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MANAGEMENT AND REGULATION OF STOCKYARDS

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
AGRICULTURE AND FORESTRY
UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 1149 and H.R. 10673

BILLS TO AMEND THE PACKERS AND STOCKYARDS ACT, 1921,
AS AMENDED

JANUARY 25 AND 26, 1968

Printed for the use of the Committee on Agriculture and Forestry

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MANAGEMENT AND REGULATION OF STOCKYARDS

THURSDAY, JANUARY 25, 1968

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan, of North Carolina (chairman) presiding.

Present: Senators Jordan of North Carolina (presiding), Young of North Dakota, and Boggs.

Also present: Senator McGovern.

Senator JORDAN. The subcommittee will please come to order.

Good morning, ladies and gentlemen. The committee is holding hearings today on S. 1149 and H.R. 10673.

The purpose of each of these bills is to provide stockyard owners with clearer authority over the management of their yards; and in particular, over yard regulations and who may act as market agencies or dealers.

The bills differ only in minor respects, the House bill containing additional inhibitions recommended by the Department of Agriculture against discriminatory actions by the stockyard owner.

Copies of the bills, the Department's report on S. 1149, and a staff explanation of H.R. 10673 will be inserted in the record at this point. (The documents are as follows:)

[S. 1149, 90th Cong., first sess.]

A BILL To amend the Packers and Stockyards Act, 1921, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title III of the Packers and Stockyards Act, 1921 (42 Stat. 159), as amended (7 U.S.C. 201 et seq.), is amended as follows:

Section 302(a) (7 U.S.C. 202(a)) is amended to read:

"(a) When used in this title the term 'stockyard' means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed as a public market for livestock producers, feeders, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce."

SEC. 2. Section 303 (7 U.S.C. 203) is amended to read: "After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons and customers, and has given written authorization to such person and (2) he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in

which he is engaged, and the kinds of stockyards services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 301 of the Act may be required to register in such manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

SEC. 3. Section 304 (7 U.S.C. 205) is amended to read: "All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory: *Provided*, That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this Act, and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this Act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 315 of this Act."

SEC. 4. Section 307 (7 U.S.C. 208) is amended to redesignate the first sentence as paragraph "(a)" and to add a new paragraph (b) as follows:

"(b) It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market."

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 5, 1967.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter of March 2, 1967, requesting a report on S. 1149, a bill to "amend the Packers and Stockyards Act, 1921, as amended."

The Department recommends the enactment of this bill, subject to the amendments proposed below.

The primary objective of the bill is to make it clear that a stockyard owner has the responsibility and right to manage and regulate his stockyard in a just, reasonable and nondiscriminatory manner and to require persons operating at the stockyard to conduct their operations in a manner which will foster, preserve or insure an efficient, competitive public market.

The bill expressly provides that no person can engage in business at the stockyard as a market agency or a dealer unless the stockyard owner has determined that his services will be beneficial to the business and welfare of the stockyard and its patrons and customers.

It would relieve the stockyard owner or market agency of a duty to furnish stockyard services to all persons upon reasonable request without discrimination, but would provide that all stockyard services furnished pursuant to reasonable request at a stockyard must be reasonable and nondiscriminatory.

The percentage of the total federally inspected slaughter cattle bought at terminal stockyards has declined from 91 percent in 1925 to 75 percent in 1950, and to 34 percent in 1965. The percentage of the total federally inspected slaughter hogs bought at terminal stockyards has similarly declined from 76 percent to 40 percent to 23 percent during the same years. The comparable figures for sheep are 82 percent, 57 percent, and 26 percent.

In *Denver Stock Yard v. Livestock Assn.*, 356 U.S. 282,289, the Supreme Court stated:

"We are told, however, that the economics of the business has changed, that while at the passage of the Act most livestock purchases were at these stockyards, now a substantial portion—about 40 percent, it is said—takes place at private livestock markets such as feed yards and country points. * * * If the

Act does not fit the present economics of the business, a problem is presented for the Congress."

We believe the present economics of the livestock business requires amendatory legislation.

At one time, the terminal stockyards had a virtual monopolistic position. At present, however, the 50 terminal stockyards are surrounded by approximately 2,200 auction markets and thousands of buying stations. Packers are building most new plants away from terminal market centers. In these circumstances, it is necessary that stockyard owners exercise such management and control over their stockyards and the persons operating thereon that they are able to preserve and maintain an efficient, competitive public market.

Some stockyard owners have investments exceeding 15 million dollars. The commission firms at a terminal stockyard are in effect the "selling arm" of the stockyard. The stockyard's existence is largely dependent upon the activities of the commission firms at the stockyard. Market agencies engaged in business at a terminal stockyard are provided with free pen facilities furnished by the stockyard owner. Their activities at a stockyard should, therefore, be subject to reasonable control by the stockyard owner.

Most market agencies selling livestock at terminal stockyards conduct their activities in a manner which will foster, preserve, and insure an efficient, competitive public market. Others, however, engage in practices which are not in the best interests of the market or patrons of the market.

Some commission firms engaged in business at terminal stockyards exert more effort in getting shippers and buyers to "by-pass" the stockyards than they exert in getting business to be handled at the stockyards.

Solicitations for "off-market" transactions are made in the free pen space provided at the stockyards by the stockyard owners.

The stockyard owner's revenue is dependent upon the volume of livestock sold by the market agencies at the stockyard. If the firms at the stockyard do not support the market, and the stockyard owner has no control over this matter, the stockyard owner can be forced to close his business.

In addition, commission firms selling livestock at a terminal stockyard are injuring their consignors if they dilute packers' buying needs by "off-market" transactions with the same packers who are buying from them at the stockyard.

The proposed bill would permit stockyard owners to impose such requirements as are appropriate to protect the market and its patrons, and to take other action to foster and insure an efficient, competitive market. For example, in addition to the need to control the matters referred to above, some stockyard owners have determined that substantial savings could be effected by a centralized, computerized, bookkeeping and paying system. A single bookkeeping and paying system at a stockyard might replace 25 to 50 separate accounting systems, leading to reduced marketing costs.

Stockyard owners presently have broad power to manage and control their stockyards. However, the precise extent of their authority is subject to serious question. Any mistake by a stockyard owner as to his authority, resulting in preventing a person from operating in a certain manner on his stockyard, could result in great monetary damages imposed against the stockyard owner. Consequently, many stockyard owners fear to exercise authority which they probably now have.

There is question as to whether there are adequate criteria set forth in the provisions of the bill governing the determinations of a stockyard owner in connection with authorizing persons to operate at the stockyard or in refusing to furnish stockyard services. There is also a question as to whether such actions of a stockyard owner would be subject to review by the Secretary. Accordingly, it is recommended that the bill be amended as follows:

1. Insert in line 12, page 2, after the words "patrons and customers," the phrase "which determination shall be made on a basis which is not unreasonable or unjustly discriminatory,";
2. Insert in line 4, page 3, after the words "reasonable and nondiscriminatory" the phrase "and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory"; and
3. Add a new section 5 to the bill to read as follows:
 "Sec. 5. Section 312(a) (7 U.S.C. 213(a)) is amended by inserting after the words 'in connection with' the phrase 'determining whether persons should be authorized to operate at the stockyard, or with'."

We believe that the enactment of the proposed legislation with the amendments proposed will clarify and extend the authority of stockyard owners in a manner which will be beneficial to the livestock industry, while preserving the right of the Secretary to prevent an abuse of such authority.

The enactment of this proposed bill would not require any additional funds for its enforcement.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

[H.R. 10673, 90th Cong., first sess.]

AN ACT To amend title III of the Packers and Stockyards Act, 1921, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title III of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 201 et seq.), is amended as follows:

(a) Section 302(a) (7 U.S.C. 202(a)) is amended to read:

“(a) When used in this title the term ‘stockyard’ means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.”

(b) Section 303 (7 U.S.C. 203) is amended to read:

“Sec. 303. After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, which determination shall be made on a basis which is not unreasonable or unjustly discriminatory, and has given written authorization to such person, and (2) he has registered with the Secretary, under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyards services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 301 of the Act may be required to register in such manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

(c) Section 304 (7 U.S.C. 205) is amended to read:

“Sec. 304. All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory: *Provided,* That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this Act, and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this Act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 315 of this Act.”

(d) Section 307 (7 U.S.C. 208) is amended to redesignate the first sentence as paragraph “(a)” and to add a new paragraph (b) as follows:

“(b) It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market.”

(e) Section 312(a) (7 U.S.C. 213(a)) is amended by inserting after the words "in connection with" the phrase "determining whether persons should be authorized to operate at the stockyards, or with".

Passed the House of Representatives September 29, 1967.

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY: STAFF EXPLANATION OF
H.R. 10673 AS PASSED BY THE HOUSE

(Subcommittee No. 4)

I. SHORT EXPLANATION

This bill is intended to clarify a stockyard owner's authority under the Packers and Stockyards Act, 1921, on a reasonable and nondiscriminatory basis, to (1) prevent persons not acceptable to him from acting as market agencies or dealers at his stockyard; and (2) prescribe rules and regulations for the conduct of his yard and operations conducted there. It is also intended to allow stockyard owners and market agencies greater discretion as to the services they will furnish. The objective is to permit better management of stockyards and make them more competitive for the benefit of the operators and those using their facilities.

II. SUBSECTION BY SUBSECTION EXPLANATION

Stockyard definition

Subsection (a) amends the definition of "stockyard" as contained in the Packers and Stockyards Act, 1921, in a number of respects, none of which appear to be material. It deletes a reference to "compensation" and inserts the phrases "or managed"; "or nonprofit"; and "for livestock producers, feeders, and buyers". The phrase "or nonprofit" is intended to make it clear that stockyards operated by non-profit cooperatives are covered. We understand that the law is now construed as covering them.

Approval of market agencies and dealers by stockyard owners

Subsection (b) amends section 303 of the Act to prohibit any person from acting as a market agency or dealer at a stockyard unless, in addition to his having registered with the Secretary of Agriculture, as now required, "the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons and customers, which determination shall be made on a basis which is not unreasonable or unjustly discriminatory, and has given written authorization to such person." The successful operation of a stockyard and its value as a market depends in large measure upon the amount of business brought to it by market agencies. The Department advises that some market agencies encourage shippers and buyers to bypass the stockyards. While stockyard owners now have broad powers to manage their yards; the extent of their authority is subject to question, and a mistake in the exercise of that authority could result in liability for very substantial damages. The express provision added by this subsection is intended to provide the stockyard owner with some assurance that he can, on a reasonable and nondiscriminatory basis, deny an unqualified person the right to act as a market agency or dealer.

Furnishing services without discrimination

Subsection (c) amends the language of section 304 of the Act by striking "It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard" and inserting "All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory." Since section 301(b) of the Act defines "stockyard services as those that are furnished, this subsection does not constitute a substantive change in the law, but an attempt to make it clear that stockyard owners and market agencies are not required to furnish services unless they desire to do so, and that any services they do furnish, they must furnish without discrimination.

At least a part of the doubt as to the stockyard owner's authority to prevent unqualified persons, or persons making off market sales, from operating as mar-

ket agencies and dealers is based on language used by the Supreme Court in deciding *Denver Union Stock Yard Co. v. Producers Livestock Marketing Association*, 356 U.S. 282. The bill would not, however, affect that decision on the basis upon which it was made. In that case the stockyard had issued regulations prohibiting market agencies and dealers from soliciting business for other markets or attempting to divert livestock from the Denver Union yard. The Court held these regulations invalid on their face as contrary to section 304 of the Packers and Stockyards Act, 1921, which requires every market agency "to furnish . . . without discrimination, reasonable stockyard services at such stockyard." The court held that "such stockyard" meant every stockyard at which the market agency was registered; and that the regulations barred "both the market agency and the stockyard" from performing their statutory duty since they would prevent a market agency registered at Denver Union from furnishing producers in the Denver area with stockyard services at Kansas City or other yards at which such agency was registered. While the bill makes some changes in section 304, it would continue to require that market agencies not refuse to furnish stockyard services on any basis that is unreasonable or unjustly discriminatory.

Neither the law nor the bill requires market agencies to furnish any services other than stockyard services. While the regulations considered in the Denver Union case prohibited sales at country points, and other off-market sales, the Court held the regulation invalid on the ground that it prohibited sales at other stockyards. Proponents of the bill intend that the changes made by the bill, and the legislative history accompanying it, will make it clear that a stockyard owner may prohibit market agencies from making sales at country points and other off-market sales.

Nondiscriminatory stockyard management

Subsection (d) states the right of every stockyard owner to manage his stockyard in a nondiscriminatory manner and to issue regulations covering the conduct of business there. The House Committee report cites the institution of a centralized, computerized bookkeeping and payment system to replace individual systems as an example of what might be done under this subsection.

Nondiscrimination in determining who may operate at a stockyard

Subsection (e) prohibits any stockyard owner, market agency, or dealer from engaging in any unfair, unjustly discriminatory, or receptive practice or device in connection with determining whether persons should be authorized to operate at a stockyard.

III. OBJECTIONS AT HOUSE HEARINGS AND IN FILE

At the House Committee hearings there was testimony in opposition from the River Markets Group, the Sioux City Live Stock Exchange, the Chicago Live Stock Exchange, the St. Louis Live Stock Exchange, and the Kansas City Live Stock Exchange. The National Live Stock Producers Association and the Farm Bureau testified that they would oppose the bill unless it were amended to assure that market agencies and dealers would be permitted to render service on other markets or in off-market transactions. This amendment, which was not adopted, would have inserted before the quotation marks at the end of subsection (d), the following: "Such rules and regulations shall not prevent a registered market agency or dealer from rendering service on other markets or in off-market transactions." While this amendment was not adopted, the legislative history in the House made it clear that the bill is not intended to change the law expressed in the Denver Union case, so that the stockyard owner would not be able to prohibit sales at other regulated markets.

The Committee file on S. 1149, a companion bill, contains objections from commission companies at Sioux City. The House debate contained favorable comments on the operations of the Sioux City Exchange, and a letter from the Deputy Assistant Secretary of the Department of Agriculture stated that "In determining whether a stockyard owner acted reasonable, in a particular instance involving one or more commission firms, we believe that one of the relevant considerations would be whether the stockyard owner had obtained the views of the livestock exchange with respect to the matter at issue."

IV. DEPARTMENTAL VIEWS

Favored by the Department of Agriculture.

Senator JORDAN. Senator McGovern, I believe you have a statement you want to make, and we will begin with your testimony.

**STATEMENT OF HON. GEORGE MCGOVERN, A UNITED STATES
SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator MCGOVERN. Mr. Chairman, just a very brief informal comment. I am one of the cosponsors of the bill, as you know. I introduced this bill along with the Senator from North Dakota, Senator Young, last year at the request of some of the stockyards people.

At the time I introduced the legislation, it was my impression that there was no opposition to it in the industry and, as a matter of fact, that it had the unanimous support throughout the industry.

Since then, some of the people in my own State and adjacent States have raised some serious questions about it. So, I think it is well that we are holding these hearings, to give everybody a chance to come in with any questions they may have about the legislation, and my own position is to keep an open mind on it and listen to the testimony on both sides.

I want to commend the chairman for scheduling these hearings so that those who do have questions about the bill will have an opportunity to air their views and have them fully evaluated by the committee.

Senator YOUNG. Mr. Chairman, I might say that as cosponsor I share completely the views expressed by Senator McGovern. I do not know of a time when hearings would be more helpful than they are on this bill. I think all of us have open minds on it. There may be some provisions that should be changed. All of us will listen very attentively to the witnesses that will appear today and tomorrow.

Senator JORDAN. I appreciate hearing from you, Senator McGovern and Senator Young. I knew you were both cosponsors of the bill. I am glad you are here, too, Senator Boggs. I want to say for the record that it has always been my policy when a bill comes under my subcommittee that is not entirely satisfactory to all parties concerned, I try to schedule hearings and give every one an opportunity to be heard. I think that is the proper way to handle such legislation and I am glad to do this. We have scheduled 2 days of hearings and will try to give all the witnesses ample time to state their views because this is an important piece of legislation.

Senator JORDAN. Mr. Secretary, we will be glad to hear from you. This is the Honorable George Mehren, Assistant Secretary of Agriculture, and Donald Campbell, Acting Administrator of Packers and Stockyards Administration, Department of Agriculture. You may proceed.

**STATEMENT OF HON. GEORGE L. MEHREN, ASSISTANT SECRETARY
OF AGRICULTURE**

Mr. MEHREN. Thank you. I also have with me, Harold Carter, Director of the Regulatory Division of the Office of General Counsel in the Department.

I appreciate this opportunity to discuss the Department's views on S. 1149 and H.R. 10673. These bills would amend the Packers and Stockyards Act to clarify the responsibilities of stockyard owners in the management and control over their market facilities.

The bills are, in large part, identical, except that H.R. 10673 contains several clarifying changes suggested by our Department. We favor the enactment of the legislation, with these clarifying changes.

The primary objective of the bills is to make it clear that a stockyard owner has the responsibility and right to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner and to require persons operating at the stockyard to conduct their operations in a manner which will foster, preserve, and insure an efficient, competitive market.

The bills expressly provide that no person can engage in business at the stockyard as a market agency or a dealer unless the stockyard owner has determined that his services will be beneficial to the business and welfare of the stockyard and its patrons and customers. Such a determination by a stockyard owner (under H.R. 10673) "shall be made on a basis which is not unreasonable or unjustly discriminatory."

The bills would relieve stockyard owners of the requirement to furnish stockyard services to all persons upon reasonable request without discrimination, but would provide that all stockyard services furnished pursuant to a reasonable request at a stockyard must be reasonable and nondiscriminatory.

The bills apply to terminal stockyards and auction markets. The questions of stockyard owners' rights, however, have arisen primarily at terminal markets. Terminal markets—there are about 50 of them—are stockyards like the yards at Chicago, Omaha, and Sioux City where livestock are sold at private treaty in negotiations between commission sellers and buyers. Many terminals also conduct auction sales on certain days of the week.

At these terminal stockyards, the stockyard owner provides the facilities. Some stockyard owners have investments of \$10 or \$15 million. The actual selling is done by commission firms in free pen space provided by the stockyard owner. The commission firms pay rent for any office space leased from the stockyard owner, but they pay no rent or fee for the pen space at the stockyards. The stockyard owner's existence is dependent upon the yardage charges collected from the shippers upon the livestock sold by these commission firms.

The commission firms at a terminal market are, in effect, the selling arm of the stockyard.

Serious questions have been raised under the present statute as to whether the stockyard owner can refuse to furnish facilities and services to a commission firm which is not furthering the best interests of the market.

At one time, the terminal stockyard owners had a virtual monopoly over livestock marketing. Under those conditions, the statutory regulation sought to be changed in the present bills may have been appropriate. Those conditions no longer prevail.

At present, the terminal stockyards are surrounded by approximately 2,200 auction markets and thousands of packer and dealer buying stations.

The percentage of federally inspected slaughter cattle bought at terminal stockyards has declined from 91 percent in 1925 to 31 percent in 1966. In other words, the longrun downtrend has continued. The comparable decline in slaughter hogs has been from 76 to 22 percent, again for 1966, and in sheep, 82 to 22 percent.

Most market agencies selling livestock at terminal markets conduct their activities in a manner which will foster and preserve an efficient, competitive market.

We understand, however, that some commission firms exert more effort in convincing shippers and buyers to do business away from the stockyard than in getting business to be handled at the stockyard. Solicitations for off-market transactions, we understand, are made in the free pen space provided by the stockyard owner. This serves to weaken and destroy the public market by reducing receipts substantially, reducing buying power, and increasing marketing costs for the shippers who continue to use the market.

Prices at terminal markets are promptly disseminated throughout the country by market news reports. These terminal prices are used as a pricing basis in off-market transactions. This further emphasizes the need for terminal markets to be operated in the best interests of the market and the shippers to the market.

Our interest is to provide conditions which will afford the terminal markets an opportunity to attempt to remain competitive in a marketing structure in which they have long since lost their monopolistic position, so that producers in this way will have the benefit of viable markets at reasonable marketing charges. This is to the advantage of the producers who prefer this method of marketing, the buyers who have an opportunity to buy substantial volumes of livestock at a single location, and the commission men who are provided with a place of business.

In a case involving the Denver Union Stock Yards and the Producers Livestock Marketing Association, the Supreme Court stated:

We are told * * * that the economics of the business has changed, that while at the passage of the Act more livestock purchases were at the stockyards, now a substantial portion—about 40 per cent, it is said—takes place at private livestock markets such as feed yards and country points. * * * If the Act does not fit the present economics of the business, a problem is presented for the Congress.

In our opinion, the proposed legislation is needed to meet the dramatic changes which have occurred in the marketing of livestock since 1921.

The National Commission on Food Marketing also recognized the possible need for amendment, in this respect. It stated, in its report on page 108:

Terminal markets for livestock are still the focal points of livestock trading in many areas, play an important role in all pricing, and are especially important sales outlets for smaller producers. In order that these markets have every opportunity to serve the changing needs of the livestock industry, and in view of increased competition from other marketing methods, the Packers and Stockyards Act should be administered, and if necessary amended, to give stockyard owners and marketing agencies the greatest flexibility and control over their operations consistent with protecting the interests of buyers and sellers.

Senator YOUNG. Mr Chairman, could I ask a question at this point for clarification? Just what supervision does the Department of Agri-

culture have over the stockyards? Could you make the necessary changes that you think should be made?

Mr. MEHREN. It is my personal opinion, Senator Young, that this legislation is almost entirely for classification. I believe that in terms of decisions of our judicial officer in the Department, fortified by court decisions, that the powers made explicit here are at least implicit in the present statute.

The basic purpose here is to make it clear and clear beyond any question that subject to the restrictions of the just, reasonable and non-discriminatory findings, that a stockyard owner is put on notice that he may do that which these amendments say, but we think that he has these powers now, but they are not clearly stated.

Senator YOUNG. Do you think Supreme Court decisions have raised some question about your jurisdiction in supervising and regulating them?

Mr. MEHREN. I know of no Supreme Court decisions that would raise such questions. I believe that in the absence of explicit legislative history and explicit statutory language, there are stockyard owners who feel that were they to avail themselves of the powers implicit in the present statute and fortified by our own administrative findings, they may lay themselves open to civil damage suits which could last for a protracted period, and what is being asked really is clarification to avoid this danger to the stockyard owners in managing their own business.

Senator YOUNG. Do they feel that even though they had your approval; that is, the Department of Agriculture, they would still be subject to claims by lawsuits?

Mr. MEHREN. They feel they could be so subject, but if the present statutory language suggested by the Department were made effective by the Congress, then a finding by a stockyard owner either to deny use of facilities to a market person or to remove him from the market would on appeal of the person involved, be reviewed by Packers and Stockyards Administration and the Secretary. Were the person who considered himself aggrieved thereby dissatisfied with the finding of the Department, he has recourse to the courts through regular procedures. So that under the amendatory language here, the stockyard owner would have quite unequivocal authority either to deny the use of his facilities or, I think, also to deny continued use under specified circumstances and standards but the person so denied would have access to appeal through the Administration here and up to the Office of the Secretary and from thereafter to the courts, if he so elected.

Senator YOUNG. Let me ask a question just for clarification. Suppose a commission firm doing business in a stockyard felt that the owners of the stockyard were providing poor hay at too high a price and they complained about it and got in trouble with the stockyard owners. What would happen? Would you take any action there or could the stockyard owners deny the use of the yard by this commission firm because they could not get along with them for reasons such as that?

Mr. MEHREN. Well, I would assume there would be immediate informal contact with the person who felt he was aggrieved, the dealer or market agency, to the Packers and Stockyards Administration. I do know this, that under the language of this amendatory statute, the person who felt he was so aggrieved by the stockyard owner would have immediate access for appeal. This would be reviewed under standard

procedures by the Office of the Secretary and the stockyard owner could very well be reversed if his action were found to be unjust, unreasonable or discriminatory, or not in keeping with the basic purposes of the overall statute itself.

Senator YOUNG. I do not know if there are any such abuses like that now but I know there were years ago. It is probably no problem at all now but it was years ago when I used to ship livestock.

Mr. MEHREN. Senator, I can say this, that there is easy access as an administrative and operating factor any person who feels himself to be aggrieved by any of the matters subsumed under this statute because each 2 weeks I get a review of what actions have occurred and there are lots of them and there is no difficulty here in making protests known.

Senator YOUNG. The questions I ask are purely for clarification.

Senator JORDAN. May I ask a question? Does the stockyard owner always provide the food, whatever it might be, while the cattle are in his market?

Mr. MEHREN. Yes; he does.

Senator JORDAN. They have to buy from him.

Mr. MEHREN. Yes. He provides this.

Senator JORDAN. I imagine he could not charge one fellow one price and another another price. It would be discriminatory.

Mr. MEHREN. Yes; it would.

Senator JORDAN. He would have to have a price for everybody in the yard that day, would he not?

Mr. MEHREN. Yes.

Senator JORDAN. I would not think he could charge one man too much or another not enough.

Senator YOUNG. That was not my question. He could have—I do not say they do but he could have hay prices much too high for the quality hay provided.

Senator JORDAN. He could do this.

Mr. MEHREN. In that event, I am pretty sure we would hear about it and we would hear about it and where there are organized exchanges on the commission, people on the markets, we would hear from them. There is ample and easy mechanism whereby issues of that sort can be resolved.

Senator YOUNG. And you can resolve each question like that?

Mr. MEHREN. Yes. He is required to provide just and reasonable and nondiscriminatory service and the Packers and Stockyard Administration is charged with the duty to enforce this law. It is a clear "Yes" to your question.

Senator MCGOVERN. In that connection, Mr. Secretary, do you have any personal anxiety about the language of this being used by the stockyards operator in an arbitrary way to rule out a particular commission operator, if for any reason or other, it did not like someone, or as some sort of favoritism or other consideration might cause an arbitrary action by a stockyard operator.

Mr. MEHREN. I have none whatever, Senator McGovern. I have read very carefully a series of cases resolved by the judicial officer and others resolved by the courts. I also have worked almost 5 years now in this area in the Department and I see no single instance in which arbitrary action, if once alleged by the aggrieved, has not been given appropriate hearing under standard procedures general to all of our

regulatory activity in the Department. So again, my answer is an unequivocal "No" to your question.

Senator MCGOVERN. Related to Senator Young's questions about whether the Department has the authority to provide the kind of practices and marketing standards that this legislation permits, what are the problems, if any, with asking for additional public regulation by a public body, perhaps a quasi-public agency over the yards, instead of giving authority to the stockyards operators?

Mr. MEHREN. I think the basic hypothesis of this bill is that in the context in which the stockyards no longer have the status of a public trust or of a regulated monopoly or a marketing position even remotely approximating monopoly power, that he may manage his own business without adverse effect upon the efficiency, the honesty, or the competitive nature of the market. This is really the explicit intent intended in these clarifying amendments. Nonetheless, despite these changes in the status of the stockyards as part of the total marketing mechanism, there is a statutory specification of appeal procedure if any one involved, anyone, considers that the action has been unjust or unreasonable or discriminatory or arbitrary or capricious or any of the other basic standards by which this regulatory activity is handled. With respect to your question of a public or quasi-public body, if I understand you, I doubt very much the constitutionality of this. The ultimate authority is vested in the Secretary of Agriculture by law. Informal consultation among any of the parties involved is fully available at the moment but the final authority to execute, the final responsibility to execute, I am quite sure, must constitutionally be vested in the Secretary of Agriculture although he, too, is bound by the Administrative Procedures Act and the other statutes governing members of the executive branch.

Senator MCGOVERN. But, you would prefer to give greater, or at least spelled out more in detail, the responsibility of the yards for policing themselves rather than asking for additional authority for the Department to set standards?

Mr. MEHREN. That is correct. I do not think we are asking for any additional authority at all. We are asking really for clarification but I would also emphasize that all of the procedures for appeal from the finding or decision by a stockyard owner remain to him, perhaps fortified by this amendatory language.

