to pay me" and when he inquires on a Monday, the packer says "I won't be able to tell you until Safeway gives me the word on Wednesday."
So, on Tuesday you don't have any competition between Safeway and A. & P. in that market price and then on Tuesday night, they publish the yellow sheets. They are published by a private concern, but they are used as public documents.
The other folks then know exactly what A. & P. did on the preceding day. I think that is an obvious administered price arrangement, an obvious one.
Senator SCHWEIKER. I wonder if you would describe again the red and blue badge technique. I wasn't quite able to follow your point there.

### THE WAY FOOD CHAINS EXCHANGE INFORMATION CONCERNING MEAT PURCHASING

Mayor ALIOTO. Over a period of years, the association, the trade association, the National Association of Food Chains, over a period of years, they have had regular meetings of their own groups. Now, every 2 years they have a clinic besides the regular meetings and quarterly meetings of their own groups, at which they discuss the kinds of subjects that I mentioned to you, you know, margins, profits, pricing formulas, the rest of that business.
So, they have something called a meat clinic with the packers. It is their story they've got professors there and we've got the Government people there, and all of that, but they promised themselves that in those discussions they would have anonymity. In order to get that anonymity, they promised themselves they would assign colors to various groups and the reports would be that the red badge group talked about this subject matter or that subject matter or pricing matters, or this cost matter and it wouldn't disclose who it was that was doing the talking.
As a matter of fact, the A. & P. chief executives so far as meat buying is concerned, a man named Carpenter, said at trial that he wasn't at those meetings. He was confronted with a photograph of himself

at that meeting and that did have an obvious affect on that jury. He said he wasn't at those meetings, and we gave him a photograph and showed him he was with the folks.

Senator SCHWEIKER. Did he have a red or a blue badge on him?

Mayor ALIOTO. He was in the red badge group, as I recall. But you know the reasons they stated, that they wanted to give themselves anonymity so that they could speak freely as against their own chief executives—and those other chief executives were monitoring everything those fellows are doing there, you know—that reason is so phony, it is unbelievable. It is the kind of stuff we listened to in the electrical case before the dike broke. It is the same kind of stuff.

The anatomy of a monopoly is always the same, regardless of what the industry is.

WHEN BEEF COMMODITY PRICES DROP, THE PASS-THROUGH TO CONSUMERS COMES MUCH LATER, IF AT ALL

Senator SCHWEIKER. Have you gotten into the area, and you haven't touched on it here too much, to my knowledge, of having set a price, that is, for meat, and then when the commodity declines, what kind of pass-through is there to the consumer? Did your case get into that at all?

Mayor ALIOTO. I am not sure whether the case did. In other words, the figures we showed in the case certainly showed all of that. You know there were 30 witnesses and hundreds of documents and 3,700 pages of transcript in that case, and we had every statistic that was ever published by the Government, by private groups, there, and we had their internal documents. So, the answer is, yes, the case showed that.

One thing that was very notable to us is that when there is a price decline to the producer—and Mr. Bray can talk on this better than I can—it is a long time before you see any change at the retail level. Why don't you talk about the recent figures?

Senator SCHWEIKER. I think this is important.

Mayor ALIOTO. Yes; it is important. After we got those two injunctions, the price went up. The jury based the damages on 20 cents a pound, and remember the average price was 22 to 28 cents.

And after the two injunctions, the price went up for a period of time and they said it went up for other reasons, but we think it went up for that reason, and the jury decided in our favor on that, and there are post trial motions on that. But, Mr. Bray has an experience as to when that price decline, how long it was, before there was any change at the retail level.

CONSUMER BEEF PRICES DIDN'T FALL UNTIL RANCHERS WERE LOSING $200 PER HEAD

Mr. BRAY. Thank you. Our markets commenced a decline on feed cattle and our grass cattle also, the first week in February. As the market became more depressed when we were losing $100 a head per steer, there was no change at the supermarket or very little, if any.

Senator SCHWEIKER. Absolutely no change?

Mr. BRAY. No change.

Senator SCHWEIKER. And that $100 per head, can you give me a percent? Can you put that in terms of percent decline of price of beef?

Mr. BRAY. That would be 20-percent decline, a 20-percent decline at that time.

Senator SCHWEIKER. A 20-percent decline at your end of the business, and no decline at the consumer end of it?

Mr. BRAY. Right. And then that carried on and when we were losing $150 a head later in the spring, still no decline. It wasn't until our cattle were losing $200 a head that the consumer was offered some relief over the counter with our commodity. I think everybody in this room will probably be aware that up until 60 days ago, they had very little relief as against early last spring as against their purchase of meat over the counter.

Again, until we were losing say $200 a head, which then would be a 40-percent decline in the value of that animal, not until then was the consumer offered some relief on their food baskets.

Senator SCHWEIKER. Would you have any idea of about what percentage relief they were offered when they finally were offered something? Do you know on the average what percent decline in the retail market prices are we talking about?

Mr. BRAY. I would say probably at the present time it would be a 20 percent decline as against the early February figures.

## BEEF COMMODITY PRICES FELL FOR 6 MONTHS BEFORE CONSUMER PRICES FELL AT ALL

Senator SCHWEIKER. So how many months was it from the time that your price started declining before they showed anything at the consumer end of it, as to a decline?

Mr. BRAY. It would be from February until June and in June we had a little spurt at the last of June when the market stabilized some. Two weeks later it started down again, and then we were on to the $200 loss a head.

I sold cattle a week ago today out of a large feed lot in California, which was in excess of $200 a head.

Senator SCHWEIKER. So, for 3 or 4 months there was absolutely no decline in the retail level, even though your prices were declining?

Mr. BRAY. That is correct.

Senator SCHWEIKER. And then when you declined almost 40 percent, they probably passed back about half of that, is that correct?

Mr. BRAY. That is the way I understand it, and the way I see it and I think that the people here, who are familiar with the retail prices, will find or will go along with me that until that time they were not allowed any relief over the counter.

Senator SCHWEIKER. Mayor, do you have any further comment on that?

## BEHAVIOR OF FOOD CHAIN PRICING PRACTICES CANNOT BE EXPLAINED BY SUPPLY AND DEMAND

Mayor ALIOTO. Just one comment that even A. & P.'s expert will admit that the economic behavior in this industry cannot be explained by supply and demand and that collusion is one of the options that explains it. That is the A. & P. explanation when the judge pressed him for it. He wouldn't do it when my son pressed him.

Incidentally, this case was tried wholly by my son.

Senator SCHWEIKER. In your experience, is this pattern prevalent in other commodities besides beef, or haven't you been engaged in that?

Mayor ALIOTO. Oh, there are lots of them. The chemical industry, and that industry there is no relation in many products between cost and——

Senator SCHWEIKER. No; I meant in the food chains besides meat.

Mayor ALIOTO. In most farm products that you are dealing with, because of the fact that statistical information is given out by the Department of Agriculture over a long period of time, there is generally a relationship between what the farmer receives on wheat, rice, corn, related to what the farmer receives and what the consumer pays for the product, either direct products or subsidiary products. There is generally a relationship.

BEEF PRICES KEPT LOW TO PRODUCERS AND HIGH TO CONSUMERS

In this industry there is no relationship. As a matter of fact, what the jury found was that the prices were kept low to the producers and high to the consumers.

Senator SCHWEIKER. All right, that is all.

NATURE OF CONCENTRATION OF FOOD CHAINS IN MAJOR CITIES

Senator PROXMIRE. Mr. Alioto, as you know the four firm concentration in food retailing in most cities is enormous. Most economists and the Federal Trade Commission agree that when you have four firms dominating the industry, controlling over half the market, you have a situation which is asking for administered prices.

Over half the cities in the United States of over 500,000 in population are in this category, that is, that 50 percent of the market is controlled by 4 firms; 11 cities have over 60 percent and some have well over 70 percent controlled.

Almost 90 percent of the large cities have concentration ratios of over 40 percent. In Washington, D.C., for example, right here, the market is dominated by two chains that control over 60 percent of the market alone. In 1972, the Federal Trade Commission estimated that this led to food prices that were 4 percent higher than the national average, therefore, a $40 million annual monopoly overcharge to the consumer in this one market right here resulted.

This monopoly overcharge figure could be enormous when figured for the entire country.

What are your views of the antitrust laws as they apply to this anticompetitive situation as the result of concentration into fewer and fewer hands?

ANTITRUST LAWS ARE NOT ENFORCED

Mayor ALIOTO. First of all, I don't think they are being enforced.

Senator PROXMIRE. I am sorry, you do not think they are being enforced, you say?

Mayor ALIOTO. I don't think they are being enforced.

Senator PROXMIRE. You do not think they are being enforced?

Mayor ALIOTO. They are not being enforced. They are not paying attention to those critical areas for a lot of reasons, but whatever they are, they are not paying attention.

Senator, I want to add another feature. Take Washington, D.C. You say 60 percent are being handled by two chains?

Senator PROXMIRE. Safeway and Giant.

AGENDA AT TRADE ASSOCIATION MEETINGS

Mayor ALIOTO. Now then, those chains show up at meetings like the National Association of Food Chains have a meat committee for example, and in October of 1969, to use one that we have direct evidence on, they are talking about the following agenda being proposed:

The net profit against gross profit aspects; Start talking profit in dollars and not percent;

Quit saying the profits will go down. We have proved they can go right up from the start;

Formula for pricing at wholesale;

The pricing of primal cuts against carcass at retail;

Pricing structure of cuts over the yellow sheets.

Now, when those chains, in addition to having 60 percent control, are sitting around and talking about those subject matters, obviously you don't have a competitive pricing situation.

Senator PROXMIRE. Now, is that done through the trade association you were talking about earlier?

Mayor ALIOTO. Yes, the National Association of Food Chains. They come up here and testify all the time. They appeared 3 weeks ago telling you-all how the profit percentage to sales are very low in the food industry.

FOOD CHAINS MOVING TOWARD GREATER CONCENTRATION

Senator PROXMIRE. Is there evidence that these chains are moving toward even greater concentration?

Mayor ALIOTO. No question about it. There isn't any doubt about that fact.

Senator PROXMIRE. There is retrenching in those markets they can't control and dominating in the markets they can?

Mayor ALIOTO. Just as an example—and let me see if I can pick out these papers hurriedly—just as an example, in 1964 to 1968, the period in question as far as we are concerned, A. & P., Safeway, and Kroger moved from $10 billion of sales to $12 billion of sales, and today they are up fairly close to $20 billion, in 1974 are up close to $20 billion of sales. When you add the other 6 in that top 10 group, you are getting an increasing concentration.

VERY DIFFICULT FOR GIANTS TO COMPETE

Now, if that concentration were not also aided and abetted by concentrated national buying and price and cost discussions of the nature of which I talked to you about in this association. In other words, if you could get competition among the giants, you might have the best kind of competition in the world. But, when you get giants, it is very difficult for them to compete in that fashion and when they are doing the types of things I just read to you, competition is impossible.

The fact that they are seeing each other so often, the fact the chief executives have private telephone numbers and call each other and meet in motel rooms, all leads to no competition.

CUTTING PRICES NOT IN THE INTEREST OF FIRMS IN A CONCENTRATED INDUSTRY

Senator PROXMIRE. It is so easy too, when you have three or four firms, for them to recognize that their real interest is not to compete effectively. Their profit is not maximized by cutting price and trying to get a bigger share of the market when they can see that their immediate rival is going to match them.

Mayor ALIOTO. Right.

Senator PROXMIRE. So you have a situation where it is very, very hard for the consumer to come out, no matter what kind of a situation you have, when you have that kind of concentration, for him to come out ahead.

Mayor ALIOTO. And also where the incentive to cut costs is lost. We have a very interesting experience in that connection with the electrical industry, Senator. Despite the fact that after the private actions and the indictments back in 1960, when they came down, the prices on heavy equipment fell 50 percent, in an inflationary cycle they fell 50 percent, so that is how much of a cushion they had, but nevertheless, in succeeding years, new management went after costs in a very aggressive fashion and were still able to make profits after cutting prices of electrical equipment by 50 percent.

Their own internal documents, which we received on the eve of trial and which we were supposed to get years before, their own documents talked about how cavalier they were about costs during that period of collusive pricing, and this is the kind of internal document we have seen.

So, you are absolutely right, Senator.

Senator PROXMIRE. So, even though they may say that their margin is paper thin, and if they eliminated their profits, they would only have a profit of a fraction of a percent, but the fact is on the basis of experience they get very lazy and very sloppy in relation to their costs. The fact is they don't have vigorous competition and prices would be reduced and reduced significantly if they had it?

Mayor ALIOTO. Yes.

Senator PROXMIRE. And they would still be able to make an adequate profit?

COMPETITION—THE BEST REGULATOR OF PRICES

Mayor ALIOTO. I feel that competition is the best regulator of prices, but you can't have uninhibited competition when the chief pricing executives are sitting around talking about the subject matters that I read off to you.

Senator PROXMIRE. All right now, in conclusion——

Mayor ALIOTO. Even though there is no formal agreement on specific prices, you still can't have competition. You don't have to have a formal agreement.

Senator PROXMIRE. Did you want to say something?

Mr. BRAY. Yes, I would like to add to this that it was brought out during trial that to be a member of the National Association of Food Chains, you had to have a certain volume, otherwise you weren't permitted to participate.

Senator PROXMIRE. I see.

Now, in conclusion I would just like to go over those three recommendations that you made, which seemed reasonable, but I would like to ask you how you would do it.

You say to outlaw trade associations and the right of executives to meet on anything———

CHECK THE POWERS OF TRADE ASSOCIATIONS THROUGH LEGISLATION

Mayor ALIOTO. That particular trade association.

Senator PROXMIRE. That particular association? Well, now, you are calling for legislation?

Mayor ALIOTO. Yes, do it by legislation.

Senator PROXMIRE. The present legislation is not adequate to do that?

Mayor ALIOTO. No, I mean sure it's adequate to do that if the antitrust division goes in and proves the case and proves what they are doing in that organization and then they get some court to outlaw the association, but that is not likely to happen, granted the present complexion and enforcement of the antitrust laws, and the present complexion of most Federal judges. That is not likely to happen. I would do it by legislation.

Senator PROXMIRE. We would be very grateful for a recommended statutory language that you can suggest that would accomplish this.

POSSIBLE FORM OF THE LEGISLATION

Mayor ALIOTO. Why don't you take the Meat Packers Act itself and start right from there. You are right in the business. Take the Meat Packers Act itself and look at that language which outlaws the packers from going into the retail business.

And I would outlaw chains from belonging to trade associations where any aspect of costs, prices, margins are discussed; any aspect, no matter what it was. You just shouldn't be talking about those subject matters when you are pricing executives. You inhibit competition.

Senator PROXMIRE. Why shouldn't that apply universally in business everywhere?

Mayor ALIOTO. There are some trade associations that are different. There are some trade associations that serve legitimate lobbying interests.

Senator PROXMIRE. Yes, that is right, but why shouldn't you outlaw any discussion of prices and that kind of behavior; pricing behavior of any sort. Why shouldn't that be universally applied?

PREVENT ASSOCIATIONS TO DISCUSS PRICES, COSTS, AND OTHER RELATED STATISTICS

Mayor ALIOTO. Well, I think it ought to be universally applied, and I think the recent decisions of the Supreme Court particularly that container case, which prohibited an exchange of prices between competitors—and they were simply exchanging past prices and you have that in the yellow sheets in this case—the Supreme Court held that to be a violation.

But you know, you get before these district courts, and some courts of appeal and some circuits in this country, and you are bounced around pretty hard when you talk about this. And I think in the retail chain business, as long as you folks have been listening to this fiction for 30 years and me too, not just you folks, that they don't know what their net profits are on beef, well, I don't know why legislators can't say specifically that the chain stores doing so much business over a certain amount cannot belong to trade associations where there is any discussion of costs, prices, statistics or exchange of statistics, I don't know why you can't do that. I think it ought to be done.

Senator PROXMIRE. Then you recommend breaking up the chains and confining buying to geographic——

Mayor ALIOTO. Divisions.

### DIVEST FOOD CHAINS BY DIVISION

Senator PROXMIRE [continuing]. Divisions. So that instead of two big chains combining and merging, you would say that if a chain is going to buy—and the desirable thing is to buy by store—but if you can't make it that specific, at least you would confine it to geographic divisions. Is that right?

Mayor ALIOTO. As I recall, A. & P. Co. has 32 divisions and there are 4,700 stores. There are more than 4,000 stores and 32 divisions. I think each one of those 32 divisions ought to be a separate organization entirely.

Senator PROXMIRE. Again, that would require new legislation?

Mayor ALIOTO. Yes; you can do it by legislation, but of course in the Standard Oil Co. case it was done by decree as you know. They broke up Standard Oil into component parts, so you've got Standard of Indiana——

Senator PROXMIRE. Is this an option that could go either way? Is it possible under present law, if you've got vigorous action by the Antitrust Division of the Department of Justice or the Federal Trade Commission, you could do this?

Mayor ALIOTO. Possibly, but not probably and remember you have the President. In the meat business you did it in the 1920 in that Packers Act.

Senator PROXMIRE. Now, what legislation do we need—and maybe Mr. Bray would like to comment on this too—to permit the packers to get into the retail business? Do we need more than the Capper-Volstead Act or what are you suggesting?

### REPEAL PACKERS ACT OF 1920

Mayor ALIOTO. You see the packers are prohibited from getting into the meat business by that Packers Act of 1920, when they constituted the bottleneck. All you have to do is repeal that legislation.

Senator PROXMIRE. I see, and why was that legislation enacted?

Mayor ALIOTO. That legislation was enacted because——

Senator PROXMIRE. Would you get the bottleneck again if you repealed it?

Mayor Alioto. At that time, you didn't have the chain stores. You see, you had all these mom and pop stores on the one side——

Senator Proxmire. I see.

Mayor Alioto [continuing]. And you had the bottlenecks on the other, but now you have the concentration here and you are just playing into the hands of that chain store concentration by keeping these packers from integrating forward.

Senator Proxmire. So, here is where you would get vigorous competition with the big concentrated firms?

Mayor Alioto. I think it would produce that effect, yes.

Senator Proxmire. All right. Thank you very much. It was most useful testimony. I can't thank you enough. You are obviously an expert on this area, both of you two gentlemen.

A. & P., SAFEWAY, KROGER: GROSS MEAT PROFITS IN THE LATE 1960'S.

Mayor Alioto. I did want to say the evidence did show that in the late 1960's A. & P., Safeway, and Kroger had gross profits in meat of $468 million in that year. You can see why they don't want to tell you what their net profits are because I think those net profits would be very revealing to all of us.

Finally, so that there is never going to be a charge——

Senator Proxmire. Wouldn't we want to put those net profits in relationship to their capital or in relationship to the history or something like that?

Mayor Alioto. Once you get them, you can put them in relation to all of the relevant factors.

Senator Proxmire. All right.

Mayor Alioto. But, the point is I think they have been concealing them.

Senator Proxmire. All right. However, my question is do we have the information on the relevant factors so we could relate it to something that would make it meaningful? The fact they made $200 million a half billion in profits doesn't mean a great deal unless it is related to something, particularly the price the consumer has to pay.

Mayor Alioto. I agree with you there, but there is no way of relating it until you get it, and up until now, in my opinion, they have hidden it by collusive action. They have agreed to hide it.

So there be no question that we are giving slanted testimony, I would like to give the A. & P. version of this evidence and file it with the committee so that the committee will have that.

Senator Proxmire. Without objection, we will be happy to take that.

Mayor Alioto. This is their brief in support of a motion for judgment, notwithstanding the verdict, for a motion for a new trial, and they analyzed the evidence in their light. I think you ought to have that to balance the record. I think you will find the main thing is that the law of supply and demand does not work in the meat industry. That is the main thing.

Senator Proxmire. Thank you, gentlemen.

Mr. Bray. Senator, we thank you for the privilege of permitting us to be here this morning. It seems a lot to us and we surely thank you.

Senator Proxmire. Thank you. You made a fine record.

Our second witness this morning is Mr. John Johnson of the Internal Revenue Service, who is the former Director of Compliance of the Economic Stabilization program during phase 2 of that program. Mr. Johnson will be accompanied by Mr. Charles Ray, a special agent who did most of the work on establishing guidelines for controlling food prices at the retail level.

And these positions these men and their colleagues gained literally thousands of hours of experience on how the major food chains handle their records and how they price their products.

Gentlemen, your vast experience in the area makes you unique in the Federal Government in knowing how these firms operate. I note for the second time this morning the committee's rules have not been complied with completely, because you were not able to give us your material in advance, but we are delighted to have you appear and you can handle your statement in any way you wish and then we have some questions for you.

## STATEMENT OF JOHN D. JOHNSON, ASSISTANT REGIONAL COMMISSIONER, INTERNAL REVENUE SERVICE, AND FORMER DIRECTOR, COMPLIANCE ECONOMIC STABILIZATION PROGRAM, ACCOMPANIED BY CHARLES RAY, SPECIAL AGENT OF THE INTERNAL REVENUE SERVICE INTELLIGENCE DIVISION; AND BURKE W. WILLSEY, ASSISTANT TO THE COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. JOHNSON. Thank you Senator. I am John Johnson, and this is Special Agent Ray of the IRS Intelligence Division. We are also accompanied this morning by Mr. Burke Willsey, an assistant to Commissioner Donald Alexander.

As you said, Senator, both Charles and I were involved during phases I through IV of the economic stabilization programs. My own responsibility was that of enforcement within the varying levels of assignments we received from the Cost of Living Council, Price Commission, and Pay Board.

We have no prepared remarks, but will be happy to answer any questions we can.

### IRS INVESTIGATION OF MEAT PACKERS AND RETAILERS

Senator PROXMIRE. All right, fine. I understand that a memo obtained by the staff, apparently from the Price Commission, indicated that about half way through phase 2 of the price controls, that Internal Revenue Service had spent over 6,000 man-hours investigating meat packers and retailers.

That is more than this committee could spend in 10 years, and we would appreciate the assistance you can provide the committee on this issue.

Would you describe how you attempted to go about controlling prices, and describe the position of the Internal Revenue Service on the Price Commission and the change——

Mr. JOHNSON. Yes, sir. The regulations were of course, drafted by the policy bodies, which were the Price Commission and the Cost of

Living Council. Almost from the onset of phase 2, the largest part of complaints or the requests of consumers for information concerned either food or rent. We decided that it was in those areas that the regulations mostly certainly had to be effectively enforced.

A very large portion of our resources went toward that effort. In the earliest days of phase 2, our job was primarily that of an investigative body recommending findings to the policy boards. Later on we were delegated additional responsibilities which included enforcement actions so that where we found price overruns, we were permitted to accomplish rollbacks and refunds to the marketplace.

Senator PROXMIRE. What was the role of the National Association of Food Chains? You heard it referred to previously by the previous witnesses. What was its role in this situation? Isn't it true that they became an information gathering and disseminating body of information to command posts among the chains?

Mr. JOHNSON. Gathering? I doubt if I would say that. They were one of the associations with whom the Service and the policy boards regularly worked. So that as the regulations were drafted and promulgated, they were used as a conduit to their membership, not only to give them the substance of the regulations, but where interpretative questions and answers were developed, those also went down through that line.

The National Association was 1 of 10 or 12 such groups with whom the service maintained contacts.

Senator PROXMIRE. Now, one of the problems that we have is that the food chains have reacted swiftly and intelligently from the standpoint of public relations and have indicated that their margins are thin. I can understand that. You have had some experience with this.

Now, if I were a businessman and I saw the Internal Revenue Service looking at gross margins in my stores and I had a vertically integrated company, which major chains have, that is, where you have processing and where you have distribution and where you have wholesaling, I would shift more of my costs forward to make my margins appear smaller. Now, your group at the Internal Revenue Service claimed in this memo: "There are many ways that the chains can manipulate the profit margins."

### HOW CHAINS CAN MANIPULATE GROSS MARGINS

Would you describe these methods of manipulation?

Mr. JOHNSON. I am familiar with the memo you are talking about and the term "manipulation" referred there not to any intent by the firms to avoid the regulations but rather is descriptive of how they could assign various cost equations under the regulations. If you recall in the food area during most of stabilization, raw food products were uncontrolled. It was only after they had been processed or acquired by the chain that we became interested.

Our job then was through each level of the vertical organization to track the markup of the cost to the item so that at no time did the chain realize an additional profit. In those cases where we did find errors or violations we insisted on price rollbacks.

The gross profit margin did have certain inherent characteristics, which make it a less reliable compliance device, particularly when you are dealing within short periods. We were either looking at monthly or quarterly returns from the firms. The limitation is that the gross profit margin really cannot be fixed unless there has been a physical inventory of those goods within that organizational element.

Very few of the food chains take any kind of hard inventories, except on an annual basis, and some not even then. So that when they are guestimating their gross profit, it is exactly that, a guestimate.

Senator PROXMIRE. Well, even when you have the inventories taken as you have described them, isn't it optional to a considerable extent as to where some of your costs are assigned or attributed, so it would be possible to make one phase of production more profitable than another simply by moving the costs away from that one and toward the other?

USING THE ACCOUNTING SYSTEM TO ADVANTAGE

Mr. JOHNSON. Well, it could be that during normal periods. If you remember, during the period of controls we are talking about, which was late 1971 into 1973, the controls were by and large item-by-item controls through the various organizational level stages. So, we were looking for the constant markup for the item being maintained.

If the firm moved to change its markup on that item, it would become apparent.

Senator PROXMIRE. Did you actually go back through their system and attempt to determine whether they were loading profits of various items?

Mr. JOHNSON. Yes, sir.

Senator PROXMIRE. What did you find?

Mr. JOHNSON. We found at times, Senator, that there had been violations of the intent of the regulations. Sometimes it was through misunderstanding, sometimes through failure of the accounting system within the corporation, but the adjustments normally were effected as soon as they were pointed out.

Senator PROXMIRE. Now, they don't have any kind of price controls at all. They are done except for the oil industry, so you don't have the same kind of discipline, the same kind of control. They also, of course, have their responsibilities to the Internal Revenue Service to pay taxes, but that is about it.

So, under present circumstances, when they come forward and say they have a very thin margin, isn't it possible that that might be subject to challenge, that they may be wrong, that they may exaggerate the thinness of their margin, that it might be more substantial?

Mr. JOHNSON. I am really not competent to comment on that.

Senator PROXMIRE. I am not saying it is, I am saying is it possible?

Mr. JOHNSON. I obviously am not competent to comment on what is happening outside the controls period. The only experience I have had was during that very limited time.

Senator PROXMIRE. Well, on the basis of the experience you have had with the controls, then absent those controls—well, let me put it this way. Why wouldn't it be possible to manipulate the costs in such a way that you were able to show a thinner margin than was actually the case?

Mr. JOHNSON. I really don't have an answer to that, Senator.

FOOD CHAIN PROFITS FROM MANUFACTURING OPERATIONS

Senator PROXMIRE. Did most of the chains claim they had no idea of what they were making on their manufacturing activities, or their nonfood operations?

Mr. JOHNSON. No, sir, not to my experience. We found that it varied from chain to chain as to how they were organized and how they were priced.

But, for example, in the meat area, one of the things that the mayor was discussing earlier—well, there are two things that we might point out to you. Many chains have now moved to the acquisition of meat products in box form. It is called boxed beef, which is already cut, prepared and processed. In those cases, it was relatively easy to identify the cost to the chain and the markup, and therefore the resulting profit.

In others, for example bakery operations, they had in their books uniquely designed values so that they could in effect identify profits. Would you like to comment?

Mr. RAY. Usually, they had the vertical integration steps and a separate profit step, so they were aware of the profits.

FOOD CHAINS CAN DETERMINE RETAIL PROFITS ON MEAT

Senator PROXMIRE. So the mayor is right. There is no reason they can't tell you what their profits were on meat if they wanted to do so, at the retail level. Isn't that true?

Mr. JOHNSON. We had never encountered a situation where they said they couldn't.

Mr. RAY. That is not our experience. We monitored, based on the regulations, and were able to determine at least at the gross profit levels, the various departments and——

IRS CAN AUDIT A MAJOR FOOD CHAIN

Senator PROXMIRE. How about the gross profits level? I think that was the level the mayor was talking about, wasn't it?

Does the Internal Revenue Service have the capability to effectively audit a major integrated food chain?

Mr. JOHNSON. Yes, sir.

Senator PROXMIRE. But you do not have the capability, as I understand it, and correct me if I am wrong, to audit a major oil company?

Mr. JOHNSON. I am sorry, sir, but I really can't answer that question. That is an area of speciality within the audit division.

Senator PROXMIRE. What I am getting at is whether the food chains are getting to the same position so that they will be very difficult to audit? Is it becoming more difficult or not?

Mr. JOHNSON. It was not my experience during the stabilization program, no, sir.

Senator PROXMIRE. Do you think that the chains have the ability, and I am not saying they do, have the ability to mislead the Department of Agriculture and the public with these margin figures?

Mr. JOHNSON. The Department of Agriculture has been working with the chains, Senator, for 25 years, with those margin figures, and they could better comment on that rather than I. There is a particular division over there that watches the price range between the raw agricultural product and the finished product, and I have virtually no experience with that organization.

Senator PROXMIRE. Mr. Ray, do you have any reaction to that?

Mr. RAY. Well, the only reaction I would have, Senator, is we are really talking about two different departments of accounting. With the chains we can measure your cost pass-through. In a large refinery operation you come in as one product and you go out as a large number of aggregate products, which makes it extremely difficult to trace the cost in that area. We were involved in some aspects, but not that we are any experts in that area.

PROBLEMS IN ALLOCATING MEAT PACKER PROFITS

Mr. JOHNSON. Let me draw the analogy between the oil companies and the packers. The packer deals traditionally with the concept of the live animal from which he derives as many as 6.000 to 7,000 different products. The market fluctuates violently, normally, and he is trying to assign tentative yields to his products, and these are mixed products, sausages, carcasses, what have you. Their bookkeeping does not permit the easiest tracking of how costs are assigned or where profits are derived from, so that packers represented the most difficult audit responsibility we had under the stabilization program.

It took a long time, and the packers in some cases had to go to considerable effort to modify bookeeping practices in order to comply with the regulations, but I think it was achieved.

Senator PROXMIRE. You think it was achieved that they could do it?

Mr. JOHNSON. Yes, sir.

Senator PROXMIRE. I don't know how you can operate any kind of business if you don't know what your profit margin is. You wouldn't know how to price it. You wouldn't know how to look for areas where you obviously must do a job in bringing your cost down in order to compete with your competition.

It seems to me you have to be able to determine what your margins are.

Also, the IRS memo states: "Expansion distorts financial statements." Can you explain that?

Mr. JOHNSON. Yes, sir. As you know, the food industry, particularly retail, has been traditionally an expanding one. They have a theory, I believe, within the retail industry that in fact a given type of store operation is obsolete within 5 years, so that they are constantly looking for new ways to do business, new ways to deliver the service, new ways to operate the chain.

You, therefore, end up with the situation that you have new kinds of write off advantages against your margin, additional depreciable assets. You have write offs on the obsolete equipment of stores and you have leaseholder improvements, where as at the same time you are realizing new profits, hopefully, through increased sales or reduced operating expenses. If you are therefore trying to look at a chain today and comparing its net margin to 5 years ago, you very often are looking at two different types of operations.

You are looking at two different sets of acquisitions and delivery methods. That does make the margin very hard to follow.

The regulations, by the way, of the Stabilization Commission, initially provided not enough recognition of that factor and were later modified.

NO COMPETITION EQUALS HIGHER PRICES

Senator PROXMIRE. Going back to the IRS memo, it is pointed out that "in areas of little or no competition, prices are higher."

Now, that is a very important statement and a very damaging statement, it seems to me, to the claims of the chains that they are highly competitive everywhere. I understand that the Internal Revenue Service put together a summary analysis that documented this point, however, the staff was unable to find it in the Price Commission files.

Have you been able to find a copy of that analysis and can you document that in any way?

Mr. JOHNSON. Actually, Senator, I believe that study was done by the Price Commission, not the Internal Revenue Service. They may have used some of the data that we developed. We do not have copies of the analysis. I would suggest that wherever the Price Commission files are now held, that that would be the place to be searched. We would help to look for it for you, but we do not have one on hand.

Senator PROXMIRE. Well, do either you or Mr. Ray have any general knowledge of this?

Mr. JOHNSON. Normally, Senator——

Senator PROXMIRE. Do you have any knowledge of areas of little or no competition where prices are higher and that there are such areas?

Mr. JOHNSON. Normally, the Service was not looking at the question of competition among the chains. We were looking at how the regulations were carried out internally within a given chain.

Senator PROXMIRE. I understand that your fundamental responsibility was simply a matter of determining whether or not price increases were legally justified.

A. & P. WEO CAMPAIGN HAD GREAT IMPACT ON PRICES

Mr. JOHNSON. I think that the origin of that remark, and it was very much an in-house, off-the-record comment, was the import of A. & P. moving to its WEO operation. WEO had considerable impact on food chain pricing policies.

Senator PROXMIRE. Do the chains generally use zone pricing within a market, and would you describe zone pricing and tell me why they use it, if they do?

Mr. RAY. Senator, most of the pricing that we were involved in was at the division level of the chains and I would say substantially all of those divisions had what is called zone pricing in which there was from 8 to 20 different zones of pricing and these price changes went out to the stores in those particular zones based on those particular prices. That was customary and that is the way we monitored them at the division level.

FOOD CHAIN PRICING POLICY

Senator PROXMIRE. Can you describe the various chain pricing policy, price checks, and so forth?

Mr. RAY. Well, as I understand it from my experience, you either have a centralized operation or a decentralized operation. In some few chains, the pricing policy is centralized in the home office. I would say the vast majority, are to operate with a great deal of economy within the separate divisions that they have.

There the executive officer files his goals to the home market as to certain expected gross profit margins in the area, and he has a great deal of autonomy in how he sets prices as long as he achieves those particular goals.

By the same token, underneath the division manager would be particular buyers and prices for the basic areas of groceries, meat products, and so forth.

Senator PROXMIRE. I realize that you may not be able to answer this question because you did have a limited responsibility, but maybe you can and maybe you can't, so tell me if you can, but in your past interviews with chain executives and pricing personnel, I want to know is the cost of the product less important in pricing than what the competition will allow?

### COMPETITION—DISCIPLINING FACTOR IN HOLDING PRICES DOWN

Mr. JOHNSON. Well, it was our experience that the primary determinate of price was the cost. That was the nature of the regulations that we were trying to enforce. We were not unaware that there is a constant kind of market analysis taking place, particularly to determine within a chain what price leaders or loss-leader items they are going to offer in a given week.

Senator PROXMIRE. So, under the circumstances—and they were very unusual circumstances, with price controls in peace time—even under those circumstances there was a consciousness and awareness that the competition was important and also a disciplining factor in holding prices down?

Mr. JOHNSON. Yes, sir, particularly in those advertised or loss-leader items that a chain offers in a given week to attract customers.

Senator PROXMIRE. Did you find that the dominant chain or chains within a market usually charged slightly higher prices than others?

Mr. JOHNSON. I don't believe we ever did an analysis on that question.

Senator PROXMIRE. In your investigation in connection with phase 2, did you see any evidence of commercial bribery? Do you feel it is a problem in the industry?

Mr. JOHNSON. I was not exposed to it, no, sir.

Senator PROXMIRE. How about you, Mr. Ray?

Mr. RAY. No, sir, not to my knowledge.

Senator PROXMIRE. Did you hear about that at all? We are going to have a couple of witnesses testify from the Organized Crime Section-Strike Force on it.

Mr. JOHNSON. They would be more competent to testify. We were really not looking to those kinds of questions.

### CHANGE FROM FIFO TO LILO

Senator PROXMIRE. Did you find most of the chains were changing from first-in-first out, to last-in-last out, in order to show lower profits?

Mr. JOHNSON. Some were changing before the program was started, and some were changing while the program was underway, but it seemed to me to be a normal business practice, and we did not view it as a device to evade controls or increase profit margins.

Mr. RAY. I think it is a very normal business, Senator, in a period of rising prices. What they are doing is matching current costs against current sales.

Senator PROXMIRE. It reduces their taxes, of course, by reducing their profits?

Mr. RAY. Yes, sir; it does, and it is allowable under the law.

Senator PROXMIRE. If they want to change again, they can change freely, if they change the first time?

Mr. RAY. That is right.

PRICE CONTROL ENFORCEMENT FEASIBLE

Senator PROXMIRE. From a technical point of view and from your experience with phase II, do you feel that prices can be effectively controlled at the retail level?

Mr. JOHNSON. Well, our view on that has to be based only on the regulations we had in phase 2. I believe those regulations were enforced. It required considerable expenditure of effort on the Government's part, as well as the industry's, to be able to set up identification systems to carry it out. Other forms of retail controls, I have no experience with.

Mr. RAY. I would be in agreement with Mr. Johnson on that. I think we did enforce the regulations at considerable expense and manpower.

Senator PROXMIRE. Would it be possible for the committee staff to have access to the stabilization program files of the Internal Revenue Service? Is that possible?

Mr. JOHNSON. They have been retired, Senator, to the Federal Records Center. I am now on the west coast myself and am not sure what place they are in, but we would be happy to work with you to try to find materials that would be of interest to you.

Mr. WILLSEY. Senator, we will attempt to get together with your subcommittee staff to make certain that all of those records which are within our control are made available to the extent it would be helpful to this inquiry.

Senator PROXMIRE. Gentlemen, thank you very much. You have been most helpful. I do appreciate your willingness to appear and be so responsive. It has been very helpful.

Mr. JOHNSON. Thank you, Senator, and may I say thank you to Mr. Stockton, who has helped prepare us for this meeting.

Senator PROXMIRE. The staff has done a fine job.

The committee will reconvene in room 318 of the Russell Senate Office Building on December 12, this Thursday, to hear William Aaronwald, Organized Crime Section-Strike Force, Southern District of New York; Nicholas Scoppetta, Commissioner of Investigations, City of New York: Lester Norton, president National Provisioner, "Yellow Sheet"; and Williams Albanos, Jr., managing director, "Meat Sheet."

The committee is recessed.

[Whereupon, at 12 noon, the committee recessed, to reconvene at 10 a.m., Thursday, December 12, 1974.]

# FOOD CHAIN PRICING ACTIVITIES

THURSDAY, DECEMBER 12, 1974

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
*Washington, D.C.*

The committee met, pursuant to recess, at 10:05 a.m., in room 318, Russell Senate Office Building, Hon. William Proxmire (vice chairman of the committee) presiding.

Present: Senators Proxmire and Schweiker; and Representative Brown.

Also present: Richard F. Kaufman, general counsel; Jerry J. Jasinowski, and Peter Stockton, professional staff members; Michael J. Runde, administrative assistant; and Walter B. Laessing, minority counsel.

## OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. The committee will come to order.

Throughout the committee's investigation of the food retailing industry, the issue of commercial bribery continues to come up. I think the tendency is to dismiss this issue as isolated and of minor importance in its effect on food prices. However, I have never heard officials of the Department of Agriculture or the FTC even raise the question as to whether commercial bribery and other forms of corruption in the food industry affect food prices.

From what I understand is going on in the various New York area investigations, we can no longer dismiss this as a minor issue. The strike force in the southern district of New York, along with the district attorney's office, have uncovered a staggering level of corruption in the meat buying sector of virtually every major chain in New York, except those who do their own meat processing. This corruption reaches the level of vice president in many of the chains. In some cases, these executives were receiving as much as $85,000 to $90,000 annually in kickbacks.

What is the impact of these kickback arrangements on beef prices? According to the prosecutors, the impacted ranged from ¼ of 1 cent to 4 cents to 5 cents per pound, and in some cases as high as 15 cents per pound. Some of these chain executives have pleaded guilty. Now, this is incredible. When the chains talk of their paper-thin profit margins in beef of only 1 cent on the dollar, and some in fact claim they lose money on beef, this 4 cents to 5 cents is at least 4 to 5 times their profit margin that end up in the pockets of their executives and employees. This practice, then, may have a terrific impact on prices.

Let me point out that this is only one level of bribery that went on in New York between the wholesalers and the retailers. Between the processors, as in the case of Iowa beef, and the wholesaler, there was another level of bribe. Iowa beef, the largest beef slaughtering firm in the Nation, had to pay ½ cent per pound in bribes to union officials to get their boxed beef into the New York market.

As you can see, this is a serious issue and one that can no longer be taken lightly. The question then is raised as to whether this bribery and corruption is limited to beef and in New York City. The prosecutors have reason to believe that the practices are not limited. In fact, some packers have admitted that they are having problems getting boxed beef into other markets.

William Aaronwald, of the strike force in the southern district of New York, was to have testified this morning on the investigation of commercial bribery as it relates to the major chains in the New York area. However, Attorney General Saxbe has refused to make either Mr. Aaronwald or his superiors at the Justice Department available for open testimony, because of possible pretrial publicity. Although some of the food chain executives have pleaded guilty to bribery charges, some of the trials are coming up next month, and ths issue has not yet been resolved by the committee.

However, we are privileged to have Nicholas Scoppetta, Commissioner of Investigation for the City of New York, with us this morning, who has intimate knowledge of this issue of commercal bribery. Mr. Scoppetta spent a number of years in both the district attorney's office in New York, as well as the U.S. Attorney's office, where he directed investigations into criminal activities in the meat industry.

It is a pleasure to have you with us this morning, Mr. Scoppetta, and you may proceed in your own way, sir. We have your statement. If you wish to abbreviate it in any way, the entire statement will be printed in the record, but you go right ahead.

## STATEMENT OF NICHOLAS SCOPPETTA, COMMISSIONER OF INVESTIGATION, CITY OF NEW YORK

Mr. SCOPPETTA. Let me start by saying—just an observation on your opening comments, Senator. The investigations that I was personally involved with took place from 1962 to 1969 in New York County, and the cases you referred to, of course, are current, active matters, some of which are still pending before the courts. But the matters I am referring to are matters that have been completed through prosecution and conviction and appeal, so that we can speak in somewhat more specific terms than otherwise.

Senator PROXMIRE. Yes. I might say that is, unfortunately, the case. We have to deal with matters which are historic to some extent, and not immediate. But at the same time, I think that is the only way we can responsibly approach this. As I have indicated, we have asked these other people who are dealing with the current situation to appear and for obvious reasons they cannot. But I think you can project this comment on it, and indicate the extent to which you think it is or is no longer a problem, and so forth, as you please. Go ahead.

Mr. SCOPPETTA. Well, it has been a problem, and I think it continues to be a problem, especially in the meat industry, and that is the area in which my investigations were concentrated.

Let us start with that question of commercial bribery.

Senator PROXMIRE. All right.

Mr. SCOPPETTA. We found that one of the major supermarket chains had a buyer who was induced to cooperate after he found himself to be involved in misconduct; and more than a dozen separate meat processors were found to be paying kickbacks to this buyer to get their product into this major supermarket chain. It was the Atlantic & Pacific Tea Co.—the A. & P.—an investigation which we conducted as a result of the A. & P. bringing the matter to our attention, bringing the matter to Frank Hogan's attention, and then cooperating fully and allowing us to keep this employee in the buyer's position, so that we could conclude the investigation, which stretched over several years' time, including the prosecutions.

Now, the kickbacks, which ranged from a half a penny a pound to a penny or 2 cents a pound, in some instances, were tacked onto the wholesale price, so that the chain bought the product, processed meats, at an artificially inflated price, which they then passed on to the consumer, not knowing that they were paying more than they could have gotten it for. And so, when you consider the very large volumes that national chains deal in, you can see that the figures are quite substantial, and the cost of the illegal conduct—the bribes—is passed on directly to the consumer.

We had another case, another set of cases, which stemmed from this original commercial bribery case, that showed another area where prices can be artificially inflated due to illegal conduct, criminal conduct. We investigated the meat unions in New York, and specifically the New York local, Local 174. And as a result of that investigation, the president and the vice president and the secretary-treasurer were all indicted for extorting money each time a contract was to be renewed from the meat industry; extorting payments in order to give a contract—not a sweetheart contract, not a special benefit on a contract—but to give a contract at all. So it was just outright extortion on the part of the unions. That case is completed—they all received substantial jail terms—so that we can talk a little bit about the details of the case.

The case that I tried involved a $60,000 payment that was demanded from all of the independent meat processors in the beef area. That was the evidence at trial. However, the testimony that was adduced before the grand jury, since the grand jury, conducting an investigation and not concentrating simply on the one indictment was more extensive. That evidence showed that this was a common practice. The payments had to be made every 2 years or every 3 years, whenever a contract expired. They had 2- and 3-year contracts. So this has gone on in the meat industry for as long as any of those processors could remember, and in fact, in some instances, we found that the son who is now the president of the company, in one particular case, the Trunz Meat Packing Co., could recall that as a young boy when his father was president of the company, his father would talk about having to get together money for these kinds of payments. So it had become a way of life in that industry to pay the union officials.

Now, there were many other payments, not just at contract time; payments were made on holidays likewise, if you wanted to transfer a man from one job to another, or if you needed a particular group of people that the union had to supply to you, or if you were short-handed with an unusual rush of business, you very often had to pay union representatives in order to get any of that done. You had to pay to get them to do the job they were supposed to do. We found that the meat processors did not take those illegal payments out of their own pockets, out of their own profits. The way most of them paid these illegal bribes was to create false bills of lading and invoices, and charge that to the corporation, and then pass that on in the sale of the product. So again, you found illegal payments being tacked onto the wholesale price of the product.

Finally, one more particularly outrageous scheme that was uncovered during that same investigation involved the now-defunct Merkel Meat Co. The Merkel Co. was based in Queens County, in New York City, and had sales of many millions of dollars a year. We found that the president and the vice president of the company were involved. After they were indicted they cooperated, and we learned the full story of what had gone on here. Their cooperation led to other prosecutions, including a meat broker with ties to organized crime. We found that the Merkel Meat Co. was buying products from upstate New York that were really unfit for human consumption. It was meat that was the product of diseased animals that died in the field, that any farmer would gladly pay someone to take off his property. That was the product they were buying from upstate New York, and then treating it so that it appeared to look like boneless beef. They would package it in expensive cartons, instead of the kind of packaging that this product would ordinarily be packaged in.

Incidentally, I should say that those animals are used for pet food. If the meat is treated in such a way, it is then used for the pet food. If it is cooked at certain temperatures, and certain safeguards are met, it is permissible to use animals like this in the preparation of pet food. But never for human consumption.

### ILLEGAL ACTIVITIES IN THE MEAT PROCESSING INDUSTRIES

At any rate, the Merkel Meat Co. brought this product down into New York, had arranged to put stamps on it—Department of Agriculture stamps on it—labeled it boneless beef, and Merkel was paying 8, 10, 12 cents a pound for it, and then carried it on the books as though they were paying for edible product, whatever it was at the time—26, 28 cents, 36 cents a pound—and then selling that to their customers, which included supermarkets and institutions such as hospitals.

Senator PROXMIRE. So at that time, under those circumstances, the additional price that they had to pay, the bribe price, the bribe was about 30 percent of the price to the retailer?

Mr. SCOPPETTA. Because they were buying an inedible product to begin with.

Senator PROXMIRE. Right.

Mr. SCOPPETTA. Yes, sir, right; and sold that product as though that were, in fact, their real wholesale price. The difference between the real price they were paying and the price they carried on their books was split between the broker and the officials at Merkel, and that was their take from using this scheme.

You have referred to the recent prosecutions, 1972 and 1973, where a Federal grand jury, working together with the New York County grand jury, the State grand jury, learned that certain brokers were controlling the price of pork products coming into New York. And in the case of the Iowa Beef Co., a case in which I think its chairman of the board has been convicted, it showed—or at least the indictments alleged—payments approaching $1 million over about a 1½-year period of time, in order to allow that company to get its product into the city. So that again, without being fully conversant with all of the facts of that case—that is Mr. Aaronwald's matter, and Frank Snitwo in the New York County district attorney's matter—it would appear again that the price of those payments were tacked onto the price of the product. And so I think it is—there are some other cases pending as a result of that investigation—I think it is fair to say that many of the corrupt practices that we found existed in the sixties still do exist in the New York area.

Senator PROXMIRE. All right, sir. Have you completed your statement?

Mr. SCOPPETTA. Yes, sir.

Senator PROXMIRE. All right. The entire statement will be printed in full in the record.

[The prepared statement of Mr. Scoppetta follows:]

PREPARED STATEMENT OF NICHOLAS SCOPPETTA

I am pleased to have been invited to appear before the Joint Economic Committee of the United States Congress during its hearings on possible anti-competitive practices, structure of markets and enforcement of the antitrust laws in the food industry. The subject of your hearings is obviously a matter of great public and legislative concern in these days when prices in the food industry continue to rise at an alarming rate.

The comments I will make today are, I suspect, offered from a perspective which may be a little atypical for witnesses appearing before your committee. That is, the perspective of one who has been exposed to one aspect of the food industry purely as a law enforcement official dealing with investigations of criminal activity in that industry. I would like to discuss with you some of the ways that food prices have been affected, specifically meat prices, by organized criminal activity which has infiltrated that industry.

Let me first define what I mean by organized crime in this context. This definition would includue any group of individuals who have come together to conduct some form of organized criminal activity. This definition obviously includes more than the traditional "Mafia" or "Cosa Nostra" view of organized crime, though obviously those elements are present. It includes persons of many ethnic and vocational backgrounds, many of whom operate behind a facade of respectibility. Many are persons who run large corporations and enjoy great position. All of these persons have one thing in common, and that is the pursuit of personal gain by criminal means.

I offer these views as one who has spent some thirteen years in law enforcement, including service as an Assistant District Attorney for New York County in the office of District Attorney Frank S. Hogan; Associate Counsel to the Knapp Commission investigating alleged police corruption in New York City; Special Assistant United States Attorney for the Southern District of New York under former United States Attorney Whitney North Seymour, Jr.; and now Commissioner of Investigation for the City of New York.

For several years as an Assistant District Attorney, I directed an investigation into criminal activities in the meat industry in and around New York City. That investigation resulted in a number of indictments and convictions, including the conviction of corporate officers and executives who operated, or were employed by, concerns which processed and supplied meat products to supermarkets, independent retail stores, municipal entities such as hospitals and nursing homes, and, in some instances, the Federal Government via certain military installations in the metropolitan area. Although the meat products produced were retailed almost exclusively in the New York City area, the investigation reached into New Jersey, Pennsylvania and Wisconsin. As a direct result of these criminal activities in the meat industry, meat prices to the consumer were substantially increased.

Subsequent recent investigations which have been conducted by the Justice Department's Joint Strike Force on Organized Crime and the New York County District Attorney's office confirm that many of the corrupt practices which were found to exist in the meat industry in the investigations I was involved in during the 1960's still exist, though they are perhaps executed in a more sophisticated fashion. Those investigations have resulted in a number of indictments which are now awaiting trial. The prohibitions restricting pretrial publicity on matters before the Court prohibit reference to specific cases before those Courts, and I will avoid doing so. However, quite apart from the facts concerning any particular individual or company, certain patterns of systematic corruption emerge which are directly related to the manipulation and artificial inflation of prices in the meat industry today.

During our investigations into the meat industry in the 1960's, a variety of cases were brought by District Attorney Frank S. Hogan which convincingly demonstrated that retailers, and ultimately consumers, were victimized by a number of corrupt schemes. One aspect of the investigation resulted in the arrest of more than a dozen meat processors from many different companies on charges of commercial bribery. Those defendants, it was learned, had made corrupt agreements whereby supermarket or chain store buyers were paid bribes which were computed on the basis of the amount of meat the chain store buyer purchased from the meat processors. Thus, for example, a buyer would enter into a corrupt agreement with a processor whereby the processor agreed to "kick-back" to the buyer one-cent per pound for every pound that the buyer purchased from him. This "cost" of bribing the buyer was added on to the selling price so that the buyer's employer, the supermarket or chain store, absorbed the costs of the bribe. Therefore, in our illustrative case, the supermarket paid $1,000 more for every hundred thousand pounds of meat it purchased. This inflated wholesale cost was then passed on to the consumer when the meat was sold at retail.

Another case involved the bribery of labor union officials who, the evidence showed, had for many years extorted at each contract renewal large sums of money from the meat companies in the New York area in return for the assurance of labor peace. The President, Vice-President and the Secretary-Treasurer of Local 174 of the Amalgamated Meat Cutters and Butchers Workmen of North America, then the largest union local in the meat industry, were convicted for engineering a scheme whereby $60,000 was demanded as the price for a new contract. The evidence before the Grand Jury showed that these same union officials had extorted hundreds of thousands of dollars from executives in the meat industry by the improper exercise of the considerable power of their union office. Invariably, the meat companies concealed the payments in their corporate records, creating false invoices for meat not purchased, and passed this cost on to their customers.

An especially vicious scheme was uncovered during our investigation of the Merkel Meat Company. The evidence underlying the indictments returned against the President and Vice-President of the Merkel Company, together with the indictments against a meat broker with ties to organized crime, showed that Merkel was purchasing from that broker many hundred of thousands of pounds of meat which was the product of diseased cows and horses. The broker arranged to pick up thousands or carcasses of animals which had died from a variety of diseases or mishaps and which were obviously not fit for human consumption. He then had these carcasses butchered at a pet food company and packaged in the expensive kind of food cartons used for edible meat, which he then marked "Boneless Beef". He finally marked these cartons with counterfeit and forged federal inspection stamps and sold the product at reduced prices to the Merkel Company. Merkel signed false bills of lading which inflated the actual price paid the broker, and Merkel and the broker split the difference between the actual price paid and that which was charged the Corporation. Of course, the price to the retailers was based on the artificially inflated wholesale cost to Merkel, so that the ultimate consumer paid a proportionally higher price for a vastly inferior and, in fact, potentially poisonous meat product.

During 1973 a Federal Grand Jury in the Southern District of New York and a State Grand Jury in New York County conducted a joint investigation to determine whether certain labor union officials and figures in organized crime conspired to unlawfully influence agents of supermarket chain stores to purchase meat at inflated prices. A number of indictments have been returned as a result of that investigation. Those indictments charge an extensive manipulation and control of the prices of meat products in the New York City area. It is alleged that certain corrupt individuals, by the exercise of their influence and control in the meat industry, have been able to keep certain wholesalers from introducing quality meat products at reduced prices into the New York City area unless the wholesalers agreed to deal through, and pay commissions to, specified brokerage houses. Thus, where a large out-of-state meat supplier, through improved packaging and marketing techniques was able to deliver boxed boneless beef to the Northeast metropolitan markets at reduced prices, he was prevented from doing so by persons who could influence supermarket and chain store purchasing practices. The out-of-state meat supplier was told that he would be guaranteed a ready market in a number of supermarket chains only if he would deal through a specified meat brokerage company. The meat supplier over a twelve-month period eventually paid approximately one million dollars to the brokerage firm for the privilege of selling his product in New York, which amount was apparently added to the wholesale price of the meat he supplied. These unnecessary additional costs were added to the wholesale meat price because of the pressures certain individuals and companies were able to exert to prevent the meat supplier from supplying a high quality product at reduced, competitive prices.

Most meat companies in New York acquire meat supplies through brokers. Some of these brokers, it has been charged, have acquired enormous influence in the industry, sometimes through unlawful schemes involving kick-backs and bribery. Some few brokers appear to control a disproportionate share of the meat products being supplied to the metropolitan area, and it may be that some restructuring of this brokerage system would eliminate some of the abuses which now exist in the New York market. Perhaps merely increasing the numbr of brokers, thereby increasing competition, would decrease the opportunities for abuse.

The fact that the companies and individuals involved in the price fixing schemes described above are presently awaiting trial prevents me from going beyond a general description of the practices charged. It may be, however, that an examination of the evidence developed upon the trials of these cases by this subcommittee, and others, will suggest ways in which legislation may be drafted to deal more effectively with this problem.

Although none of these prosecutions was brought under the criminal sections of the anti-trust laws, it may be that a greater role exists for the application of anti-trust statutes in dealing with the problem of ever increasing prices in all aspects of the food industry. I have confined myself to a discussion of the meat industry because that is the area within which I have had some personal experience and is one in which the Federal Strike Force for the Southern District of New York, headed by Edward M. Shaw and the New York County District Attorney's Rackets Bureau have been extremely active in developing evidence which has enabled a Grand Jury to act. However, conditions which exist in the meat industry—that is, the mechanics by which wholesalers get their product to the consumer, exist likewise in other areas of the food industry and the action and influence of this Committee may be brought to bear to encourage the more vigorous use of the anti-trust provisions in this area.

I think that there is a tendency for some of us in law enforcement to regard the criminal sections of the antitrust laws as having application only to corporations involved in some esoteric manipulation of the economics of their industry. It would seem that a fresh approach would encourage anti-trust sanctions to straight criminal activity involving extortions, bribery and sophisticated kick-back schemes where those practices ultimately manipulate and control food prices and markets.

I thank you for affording me this opportunity to appear before you.

Senator Proxmire. From your experience in this field, and from your contacts with prosecutors in the strike force and in the district attorney's office, would you say that these practices are not unique to New York and are not unique to meat?

### EXTORTION—PART OF THE FOOD INDUSTRY IN SEVERAL STATES

Mr. Scoppetta. I think there is every reason to believe they are not unique to New York. Very many of the same conditions which exist in the meat industry exist in other aspects of the food industry. The product is brokered into large urban areas from other parts of the country.

To answer your question directly, we found in our investigations that the criminal conduct was specifically related to other States. We found products being treated in the same way as the Merkel product was being treated that came from Wisconsin, for example. We found illegal payments from——

Senator PROXMIRE. Where in Wisconsin?

Mr. SCOPPETTA. You would have been happier if I had not mentioned it, Senator. I would be happy to get that for you.

Senator PROXMIRE. Can you remember the city in Wisconsin?

Mr. SCOPPETTA. I remember we had an extradition proceeding and I remember the name of the person who testified, a Mr. Buster Lea, who ran a very large——

BUSTER LEA—ROLE IN MEAT PROCESSOR CASE

Senator PROXMIRE. How do you spell Lea?

Mr. SCOPPETTA. L-e-a.

Senator PROXMIRE. He ran a large what?

Mr. SCOPPETTA. He ran a large meat-exporting operation, exporting product to New York.

Senator PROXMIRE. Was Buster his first name?

Mr. SCOPPETTA. Yes, sir.

Senator PROXMIRE. B-u-s-t-e-r; was it his nickname or his real name?

Mr. SCOPPETTA. It was the name we compelled him by reciprocal witness proceedings, to appear under. It was the only name we ever used on any of the documents that I had contact with. We asked him to come to New York. He was not anxious to come to New York. We subpenaed him. We had a reciprocal witness proceeding which resulted in one of our assistant district attorney's going out to Wisconsin and having a court proceeding in a court in Wisconsin, directing that he appear. And then he did appear, and was subsequently indicted in Federal courts in the Southern District of New York.

Senator PROXMIRE. Do you remember the city in Wisconsin?

Mr. SCOPPETTA. I will get all that information for you, Senator.

Senator PROXMIRE. All right.

Could you tell us any more details about that—any other cities?

Mr. SCOPPETTA. That is the one person in Wisconsin. It is the one set of facts involving his operation. He was involved in many more transactions, and we had reason to believe he was bringing meat into New York from the South as well, from Texas and possibly from Mexico.

Senator PROXMIRE. How about in the big meat-processing centers in the country, of Kansas City, Chicago, and so forth?

Mr. SCOPPETTA. Well, this union, local 174, is based in Chicago. It has its national headquarters in Chicago, and we had some contact with the union as a result of that, but not with the traffic or the meat product coming out of Chicago. The New York area, or, at least, the companies we were dealing with were being fed by meat suppliers south of New York and just north of New York, in the New England area.

Senator PROXMIRE. Are there investigations into this problem being conducted in other areas of the country besides New York?

Mr. SCOPPETTA. I am familiar with the investigations of the strike force in the Southern District of New York, and the New York County

District Attorney's Office has had investigations on and off for the last 20 years. Al Scotti, who just left as chief of the rackets bureau after serving 30 years in that office, first investigated this very same union some 25 years before we got our indictments.

Senator PROXMIRE. My question was whether this was in other areas of the country beside southern New York.

EXTENT OF PROCESSOR INVESTIGATION

Mr. SCOPPETTA. Whether we have this problem?

Senator PROXMIRE. Whether there are other investigations into the problem being conducted in other areas.

Mr. SCOPPETTA. Well, I do not think I would be—though it may be, I am not familiar with them.

Senator PROXMIRE. Do you know whether or not they are investigating chains, the chains themselves, the big store operations?