Senator MCGOVERN. It is your preference not to ask for additional authority, additional public regulation, but to strengthen the hand of the stockyard in providing regulation?

Mr. MEHREN. While continuing to have a channel of appeal if that authority of the stockyard owner is in any measure abused. I would emphasize that, that we specifically retain all of the standing channels of appeal and review through carefully specified due process up through the Secretary's office and if necessary from there to the courts, so that no stockyard owner may abuse these powers which we clarify with this language.

Shall I go ahead, sir?

Senator JORDAN. You may proceed; yes, sir.

Mr. MEHREN. The ability of the terminal marketing system to survive in the marketing system of the next decade or two may well depend upon giving the stockyard owners sufficient authority to man-

age their stockyards, as is provided by these bills. Some terminal stockyards have ceased operating as terminal markets in recent years. Others may cease operations in the not too distant future.

Our Department does not favor any system of marketing over any other. But we have a real interest in preserving for producers a reasonable number of marketing alternatives. We believe that terminal stockyard owners should be afforded the opportunity to manage their stockyards in a manner which will enable them to continue to remain competitive.

In our legislative report to the Congress we have suggested several changes in the language of S. 1149 (which are included in H.R. 10673) to make it clear beyond question that the actions of a stockyard owner are subject to review by the Secretary.

Senator YOUNG. On page 5 of your statement you mention the need to maintain a competitive market. I think this is highly important. There is nothing more important to livestock producers. The more direct buying you get, the less competition there is in the market. The market sets a price on 31 percent of the cattle marketed now; all the other purchases are made outside of the terminal markets. The price established in the market is a guideline for these sales. The less marketings you have through regular terminal stockyard procedures, the fewer competitive markets you have and you eventually would do away with any competition at all.

Mr. MEHREN. What we seek really is to have a sufficient number of alternative channels of buying and selling such that the foreclosure or threatened foreclosure of any one of them will not yield any advantage you could not get otherwise. That is what we mean by competitive markets here. But at the same time, we are not here today to advocate any favored position for stockyards as opposed to others. We merely ask that they be given a management right, common to most free enterprise businesses in this country, as a means of permitting them to stay competitive on their own and by their own efforts if they can do so, Senator.

Senator YOUNG. Then the stockyards and the commission firms have the same interest?

Mr. MEHREN. That is correct.

Senator YOUNG. That is marketing the maximum number of livestock through competitive bidding in the yards.

Senator JORDAN. Mr. Secretary, in North Carolina I know that there must be 15 or 20 auction markets—I believe that is what they are called—where cattle are sold by commission. Is that correct?

Mr. MEHREN. That is correct, but it is a different situation. In essence in an auction market the auction person is the only seller, whereas in a stockyard, a stockyard owner provides services and facilities and the people who do the selling are totally independent of him, you see. First, they are not restricted just to one selling person and there is total independence or separation of your sales agents on a terminal market from the stockyard owner whereas with an auction market there is only one seller operation and that is the auction person who normally owns the market.

Senator JORDAN. There are a good many buyers at these small markets.

Mr. MEHREN. Yes.

Senator JORDAN. Would this law apply to these small markets?

Mr. MEHREN. Well, I am not a lawyer. I believe technically it would apply to auction markets but actually would have no relevance to them whatever. It is relevant only to the terminal markets where the stockyards is owned by one person or a group provides facilities, services, et cetera, and the sales function is done by commission or other market agents independent of the owner of the yards. So, it is really relevant only to terminal stockyards.

Senator BOGGS. Mr. Chairman, at this point I would like to ask the Secretary to give me one or two examples of just what this legislation is intended to correct.

Mr. MEHREN. Well, there are quite a few examples in the history that I have been over in the last few weeks, Senator. There have been instances in which a commission merchant has gone to a stockyard owner and asked for pen space. He has been denied pen space on the grounds that in order to have a fair, efficient, and competitive market, first, additional sales agents are not needed. Second, to provide it would require the construction, say, of a totally new alley, and that the return that could be expected by the owner was such that he would not in the public interest be required to provide such space, which he must do free, I would add.

There are instances where registered commission people have apparently sold maybe 1 day out of 3 months and spent their time in saloons or painting pictures, and operated on a sporadic or intermittent basis. Our judicial officer or the courts have determined that the denial of pen space to such a man is not unreasonable.

There have been instances, alleged at least, in which some sales people on the terminal markets have been charged, at least, alleged, at least, carefully and consciously to try to divert business away because simultaneously they are operating in competitive market channels.

Senator BOGGS. I see.

Mr. MEHREN. And while they are fully authorized so to do, if it were not hostile to the basic intent of the act under this amendatory language the stockyard owner would be able to deny him such, and so there is, and I believe introduced in the House side, a series of specific examples of the sort of thing that is contemplated to be covered by this statute and if it pleases the chairman I am sure we could submit this same set of—

Senator JORDAN. We will be glad to have it.

Mr. MEHREN (continuing). Actual instances here.

Senator BOGGS. That would be helpful. Thank you.
(The information is as follows:)

EXCERPTS FROM HOUSE HEARINGS ON H.R. 6231

Letter of June 5, 1967, from Secretary of Agriculture

* * * * *

"Some stockyard owners have investments exceeding 15 million dollars. The commission firms at a terminal stockyard are in effect the 'selling arm' of the stockyard. The stockyard's existence is largely dependent upon the activities of the commission firms at the stockyard. Market agencies engaged in business at a terminal stockyard are provided with free pen facilities furnished by the stockyard owner. Their activities at a stockyard should, therefore, be subject to reasonable control by the stockyard owner.

"Most market agencies selling livestock at terminal stockyards conduct their activities in a manner which will foster, preserve, and insure an efficient, com-

petitive public market. Others, however, engage in practices which are not in the best interests of the market or patrons of the market.

"Some commission firms engaged in business at terminal stockyards exert more effort in getting shippers and buyers to 'by-pass' the stockyards than they exert in getting business to be handled at the stockyards.

"Solicitations for 'off-market' transactions are made in the free pen space provided at the stockyards by the stockyard owners.

"The stockyard owner's revenue is dependent upon the volume of livestock sold by the market agencies at the stockyard. If the firms at the stockyard do not support the market, and the stockyard owner has no control over this matter, the stockyard owner can be forced to close his business.

"In addition, commission firms selling livestock at a terminal stockyard are injuring their cosignors if they dilute packers' buying needs by 'off-market' transactions with the same packers who are buying from them at the stockyards.

"The proposed bill would permit stockyard owners to impose such requirements as are appropriate to protect the market and its patrons, and to take other action to foster and insure an efficient, competitive market. For example, an addition to the need to control the matters referred to above, some stockyard owners have determined that substantial savings could be effected by a centralized, computerized, bookkeeping and paying system. A single bookkeeping and paying system at a stockyard might replace 25 to 50 separate accounting systems, leading to reduced marketing cost."

* * * * *

Mr. KLEPPE. As it is written now, do I understand correctly that the stockyard owner would have the last word as to who would be allowed to come into the stockyard to function? For example, if he knew of some background of a person, that the commission firm was not good, he could refuse to have them enter his yard and function, is that correct?

Mr. LEONARD. He could.

Mr. KLEPPE. What you are suggesting is that each individual would have recourse to the Secretary—that is, each commission firm?

Mr. LEONARD. Right—we do not argue with that.

* * * * *

Mrs. MAY. Mr. Secretary, I would like to have you comment a little further for the record on some parts of your statement.

On page 1, the bottom paragraph, you state:

"The bill expressly provides that no person can engage in business at the stockyard as a market agency or a dealer unless the stockyard owner has determined that his services will be beneficial to the business and welfare of the stockyard and its patrons and customers."

Would you comment for us, from your background of experience, as to how the stockyard owner would determine which of these persons or firms would help or be beneficial to the welfare and business of the stockyard, and those that would not be beneficial. What, from your viewpoint, would you use as a criteria to make this determination? If you would give us specific examples. I think that it might help to clarify the record on this point.

Mr. LEONARD. If I may, I would like to have Mr. Campbell comment on that.

Mrs. MAY. Yes, Mr. Campbell.

Mr. CAMPBELL. I believe that ordinarily the stockyard owner would allow anyone to do business on the stockyard unless he had some real reason for not allowing him on the stockyard.

To give a few examples, in the past we understand that at one stockyard there was a commission firm which consisted of one man who spent most of his time painting. He was really a painter. If he ever got a load of livestock to sell, he would run down to the stockyard, find out what the prices were, and sell it to the first person he could, sell it to.

* * * * *

Another person, we understand, was the tollkeeper on a nearby bridge. He did that same thing.

These are just illustrations of what can go on under the present act. And if the stockyard owner knew that was the case, he would probably deny to such persons the use of the stockyards because they are not really interested in fostering a good livestock market.

Mr. MAY. For the record again, does this type of operation by, I assume you would call it a part-time commission firm person, hurt the stockyard?

Mr. CAMPBELL. The word gets around that this is going on. Shippers to the market find out that this kind of commission firm is on the market—probably not the shippers who are using that commission man or they would not be using him—other shippers see that it goes on—and the rumor spreads. In all likelihood that commission man will get lower prices for the livestock he is selling. He really does not know what the true buying strength is. He is interested in selling the livestock quickly and turning them over to the first person who will take them off of his hands. As a result, he will get a lower price established.

Here, again, the news spreads like wildfire. If a commission firm on a market is selling livestock at \$25, that could dampen the price later received by some other seller who knows the true value of the livestock. If you have a poor commission firm on a stockyard, it would do damage to the whole market.

Mrs. MAY. And under the present wording of the law the stockyard owner cannot prohibit the use of his stockyard to this type of a commission firm?

Mr. CAMPBELL. We feel that he has the authority but if he guesses wrong and tries to put the person off the market, then immediately he can be subject to a tremendous damage suit. Some of those have been filed in the past. And if the commission man ultimately prevails in court, if the court says that he was wrongfully put off the market, damages could go on for years before the litigation was finally terminated. In view of that risk, stockyard owners fear to exercise their authority.

* * * * *

"ADMINISTRATIVE AND JUDICIAL DECISIONS INVOLVING STOCKYARD OWNERS' AUTHORITY

"Carpenter Walsh Commission Company v. The Sioux City Stockyards Company,
1 Agricultural Decision 738 (1942)

"The stockyards company attempted to eliminate from the yards the three commission firms which made the least use of assigned space and transacted less business than the other commission firms.

"The Judicial Officer, U.S.D.A., ruled that there was no showing that this was a reasonable action by the stockyard company. The facts do not show why the complainant could not have received a smaller pen space which would show a considerably higher percentage of use. Also the evidence is restricted to the one year 1941 which is not necessarily a representative year for the complainant's business. Moreover, there was no regulation putting the market agency on notice of such intention by the stockyard company in advance, and lack of reasonable notice in a matter of such vital concern to the complainant violates fundamental standards of fairness.

"Union Stockyards Co. of Fargo, 13 Agricultural Decision 602 (1954)

"The Judicial Officer, U.S.D.A., ruled that where the stockards company arbitrarily failed and refused to assign pen space, upon reasonable request to a registered dealer at the stockyard, the respondent discriminated unfairly against the dealer in violation of the Act, and the stockyard company is ordered to cease and desist from failing to render reasonable and nondiscriminatory stockyard services.

"Flynn v. Kansas City Stockyards Co., 12 Agricultural Decision 14 (1953)

"Dealers who had previously been assigned pen space at the Kansas City Stockyards requested the Secretary to require the stockyard to assign pen space to them. The dealers had been involved in weight frauds at the yards, and were denied pen space.

"The Judicial Officer, U.S.D.A., ruled that since pen space was unavailable, it was unnecessary to base his decision of the ground of the dealers' unfitness.

"The Judicial Officer stated:

"In seeking entry into the livestock dealer business on premises owned by the respondent stockyard company, the complainant shouldered the burden of demonstrating that pen space was available for assignment and that the stockyard company by refusing to assign such space to them engaged in a discriminatory practice, in violation of the Act. * * * Mere registration as a market agency with the Secretary of Agriculture does not automatically force the stockyard company under any and all conditions to provide the registrant with

facilities to do business. * * * Since the preservation of the integrity of public markets is one of the principal aims of the Packers and Stockyards Act, it would not seem that refusal of the respondent to reinstate these complainants as dealers with pen space would be a violation of any provision of the Act. But since we have found and concluded that the complainants have not sustained the burden of demonstrating the availability of space for their use, it is unnecessary to base our decision on this ground also.'

"Gilbert R. Smith v. Union Stockyards Company, 9 Agricultural Decision 588 (1950)

'The Judicial Officer, U.S.D.A., ruled that the facts fail to prove that respondent stockyard company violated the Act by refusing to allow pen space to a market agency which wished to initiate business at the stockyard.

'The Judicial Officer stated:

'The complainant is seeking entry into the commission business through the use of facilities owned by the respondent. He has not shown that there is an insufficient number of selling agencies at the stockyard, that is, that number of existing firms is not "reasonable" for the amount of business at the stockyard. * * * We cannot say then that it was unreasonable or unlawfully discriminatory for the respondent in the light of its former experience to determine in its management's discretion that in its large facilities it should have one commission firm per alley in the cattle division. We cannot say, either, that it was unreasonable or unlawfully discriminatory for the respondent to decide that the building of another alley for the complainant would not warrant the necessary capital outlay without a better demonstration of compensatory revenue than the complainant could make. Because the respondent did offer to take in Missouri Farmers Association and refused the complainant does not therefore mean unlawful discrimination against the complainant.'

"Houfburg v. Kansas City Stock Yards Co. of Maine, 283 S.W. 2d 539, 544 Missouri, (1955)

'The court held that a 'stockyard company is not granted a franchise by the state or federal government and it does not necessarily have a monopoly. * * * Subject to reasonable regulation, the right to control and conduct the business of a stockyards company remains in the company just as it did before the enactment of the [Packers and Stockyards] Act.'

"Carnes v. St. Paul Union Stockyards Co., 205 N.W. 630 (Minnesota, 1925)

'The plaintiff was an employee or member of a commission firm which was suspended from operating at the St. Paul Stockyards. The court ruled that the plaintiff had made a prima facie case and that his complaint should not have been dismissed. In its decision, the court stated (p. 632):

'But undoubtedly defendant has lawful interests to protect, and may properly refuse to admit to its yards a commission man, or one of his employees, if there is justification or a valid excuse for the refusal. As was said in the Joyce case, defendant might insist that no unworthy persons should be employed upon its property, and, if that was the basis of its action, no liability exists. In other words, defendant is not merely an officious intermeddler in plaintiff's affairs, with no legitimate interest to serve. Such an intermeddler can rarely, if ever, justify or excuse his conduct. But one standing in the position of defendant has rights which it may assert by excluding from its property a man of doubtful reputation, or one who had been guilty of misconduct in his dealings with defendant's patrons. What would justify exclusion we do not now attempt to decide. We do say, however, that, because defendant had a legitimate interest to protect, in that it is the owner of the stockyards who is responsible for their efficient management and proper use, particularly by local market agencies, it has liberty of action much wider than that of a third party having no such interest or duty in the premises, and a discretion of management not lightly to be interfered with by the judiciary, who have none of the regulatory and administrative power, legislative in origin, which has been assigned by Congress to the Secretary of Agriculture.'

'In a later case involving the same issues, 221 N.W. 20 (1928), the plaintiff had lost in the trial court and did not appeal. But the defendant appealed from an order denying its counterclaim asking that the plaintiff be permanently

enjoined from operating at the yards. The court ruled that there was no basis for a permanent injunction. In its opinion, however, the court stated (p. 21): "The defendant's stockyards are devoted to a public use. * * * Still such institutions may, without incurring liability, deny the use of their facilities to dishonest dealers and so protect the general public. Dishonest traders should not be permitted to do business in the yards. The plaintiff claims that under the Packers and Stockyards Act, 1921, all control is with the Federal authorities. In [the Carnes case] we held that the District Court had competent jurisdiction to sustain the authority of the defendant in excluding those engaged in dishonest practices.'

"Denver Union Stockyard Co. v. Producers Livestock Marketing Association,
356 U.S. 282 (1958)

"The Supreme Court held that a regulation of the Denver Stockyard Company prevented a market agency at Denver from soliciting business for, or diverting business to, any other market, and that such a regulation was invalid because it was in conflict with the Packers and Stockyards Act. The court referred to the terminal stockyards as 'great national public utilities', and to the intent of the Packers and Stockyards Act to prevent such stockyards from engaging in 'monopoly practices'. (p. 288-290)

"Acker v. U.S. 12 F. Supp. 776, 779 (1935), aff. 298 U.S. 426

"In a stockyard rate case involving market agency rates, holding that the Secretary had the power to regulate rates, it was also held that although a stockyard is * * * subject to reasonable regulation in the public interest, the management and right to control the policy of a business affected with a public interest belong to its owners.'

"Farmers Union Livestock Ass'n v. St. Paul Union S. Co., 97 F. Supp. 539, 541 (1951)

"The Court held that a stockyard operator's practice of basing allocation of pens and relative location of those pens upon amount of business done by commission firms to whom space was assigned was not in itself a violation of the P&S Act. It was an exercise of its 'business discretion.'

"Fort Worth Stockyard v. Brown, 161 S.W. 2d 549, 554 (1942)

"The court held that a plaintiff stockyard owner is not precluded 'from determining who may and who may not transact business on its premises. This we believe to be true even though plaintiff's business is of general public nature. Plaintiff should always be accorded the right to the exclusive use by it or by those chosen by it, to use and enjoy its premises.'"

* * * * *

Senator JORDAN. If a stockyard owner furnishes free pen space, where does he get his revenue?

Mr. MEHREN. He gets it from the shippers who ship the product in to him. That is the—the charge goes to them.

**STATEMENT OF DONALD A. CAMPBELL, ACTING ADMINISTRATOR,
PACKERS AND STOCKYARDS ADMINISTRATION, MARKETING
AND CONSUMER SERVICES, U.S. DEPARTMENT OF AGRICULTURE**

Mr. CAMPBELL. There is a yardage charge.

Senator JORDAN. And that is where he sells the feed, et cetera.

Mr. CAMPBELL. The yardage charge is in addition to the commission charge charged by the market agencies for the selling.

Senator YOUNG. He usually makes some profit on the feed that he provides.

Mr. MEHREN. Most terminals do not make much, if any, profit on feed. They make their profit on the yardage charge, paid by the ship-

pers. The yardage charge pays for the basic stockyard facilities furnished, such as facilities for receiving, handling, buying, selling, weighing, and delivery, and services such as weighing and handling and delivery of livestock to the buyers. That sort of thing he provides and charges for. That is the sole source of his revenue. He gets nothing from the commission people who are paid directly by the person for whom they work.

Senator MCGOVERN. Mr. Secretary, as long as we have stopped here momentarily, let us assume if the bill is passed and a commission firm is barred from operating by one of the stockyard companies, and then he appeals through USDA and maybe to the courts, what happens to that man's business during the appeal? Is he closed down for a period of weeks or months or whatever time it takes for that appeal to be evaluated or what happens to his business during the appeal period?

Mr. MEHREN. How long does that appeal take?

Mr. CAMPBELL. Well, first he could get a temporary restraining order in all probability. If it is an arbitrary action, he would have immediate access to the courts asking for a temporary restraining order. But, if it is not a patently arbitrary action the court might deny it. In that case if he is denied pen space and ultimately it is determined he should not have been denied pen space, then he is entitled to monetary damages for the entire loss of business and the damages could be quite high. So as a practical matter the stockyard owners would be very slow to ever deny pen space under such conditions. They realize they could be subjected to tremendous damage suits.

Mr. MEHREN. I believe the Department also has the authority to provide reparations after hearings.

Mr. CAMPBELL. That is what I meant by damages to be paid. We would issue our own award for damages in the way of a reparations order.

Senator JORDAN. You already have that authority now in the act.

Mr. CAMPBELL. Yes, that is right, but the regular court system still has authority to grant temporary restraining orders and preliminary injunctions.

Senator YOUNG. How long does it take the court to act on this?

Mr. CAMPBELL. On a restraining order the court acts overnight or a matter of days, but for full administrative hearing to be heard, that could take a year or two.

Mr. MEHREN. I believe on this kind of injunction the maximum period is 10 days because I believe for this kind of a temporary injunction it must either be made permanent or lifted within 10 days. Therefore, the court is confined on all matters of this sort to 10 days.

Senator YOUNG. They must have better courts than they have in the District of Columbia.

Senator JORDAN. What the Senator is referring to is rather like mail—you leave it a certain length of time and it answers itself. Here if they do not try them in so many months they just wipe the slate clean and start all over again. Is that what you are thinking about?

Senator YOUNG. Yes. Here in the District of Columbia, if someone is brought into court by a policeman on a serious charge, oftentimes the judge puts him out on probation and he can commit many more law violations and they will not bring him back into court until he is

tried on the first offense. There oftentimes is a delay of a year or two. I could preach a sermon on the court system here in the District.

Mr. MEHREN. Well, we could, I think, in response to Senator McGovern's statement, issue a cease and desist order against the stockyard owner after a hearing which would foreclose any continuation over any protracted period of any unjust or discriminatory action. This is an instrumentality we have now over any element of the packers and stockyard work. We do have instrumentality under our present powers to prevent any abuse which would lead to a protracted period of being off the market.

Senator MCGOVERN. I do think some assurances are needed on that point because it is conceivable that a commercial firm could have a situation where you could put a commission house out of business unless they had some protection by suspending their service.

Mr. MEHREN. No. The only difficulty I would see is that there are statutory requirements generally applicable for periods of notice and I suppose that if an appeal were made to the administrator of packers and stockyards that the other party, the stockyard owner, would have to be given adequate notice and reasonable time under the circumstances to prepare his side of it and to present it. But, that which is reasonable under a situation in which a merchant might be put out of business or permanently damaged, is a different thing from a situation in which the impact might not be so adverse to him.

So, I would think that we would do as we do in any other instance, that if a man is in danger really of being hurt, we would hear it immediately. We would make arrangements for the process within the limitations of notice to go as rapidly as they legally can.

Senator BOGGS. Mr. Secretary, would not a stockyard owner want to encourage more commission merchants to be available—

Mr. MEHREN. That is his basic—

Senator BOGGS (continuing). For competition there rather than deny him?

Mr. MEHREN. That is his basic—no stockyard owner who is operating rationally would be foolish enough to take business off his market and, therefore, he would be inclined under these amendments to operate only in extreme conditions in which he was reasonably sure that he would be sustained.

Senator BOGGS. I would think so.

Mr. MEHREN. For two reasons. One, you mentioned. He would be losing business. And second, he is in jeopardy of being reversed under this language if we were to find that it was not just, nondiscriminatory, in which case he probably would be in serious trouble.

Mr. CAMPBELL. The stockyard owners are so fearful of these damage suits that almost without exception they will come to us for informal advice first, before they take any action, and then as soon as we tell them that the action is illegal, or arbitrary, or capricious, in our judgment, they will immediately withdraw it.

We had a situation just in the last few months where a stockyard owner proposed a rule which would have affected commission firms, and as soon as we told them in our judgment it would be unlawful, it was immediately dropped and never put into effect. So, I think they bend over backwards because they are fearful of damage suits and if they err, it is on the side of not bringing action against com-

mission merchants where they should rather than taking action which they should not take.

Senator YOUNG. Have you any cases where partiality was shown on the part of the stockyard owners against one commission firm?

Mr. CAMPBELL. Over the years, commission men have won cases before our Department in which we have held that the action was arbitrary and discriminatory. And they have this complete review with the full hearing and subject to court appeal if they do not like our decision.

Senator YOUNG. How long did it take for you to make your decision from the time the complaint was registered?

Mr. CAMPBELL. It could take in a vigorously contested case, a year or longer, but the reason the stockyard owners do not get into that in the first place ordinarily is because they are subject to damages for the full length of time they have denied pen space. So, with that damage suit staring them in the face, I think that affords adequate protection to the commission men.

Mr. MEHREN. I think we could, if the Senators wish, give you examples of the dates on which complaints were filed and the dates of the completion of the matter in the past in matters of this sort. If it would be useful to the committee we would be glad to provide that for you.

Senator JORDAN. If you will provide it we will appreciate it.
(The information is as follows:)

COMPLAINTS BY MARKET AGENCIES OR DEALERS AGAINST RULES OR PRACTICES OF STOCKYARD COMPANIES

Packers and stockyards docket No.	Complaint date	Date of Secretary's order	Charge and disposition
5	June 8, 1922	June 30, 1924	Unjust rule—Cease and desist.
106	May 5, 1924	May 15, 1925	Unjust rule—Consent dismissal.
461	Mar. 16, 1935	Aug. 15, 1935	Services and facilities failure—Cease and desist.
721	Mar. 22, 1937	May 6, 1937	Discriminatory rule—Consent dismissal.
956	July 6, 1937	May 10, 1938	Discriminatory facilities—Cease and desist.
979	Sept. 20, 1937	Apr. 18, 1938	Discriminatory facilities—Dismissed.
1186	Jan. 19, 1939	Aug. 10, 1939	Discriminatory practice—Cease and desist.
1264	Sept. 5, 1939	July 13, 1940	Discriminatory facilities—Cease and desist.
1460 ¹	Jan. 12, 1942	Dec. 17, 1942	Unjust rule—Cease and desist.
1477	Jan. 23, 1942	Sept. 2, 1943	Services and facilities failure—Dismissed.
1705	May 22, 1945	Sept. 28, 1945	Discriminatory practice—Cease and desist.
1815	Oct. 1, 1948	May 25, 1950	Unjust rule—Dismissed.
1936	(²)	Sept. 8, 1953	Discriminatory facilities—Dismissed.
2031	July 30, 1952	June 2, 1954	Discriminatory rule—Cease and desist.
2059	Feb. 1, 1953	Apr. 30, 1954	Discriminatory facilities—Dismissed.
2070	Feb. 26, 1953	Mar. 15, 1954	Do.
2176 ³	July 7, 1955	June 18, 1956	Discriminatory rule—Dismissed.
2188	Oct. 19, 1955	July 7, 1958	Cease and desist.
2276	(²)	Sept. 24, 1958	Discriminatory rule—Dismissed.
2289	Oct. 23, 1957	Aug. 27, 1958	Unjust rule—Dismissed. Discriminatory facilities—Dismissed.

¹ Decision by Federal district court on Nov. 27, 1942

² Not shown.

³ The final decision of the Supreme Court was issued on Apr. 28, 1958. In addition, there were 100 cases filed by market agencies or dealers alleging damages because of lost or injured livestock resulting from negligence by stockyard employees. The majority of these were disposed of by consent settlement.

Senator JORDAN. You may proceed.

Mr. MEHREN. We would add the express requirement that determinations by a stockyard owner as to persons authorized to engage in business at the stockyard shall be made "on a basis which is not unreasonable or unjustly discriminatory." We would also add that "stockyard services which are furnished shall not be refused on any

basis that is unreasonable or unjustly discriminatory." With these clarifying amendments, which are already contained in H.R. 10673, we would be in a position to review any action by a stockyard owner, such as the denial of pen space, issuance of a regulation, or any other action by a stockyard owner, which is claimed to be unreasonable or unjustly discriminatory by someone adversely affected. These clarifying amendments would make it plain that the Secretary has the same right of review with respect to actions of a stockyard owner under the present statute as he would have under the proposed legislation.

In the enforcement of the Packers and Stockyards Act, we encourage stockyard owners to make innovations and to establish and enforce regulations which foster efficient and competitive livestock markets. Section 201.4 of the regulations under the act emphasizes the importance of self-regulation by the livestock industry. It provides for enforcement by industry of bylaws, rules, or regulations which are not inconsistent or in conflict with the act and Federal regulations.

This right of self-regulation applies to organizations at a stockyard, such as a livestock exchange consisting of selling agencies at the market as well as to the stockyard owner. However, any regulation by a livestock exchange is binding only on the members of the exchange. Therefore, only the stockyard owner is in a position to make a regulation binding on all persons at the stockyard.

Senator BOGGS. Let me interrupt. On these stockyard owner's regulations, does he have to have a hearing before he puts them out or has to give due notice before they are effective?

Mr. CAMPBELL. Well, they are sent to us and we have the right to set aside any regulation which we find to be unjust, unreasonable or discriminatory.

Mr. MEHREN. Prior to their effectuation, if they change, affect, or determine any part of the rates or charges, or the value of stockyard services furnished.

Senator BOGGS. I see. Very good. Thank you.

Mr. MEHREN. We believe that stockyard owners today have broad power to manage and control their market facilities. However, the precise extent of their authority is subject to serious question. Any mistake by a stockyard owner as to his authority which results in preventing a person from operating at the stockyard could result in great monetary damages being imposed against the stockyard owner. Several cases have been filed against stockyard owners claiming large damages for refusal to furnish pen space. The possibility of such damage suits causes many stockyard owners to fear to exercise the authority which they probably now have. Clarifying legislation is, therefore, desirable.

In the event of litigation resulting from a stockyard owner's exercise of the authority stated in this legislation, the stockyard owner would still be subject to a possible damage suit filed by a person or firm claiming injury resulting from the stockyard owner's action. He would, however, have more precisely stated authority for his action. The amendments, together with the legislative history, would make it clear that Congress intended for the stockyard owner to exercise his management responsibility, subject to the Secretary's supervision.

In the absence of any amendatory action by the Congress, a court—construing the present provisions of the act—might be inclined to decide the issues in the light of economic conditions existing 40 or 50 years ago. Those are the conditions referred to in the legislative history made when the act was originally enacted. The terminal stockyards were regarded at that time as monopolistic, great national public utilities. We believe that the legislative history in connection with the present proposed amendments showing the economic conditions as they exist today will be as important in deciding a case involving a stockyard owner's rights as the proposed statutory language, if enacted.

Our Department would not permit a stockyard owner to take any unreasonable or unjustly discriminatory action removing a commission firm from the stockyard or adversely affecting commission firms. Although the commission firms do not own the stockyard facilities, they have a substantial and legitimate interest in being able to continue to operate at the terminal stockyards. This interest must be—and is, under the proposed amendments—adequately protected.

We feel that stockyard owners must work cooperatively with the commission firms engaged in business at their markets.

We have frequently urged stockyard owners to consult with the livestock exchange and other groups engaged in business at a terminal stockyard before promulgating regulations or taking significant action which affects the persons engaged in business at the stockyard. We have stated to stockyard owners that, irrespective of their authority to take unilateral action, the success of the stockyard is dependent upon cooperation and harmonious relations between the stockyard owner and the persons engaged in business at the stockyard. Frequent exchanges of views are, therefore, vital to a successful stockyard.

The stockyard owners have expressed an agreement with our views, in this respect. They have assured us that they would obtain the views of the livestock exchange and other persons engaged in business on the stockyard before taking significant action affecting such persons.

In determining whether a stockyard owner acted reasonably, in a particular instance involving one or more commission firms, we believe that one of the relevant considerations would be whether the stockyard owner had obtained the views of the livestock exchange with respect to the matter at issue.

This proposed legislation would not enable a stockyard owner to prevent a commission firm from engaging in business at more than one public stockyard. The House report on H.R. 10673 (H. Rept. 575, 90th Cong., first sess., p. 7) explains as follows:

The bill does not prevent a commission man engaged in business at a public stockyard regulated by the Secretary of Agriculture from also engaging in business at another such public stockyard. The testimony shows that it would not seem reasonable or desirable for any stockyard owner to attempt to prevent a commission man from engaging in business at more than one regulated public stockyard. In this respect, therefore, the result under this bill would not be inconsistent with the Supreme Court's holding in *Denver Stock Yard versus Livestock Association*, 356 U.S. 282, that the Packers and Stockyards Act does not permit a stockyard owner to prevent a commission man engaged in business at his stockyard from also engaging in business at another regulated stockyard.

Under the proposed legislation, if a stockyard owner prohibited or restricted "country" activities—that is, activities not at any public stockyard—by the commission firms engaged in business at the stockyard, the Secretary would consider each case on its merits to deter-

mine whether the regulation was fair, reasonable, and nondiscriminatory.

An outright prohibition precluding a commission firm engaged in business at a stockyard from engaging in any "country" transaction under any circumstances would seem to be unreasonable. However, some type of prohibition or limitation in this respect may be necessary to prevent a stockyard owner from having to go out of business, resulting in a less competitive market available to producers. All of the relevant facts would have to be considered on a case-by-case basis with a complete factual record, including expert testimony as to the matter. Any party adversely affected by a determination by the Secretary in such a case could obtain judicial review of the Secretary's determination.

We believe that with the amendments to the proposed legislation contained in H.R. 10673, the authority of the stockyard owners will be clarified and extended in a manner beneficial to the livestock industry, while at the same time preserving the right of the Secretary to prevent any abuse of such authority.

We will be happy to respond to any questions you may have.

Senator JORDAN. Senator McGovern, do you have any further questions?

Senator MCGOVERN. I think we have pretty well developed the questions I had as we went along, Mr. Chairman.

Senator JORDAN. Thank you.

Senator Young?

Senator YOUNG. No. I have no questions.

Senator JORDAN. Senator Boggs?

Senator BOGGS. No, thank you, Mr. Chairman.

Senator JORDAN. Senator McGovern, would you chair this subcommittee a few minutes? I have to appear at a Public Works Committee meeting.

Senator BOGGS. So have I.

Senator JORDAN. I will return shortly.

Senator MCGOVERN (now presiding). Is Mr. Beaton here, Mr. Francis Beaton? We will be glad to hear from you now, Mr. Beaton.

Mr. BEATON. May I suggest, Senator, that we call on Mr. Jennings, president of the American Stockyards Association?

Senator MCGOVERN. I think I misread the order here. And, as a matter of fact, Mr. Jennings was listed as the next witness. He is the president of the American Stockyards Association.

STATEMENT OF CHARLES B. JENNINGS, PRESIDENT, AMERICAN STOCK YARDS ASSOCIATION

Mr. JENNINGS. Mr. Chairman, committee members, my name is Charles B. Jennings. I am president of the American Stock Yards Association, a voluntary trade association representing livestock markets throughout the Nation. Our markets operate under the jurisdiction of the Packers and Stockyards Act administered by the U.S. Department of Agriculture. I appreciate the opportunity to appear before this committee to discuss the proposed amendments to the Packers and Stockyards Act being considered here today.

A brief description of the so-called terminal livestock markets that the American Stock Yards Association represents would include the fact that these markets are made up of physical facilities for handling and caring for livestock including facilities for conducting the actual sale of the livestock. These facilities are owned by a stockyard company which is usually a corporation owned by stockholders. The business-getting sales department of the market is made up of a number of independent market agencies, competing with each other, who represent the owners of the livestock in conducting their sales operations. A stockyard is a facility designed to bring supply and demand together in the form of livestock and livestock buyers, and under open, competitive conditions to establish livestock values and transfer of the ownership of livestock from seller to buyer at its true value at that particular time.

The report of the National Commission on Food Marketing issued in June 1966, entitled, "Food From Farmers to Consumer,"³⁷ had a number of statements in it pertaining to livestock markets which are relevant to these hearings. Among these statements was the following found on page 23 of this report. It stated that :

Terminal markets, in providing a central concentration point for many buyers and sellers to compete, perform another valuable function—that of pricing. Terminal market prices are reported by the Market News Service and are widely disseminated by communications media. Prices generated at terminal markets thus serve not only to transfer various grades and classes of livestock from seller to buyer at the terminal but also to guide the pricing of livestock elsewhere.

The Packers and Stockyards Act was enacted in 1921 following a lengthy congressional study of the meatpacking industry. This study revealed unfair and deceptive trade practices in livestock marketing which were not in the best interest of livestock producers and owners. These practices tended to prevent free, open, competitive marketing of livestock. At the conclusion of the investigation Congress passed the Packers and Stockyards Act in 1921 to set up a system of regulations based on the principle that the major terminal markets or stockyards of the country, then in large part either owned or controlled by various meatpackers, were monopolies and should be treated as "great national public utilities" whose existence and functioning were essential to the flow of commerce. This approach to regulation—that stockyards are public utilities—was designed to cope with conditions as they existed a half century ago.

Significant and major changes have taken place since the enactment of this legislation, yet there has been relatively little change in the Packers and Stockyards Act.

Now, the stockyard industry is neither owned or controlled by the meatpacking industry, this change having occurred shortly after the enactment of the Packers and Stockyards Act.

Another of the obvious changes in the industry is that stockyards no longer enjoy a monopolistic position. Since the enactment of the act, some 2,200 auction markets have come into being, several thousand country dealers have entered the picture, there are hundreds of concentration yards throughout the Nation today and many producers sell their livestock direct to the packers, feeders, dealers, or others without the benefit of any market. To further illustrate the change that has taken place, it is revealing to recall some of the statements made concerning the stockyard industry by the Supreme Court in its

decision issued in 1922 which upheld the legality of the Packers and Stockyards Act in *Stafford v. Wallace* (258 U.S. 495, 514-16) : This decision stated :

The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys.

Further quoting from this same decision :

The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce.

Certainly today's stockyards industry is far different from that under review in *Stafford v. Wallace*. To further demonstrate how the stockyard industry has changed since the passage of the Packers and Stockyards Act the following USDA figures show the reduction in percentages of slaughter livestock purchased by packers at stockyards. They are the same figures that Secretary Mehren gave to you earlier, so I see no reason to read those off, but they are the same as he presented to you.

(The chart referred to follows :)

Percent of total slaughter livestock purchased at terminal markets

Cattle :	
1923	90.0
1930	88.3
1940	75.1
1950	74.9
1960	45.8
1965	34.0
Calves :	
1923	86.0
1930	81.8
1940	60.9
1950	56.7
1960	25.4
1965	16.5
Sheep :	
1923	86.0
1930	81.8
1940	63.8
1950	57.4
1960	35.5
1965	25.5
Hogs :	
1923	77.0
1930	59.9
1940	46.7
1950	39.9
1960	30.3
1965	23.4

MR. JENNINGS. This trend has resulted in an ever-increasing percentage of slaughter livestock sales being made without the benefit of supply and demand forces functioning in establishing their values. As the number of livestock sold under other than competitive conditions increases, there is less likelihood of any livestock being sold at its true value. This trend will continue until such time as the Packers and Stockyards Acts amended to permit stockyard owners and operators to change and adjust their operations to fit the need of the changing livestock industry.

This can be accomplished by redirecting the focus of Federal regulations so that the competitive forces of the free market system can more effectively determine the price of livestock, so that both producer and consumer receive fair value. This can be done by clarifying the rights and responsibilities of market owners and operators so that livestock markets can be operated efficiently and competitively.

Senator YOUNG. Could I ask a question there? Just what authority are you asking that the Department of Agriculture does not have now? You say you want to update and make some changes.

Mr. JENNINGS. We want it clarified, Senator, so that the owners and operators of stockyards clearly understand what rights they have in making changes in their methods of operation. Again, one of the examples, I believe given earlier, is that in some instances we have the case of an operator on one of our stockyards who is directing most of his efforts and attention toward handling livestock away from our market, even to diverting some of the business that normally would flow through that market. We would like to know clearly that we do have the right to prohibit such activities on our own property. This specifically is one of the things we are seeking the right to do.

Secretary Mehren said we probably already have this authority but it certainly is not nearly as clear cut as we feel it must be in order for us to take the action to bring about these changes.

Senator MCGOVERN. Mr. Jennings, in that connection, you would not propose to restrict the commission house from operating elsewhere but simply restrict him from using your yards as a place where he generates business transacted away from the—

Mr. JENNINGS. Very definitely, Senator. We have no thought of saying this is the only place he can operate but his operations on our property we want to be conducted in such a manner as to promote the best interests of that market, to better serve the patrons of that market who ship their livestock in.

Senator MCGOVERN. Would you foresee if the bill is passed, a decrease in the number of commission houses operating in the yards?

Mr. JENNINGS. Well, it would be conjecture on my part, but I would assume that if some market agencies were prohibited from operating on a market, that there would be other agencies replacing them, taking their place, so that in the end I would assume the total number of market agencies would not be changed greatly.

Senator MCGOVERN. You do not see any intent to reduce the number of houses but upgrade the practices.

Mr. JENNINGS. Very definitely. I thought Senator Boggs' question was a most pertinent one, questioning why we would want to remove any business-getting firm from our property. Certainly this is not our desire at all.

Senator MCGOVERN. Your incentive would be the same in that case.

Mr. JENNINGS. Identical.

Senator MCGOVERN. To generate maximum business in the yard.

Mr. JENNINGS. Yes, sir.

Senator MCGOVERN. Thank you.

Mr. JENNINGS. Again, quoting from the report of the National Commission on Food Marketing on page 23 it states that—

It is also important that terminal markets, because of the key role they play in livestock trading, have the flexibility and incentive to achieve their full po-

tential in serving the changing livestock industry as effectively and fairly as possible.

Again on page 87 this report it is stated:

Generally, the stockyards section of the Act is considered to be a valuable service to producers and the industry. However, changes in marketing methods for livestock have raised some questions about the restrictions the Act puts upon the competitive strength of terminal markets. In the past few years, direct buying and auction markets have diverted substantial amounts of livestock from the terminal markets. Attempts by the terminal owners to meet declining volumes by reducing the number of market agencies on the terminal have been met with the claim that the Act requires the terminal to accept all who wish to stay. Although the question is unresolved, it seems clear that such a requirement would make it difficult for the terminal owner to adjust to economic change. The terminal markets' loss of almost complete control of livestock marketing may warrant a new look at regulations of terminal markets not imposed on other marketing channels.

Again, finally, on page 108 of this same report this statement is made:

Terminal markets for livestock are still the focal points of livestock trading in many areas, play an important role in all pricing, and are especially important sales outlets for smaller producers. In order that these markets have every opportunity to serve the changing needs of the livestock industry, and in view of increased competition from other marketing methods, the Packers and Stockyards Act should be administered, and if necessary amended, to give stockyard owners and marketing agencies the greatest flexibility and control over their operations consistent with protecting the interests of buyers and sellers.

The proposed amendments to the Packers and Stockyards Act covered in S. 1149 will make possible a healthy competitive livestock marketing industry for the future. Without an effective livestock marketing industry, I do not believe a healthy livestock industry is possible.

A similar bill, H.R. 10673, was introduced in the House of Representatives during the first session of the 90th Congress. It was approved by that body by a favorable vote of 234 for and only 6 against. Gentlemen, I hope that these proposed amendments to the Packers and Stockyards Act will be approved by this committee and by the Senate at an early date.

By the way, I might add to the amendments recommended by the Department and included in H.R. 10673, certainly we, too, approve of those. We have no objections to those.

I will be glad to answer any of your questions.

Senator JORDAN (now presiding). Mr. Jennings, I am sorry I was not here to hear your entire testimony. I will read and study it.

Senator McGovern, do you have any questions?

Senator MCGOVERN. An excellent statement. I have no other questions.

Senator JORDAN (presiding). Senator Young?

Senator YOUNG. Do you approve of the House bill as written or do you favor the Senate bill with the proposed changes by the Secretary of Agriculture?

Mr. JENNINGS. My point is that we have no objection to the changes recommended by the Department which have been added in H.R. 10673. We have no objections to those.

Senator YOUNG. Those changes have been added to the House bill.

Mr. JENNINGS. In H.R. 10673; yes, sir. They are included in there.

Senator JORDAN. Is H.R. 10673 the same as the Senate bill now? Are the proposed changes included in the Senate bill?

Mr. JENNINGS. I do not believe they are in this one at the present time; no, sir. They are not in this. That is the difference between S. 1149 and H.R. 10673, the changes recommended by the Department of Agriculture, and those changes in the main seem to me to boil down to making it very clear that any action taken by a stockyard owner or operator is very definitely subject to review by the Department to determine it is just, reasonable, and nondiscriminatory. Basically, I believe that is what they are recommending and certainly we have no objection whatever to having that clearly spelled out.

Senator JORDAN. Would you like to see those incorporated in the Senate bill? You would have no objection?

Mr. JENNINGS. I am not necessarily recommending.

Senator JORDAN. You have no objection?

Mr. JENNINGS. That is right. We certainly have no objections to them whatsoever.

Senator YOUNG. I understand the House did adopt the proposed changes by the Department of Agriculture and they are proposing the same changes to the Senate bill.

Mr. JENNINGS. That is correct; yes, sir.

Senator JORDAN. Thank you. Do you have further questions?

Senator YOUNG. No.

Mr. JENNINGS. Thank you.

Senator JORDAN. Thank you very much, Mr. Jennings.

Senator YOUNG. Mr. Chairman, the next witness is a very special friend of mine, Mr. Francis Beaton. He is a very versatile fellow, very knowledgeable in the livestock business. He is with the Central Livestock Association of St. Paul, and operates out of West Fargo, N. Dak. He has an equal number of friends among livestock people as among veterans.

Senator JORDAN. We are glad to have you with us today and to have your remarks for the record.

Senator YOUNG. Mr. Beaton is the national commander of the Disabled American Veterans.

Senator JORDAN. That is a fine organization.

Mr. BEATON. Thank you, Mr. Chairman.

Senator JORDAN. We are glad to have you this morning. You may proceed.

STATEMENT OF FRANCIS BEATON, MANAGER, CENTRAL LIVESTOCK ASSOCIATION, WEST FARGO, N. DAK.

Mr. BEATON. At the outset, as a matter of personal privilege, Mr. Chairman and members of this distinguished committee, I would like to introduce my administrative assistant and national director of legislation, Mr. Charles Huber, who also has a real good farm background and accompanies me on all of our legislative activities here in the Washington scene.

Senator JORDAN. We are glad to have you with us also, Mr. Huber.

Mr. HUBER. Thank you.

Mr. BEATON. Mr. Chairman and members of this distinguished committee, my name is Francis Beaton and I am employed by the Central Livestock Association, Inc., West Fargo, N. Dak. I appreciate very much the privilege of appearing before this committee to

express my support, as well as that of the Central Livestock Association, Inc., for S. 1149.

On October 16, 1967, Mr. Norris K. Carnes, general manager of the Central Livestock Association, Inc., wrote to the chairman, expressing his support and that of the association for this proposed legislation.

The Central Livestock Association, Inc., enjoys the distinction of being the largest livestock marketing agency in the world—as defined by the Packers and Stockyards Act of 1921, as amended. It is a co-operative institution organized under chapter 23 of the Laws of the State of Minnesota for 1921 and chapter 326 of the Laws of the State of Minnesota for 1923.

The Central Livestock Association began business on August 8, 1921. On December 31, 1967, the Central Livestock Association had as member stockholders 135,733 individual farmer-producers residing and operating largely in the States of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Montana. During the year 1967 the Central Livestock Association and its affiliated companies handled a grand total of 1,969,282 head of livestock valued at \$187,919,210.

This association is an outstanding service organization. It has experienced and capable salesmen who have been charged with the responsibility for the sale of each species of livestock consigned to it for sale. It has provided a general marketing service that is second to none.

This association would like to be recorded among those persons who are supporting the enactment into law of S. 1149, which provides for certain specific amendments to the Packers and Stockyards Act of 1921, as amended.

At the time of its enactment in 1921 the Packers and Stockyards Act established a regulatory system based on the premise that the then major livestock markets, or stockyards, were monopolistic and should be considered in the nature of a public utility. In the 46 years that have intervened since the enactment of the Packers and Stockyards Act we have witnessed major changes in the livestock marketing picture. Today, the terminal livestock markets, or public stockyards, cannot be correctly stated as holding a monopolistic position in the livestock picture. It is a matter of common knowledge that a smaller, and a steadily declining portion of livestock purchased for slaughter and replacement purposes is being marketed, sold, and purchased at the various terminal markets in this country. It is quite apparent that the public utility concept of the act is no longer applicable, because the so-called terminal livestock markets clearly do not have a monopolistic position today. In our opinion, the provisions of S. 1149, if enacted into law, will serve to promote a vigorous and competitive livestock market system. One result from the enactment of this legislation would be the orderly promulgation of reasonable and just rules and regulations for efficiency and for the orderly conduct of any given market. As examples, one market may wish to establish a rule requiring every market agency to have in its employ a qualified salesman for each species of livestock handled and sold.

This is not necessarily the situation today at all markets. Another market may wish to establish a rule setting minimum standards for livestock salesmen on that market. It is a well-known fact that the existence of substandard selling services by a single market agency

can be a reflection on the entire market wherever it operates. Whatever they may be, rules will vary from market to market according to the need. In each instance they must be such as are not unjust, unreasonable, or unfairly discriminatory.

We believe that these, and similar rules, would strengthen the market agency system of selling and buying livestock. The amendments proposed under S. 1149 represent a means of adapting the terminal public markets to new conditions and new economics associated with the livestock industry. We believe these new rules and regulations are necessary if our competitive livestock markets are to endure and effectively serve the Nation's livestock producers and feeders.

The Central Livestock Association enthusiastically supports S. 1149 and urges its favorable consideration by your committee at the earliest possible date.

Thank you, Mr. Chairman, and members of the committee, for the opportunity to appear before you.

Senator JORDAN. Thank you very much, sir.

Senator McGOVERN, do you have any questions?

Senator McGOVERN. Mr. Beaton, I note in the example you cite here the type of regulations that might be laid down under this legislation, that conceivably an agency could require qualified salesmen for each species of livestock handled and sold.

In the case of a smaller commission house, it is conceivable that the same man could be qualified for all of these different functions? Could you have one man handle sheep sales, livestock, cattle, and hogs and so on, or under a regulation like that would that firm have to take on additional employees in each of those categories?

Mr. BEATON. Well, we firmly believe in our institution that these gentlemen should be qualified by the fact that they are specialists and we have belief that we can best serve the patron producers honestly and fairly and sincerely in this price structure by having a specialized man handle each category. I might add to this, Senator, and members of the committee, I made the statement in here that it is not true in all cases that this is being done because we know of cases where one individual is probably selling, for instance, sheep for four or five different firms, and I would ask you in answering your question, Senator, if you would consider this fair if a fellow would be able to represent all five of these firms, for instance, if there were five, and do a job for each firm and for the producer, more importantly.

Senator McGOVERN. It would seem to me that would weaken the competition involved but my question is whether one man at a firm could be knowledgeable in what is involved in selling sheep but be equally skillful in handling cattle.

Mr. BEATON. My answer to that would be this. Certainly, a livestock trained specialist with a degree in animal husbandry and probably marketing would be able to be proficient in all of these. However, this again, would not allow him time enough if they were doing a volume enough business to be able to handle this. He just could not conceivably handle it and it would be tough, too, for him to be totally informed, grade and yield and so on, through each marketing day to stay with the boards, and so on, as they come in from our Market News Service, to be able to be right on top of the situation and get the top dollar for this producer under these circumstances.

Senator MCGOVERN. Do most of these commission houses handle all types of livestock? Do they handle sheep, hogs?

Mr. BEATON. Yes, sir.

Senator MCGOVERN. Cows?

Mr. BEATON. Specialized salesmen for each category, sir. One will sell fat steers and heifers. Another will sell cows, another will sell bulls, another will sell calves, another one will sell yearlings, et cetera.

Senator MCGOVERN. And all of those functions might be handled in a single commission house?

Mr. BEATON. Oh, they are, yes, sir. They have separate departments. Incidentally, I might tell you that I am proud to tell you that I have worked in everyone of them, both on the selling end of them and the buying end of them.

Senator YOUNG. Off the record.

(Discussion off the record.)

Senator JORDAN. May I ask you a question, please, sir. It might be that a yard much smaller than yours could not have all this personnel there, but it is incumbent upon the man who wants to sell the cattle to take it to any market he wants, is that correct?

Mr. BEATON. Right.

Senator JORDAN. He does not have to take it to you unless he wants to.

Mr. BEATON. That is right.

Senator JORDAN. And if he wants to take it to the place where they have inferior services that is up to him.

Mr. BEATON. Certainly.

Senator JORDAN. And you are not proposing that this is mandatory on all the yards?

Mr. BEATON. No. My statement is this, Senator, that if this would be the case, though, that the enactment of this would give the Department the opportunity to examine and if they felt there was—they were not performing a true service under those circumstances that they could sit down and discuss this with those people that were operating on that market that was substandard.

Senator JORDAN. Well, I would not think that you would want to put in a law that you had to have a specialist on all types of livestock. For instance—

Off the record.

(Discussion off the record.)

Senator JORDAN. I think you still want to permit the man who raises the cattle and who is selling them, to take them wherever he pleases and if he says he is satisfied with the service he gets there and the people who are doing his selling, he is the man, after all, that is supposed to be satisfied.

Mr. BEATON. Right. The producer.

Senator JORDAN. The producer.

Mr. BEATON. This is the man we are concerned with, to give him the very, very best representation.

Senator JORDAN. That is all I have.

Senator YOUNG. May I ask a couple of questions? Do you support the amendments proposed by the Department of Agriculture?

Mr. BEATON. Well, we have discussed this this morning and I am mainly interested in my testimony here in this act, Senator, on these points that I suggested, that there be specialized salesmen and that

the volume of business done by an organization or a commission firm that has been registered as an organization within the stockyard produces enough vigorous solicitation to attract enough business so that it is not only profitable but they have this bargaining power by having control of a large volume of business. As far as the amendments are concerned, I have no disagreement with them whatsoever.

Senator YOUNG. Do you think they are necessary or desirable or would S. 1149 be suitable without these?

Mr. BEATON. Yes, sir.

Senator JORDAN. I judge you would not object to the amendments which the Department recommends.

Mr. BEATON. No, sir.

Senator YOUNG. How many markets does Central operate in?

Mr. BEATON. South St. Paul is the headquarters, West Fargo branch and Billings, Mont.

Senator YOUNG. Mr. Chairman, I would like to have inserted in the record a letter I received from Mr. H. Gordon Haefner, branch manager, Central Livestock Association of West Fargo in support of this legislation.

Senator JORDAN. So ordered. It will be inserted at this place in the record.

(The letter referred to follows:)

CENTRAL LIVESTOCK ASSOCIATION, INC.,
West Fargo, N. Dak., November 6, 1967.

Hon. MILTON R. YOUNG,
U.S. Senate, Committee on Agriculture and Forestry,
Washington, D.C.

DEAR SENATOR YOUNG: Thank you for your letter to our Mr. Francis Beaton, current National Commander of the Disabled American Veterans. As you know, Francis is also with our organization in the capacity of head of our West Fargo Branch's public relations and field service of the Central Livestock Association, Inc. with the home office at South St. Paul, Minnesota.

Let me say I deeply appreciate your interest and concern for Senate File 1149 which provides for certain specific amendments to the Packers and Stockyards Act of 1921 as amended.

Our General Manager, Mr. Norris Carnes, under date of October 16th, 1967, in his letter to the Honorary B. Everett Jordan, Chairman, Senate Agriculture and Forestry Subcommittee on Agricultural Research and General Legislation, I fully believe, has expertly outlined our organization's history as a livestock marketing agency, its activities and outstanding service to the livestock producers.

We at our branch office here in North Dakota would also like to be recorded among those supporting the enactment into law of Senate File 1149 which if enacted into law would most certainly serve to promote a vigorous and excellent livestock market system. Enactment of this legislation would in our opinion, provide for better efficiency and also would effect more orderly conduct of any given market. If the rule of requiring each marketing agency to employ a qualified livestock salesman for each species of livestock sold was to become law, the country's livestock producer would be much better served.

It is also our opinion that these and similar rules would strengthen the market agency system of selling and buying livestock. New rules and regulations such as proposed under S. 1149, are necessary if the competitive livestock markets are to continue to effectively serve our nation's livestock feeders and producers.

Again let me say we of the West Fargo Branch of the Central Livestock Association fully support and urge favorable consideration by your committee as early as possible on Senate File 1149 and request this letter be included as a part of the record of the hearings on Senate File 1149 before your Subcommittee on Agricultural Research and General Legislation.