Mr. SCOPPETTA. I am sure the strike force in the Southern District of New York has investigations that may extend that far. I have every reason to believe that. But I would leave that to Mr. Aaronwald or Mr. Shaw, who heads the strike force, without commenting on matters that they are still working on, sir.

Senator PROXMIRE. Well, if the Justice Department found such a deep-rooted problem in the New York area—and I think your description is really appalling—why did they not immediately begin investigations in other areas?

Mr. SCOPPETTA. When I conducted these investigations, I was an assistant district attorney for New York County, and I do not know what the thinking may have been. I know that Robert Morgenthau was the U.S. attorney at the time, and of course now is the newly-elected district attorney of New York County, and his office did have an investigation that paralleled ours at the same time that we obtained indictments in the *Merkel Meat* case.

Senator PROXMIRE. Do you think the Justice Department should take a more active role in these investigations?

ANTITRUST LAW ENFORCEMENT LAX IN FOOD AREA

Mr. SCOPPETTA. I think there is one area that has been, perhaps, neglected, and that would be enforcement of the antitrust laws in this area. It would seem that, based on the facts as I read them from the indictment that the southern district has obtained, that there may be—I have only superficial knowledge of the Sherman applications, the criminal applications of the Sherman antitrust sections, but it would seem that there is a pricefixing element there that the antitrust laws may be able to deal with. And when you prosecute, for example, as happened in the *Iowa Beef* case, you prosecute the head of a large concern like that, with all of the resources and energies and effort that went into it, and the prosecution was finished, and the man is convicted but has gone free, I do not know that we have had any great deterrent effect on what happened.

Senator PROXMIRE. What you are saying is, there was action on the part of local officials and others, perhaps the Justice Department or the USDA, on the criminal activities relating to bribery and conspiracy and so forth, with respect to violation of antitrust laws, to fix prices and gouge the consumer—that that action apparently was absent.

Is that right?

Mr. SCOPPETTA. I do not know—I think that is right, Senator—I do not know of any antitrust investigation, even, much less a prosecution or a suit, that resulted, that came out of these meat investigations. And typically what happens, I think, is that we use only one resource available to us in these kinds of investigations; that is, we have a criminal violation, and that is prosecuted, and then it is considered dealt with by one agency, and then it is left alone. And if we had, in this case, a two-pronged approach, had the antitrust division look and see if they could not institute a suit that would then lead others to have treble damage suits against these corporations, I suspect the effect would be devastating, and would have a terrific deterrent effect on these corporations that might engage in these practices.

ILLEGAL ACTIVITIES HAVE STRONG IMPACT ON FOOD PRICES

Senator PROXMIRE. Well, you see what this committee is interested in particularly. What our responsibility is with respect to economic impact, and the effect on prices; and it appears that that aspect of it has not been pursued at all. I think your testimony this morning indicates that this could be very, very substantial. It could cost the American consumer literally hundreds of millions of dollars over all if the pattern in New York, as a realistic analysis would suggest, is common in other sections of the country, too.

Do you believe that when the meat buyers and the vice president in charge of meat are involved in an extensive kickback scheme, and plead guilty, the other officers of the company were completely unaware of what was going on?

Mr. SCOPPETTA. I suppose it is possible, but it seems unlikely.

FOOD CHAINS—NO SYSTEMATIC WAY TO PROTECT AGAINST COMMERCIAL BRIBERY

Senator PROXMIRE. Did the chains have any systematic way of detecting or guarding against commercial bribery?

Mr. SCOPPETTA. None that I am aware of, and this leads us to another point. In dealing with these kinds of problems, I do not think there is any systematic way to detect the problem, and I think what happened in our investigations was what happens, unfortunately, with most law enforcement. We react to complaints, and we do not take an aggressive attitude toward investigation. Instead of waiting for complaints to be made, and in bribery situations, since it is a comfortable situation for both sides, the bribegiver and the bribetaker, you almost never get complaints. If you wait for complaints, we will never be able to deal with the problem. I think we need a more aggressive approach, and go out looking for the violations; and of course, antitrust typically involves that kind of an investigation.

1 PERCENT PROFIT ON SALES—4 TO 5 PERCENT GOES TO BRIBERY

Senator PROXMIRE. One major chain that had a vice president indicted and subsequently pled guilty told his staff they were interested in turning over goods, and did not police the employees. Now, is this not hard to accept as prudent, even from the standpoint of just maximizing profits, in that they claim a 1 cent on the dollar profit, and bribery is costing them 4 to 5 cents on the dollar, or as much as that in their largest sales categories?

Mr. SCOPPETTA. I could not agree with you more. It certainly sounds inprudent, it certainly sounds——

Senator PROXMIRE. It would be good business to stop the bribery.

Mr. SCOPPETTA. Yes, sir.

Senator PROXMIRE. And yet they say they are apparently able to pass it on in some ways. Is it your experience that people take this issue seriously, or do they feel it is just a way of doing business?

Mr. SCOPPETTA. It is not taken seriously enough, Senator. I think we find this in many aspects of official corruption. In the area I am most concerned with now, in my present position, people sometimes think in business and in government that that is a necessary way of doing business. And obviously, that attitude has to be dealt with first.

HOW WHOLESALERS HIDE THE BRIBERY CHARGES

Senator PROXMIRE. How do the packers and wholesalers handle the bribes that they pay out on the books?

Mr. SCOPPETTA. We found that typically, they would create artificial invoices and bills of lading, and other documents, to support inflated entries on the books.

Senator PROXMIRE. Did you have any trouble with the income tax, the Internal Revenue Service?

Mr. SCOPPETTA. It was one of the big problems that we had when we got the meat companies to cooperate with us, and tell us about payments made to the union officials who were extorting payments from them. They were most concerned with the fact that they had made these entries on their books to cover the payments out of fear of detection, and out of an interest not to make the payments out of their own pocket. They were most concerned about the income tax laws, and of course since they cooperated, they were given consideration; and they were not prosecuted for any violations of the income tax laws, just simply misstating their gross income, any of those sections, even if they did not personally benefit from it. But given that experience of going through those books and records, and speaking with those packers, there is no question in my mind that there are many violations of the tax law that can be brought to bear in this area.

THE COURTS DEAL TOO LENIENTLY WITH WHITE COLLAR CRIME

Senator PROXMIRE. Do you think the bribed executives should be more severely penalized?

Mr. SCOPPETTA. I think that is true in white collar crime across the board. I think we deal too leniently with white collar crime in general, and these investigations are no exception. A man can commit the most isolated crime of violence, and he will go to jail for a very substantial time. Someone can violate the antitrust laws, the drug companies are among the examples we have had where it costs the taxpayer and costs the citizens of this country many millions of dollars over extended periods of time, and the most that will happen, if anything happens at all, is that the corporations will pay a fine and will have to deal with the treble damage suits and will have to return some of the money they have been stealing for many years.

I think there is no question they are dealt with too leniently.

### MEAT MARGIN NOT EXTREMELY TIGHT—NEW YORK MEAT MARKET NOT VERY COMPETITIVE

Senator PROXMIRE. Do you think that this scheme that was uncovered in New York indicates that the middlemen in the meat industry have a substantial cushion to play with and that they are not in this tight margin squeeze they talk so much about? After all, if they can pay out this much in bribery and still survive, make enough money to stay in business, it looks as if they are not on that tight squeeze after all.

Mr. SCOPPETTA. Well, certainly nobody went out of business as a result of making these payments, and the only company that went out of business was the Merkel Meat Co.. but not because of the payments. It was because of the exposure of the kind of product they were selling.

Senator PROXMIRE. Well, in a truly competitive market, how can chains be paying such an inflated price for their beef as a result of these bribes and not suffer significant competitive disadvantages?

Mr. SCOPPETTA. Well, I think the situation that was revealed in these recent indictments shows that maybe New York's market is not all that competitive, and that the products coming into the city go through comparatively few numbers of people. A few brokers control the product coming in, and in one instance one particular person is alleged to be able to—at least at that time, 2 years ago—control the price of the wholesale product coming into New York, either because of his own interest in his brokerage companies or the influence he could exert on other brokers and other buyers.

Senator PROXMIRE. Are you saying that is total and comprehensive, though? It seems to me that the chains that are not involved in bribery—and I presume there are some—would be able to underprice the chains that were and take advantage of the situation to increase their volume very greatly.

Mr. SCOPPETTA. Well, I think that is undoubtedly true. The example I gave is one area of pork processors. We are not talking about some of the large, in this particular case, large processors and large wholesalers that do not have to bow to that kind of pressure, and so it would seem that if these smaller companies are charging a certain price, including their illegal payments, that unquestionably those that are not making the illegal payments ought to be able to undercut them. I think that is true.

### MEAT MARGINS ARE COMFORTABLE

Senator PROXMIRE. And if they do not—and they do not seem to because the other companies can survive—it must be a pretty fat margin there somewhere, one way or another.

Mr. SCOPPETTA. It is a comfortable margin, I guess.

### ILLEGAL ACTIVITIES ACCOUNT FOR PORTION OF LARGE MEAT SPREAD

Senator PROXMIRE. Finally, before we move to Senator Schweiker, let me ask, would you agree, then, as we are looking at this terrific increase in the farm-retail spread in beef that some portion of that increase could be accounted for by these illegal activities and maybe a substantial proportion?

Mr. SCOPPETTA. I certainly would, sir. I would agree with that.

Senator PROXMIRE. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Commissioner, in the kind of investigative work that you have been involved in, when you talk about pocketing money, is this usually the executives that are in charge of the buying operations? In other words, who actually personally benefits from the corruption you are describing, as a general rule, in the patterns you are describing?

### THE FORMS THE MEAT BRIBERY TOOK

Mr. SCOPPETTA. I think it is at several levels. We found in the commercial bribery cases that the buyer himself, not the executives of the company, but just the man employed as the buyer, was pocketing the money in a lot of different forms. People would send him bonds in his children's names, or he would get the cash payments, just kickbacks outright. That was the buyer himself.

We also found that in the Merkel Meat Co., there was a president and the vice president of the company, a very large, substantial processing house, and they themselves were taking money out of the corporation, and we found, on the other side of the fence, that the union officials were the ones getting the money and not just union delegates or representatives, but the president, the vice president, the secretary-treasurer of the largest local in the country in the meat industry were the ones who were all convicted of this scheme. So that we found there that the top level management of the union, at least in New York, was getting money and found that many of the union delegates were getting the kind of minor payments that would induce them to do their job as they were supposed to do, such as supplying butchers or supplying hog carriers or whatever.

Senator SCHWEIKER. Now, Senator Proxmire asked you a little while ago whether it was conceivable that the higher-ups would be aware of the activities of bribery and corruption going on, and I did not fully understand your answer because I think you indicated that they probably should know.

### BRIBES CHARGED TO THE CORPORATION SHOULD BE KOWN TO HIGH LEVEL CORPORATE OFFICERS

My reaction to that—would it not be a matter of whether they were involved in the bribery or not. If they were involved in the bribery and got a percent of the take, of course they would know. If they were not, I wonder if they did know.

Mr. SCOPPETTA. Well, I question how they would not know in those instances where the bribes were charged to the corporation.

Senator SCHWEIKER. What would be their reason for knowing and keeping quiet when they see one person benefiting at the expense of the company?

Mr. SCOPPETTA. Well, I think the company is benefiting too, and I think that they receive not so incidental—I started to say an incidental benefit, but not such an incidental benefit, in increased profits for the company.

Senator SCHWEIKER. How would the company benefit unless they do not follow the pattern you are describing? And that is why I asked my first question. I thought the buyer or the person who was getting the money firsthand was personally pocketing it, so it did not go any higher than that. It would seem to me the company was, in essence, giving a special payment to that buyer, and I do not follow——

HOW A. & P. HANDLED ILLEGAL PAYMENTS

Mr. SCOPPETTA. In the case of the—I think we have two sides to the coin. We have the bribegiver and the bribetaker.

In this instance of the A. & P. it seemed very clear that as soon as the A. & P. executives learned that this was a problem in their company, they came to Frank Hogan's office, and we had an investigation, so they did precisely what we would hope all company executives would do. They did not know that the buyer was receiving illegal payments, and as soon as they did find out, they did something about it.

But on the other side of the fence, those companies who were paying the buyer were charging those illegal payments to their corporations, and in some instances we found high level executives, the president of the company or vice president of the company, dealing directly with the buyer and then tacking that price onto the wholesale price, the payment onto the wholesale price of their product and selling it to the A. & P.

Now if somebody in that company was not involved in the bribe scheme—let us say the vice president was making payments to the buyer, and the president of the company was not involved in it, or he suspected, or he knew because of the book entries and so forth, he might still be motivated not to do anything about it, not to complain about it because for many of those independent processers, it was very important for them to be able to tell other customers that they were selling their product to A. & P., and the fact that his vice president was willing to bribe the A. & P. buyer to get the product in, gave his company a sizable advantage in dealing with other accounts so that many of the smaller chains were influenced by the fact that X, Y, Z company came in and said, our processed meats are sold by A. & P., and this is an excellent product, you know, A. & P. has all these quality standards to meet, and then they would buy it too.

FOOD CHAINS MOVED IN WHEN THEY GAINED KNOWLEDGE OF BRIBERY

Senator SCHWEIKER. I understand what you are saying about the processer; that is correct. They as a unit have something to gain.

I guess my question was directed to the chain itself. Your answer would not be the same with the chain itself, would it?

Mr. SCOPPETTA. No; it would not be, sir. I think in that instance, all of our experiences there show that the executives themselves had no knowledge at all, and as soon as they suspected it, they moved on it; yes, sir.

Senator SCHWEIKER. Unless they were receiving part of the take, too.

Mr. SCOPPETTA. Yes, sir.

Senator SCHWEIKER. OK, that clears that up.

Another question I have is, in any of these investigations or any of these matters that you have been involved in, has the Federal Trade Commission been involved in them? Have they been investigating? Have they been interested? Have they been conducting any inquiries? What has their role, to your knowledge, been in some of these corrupt situations that you have been describing?

FTC HAS PLAYED NO ROLE IN MEAT INDUSTRY INVESTIGATIONS

Mr. SCOPPETTA. They had no direct involvement in any of these matters that I have been describing, but I would not say, I have no basis for saying that they have not had an interest in this area. I just do not know what the Federal Trade Commission has been doing in this regard. It is simply a matter of them being an agency that I did not deal with as a State prosecutor.

Senator SCHWEIKER. Would it not appear to you that inasmuch as you pretty well described not only illegal, unfair trade practices, that they would have every responsibility and every right to be involved and be concerned as a matter of conducting their office properly?

Mr. SCOPPETTA. From what I understand of the Federal Trade Commission's jurisdiction, I would think that they should or would; yes, sir.

Senator SCHWEIKER. To your knowledge, are these practices and patterns occurring in other segments of the food industry or primarily meat as far as your experience shows?

Mr. SCOPPETTA. Well, my direct experience has been in the meat industry, but it seems to me that the same conditions that exist in the meat industry exist in many other areas of the food industry and that there is no reason to believe that it should be unique to the meat industry. We have many of the same conditions, the buying practices, the brokering practices; we have buyers for chains for all food products.

There is no reason to believe that only the buyers in the meat products would be subject to the temptations of commercial bribery. There is every reason to believe we ought to examine the practices in the food industry across the board.

Senator SCHWEIKER. In the recent economic conditions, that is, the food price, meat price situation, because of their increase and inflationary trend, would you say that is more of an incentive for illegal and corrupt elements to participate and get into the system, or less incentive?

Mr. SCOPPETTA. Well, I suppose if it becomes increasingly—I am not sure how that works out. If it becomes increasingly difficult to increase your profit margin, then you may be tempted to stretch the rules to do so.

I suppose it would seem to be incentive, without having thought about it too much, I think it would be an incentive to increase illegal practices when times are tougher, when it is tougher to make money. I suppose the temptation is to try to make it in any way possible, including illegal means.

Senator SCHWEIKER. Well, I realize we are talking about different time frames, different kinds of market conditions. One thought that occurs to me is, I guess in the past year or so when meat was in fairly short supply and when prices were sky high and they were put under control, it seems to me that would be a great situation for some of the illegal and corrupt activities that you described because of just the scarcity or the kind of market conditions that were occurring then.

Now, of course, to some extent some of those forces have dissipated themselves, so I guess it depends on what specific time we are talking about.

Mr. SCOPPETTA. Yes, sir; I should certainly think that is true. We are experiencing this in New York, right now, with milk. Because of a strike of the distributors, the milk that is available in New York, apparently is coming from New Jersey, and if the chain or the seller has got to go across the State line and bring in milk that he ordinarily would have delivered to him, he is tacking on some extra price, and we are paying more for milk now because the demand is higher than the supply, sure.

A. & P. COOPERATED FULLY WITH THE INVESTIGATORS

Senator SCHWEIKER. The chains per se, in cases where you are dealing with the superiors in a chain who are not involved in the graft and corruption, in those cases, did you find the chains cooperative, willing to work fully with your office or not? In other words, where you are dealing with a higher level from the corruption that was taking place, what kind of an attitude did you find among the chains in terms of cooperating or not cooperating with your investigations?

Mr. SCOPPETTA. Well, our experience is with the A. & P., the Atlantic & Pacific Tea Co., and the cooperation was complete, and we could not have asked for more.

For example, they brought the matter to our attention to begin with through their counsel. They allowed us complete access to all of their records and documents, and furthermore they kept a corrupt employee on for a substantial period of time, many, many months, so that our investigation could proceed.

The temptation would be, I should think, for most companies to fire the man outright and say, do with him what you will, so they are free of the scandal. Instead, they allowed us to keep—or they kept him on and allowed him to continue in his position until we could get the corroboration, get the evidence of these past acts that had occurred, and then indict more than a dozen separate companies that were dealing with him, and then they suffered the embarrassment later of having a man testify at a number of trials, as a buyer for the A. & P. and a man who had taken bribes.

They could have avoided all of that, but in the interest of responsible law enforcement, they allowed—they did keep him on and allowed us to proceed, so that I cannot say enough about the cooperation we received from the A. & P. It was excellent.

Senator SCHWEIKER. That is all I have, Mr. Chairman.

Senator PROXMIRE. OK, thank you very, very much, sir. This has been most helpful testimony. We deeply appreciate it. You have performed a real service by coming before us this morning.

Mr. SCOPPETTA. Thank you, Mr. Chairman.

Senator PROXMIRE. Our next witnesses will be Mr. Marvin McLain, the head of the Packers and Stockyards Administration in the Department of Agriculture, Mr. Lester Norton, president of the National

Provisioner, and Mr. William Albanos, managing director of the meat sheet.

I hope that each of the three principal witnesses will have a microphone, if that is possible.

Now, every day in this country about 133 million pounds of meat are purchased. About 90 percent of all wholesale meats are governed either directly or indirectly by the prices carried in the "Yellow Sheet." We have found that the military also buys most of its meat directly by the prices carried by the so-called Yellow Sheet.

This little sheet mysteriously drives the meat market, but apparently very few people know how the prices in the Yellow Sheet are determined or how reliable they are, how subject to manipulation they are, and there have been allegations that they are very subject to manipulation indeed.

The staff of the committee over the last month has heard complaints and rumors that the Yellow Sheet has been manipulated recently through the use of phony packer-to-packer trades. The staff has developed a chart that appears to indicate that there are significant swings in the prices of beef which indeed appear to be affected by packer-to-packer trades, which are not separately reported in the Yellow Sheets.

The significance of any possible manipulation is tremendous. Swings of only a few cents in the price of carcass meat can mean virtually millions of dollars in windfall profits to the packers. At the same time, a manipulation downward can have a devastating effect on the price paid to the cattlemen for their livestock.

I hope that you witnesses this morning can clear up a few of these questions for us. First, we will hear testimony from Mr. McLain of the Department of Agriculture, and then from Mr. Albanos, and third from Mr. Norton, and then the committee will ask questions.

Mr. McLain, go right ahead, sir.

## STATEMENT OF HON. MARVIN L. McLAIN, ADMINISTRATOR, PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY HARRY L. WILLIAMS, DIRECTOR, LIVESTOCK MARKETING DIVISION; PASCHAL O. DRAKE, DIRECTOR, PACKER AND POULTRY DIVISION; HAROLD CARTER, ASSISTANT GENERAL COUNSEL FOR REGULATORY DIVISION; AND KEN VALE, OFFICE OF THE GENERAL COUNSEL

Mr. McLain. Senator Proxmire and Senator Schweiker, we are delighted to cooperate with you because I think you are working in a field that needs attention.

I have with me here Mr. Pat Drake, who is in charge of the packer work in my division, and Mr. Harry Williams, who is back behind here, who is in charge of the livestock marketing end, and Mr. Carter, who is general counsel of regulatory head, and his assistant, Mr. Vale.

First of all, of course, we are here to talk about the "Yellow Sheet," as such. We are not spokesmen for that. We have been fairly active over several years, though, in the areas you are exploring here with the committee because we do have some authority.

Our authority goes back to the act of 1921, which was put on the books, of course, as you will recall, when the livestock industry was pretty much concentrated out in Chicago and under the dominance of several of the big packers, or at least, a lot of people thought it was. It led to the act, and it has been amended a good many times since then.

Now in the specifics of what you are interested in here this morning, and to save your time, I think probably the quickest way to get to it would be to have Mr. Drake here, who works in this area, explain what we are doing to ferret out some of these practices.

Senator PROXMIRE. All right, we would like to limit that testimony if we could. I realize this is complicated. We want to hear from Mr. Albanos. Is Mr. Albanos here?

Mr. ALBANOS. Yes, sir, I am.

Senator PROXMIRE. Mr. Norton?

Mr. NORTON. Yes, sir.

Senator PROXMIRE. Mr. Norton, also, so if you could just have about a 5-minute summary of your position, then we could get into questions after the other witnesses testify, that would be fine.

Mr. MCLAIN. All right, Mr. Drake will indicate the areas we have been working in.

Senator PROXMIRE. All right, sir, go ahead.

Mr. DRAKE. Mr. Chairman, as relates to your inquiry of the Yellow Sheet, our jurisdiction is on meat packers and not the Yellow Sheet as such. As far as we are concerned, it is a method of news media similar to USDA Market News.

Over the years, especially the last 3 or 4 years, we have received numerous complaints from the industry concerning what they term "rigging" of the Yellow Sheet. Primarily, these allegations have to do with the quotation of packer-to-packer sales as such.

We have made various investigations with the cooperation of the Yellow Sheet people and Mr. Norton. We have found questionable instances of possible misuse by the packing industry of the Yellow Sheet, but to date we have never been able to get sufficient evidence or enough evidence in order to prosecute.

We currently have personnel who continually monitor activities on the Yellow Sheet, but our primary concern with the Yellow Sheet, as of today, is the quotation of packer-to-packer sales transactions.

Senator PROXMIRE. All right, sir, thank you very much.

Now, Mr. Albanos, do you have a statement? Will you take the microphone?

## STATEMENT OF WILLIAMS ALBANOS, JR., MANAGING DIRECTOR OF "THE MEAT SHEET"

Mr. ALBANOS. Yes, I have a statement, Mr. Chairman.

My name is Williams Albanos, Jr., and I am the managing director of The Meat Sheet, a daily price reporting service of the meat industry.

We have a staff of experts gathering price data daily from over 300 buyers and sellers, brokers and traders in the beef and pork industry from all parts of the country.

The Meat Sheet came into existence 17 weeks ago at the request of many in the industry anxious to have certain reforms in the method of reporting. Beef and pork committees of the American Meat Institute made certain suggestions in May and June of this year, which have all been incorporated in our format.

The Wall Street Journal's staff reporter Jonathan Kwitny has raised serious questions about meat price reporting in his article dated Friday, December 6, 1974. He suggests three schemes by which prices may be manipulated. Reforms instituted by The Meat Sheet in August of this year safeguard against such manipulations.

The Meat Sheet separates packer-to-packer beef carcass trades from packer-to-processor trades thus minimizing influence of such trades on general market price structure.

The Meat Sheet has met with wholesale meat associations in New York and New England to establish data reporting by most reputable firms thus minimizing the danger of split price transactions with higher priced shipments being reported in exchange for bargain priced shipments.

The decelerated drop in prices mentioned by Mr. Kwitny is more easily accomplished with a single price close. The Meat Sheet carried the full range of trading with high, low, close, and volume of sales upon which the prices are based.

Further, The Meat Sheet has made provision for subscriber election of a board of governors from their ranks, to supervise the modus operandi of data-gathering and reporting.

Other Meat Sheet innovations include: (1) chemical rather than visual analysis for categorizing sausage materials; (2) 13 items reported in Australian and Latin American imports; (3) an eastern close to reflect regional differences, ethnic consumption patterns, chain buying specials, severe weather; (4) added items of beef and pork actively traded but not previously reported on a daily basis; (5) analysis of price factors by an agricultural economist for long range trends.

The Meat Sheet has sought to bring accuracy and professionalism to meat price reporting. With the safeguards that we have built into our reporting, price changes tend to be linear rather than to reflect noticeable fluctuations on a day-to-day basis. These fluctuations do, for example, reflect in the very sharp rises and sudden drops resulting in: (a) cattlemen sometimes being forced to sell at reported money-losing lows; (b) wholesale and chain buyers, who are accustomed to purchasing on certain contract days, could be forced to buy at a reported high.

We hope that The Meat Sheet's method of reporting will provide a better climate in which all segments of the meat industry will be able to realize justifiable and equitable profits, and at the same time, reflect less inflationary prices at the ultimate consumer level.

Senator PROXMIRE. Thank you very much, Mr. Albanos. Mr. Norton?

You have no prepared statement, or is this it?

Mr. NORTON. I have a statement I will be glad to submit.

Senator PROXMIRE. How long a statement is it?

Mr. NORTON. About 10 minutes.

Senator PROXMIRE. All right.

## STATEMENT OF LESTER I. NORTON, PRESIDENT, THE NATIONAL PROVISIONER, INC.

Mr. NORTON. I am glad to respond to the request of this committee that I appear before you today, even though it is as a result of only a few days' notice. I appreciate your courtesy in allowing me to make for the record some preliminary remarks. These may be helpful in putting the operations of our business in perspective for this interview. I am happy to adjust myself to the short notice I have been given, though it makes it necessary to appear without counsel.

I will be very pleased to go into our reporting methods in whatever length the committee desires. In the absence of counsel, I am going to confine myself to the areas in which I am told you are interested.

The National Provisioner, Inc., of which I am president and chief executive officer, is a news media organization. We are engaged in the dissemination of information of interest to the various segments of the meat packing and processing industry. The company, which was originally called the Food Trade Publishing Co., was incorporated in about 1891 by four journalists who invested their own private capital in the business.

We publish the National Provisioner magazine, which is widely known and respected throughout the meat industry. It has been published continuously every week for 83 years—and I would like to say that the livestock meat industry public hearings and work of various meat commissions and committees of the Government, for example, have probably been more reported in our media than any other in the country. The magazine also contains editorial comment on various developments and proposals.

The control of our private business lies in its shareholders, and I have with me a list of those shareholders, which I am glad to make available to you. I am the only shareholder in the direct, daily employ of the company. All others acquired their holdings by being heirs and descendants of founders of the business, or by widows or heirs of former full-time employees and editors.

The directors of our company, with only one exception, have always been shareholders or employees of the company, or members of their immediate families. I have been an employee of the company for 51 years, have been president and a director for 26 years, and I am a shareholder in my own right.

I can here state to you that I have personally known all of the directors and shareholders of the company and their families for many years. To my knowledge, none of them, and none of our other executive or other employees, including myself, are under the financial, family, social, or other control of any kind directly or indirectly, of any advertiser, subscriber, reader, meat packer, meat processor, retail chain, or anyone else in the food industry. Our business is completely independent, and its policies are directed entirely by its management and shareholders.

I have been told that your interest today is in an operation of our business related to carlot meat price reporting. This is done through our daily market and news service, which was begun in 1923. Its function is to report and disseminate news and price reports of immediate delivery sales of substantially unprocessed meats and byproducts on the open going market among buyers, sellers, and brokers who have not made advance commitments or contracts for specified quantities.

This price reporting service is one of many in the meat industry, such as The Meat Sheet, the University of Illinois Consumer Service

Advance Market Newsletter, the L.F.M. News Service, Producers' Price Current, the Daily Hide and Tallow Bulletin, the Wall Street Journal, the New York Journal of Commerce, the Pratt Report, and the U.S. Department of Agriculture Market News Service. Our service, however, like the comparable private Dow Jones service for reporting open auction market sales of corporate securities, is the only one reporting and disseminating actual prices in the open going market for dressed but unprocessed meats.

Appended to my remarks is a full description of the operation of our price service, as I gave it at an address to the Cooperative Food Distributors of America in September of this year. This is being furnished for the record.

However, certain cardinal points should be emphasized in connection with our service. One, its only purpose is to supply impartial and accurate information that is vital to intelligent operation and informed competition. Two, our interest in market prices is solely that of an objective observer and reporter. Neither our company nor anyone connected with it profits directly or indirectly from price conditions or movements. Three, we report only price facts, not opinions of value. We double-check and confirm all important trading reports. Four, the nature and pattern of the existing private enterprise market makes price reporting in such a market dependent on the personalities, skills, experience and efforts of the market reporters, and on the respect with which buyers and sellers and brokers have for the integrity and accuracy of the reporting service. The reputation which our business has built up over the years commands the respect of these people. Five, our business is devoted to the dissemination of information. We believe that this benefits the industry and the consumer, and advances the public interest which concerns this committee.

In our field, we are not too dissimilar from the price reporting service of the Dow Jones Co. Now, Dow Jones is admittedly a much larger company, but it is still a private news media business that reports actual transaction prices in the specific open market for corporate securities. Like us, it furnishes price reports to subscribers for profit, as it furnishes price information and related market news. The market it reports intimately affects the national economy. Thousands of contracts are made daily and privately outside the market it reports, and it is common knowledge that millions of shares of stock trade daily off its market on the basis of previous closing prices reported by it on the market it does cover.

A similar situation obtains in the open market reporting of carlot transactions of unprocessed meats. We submit to the committee that here is an area where private business, operating under the informal but rigorous controls that guide a private competitive enterprise, can and does perform a more objective and useful service than any Government-operated service. This is attested to by the fact that our daily market and news service price reports provided the base from which all meat ceiling prices in effect in World War II were constructed, and that present U.S. meat procurement agencies for our Armed Forces use daily market and news service quotations in judging bid acceptabilities.

The U.S. Department of Agriculture entered the field of market reporting in 1915. In a typical year, it issues about 65,000 market reports, and Congress appropriates about $7 million a year for this service.

No charge is made for information supplied by the Market News Service.

Senator PROXMIRE. Mr. Norton, how much longer is your statement?

Mr. NORTON. About 2 minutes.

Senator PROXMIRE. I understood you to say you had a 2-minute statement to begin with.

Mr. NORTON. No, I said 10 minutes.

Senator PROXMIRE. Oh, 10 minutes. I misunderstood you.

Mr. NORTON. If you like, I will abbreviate.

Senator PROXMIRE. No, no, that is all right. You can finish it.

Mr. NORTON. We charge $130 a year for a basic subscription. And we have been able to increase our service to the food industry progressively, in competition with a free service, while achieving stature and respect that is unmatched by the Government. For more than 50 years we have submitted ourselves for appraisal to our subscribers; for almost 13,000 consecutive days, our service has been judged by its users. We have yet to have a subscriber ask for a subscription refund because he felt our service was inaccurate.

I am happy to have this opportunity to be interviewed by you for your record, and I would be pleased to try to give you whatever further views or information I can that might be pertinent to your activity. I would like to try to be helpful.

[The speech referred to by Mr. Norton, together with attachments follow:]

SPEECH BY LESTER I. NORTON TO COOPERATIVE FOOD DISTRIBUTORS OF AMERICA, KANSAS CITY, MO., SEPTEMBER 16, 1974

It is a real privilege to be talking to representatives of a vital part of our great food marketing system. Which was once described as the easiest business in the world to come out of with a small fortune. All you have to do is go in with a large fortune.

There is not much question that the most important element in a meat operation is price. The price at which you sell. Also the price at which you buy. So it is important to be well-informed on price.

The meat business is price oriented. Price brings supply and demand in balance. Lower prices move extra supplies and keep meat from going to waste. Higher prices keep demand in check when supplies are short. Price, in relation to cost, helps determine profit.

So your first problem as buyers is to determine the price at which you can expect to buy the meat you need. There are three ways you can go about this:

You can discuss price with competitors. That way can land you in jail. You can start from scratch and call every supplier to get asking prices. A lot of time is involved in this, and you don't know the relationship of hopeful asking prices to realistic selling prices. The third way is to have an accurate picture of where the market closed the night before and start from there. Because usually the market starts off in the morning where it left off the night before.

Knowing the previous night's closing prices, you can then use your time to better advantage by concentrating on only one thing—deciding whether the market has heated up—or cooled off—from the night before. Then you can begin to trade in meat with greater certainty.

More than any other single thing, more meat buyers use "The Yellow Sheet" as a guide for the bids they will make in the market, and as a tool to determine the prices they are willing to pay for the meats they need.

So let's talk about the Yellow Sheet . . . What is it? What can it tell you? Who is behind it? How much can you depend on it? Where does it get its prices? What do those prices mean?

The Yellow Sheet is a price reporting service published by The National Provisioner, Inc., of Chicago. Its more formal name is The Daily Market & News Service. Our company has been in business since 1891. Every week since 1891 we have published an issue of The National Provisioner magazine.

The objective of the magazine is to provide accurate and timely business information on meat subjects to managing, operating, marketing and other executives of the meat industry. More meat men read this magazine than any other in the world.

Through The Yellow Sheet we have been intensively engaged in market reporting for more than 50 years. Most of the important buyers and sellers of meats in the country subscribe to our Yellow Sheet or one of its companion services. We have Yellow Sheet subscribers in many other countries of the world. Some of these export meats to us. Others are buying here, and competing with the American public for part of our meat supply.

In the over 50 years we have been publishing The Yellow Sheet we have produced almost 13,000 consecutive daily price reports. We have yet to have a subscriber ask for his money back because he thought we were inaccurate.

We are pleased that we've had some degree of success at what we do. We don't intend to let that success breed failure. I suppose you could get to the point where your record of being right is so strong that people could believe anything you say. So you stop working. And stop being right. We don't intend to let that happen.

If anything, we work harder at what we do than ever before. We have been steadily adding to our staff for years. We will be doing more as the meat industry moves into new items—like boxed beef—and as open markets are created on new items.

The Yellow Sheet is really simple to define. It is a price report. A report of the actual prices being paid in the open market for the meat items that it quotes. The Yellow Sheet quotes the actual going market at the close of the trading day. Five days each week.

The prices we quote are not judgments of what people should ask for meats they want to sell. They are not our opinion of what you should bid for meats you want to buy. They are not opinions of value. They are not suggestions as to what prices ought to be. The prices we quote are the actual closing prices being paid in the open market—by willing buyers to willing sellers—where neither party is under undue pressure and is negotiating freely in competition with others who are also in the market.

If you went into the open carlot market at the close of the trading day, these would have been the prices you would have obtained for product you had to sell. These would have been the prices you would have had to pay if you had a need to fill. The prices are the actual, open, going market prices.

We get the information we publish by means of a staff of market reporters. These are all skilled reporters or expert meat men. Throughout the day they are talking to buyers, sellers, and brokers. As they go, they are getting reports of trades taking place, prices being paid, facts on bids and offers. Reporting activity is concentrated on the open market, because this is where market prices are truly established by buyers competing against buyers for the supplies available, and sellers competing against sellers for the sales that are going to be made.

The Yellow Sheet was started in 1923 at the request of a number of leading packers in the industry. This was a time when markets were fluctuating wildly. Identical product was selling at greatly differing prices, often at no relation to cost. The confusion was costing everyone because no one had realistic pricing.

Exchanging price information was not the answer. This was prevented by law. But the packers desperately needed information as to what was taking place in the market. They asked The Provisioner to set up a service that would monitor and report market prices for the benefit of everyone.

They asked us to do this because we were the only ones who seemed able and qualified to do the job. We knew the industry and its products. We had expert meat men on our staff. We had no financial stake in the products of the industry.

Then, as now, our interest in prices was solely that of an objective observer. Neither our company—nor anyone else connected with it—profits from price conditions or price movements. We own no meat, never have owned any meat, never expect to own any meat. We have no financial interest in whether markets go up or down.

We are also a completely independent company. No company dealing in meat owns any part of our company. We own no part of any company producing or dealing in meat. Our business and its policies are directed solely and entirely by its management and directors.

Our interest in meat prices is solely that of an objective reporter and observer. We publish only price facts. Our reporters and editors follow procedures that have been carefully developed to insure accurate reports of what is occurring in the market place.

We look at ourselves as an organization performing a mature and responsible job. And I think that any informed and objective person in the industry would agree that this is true. We believe we help promote the health and vigor of the industry by helping our readers make better decisions.

Certainly the least that any business man needs when he goes into the market is knowledge of what others are doing in the market. Then he can try to do better.

You do not need to pay our reported price if you can do better. As packers you don't need to take our reported price if you can do better. What we give you is a price guide as to what others were paying the night before.

And as buyers, you are expected to try to do better. Just as sellers try to do better. And with this, markets are going to move in accordance with supply and demand. As they move, we keep our subscribers informed as to what has taken place.

Markets are going to keep on being the same and they are going to keep on being different. In that sense, they are a lot like women. You never know what to expect. There's nothing like a plunging neckline to keep a man on his toes. And whether markets are plunging, or developing, you'd better know what is going on.

The important thing is to know where you are going. Except for what happened at last night's close, don't worry about what has happened in the past. Because nothing is more responsible for the good old days than a poor memory. It is what is happening now that should concern you, because it is the meat you buy today that will hopefully give you the profit you need tomorrow.

So accept the fact that you are going to have problems, just like you should accept the fact that the argument you just won with your wife isn't yet over.

There have been attempts to figure out what market prices are going to do. Commodity speculators do it all the time, yet lose 85% money. About all that research can do is to prove that prices DO change.

Our most important function is helping you buy right. Which means paying in line with what your competitor pays so you are not at a disadvantage in the market place. Just as we help the packer to sell right by knowing what his competition is getting in the market place.

Maybe the law of supply and demand isn't perfect in that it doesn't always divide the consumer's meat dollar the way every part of the livestock meat chain would like. But if people would stop trying to twist it to their own advantage, and government keeps its hands off, it would distribute our meat supply far better than anything else.

As I've said before, price is undoubtedly the most important single element of the meat business. Slaughterers compete on a price basis for basic raw material, or livestock. You must compete on a price basis for meat supplies. Know it or not, consumers compete with each other and cause prices to move accordingly.

So the Yellow Sheet concentrates on prices. It reports prices. Prices paid in a free and open market place. Paid by willing buyers to willing sellers for standard quantities of standard merchandise of aceeptable condition and quality.

While markets on meats may often seem chaotic, they are actually a continuous economic referendum. They represent the decisions of a large number of individuals who are expressing, by trading action, their opinions of values. Expressed by prices. Which we have learned to report accurately, for your benefit.

We do not calculate or construct prices, we report them. Which is important in an industry where no packer enjoys a position of such strong market power than he can get an exaggerated price for his products in relation to cost. So even fractions of a cent become important because the profit per dollar of sales is low.

In turn, prices are vital to you as meat buyers. We have all seen how easily the housewife can be turned off by what she thinks are improper prices. It doesn't matter whether she's right or wrong. She gets turned off. So you must be careful in your pricing, and in turn your buying, to have the volume you need.

By acting as a guide to intelligent trading, The Yellow Sheet enables the meat industry to move its products in a more sensible and orderly manner. It helps people adjust to the realities of the market place. It can help you meet the needs of your trade by guiding you to more orderly buying.

For a meat man, every day's business needs a point from which to start. Knowledge of the previous day's trading and closing market prices. So you can test that day's market to see if you can meet the needs of your trade at prices which will keep you competitive and still produce a profit.

And if I am correct in telling you that many DO use The Yellow Sheet for starting their buying day, and that perhaps you could also do this with a saving of time and money, then I should also help you know how we report prices in such a complicated, fast moving industry.

So start with staff. In addition to the employees who handle printing, production and mailing, there is a staff of nine full-time reporters. Each covers a specific segment of the trade and is on the phone constantly talking with producers, sellers, buyers and brokers.

Most of the calls are made on the editor's own intiative to reliable sources of market facts. But many other calls come in to us, as buyers and sellers call us to report trading facts. By doing this, they help us maintain our accuracy, which helps them and the entire meat community.

Oh yes, people with an axe to grind do try to fool us. But I don't think anyone has yet succeeded in this because all the people know more than some of the people, and we know too much about everything that is going on to be fooled by any one individual.

As the day progresses, each editor obtains and checks transactions in his particular area. As he goes, he will confirm each important trade. Only after a trading report has been checked with an opposite principal or broker can the trade be considered a publishable fact.

We report the market on the basis of verified trading prices. So it is important for the editor to not only know that trading has taken place, but also to know the circumstances of the trade, so it can be properly evaluated. In evaluating trades, time is an element. Like when did the trade take place so we can properly follow an advancing or declining market, and accurately quote prices at the end of the trading day. For us, the end of the trading day is whenever trade ceases on each particular item.

Condition of product is also an element in evaluation. Product that cannot command going prices because of poor cut or trim, or excessive age, cannot be used in quoting a market. Nor can we use the premium price you pay for getting a special selection from a larger volume of product.

Volume of trading is important in reporting markets. When there is less product than buyers need, or more than the market will absorb, closing prices can differ from trading prices. This is because the market can move up on higher bids, or down on lower offers, even in the absence of trading.

Circumstances of sale is also important. A distress sale made by a packer who must "sell it or smell it" can't be used in quoting a market. Nor can we use distress buys in which a desperate buyer with emergency needs "outpays" the market to meet a shortage.

The market we report is the going open market. Not distributive transfers, not sales made because of an unusual relationship between a single buyer and a single seller. Not bulk sales involving special packing and store-door deliveries to a number of points. Not sales for future delivery at "guessing game" prices.

For reporting purposes, we consider only product sold for prompt shipment. Prompt shipment is defined as shipping the product to the buyer not more than three days after the sale is made. Shipments beyond three days may be reported but are not used in making price determinations.

We are concerned with product offered freely to anyone interested in buying, which after negotiation is sold to the party willing to pay the asking price, or the highest price in competition with other buyers. The price paid under these circumstances is the going, open market price. This is the price we report.

We operate only by means of facts and there is no room in our service for opinion. Hence we have no interest in values. Depending on whether you are talking to a buyer or a seller, opinions of value can differ widely. They can differ widely not only from each other, but also from the level at which product will trade. It is not our job to keep markets in line, but only to report the facts.

52-788—75——5

The prices we publish are closing prices. They are not averages of the prices being paid during the day, because an average is only a mathematical calculation and not a fact you can use in making your own buying decisions.

I should also mention that there are times when we quote the price of an item as we say "on a range." When a price is quoted, as an example, 50@51¢, this does not mean that this was the range of prices that occurred during the day.

Instead, it meant that at the close of the market, prices were in a state of flux. The item was trading at both 50 and 51¢. Since we could not determine whether the market was moving to a 50¢ level or a 51¢ level, we showed both prices on a range.

So remember that when we quote prices on a range, we are quoting a range of trading and not a range of time. We believe that range-of-the-day quoting can only confuse. Once the market moves to a new level, the old price is only history and has no value for trading purposes.

Value is vague, indefinite and arguable. Price is rigid and factual. Bids are factual. Offers are factual. We report trading facts, not the wishful thinking of either buyers or sellers. These are facts on which you can make your own buying judgments.

The entire process of evaluation is often quite complicated. It not only involves certain rigid factors, but also includes sensitivity, knowledge, experience and procedures worked out over many years. But the end result is The Yellow Sheet, published every evening for the guidance of the meat industry.

In terms of money, price changes are larger today than ever before. And it is not unusual to see the market reverse itself one or more times during the day. For un-informed traders this has increased the chances for trading losses.

Where we once offered price reports only in the form of the printed Yellow Sheet by mail, we now provide faster price service by wire. By way of Telex, TWX and Western Union, we send special coded price messages at both noon and the end of the trading day. Each shows market prices at the time the message is filed.

In addition, we have mid-morning and mid-afternoon market commentary messages. These help in following market trends and keeping track of changing price levels. In addition to domestic messages, we also send price cables to subscribers in other countries.

Whatever acceptance The Yellow Sheet enjoys comes from its ability to be sensitive to price informational needs of the field. From the standpoint of accuracy, it is under the most rigid control possible—the right of subscribers to stop using our service if we are ever otherwise, and thus put us out of business.

The Yellow Sheet quotes prices the way they are determined in a free society, in open competition in the market place. Barring government price meddling, this is the system under which you operate. The Yellow Sheet can be a valuable guide in the purchases you make under such circumstances.

While misguided consumerists would have it otherwise, for the present time at least you have the right to make your own buying decisions, be they good or bad, profitable or otherwise. And so long as this is so, The Yellow Sheet can be a valuable guide.

The facts in The Yellow Sheet are yours to use, reject, or adapt to your own situation. Not to serve as a substitute for your own judgment, but to enable your judgment to be better. Because your buying decisions will be based on facts.

We don't make the market. It is the market that makes us. When sellers move from a position of strength they can often make prices advance. When buyers have the advantage, prices will usually fall back. But in every case the informed man has a great advantage over those who know less. Most informed men use the Yellow Sheet.

We do not publish a sellers' service. Nor do we publish a buyers' service. We publish a traders' service so that skillful, knowledgeable people, whether they be either buyer or seller, can make better business decisions by means of facts.

Just as a thermometer measures and records the temperature, so The Yellow Sheet measures and records prices. It is up to you to use the information to your best advantage.

As 50-year market observers, we know that the job of the meat buyer is not easy. He can contribute greatly, or he can seriously affect profits. Depending on how much he knows, and how well he does his job. We think The Yellow Sheet can do much to make him better.

[From the Wall Street Journal, April 2, 1942]

## Pork Prices Facing Early Adjustment—Change in General Level Possible After Monday, OPM Officials Hint

### AGENCY GETS LISTS

(By Ray Moulden, Chicago Journal of Commerce, Washington Bureau)

Washington, April 1.—Considerable readjustment in individual prices for pork products, if not in the general price level, can be expected when the Office of Price Administration, after Monday, begins determinations prior to establishing definitive wholesale prices for imposition in a permanent price regulation.

This was definitely indicated here today as the agency awaited filing of actual price lists by the packing industry which will form the primary basis for determining final prices.

All but one of the largest packers have submitted their price lists, originally required by March 27 but extended to April 6, to permit the branch offices of the major firms to complete reports.

Until all these statements are before the price agency, however, officials have no indication whether the prices now in effect under the temporary regulation are fair and equitable.

The paramount question in such determination is whether the price lists disclose prices as high as those quoted for the green pork market in the National Provisioner, authoritative trade publication.

This is because OPA's problem in eliminating inequities is to arrive at a balance between the processed and the green pork market, officials explained.

Meanwhile, the agency is plagued with deciding whether the price control it has attempted is going to work out in practice as well as appeared probable in theory.

In other words, by moving in on the middle level, can the agency also control the two other vital levels of prices—those for live hogs and those paid by consumers at retail?

| Issued by | NOTICE OF INTENT TO PURCHASE No. DSA131-7-N-00112 | | | |
|---|---|---|---|---|
| SUBSISTENCE REGIONAL HQ COLUMBIA<br>DEFENSE PERSONNEL SUPPORT CENTER<br>1813 MAIN STREET<br>COLUMBIA, SOUTH CAROLINA 29201 | Date<br>21 Feb 67 | Mailing List No.<br>COL 1 | Page No.<br>1 | No. of Pages<br>3 |
| | Purchasing Agent to contact concerning this Notice of Intent to Purchase: HENRY S BROOKS | | | |
| | Phone<br>254-1606 | Extension<br>51 | Teletype<br>810-666-2610 | |

Gentlemen:

In accordance with Armed Services Procurement Regulation 3-101, quotations are hereby solicited for the items described and in accordance with the conditions shown herein.

This request for quotations does not commit the Government to procure or contract for supplies, nor to pay any costs incurred in the submission of this quotation.

Quotations must be received in this office not later than 12 NOON ES TIME, on the specified closing date listed below: 8 MARCH 1967

THIS NOTICE EXPRESSES OUR INTENTION TO PURCHASE RESALE FRESH PORK CUT REQUIREMENTS OF THE BELOW LISTED INSTALLATIONS. THE PROCUREMENT WILL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN AND AS MAY BE AMENDED BY FUTURE ADDENDA AND AMENDMENTS. OFFERORS ARE CAUTIONED TO RETAIN THIS NIP AND ANY ADDENDA OR AMENDMENTS WHICH MAY BE ISSUED THERETO, CHANGING TERMS AND CONDITIONS FOR FUTURE REFERENCE.

ALL BUSINESS FIRMS MAY OFFER REGARDLESS OF THEIR LARGE OR SMALL BUSINESS CLASSIFICATION.

CONDITIONS. The attached DPSC Conditions 6 are a part of this Notice of Intent to Purchase.

QUOTATIONS ARE TO BE SUBMITTED FOB DESTINATION.

AWARDS WILL BE MADE ON AN ALL OR NONE BASIS.

REQUIREMENTS TYPE PROCUREMENT. DPSC Special Provisions 25 a 1 Mar 67 and b 16 May 66 applies.

OFFERS. Submitted offers will be plus or minus the average base price as explained herein. Submit offers to SRH Columbia, DPSC prior to hour and date of closing. Offers may be transmitted by letter, phone, teletype or telegraph. Offers submitted by telephone, telegram or teletype must be confirmed by letter or return of attached proposal, signed by a person authorized to sign a binding contract, prior to issuance of contract.

Vendors shall provide their terms of payment as a part of their offer in response to this solicitation. These terms will be reflected in the award document. Terms for payment less than 7 days where delivery and acceptance are at point of origin or 20 days where delivery and acceptance are at destination will not be considered for award purposes. In the absence of terms of payment within TWX or written offers, the Government shall consider the offer as net for award and invoice processing time.

CAUTION - LATE PROPOSALS: Proposals and modifications received at SRH Columbia, DPSC after the time set for receipt will not be considered unless:

a. They are received before award is made; AND

b. They are sent by registered mail, or by certified mail for which an official dated Post Office stamp on the original receipt for certified mail has been obtained, or by telegraph; and it is determined by the Government that late receipt was due solely to delay in the mails, or delay by the telegraph company, for which the offeror was not responsible; OR

c. If submitted by mail or telegram, it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at a Government installation; PROVIDED, that timely receipt at such installation is established upon examination of an appropriate date or time stamp, or of any other documentary evidence of receipt at the Post Office or SRH Columbia, DPSC.

PAYMENT. Quantities invoiced will be rounded off to the next lower pound. Invoices will be submitted monthly covering accounting periods as established by the OIC, Commissary Store, Jacksonville to the Officer In Charge, Commissary Store, Naval Air Station, Box 42, Jacksonville, Florida, 32212, for verification and processing with payment being made by the Navy Regional Finance Center, Norfolk, Virginia.

| CONTINUATION SHEET | NOTICE OF INTENT TO PURCHASE No. DSA131-7-N-00112 | Page No. 2 | No. of Pages 3 |
|---|---|---|---|

EVALUATION OF OFFERS: In addition to other factors, offers will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $50.00 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards will be for the items and combination of items which would result in the lowest aggregate price to the Government, including such administrative costs.

Change 2, 15 Jul 66, to DSA DPSC Manual 4155.5 applies to this procurement.

DPSC FORM 2131-1 and -2. Suppliers are required to return completed DPSC Forms 2131-1 and -2 with offer.

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REQUIREMENTS FOR: NAS JACKSONVILLE, FLORIDA REQUISITION NO: N60935 7041 9904

DELIVERY PERIOD: 1 APRIL 1967 THRU 30 JUNE 1967

DELIVERY POINTS:

Commissary Store
US Naval Air Station Bldg 135
Jacksonville, Fla

Commissary Store
US Naval Station, Bldg 46
Mayport, Fla

Commissary Store
US Naval Air Station Bldg 30
Cecil Field, Florida

Commissary Store
US Naval Air Station Bldg 1
Glynco, Georgia

DELIVERY SCHEDULE: Normally two (2) stop-off deliveries per week on Tuesday and Thursday to the four (4) delivery points will be required between the hours of 8:00 am and 4:00 pm, in the following sequence if delivered on a single carrier: Jacksonville, Cecil Field, Mayport and Glynco. Orders will be placed with the supplier at least seven (7) days in advance of the specified delivery date.

| Item Nbr | Supplies | Estimated Qty (lbs) |
|---|---|---|
| | PORK, FRESH. FS PP-P-571a, 27 Jul 56, Delivation List, 18 Feb 64, with Errata Sheet, 19 Sep 66, DPSC Articles 312, 3 Oct 66 and General Articles 76. | |
| 1. | HAM, SKINNED, SHORT SHANK. Chilled, Selection 1, Type I, Style B, Code B-1, 6/12 lb range. Wrapped. Domestic immediate use. BASE PRICE: SKINNED HAMS F.F.A. OR FRESH 10/12 | 14,000 lbs |
| 2. | SHOULDER PICNIC, REGULAR, SHORT SHANK. Chilled, Selection 1, Type I, Style B, Code D-1, 4/8 lb range. Wrapped. Domestic immediate use. BASE PRICE: PICNICS F.F.A. OR FRESH AVERAGE OF 4/6 AND 6/8 | 10,000 lbs |
| 3. | LOIN (BLADELESS). Chilled, Selection 1, Type I, Style F-1. 8/12 lb Range. Wrapped. Domestic immediate use. BASE PRICE: FRESH PORK CUTS CAR LOT FRESH REGULAR LOINS UNDER 12 | 91,000 lbs |
| 4. | BOSTON BUTT. Chilled, Selection 1, Type I, Style B, Code G, 4/8 lb range, wrapped. Domestic immediate use. BASE PRICE: FRESH PORK CUTS CAR LOT FRESH BOST. BUTTS 4/8 (BOXED) | 15,000 lbs |
| 5. | SPARE RIBS (BELLY RIB). Chilled, Selection 1, Type I, Style B, Code H, Weight range 3 lbs and down. Wrapped. Domestic immediate use. BASE PRICE: FRESH PORK CUTS CHICAGO JOB LOT SPARERIBS 3/DOWN | 28,000 lbs |

The quantities set forth herein are based on the best information available and do not represent the actual quantities which may be required.

SUBSTITUTIONS: Unless otherwise authorized by the Officer In Charge or his representative, no substitutions shall be permitted

MINIMUM QUANTITY ORDER: The minimum quantity which the Government may require to be delivered under any order shall not be less than 80% of the amount estimated in the Schedule contained above. If the contractor receives an order for less than the minimum quantity, he will notify the ordering officer at least five days prior to the scheduled delivery date if he plans to reject the order. Failure to reject at least five days prior to the scheduled delivery date will constitute contractor acceptance of the quantity ordered at the same contract unit price.

| CONTINUATION SHEET | NOTICE OF INTENT TO PURCHASE No. DSA131-7-N-00112 | Page No. 3 | No. of Pages 3 |
|---|---|---|---|

BASE PRICE: Base price for any deliveries contractor for as a result of this Notice of Intent to Purchase will be the average of the quotation (lowest price listed for a split market) for Monday thru Wednesday of the week preceding delivery, for each specific item as listed herein. If any specific item is not quotated for one or more days, the base price shall be computed using the quoted days. If the specific items are unquoted for all three days, the base price shall be subject to negotiation between the contractor and the Contracting Officer. These daily quotations are as stated in the "NATIONAL PROVISIONER DAILY MARKET AND NEWS SERVICE", "THE YELLOW SHEET". These averages will be rounded off to the nearest fourth decimal point.

ORDERING:

a. Supplies or services to be furnished under this contract shall be ordered by the issuance of written delivery orders, or oral delivery orders promptly confirmed in writing, by the OIC, Commissary Store, Jacksonville, or his designated representative.

b. All delivery orders issued hereunder are subject to the terms and conditions of this contract. This contract shall control in the event of conflict with any delivery order.

c. Reference Special Provisions 6, DPSC Special Provisions 25, the Delivery Order(s) shall specify delivery(ies) no less than five days from the date of mailing of the Delivery Order.

NOTE: Subparagraph 1(h), DPSC Special Provisions 25, is deleted and the following substituted therefor:

"(h) The requirements referred to in this contract are for resale by Commissary Stores at the Government activity identified in the 'Ordering' clause. This contract does not cover requirements for troop issue. If a brand name is specified, only requirements for that specific brand are covered herein. The Government may procure similar products by 'brand name' from other sources.

PRIORITIES, ALLOCATIONS AND ALLOTMENTS: The DO-C9 priority rating contained in DPSC Clauses 18f for packaging materials and containers is applicable to this requirement. Prime contractors will provide sub-tier contractors with this priority rating by placing the following certification as prescribed in DMS Regulation 1 on their order(s): "DO-C9 certified for national defense use under DMS Regulation No 1."

CONTRACT PROVISIONS: The following provisions will become part of any contract awarded as a result of this NIP:

1. DPSC Clauses 18a 15 Jul 66; b 10 Aug 66; c 1 Dec 65; d 31 Oct 66; e&f 3 Oct. 66
2. DPSC Clauses 20 a 1 Feb 67; b 3 Oct 66
3. DPSC Clauses 300 a 1 Dec 65; b & c 15 Nov 66
4. DSSC Clauses 301, 1 Jul 64
5. DSSC Information 4, 1 Jul 64
6. DSSC Articles 331, 3 Oct 66
7. DSSC Articles 332, 3 Oct 66
8. DPSC Special Provisions 25 a 1 Mar 67; b 16 May 66
9. DPSC Articles 312, 3 Oct 66
10. DPSC General Articles 76 a 15 Jul 66; b 30 Nov 66 and c 15 Jul 66

Suppliers are cautioned to retain any inclosures furnished herewith except for DPSC Conditions 6, as subsequent Notices of Intent to Purchase for the items set forth herein will incorporate contract provisions by reference only. Contract provision sheets will be furnished in those instances where a change or revision has been incorporated or new provisions issued. COPIES OF CONTRACT PROVISIONS REFERENCED HEREIN MAY BE OBTAINED FROM THIS OFFICE UPON REQUEST.

APPROVED: R.E. Steidle

R. E. STEIDLE
Lt, SC, USN
Purchasing Division

3 Encl
DPSC Conditions 6 a,b,c & d 1 Dec 65
DPSC Forms 2131-1 & -2 (Dupe)
DPSC Special Provisions 25 a 1 Mar 67; b 16 May 66

DSSC Form 6-4-R
5 Nov 63

Replaces DSSC Form 6-4-R, 13 Dec 62, which is obsolete.

THE NATIONAL
**PROVISIONER**
LEADING PUBLICATION IN THE MEAT PACKING AND ALLIED INDUSTRIES SINCE 1891

**DAILY MARKET & NEWS SERVICE**
*"The Yellow Sheet"*
PUBLISHED 5 DAYS WEEKLY

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CHICAGO, ILLINOIS 60610
PHONE (312) 944-3380

By first class mail; $130.00 yearly, 13 weeks $35.00. Air mail service $16.00 extra yearly. Back issues 75¢ each. Telegraphic service available.