Yours respectfully,

H. GORDON HAEFNER,
Branch Manager.

Senator JORDAN. Senator McGovern?

Senator MCGOVERN. I have no further questions.

Senator JORDAN. Thank you very much. Appreciate your being with us.

Mr. BEATON. Thank you.

Senator JORDAN. Is Mr. Long here? Mr. Long is manager of the Farmers Union Marketing & Processing Association of St. Paul, and Mr. Angus McDonald, research director of the National Farmers Union. We are glad to have both of you gentlemen with us this morning. You may proceed with your testimony, sir.

**STATEMENT OF GLENN A. LONG, MANAGER, FARMERS UNION
MARKETING & PROCESSING ASSOCIATION, SOUTH ST. PAUL,
MINN.**

Mr. LONG. Mr. Chairman, members of the committee, I have Mr. McDonald with me from the National Farmers Union, who has filed a statement with the committee and I propose that I will present my testimony at this time.

We appreciate the privilege of appearing before this committee to express our support for S. 1149.

The Farmers Union Marketing & Processing Association is a co-operative livestock commission company doing business on the public livestock markets at South St. Paul, Minn., West Fargo, N. Dak., and Sioux Falls, S. Dak. Our primary trade territory covers six States: Minnesota, North Dakota, South Dakota, Montana, Wisconsin, and Iowa. I have been in a managerial capacity with the Farmers Union Livestock Marketing Association since 1947. During this time, I have operated on the Chicago market in addition to the three markets on which we currently operate. During my 20 years of experience in managing a livestock marketing business, I have become familiar with the operations of stockyards companies and the problems confronting our public livestock market system.

The Farmers Union Marketing & Processing Association has strongly supported the public livestock market system and believes this system of livestock marketing provides the most competitive and economically sound system of livestock marketing available for the independent livestock producers. We are deeply concerned about the future of this important livestock marketing system because of the effect it has on the economic well-being of the livestock industry as a whole. For years, the public livestock markets were the pricemaking machinery for the entire livestock industry. In the past few years, there has been a decided decline in the percentages of livestock going through the public market system as compared to other methods used by producers in marketing and selling their livestock. This decline in the percentages of livestock handled by the public markets has weakened the pricemaking mechanics of the public livestock markets for the livestock producers. In spite of this, the livestock producer still looks to the public livestock markets for the establishment of prices on various grades and species of livestock.

The average independent livestock producer is still dependent on the public livestock markets to establish prices for him and to make available to him authentic and accurate information concerning the prices

and grades of various types of livestock being sold in commerce. Because of his dependency upon this system and the relative importance that it holds in establishing value for his livestock, we feel it is necessary both to preserve and improve the public livestock market system. We believe that a collapse or further decline in the relative importance of the public livestock markets will result in an economic hardship on the independent livestock producer and greatly weaken the competitive aspects of all livestock marketing in this country. We believe this proposed legislation will strengthen the public market system by insuring a more efficient and competitive public livestock market.

I have served on the advisory committee for the Packers and Stockyards Administration of the U.S. Department of Agriculture since this committee was set up by the Secretary of Agriculture, Hon. Orville L. Freeman, in 1963. During this time, in the course of discussions on this committee, I have advocated there should be established "standards of performance" for commission firms and individuals operating on the public markets in order for this system to function more effectively in behalf of the livestock producers in this country. Many stockyards operators who I have contacted personally have indicated their support and desire for the establishment of "standards of performance" for individuals and organizations operating on their property. They have further indicated that under the existing circumstances, they do not have the authority to provide these effective standards.

It is my opinion that the proposed legislation will permit the market owners to establish "standards of performance" for those people who choose to operate on their public livestock markets. There appears at present to be no other feasible way effectively to improve "standards of performance" for those involved in performing the functions of a public livestock market. Under the present conditions that exist in the total livestock marketing picture, we feel it is imperative that the efficiency and "standards of performance" of our public markets be materially improved in order for them to continue to perform the important price-making functions that are so necessary to the future of the independent livestock producer. Under this proposed legislation, the market owners will have the authority to establish reasonable "standards of performance" and to effect other changes in the operation of the markets to more effectively and efficiently serve the needs of the industry. The stockyards companies will continue to operate under the close supervision of the Packers and Stockyards Administration of the U.S. Department of Agriculture which will insure fair, equitable, and reasonable service to all who choose to operate on the public market. I believe that under the watchful eyes of the Packers and Stockyards Administration, livestock marketing agencies and individuals need have no fear of the possibilities of the market owners abusing the powers and privileges afforded them in this proposed legislation. I have confidence that the market owners today are aware of the competitive situation existing in their industry and that they will use the authority granted in this legislation in a manner that will enhance the services and competitive aspects of the markets through the proper operation of the facilities they own.

As a manager of a farmers' cooperative livestock marketing agency, my primary interest is in the livestock producer. I believe that more must be done to protect the economic interests of this producer than

has been done in the past and that some of this can be accomplished effectively by strengthening the public livestock market system through legislation as is being proposed here today. I submit this legislation, S. 1149, is in the public interest, that it will stimulate and create a more competitive system of livestock marketing under a free enterprise system. I hope this amendment to the Packers and Stockyards Act will be approved by this committee and by the Senate at a very early date.

Thank you.

Senator JORDAN. Thank you very much.

Senator YOUNG?

Senator YOUNG. Just one question. How many markets do you operate in?

Mr. LONG. Three. South St. Paul, West Fargo, and Sioux Falls, S. Dak.

Senator YOUNG. Have you had any problems with stockyard owners, any serious problems?

Mr. LONG. Oh, I suppose—not serious, not for a number of years. The last time we had what you call a serious problem, we had a rate problem in these markets way back several years ago which went through the channels of USDA, Packers and Stockyards Division.

Senator JORDAN. What kind of rate problem was that?

Mr. LONG. Well, the rate structures in all of these markets are established by the agencies and you have this same situation where the firms way back in those days thought the rates were unreasonable and they went through the process of hearings and this sort of thing, and finally were accommodated satisfactorily to all parties concerned.

Senator JORDAN. You mean the rates for handling?

Mr. LONG. Charges for the services rendered.

Senator JORDAN. When we think of rates sometimes we think of freight rates.

Mr. LONG. Well, it is very comparable to that.

Senator JORDAN. Transportation, et cetera.

Mr. LONG. But there is a good demonstration how that machinery under the USDA operates, too.

Senator JORDAN. I understand. I presume you heard the testimony this morning of the Assistant Secretary. Do you have any objection to the amendments proposed by the Department which are included in the House bill?

Mr. LONG. No. We have no objections. We are not particularly concerned. We think the basic legislation will do the job but the amendments seem to spell it out a little more clearly and we have no objection to those amendments.

Senator JORDAN. Senator Young?

Senator YOUNG. Do the prices usually charged for hay and other feed by the stockyards compare favorably with prices in that area?

Mr. LONG. The charges by the various stockyards, of course, first of all, are all the same for all parties involved and it is difficult to determine the value of hay, for instance, as it sells in the West Fargo area as compared to charges made by the stockyards company for it because this charge for the hay includes the services of delivering it and feeding it and this sort of thing.

Senator YOUNG. They would be expected to make a profit on it?

Mr. LONG. Yes. So they charge, for instance, maybe a dollar fifty cents a hundredweight for a bale of hay which would be probably 30 percent more than it would cost on the open market, but they provide the service along with it. So that we have felt that these charges to date are reasonable and, of course, here again the P. & S. people supervise these charges and see that they are in line with the costs of the services rendered and this sort of thing.

Senator YOUNG. That is all.

Senator JORDAN. Thank you very much. We appreciate having both of you with us.

(The statement of Mr. McDonald follows:)

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. Chairman and members of the committee, we are relying to a great extent in our position on this legislation on the advice of Mr. Glenn A. Long, General Manager of the Farmers Union Marketing Association of South St. Paul, Minnesota. Mr. Long has managed the cooperative stockyard at South St. Paul over a period of many years and is familiar with its day-to-day operations. We therefore feel that he is in a position to determine whether or not the legislation before this Committee is in the best interest of the livestock industry.

Mr. Long, as well as others, has pointed out that under existing law and regulations there is some doubt as to whether operators of stockyards have sufficient authority to protect themselves from competition pertaining to sales and purchases of livestock at terminal markets. Terminal markets, as all who are engaged in the livestock business know, have declined greatly during the last few years. At one time terminal stockyards had an almost complete monopoly. In 1925 terminal stockyards accounted for 91 percent of federally inspected cattle slaughtered. By 1965 this had declined to 34 percent.

Stockyard owners have tremendous investments which they should be allowed to protect as well as competition in their business. It is reported that commission firms engaged in business at terminal stockyards persuade shippers and buyers to by-pass the stockyards in obtaining business for themselves. This of course, perfectly legitimate, but such groups should not be allowed to use the terminal stockyards as a means of destroying stockyard business. The purpose of setting up stockyards under existing legislation was to permit a free market whereby the transactions of the stockyard would, in a sense, make the market.

The proposed bill would, as we understand it, permit stockyard owners to take necessary steps to protect the market and its patrons without being subject to possible suits for damages. The precise extent of the authority of the stockyard owner is, we are informed by individuals who have the utmost familiarity with the operations of the industry, subject to serious question. We are told that any mistake that a stockyard owner might make in regard to his authority might result in great monetary damages being imposed upon him. This bill would clarify the authority of the stockyard owner and allow him to carry on his business without fear of harassment by groups who possibly were seeking to undermine the institution of the terminal stockyard.

We will appreciate report of the bill by this Committee. We feel that a favorable report by the Members of the Committee would go far toward insuring its passage by the Senate.

Senator JORDAN. Mr. McCreight. Mr. McCreight is vice president, United Stockyards Corp. of Chicago.

STATEMENT OF ROBERT B. McCREIGHT, VICE PRESIDENT, UNITED STOCKYARDS CORP., CHICAGO, ILL.

Senator JORDAN. We are glad to have you with us, and you may proceed as you wish.

Mr. McCREIGHT. Mr. Chairman, members of the committee, as you know, my name is Robert B. McCreight and I am a vice president of

United Stockyards Corp. This company owns and operates nine livestock markets at the following locations: (1) Fort Worth, Tex.; (2) Milwaukee, Wis.; (3) North Portland, Oreg.; (4) Sioux City, Iowa; (5) Sioux Falls, S. Dak.; (6) South St. Joseph, Mo.; (7) South St. Paul, Minn.; (8) Stockton, Calif.; and (9) West Fargo, N. Dak.

Senator JORDAN. May I ask you a question at that point? Are the other livestock markets—in some of the same locations?

Mr. McCREIGHT. As far as I know there are no other livestock markets in those locations. There may be in one instance, sir. By that, I mean we are the stockyard company. We are the market agencies. In other words, there are livestock commission firms and there are registered livestock dealers at each of those markets. There may be livestock auction markets if this is what you have in mind.

Senator JORDAN. I thought I heard in the testimony of another witness that there were several livestock markets at the same locations.

Mr. McCREIGHT. You did hear from Mr. Beaton, for instance, that as a market agency, they are doing business at South St. Paul, West Fargo, and Billings, Mont. Now, I represent a stockyard company, sir, whereas Mr. Beaton represents a commission man or livestock market agency, and they are one of the market agencies doing business on these markets.

Senator JORDAN. But, your company owns the—

Mr. McCREIGHT. The facilities, sir. Just as Mr. Long testified, his association does business at South St. Paul, West Fargo, and Sioux Falls. Some of these locations—

Senator JORDAN. I have got the difference now.

Mr. McCREIGHT. We are not like the auction market that you referred to where the auction operator performs all services. He supplies the facilities and selling services. Ours is a split operation to that extent.

Senator JORDAN. Thank you.

Mr. McCREIGHT. Each of these markets operate under the jurisdiction of the Packers and Stockyards Administration of the U.S. Department of Agriculture. In the past year, 1967, these nine competitive livestock markets received and handled a total of 15,896,188 head of livestock, consisting of 5,736,847 cattle and calves, 7,761,104 hogs, and 2,398,237 sheep.

By this list of stockyards you will readily see that we have an intense interest and a clear-cut responsibility to seek out effective areas of improving our livestock marketing system. No one knows better than we do that the patterns for both the production and marketing of livestock are changing very rapidly. New and different marketing arrangements and trading practices are continually developing.

Mr. Chairman, we support the provisions of S. 1149 in the belief that the proposed amendments to the Packers and Stockyards Act, 1921, will better enable existing livestock markets to stay abreast of industry trends and practices. Certainly, the need for these amendments was stated very forcefully by Senator McGovern in his remarks at the time of the introduction of this bill. These remarks are contained on pages S2815 and S2816 of the Congressional Record, March 1, 1967.

The proposed amendment to section 302(a) of the Packers and Stockyards Act, 1921, as amended, defines the term "stockyard" as

meaning a public market for livestock producers, feeders and buyers, rather than just a public market for anyone. The importance of this is to clarify the status of stockyards and livestock markets today as private, free enterprise businesses, rather than as public utilities, which they were considered to be in 1921.

Certainly, no one familiar with livestock marketing today can seriously state that stockyards are public utilities. They have no franchise nor monopoly. They do have competition on all sides and at every crossroads.

Senator YOUNG. Could I ask a question at that point? Chainstores are getting into the feeding business on a sizable scale, are they not?

Mr. McCREIGHT. They are, to some extent, sir. The scale is debated widely, sir, as to how far they are going into it.

Senator YOUNG. Do they ever market such livestock through your stockyards?

Mr. McCREIGHT. Very rarely that I know of, sir. If they have their own feedlot they would stake it in and have it slaughtered for their own account. That would be a completely integrated operation, generally.

Senator YOUNG. We have many big feeding operations now, some of them going to 25,000 to 50,000 head. Do feeders of this kind use terminal stockyards?

Mr. McCREIGHT. In some instances, no; and in other instances—generally not particularly since the larger number of those high-volume feedlots are in the Southwest and in the West, sir, where there are not markets readily available for them.

Senator YOUNG. They sell directly to packers?

Mr. McCREIGHT. Many of those will sell directly, sir. There are other large feedlot operators who do utilize the services of the markets. By that, I mean competitive livestock markets, whether they are so-called terminals, and we discussed them this morning, or livestock auction markets.

Senator YOUNG. That would include the contract feeders, too?

Mr. McCREIGHT. Generally not the contract feeders. They are feeding for gain. Some of those will come into a market sometimes but most generally they will not.

Senator YOUNG. They will not?

Mr. McCREIGHT. That is correct.

Senator YOUNG. Contract feeding is on the increase, too, is it not?

Mr. McCREIGHT. That kind of feeding is temporarily on the increase; yes, sir.

Senator YOUNG. It is increasing at an alarming rate. The thing that alarms me is that an ever-increasing amount of livestock is sold direct. This really does destroy the competitive marketing system.

Mr. McCREIGHT. This is correct, sir, because by that they are able to have an adverse effect on the price received by the feeder who is feeding and selling on the competitive or the open market, sir.

Senator YOUNG. I could not agree with you more.

Mr. McCREIGHT. Thank you.

The effect of the proposed amendment to section 303 of the Packers and Stockyards Act, 1921, as amended, is to require the stockyard owner to determine that the services of either the applicant market agency or commission farm as you may know them, or dealer will be

beneficial to the business and welfare of a given stockyard, its patrons, and customers. This language is prospective in application since it does not relate to or affect either registered market agencies or dealers presently doing business on a posted stockyard or stockyards. At the present time an applicant for registration can scarcely be denied registration and entry into business on the premises of a stockyard, unless the stockyard does not have facilities available for another registrant. Even this basis for refusal is subject to review as to whether or not it is discriminatory. This amendment would require the market owner to determine that the services of the applicant "will be beneficial to the business and welfare of said stockyards, its patrons, and customers." This amendment would afford the opportunity to endeavor to select the best qualified persons to better serve the industry. As far as humanly possible, we want the best qualified personnel to perform market services in the best interests of the livestock producer and feeder—not just quantity of marketing services without regard to need, efficiency, or quality.

Section 304 now provides that it is the "duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard." The proposed amendment requires that all stockyard services which are furnished pursuant to reasonable request made of either a stockyard owner or a market agency shall be reasonable and nondiscriminatory services.

The concluding proposed amendment adds a new paragraph (b) to the present section 307. This is simply the substantive portion of the policy statement published December 7, 1965, by the Deputy Administrator, Consumer and Marketing Service, and published in the Federal Register December 11, 1965. In that policy statement it is pointed out that the livestock industry is in a constant state of transition and that rapid changes in the industry require a continual appraisalment by stockyard owners and market agencies of their regulations, practices, facilities, and services to meet the demands of a changing industry and to insure improved efficient services for market patrons.

The provisions of S. 1149 do not in any way limit or restrict either a registered market agency or a registered dealer from engaging in business on another poster livestock market or markets.

Today's livestock markets must be free, we feel, to exercise control over the operations, sales, and services in such a manner as to assure an efficient, competitive market for the livestock feeder, producer, and buyer. In my opinion, the proposed amendments will aid in clarifying the rights and responsibilities of market owners and operators and thereby assure the existence of a healthy, competitive market system. By these proposed amendments, we believe livestock markets would be better able to (a) maintain and strengthen the market agency system of selling and buying of livestock; (b) introduce efficiencies that will benefit the market patron and thereby the consumer; and, paramount above all, (c) protect the interests of the livestock producer and feeder.

These proposed amendments are not a blank check or authorization to a market to proceed in any manner it desires, but are subject to the existing requirement of the act that any course of action shall not be unjust, unreasonable, or unfairly discriminatory. These safe-

guards are now and will continue to be administered by the Secretary of Agriculture. To meet and comply with these safeguards adequate notice under the existing circumstances must be given by the publication or notice of such rules in advance of their effective date.

Senator YOUNG. May I ask a question there? If you publish such changes as you state here, the Department of Agriculture then could intervene and prevent you from making the changes?

Mr. McCREIGHT. I would say yes, sir; the Department could intervene and say we do not think these are fair, reasonable, or that they are unfairly discriminatory and should be held up. We would certainly feel this was true, sir. You would want to have these considered by your market interests. You would want to give them notice. I do not think one could publish an arbitrary rule that says effective tomorrow morning so and so, and you certainly cannot put up a rule because one does not like the way one parts his hair. I mean, you have to have justification, reason for this, I would say, to have it a reasonable rule and a fair rule.

This bill does not have the intent, nor will it have the effect if enacted into law, of authorizing or permitting market owners to move in or take over the functions of the market agencies. It does not need to, as that authority exists today under the provisions of the act and this has been the case since the enactment of the act in 1921.

We recognize that the Packers and Stockyards Act is a vital law. The declared purpose of the act is to help maintain free competitive practices in the marketing of livestock and assure the existence of reasonable services, regulations and practices. In the interval of the nearly 47 years since the enactment of the act, conditions have changed with the result that the act today does not completely fit the present economics of the business of the livestock industry.

Mr. Chairman, the favorable consideration of the proposed amendments contained in S. 1149, we believe, will modernize the act and be most helpful in assuring the most efficient possible competitive markets for the sale of livestock. I hope that these amendments will be approved by this subcommittee and by the Senate in the very near future.

Now, Mr. Chairman, may I have permission to answer a question asked of another witness about hay?

Senator JORDAN. Yes, certainly you may.

Mr. McCREIGHT. And the costs?

Senator JORDAN. Certainly you may.

Mr. McCREIGHT. Under the tariff regulations of the Department of Agriculture, they establish and furnish us with an overrun that we may charge over the cost of the hay. In other words, we may not charge whatever we wish to. We are given an established amount figured by the Department. In the case of one market I am familiar with, that cost was established in 1938 at those prices, so you can imagine how out of date it is with today's price of procurement and delivery. This is on top of the cost of hay to you. You may then add this charge and prorate it but you sell the hay at an equal price placed on all parties to the market. In other words, we cannot establish any price for hay we decide we would like to. It is that cost plus the mark-up permitted by the Department for that specific market and applied then uniformly to all parties at the market.

Senator JORDAN. Well, I am sure the price of hay or any kind of feed would vary from market to market because of the freight rates.

Mr. McCREIGHT. That is right.

Senator JORDAN. But you have an overriding charge on top of that.

Mr. McCREIGHT. Which the Department allows you but this varies also from market to market in the discretion of the Department.

Senator JORDAN. Different wage scale.

Mr. McCREIGHT. Yes, that is correct, and it depends upon the source from which you draw your hay.

Senator YOUNG. I suppose you have some complaints about the quality of the hay?

Mr. McCREIGHT. From time to time.

Senator JORDAN. You have more broomstraw than alfalfa.

Mr. McCREIGHT. We try to or the corn might be wetter than some people think it should be.

Senator JORDAN. I notice in your statement you sold 2,398,000 sheep. Where do all the lamb chops come from? I never heard of any sheep chops.

Mr. McCREIGHT. Well, I use the term sheep generally for lamb because we handle both lambs and sheep, sir, just like I say I could probably have said sheep or rather than instead of hogs it might have been more proper to say swine as including pigs but I am like you, I do not want sheep chops.

Senator JORDAN. I might be getting them but they do not call them sheep.

Senator YOUNG. One more question. On page 5 of your statement you mention a posted stockyard. I should know what that is.

Mr. McCREIGHT. A posted stockyard is one that has been posted by the USDA and is, therefore, under the supervision of the Department of Agriculture. That is called a posted stockyard and they must comply with all the rules and regulations of the Packers and Stockyards Administration.

Senator YOUNG. Thank you.

Senator JORDAN. Mr. McCreight, let me ask you the same question I asked the others. You heard the Assistant Secretary this morning. Do you all have any objection to those amendments?

Mr. McCREIGHT. We have no objection. If they feel those are desirable for a further safeguard, fine, sir.

Senator JORDAN. They are clarifying amendments.

Mr. McCREIGHT. Yes, sir.

Senator JORDAN. Thank you very much. We appreciate your being with us.

Mr. McCREIGHT. Thank you, sir.

Senator JORDAN. Mr. Ross. Mr. Ross is vice president of the National Live Stock Producers Association, Chicago. Very glad to have you with us, sir.

Mr. Ross. Pleasure to be here.

Senator JORDAN. You may proceed, sir.

STATEMENT OF MYLAN E. ROSS, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, NATIONAL LIVE STOCK PRODUCERS ASSOCIATION, CHICAGO, ILL.

Mr. Ross. As you introduced me, my name is Mylan Ross and I am executive vice president and general manager of the National Live

Stock Producers Association with headquarters at 155 North Wacker Drive, Chicago, Ill. We appreciate the opportunity to present the views of our association's members on the bill under consideration—S. 1149.

In order to better understand our position on this bill proposing an amendment to the Packers and Stockyards Act, I hope you will permit a description of some operations and background of our organization.

Senator JORDAN. We will be glad to have them.

Mr. Ross. The National Live Stock Producers Association is a federation of livestock marketing cooperatives. It is, then, owned and operated by its 16 regional cooperative livestock marketing associations. In turn, in excess of 400,000 livestock ranchers and farmers are members of these regional livestock marketing cooperatives. We have provided for your information—at the back of the statement, there is referred to a list of the headquarters of these 16 regional livestock marketing cooperatives on a blue slip.

(The document referred to follows:)

LIST OF MEMBER MARKETING ASSOCIATIONS, NATIONAL LIVE STOCK PRODUCERS ASSOCIATION

- California Livestock Marketing Assn., P.O. Box 3328, Visalia, California.
- Equity Co-operative Livestock Sales Association, P.O. Box 89, Baraboo, Wisconsin.
- Interstate Producers Livestock Assn., Union Stock Yards, Chicago, Illinois.
- Michigan Live Stock Exchange, 6750 Dix Avenue, Detroit, Michigan.
- Mississippi Livestock Producers Assn., P.O. Box 4797, Jackson, Mississippi.
- Ohio Valley Producers Livestock Assn., Stock Yards, Evansville, Indiana.
- Oklahoma Livestock Marketing Assn., Livestock Exchange Bldg., Oklahoma City, Oklahoma.
- Producers & Texas Livestock Marketing Association, Livestock Exchange Bldg., Kansas City, Missouri.
- Producers Commission Association, Livestock Exchange Bldg., Sioux City, Iowa.
- St. Louis Producers Live Stock Marketing Association, Livestock Exchange Bldg., National Stock Yards, Illinois.
- Producers Live Stock Marketing Assn., Livestock Exchange Bldg., Omaha, Nebraska.
- Producers Livestock Marketing Assn., Bourbon Stock Yards, Louisville, Kentucky.
- Producers Livestock Mkt. Assn., Union Stock Yards, North Salt Lake, Utah.
- Producers Marketing Association, Inc., Livestock Exchange Bldg., Indianapolis, Indiana.
- Tennessee Producers Livestock Marketing Association, Box 313, Columbia, Tennessee.
- Texas Livestock Marketing Association, Livestock Exchange Bldg., Fort Worth Texas.

Mr. Ross. Within our 16 member marketing associations we operate sales agencies on most of the recognized terminal markets of the country and we are very proud of their volume and service position on these markets. It is with pride that we can say that today our sales agencies on the terminals where we operate are the No. 1 firm in volume or, if not No. 1, close to it, and that we have been the originators or innovators of a great many of the new or improved services on the terminals. In addition to the terminal market operations, we also maintain operations through many auction markets and provide a sales and purchasing service to our member livestock producers and feeders at country assembly yards, as well as providing representation at ranches and feed lots for movement in more direct channels. In all, we operate on approximately 150 markets of all these types. During 1966, our 16 regional livestock marketing associations handled 10,111,470 head of livestock with an evaluation just short of \$1 billion at \$982,556,000 by

all of these marketing methods again. Preliminary figures would indicate 1967 volume figures will be slightly higher.

As cooperatives, it must be understood that our farmer and rancher members, through their elected board of directors, establish policy and make known the kind or type of marketing service which will be provided by their association. This is very basic to our position on the bill.

The establishment and organization of the National Live Stock Producers Association and its first producer marketing association was in early 1922. During the first several years the producer associations operated almost exclusively as cooperative sales agencies on terminal markets. However, over the years as marketing and production changes took place and farmers and ranchers became aware of the differences between types of marketing as to how they satisfied both their needs and convenience, our producer agencies, in response to the wishes of their livestock farmer and rancher members, took steps to provide the kind of service that their members wished. As a consequence, we are now rendering the great variety of marketing mentioned previously. It should be added that this variety of service is frequently rendered within a single association rather than an association specializing in just one kind of marketing service.

It is natural, then, that after 45 years of experience in marketing, we would be interested in any proposal to change the Packers and Stockyards Act which we consider vital to maintaining an efficient and competitive system of marketing. We feel we are aware of what some of the industry supporters of S. 1149 wish to accomplish under the proposed change. We are also sympathetic with them concerning some of the practices they hope to correct through this bill. As now written, however, we feel it contains terminology that is so broad and general that its interpretation and application harbors real potential problems for the future for many progressive market agencies now operating on terminal markets and particularly for livestock marketing cooperatives such as the National Live Stock Producers Association and its cooperative member agencies. It is a bill for a single vested interest in our livestock marketing channels, thus, for the stockyards owners and not for the service itself.

Prior to the introduction of H.R. 6231, passed as H.R. 10673, and now S. 1149, it had been and continues to be the position of the National Live Stock Producers Association and its member marketing associations that the stockyards owners have the authority to manage and regulate their stockyards in a just, reasonable, and nondiscriminatory manner under existing P. & S. regulations. To date, apparently stockyards owners have neither recognized a need for any changes in management or maybe they lack courage to make any changes that would be nondiscriminatory. On the other side, the Packers and Stockyards Administration, for reasons that are not clear, has not felt that it could back up the stockyards owners in taking needed action as now permitted in the act and its regulations. As a consequence, the stockyards owners are now asking passage of a private bill which grants them broader powers than we deem necessary.

The National Live Stock Producers Association has had experience with attempts by stockyards owners to institute regulations that were unreasonable and discriminatory and did not permit free exercise of choice in marketing methods on the part of their farmer- and rancher-

owned marketing associations. This experience causes us to be concerned with the broad powers to be given to them in the present wording of S. 1149. One experience referred to started with an action on the part of the Denver Union Stock Yard Co., who, on May 11, 1955, issued its tariff No. 14, effective May 25, 1955. The tariff contained regulation item 10(c) to this effect:

(c) No market agency or dealer engaging in business at this stockyard shall upon stock yard property, or elsewhere, nor shall any other person upon stock yard company property—

(1) solicit any business for other markets, for sale at outside feed yards or at country points, or endeavor to secure customers to sell or purchase livestock elsewhere; or

(2) in any manner divert or attempt to divert livestock from this market which would otherwise normally come to this stock yard; or

(3) engage in any practice or device which would impair or interfere with the normal flow of livestock to the public market at this stock yard.

This regulation concluded with its own definition of "area of normal flow" as being all of Colorado except approximately the eastern one-sixth of the State as outlined by county boundaries and highways. This regulation forced our member cooperative association sales agency operating on the Denver market to discontinue its off-yard or country representation being rendered to its rancher and farmer members unless livestock so handled was delivered to the Denver market for weighing and final settlement. The only other alternative was to discontinue operations on the Denver market entirely.

We challenged the 10(c) regulation in a formal hearing held by the Packers and Stockyards Administration. We lost, with the Packers and Stockyards Administration ruling in favor of the stockyards company. We appealed this ruling to the U.S. Court of Appeals, 10th District. The P. & S. ruling was reversed by the district court of appeals. The stockyards company appealed to the U.S. Supreme Court, which court upheld the decision of the district court of appeals.

We desire to avoid expensive and disrupting conflicts of this type. The wording of S. 1149 does not insure against such conflicts, in fact, may invite grounds for similar conflict. At the same time, we believe that the rules and regulations covering any livestock market, terminal or otherwise, should be subscribed to in such a manner as to foster, preserve, and insure an efficient marketing system. We are also aware of some situations that this bill may be intended to correct. We do not question the right of stockyards owners to manage their yards so long as it is fair and nondiscriminatory and contributes to a free and open market system. We do not believe, however, that a public market should have the power to regulate or to prescribe rules that would limit outlets for livestock owned by farmers and ranchers where such regulations may hold the potential of excluding them, through their cooperative marketing associations, to the use of the facilities available on the public market.

It may be of interest to this committee to learn that one of the leading terminal markets within recent months, and, perhaps on the strength of possible passage of this bill, proposed a rule as follows:

No market agency, dealer, or employee thereof shall go outside the limits of this stockyard to buy for his own account or on an order, slaughter livestock, or to take, send, or accompany a buyer, or prospective buyer outside this stockyards with the intent, or for the purpose of making a purchase or sale of any livestock for slaughter.

This is the type of rule, gentlemen, that we feel could be written under the broad wording of the bill. Such a rule ignores our situation and could have the net effect of forcing one of our cooperative member agencies, or more, to make a choice of alternatives, including forced withdrawal from a terminal, and thus, conceivably deny our members a choice of representation on a terminal as a part of the complete marketing package.

We believe that the wording of S. 1149 is so broad as to open up the possibility that rules could be established which would make it impossible for some of our cooperative terminal market operations to continue on these markets and still provide the services that our farmer and rancher members have asked us to provide.

Senator YOUNG. Would you explain further what you mean by provide the services that farm and rancher members have asked us to provide? What other services do you mean?

Mr. Ross. Wherein we do operate as we stated on many of the terminal markets. We also operate in a great number of auction markets but as has been described by previous speakers in the Department, this is the stockyards in their posted markets. Some of the services we would provide would be assembly of livestock at country points for reshipment, actually in more direct channels. These would not go through terminal operations or auction operations. That would be one example.

Senator YOUNG. Would that be a procedure that would be prohibited by stockyards you were doing business with?

Mr. Ross. It would be prohibited if such a rule as the one I just quoted had been proposed by one market. I guess it would be, let us put it that way, if this rule I just quoted here as proposed were put into effect. It could conceivably do this. In this case it would, as I tried to point out, force us into the same old question: Which of the services do the members want within this one association? The reason I—again, this was the reason we have underlined the one statement, that as a cooperative our members do through their elective boards, make known the services they wish and sometimes these members in a given area will come to us and say we would like a certain kind of representation. It may be a country point for either cattle or for hogs.

Senator YOUNG. Would you explain a little more in detail the regulation adopted by the stockyard in which the Department of Agriculture held against you and the court held with you?

Mr. Ross. Could we describe it?

Senator YOUNG. Yes.

Mr. Ross. Well, on this, as outlined in three procedures, any livestock—we were operating in the Denver yards—any livestock we might handle we would have to run through the stockyards regardless of the—we would have arrived actually at a selling price, would have arrived at a destination for the livestock, but we would have had to bring it through the terminal yards at Denver. We could not have operated at any other point, in other words.

Senator JORDAN. That was upset by the court ruling, so that is not in existence today?

Mr. Ross. It is not in existence but we wanted to tighten it, again referring to our statement, that the breadth of this statement we think may invite still some of these kinds of rules.

Senator YOUNG. On the bottom of page 6, you cite a regulation proposed by one of the terminal markets, "no market agency, dealer or

employee thereof shall go outside the limits of this stockyard to buy for his own account or on an order", et cetera, the rest of the paragraph. I understand that this one was disallowed by the Packers and Stockyards Administration?

Mr. Ross. I would gather that the Department this morning referred to a situation where a rule was submitted to them and I would only be guessing on my part. This may have been the particular rule. But, I think you would have to ask the Department or compare markets as to where it was involved.

Senator JORDAN. You may proceed, sir.

Mr. Ross. I will start with the second paragraph on page 7.

We believe that the wording of S. 1149 is so broad as to open up the possibility that rules could be established which would make it impossible for some of our cooperative terminal market operations to continue on these markets and still provide the services that our farmer and rancher members have asked us to provide. In our attempt to clear our position on this matter, we suggest an amendment to subsection (b) of section 4, section 307 of S. 1149 with one sentence to be added (as underlined in this prepared statement) which would make that section read as follows:

(b) It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient competitive public market. Such rules and regulations shall not prevent a registered market agency or dealer from rendering service on other markets or in off-market transactions.

Senator JORDAN. What do you mean by that condition, in connection with this proposed law? I want to be sure I understand the purpose for inserting this amendment.

Mr. Ross. This is clarification again, I believe, Mr. Chairman. As we have quoted again, if such a proposal as I have quoted for you could be written, this would—where we have an association who may be operating, and we have some who—I will describe one of our cases. We have one that is operating on three terminals and providing a service for its members there. They also within a State area have 30 country point where they assemble hogs and these are then sold, presented to packers without going through a terminal market or a posted stockyard. This we feel, with the broad wording—again not being legal, my men and myself—that such a rule would say we could not go off as an association, a marketing agency, could not go off the yards to represent our members in some other service. That is what is meant down here by "rendering service on other markets or in off-market transactions." Ours is to render a representational service for our members.

Senator JORDAN. You would not want to try to say to a farmer, now do not go to this market, we will go over here and sell them out of the field, in other words, you would not think that you would be entitled to try to take business away from a stockyard and hand it to some local place for any reason?

Mr. Ross. No, sir.

Senator JORDAN. You would not say that your farmers did not have a right to sell it anywhere they please or in any manner they wanted to?

Mr. Ross. As a matter of fact, I would say our operations would be much simpler if we were back at the old status of having central markets.

Relative to the other statement, as to the promoting of the market, we do a great deal of promotion by our association of just the terminal market. I would say in some instances in some of the terminal markets that some of the strongest promotion to draw livestock to those terminal markets is actually put out through newsletters and communications services by our association. So, this is not our intent.

Senator JORDAN. Terminal market is a very valuable asset to your members, let us put it that way. Not the association, but to your members, in determining what the price of hogs is in Sioux City today at 11 o'clock.

Mr. Ross. It is certainly one of the important—

Senator JORDAN. Because a—

Mr. Ross (continuing). Pieces of price information.

Senator JORDAN. A little country operation would not have that information. They have to get it from some place.

Mr. Ross. No. I might, however, to clear this up, state that where we have a number of points, that we do report through price reporting services the prices at country points and there are several of these, say particularly the hog States or interior prices. This would be another source of prices as guides to our members for all of the livestock producers. But I will agree with you, a substantial part of our operations still is on terminal markets and we are very—they are very important to us.

Senator YOUNG. Can you give us some percentage of the amount of your business done on the terminal markets and the percentage sold direct? Would a sizable percentage of livestock marketing by your association be sold direct to packers?

Mr. Ross. It certainly is a decreasing percentage, Senator. We have not actually analyzed—I cannot give you a specific figure as to what would go through terminals as compared to some of these other methods. However, as the terminals have gone down, so have our numbers and consequently our percentage of livestock that has gone through terminals has gone down. We may be increasing, we will say, even our share of the receipts of a particular terminal market but as has been referred to on occasions where they are buying volume, the trend in the terminals has gone down, probably a smaller piece. It is a bigger piece of a smaller pie. So, we have kind of followed this trend. I did not give you, and I am sorry I did not give you, a specific figure.

Senator JORDAN. Thank you very much. You may proceed.

Mr. Ross. I believe I was just starting on page 8.

Without the change in the bill and the addition of the one sentence as outlined to you, the National Live Stock Producers Association did, by official action at its last annual meeting and in directors' meeting, instruct us to unalterably oppose the passage of this bill. With the addition of the one sentence, they did, however, instruct us to make known their support of the bill, and their wholehearted support.

We hope we have been able to clarify for you the special position from which we make our presentation. Many of our member marketing associations are asked by their livestock producer members to serve them both on public stockyards and in off-market operations.

As has been previously pointed out, on many of the terminal yards where our members operate, the member agency representative is one of the leading agencies, if not the top volume agency on that market. We feel that they could not have attained such a position of service had they not promoted the marketing service available to livestock producers and feeders on the public stockyards. We have every desire to continue to render top service at our stockyard locations, but must also, as cooperative associations, follow the wishes of the livestock producer member in giving off-market service where and in the way he requests it. The present wording of the bill, without the addition of the sentence we have just recommended to you, gives rights and powers to stockyards owners that are too general and broad in scope. We do not believe that stockyards owners should be granted a position which opens the door to limit the outlets for the livestock of our producer and feeder members.

The amendment we propose would clarify this question and would still make cooperative marketing service on terminal markets available to livestock producers and feeders and would leave the final decision as to the type of market used in the hands of livestock producers and feeders. We, therefore, urge your serious consideration of the addition of our recommended amendment to S. 1149 in order that the National Livestock Producers Association and its member livestock cooperatives can then give the bill support.

I certainly thank you gentlemen for letting me make this statement.

Senator JORDAN. Thank you very much. We are glad to have you with us, and your testimony. Senator, any questions?

Senator YOUNG. No.

Senator JORDAN. Thank you very much.

Mr. Ross. Thank you, sir.

Senator JORDAN. Mr. Cunningham, and Mr. Overman, Omaha Live Stock Exchange, Omaha, Nebr., also representing the River Markets Group. Glad to have you with us, both of you.

STATEMENT OF ROBERT E. CUNNINGHAM, EXECUTIVE SECRETARY, OMAHA LIVE STOCK EXCHANGE, OMAHA, NEBR.; ALSO REPRESENTING THE RIVER MARKETS GROUP

Mr. CUNNINGHAM. Gentlemen, my name is Robert Cunningham. I am the executive secretary of the Omaha Live Stock Exchange and also the executive officer of the River Markets Group. The chairman of the River Markets Group is Mr. Warren Overman, who is here with me. He is from Chicago, Ill.

To be a little more specific and for your information, the River Markets Group comprises in membership approximately 900 members of the Livestock Exchanges at six of the largest terminal markets in the United States; namely, St. Louis National Stock Yards, Ill.; Chicago, Ill.; Kansas City, Mo.; Omaha, Nebr.; Sioux City, Iowa and Sioux Falls, S. Dak. During 1967 these markets handled livestock receipts amounting to 6,827,000 cattle and calves, 9,987,000 hogs and 1,505,000 sheep for a grand total of 18,500,000 head of all species received and sold.

Members of the River Markets Group serve Midwestern feeders and growers in the purchase and sale of livestock at these terminal markets. They act on an agency basis under exchange rules and regulations

designed for the protection and betterment of shippers' interests. Our people are highly skilled and experienced market agency technicians whose primary responsibility is selling consigned livestock for the highest price obtainable in open, free competitive livestock markets. We sincerely appreciate this opportunity to appear before your Committee and discuss our position on the legislation that you presently have under consideration, S. 1149.

Our River Markets Exchanges were established in the late 1800's for the purpose of inculcating principles of justice and equity in trade; to enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate the speedy adjustment of business disputes; to expedite and regulate the handling and sale of livestock; to promote uniformity in the customs and usages of members. We have been in operation at these markets since the late 1880's. As an example, the Omaha Live Stock Exchange is presently in its 78th year of operation. Chicago has been in operation longer than that. Our markets have been operating under the Packers and Stockyards Act since its inception in 1921, a period of 46 years. We feel the act was an excellent piece of legislation. It was originally patterned after the rules of our Livestock Exchange, most of which have been in existence for 80 years or more.

As previously outlined, the 900 members of the River Markets Group are men who are the actual trades people in these large midwestern terminal markets. They are the procurement arm of the industry and make the personal, on-the-farm contacts with patrons and prospective patrons of our markets in securing their livestock shipments to our stockyards for final sale.

Our members sort, shape, show, and sell all livestock and remit the proceeds of sale to customers of the market. They handle all financial accounting, bond protection, and the rules and regulations of the market in our customers' behalf. Their skilled knowledge and keen business acumen contribute the major share of establishing national price levels at which all livestock is sold.

The stockyard companies on the other hand, are the owners and custodians of the terminal market properties. They do not enter into the process of business procurement, customer relationships or livestock selling operations to the extent that our exchange members do, but rather confine their activities to receiving and weighing the livestock that come to our markets and maintaining the properties.

The River Markets Group views the legislation proposed in S. 1149 and H.R. 10673 with critical concern. We find in the proposed amendment to section 303, subparagraph (1) and 307, subparagraph (b), legislation tantamount to granting absolute and complete control to stockyard owners over all agencies operating at their markets.

Subparagraph (1) of section 303 states that—

No person shall carry on the business of a market agency or dealer unless the stockyard owner has determined his services will be beneficial * * * and has given written authorization to such person.

This change grants to the stockyards owner the sole right and discretion to determine the qualifications of anyone desirous of commencing business at any market. The proposed amendment provides no guidelines for this determination except at the discretion of the

stockyard owner. We feel such a broad grant of legislative power actually authorizes arbitrary discretion to only one segment of the stockyard industry.

In the proposed form, the stockyard owner might decide for any arbitrary reason that a certain dealer or market agent was not good for the industry and deny him the opportunity of the marketplace. The power to approve ordinarily carries with it the power to revoke such approval, and again, the same stockyards owner might possibly decide that an established firm was no longer "beneficial" and revoke their written authority to continue in business. We feel that the dangers inherent in such unilateral authority far outweigh the benefits that might accrue from its adoption.

Our next comment is relative to subparagraph (b) of section 307 which states that—

It shall be the responsibility and right of the stockyard owner to manage and regulate his stockyard and to prescribe rules and regulations and to require those persons engaging in the purchase, sale or solicitation of livestock at that stockyard to conduct their operation in a manner which will foster, preserve and insure an efficient, competitive public livestock market.

We would state for the record that the stockyard companies are contending that they need such broad regulatory powers to protect their vested interests. They seem to overlook the sizable interests that all of our people, market agents and dealers alike, have in these markets. Our people have the investment of their capital, their reputation, in fact that of their very lives and those of their families at stake in the future of these markets. To grant complete control over their business operations to one party such as a stockyards company would be an outright abuse of the freedom of individual enterprise.

As we have outlined in an earlier paragraph, for some 80 years our livestock exchanges have prescribed the rules and regulations for our markets. Since 1921 the Packers and Stockyards Administration has joined in this regulatory activity. Obviously, our exchanges and our market agencies have as much interest in "fostering, preserving, and insuring efficient competitive markets" as does a stockyard owner.

We feel that the proposed amendments are self-defeating to the purpose of our exchanges and the Packers and Stockyards Administration. Our exchange rules and the Packers and Stockyards Act were promulgated to regulate the affairs of the stockyards and related industry. The act is a police power type of function with the Secretary as the policeman. On the other hand, the exchange control is a democratic process in which self-regulation comes into play. Now, the stockyards companies are seeking to usurp these regulatory powers, eliminating the voice and authority of the exchanges, the individual market agencies, and even supersede the authority of the Packers and Stockyards Administration.

We have no quarrel with giving equal time and/or authority to stockyard companies as that presently given to all the other segments of our market family and to the Packers and Stockyards Administration. In fact, stockyard companies currently share these regulatory powers and have even a good deal more than concurrent jurisdiction over the operations of their markets and the agencies located thereon.

We fail to see why it is necessary to vacate the rights of all other agencies in favor of granting absolute control to one organization.

We find such proposal so obnoxious that we are dutybound to oppose it with all the forces at our command. We have never asked for, sought, nor been granted such dictatorial powers and we feel it is highly improper for any one body to assume this cloak of authority.

Even our Federal Government has realized the propriety of checks and balances for nearly 200 years. The establishment of an executive, legislative, and judicial authority assures that not all power is granted to any one omnipotent individual, department, or jurisdiction.

Our many years of experience in the business of livestock marketing does not lead us to the conclusion that we can expect fair, just, and nondiscriminatory application of this broad grant of legislative power to a one man or one organization rule of our lives and our destinies. In fact, we have seen too many instances of behavior on the part of stockyard companies which are to us arbitrary and unilateral and which would lead us to think that they should not be allowed to warrant the consideration they seek under S. 1149. The River Markets Group and its 900 members who have operated in these markets for some 80 years registers its opposition to this legislative proposal and respectfully requests your committee to deny it further consideration.

I might add, if I may, please, several other comments that came to mind from previous testimony that has been presented here. I note that the National Commission on Food Marketing report at page 108 stated, and it is quoted in some previous testimony :

The P&S Act should be administered and if necessary, amended to give stockyard owners and marketing agencies the greatest flexibility and control over their operations consistent with protecting the interests of buyers and sellers.

Gentlemen, we are in accord with this but we do notice the careful mention of market agencies at the same time as stockyard companies. So what we propose here is that there would be some tribunal or reviewing authority in which a member of the Packers and Stockyards Advisory Committee, a member of the local stockyard company, and a member of one of the marketing agencies or the exchange might sit down and consider a problem that seemed to be one that should have some necessary action taken at a local level. We feel that that would be much better, and would give everyone a voice in a democratic decision on local problems.

We note that also the comment was made that under certain instances, the exchanges have their rules which may be applied uniformly but only to their members, and that if there would be nonmember firms in a market, that these exchange rules would not apply to the regulation of that market.

We have accomplished this rather easily in Omaha by the stockyards company who have agreed and approve of the Omaha Live Stock Exchange, rules merely making them a part of their tariff and they then become rules that are binding on all people who operate in the Omaha markets. A very simple solution, which can be accomplished at a local level without it being necessary to initiate legislative authority of the type that has been suggested here.

We also note the USDA saying that commission firms selling at terminal stockyards are injuring their consignors if they dilute packers' buying needs in off-market transactions. We feel that the same is true if stockyard companies charge yardage on livestock sold direct

in the country and this livestock moves through a terminal market. Livestock that comes in consigned direct to a packer and is received through a terminal market impedes our ability to establish price on the salable livestock that is available on a given day. So, we feel if the USDA, as they state, feels that off-market transactions do dilute packers' buying needs that it might be a good idea for the USDA to recognize this problem and to do something if they could to correct it, because it would certainly be helpful to us if we do remove that dilution of buying needs.

Senator JORDAN. I understand what you are saying, that you do think the cattle ought to be brought through a terminal market but not subject to the rules of that terminal market and fees be charged for the handling of those cattle or there may be—

Mr. CUNNINGHAM. My point is that if, as the Department has said, off-market transactions on the part of commission firms or anyone else tend to dilute the buying power or the price-setting power of the market, that this is something that the USDA should take a look at. We have wanted this done for a long time, that direct buying activities or off-market activities do impede our ability to set a high price because it does remove the competitive buying power from our market. We are very happy to see this recognized. But, we think there is a better way than this particular type of legislation to correct it.

Now, this is all I have, Senator, and Mr. Overman has a statement that he would like to present for the River Markets Group.

Senator JORDAN. How long is your statement?

Mr. OVERMAN. In the interests of brevity, figuring the other markets would cover most of the statement, it is quite short.

Senator JORDAN. You may proceed. State your full name and who you represent.

STATEMENT OF WARREN C. OVERMAN, CHAIRMAN, RIVER MARKETS GROUP, CHICAGO, ILL.

Mr. OVERMAN. I am Warren C. Overman, chairman of the River Markets Group. I have been a member of the Chicago Livestock Exchange since 1941. I am a director of the Chicago Livestock Exchange.

The River Markets Group is an association of interested people on six major central markets. The group was formed to promote the interchange of ideas and discussion of common problems for the sole purpose of keeping the markets as strong as possible for the benefit of the livestock producers.

I feel strongly that strong central markets are most essential to the welfare of the livestock producer. I cannot see how he will be served if the sweeping authority over selling agencies by stockyard owners proposed in S. 1149 is granted. The inequities inherent in the bill as regards the selling agencies themselves will be gone into by others; the welfare of the producer is my sole concern. I would like to say right here that the language used in the bill by the USDA and by the representatives of the stockyard companies has always put the stockyard interests first. I believe the producer in this country, who I think is in quite a price bind right now, needs to be put first.

Selling agencies have essentially one purpose: to stand on equal and professional footing with buyers in the marketplace and convert livestock to cash by means of securing the highest possible price for the greatest possible weight. Three components are necessary to strong operation of a market to develop price—a stockyard operator, a buying side, and a selling side—and these must be completely independent in their basic actions. Sweeping assurances that stockyard owners will not be unjust, dictatorial, or discriminating in their demand for a very tenuous “standard of performance” do not impress me in the slightest. May I say here that standard of performance they have talked about will eventually come right down to one thing—money.

Senator JORDAN. That is what they are hoping for, is it not?

Mr. CUNNINGHAM. Sometimes I wonder, sir.

The proposed grant of authority under this bill offers no protection as stockyard administrations change or profits fall.

The membership rule of the Chicago Live Stock Exchange is quite simple and typical of the rule of other exchanges. It asks only that the applicant be of good character, attained his majority, and that his primary business concern lies at the market. There is nothing here that precludes the stockyard personnel joining the exchange where their voices may be heard and heeded. No man serves two masters well and a selling agency to do its job well must think only of its principal. We are assured that stockyard owners are reasonable men and we assure them that we are just as reasonable. May I say here that three or four membership in our exchange at Chicago are held by stockyard company people, yet they never come to meetings, they never participate and they are perfectly welcome and have every right to do so.

I ask that the over 100 years of successful operation of central marketing be considered and that the basic concept of owners, sellers, and buyers standing at arm's length be maintained.

I would like to add one more thing. Mr. Jennings in his statement decried the public utility concept of a stockyard. Yet, he quoted a point made at Food Commission hearings. For example, that—

Public stockyards have an additional valuable function, that of pricing, setting price levels to which other systems and interested people measure livestock values.

Certainly I feel that this but further strengthens the public utility concept.

Thank you, sir.

Senator JORDAN. Thank you. We appreciate your testimony. I do not quite understand, and would appreciate your enlightening me on this point. Does this bill have anything to do with the Chicago Live Stock Exchange?

Mr. OVERMAN. No, sir.

Senator JORDAN. Does it in any way inject itself into the livestock exchange?

Mr. OVERMAN. No. Essentially what I was suggesting, here is the place to settle probably 99⁵/₁₀ percent of our differences.

Senator JORDAN. In the exchange.

Mr. OVERMAN. Yes, sir. We have been able in Chicago and at most of the other large terminal markets to never have to go to government to have stockyard functions spelled out exactly. We have been able to reason with them. They have been able to reason with us for

example, sir, at Chicago about a year and a half ago they began calling all commission firms in. When the first ones went in they were told flatly they were going to cut the number of commission firms to 20. I was among the very few, my partner and I, who got in at the first and this was the statement. We are going to do this.

Some people told them where to go and how to get there. Others reasoned with them. And by the time they got to about the tenth one, they were in a position where they are discussing, not telling.

Eventually the thoughts that were exchanged on both sides, it dropped, it passed. They finally figured out the more commission firms they had at Chicago, the stronger that market was, and we still have four alleys in that stockyard where I think they should encourage more commission firms to be set up.

Senator JORDAN. Is there more than one stockyard in Chicago?

Mr. OVERMAN. No, sir.

Senator JORDAN. Is the Stockyard Restaurant still operating out there where they have such good steaks?

Mr. OVERMAN. Over at the Stockyard Inn, Matador Room. If you come there, I will be pleased to buy you one.

Senator JORDAN. I have eaten there a good many times and they do have good meat.

Mr. OVERMAN. The finest in the world.

Senator JORDAN. No question about that. Thank you very much for your presentation, both of you.

This subcommittee will recess until 10 o'clock in the morning. Thank you very much.

(Whereupon, at 12:40 p.m., the hearing was recessed, to reconvene at 10 a.m., Friday, January 26, 1968.)

MANAGEMENT AND REGULATION OF STOCKYARDS

FRIDAY, JANUARY 26, 1968

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan of North Carolina (chairman) presiding.

Present: Senators Jordan of North Carolina, Harry F. Byrd, Jr., of Virginia, Young of North Dakota, and Miller.

Also present: Senator McGovern.

Senator JORDAN. The subcommittee will please come to order.

Senator Young, we are glad you are back with us this morning. I mean that sincerely. You always add a great deal to our meetings and we appreciate your being here.

Senator McGovern, we are very glad you are here, since you are so interested in the bill.

I say this for the benefit of our visitors because it is sometimes difficult to get a quorum for these hearings since there may be three or four scheduled at the same time. Good attendance shows an extra interest on the part of Senators when they can be at a meeting whenever possible.

Senator YOUNG. Thank you. Could I have a recording of that?

Senator JORDAN. Yes. It is in the record.

Mr. George Doup, president of the Indiana Farm Bureau, Indianapolis, Ind., representing the American Farm Bureau Federation.

Will you come forward and have a seat?

We are delighted to have Mr. Lynn along with us, today. Jack is an old friend of ours and he is in regular attendance at these meetings.

You may proceed as you wish.

STATEMENT OF GEORGE DOUP, PRESIDENT, INDIANA FARM BUREAU, INDIANAPOLIS, IND., REPRESENTING THE AMERICAN FARM BUREAU FEDERATION

Mr. DOUP. Mr. Chairman and other members of the subcommittee, we appreciate the opportunity to present the views of the American Farm Bureau Federation with respect to S. 1149.

The voluntary paid membership of farm bureau includes 1,753,532 farm and ranch families in 2,770 county farm bureaus in 49 States and Puerto Rico. Livestock is the most important source of income to a very high percentage of farm bureau membership; therefore, the reason for our interest in this legislation is apparent.

Farm bureau had a great deal to do with the development of the Packers and Stockyards Act of 1921 and gave strong support for its enactment. This act has served the livestock industry well. Dramatic changes have taken place in the marketing of livestock. We want to make sure that by legislative action we do not turn back the clock or prevent the further improvement of the marketing process.

There is a table accompanying this offer—about four tables—one for the year 1966, and then the other a comparison of the years from 1962 to 1966. It tells rather dramatically the change in pattern of livestock marketing in the country. You will note in 1962, in the second table there, that the direct marketing of cattle, for instance, at that time was 38.6 percent. It has gone up to 49.2 percent in 1966, practically half then of the cattle market, our direct marketed cattle.