U.S.D.A. LIVE HOG MARKET QUOTATIONS

**Not enough in the yards to make a market.

| Code | | Weights | OMAHA | SIOUX CITY | INT. IOWA | ST. PAUL | ST. LOUIS | INT. ILLINOIS | Ind'pls |
|---|---|---|---|---|---|---|---|---|---|
| 1-2 | L | 180-200 | ** | 39.25-40.00 | ** | ** | ** | ** | ** |
| | M | 200-220 | 40.00-40.25 | 39.75-40.00 | 38.25-39.25 | 39.50-40.00 | 40.25-40.50 | 39.50-40.00 | 40.50-41.00 |
| | N | 220-240 | 40.00-40.50 | 39.75-40.00 | 38.25-39.25 | 39.50-40.00 | 40.25-40.50 | 39.50-40.00 | 40.50-41.00 |
| 2-3 | P | 180-200 | ** | ** | ** | ** | ** | ** | ** |
| | Q | 200-220 | 39.75-40.00 | 39.00-39.75 | 38.00-39.00 | 39.00-39.75 | ** | 39.00-39.50 | 40.25-40.50 |
| | R | 220-240 | 39.75-40.00 | 39.00-39.75 | 38.00-39.00 | 39.00-39.75 | 40.00-40.50 | 39.00-39.50 | 40.25-40.50 |
| | S | 240-270 | 39.00-40.00 | 38.75-39.75 | 36.75-38.75 | 38.50-39.75 | 39.00-40.25 | 38.25-39.50 | 40.00-40.50 |
| 3-4 | T | 240-270 | 38.50-39.50 | 38.50-39.50 | 36.75-38.50 | ** | ** | ** | ** |
| | U | 270-300 | 37.50-39.25 | 37.50-38.50 | 34.50-37.50 | ** | 37.50-38.50 | ** | 39.25-40.00 |
| 1-3 | V | 180-200 | 38.50-40.25 | ** | ** | ** | 37.00-40.25 | ** | ** |
| | W | 200-220 | 39.75-40.25 | 39.25-39.75 | 38.00-39.00 | 39.00-39.75 | 40.25-40.50 | 39.00-39.75 | 40.25-40.75 |
| | X | 220-240 | 39.75-40.25 | 39.25-39.75 | 38.00-39.00 | 39.00-39.75 | 40.25-40.50 | 39.00-39.75 | 40.25-40.75 |
| 2-4 | Y | 240-270 | 38.75-39.75 | 38.50-39.50 | 36.75-38.75 | 38.50-39.50 | 38.50-40.00 | ** | ** |
| Sows | WW | 270-330 | ** | ** | 32.50-33.50 | 33.50-34.00 | 33.50-34.00 | 32.50-33.00 | ** |
| | XX | 330-400 | 33.75-34.25 | 33.25-33.50 | 31.50-33.00 | 33.00-33.50 | 32.75-34.00 | 31.00-33.00 | 31.50-33.00 |
| | YY | 400-550 | 33.00-33.75 | 33.00-33.50 | 30.25-32.25 | 32.00-33.00 | 32.00-32.75 | 31.00-32.50 | 31.00-33.25 |

LIVE RECEIPTS (Head)

| | HOGS 11 Markets | CATTLE 11 Markets | HOGS Interior Iowa |
|---|---|---|---|
| Today | 50,000 | 37,800 | 75,000 |
| Last Week | Holiday | Holiday | Holiday |
| Year Ago | 46,500 | 30,300 | 78,000 |

DAILY ESTIMATED TOTAL
FEDERALLY INSPECTED LIVESTOCK SLAUGHTER

| | Thursday Dec.5'74 | Thursday Nov.28'74 | Mon-Thurs This Wk | Mon-Thurs Last Wk |
|---|---|---|---|---|
| **Cattle** | [illegible] | 1,000 | 503,000 | 409,000 |
| **Hogs** | 23,000 | 3,000 | 1,292,000 | 986,000 |
| **Sheep** | [illegible] | 0 | 121,000 | 95,000 |
| | Thursday Dec.6'73 | | Mon-Thurs Dec.3/6'73 | |
| **Cattle** | 122,000 | | 469,000 | |
| **Hogs** | 318,000 | | 1,232,000 | |
| **Sheep** | 32,000 | | 132,000 | |

HAMS.--Car 14/17 fresh skinned hams sold 83¢, and couple cars sold 84¢, Chgo. basis. Car 17/20 FROZEN sold 78¢, Chgo. basis. The 17/20 fresh sales early from 79@80¢, and later more cars at 81@81-1/2¢, Chgo. basis. The 20/26 fresh sold 76¢ up to 78¢ early, and more cars sold later at 77¢, Chgo. basis. Mixed car 17/20 and 20/26 fresh sold 79¢ and 6¢, 26/30 fresh bid at 69-1/2¢, 26/up fresh early at 66¢, 67-1/2¢, 68¢, and then at 68-1/2¢, Chgo. basis. Car 14/17 FROZ. skinned hams sold 81¢, Chgo. basis.

PICNICS.--Mixed car 4/6 and 6/8 fresh picnics sold 39-1/2¢, Chgo. basis. Straight cars 6/8 fresh sold 40¢, Chgo. basis. The 8/up fresh offered out early at 38¢, Chgo. basis.

BELLIES.--Car 8/10 fresh bellies sold 56¢, couple car 10/12 fresh sold 62¢, some 12/14 fresh at 62@62-1/2¢, and later some at 63@64¢, Chgo. basis. The 14/16 fresh sold 60-1/2@61-1/2¢, couple cars 16/18 fresh at 59¢, and some cars 18/20 fresh at 58¢, Chgo. basis.

D.S. MEATS.--Some cured fat backs reported to have sold as quoted.

FRESH PORK CUTS. --(carlot); The 14/down and 14/17 fresh pk. loins sold within quoted list, car 17/20 fresh sold 62¢, some 20/up fresh sold 58@59¢, JOBLOT 8/up fresh sold 54@55¢, car 1-1/2/3 froz. C.T. boneless butts at 81-1/2¢, Chgo. basis; fairly good movement of 3/down froz. spareribs sold at 69-1/2@71-1/2¢, Chgo. basis.

SAUSAGE MATERIALS & PK. VARIETY MEATS.--Some fresh and froz. 50's sold within quoted list. Few cars fresh boneless picnics, cushion-in, sold 55¢, car froz. pk. hearts sold 30-1/2¢, some JOBLOT fresh blade meat at 87¢, and car froz. scalded pk. stomachs at 14¢, Chgo. basis. JOBLOT 80's sold 58¢, Chgo. basis.

LARD AND EDIBLE TALLOW--In early market, p.s. loose lard offered at 38¢ Chgo. basis with unconfirmed reports circulating that loose sold 37-1/2¢ late Wed. a little later, couple of jumbo tanks p.s. loose sold 38¢ c.a.f. Southeast pt. and loose was available at 37-1/2¢ Chgo. basis. Some trade of edible tallow early at 32¢ Chgo. basis. Limited trading of loose lard reported later at 37¢ Chgo. basis. Rend. pork fat reported available 36¢ Chgo. basis.

COWS, BULLS, CALVES AND LAMBS: C&C under pressure. Selling on basis of 41¢ Chgo. on Northern with a load reported selling basis of 42¢ Chgo. Offerings available with bids lower. Southern C&C sold 39-1/2¢-40¢ Chgo. Interest for boning cows with few loads selling steady. Interest also for breakers at steady prices and offerings light. Northern bolo bulls sold into Chgo. at 44¢ with a sale at Northern point at 45¢. Lamb market steady on a nominal basis. with clearance Wednesday. Northern veal calves steady however lower grades under pressure.

BUTCHER CATTLE (CARCASS, CAR, LOT) GENERAL RANGE: Good interest for holstein type US Good steers with selling East at 59¢ and 56¢ FOB river. Choice heifers sold 58¢ into Chgo. and 57¢ fob river. Choice steers 6/800 moved on basis of 59¢ Chgo. and 61¢ caf East. A few loads of 6/800 sold East at 61-1/2¢. Choice steers 8/900 moved East at 60¢@61¢ East early with offerings available at the close and unsold. Few loads reported sold at river points at 57¢.

TOP HALF: Good movement and interest for top good heifers at 56¢ Chgo. with yield graded at 56-1/2¢ Chgo. Yield graded steers sold East at 60-1/2¢ and not yield on basis of 58¢ Chgo. into mid-East. Choice heifers sold in good amounts into Chgo. at 61¢ with a late trade reported at 61-1/2¢ Chgo. Choice steers 5/800 sold basis of 62¢ Chgo. basis and 64¢ CAF East. Good interest for light weight cattle. Choice steers 8/900 weights sold 61¢ Chgo. basis and a few loads sold at 62¢ river. Steers weighing 7/900 available late unsold at the close.

BUTCHER CATTLE (Primal Cuts): Front meat a little stronger with other cuts about steady in light trade. Choice Fore traded early at 51¢ fob river basis and then traded few times at 51-1/2¢ fob river basis with select loads trading slightly higher. Choice Heifer Hinds and Steer Hinds being held at steady quote. Choice Rounds traded steady and closed available. Choice Arm Chux traded few times within new range. Choice Arm Backs reported trading few times within new sheet. Choice Loins offered at new market. Choice Ribs in good position. Rough meat steady. Fresh and Frozen 50% lean traded within range.

DOMESTIC BONELESS BEEF: Movement of domestic boneless beef slow. Few loads of 90% lean beef fresh sold at 59¢ Chgo. basis, with higher asking prices and bids lower. 75% trimmings steady at 49¢ and movement on this basis both fresh and froz. Other items available unsold at quoted prices. Northern bull meat sold 68 Chgo. with Northern veal trimmings steady.

BEEF VARIETY MEATS: Beef hearts traded a couple times steady at 18¢ Chgo. basis. Unscalded lips traded at 11-1/2¢ Chgo. basis. A few loads of scalded tripe for deferred shipment sold at 11-1/2¢ fob river.

FROZEN IMPORTED BONELESS MEATS: Market dull with offerings plentiful but very little buying interest. Cow meat reported trading at 59-1/4¢ ex-dock for late Dec. and unconfirmed report of trading at 59¢ ex-dock for late Dec. offered at 59-1/2¢ ex-dock for early Jan and unsold. Shank meat reported trading at 65¢ ex-dock for Dec. arr. and offered at 65¢ ex-dock for early Jan. arr. Crops offered at 58-1/2¢ ex-dock for Dec. but reported trading at 56¢ ex-dock for Jan. Bull meat offered at 65¢ ex-dock for early Jan. arr.

TANKAGE--Reported early that a couple of car d.r. tkge sold $2.70 f.o.b. River pts. and Indiana pt. The Dec. soybean meal at the Bd. of Trade closed at $156.00 vs. Wed. close of $153.00. Reported later that some d.r. tkge was trading within quoted levels. Truckload d.r. sold low as $2.40, some trucks at $2.55. No change reported in dried blood. Reported that the 50% meat and bone meal selling and available within quoted range.

HIDES AND SKINS--Major packer market described by trade members as soft and rather confusing. Tone, for the most part, is weak, particularly, on hvy hides. Some Northern hvy. nat. cows reported sold at 14-1/2¢. Branded cows easier as quoted with some hvy. avg. reported sold at 9¢ Northern pt.

TRADES BY TANNERS' COUNCIL--Yest'y, 3,600 Colo. strs., fleshed, River 9¢, big packer. Also, 1,500 hvy. nat. strs., Midwest, 14¢ selected and 2,200 lt. nat. hfrs., Northern 18-1/4¢, selected; both fleshed and processor. Also, 4,000 hvy. nat. cows River 14-1/2¢; 4,000 branded cows, River 9¢, both fleshed no description of seller.

INEDIBLE FATS--This market still demoralized with practically no buying interest showing. Some trading of bleachable noted at 12-3/4¢ c.a.f. Gulf. Prime tallow sold yest'y at 12¢ and available today at 11-3/4¢. Other grades slow and available as quoted. No. 2 tallow closed at 9-1/2¢ on limited trade.

LIVE CATTLE MARKET--In Omaha, steers and heifers active under an aggressive demand by most buying interest. Steers $1.00@1.50 higher; heifers 50¢@$1.00 higher. Cows 50¢ lower than late Tuesday. Bulls weak to $1.00 lower. Steer top, $38.75; heifer top $38.00. Unofficial estimated receipts tomorrow, 6,500 head.

In Joliet, insufficient receipts to establish a market trend. Unofficial estimated receipts tomorrow, 1,200 head.

N.Y. MERCANTILE EXCHANGE--IMPORTED BNLS. BEEF FUTURES--CLOSE--Jan. 61.00, 11 sales; Mar. 60.40, one sale; May 62.20b, 7 sales. Open int. Dec. 4th: Jan., 179; Mar., 92; May, 44.

ALL PRICES REPRESENT CHICAGO BASIS MARKET
AT END OF TRADING DAY ON STANDARD PRODUCT
CARLOT BASIS, LOOSE, UNLESS OTHERWISE STATED

KEY: b-bid; ax-asked; n-nominal (approximate value in absence of trading); f.f.a.-fresh freezer [illegible]; f.c.-full carcass; c.t.-cellar trim; p.t.-private terms; l.c.l.-less than carlot; l.t.l.-less than truck load; t.i.s.-transfer-in-store; f.o.b. [illegible] freight; c.a.f.-cost includes freight; f.a.s.-export sale where price includes freight to shipside; c.i.f.-cost includes insurance and freight to export [illegible]; unq-unquoted, market inactive.

### SKINNED HAMS

| F.F.A. or FRESH | | FROZEN |
|---|---|---|
| unq | 14/dn. | 84½ @85½ |
| 84 | 14/17 | 81ax |
| 81@81½ | 17/20 | 78 |
| 77 | 20/26 | 74 |
| 69½ b | 26/30 | unq |
| 68½ | 26/up, 2s in | 65 |

### PICNICS

| F.F.A. or FRESH | |
|---|---|
| 4/6 | unq |
| 6/8 | 40 |
| 8/12 | unq |
| fresh 8/up, 2s in | 38ax |

### BELLIES

(Square Cut Seedless)

| | F.F.A. or FRESH |
|---|---|
| 8/10 | 56 |
| 10/12 | 62 |
| 12/14 | 63@64 |
| 14/16 | 60½ @61½ |
| 16/18 | 59 |
| 18/20 | 58 |
| 20/25 | 52½ |

### D.S. BRANDED BELLIES

| | Cured |
|---|---|
| 20/25 | unq |
| 25/30 | unq |

### GR. AMN. BEL. / D.S. BELLIES

| FROZEN or FRESH | | CLEAR |
|---|---|---|
| 45b | 20/25 | 48@49 |
| 43½ b | 25/30 | 46 |
| 42½ b | 30/35 | 44 |
| 39b | 35/40 | 42 |
| unq | 40/50 | unq |

### FAT BACKS

| | CURED |
|---|---|
| 8/10 | 38½ b |
| 10/12 | 39½ |
| 12/14 | 40½ |
| 14/16 | 42½ |
| 16/18 | 46 |
| 18/20 | 46 |
| 20/25 | 46 |

### HOG MARKET

| | |
|---|---|
| PEORIA-Dec. 5 | |
| Receipts | 4,300 |
| Top Price | $41.25 |
| PEORIA-Dec. 4 | |
| Avg. price barrows & gilts | $39.79 |
| Avg. wght. barrows & gilts | 235# |
| Avg. price all hogs | $37.70 |
| Avg. wght. all hogs | 274# |
| Avg. price sows | $32.95 |
| Avg. wght. sows . (19%) | 440# |
| JOLIET-Dec. 5 | |
| Receipts | 1,200 |
| Top Price | $41.25 |

### LARD (Loose)

| | |
|---|---|
| **P.S. and/or C.P. | 37 |
| **Rendered Pork Fat | 36ax |

### EDIBLE TALLOW

| | |
|---|---|
| **Chgo. and/or basis | 32 |
| **F.O.B. River | 31⅜ n |
| *F.O.B. Denver | 31n |

*150#-lb. tanks
**60,000 lb. tank cars and or 150#-lb. tanks.

### CRUDE VEGETABLE OILS

| | |
|---|---|
| Corn Oil, Mill | 44n |
| Soybean Oil, Decatur | 38.20n |
| Peanut Oil, S.E. | 47½ n |
| Coconut Oil, Pac. Coast | 31½ n |
| Cottonseed Oil, Valley | 39n |
| Cottonseed Oil, Texas | 39n |

### CHGO. CR. SOYBEAN OIL—CLOSE

| | | | |
|---|---|---|---|
| Dec. | 37.50@70 | July | 34.80 |
| Jan. | 36.@70@90 | Aug. | 33.95b@34.00ax |
| Mar. | 35.75@85 | Sept. | 33.60@50 |
| May | 35.25@30 | | |

### BELLY FUTURES MARKET—CLOSE

| | Close | Sales | Open Int. |
|---|---|---|---|
| Feb. | 68.65@75 | 2816 | 3813 |
| Mar. | 68.40@25 | 472 | 1984 |
| May | 69.30@40 | 118 | 909 |
| July | 69.70 | 58 | 476 |
| Aug. | 68.65 | 19 | 140 |
| Feb. | 6•.00 | 0 | 3 |

### FRESH PORK CUTS (Packed)

| CHICAGO JOB LOT Fresh | | CAR LOT Fresh |
|---|---|---|
| 70@71 | Reg. Loins 14/dn. | 70@70½ |
| 69½ @70½ | Reg. Loins 14/17 | 69½ @70 |
| 62 | Reg. Loins 17/20 | 62 |
| 58@59 | Reg. Loins 20/up | 58@59 |
| 54 | Bst. Btts, 4/8 (Bxd) (Dom) | 54 |
| 54@55 | Bst. Btts, 8/up (Dom) | 51 |
| unq | EXPORT FROZ. 4/8 Bost. Butts (30-days) Dev'd Dock) | unq |
| 49 | Sknd. Shoulders 16/dn. | 48n |
| | | Frozen |
| 1.15@1.20 | Canadian Backs 5/9 | unq |
| 1.15@1.20 | Tenderloins 10's | unq |
| 89 | Bnls. Butts, C.T. 1½/3 | 81 |
| 89 | Bnls. Butts, C.T. 3/4½ | 81 |
| 89 | Bnls. Butts, C.T. 4½/6 | 81 |
| 70½ | Spareribs 3/dn. | 69½ @71½ |
| 60 | Spareribs 3/5 | 60ax |
| 43 | Spareribs 5/up | unq |
| 1.45@1.55 | Bk. Loins Ribs 1¾/dn | unq |
| 25 | Neck Bones | 24 |
| 21½ | Tails | 20½ |
| 23½ | Feet Front, Toes On | 22½ |
| unq | Feet Front, Toes Off | 19 |
| unq | Pig Skins (Gelatin) | 16b |

### SAUSAGE MATERIALS (PACKED)

| CHICAGO JOB LOT Fresh | | CAR LOT Fresh | CAR LOT Frozen |
|---|---|---|---|
| 42½ | 50% Lean Trg.*(42%) | 41@42 | 42 @42½ |
| 58 | Spl. 80% Lean *(72%) | 55ax | 55½ |
| 59@60 | Bls. Pics. C-I*(72%) | 55 | 57 |
| 87 | Blade Meat | unq | 67½ @69 |
| unq | Skinned Jowls | 35 | 34½ |

*Chemical

### PORK-VARIETY MEATS (Packed)

| JOB LOT Fresh or Froz. | | CAR LOT Frozen |
|---|---|---|
| unq | Chitterlings, 10's | 37½ @38½ |
| unq | Brains (5's) | unq |
| 57 | Cheek Meat, Trimmed | 56ax |
| 34 | Ears | unq |
| unq | Hearts | 30½ |
| 12 | Kidneys Large Boxes (Domestic) | 11 |
| 14 | Lips | unq |
| 16½ | Livers, Large Boxes (Domestic) | 15½ @16 |
| 10½ | Melts | 9 |
| 47½ | Pork Head Meat | 46½ |
| 27½ | Snouts, Lean in | 26½ |
| 22½ | Tongues, Bnls. Scld. & Scrpd. | 21½ |
| 15 | Stomachs, Scalded 80's | 14 |

ALL PRICES REPRESENT CHICAGO BASIS MARKET
AT END OF TRADING DAY ON STANDARD PRODUCT
CARLOT BASIS, LOOSE, UNLESS OTHERWISE STATED

Lamb and cattle prices F.O.B. Midwest River Points

### U. S. GRADE CARCASSES
F.O.B. MIDWEST RIVER POINTS

| Gen. Range | | Top Half |
|---|---|---|
| unq | Com. Cows 6 800 | unq |
| unq | Std. Strs. 5/700 | unq |
| unq | Gd. Hfrs. 4/500 | 55 |
| unq | Gd. Hfrs. 5/700 | 55 |
| 56 | Gd. Strs. 5/600 | 57 |
| 56 | Gd. Strs. 6/700 | 57 |
| 56 | Gd. Strs. 7/800 | 57 |
| unq | Ch. Hfrs. 4/500 | 59 |
| 57 | Ch. Hfrs. 5/600 | 60 |
| 57 | Ch. Hfrs. 6/700 | 60 |
| unq | Ch. Strs. 5/600 | 61 |
| 58 | Ch. Strs. 6/700 | 61 |
| 58 | Ch. Strs. 7/800 | 61 |
| 57@58 | Ch. Strs. 8/900 | 60 |
| unq | Pr. Hfrs. 6/800 | unq |
| unq | Pr. Strs. 7/900 | unq |

| | Heifers | Steers |
|---|---|---|
| Fores, 5/700 | 51½ | 51½ |
| Fores, 7/800 | 51½ | 51½ |
| Hinds, 5/700 | 70 | 70 |
| Hinds, 7/800 | unq | 70 |

### CHOICE LAMBS (RIVER POINTS)

| | |
|---|---|
| Lambs, 35 45 | 85@86 |
| Lambs, 45-50 | 85@86 |
| Lambs, 50-55 | 85@86 |
| Lambs, 55 65 | 85@86 |

### LIVE MARKET (OMAHA)

| | |
|---|---|
| Canners | 13.00@14.50 |
| Cutters | 14.50@16.00 |
| Bologna Bulls | 21.00@22.00 |
| Cattle (Today) | 1,200 |
| Cattle (Last Week) | Holiday |

### CARCASS COWS AND BULLS (CHGO)

| Cows | South | North |
|---|---|---|
| C.C. . . . 350 up. | 39½ @40 | 41 |
| Bng. Utl. 400 up. | 39 | 40 |
| Brk. Utl. 500 up. | 36 | 37 |

North Bolo Bulls, 500 up . . . . . 44

### BONELESS PROCESSING BEEF

| Fresh | C.&C. (Packed) | Carlot Froz. |
|---|---|---|
| 68 | Carc. Bullmeat | unq |
| unq | Carc. Cow meat | unq |
| 49 | Trmg. 75/ln Chm. | 49 |
| 57 | Trmg. 85/ln Chm. | 57 |
| 59@60 | Bls. Beef, 90/ln. Chm. | 60 |
| 59 | Bls. Chucks | unq |
| ..... | Shank Mt. Froz. | 66 |
| ..... | Shldr. Clods | 66 |
| 80@81 | Insides, 12 up l.c.l. | unq |
| 80@81 | Outsides, 8 up l.c.l. | unq |
| 80@81 | Knuckles, 7/up l.c.l. | unq |

### AUST.-N.Z. FROZ IMPORTED MEATS
F.O.B. Port Of Entry (30 days)

| | |
|---|---|
| Cow Meat, 90% Vis. Ln. | 59½ ax |
| Bull Meat 90% Vis. Ln. | 66 |
| Shank Meat | 65@65½ |
| Bnls. Mutn. 85% Ln. Chem. | unq |

### BNLS. VEAL AND MUTTON

| Fresh | | Frozen |
|---|---|---|
| 68@70 | Veal Trgs. 90% ln. Chm. | unq |
| unq | Bnl. Mutn. 90% ln. Chm. | unq |

### TRIMMED COW AND BULL TENDERS

| Fresh Job lot | C. & C. Grade (Packed) | Frozen Car lot |
|---|---|---|
| 105@110 | 3/dn. Cow | unq |
| 115@120 | 3/4 Cow | unq |
| 145@150 | 4/5 Cow | unq |
| 155@160 | 5/up Cow | unq |
| 165 | 5/up Bull | unq |

### PRIMAL CUTS BEEF—Carlot
U.S. Choice Top Half

| | Heifers | Steers |
|---|---|---|
| Rounds, 70/90 | 73½ | 73½ |
| Sq. Chux, 70/ | 52½ @53½ | 52½ @53½ |
| Arm Chux | 49@50 | 49@50 |
| Arm Backs | 60½ @61½ | 60½ @61½ |

| Less than Carlot | Prime | Choice |
|---|---|---|
| Trd. Loins 40/50 | unq | 87 |
| Trd. Loins 50/60 | unq | 87 |
| Trd. Loins 60/70 | unq | 87 |
| Ribs 25/30 | unq | 88 |
| Ribs 30/35 | unq | 88 |
| Full Plates | | 33 |
| No. 1 Briskets, 12/up | | 42½ |
| No. 1 Navels | | 27½ |
| No. 1 Rough Flanks | | 29@30 |
| Fresh 50% Trmgs. (cl) | | 33@35 |
| Froz. 50% Trmgs. (cl) | | 33½ @34 |

### BEEF VARIETY MEATS
Boxed Car lot Frozen

| | |
|---|---|
| Sel. oxtails (sm. boxes) | 37 |
| No. 1 Tongues, 8 to box | 37 |
| No. 1 Tongues, Lg. Bxes | 34n |
| No. 2 Tongues | 27½ |
| Trmd. Cheek Meat | 44 |
| Salivary Glands | 11 |
| Head Meat | 41 |
| Hearts, Bone Removed | 18 |
| Heart Meat | 21 |
| Kidneys (small boxes) | 13 |
| Lips, scalded | unq |
| Lips, unscalded | 11½ |
| Livers, Sel 2 to box | 35 |
| Livers, Reg. 2 to box | 24 |
| Lungs (ined. Stnd. Trim) | 8½ |
| Melts | 9½ |
| Tripe, scalded | 13 |

### DRESSED CALVES

| | |
|---|---|
| Cull, hide off, 40/80 | 50@52 |
| Utility, hide off, 60/100 | 57@59 |
| Std., hide off, 80/120 | 75@80 |
| Good, hide off, 80/120 | 88@93 |
| Choice, hide off, 90/140 | 93@98 |

### D. R. TANKAGE-DRIED BLOOD

| Unground | F.O.B. Mo. River | Dlvd. nearby midwest pts. (Approx. 150Mi. Rad. of Chgo.) |
|---|---|---|
| Low test | 2.60@2.70n | 2.60@2.70n |
| Med. test | 2.60@2.70n | 2.60@2.70n |
| High test | 2.50@2.60n | 2.50@2.60n |
| Dried Blood | 9.50n | 10.00n |

50% Meat & bonemeal f.o.b. midwest 145.00@150.00

### PACKER HIDES

| | |
|---|---|
| *Nat. Strs., Ex-lt. | 20n |
| *Nat. Strs., Lt. | 20n |
| *Nat. Strs., Hvy | 16 |
| Butt Brd. Strs | 12 |
| Colo. Strs | 9 |
| *Hvy. Nat. Cows | 14½ @15n |
| Lt. Nat. Cows, N | unq |
| *Lt. Nat. Cows | 19½ n |
| *Branded Cows | 9½ n |
| Nat. Bulls | 7@7½ n |

CALF. (N.Y. PACKER TRIM)

| | | | |
|---|---|---|---|
| 5/7 lb. | 3.75n | 7/9 | 5.00n |
| 9/12 lb. | 7.00n | 12/17 | 7.50n |
| 17/25 lb. | | | 8.00n |

*River — If export freight add 1/2¢

### MIDWEST SMALL PACKER

| Avg. (plump & medium) | Native |
|---|---|
| 60/62 lbs. (all wts.) | 11@12n |
| 50/52 lbs. (all wts.) | 12½ @13½ n |
| 50/60--56 avg. | 13½ @14n |
| 30/50--45 avg. | 15@15½ n |

### TALLOWS AND GREASES—INEDIBLE
CHICAGO

TALLOWS:

| | | | | |
|---|---|---|---|---|
| Fancy | 41.5 | 4 | 7. | 12½ n |
| Fancy (bleachable) | | | | 12½ ax |
| *Fancy (bleachable) River | | | | 11½ @11¾ n |
| Prime (Pkr. or rend.) | | | | 11¾ ax |
| Special | 40.5 | 10 | 19 (11C) | 11½ ax |
| No. 1: | 40.5 | 15 | 33 | 11ax |
| No. 2: | 40 | 35 | No Col | 9½ |

GREASES

| | | | | |
|---|---|---|---|---|
| Choice White (all hog) | 37 | 4 | 11 | 15¼ ax |
| B-White | 36 | 10 | 19 | |
| basis 2 MIU or 11C | | | | 11½ n |
| Yellow | 36 | 15 | 37 | 11 ax |
| House | 37.5 | 20 | 39 | 10⅝ n |

* F.O.B. Missouri River Area

### CHGO. MERCANTILE—CLOSE
LIVE CATTLE FUTURES—Chicago

| | Close | Sales | Open Int |
|---|---|---|---|
| Dec. | 39.50@40 | 2412 | 2935 |
| Feb. | 42.20@15 | 4326 | 8746 |
| Apr. | 42.60@50 | 1735 | 4577 |
| June | 43.50@55 | 705 | 2565 |
| Aug. | 43.50 | 123 | 1093 |
| Oct. | 43.50 | 37 | 45 |

LIVE HOG FUTURES—Chicago

| | Close | Sales | Open Int. |
|---|---|---|---|
| Dec. | 42.75@60 | 816 | 1394 |
| Feb. | 45.90@80 | 1680 | 4398 |
| Apr. | 45.00@44.75 | 384 | 2090 |
| June | 47.90@75 | 417 | 1802 |
| July | 48.45 | 112 | 686 |
| Aug. | 47.20 | 85 | 256 |
| Oct. | 45.00b | 0 | 12 |
| Dec. | 45.20b | 0 | 10 |

Senator PROXMIRE. Thank you, Mr. Norton. You are a remarkable man. You have been working since 1923 at this job?

Mr. NORTON. That is correct.

Senator PROXMIRE. That is 51 years. You certainly do not look—you must have been mature enough to hold a job when you got it. You do not look your age. You must run to work or something.

Mr. NORTON. Thank you, sir.

Senator PROXMIRE. You must do something to stay in shape.

Senator SCHWEIKER. Jog?

Senator PROXMIRE. Yes, jog.

Well, let me ask you this. In collecting prices for meat for your reporting service, do you cover the entire country?

HOW THE "YELLOW SHEET" CALCULATES PRICES

Mr. NORTON. We cover meat on two bases. One, we cover beef on what we call a river point basis, which is the area of the country where your major cattle production comes about. This is Kansas City—St. Joe, and the area through the Missouri River area. This is the largest beef production area of the country, and is the f.o.b. basing point for our beef quotations.

Our pork quotations are based on Chicago basis, which is the common, accepted term in the industry for basic pork prices. Our market reporters go as far west as Denver, they go as far north as Duluth and St. Paul, they go as far east as New York, and they go as far south as Memphis. We blanket the industry in what is broadly termed the whole Middle West meat production area.

Senator PROXMIRE. Now, I notice that the prices quoted for U.S. grade beef carcasses is f.o.b. midwest river points.

Mr. NORTON. Correct.

Senator PROXMIRE. What does this mean? Is this a multiple basing point system?

Mr. NORTON. It is a multiple basing point system, which I mentioned— includes the whole broad area north and south through a common freight rate area, which is acceptable for basing purposes on an f.o.b. basis, because you have the largest number of beef slaughtering plants, and the largest production of beef, in that area of the country.

Senator PROXMIRE. Now, is it correct that the buyer pays the freight from these points, and the prices vary at the Midwest river points. What your sheet presents is an average of these prices?

Mr. NORTON. It is not an average. We do not calculate prices. We quote on a reported basis. Averaging is only a calculation. We report the actual transaction prices that take place.

Senator PROXMIRE. What do you do, then, report a range?

Mr. NORTON. If there is a range, yes.

Senator PROXMIRE. This means the buyer has two variables in buying; prices at that particular point, and transportation from these points. Is that right?

Mr. NORTON. Correct. Prices at the various points are usually constant.

Senator SCHWEIKER. Mr. Chairman, I wonder if the Chair would yield for 1 minute. We do not have a copy of the yellow sheet up here. I think it would be very helpful to us, who are going to question, to have a copy of the yellow sheet, since that is very much an issue here.

Excuse me, go ahead.

Senator PROXMIRE. Some of the price quotations have the word AX afterwards. Well, I will wait.

Mr. Norton, some of the price quotations have the word AX afterwards. Does that mean asked?

Mr. NORTON. That means asked.

### HOW ASKING PRICES ARE TREATED

Senator PROXMIRE. How do you verify an asking price as legitimate and verifiable, since no sale is consummated?

Mr. NORTON. An asking price is an asking price. It is not necessarily the price at which a product will trade when an actual transaction occurs.

Senator PROXMIRE. You just assume that the people who use your report are sophisticated enough, and informed enough, to realize that that is not the same as a consummated price?

Mr. NORTON. That has been our experience, yes.

Senator PROXMIRE. All right.

The letter *n* after some prices means nominal?

### NOMINAL PRICES

Mr. NORTON. That means nominal. That is an approximate value in the absence of trading.

Senator PROXMIRE. Why report a nominal price when no sale occurs?

Mr. NORTON. This is usually only done for a day or two, when there is a temporary inactivity, to provide some continuity between the last trading and the next trading.

Senator PROXMIRE. Your prices really represent spot market sales?

Mr. NORTON. Cash market sales, yes.

Senator PROXMIRE. And spot sales or cash sales represent only about 2 percent of all meat sold?

Mr. NORTON. I do not know the answer to that, Senator.

Senator PROXMIRE. Well, a small percentage, at any rate. You see, the problem I have is, whether or not this 2 percent controls the price of the remaining 98 percent, which moves under contract.

### ACTIVITY IN THE OPEN MEAT MARKET

Mr. NORTON. I do not know that 2 percent is correct. That is my point, sir. I do not think anyone knows how much product actually flows into what we call the open market, and the open market, of course, is what we quote. This is the market where all sellers offer a product to anyone who is interested in buying. They offer their products in competition with other sellers to anyone who is willing to bid on that product, where, after negotiation, either the asking price or the best price is accepted by the seller.

Senator PROXMIRE. Could I ask you, Mr. Albanos, for your observation on this; the extent to which this price, this cash price, would represent a representative proportion of the market.

Mr. Albanos. Well, you made an estimate of 2 percent, and as Mr. Norton says, I do not think there is any reported number. But it can be said, it is my opinion, that it is a small portion of the amount of meat that travels. Maybe it is 2 percent, maybe it is 5 percent, maybe it is 10 percent.

### SMALL PORTION OF "YELLOW SHEET" PRICES DRIVES MEAT MARKET PRICES

Senator Proxmire. Does it not seem that under this system, the yellow sheet used as widely as it is, that this does seem to drive the market; this does seem to determine the price throughout the market?

Mr. Albanos. Yes, it does. The innovations in our format were put there for that purpose; to show the people how little volume was being traded on those prices, and up until our publication, they had no idea if a price report was based on a tremendous amount of volume, or no volume, or a small amount of volume. That is why we have volume; to show what volume went in to compute those prices.

Mr. Norton. I would like to make the observation, if I may, that meat will move into consuumptive channels either through a normal distributive trade, or in the open market; and it is for each producer to elect how he wishes to move his production. There is no law, there is no rule, which requires him to do one or the other; and depending on circumstances, he can move from one market to the other, and if the prices on the open market are better than he can get on a contractual basis, there is nothing to keep him from moving his entire production into the open market, just as if he can contract for better prices than the open market then affords, he can go for more distributive trade. So the percentages are really unimportant, in my mind, because this is the one area where meat is open for open auction, where sellers compete against sellers; and that is where the true value is actually found.

Senator Proxmire. Well, how do you meet the assertion in the article by Mr. Kwitney in the Wall Street Journal, who says that increasingly, suggestions are made that prices on that yellow sheet are manipulated, mostly by major packing companies for whom a price swing of a penny or two a pound on carcass meat can mean millions of dollars in profits? Meat brokers, wholesalers, processors, even some packers, poured out accusations of price rigging in recent interviews with this reporter. What is your response to that general complaint?

### "YELLOW SHEET" REACTS TO WALL STREET JOURNAL ARTICLE

Mr. Norton. My response to all of the, quote, "alleged schemes" that were outlined in the Wall Street Journal is that, to my knowledge, none of them have ever worked; because, first of all, the reporter was unexperienced, and he was uninformed. They are talking, for example, about the first alleged scheme, which is a ploy that some buyers think is used to raise market prices artificially. Now, to work, this requires two things; the absence of everybody else from the market, and insensitive reporters, and I do not think that the combination is ever present. For our reporters, for example, purchases by a producer to, quote, "fill an alleged shortage" are automatically suspect, and they could be ignored by us, because they would normally be a distress purchase.

Furthermore, the whole matter neglects the point that there is a large amount of trading from packer to packer, and there is absolutely nothing unusual about this, because when a packer oversells his production, there is only one place he can go to obtain meat to meet his guarantees, and that is to another, major producer. Whether these sales are made at higher or lower levels than packer to user is a matter of whether the meat really is being sold or bought.

Now, when meat is bought by a producer to meet his shortage, it is not at all unusual for him to pay more than users are then paid, for several reasons. One, no one gives meat to a competitor to help him out, unless you get some extra money for it. Two, you are not going to take a chance on shorting your regular outlets without being paid for the privilege. And the third thing is that the packer who is in trouble has to pay an exaggerated price to get out of trouble. But this has normally nothing to do with packer to user sales, because the one packer purchase on that level is soon negated by all of the other trading that goes on in the market.

Senator PROXMIRE. All right, sir.

Let me ask Mr. McLain, would you describe the *Frank West* case, and whether or not he manipulated the yellow sheet?

### FRANK WEST, CEO OF AMERICAN BEEF PACKERS, USED THE YELLOW SHEET TO RIG HOG PRICES

Mr. MCLAIN. Mr. Drake handled it. We will let him answer it.

Mr. DRAKE. Mr. Chairman, this is an action we brought some time back, and one of the many alleged violations in the complaint was one that Mr. West, who, as chief executive officer of American Beef Packers, and also runs a hog operation, whereby they are one of the largest hog carcass sellers in the United States. He also was the owner of the largest hog dealer operation on Omaha Hog Terminal Market. One of our allegations is that through his dealer operations, he artificially rigged the Omaha live market in order to sell his dressed hog carcasses through what is commonly known and utilized by the industry—the Bussy system, which is a formula system of marketing hog carcasses in the United States by hog packers, basically all packers who market hog carcasses in this country. This Bussy denominator is a system whereby they utilize one base point, live market point—in this case, the Omaha live market versus a denominator which converts the live hog price to a dressed price, arriving at a dressed price—and they utilize this formula for nearly marketing all carcass hogs in the United States.

As I mentioned, we allege in this complaint that through artificially rigging the Omaha live hog market, Mr. West utilized this rigging to sell his carcassed hogs.

Senator PROXMIRE. My question is, was this manipulation through the yellow sheet? How did it affect the yellow sheet?

Mr. DRAKE. The yellow sheet was the vehicle. The yellow sheet quotes live market prices, broken down in Omaha.

Senator PROXMIRE. This was your allegation?

Mr. DRAKE. Yes, sir.

Senator PROXMIRE. Was the allegation proved in court or not?

Mr. DRAKE. We negotiated a nolo consent order with Mr. West, where he consented, through a nolo consent order, of all the violations in the complaint.

Senator PROXMIRE. Now, how did you investigate the yellow sheet?

Mr. DRAKE. How do we investigate?

Senator PROXMIRE. How did you investigate in this particular case, or did you?

Mr. DRAKE. In this case, the yellow sheet was only a vehicle, in that all of the people who sell on the Bussy system, or the formula system of carcass hogs, look to the yellow sheet as the live market price input in this formula.

Senator PROXMIRE. Did you subpena the records of the yellow sheet?

Mr. DRAKE. No. We had copies of the yellow sheet, and we checked these out, plus we checked all of Mr. West's csutomers, and vertified he was selling on this formula, and that he insisted on utilizing the Omaha market.

### USDA AND THE YELLOW SHEET

Senator PROXMIRE. In view of this experience, this record, has the Department of Agriculture ever felt it necessary or desirable, useful, to conduct an investigation of this very important method of reporting prices, which allegedly, according to a number of allegations, has been used to manipulate prices? Have you ever felt that was your responsibility? Have you ever acted on it?

Mr. DRAKE. Well, yes. As I mentioned earlier, we have no jurisdiction over the yellow sheet. We have jurisdiction over those people, meat packers, that is, who utilize and are a part of the input, the information into the yellow sheet; and yes, we have investigated it, and continue to do it.

Senator PROXMIRE. Do you have any other findings than what you have told us about this *Frank West* case?

### OTHER USDA CASES

Mr. DRAKE. Well, the *Frank West* case was different from some of the other problems which arise, as I mentioned—packer to packer sales—in that Frank West, knowing that the yellow sheet was utilizing the live hog market prices from Omaha, which happens to be USDA live market prices; they were only using the yellow sheet as a vehicle to carry out this——

Senator PROXMIRE. Well, you see, what I am trying to get at is whether or not there is any—you do not have any jurisdiction, you say, over the yellow sheet. I am wondering if anybody does. We have freedom of the press in this counrty, we are all proud of it, we all believe in it, and I think we ought to do our best to protect it; and it may be that there is very little we can do. But do you feel there is any legal basis for protecting the consumer against deliberate manipulation?

Mr. DRAKE. Yes, sir, no doubt about it.

### HOW TO PROTECT THE CONSUMER AGAINST PRICE SHEET MANIPULATION

Senator PROXMIRE. What is that protection? What can we do to protect the consumer against that, so he is not deceived on price? I am not trying to make any allegations against Mr. Norton, who obviously is a very able man who feels he is doing a conscientious job. But I am just wondering if these allegations that have been reported, if there is substance to them, we ought to investigate them.

Mr. DRAKE. This is a personal opinion, Senator. The yellow sheet, or any other media, reporting a market on a voluntary basis, even with all of their safeguards, they are still in a position of reporting a market which is no better than the source of information. I have talked to many people in the industry who—I can see why they need an adequate market news reporting system in our modern marketing system, and many of them have recommended that we need a market reporting system which reports all of the market, such as someone mentioned the New York Stock Exchange; all transactions should go into a market news reporting system. As one person pointed out earlier. I think one of the possible weaknesses in my own opinion is what Mr. Norton calls open market transactions. Well, basically, I think what he is saying, most of these are brokerage transactions; whereas your big volume of meat in this country is sold by direct negotiated transactions.

So we are in a position where a small volume of meat transactions, through brokers, could be setting the price for this other large volume of meat. I think this is one of the problems.

Senator PROXMIRE. My time is up. In fairness to Mr. Norton, I want to give him an opportunity to respond, and the same time to explain. The 10 people you have who report on this—what do you have, one or two people in beef—how they are able to gather statistics on such an enormously complicated and vast area.

### YELLOW SHEET DEFENDS ITSELF

Mr. NORTON. May I first comment on the gentleman's remark?

Senator PROXMIRE. Yes, sir.

Mr. NORTON. In that I want to agree with him that the accuracy of a market report depends entirely on the people who furnish the information, and the Omaha hog prices that he speaks of are figures produced by the U.S. Department of Agriculture, and are relayed by us to our subscribers purely as a convenience factor. The Bussy denominator system that he talks about goes back to USDA live hog quotations, and has no bearing whatsoever on any quotation furnished by the daily market and news service as a result of its own reporting efforts.

Now, I think that should establish in the record that it is the Department's figures that are being used, and not ours. If you will notice, on the top of our service here, that we clearly define these as USDA live hog market quotations, and they come from Government reports.

Senator PROXMIRE. My time is up. In fairness to the other members, I will get to the other question later. Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman.

### THE MEAT SHEET'S FORMAT

I would like to understand, Mr. Albanos—you say your format is different. In layman's terms, what does that mean, that your format is different? In what key features is it different?

Mr. ALBANOS. When I speak of the format, I think of the way it is designed on the face of the sheet. Our service provides four different numbers. The first number for the item is the volume of trades. It is reported in tons, so that a person knows how much trading, or how many pounds of merchandise, was transacted. Our second figure of high is the highest price that was reported for the day. Our third figure of low is the lowest figure that was reported for the day, and the close, which is equivalent to the price you see on the yellow sheet.

Senator SCHWEIKER. The first figure was totals?

Mr. ALBANOS. The first figure was volume, the volume at which these prices are——

Senator SCHWEIKER. So you are reporting a total or volume, and the high, the low, and the close?

Mr. ALBANOS. That is correct.

Senator SCHWEIKER. Which would be very similar to a Dow Jones stock average.

Mr. ALBANOS. It is very similar to a Dow Jones. It was designed on my part along those lines. I thought it was time for——

NUMBER OF PEOPLE CONTACTED BY THE MEAT SHEET

Senator SCHWEIKER. You report all transactions, then? How big a sample do you get of your market?

Mr. ALBANOS. Well, we talk to approximately, as I said in my statement—to about 300 people a day, and we can only report their verifiable trades. These people are trading all day long, but most of them are locked into this market basis trading by the yellow sheet, and very little of it is negotiated price. We can only report the prices that are negotiated.

Senator SCHWEIKER. All right. I would like to ask Mr. Norton, Mr. Norton, as I read your sheet, I do not see a total high, low and close. How do you operate?

YELLOW SHEET—NO HIGH, LOW, OR CLOSING PRICES

Mr. NORTON. We do not believe that a high, low and close are of any interest simply because we are publishing a guide for our industry, and that is to enable our subscriber in the morning to know where the market left off the night before because in the morning the market takes off where it left off the night before. The high and the low of the previous day is merely history at this particular point. We carry the reporting operation on throughout the entire trading day. Our reporters start somewhere about 7:30 or 7:45 in the morning. They work until the market closes, which is for us whenever trading ceases on a given item. This can be anywhere from 2 until 4:30 in the afternoon. And as they go, they accumulate information both by the type of product that is being traded, the volume of the trading that goes on, and working toward the ultimate production in our yellow sheet of a closing market quotation, the prices at which product was moving at the end of the trading day.

Senator SCHWEIKER. What about total? Do you have any index for total figures?

Mr. NORTON. No, we do not.

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Senator SCHWEIKER. All right. Now in the earlier statement you made an analogy between your sheet and the Dow Jones industrial averages, and here in your description I have a hard time reconciling this analogy because the high, low and close and total, it seems to me, is pretty fundamental in the business stock market. You have no total high, lows and closed. Now maybe for your own reason, which obviously is part of the element of the controversy here, but I do not see the analogy between Dow Jones. I am not aware also that Dow Jones eliminated distress sales. After all, what is a market but a measurement of who is in distress and how much they are in distress. And is that not a pretty subjective judgment to just throw out a low price and say, they are in distress.

YELLOW SHEET ELIMINATES DISTRESS SALES

Dow Jones does not throw out prices on the basis of being in distress. Why do you? And is this not a pretty subjective thing that is subjective thing that is subject to anybody's usage in any way they want?

Mr. NORTON. I do not believe so, in the first place, Dow Jones reports at the end of each day the high, the low, and the close on various corporate securities. I do not know that the element of distress enters into Dow Jones the same as it does on meat, because on meat the matter of disress usually refers to perishable products where you have got to either sell it or smell it, or where you have got a delivery commitment to make and you have no alternative if you are going to fulfill your contractual requirements.

This is where the matter of distress comes in. It is a matter of a product which has to be sold, at times for anything you can get. That has nothing to do with standard merchandise of acceptable quality being sold without that pressure point, and it also has nothing to do with a seller which has all of sudden gotten in a box and has to somewhere find a limited quantity of meat that could be made available for instantaneous delivery.

Meats are sold in our industry on the usual basis of immediate shipment. This allows that the shipment has to be started to the purchaser within three days of the time the deal is made.

Now there was a case not too many months back where a major packer was commited to deliver meat to A. & P. at Detroit, and they ran short Friday afternoon and could not fulfill their delivery commitment. They had to go out and outpay the market 2 cents that afternoon to one packer who happened to have one load of meat in Detroit that he was willing to make available for Saturday morning delivery.

Now this has nothing to do with normal selling of meat of an immediate shipment basis where you are given as much as three days to start your shipment.

Now with reference to the analogy of Dow Jones on our service, there are apparently some people who prefer to do business on a contractual basis where they will agree to buy and sell meats at a future date with the price to be determined on whatever price we quote the day that meets delivery.

And the same thing pertains as far as Dow Jones is concerned in that possibly only as little as 10 percent of the General Motors stock that changes hands over a period of time changes hands in the New

York Stock Exchange. The balance changes hands on the basis of private trading of large blocks of 50,000 to 250,000 shares, which are traded on the basis of Dow Jones close the day the stock was transferred. So the same situation obtains exactly.

PROBLEM OF MONITORING ALL MEAT SALES

Senator SCHWEIKER. But Dow Jones does report all those that do occur on the market that are available. They do not sample. They take the whole approach.

Mr. NORTON. Well, we are talking about a different situation in that all stock that is going to be traded in the open has to be traded on the New York Stock Exchange where it can be precisely monitored. But that does not mean that all stocks that are transferred trade on the New York Stock Exchange. Only those that are handled by certain registered brokers.

Senator SCHWEIKER. Well, now, an economic market is the total sum of all the pluses and minuses forces in the market. It would seem to me that the stress, particularly of a perishable commodity, is a very key element in that market situation. I have a very hard time understanding why you throw out the lowest prices automatically.

How do you do that? Who knows that something is in distress when they call and say it is in distress? Do you send somebody down to see if it is a legitimate distress? How do you know it is a distress part because you throw out the elements that bring down the price?

PROBLEMS WITH DETERMINING A DISTRESS SALE

Mr. NORTON. It is not we that throw it out; it is the people who participate.

Senator SCHWEIKER. You are cheating. The policy is not to include that in the market quotation.

Mr. NORTON. But it is either the buyer or the seller who makes it clear when we go through our confirmation proceeding that this was, in fact, a distress sale. And then when you get into a situation——

Senator SCHWEIKER. But who validates that? Who certifies that and how do you check that. That is the area where a mainpulation can easily occur and it probably does?

Mr. NORTON. That is a situation that applies to that one trade only, and when you then have a continuation of trading in the market for the balance of the day, and when the market moves back to its previous trading level in complete disregard of that one isolated trade, the market establishes itself on a regular basis.

Senator SCHWEIKER. Well, it seems to me a lot of personal judgment. No. 1, and No. 2, the people who have the most to gain by giving you false information have every incentive to talk about distress to their advantage, and therefore, throw the whole transaction off the exchange.

Mr. NORTON. Every buyer who buys meat at a low price alleges that the product is normal. Every seller who sells meat at a low price likes to suggest that this might not be typical.

It is our job, after all, to monitor and find the trend of the market.

Now that also gets back to one other important point, I think, and that is that, let us suppose that you do have a trade at 10 in the morning, and this is reported by the seller as a distress trade, and that the buyer also says, "yes, this was not a typical lot of merchandise. I bought it because I could use it at this particular time despite its condition."

Now if, during the balance of the day, the market moves at higher levels and you could no longer buy a product at that distress trade price, that market no longer exists. It is only history.

Senator SCHWEIKER. My time is up but I think in fairness we should give Mr. Albanos some time to respond to any of those.

### MEAT SHEET DEFENDS ITS PRICING METHODOLOGY

Mr. ALBANOS. I would like to respond to defend the volume high, low, close concept.

As the Senator said, there is a tremendous amount of discretionary latitude in the reporter at the end of the day so come up with that one figure at the close. I designed a format for a couple of reasons, one of them being to lock the reporter at the end of the day into showing what the highest price was and what the lowest price was, to guarantee the minimal amount of flexibility on his part, to show the close we accept all trades. We put all trades into the market, and I feel that if he was to close it out of any of those ranges, that he would have to have strong feelings that we could defend the next day and it should be closed that way. And I feel it is important that the industry sees the highest price, the lowest price, and then the close.

We also separate on format the packer-to-packer trades and the packer-to-processor trades, I did not speak to that before about our beef carcasses. This is the section of the sheet that we separate, any trades that are made from packer-to-packer differently than from packer-to-processor. Our feeling is that the casual, minor volume of packer-to-packer sales on carcasses are sometimes caused by operating circumstances that do not reflect the same needs as for end-users, and therefore, we feel it should not reflect in the same style as they do for end-users.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Senator PROXMIRE. Congressman Brown.

Representative BROWN. I would like to get the terminology straight in the sum and substance of the percentage of the total market volume and the fluctuations in the total market volume. I guess this ought to be directed to the representative of the Department of Agriculture or Mr. Norton.

Out in my part of the country, in Ohio, we have a lot of little farmers who are feeding out cattle or raising pork. They sell through community auction houses or market places where their prices are adjusted on an auction basis from buyers who come in and pick up these animals and then ship them to some more central location.

Now where do these people fit into the picture? What portion of the market do they take care of?

Mr. ALBANOS. That is the live market. Our marketing reporting takes effect as soon as the animal is slaughtered. Any live market quotations that we have on our sheet are figures that we get from the Department of Agriculture. We do not report the live market in any way other than to get it from the Department of Agriculture.

We take meat prices from the point where the animal is slaughtered. From that point on to the system is where we are reporting the prices.

Representative BROWN. Is that true of Mr. Norton's operation also?

Mr. NORTON. Yes, sir.

Representative BROWN. Well, then how does the Department of Agriculture determine these live market prices?

Mr. DRAKE. I am not in the market news service but I am very familiar with their activities. They today have actual market reporters in all the major markets in the United States.

Representative BROWN. What do you mean by major markets? I am talking about these little operations, auction barns, that cover maybe three, four, five counties.

Mr. DRAKE. I cannot give you every area that they report, but I do know the major hog producing areas and cattle, too, that they do have field reporting employees.

For instance, in the interior of Iowa, they cover on the hog market activities. I know they have decentralized their market reporting activities and have actual personnel who report nonpublic market activities.

Representative BROWN. Who is doing the buying at these markets, these live markets?

Mr. DRAKE. Depending on the species of livestock, slaughtered livestocks, packers have their own employees or they have order buyers buying for them.

Representative BROWN. How competitive are they?

Mr. DRAKE. It is difficult to get a handle on how competitive are they and weigh it. I would say this would vary from sale to sale from time to time. The whole concept of the auction market is to maintain a competitive process, just like your terminal markets our producers consign and the various buyers theoretically bid competitively.

Representative BROWN. Well, are there enough bidders to keep that price competitive or are there so few bidders that prices are always forced down? I mean, do they just stop bidding if they are watching the "yellow sheet" or the "meat sheet" or something and decide that the price has gone too high?

Is that the way it works?

## BIDDING COMPETITION IN MEAT AUCTIONS

Mr. DRAKE. No, this is a many splendored thing. I have been on auction markets in the course of my business where you can have more competition where there are two buyers active than if you have two dozen buyers sitting there with little or no activity.

So it is very difficult in any given situation to judge competition on an auction market, as such. It is my personal opinion, generally, in this country today in the meat business the meat price is established at the wholesale level between the meat packer and the buyer of his product.

One thing that has not been brought out this morning is that there is a lag on big volume meat sales in this country, especially packers selling to chain stores. Every chain store in the country basically has what they call a booking date for the following week's purchases. I have not checked this week but A. & P.'s booking date used to be Tuesday. The day they finalize their sales with price for the following week deliveries. So you have a lag there of from 7 to 10 days between the booking with the chain store and a packer-supplier and actual delivery date. Safeway used to be Wednesday.

The whole industry knows this so actually in many cases a packer books supplies of meat when actually he has not even gone out in the live market and procured the raw product.

Representative BROWN. Now when he does that, he darn well has to come up with live product, right?

Mr. DRAKE. That is correct.

Representative BROWN. So he may be a little bit more desperate in his bidding than if he had not made the booking.

Mr. DRAKE. Normally, if he is caught short, yes, sir.

Representative BROWN. Is there a differentiation between the small auction markets where small butcher operations are buying and where the buying is being done only for big packers? You know, thanks to the U.S. Congress we have eliminated most of the small meat processors, I guess, with the cooperation of the Department of Agriculture, in the Clean Meat Act, which got a lot of publicity here about 6 years ago, or something like that. As a result, we put out of business most of these small community processors because they could not afford, whether they were clean or not, the cost of all the things that had to be done under that law.

So we tended to centralize the business of meat processing, is that not correct?

Mr. MCLAIN. Yes, sir.

Representative BROWN. OK, but we still have some of those people who survive. In my little community in Ohio we still have something called the McInturff's Meat Center where they buy some of the meat at auction and process it. I still know where you can buy meat from a processor and put in your own locker without having to go through some of the big packing companies, without having to buy it from the supermarket.

Now, is there a substantial difference between the prices of such operations in meat and the big packers and their purchase bids at auctions?

Mr. DRAKE. Whether it is good or bad the big volume of meat that the consumer buys in the chain store does not go through any public competitive marketing system.

Representative BROWN. What is that percentage that does not go through?

Mr. DRAKE. Oh, it is overwhelming today.

Representative BROWN. Overwhelming? Like 99$^{44}/_{100}$ percent or 85 percent or 60 percent?

Mr. DRAKE. Something in that neighborhood.

Representative BROWN. What neighborhood?

Mr. DRAKE. There are no figures.

Representative BROWN. I just described, I think, a fairly big neighborhood.

Mr. DRAKE. No, Senator, there are no actual figures on that percent of slaughtered beef for slaughter goes through State auction markets as such because auctions, they are a primary outlet of stock or feeder animals, and let us say slaughter cows, but your big volume of fed beef in the United States today, and there are no figures, actual as such, do not go through a competitive marketing system.

Representative BROWN. So you cannot answer my question. You do not know what the difference in price of the small meat processors is, where they go out in the same competitive auction market and buy just a few animals for slaughtering.

Mr. DRAKE. I can answer your question, having been in the auction business myself, and that they are a tremendous asset to any auction market because many of your small independent local packers utilize the auction market for their needs rather than going to the big commercial feedlots.

Representative BROWN. Well, if you did not have these big meat operations, if the Congress had not made it practically impossible for these little fellows to operate, why they might be a safety valve in the market, might they not, so that maybe a small supermarket chain could start working through one of these small processors where the price was not administered but where it was competitive.

Is that possible?

Mr. DRAKE. The only thing I can say, Senator, is that the small independent packer is quite an asset to the overall competitive conditions of the meat industry today.

Representative BROWN. Let me ask the question another way. What percentage of the wholesale meat market do the five or six largest packing companies have?

Mr. DRAKE. In the beef industry there are many more than that.

Representative BROWN. Well, how many?

Mr. DRAKE. We have statistics in our shop on all of them, with broken down on five or six. I would have to check our statistics on their percentage of the market. But it is available.

I would be glad to get it.

Representative BROWN. I wish it were available here today. I would like to ask what percentage of the market is controlled by, say, the six largest packing companies in the United States?

Could anybody give me a figure on that?

Mr. DRAKE. No. We have those figures broken down by species and I am sure we would be glad to furnish some figures to you but I do not have them on the tip of my tongue.

Representative BROWN. Thank you, Mr. Chairman. My time is up. I think it would be desirable if we could get those figures supplied to the committee because it makes a significant difference about what we are talking about. I would like to know if there is any way we could find out what the percentage of the market is that is being handled by the small meat processor directly to customers or directly to supermarket outlets where the supermarket chain is a very small chain that might serve regionally in a relatively small market community.[1]

Senator PROXMIRE. Mr. Albanos, I have just one brief question on the high and low situation. Highs and lows in volume give a much better indication of the thinness and the volatility of a given market.

Is that not correct?

Mr. ALBANOS. Yes, it is.

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[1] The information requested may be found in the committee files.

Senator PROXMIRE. One small transaction at a given price, is something very different than a large number of sales at different prices so that if you provide highs, lows, and volume it is much more difficult to rig the market. The prospective buyer or seller has a much better notion if he has that information.

Mr. ALBANOS. That is right. I am an experienced buyer. Before I started this service, I was 15 years in the meat business. And one of the unknowns in the morning when we got the yellow sheet was to know if any meat was ever traded at that price or a little bit of meat because the price, when you start in the morning the first number that you have in your head and you start adding and subtracting all the pluses and the minuses to find out if the market is going to go up or down, knowing the volume at the highest price, at the lowest price, I was unaware, the only thing to look at was only one price that was arbitrarily selected at the end of the day by the market reporter and say this was what the market was worth.

That was not enough for me.

### DEFENSE DEPARTMENT MEAT PURCHASING

Senator PROXMIRE. Now is is true that the Defense Department uses a Monday-Tuesday-Wednesday average on yellow sheet prices for contract purchases of fresh meat?

Mr. ALBANOS. I am aware that the Defense Department buys a tremendous quantity of meat on the yellow pages prices. I do not know if that is the exact formula. If it is, it may be Monday-Tuesday-Wednesday. I am not sure which days it is but I know that they do definitely buy on that system.

Senator PROXMIRE. I am going to ask Scott Walker—Scott, are you back there? Our staff has charted some comparisons between your two publications, The Meat Sheet and the yellow sheet, on beef carcass trading on a very active yield, three yield four range. The Meat Sheet also reports to packer trading as differentiated from packer-to-processor trading.

Now would you explain the difference of these type of trades, Scott, and tell us what that chart shows?

### YELLOW SHEET-MEAT SHEET COMPARISON

Mr. WALKER. Yes. sir. We have taken the yellow sheet and The Meat Sheet and compared the closing prices for choice steers, weight, 600 to 800 pound carcasses, and plotted them for the period of August through parts of November of this year, and made a comparison between the prices as reported to The Meat Sheet yield three. Packer-to-processor is the green line. The provisioner top half as reported in the provisioner or the yellow sheet is the purple with the dash dot line, and The Meat Sheet with the grade yield of four on packer-to-packer is the brown dashed line, and the provisioner general range closing price is the solid blue line.