The auctions there are shown, and then the terminal markets are shown.

You can carry that on over to the hogs, calves, hogs and sheep, and you will note over there that in hogs in 1966, 62.7 percent were marketed directly in the country, 22 percent in the terminals and 15 percent in the auctions.

This gives you a feel, certainly, of the changes that have taken place in the livestock marketing pattern in the country.

Based on the recommendation of the Farm Bureau Livestock Advisory Committee in March 1967, the American Farm Bureau Federation Board took action in support of H.R. 10673 provided certain safeguards were made as follows:

The Committee recommends favorable consideration of this proposed legislation with the understanding that every stockyard owner shall have the responsibility as well as the right to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner to insure an efficient and competitive public market for livestock producers and feeders and that rules and regulations adopted by such stockyard owners shall in no way prohibit farmers and ranchers from establishing and/or operating a market agency or any public livestock market, even though they may operate other types of market services at auctions or concentration points or sell, buy, or contract for the purchase or sale of livestock at farms or ranches.

The point of our testimony is that section underlined there. This is our concern in this legislation.

Neither H.R. 10673 as passed by the House, nor the legislative record or S. 1149, includes the protection to livestock producers and shippers we feel essential. The House bill, together with the legislative record, indicates that the effect, if not the purpose of the legislation, would be to strike at direct marketing by farmers and ranchers by authorizing the owners of a public stockyard to prohibit a livestock marketing agency operating on a public market from providing a direct marketing service at country points, feedlots, or farms or ranches.

The owners of public stockyards are now prohibited from taking such action by the Supreme Court's decision in what is known as the *Denver Stockyards* case. A copy of this discussion is attached.

We were a party to this case. It was one we were very much concerned with, very much involved in, and the decision rendered there was favorable for our position, and we don't of course now want it overturned.

It would appear that instead of meeting the dramatic changes in the production, transportation, marketing, processing, and retailing of livestock and livestock products or in reducing costs of marketing, this bill, as passed by the House and now before this committee, would tend to freeze the old system of marketing. It appears that proponents of the bill are more concerned with protecting a certain marketing system than with marketing costs or net returns to farmers and ranchers.

We recommend the following amendment to S. 1149: In line 5 on page 3 insert the following after "*Provided*,"—

That nothing in this Act shall authorize any stockyard owner to prohibit farmers or ranchers from establishing or operating a cooperative market agency on any public livestock market because they operate other types of cooperative market services at auctions or concentration points, or sell, buy, or contract for the purchase or sale of livestock at farms or ranches: *Provided further*—

Senator YOUNG. Let me ask a question at this point. The National Livestock Producers Association in their testimony yesterday proposed something quite similar to this.

Mr. DOUP. Very similar.

Senator YOUNG. Are you familiar with it?

Mr. DOUP. I just glanced at their testimony this morning, but I knew their position. I sit on that board of directors, and have known the position they take. Theirs is similar to ours, they propose a little different language.

Senator YOUNG. In marketing through the Farm Bureau agencies, is it much the same as through the National Livestock Producers Association?

Mr. DOUP. Yes.

Senator YOUNG. You experience some of the same problems?

Mr. DOUP. The National Livestock Producers was started by the Farm Bureau many years ago. Many of the producer agencies are affiliates of the Farm Bureau. In Indiana we are. We are a close affiliate of the Farm Bureau and we are also members of the National Livestock Producers, the agency that testified yesterday. Their position is about the same as ours, slightly different language.

Senator YOUNG. Then your organization sells much of their livestock through the stockyards, some through auctions?

Mr. DOUP. Yes. Let me give you the illustration. In Indiana and the Midwest, in Indiana specifically we are on terminal market at Indianapolis with the agency. We also have 21 points throughout Indiana. Now, the effect of a situation that was in the courts, known as the *Denver* case would be for the Indianapolis terminal to say that as long as you are on this terminal, you can't operate country points, and so the effect of this for us in Indiana would be to say either you are on the Indianapolis terminal and not in the country, or that you are in the country and not on the terminal.

Senator YOUNG. What do you do at the country points?

Mr. DOUP. Country points are concentration yards where we get together the farmer's hogs, in some instances we have auctions, and handle them much like we would handle them at the terminal. However, they don't go to the terminal. They are marketed from the points directly to the packing plant.

Senator YOUNG. Then you really market in three ways, through local auctions, direct selling to the packers.

Mr. DOUP. This is right.

Senator YOUNG. And then through stockyards?

Mr. DOUP. Yes. Now, we are not entirely favorable to what the old terminology of the direct marketing, where a packinghouse is out in the country and they establish a yard and did direct buying. We think that there ought to be an agency representing the farmer out there, and this is the reason the cooperatives have gotten in this one so heavily. And so we have established these points, where our cooperative jointly sells the hogs from these 21 points, where the farmer isn't competing against each other, each farmer out there. The agency is selling the hogs so in reality these are concentration yards where the farmer brings these hogs in. The market is established for them, and he gets his check right there. This shortens the marketing path for him, this shortens his marketing costs, and we think the fact that the hogs are in the terminal is not necessarily a factor that has to be to make this competitive. They can be right out there in the country because they can be described over the phone and it is a waste of money for the farmer to have to bring those to the terminal and then go on. Why not concentrate them in shorter distances out there?

Senator JORDAN. Would you repeat that last part? You concentrate by telephone?

Mr. DOUP. No; we concentrate them out there, but we sell them by telephone.

Senator JORDAN. How large an area would you consider to be a concentration point, two counties, or one county?

Mr. DOUP. We have these differently in the 21 areas. This does not cover all of the State of Indiana, but I suppose our closest markets are about 30 or 40 miles apart.

Senator JORDAN. Would these hogs be concentrated in this one shipping place for disposal?

Mr. DOUP. That is right.

Senator JORDAN. But it could be handled by phone?

Mr. DOUP. Yes. But this lets a fellow who may have 20 hogs out there instead of having to take them to the terminal, can put them there. We can concentrate them in loads of 100 to 150, describe them to the packer, and go direct to the packer from there.

Senator YOUNG. This is a form of collective bargaining, too, isn't it?

Mr. DOUP. It has bargaining in it; yes, very much, because the farmer is represented in the marketing of those hogs by an agency that has under its control the hogs in those 21 points plus knowledge of what is happening in the terminal, too. The part that I mentioned a moment ago that we do not completely agree with is where a packer comes out there and sets up and there is no bargaining there. He just buys what is normally known as direct. We think the farmer ought to have an agency there representing him, knowing what the marketing situation is, knowing where the hogs are, and being able to bargain. And so our cooperative has been able to do this through necessary points. Not just at the terminal market. So we do not think at all that the establishment of country markets and country concentration yards such as we have in our cooperatives has hindered the farmer. We know it has helped him.

Senator YOUNG. Some of the livestock that goes through these auction rings finds its way to the terminal market, too; doesn't it?

Mr. DOUP. There is some of this, but not nearly as much as there used to be. There used to be a great deal of this, but today in our auc-

tions we have the packing houses right there bidding on the livestock, and so very little of our auction livestock today goes to the terminal. There used to be a great deal of it, Senator.

Senator JORDAN. May I ask another question?

Wherever livestock is concentrated, are there a feeder lots, too?

Mr. DOUP. Not to speak of. We have to carry these overnight but this is all.

Senator JORDAN. You might have to water them and feed them.

Mr. DOUP. Yes.

Senator JORDAN. Is someone paid for a short period of time when you collect the load and carry them off?

Mr. DOUP. Yes.

Senator JORDAN. The farmer will pay for that charge, would he not?

Mr. DOUP. Yes.

Senator JORDAN. As he wouldn't in a regular market.

Mr. DOUP. Some of this may be on us, because we will take title to the hogs and have to carry them over if we can't move them. We attempt to move them every day, of course, but there are occasions when you have to put them together as you say for orders, or you may find a situation where the packers are just filled, and you can't sell them on that day. You would have to carry them over.

Senator JORDAN. You would have to have some pens. Do you handle cattle too.

Mr. DOUP. Very few cattle this way. Practically all of our cattle go right from the auctions right to the packing plant. Our principal operation in the country is hogs, but we do have some auctions that handle a good many cattle but those are direct to the packer and he buys them right there with his representative or with a buyer.

Senator YOUNG. Do you buy your feeder cattle at auction rings in the western areas?

Mr. DOUP. Not much any more. Most of our feeder cattle come directly from auctions in other States.

Senator YOUNG. That is what I had reference to.

Mr. DOUP. And then come in direct to the farm. There are not many of these go through our auctions. Again in Indiana they go direct to the farm. We will put a few of them through, but not very often.

Senator JORDAN. They go through the farm to the man who bought them and needs them?

Mr. DOUP. Yes. They will come into the auctions. The producer agency who testified before you yesterday has some of these yards in Tennessee and Mississippi, places like this. On our farm in Indiana, why, we buy cattle from a producer agency in Tennessee, out of Columbia, Tenn. The effect of this kind of legislation would say, that is, if the stockyards owners wanted to be able to move without this kind of an amendment in there, they might say that if you were going to operate at a terminal you can't operate in the country, and this is what bothers us. This is, of course, the effect of our proposed amendment here would be that it would just simply say that because you operate on the terminal is not reason for you to be kept from operating in the country.

Senator JORDAN. Senator McGovern, do you have any questions?

Senator MCGOVERN. Mr. Chairman, on the surface of this it seems to me the amendment is a reasonable one. If I understand the testimony that some of the stockyards people gave yesterday, what they

were concerned about is some of the sellers using the yards to generate business outside of the yards, but I can't see where this amendment would be in conflict with that.

Mr. DOUP. It wouldn't.

Senator MCGOVERN. Is that right, Mr. Doup?

Mr. DOUP. That is right. No, we did not practice this, and we would see no reason to do this in our kind of an operation.

Senator MCGOVERN. My understanding is some of these commission people also generate business the other way. They go out into the country and bring livestock into yards that otherwise might not come there.

Mr. DOUP. Yes.

Senator MCGOVERN. So that can work both ways, too.

Mr. DOUP. Yes.

Senator MCGOVERN. It seems to me on the surface at least to be a reasonable amendment.

Senator YOUNG. Would this have any affect on order buyers?

Mr. DOUP. I wouldn't see where it would affect them at all. Order buyers are free to go on terminals or into the country, and so I wouldn't see where this would affect them at all. We use order buyers in the country. We have own own order buying system, too, but we use others.

Senator JORDAN. Just what does an order buyer do? Does he get an order for so many cattle and then buy and ship them?

Mr. DOUP. Yes.

Senator JORDAN. For instance, he could get an order from Swift to buy 100 steers.

Mr. DOUP. That is right.

Senator JORDAN. Certain qualities and weights.

Mr. DOUP. That is right. He may go to the terminal in Indiana. He may come to one of our auctions or go to another auction, wherever he thinks he can find the type of orders that he has to go to get them.

Senator YOUNG. Order buyers in our areas usually buy mostly feeders. A lot of the livestock feeders buy through order buyers rather than going on the market and buying cattle themselves. An order buyer can get a more uniform lot and he knows cattle and can be very helpful to a feeder.

Mr. DOUP. I would want it made real clear that we have nothing against the terminal market. We are for the terminal market, and we use the terminal market in Indianapolis extensively. But what we don't want to do is to have our country markets disrupted. We think there is a place for both. This is by choice of the farmer. This wasn't by our choice. The farmer was going to the country and selling his hogs before we got in this as a cooperative. We did not force this. The farmer forced this, because this is what he wanted to do, and chose to do. He was trying to find a way of lessening his marketing costs, and so once this came into being, the cooperative in Indiana said this is what the farmer chooses to do, we don't see that it is lessening his competitive position. We are going in then and establish points, and we have done this and we are still establishing them. We established another one or two last year.

Senator JORDAN. Thank you, sir.

Any further questions?

Mr. Doup. I didn't quite finish. The rest isn't pertinent unless you want me to finish.

Senator JORDAN. You may finish if you wish.

Mr. Doup. The issue here is not whether a market agency operating on a public market should be permitted to operate on other public markets or provide a different type of marketing service on such markets, but rather whether a market agency such as a regional or national cooperative operating on such a market can also provide a direct marketing service at concentration points, auctions, feedlots, farms and ranches or help farmers and ranchers negotiate contracts for future delivery as some cooperative marketing agencies are now doing. That is a new practice that is coming into being.

The purpose of a livestock marketing cooperative is to serve the interests of its members. Cooperatives have some members who wish to market through terminal markets and others who wish to market in other ways. In order to meet member demands for different types of marketing services, cooperative marketing agencies must be free both to operate at terminal markets and to provide other types of services at other locations. In our opinion the maintenance of effective competition requires that cooperative market agencies be allowed to offer their members a choice of services.

Unless it is made clear by amendment that this legislation is not intended to authorize the owners of public stockyards to discriminate against cooperative market agencies which offer direct marketing services at points other than a public stockyard, we have no choice but to urge disapproval of the bill even though it has several desirable aspects.

(The attachments to the prepared statement follow:)

TABLE 1.—LIVESTOCK PURCHASES BY PACKERS THROUGH DIFFERENT MARKET OUTLETS, 1966¹

Source of purchase	Cattle		Calves		Hogs		Sheep	
	1,000 head	Percent	1,000 head	Percent	1,000 head	Percent	1,000 head	Percent
Major packers								
Direct, country dealers, etc....	5,241	53.5	803	40.8	25,795	71.2	5,678	71.0
Terminal markets.....	3,172	32.3	404	20.5	7,287	20.1	1,638	20.5
Auction markets.....	1,391	14.2	762	38.7	3,161	8.7	676	8.5
Total.....	9,804	100.0	1,969	100.0	36,243	100.0	7,992	100.0
Food chains (5)								
Direct, country dealers, etc....	513	70.9	152	69.4	112	66.3	432	82.3
Terminal markets.....	197	27.2	6	2.7	7	4.1	93	17.7
Auction markets.....	14	1.9	61	27.9	50	29.6		
Total.....	724	100.0	219	100.0	169	100.0	525	100.0
Other packers (1,322)²								
Direct, country dealers, etc....	9,240	46.4	1,140	28.3	17,348	53.3	2,164	50.6
Terminal markets.....	6,065	30.4	566	14.0	7,952	24.4	1,072	25.0
Auction markets.....	4,623	23.2	2,330	57.7	7,247	22.3	1,046	24.4
Total.....	19,928	100.0	4,036	100.0	32,547	100.0	4,282	100.0
All packers (1,337)								
Direct, country dealers, etc....	14,994	49.2	2,095	33.7	43,255	62.7	8,274	64.6
Terminal markets.....	9,434	31.0	976	15.7	15,246	22.1	2,803	21.9
Auction markets.....	6,028	19.8	3,153	50.6	10,458	15.2	1,722	13.5
Total.....	30,456	100.0	6,224	100.0	68,959	100.0	12,799	100.0

¹ Summarized from annual reports of packers filed with the Packers and Stockyards Administration, USDA. Includes data for all firms purchasing more than 1,000 head of cattle or 2,000 head of all livestock during the reporting period.

² All 1966 reports have not been received.

TABLE 2: SUMMARY OF LIVESTOCK PURCHASES BY PACKERS THROUGH DIFFERENT MARKET OUTLETS, 1962-66¹

Year, source of purchase, and number of packers	Cattle		Calves		Hogs		Sheep	
	1,000 head	Percent	1,000 head	Percent	1,000 head	Percent	1,000 head	Percent
1962—All packers (1,441):								
Direct, country dealers, etc.....	9,086	38.6	1,914	31.0	45,269	59.6	7,681	49.4
Terminal markets.....	10,030	42.6	1,436	23.3	22,304	29.3	5,504	35.4
Auction markets.....	4,428	18.8	2,823	45.7	8,461	11.1	2,356	15.2
Total.....	23,544	100.0	6,173	100.0	76,034	100.0	15,541	100.0
1963—All packers (1,372):								
Direct, country dealers, etc.....	10,518	43.1	2,031	35.4	48,354	60.7	8,493	56.0
Terminal markets.....	9,546	39.1	1,042	18.2	21,136	25.6	4,561	30.0
Auction markets.....	4,343	17.8	2,653	46.4	10,125	12.7	2,118	14.0
Total.....	24,407	100.0	5,736	100.0	79,615	100.0	15,172	100.0
1964—All packers (1,368):								
Direct, country dealers, etc.....	12,363	44.6	2,081	31.7	51,964	62.1	8,430	57.7
Terminal markets.....	10,124	36.5	1,231	18.8	19,608	23.8	4,180	28.6
Auction markets.....	5,244	18.9	3,242	49.5	10,801	13.1	2,007	13.7
Total.....	27,731	100.0	6,554	100.0	82,373	100.0	14,617	100.0
1965—All packers (1,349):								
Direct, country dealers, etc.....	13,455	45.1	2,351	34.3	46,613	62.9	8,127	62.4
Terminal markets.....	10,162	34.0	1,127	16.5	17,375	23.4	3,321	25.5
Auction markets.....	6,235	20.9	3,373	49.2	10,151	13.7	1,571	12.1
Total.....	29,852	100.0	6,851	100.0	74,139	100.0	13,019	100.0
1966—All packers (1,337):								
Direct, country dealers, etc.....	14,994	49.2	2,095	33.7	43,255	62.7	8,274	64.6
Terminal markets.....	9,434	31.0	976	15.7	15,246	22.1	2,803	21.9
Auction markets.....	6,028	19.8	3,153	50.6	10,458	15.2	1,722	13.5
Total.....	30,456	100.0	6,224	100.0	68,959	100.0	12,799	100.0

¹Summarized from annual reports of packers filed with the Packers and Stockyards Administration, USDA. Includes data for all firms purchasing more than 1,000 head of cattle or 2,000 head of all livestock during the reporting period.

Supreme Court of the United States

Nos. 106 and 118—October Term, 1957

No. 106

THE DENVER UNION STOCK YARD COMPANY, PETITIONER

v.

PRODUCERS LIVESTOCK MARKETING ASSOCIATION

No. 118

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES,
PETITIONER

v.

PRODUCERS LIVESTOCK MARKETING ASSOCIATION

On Writs of Certiorari to the United States Court of Appeals for the Tenth Circuit

(April 28, 1958)

Mr. JUSTICE DOUGLAS delivered the opinion of the Court.

This litigation started with a complaint filed by respondent, a market agency at the Denver Union stockyard, with the Secretary of Agriculture, alleging that certain regulations issued by Denver Union Stock Yard Company are invalid under the Packers and Stockyards Act, 42 Stat. 159, as amended, 7 U.S.C. § 181 et seq. The Regulations complained of provide:

"No market agency or dealer engaging in business at this Stockyard shall, upon Stock Yard Company property, or elsewhere, nor shall any other person upon Stock Yard Company property—

"(1) Solicit any business for other markets, for sale at outside feed yards or at country points, or endeavor to secure customers to sell or purchase livestock elsewhere; or

"(2) In any manner divert or attempt to divert livestock from this market which would otherwise normally come to this Stock Yard; or

"(3) Engage in any practice or device which would impair or interfere with the normal flow of livestock to the public market at this Stockyard."

The complaint was entertained; and the Stock Yard Company admitted that it issued the Regulations and alleged that they were necessary to enable it "to furnish, upon reasonable request, without discrimination, reasonable stockyard services * * * and to enable the patrons of the Denver Union Stockyards to secure, upon reasonable request, without discrimination, reasonable stockyard services * * *." The prayer in the answer was that the Stock Yard Company be granted an oral hearing and that the complaint be dismissed. Thereafter the Stock Yard Company filed a motion to require respondent to produce for examination certain books and records. Respondent opposed the motion, electing to stand upon the illegality of the Regulations as a matter of law. The Examiner certified the question to the Judicial Officer for decision, recommending that the proceeding be dismissed. The Judicial Officer dismissed the complaint, holding that he could not find the Regulations invalid on their face. 15 Agr. Dec. 638. The Court of Appeals reversed, holding that the Regulations are an unlawful restriction on the statutory rights and duties of stockyards and market agencies under the Act. 241 F. 2d 192. It remanded the case to the Secretary of Agriculture with directions to issue a cease and desist order against the issuance or enforcement of the Regulations. The case is here by certiorari which we granted in view of the public importance of the issue raised. 353 U.S. 982.

The Act defines "market agency" as "any person engaged in the business of (1) buying or selling in commerce live stock at a stockyard on a commission basis or (2) furnishing stockyard services." § 301(c). The Act also provides that "no person shall carry on the business of a market agency * * * at such stockyard unless he has registered with the Secretary * * *" § 303. Respondent is registered not only with the Denver Union Stock Yard Co. but with other stockyards as well. One impact of the Regulations on respondent is therefore clear: having registered with this Stock Yard Company it may not, in the "normal marketing area" of the Denver yard (which is defined in the Regulations to embrace a vast area in Colorado), solicit business for, or divert it to, other markets. The market agency registered with the Denver Stock Yard Co. must while working in the "normal marketing area" of that yard solicit or do business exclusively for it and for none of the other stockyards with which it is registered.

Yet § 304 of the Act makes it "the duty" of every market agency "to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard." Section 301(b) defines stockyard services to mean "services or facilities furnished at a stockyard or connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of live stock." and § 307 prohibits and declares unlawful "every unjust, unreasonable, or discriminating regulation or practice."

The words "at such stockyard" as used in § 304 obviously mean, as applied to a "market agency", every stockyard where that "market agency" is registered. From the Act it seems plain, therefore, that the duty of respondent would be to furnish a producer in the Denver area stockyard service at Kansas City, if the producer so desired. Stockyards and market agencies are made public utilities by the Act. *Stafford v. Wallace*, 258 U.S. 495, 516; *Swift & Co. v. United States*, 316 U.S. 216, 232. Their duty is to serve all, impartially and without discrimination. The Regulations bar both the market agency and the stockyard from performing their statutory duty. A market agency registered with Denver could not by force of the challenged Regulations furnish producers in the Denver area stockyard services at Kansas City or at any other stockyard where the agency is also registered. The conflict seems clear and obvious; and no evidence could make it clearer. The case is as simple to us as that of a utility that refuses to sell any power to a customer if the customer buys any power from competitor; as clear as an attempt by a carrier by rail to deny service to one who

ships by truck. Cf. *Northern Pacific R. Co. v. United States*, 356 U.S. 1; *International Salt Co. v. United States*, 332 U.S. 392.

When an Act condemns a practice that is "unfair" or "unreasonable," evidence is normally necessary to determine whether a practice, rule, or regulation transcends the bounds. See *Associated Press v. Labor Board*, 301 U.S. 103; *Chicago Board of Trade v. United States*, 246 U.S. 231; *Sugar Institute v. United States*, 297 U.S. 553. But where an Act defines a duty in explicit terms, a hearing on the question of statutory construction is often all that is needed. See *Securities and Exchange Comm'n v. Ralston Purina Co.*, 346 U.S. 119 (public offering); *Addison v. Holly Hill Co.*, 322 U.S. 607 (area of production). It is, of course, true that § 310 of the Act provides for a "full hearing" on a complaint against a "regulation" of a stockyard. That was also true of the Act involved in *United States v. Storer Broadcasting Co.*, 351 U.S. 192. But we observed in that case that we never presume that Congress intended an agency "to waste time on applications that do not state a valid basis for a hearing." *Id.*, at 205.

The critical statutory words in the present case are from § 304 providing, "It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard." The Secretary's emphasis in the argument was on the words "reasonable stockyard services." By analogy to the antitrust cases, a case is built for fact findings essential to a determination of what is "reasonable." See *Standard Oil Co. v. United States*, 221 U.S. 1; *Chicago Board of Trade v. United States*, *supra*. Certainly an evidentiary hearing would be necessary if, for example, a method of handling livestock at a particular stockyard was challenged as unreasonable. See *Morgan v. United States*, 298 U.S. 468; *Morgan v. United States*, 304 U.S. 1; *United States v. Morgan*, 307 U.S. 183. But that argument is misapplied here. It misconceives the thrust of the present Regulations, which are aimed at keeping market agencies registered at Denver from doing business for producers, who are in the "normal marketing area" of the Denver yard, at any other market. These Regulations bar them from rendering, not some stockyard services at the other yards but any and all other stockyard services for those producers except at Denver. No stockyard services cannot possibly be equated with "reasonable" stockyard services under this Act.

The argument *contra* is premised on the theory that stockyard owners, like feudal barons of old, can divide up the country, set the bounds of their domain, establish no trespassing signs, and make market agencies registering with them their exclusive agents. The institution of the exclusive agency is, of course, well known in the law; and the legal problem here would be quite different if the Act envisaged stockyards as strictly private enterprise. But, as noted, Congress planned differently. The Senate Report proclaimed that these "great public markets" are "public utilities." S. Rept. No. 39, 67th Cong., 1st Sess. 7. The House Report, in the same vein, placed this regulation of the stockyards on a par with the regulation of the railroads. H. R. Rep. No. 77, 76th Cong., 1st Sess. 10. It was against this background that Chief Justice Taft wrote in *Stafford v. Wallace*, *supra*, at 514:

"The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market."

He went on to say that the Act treats the stockyards "as great national public utilities," *id.*, at 516. His opinion echoes and re-echoes with the fear of monopoly in this field.

We are told, however, that the economics of the business has changed, that while at the passage of the Act most livestock purchases were at these stockyards, now a substantial portion—about 40 percent, it is said—take place at private livestock markets such as feed yards and country points. From this it is argued that the present Regulation is needed to keep the business in the public markets, where there is regulation and competition, and out of the private markets where there is no competitive bidding and regulation. If the Act does not fit the present economics of the business, a problem is presented for the Congress.

Though our preference were for monopoly and against competition, we should "guard against the danger of sliding unconsciously from the narrow confines

of law into the more spacious domain of policy." *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 194.

We take the Act as written. As written, it is aimed at all monopoly practices, of which discrimination is one. When Chief Justice Taft wrote of the aim of the Act in terms of the ends of a monopoly, he wrote faithfully to the legislative history. The Senate Report, *supra*, at 7, stated "It has been demonstrated beyond question that the history of the development of this industry has been the history of one effort after another to set up monopoly." The present Regulations, it seems, have had a long ancestry.

Affirmed.

(NOTE.—This copy does not include the footnotes contained in the Court's opinion, or the dissenting opinions of Justices Whittaker, Frankfurter and Harlan.)

Senator JORDAN. May I ask one question?

Mr. DOUP. Yes.

Senator JORDAN. You don't propose to try to take the business away from stockyards and promote it into other areas. In other words, that would be a business that I think would concern the stockyards, if through your agency you would say, "No, we intend to set up one, don't go there."

Mr. DOUP. No.

Senator JORDAN. "We are going to do it better and cheaper. We are going to concentrate it." In other words, that is the only method they have of making a living.

Mr. DOUP. No, we encourage shipments to the stockyards, to the terminal. We operate heavily. Last month—I got these figures yesterday—we last month were the largest agency on the Indianapolis stockyards on cattle and hogs. We don't always hold this position but we were last month. So we encourage people to choose whichever one they thing is best for them. The farmer makes this choice. We don't. We try to point out the advantages, and there are advantages. In cattle, for instance, I go with my cattle all the time, to the Indianapolis terminal. But hogs I would go to a local concentration yard.

Senator YOUNG. If you tried to tell a farmer what to do, he would probably do just the opposite.

Mr. DOUP. I think so, Senator; yes.

Senator JORDAN. Senator McGovern, do you have any questions?

Senator MCGOVERN. I don't have any questions.

Senator JORDAN. Senator Byrd, we are glad you are able to be here.

Senator BYRD. Thank you, Mr. Chairman.

Senator JORDAN. Do you have any questions?

Senator BYRD. No questions.

Senator JORDAN. This is the first witness and I am glad you have arrived because it is a very interesting hearing.

Senator BYRD. Thank you.

Senator JORDAN. Mr. Lynn, do you have anything to add?

Mr. LYNN. No, sir.

Senator JORDAN. Thank you very much.

Mr. DOUP. Thank you very much.

Senator JORDAN. I thank both of you for being here.

Two of the witnesses have to catch a plane later. Mr. Ecker and Mr. Dougherty—so Senator McGovern will introduce them now. They are from his State. We are glad to have both of you with us.

Senator McGovern, you may proceed as you wish, sir.

Senator McGOVERN. Mr. Chairman, Mr. Dougherty is the operator of a livestock marketing agency or commission house at the Sioux Falls stockyards. I do not know anyone any more knowledgeable in that field, in the marketing field. He has been in it all his life. His father organized that firm about a half century ago, and it is all the family has ever done.

Bill Dougherty, who is testifying here today, has been steeped in the business all of his life, and I think he can bring to bear on these hearings a point of view that has not yet been expressed that we need to hear. He has raised some serious questions with me about this legislation from the very beginning, and I am very anxious that the questions that he has to raise about it be fully understood by the committee, because I think it is of the utmost importance.

The attorney for that firm who appears with him is Peder Ecker, also of Sioux Falls. He has handled livestock marketing cases in the courts, and as a lawyer for a good many years, and he will also be testifying. I think what he has to say will be of interest to the committee.

Senator JORDAN. Thank you, sir. I appreciate those remarks from you, Senator, and we will be glad to have both Mr. Ecker and Mr. Dougherty. You may proceed.

STATEMENT OF WILLIAM J. DOUGHERTY, ADAMS-DOUGHERTY LIVESTOCK COMMISSION CO., SIOUX FALLS, S. DAK., AND PEDER K. ECKER, ATTORNEY AT LAW, SIOUX FALLS, S. DAK.

Mr. ECKER. Thank you, Mr. Chairman.

I am Peder K. Ecker, a practicing lawyer in Sioux Falls, S. Dak., who has been requested by my client, Mr. William J. Dougherty to prepare and present to this committee some viewpoints as to legal ramifications of S. 1149, for the benefit of the committee and for submission here today.

Section 302(a) of S. 1149, proposes to amend 7 U.S.C. 202(c) by adding 7 U.S.C. 204, presently omitted by the existing act, to include in section 202(a) the provisions, and they are penal in nature, regarding bonds from market agencies and dealers to secure performance of their obligations and for suspension of any registrant for insolvency or violation of any provisions of this chapter.

The suspension is effective within 5 days, on order of the Secretary and, presumably under the amendment act, for any violation of rules and regulations promulgated solely by the stockyard owner as contemplated in (b) section 303, (c) section 304, (d) section 307, and (e) section 312, of S. 1149.

Presently, suspension is on order of the Secretary for violation of rules and regulations of the Secretary under the Packers and Stockyards Act of 1921.

In addition, section 302(a) of S. 1149, proposes to amend 7 U.S.C. 202(a) by adding 7 U.S.C. 204, presently omitted by the existing act, to include section 202(a), the provisions regarding bonds from market agencies and dealers to secure performance of their obligations and for suspension of any registrant for insolvency or violation of any provisions of this chapter.

The suspension is effective within 5 days, on order of the Secretary and, presumably for any violation of rules and regulations promul-

gated solely by the stockyard owner as contemplated in (b) section 303, (c) section 304, (d) section 307, and (e) section 312, of S. 1149.

Presently, suspension is on order of the Secretary for violation of rules and regulations of the Secretary.

In addition, section 302(a) of S. 1149, changes the present "stockyards, conducted or operated for compensation or profit, as a public market," to "stockyards, conducted, operated, or managed as a public market for livestock producers, feeders, and buyers," with no mention of market agencies or commission firms, dealers.

Senator JORDAN. Does the present law mention those which you say are not included in this section?

Mr. ECKER. No, but over the years since 1921 the statute is in general phraseology as to what a stockyard is, and over the years the practice has been that the definition has included the operation of these commission firms and order buyers on the market for the benefit of the producers and the sellers bringing their livestock to the market.

Senator JORDAN. Is it your feeling that this proposed law deliberately leaves them out for one reason or other?

Mr. ECKER. I think that is right. And the language is very specific. It says the stockyards under this proposed amendment, it says the stockyards are for the livestock producers, feeders, and sellers, and makes no mention of these hundreds of commission firms and order buyers operating on the market.

Senator JORDAN. I would not think a market could get along very well without them; could they? If you had a stockyard and you did not have any buyers coming in or you did not have any commission merchants who were buying, your business would dry up; wouldn't it?

Mr. ECKER. Well, the danger is this, Senator. Over a period of time it is conceivable that a different form of operation could come to bear at the market. Under this specific definition of a stockyard, it would be possible for the operator of the stockyard to conduct the handling and sale of the livestock brought to that market without the benefit of market agencies or order buyers or commissionmen.

Senator JORDAN. Please proceed. I think I understand your point.

Mr. ECKER. The implication or danger is clear, the stockyard owner includes himself or his agent within the definition, even as a manager, but has phrased this amendment to omit present commission firms and dealers as part of the definition of the term "stockyard." The implication of this new definition unquestionably contemplates that a "stockyard" may, in time, and after operation under stockyard-owner rules and regulations, become a place within independent market agencies or dealers.

Within the same philosophy of the proposed amendments, we see that section 2, section 303, as amending present U.S.C. 203, simply inserts, adds, and gives primary authority to the stockyard owner to determine who, if anyone, shall be permitted to carry on a business as a market agency, commission firm, dealer, or order buyer at the stockyard. Such permission or authority is placed ahead of any authority, left to the Secretary by inserting in the present law a provision that no person shall carry on the business of a market agency or dealer.

This includes commissionmen or order buyers, at such stockyards, from the stockyard owner.

Senator JORDAN. You would not want just anyone bringing in a herd of cattle and saying "Move over, I want to put them in here and sell them"?

Mr. ECKER. That is exactly right.

Senator JORDAN. You don't think we should be allowed to do that; do you?

Mr. ECKER. No, and the act does provide that they have to have written authority from the stockyard owner to do this. But it does not contemplate, or rather it puts the primary authority on the stockyard owner to do this, and the impact of this becomes clear through the further rulemaking and regulatory making authority given to the stockyard owner in the rest of the amendments.

Senator JORDAN. Wouldn't any smart operator of a stockyard want to get as many cattle through his yards as possible?

Mr. ECKER. That is right.

Senator JORDAN. And he certainly would not set up rules to keep them out; would he?

Mr. ECKER. That is right, but more important than that stockyard owner wanting to get cattle through the market and avoiding rules to keep them out would be the commissionmen themselves and order buyers wanting that activity at the market, because their livelihood depends on it, more primarily stockyard owner.

Senator JORDAN. I do not see why you would be against this, but I am not as familiar with the situation as you are. I cannot quite understand why you would be against the stockyard owner, because it is his business and he certainly would want it to produce, or why you would be opposed to his setting up the rules and regulations as to the type of livestock to be brought in and who could qualify and under what conditions.

Mr. ECKER. I am not opposed to his making provision to have application made to him for operating on his market.

Senator JORDAN. You are opposed to the rules of my proposal?

Mr. ECKER. But in granting him this broad authority to propose or to put this in effect rules and regulations, and without providing some safeguards to these operating marketing agencies and dealers that we have found on the market over the years, and by the hundreds now generating the business to the stockyards, we are not protecting.

Senator JORDAN. You have been there all the time. Now, do you think this new proposed law would jeopardize that situation which you have had all the time?

Mr. ECKER. Very definitely.

Senator JORDAN. Why?

Mr. ECKER. Particularly over a period of years under operation of the act. I think part of that is to understand a little of the background here. The present operation of these terminal markets has been governed by an act passed in 1921.

Senator JORDAN. Right.

Mr. ECKER. And the development and operation of the market and the whole concept of livestock marketing has evolved over all of these years.

Senator JORDAN. Has it changed considerably?

Mr. ECKER. Yes. And this act now is something about within a few years after a handful of people in this country and in foreign countries

have acquired complete control of many of the major terminal markets, the ownership of many of the major terminal markets, and this act appears to be something that is coming within a short time after that act was issued for control, which can be interpreted under the general phraseology of the act, and without the safeguards to the present market agencies of the yards to permit them to seek more control of the business at the terminal market. The business does not mean simply the renting or being paid for the pen space there, but the business of generating and bringing to that market the livestock that are sold there.

Senator JORDAN. But do they contribute anything now in trying to get the cattle into their market? Do they have any method of trying to induce feeders, et cetera, to bring them?

Mr. ECKER. No, this is all handled by the market agency, the commission men and the order buyers. The primary function in encouraging producers, feeders, and ranchers, farmers to bring their livestock to the market, the primary emphasis and the thrust of the thing comes from the market agencies and dealers, and the stockyard owners, to put this in the proper perspective, the stockyard owner is in the position merely of a real estate agent who is leasing out for a fee pen space to these people who operate at this terminal market, and the people who operate there are these commission men and the order buyers.

Senator JORDAN. Does the stockyard owner merchandise any livestock?

Mr. ECKER. Not at all. They are not involved in the livestock business except to rent pens to hold those critters.

Senator JORDAN. Is there any law prohibiting this activity?

Mr. ECKER. No; and the phraseology and the danger presented by these proposed amendments is that under the phraseology presented, they could enlarge the concept of their operations to encroach on the present concept of marketing by commission men and dealers.

Senator JORDAN. In other words, you have a fear that the stockyard owner might become the commission merchant himself, and bring livestock through the market and then turn around and sell his own herd, leaving you out; is that what you are afraid of?

Mr. ECKER. It very well could have.

Senator JORDAN. Well, in the first place I do not think you could pass a law that would prohibit the stockyard owner from selling livestock. I think if you had a stockyard and wanted to do your own selling no one could prevent your doing it. It would be a legitimate business. I can see your point. I do not know whether this would ever happen, but it is something for all of us to think about.

Senator YOUNG. Mr. Chairman.

Senator JORDAN. Yes, indeed.

Senator YOUNG. Did you say that ownership of stockyards throughout the country has been concentrated in fewer hands in recent years?

Mr. ECKER. That is right. Just in the last several years the real estate holding company has acquired many of the major terminal markets in this country. Of course, the importance here is that these people are involved in the real estate business only at this point. But under these proposed amendments, it appears to me at least, that they may be putting themselves in a position to acquire further interests in the marketing of livestock in the United States.

Senator YOUNG. What really is your position? Are you opposed to any legislation at all?

Mr. ECKER. No.

Senator YOUNG. Would you accept a bill with some safeguards?

Mr. ECKER. I was going to come to that. I think under the amendments presented, they probably would be acceptable with a few changes. One of those changes should be in the area where they remove the duty on themselves to provide these stockyard services on reasonable request. Now, they have taken, in section 304, they have simply taken the first sentence of that section, and all they have done is turned it around, the phraseology around, and left the word "duty" out. They do not have a duty any more to provide reasonable stockyard services on reasonable request without discrimination. They just leave the word "duty" out. I think they should have that duty. These markets have been considered at least since 1922 when the Supreme Court spoke on this subject, and I will get to that later in my statement, as of the nature of a public duty, and when you get into that area particularly I think they should have the duty to provide those services on reasonable request and without discrimination, but I think this gets to the entire philosophy of their proposed amendments, and they give themselves away when they just take that word "duty" out. They don't want that duty any more.

Senator JORDAN. What does the bill say about "duty"?

Mr. ECKER. It is in section 304 where they amend 7 U.S.C. 205 and the amendment is—

All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory.

Now, you can see what they are doing when you refer back to the original act, and the original act provides thusly:

It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request without discrimination reasonable stockyard services at such stockyard.

Senator JORDAN. Do you think the word "duty" has this meaning?

Mr. ECKER. The thrust of these amendments is to remove the responsibilities on them to provide these services on reasonable request and without discrimination.

Senator JORDAN. Do you have any further questions?

Senator YOUNG. No, I think the witness is making a point though that needs consideration.

Senator JORDAN. Yes, I think so. I cannot quite understand why anyone who was running a stockyard for profit—and I presume that is the reason why he is running it—would not want to bring all of the livestock, through it, since his only method of making any money would be by renting space, feeding, and handling. I cannot understand why he would want any legislation that would restrict him from selling or why he would not want to sell without any legislation.

Mr. ECKER. There is one further place, Senator, that causes concern in what the philosophy of these proposed amendments might have to do with, and that is in section 302 where they amend the present statute to add that the stockyard, in defining what the stockyard is—now under the old act they simply said that a stockyard was a place of establishment or facility commonly known as a stock-

yard conducted and operated as a public market consisting of pens, and that sort of thing, for this livestock.

Well now, they have gone in there, and they have particularized under these proposed amendments, and they limited, further limited that definition by adding this. They add "as conducted, operated or managed," and then they add "as a public market," and then they add the phrase "for livestock producers, feeders, and buyers."

Senator McGOVERN. I think, Mr. Chairman, I can understand where there is some confusion in your mind. You have made the point several times that it does not make sense for the owner and operator of a stockyard to restrict the volume of sales. Of course that is right, but I think the point Mr. Ecker is trying to make is not that the stockyards' operator would try deliberately to restrict the volume going through that yard, but he would take over. What he is afraid of is that under this bill they have greater opportunity to take over that selling function themselves. The point is now that the person that invests in a stockyard is really a real estate operator. He owns the land, but the actual selling function is carried on by a number of commission houses and selling agencies that rent that space for a rather healthy fee from the stockyards' owner.

I believe the point he is trying to make is that there is a new opportunity provided in the language of this proposed bill that would permit that stockyards' owner to squeeze out the independent marketing agency and assume that selling function as well as the ownership of the yards. What may be occurring here is what is sometimes referred to as vertical integration, where the same interest that owns the stockyard takes over other functions. Mr. Ecker has pointed out that that ownership is being concentrated in fewer and fewer hands, you may also be creating a situation where the independent marketing agency is squeezed out entirely. If I have misinterpreted Mr. Ecker's position I wish he would straighten it out, but I think that is the basis for the confusion in your mind as to the point he is making.

Senator JORDAN. Yes. I would like to say at this point that I am trying to learn as much about this bill as I can, because I have never been to a stockyard nor a slaughterhouse, and I have no desire to go, because I just do not enjoy that kind of thing. I have raised some white-faced Herefords. My son took over the herd but later decided to buy some Charolais. He says he is doing better now but I do not know. I know he has paid a lot more money for his cows that I paid for mine.

I would like to raise another question. Suppose an owner of a stockyard would say "We own this stockyard and we are going to take over and do the merchandising, and so forth. We are going to cut out all the commission merchants, and take over all of the responsibilities—buying, selling, and so forth and so on." Would there be any law to stop him?

Mr. ECKER. That is right, under these proposed amendments.

Senator JORDAN. I mean you would not have to have one anyway?

Mr. ECKER. No, that would not be right.

Senator JORDAN. If you want to buy a lot and put up a barn and start buying and selling cows there is nothing wrong with that is there?

Mr. ECKER. Then they are getting by statute what might have by

practice now. Here is the concern of my study of this thing. That either the failure to put some safeguards in here for the market agencies and order buyers is either unintentional or inadvertent, or, on the other hand, it is intentional, and it is by design. In viewing the broad perspective of this thing, I would be reluctant to accuse the large real estate company involved here of inadvertence in drafting and proposing amendments to the Packers and Stockyards Act, and I would rather feel that they were operating by design.

If it is design then there is something here to fear for the people that are operating these terminal markets, and generating the business through these markets as they have over the past many years.

Senator JORDAN. I still do not understand one other matter and I would like to raise this point. If, under present law or under this proposed legislation, the owners of a stockyard should elect to start merchandising, there is nothing to prevent them from doing it, is there?

Mr. ECKER. I have not made a study of that.

Mr. DOUGHERTY. Could I answer that?

Senator JORDAN. Yes.

Mr. DOUGHERTY. I would say this, Senator, and this is probably getting, maybe, a little ahead of the testimony, I purchased a live-stock commission firm from other interests which I had a small interest in in 1961, and I paid what back in South Dakota is a considerable sum of money for it, for the right to operate on the market and to own my own firm completely. Today, by looking at my net profits, say over the past since 1961, looking at the records, my firm is worth a lot more. In fact, my banker and my CPA tell me it is worth about three or four times as much. I mean this is the way they look at it on my financial statement. But in the safeguards I think I have probably, they are these.

A man has established a business on a terminal market. I have lived up to the rules and regulations of the United Stockyards Co. or the Canal Randolph Co., and, unless I do anything that is what you might say against the Packers and Stockyards Act under the existing regulations, I can continue to operate on that market.

Now, with this new legislation, which they have proposed, and this bill that you are considering, and I am going to say frankly what I think, is a bill that was written by the Canal Randolph corporation. It was proposed through the American Association of Stockyards organization, which is virtually controlled by the United Stockyards Co. which is owned by the Canal Randolph Co. Their argument for this legislation is that they feel that there are some market agencies on some markets that are doing the job, and so, therefore, they are losing revenue.

In other words, they have got this pen space and there is no livestock in it and so they are not collecting any yardage. But I think, if you are familiar with the act, you can look at the part on pen assignments. For instance, at the Sioux Falls market right before I left, I am negotiating with a stockyards' company in my sheep division. I want three more new pens this year because we had 24,000 more lambs last year, my firm did, than we had the year before, so we feel that—the first of every year they reassign the pens according to your volume. It is figured right out, so many square feet for each firm. If I do less business, they are going to take pens away from me. Now, when I get

these new pens, they are going to take them away from a firm that did less business last year and give them to me. They can do it right now.

I think what happened, and I am no attorney, but I think, if you will remember—you probably won't remember—but in St. Louis at one time they went into the market and they got rid of about eight or nine firms. They just went down there and threw them out, saying you are not going to operate on the market any more. These firms went to court and said, "We have not violated any laws. We have done this and that," and they just beat the heck out of the United Stockyards Co., and the United Stockyards Co. was forced to pay them some indemnities, and they were forced to let them go back on the market and operate.

I feel that I am entitled, just like any other businessman, I am just a businessman and so are they, but we have to work together, but I feel I am entitled to some protection too. This bill right here is a result of that St. Louis case. Now, that is my opinion. That is just my opinion. I am not an attorney.

Senator YOUNG. Wouldn't you have the same appeal rights to the Department of Agriculture?

MR. DOUGHERTY. Yes, I would, but my feeling would be this. I would be out of business while I was appealing this thing, you see. This just strips me. I mean right now if the yard company and I have a dispute, I get the Packers and Stockyards up in St. Paul. They come down and they make the decision. We talk it over and we try to arrive at a decision that is mutually agreeable. I mean, whatever it is we have to go along.

This way the stockyards company manager in the Sioux Falls or the Fargo market—I can tell you of similar situations, Senator, in your State. I do not know whether you are familiar with Wally McDonald? Did you ever hear of or know Wally McDonald?

Senator YOUNG. Yes.

MR. DOUGHERTY. He is or was a good friend of mine. He just recently sold his firm a couple of years ago to three fellows that I know real well, three young guys. They are doing about 25 percent of the business coming in the Fargo market and their firm is worth a lot of money and he sold it to them for a lot of money. If this bill goes through, who knows what business is worth. There are a lot of people that I could sell my firm to, I mean that would be interested in buying my commission business, but if this bill goes through I do not think any lawyer in the United States would advise anybody to buy my commission firm from me, because, in effect, I wouldn't really be running my own business.

They talk in here—there has been some testimony I read some place about taking the bookkeeping part of a commission firm and, you know, everybody goes together and doing it themselves, and the yard company having a hand in it. Well, this is not right. I mean this is not the way you operate. You operate your own business independently and if you cannot make it independently they can take all your pens away and you are out of business under the existing Packers and Stockyards Act.

Senator YOUNG. Can they do it without first getting approval from the Department of Agriculture?

Mr. DOUGHERTY. Right; as it is they have got to get the approval of the Department of Agriculture.

Senator YOUNG. First, but now they cannot without the approval of the Department of Agriculture?

Mr. DOUGHERTY. They can just do it.

Senator JORDAN. Under this proposed new law they can do that.

Mr. DOUGHERTY. They can do it.

Mr. ECKER. They can take the pens away under the existing act.

Mr. DOUGHERTY. No, I would say this under the existing act. For instance, right now, like I was telling you about my shape. If I don't like to say the way they are handling the deal, I mean I do not think I have got enough pen space, I can probably go to USDA and complain. I do not know whether it will do me any good but I can go there and complain and say "I have got to have more pen space. Look at the facts and figures." But normally it is pretty fair because they figure it out, it is figured out on a per-square-foot per-head basis.

Just to give you an example, in my cattle I was thinking last night, I sell the cattle myself and I run the business myself, and I have 30 pens, and they are about 20 and I paid the yard company over \$51,000, I remitted to the yard company from the producer over \$51,000 just out of my cattle alley. Out of my hog alley we handled about 18,000 last year, I remitted over \$20,000. All they do, they have got the feed and water and they do the weighing and we pick up our own livestock, bring them in, take care of them, sort and sell them. I drove over 50,000 miles last year in the country, calling on producers, and they do not ship to Sioux Falls because of the stockyards.

Senator YOUNG. Could I ask a question there? Does this remittance include the cost of feed?

Mr. DOUGHERTY. No, that did not include the cost of feed, not at all. That was just yardage. Oh, sure, they get paid in addition but under the existing Packers and Stockyards Act, at the end of the year we have to break even on our feed costs. Now, the yard company is permitted to make money on their feed, but we are not as a commission man. We buy it from them. They set the price and we buy it.

Now, just to give you an example—am I talking too much here?

Senator JORDAN. No, no.

Mr. DOUGHERTY. To give you an example, you have been in the Fargo yards?

Senator YOUNG. Yes, my sons sell there.

Mr. DOUGHERTY. You have been in the Fargo yards and you have seen the condition of the Fargo yards?

Senator YOUNG. Yes.

Mr. DOUGHERTY. And I mean the very philosophy of this bill is that the stockyards companies come to the U.S. Senate or the U.S. Congress and they are saying that the reason for the decline of livestock marketing is because—they are blaming me, I mean the commission men. But yet what have they done? Really what have they done? They have done nothing. I mean the condition in the Fargo yards, for instance, which you are familiar with and I am familiar with, as I get up there once in a while, the gates are wired, the help is old and not very friendly to the shippers. I mean I am talking about the yard company help that greets the shipper when he unloads his cattle, writes up the ticket.

Senator YOUNG. I have not had any complaints from anyone in North Dakota.

Mr. DOUGHERTY. I have had a lot of complaints from the commission men. You have not any complaints from North Dakota.

Senator YOUNG. No, not on this bill.

Mr. DOUGHERTY. Well, I have talked to some people up there. Now, maybe they have not.

Senator JORDAN. Let me ask a question at this point, Senator, if you will yield to me for a minute. You may solicit this business and also collect the cattle that you have sent into the yard?

Mr. DOUGHERTY. I solicit; that is right.

Senator JORDAN. You solicit?

Mr. DOUGHERTY. That is right.

Senator JORDAN. And have the livestock delivered?

Mr. DOUGHERTY. Right.

Senator JORDAN. Suppose you decide you want to open up your own yards. What would keep you from doing that?

Mr. DOUGHERTY. I would say this: The facilities would probably cost a lot of money. Besides that, you have a better buying power on a terminal. At Sioux Falls, for instance, and I can speak for Sioux Falls, we have 39 packers represented right there and they go into all the alleys. They do not just go into my alley. Where if I am sitting over here by myself, this is what is good about a terminal knowledge, I might only have Armour walk in there or Swift or IBP or somebody like that you see, where at the terminal there is such a volume of livestock that it is going to draw your buyers in.

Senator JORDAN. In other words, they do perform a service from which you derive your income?

Mr. DOUGHERTY. They perform a service.

Senator JORDAN. By selling it through their facility.

Mr. DOUGHERTY. But, Senator, they are well paid. Now, I perform all these functions such as this. I have 12 employees, and we have five cars on the road, you know, out, and I get, my commission last year averaged about \$1.21 a head. The yardage on cattle in Sioux Falls is 95 cents a head, which I collect and remit to the yard company each day, incidentally. It is a new deal each day.

Senator JORDAN. It apparently costs them something to own that yard.

Mr. DOUGHERTY. I am not disputing that.

Senator JORDAN. They have real estate and pens and they have to keep them up and so forth. I am not talking for the yard owner but I can see both sides of this situation. An investment in a yard represents some money.

Mr. DOUGHERTY. I think you are right and I think we are both business people. They are business people, I am a businessman. However, what I think they are trying to do is change the rules of the ball game in the middle of the game. That is my opinion.

Mr. ECKER. If I might interject here, Senator, what you are bringing up, I think, is that there are two different interests involved here. There is the dockyard owner providing the place at which this business can be conducted, and then there is the market agency or dealer who is conducting the business at this place, and not just the producer and the farmer bringing the livestock in.

Senator JORDAN. I understand.

Mr. DOUGHERTY. So I think when you give the authority to this owner to promulgate his own rules and regulations, and all he has got to do is put them out there, you are giving him a lot of authority and you are not providing any safeguards for the other agencies operating at that market. Part of what I was going to suggest, and that we had discussed back in Sioux Falls to propose to your committee here was that these amendments should contemplate that instead of the stockyard owner being able to promulgate rules and regulations for operation in market, if anything he should be able to propose rules and regulations which would be submitted to the Secretary of Agriculture for approval, notice of which would go to the operating agencies operating on the market, and posting of the proposed rules at the stockyard itself, and have these things approved some time later on after there has been an opportunity for a hearing or for discussion on the proposed rules and regulations of the stockyard owner.

Senator JORDAN. Do you have any further questions?

Senator YOUNG. No.

Senator JORDAN. I appreciate all this information. It has certainly been helpful to me.

Senator McGovern, do you have any questions?

Senator MCGOVERN. If amendments were accepted, and some language was added recognizing the interests of the market agency, and protecting him against arbitrary or discriminatory practice, assuring the competitive aspects of spelling, if that could be written into the legislation, would it then be accepted?

Mr. ECKER. I think by and large in my understanding from the area in which we come, I think it would be acceptable, possibly with a further provision that the stockyard owner would have a duty to provide these services on reasonable request.

Senator MCGOVERN. There is a phrase in the legislation right at the bottom on page 3, section 4, section (b). It says:

It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale or solicitation of livestock at such stockyard to conduct their operation in a manner which will foster, preserve, or insure an efficient, competitive public market.

Now, what is that lacking? That uses all the phrases about just and reasonable and nondiscriminatory. It talks about preserving an efficient competitive public market. What does that lack in the way of the kind of safeguards that you are looking for?

Mr. ECKER. What it lacks, Senator, is they are talking about how he is going to operate a stockyard. The very first amendment, the very first proposed amendment changes what a stockyard is from its present concept, and they say that it is a place for marketing, and for livestock producers, feeders and buyers. Certainly the —

Senator MCGOVERN. Then if that definition were modified to include the selling aspects, that is the marketing aspects, that would meet your objection?

Mr. ECKER. I think it would, Senator.

Senator McGOVERN. I do not know what the legal questions involved here are, but I just wanted to draw out what you are trying to get at.

Mr. ECKER. I think if the language that you were referring to would include the market agencies, the commissions, the dealers and order buyers as part of that stockyard —

Senator McGOVERN. But if the definition on the very first page of what a stockyard is was corrected, then the language setting forth the responsibilities and rights of the stockyard owner, which I have just read there at the bottom of page 3, then that would meet the purposes you have in mind, would it not?

Mr. ECKER. That is right.

Senator McGOVERN. So really what you are getting at is the definition of what constitutes the stockyards operations, and you are suggesting that those who go on those yards as sellers are entitled to be included as part of a stockyards operation, their rights should be fully protected, is that correct?

Mr. ECKER. That is right, Senator.

Senator JORDAN. You may proceed, sir.