The month of August, Monday, Tuesday, Wednesday, Thursday, and Friday, closing prices are reported and the date of the 5th, 6th, 7th, 8th, and 9th is in the top bar, 12th to 16th, the second series, and et cetera, all the way through August. The same applies to September, except that September 30 is a Monday and is in the next bar along with the rest of that week going into October.

The packer-to-packer sales, as reported on The Meat Sheet, is a red dot with a P, and you notice these reported in various places throughout the period. A is reference to an ask-price and the B is a reference to a bid-price.

If there is a range in the price that has been quoted in any of the closes, we have midpointed the range. If it said 57 to 57½, we midpointed.

Senator PROXMIRE. Now one of the problems we have here, and I want to ask you further on this, Scott, one of the problems we have here is whether or not the reports on simply packer-to-packer trades or the emphasis on that may give a different picture or a picture that may not be as accurate or as reliable.

Let me just say that we have noted that a correlation between packer-to-packer trades in a rising market and the correlation between the absence of packer-to-packer trades in the falling market, these facts, in fact, influence the market.

Mr. WALKER. Yes, it would appear to inasmuch as it has some tendency to, in certain periods, to be above any other reported price.

For example, in September 11, 12, and 13, you have three packer-to-packer prices that are above anything else that is reported and one that is very much at the bottom. But nevertheless, you get patterns. Here is a whole series in the first full week, or rather, September 30 to October 4. There is a lot of packer-to-packer activity and it is a rising market. Very little packer-to-packer activity in a declining market here followed. The following week from October 7, there is very little or no packer-to-packer activity on Tuesday, Wednesday, Thursday, and Friday, and here is a declining market. But the week earlier, there is a rising market and there is packer-to-packer activity up through Thursday.

Senator PROXMIRE. How do these reports, then, influence the market, and do they influence the market?

Mr. WALKER. It would be a part of the transactions in the "open market," and if it happened to be the last transaction of the day and that happened to be the one that was reported, that would be what would be in the sheet.

Senator PROXMIRE. Now, what I get from this overall graph—and I certainly want the comments of Mr. Albanos and Mr. Norton on those—that the volatile prices that the two sheets have been reporting create a kind of a roller coaster graph of heights and depths, and I wonder what effect these rapid changes have on cattlemen, packers, processors, the wholesalers, chains, consumers, and so forth.

Mr. Albanos? Thank you very much, Mr. Walker.

### NEED FOR TWO MEAT PRICING SHEETS

Mr. ALBANOS. Yes, sir. As I say the first comment I want to make is that you see there are differences between our prices and the "Yellow Sheet," and the overriding factor here is that it is my opinion that we have to have another competitive price reporting system in the mechanism, and I think that is the most important thing because you can see that it is such a small amount of meat that is sampled to get prices.

What we need is many different opinions, as many different people gathering the data as we can to find the real level of markets.

Senator PROXMIRE. Well, is it or is it not a fair conclusion that reporting packer-to-packer prices on a rising market tends to drive up the price?

WAY PACKERS DRIVE UP MEAT PRICES

Mr. ALBANOS. The chart speaks for itself on that point. It would seem so. It would look that way. The roller coaster effect has a couple of effects. The roller coaster effect on the way up—the majority of the meat that is sold in this country is sold on a market basis. That means that it is precontracted for whatever price the "Yellow Sheet" comes out on a certain day. If those days happen to turn out to be the ones that are at the high there, the buyers are the ones that end up at the high end of the roller coaster.

If the days that packers buy cattle happen to be the days that are at the low end of the roller coaster, you get this tremendous spread between what the farmer is getting for the cattle and what the meat costs in the stores to the consumer.

Senator PROXMIRE. All right, Mr. Norton.

Mr. NORTON. It is rather difficult to comment comprehensively on such short notice, but it would be my observation that the increasing prevalence of packer-to-packer trades has taken place on rising markets.

Now, in rising markets, you have a shortage of supply and an excess of demand. It would be more logical to think that that was a period of time when more suppliers were caught short as far as their ability to supply the demand that existed and that there was more scrambling for a product.

If you did not have the product in your own production, you would try to obtain from others, and this would of course I think explain why there would be more packer-to-packer trading at that particular time in the cycle.

Now any declining market, when you have a surplus of supply, and as a consequence the market is being depressed because of that surplus of supply in relation to demand, no one is going to be in the position of being short on their commitments, and there is no need then to go into the market as a producer to buy from other producers because you can meet your requirements out of your own production.

I might further suggest too that the packer-to-packer trading that has been charted here, in all deference to Mr. Albanos, is a very limited number of trades, if you go by his own service and see the number of zeroes that he shows as having no trading whatsoever to support the prices that he publishes.

Senator PROXMIRE. Well, as far as that latter point, I think you can make a very strong point. It is hard to resist your logic on your first argument, but as far as the latter is concerned, all Mr. Albanos is doing is reporting the facts, and he reports zero, it is zero, and you do not have any misapprehension.

Mr. Norton. I am confused, however, by the fact that Mr. Albanos shows closing quotations that fluctuate day to day with no reported trades.

Senator PROXMIRE. All right, Mr. Albanos?

Mr. ALBANOS. The reason that we do that—plus, I do not want to get into a debate with Mr. Norton, but we do not know if his reported changes are based on without trading also.

On the days that we have zero are the days that we have no verifiable trades. We will not print a trade that—when we know a customer—we find out who the customer is and who the broker was and who the seller was. In the absence of that, we talk to the buyers and sellers and try to come up with what the market might be at that instant, in absence of a verifiable rade, which is I am sure the same system they have to use.

Senator PROXMIRE. All right, let me just have one concluding question.

Representative BROWN. Mr. Chairman, could I ask a question on that. If you do not have a verifiable trade, why do you report anything?

Mr. ALBANOS. Well, Congressman, because we make the commitment to put on our service our expertise and to put what the market is at that day for all items.

Representative BROWN. Well, did you not just make up something?

Mr. ALBANOS. No, I just explained how we accomplished that. We are still talking to the same people every day, and we talk to the people that are offering and the people that are willing to buy and what the market might be worth if there was a transaction. This is the same system, I am sure, that the other service has to do also when there are no verifiable trades.

Representative BROWN. That is a bid and asked price, is that what you are saying?

Mr. ALBANOS. That is correct. When we show a zero volume, we are telling people that is what it is.

Senator PROXMIRE. As long as you say there is no transaction, it seems to me that would be——

Mr. ALBANOS. It is our feeling that is what covers it.

## ROLE OF PACKERS AND STOCKYARDS ADMINISTRATION IN POLICING MEAT PRICE SHEETS

Senator PROXMIRE. All right.

Let me ask a final question of Mr. McLain, as I understand the Packers and Stockyards Act, it provides not only protection for the farmer, but for the consumer as well. Surely an accurate, detailed, knowledgeable reporting system is necessary. To protect both the seller of the product and the consumer.

No market can work otherwise. It is just fundamental to have honest information. Why cannot you use the authority under the act to protect both the farmer and the consumer, as well as the processors and the distributors to see that these reports are accurate, complete, and full?

Mr. MCLAIN. Well, I think that is a very logical question, Senator Proxmire. Our job, as we see it, is to see that there is no rigging or manipulation in the operations of the market people.

For instance, in the *West* case, we determined that we thought there was, and we filed a complaint to that effect. Now to the extent that we can prevent that kind of thing from happening by the people that are responsible for feeding the figures in that these gentlemen are talking about, why I think we are trying to do this.

Now, when there are not any transactions, of course, it means——

Senator PROXMIRE. Of course, now where you do have the "Yellow Sheet" which is used—and Mr. Norton seems to agree with that it has been the driving force in providing information to the industry. Perhaps 90 percent of the sales are based on this—a very large proportion, at any rate. You do have information on the volume. You do have the high and low.

Why should not that information be disclosed? Or should you rely on a competitive sheet like The Meat Sheet?

Mr. McLAIN. Of course, we are not in the market reporting business in packers and stockyards, you understand. It is not our jurisdiction. The jurisdiction is over in the Market News Service, which of course as you know is another agency within the Department.

Senator PROXMIRE. Who is responsible for this, then? What agency of the Federal Government is responsible for seeing that the consumer and others get the accurate information?

Mr. McLAIN. The Market News Service is the agency within the Department that furnishes all the information that comes out of the Department on prices, not only in the meat area, but in all other areas.

Senator PROXMIRE. Are you telling me that they do not have the authority under law to make this more readily available or to police inaccurate or dishonest, manipulative prices?

Mr. McLAIN. No, I am not saying that. I am just saying that they are the ones responsible within the Department to see that the market, as best they can determine it, is reported accurately, because, as has been evident here, on a lag basis, it has been picked up on the "Yellow Sheet" on that basis in their quotations.

But you have to remember this is not a simple process. The number of people in the Market News Service that would be required to actually know what went on in each transaction—it would take a tremendous number of people, and there are money limitations, as you know.

Do you want to comment further on this, Mr. Drake?

### USDA HAS NO JURISDICTION OVER INDEPENDENT PRICE SERVICES

Mr. DRAKE. No, other than to make one thing clear. The U.S. Department of Agriculture has no jurisdiction over independent market news services, such as the "Yellow Sheet" and the Meat Sheet. Also, the market news system in the Department of Agriculture has to rely on voluntary information, and there is no law that gives them the right to go into people who supply information, to their books and records, so basically you can say that USDA market news system relies on voluntary information, as does the "Yellow Sheet" and the Meat Sheet.

Senator PROXMIRE. And then you are left with simply the option of recommending to the Department of Justice or to the Federal Trade Commission if you feel this is being used to fix prices or illegally manipulate prices to act and to prosecute?

Mr. DRAKE. No, if we found any packer subject to the act who we thought was using any of these sheets to manipulate the market, we would file action against him, Senator.

Senator PROXMIRE. You would?

Mr. DRAKE. Yes, sir.

Senator PROXMIRE. Have you investigated this to determine whether or not this is the case?

Mr. DRAKE. As I mentioned, we have received complaints, and we have made investigations, and as I mentioned earlier, we have found some questionable activities in relation to the sheet, but to this date we have never gotten sufficient evidence to bring formal action.

Senator PROXMIRE. The reason I belabor this point is because, as I say, the Wall Street Journal article and other reports indicate that there is a great number of complaints within the industy from informed, capable people that there is manipulation.

Congressman Brown.

### BUYER POWER OR SELLER POWER—WHICH IS STRONGER?

Representative BROWN. Who has the greater power—I guess I should ask this of the Department of Agriculture, but the other gentlemen may comment if they wish—who has the greater power to set the price of meat in trade? Is it the supermarket that is, say, demanding meat because they anticipate heavy weekend sales around the holiday weekend or something?

Or is it the packer who can buy up meat when the price is low and then run it up when they trade packer-to-packer or when the supply is limited and make a killing that way and set the market for the supermarket?

Mr. MCLAIN. For my comment on this, Congressman Brown, the supply and demand, of course, is a governing factor, obviously, as you look at the chart. When you get into a period when you are oversupplied, the way the buyer operates the market shuts off the supplies, lowering the price. That is the way it also has been, and it will always continue to be.

Representative BROWN. Yes; but does not the meat packer have a certain push in there that when the supermarkets say hey, look, we are getting buyer resistance, the meat packer can go ahead and buy when the price is low and then in this trading between packers, run the price up? And then when the supermarket, if the supermarket suddenly has a short supply, has to buy more, they have to buy at that packer-traded price, with the result that the price is up much more sharply than the situation really merits.

Mr. MCLAIN. Well, I am sure this does happen occasionally, but again it is the market working. If there is an oversupply, we all know the whole history. If you get too much supply, the buyers will back off, because they know they can buy cheaper.

Representative BROWN. Well, I guess the point I am trying to get at is this, we have with fewer and fewer packers—again, because of the legislation which we passed—and those packers are perhaps being located in an area to service various supermarkets while the supermarket industry is not, in its ownership, generally a nationwide industry. We have strong chains, as I understand, in certain areas, and then you have some, like A. & P. and others that are national. I do know where the volume of business really goes, but I am told that the heavy volume is in regional areas. So if you have got a packer or a couple of packers that supply that regional area, it seems to me that they have manipulative control over this market, somewhat more extensively than the supermarkets themselves, because they can set the prices for the supermarkets when they come in to buy from the packers, and they could also set the price from the producer because they can buy up, store for a while, and manipulate on that basis.

Is that a fair comment, or am I seeing the market incorrectly?

Mr. McLAIN. Well, of course the ones you ought to get answers on this from are the packers and the chain people themselves.

Representative BROWN. My guess is those answers might be more self-serving than that which I get from the Department of Agriculture or from the people who report the industry, but perhaps that guess is incorrect.

Mr. McLAIN. I would like to clear up one point on the number of packers. Some people have the—in spite of your reaction in Ohio, where some of your smaller locker plants and plants of this kind have not been able to operate. We do have a very large number of packers in this country.

In fact the numbers have grown in recent years as compared to what they used to be.

Representative BROWN. Well, you are talking about big packers, but are you talking about those who process meat? I feel fairly sure that that number has shrunk significantly.

Mr. McLAIN. I am talking about the ones that slaughter the animals; the actual slaughterers is what I am talking about.

Now the problem that you have in your area, I am sure, is that some of these smaller plants that were in the process of doing as you have indicated are not now in the business. You have some of your producers——

Representative BROWN. They cannot meet the standards that the Federal Government has set, so we have served to concentrate the industry in fewer and fewer hands.

Mr. McLAIN. We have taken it out of the hands of these people that were performing a service in a certain locality, there is no question about it, by the action that has been taken by the law dealing with the things you mentioned.

Representative BROWN. I would like to have you verify for us—if you would send me an indication of what you have in the way of packers by volume, and I hope that that list will not eliminate the—I should not say packers—processors, and I hope that that list will not eliminate processors who fall in the volume from zero up to something else.

Now do you have those, because those are the guys who we have put out of business?

Mr. McLAIN. Do you want to comment further on it, Mr. Drake?

Mr. DRAKE. Congressman, the information we have comes through from annual reports from packers that we require to file such reports.

Representative BROWN. You are talking about big packers?

NUMBER OF SLAUGHTERERS STABLE

Mr. DRAKE. No. Basically, we require all slaughterers of cattle, for our information, to file an extensive annual report with us. It is very extensive on volume, financial conditions, and so forth.

In the area you are talking about, processors, there are litrally thousands and thousands in the United States, and because we do not think the information we use would be beneficial requiring annual report, we do not keep statistics on these various middlemen or processors that I think you are referring to in your State, so we do not have statistics on all aspects of processors in the United States.

Representative BROWN. So what you are telling me is the only statistics you have are that there are more of these big packers than there used to be, is that right?

Mr. DRAKE. No, I think generally what Mr. McLain was saying was that on a national basis our slaughterers of cattle who are the ones that buy livestock from your farmers and producers, their numbers have not dropped off. Contrary to that over the years, there has been freedom of entry, and there has been an increase in the amount of slaughterers over the years in the United States, both big and small.

Representative BROWN. Well, my area must be terribly aberrational.

Mr. McLAIN. Yes.

Representative BROWN. It is? Why would that be?

Mr. McLAIN. Because you had many of these smaller ones that were affected by this new law.

Representative BROWN. Yes, but that did not have any impact elsewhere in the country?

Mr. McLAIN. No, it had, yes, but I think in your part of the country, it had more impact than anywhere else. At least we have had more complaints from that area.

Representative BROWN. Well, it just occurs to me that the price of meat—there used to be a distinct difference in the price of meat in my part of the country, and from what we can read in the newspaper advertisements and so forth, than what it is in say, Washington, D.C., and that difference has been reduced over the last few years, and I must say that I correlate that distinction to some extent with the legislation which we passed which appears to have put a lot of people out of business.

I can name you in my congressional district half-a-dozen to a dozen of these people who are no longer in business. Now we must buy our meat at the supermarket, and I gather that comes from larger packers.

Nods do not count, I have to say. Could you say something for the record.

Mr. McLAIN. I think that is correct. I think that is correct.

Representative BROWN. Mr. Albanos.

Mr. ALBANOS. Mr. Congressman, I can make one further comment from the information I have here.

We are members of the AAMP, which is the American Association of Meat Processors, which are the type of people you are talking about with small locker plants that have approximately 1,300 members. If you compare that with federally inspected meat plants in the United States, they number about 6,000. That might give you the comparison that you are looking for.

Representative BROWN. Give me the figures again.

Mr. ALBANOS. That there are 1,300 members of this American Association of Meat Processors, which are made up of the type people you are talking about, the small locker plant and smaller operating people.

Representative BROWN. And that compares to what figure?

Mr. ALBANOS. Approximately 6,000 federally inspected establishments. Those that process meat and slaughter. But how many of them are slaughterers, I do not have that, but that may give you the comparison figure that you are looking for.

Representative BROWN. Can you give me a comparison with a decade ago?

Mr. ALBANOS. No, sir, I do not. I only have this because we belong to the association.

Representative BROWN. Or the volumes or who was doing most of the packing and processing 10 years ago, or who is doing it now?

Mr. ALBANOS. I cannot give you that, sir.

Representative BROWN. I am under the impression that, also in my part of the country which seems to be so aberrational, that some small plants that had meat sold under brand names are now owned by larger packing houses, because they could not survive economically on their own.

I am not sure that the law on the Clean Meat Act is to blame for that. Maybe economic pressures of another kind are to blame, but is that a fair statement of what has happened to the meat-packing industry around the country over the past few years or not?

Mr. DRAKE. There has been a certain degree of acquisition and merger in the industry. Right now we are not going through an active period. This went through in a period in which we saw activity in the whole U.S. economy.

We had worked and continue to work very closely with the Department of Justice in this area, and there have been some formal actions filed by them on these type acquisitions.

Representative BROWN. Well, could you give us some figures on that? Are there figures available for now for 1970 or 1965 or something that would go over the last 10 years?

Senator PROXMIRE. Can you supply that for the record?

Mr. McLAIN. We will supply everything that we can, that we have available.[1]

Senator PROXMIRE. It seems to me you must have the figures on the number of packers that you had, let us say, in 1960, 1965, 1970, and 1974.

Mr. DRAKE. But not processors, Mr. Chairman.

Senator PROXMIRE. Why not? Why do you not have processors?

Mr. DRAKE. Because we do not require them to file annual reports with us, other than just a few of the larger. I can tell you here on the record that your national slaughterers are also the largest processors of meat in this country, which might be of benefit to you.

Representative BROWN. All right.

Let me ask you one other, or another series of questions if I have time, to try to get to the point I am working toward with reference to who has the leverage of control here.

Can you compare the number of packers to the number of supermarket chains or outlets in the country? Has anybody got that figure?

Mr. ALBANOS. I only have one figure as far as from solicitation purposes, there are approximately 850 chain store operations that we have

[1] The information requested may be found in the committee files.

solicited for subscriptions, as compared to the 6,000 number of federally inspected plants. So that gives you an idea, but that does not make it the volume. It gives you a number.

Representative Brown. Well, I do not know where you got your subscription solicitation list, so I do not know what that means.

Mr. ALBANOS. As far as the chain stores, we get them from nationally publicized chain stores operators in the country.

Representative BROWN. Well, who belongs to that? You know, that is sort of like the National Association of Counties that supposedly represents all of the counties in the United States, except in my district we have only got two counties big enough to pay the price for belonging. So what does that mean?

Mr. ALBANOS. I think these are chain stores that have more than five stores.

Representative BROWN. OK, that helps.

Senator PROXMIRE. If the Congressman would yield, I think it also might be helpful to get it by reason because here is where you have an enormous concentration.

You have in Washington, for instance, two supermarkets that control 60 percent of the market, and you have a very, very strong concentration in most of the big cities.

Representative BROWN. Let me ask the question in another way. We have, let us say two or three major chains in Washington if you read the papers and look at the ads. How many meat packers supply these two or three major chains in the Washington area? How many packing plants are there close enough by here to supply them?

Mr. DRAKE. Congressman, there is very little correlation between the location of a chain and the suppliers.

Actually, the distribution of meat or even here in Washington, the meat supplies for the chains in Washington can theoretically come from all over the meat-producing area of the United States. I know it goes as far as the Midwest, for instance Texas, Colorado, Iowa, so you can literally have hundreds of meat-suppliers supplying these chains in the Washington area, and in fact, do.

Representative BROWN. So that you are telling me that the transportation factor is not a significant factor here?

Mr. DRAKE. Not necessarily. It figures in the pricing, f.o.b. pricing, but I think this is true all over the United States that a local packer, say located in Virginia, does not necessarily have a preferential pricing situation over a midwestern slaughterer.

Representative BROWN. And does the chain store buy directly from the packer? Does he buy from a broker? How does he do it?

Mr. DRAKE. Most of their procurement is direct with the supplier.

Representative BROWN. And does he contract with the packer?

Mr. DRAKE. Not contract, no sir.

Representative BROWN. So it is negotiated daily between the supermarket and the packer?

Mr. DRAKE. Direct, that is correct. There is very little direct procurement other than fill-in sales that come through brokers or what Mr. Norton calls "open market."

Representative BROWN. And if I am a giant supermarket with some brand name and I want to buy some beef for this weekend, then what do I do?

Mr. DRAKE. These head buyers for these chains, Congressman, are in touch every day with every major beef supplier in nearly all the United States.

Representative BROWN. Do I take bids and get the best price? What is my arrangement here?

Mr. DRAKE. They operate different methods. Some of them take bids. Some of them start negotiating before this booking price I mentioned and start getting the feel of the market and see what the supply situation is.

Normally, no one packer has the supplier ability at any given time to supply one major chain.

Representative BROWN. I am not talking about major chains. I am talking about a regional chain with a few stores.

Let us talk about a chain of say 10 stores.

Mr. DRAKE. Usually he is in touch with many suppliers or packers that is, and vice versa. Many packers are calling him continuously. This is a day-to-day process.

Representative BROWN. All right. Now he is in head-to-head competition with another supermarket someplace in town.

Mr. DRAKE. Who is also talking to these same suppliers.

Representative BROWN. The same suppliers, or different suppliers?

Mr. DRAKE. The same suppliers, yes sir. Your meat business is a national market. We can no longer due to the location of production and consumption, localize the meat industry today.

Representative BROWN. Do most chains have a relationship with a limited number of suppliers or are they calling all over the country?

Mr. DRAKE. They usually do business with the same suppliers regularly and there are usually other suppliers trying to get action from any group of chains, but this is not a handful. Usually, it is many.

Representative BROWN. Is it done on a price basis, a delivery basis, or quality-of-product basis?

Mr. DRAKE. I would say all three.

Representative BROWN. What is the primary consideration if you want to put a special in the newspaper that drops your beef price below somebody else's?

Mr. DRAKE. Nearly all chains have their own specifications. Most of them use USDA grade standards plus weight differentials, and after that you come down to negotiating price and volume.

Representative BROWN. If I am a 10-store operator, do I actually go to Swift and Armour and so forth, or do I go to some middleman who is a wholesaler between the packer and the chain operator?

Mr. DRAKE. Normally, they would go direct to a supplier and the suppliers are going direct to them.

Representative BROWN. Floating around Washington I see somebody's steak truck or something, Murray's Steaks. I do not buy my steaks from Murray. Is that right?

Mr. DRAKE. That is correct. Murray's Steaks is a chain, a fabricator of retail cuts, retail and——

Representative BROWN. For restaurants?

Mr. DRAKE. Yes and direct to the consumer. He owns consumer outlets in his small meat operation but he supplies mostly portion control cuts.

Representative BROWN. How many companies would I normally call if I were a 10-store chain?

Mr. DRAKE. It could be anywhere from, depending on the product you are interested in, whether it is beef, pork, or lamb, it can be anywhere from two or three to two dozen, depending on its operation. And on the other hand, you say the chain calling a supplier, you have all the suppliers calling this chain continuously every day of the week, sometimes many calls every day.

Representative BROWN. And there would be a competitive quote for everybody who calls.

Is that right?

Mr. DRAKE. Finally, you go through a situation of negotiating and like I said, you finally come down to certain chains where what they call the "book" or arrive at the price, whether they are selling it on a formula basis or what have you.

Representative BROWN. But if everybody comes up with essentially the same price and I have got an empty meat shelf, I guess I have to buy it at the price they quote for me.

Mr. DRAKE. Well, through this negotiation, and you can never get a handle on it, but normally, once a chain store decides to buy, even though sometimes on a big meat special you can have six to eight beef suppliers on a beef special, normally they get around and the chain says, "This is the price I will pay," and those that are willing to supply at that price get booked on it and those that cannot will not.

So normally, the procurement usually is a one-price system.

Representative BROWN. You see, I am trying to get at where the competitive leverage is here.

You said that in a moment of, I thought, candor a minute ago that the prices could be set most effectively at the wholesale level and now I am trying to figure out whether the retailers are setting those prices and you are suggesting that the retailers get competitive bids from the wholesalers, and next thing you know, why, I will be thinking that the wholesalers had competitive bids from the farmers and that this whole thing is really——

Mr. DRAKE. No. The reason I said that, Congressman, is that through these negotiations we were just discussing, normally today, because the supplier is booking with these big chains, because of the volume involved, a week or more in advance when he makes his sale, and in most instances, this slaughterer or packer has not procured the livestock from the farmer when he makes his bookings, so normally, this price is set before he goes down in the marketplace, whether it be an auction or direct, and produces the livestock from the producer.

This is why I said normally the market is made at this level.

Representative BROWN. At the wholesale level.

Mr. DRAKE. That is right.

Representative BROWN. Well, I am sure we will get some kind of different story from the packers. Do any of you other gentlemen have any comment on that conclusion?

Would you agree with that, Mr. Albanos?

Mr. ALBANOS. The complex of the whole industry is very difficult to make a clear-cut analogy of any one of those things. It is my personal opinion that chain stores deal with suppliers directly. They also deal with the wholesalers because they are buying so many varieties of products that they are buying certain items directly from the supplier. When we talk about supplier, we are talking about slaughterer. And then they may buy certain items in addition to that from wholesalers, where the wholesalers are buying the whole carcasses and selling the different pieces to different outlets, different chains.

So there is a commingling of this whole situation between chain stores dealing with wholesalers and chain stores dealing with suppliers. I do not think there is a clear-cut analogy you might make that all chain stores deal with suppliers or all chain stores deal with wholesalers. It is all commingled together.

Representative BROWN. It is not impossible, I suppose, that a wholesaler or a packer would, if he had some meat to sell to the retailer that he had to move because of the maturing quality of it.

Does that happen?

Mr. ALBANOS. Occasionally. You have to remember one thing. It is my observation that the majority of the meat sold on a market basis situation between all these factions of the industry, there are some negotiated price ones, but there are just as many, if not more, where the chain store decides to run a sale and there is no way to compute a fair price.

Representative BROWN. There is no way to do what?

Mr. ALBANOS. There is no way you can come up with what a fair price might be 2 weeks from now and it is booked what is called "the market basis," which is the price that our service, that the "Yellow Sheet" comes up with.

Representative BROWN. That are on this sheet?

Mr. ALBANOS. Yes.

Representative BROWN. And he cannot call up then and say, "Look, we have got to get it at 5 cents a pound less because I am going to have a big beef sale"?

Mr. ALBANOS. No. He has a contract. It is precontracted for and that is the price, the shipment date prior to the national provisioner. It is the same way that the Government buys occasionally, also.

Representative BROWN. It is the price set at that moment, but can he call up and say, "Two weeks from now I want to get so much meat, and I would like to have this price"?

Can you meet that price?

Mr. ALBANOS. Yes, you can, but what they do in order to insure that they have a constant supply of fresh meat coming in, if we are talking about the different factions of the industry, we are talking about chain stores that might be a little different. They have some meat that comes that way all the time and then when they have specials, they buy it a little differently.

But the point I am trying to make is that they only negotiate for the volume of meat they are getting. When it comes to the price, if it is out in advance more than 2 or 3 days, nobody can give them a definite price. It is too far out.

Representative BROWN. Thank you, Mr. Chairman.

Senator PROXMIRE. Thank you, gentleman, very much. I would just like to make a concluding statement, not a question. To make any free market work there must be a full and complete and honest information. That goes all the way back to Adam Smith and classical economics. I just do not know how you can regulate properly without making certain that there is such a market, even if that includes spot checking to make certain that reporting systems are accurate. And I hope we can move in that direction.

I think that the testimony this morning has been most enlightening and helpful, and I want to thank everybody who has testified here.

The committee will recess until Monday, when we reconvene to hear a number of consumer experts to testify, and then we will have the chief executive officer of Safeway on Tuesday.

We will stand in recess.

[Whereupon, at 12:37 p.m., the committee recessed, to reconvene at 10 a.m., Monday, December 16, 1974.]

# FOOD CHAIN PRICING ACTIVITIES

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MONDAY, DECEMBER 16, 1974

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
*Washington, D.C.*

The committee met, pursuant to recess, at 9:50 a.m., in room 1202, Dirksen Senate Office Building, Hon. William Proxmire (vice chairman of the committee) presiding.

Present: Senators Proxmire, Sparkman, and Schweiker.

Also present: John R. Stark, executive director; Loughlin F. McHugh, senior economist; Robert D. Hamrin and Peter Stockton, professional staff members; Michael J. Runde, administrative assistant; Leslie J. Bander, minority economist; and Scott Walker, consultant.

## OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. The committee will come to order.

This morning we are honored to have before us a number of distinguished experts representing the consumer.

Our first witness will be Congressman Benjamin Rosenthal of New York.

Congressman Rosenthal has been certainly one of the most effective and in my view probably the most effective representative of the consumer in the Congress of the United States, in the House or Senate. I have had on a number of occasions a chance to appear with Congressman Rosenthal and he is consistently for a better break for the consumer, with more honest disclosure, more complete disclosure, and an opportunity for the consumer to be treated fairly and honestly.

Congressman Rosenthal has an intimate knowledge of the food industry and he served on the National Food Marketing Commission, the last serious inquiry into the structure of the food industry.

Congressman Rosenthal, we are delighted to have you here this morning.

Go right ahead.

## STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE EIGHTH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Representative ROSENTHAL. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify before this distinguished committee on the subject of food prices and I congratulate you on holding these most timely and important hearings. I asked to testify, Mr. Chairman, because I believe that we are facing an extraordinary national emergency in the price and availability of food and that unless dramatic solutions are immediately forthcoming, the results could be catastrophic for our country. I also believe that it must be the Congress that takes the lead in stimulating the kinds of policies that are necessary to deal with the food crisis.

Beyond the fact that I am a consumer and a member of Congress with a consumer-oriented, urban constituency, these hearings are of special interest to me because, as you have stated, from late 1964 to mid-1966, I was a member of the National Commission on Food Marketing, which studied the marketing structure of the food industry, from farmer to consumer.

That Commission's final report was, in my judgment, the most comprehensive and potentially useful document ever produced on the Nation's ailing food industry. Some have suggested that it uncannily foresaw today's crisis in the cost and supply of our food.

Others argue that the report's timeliness is due to the fact that the failure of our Nation's food policy in the mid-1960's was not really dissimilar to the failure we are experiencing now.

Either way, the significant fact is that the crisis in our food marketing system is destined to worsen or at least repeat itself unless the major findings and recommendations of the Food Marketing Commission—virtually ignored until now—are implemented.

If we are to solve our Nation's food problems it is essential that we halt and ultimately reverse what the Commission described as the increasingly dangerous trend toward economic concentration in all segments of the food industry. We must also react affirmatively to the Commission's recognition of the need for a major realignment of the Federal regulatory structure governing the food industry.

It has always been my belief, Mr. Chairman, that "organization makes policy." It was largely a failure of structure and organization that was and is responsible or he Federal Government's inaction in the face of an impending energy crisis. Now, of course, Congress has created a new Federal energy structure in the form of a Federal Energy Administration and an Energy Research and Development Administration.

These organizational changes in the energy field are important in the context of these hearings on food prices, because I believe there are some interesting parallels between our energy price and supply problems and those in the food arena.

As you well know, in 1970, the four largest oil companies accounted for almost 60 percent of total U.S. petroleum sales. Today's oil crisis in many ways is the inevitable result of this vast concentration of economic power, where a handful of multinational firms control the movement of oil from the well head to the gas pump and, thereby, have the opportunity to manipulate supplies and administer prices. This enormous concentration of economic power is at least as responsible for the high price of petroleum as the oil embargo and the outrageously high price of foreign crude.

But if American energy consumers are being victimized by a lack of competition in the oil industry, then American food consumers are equally the victims of that same economic phenomenon in the food industry. Oil embargoes and crop destruction aside, a major, if not the primary, cause of high prices and short supplies in both the energy and food areas is the growing market power of fewer and fewer firms.

Mr. Chairman, I do not intend to take up the committee's time by citing previously submitted evidence of monopoly power and economic concentration in the food industry. We know that between 1963 and 1972, close to 10,000 food and related products processing plants have disappeared. We know that since 1966, horizontal, vertical and conglomerate mergers have hit the food industry at an unprecedented rate.

During 1955 to 1970, the estimated mergers in the food manufacturing industry totaled 1,300 and the annual rate of acquisitions increased by nearly 250 percent. But the decline in the number of grocery manufacturing firms is only part of the problem. Equally important is the expanding volume of business increasingly concentrated in but a few of the largest remaining firms. In 1950, for example, the top 50 grocery firms accounted for 42 percent of total assets in the food manufacturing industries. By 1966, the top 50 firms accounted for 52 percent of total assets and since 1966 the concentration of assets has become even more pronounced.

But, I am particularly concerned, Mr. Chairman, over the increasing concentration of both purchasing power and selling power by food retailers. In 1966, the Food Marketing Commission reported that:

> The increasing market orientation of the food industry and the changes in the organization of buying have transferred market power from processors and manufacturers to retailers. Prospective developments in the industry are likely to further enhance their position. Increasing concentration of purchases restricts the alternatives open to suppliers, stimulates compensating concentration on their part and weakens the effectiveness of competition as a self-regulating device throughout the industry.

The increasing market power of supermarket chains nationally and in various and specific localities across the country is, in my opinion, the leading cause of higher food prices to consumers.

A revealing Census Bureau study completed in 1967 and soon to be updated shows, for example, that between 1954 and 1967, the Nation's four largest grocery firms increased their share of the total retail food market 6 percent—from 45 percent in 1954 to 51 percent in 1967. This trend is regrettably continuing. The same study shows that in 1963, the 32 largest grocery firms controlled 34.5 percent of total grocery sales nationally. By 1967, the 39 largest firms controlled 36.2 percent of total national sales. The Census study also shows, finally, that in 1963, 14.464 supermarket outlets with business of $1 million or more a year accounted for 50.3 percent of total U.S. food sales. By 1967, 19,000 such establishments accounted for close to 60 percent of total grocery store sales throughout America.

All available evidence points to a continuation of this trend toward the concentration of market power in fewer and fewer large firms.

Increased market concentration in the supermarket industry, while a growing problem on a national basis, is especially severe in certain local markets. In the District of Columbia and its suburbs for example, the four largest chains—Safeway, Giant, A. & P., and Grand Union—had 56 percent of the retail food dollar in 1954. By 1970, their share increased to 70 percent. It is still increasing. Is it any wonder that consumers in the Nation's capital pay some of the highest food prices in the Nation?

What is particularly interesting and important, Mr. Chairman, is that in those localities where a supermarket chain enjoys a high market position, their price markups are higher than in low market localities and their profits are often 60 percent higher than the chain's average. As a consequence, consumers in localities where a supermarket has a monopoly or oligopoly position actually subsidize store operations in localities of low market concentration, and of course, competitors suffer in both localities: Those competing in the high market area simply cannot cope with the economic power, and those in the low market area are actually competing against profits made by stores hundreds or thousands of miles away.

But if increasing economic concentration in supermarket sales to consumers is a problem, then growing concentration in their purchases of food from suppliers should be and is of equal concern.

Vertical integration by retailers—which is the process by which a company engaged in one phase of an industry enters another—is becoming an increasing problem. In testimony before the Monopoly Subcommittee of the Senate Select Committee on Small Business in December of 1973, the Food Action Campaign said that:

> There is no more reason why Del Monte should grow, transport, process, and market vegetables than why Exxon should drill, refine, transport and market oil. Both unfairly compete with smaller, more efficient independent producres and both raise prices for consumers.

The Food Action Campaign went on to report that:

> Already, nearly a fourth of total U.S. agricultural production is vertically integrated.

An additional factor that has increased the ability of the large supermarket chains to dictate food prices, quality and quantity, is the success of private label brand sales. Private label sales now account for between 15 percent and 25 percent of total grocery stores sales and their popularity as lower-cost, but equal-quality substitutes for national brands continues to grow. But it is an interesting indication of the increasing economic power of the large supermarket chains that the price spread between private store brands and nationally advertised brands has shrunk dramatically. In 1962, the average price differential was 15 percent. In 1972, it was 8.9 percent—a decline of 40 percent. It has also been reported that some private brands are now selling for as much as or more than national brands.

Before I recommend a course of action to this distinguished committee, I would like to touch for a moment on the unsatisfactory way in which the Federal regulatory apparatus deals with the issue of food safety. I do so in the context of this committee's concern over food prices, because price and quality are interrelated and because it strengthens the argument for a complete overhaul in the organizational arrangements by which the Federal Government regulates the Nation's food marketing system.

In July of this year, the GAO issued a little noticed report aimed at assessing the extent of salmonella contamination of raw meat and poultry products. Salmonella, of course, is a bacteria whose presence often causes food poisoning and communicable infections which are potentially dangerous, sometimes even resulting in death; 2 million cases of salmonella contamination occur annually in our country and result in medical payments and lost working days costing at least $300 million. Although the incidence of this infection and its costs, both human and economic, are not trivial matters, the Food and Drug Administration and the Department of Agriculture have largely ignored the startling findings of the GAO investigation.

In November 1972, at GAO's request, the Food and Drug Administration conducted a study of the extent of salmonella contamination of meat and poultry products in retail stores in 10 metropolitan areas, where about 23 percent of the Nation's population resides. Laboratory analysis of those samples indicated that 17 percent were contaminated—31 percent of the chicken, 15 percent of the pork, 11 percent of the lamb, and 10 percent of the turkey. Other studies conducted in individual cities have found a much higher incidence of salmonella contamination, especially for poultry products, ranging from a low of 17 percent of tested samples to a high of 50 percent.

In its report that GAO urged a specific course of remedial action on the FDA and USDA which have regulatory responsibility for preventing food contamination. The responses have been half-hearted at best. GAO's principal recommendations focused on two areas: Data gathering and consumer education. With respect to data gathering efforts the GAO recommended that FDA and USDA cooperate in establishing a program to monitor the extent of salmonella contamination at the retail level. The GAO declared that such information would be useful in determining whether or not Federal programs to control salmonella contamination are having any impact. Both HEW and USDA have indicated reluctance to increase their activities in this area.

GAO's report also urged an intensified consumer education program aimed specifically at certain susceptible target groups, as being among the most important and cost-effective steps that can be taken to avoid food poisoning. Both agencies have resisted the idea of educational efforts with regard specifically to the salmonella problem. And, in fact, whereas the GAO study indicated that the elderly population was most uniformed about salmonella-related health hazards. USDA's major educational campaign for 1975–76 is directed toward the junior high schools.

Mr. Chairman, the alarming increase in economic concentration throughout the food industry (including the growth of corporate agriculture and accompanying demise of small family farming) and the evidence of continuing health-related food hazards, have gone virtually unchallenged by the Federal Government. Unless we recognize that the nation's food crisis demands the same massive commitment that we have directed toward the energy problems, this nation is courting disaster.

I find alarming the administration's blase, "business as usual" approach to the food crisis and, with the exception of this committee, Congress lack of attention to this enormous problem. I would urge this committee to continue its work and lend its weight to the following recommendations:

1. That the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission immediately initiate antitrust enforcement actions to break up food chains that exercise excessive market power in restraint of trade, either nationally or in local markets. And that similar antitrust action be directed against agri-business interests and food middlemen. I believe that there is already sufficient evidence to justify such a course of action on a massive scale.

2. That the Congress reestablish the National Commission on Food Marketing or a similar organization or adjunct for the expressed purpose of recommending organizational and policy changes at the Federal level designed to increase competition in all segments of the food industry and designed to guarantee an abundant food supply at reasonable prices to consumers and a fair profit to farmers.

3. That Congress enact legislation requiring that there be a direct relationship between farm prices and retail prices. The law of supply and demand has been effectively repealed by the market power and merchandizing techniques of oligopolistic middlemen and retailers.

4. That Congress enact legislation to control the export of food commodities in short supply in the United States and to establish a meaningful strategic grain reserve; and

5. That the Criminal Division of the Justice Department, through its organized crime strike forces, investigate reports presented to this committee of illegal activities in the food industry and leading to higher consumer prices in New York and other major cities.

Mr. Chairman, some of these statistics and colloquy to me sound dry and boring. I have heard it a thousand times before. I said it myself hundreds of times. But the fact of the matter is, and I know this from contact with people in my community, I'm sure that members of this committee know it, the people in many areas of the country are on the verge of economic and food starvation. People in my community have told me that—some older people in my community in New York have told me that they have taken to eating pet food, that on their fixed incomes, what with increasing rents and other expenses, they simply could not afford to buy food at the prices today.

Since I have been in Congress we have heard the story of the spread between the farmer producer and the consumer. The spread has been spreading in the 13 years that I have been here.

The excuses are getting weaker and lamer. The growth of the retailer and the influence of the retailer and the middleman has excessively increased over this period of time and the Federal Government has failed to do anything about it, the excessive unbearable costs of the average American consumer.

Now, you will hear stories, I am sure, because I have seen many of my friends from the food industry here, a long and sad tale of woe, that their profit ratio compared to other industries is very low, that they are making 1 percent or less on capital investment, but the hard cold fact of the matter is that their economic power is growing by leaps and bounds.

Their ability to pass through, to add on, to increase prices has never been effectively challenged.

We see situations today in all of the common foods, sugar, meats, starches, all these things—the only exception I know of is onions—where prices have simply gotten away from the average consumer and it is that this system is inadequate.

Our organizational structure to deal with the presumed free market economy is ineffective, and unless the Congress does something about it, the average American consumer will be himself in serious short supply of food and the ability to feed his family.

FOOD CHAIN CONCENTRATION

Senator PROXMIRE. Thank you very, very much, Congressman Rosenthal, for an excellent presentation and a very useful analysis.

You say that "The increasing market power of the supermarket chains is the leading cause of higher food prices to consumers," and then you show that the concentration for the four largest grocery firms has gone from 45 percent in 1954 to 51 percent in 1967.

Do you have any estimates as to what the situation is now, how large a proportion of the total market they have at the present time?

Representative ROSENTHAL. Well, it is either where it was in 1967 or increased about 4 to 5 percent. Final projections to my knowledge are not available but that is about where it is.

I happen to think myself that their economic power has increased almost in geometric proportion to their concentration. In other words, when they gain a larger share of their market, their ability to influence other segments in the food marketing system increases far out of proportion to their concentration of retail outlets.

IMPACT OF MARKET SHARE ON PRICE LEVEL AND PROFITS

Senator PROXMIRE. I certainly noticed that at first hand in the communities I visited in Wisconsin, and I visited them all over the State, that the number of small independent firms has diminished very sharply in the last few years and the supermarket spread has increased very greatly.

You also argue what follows from this and the consequence is that the supermarket chain, you say, where they enjoy a high market position, their price markups are higher than in low-market localities and their profits are often 60 percent higher than the chain's average.

Is there any study to document that, any documentation?

Representative ROSENTHAL. There have been a number of studies, one out of Cornell, and one out of another place I don't recall. The situation is quite simple in an area where they eliminated or virtually wiped out competition, prices will be higher.

Senator PROXMIRE. Well, it would except—let me interrupt to say they might argue—we are having Safeway here tomorrow and then we are having Great Atlantic & Pacific and Kroger and Grand Union on Wednesday. They may argue there is a much more effective competition where they have two or three or four very important relatively equal giants competing.

Representative ROSENTHAL. They may argue that but Washington, D.C. is a classic example of the untruth of the argument and the lack of efficacy of the argument.

The fact is that what they have done here in Washington, much of the testimony to the contrary, is to divide up the territory. They do have competition but not meaningful competition and the Washington area residents pay some of the highest prices in the nation and are subsidizing these very same chains in other areas of the country.

Senator PROXMIRE. That Cornell study, later on could you give us the documentation so we could have that?

Representative ROSENTHAL. I would be happy to do so.[1]

Senator PROXMIRE. It would be very helpful.

You have some useful recommendations. You conclude with them. And they are the kinds of recommendations I think we can really move with.

The third recommendation, however, is one that raises the question of how do you do it? You say:

> That Congress enact legislation requiring that there be a direct relationship between farm prices and retail prices.
>
> The law of supply and demand has been effectively repealed.

There is no question the spread is enormously increased. Just in the last year it has increased very greatly. You have the spectre of farm prices dropping and consumer prices going up, both rather sharply, but what can we do about it?

What kind of law do you have in mind?

Representative ROSENTHAL. When you do nothing about it, the situations become intolerable.

Are we so totally incapacitated, all of us, that we do not have the intellectual inspiration or the ability to draft that kind of a law?

I myself am convinced that we do not in reality have a free market economy, that this is not a free enterprise system when you have this enormous economic power.

Now, the question is can you draft a law that says that the retail price cannot be more than two times the producer—what the farmer gets because the farmer I happen to think has not been the beneficiary of any of these developments in the food field.

Can you draft such a law and can it be made effective in all segments of the food industry? Probably yes. I think it can be done.

Senator PROXMIRE. Well, it would vary a lot depending on the kinds of products.

Where you have some products twice as high, sometimes 10 percent, sometimes depending on the complexity of processing and perishability.

Representative ROSENTHAL. You have to have differentiations between products but what has happened in the food industry, even when we had phase 1 and phase 2 of that recent round of events, there were no controls of raw agricultural products and we permitted a passthrough at each level.

When there was an increase, say, in the five or six segments of the food marketing industry, each of those increases was passed on and the additional profit of each segment was passed on, too, so that the

[1] The information referred to may be found in the committee files.

spread continually grows all the time, a percentage limit or some other efficacious way of working it out between the cost to the consumer and the price the producer gets, you would in effect have some kind of price control.

It might not be difficult to do or it might be difficult to do. I think it might depend in some cases on the difference between meat and fish and between various types of products.

Senator PROXMIRE. Let me give you an example of that which really perplexes me.

Last year I worked at a food canning plant all day and in the process of working there I was told that the cost of the tin that they used for the can of peas is greater now than a full can of peas was a few years ago and, of course steel prices went up—we had testimony on that—went up 45 percent last year.

Now, if you have a tremendous increase in cost that way it is very hard then to impose any kind of cash flow between the cost of food and the cost of the finished products unless you take into account the actual increase in cost that would have to be under——

## CONTROLLING PASS THROUGH COSTS ON FOOD PRICES

Representative ROSENTHAL. We could easily deal with that. That is not an insurmountable problem. You could have a device that says the supplier or processer would be permitted to add on the cost of the product he buys, the steel, but what we haven't had in the whole industry is some kind of a compression anywhere. These enormous retailers have never pressed down below on their sellers to reduce prices. All they do is accept the price increase and pass it on to the consumer, knowing full well that the consumer is the last resort of the price increase.

What I am suggesting is some kind of pressure device on all segments of the economy to restrain itself.

Voluntarism won't work, so we have to find a legislative technique to do it and as you suggest, there are many areas of difficulty, tin and other metal costs and labor costs and trucking costs, but what this would do would be a compression formula on the entire food industry.

Now, why the food industry? Why should the food industry be singled out? I myself don't think they should be singled out. I think it should be applicable across the board but no more industry is relevant to the survival of the American citizen than the food industry. Energy is important and food is important and housing is important and beyond that we are dealing in grayer areas.

Senator PROXMIRE. My time is up.

Senator Schweiker.

Senator SCHWEIKER. Thank you very much.

First, I would like to welcome my colleague whom I served with the House and this committee commends him on his work.

I would just like to follow up some of his suggestions.

On the export of food products, item No. 4 in your recommendations, this has been one of the areas that I have been interested in, too, and it seems to me here—I will be glad to hear a little bit more elaboration of what you had in mind—it seems to me here that most of the exporting that we do does not relate to the national interest in any means and is strictly a matter of who can make the highest and fastest profit and in no way relates to the national interest of our country where in most cases where we are selling, it does relate to the national interest of the receiving countries. I will be glad to hear any detail thoughts of what you have on this No. 4 that you outline.

### NATIONAL FOOD POLICY

Representative ROSENTHAL. Well, the point, Senator Schweiker, is this: Food is a national reserve inventory asset of this country, the same way as our energy is.

We have not had a national food policy ever, nor have we had an organizational structure that took into account the entire food needs of our country, either the producer of the consumer.

We have a Department of Agriculture whose constituents are the producers and which takes presumably good care of the producers, although I myself doubt that, but certainly they take very little concerned care or caution with regard to the interests of the consumers.

Now, there isn't any question that we are the world's No. 1 food producer and that food as an asset that we should deal with in a respectful way. That is, that the decision whether to sell millions of dollars of grain to the Soviet Union or to give it away or to sell it to other countries should not be made solely and exclusively by a Secretary of Agriculture whose credentials in respect to the national interest are subject to serious doubt, and I do not mean to even make this a personal situation. I think structurally having a Department of Agriculture implies that the mission of that Department is to enhance the interests of producers and the belief then is that that should increase the price of food. And that is not necessarily in the best interests of the farmers.

What we need in this country is a food policy in which a high level board or commission or even the President himself or a new Department of Agencies should balance out the interests of producers and consumers in this country and then take into account the foreign policy interests of food disposition overseas. There isn't any question that in some, and maybe large areas, we should be more deeply involved in selling or trading foods overseas, to deal with impoverished societies, but on the other hand, there has not been a care or concern for the availability and price of food in this country. And if the situation should be, I thing it should be done by legislative mandate, that when shortages occur in specific food areas, thus causing price increases in that produce, then restraints should be placed at least temporarily on the foreign disposition of food. There has to be a recognition that if food by virtue of price becomes unavailable to American citizens then restraints must be shown in the exporting of food products.

Senator SCHWEIKER. I think, too, one of the other aspects of the same policy you are talking about is the matter of whether we are going to use food as a purely political weapon as opposed to the humanitarian aspects of it.

It seems to me in recent years we have gotten away from the humanitarian aspects of foods and looked at it more as a political weapon. I think this is one more angle we have to crank into whatever policy making decisions would formulate food policy because I think we really come full-circle from the old food for peace program to using it as an instrument of cold war or leverage for cold war.

Representative ROSENTHAL. I agree with you completely. I think we do have to take into account our responsibilities for morality in the world and certainly you have been a leader in this area, in the world of law, of nations. Food is a reserve, a national reserve, a national resource of this country and it must be used certainly not in political terms because that is a harsh connotation that neither of us wants to suggest, but we must take into account the resources of this country.

Food is a resource, energy is a resource, technology is a resource. They must be a balanced program. When and how you dispose of food commodities at home must be matched against when and how it is disposed of overseas.

Senator SCHWEIKER. That is all I have, Mr. Chairman. Thank you.

Senator PROXMIRE. Thank you very, very much, Congressman Rosenthal, for an excellent job. We are indebted to you.

Representative ROSENTHAL. Thank you, Mr. Chairman.

Senator PROXMIRE. Our next witness is the president of the National Council of Senior Citizens, Nelson Cruikshank.

We are honored to have him.

Mr. Cruikshank, you have done an outstanding job, a superb job as chairman of that council. The senior citizens need your kind of vigorous and intelligent representation.

## STATEMENT OF NELSON H. CRUIKSHANK, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS, ACCOMPANIED BY GARY CAPISTRANT, RESEARCH ASSISTANT

Mr. CRUIKSHANK. Thank you very much, Mr. Chairman.

Senator PROXMIRE. I understand you are also the father of medicare. The citizens of this country are not only grateful to you for your great fight on the food issue but also in the health area.

Mr. CRUIKSHANK. Thank you very much, sir.

With your permission, I am accompanied by a research assistant, Mr. Gary Capistrant.

Mr. Chairman, it is an honor for me to appear here and we have a prepared statement which, with your permission, Mr. chairman——

Senator PROXMIRE. Yes, Without objection, the entire statement will be printed in full in the record.

Mr. CRUIKSHANK. Thank you, sir.

Senator PROXMIRE. And let me announce now, and I apologize for this, but I am acting for Senator Mansfield in handling the military construction authorization bill on the floor of the Senate and I am going to have to go there in about 5 minutes. I am going to ask Senator Schweiker to preside as long as he can stay here and I will be back just as soon as I can.

That may be quite a bit later.

Mr. CRUIKSHANK. We understand.

In the interests of time, I will try to summarize some of the high points of the statement, which you have agreed to have inserted in the record.

I was so much interested in Congressman Rosenthal's comments which a number of times pointed out the special impact of these rising prices and these managed prices in the food area on the elderly. These are the people that I am at the present time attempting to represent, the thrust of this statement documents that in some detail.

The people that make up the membership of the 3,000 clubs that are affiliated with the National Council of Senior Citizens over the country are people many of whom do not understand the intricacies of these concentrated centers of power and these economic forces that are at work but they feel probably more than anybody else the impact when they are at the cash register of the supermarket or when they are trying to scrounge around for food.

Now, we point out here, for example, in two tables the figures that point up this impact. We look at the intermediate family budget, the family budget before, and these, of course, are BLS figures, and compare them for the budgets of the retired couples, the intermediate budget and the lower budget. You will see that food constitutes one of the greatest portions of the budget.

Of four major items that total up to 83.6 percent of the budget for a lower budget retired couple, food takes up 31.4 percent, you will notice, next only to housing. And when you take those same items and look at the increases in the costs that have been going up in these fantastic skyrocketing price increases of this two digit inflation that we are living under you will see there again that food has increased by almost 12 percent. So that you have this impact of the very high proportion of the family budget of a retired couple represented by their food needs and then the fact that this very same high proportion cost is one of the items of the budget that is increasing most rapidly.

You take these figures and translate the percentages into dollars and you will see that it is even more dramatic.

For example, as we cite here, the figures for autumn, 1973, indicate that at the lower level the retired couple spent $1,182 out of a total budget of $3,763 and at the intermediate level spent $1,599 out of a total budget of $5,414. And in the autumn of 1974, projecting these figures, we find the food items cost the low budget couple about $1,323 and the intermediate budget couple $1,789.

A closer examination of the BLS figures shows that not only does food account for a very high percentage of the elderly's budget, but that the percentage is increasing. In autumn 1972, food swallowed up 28.7 percent of the retired couple's poverty level budget and 26.7 percent of the median income budget, but in autumn, 1973, food expenditures increased to 31.4 and 29.5 percent of the total budget respectively.

Now, older Americans are not in a position to heed the exhortation of President Ford and his economic spokesmen to reduce their spending and to seek out less expensive substitutes. With their fixed retirement incomes being devoted to basic and essential expenditures our members do not have any "fat" in their diets and do not have any more "notches in their belts for tightening."

One of the most poignant statements in this regard is that of Mr. Joseph E. Lowery, chairman of he Southern Christian Leadership Conference, whose reaction to the misguided remark of Mr. Alan Greenspan about the economic plight of the Wall Street stockbroker was:

It is incredible that the Chairman of the President's Council of Economic Advisers equates the fact that a Wall Street financier has to eat less steak and drink less champagne with the fact that poor people have to eat dog food and pretty soon, the dog.

These rising prices in these managed food price areas confront the older people particularly with very hard choices. These minimum figures in these budgets are not any figures of budget items that contain luxury items at all. They are the hard choices that have to be made with these minimum marginal dollars when people have to decide whether they can have a—a woman decides whether she could have a new dress which to her means whether or not she stays with her group, her club, her church, and maintaining her position in her group of friends, or whether she eats. These are not choices between luxury items.

The contacts we have with older people and our correspondence with them show that this is exactly what has happened.

To get at the real element of this, and its impact on the older people, particularly, we must go beyond and behind the aggregate classifications of the BLS-CPI reports. We have to break them down into their components and when we do, you will know that the—these component items come out usually a bit later and very often they are not—they do not get general circulation in the media. They are not—they do not appear on the television and not often in the press accounts. But they are extremely important because if we are telling people they have to go back to staples and eat the more ordinary kinds of food and then look at these components, you will find that the increase in—rice, for example, has increased 89.5 percent in 1 year, from August 1973 to August 1974. Dried beans—suppose we tell people, "Don't eat steak, eat just ordinary things like beans." There is protein in beans. But the cost of beans has increased 146.9 percent in 1 year; margarine, 56 percent; canned bean soup, 52 percent. So when you look at these components, when you get down to the kinds of choices with which people are confronted on the shelves of the supermarkets, you realize that they are not choices that are easy to make, that they are just forced right up against the wall in their very existence.

Now, hopefully, having made this point, of the impact of these increasing prices, and these run-away food costs, I would like to bring to your attention, members of the committee, the immediate issue that is before us. I would like to describe a recent development of major concern to the National Council and other social action organizations affecting the nutrition of the poor. I am referring to the action of President Ford to virtually remove poverty level old people from the beneficial food stamp program as of the first of next March.

Last August, when the Ford administration was only 2 weeks old, our executive director, Mr. William Hutton, and myself, and a small group of national representatives of senior citizens organizations, had the opportunity to meet with the new President and discuss some of our problems. He expressed real concern, or so it seemed to us, at that time, about the problems which we presented, including these problems of rising food costs and inflation, but the concern did not apparently last very long because now, after having consulted with his advisers, and so forth, he proposed a cut of $4.6 billion out of the fiscal 1975 budget, largely in the area of basic social programs and major cuts were called for in food stamps, in medicare, as well as cuts in social security and medicaid.

In other words, the President's program is calling on these poorest people who are least able to defend themselves to carry the burden of the anti-inflationary drive.

The change in the food stamp program which he has proposed would require older people to pay significantly greater percentages of their meager incomes to purchase food stamps. All recipients would be required to pay the program maximum with 30 percent of their net incomes for food stamps. This is what they are presently paying for their total food budget items.

Nearly all of these individuals now pay 15 to 20 percent of income for food stamps and now they are being called upon to pay nearly 30 percent of their funds for the food stamps. The results of that would be nothing but that the elderly poor will be effectively removed from the food stamp program because their incomes will be too high.

Take, for example, SSI individuals with a net income of $146 a month—basic SSI benefits—would be eligible for food stamps but would have to pay $43.80 each month toward $46 worth of food stamps. Presently such persons pay $30 for $46 of food stamps. When you add to that the fact that food stamps are not easily obtainable, there are usually two or three bus fares involved in getting down to the office, making applications, all of the kind of redtape that is involved in this, it would end up that they would actually pay out of pocket more than the food stamps were worth. A retired couple receiving a basic $219 SSI payment would have to pay $65.70, or $71.70 if they are able to take advantage of the $20 disregard for $84 worth of food stamps.

It is clear that a large number of food stamp recipients will leave the program if this plan is carried out, either because their food stamp benefits would effectively disappear, would be too small to go through the burden of applying for, picking up and using the food stamps, or because they will be unable to afford the new price after paying increasing costs for other food items, rents, medical expenses, and other fixed bills.

It looks to us as though this was an effort on the part of the President really to circumvent the clearly expressed will of Congress with respect to this food stamp program.

You may have noticed in the Washington Post of December 12 an editorial which reviewed a decision of the U.S. District Court Judge Miles W. Lord of Minneapolis. There was before him a complaint, a class complaint on the use of the food stamp outreach program in which the complainant charged that the outreach program specifically directed by the Congress had not been carried out by the Secretary of Agriculture, Mr. Butz, and the judge said, in the conclusion of his decision, and I quote:

> The Secretary's response to the Congressional directive when viewed in its totality is fairly described as a total failure on his part to do what the Congress clearly intended him to do.

Now, under this court order, although I understand the Department of Agriculture is going to appeal it, under this court order, if it stands, the will of Congress will be circumvented unless, if this court order stands, the Secretary will have to carry out the will of Congress, but now the President comes forward with a budgetary program which again would be directed to this same thing, whereas these rising costs of food which have such a direct and critical impact on the budget of the elderly, as we have pointed out in these tables in our full statement, can find some relief and some amelioration through the food stamp program, now if this order is carried out, the budgetary order is carried out, even that ameliorative program will be circumvented.

Now, the work of this committee and antitrust and all that is extremely important and we are very happy that you are entering in on it. The proposals that have been made to investigate the whole area of managed prices and the spread between the first producer and the ultimate retailer are terribly important but these are long run things. Right now elderly people in particular are presented with a crisis situation and it is aggravated by this food stamp directive that is put into the budget message and we ask you while you are continuing your long run programs to instigate emergency action to overrule this arbitrary budgetary proposal that will do so much to destroy the value of the food stamp program.

That is the conclusion of my remarks and my summary of the statement, Mr. Chairman.

Senator SCHWEIKER [presiding]. Thank you very much. Mr. Cruikshank.

First, I want to join with the chairman in welcoming you to this committee.

Having worked very closely with you in some of your other projects, medicare, nutrition, as well, I think it is a fine contribution that you are making here today by your testimony and I, too, really wonder how our senior citizens can make ends meet in this kind of inflationary crisis, particularly when food is so affected, and that is something they cannot do without.

I think the citations you make in your statement of the individual products and the rise that has been encountered in these areas where these budgets that they operate on are very limited, aren't nearly escalating as much and also food makes up such a big percentage of their budget that it is incomprehensible to me why the administration is cutting back on its food program. If anything, in this kind of recession and inflationary impact jointly, we ought to be considering doing more for the people who are really hard pressed rather than doing less and I think it is tragic and I hope that the Congress will be able to do something about it.

Let me ask, in terms of recommendations that this committee might be looking into that would change not just the dollars and cents figures which are the thing we are all concerned about but the whole structure of the food picture, do you have any recommendations at all to address yourself to what Congress ought to be doing on the overall problem of food distribution, food pricing, the whole picture in terms of our responsibilities? I think you heard Congressman Rosenthal here make a few suggestions in this area and you might want to comment on these and others.

## SENIOR CITIZENS' VIEWS ON MODERATING FOOD PRICES

Mr. CRUIKSHANK. I think those were very important suggestions, and, Senator, I want to say, too, how much we appreciate the interest that you have shown. I know that you have met with our groups in Philadelphia, Pittsburgh, and other places and that you are well aware of the immediate impact in percentage terms of the things that we have put down here in some statistical form.

On the matter of the pricing, it seems to me that one of the most important aspects, and I would like to say that I thought that Congressman Rosenthal's suggestions were very constructive and very imaginative, one of the things that strikes us is the power that—he talked a little bit in the abstract but in concrete, these great chains can control things so much by the fact that they can shift the burden from one area to the other.

When you had genuine competition, and you had little units competing with each other, they had to compete in terms of the price and service and the quality of their goods that they delivered to the consumer. Now you have a situation where with these great chains, with hundreds of outlets, they can operate some of their places at a reduced cost or a reduced profit in order to meet the competition in another place. They can squeeze out someone because they don't have to have a universal pricing policy. In other words, an outfit with 100 outlets can lower their profit margin a little bit some place to absorb a temporary loss at one place in order to squeeze out somebody.

An another thing is the fact that they do not have a universal pricing policy that penalizes notably the people in center cities.

We know that the people that live in the center city Washington area, for example, and this is true of others, are paying higher prices for lower quality foods than the people in suburbia are, and the reason is that in suburbia, there is apparently a kind of carriage trade for which there is some competition but here they have people who are locked in, with poor transportation or no transportation, inability to shop around, and so they have a captive market and they lay the price on there and this hits people the hardest.

It seems to me one of the things in these managed price areas which you would want to look into would be this matter of the lack of universal pricing policies in the big chains.

## NUTRITION NEEDS OF THE SENIOR CITIZEN

Senator SCHWEIKER. One of the other aspects, too, being on the Nutrition Committee, I am concerned at, and you allude to it in a few of your remarks here, is that as a senior citizen is forced to cut his budget, his food budget, he has to redo what he buys and the question is when he does buy, does he get what he needs nutritionwise. So aside from whether he can even afford to buy it, which is a pretty basic question, the secondary question is when he does buy it, what is he buying and what is he getting and is he putting so much of his money in the wrong thing because he cannot afford the right thing in terms of nutrition.

We all know that senior citizens have probably more critical nutrition requirements because of the aging process than young people can get away with. So I think here again you are putting the double penalty on the senior citizens because they need a certain balanced diet and nutrition because of some of the incapacity they have and some of their sicknesses.

So I think that is another point you refer to.

Mr. CRUIKSHANK. That is definitely true.

The senior citizen goes to the clinic and discusses with his doctor or dietician his needs and the dietician does a conscientious job of making recommendations and he takes those things that he is supposed to have to the market, and he is priced right out of that market. The quality foods are among those that have had the most severe price rises.

Senator SCHWEIKER. Thank you very much, Mr. Cruikshank. We appreciate your testimony here today and certainly will weigh very heavily some of the very specific problem areas you have cited.

We appreciate your coming. Thank you.

Mr. CRUIKSHANK. Thank you.

I appreciate the opportunity to be with you, sir.

[The prepared statement of Mr. Cruikshank follows:]

## PREPARED STATEMENT OF NELSON H. CRUIKSHANK

Mr. Chairman and distinguished members of the Joint Economic Committee, I wish to express on behalf of the National Council of Senior Citizens appreciation for this opportunity to describe the impact of increasing food prices on the elderly.

We are heartened that Congress is concerned about finding the causes of inflationary price increases in highly concentrated industries and realizes the ruinous impact of soaring prices on the American consumer's budget. In this regard, we think it important that the Congress extensively examine corporate practices of the food industry, especially retailers and processors.

Inflationary price increases for food are probably most devastating to the diet and well-being of the elderly, most of whom are struggling on "bare-bone" retirement income.

The price for living in our "double-digit" economy is especially high for the elderly who pay a disproportionate amount of their budget for food, shelter, medical care and transportation.

Table 1 below contrasts the percentage of the total Bureau of Labor Statistics family budget spent for these four expenditure classifications in Autumn 1973 by an intermediate level family of four with an intermediate and lower level retired couple. (The intermediate retired couple amount approximates the median family income for senior citizens and the lower level budget amount is even more generous than the Census Bureau poverty threshhold.)

Table 2 shows the annual rate of the Consumer Price Index increase for these four items since October 1973 when these budgets were last updated.

TABLE 1.—PERCENTAGE OF BLS FAMILY AND RETIRED COUPLE BUDGETS SPENT FOR SELECTED ITEMS, AUTUMN, 1973

| | Intermediate budget family of 4 | Intermediate budget retired couple | Lower budget retired couple |
|---|---|---|---|
| Housing | 23.1 | 34.0 | 33.9 |
| Food | 25.2 | 29.5 | 31.4 |
| Medical care | 5.3 | 8.4 | 12.0 |
| Subtotal | 53.6 | 71.9 | 77.3 |
| Transportation | 8.1 | 8.5 | 6.3 |
| Total | 61.7 | 80.4 | 83.6 |

Source: Bureau of Labor Statistics, U.S. Department of Labor.

TABLE 2.—*Annual rate of Consumer Price Index increase for selected items, October 1973 to October 1974*

| | *Percent* |
|---|---|
| Housing | 13.5 |
| Food | 11.9 |
| Medical care | 11.1 |
| Transportation | 16.5 |

Source: Bureau of Labor Statistics, U.S. Department of Labor.

How can low-income elderly spend 30 percent of their budget for food and yet handle significant increases in food costs? With incomes fixed the effect of new rent and utility increases or a medical bill can make oatmeal a staple, fish and chicken a luxury.

Even more dramatic than these percentage figures are the actual dollar amounts of the retired couple's budget and their food bill. The figures for Autumn 1973 indicate that at the lower level the retired couple spent $1,182 out of a total budget of $3,763 and at the intermediate level spent $1,599 out of a total budget of $5,414. For Autumn 1974 we estimate these same food items cost the low budget couple about $1,323 and the intermediate budget couple $1,789.

A closer examination of BLS figures show that not only does food account for a very high percentage of the elderly's budget, but that the percentage is increasing. In Autumn 1972 food swallowed up 28.7 percent of the retired couple's "poverty level" budget and 26.7 percent of the "median income" budget, but, as stated, the Autumn 1973 food expenditures increased to 31.4 and 29.5 percent of the total budgets respectively.

Older Americans are not in a position to heed the exhortation of President Ford and his economic spokesmen to reduce their spending and to seek out less expensive substitutes. With their fixed retirement incomes being devoted to basic and essential expenditures our members do not have any "fat" in their diets and do not have any more "notches in their belts for tightening."

The economic problems confronting workers and their families today are approaching what the elderly have had to live with for at least two years now.

When food prices go up, most families adjust their dietary habits by reducing their consumption of some items and purchasing cheaper substitutes for others.

But poor elderly have long been limited to the cheapest, and often least nutritious, foods. Their problem is not "spending down" from meat to poultry, but from poultry to diluted soup.

One of the most poignant statements in this regard is that of Dr. Joseph E. Lowery, Chairman of the Southern Christian Leadership Conference, whose reaction to the misguided remark of Mr. Alan Greenspan about the economic plight of the Wall Street stock broker was, "It is incredible that the Chairman of the President's Council of Economic Advisers equates the fact that a Wall Street financier has to eat less steak and drink less champagne, with the fact that poor people have to eat dog food and pretty soon, the dog."

How do we expect on elderly widow to cope when she has not tasted meat for months and can no longer afford soup?

When confronted with these higher and higher prices at the supermarket they must simply buy less food and reduce other essential expenses. Must older people suffer the indignity of eating baby or dog food, wearing the frayed dress and worn shoes, putting off replacing the broken window or seeking physician care, and stop buying toilet goods or medications?

But from the contacts we have with older people, and from our correspondence with them all over the country, we know this is exactly what is happening.

It must be remembered that the Consumer Price Index reflects the consumption patterns of workers, not retirees. This caveat is particularly relevant to a discussion of food prices and the elderly because the CPI food index presently understates food price rises for the poor.

The recent modernization in the rate of CPI food increases reflects a reduction in the rate of price increases, in some cases actual price cuts, in the food stuffs which might be characterized as a working family's "meat-potatoes" diet.

As a result, the CPI food group cannot adequately report that food items common to the diet of the low income person are skyrocketing.

To notice this fact you must go beyond the aggregate classifications of the preliminary CPI reports for the previous month and examine the itemization in the CPI Detailed Report which is available about four months later. Unfortunately, the policy makers, the press, and the general public often stop at the first stage of this information.

The August CPI Detailed Report reveals the unadjusted percentage price increases during the preceding year for food items often found in the cupboard of the poor elderly household:

*Table 3.—Annual rate of Consumer Price Index increases for selected food items, August 1973 to August 1974*

| Food items: | CPI percentage increase |
|---|---|
| Corn flakes | 29.4 |
| Rice | 89.5 |
| Bread, white | 27.3 |
| Milk, fresh, skim | 22.0 |
| Fruit cocktail, canned | 26.8 |
| Peas, green, canned | 25.2 |
| Dried beans | 146.9 |
| Margarine | 56.2 |
| Coffee, instant | 24.7 |
| Bean soup, canned | 52.7 |
| Chicken soup, canned | 26.0 |
| Spaghetti, canned | 21.5 |
| Mashed potatoes, instant | 23.1 |

Source: Bureau of Labor Statistics, U.S. Department of Labor.

Although we look forward to federal action to break up the food cartel, the short-term dilemma of older people does not premit their surviving long-range programs to improve the marketplace for the consumer.

I do not wish to dampen your enthusiasm for curbing price setting practices of non-competitive businesses or eliminating obsolete and counterproductive government regulations, but only to stress the immediate need for more direct action to protect the elderly and other poor from the ravages of inflationary food price increases.

Before closing I would like to describe a recent development of major concern to the National Council and other social action organizations affecting the nutrition of the poor. I am referring to the action of President Ford to virtually remove poverty level old people from the beneficial Food Stamp Program as of the first of next March.

On August 23, two weeks into the Ford Administration, Mr. William R. Hutton, our Executive Director, myself and a small group of other national representatives of senior citizens, had the opportunity to meet with the new President.

Mr. Ford wanted to discuss with us the problems of the elderly, especially in the double-digit inflation he inherited.

Coming into the Oval Office without much of a "sidelines warm up", I think the President became more sensitive to the general problems of the elderly as a result of our meeting. In addition, he expressed concern that older people have been bearing more than their fair share of the inflationary burden and can be asked to bear no more.

But it appears that it did not take him long to learn the game plan and follow the policies of his predecessor's team.

Last month the President proposed to cut $4.6 billion out of the Fiscal Year 1975 Federal Budget, largely in the area of basic social programs. Major cuts were asked for in Food Stamps and Medicare, as well as smaller cuts in Social Security and Medicaid.

Unfortunately for the elderly and the poor the Food Stamp change differs from most of the other proposed cuts because it can be implemented by administrative fiat without Congressional approval.

The change in the Food Stamp Program will require older people to pay significantly greater percentages of their meager incomes to purchase food stamps.

Under the Ford program, already scheduled to take effect March 1, most all recipients would be required to pay the program maximum of 30 percent of their net incomes for food stamps. At present, nearly all individuals pay 15 to 20 percent of income for food stamps and most couples pay 15 to 25 percent.

The Community Nutrition Institute, a non-profit public interest research organization in Washington, D.C. has done an excellent job in analyzing the impact of President Ford's food stamp scheme on the 15 million food stamp recipients, two million of whom are over age 65.

Because of the basic Federal payments under the new Supplemental Security Income program of $146 a month for an individual and $219 for a couple, the SSI "disregard" of $20 from Social Security or unearned income, and the additional SSI payment of the most populous states, the elderly poor would effectively be removed from the Food Stamp Program because their income would be too high!

SSI individuals with a net income of $146 a month—basic SSI benefit—would be eligible for food stamps, but would have to pay $43.80 each month for $46 in food stamps. Presently such persons would pay $30 for $46 in stamps.

If the individual was like 70 percent of SSI beneficiaries who are able to "disregard" $20 of Social Security, the person would be in the ironic situation of paying more for food stamps than they are worth, $49.80 for $46 of stamps to be exact. Presently, the person is paying $33 for that $46 benefit.

A retired couple receiving a basic $219 SSI payment would have to pay $65.70 or $71.70 if they are able to take advantage of the $20 "disregard" for $84 in food stamps.

It is clear that a large number of food stamp recipients will leave the program if this plan is carried out, either because their food stamp benefit would effectively disappear; would be too small to go through the burden of applying for, picking up and using food stamps; or because they will be unable to afford the new price after paying increasing costs for other food items, rent, medical expenses, and other fixed bills.

As a result, Mr. Ford will be able to achieve through administrative action what his predecessor had unsuccessfully attempted to achieve through Congressional action, that is the elimination of SSI recipients from the Food Stamp Program and the gradual elimination of the program.

While preparing this statement I noted with great interest an editorial in the Washington Post of December 12. The editorial reviews a decision of U.S. District Court Judge Miles W. Lord of Minneapolis:

"The case before Judge Lord (Bennett v. Butz), turned on the question of whether the Department of Agriculture was conducting the food stamp program as Congress intended. The act called for an 'outreach' program that would 'insure the participation of eligible households.' Judge Lord, after hearing what Agriculture had to say in its defense about the fact that only half of those eligible are receiving aid, said of Secretary Earl Butz: 'The secretary's response to the congressional directive, when viewed in its totality, is fairly described as a total failure on his part to do what the Congress clearly intended him to do.'"

It would appear that President Ford's food stamp scheme was developed to thwart Congressional intent by a slightly different means.

We are pleased that concern is beginning to be generated within Congress to stop by legislative action this ill-conceived notion of Mr. Ford's. We are aware of an effort in the House by Congressmen Donald Fraser and John Heinz to build support for Agriculture Committee action on this critical matter.

I strongly urge you and your colleagues to make one of the first priorities of the 94th Congress the prohibition of this food stamp change and the strengthening of Congressional intent about the purposes and policies of this essential social program.

I thank you again for the opportunity to discuss with you the food problems of the elderly and am looking forward to working with you in improving the well-being of the American consumer.

Senator SCHWEIKER. I have been pinchhitting for Chairman Proxmire. I have to go to a public service employment conference, so I see one of our senior members has come here, on the committee, so he has agreed to take over for the next witness.

Senator SPARKMAN. Thank you.

Senator SPARKMAN [presiding]. Mrs. Ann Brown, Chairman, Consumer Affairs Committee, Americans for Democratic Action and the District of Columbia Democratic Central Committee, and Mark Silbergeld of the Consumer's Union. Will you come around, please?

**STATEMENT OF ANN BROWN, CHAIRMAN, CONSUMER AFFAIRS COMMITTEE, AMERICANS FOR DEMOCRATIC ACTION, ACCOMPANIED BY MARK SILBERGELD, ATTORNEY, CONSUMERS UNION**

Mrs. Brown. Senator, I promise not to read all of this testimony. It is everything you ever wanted to know and probably more about concentration in the District of Columbia supermarkets. I am just going to go through a small part of it for you.

It is a great privilege to appear before this committee to testify on the subject of food chain pricing activities. These hearings focus on the major issue concerning U.S. citizens today and that is high food prices. You are absolutely on target to focus on the pricing policies of the major food chains.

My remarks today are on a subject which has become a central concern for our committee for several years—the lack of competition in the District of Columbia area food chains because of a shared monopoly among our major District of Columbia food chains. What concentration means is lack of competition, and what lack of competition means is higher prices. What higher prices means is a tremendous burden to be borne by the citizens of the District.

You can fathom the effect on all people of the increase in food prices because of rampant inflation and of their lack of ability to pay such prices because of recession, who are forced to pay exorbitant food prices, prices rising faster than even the national average.

But in the Nation's Capital each day "modern-day bread lines" exist. Customers wait for hours in the cold to buy bread at thrift stores that sell old bread not sold the previous days in supermarkets. "The shelves are cleaned out so fast business is strictly first come, first served," said a store manager. "These days even a few pennies is a big savings," said a shopper at a store.

And yet, except for some conscientious officials, we were a lone voice in the wilderness, bewailing this plight of District of Columbia shoppers for years.

Congressman Gilbert Gude alone of the District of Columbia area government officials took up the criticism.

Local supermarket officials appear to be bothered only by attendant publicity about the high concentration levels of District of Columbia supermarkets. They do not seem to be bothered by the attendant burdens borne by their customers.

Charles E. Mueller, Washington economist and lawyer, wrote:

> Perhaps the second most important concept in economics today—second only to the Keynesian proposition on the relationship between aggregate national expenditures and full employment—is the concept of a relationship between the structure of a product market and its social performance. In brief, it has been established beyond the point of really serious dispute that, without any necessary collusion or conspiracy, an industry becomes effectively monopolized when the four largest firms control 50 percent of the market or more.

Beyond any doubt, the evidence of shared monopoly in District of Columbia supermarkets is totally compelling. This evidence can be divided into five areas:

1. Concentration levels of the District of Columbia grocery retailing market,

2. High entry barriers in the District of Columbia grocery retailing market including evidence of predatory pricing,
3. Evidence of higher food costs of District of Columbia consumers,
4. Use of advertising to give an advantage to the large existing chains, and
5. Analysis of profit data of the two largest District of Columbia area grocery chains.

The situation of shared concentration in the supermarket industry here, always high, has in fact worsened in recent years in the District. The source of the information of the following appallingly high concentration levels in the District of Columbia is a highly respected publication called Grocery Distribution Guide, 1973, published yearly by Metro Market Studies, Inc. This data source is proven accurate when measured against U.S. census data. Here is some of the relevant information from the guide:

The top two firms—Giant and Safeway—in 1965 had 49 percent of the market share; in 1973 these two had 50 percent of the market share. This is just two firms. The top four firms, Giant, Safeway, Grand Union, and A. & P., in 1965 had 67 percent of the market and in 1973 had 71.8 percent of the market. The next highest in concentration level is 60 percent, in two cities—Philadelphia, Pa., and Atlanta, Ga. The increase in concentration levels from 1965 to 1973 here in the District was the largest single increase of any large city in the United States.

The FTC staff described the District of Columbia situation in the following way in their report entitled "Discount Food Pricing in Washington, D.C.," in March, 1971:

> In terms of traditional structural dimensions used to describe markets, grocery retailing in the Washington area is a tight-knit oligopoly. Concentration of foodstore sales in the Washington metropolitan area is higher than all other major cities according to the Bureau of the Census. The four largest chains of the metropolitan area accounted for more than two-thirds of all foodstore sales. This percentage is half again higher than the average for the other cities ranking among the 20 largest.

The *Shop Rite* case I will go into in a moment.

An FTC staff memo in 1971 estimated that the District of Columbia consumers would have saved approximately $40 million if Shop Rite Stores had been able to enter the market.

The $40 million is the estimate of how much supermarket prices would have dropped with Shop Rite's successful entry. Lucky Stores had announced they were going to open stores just around the immediate District of Columbia area, whereupon the major chains indicated they were going into something called discount pricing which was a temporary lowering of prices and which the FTC staff indicated was done to keep a new entrant from establishing itself.

There has been and continues to be an acceleration of high and rising food prices in District of Columbia. From the time of the FTC staff report entitled "Discount food prices in Washington, D.C.," in end of 1970 and beginning of 1971, to August 1973, Washington food prices had increased 2.5-percent more than the national average. Since every 1 percent of change is 1 percent of a billion and some dollars, District of Columbia consumers are paying $60–$70 million more than the national average. And this came during a time when prices should have been reduced approximately 2 percent, since games of chance and trading stamps had been dropped.

Congressman Gude went on in his testimony to give further evidence of rising prices: He said—

Evidence just released last week (end of February 1974) by the Bureau of Labor Statistics not only confirms this trend of higher prices, but indicates it is accelerating. The Consumer Price Index for food at home in Washington rose to 160.5 for January, highest of the 23 cities surveyed, and an increase of 3.0 percent over the previous month.

An article in the Washington Star-News (April 1974) underlined the urgency of the rises.

It noted that the Washington area has moved from the middle to the head of the line in an eight-city survey of surpermarket prices over the last 2 months. The article went on to say that despite recent sharp declines in meat prices, meat in this area still costs more than in other cities in the survey, all large metropolitan areas.

Other evidence of steep District of Columbia food prices came in a survey taken by the American National Cattlemen's Association. This association noted that Washington area retail beef prices were the highest in the Nation—with averages higher even than the highs reached last February—according to a survey conducted in 18 cities and released September 12, 1974.

The cattlemen noted that overall beef prices were down across the country, however.

District of Columbia supermarket meat prices do not reflect drops at wholesale because of the anticompetitory situation.

Final evidence of oligopoly in the District's supermarkets is established by analysis of the profit data of the two largest District of Columbia area supermarket chains—Giant and Safeway. Here is an article from Supermarket News citing Giant's food profits in the quarter ending November 1974. The article said:

Net earnings of Giant Food jumped 72.7 percent in the 12 weeks ended November 2, and 61.3 percent in the 36 weeks.

The article indicates that Giant's profit rate is 1.1 percent after taxes. In reality that rate is twice as high. Since the tax rate is 52 percent, the before tax percentage would equal 2.2 percent of sales. Technical Study No. 7 (June 1966) by the National Commission on Food Retailing notes that:

. . . If dominant market position increases a retailer's discretion over pricing, promotion and other marketing decisions (both in buying and selling), the best index of the degree of such discretion would be net income, rather than gross profit margins (which include total operating costs as well as net income). . .

The high profits associated with relatively large market position suggest that such position confers a substantial advantage for the retailer holding it.

Naturally the most important indication of profitability is profit on equity, not margins.

When Shop Rite, before it had tried to enter the area, was doing an advance survey of Washington area prices, they said they looked at the market and decided they could come in 5-percent below the market on the prices they would charge. They did put their money where their mouth was and tried to enter, but were unsuccessful because of the aforementioned predatory pricing practices of Safeway and Giant.

It seemed only fitting that the FTC was investigating a possible monopoly among the four largest supermarket chains in the District of Columbia area.

Can you imagine our surprise when we came upon an article in Supermarket News (August 13, 1973) with the headline: "FTC drops monopoly probe."

The FTC Commissioners felt some sense of overriding privacy about their decision, for the only public announcement was this tiny article in that great in-house publication; Supermarket News. I sent a letter to FTC Chairman Engman stating my views on the subject and asking for an explanation of why the probe was dropped. Somehow the letter found its way to the front page of the Washington Star-News (October 16, 1973).

Mr. Engman in a letter to our Consumer Affairs Committee stated that the probe was dropped because concentration levels had decreased. In fact this is patently untrue.

The Commission's reaction to these proddings by the Senate was an announcement on March 7, 1974, of a food industry probe. Details were not released until July 1, 1974, when the FTC confirmed a new food investigation would focus on food prices in six major cities including Washington, D.C. Also to be included in the probe was the relationship between levels of concentration and retail food prices.

This appeared to me to be an odd development. The FTC had, 1 year ago, dropped its investigation of antitrust activities in the Washington, D.C. area. And here it was taking up a new study of high concentration levels in six cities of which Washington, D.C. was the most prominent example. The new study might take years to complete, yet the old study had been essentially complete. How, with the perfect case study available in District of Columbia, could the FTC possibly take up a new six-city study of the same topic they had just dropped in the District of Columbia?

Details of the new six-city investigation have been harder to come by than hen's teeth.

Rumor has it that this investigation is not going anywhere and was only announced in response to consumer and congressional pressures—that this was a limited study for which no new price data was being collected.

I do not want to spread rumors; I urge the Joint Economic Committee to find out for itself the real intentions and depth of this new FTC probe.

All of the information I have stated to this point in my testimony was painstakingly accumulated over the years through study of public documents, on-the-record talks with economists and approved interviews at the FCC.

However, something new has been added about the Federal Trade Commission. I have been privy to some additional information about the FTC investigation that was so secretly dropped and I feel it is my duty to reveal it to you. The information merely amplifies, expands and strengthens my testimony to this point; it in no way contradicts the basic thrust of what I was able to learn publicly.

In the Safeway case, there were subpenas issued in 1969. In 1972, Safeway was still in noncompliance with these subpenas. That is a 3-year delay. One wonders if the FTC ever intended to enforce the subpenas. In the current six-city investigaton, the chains have refused to respond without subpenas. So far no subpenas have been issued.

If they were issued, would they be enforced, like the 1969 subpenas in the previous case?

The previous investigation of the *Shop Rite* case and concentration in the District of Columbia supermarkets that was dropped was a 4-year investigation which cost taxpayers several hundred thousand dollars.

A "fact memo" was drafted in the summer of 1972. It sat on Allan Ward's desk, the former Director of the Bureau of Competition, for over 1 year. One of the reasons for which the FTC dropped the case was because they said the facts were stale.

The deciding memo on the FTC case was written by Douglas C. Dobson on May 24, 1973. His memo, which was presented to the Commission, recommended that the investigation be closed. Mr. Dobson was new to the staff of the FTC and a believer in the Chicago school of economics. He had no previous experience in the food field and had not shared in any of the previous investigations.

He was unfamiliar with the evidence and based his market analysis on the amount of advertising being done by the companies. His memo did not question that there were high concentration levels in the District of Columbia, but Dobson contended that these high levels would not lead to anticompetitive conduct. Dobson said, in effect, that predatory pricing was not bad in itself, unless it led to high entry barriers. Somehow he decided that the entry barriers had not been high. The memo further did not make any use of stockholder equity ratios, even though these were available. Yet this was the memo that decided the vote by the FTC Commissioners, and was in fact presented to the Commissioners.

The Commission vote against the District of Columbia case, which was taken on July 24, 1973, was a secret vote. One wonders how did the Commissioners vote; only Mary Gardiner Jones put her views in writing. Ms. Jones disagreed with the results of the Dobson memo.

A further added fact of interest is that Basil J. Meznies, who was Executive Director of the FTC during the time of the last case, now represents Giant Food on all FTC matters including the new investigation.

Mr. Russell Parker wrote a memo he submitted on June 25, 1973. This memo strongly disagreed with the Dobson memo. The Parker memo in addition to the forementioned evidence, did bring to light some new aspects about the high entry barriers in the District. For instance, in 1972 K–Mart Discount Centers entered the area, but did not open its own discount food department. K–Mart had previously entered a hundred new markets in 30 states and in all of them had opened a discount food operation, but, oddly enough, in the city of Washington they did not open one.

Two separate market analyses were made, one by Lucky Stores opening Memco in the area, and by Shop Rite before either of these firms decided to enter the District of Columbia area. Both firms in their analysis found a high price level in the District had a lack of price competition.

The analyses were made by firms that had been frequent and successful new entrants in other areas. Each company invested large sums of money based on these studies.

The May 25, 1973, memo by the Bureau of Competition lawyers recommended that a complaint be issued against Giant and Safeway. Many of the arguments in this strongly written complaint were already public knowledge. However, this memo adds much other information. The memo noted that food was a million dollar industry and yet there was no serious price competition in the District of Columbia. What existed was a general appearance of price competition.

There was rapid growth in the District of Columbia market and yet, oddly enough though there were many new supermarkets buyers in the area, especially in the suburbs, there were few new supermarket entrants. The memo lists the new entrants. It has been said that Lucky Stores is a new entrant. Lucky Stores relies not on the food business but prefers to operate large discount stores with a food department. In fact, food is only one-fiftieth of Lucky's business and is used mainly as a draw to get people to buy in the other departments in the store.

The FTC staff memo said that Safeway and Giant willfully maintain a tight-knit oligopoly market structure by means of anticompetitive conduct.

Mr. Willard Mueller, formerly Director of the FTC Bureau of Economics, said in an interview that his "main concern was the probable illegality of two oligopolists following parallel and possibly collusive programs which had the effect of further raising entry barriers."

The major chains have remained unchallenged in their positions for some years and, except for Giant Food, strong regional or local chains disappeared from the market.

The principal chains that do exist are vertically integrated; therefore they do not depend on local wholesalers or suppliers for supplies. So more's the pity that for the District area the latter have practically disappeared from the Washington, D.C., area.

Giant leases one quarter of its stores from Giant Food Properties, Inc., a publicly held company with 25 percent of its stock owned by Giant and Giant's principal shareholders.

The FTC staff memo goes on to describe in full the Shop Rite story. It describes this situation as a predatory, malignant and harassing price war on the part of Giant and Safeway stores against the entry of Shop Rite.

In the fall of 1967, after two Shop Rite stores had opened in the District of Columbia area, there was constant checking of Shop Rite stores in other areas of the country. This suggests a concern with the overall quality of Shop Rite as a competitor, rather than with the specific prices of the stores that had already opened.

Giant, in addition to lowering prices only in the immediate areas of the new Shop Rite stores, engaged in other harassing tactics that made Shop Rite's entry extraordinarily difficult.

Giant, probably in conjunction with Giant Food Properties, Inc., the shopping center landlord, refused permission for Shop Rite to put its sign at the entrance of the shopping center used by both firms. This may not sound important but, if you cannot see the sign, you cannot recognize the store from the road.

The FTC staff concluded that these responses to competition were harassing rather than meeting competition in good faith.

The management of Lucky Stores had instituted a comprehensive report done on the metropolitan area stores before they decided to enter. The conclusion of this report with respect to nonprice competition was that the District of Columbia area stores in general were dirty, smelly, poorly stocked and that Lucky could do better. Indeed, Safeway stores were described by Lucky "not as neat and clean as the usual Safeways on the west coast." Giant, not Safeway, was identified as the principal competitor of Lucky because it followed "some fine practices"; but even it was said to "run a very sloppy store."

A Lucky official concluded that the "lack of good competition had caused Giant to become only slightly better than Safeway."

The FTC memo makes the point that in an unconcentrated market each firm would perceive its loss of sales to the new entrant as a very small percentage of total sales; hence the drastic and dramatic response by each firm would not have been expected.

The memo finally says that in a sustained oligopoly situation, specific business practices which are carried on are the mechanisms by which oligopoly preserves itself and, in fact, are the breeding ground for future antitrust violations.

"Affirmative aggressive conduct calculated to drive out a competitor is more than mere 'conscious parallelism,' it is a partnership in evil," wrote the staff.

One can observe conscious parallelism in effect even today. During the week before Thanksgiving (1974) it was noted that the price for turkeys by each of the four chains was 55 cents a pound.

Each of these big chains hit the price on the head; not one of the four was 56, or 53 or 59 cents a pound. One can see that the chains worked together silently without verbal agreement to maintain similar prices.

What the aggregate of these memos provide is supporting evidence to what we already knew: That the FTC's dropping of the case of antitrust activities in the District of Columbia supermarket industry was not only a botched up procedure, it was a heartless one as well for District citizens.

I must wonder what the final decision was based on. It appears to me it was based on recalcitrance and possibly pressure from some sources.

It is clear what the solution to this enormous and costly situation must be. Relief from high food prices must come to the District of Columbia citizens. Competition must be restored to the marketplace. Small chains can be just as efficient as the great big ones. The nasty word "divestiture" is in fact the answer.

The break-up of these huge chains must be employed if we do not want the food industry to go further in its current direction of the industries of automobile and steel. Divestiture could be obtained legislatively, particularly in Washington, D.C., proper. The entry of new competition is especially urgent as well as especially difficult in the center city.

The limited growth potential of the center city requires such a drastic step as divestiture.

I cannot tell you how the scheme can be worked out for the divestiture but I can tell you that this cruel and inhumane condition of inordinately high food prices cannot be tolerated much longer by the District of Columbia shoppers.

Since our past city government officials, some of whom continue in office, have been totally unresponsive to this problem and our Federal officials have responded in a negative manner and our supermarket officials connive to continue this intolerable situation, the frustrations of our District of Columbia citizens may again break out in a most devastating manner.

I will be glad to answer any questions.

Senator SPARKMAN. I want to say to you you have given a tremendous lot of information in this paper of yours. You must have done great work in pulling it together.

You brought out facts so fully and so clearly I hardly know how to pick your mind further on it.

Mrs. BROWN. It was worth the work, Senator, because it is a very vital and critical subject.

Senator SPARKMAN. I think we will hear from Mr. Silbergeld of the Consumer's Union and then question the two of you together as a panel.

In fact, I may have to leave before you complete your paper, Mr. Silbergeld. If so, my friend here will carry on.

Mr. SILBERGELD. Thank you, Senator Sparkman.

I won't read my paper. I will submit it for the record and try and summarize it.

Senator SPARKMAN. It will be printed in full in the record.

Mr. SILBERGELD. I hope my summary will be short.

Senator SPARKMAN. Present it as you see fit.

Mr. SILBERGELD. Senator Sparkman, Consumer's Union very much appreciates the committee's invitation to testify at these hearings. At the same time, I must note that this is at least the fifth hearing we have been invited to testify in on the subject of food prices, the first one being hearings before this same committee a year and a half ago. Each of the hearings seems still to be seeking basic information rather than to formulate policies on which basis the Government can actually begin now to deal with the problem. We are extremely concerned that this system of our society trying to do economic analysis and data collection solely through the mechanism of congressional hearings really is not enough and it isn't working, although the kinds of information that Mrs. Brown has presented to you are the kinds of things that probably are best presented and discovered through congressional hearings because then they are out in the open immediately rather than in the files of an investigative agency.

There is a tremendous amount of boring but highly relevant statistics which have to be collected, and not simply one time, for the purpose of one analysis, but systematically.

And so I must express a great deal of concern that nobody has ever taken up on the recommendation of the National Commission on Food Marketing which Congressman Rosenthal mentioned—he did not mention this particular recommendation but he did mention the Commission prominently in his testimony earlier—that the Congress charged the Federal Trade Commission with doing an on-going, not a one-time, but an on-going analysis of structure and competition and economic performance in the food industries, and that the Commission make an annual report thereon to the Congress so that the antitrust agency, the Congress of the United States, and the people know exactly what is going on, on the basis of evidence obtained under compulsory process, and on the basis of work done by a staff which is assigned to the subject full time. And I should add that this will require a very substantial authorization and appropriation because they cannot do it with their present resources without disrupting other economic studies that are essential to cases now before them and other industry analyses which we also need.

[The prepared statements of Mrs. Brown and Mr. Silbergeld follow:]

PREPARED STATEMENT OF ANN BROWN

Mr. Chairman and Members of the Joint Economic Committee: I am Ann Brown, Chairman of the Consumer Affairs Committee of Americans for Democratic Action and the D. C. Democratic Central Committee. It is a great privilege to appear before this Committee to testify on the subject of Food Chain Pricing Activities.

Since I am a representative of local grass roots consumer organizations, I may be expected to represent only the views of Ms. average consumer, and nothing further. But this is a new era in consumer activism. I like to think of myself as the kind of consumer advocate who is no longer simply a tape recording of how the average consumer thinks. Rather, I like to think of myself as the kind of advocate who collects and decimates the consumer interest while refining it and educating this interest. For instance, in the last three years I have spent a great deal of time along with a group of other consumer activists being educated on the subject of economics by economists and legislators in and out of government. How I wish I had taken more courses in economics at Smith College and less courses on the Existentialist predicament.

The consumer advocate has come to realize that the major economic problems confronting our nation are the major sources of consumer concern. The reason is quite simple. In the end, it is the consumer who pays the bill. We no longer treat consumer problems simply as questions of morality. The major issues that are the greatest concern to us, the ones that cost us the most, really are not just cases of moral terpitude.

These hearings focus on the major issue concerning U. S. citizens today—high food prices. And you are absolutely on target to focus on the pricing policies of the major food chains.

I will center my remarks today on a subject which has been a central concern for our Committee for several years—the lack of competition in the District of Columbia (D. C.) area food chains because of a shared monopoly among our major D. C. food chains. What concentration means is lack of competition, and what lack of competition means is higher prices. What higher prices means is a tremendous burden to be borne by the people of the District.

You can fathom the effect on all people of the increase in food prices because of rampant inflation and of their lack of ability to pay such prices because of recession. But now imagine that problem of D. C. citizens, an impoverished group to begin with, who are forced to pay exorbitant food prices, prices rising faster than even the national average. The inhumanity and inequity of such a situation boggles the mind. An urban family of four living on the U. S. Department of Labor's Bureau of Labor Statistics' "lower level" budget spent 34 percent of its disposable income on food in 1972 but had to spend 37 percent of disposable income on food in 1973. For "intermediate level" families, food spending rose from 30 percent of the consumption budget to 33 percent, and for "high level" families the jump was from 27 percent to 30 percent of the consumption budget. These percentages should still be accurate today, since food costs rose at roughly the same rate as all other costs combined from September 1973 to September 1974.

Our Consumer Affairs Committee has come full circle in its sphere of interest. Our first connection with the FTC was to petition the Commission to require open dating in all food markets throughout the country. We have come to believe that although open dating is certainly a good idea, it is peripheral to the real guts of the problem. This problem is antitrust and competition.

But in the Nation's Capital each day "modern-day Bread Lines" exist. Customers wait for hours in the cold to buy bread at thrift stores that sell old bread not sold the previous days in supermarkets. "The shelves are cleaned out so fast business is strictly first come, first served," said a store manager. "These days even a few pennies is a big savings," said a shopper at a store.

And yet, except for some conscientious officials, we were a lone voice in the wilderness, bewailing this plight of D.C. shoppers for years, Congressman Gilbert Gude alone of D.C. area government officials took up the criticism. Both Congressman Gude and our Committee have been wildly berated by officials of the two major local supermarket chains: Giant Foods, Inc., and Safeway Stores, Inc. Local supermarket officials appear to be bothered only by attendant publicity about the high concentration levels of D.C. supermarkets, not about the attendant burdens borne by their customers.

Mr. Joseph Danzansky, President of Giant Foods, said on November 19, 1974, in testimony before the Subcommittee on Domestic Marketing and Consumer Relations of the House Agriculture Committee:

In developing my testimony. I have asked myself, "What should be my objective? What's really important?

Is it to defend industry and our company from unwarranted and often malicious attacks?

Is it to level the finger of blame on some other hapless so-called culprit?

Or, is it to get on with President Ford's four C's—conciliation, compromise, communication and cooperation—that are our only sound hope for impacting inflation and its devastating effect on cattlemen, retailers and consumers alike.

I would like to add another *C* to the President's four *C*'s and to Mr. Danzansky's recital of them—that is "Competition." And as a D.C. consumer advocate I will pledge my determination to "let competition begin at home"—to restore competition to our local supermarket situation.

"Consumer Reports" printed in a May 1974 article:

According to classical economics, competition among middlemen should keep a lid on consumer prices. The workings of a competitive marketplace should insure the lowest food prices consistent with a reasonable profit—"reasonable" meaning a profit sufficiently high to keep the "right" number of suppliers in business. When profits rise above that level, more suppliers enter the business, and increased competition forces prices down. When prices fall too low, the number of suppliers decreases, and lowered competition permits prices to rise. Since competition determines price in the classical scheme of things, it follows that the consumer interst demands healthy competition among food middlemen. But available indicators suggest that competition is generally ailing in that giant industry.

Charles E. Mueller, Washington economist and lawyer, wrote:

Perhaps the second most important concept in economics today—second only to the Keynesian proposition on the relationship between aggregate national expenditures and full employment—is the concept of a relationship between the structure of a product market and its social performance. In brief, it has been established beyond the point of really serious dispute that, without any necessary collusion or conspiracy, an industry becomes effectively monopolized when the four largest firms control 50 per cent of the market or more.

More than 25 major statistical studies in the last decade have all identified the four-firm/50 per cent level as the point at which marked monopolistic effects set in regarding prices, profits, and costs. This is a very conservative dividing line. In other words, many American industries with less concentration—say, with five firms having 50 per cent of the market or four firms with 40 per cent—also show signs of monopoly: but the evidence is so pronounced at the four-firm/50 per cent level that the significant monopolistic effects can safely be attributed to any industry which meets that test.

The Supreme Court has actually recognized a far stricter standard in one area of antitrust law—mergers. In a 1966 case, *United States* v. *Von's Grocery Company*, the Court disallowed a proposed merger between two California grocers who each controlled only about 4.5 per cent of the market—on the grounds that their combined market share of nine per cent would tend to restrict competition. Since then, prevailing judicial decisions have prohibited direct mergers that give two companies more than about eight or nine per cent of the market. But the Supreme Court has not handed down antitrust decisions against the multitude of existing companies that are already much more monopolistic than Von's Grocery.

Beyond any doubt, the evidence of shared monopoly in D.C. supermarkets is totally compelling. This evidence can be divided into five areas:

1. Concentration levels of the D.C. grocery retailing market;
2. High entry barriers in the D.C. grocery retailing market including evidence of predatory pricing;
3. Evidence of higher food costs to D.C. consumers;
4. Use of advertising to give an advantage to the large existing chains; and
5. Analysis of profit data of the two largest D.C. area grocery chains.

The situation of shared concentration in the supermarket industry, always high, has in fact worsened in recent years in the District. The source of the information of the following appallingly high concentration levels in D.C. is a highly respected publication called "Grocery Distribution Guide, 1973," published yearly by Metro Market Studies, Inc. This data source is proven accurate when measured against U.S. Census data. Here is some of the relevant information from the Guide:

The top two firms—Giant and Safeway—in 1965 had 49% of the market share; in 1973 these two had 58% of the market share. The top 4 firms—Giant, Safeway, Grand Union and A & P—in 1965 had 67% of the market and in 1973 had 71.8% of the market. The next highest in concentration level is 60%, in two cities—Philadelphia, Pa. and Atlanta, Georgia. The increase in concentration levels from 1965 to 1973 was the largest single increase of any large city in the United States.

The FTC staff described the D.C. situation in the following way:

In terms of traditional structural dimensions used to describe markets, grocery retailing in the Washington area is a tight-knit oligopoly. Concentration of foodstore sales in the Washington metropolitan area is higher than all other major cities according to the Bureau of the Census. The four largest chains of the metropolitan area accounted for more than two-thirds of all foodstore sales. This percentage is half again higher than the average for the other cities ranking among the 20 largest. (Discount Food Pricing in Washington, D.C., Staff Economic Report of the Federal Trade Commission, March, 1971).

This FTC staff report goes on to describe the remarkable series of failures of new entries into the D.C. market. Of course, price competition is stimulated most effectively by the entry of new competitors.

Entry barriers in the market have also been high. Prior to Lucky's (Lucky Stores) current attempt, two chains have attempted entry over the last decade. Both of these chains failed in their plans to become established competitors. The Kroger Co., the Nation's third largest grocery chain, entered the market in 1960 by acquiring a small local chain. After making a substantial effort to expand its market share, Kroger sold its Washington area stores in 1966 to the Consumer Co-op, a smaller grocery chain which was already operating in the area.

The second attempted entry was by Shop Rite in 1967. Shop Rite (Foodarama) was an aggressive discounter from the New Jersey area and had a history of successful entries into several east coast cities before attempting to enter the Washington Market. Approximately 2 weeks prior to Shope Rite's initial opening of two stores in the Washington market, the two leading Washington area chains cut prices in their stores located in the immediate vicinity of the stores Shop Rite had scheduled to open. The price cuts were confined only to those stores and to stores in the area of a third store Shop Rite subsequently opened. As a result, the average price levels of those stores were substantially lower than the level of prices in the other Washington area stores operated by these chains. Those stores for which profit data were available sustained substantial losses after the price cuts, while prior to the cuts they had earned substantial profits.

Here is a clear example of predatory pricing. An FTC staff memo in 1971 estimated that D.C. consumers would have saved approximately $40 million if Shop Rite Stores had been able to enter the market. The $40 million is the estimate of how much supermarket prices would have dropped with Shop Rite's successful entry.

The tactics of Safeway and Giant when Lucky Stores attempted to enter the D.C. area market are accurately described by Congressman Gude in a statement on March 1, 1974, before the Consumer Subcommittee of the Senate Commerce Committee:

The third of attempted entry was not met with the same tactics on the part of the major chains, perhaps because of the Federal Trade Commission's investigation into the Shop Rite case. The announcement in the spring of 1970 by Lucky Stores (Memco) that it was planning to enter the Washington market was met by announcements of the major chains here that they were going to initiate discount pricing policies. The actual switch to discounting by the major chains occurred a few months later, in August 1970, just days before the two Memco stores opened.

Interestingly, this was the same tactic Safeway and other chains had used in 1968 in San Francisco, when Lucky Stores entered the market there.

The switch to discounting, which the FTC staff indicated was done to keep a new entrant from establishing itself, clearly had short-run benefits for consumers. The monthly Consumer Price Index for food in Washington as compared to the rest of the Nation shows clearly that prices in Washington had been rising faster than those in the rest of the Nation until mid-1970 when discounting began. From that point, prices rose more slowly than the Nation until mid-1972, when unexplained events led to a renewed sharp increase. It appears from this that the discounting policy was only temporary.

There has been and continued to be an acceleration of high and rising food prices in D.C. From the time of the FTC staff report entitled "Discount Food prices in Washington, D.C." in end of 1970 and beginning of 1971, to August 1973, Washington food prices had increased 2.5% more than the national average. Since every 1% of change is 1% of a billion and some dollars, D.C. consumers are paying $60–70 million more than the national average. And this is during a time when prices should have been reduced approximately 2%, since games of chance and trading stamps were dropped.

Further proof can be found in a little observed fact about the nature of the price rises in D.C. in relation to the national average. It is not in the area of locally produced products, such as dairy products or bread, that the greatest price occurred. But it is the nationally produced items for which local retailers charged more. Do not forget that local retailers, who have discretionary pricing power in this market due to lack of competition, have recently observed the breaking up of the bread pricing conspiracy in Baltimore, Maryland, where Giant Food has a good market share and the breaking up of the Seattle, Washington, bread price conspiracy, where Safeway Stores has a good market share.

Congressman Gude went on in his testimony to give further evidence of rising prices:

Evidence just released last week (end of February 1974) by the Bureau of Labor Statistics not only confirms this trend of higher prices, but indicates it is accelerating. The Consumer Price Index for food at home in Washington rose to 160.5 for January, highest of the 23 cities surveyed, and an increase of 3.0 percent over the previous month and well above the national average of 1.8 percent. Only one city on the list had a greater increase. Baltimore, a city of comparable size and location, experienced an increase of only 1.0 per cent.

My own survey verifies this trend. I had compiled a list of food necessary to feed a low-income family of four for one week, and sent volunteers out to price this food in Baltimore and in the Washington area. Volunteers were instructed to choose the store brand, or if that was not available, the cheapest brand on the shelf. In the case of one major chain, of 41 items actually priced, 13 were lower in Baltimore and 5 were higher. The total shopping list cost $34.49 in Baltimore and $35.24 in Montgomery County—a difference of approximately 2.2 per cent.

In the second major chain surveyed, of 44 items priced, 16 were lower in Baltimore and 5 were higher. The total list cost $38.22 in Montgomery County and $36.89 in Baltimore, a difference of 3.6 per cent.

An article in the "Washington Star-News" (April 1974) underlined the urgency of the rises. It noted that the Washington area has moved from the middle to the head of the line in an eight-city survey of supermarket prices over the last two months. The article went on to say that despite recent sharp declines in meat prices, meat in this area still costs more than in other cities in the survey, all large metropolitan areas. This means that while county residents can pay higher meat prices and grumble, many D.C. residents can't eat meat at all. Prices were checked at Giant and Safeway stores on Wisconsin Avenue, N.W. "Management at both stores assured reporters that prices were uniform throughout the stores in each chain."

In a ten-city survey reported on March 7, 1974, a market basket of food in Washington, D.C., was second highest in the Nation. The survey also showed no items here that were cheaper than elsewhere in the Nation and only corn flakes and oranges were as low as the lowest prices in the other cities surveyed.

Other evidence of steep D.C. food prices came in a survey taken by the American National Cattlemen's Association. This Association noted that Washington area retail beef prices were the highest in the Nation—with averages higher even than the highs reached last February—according to a survey conducted in 18 cities September 12, 1974.

The Cattlemen noted that overall beef prices were down across the country, however. In fact, retail beef prices of five representative cuts in supermarkets averaged 3 cents per pound lower than the previous month and 15 cents lower than the highs reached the previous winter.

Further, cattle prices had recently shown sharp declines, according to the survey, reflecting increases in total beef production.

D.C. supermarket meat prices do not reflect drops at wholesale because of the anticompetitory situation.

Supermarket personnel argue that prices are high in D.C. because in the District suburbs live affluent people. This factitious argument implies that local supermarkets charge what the traffic will bear. The way the economic system is supposed to work is that if supermarkets can charge higher prices, there should be new entries in the market. The real implications of the argument confirm that there is monopoly here because the two large chains have the ability to charge more with no real cost justification.

On the relationship of the concentrated D.C. supermarket industry and advertising cost, Dr. Willard F. Mueller, Villas research professor at the University of Wisconsin, testified before the Senate Subcommittee on Monopolies and Commercial Law in the summer of 1974 that:

Washington, D.C., is one of the most concentrated food grocery retailing markets. The top four chain's share of grocery store sales in the Washington metropolitan area rose steadily between 1954 and 1967—from 56% to 70.3%. The largest chains have a strong grip on this market. They have forestalled potential competition entry by engaging in tactics to discourage entry into the market. Although I have no information on curernt practices, in the 1960s retailers that held a dominant market position in the city received larger advertising allowances from their suppliers than they spent on the products for which they received the allowances. In other words, they actually enjoyed a profit on their advertising allowances. This situation gives dominant firms a pronounced advantage over smaller rivals, who typically have net advertising costs of 2% of sales. This difference in advertising costs of dominant and small chains and independents can be decisive in food retailing where pretax profit margins typically run between 2% and 3% of sales.

Dr. Mueller is perhaps the foremost expert on this matter of concentration in the retail food industry.

Final evidence of oligopoly in the District's supermarkets is established by analysis of the profit data of the two largest D.C. area supermarket chains—Giant and Safeway. Here is an article from "Supermarket News" on Giant's food profits in the quarter ending November 1974:

Giant Food Profits Soar 72.7% On Rise In Sales For Quarter Landover, Md. (FNS)—Net earnings of Giant Food jumped 72.7 percent in the 12 weeks ended November 2, and 61.3 percent in the 36 weeks.

Earnings in the quarter were $1.9 million, or 56 cents a share, against $1.1 million, or 32¢, a year earlier. Nine months net amounted to $5 million, or $1.50 a share against $3.1 million, or 94¢.

Quarterly sales totaled $167.7 million, or 10.6 percent higher than $151.6 million in 1973. Revenue for the 36 weeks was up 12.8 percent to $497.1 million, from $440.8 million.

The profit-to-sales ration was 1.1 against 0.72 percent in the quarter, and 1.0 against 0.70 percent in the nine months.

The article indicates that Giant's profit rate is 1.1% after taxes. In reality that rate is twice as high. Since the tax rate is 52%, the before tax percentage would equal 2.2% of sales. "Technical Study No. 7" (June 1966) by The National Commission on Food Retailing notes that:

. . . if dominant market position increases a retailer's discretion over pricing, promotion and other marketing decisions (both in buying and selling), the best index of the degree of such discretion would be net income, rather than gross profit margins (which include total operating costs as well as net income).

The high profits associated with relatively large market position suggest that such position confess a substantial advantage for the retailer holding it. The facts further indicate that high profits associated with strong market position may be maintained for years without an erosion of either profit or market position.

Naturally the most important indication of profitability is profit on equity, not margins.

When Shop Rite was doing an advance survey of Washington area prices, they said they looked at the market and decided they could come in five percent below the market on the prices they would charge. They did put their money where their mouth was and tried to enter, but were unsuccessful because of the aforementioned predatory pricing practices of Safeway and Giant.

It seemed only fitting that the FTC was investigating a possible monopoly among the four largest supermarket chains in the D.C. area. Can you imagine my surprise when I came upon an article in "Supermarket News" (August 13, 1973) with the headline: FTC drops monopoly probe. The disgrace of this action on the part of the FTC can hardly be overemphasized. Evidently the FTC Commissioners felt some sense of overriding privacy about their decision, for the only public announcement was this tiny article in that great in-house publication: "Supermarket News." I sent a letter to FTC Chairman Engman stating my views on the subject and asking for an explanation of why the probe was dropped. Somehow the letter found its way to the front page of the "Washington Star-News" (October 16, 1973).

Remarkably, since the time of the public announcement of the dropping of the probe in September, the level of Washington prices, according to Bureau of Labor statistics, has risen from $18 million more than the national average or to $60 million more than the national average in December 1973. In September 1973, prices in Washington, D.C., rose approximately 1 percent more than the national average. In December 1973, the rise of Washington, D.C., prices was 3 percent more than rise in prices nationally, and the highest level in two years. The time for this enormous change coincides exactly with the dropping of the FTC probe. One possible explanation for the tremendous rise relative to the national average is the publicized dropping of the D.C. concentrated supermarket probe.

Mr. Engman in a letter to our Consumer Affairs Committee stated that the probe was dropped because concentration levels had decreased. In fact this is patently untrue. D.C. concentration levels had in reality increased from 67.6 per cent of the market in 1968 to 71.8 per cent in 1973. At FTC Oversight Hearings of the Senate Consumer Subcommittee I fervently urged resumption of the investigation, as did several other witnesses.

The Commission's reaction to these proddings was an announcement on March 7, 1974, of a food industry probe. Details were not released until July 1, 1974, when the FTC confirmed a new food investigation would focus on food prices in six major cities including Washington, D.C. Also to be included in the probe was the relationship between levels of concentration and retail food prices.

Now here was an odd development. The FTC had, one year ago, dropped its investigation of antitrust activities in the Washington, D.C., area. And here it was taking up a new study of high concentration levels in six cities of which Washington, D.C., was the most prominent example. The new study might take years to complete, yet the old study had been essentially complete. How, with the perfect case study available in D.C., could the FTC take up a six-city study of the same topic they had just dropped in D.C.? If it is true that God works in strange ways, unfathomable to man, it is equally true that so does the FTC. This is, of course, a limited simile.

Details of the new six-city investigation have been harder to come by than hen's teeth. At a meeting with the FTC Commissioners and national consumer leaders in July 1974, I asked about the new probe to no avail. Local reporters interested in the probe have said their sources cannot tell them whether this probe is a P.R. gimmick or a substantial investigation. Rumor has it that this investigation is not going anywhere and was only announced in response to consumer and Congressional pressures—that this was a limited study for which no new price data was being collected. Far be it from me to spread rumors: I urge the Joint Economic Committee to find out for itself the real intentions and depth of this new FTC probe.

All of the information I have stated to this point in my testimony was painstakingly accumulated over the years through study of public documents, on-the-record talks with economists and approved interviews at the FTC.

However, something new has been added. I have been privy to some additional information about the FTC investigation that was so secretly dropped and I feel it is my duty to reveal it to you. The information merely amplifies, expands and strengthens my testimony to this point; it in no way contradicts the basic thrust of what I was able to learn publicly.

First of all, the food chains in various Congressional testimony have been able to make their margins appear smaller by shifting the costs forward. They simply charge more to the individual stores on products brought into the warehouse.

Second, the chains have been mighty recalcitrant about revealing corporate information that has been subpoenaed. In the Safeway case, there were subpoenas issued in 1969. In 1972, Safeway was still in noncompliance with these subpoenas. That is a three year delay. One wonders if the FTC ever intended to enforce the subpoenas. In the current six-city investigation, the chains have refused to respond without subpoenas. So far no subpoenas have been issued. If they were issued, would they be enforced, unlike the 1969 subpoenas in the previous case?

The previous investigation of the Shop Rite case and concentration in the D.C. supermarkets that was dropped was a four-year investigation which cost taxpayers several hundred thousand dollars. A "fact memo" was drafted in the summer of 1972. It sat on Allan Ward's desk for over one year! One of the reasons for which the FTC dropped the case was because they said the facts were stale. Unlike wine, these facts did not age gracefully, especially since they were aged by neglect on the part of FTC upper-level staffers.

The deciding memo on the FTC case was written by Douglas C. Dobson on May 24, 1973. His memo, which was presented to the Commission, recommended that the investigation be closed. Mr. Dobson, a man of good will I am sure, was new to the staff of the FTC and a believer in the Chicago school of economics. He had no previous experience in the food field and had not shared in any of the previous investigations. He was unfamiliar with the evidence and based his market share analysis on the amount of advertising being done by the company. His memo did not question that there were high concentration levels in the District of Columbia, but Dobson contended that these high levels would not lead to anticompetitive conduct. Dobson said, in effect, that predatory pricing was not bad in itself unless it led to high entry barriers. Somehow he decided that the entry barriers had not been high. The Dobson memo rewarded big market power and substantially punished consumers. The memo further did not make any use of stockholder equity ratios, even though these were available. Yet this was the memo that decided the vote by the FTC Commissioners, and was in fact presented to the Commissioners. There were no staff advocates involved in the Dobson presentation.

In fact, the two leading attorneys on the case, Mr. Gavies and Mr. Lipson, went on to other cases. The Commission vote against the D.C. case, which was taken on July 24, 1973, was a secret vote. One wonders how did the Commissioners vote; only Mary Gardiner Jones put her views in writing. Ms. Jones disagreed with the results of the Dobson memo.

A further added fact of interest is that Basil J. Mezines, who was Executive Director of the FTC during the time the last case was wandering around the FTC, now represents Giant Food on all FTC matters including the new investigation. Does this have conflict of interest implications?

Dr. Russell Parker, on June 25, 1973, submitted a memo that disagreed with the Dobson memo. I don't know if the FTC Commissioners ever saw or considered the Parker memo. To my mind, it is much more persuasive than the Dobson memo. However, this may be a matter of my own prejudice. It is certainly as equally worthy of consideration as was the Dobson memo.

The Parker memo strongly recommended that the Dobson recommendation to bring no complaint was wrong. He based his argument on data concerned with the nature of D.C. grocery store sales, the condition of entry and the high-level of concentration which was in fact increasing. He noted that entry barriers were high and that pecuniary advantages were accruing to the large chains in newspaper advertising and purchase. He also described how costly it was for a new entry to gain the necessary sales volume for a low-cost efficient operation because of market saturation. Dr. Parker contended in his memo that the real information supported the staff recommendations of the Bureau of Competition (FTC) as stated in a staff memo.

The Parker memo did bring to light some new aspects about the high entry barriers in the District of Columbia. For instance, in 1972 K-Mart Discount Centers entered the area, but did not open its own discount food department. K-Mart had previously entered a hundred new markets in 30 states and in all of them had opened a discount food operation, but, oddly enough, in the city of Washington they did not open one.

Two separate market analyses were made by Lucky Stores and by Shop Rite before either of these firms decided to enter the D.C. area. Both firms in their analysis found a high price level in the District of Columbia and a lack of price competition. The analyses were made by firms that had been frequent and successful new entrants in other areas. Each company invested large sums of money based on these studies.

The May 25, 1973, memo by the Bureau of Competition lawyers recommended that a complaint be issued against Giant and Safeway. Many of the arguments in this strongly written complaint were already public knowledge. However, this memo adds much other information about why the lawyers advocated that a complaint be issued. The memo noted that food was a million dollar industry and yet there was no serious price competition in D.C. What existed was a general appearance of price competition. There was rapid growth in the D.C. market and yet, oddly enough, though there were many new supermarket buyers in the area, especially in the suburbs, there were few new entrants. The memo lists the new entrants: Grand Union in 1956, Food Fair in 1961, Kroger in 1960, Foodarama (known as Shop Rite) in 1967, and Lucky Stores (locally known as Memco) in 1970. The history of these new entrants is basically one of little success. Kroger pulled out; Foodarama (Shop Rite) was forced out; Grand Union has been a puny and paltry fourth of the big-four supermarket chains; and Lucky Stores relies not on the food business but prefers to operate large discount stores with a food department. In fact, food is only one-fifth of Lucky's business and is used mainly as a draw to get people to buy in the other departments in the store.

The FTC staff memo said that Safeway and Giant willfully maintain a tight-knit oligopoly market structure by means of anticompetitive conduct.

Dr. Willard Mueller, formerly Director of the FTC Bureau of Economics, said in an interview that his "main concern was the probable illegality of two oligopolists following parallel and possibly collusive programs which had the effect of further raising entry barriers."

The staff sent questionnaires to the major firms in 1972 and, true to form, the major firms in 1973 still had not answered the questionnaires. That is not a very good example of firms that claim high efficiency. One wonders what they have to hide.

The major chains have remained unchallenged in their positions for some years and, except for Giant Food, strong regional or local chains disappeared from the market. The principal chains that do exist are vertically integrated; therefore they do not depend on local wholesalers or suppliers for supplies. So, the latter have practically disappeared from the Washington, D.C. area.

This indicates further barriers to entry, which are: Lack of (1) a viable wholesale market; (2) Use of store opening policy and shopping center preference, exclusionary lease policies; (3) High cost of advertising; and (4) predatory pricing by established firms.

Giant leases one quarter of its stores from Giant Food Properties, Inc., a publicly held company with 25 percent of its stock owned by Giant and Giant's principal shareholders. This is certainly an illustration of vertical integration.

Concerning advertisements, allowances are received from manufacturers by the chains which pay a great proportion of food store advertising. The basis for these allowances is "on the per case bought." So the retail firms with large volumes receive advertising allowances in excess of their costs.

The FTC staff memo goes on to describe in full the Shop Rite story. It describes this situation as a predatory, malignant and harassing price war on the part of Giant and Safeway stores against the entry of Shop Rite. Interestingly enough, Safeway maintained a clipping file on its "competition" including Shop Rite, and these clippings uniformly picture the Shop Rite operation as efficient, aggressive, and low priced. One clipping in the Safeway file lists among other reasons contributing to Shop Rite's success that Shop Rite stores are pace setters in everything and that "Shop Rite's low prices and low margin combined with dramatic promotion and efficient store operation creates king size traffic that sharply reduces fixed expenses as a percent of overhead. High volume also has self-perpetuating features. . . ." Another clipping described the price war kicked off in Philadelphia by the opening of two Shop Rite stores in 1965. In the fall of 1967, after two Shop Rite stores had opened in the D.C. area, there was constant checking of Shop Rite stores in other areas of the country that suggest a concern with the overall quality of Shop Rite as a competitor, rather than with the specific prices of the stores that had already opened.

Giant, in addition to lowering prices only in the immediate areas of the new Shop Rite stores, engaged in other harassing tactics that made Shop Rite's entry extraordinarily difficult. At least three weeks prior to Shop Rite openings, Giant initiated a barrage of weekly circulars which appeared very similar to the slogans and format that Shop Rite usually used. These circulars were, of course, distributed only to the homes in the area of the Shop Rite store. Giant, probably in conjunction with Giant Properties. Inc., the shopping center landlord, refused permission for Shop Rite to put its sign at the entrance of the shopping center used by both firms. This may not sound important but, if you cannot see the sign you cannot recognize the store from the road. The FTC staff concluded that these responses to competition were harassing rather than meeting competition in good faith.

The management of Lucky Stores had a comprehensive report done on the metropolitan area stores. The conclusion of this report with respect to nonprice competition was that D.C. area stores in general were dirty, smelly, poorly stocked and that Lucky could do better. Indeed, Safeway stores were described by Lucky as "not as neat and clean as the usual Safeways on the west coast." Giant, not Safeway, was identified as the principal competitor of Lucky because it followed "some fine practices"; but even it was said to "run a very sloppy store." A Lucky official concluded that the "lack of good competition had caused Giant to become only slightly better than Safeway."

The manager of Lucky's Washington operation also commented on the absence here of "discounting." The memo goes on to note that as the Commission has observed in "Beatrice Foods," 67FT473, 716 (1965), "The large seller in a concentrated market knows that the entry of new competitors would jeopardize the stable price structure of the market and might well lead to lower prices as a result of greater competition and, hence, lower profit." If the metropolitan market were operating in a competitive manner, established firms would have had very little to fear from a new entrant since his entry prices would not have been substantially lower than the prevailing competitive level. The FTC memo makes the point that in an unconcentrated market each firm would perceive its loss of sales to the new entrant as a very small percentage of total sales; hence the drastic and dramatic response by each firm would not have been expected.

The FTC memo concludes that from 1941 through 1955 Safeway was convicted of six criminal violations of the Sherman Act. Furthermore, in 1928 Safeway illegally entered the area market by illegally acquiring Sanitary Stores.

The memo says that in a sustained oligopoly situation, specific business practices which are carried on are the mechanisms by which oligopoly preserves itself and, in fact, are the breeding ground for future antitrust violations. "Affirmative agressive conduct calculated to drive out a competitor is more than mere 'conscious parallelism,' it is a partnership in evil," wrote the staff. One can observe conscious parallelism in effect even today. During the week before Thanksgiving (1974), I noted that the price for turkeys by each of the four chains was 55 cents a pound. Each of these chains hit the price on the head; not one of the four was 56, or 53 or 59 cents a pound. One can see that the chains worked together silently without verbal agreement to maintain similar prices.

What the aggregate of these memos provide is supporting evidence to what we already knew: that the FTC's dropping of the case of antitrust activities in the D.C. supermarket industry was not only a botched up procedure, but a heartless one as well for District citizens. I must wonder what the final decision was based on. It appears to me it was based on recalcitrance and perhaps pressure from some sources.

It is clear what the solution to this enormous and costly situation must be. Relief from high food prices at this horrendous time of recession must come to D.C. citizens. Competition must be restored to the marketplace. Small chains can be just as efficient as the great big ones. The nasty word "divestiture" is in fact the answer. Divestiture must be employed if we do not want the food industry to go farther in its current direction of the industries of automobile and steel. Divestiture could be obtained legislatively, particularly in Washington, D.C., proper. The entry of new competitors is especially urgent as well as especially difficult in the center city. The limited growth potential of the center city requires such a drastic step as divestiture. The exact formula for divestiture by Safeway and Giant can be worked out by others more knowledgeable than I am.

I *can* tell you, however, that this cruel and inhumane condition of inordinately high food prices cannot be tolerated much longer by D.C. shoppers. Since our past city government officials, some of whom continue in office, have been totally unresponsive to this problem and our Federal officials have responded in a negative manner and our supermarket officials connive to continue this intolerable situation, the frustrations of our D.C. citizens may again break out in a most devastating manner. We will not be controlled by more policemen on the street. We will not be appeased by the purchase of a new baseball team. We will not be deceived by donations of food to poor people in campaigns or by training sessions for D.C. jail inmates. The D.C. citizen can only be satisfied by the break-up of this terrible supermarket monopoly which impoverishes and humiliates us both spiritually and monetarily.

## APPENDIX

TABLE 1.—CLASSIFICATION OF FOOD MANUFACTURING INDUSTRIES ACCORDING TO BAIN'S CONCENTRATION TYPES

| Bain's industry concentration type [1] | Number of industries and percent of food industry [2] value added — National or regional industries: Number | National or regional industries: Value added | Local market industries (average concentration): Number | Local market industries (average concentration): Value added | Total for type: Number | Total for type: Value added |
|---|---|---|---|---|---|---|
| I. Very highly concentrated oligopolies | 9 | 14 | (3) | | 9 | 14 |
| II. High concentrated oligopolies | 3 | 2 | 1 | 3 | 4 | 5 |
| III. High-moderate concentrated oligopolies | 5 | 8 | 3 | 32 | 8 | 40 |
| IV. "Low-grade" oligopolies | 12 | 22 | None | | 12 | 22 |
| V. Unconcentrated industries | 10 | 19 | None | | 10 | 19 |
| Total | 39 | 65 | 4 | 35 | 43 | 100 |

[1] Joe S. Bain, "Industrial Organization," John Wiley & Sons, 1959, pp. 124–133. Bain's type 1, very highly concentrated class, includes industries whose top 8 firms control 90 percent or more of production or whose top 4 control 75 percent or more. The equivalent percentages for type II are 85 to 90 percent for the top 8 or 65 to 75 percent for the top 4. Type III, 70 to 85 percent for the top 8 or 50 to 65 percent for the top 4. Type IV, 45 to 70 for the top 8 or 35 to 50 for the top 4. Unconcentrated industries would fall below type IV.

[2] Food and kindred products industries, excluding alcoholic beverages.

[3] Local and small regional market industries were classified by average concentration. However, 4-firm concentration ratios of some markets of local and small regional market industries would cause them to be classed as type I.

Source: "The Structure of Food Manufacturing," technical study No. 8, National Commission on Food Marketing.

TABLE 2.—MARKET SHARE OF 20 LEADING GROCERY CHAINS, SELECTED YEARS, 1954–70

[In percent]

| Chains | Share of total grocery store sales in— 1954 | 1958 | 1963 | 1967 | 1969 | 1970 |
|---|---|---|---|---|---|---|
| 1st to 4th largest | 20.9 | 21.7 | 20.0 | 20.0 | 20.5 | 20.1 |
| 5th to 8th largest | 4.5 | 5.8 | 6.6 | 7.2 | 8.0 | 8.1 |
| 1st to 8th largest | 25.4 | 27.5 | 26.6 | 27.2 | 28.5 | 28.2 |
| 9th to 20th largest | 4.5 | 6.6 | 7.4 | 9.8 | 11.5 | 11.8 |
| 1st to 20th largest | 29.9 | 34.1 | 34.0 | 37.0 | 40.0 | 40.0 |

Source: National Commission on Food Marketing, Organization and Competition in Food Retailing, June 1966; estimates for 1967, 1969, and 1970 were computed from sales of food chains, and total sales of grocery stores reported by Bureau of the Census, "Census of Business Retail Trade and Annual Retail Trade Reports."

TABLE 3.—PROFIT RATES OF FOOD MANUFACTURING FIRMS ASSOCIATED WITH VARIOUS LEVELS OF INDUSTRY CONCENTRATION AND ADVERTISING-TO-SALES RATIOS

| Advertising-to-sales ratio (percent) | 1.0 | 2.0 | 3.0 | 4.0 | 5.0 |
|---|---|---|---|---|---|
| | Associated net firm profit rates as a percent of stockholders equity [2] | | | | |
| 4-firm concentration:[1] | | | | | |
| 40 | 6.3 | 7.4 | 8.5 | 9.6 | 10.7 |
| 45 | 8.0 | 9.1 | 10.2 | 11.3 | 12.4 |
| 50 | 9.3 | 10.4 | 11.5 | 12.6 | 13.7 |
| 55 | 10.3 | 11.4 | 12.5 | 13.6 | 14.7 |
| 60 | 11.0 | 12.1 | 13.2 | 14.3 | 15.4 |
| 65 | 11.4 | 12.5 | 13.6 | 14.7 | 15.8 |
| 70 | 11.5 | 12.6 | 13.7 | 14.8 | 15.9 |

[1] The average concentration ratio (weighted by the company's value of shipments) of the product classes the company operated in 1950.

[2] Profit rates were calculated from the regression equation shown in appendiz table 4–2. Other variables influencing company profitability were held constant at their respective means. These variables were the firm's relative market share, growth in industry demand, firm diversification, and absolute firm size. Profit rates are averages for the years 1949–52. Advertising-to-sales ratio is for the year 1950.

Source: Federal Trade Commission, "Economic Report on the Influence of Market Structure on the Profit Performance of Food Manufacturing Firms, 1969.

TABLE 4.—AMOUNT OF MARKET SHARE OF TOP 4 FIRMS IN WASHINGTON, D.C., BY PERCENTAGE

| | 1965 market share | 1973 market share |
|---|---|---|
| Giant | 19.0 | 29.5 |
| Safeway | 30.0 | 28.7 |
| Grand Union | 9.3 | 7.1 |
| A&P | 9.0 | 6.5 |

Source: "Grocery Distribution Guide 1973" published by Metro Market Studies, Inc.

## Prepared Statement of Mark Silbergeld

Mr. Chairman, Consumers Union [1] appreciates your invitation to testify at these hearings on food prices and pricing policies in the retail supermarket industry. We wish that we were able to make a few constructive recommendations which would assist in getting at some of the problems underlying the enormous increase in food prices which consumers have faced in the last few years.

At the outset, however, Mr. Chairman, we must express a great concern that at this advanced stage in the inflation game this society is still seeking to collect basic data about how its economic system works through the wholly inadequate mechanism of Congressional hearings. By any reasonable measure, a country which is into a second year of double-digit food price inflation should be well aware of how food prices are determined, and of what profits are being made, and by whom, at each step in the food production and distribution chain. And it should be reaching social, political and economic solutions from that information base, instead of still groping for the basic information. Instead, we appear now before what seems the umpteenth Congressional hearing of the cause

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of "Consumer Reports" (magazine and TV) and other publications. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing "Consumer Reports," with its 2.2 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

of food price inflation [2] with little more definitive evidence than we had when it all began. And, to the best of our knowledge, no bills have yet been introduced to provide for making the needed information systematically available.

This record is somewhat appalling in the face of the eight year old (and still ignored) recommendation of the National Commission on Food Marketing that the Congress should charge its expert economic agency, the Federal Trade Commission, with a continuing study of structure and competition in the food industries and with making an annual report thereon to the Congress.[3] Had the Congress paid heed to this recommendation, we might well now be arguing about solutions, rather than the nature of the problem. We urgently recommend that the Congress act now upon this recommendation, and that you also authorize and appropriate sufficient sums to permit the necessary work to be done at a reasonably rapid pace.

The problem of defining and describing retail food pricing policies and practices is complex, and next to impossible to undertake on the basis of publicly available data. There is, for instance, some evidence that a retail chain's profit margins are directly related to its market share in specific metropolitan areas—that is, the greater its market share in a given city, the higher its profit margins there.[4] But no subsequent economic studies have been conducted (or, at any rate, been disclosed) to confirm or deny this phenomenon as general.

If the data relationship were confirmed as representative of industry conditions, the profit margins might be an effective indicator of the degree of price competition in various Standard Metropolitan Statistical Areas (SMSAs). This would be of great importance, because confirmation of a consistently positive statistical relationship between profit margins and market shares would then indicate that market concentration is a condition which should be dealt with promptly by the FTC and/or the Antitrust Division under the antitrust laws, so that a properly functioning retail market will serve as a brake on food prices.

Market concentration is indeed a matter of concern in many SMSAs. In 84 of 158 metropolitan areas analyzed by the Census Bureau for the FTC, the four largest grocery retailers controlled 50 percent or more of the market.[5] This is a level of concentration which many economists consider to be inconsistent with effective price competition.

But differences between economists as to the effect of concentration on price competition is not the only problem with utilizing publicly available data to identfy pricing practices in retail food industries. The backward integration of supermarket chains into food processing—which is quite common in baking and dairy products, and not uncommon among the larger chains in canning of fruits and vegetables—presents the opportunity to disguise the department by department retail profit margins from casually inquiring public or governmental eyes by adjusting the prices charged on intracorporate transfers. Fresh fruits and vegetable growing is also engaged in by some chains on the West coast. Some food chains' potential for hiding actual profits on individual categories of products is substantial. Safeway Stores, for example, is such a large processor of food at the manufacturing level that, quite aside from its retailing activities, it is among the 345 very large manufacturing corporations which the FTC has ordered to file special line of business reports. In the face of an order simply to disclose department-by-department retail margins, a supermarket chain in such a position could—for example (and we offer this only as a hypothetical example)—increase the intracorporate transfer price on the foods it processes, thus crediting a manufacturing division with higher profit and permitting some retail departments to show a lower nominal profit margin on goods it processes, all without changing the retail price of those goods one penny.

Further complications in utilizing such data as department-by-department margins include the lack of uniform accounting systems between chains. One firm's meat may be another firm's delicatessen or dairy. The lack of uniformity in

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[2] Hearings on food price inflation have been held by the Joint Economic Committee (twice, in April 1973, and the present hearings), the House Judiciary Committee (in June and July, 1973), the Senate Select Committee on Small Business (as part of its continuing hearings on the role of giant corporations, December 1973) and the House Agriculture Committee (in October 1974), among others.

[3] "Food From Farmer to Consumer," Report of the National Commission on Food Marketing, U.S. Government Printing Office (Washington, 1966), p. 107.

[4] Federal Trade Commission, "Economic Report on the Structure and Competitive Behavior of Food Retailing," U.S. Government Printing Office (Washington, 1966), pp 93–94, data taken from the record in Matter of National Tea Co., FTC Docket No. 7453.

[5] Id., Appendix Table 4, p. 293.

accounting and the opportunity for processor/retailers to shift the book profits from retailing to processing make it virtually impossible to analyze food retailing profits from publicly available data.

What we do know, however, is that some national chain retailers continue to make very handsome corporation-wide rates of return on stockholders' equity—a measure more meaningful in measuring end-of-the-year profitability than the profit margins which the food chains are so fond of quoting. For instance, in their most recently completed fiscal years, Winn-Dixie Stores made a 19.1% rate of return on equity (compared with a 2% margin), Safeway a 13.1% rate of return (compared with a 1.3% margin), and Jewel Companies a 13.8% rate of return (compared with a 1.6% margin).

Furthermore, while the President of Jewel Stores was telling a U.S. Department of Agriculture conference in November that supermarket chains have difficulty raising capital, many of the larger chains seem able to raise the capital from somewhere to install electronic front-ends which may cost as much as $120,000 per lane. The availability of this kind of capital—whether from profits or from institutional borrowings—does not seem consistent with either present or anticipated future low profitability. While we would not assume to undertake an analysis of pricing strategy or department-by-department profitability, the rates of return experienced last year by *some* of the largest chains does not seem consistent with some of the cries of "wolf" which have been heard from the industry. Only systematic economic analyses can determine whether—and to what extent—competition is keeping these profit levels at a reasonable level, and we believe that the information already known indicates that these studies are needed.

In conclusion, Mr. Chairman and members of the Committee, we would suggest that Congress ought to have done a better job—and should now begin to do it—of keeping itself and the people systematically informed about pricing and profits in food industries, so that we would not suffer from what now seems to be a paralyzing lack of adequate information. Thank you again for your kind invitation to testify.

Mr. STOCKTON. Could I make one point here? Ann Brown has just gone through a rather amazing chronology here. Now, are you confident that the FTC would have the capability to provide the Congress with the kind of information you are talking about?

She went through the scenario of the subpena process down here and the subpenas were issued in 1969 for some very basic data, the kind of data you are talking about, and that is divisional profit information. OK. There are letters in their files as late as September and October 1972 where Safeway is still arguing over the definitions in those subpenas. Now, they went to the fact memorandum and they actually attempted to issue a complaint without ever getting that information and to the best of our knowledge they never went to the Justice Department to actually to try to enforce these subpenas.

At the same time this information has been requested by congressional committees. It has been requested by individual Congressmen time and time again and we have never been able to get that information from the FTC until this committee got it and it just seems, you know—I hate to be put in a position of defending the committee here, but I think that we are attempting to raise questions in this committee that apparently have not been raised by other committees before.

Mr. SILBERGELD. I have no doubt that this hearing is a very important hearing and that——

DIVISIONAL PROFIT DATA OF MAJOR FOOD CHAINS

Mr. STOCKTON. No. I did not mean to get into that kind of a situation. I just want your observations.

I understand you are a former FTC attorney.

Mr. SILBERGELD. There has been a change in the law since that investigation. The Commission had a serious problem in that they had to get clearance from the Justice Department. In fact, they had to be represented by the Justice Department when they went to court to enforce their own subpenas and that is the situation in which they found themselves throughout the Safeway investigation.

Last year in the Alaska Pipeline Act the Commission was given the authority to represent itself in court after a very brief period in which the Attorney General has notice that the Commission is going to court. There were some attempts to change that in the consumer warranty and FTC improvements bill, in the legislative battle that went on this past month, but the Commission's ability to represent itself and to go into court on its own determination has been preserved and I observe therefore at least one circumstantial change which indicates that there will be a different kind of performance.

Now, the second thing that needs to be changed——

Mr. STOCKTON. You went to the question of ability. They now have the ability, but do they have the intent?

Mr. SILBERGELD. That intent, I must say, is very greatly influenced by the kind of expectations that the Commission perceives when they take their readings up here on the Hill. If they have a statuory mandate specifically to collect certain kinds of information, provide economic analysis, then, of course, they are under a different incentive system than if they are left down there with their own agenda to write, with the investigations opened or closed on their own determination, rather than under a deadline to complete an annual report and under a mandate that those series of reports collect and study the food industry, or any other industry, on a systematic basis. So I think with those two changes we would have a situation in which the information would be collected and would be carefully and accurately analyzed and accurately reported to the Congress.

I would suggest that that statute needs to be worded in such a way that we do get around the problem, which Mrs. Brown pointed out, of depending upon whether you get a Chicago school economist or concentration school economist drafting up any particular portion of the report. That is, the Commission cannot be asked simply to issue to the Congress an annual report, the kind that an agency sends up, summarizing their activities in two paragraphs per operating bureau.

They are going to have to be told in effect to submit an economic study to the Congress each year on the particular area that they are able to complete that year, that they are under a mandate to complete that year, so that you will know what the underlying data is.

I am not suggesting that Congress is ever going to pass something that says, "Put the company data out so we can look at the raw figures." But certainly the data at least in some kind of summary form which underlies the conclusions is going to have to be put out in the open so that we can all see whether the Commission's staff has applied some particular economic ideology in reaching or not reaching particular conclusions.

But nevertheless——

SHOULD DIVISIONAL PROFITS BE DIVULGED

Mr. STOCKTON. Do you believe there is a rationale for the companies not to divulge their divisional profit information? I mean, there are many arguments on this, that they will claim it is giving away top secret information.

Mr. SILBERGELD. Well, top secret, of course, is their characterization of it, but it is top secret because they keep it top secret. The better question is what effect disclosure would have. I think we would have to go down the list of individual categories of data to determine what the effect would be. One of the problems is that in all of this tremendous activity of the Federal Government, in collecting data, nobody has ever taken a look at what the competitive effects of disclosing or not disclosing particular items would be.

For instance, I can see some problems with disclosing, at the conclusion of any reporting year, the specific R. & D., research and development data, because in some industries if you disclose that promptly and show what probably is an on-going level of activity, this becomes a ceiling rather than a floor on R. & D. expenditures. It could be that for that kind of data economists would recommend there be a 3 or 4 year reporting law.

On the other hand, product-by-product profits—which the FTC now expects to collect and disclose on a line of business basis, on an aggregated basis rather than company basis, apparently will be disclosed not in the first but in the second round of line of business reports—I do not think there is any excuse for keeping that secret. Arguments could be made that smaller companies, if their profits were known, would be exposed to additional destructive competition but I don't believe their profits aren't known, at least to the degree of a pretty good thumbnail sketch, when Giant and Safeway and Lucky Stores and Winn-Dixie in their respective markets go looking for new stores to open.

There is no way that those big companies do not have a pretty good idea of whether the local IGA people or the local "mom and pop" or the local chain that operates only in city X or city Y is making a pretty good profit. And so I see no justification for keeping that secret.

It is one of those self-defining things when they say that it cannot be made public or made known to the Government because it is top secret. It is top secret because they turn the key.

Mr. STOCKTON. Isn't it true that independents in an area generally have to divulge how profitable they are in this market, in this——

LINE OF BUSINESS REPORTING WOULD HELP

Mr. SILBERGELD. If they are subject to SEC reporting and they are publicly held firms, that is true, and that is one of the reasons for the line of business report.

Independents who are in one or a very few categories of activity have to file annual reports with the SEC, if they are publicly held; therefore in their Form 10K they disclose their profits on an individual profit or variety of lines of products. Whereas General Motors, I am told, reports its profits on a very wide category basis in its 10K's in which you can find in one category as many as 15 or 16 different four digit SIC-defined products. I have looked at the Cost of Living Council's summary of the quarterly reports they received, and General Motors apparently only reported in 8 or 9 four-digit SIC categories to the Cost of Living Council. I am told that they are either the first or second largest seller in something like 25 or 35 different four-digit product lines.

Now, if they are competing with a smaller company that only makes laundry equipment or refrigerators or any other of the products that they are prominently engaged in, that smaller company when it files its 10K, gives a lot more information away than General Motors does at present. So I simply cannot concur with the people who undoubtedly will be saying later in these hearings, who come in and represent firms, that any harm will be done.

It is very interesting when they come in and make that claim that they always say it will destroy competition. No, it will destroy the competitive advantage they have over people who do not know how profitable it is to be in that line of business.

Destroying somebody's competitive advantage is not necessarily destructive of competition if that advantage is based upon a secrecy of information. In fact, it might be something that enhances competition.

Mr. STOCKTON. Isn't that what concentration is all about, when profits reach a certain level you do get new entrants and we found in the data we received some of the changes are enormously profitable in certain markets in that there tends to be a correlation between their market position and their profits. Generally that is——

Mr. SILBERGELD. Congressman Rosenthal mentioned the Cornell Study. I took one look at that and decided I could not evaluate it because some of the underlying data was not in the least what I would call detailed. We go all the way back to the FTC 1966 report and find a very fascinating piece of data that they drew out of the National Tea Case, which was a litigated case, and analyzed. That is that there was a direct correlation between their market shares in any given market (and I think that was defined as a standard metropolitan statistical area) and their margins in that region. The FTC has never, partly because it has never been instructed to, followed up on that study to see if that is a general phenomenon.

### FTC ANALYSIS OK—DATA IS POOR

Mr. STOCKTON. Except that was part of their theory, actually, the D.C. case. It was testified to and they were never able to get that information.

Mr. SILBERGELD. It is my understanding the Commission got some very bad data which misinformed them. Not the analysis of the data, but the data itself, indicated that concentration was going down when in fact it was going up.

I think the Commissioners believe to this day that concentration is going down in the District of Columbia market. But if the Commission were to, and should be instructed to, determine whether that is a general phenomenon then we would know promptly that some legislative or administrative antitrust action must be taken which gets at this problem of concentration.

On the other hand, for those people who won't act because they say they do not believe that it is anything more than a theory, we would assume that, too.

Part of the problem is that when people come in and make divergent arguments on the basis of the same evidence there is nobody charged with going out and determining in fact which of those arguments can be sustained and which cannot, and so we have Members of Congress and members of Administrative agencies saying, well, that is the theory but nobody has ever proved it.

Well, hell, Congress has an expert agency, not six blocks down the street, that has the capabilities and the kind of expert staff in its Bureau of Economics which is capable of determining whether that theory is provable or not, and why sit around and have arguments in the Congress and on the FTC agenda table as to whether it is theory or fact, when we have a very good way of finding out in a relatively short period of time.

Now, I want to say just one more thing about doing an analysis on the basis of what we can bring you, which is mostly—although Ann has broken some barriers today—publicly available data; and that is that we cannot do it. The FTC itself released a study two or three years ago that shows that the industrial analyses on the basis of publicly available data simply are not reliable, that the data are not very good, and I would like to give you a perfect example which I discovered just a couple of weeks ago when the FTC gave me access to motions to quash which were filed by a number of business firms.

Safeway stores is so heavily into manufacturing that it is one of the 345 corporations which the FTC—excuse me, 345 manufacturing corporations—which the FTC has included in its line of business study. Now, that is the extremely——

Mr. STOCKTON. Do you know how they rank in that?

Mr. SILBERGELD. No: I do not, and they do not rank. I suppose I could simply pick up the Fortune 500 and the Fortune Retail 50 and see where they stood in terms of dollars but the interesting thing is that all the other corporations as far as I know of, which is 255 out of 345, are all primarily engaged in manufacturing.

For Safeway, they had to go not only out of the top 345, if you listed them by dollar sales, but they had to go completely out of manufacturing and pick a firm which is not primarily a manufacturer as far as I know, but is nevertheless so big a manufacturer that it needs to be pulled in, in order for the Commission to do an accurate study of food manufacturing.

Now, Safeway stores in that kind of a position. If we simply pick up their retail department by department food margins—either because they are made systematically available sometime in the future or because under pressure Mr. Mitchell comes in and decides to disclose them to avoid other political problems—we still do not have very much. Safeway can change its intercorporate pricing, then shrink its store margins and report what appears to be very small margins. So those figures do not mean very much.

Even if you do get those, there are a whole host of things. We know some of them are engaged in canning. I am sure that A. & P. is engaged in canning many of its own products. Many retail chains are engaged in baking. Some of them are engaged in dairies—a whole host of opportunities for the accountant to make those figures extremely deceptive, even when we get them.

That is why I am saying we really need an on-going and systematic and really never-ending economic study which picks up the subjects, retailing, manufacturing, particularly lines of food, one at a time and then when it is satisfied that it has done most of those, goes back and starts over again to see what changes have occurred in the last 10 or 12 years and why.

Although these hearings are necessary and cause many of the witnesses to produce some fascinating information, necessarily fascinating to people concerned with the subject, they are not enough to really provide the Congress or other people with systematic data. We strongly urge this committee, although I know it is not a legislative committee, urge its members to take some quick steps toward seeing that this information becomes available by picking up the recommendations from the 1966 National Commission on Food Marketing, and charging the FTC with that reporting responsibility.

Mr. STOCKTON. Just going to those last few points, as you are probably aware, we did subpena a great deal of information from the 17 largest chains and we did ask for information on manufacturing.

As you point out, Safeway is one of the largest manufacturers in the country. It turns out that they claim, many chains claim that they have no idea whether they are making or losing money on manufacturing. They could not give us any information except on—actually on production and we did not—most of the information we have been able to put together on that is 1967 FTC information.

UNREASONABLE THAT SAFEWAY IS NOT AWARE OF ITS MANUFACTURING PROFITS

Mr. SILBERGELD. Oh, I wish I were a stockholder. As a lawyer and a stockholder I would have a very nice suit.

Mr. STOCKTON. We have some very interesting examples that may come out tomorrow about this problem. It seems almost incredible to the Senator I know that they can produce in 1967 or 1968 over 40 items and they are certainly producing a good deal more now and they claim they do not know what they are making. You were pointing out that the FTC, that this really has to be done on a systematic basis. From our experience it is going to have to be one whale of a system because of the problems you point out here, within a vertically integrated structure.

If you have the IRS and the FTC mesmerized with margins of the store, any astute businessman can make those margins look practically any way he wants and it is an extremely difficult thing to put together and I think your point is well taken.

Mr. SILBERGELD. And expensive. But I can only suggest that, while it would take a substantial appropriation to do it, that the returns on that would be—on a cost-benefit basis—very high. And I would report that on the basis of return on stockholders' equity and not on the basis of margins.

Mr. STOCKTON. Yes.

Mr. SILBERGELD. It is always fascinating to me that those business executives will come in and argue that size is necessary for efficiency and at the same time tell you that they are so inefficient that they do not even know if they are making a profit or loss on their canning operations.

If that is the kind of efficiency that size and vertical intergation produces, they make a pretty poor argument for it and maybe we ought to take some steps that way.

Mr. STOCKTON. Just one more question on this and then I have some questions for Mrs. Brown.

We found that in the chains, it is—a number of remarkable things, but in certain markets, and we went to this earlier, that they are enormously profitable and others generally subsidizing other markets within their operation that are not as profitable, we find that in some markets, very large markets, some of the very large chains will have lost money in every quarter since 1970 and they continue to remain in these markets.

POOR DIVISIONS SUBSIDIZE PROFITABLE ONES IN FOOD CHAIN OPERATIONS

Now, it is not clear, you know, what this means in terms of competition. Are they viable competitors in those markets where they are losing money continuously? What are your observations on that?

Mr. SILBERGELD. It probably means they are subsidizing a lot of markets in which they actually have to compete on the basis of price. That is the only explanation I can see. Either that or maybe we need to have some tax experts go over it and there may well be some tax advantages to operating at a loss and maybe that is a real loss, corporatewide loss, not just a regional division loss, and it is for tax purposes.

But my real suspicion is that they are subsidizing the stores in a competitive market.

Mr. STOCKTON. Mrs. Brown, have you gotten any reaction from Mr. Engman at all about your recent findings? Have you talked with him to see whether he misled you deliberately on some of the information he gave you or he was just misinformed?

Mrs. BROWN. I haven't personally heard. Our committee hasn't received anything except Mr. Engman's public announcements on having a six-city investigation and in fact some consumer leaders were at a meeting with the FTC Commissioners in July, I think it was, and I particularly asked for some information if the six-city investigation was going on and received none at all and Mr. Engman said while an investigation was going on there could be no information divulged at all. So really the only answer that I would say would be an impersonal one, that there is some kind of investigating going on but I have no details any further about the last one.

CHAINS NOT COOPERATING WITH THE FTC

Mr. STOCKTON. They have made certain information public, have they not, on the six-city investigation?

I think Mr. Halverson has said they are having trouble with the chains in cooperation, are they not?

Mrs. BROWN. Right, but I have trouble telling what is sort of—what has been hearsay and what has been publicly divulged. There hasn't really been, from what I know, there hasn't been any real kind of public disclosure. Some of it has sort of leaked out, press reports, that sort of thing, so it is a little hard to define.

Mr. STOCKTON. Is it your understanding that the FTC was going on the theory that the District of Columbia market because of their concentration, was highly profitable?

Isn't it true that we had a—that was the stumbling block essentially in the investigation, that they never were able to get compliance with the subpena on that point?

Mrs. BROWN. There was information, I think, that they did go on the assumption that it was a profitable market and particularly the top two chains fought so hard against revealing just how profitable it was that immediately that would be one surmise and I think—now, there was Safeway profit data available in the 1966 study which said this area of Safeway. I cannot remember the exact percentage, only 3 percent of Safeway Stores but it did 7.7 percent of all total Safeway business. This would be a very profitable area.

I don't know what the latest profit figures on Safeway would be. You see, in Giant we can sort of see because when they give out a profit statement, you know it is this area, but when Safeway gives out a large profit statement I do not know how it is broken down.

Mr. SILBERGELD. And you won't know for Giant for very long, because they are going into what is in effect department store operations, so the food data from that corporation will soon be lost also.

Mr. STOCKTON. Mr. Silbergeld, from your experience with financial statements, FTC, and other things, would you think that the chains would have the ability to raise or lower their divisional profits arbitrarily?

### ABILITY OF FOOD CHAINS TO SHIFT DIVISIONAL PROFITS

Mr. SILBERGELD. You are talking about the same kind of intercorporate transfers and intermarket, intramarket—I'm sorry—intermarket subsidiaries and interdepartmental subsidies.

Mr. STOCKTON. Yes.

Mr. SILBERGELD. Sure. There is that same kind of opportunity, especially I would think in an operation like Giant. If you have people in the same store and the attraction is convenience, to buy foods and children's house slippers or food and bedding, and you know on the basis of operating surveys that *x* percent of the people will, regardless of how high the prices are within a certain range, will buy there because of the convenience and the one-stop shopping factor, then you can start operating various kinds of subsidies. And, as a matter of fact, you can shift these quickly in order to get advertising leaders.

Somebody mentioned previously—I think Mrs. Brown mentioned that analysis was done on the basis of newspaper advertising to determine that in fact the stores were competitive. Of course, they are advertising sale leaders. That is one of the reasons why we need accurate, not just raw, but accurate department-by-department margins which are adjusted for such things as intracorporate transfer process.

Mrs. BROWN. Also a year back I had heard, and I think this has been well documented, that Giant had sustained some losses and although these apparently were food figures, there were some losses that had to do with the food stores subsidizing the Giant Food department stores which had been starting up.

Mr. STOCKTON. Recently, I think it was at the Outlook Conference, Mr. Perkins of Jewel Tea pointed out that in this department problem, what are their profits, say, on meats, on groceries, and on produce? Most of the chains have been claiming for years that they could not tell whether they were making a profit or not. Mr. Perkins came in and rather strongly stated that clearly the chains know whether they are making profits or losses on meats and other items and he actually gave out his profit margins to prove that he was actually losing money.

Mr. SILBERGELD. And he also sharply suggested that not only his competitors and other food firms with which he is not competitive but he sort of at least strongly hinted that the National Association of Food Chains itself was engaged in strong efforts to resist that kind of a move toward disclosure. I take it that there is not agreement within the industry and that in fact while some firms are making that move to make those disclosures—and I do not know what accounting variations his figures are subject to, because I do not know what other activities he looked into besides food retailing—it also appears that the trade association is not in favor of that type of thing.

I do not know what kind of influence it exerts over its members, and at the behest of which members, but it seems to me that even though the data are subject to the kind of manipulation that I have been suggesting, that they are going to continue to resist disclosing.

Mrs. BROWN. I just want to say it boggles the mind to have the major chains say they do not know how much they make in manufacturing for a certain industry or don't know some of this data. I am just repeating, but the efficiency quotients one would say would be very, very low and I would say it just cannot be the fact.

Senator PROXMIRE [presiding]. Now, if Mr. Stockton will yield, I want to apologize for having to leave earlier and not having had a chance to question Mr. Cruikshank and a chance to hear your statements but I had no choice. I had to go to the floor. I had to handle a bill and there was nothing else I could do. But I think it has probably served you well. I think there were other Senators here. I saw Senator Sparkman on the way over. It served you well to have the staff ask the questions. They are often far better informed.

Let me ask you a few questions and if you have already been asked these questions, stop me.

The principal argument used by the big chains, public relations argument, they scored very heavily with it, is that their margins are picayune. Even if you wiped out their entire profit you would only save a couple of dollars per consumer per year and you lose the profit motive, which is what drives the whole system and keeps costs down. There seem to be just a couple of arguments on this and tomorrow we are going to have Safeway and the next day two other big chains so we would like to be armed as heavily as possible.

One is that we do not know what their margins really are because we don't have full disclosure. Two is they are able to manipulate their margins rather readily because, of course, they have all kinds of processes and they can move their costs forward or backward and there is no control over their accounting system.

My question is what kind of legislation can we develop that would give us the kind of disclosure we need and enable us to see whether or not their profits are justifiable or not.

Mr. SILBERGELD. I would like to answer that first, Senator, and before I tell you what kind of legislation, I would like to go specifically to that company plan that you described. It is a matter of margin times volume. Those figures do not reflect volume. When they tell you they make a penny or two or three pennies on the dollar they do not tell you how many dollars.

RATE OF RETURN ON STOCKHOLDER EQUITY, BEST PERFORMANCE INDICATOR

Senator PROXMIRE. I understand that. I understand they make a tremendous return on their equity capital, make up to more than 20 percent which is far better than other areas but nevertheless as far as the consumer is concerned, the critical point is how much of his food dollar is going in unjustified price increases which simply increase profits and aren't necessary in order to meet costs.

Mr. SILBERGELD. That is right, and the—that is why the rate of return on stockholders equity is a much more accurate figure for determining how profitable they are and how profits have behaved over a period of time than the retail margins which they are so fond of quoting.

As you point out, and I held a very substantial discussion with Mr. Stockton just before you returned, on the kinds of accounting variabilities that are available to hide or disguise or at the very kindest make those margins noncomparable between stores, I would recommend, and I do in the prepared statement, that the Congress adopt in enacting legislation the recommendation of the 1966 National Commission that the FTC be charged with doing an on-going study of the structure and economic performance in the food industries—I make that plural—and that in the course of their ongoing study they make an annual report to the Congress.

The report could very—the legislation could very well identify the particular areas and tell the——

Senator PROXMIRE. And the main thrust of the study as I understand it would be to identify what the margins are and to make whatever recommendations they could as to whether or not they are justifiable and if not, what we can do about it.

Mr. SILBERGELD. That would be one. An economic report of the FTC, as you well know, describes all of an industry's peculiar means and methods of competition which may not be something that you find in any other industry. You may find a lot of those things that you want to know along with such general parameters as profit margins and rates of return, but I would think that certainly within that kind of a report, you would get what is in effect a "line of business" type report for food retailing.

FTC's form LB program is only for manufacturing but there is no reason why it cannot be done for food retailing. If you look at the specific instructions that went out with form LB, you will see the Commission requires a description of the kinds of accounting methods to be used in preparing the reporting data. So the Commission itself, by changing the method by which this data is analyzed, is able to make it comparable between firms.

If they are using different accounting methods, they are able to get down to the original parts of the process, the methods by which the books, the rawest books in the bookkeeping department are set up and categorized, so when we get the data, several books and several reports later, we know what has to be done if you want to really compare chain A with chain B or market A and market B or any kind of statistical comparison you want to make.

Senator PROXMIRE. On the basis of what we have, is there evidence that the food industry does have unjustifiable margins altogether? I know there are some firms that are very profitable. That may be because they are very efficient. That is the reward of being efficient. If one firm gets a 20-percent return on their equity that might be justifiable. If you have other firms that get 15, 10, maybe less, it indicates that the most efficient firm is reaping the benefits of being able to operate efficiently and that is in the consumer's interests.

Do we have any study that would indicate that this industry is like the drug industry, for example, in which we have good documentation, that it has been far more profitable than others, and I think, and many others think, because of a pricing system which is unjustifiable? Do we have that in the food industry?

Mr. SILBERGELD. I don't know of any because especially in this industry, where we don't have to deal with other problems like patent policies which are barriers to competition, the best indicator of what is justified is whether it is set in the competitive marketplace and the information we have tells me that in many metropolitan areas we do not have a competitive marketplace. That is based on the concentration ratios. I believe they are extremely significant.

A lot of people, including Mr. Adamy don't believe they are relevant. My testimony contains some indications as to the kinds of information previously developed—a long time ago—by the FTC that shows they are relevant. That is, the National Tea data, which shows that as its market shares went up in a particular market, Nationl Tea's profits went up, but my point is really that I cannot tell you whether anybody's profits are unjustified until I can tell you whether or not they are limited by competition.

Senator PROXMIRE. I have some evidence in some areas of consumer benefits from competition in this industry. Milwaukee is an example. The Milwaukee Journal had an article, about 6 weeks ago or so, saying that the price of food in Milwaukee is much less than it is in most other similar metropolitan markets because apparently Jewel Tea is fighting to get into the market and they moved in with a program of keeping their prices down and keeping them down rather sharply. The other big food chains are fighting to maintain their share of the market.

This is great for the consumer and it seems to work to his benefit.

I have been in many of those Milwaukee stores, or all those chains, and I am very impressed by the quality of the food and by the cleanliness and by many other factors in addition to price. So it seems at least in that particular area you have the benefits of competition.

Now, is it your position that this benefit on the basis of past experience is likely to be transitory only until Jewel Tea makes their share of the market or doesn't and then after that, they are likely to increase prices to get back to the profitability they enjoyed before?

Mr. SILBERGELD. It probably depends upon how that market concentration—if you accept the concentration theory which I think is highly relevant—probably depends on how that concentration settles out after Jewel Tea is established.

If Jewel becomes one of the four firms that have 50 percent of the market I would say you are not likely to—you are likely to see prices go back up. If the net result is five or six firms, each with 15, 18 percent of the market, then I think you probably will continue to see price competition.

I also wonder how many of those firms are subsidizing low food costs in Milwaukee with high food costs somewhere else where they all are, or different places.

Senator PROXMIRE. Let's hope the high food costs are outside of Wisconsin.

Mrs. BROWN. Senator, if you would like to see the reverse of the situation in Milwaukee, I suggest you take a trip to the supermarket right here in the District.

Senator PROXMIRE. That is right. I was being facetious and, of course, it is cruel to have high prices elsewhere because they are fighting to get into another market.

Well, this is most helpful testimony but I wonder finally if you have any other documentation. Congressman Rosenthal this morning told us the same thing that you are telling us, that whenever you have a big concentration in the market, like the District of Columbia where you have two chains that have 60 percent of the market, you have wider margins. He said there was a Cornell study and we would like to get that. We would like to get whatever documentation we can get.

Do you have any other documentation, any studies that would disclose correlation between concentration and higher margins or higher prices?

Mr. SILBERGELD. No.

I did look at the Cornell study at least in the publicly available form. I cannot evaluate it because most of the underlying data simply is not there. So I don't know how they arrived at that.

Senator PROXMIRE. Have you made any studies, either Mrs. Brown or Mr. Silbergeld, of the—or know of any—of the proportion of income the consumer is paying now for food compared to what he did in the past? There has always been the argument that the American consumer does very well, that the proportion they pay for food is less than it has been in the past and less than in any other country.

I realize in certain income areas this can be still tremendously unfair and unjust. But compared to the proportion that the British consumer or the Russian consumer, historically, compared to the consumer 10 or 20 or 30 years ago, it is greatly improved. Is this argument true or false?

Mrs. BROWN. Well, the latest statistics from the Bureau of Labor Statistics, the 1973 statistics from the Bureau of Labor Statistics show that the lower level budget family spent 34 percent of its disposable income on food in 1972 but had to spend 37 percent in—on food in 1973 and for intermediate levels——

Senator PROXMIRE. Let me get that. You say the lower level. What income is that?

Mrs. BROWN. I don't know exactly what income it is. This is information I got from the consumer——

Senator PROXMIRE. Do they do it on the basis of the lower fourth quartile, something like that?

Mrs. BROWN. I am really not certain, but I can get the information for you more complete than I have it in my testimony. And intermediate level families, food spending rose from 30 percent of the budget to 33 percent and for high level families the jump was from 27 to 30 percent of the consumption budget.

I always think it is unfair——

Senator PROXMIRE. Where are those figures from?

Mrs. BROWN. From the U.S. Department of Labor, Bureau of Labor Statistics, and it is about an urban——

Senator PROXMIRE. They differ so sharply with everything I have heard and seen. The figures I have seen is the the average American consumer, average including low and high income, the average pays around 17 percent of its income for food.

Mr. SILBERGELD. That is USDA.

Mrs. BROWN. That is really folly. These are considered very respected figures and much more accurate than the 16, 17 percent ones we——

Senator PROXMIRE. You haven't seen any reconciliation of those two?

That is an appalling difference between two Government agencies. Do your figures come from the Bureau of Labor Statistics?

Mrs. BROWN. Yes.

Senator PROXMIRE. What studies? Is it further identified at all?

Mrs. BROWN. I have the study back at my seat and I can get the information from the study to submit for the record.[1]

Senator PROXMIRE. Fine. We would very much like to get that. That is a great difference. You indicate that even the well to do are paying almost a third of their income for food.

Mrs. BROWN. Right.

Senator PROXMIRE. And it is close to two-fifths for the low-income person.

Mrs. BROWN. I had heard figures before that were as high as 40 percent for the low-income family. That isn't quite—it is 37 percent and I will have to track down those figures. They were higher for the lower income family. I think that was from an FTC report.

Senator PROXMIRE. Thank you very much.

Mr. STOCKTON. I just have one question here. Senator Proxmire was asking about monopoly over charges or monopoly profits. Would it be your theory that to get to the point you would have to know what divisional profits actually are within certain divisions to see whether those profits were gained from a competitive position or non-competitive position in that market?

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[1] The information referred to may be found in the committee files.

There seems to be an indication in some of the information that we have that increased profits, profits within divisions, are not necessarily due to efficiency but because those chains once they reach a dominant position could actually raise prices. Usually you find the dominant chains in most markets with the higher prices in that market. I just wonder what your observations are on that. I am not sure how you get to that point unless you go market by market.

Mr. SILBERGELD. No; that is right. You go market by market. You cannot compare on a nationwide basis.

There are a lot of things that affect it. You may have higher costs which are not discretionary costs in some markets. For instance, real estate or the general wage level which has some effect upon the supermarket labor costs, may vary very substantially from city to city and you have to see how that gibes with corporatewide pricing policies to determine whether particular rates of return or particular profits are comparable from one area to—one market to the next. But I certainly think that you practically have to do the kind of a breakdown on an SMSA basis and at that I am not even sure that—it may be the best we can afford to do, but I am not even sure that is going to be accurate.

Certainly somebody from the Bronx is not going to come down to Manhattan on public transportation to shop for the week's groceries. So it could be that, in addition to the SMSA basis, we ought to take a few pilot cities of controllable size where we know there are transportation and other barriers to determine even whether the SMSA is going to do us any good and if not, whether we ought to forget it or do the report right.

Mr. STOCKTON. Is that generally the finding of the FTC study?

Mrs. BROWN. That is why I wonder about a six-city study. That seems to me—isolating six cities— that seems to me really to do an in-depth thing is a very small amount.

Mr. STOCKTON. The important thing that Mr. Halverson who is running that study, pointed out the other day in a speech, if they are successful in showing a correlation in those six cities, then they will generalize it to more cities and it was my information that the FTC in the District of Columbia study was going to use the District of Columbia as a prototype and then look into other markets from there, but it is not clear what the motivation is on the part of the FTC now. What is your understanding?

Mrs. BROWN. I think that Mark Silbergeld really make a good point about so many hearings and what can be done if anything can be done legislatively. I think that is terrifically important just to bring these things out and to bring them out and bring them out is almost—it is a hopeless—it would be a hopeless thing to do unless you were able to then translate them into some kind of legislation.

Mr. SILBERGELD. I think the target date is important, let alone the motivation. We never get a target date. I would like to know the target date. This is really just a statistical study. Or if they are expecting to go to court, I would like to know if they have a target date, if there is an unpredictable amount of delay due to subpena resistance or whatever but we are never in the position of knowing when we can expect the information and how long we should wait for it.

Mrs. BROWN. And the word was they had not even put out subpenas. They were just having recalcitrance in getting any information at all and they haven't issued any subpenas at all.

Mr. STOCKTON. Mrs. Brown, from your experience in the District of Columbia, do you think the major chains have pricing zones and do you know what those zones are based on?

Mrs. BROWN. Well, no. I do not really know. I am forever mystified by that—there will be a time when prices do look like they will come under one grade level and then FTC Commissioner Mayo Thompson—then we got hold of a memo that said that Giant zones were different, that they priced to meet competition. That was a memo that Thompson said he had some information in the memo he wrote. So just when we are sure that the prices are equal throughout the city then we come to some other tinge of doubt that maybe they are pricing to meet competition.

Certainly our drugstores do that in the city. When there is just a People's Drug, which there often is in the inner city, they do not price to meet competition. They do out in the suburbs. It would be a very natural thing unless there is constant vigilance about this.

Mr. STOCKTON. Is it your understanding that the chains base on cost, they price on cost, or is an overriding issue the competition in the area?

Mrs. BROWN. Well, that is the thing. That is the crux of the situation. Is there such a concentration they can price the whole level higher than cost justification?

That is No. 1. That means the whole area. Or can they just price on competition, not on cost justification. At one point in 1970 we had found that prices were different in a small survey done in the inner cities than the suburbs. Later surveys—and these are very hard to do because they are small surveys—later surveys found that they were not pricing—they were pricing either on cost justification or higher than cost justification because of the high concentration level.

Mr. STOCKTON. You are familiar with price checks, aren't you, that chains do? We have one example——

Senator PROXMIRE. Would you just yield for a minute? I am going to have to leave. I am going to ask Mr. Stockton to wind up the hearing and Mr. Walker, if you have any questions, too. I want to thank you so much for your testimony. It has been very, very valuable and perfectly timed because of our hearings tomorrow, and, of course, because of the tremendous inflationary problem we have.

So I am going to have to leave.

Mr. STOCKTON. Just to continue that, we have one example of a chain who did I think it was 1 week's price checks and it came out at 164 pages of computer printout so it is pretty clear they know what each other is doing. I think you raised the question about the turkey prices here in the District and on identical pricing and there are some rather amazing examples of identical pricing.

Mrs. BROWN. We had one check up in the Paterson-Newark, N.J. area where one of the chains price checked the other chains and found that between 91 and 93 percent of the time their prices were identical on something like 4,000 items. I just wonder what consumer's observation is.

What is amazing about that, if they really want to price check items out, you would think it would be a penny, two pennies difference. They can't be all paying the same price for that turkey and therefore are going to charge the exact same price. You wonder how they hit it on the noggin.

Mr. SILBERGELD. I was not surprised that they can hit it on the noggin because unlike industrial sellers who sell by contracts which are not out on the shelf, the prices are right out there in the open, but what is interesting and what is indicative that there may not be competition is the fact that when they find out each other's prices which are just hanging out there for everybody to see, the form of competition is to go back and price theirs the same.

It brings to mind the time George Humphrey, once President of United States Steel, appeared before Senator Kefauver's hearing on administered prices and said, "You bet if my competitors raise their prices, my salesmen are going to—I am going to raise my price. My salesmen are as good as they are." That was his definition of competition. I would think as Mrs. Brown says, if you find 34 cents a pound, you are going to go back and drop to 32 and advertise.

Mrs. BROWN. The other thing that is a little off the subject, but that came from your hearings last Friday is there was a gentleman here from New York who was talking about some graft with supermarket personnel and meat people and giving our District of Columbia supermarket people the benefit of any doubt and saying they are honest as the day is long and without any graft involved, we still have higher meat prices here than in the rest of the country and here we say we have very honorable supermarket personnel.

In New York they could have graft and still have lower meat prices than we have in Washington without the graft.

Mr. STOCKTON. I won't comment on that.

Mr. Walker, do you have any questions?

Mr. WALKER. Well, one question I might ask, have you ever tried to read the ads in the newspaper and sit at home and decide where you ought to buy your groceries that week to get the lowest prices, lowest priced grocery bill?

Mrs. BROWN. I have tried to do that myself and have ended up with total idiocy. I decided I want to see if the consumers in the District were a lot smarter than I was about shopping. So we did a survey—it was done by some Georgetown University students—trying to survey, trying to understand—we tried asking people what they understood about the supermarkets' ads and I don't have the survey at the moment, but it was quite clear that 50 percent of the people in the sort of out of city stores and a higher percentage than half in the inner-city stores didn't understand what the ads were saying, what a discount price was, didn't understand that everything in the ads wasn't on sale. Many people think anything in the ads is on sale. All it is merely saying is that Del Monte applesauce is the same price as it was last week. This was why in 1972, and I don't think that has changed since then, trying to figure out what is cheaper by way of advertising is next to impossible.

Mr. WALKER. Have you noticed that it is very infrequently that you will see the meat price specials on the same cuts of meat products during the same week?

Does this raise any questions in your mind?

In other words, a chuck steak sale in one chain will be matched with a pork loin sale in another chain and you never see the same item on a head-to-head price special?

Mrs. Brown. Right. Supermarket News, obviously my bible, has a little squib each week when they have different prices in different cities and different stores and different items. I also note, I think, "Aha, this is the way I'm really going to be able to see some price comparison. In Supermarket News it is hard to compare city to city. They do not have city to city, let alone chain to chain in this little price comparison. I'm never quite sure why it is there.

Mr. Stockton. Well, tomorrow, Mr. William Mitchell, chief executive officer, Safeway Stores, Inc., will appear. The committee stands recessed.

[Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, December 17, 1974.]

# FOOD CHAIN PRICING ACTIVITIES

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**TUESDAY, DECEMBER 17, 1974**

CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
*Washington, D.C.*

The committee met, pursuant to recess, at 10:01 a.m., in room 318, Russell Senate Office Building, Hon. William Proxmire (vice chairman of the committee) presiding.

Present: Senators Proxmire, Humphrey, and Schweiker.

Also present: John R. Stark, executive director; Loughlin F. McHugh, senior economist; Robert D. Hamrin, Peter Stockton, and George R. Tyler, professional staff members; Michael J. Runde, administrative assistant; Leslie J. Bander, minority economist; and Scott Walker, consultant.

## OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. The committee will come to order. I might explain that Senator Humphrey, as I understand it, will be here at 11 o'clock. Unfortunately, at 11 a.m. I have to leave, because we have a meeting of the Appropriations Committee that I simply must attend, and regretfully I will have to go. Senator Humphrey or another member of the committee, or a staff member, will chair the committee meeting from that point on.

Every American family is deeply concerned by the continuing rising price of food. Unlike most purchases, such as autos, clothing, and other consumer goods, there can be no postponement in the buying of food. People are dependent upon the products of this industry, and this dependency puts the American family totally at the mercy of the food industry. Every day, I get letters from irate customers that want to know why food prices continue to increase when they know that farm prices are falling, or at least stabilizing.

Over the last year, we have had an increase of roughly 11 percent in the price of food, and a drop in the price the farmer receives—a widening margin. Despite heavy advertising campaigns by the food chains, attempting to explain this paradox, the consumer still feels that questions are unanswered. Frankly, I find one word best describes the mood of the consumer today regarding food chains and food processors. The word is suspicious. They are suspicious because they do not understand why the profits of the food chains are increasing at a much faster rate than the price of food in the consumer price index. This is particularly galling because of the dependency I just mentioned. Many of my constituents are beginning to suspect that certain sectors of the food industry are becoming monopolized by fewer



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and fewer firms. The Government knows little about the structure and activities of this industry.

In connection with the committee's inflation study, the 17 largest chains were asked to submit certain documents and data to the committee, regarding their operations. In a very short time, with a limited staff, the committee has found certain activities and policies in this industry which raise serious doubts as to the competitivess of the industry.

Today, we will raise a number of questions about industry structure, concentration, profits, corporate secrecy, meetings with competitors, accounting practices, buying practices, lack of price competition, commercial bribery, lack of cooperation with Government agencies, and so forth. The Government knows precious little about this industry, as I say. We need to know much more, and we hope that we can discover more today.

Our witness this morning is Mr. William Mitchell, president and chief executive officer of Safeway Stores. Safeway is the largest food retail chain in the country, with annual sales of over $7 billion. Safeway is also the most profitable chain, as well as being one of the largest manufacturers in the country.

I want to commend you, Mr. Mitchell—would you come forward, sir—I want to commend you at the outset for the cooperation that you have extended to this committee in responding to most of our requests for information. I understand that most of the documents and the data that were requested from Safeway were supplied.

You may proceed with your statement. You have been very cooperative also in providing many copies of this statement. We have gone over your statement carefully. I must say it is a brilliantly argued brief for your position, and we will get to questioning you on it a little later. Please proceed.

## STATEMENT OF WILLIAM S. MITCHELL, PRESIDENT, SAFEWAY STORES, INC.

Mr. MITCHELL. Thank you, Mr. Chairman, and members of the committee. My name is Billy Mitchell, and I am president of the Safeway Stores. With your permission, I would like to read a brief statement concerning food retailing, food prices, grocers' profits, and inflation.

Senator PROXMIRE. May I just say, without objection, the tables which you have listed here will be printed in full in the record, and the addendum also, so that we can have that fully available in the record.

Mr. MITCHELL. I am accompanied today by Richard Odgers of the Pillsbury-Madison-Jutro law firm that represented Safeway prior to its dismissal from the recent antitrust action of A. & P. When I have completed reading my brief statement, I would appreciate it if Mr. Odgers might be permitted to make a statement in connection with that case, and Odgers' statement is attached to the material that we filed with the committee.

The retail food business in the United States is largely handled by nearly a quarter of a million grocery stores, which had a sales volume of $98 billion in 1973, and this year will reach an estimated $111 billion. Net profits of major food chains in 1973 were at the rate of seven-tenths of 1 percent of sales, which applied to all U.S. grocery stores would amount to $689 million. If net profit rates recover to nine-tenths of 1 percent of sales this year—the average rate for the first half of the year—U.S. grocers' net profits will amount to $1 billion.

The record of grocery store sales and profits over the past decade is shown in table 1. Also included, in order to put grocers' sales and profits into perspective, are figures for the Nation's GNP, disposable income, and cost of government. You will note that for the years 1972 and 1973, the estimated total dollars of grocery stores' net profits were below those in 1964. Even with a slight improvement in grocers' profit rates this year, the 10-year increase—1964 to 1974—in total dollars of net profits will be about 38 percent, while grocers' sales volumes have doubled. Over the same period, the Nation's GNP and disposable personal income have more than doubled. GNP and disposable income in 1974 will be about 2¼ times the comparable figures in 1964, and the cost of Government will be more than 2½ times that in 1964.

Table 1 further shows that for the past 4 years, including this year, the average grocer's net profits have amounted to less than a penny for each dollar of groceries he has sold. Looking at it another way, during the rapid inflation of the past 2 years, if all the profits of all the grocery stores were divided up among the total U.S. population, grocers' profits would have amounted to less than 1 penny per person per day in 1973, and perhaps a penny and a quarter this year. In other words, if all these net profits were handed back to grocery store customers at the end of each week, they would not even have received enough to pay for the postage to send a letter to their respective Senators, regular mail.

As noted, the profit picture is improving for the grocer in 1974 and it now looks as though he will earn, on the average, perhaps nine-tenths of 1 cent per dollar of sales, not quite up to the 1-percent average for the 10 years ended in 1973.

I hope that the foregoing information on the profitability of retail grocers will convince this committee that all those stories about price gouging, profiteering, ripoffs, price fixing, and monopoly are just not so. I think that any industry that can earn so little on each dollar of sales and still survive should be commended, not castigated. From the profile presented by the industry, it should be self-evident that strong, effective, anti-inflationary competition is the name of the game in food retailing.

The old nursery rhyme about a penny for a spool of thread certainly holds true for the grocer today. A penny for the grocer. Then table 1, which we will not read unless you have some questions, Mr. Chairman, and we will go on with the Safeway story. Safeway is the second largest food chain—I thank you for saying we are the largest, but we are not.

Senator PROXMIRE. Who is the largest?

Mr. MITCHELL. A. & P., in terms of sales and in terms of number of stores.

Senator PROXMIRE. I stand corrected. A. & P. will testify tomorrow.

Mr. MITCHELL. Yes, sir.

Safeway's U.S. sales this year will approximate $6.6 billion, and the number of stores in operation is about 2,000.

A summary of pertinent operating data for Safeway in the U.S. is shown in table 2. You will note that Safeway generally outperforms the overall industry average in terms of net income as a percentage of sales—at a ratio of about 1½ to 1. However, we are not the highest by a long shot, there being a number of regional chains who outperform us.

A few of the relevant points in the table are: (1) the downward trend in gross profit rates, which would tend to disprove any claim that we have made increased profits by way of inventory appreciation; (2) the downward trend in expense rates; and (3) the fact that the net profit rate for this year to date is just equal to the average for the past 10 years.

Why does Safeway do better than the industry average? Quite frankly, we think we have better people, better trained and organized to perform their jobs more efficiently.

The table is table 2, that shows the Safeway record of sales for the past 10 years, and the rate of growth, profit, expenses, and net income.

EFFICIENCY IS THE KEY

From time to time, we encounter sharpshooting barbs from some critics who claim we are a wasteful and inefficient industry, and that if we would just cut out some of the frills we could lower the cost of food. These charges, of course, are sheer nonsense, and if there were any practical ways to cut costs or reduce expenses, we would adopt them very fast.

The fact of the matter is that this business was founded on the principle of distribution without waste, and this has been our creed for the past 60 years. We are particularly proud of Safeway's proven ability to control expenses, and you will note on table 2 that our expense ratios have gone down from 20.7 percent in 1964 to 18.7 percent currently—this has not been easy to achieve and represents a lot of hard work by a lot of fine Safeway people. If you are interested in details of cost saving ideas, we can try to share them with you during the question and answer period.

WET STREETS DO NOT BRING THE RAIN

The retailer typically gets the blame for inflation. Here is the way the popular scenario goes; he—the retailer—causes the high food prices. The high food prices bring on inflation. Therefore, just make the retailer roll back prices and we will not have any inflation. Or, all you have to do is dry up the streets and the rain will go away.

But in reality, of course, far from being the cause, the retailer is a victim of inflation, along with everyone else. His costs have risen even more than his prices, resulting in the 10-year downtrend in net profit rates which I mentioned earlier.

We are obviously, even in the face of a recession, experiencing a nationwide and worldwide inflation of food prices. It is fed not only by relative scarcities of supplies, but by a rapid expansion, particularly of foreign demands—and by a nationwide, worldwide inflation psychology which says, in effect, the price of everything is going up, so I need a higher price for the goods, services, or labor that I sell just in order to cope.

Food is important in everyone's living costs. Expenditures for food from all outlets, not just that purchased in grocery stores for home consumption, will in 1974 amount to nearly 17 percent of our U.S. population's disposable personal income. Just 2 years ago, in 1972, that proportion was 15½ percent, following a long-term decline. Historically, and still today, U.S. consumers have enjoyed the best diets at the lowest proportions of income of any in the world. However, retail food prices are probably the most visible of any we pay. Advances in retail food prices, even though symptoms rather than causes of inflationary forces, therefore become the most conspicuous target in any anti-inflationary program.

So, what is the answer? First, price freezes or phases of markup limitations just do not work. Very recent, near-disastrous experience quite dramatically proved it, and all of us are still suffering from the consequences. Second, rationing of one form or another might conceivably limit inflation. But we cannot regard this as really a desirable or viable option. Third, curtailment or elimination of so-called middlemen's profits would be no answer. As I have shown at the the outset, there is just no slack to take up in food retailing.

These are what we would consider unworkable answers. Now, turning to the positive side, I think there are three general areas in which constructive efforts might be made.

The first involves a continuation and intensification of our efforts in the food distribution industry to become more efficient, raise our productivity and cut our costs. As I have indicated earlier, we are already devoting a great deal of our efforts and energies in that direction. Moreover, we are ready to listen to and cooperate with any constructive and practical program, suggestion or idea that is designed to achieve these objectives.

Second, we believe efforts should be made to stimulate the production of basic foods in short supply to meet the expanding demands, both here and abroad, by means which can be discontinued when predetermined supply goals are reached. Also, to examine the possibility of increasing competition in food distribution by elimination of barriers which prevent food from entering or moving freely through marketing channels. Barriers can occur as a result of product control boards, control of resale prices, and laws purportedly to insure health and sanitation, but administered so as to keep competing products from the marketplace. The food industry has been inhibited by State and Federal laws, and by restrictive mechanisms which have been built up during a period when such barriers were deemed necessary to the economy.

Finally, with respect to possible evaluation and reformulation of governmental policies and programs, I concur fully with Senator Proxmire's recent statement, that he:

> * * * would like to see us put into effect a cost-benefit study of all these measures and those that require some form or other of regulation or expenditure on the part of industry, so that we know what the inflation impact is * * * we then should face it squarely and decide whether we can afford to go ahead, given the needs of the economy and the limitations of our resources.

The Senator has just referred to a number of well-intended, but cost-raising measures for which the tab must inevitably be picked up by consumers—such things as OSHA, air and water pollution controls, and noise abatement, among others.

In the food industry, we face programs or restrictions which inevitably add a further cost-push to food prices already inflated by worldwide scarcities in the face of burgeoning demands. I have in mind such things as union contract as well as legislative restraints upon the scheduling and utilizing of our employees' efforts more efficiently; remnants of fair trade or minimum markup laws which limit grocers' ability to price food more flexibly, closer to the belt, for the consumers' benefit; Federal trade regulation rules governing availability of advertised items which necessitate excessive, costly checking and rechecking of store-ordering, inventories, and stocking, and at times result in the nonadvertising of consumer bargains for fear that a technical violation of the rules might occur if supplies prove inadequate to fulfill the purchasing demands of customers in every store; and proposals for legislation requiring individual price-marking of every item on our shelves, which could defer or deny the cost-saving utilization of electronically computerized checkstand operations, when the customer would receive even more fully informative, itemized ring-up slips.

I am not asking for a hands off policy by Government, or for abrogation of all employee or consumer protection laws and regulations for food retailing. I am, as mentioned, urging the adoption of Senator Proxmire's suggestion of cost-benefit evaluations of existing and proposed restrictions. I am urging the avoidance or the removal, wherever possible, of hidden or underestimated costs, which merely further fuel the fires of food price inflation.

I thank you for this opportunity today to present to you some facts about the grocery business, as well as my viewpoints. I shall be happy to try to answer any questions that you might have.

Mr. Chairman, subsequent to preparing this statement, I received a copy of the committee's press release of December 6, 1974, which contained a number of questions. These have been responded to and did you want me to read the questions and answers that we prepared?

Senator PROXMIRE. That would not be necessary. Those questions and answers will be printed in full in the record.

[Tables 1 and 2, together with the additional questions referred to follow:]

TABLE 1

[Dollar amounts are in billions]

| | U.S. grocery store sales (U.S. Department of Commerce) | Net profit rates of major food chains: percent of sales (U.S. Department of Agriculture from Moody's) | Estimated net profits of all U.S. grocery stores (Col. 1× col. 2) | Gross National Product (U.S. Department of Commerce) | Disposable personal income (U.S. Department of Commerce) | Cost of Government: Total Government expenditures Federal, State, and local (U.S. Department of Commerce) | Cost of Government: Federal budget outlays: fiscal years beginning in years noted (U.S. Treasury Department and OMB) |
|---|---|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1964 | $55.73 | 1.3 | $0.724 | $632.4 | $438.1 | $175.4 | $118.4 |
| 1965 | 59.32 | 1.2 | .712 | 684.9 | 473.2 | 186.9 | 134.7 |
| 1966 | 63.35 | 1.2 | .760 | 749.9 | 511.9 | 212.3 | 158.8 |
| 1967 | 64.32 | 1.1 | .708 | 793.9 | 546.3 | 242.9 | 178.8 |
| 1968 | 67.93 | 1.1 | .747 | 864.2 | 591.0 | 273.3 | 184.5 |
| 1969 | 72.89 | 1.1 | .802 | 933.3 | 634.4 | 287.9 | 196.6 |
| 1970 | 79.76 | 1.1 | .877 | 977.1 | 691.7 | 312.7 | 211.4 |
| 1971 | 82.79 | .9 | .745 | 1,054.9 | 746.4 | 340.2 | 231.9 |
| 1972 | 88.34 | .6 | .530 | 1,158.0 | 802.5 | 372.1 | 246.5 |
| 1973 | 98.39 | .7 | .689 | 1,294.9 | 903.7 | 408.0 | 268.3 |
| 1974 (estimated) | 111.20 | .9 | 1.001 | 1,402.0 | 981.5 | 460.0 | 305.4 |
| Ratios: 1974/64 | 2.00 | .69 | 1.38 | 2.22 | 2.24 | 2.62 | 2.58 |
| Percent increase: 1974/64 | +100 | −31 | +38 | +122 | +124 | +162 | +158 |

TABLE 2.—SAFEWAY STORES, INC. (U.S. ONLY), SALES IN THOUSANDS OF DOLLARS, RATES OF GROSS PROFIT, EXPENSES AND NET INCOME EXPRESSED AS A PERCENTAGE OF SALES

| Year | Sales | Percent of sales: Gross profit | All expenses | Net income |
|---|---|---|---|---|
| 1964 | $2,442,516,000 | 22.5 | 20.7 | 1.8 |
| 1965 | 2,538,808,000 | 22.2 | 20.6 | 1.6 |
| 1966 | 2,897,600,000 | 22.1 | 20.4 | 1.7 |
| 1967 | 2,849,384,000 | 21.8 | 20.4 | 1.4 |
| 1968 | 3,124,731,000 | 21.9 | 20.5 | 1.4 |
| 1969 | 3,500,205,000 | 21.0 | 19.9 | 1.1 |
| 1970 | 4,131,735,000 | 20.6 | 19.3 | 1.3 |
| 1971 | 4,522,088,000 | 20.4 | 19.0 | 1.4 |
| 1972 | 5,049,252,000 | 20.1 | 18.7 | 1.4 |
| 1973 | 5,553,538,000 | 19.6 | 18.5 | 1.1 |
| 10-year average | | 21.0 | 19.6 | 1.4 |
| 1974 (1st 36 weeks) | 4,476,946 | 20.1 | 18.7 | 1.4 |

## Response of William S. Mitchell to Additional Written Questions Posed by Senator Proxmire

*Question 1.* As markets are dominated by fewer and fewer chains, what is the impact on competition and prices?

Answer. First I would question the assumption. We would not agree that the markets in which we operate are "dominated by fewer and fewer chains." Quite to the contrary, I think it can be shown that there are as many or more major chain competitors of all types—corporate, voluntary or cooperatives—in our trading areas than in any prior period. Some examples of relatively recent entrants might be Albertson's, Alpha Beta, Ralphs, Loblaw's and Fry's in the San Francisco/Oakland market; Fisher-Fazio, Ralphs and Smith's Food King in Los Angeles; Alpha Beta and Food Basket in San Diego; Penney's Treasury outlets in various markets; Target and K-Mart in numerous areas; Lucky in Houston and Washington, D.C.; Skaggs-Albertson in Texas and Oklahoma; Albertson's in Seattle; Warehouse Markets in numerous cities, just to name a few. Additionally, in recent years Safeway has entered Houston, Shreveport, West Memphis, Toronto, Sydney and the Virginia Beach areas.

Actually, we find that all of the market areas in which we operate are intensely competitive, and including keen competition comes from numerous large independents and smaller regional chains who are aggressive and flexible merchandisers. So, in summary I would reject any notion that there is less competition pricewise or otherwise, in grocery retailing today.

*Question 2.* Is there a direct relationship between the market position of food chains and their profitability?

Answer. This is a difficult question to answer because we don't know of any reliable measure of "market position" and therefore have nothing to measure "profitability" against. (Most of the published measures of so-called "Market shares" seem to be based either on some consumer popularity survey or on some arbitrary allocation related to number of store outlets.)

Our objective in any area is to build customer confidence and to develop sufficient patronage and sales to have an efficient operation. To the extent that we do gain general acceptance we get better sales. And our experience indicates that when we do well saleswise we also do well profitwise. This is probably just another way of saying, "Wherever we are successful, we succeed." But success is by no means assured for any length of time, or for any given store, regardless of current overall acceptance. Within any given area, we may very well have stores ranging the whole spectrum in sales and profits. That is, two stores in the same city may have entirely different operating results even though both are on the same price structure and have similar facilities. We think this situation could well reflect differences in local management abilities, customer make-up, location accessibility, and numerous other factors.

*Question 3.* What is the reliability of the profit margin data on which the chains base their claims of paper-thin margins?

Answer. Insofar as the Safeway Company is concerned, the profit margin data submitted to this Committee are completely reliable. These figures came from the same sources and can readily be reconciled to the annual reports issued by the Company, the reports filed with the Securities and Exchange Commission and the filings made to the Internal Revenue Service. All of our figures have been prepared in accordance with generally accepted accounting principles applied on a consistent basis for all of the periods involved, and every dollar of U.S. sales costs and profits are included in statements submitted to this Committee

So I would answer that yes, our profit margin data are reliable, are valid. And by any comparisons I've seen, they may properly be regarded as "paper-thin." I think we can be proud of what the retail food industry has accomplished for American consumers as a result of the highly competitive environment which is reflected in these profit margins.

*Question 4.* Does the enormous buying power of the chains lead to anti-competitive activities?

Answer. I just don't see in the marketplace any enormous buying power of chains.

Safeway's purchases are made in the wholesale market on a decentralized basis with each of its 20 Retail Divisions purchasing only to meet the requirements of the stores it operates.

And in our buying we compete with each and every other potential buyer—corporate chains, voluntaries, co-ops, unaffiliated retailers, hotels and restaurants, hospitals and other institutional buyers, and not unimportantly with government.

*Question 5.* On chain pricing policies, what relation does the cost of the product have to the prices that are finally charged at the retail level?

Answer. Cost is one of the many factors taken into consideration by a merchant when he goes about determining the price at which he is going to offer his merchandise for sale. Some others, and not necessarily in order of their importance, are quality of the product, perishability, consumer demand, seasonality, availability of competing or substitute products, competing merchants, adequacy of supplies, credit terms (if any), whether it is a new item without an established market, and so on. The importance of each of the several factors varies by product and the merchandising plan of the seller. A door-to-door peddler of eggs may be selling freshness rather than price. A charge and delivery grocer may be selling service. As can be seen, cost is just one of several factors and its importance varies with the job to be done.

*Question 6.* Do various sorts of commercial bribery in the industry add significantly to the price of food?

Answer. I have been associated with the Safeway Company for just over 38 years. My experience is that commercial bribery is all but non-existent. I believe we have not had over a half dozen instances that I can recall. These were in the nature of gifts or bribes to our people. In each case we disciplined the employee and suspended doing business with the vendor. We have very strict rules about accepting gifts—we regularly notify our employees and our vendors of the rules and we enforce them rigidly.

I read the articles in the Wall Street Journal about the bribery, etc. in the meat business in New York. I would have to assume that skullduggery of this type adds to the cost of food, but just how much I wouldn't be in a position to say.

I can guarantee you that the Safeway Company wouldn't knowingly do business with gangsters or racketeers.

*Question 7.* How do identical prices show up so often among the major chains in the market when presumably their costs would vary?

Answer. When you refer to "cost," if this is cost of product I don't think you will find variations all that frequent, and I would question that the presumption is correct. In the purchase of many or even most of their products, corporate chains, voluntary groups and co-ops all pay about the same.

Also, there are traditional prices associated with certain products (although probably the victim of inflation now) such as the 5¢ candy bar or the 10¢ cornucopia. Finally, in a situation where the economy-minded housewife painstakingly compares ads and "shops around" from store to store, competition for her patronage is such that it should not be surprising to find a high frequency of near-identical prices.

*Question 8.* Has a mutuality of interests in this industry reached the point where it has led to a lack of price competition?

Answer. In my opinion, "mutuality of interests" among grocery retailers—and their suppliers and their customers—extends to such areas as improving consumer information, standardization of terminology (e.g., meats), increasing productivity throughout the system, and avoidance of barriers to product development or movement. All these facilitate rather than deter the active, aggressive competition which I feel characterizes grocery retailing.

In my experience, I just have never seen nor do I understand the idea of any "mutuality of interests" among competing grocers when it comes to such activities as site selection, store design, merchandise assortments, prices or pricing, services offered, or promotional programs. Quite to the contrary, it seems to me that each grocer bends every effort to attract and hold the patronage that enables him to succeed. In other words, the name of the game is to out-compete your competitor, pricewise and otherwise, rather than to sit back and contemplate "mutuality of interests" you might be presumed to share with those other merchants who are trying to out-compete you.

*Question 9.* Are trade associations an anti-competitive factor in the food industry?

Answer. To the best of my knowledge, no. Trade associations can and do provide a very constructive channel for the gathering and dissemination of factual information about an industry, about opportunities for productivity improvements, and reviews and recommendations regarding legislative or regulatory proposals—informational, educational, and analytical activities resulting in positive contributions to members of the association, to their customers, to their suppliers, and to legislators and research or regulatory agencies.

*Question 10.* Can the anti-trust laws effectively improve competition in the food retailing business?

Answer. I am not an expert in the area of anti-trust laws, but as discussed and documented in my statement (and in my answers to the other questions), I believe food retailing is already and long has been one of the most vigorously competitive of any business I can think of.

Anti-trust laws and their implementation obviously have a place. But, as included in my statement, I certainly do concur with Senator Proxmire's position that all present or porposed legislation and regulations, anti-trust along with others, should be subjected to critical review and cost-benefit analyses. And I mentioned some areas where so-called anti-trust programs in actual practice have anti-competitive effects, and are counter-productive to this nation's anti-inflation objectives.

The following statement is not in the form of a question but bears so heavily on the subject here today I would respectfully like to comment:

*Press release JEC 12/6/74—"Although the chain executives have been complaining about paper-thin margins during this period of inflation, they have been registering fantastic increases in profits. For example, fourteen major chains showed an average increase of 115 percent in the third quarter of 1974 over the third quarter of 1973."*

We don't question the accuracy of the foregoing comparison but we should point out the well-known and well-documented fact that in the third quarter of 1973 the profits of chain grocers were severely depressed because of price controls then in effect, great numbers of product shortages and the use of custom slaughter for beef. As reported by the U.S. Department of Agriculture, the ratio of profit to sales for food chains in the third quarter of 1973 was only 0.4%. Thus the third quarter ratio of 0.4% compares to a "norm" of about 1.0% for food chain profits. If we increase the 0.4% ratio by 115% we come up with a ratio of 0.86%, which is still below the "norm."

Our experience at Safeway was that the third quarter of 1973 was the poorest profit year in terms of dollars since 1969 and in terms of percentage margins 1973 (0.84%) was the lowest in the past 20 years. It would appear that a more realistic comparison could be drawn using averages for some prior periods rather than the depressed third quarter of 1973.

Senator PROXMIRE. Mr. Odgers, may we have your statement, sir?

## STATEMENT OF RICHARD W. ODGERS, ATTORNEY

Mr. ODGERS. Thank you, Mr. Chairman. I am the attorney who represented Safeway prior to its dismissal from the recent San Francisco antitrust case involving A. & P., and I represent Safeway in several pending actions involving similar issues.

On Monday, December 9, Mayor Joseph L. Alioto testified before this committee and made some assertions with respect to Safeway that are so far afield of the facts that I can only assume that he was misinformed. I do not know where he actually obtained his information about Safeway, but the inference was that he was relying upon evidence introduced in the recent San Francisco antitrust trial involving A. & P.

In fairness to the mayor, he was not involved in the preparation or trial of the San Francisco case, although the plaintiffs were represented by his law firm. The fact remains, however, that the circumstances of the San Francisco case, insofar as they had anything at all to do with Safeway, bear so little resemblance to the statements made by Mayor Alioto last Monday that a reply is essential.

As a lawyer, I am constrained by the Code of Professional Responsibility from comment on the evidence or merits of pending litigation in which my clients are involved. I am, however, free to quote from the public record, and that is what I intend to do.

The mayor suggested that Safeway, in conjunction with A. & P. and Kroger, the other two defendants in that case, possessed and exercised the power to fix meat prices, that Safeway had a centralized buying operation in Chicago, that Safeway did not compete at retail with the other large chains, that Safeway uses the yellow sheet in purchasing beef and that the court in San Francisco had in some way enjoined Safeway.

This committee should know that there has never been a determination of any kind in any court anywhere that Safeway was involved in unlawful activity regarding meat price fixing or rigging, either at wholesale or retail, and the court in San Francisco did not enter any kind of an injunction against Safeway. In the San Francisco lawsuit to which Mayor Alioto referred, the case went to trial only against A. & P. The reason it did not go to trial against Safeway is summed up in an order of the court which embodied representations made to the court by plaintiff's lawyer, who is the mayor's son and a member of his law firm. That order, and those representations to the court, are so different from what the mayor said last Monday that I would like to read a brief portion of the court's order, and I quote from that order:

> As respects Safeway, plaintiff's discovery has shown that in a number of areas the facts are different than those which plaintiffs had believed to exist when their complaint was filed. Safeway, for example, does not use formulae based on data published by private market reporting services to determine the prices to be paid by it for fresh beef at wholesale.
>
> Since shortly after World War II, Safeway has not been integrated backward into producing, feeding or slaughtering live cattle, and Safeway does not purchase or trade in livestock either directly or indirectly, nor does it have ay present intention of doing so. Safeway does not utilize centralized buying. Also, Safeway has been in competition with, and continues to compete with, either or both of the other defendants in a number of major markets, and in recent years Safeway has entered a number of additional markets where it also competes with either or both of the other defendants.
>
> Moreover, only a small portion of Safeway's total fresh beef requirements were purchased through its Chicago buying office, which Safeway has now closed, with the result that it no longer maintains any meat buying facility of any kind in Chicago. Safeway's fresh beef purchases are made by means of 'offer and acceptance' whereby packers' offers are received and accepted separately through more than fifteen meat buying offices, generally by mid-week of one week for delivery during the following week. Also, Safeway does not follow the practice of furnishing fresh beef price data or other fresh beef purchase information to any private market reporting service.
>
> Safeway has not and does not intend to change or depart from its policies and practices, one, against exchanging any information relating to the pricing of fresh beef with competitors through trade associations or by any other means; two, against furnishing any fresh beef price or other purchase information to private reporting services; three, against receiving fresh beef from distant sources where adequate supplies of fresh beef of like grade and quality were available from

local sources at the same or lower delivered prices; four, against voluntary disclosure to third parties—other than authorized government agencies—of its paying prices for fresh beef; and five, of continuing to make stenuous efforts to ensure adherence to the principles of its 'offer and acceptance' method of purchasing fresh beef. It is Safeway's policy to take all reasonable steps to assure that its employees continue to adhere to both the spirit and the letter of the 'offer and acceptance' method of purchasing fresh beef.

The court order concludes:

Plaintiffs, taking into account all of the circumstances set forth herein * * * do not believe that prosecution of this case against Safeway is warranted.

That is what the mayor's son, acting as plaintiff's attorney, told the San Francisco court in February, 1973, and the court embodied that statement in an order which dismissed Safeway as a defendant. With all due respect to Mayor Alioto, I think he should have made himself aware of his son's representations to the court, and of that court order, before making unsupported charges to this committee and to the press. I think that the court's order, entered after the plaintiffs in the San Francisco case had spent 5 years examining Safeway documents and taking the depositions of Safeway employees from the chairman of the board down through the meat buyers themselves, says all that needs to be said. Thank you, Mr. Chairman.

Senator PROXMIRE. Thank you, Mr. Odgers, and Mr. Mitchell. Thank you very much for your very strong and effective presentation.

Mr. Mitchell, as you are aware, the consumers of this country are suffering from the worst increases in food prices in recent years, and perhaps ever. For the past 2 years food prices have increased sharply, and lately at an annual rate of more than 10 percent.

We know a number of casues for this increase can be identified. However, most consumers are still perplexed, and as I said, suspecious about this unexplained increase in the farm-retail spread. At a time when prices at the farm level have been declining or stabilizing, the prices at the retail level have been increasing.

How do you justify this discrepancy and this widening margin?

Mr. MITCHELL. The widening margin, as I understand it, between farm prices and retail prices reflects not only the retailers' portion of the business, but many others in between. I do not think it is too relevant that the retailer has a certain share. I think the more relevant figure is what he gets to keep.

As I said in my statement, after we go through all of the work of bringing wholesome food and so on, all the good things to the people through the Safeway Stores, we end up with a penny and a half on each dollar.

Senator PROXMIRE. I know you do that. You made that position very clear. I want to get to that a little later.

As far as the consumer is concerned, what bothers him is the price he has to pay, and part of that is within—may not be your profit, but part of it is within your control. You stipulated yourself in your analysis that I also want to come to a little later, of the proportion of income that people have to pay for food that has gone up, and has gone up rather sharply in the last couple of years. That increase, it seems to me, ought to be justified by the element in the food industry that is as important as you are, in view of the fact, as I say, farm prices over the last year or so have not gone up.

RETAILER HAS NO CONTROL ON THE PRICES HE PAYS

Mr. MITCHELL. I would say that the retailer has practically no control whatsoever on the prices he pays for merchandise.

I clipped something from the Wall Street Journal last week that said prices of potatoes last May were $14 plus. Now they are $3 plus. They have gone down. I am sure there are retail prices that have gone down on potatoes. When the $14 potatoes were up there, you get letters of complaint. You can imagine the letters I get.

Senator PROXMIRE. There are some farm prices going up, going down. They fluctuate all over the place. They went up 5 months last year. They went down this past year, they went down 7 months. Overall they did not go up. Yet the food prices that the consumer has to pay did go up.

You said that you were not able to make much of an increased profit on that. As I say, I want to come to that a little later. What I am getting at is you have made a great point and quite a convincing point about the efficiency of the food distributor, about your very great concentration on efficiency. Something is happening to that efficiency when your costs are going up as rapidly as they are, unless you can explain it.

COSTS AFFECTING FOOD RETAILER PERFORMANCE

Mr. MITCHELL. We have two types of cost, the cost of merchandise and the cost of operating the stores. The cost of operating the stores as a ratio of sales would be indicated by the tables we submitted. It has actually been going down, which I think is a pretty darned good achievement when you know that everything we are buying from labor to supplies to diesel oil to electricity, and everything else, is going up.

Senator PROXMIRE. Something is happening to that margin. If farm prices are not going up but you have to pay more for your merchandise, who is getting that increased margin? Is there a wholesale or a processor somewhere in there that is getting a much greater proportion of the food dollar? If you are saying, you are netting very little more while the farmer is getting less, but food prices to the consumer are rising sharply somewhere, if there is not a ripoff, there is an expansion in cost, at the very least.

MIDDLEMEN RAISING PRICES TO FOOD RETAILERS

Mr. MITCHELL. The cost that we pay for our merchandise, the canned beans, the canned peaches, the beef and so on, are pretty well out of our control. We have had—and I have a record here, Mr. Chairman, of what we call cost-price increases. In the week of November 9, there were 572 vendors who came to us and said, Mr. Safeway, we are raising our prices to you on 572 prices. In the week of November 16, they came in and said, we are raising our prices to you on 706 items. This is excluding fresh fruits and vegetables and meat, which fluctuates weekly. These are things like canned beans, canned peaches, sugar, you name it. On November 23, there were 497. On November 30, there were 396. We carry 10,000 items. If you are getting 3, 4, 500 price increases a week without the ability to absorb that, if the price of peaches goes up from $4.90 a dozen, to $5.90 a dozen, we cannot absorb that.

Senator PROXMIRE. Mr. Mitchell, you are a very intelligent and able man. You either dispute my argument, my position that the farm prices have not gone up, or you tell me, because you know about your costs and you know about your suppliers' costs, you must know that. You would not be as efficient and successful if you did not know it. Where is this increase taking place?

Mr. MITCHELL. All I can speak for—I appreciate the comments you made—all I can speak for is the retailers' position. We do not own any canneries. I do not know what the cannery problem is. We do not own any sugar mills.

Senator PROXMIRE. I understand that you are very, very effective buyers. You have been very vigorous and very strong in buying beef, for example. We had testimony in that area, and you would not be as successful as you are if you let the sellers come to you and your suppliers and you pay whatever price they propose. You shop around and you satisfy yourself that you are getting it from the most efficient kind of supplier.

So you must have some suspicions, some notion, some pretty intelligent notion of why the prices have gone up and why the consumer has to pay so much when the farmer is not getting more.

Why is this?

FOOD CHAINS NOT THAT EFFECTIVE IN BUYING SOME GOODS

Mr. MITCHELL. We are not as smart buyers as you would indicate. For instance, on branded goods we are buying off price lists. The price list is put out by the vendor, and we pay the same price, we hope, as the wholesaler, as the voluntary groups, as the co-op and as the other corporate chains.

I think without trying to practice law, and I am not a lawyer, I think it would be illegal if we were to shop around and buy something at less than their list price on a carload basis.

Senator PROXMIRE. Maybe I can come back to that a little later. Let me get to something else.

I want to talk about your return on sales as compared to the return on equity. There are two measures of profit. One is the profit you get on sales. That is very pertinent, very appropriate, particularly when you are talking about the price to the consumer. But the return on equity is also of great significance, too.

Is it not true that return on sales on food would be lower because of the rapid turnover of goods in your industry versus steam turbines, for example? While you complain about your return on sales, your return on equity is also a meaningful measure of profit. It is rising through the roof from 14½ percent in the first quarter to 20 percent in the third quarter, a 40 percent increase. At that rate you can pay for your investment in only a 5-year period.

The Internal Revenue Service data compiled from tax returns show the return on equity on food retailing has been consistently higher than the average of all retailing from 1950 through 1971. Those are the latest figures the IRS could supply us with.

In fact, for most of this period the return to food retailing exceeded all manufacturing rate of return.

Let me ask, on that basis, is it not true that your return on your equity has been very handsome and compares very favorably with other industries? I am not talking about your particular firm, but your industry, food retailing.

THE PROFIT DEBATE—IS RETURN ON SALES OR PROFIT THE MOST USEFUL PERFORMANCE INDICATOR

Mr. MITCHELL. I think in trying to understand return on equity you have to look at the capital structure that the company has decided to use. We have decided that we would finance the business with what we call off-balance sheet financing. We have $1½ billion that does not show on the balance sheet of leased liability. These are assets used for the company. The present discounted value of these leases I estimate would be about $1 billion. This is capital that does not show up for the company.

SAFEWAY'S REASON FOR ITS HIGH RETURN ON EQUITY

Various companies are leveraged. We are leveraged very heavily on the lease end. Others are leveraged on debt. The return on equity is not necessarily a measure of efficiency or lack of efficiency or profiteering or what have you.

Senator PROXMIRE. Leverage simply indicates that you would show a high return on equity or a low return on equity, depending on the overall return on your invested capital; it is nevertheless true that your return on equity is a real measure of profitability as far as the stockholders are concerned for your enterprise.

That, as chief executive officer of Safeway, that is what you are responsible for.

Mr. MITCHELL. This is correct. We have chosen over the years to leverage this thing. If we had chosen, instead of having leasing, to own these assets, finance them through debt or finance them through additional equity, our return on equity would be about 7 percent instead of 13 percent.

Senator PROXMIRE. The fact is, not only your return but the return on equity throughout the industry is very high and compares very favorably with other industries.

Let me then go to the Federal Trade Commission's findings in 1972. The Federal Trade Commission study on monopoly overcharge in 100 concentrated industries found that in the food industry alone there was about $2.6 billion in monopoly overcharges. In other words, what would prices be if indeed there was competition in these industries such as the food industry that exhibited administered prices due to overconcentration and monopoly?

IS SAFEWAY'S RETURN ON EQUITY HIGH BECAUSE OF MONOPOLY OVERCHARGE?

The FTC used a figure of less than 10 percent rate of return on equity as the point where monopoly profits begin.

Mr. Mitchell, if your industry is competitive, how do you rationalize rate of return to Safeway at 20 percent, more than double the figure that the Federal Trade Commission used to indicate excess profits due to monopoly?

Mr. MITCHELL. Mr. Chairman, we can say there is so much overcharge in the retail food industry and Safeway and so on, but I keep coming back to the fact that when you take the audited statements, the earnings are just not there. If there was an overcharge of $2.5 billion, or $4 billion, or whatever the figure was, it does not really matter, then it should show up somewhere, should it not? It should show up in the net profits of the company.

But the profile, if you could draw a profile of the retail food industry, it is not the profile of a profiteer, of a price fixer or a noncompetitive industry. It is the profile of a very lean, hard-working, efficient business.

WHERE DO THE MONOPOLY PROFITS GO?

Senator PROXMIRE. I do not know what you mean by profile.

The Federal Trade Commission provided this basis for evaluating monopoly profits: that some failure of entry or inability to compete created a situation where those in the industry were able to get a return above 10 percent, in your case 20 percent. Their conclusion was that there is a $2.6 billion overcharge because of it.

Mr. MITCHELL. I would ask the Federal Trade Commission, where does this $2.6 billion end up? It does not end up in the net profits of the companies. We can demonstrate that and we can document that.

Senator PROXMIRE. It ends up in part there. It ends up also in a greater tax revenue to the Federal Government. It ends up partly in higher profits for you. That is what the $2.6 billion means.

Let me ask you about something that bothers this Senator a great deal.

WHY SAFEWAY WISHED TO KEEP THE DIVISIONAL PROFIT DATA PRIVATE

In your letter of November 13, you insisted that the data supplied to the committee not be disclosed to the public. I do not understand why you want to withhold information such as divisional profits. Why cannot the Congress and the public know these facts?

Mr. MITCHELL. We have thought that divisional information would be of value to our competitors. They would be able to analyze our merchandising strategies and be able to find out those that worked and those that did not work, and in all candor, it is none of their business.

Senator PROXMIRE. Look at the tremendous disadvantage you put your competitors that are not operating on a nationwide basis. We know what the profits are for a relatively small operation that may operate, say, just in the Washington, D.C. area, in the Chicago area, or just in the Philadelphia area. We do not know the Safeway divisional profits because they can conceal them because they are a nationwide operation.

Why should you have that advantage, and why should not the public know that fact? Why is it not their business since they have to buy food, and their only choice is to buy it from your industry.

DIVISIONAL PROFITS GIVE COMPETITORS A CHANCE TO EVALUATE CORPORATE FAILURES

Mr. MITCHELL. Our concern, Mr. Chairman, is with our competitors, not public, not Congress.

Senator PROXMIRE. Why would it not be healthy to have the competitors move into areas where you are getting high profits? Why would that not be good for the consumer, good for the public, good for competition?

Mr. MITCHELL. And evaluate our failures. They would also be able to evaluate our failures; everything we do does not work.

Senator PROXMIRE. That is all right. Why not? What would be wrong with that?

Mr. MITCHELL. This has been our philosophy. If Congress wants to change it, that is fine.

Senator PROXMIRE. I want to know from the public interest standpoint, if you cannot defend it. I think you can, if it is defensible, from a public interest standpoint, why should not the public know whether you are making a very high profit in Seattle or a very low profit in Seattle, very high or low profit in Washington?

Would that not be a useful aid to get competition in these areas, for the competition to react intelligently on the basis of the information they would have?

SAFEWAY ALLOWS RELEASE OF ITS DIVISIONAL SALES AND PROFIT DATA

Mr. MITCHELL. Perhaps it would.

Senator PROXMIRE. Would you object to my releasing the data? Would you invoke the rule if I do it?

Mr. MITCHELL. I would prefer you did not. If you think it is the thing to do, Senator, go ahead.

Senator PROXMIRE. I will do it if you will agree that I can do so.

Mr. MITCHELL. Could we correspond on that subject?

Senator PROXMIRE. The hearing is today—if we correspond on the subject we would prefer greatly to have an opportunity to question you on this right now. You are before the committee now. You have the attention of the committee. You have the attention of the Congress, and the report that we make on this, if we correspond, it is likely to be of less value.

Mr. MITCHELL. As we said in our statement, I would prefer that we keep these things confidential. Like the sales of individual stores, we keep confidential.

Senator PROXMIRE. Will you object if I disclose this information?

Mr. MITCHELL. I would not object.

Senator PROXMIRE. You would not object?

Mr. MITCHELL. I would not object.

SOME SAFEWAY DIVISIONAL PROFIT INFORMATION

Senator PROXMIRE. All right, sir.

Then returning to your 18 operating divisions, they were all profitable. Before income taxes and administrative expenses are reduced, they are making 3 percent on sales.

The Seattle division, for example, shows the following increases: 1970, 4.98 percent on sales; 1971, 4.70 percent; 1972, 3.82 percent; 1973, 3.76 percent; 1974, the first quarter, 4.5 percent; the second quarter, 5.51 percent; the third quarter, 5.79 percent.

Those are extraordinarily profitable figures in this particular industry. You have been talking about a 1-percent return. This is before taxes; nevertheless, you would agree that it is a very handsome return in that area.

Salt Lake City division also shows a large increase, ending up with 5.22 percent in the third quarter, 1974, 3.62 percent in 1973, and so forth.

How do you account for lower profits shown in the District of Columbia as against the Seattle and Salt Lake divisions? Is it not one of the highest priced areas for the price of food, the Washington, D.C., area?

Mr. MITCHELL. I do not know which are the higher priced areas for food. I recently saw a cost of a market basket of food for various cities, and Boston, as I recall, is the highest city. I do not know where Washington, D.C., stands.

Senator PROXMIRE. It has been suggested that a major factor was the Federal Trade Commission investigation of the D.C. market. The fact of the examination of an antitrust agency has an unsettling influence and tends to increase competition.

Do you think that is meritorious or not?

Mr. MITCHELL. Our posture regardless of having an FTC investigation or any investigation, our posture is to remain competitive.

Senator PROXMIRE. Did Safeway cooperate in the 1970 investigation?

### SAFEWAY FOUGHT THE FTC FOOD CHAIN INVESTIGATION

Mr. MITCHELL. I really am not familiar with that. I assume we did. We generally have been cooperative with Government agencies.

Senator PROXMIRE. I understand subpenas were issued and Grand Union and Giant responded. Safeway and A. & P. contested the subpenas.. A. & P. was ordered to respond to the Commission and did so. Safeway's motion to squash was denied by the Commission, and Safeway sought an injunction in the northern district of Texas.

Why did you go to Texas for a case in Washington, D.C.?

Mr. MITCHELL. I am not an attorney, but we are under a consent decree, dating back to 1957, as to what is known as the *Fort Worth* case. In that consent decree, the court has certain jurisidiction.

Incidentally, that had to do with selling at too low a price. Sometimes, Senator, I wonder if we are predators or profiteers. I get a little bit confused.

Senator PROXMIRE. As I understand it, you were not cooperating in the FTC investigation. You felt the people in the Washington metropolitan area were not entitled to know about the investigation, and that the people were not entitled to the facts, is that right?

Mr. MITCHELL. Those are matters that are handled by our legal department. I really am not that familiar with them.

### HOW SAFEWAY IS COOPERATING WITH THE PRESENT FTC INVESTIGATION

Senator PROXMIRE. Since July of this year, there was a new Federal Trade Commission investigation. Are you cooperating this time?

Mr. MITCHELL. I testified, yes, sir.

Senator PROXMIRE. What kind of information have you been asked for, and what are you supplying?

Mr. MITCHELL. It was all verbal. They did not ask for any written documents. I spent a whole day with the Federal Trade Commission attorney, answering questions.

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Senator PROXMIRE. On what?

Mr. MITCHELL. They ranged the whole gamut of questions about the organization, the duties of people, how we buy, how we sell.

SAFEWAY DOES NOT LIKE ITS DIVISIONAL PROFIT DATA TO BE MADE PUBLIC

Senator PROXMIRE. Pricing? Profits?

Mr. MITCHELL. As I recall, there was some information on pricing, how are prices arrived at.

Senator PROXMIRE. Will you attempt to have divisional data submitted on a confidential basis and held in camera or not?

Mr. MITCHELL. If the FTC asks for it. I assume the legal division, legal department of the department would ask them to keep the information confidential.

Senator PROXMIRE. Why?

Mr. MITCHELL. For the reasons I previously stated. I think it is beneficial to our competitors to get our operating data.

Senator PROXMIRE. You would deny—at least previously you did not deny that this would be beneficial to the consumer too. It could be beneficial to the consumer; it could be in the public interest?

Mr. MITCHELL. It could be. I do not see exactly how it could be.

Senator PROXMIRE. If the profit figures and the margin figures are sufficiently big, it encourages competition and that is desirable for the consumer, because with more competition he gets a lower price. There are greater options for buying.

Mr. Mitchell, when the Food Advisory Committee of the Cost of Living Council was preparing for phase IV, it set forth some plans for action and included the kind of information they needed. Under the caption "Industry Profile," it stated, some measures of concentration, ratios where the percentage of industry sales by the largest firms will be needed to determine the degree of competition that exists within each industry.

CONCENTRATION DOES AFFECT COMPETITION

Would you agree that concentration in the market does affect the amount of competition at present?

Mr. MITCHELL. You are answering your own question. The number of people in the market determines competition. Is that what your question is?

Senator PROXMIRE. Concentration, then, in the market does affect the amount of competition present, yes. In other words, you are saying, if you have a greater concentration, you have less competition?

MITCHELL HAS A UNIQUE VIEW OF THE EFFECT ON COMPETITION OF CONCENTRATION

Mr. MITCHELL. I do not agree to that.

Senator PROXMIRE. You do not agree to that?

Mr. MITCHELL. I would agree if there were fewer competitors in the market, fewer operators on the market, there would be fewer competitors.

Senator PROXMIRE. Why would it not make sense that if you are going to have more effective competition, you have more sellers?

Obviously when you have a situation such as you have here with Safeway and Giant having 60 percent of the retail sales in the Washington area, there is a tendency obviously for them to dominate the market as a whole, is there not? And to be in a far better position to establish the kind of prices that they would like to establish, profitable prices, and to maintain high prices?

MITCHELL ARGUES THAT THERE IS STRONG COMPETITION IN EVERY MARKET WHERE SAFEWAY OPERATES

Mr. MITCHELL. I would not say so. We have good strong competition, in every market we operate in, regardless of the number of operators, regardless of the number of stores we have.

Senator PROXMIRE. We have an IRS memo drafted during phase II that states that our experience indicates that there are many ways to manipulate the profit margin. Two Internal Revenue Service agents told the committee that, within your vertically integrated structure, you certainly had that capability, and during their audits, they found a number of examples.

If I were a businessman and saw the IRS or Federal Trade Commission looking at gross margins in my stores, I would shift more of my costs forward to make my margins appear small. Is that not true?

NO HIDDEN PROFITS IN SAFEWAY

Mr. MITCHELL. You are speaking for other people in the industry I am not that familiar with them.

I can state that the information we have filed with this committee, the information we filed with the Cost of Living Council and the Price Commission, the information that is shown on our annual report, and the information that we filed with the Securities and Exchange Commission includes every dollar of profit we make. There is no hidden profits, no shifting from one area to another. You have the whole story.

Senator PROXMIRE. It is possible to make your retail margin appear small by shifting your cost forward so that it appears that your net is less than it actually is.

IS SAFEWAY SHIFTING COSTS?

Let me give you an example. The staff found in some of the documents submitted by you to the committee that between September 25 and October 1, 1974, the Safeway's milk plants supplying the Phoenix division charged your warehouse 58.9 cents per half-gallon for Lucerne homogenized milk. This milk retailed at 63 cents in one zone, 65 cents in another.

However, the data supplied to the committee showed some other chains at Phoenix got their milk delivered in their stores under 51 cents per half-gallon. Mr. Mitchell, that is 8 to 9 cents cheaper per half-gallon. Either your milk operations are not as efficient as we believe, or you are playing games with costs.

Mr. MITCHELL. Mr. Chairman, we transfer all the products, for example, from the Phoenix milk plant. We transfer all of them to the retail division at cost. We do not make 1 cent of profit in the milk plant. This is true of any other manufactured items. We are transferring everything at cost.

I do not know where those figures came from.

Senator PROXMIRE. I am giving you a specific example. I do not want to take too much time because I do have to go to another meeting, and Senator Schweiker is here. I have gone over my time.

WHY ARE SO MANY FOOD CHAIN PRICES IDENTICAL?

I do have two other questions I would like to ask you. One, Mr. Mitchell, I am just astounded by the number of items in your stores and various markets that are exactly identical to those in your competitors' stores. We found in a price check in the Kansas City market in October 1974, for example, out of 3,959 items, almost 4,000 items, that were checked, Safeway and A. & P. had identical prices on 2,969. Out of 4,000 items, 3,000—75 percent of them—were identical in price.

Presumably, your costs are different. How does it happen that you can have this kind of identical, precise identity with this very large number of items?

Mr. MITCHELL. Your first assumption that our costs are different is in error because we are all buying our price list from vendors, national vendors. We are all paying the carload price, and if someone wanted to give us a lower price, we could not take it because of Federal Trade Commission rules.

Campbell's soup quotes $6.90 a case. This is the price we pay. We do not haggle. They would not lower it. We do not ask them to lower it.

Senator PROXMIRE. We have had testimony before our committee that there are tremendous differences in the price by sellers, and they fluctuate daily, they fluctuate hourly, they go up and down. The farm prices are not fixed at a specific level.

Furthermore, there is another element here you made a point of, and a good point of, and I think it is true, that Safeway is very, very efficient. You have trained your help very well. You have organized your operations efficiently, more efficiently then your competitors.

Therefore, why would you not be in a position to underprice your competitors from the standpoint of increasing your volume? Would it not be good to shave your price by 1 cent or 2 cents, instead of having it precisely identical in three-quarters of the cases?

Mr. MITCHELL. Let me go back a moment. The prices you are quoting, I think, are not the prices that go up and down. The prices that go up and down are the perishables, the lettuce, the carrots, the things that you buy weekly.

The prices I am talking about represent the most number of items in a grocery store and grocery department. They are bought on price lists. Those are the things that we pay exactly the same thing as the co-op does, as a voluntary wholesaler does, as everybody else does.

Senator PROXMIRE. You may pay the same, but there is a margin. I am not talking about the profit margin. I am talking about the margin between what you pay and the margin you sell. There may be a margin of 20 percent, 30 percent, 40 percent. It is not a margin of 1 percent, between what you buy and what you sell.

Mr. MITCHELL. The first thing I want to correct——

Senator PROXMIRE. You are talking about gross margin?

SAFEWAY DOES NOT BUY AT BETTER PRICES THAN OTHER FOOD STORES FOR MANY GOODS

Mr. MITCHELL. Yes. I want to correct the idea that we have different costs. Because of laws, I think the grocery business has pretty much the same cost of merchandise, we are all paying for a can of Del Monte peaches or a case of Del Monte peaches, $6.90 a dozen. These things are priced traditionally in the area of, say, 20 percent gross.

Senator PROXMIRE. I will contest that. I do not have the documentation to do it right now. Certainly, there are differences in maintenance, differences in transportation costs, differences in many, many other things.

Mr. MITCHELL. We are talking about gross profits.

Senator PROXMIRE. All right. Go ahead.

MITCHELL DISCUSSES PRICE CHECKS

Mr. MITCHELL. Now you come along and say you have the same price, you have the same price. There are certain magic prices in the grocery business. If you ran analysis of this, you would find most of the prices end in 9, then they end in 7, and then 5 because this as a psychological thing.

Before we get too far into this, we check each of the list prices. Nobody in his right mind is going to be undersold in any important item. If we have a price of 69 cents, and somebody comes in and they have 71 cents, they are going to lower their price to our 69 cents pretty darn quick, or they are not competitive.

Senator PROXMIRE. It goes the other way, does it not?

Mr. MITCHELL. Having a set of prices that are equal is probably a good proof that there is competition.

Senator PROXMIRE. It sounds like the steel industry; they always say, sure, our prices are always equal to the last percentage point. That proves we have competition

It seems to me it proves exactly the opposite. If you have competitors who are striving to increase their volume, you do not get that kind of behavior.

For instance, it seems to me that this can be used as a tool for keeping prices in line. It is the kind of conduct you would expect of a price-fixing conspiracy. If everyone is playing this follow-the-leader game, one of the chains arbitrarily goes up in price on an item, it would seem to me the others would go up on the item. There is where you get the monopoly overcharge.

Mr. MITCHELL. Just because prices are the same does not mean there is price collusion. Before we had the inflation, remember, we had a 5-cent candy bar. The 5-cent candy bar was 5 cents everywhere, yet there was no getting together on it. We had a 10-cent cornucopia.

Senator PROXMIRE. Here you have a situation in October, you had a tremendous amount of changes in a number of items. Yet with such a volatile market, with prices going up and down as rapidly as they are, everybody stays in line.

It is hard to accept that as a competitive behavior.

CHECK COMPETITION BEFORE SAFEWAY MOVES A PRICE UP

Mr. MITCHELL. Our competitive posture has been—and we try to follow this—that is, last up, first down. We get a price increase, a vendor comes through and says we are increasing your price by 24 cents a dozen. We do not raise our price immediately. We check competition, let them take the heat. Let them cause their price image to deteriorate. We will check competition before we move up.

You are talking about the price checks that we make. We send price checkers to the competitive stores regularly to make sure we are on the market.

MOVE PRICE UP IN RESPONSE TO COMPETITOR IF PART OF A PRICE ADVANCE

Senator PROXMIRE. If you find your competition has moved the price up, you move the price up?

Mr. MITCHELL. If it is on a cost advance.

Senator PROXMIRE. This is what infuriates the housewife. She goes in and buys something. She sees that the price has been changed and marked up. She knows that you must have paid a particular amount and marked it up to begin with enough to give you a reasonable margin. Then you mark it up again.

Mr. MITCHELL. We do not do that any more, Senator. Back in the old days——

Senator PROXMIRE. When did you stop doing that?

Mr. MITCHELL. In July of this year.

Senator PROXMIRE. No Safeway store will mark up a price when it is already on the shelf?

Mr. MITCHELL. That is correct. That is correct. This was the result—you say you get letters from customers; I get letters from customers. I get phone calls from customers, and I take them all. I have had phone calls from customers. They are entirely right. They say, here is a package of detergent, and it says 39, 49, and 59 cents. What are you pulling off on us?

I thought the right thing we could do, the morally right thing to do with these rapid price increases was to say we would not mark up shelf stock once it is priced, and we do not. This is a universal program throughout the entire Safeway Co., Safeway International.

Senator PROXMIRE. I am going to ask one more question before I leave.

This relates to a rather dramatic testimony we had last Thursday about the commercial bribery that has affected every major chain in New York City. In most cases these bribes reached the level of vice president, and according to the prosecutors, many of these corporate executives were taking as much as $85,000 and $90,000 a year in bribes.

They found the impact on the price of meat, on the average, was 4 to 5 cents per pound, which of course is substantial compared to the industry's alleged profit margin of 1 cent on the dollar. The prosecutors say that these practices are not limited to New York City or limited to meat purchasing.

Apparently the Department of Justice strike force is out looking at allegations in other parts of the country. A disturbing factor is in none of these cases did the chain management uncover these illegal activities. It must have had a significant impact on their profits. They were told that the chains did not have anyway to police these activities. They were also told the chains did not take this problem very seriously.

Do you at Safeway take the problem seriously?

SAFEWAY EMPLOYEES DO NOT ACCEPT BRIBES

Mr. MITCHELL. Very seriously. We have had longstanding policies that we remind our people of periodically and remind our vendors of periodically that our people do not accept gifts, bribes, entertainment, and so on.

Senator PROXMIRE. This is not the Christmas gift or entertainment that is bad, I agree; but this is for more serious. This is a systematic program of ripping off the consumer, in effect, by taking, as I say $85,000–$90,000 a year for a corporate executive, and on a wholesale basis with literally hundreds and hundreds of people involved in offering and accepting bribes.

What practices and structures do you have to prevent that from taking place, other than the statement that it is not company policy to accept gifts?

Mr. MITCHELL. In 38 years I have been with the company, we have uncovered probably one-half dozen—no more than that—incidents of vendors bribing our people. These have been uncovered by other employees telling us, by the vendors telling us that the employees have come and asked for things.

Senator PROXMIRE. Have you ever thought, in view of the scandal in New York, of having an efficient investigator to go and make a thorough investigation to determine whether or not in any of your vast operations this might be going on?

It seems to me that this would make a lot of sense, not just from the standpoint of morality, but from the standpoint of your own profit and loss operation.

SAFEWAY AUDITORS CHECK FOR KICKBACKS

Mr. MITCHELL. We have an extensive audit program. I think we have 23 staff auditors that go out to places and audit prices, invoices, and sometimes you can tell when a man is getting a kickback by his level of living. If you just sit down to take a look at him, what is he doing.

Senator PROXMIRE. Do you check that out?

Mr. MITCHELL. Yes, sir. Where is he spending his time. As I say, we have had less than one-half dozen.

Senator PROXMIRE. How many have you investigated?

Mr. MITCHELL. I would guess 50 at least.

Senator PROXMIRE. Over how long a period?

Mr. MITCHELL. In the last 10–15 years, something like that.

Senator PROXMIRE. That is not very many when you consider the vast number of stores you have. How many employees do you have?

Mr. MITCHELL. In the United States under 100,000.

Senator PROXMIRE. 100,000 employees, and you had 50 investigations. This indicates this is a very limited effort on your part.

Mr. MITCHELL. The guy that is susceptible to this is a buyer because he does control a lot of money. He can make these deals. Those that we have run down, we have terminated or disciplined the employee and cut out doing business with the vendor involved.

### SAFEWAY IS NOT A TOUGH PRICE COMPETITOR

Senator PROXMIRE. Does Safeway make a serious attempt to undercut or underprice competitors?

Mr. MITCHELL. We try to maintain a competitive posture. We do not engage in loss leader selling.

Senator PROXMIRE. Just to underprice your competition. I was in the printing business before I came to the Senate. That is highly competitive, that business, because we just went out and underpriced our competition. You gentlemen do not seem to do that in that industry. You match the competition.

Mr. MITCHELL. We try to price our merchandise at the optimum price to generate traffic. Now I would say that this year, to date, we have a sales increase at about 20 percent, the inflation factor there though is 11 percent. We have had an increase in the number of customer transactions. I think we must be doing something right as far as the customer is concerned as opposed to our competition. We would not be getting those sales increases.

Senator PROXMIRE. That shows what a lack of competition, a vigorous, strong competition there is in the industry. You do not have a policy. You just told me you had a policy of not undercutting your competition, of not cutting prices to get business, and yet you are doing very well in this industry.

### ONLY SOFT PRICE COMPETITION IN THE FOOD RETAILING INDUSTRY

It seems to me if you had an industry in which there was vigorous competition, you would not be able to do better and better with the soft, gentle, benign, easy policy of not competing vigorously in price.

Mr. MITCHELL. Do you think there might be charges of predatory pricing practices then?

Senator PROXMIRE. No. How can there be charges of predatory practices, provided you are as efficient as you indicated you are, and I believe it, and you cut your prices? I am not asking you to sell below cost.

Mr. MITCHELL. We generally have a policy against that.

Senator PROXMIRE. You can still beat your competition if you are more efficient because your costs are less in many areas such as in Seattle, for example, you have this 5 percent margin on sales, which in your industry, is five times the margin of the industry as a whole. You should be able to make sharp cuts and get a bigger share of the market and benefit the consumer and the public interest.

Mr. MITCHELL. In some instances, we are handling all the business we can handle.

Senator PROXMIRE. My time is up.

HOW COMMODITY PRICES AFFECT RETAIL PRICES

Senator SCHWEIKER. One of the questions I have, what relationship is there between falling commodity prices and your pricing system? How much of a time lag is there, if there is a lag in terms of whether prices come down once your input price declines?

Mr. MITCHELL. In the perishable field, fresh fruits, produce, and meat, we believe we are on the market every week and we have followed the meat prices down. We have submitted information to Congressman Vigorito's committee that I think, in my opinion, substantiates the fact that we have reflected the lower cost of beef in retail prices. In the grocery end of the business there is about a 2-week lag by the time you get the paperwork done and get the prices into the computers and get them out to the stores.

So on a price advance or price declared you have 2 weeks from the time the vendor tells you there is a price change to the time the price is reflected on the shelf.

Senator SCHWEIKER. Is there a direct relationship? If bulk prices go up about 20 percent with the add-on to that by the time it gets to the store, and then they decline by the same 20 percent and the add-on declines proportionately, is that fully reflected in your pricing policy?

SAFEWAY TRIES TO BE LAST WITH A PRICE HIKE AND FIRST WITH A PRICE CUT

Mr. MITCHELL. We believe it is. As I mentioned to Senator Proxmire, we have a standard in the company last up, first down. When we get a low price, we like to be the first one to announce, to improve our price image, to announce the shelf low price. When the price advances, we like to wait for someone else to put the price up first and take the heat from the consumer and then we go up.

There would be more of a lag on the advance in price than there would on a declining price. Furthermore, an advancing price, we have adopted a policy of not changing any shelf stock prices. Anything previously marked on shelf stock we will not reprice it up but we will reprice it down. But this increases—if it takes us 2 weeks to get the paperwork out to the store on a price event, then he must have 2 weeks' supply on the stock shelves.

So there is really a 4-week lag between the time we get a notice of an increase and the time we put the increase in effect. This is reflected, Senator, in the fact that our gross profit—I do not know if you follow me on gross profit which is the difference between cost and sell—our gross profit rates of the years of the last 10 years have been going down, not up. If we had inventory profits, if we were pricing merchandise up that we bought at the old low price, the gross profit rate would tend to expand, not contract. It is going down and has been going down.

Senator SCHWEIKER. I think Senator Proxmire mentioned a moment ago one of the things that really disturbs the housewife, and you concurred, was the repricing policies of some of the stores.

Just a matter of a couple of months, one of my staffers went into one of the Pennsylvania stores. Within a half hour—not your store, but another store—within a half hour they had purchased five items. Three of the items had been marked up twice and two of the items had been marked up three times.

In several other cases the repricing increase was 20 percent while on the shelf and the others 30 percent.

So I can see where the housewife burns on that because it is obviously a profit the store realizes by just doing nothing but overstamping the last price.

You announced, you say, was it July when you instituted your policy about doing that, which is good. I think along with that, the other thing that burns, that I get complaints about is reading where raw material or raw prices have declined and yet are not reflected in the store.

TENDENCY TO INSTITUTE A PRICE DECLINE FASTER THAN AN INCREASE

Mr. MITCHELL. There would be a tendency for us to reflect price declines more quickly than price advances. The time span spread would be in effect if shelf stock is already priced and we do not advance it, but we do immediately lower it.

So if you had 2 weeks' supply on the shelf, there would be an extra 2 weeks for the customer to buy at the old, lower price.

Senator SCHWEIKER. Even though you have paid a proportionately higher price on that——

Mr. MITCHELL. For the replacement stock, yes, sir.

Senator SCHWEIKER. I understand sugar is declining on the shelf. What is your stores' policy on declining sugar prices at this point?

Mr. MITCHELL. Unfortunately, the retailer, or at least our prices on retail sugar, never did get up to the increases that we paid at wholesale. This is because we have this lag, I mentioned there are 2 weeks, and 2 weeks to get the paperwork done, plus 2 weeks on the shelf.

So we never did get up to the top price when we were paying about 71 cents a pound for sugar. So the first downward prices, downward costs in sugar, may not be reflected in a downward price on the shelf because it was never raised. But certainly, I would certainly say as the sugar price continues to decline, our retail price will decline.

Senator SCHWEIKER. I have to go to a Full Appropriations Committee meeting, too, with Senator Proxmire. He asked me to turn the questioning over to Mr. Stockton, of the staff, at this point.

Mr. STOCKTON. Mr. Mitchell, as you are well aware, Mr. Alioto's law firm was successful in prosecuting A. & P. for price fixing. The jury found A. & P. guilty and awarded damages of $32 million to the affected cattlemen. Safeway was also one of those chains accused of price fixing. As Mr. Odgers has pointed out, a number of those charges were set aside.

What were the original allegations against Safeway in that case?

Mr. MITCHELL. Can Mr. Odgers answer that?

Mr. ODGERS. The question is with respect to the litigation in San Francisco might be brought to me but, as I mentioned in my comment, I am precluded on commenting on the merits of the evidence in that case. But the allegations, however, are part of the public record and the complaint in the allegations were that retail chains, generally including the three-named defendants, had conspired to fix low-wholesale prices for fresh beef, and it was those charges to which Mr. Alioto's son, the plaintiff's lawyer, and the court, were directing their attention in the order that I read, in which they said, "Further prosecution of the case against Safeway is not warranted."

SAFEWAY'S SETTLEMENT WITH CALIFORNIA CATTLEMEN

Mr. STOCKTON. What was the settlement that you made with the cattlemen out of court?

Mr. ODGERS. Our settlement after 5 years, and I think perhaps the amount of settlement, incidentally, is the best indicator of the weakness in which the plaintiffs viewed their own case against Safeway, after 5 years in a major antitrust case, it was a mere $45,000, which I think fairly can be described in an antitrust case of that magnitude as perhaps less than a nuisance value.

Mr. STOCKTON. If there were no substantial allegations, why did you settle for anything?

Mr. ODGERS. We are all aware that the prosecution or the defense in a major antitrust case is an expense which is enormous. For example, the public record indicates that A. & P.'s counsel were paid several hundred thousand dollars in the preparation of that case for trial.

So $45,000 to settle an antitrust case of that kind is fairly described as peanuts.

Mr. STOCKTON. What were the specific terms of that settlement as regards Safeway? Mr. Alioto pointed out that as a result you moved the remaining portion of your centralized meat operation from Chicago.

Was that part of the settlement? What were the specific terms?

Mr. ODGERS. No, sir; it was not. The specific terms of the settlement were embodied in the order which I read. I do not have a full copy of it with me. I will be happy to transmit it to the committee by letter. But the concluding terms——

SAFEWAY CHANGED NO ACTIVITIES AS A RESULT OF THE SETTLEMENT

Mr. STOCKTON. None of your activities had to be changed as a result of the settlement?

Mr. ODGERS. No, sir. We represented to the court, and there was a joint representation by a plaintiff's lawyer, Mr. Alioto's son and by me, that Safeway conducted certain practices and did not intend to change those practices. But Safeway was not enjoined or required to do anything. It was not required to stop any activity nor to change its activities. Indeed, Mr. Alioto's son represented to the court that the facts that I read a few moments ago were different than those at Safeway, which he thought was the case when the suit was filed. And it was for that reason that he asked the court that the case be dismissed as to Safeway with prejudice, and that was done in February of 1973.

Mr. STOCKTON. In terms of meeting with competitors, that has been coming up throughout these hearings. Mr. Alioto testified before the committee last week and he cited what he termed as examples of collusion between the chains that had come up during their investigation or trial.

One example, the president of Winn-Dixie said he had provided his private telephone number to the president of Safeway. This claim would facilitate communications between the two of you in talking about general industry matters.

In such situations, what do you talk about with your competitors?

Mr. MITCHELL. In the first place, whoever it was from Winn-Dixie has never given me his private phone number

Mr. STOCKTON. Was this your predecessor he gave it to? It came out in a deposition.

Mr. MITCHELL. He is a personal friend of our former chairman, who is now retired from active duty in the company. He was a personal friend of his. He had known him for many, many years. During that time, I might add, this goes back to 1955 and 1965, during that time Safeway and Winn-Dixie did not operate in the same territories. We are now competitors. This is an example of competition movement. We have moved into areas and do compete.

### SAFEWAY HAS NEVER CONTACTED WINN-DIXIE

Mr. STOCKTON. This was not a case of discussing prices or margins?

Mr. MITCHELL. I have never talked to those people on private lines. I have never called them. I have never known their private phone numbers, and I would have no occasion to call them.

Mr. STOCKTON. Does Safeway belong to the National Association of Food Chains?

Mr. MITCHELL. Yes.

Mr. STOCKTON. Have you ever sent any of your executives to meat clinics of the national association?

Mr. MITCHELL. I understand some years ago some of our executives did attend a meat clinic.

Mr. STOCKTON. One of Senator Proxmire's questions was: We have evidence in deposition form that the meat clinics of various chains' executives discussed prices and consumer tolerance for higher prices on certain food items.

### PRICES ARE DISCUSSED AT TRADE ASSOCIATION MEAT CLINICS

For example, one fellow felt that the housewives would not buy bacon if it went over 99 cents. However, another man assured him that he sold out at $1.29. There are numerous other examples.

It is interesting to note that the minutes of these meetings were color coded to hide the identity of the chain executives.

If, indeed, Safeway chain executives have attended such meat clinics, what is the reason for this color coding? Do you think it is justified?

Mr. MITCHELL. I am not familiar with it. I have never been to a meat clinic myself. The people that went were under strict instructions not to discuss price or supply or other matters that might be questionable, and I am confident if there had been discussions they would have left the meetings. Those are our standing instructions for our people.

When they came home from the meat clinic, they never made a report to anyone else, as far as I know. At least I never heard of a report as to what was discussed, what was not discussed.

Mr. STOCKTON. In the subpenas, the committee asked you for all documents relating to meetings between Safeway personnel and competitive personnel. So far we have received a totally inadequate response from Safeway, only a list of officers that attended National Association of Food Chain meetings. This list appears to be incomplete.

Did any of the Safeway personnel attend the Las Vegas meeting of the association, this last one in October?

Mr. MITCHELL. No.

SAFEWAY NOT ACTIVE IN THE ASSOCIATION

Mr. STOCKTON. Are you still active in the National Association?

Mr. MITCHELL. We are still members. We are not active in a sense—for example, I have never been to a convention of that association or any other association. We are not active in that sense. We pay our dues and get bulletins. That is about the size of it.

Mr. STOCKTON. None of your personnel go to any of the National Association meetings?

Mr. MITCHELL. Our personnel have. In fact, I have been to two of their board of directors' meetings both in connection with the Price Commission and the Cost of Living Council matters; I was going to be in on the meeting of the Cost of Living Council Food Advisory Committee the following day and they were having an NAFC meeting where representatives from the Cost of Living Council and the Price Commission explained regulations.

Yes, I did attend those two meetings. I did listen to what they had to say, and that was it.

Mr. STOCKTON. Do your personnel meet with competitors in regional and local retail associations?

Mr. Mitchell. They are under strict rules not to and I believe they do not.

Mr. STOCKTON. I am sorry, I missed that.

Mr. MITCHELL. They are under strict rules not to attend such meetings, if there are any meetings of that kind.

Mr. STOCKTON. They do not belong to any of these regional or local associations?

Mr. MITCHELL. I do not know. That information was submitted on Friday to you. It should have been through our good U.S. mails on Monday, the additional information you asked for.

Mr. STOCKTON. The metropolitan profit data? We received that. We did not receive anything further in regard to this question of meetings with competitors.

Mr. MITCHELL. I have a transmittal letter. It must be on the way.

Mr. STOCKTON. Fine. How often does the out-of-house counsel you employ meet with competitors?

Mr. MITCHELL. Let Mr. Odgers answer that. He is not a house counsel. I do not know if he has ever met——

Mr. ODGERS. You mean the lawyers?

Mr. STOCKTON. Yes, the various law firms that Safeway retains.

Mr. ODGERS. The only occasions that I am aware, and I have been representing Safeway in FTC and antitrust matters for some years is in connection with the actual conduct of litigation where, as we are all aware, our codefendants necessarily have their lawyers join in certain motions and in the conduct of discovery and so forth.

That is the only occasion that I have met them; I have never encountered lawyers for other retail chains.

Mr. STOCKTON. Mr. Mitchell, isn't it true that Jim Rill, Safeway's counsel here in Washington is also counsel for the National Association of Food Chains?

Mr. MITCHELL. Yes, I think that is true.

Mr. STOCKTON. Do you see a potential conflict-of-interest problem with this arrangement?

Mr. MITCHELL. When there is a problem involving the NAFC and Safeway, again I am not a lawyer, but he would have to watch out for his ethical conduct; and even if he can represent two people, which I do not think he can, I assume he bows out in one way or the other.

Mr. ODGERS. Further than that, that is the case. He represents Safeway only in those matters in which Safeway is involved individually in some particular matter that does not have anything to do with the association. Where there is any involvement whatever, there is other counsel retained or counsel used from the company's own legal staff.

Mr. STOCKTON. Isn't it true that he has access to margin, profit, and cost data of your competitors which is submitted to the National Association of Food Chains?

Mr. MITCHELL. We have not submitted that type of information to the NAFC.

Mr. STOCKTON. Did you cooperate in the Ferris study?

Mr. MITCHELL. To my knowledge we did not.

Mr. STOCKTON. Do you have any idea which chains did? They said that was a comprehensive study.

Mr. MITCHELL. I do not have any information on that.

Mr. STOCKTON. Isn't it a fact that certain chains do submit their cost and profit data to the National Association and make it very clear that they want this information to remain confidential?

Did you see a problem with one of the major chains' counsel also being counsel for the National Association?

Mr. MITCHELL. I do not know it is a fact, although you say it is.

Mr. STOCKTON. It turned up in a number of documents that were submitted under subpoena to the committee.

Mr. MITCHELL. I think they submitted them to Cornell University.

Mr. STOCKTON. The study I'm directly concerned with is one last spring where the National Association attempted to show that the margin on meat was very, very thin. This was a conclusion that Mr. Ferris has been hired on other occasions by the industry to prove. There were a number of these margin submissions that were routed through the National Association.

Mr. MITCHELL. To the best of my knowledge, we did not participate.

Mr. STOCKTON. Have any of your competitors complained about what would appear to be a conflict of interest, or at least a suspect arrangement with your counsel also being the NAFC counsel or having access to your competitors' data?

SAFEWAY TAKES MEASURES TO AVOID THE APPEARANCE OF CONFLICTS OF INTEREST, MUCH LESS REAL CONFLICTS

Mr. MITCHELL. Not to my knowledge.

Mr. ODGERS. I should add, I do not believe it appears to be a conflict of interest at all. It is a commonplace and customary situation. As I said and as Mr. Mitchell said, in every instance where there could be any appearance, much less fact of a conflict of interest, there has been no joint representation nor any representation by Safeway at all.

Mr. STOCKTON. Also regarding the National Association of Food Chains, have any extra assessments been made by the NAFC for any purposes recently?

Mr. MITCHELL. Not that I am aware of.

Mr. STOCKTON. You are aware of the fact the NAFC maintains a fund of $264,000, out of which $30,000 was recently appropriated for NAFC intervention in an A. & P. court case?

Mr. MITCHELL. I was not aware of that. This is the first time I have heard it.

Mr. STOCKTON. Is that the way competitors act—you finance each other's defenses in certain cases?

Mr. MITCHELL. I have not been active in NAFC affairs. This is the first time I have heard of a defense fund or whatever you want to term it. I have no idea what competitors, if any, contributed, nor do I have any idea of how the money is going to be spent, or if there is money as a matter of fact. It is news to me.

Mr. STOCKTON. All right.

In the documents that also came from the National Association there were a number of other items listed. At their latest board meeting in Las Vegas, the National Association budgeted $50,000 for a professor, who has been in their employ before, to refute the charges and theory of the current FTC retail food chain investigation.

Is that the kind of thing that the National Association should be involved in?

Mr. MITCHELL. I am totally unfamiliar with it. I was not at the meeting. We did not have a representative at the meeting. I have no information as to what went on in the meeting.

Mr. STOCKTON. You are no longer on the board of directors.

Mr. MITCHELL. I never was on the board of directors.

Mr. STOCKTON. The executive committee.

Mr. MITCHELL. Never.

Mr. STOCKTON. What were the meetings you were referring to regarding the Cost of Living Council?

Mr. MITCHELL. That was a Government affair under the uaspices of John Dunlop who was Director, whatever he was. He had a committee formed called the Food Industry Advisory Committee, and that was made up of consumer representatives, of farm representatives, wholesalers, two retailers, me being one of them, and three or four college professors, and we met regularly and minutes were kept in accordance with public laws and so on.

PREFERENTIAL PRICING DOES OCCUR

Mr. STOCKTON. Earleir you were telling Senator Proxmire that you never dicker over prices with your suppliers. You are probably aware of the fact that the Packers and Stockyards Administration of the Department of Agriculture recently filed suit against the Wilson Co., the largest meat packer in the country. It involves the *Brigg's* case here in Washington where Safeway and Giant apparently got significant concessions out of Brigg's, differentials of up to 20 percent, compared to prices they were charging your smaller competitors.

Were you aware of this?

Mr. MITCHELL. I was aware of it when I read it in the newspaper.

Mr. STOCKTON. Isn't that an example of market power? Wouldn't your buyers here in Washington have been aware of it at the time? Didn't they dicker? This is a violation of the law, right?

Mr. ODGERS. I am going to have to ask Mr. Mitchell not to comment on matters pending in the *Packers and Stockyards* litigation or other litigation.

Mr. STOCKTON. It is my understanding in that litigation, Safeway is not involved, only Brigg's.

Mr. ODGERS. Likewise, there is a pending investigation. However, I am going to have to ask Mr. Mitchell, indeed, I do not know whether he knows anything about it or not. I think it is unreasonable and unfair to ask him to comment upon facts that are involved in that investigation.

Mr. STOCKTON. Stated another way, how do you guard against this kind of thing, preferential pricing to larger chains?

Mr. MITCHELL. To clarify Mr. Odgers' statement, I know what I read in the paper, period. I know nothing else. As I stated to the Senator, we are very, very strict with our people. We lay down rules and we know they are following them. We buy off price lists.

Mr. STOCKTON. I wonder if your buyers would have seen the price list.

Mr. MITCHELL. Let's take a Del Monte price list. I do not see price lists. Our buyers get a Del Monte price list. We do not chisel off that price list. A company like Del Monte would not let you chisel because they know the law, too. There may be smaller vendors who would want to get your business and want to do something for you. They might be willing to. I do not know this, but we would not accept it.

Mr. STOCKTON. Wilson is the biggest packer in the country, are they not?

Mr. MITCHELL. I do not know who is the biggest packer.

Mr. STOCKTON. Does Wilson do any private label work for Safeway?

Mr. MITCHELL. I believe so, yes, in this area.

Mr. STOCKTON. Do you ever make any contracts or whatever on private labeling that could extend to other products?

Mr. MITCHELL. I do not understand.

Mr. STOCKTON. Do you grant them private label contracts in exchange for preferential treatment on costs of other products?

Mr. MITCHELL. No. The other products we are buying, say Campbell's soup, they issue a price list for \$6.90 a case for tomato soup. There is no way that you can buy that for less than \$6.90. If you did, if you tried to induce them to give you an allowance, that would be illegal. Our buyers are well versed and well schooled in what they can do and what they cannot do.

SAFEWAY DOES NOT BUY MEAT OFF THE YELLOW SHEET

Mr. STOCKTON. Do you subscribe to the yellow sheet?

Mr. MITCHELL. We do not buy off the yellow sheet. I have never seen a yellow sheet.

Mr. STOCKTON. You do not use it as a guide?

Mr. MITCHELL. I do not know whether any of our buyers might personally subscribe. I know the company would not subscribe. I suppose it is available if somebody wanted to get it.

However, because of our method of buying, the yellow sheet is completely irrelevant. We buy, as you probably know, from reading the correspondence and so on, we buy by offer and acceptance. The packer makes an offer to us and we accept or reject it, or we accept part of it, and I might add that we buy completely decentralized.

Mr. STOCKTON. Senator Proxmire asked you about your profits, rate of return on equity for the last four quarters, which has gone from 14 to 19 percent. We notice in you financial statements, there usually is a significant bulging of profits in the last quarter of each year.

Are these accounting adjustments, or what is the cause of this, and to string out that trend, would you look for a substantial increase in the fourth quarter of this year also?

Mr. MITCHELL. What you are looking at, we do not have quarters in the company. We have 12-, 12-, 12-, and 16-week periods, so the 16-week period is always bigger than the 12 week period in both sales and profits.

Mr. STOCKTON. The way you adjusted the data you gave us, I believe it was on a quarterly basis.

Mr. MITCHELL. No, sir. The footnote on the schedule we gave you identified quarters 1, 2, and 3 as being 12-week periods, and quarter No. 4 ,the footnote to the schedule in the material I mailed personally to you, that the fourth quarter is either 16 weeks or 17 weeks. We always close off the business for a year on a Saturday. Every 4 or 5 years we have to have a 17-week period to catch up. They were identified on the schedule.

NEW SAFEWAY STORES OPENING WORLDWIDE

Mr. STOCKTON. Fine. How many new stores are you opening this year?

Mr. MITCHELL. Our goal at the start of the year was 150. I think we are gojng to get about 160, that is, worldwide. I do not have the figure with me for the United States. It might be in the neighborhood of 115 or 120.

Mr. STOCKTON. The way you handle this in you accounting system, this generally lowers your profits, is that not true? In other words if you were not expanding at all over a 1-year period, your profits would be higher for that year than if you were expanding.

Is that not true?

The Internal Revenue Service said that some of the industry profit data was somewhat unreliable because of the different rates of expansion of the different companies.

Mr. MITCHELL. We have been expanding over the past 10 or 15 years. Our goal generally has been about 150 stores a year. This is what we think is reasonable. It represents an amount in dollars of capital expenditures that we can digest and generate internally and so on.

So if we are doing this consistently from year to year, I do not see that it has any significant effect on profits.

Mr. STOCKTON. In 1 year it would, but as a trend it would not?

Mr. MITCHELL. As a trend, it would not.

Mr. STOCKTON. Fine.

Back to your penny for the grocer. Could not anyone make the same argument that—the telephone company rates, the rise in electricity rates, gas rates, increases in water rates—if you divide anything in this country by 220 million people, nothing by itself really causes inflation?

Mr. MITCHELL. The point I was trying to make, if through some device you decided that the grocery stores were ripping the people off, they should not make any money at all, and gave all this money back to the populace, I do not quite agree with the Senator's figure for present inflation. He said 11 percent. I think the last figure I saw was 14 or 15 percent. It is not going to significantly affect that. It is going to come down from 15 to 14. You still have your customers who are unfortunately having to pay too darn much for food.

And the solution, if you are looking for a solution with the retail grocer, I do not think there is anything we can do that would help you. If we are overcharging people, I would say it would show up in the net profit. If we lower our prices 1 percent it is not going to have a significant effect on the problems that this Nation has.

Mr. STOCKTON. There were some divisional profit questions that the Senator did not have a chance to get to, so I will ask them.

For most of the chains which the staff has had the time to analyze, there is a definite correlation between the market position and their profits gained in those markets. This relationship, of course, for some time has been a theory that FTC and antitrust lawyers generally use as a measure of market power and anticompetitive activities.

### SAFEWAY'S STRATEGY—BE THE MARKET LEADER IN EACH DIVISION IN WHICH THEY OPERATE

In the case of Safeway, there is an apparent correlation, however, it is not as strong as in the case of some of the other chains. You show substantial profits in virtually every division, which is unique in the industry. One reason for this phenomenon appears to be the fact that Safeway has adopted a corporate strategy of becoming the dominant chain in virtually every market in which you do business.

Safeway is No. 1 currently in 13 of the 19 divisions and No. 2 in 2, and No. 3 in 1, and No. 4 in 2. This strategy has led to substantial profits, generally above the industry average for most divisions.

Do you argue that your rather incredible success in these markets that you control is not due to monopoly power, restraint of trade, or other anticompetitive activities?

Mr. MITCHELL. In the first place, I do not agree with what you talk about controlling a market, and I think——

Mr. STOCKTON. You are the dominant chain in most of these markets. From what we have been able to determine from your price checks and other price checks, which, as you know, is a very tedious process, it appears that in those markets where you are the dominant chain, you generally charge higher prices. Is that not true?

### SAFEWAY ARGUES THAT IT IS NOT A DOMINANT PRICE FACTOR IN ANY MARKET IN WHICH IT OPERATES

Mr. MITCHELL. I think it is categorically untrue. I do not think we are the dominant factor in any of these markets. There is good, stiff competition in all of them.

I think you get a miscomprehension when you talk about the El Paso market, you think of stores in El Paso. When you talk about the Denver market, you think of the stores in Denver. This is not true.

We have 2,000 stores in the United States and 2,400 worldwide. We operate in 1,400 different towns. We do not have concentrated markets in the big cities. We have stores in the big cities, but we do not have concentrated markets. Washington, D.C., we probably do have more stores than anybody else. I think we have 42 stores in the District.

Mr. STOCKTON. As you know, there is very significant concentration in most American cities; some over 70 percent.

Mr. MITCHELL. The profit we make in the cities, I do not think is the result of concentration because I do not think we are concentrated. Furthermore, I do not think the data is any good on which you are basing your argument, that we operate, as I mentioned, mostly in one-store towns, and two-store towns, and as to Washington, D.C.——

Mr. STOCKTON. You are saying most of the concentration data that is available is not reliable?

Mr. MITCHELL. Yes, sir. Most of it is our—most of these newspaper surveys you see are really the result of a popularity contest where they go around and say, where do you buy most of your groceries? They buy 51 percent of their groceries at Safeway. Safeway gets to be No. 1 there.

Mr. STOCKTON. There are a number of surveys that generally correlate with each other measuring advertising any number of other measures. They are generally in the same range, is that not true? Would you not estimate that in Washington, you have approximately 30 percent of the market?

Mr. MITCHELL. I would not have any idea what we have of the market in Washington. We could get a greater market than we have. We have stayed with the inner-city in Washington, and there are a heck of a lot of people who have not. We have stayed with the inner-city in many of these places.

Mr. STOCKTON. You just do not agree with what we found in those cities where we have gone through your price checks, that you are not the price leader in those markets or the highest-priced chain?

Mr. MITCHELL. I would agree to the contrary. I would say we are the price leader on the low price.

Mr. STOCKTON. We went through your price checks, for example, in the Richmond market. It was just clear that you were higher priced.

Mr. MITCHELL. If we are higher priced, how is it that so many customers favor us?

Mr. STOCKTON. There are a number of reasons, possibly, for that.

HOW MARKET DOMINANCE GIVES SAFEWAY A COMPETITIVE EDGE

You say that generally you are more efficient. That is why you make higher profits. Is it not true that this success is not so much due to efficiency, but to the fact that once you become the dominant chain in a market, significant advantages flow from that dominance.

Preliminary analysis of the voluminous price checks that have been submitted to the committee indicate that once a chain becomes dominant in the market, they develop an image through enormous advertising and other merchandising techniques that allows them to charge higher prices.

For example, we noticed that you are number one in the Richmond market, and your prices are the highest of any of the major chains in that area. In the Washington market, you are neck and neck with Giant for dominance, and the two of you have the highest prices in the market.

Another advantage of being number one is the ability to obtain the best store location. For example, when a new shopping center is being built in Washington, the developers are not interested in asking Jumbo Foods to locate in their shopping center. They want Safeway and Giant because of the image and drawing power that is built up through their dominance of the market, not because of their lower prices.

In dealing with producers and suppliers, the major chains appear to be able to extract better deals than other chains, not necessarily because of volume, but because of their market position. For example, in the Brigg's case here in Washington, Giant and Safeway were able to extract prices from Brigg's which in some instances were 20 percent lower than those provided to their competitors.

And there are other reasons. You develop a certain image so that you really do not have to compete price-wise, and it is extremely difficult for consumers to go from store to store.

Mr. MITCHELL. I would argue to the extent that gross profit is a measure of your pricing structure—and it is an indication—we do not have any higher gross profits rates in the city than we do in the country.

PRICING ZONES AND PRICE CHECKS

Mr. STOCKTON. The Internal Revenue Service came here and said, in their checks during phase II that margins were significantly higher in those areas with lesser competition. Would you agree with that generally?

Mr. MITCHELL. I would not agree with that.

Mr. STOCKTON. Do you not use pricing zones in certain markets?

Mr. MITCHELL. We do.

Mr. STOCKTON. What are they based on? Are they not based on competition?

Mr. MITCHELL. Generally, they are based on geography. If we are hauling out of San Francisco to Eureka, which is 350, 400 miles——

Mr. STOCKTON. How about within the same city? In the Phoenix market?

Mr. MITCHELL. We would not have pricing zones within the same city.

Mr. STOCKTON. A number of chains do.

Mr. MITCHELL. I do not know about other chains, their merchandising philosophy, but if we have a pricing zone in the District, we have one pricing zone in the District. We do not charge more in some stores and less in some stores.

I simply do not buy the idea that you do better in a concentrated area than one that is not. I think it is extremely difficult——

DIRECT CORRELATION BETWEEN MARKET POSITION AND PROFITABILITY

Mr. STOCKTON. That is very true of the other chains we have information on. There is a direct correlation between their market position and profitability.

Mr. MITCHELL. Maybe that it why we are more successful, because we go out after business.

Mr. STOCKTON. That is true because you have become dominant in most of the markets in which you do business. There is no argument with that.

It appears that another advantage in some of these markets when you become the dominant chain is that your advertising rebates are substantially higher? Isn't it true that many chains do not pay any of this money on advertising? Most of this is paid through rebates from suppliers?

Mr. MITCHELL. Let me go back to your statement. We do not concede, and I do not agree with you, that we are dominant merchants in any markets that we operate. We have good stiff competition. It is a dog-eat-dog business.

As to our advertising allowances, we reported those to you. Those are per the books. I used to be comptroller of the company. I am a CPA. I know what is in the books. Those are per the books, and those are the allowances we receive for advertising.

If other chains are getting more than we are, more power to them.

Mr. STOCKTON. Significantly more than you are—their profits in some cases are due entirely to advertising rebates. This was true of Grand Union last year. Albertson's had more rebates than you reported to us.

Mr. MITCHELL. We review all of those. We take those, where we carry the product, where we think it is a profitable deal. We do not take all of them.

Senator HUMPHREY. Mr. Mitchell, I deeply regret that I could not be here at the opening of this meeting. I serve as chairman of the Consumer Economics Committee of the Joint Economics Committee. Today, I have been in what we call a conference committee on the Foreign Assistance Act. I had to stay away for a little while.

We thank you very much for coming, may I say, from the committee, and for your cooperation with the staff. I have a brief opening statement that I shall not take time to read into the record.

I will simply note the great concern that we have here. I also serve as a member of the Committee on Agriculture and Forestry. This ever-widening gap known as the price spread between what a farmer gets for what he sells and what a consumer pays for what he buys; and the spread continues to widen.

There are many factors, of course, that relate to that spread. I am not attributing it to any one because from the raw material produced by a farmer up to the time that the consumer brings it to the kitchen or to the home, there are many, many transactions, and everybody gets a piece of the action, as we say.

But the consumer still feels, and the farmer—let me put it this way—the farmer feels that he is getting blamed for the high food prices when agricultural prices are going down and have gone down considerably. The consumer feels that there is something amiss here, because he reads about the beef prices that are down, the pork prices are down.

At the same time, they go into the supermarket and find that the prices of bacon are way up; they have no relationship at all to hog prices, these unbelieveable prices in the supermarket for bacon. They go into the supermarket and take a look at these prices, and then they talk to their uncle who runs a cattle ranch or is out there on the feeder lot and find out what happens to beef prices.

They take a look at hamburger. They know hamburger is made from low-grade beef, for example, dairy cows, that are marketed generally to make hamburger meat. In my State, sir, we pay people to take the cow from the farm right now.

That is a fact. That is a factual statement. It costs a farmer more to get rid of the cow than he receives for the payment of the cow by the time he has paid the transportation to haul it to market. The price of that cow in terms of money that comes to him is less than the transportation and the handling.

Yet the price of hamburger stays right up. These are the paradoxes. Undoubtedly, there are explanations. Some of them have been made here today, I am sure, by yourself prior to my coming to this meeting.

I want to just go over a few specific questions and then some general questions with you, Mr. Mitchell. There was an ad here that appeared, for example, in the Washington Post, November 18, shortly before Thanksgiving.

It shows that the prices for turkeys in six different categories for all major chains in Washington are all identical. I think it is rather difficult to understand how this can happen in a so-called competitive market.

WHY FOOD CHAIN PRICES ARE OFTEN THE SAME

What I am most curious about is, how did both Safeway and Giant arrive at 55-cent price for their private labeled turkey? It seems incredible to me that with presumably different costs, why was not Safeway's price either 54 cents or 56 cents or 52 cents, and Giant's price a little difference?

Or to put it bluntly, how did you hit on the same price on the same day in the same market for the same bird?

Mr. MITCHELL. Senator, I do not think there is anything unusual about having the same price on any article in the stores. We all had substantially the same costs. We buy from the same vendors, and I went through this with Senator Proxmire. When you are talking about groceries, we are all paying the same price for Campbell's soup.

We in this industry will not be undersold on any item that is of any importance. This is true. We are not the only people, this is true of the competition. So someone announces a 55-cent price, and say, we had planned on a 57-cent or 56-cent. We are not going to try to sell it at 56 cents or 57 cents. It is very competitive, and the customer is very aware of that price, so we lower our price to 55 cents.

If, by chance, we had come out at 53 cents, I am sure—I do not know who was first to come out with 55 cents. If we had come out with 53 cents, I can promise you that it would not have been 53 cents alone, but for a few hours, and they would meet us.

Senator HUMPHREY. A few hours is right. I grew up in the merchandising field. I know what it means to compete because I was the son of a druggist. We had to compete against discount stores, so we watched prices very carefully. Even now I get my report. We still operate our business. We have to be highly competitive. In fact, we are constantly trying to compete. Sometimes we try to underprice in order to get that market.

You have loss leaders like everybody else, do you not?

SAFEWAY WILL MEET LOSS LEADER COMPETITION, BUT WILL NOT INITIATE IT

Mr. MITCHELL. We do not make a practice of selling below cost as loss leaders, no sir.

Senator HUMPHREY. You do not?

Mr. MITCHELL. No. We will meet loss leader competition, but we do not initiate it ourselves. But back to that 55-cent price, as I say, people in the business have substantially the same costs. I do not know what the 55-cent turkeys cost. It was probably in the neighborhood of 51, 52 cents. That probably would have been our cost, and the merchandising manager, he wants to make a profit. What can I get on it? He has 55 cents, and the other guy has 55 cents. I do not know who hit the newspaper first, or if the newspaper is giving our ad prices, which we have had happen. They will find out what our price is, and they do it.

Senator HUMPHREY. Interestingly enough, I found our staff in checking what we call the price check, we were astounded by the number of items in your stores in various markets that are exactly identical to those in your competitors' stores.

We found in a price check in a Kansas City market in October 1974, for example, that our of 3,959 items that were checked, Safeway and A. & P. had identical prices on 2,969 of those items; in other words 75 percent of your prices are identical to those of A. & P.

BACK TO PRICE CHECKING

Mr. MITCHELL. That is a measure of competition. We have price checkers that go out to our competition to see what they are selling merchandise for. We are not going to be undersold for any important item.

Senator HUMPHREY. Let us take a look here at New Jersey, at the Paterson and Newark markets. An A. & P. price check, also in October 1974, showed the following identical prices with 10 percent of the market under the control of Shop-rite, 91 percent of 4,759 articles were identical in price to A. & P. Grand Union, with only 8 percent of the market, 91 percent of 4,759 items had the same price as A. & P.

Pan-rite with 22 percent of the market, 93 percent of 4,759 items had the same price as A. & P.

So with these four firms, Shop-rite, Pan-rite, Grand Union, A. & P., about 92 percent of all the prices are identical. Is that what you call competition?

Mr. MITCHELL. That is what I call competition.

Senator HUMPHREY. It is?

Mr. MITCHELL. The fact that they are all the same means they are competing and lowered the prices to the reasonable low side that they can do.

NO PRICE AGREEMENTS BETWEEN CHAINS

Senator HUMPHREY. Does it not mean that there is a gentleman's agreement that prices will stay at a certain level?

Mr. MITCHELL. There never has and never will be as regards to Safeway with any other chain. Just because you have the same prices does not mean collusion. In the good old days you had a 5-cent candy bar. That did not mean that people got together and priced it. Our 10-cent cornucopia or something like that comes——

SAFEWAY SIMPLY SAYS IT WILL NOT GOUGE—IT OFFERS NO BARGAINS!

Senator HUMPHREY. I cannot understand why you all stay in line on prices so accurately all the time.

Mr. MITCHELL. We are checking prices, and this is competition. If we go out to a Lucky or A. & P., Kroger, or you name it, and we find they are 2 cents below us on Campbell's soup, we are going to move down as fast as we can because we have made a pledge to our customers, if you buy all your food at Safeway, you will have a fair grocery bill, and it will be no higher than anybody else's.

Senator Humphrey. Can you explain to me why there is not an extra supermarket in Southwest Washington in addition to your one Safeway?

Mr. MITCHELL. I do not know.

Senator HUMPHREY. I want to know how 50,000 people are supposed to be served by one grocery store.

Mr. MITCHELL. I do not know why the other grocers have not moved in. I can assure you there has been no collaboration and no discussion.

Senator HUMPHREY. I was not trying to indicate that. I just wondered if you could tell me why the situation is the way it is.

Mr. MITCHELL. If our prices were out of line, Senator, I am quite sure, dead sure, that there are plenty of people who would be willing to move in and take our business away from us.

Senator HUMPHREY. They do not.

SENATOR HUMPHREY UNHAPPY WITH PERFORMANCE OF SOUTHWEST WASHINGTON, D.C., SAFEWAY STORE

Mr. MITCHELL. They probably check our prices——

Senator HUMPHREY. I have been there since 1965, and there is just the one Safeway Store that you cannot get into. It is absolutely a—it is a menace to life and limb. You really have to put on knee-guards.

The only man that should go in there is Larry Brown with a helmet on; he is so tough that he can take the knocking around.

I want to get this off my chest, because somebody in the city needs to do something about this. There is one drugstore, one supermarket in that whole cockeyed area that runs for a couple of miles.

Why, we have got more than that in Waverly, Minn., and we only have 500 people, but we have two supermarkets in our little town.

Mr. MITCHELL. Are you suggesting we should put another Safeway supermarket in?

Senator HUMPHREY. A good idea. Either that or Giant should serve the customers. You know how many people go elsewhere to shop because they cannot find a place to shop?

Mr. MITCHELL. If we put another Safeway supermaket here, these gentlemen would have me up here saying you are trying to monopolize the business.

Senator HUMPHREY. No doubt we would do that to see if there were identical pricing.

I am very serious about it, this shows what market control means. This is exactly what it means. Possibly you have such a dominant position there that nobody dares compete with you. At the same time, you are not giving the customers the service that they rightly deserve.

You have Peoples drugstore and Safeway, period, and you can go down there for blocks and there is apartment house after apartment house. More people must live within five blocks of that store than live in my town where I grew up with 15,000 people.

They say that there are 50,000 people in that area that are trying to be served by your one store. I think there is something cockeyed, and I am going to try to find out what it is.

Mr. MITCHELL. I would not know why there are no other merchants. We have no contact with them. I think if the conditions are as you describe——

Senator HUMPHREY. They are.

Mr. MITCHELL [continuing]. That some enterprising merchant would not move in. Maybe this would be a chance to have a branch of your drug company down here.

Senator HUMPHREY. I cannot do it. I am sorry. We do not have reciprocity. I am very serious about it. I think there is something in this here. I want to know why one company is so dominant in that area that nobody else comes in.

Mr. MITCHELL. I think you will have to ask the other chains.

Senator HUMPHREY. We plan on doing it. I want to review with you a little bit some of the marketing practices. Of great concern to consumers is possible overcharging by retail chains in one area in order to subsidize lower prices in other areas of stiff competition; of course, that is a fact.

### SAFEWAY OPERATES AUTONOMOUS DIVISIONS

Mr. MITCHELL. This is not what we do.

Senator HUMPHREY. That is exactly what happens in the retail business, because I know what happens in the retail business. I know that many chain outfits frankly say they are willing to lose a quarter of million dollars to drive someone else out. That is good for the consumer temporarily until you get a lock on the market like you have in Southwest Washington.

Mr. MITCHELL. The situation you are describing is not the case. With Safeway, we run 21 autonomous divisions. Each division stands on its own feet.

Senator HUMPHREY. We are going to that. We have a little evidence here that does not quite prove all that. Evidence suggests that your firm earns high rates of return in areas where you have a large share of the market, and a low return in areas of stiff competition.

In Little Rock, you have 32 percent of the market and receive a relatively high return of 4.35 percent on sales. That is a very good percentage on sales. Yet in Sacramento, Calif., where you have only 12 percent of the market, you receive only 1.7 percent on sales, return on sales.

You either have a lousy manager in Sacramento, or you are engaging in competitive practices in Sacramento that you do not engage in in Little Rock.

Mr. MITCHELL. In the first place, you talk about Little Rock. We have about 12 stores in Little Rock. Most of our stores—before you came in, Senator, I mentioned this to the other gentlemen—most of our stores are in one-store towns and are not what you would term the Little Rock division. They would be out in the country.

I think management has a great deal to do with it. We have had excellent managers over the years in Little Rock, and they have built a business and they have watched their costs and they are doing a better job than Sacramento. Sacramento is one of our highest cost areas.

Senator HUMPHREY. Are you indicating that your prices are the same in Sacramento as they are in Little Rock?

Mr. MITCHELL. Probably higher in Sacramento.

Senator HUMPHREY. Probably higher?

Mr. MITCHELL. Yes.

Senator HUMPHREY. Except you are earning less on sales.

Mr. MITCHELL. Yes, we have a higher cost of doing business in Sacramento.

Senator HUMPHREY. Are labor costs higher?

Mr. MITCHELL. Yes.

Senator HUMPHREY. Unionized?

Mr. MITCHELL. Unionized 99 percent.

Senator HUMPHREY. Little Rock is unionized too, is it not?

Mr. MITCHELL. Yes.

Senator HUMPHREY. That is not a factor then?

Mr. MITCHELL. Yes, the union rates can vary from city to city.

Senator HUMPHREY. Yes, of course. Now to give you another example here, you make an observation that your firm and others are fond of declaring that you earn about 1 or 2 cents per dollar on sales. The implication with that is that it is a very low profit margin and there is some implication you may not be doing too well. You are not earning profits comparable to some other companies.

But Safeway's profits are up 40 percent since January, is that correct?

Mr. MITCHELL. That would be correct.

Senator HUMPHREY. The third quarter profits are up 75 percent over last year.

Is that correct?

Mr. MITCHELL. At least. I thought it was closer to 100.

Senator HUMPHREY. Over last year?

Mr. MITCHELL. Over last year.

Senator HUMPHREY. How did you do last year?

Mr. MITCHELL. Third quarter?

Senator HUMPHREY. Third quarter.

Mr. MITCHELL. The third quarter of 1973 was a disaster quarter for us and the other retail trades.

Senator HUMPHREY. Why?

Mr. MITCHELL. We had price controls. We had the beef shortage.

Senator HUMPHREY. Which got the price of beef up.

Mr. MITCHELL. We were out of stock a great deal of the time. We were out of stock. We had many out of stocks and grocery items, canned goods, paper products, were all on allocation. We had a terrible third quarter. In fact, for preparation for this meeting I went back to 1955 before I could find a third quarter that was as bad as the third quarter of 1973. That is almost 20 years.

Now the staff has come along and said, "here are your third quarters. You doubled your profits in 1974. You are doubling it from a disaster period."

Senator HUMPHREY. How was January of last year?

Mr. MITCHELL. January of 1973?

Senator HUMPHREY. Yes.

Mr. MITCHELL. It was not a good quarter. 1973 was not a good year for the company.

Senator HUMPHREY. It was not?

Mr. MITCHELL. No, sir.

Senator HUMPHREY. I thought the grocery business did quite well in calendar year 1973.

Mr. MITCHELL. In 1973, the grocery business made something, I think it is less than seven-tenths of 1 percent.

Senator HUMPHREY. Net?

Mr. MITCHELL. Net.

Senator HUMPHREY. On sales?

Mr. MITCHELL. On sales.

Senator HUMPHREY. What were your sales?

Mr. MITCHELL. Our sales in the country here in 1973——

Senator HUMPHREY. If you made 1 percent of $5 billion, you did pretty well, did you not?

Mr. MITCHELL. No. I would say we did rather poorly.

Senator HUMPHREY. A question of perspective here.

### FOOD STORE PRICES DO NOT HAVE MUCH IMPACT ON PRICE LEVEL SAYS MITCHELL

Mr. MITCHELL. That is right. In the statement that I regret you missed, the grocery store profits, the total grocery store profits are miniscule compared to the other figures that we kicked around here, the Gross National Product, that type of thing.

The point that I am getting to, Senator, is that if we made no profit whatsoever in the grocery business, it would not alleviate this terrible inflation that we are having. I think food prices are up, according to BLS, something like 15 percent. But if you took 1 percent off from all the profits of the grocery stores, you still have a heck of a problem.

Senator HUMPHREY. I can understand that every little bit helps and I think what we have an obligation here is to try to find out why this great retail-farm price spread—this food inflation occurred—because this is the thing that confounds people. Do not misunderstand me. I believe in the profit system. I do not think you are obligated to run a welfare agency. That is for the government. I believe in profit. I know what it is to compete in my district. We are the only private merchants in four counties in the drug store business there. There is not one of us left except this old family store, started in 1903, 71 years ago.

I know what it means to lose money; I know what it means to have loss leaders. I was born above a drug store, raised in one, and merchandised to beat the devil all my life and I am still doing it. That is my sideline. I have to do that as a family trustee for this business. So I know what it is. It is a small business. It does not do too much per year, nothing like Safeway.

I know what it is to meet competition. You are not talking to an academic or a theoretician. I believe in profits. I think you are entitled to them.

I notice in 1970 your return on equity for domestic operations was 14.7; in 1971, 16.1; 1972, 16.1; 1973, as you indicated, not a good year, 13.4; the first quarter of 1974, 14.5; second quarter, 17.2; third quarter, 19.6, almost 20 percent on equity.

That is the pattern this last year after those price controls came off. That is exactly what I said was going to happen. Everybody was going to go out for the kill. That is what has been going on.

Let us compare you to the oil companies that we trounce around here, and rightly so because they are a bunch of gluttons when it comes to profits. I believe in frankness and candor. Let's take a look at Gulf.

Gulf's after-tax return on equity was 18 percent. That is a very good return on equity. And I notice here Shell had 17 percent. Sunoco had 18 percent. And Safeway received on an average this year so far at about 18 percent return on equity after taxes. Albertson's received 20 percent.

MITCHELL EXPLAINS WHY SAFEWAY HAS HIGH RETURN ON EQUITY PRICES

Is that not an indication that there is a little something going on this past year or have you all at once become better managers? Obviously, wage rates are not down, Mr. Mitchell. They are up. Utility costs are up. You are paying more money. Fuel costs are up. You are paying more money. Yet your after-tax return on equity was running at 19.68 in the third quarter and an average of 18 percent in the year ending June.

How do you explain that?

Mr. MITCHELL. I explain that, Senator, by the fact that you are looking at the stockholders equity which is in preinflation dollars.

We do not inflate [sic] the stockholder. He is entitled to more money, I think, because there is $700 million that he put in there before we had all of this devaluation and so on.

But in the structure of the balance sheet there are things other than stockholders equity. There is debt and there is off-balance sheet financing, and I think they should be taken into account. If you take into account Safeway has off-balance sheet financing, our lease liability is $1½ billion and not reflected on the balance sheet.

Senator HUMPHREY. That was true of other years?

Mr. MITCHELL. That was true of other years. In a supermarket chain we hock everything, really—we lease back everything. We do not want to own anything because we can lease cheaper and there is leverage, what we refer to as leverage. If you took the earnings on capitalized debt, our return on investment would be about 7 percent after you capitalize all of these leases.

Before you came in I read Senator Proxmire some figures. Our operation expenses—I am sure you understand what I am talking about.

Senator HUMPHREY. Yes, sir.

Mr. MITCHELL. In 1964 it was 20.7 percent of sales. In this year to date they are 18.7 percent. We get a lot of static from people who say you run a sloppy operation, you are wasteful, you do all these things.

I think this is the best damn record I have seen in a long time. We cut our expenses 2 percent, and yet our return in 1964, our net return on percent of sales, is 1.8. This year to date it is 1.4. The average for the past 10 years is 1.4.

Senator HUMPHREY. Your operating expenses are, I would say, are very reasonable.

Mr. MITCHELL. We work hard.

Senator HUMPHREY. Let me ask you, Mr. Mitchell, what do you think is the cause of this unbelievable farm-retail price gap? How do I explain, for example, to my farmers when they are getting 34 cents a dozen for eggs, the price you charge for them here in Washington, D.C.?

There is an explanation. I want you to tell the listening audience here and the reporters what it is? I go home and see Mr. Waggoner, who is a poultry farmer, and he is paid 34 cents a dozen. I go to Washington and they are $1.09. In Minnesota they are fresher eggs than I get here, real fresh, right smack bang out of the henhouse, Grade A large, and at a difference, I might say, of 60 to 65 cents a dozen.

I think that something happens when you get to Washington. They must gold plate them or something here. I have never seen anything like it.

When I go back to constituents of my State and tell them what the price of eggs is here and they tell me what they are getting there, they cannot believe it.

There is a reason for it, but would you tell us?

### RETAILERS SHOULD NOT GET THE HEAT FOR PRODUCER ACTIVITIES

Mr. MITCHELL. All I know is what we pay vendors. I have a clipping from the San Francisco paper here. It says, "State Helps Keep Egg

Prices Up." This is a current clipping, December 4. So all of the egg producers get into some kind of a coop and they decide, and I will leave this clipping with you, Senator, if you like, and they decide they are going to ship eggs to Japan or elsewhere overseas, at a lower rate. They are going to short the local egg market, which they say will increase the price of their eggs back to 8 cents.

Senator HUMPHREY. Right. If you are a farmer, that is exactly what you ought to do.

Mr. MITCHELL. I do not care what they do. I do not like to get the heat for it.

Senator HUMPHREY. The retail business ought to try to explain to the American people, to consumers, how you are being hijacked on egg prices, if you are telling us the truth, and I have no reason to feel you are not.

Why is it that eggs will sell for $1.09 when Grade A eggs at the farm are 40 cents a dozen? That is a good average retail price, $1.18, $1.19, $1.03, $1.09.

Why is that? This happens all the time.

Mr. MITCHELL. That is competition.

Senator HUMPHREY. Good. That is what I thought. I wondered why that did not translate itself into some other items.

Mr. MITCHELL. We used to grow alfalfa personally.

Senator HUMPHREY. Yes.

Mr. MITCHELL. When we grew it, we got $18 a ton behind the bailer. We gave up growing alfalfa because it got army worms and weevils and we did not have enough time to put in on it. We grow cows. We have to buy alfalfa now and we pay $72 a ton. That price increase is over a period of 3, 4 years.

Senator HUMPHREY. Is that what the farmer receives?

Mr. MITCHELL. He is getting $72 a ton for it.

Senator HUMPHREY. Some of them have to buy it, too, for feed.

Mr. MITCHELL. One farmer is charging the other farmer $72 a ton.

Senator HUMPHREY. Again, on perishable items, sir, how do you explain to the consumer that your hamburger meat in the packing house is around 16 to 18 cents, and what do you charge for hamburger?

Mr. MITCHELL. 79 cents, something like that.

Senator HUMPHREY. What happens? In my State it is 12 to 14 cents for hamburger meat, for a cow when they cull the herd.

Mr. MITCHELL. If you know, and I am not a meat man, you buy a cow and you slaughter it, and to get you a carcass there is 60 percent by weight left.

If you look in the paper today, the beef market was 37–40, live.

Senator HUMPRHEY. That is what they print. That is not what the farmer gets. He may get 29, 30 cents, because that is a certain kind of class. By the time that farmer gets to the market and has marketed that cow or steer, the price that he gets is entirely different than what is printed in the paper. That is another thing that needs to be understood here.

I come home to my beef grazers. They will show me their marking slips. They will show me the market price that is printed in the local newspaper, the local newpaper's market price as compared to what the farmer gets. It has no more relationship than the man in the moon to a crocodile. There is no relationship at all.

Is that not a factual statement?

Mr. MITCHELL. I do not know.

Senator HUMPHREY. You ought to know, you are in the food business.

Mr. MITCHELL. We are buyers of carcass beef. We are not buyers of live animals. We do not own live animals, we do not slaughter any, we do not feed any. We just buy carcass beef.

The price quoted yesterday was 37–40 for live U.S. choice, 1,000-pounds in the Wall Street Journal. The price for carcass beef was about 60, reflecting a 60 percent cut-out. We are getting to the price of hamburger.

If we buy carcass beef and bone it ourselves, you get something like 240 pounds, some such figure, of ground beef out of the 600 pound carcass that you bought. So that is why your price keeps multiplying.

In other words, a 1,000 pound steer does not produce 1,000 pounds.

Senator HUMPHREY. Of course not. It may produce 300 pounds of meat with the bones out and the entrails and all, 300 pounds. When that starts out at 12 cents, it should not end up at 88 cents. This is one of the reasons for this hearing, this constant price spread that no one understands, and I never found anyone yet that can explain it, and I am trying to get somebody in the market to do so.

I know there must be an explanation. I realize each person that handles it gets a profit. All I want is for a man of your ability and standing in the food market to explain to the American public what happens.

You say you are not overcharging. There are some people who think there really is not much competition anymore simply because most of the private merchants in the food business have been eliminated, leaving only the big chain operation. When the giants get together, they learn how to live together. They learn that competition is sometimes not too good. It is much better if you have high and stable prices in the market than highly competitive prices. Most of the real competition comes when you are trying to put somebody out of business. When you really get command of the market—there is a nicer way to put it—when you dominate the market or get a lion's share of the market, that is when you earn excessive profits.

After you have the market locked up and you have a commanding position in the market, people pretty well respond to you. It is like General Motors. The rest of your competitors live by suffrance. They do not dare to eliminate Chrysler and American Motors or they would have the Justice Department on them. So they have a kind of paternalistic attitude. In effect when a big corporation gets so much control of the market, it loses its competitive zeal. It is just like the politician who gets too much of a vote. He does not take care of his constituents. It is when you are close and have competition that you become lean like Cassius Clay and do a better job.

It is true of football, it is true of education, it is true of economics and it is true of Safeway, which is among the largest of the food chains.

Mr. MITCHELL. In the United States we are second.

Senator HUMPHREY. Who is the largest?

Mr. MITCHELL. A. & P.

Senator HUMPHREY. You are very close.

Mr. MITCHELL. That is correct.

Senator HUMPHREY. The two largest food chains, when you and A. & P. compete, you come down the skids together, like two skiers coming down the slopes—just like twins. You come down there and your prices all kind of hang together.

That was not the case before you got that dominant influence in the market, was it?

MITCHELL—EVERY YEAR FOOD CHAINS ARE HIGHLY COMPETITIVE

Mr. MITCHELL. I have been around this company for 38 years. Every year has been a pretty darn tough competitive year. I have not seen any situation where we dominated a market or anything else like it.

Many of these markets that you mentioned have new competitors coming in to them. We outlined this. I could name a few. The Albertson chain has been going faster than Safeway. They have been entering territories where we are. The Target stores, Penny's Treasury stores, K-Mart, have brought in competition. In every area where we operate we have vigorous competition.

I think we get some of the best competition from the independents who join some kind of voluntary group and he is willing to work long hours standing up to get that business. And he will do it. They are smart. They are good merchants.

Senator HUMPHREY. You are saying there is good competition.

Mr. MITCHELL. I say there is good competition. I say good competition is keeping us on our toes.

If it were not, we would not be working on these expenses that I talked to you about, which I think is a tremendous record, without blowing my own horn.

Senator HUMPHREY. The time is running out here, Mr. Mitchell. One of the requirements of the committee subpena was asking you to submit sales, cost, and profit data on their major departments in your supermarkets, like meat, grocery, and produce.

All you provided were sales in these categories.

Mr. Alioto, mayor of San Francisco who testified before the committee last week, said that you do have such information on documents that are put together for your use. Also, Mr. Perkins of Jewel Tea said the chains indeed know their profits by departments. He claims he is losing money on meat, so he had to know his profit by department.

SAFEWAY DOES NOT KNOW ITS NET PROFIT BY DEPARTMENT

Are you telling this committee that you do not know what your profits are by department and you claim you do not know whether you are making or losing money on meat?

Mr. MITCHELL. In some of the testimony I read, people are confusing gross profit and net profit. I am sure you would not do that, Senator, because you have been in the business. You know what we are talking about.

Senator HUMPHREY. I still want to know what your estimated net profits were in these areas.

Mr. MITCHELL. We have gross profits by department. In order to generate a gross profit of any kind, you have to know what your sales are.

Our cash register keys generally are set up with three departments and a tax key. The checker or cashier, when you bring your things forward, segregates your order and rings up meat, rings up produce, and rings up groceries. And we do generate a figure of gross profit by department. And that information was submitted to Congressman Vigorito at the hearings on November 19th.

We do not generate a figure at net profits by departments and I will be happy to explain why.

Within a store, again as you know, there are many common expenses. You have your rent, you have your insurance, you have repairs. The checkstand operation is a common one. You have carryout boys who operate throughout all departments.

We have never segregated or attempted to segregate by one means or another each of these individual departments. We do not think it would serve any useful purpose.

Senator HUMPHREY. You do not allocate those expenses?

Mr. MITCHELL. No, sir.

Senator HUMPHREY. You take, for example, some of the larger stores like Kresge's, Sears, and Montgomery Ward. They allocated expenses. I remember in my early experience with some of these, they even checked the amount of floorspace that they are using and whether goods yield a net return on floorspace used. There is no sense in having a lot of items piled up in a place where you are just getting large gross sales on it if they are all losers.

That is the first thing you learn.

If you have, for example, you are running a large establishment, and you have a soda fountain, yet you find out it is a dead loser year after year, year after year. You have to question it and ask yourself, "Is it worth keeping there to bring in the trade." It may be an attraction for the trade, or is it such a loss that you ought to get rid of it because you could use the floorspace to hold fly spray better.

Every successful merchant that I know does that. You weigh it out.

Here is Mr. Perkins of Jewel tea. He said he knows they are losing money on meat. How does he know that if he only keeps track of gross profits?

### SAFEWAY DOES NOT KNOW ITS NET PROFIT ON MEAT

Mr. MITCHELL. I do not have any idea how he knows that. We do not. We cannot do it retroactively. Perhaps we could do it prospectively, if we thought the information would be of value.

Senator HUMPHREY. It would be of value to you.

Mr. MITCHELL. We have tried to cut down on expenses. We have a flood of paperwork in this company already and in the Government, as you know. We have tried to cut down and streamline our expenses. We have got hundreds of expenses.

I ask you, we have a bad check artist come in and he writes a check for $100 and it bounces, it is not good. Who are you going to charge that to?

Senator HUMPHREY. The store.

Mr. MITCHELL. We do charge it to the store.

Senator HUMPHREY. Allocate it.

Mr. MITCHELL. On what basis?

Senator HUMPHREY. You have to have some kind of formula. You start off any bookkeeping system with certain assumptions. I am not going to try to tell you how to run your business. You know how to do that. Everyone does that. I have been a manager of a store where we had departments and we knew whether or not a particular department was making money or losing money.

If you did not know that, you could not control your floorspace.

You lease, do you not?

Mr. MITCHELL. Yes.

Senator HUMPHREY. You lease property and you are leasing so many square feet of floor space. You would like to know whether that floorspace is yielding a profit. You are not trying to run a gallery, you know, where people take a look at the labels. You are really trying to see if it makes a profit.

If you have one-fourth of your floorspace in losers, you are not a very good manager. There must be a profitable item that you can put in there. Let somebody else run the losers. I learned that a long time ago. That is the only way we stayed in business for three-quarters of a century. You cannot have losers all over the joint. You have got to know whether they are making money.

Now you are telling me you do not know whether your meat departments are making any money?

Mr. MITCHELL. We know what our gross profit is.

Senator HUMPHREY. That does not tell you anything. Gross does not mean a hoot.

### SAFEWAY DOES NOT KNOW WHAT ITS BEEF SALES ARE

Mr. MITCHELL. We do not know the net profit on the meat department. We do not know the net profit on beef. We do not even know what our sales are on beef.

Senator HUMPHREY. You are in one heck of a fix.

Mr. MITCHELL. We may be, but it is slightly better than our competitors who are spending a lot of their time spinning the wheel about things they cannot do anything about.

Senator HUMPHREY. How do you know how to price your meat if you do not know whether you are making a profit?

### MEAT PRICES—HOW DO FOOD CHAINS FIGURE THEM?

Mr. MITCHELL. We price it competitively.

Senator HUMPHREY. You do?

Mr. MITCHELL. Yes.

Senator HUMPHREY. That is why you have standard prices for turkeys. You know the other fellow is checking it out and he makes a profit so you figure if they are making one at 55 cents, you can price it at 55 cents.

Mr. MITCHELL. In this trade, we have never made any money on turkeys. Christmas and New Year's turkey sales, we probably pay 52 cents for them.

Senator HUMPHREY. How do you know you are not making money on turkeys if you do not have any way to check out net profits?

Mr. MITCHELL. We pay 50 cents, we sell them for 55 cents. My instinct tells me——

Senator HUMPHREY. That tells you you are not making much money?

Mr. MITCHELL. That is not enough to pay the rent.

Senator HUMPHREY. You do not get a little operational deal when you buy large amounts?

Mr. MITCHELL. Suppose you reached the conclusion, as you probably reached the conclusion, that I will not handle turkeys this year because I cannot make any money on them. We cannot be in the grocery store business without handling turkeys.

Senator HUMPHREY. That is one of the trade-offs you have to make, I agree. There are certain things you have to carry even if you do not make a dime on them. You may actually lose some.

I would think good management would require that you would know how much you were going to lose and whether or not a department is a profitable department. Gross profits do not mean a hoot.

You can have gross profits and go broke. It is easy to have gross profits.

Mr. MITCHELL. Some of our competition are going broke.

Senator HUMPHREY. Gross profits—again, gross profits mean very little unless you have a way to determine what each department is doing. Apparently, we have some disagreements on this. You indicated very strongly here that you are highly competitive. All evidence here indicates that you do quite well despite that competition. Maybe it is due to very good management. But I was rather interested in noticing that your profits on equity, after tax was as good as the oil companies. Here I have been getting after the oil companies all the time and you did as good as Gulf, Sunoco, and you did as well as Shell.

That is really going some.

Mr. MITCHELL. Perhaps if the SEC lets us capitalize leases, we will get back to a figure of 7 percent and we will not look so good.

Senator HUMPHREY. In other words, you think the difference on your leasing arrangement is what causes the discrepancy.

Mr. MITCHELL. This is a leverage business.

Senator HUMPHREY. Mr. Mitchell, you are lucky I have to go to a luncheon, and I think it is time for you to eat. You have been here since 10, have you not?

Mr. MITCHELL. Yes, I have, Senator.

Senator HUMPHREY. We thank you very, very much for your cooperation.

Mr. MITCHELL. If you ever get out to Oakland, I hope you visit.

Senator HUMPHREY. Oakland, Calif.?

Mr. MITCHELL. Yes.

Senator HUMPHREY. How are the Raiders going to do?

Mr. MITCHELL. They are going to win.

Senator HUMPHREY. I hope you and I have a chance to see the Raiders play the Vikings. I am not at all sure that is going to work out. If they do, it would be the most amicable relationship up until the game starts.

Mr. MITCHELL. The Raiders are highly competitive.

Senator HUMPHREY. They are very good.

I enter into the record the divisional profits of Safeway stores in rate of return on sales by division relating to Butte, Dallas, and Denver and all other areas of the Safeway Corp.[1]

Senator HUMPHREY. The committee is adjourned.

[Whereupon, at 12:45 p.m., the committee adjourned, subject to the call of the Chair.]

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[1] The information referred to may be found in the Committee files.

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