Mr. ECKER. The House of Representatives bill which has been passed, H.R. 10673, they added to the last discussed section, 203 under this proposed bill, the phrase "which determination shall be made on a basis which is not unreasonable or unjustly discriminatory." That phraseology is vague, does not identify market agencies or dealers as among those to be protected by this reasonableness and "unjustly discriminatory." This is a phrase begging for litigation, strife, and hardship to a small businessman contending in courts with a giant corporation. The House of Representatives hearings, in their hearing report accompanying H.R. 10673, includes the suggestion that these amendments would permit, among other things, the stockyard owner to consolidated and require commission men and dealers to submit to centralized computerized bookkeeping and payment systems, presumably as long as this requirement was not discriminatory and was uniformly applied to these sellers on the market.

We have asked this committee what other businessman would voluntarily submit and turn over his bookkeeping and payment to his customers to another business concern not subject to his own supervision, control or desires? Can market agencies, commission firms, dealers, and order buyers be expected to give away this management aspect of their business to a stockyard owner who is engaged in another business?

Senator JORDAN. I think the law would have to be clarified as to how far they want to go.

Mr. ECKER. But this will illustrate their thinking on it. What other aspects do they have in mind to consolidate? What other aspects of the solicitation and handling of livestock at the terminal market do they have in mind to make of uniform application to the market agencies operating there, and thereby make it reasonable and nondiscriminatory, as long as they make it uniform to all who are operating?

They point out one that gets right into the management of these businesses that they are interested in doing.

What safeguards are to prevent the stockyard owner from determining that no market agency or dealer is beneficial to the business of a given stockyard within the definition of "stockyard" when that defi-

nition has been clarified to mean any place conducted, operated, or managed as a public market only for producers, feeders, and buyers?

Now, the authority granted by the proposed insertion of section 1 contemplates that the stockyard owner would be able to determine not only which, but, if any, market agencies and dealers would be permitted to engage in business at the stockyards.

The change in emphasis in the law has been presented and I have set that forth in the text and I think that that can be picked up. This gets involved in section 304 of the proposed amendment involving the duty of the stockyard owner to provide the service.

You will note that the obvious deletion is simply to remove the word "duty" of the stockyard owner from furnishing stockyard services upon reasonable request.

The present law makes it a duty to respond with reasonable stockyard service to reasonable request for these services without discrimination, while the proposed amendment simply provides that any stockyard services which may be furnished pursuant to reasonable request must be reasonable and nondiscriminatory. We are talking about "stockyard services." The present law is left unchanged in defining what stockyard services contemplate. That appears at 7 U.S.C. 201. The definition is "means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing or handling in commerce, of livestock."

You will note that all of the activities of a market agency, the commission firm and the dealer or the order buyer are included in the definition of stockyard services.

Senator YOUNG. I noticed you mentioned order buyers more in your testimony than other witnesses have. Order buyers do play a more important part in marketing now than they used to, don't they?

Mr. ECKER. I think the order buyer does play a very important role at these terminal markets in that, as Mr. Dougherty has mentioned, one of the advantages of the terminal market is most of the major packers are represented there, and they present a competitive bidding situation to create the market.

Senator YOUNG. The order buyer of course is buying for the feeders, too?

Mr. DOUGHERTY. That is right.

Senator YOUNG. That is the big end of the business.

Mr. ECKER. Right. And part of the function that the order buyer provides is he will equalize as best is geographically possible the prices around the country, because if the prices are depressed in one market, and they are up in another market, that order buyer is going to be in there buying and moving, so you get a more uniform livestock price which gives a more uniform meat price around the country, because of the interrelationship of activity of the commission firms and the order buyers in making the livestock available for sale to the consumer.

Senator JORDAN. Proceed, sir.

Mr. ECKER. This proposed amendment removes the duty on the stockyard owner to permit the business at the stockyards of commission firms, market agencies and dealers.

In the House version as passed, they simply add the following language to this section: "And stockyards services which are fur-

nished shall not be refused on any basis that is unreasonable or unjustly discriminatory."

We point out, and you will notice the interesting and what we feel is a foreboding phase "which are furnished," and again this gets into the philosophy of these possible amendments, as contemplating instances where none of these services might be furnished. They remove the duty, and they are saying "which may be furnished." "May" is prospective and not directive, and they may not furnish them.

Senator JORDAN. Do you think that ought to be "shall be furnished"?

Mr. ECKER. Well, it gets back to the other section, Senator, where they have removed from themselves the duty to furnish these services on reasonable request and on a nondiscriminatory basis. In other words, presently where they are furnishing these services at the terminal market, if someone else makes a reasonable request to go into business and furnish additional services as a market agency, then they have a duty under the present law to permit them to do so.

Senator JORDAN. Does the law require this? Suppose another commission merchant decides he is going to go into the cattle business, and he goes into business. He acquires livestock. Must the stockyard owners then build pens for him whether they want to or not?

Mr. ECKER. What they do is they assign these pens on the basis of business volume, and if they permit another market agency to come onto the market and the amount of pen space that he would have would be in connection with the percentage of business.

Senator JORDAN. I am talking about the assigning. He can't assign something he doesn't have.

Mr. ECKER. That is right.

Senator JORDAN. If his volume grows must he build more pens?

Mr. ECKER. That is right.

Senator JORDAN. If he has all the business he can handle, is he required to build more pens upon request?

Mr. ECKER. No. They are only required to divide up reasonably and equitably between those who are operating that they have available.

Senator JORDAN. Suppose there is too much business and he doesn't have the pens? Whom is he going to restrict? He has to say no to someone.

Mr. ECKER. He is going to restrict all equally in a portion of their available space.

Senator JORDAN. It does say "discriminatory" in this bill.

Mr. ECKER. That is right.

Senator JORDAN. That would be what is intended in that particular phraseology of the bill—that you couldn't discriminate in giving him all the space he wanted and giving none to another one who had access to this market. I am not talking about a new man coming along. You would normally go along with the people you had been doing business with all the time, wouldn't you?

Mr. ECKER. That is right.

Senator JORDAN. But he has been established on the market and you would want to keep him.

You may proceed.

Mr. ECKER. This far-reaching change gives full rulemaking authority to the stockyard owner of every facet of the stockyard services

previously defined as including the commission men and the order buyers. The stockyard owner would be able to regulate and govern, in detail, all of the operations, activities, business, solicitation, and work of these market agencies, which the stockyard owner might permit to operate on the market.

Again, all of these powers would be enforceable under the penalties of suspension, which they brought in by amendment of section 204 to come within their rulemaking authority.

Proponents of these amendments point to statistics showing a decline in the percentage of slaughter livestock purchased at terminal markets. They use the figures from 1923 to 1965 as being 90 percent down to 34 percent on cattle, and 77 percent down to 23.4 percent on hogs, and 86 percent down to 25.5 on sheep.

There are other factors in the decline in slaughter livestock receipts, and among these we point out the contemporaneous growth during that period of time of Federal meat inspection. Certainly Federal meat inspection, the emphasis there has driven some of this business to other marketing locations. This Congress has just recently taken steps to provide broader Federal meat inspection and we feel that part of the impact of that will draw some of the business that has gone to other marketing locations back to terminal markets.

The original Stockyards and Packers Act of 1921 was in response to flagrant and deceptive practices in livestock marketing and monopoly control of livestock purchasing through ownership or control of stockyards by several large packing companies. Congress established a regulatory system aimed at conditions existing then.

The Supreme Court of the United States in *Stafford v. Wallace*, in upholding the constitutionality of the act in 1922 said, and I am quoting the Supreme Court:

The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys.

The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce.

That is the end of the quote.

The present situation finds a certain few in complete ownership of the terminal markets as stockyard owners. This consolidation or new monopoly of ownership has been obtained in the last several years by a real estate holding company who is now coming to this Congress for authority to control by rule and regulation power over all of the market agencies and dealers they have found operating for so many years on the real estate they have purchased.

We question whether this stockyard owner should be established as a private policeman, to govern and regulate on rules of its own, a large portion of the livestock industry and virtually all of the terminal markets, where the day-to-day prices of all livestock in this country are established.

Certainly the stockyard owner is not the only one to be considered here. No provision is made to hear from the market agencies or from the dealers, or from the producing farmer and rancher. The public interest or consumer interest has not been considered by these proposed amendments.

We think that the Congress would be reluctant to turn regulatory powers of the SEC, FCC, FTC, FPC, and the ICC over to a segment of each industry or over to the industry itself as to the economy, the fortunes of the economy being supervised by these agencies. Similarly, the Senate should be reluctant to grant primary regulatory powers over our great terminal public markets to a private real estate holding company engaged in the real estate business.

Most of the regulatory power granted the stockyard owner by these amendments presently vest in the Department of Agriculture. Certainly the Secretary and the Department of Agriculture should not be permitted to duck out on their responsibilities in this field, even if they prefer to do so, and apparently there is some feeling along that line by the testimony you have had before this committee. We feel that the public interest requires otherwise, and that the public interest requires that any amendment to the Packers and Stockyard Act of 1921 include not merely the interests of the stockyard owner but the interests of the market agencies and dealers operating there as well as the producers, farmers, and ranchers.

Senator JORDAN. Mr. Doup of the Farm Bureau, who testified first this morning, if I understood his testimony correctly, and he made a good presentation, I think the establishing of yards, not stockyards in themselves but assembly points and so forth, must have had something to do with the decline in the amount of cattle going through these bid yards, in this drop which you show, because apparently at the time this bill was written in 1921, the bid yards were the only place where cattle were handled.

Mr. DOUGHERTY. Right.

Senator JORDAN. In my State, we had no packinghouses at that time, although we do have some very fine packinghouses now, and they buy a lot of cattle throughout the State. As far as I know we don't have any yards there in the sense of this bill. There are a lot of buying markets—there is one very close to me—that advertise on the radio every day, trying to get the cattle and hogs through their own buying market or whatever the proper name for it is.

I remember very well they used to assemble a carload of hogs right near where I lived to be shipped to Chicago. They didn't take them by truck because of the lack of good roads. They always talked about the hog market in Chicago, Sioux Falls and so on, but you had to take them up there to sell them.

Now, these small markets and places where they assemble them have done away with having to haul cattle or hogs or whatever to the big centers where the big packinghouses are located. Of course the packinghouses have also moved out into different areas of the country, alleviating the necessity of hauling livestock to Chicago, for instance, to be brought back and sold in North Carolina through the meat markets. So there has been a substantial change in the whole system of handling livestock of any nature. It is a complicated question.

Mr. DOUGHERTY. Senator, if I might interrupt, what you are saying is completely true and it is true nationwide. However, the growth of these small buying points, one thing you have to remember is that most of these small buying points we are talking about are not federally regulated by the Packers and Stockyards Act, and now, as I

understand it, the Department has in the past several years and they are beginning to regulate these people, too. In other words, they have to provide bonds, for instance, which they didn't have to. Originally all they needed was a \$5,000 bond. Nobody had much trouble getting one. But then they had some experience with bad checks. I mean the farmer would sell his livestock and the check would be no good. You don't find that on a terminal market.

In South Dakota, just to give you an example, Sioux Falls is the only place where there is Federal inspection of livestock going through that market. It is the only place, and there are probably 80 or 90 sale barns besides this. But the only place where there is Federal inspection of livestock in Sioux Falls.

Senator JORDAN. Of course I don't know about that. The new meat inspection law will change some of that, but the inspection is done to a great extent in the packinghouses, too. In other words, a steer may be in good shape when it leaves your yard.

Mr. DOUGHERTY. You are talking about slaughter livestock.

Senator JORDAN. Yes.

Mr. DOUGHERTY. But you see, the receipts on many terminal markets, a lot of the receipts is feeder livestock. For instance, in my firm it may be 50 to 60 percent. You have different types of diseases that they don't want to go back out around and be spread around.

Senator JORDAN. I understand, yes.

Mr. DOUGHERTY. And in these smaller markets it is rampant. In the terminal market it isn't.

Senator JORDAN. I have no further questions.

Senator, do you have questions?

Senator YOUNG. No.

Senator JORDAN. Senator McGovern?

Senator MCGOVERN. Mr. Chairman, I think in the interests of time, rather than going into any more questions, I am going to ask Mr. Ecker and Mr. Dougherty to submit to me any proposed amendments they are interested in. Then, maybe I can take them up with the committee at a later time for the consideration of the committee.

Senator JORDAN. Any information that comes before this subcommittee will be considered when the committee meets, I can assure you of that. It always is, and we are always glad to have all the information from every angle. That is the reason for a hearing.

Mr. MCGOVERN. I would like to ask also unanimous consent that Mr. Dougherty's full statement be filed as a part of the record rather than have him read it.

Senator JORDAN. It will be filed at this point in the record.

(The prepared statement of Mr. Dougherty follows:)

My name is William J. Dougherty and I am the owner-operator and cattle salesman for Adams-Dougherty Livestock Commission Company at the Sioux Falls, South Dakota Stockyards and a member in good standing of the Sioux Falls Livestock Exchange. I first began working at the yards in 1944 at the age of 12 and continued working there part time, vacations etc. until 1954, when I graduated from South Dakota State University with a degree in Agricultural Economics, whereupon I began full time employment. In 1961 I purchased Adams-Dougherty Livestock for a substantial sum of money and have operated it in what I would say is a very successful manner since that time. I am sure that today I could sell my business which I have built up for a much greater sum than I paid for it seven years ago. This has not been an easy task; I work seventy to eighty hours per week, soliciting, selling, sorting and weighing live-

stock. Last year alone, I drove over 50,000 miles calling on farmers and ranchers in a four state area. As one who has worked hard and made a good living on the market, I say that if Senate Bill 1149 is passed into Law, my business is not worth much nor is any other Commission Firm in the United States because the owner will no longer be running it.

Now, to give you some background let me point out these facts to you: the largest stockyards company in the business is the United Stockyards Company which owns the Sioux City, Sioux Falls, Saint Paul, Fargo, Saint Joseph, Portland, Boston, Fort Worth, Milwaukee and Stockton California Yards. This Company is a wholly-owned subsidiary of the Canal-Randolph Corporation, a real-estate holding corporation controlled primarily by New York and foreign banking interests. Since the acquisition of United by this organization the feeling in the industry has been that they wanted complete control over the market agencies.

In S.B. 1149 they will certainly have this power. As you know the Stockyards owner collects yardage on a per head basis, it has nothing to do with the buying or selling of livestock. Its main function is to provide facilities for the yarding and weighing of the livestock. Now, in my long experience in the Stockyard, I cannot truthfully say that I could take over and operate the Stockyards Company (although there are times when I feel I could do a better job). By the same token I am absolutely sure that none of the Stockyards people could even begin to run my Commission Firm. Most of them know very little about livestock or any other of the functions which we perform every day. I am a professional in my business and I deal with professional people, trading on the market. Our rules and regulations are made by us through our exchange within the existing P&S Act. I understand that the Stockyard Company feels that they should have the right to eliminate some firms who are taking up space but not producing enough yardage—well, they have the right under the existing law and regulations in the section on pen assignments. I would also say that maybe the Stockyards Company should take a look at their personnel and facilities, which they have offered over the years.

The livestock producer does not ship to any terminal market because of the services offered by the Stockyards Company, but does so because of the services offered by the trained sellers and buyers who are operating at the market. In my opinion, if this bill is passed and allows the Yard Company to set up rules and regulations governing the practices on the markets, it could well spell the end of the terminal markets.

Senator JORDAN. Thank you very much for being here.

Mr. DOUGHERTY. Thank you, Senator.

Senator JORDAN. At this point in the record I want to file a statement from Mr. Harry L. Graham, the legislative representative of the National Grange.

Mr. Graham had an appointment, so he had to leave. His statement will be filed at this point in the record in its entirety.

(The statement is as follows:)

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE, NATIONAL GRANGE

Mr. Chairman and members of the subcommittee, my name is Harry L. Graham, Legislative Representative of the National Grange. We would like to register our objections to H.R. 10673 to amend the Packers and Stockyards Act.

In brief, the present legislation concerning the stockyard owners and market agencies of producers provides that before doing business at a stockyard, the market agencies of producers must register with the Secretary. This law specifically makes it the duty of every stockyard and market agency to furnish, upon reasonable request, without discrimination, reasonable stockyard services at the stockyard.

The purpose of the existing legislation was to require that stockyards which dealt with the livestock grown by producers and which had been shipped to these stockyards be handled on an equitable, nondiscriminatory, competitive basis. The permission for market agencies of producers to operate freely on these premises was a part of the general concept governing the stockyards as public markets.

We are all aware that there have been substantial changes in the volume of livestock which is shipped to the terminal markets, especially to even smaller stockyards at the present time. This is the result of many factors, such as direct buying by packers, contract feeding for the packers, the rapid growth of the small, independent stockyards close to the producer's residence, and the expansion of packer facilities beyond the terminal stockyard area and into the areas where the animals are produced.

At the same time, the Grange has been concerned with the obvious failure of the stockyards to maintain their premises and facilities in such a manner to be attractive to the producers and where the animals could be handled with maximum efficiency and minimum losses.

A part of this is reflected in some stockyards by the deterioration in the office facilities. We would point to the East St. Louis yards as an example of the latter situation.

The decline in numbers has undoubtedly meant that there has been a reduction in the volume that can be handled, or that is available to be handled, by the existing agencies in the stockyards. However, we would still hold that the producer has a right to choose the agency which he desires to serve him, and that as long as this agency does not violate the basic statutory requirements of honesty, and integrity, and the producer is willing to take what he receives for his livestock as a result of the sales and services of these commission agencies, that no one except the secretary of Agriculture should have the authority to prohibit these sales agencies, especially if they are agencies of producers, from operating in the terminal and regular livestock market stockyards.

We have a very serious objection to placing any private group which provides an economic service under the jurisdiction of another private group. Regulatory discipline and jurisdiction, in our judgment, should be retained by federal or state authorities.

This proposed legislation, therefore, seems to violate this basic concept by requiring the producer's agent to obtain written authorization from the stockyard owner before being permitted to operate and based upon a determination by the stockyard owner that the agent's services will be beneficial to the business and welfare of the stockyards.

This determination is required to be on a basis which is not unreasonable or unjustly discriminatory. We have no argument with these provisions. But when the requirement is made that these services shall be rendered only if they are considered beneficial to the business and welfare of the stockyard, and the determination of this is being made by the stockyard, then we think that this positive statement would have extremely negative effects.

We are especially concerned because there are no adequate guidelines to determine whether these agencies are beneficial to the welfare of the stockyard. We are aware of the fact that these decisions can be overruled by the Department of Agriculture, but we are also aware of the fact that the agencies which the producers have chosen to handle their business might be prevented from doing just this over a long period of time while appeals were being heard and decisions being rendered. In our judgment, the negative effects of this, reflected in the unwillingness of farmers to commit their livestock to these yards, could very easily completely outweigh any beneficial effects imagined by those proposing this legislation.

The thrust of this new legislation also does not require that any services be furnished, but merely that such stockyard services, furnished pursuant to reasonable requests made to a stockyard owner or a market agency, be reasonable and nondiscriminatory, and that stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory.

We recognize the right of stockyards to cease to do business, just as any organization has that right, except under certain circumstances—such as the transportation industry's regulated carriers which have been granted certain exemptions and privileges under law on the basis that they provide service as long as the Interstate Commerce Commission decrees that these services are required.

A stockyard owner does not have to put his property to that use at the present time, but the legislation which we have at present provides that if he chooses to do so, it becomes dedicated to a public use and affected with a public interest. Therefore, we would hold that the public interest requires the widest possible choice among agencies which serve the producer in the stockyard, and

not be restricted to a choice among just those agencies authorized to do business by the stockyard owner.

The economic situation permitting the producer to choose an agent, independent and free from control by other private interests operating therein, is a part of the attempt to preserve the competitive marketing system, and any infringement upon this, in our judgment, is contrary to the basic concept of the market system—supposedly best exemplified in this type of market.

The proposed amendment would eliminate the present requirements of the Act that both stockyard owners and market agencies must furnish reasonable and nondiscriminatory stockyard services on reasonable request, and would merely require that such services as may be furnished shall be reasonable and nondiscriminatory and shall not be refused on any basis which is unreasonable or unjustly discriminatory.

Even if the words “unreasonable” or “unjustly discriminatory” were properly defined and adequately surrounded by legislative safeguards, we still believe that this change would be inconsistent with the best interest of the producer, since the system of regulated stockyards was established for *his use* and he should at all times be in a position to receive services there from any registered market agency of *his choice* upon his reasonable request.

The Grange is not comforted by the rationale proposed behind the support of the third amendment at the hearings before the House Committee. At that time, witnesses for the Department of Agriculture admitted that stockyard owners presently have authority under the Act to prescribe rules and regulations which would tend to require market agencies to carry out their statutory duty and to render reasonable and nondiscriminatory stockyard services upon a reasonable request. However, stockyard owners voiced fear over prescribing and enforcing regulations which they are presently permitted to make, because of fear that they might become liable to substantial damages if some court should hold that action taken against a market agency had been unlawful.

What this legislation then proposes is to give the stockyards legislative immunity from their acts which even they admit might be questioned in a court. Even though these decisions are appealable to the Department of Agriculture, we still do not believe that any private group should be provided legislative and judicial immunity from actions which may become economic aggression against defenseless and less well supported agencies serving in the public trust and in the public interest.

The position of the Grange is that the Department of Agriculture has ample authority at the present time to deny the right of any marketing agency to operate if, in the judgment of the Department, such agency is not performing its function in a manner which accrues to the benefit of the public. At the same time, the stockyards have a perfect right to file charges with the Department of Agriculture against those individuals and practices which, in their judgment, do not meet the requirements of the Packers and Stockyards Act and the basic and fundamental requirement of serving the public interest.

Because of this concept, and for reasons previously stated, the Grange would oppose the transfer of this authority to the stockyards themselves, and would respectfully request this subcommittee to take no action which would transfer the authority which presently and properly is in the Department of Agriculture to any private agency.

This position of the Grange is not taken with any malice toward the stockyards and those who operate them at the present time. We are indeed grateful to them for the service they have rendered in the past to agricultural producers. We are very much concerned about the possibility that a further eroding away of those services might occur if this legislation were passed. We would much rather give maximum cooperation to the stockyards in attempts to improve their facilities, to increase their volume, and to render a more perfect service to the producers of American livestock.

This is especially needed at the present time when, despite the fact that terminal yards do not handle nearly as great a percentage of the livestock as in years gone by, they still set the market price which issued within the industry.

We believe that the attention should be directed toward improving the price which can be received by the producers in these stockyards, rather than in limiting the number of people who can practice their profession at the request of the producers themselves.

In conclusion, we again respectfully urge this committee to disapprove of this legislation, in the best interest of the agricultural producers and, in the long

run, in our judgment, in the best interest of the stockyards themselves and the services they render to the American public.

Senator YOUNG. Mr. Chairman, I notice in a brief reading of the Grange statement they are opposed to this legislation, and don't suggest any amendments either.

Senator JORDAN. Well, that is another thing we will have to take up in the committee.

Senator MILLER, if you would come around, please, sir; and bring your witness, Mr. Welding, we would be glad to hear you at this time.

Senator MILLER. Mr. Chairman and members of the committee, the stockyards in my hometown of Sioux City ranked second nationally last year in commission firm sales. These commission firms are all located in the Sioux City Livestock Exchange, and the next witness is a good personal friend of mine, Dick Welding, who is the secretary of the Sioux City Livestock Exchange.

I am sure that he will provide this committee with knowledgeable and factual information.

Senator JORDAN. Thank you. We appreciate your remarks and your being with us. You are a member of this committee, you know.

Senator MILLER. Yes. If the chairman will excuse me, please; I am sure that Mr. Welding can handle himself very well.

Senator JORDAN. I just wanted to remind him that he has some work to do here, too. Thank you.

Mr. Welding, we will be glad to hear from you.

Incidentally, Senator Miller is a very fine member who works hard on this committee. It is just unfortunate we have so many committees in this Senate you have to go here, yonder, and everywhere else and you can't spend as much time on any one as you would like to do. Proceed sir.

STATEMENT OF RICHARD A. WELDING, SECRETARY, SIOUX CITY LIVE STOCK EXCHANGE, SIOUX CITY, IOWA

Mr. WELDING. Mr. Chairman and members of the committee, I am Dick Welding, secretary of the Sioux City Live Stock Exchange.

We wish to convey sincere appreciation to the committee for the privilege of appearing before you in opposition to S. 1149.

The Sioux City Live Stock Exchange is made up of 160 voluntary members, who represent commission firms, order buyers and dealers on the Sioux City market. The Sioux City Live Stock Exchange has been in existence since 1896 and has been very active in setting up trade practice procedures, which its members must follow. These rules and regulations are set up in the best interest of its patrons. You will note that the exchange dates back much further than the Packers and Stock Yards Act of 1921 and in many cases their rules and regulations are much more stringent on our market people than the Packers and Stock Yards Act, as it is written.

It is our opinion that, as the proposed legislation is written, that it will put complete control of the agencies in the hands of one party. These agencies are privately owned businesses, who have operated on this market for years in the best interest of the customers, whom they are serving. Our agency people, whether young or old, and I might

add in here the average age in Sioux City is 52, have dedicated their lives, time, and effort on behalf of our customers.

Senator YOUNG. Does your agency represent all of the commission merchants at the Sioux City market?

Mr. WELDING. All of the market agencies in Sioux City except the three cooperatives who have worked very cooperatively with us and in fact in most cases they are more stringent on their own employees, on our rules and regulations than some of our own members are.

Senator YOUNG. Is this opinion you express here the unanimous opinion of all of them?

Mr. WELDING. Yes, sir; this does express the opinion of all the market agencies of Sioux City.

I might add in here before I go on that we are quite surprised that this particular legislation is being pushed so hard, because it is our understanding that the packers and stockyards administration at this time are either going to introduce or have introduced legislation which will completely make a sweeping change in the act, and we have long felt that this was needed, but we are quite surprised that this particular piece of legislation is being pushed, and not waiting for this other legislation to come through.

Under section 303, as written, it would give stockyards—

Senator McGOVERN. On that point, what is your understanding of the major import of the proposed changes in the act? Do you have any information on that?

Mr. WELDING. Senator, I can't go through it in detail with you, but it is my understanding that as it is written, that in a lot of these areas that we have had concern about it will bring us updated to where we will all have protection under this thing. Our biggest concern under this thing is that our agencies on the market have as much at stake as the yards companies. I understand that the legislation will help us, too. We feel that we have time, money, invested for many years in this and we deserve some protection.

Senator McGOVERN. There is in the mill, there are sweeping changes in the mill in the Packers and Stockyards Act that we are going to be asked to look at here shortly; is that correct?

Mr. WELDING. Yes, sir; that is my understanding.

Senator JORDAN. I judge that you, like Mr. Ecker, are apprehensive of what this piece of legislation might do to the commission merchant and so forth.

Mr. WELDING. This is correct, sir. To us there are areas that leave a lot of questions, and at this time, if I may, we also have a legal opinion that I would like to have made a part of the record from our attorney.

Senator JORDAN. We will be glad to insert it in the record at the conclusion of your remarks.

Senator YOUNG. May I ask this question. A similar bill passed the House by an overwhelming majority. I think there were only six votes against it. Did you present your case against the bill in the House?

Mr. WELDING. Yes, we did.

Senator YOUNG. I was wondering why they passed it with such a huge majority, then. There was considerable opposition expressed here today.

Senator JORDAN. As Senator Young knows and as Senator McGovern knows, this bill almost passed last year without any opposition at all, and it was held up by request for some hearings this year. It is a mystery to me, why the bill passed with such an overwhelming majority in the House, if there was any opposition to it in the Senate.

Mr. WELDING. We all appeared and filed statements, and in some cases we had some people appear.

Senator JORDAN. Well, thank you very much. You may proceed now.

Mr. WELDING. Under section 303, as written, it would give stockyards owners absolute and complete discretion as to who would operate at these stockyards. The power to approve ordinarily carries with it the power to revoke that approval. Thus, a stockyards owner could arbitrarily revoke that approval at any time. The proposed amendment gives no guideline for this determination except at the discretion of the stockyards owner.

Senator JORDAN. May I interrupt at this point. What regulations now under the present law give the stockyard owner the right to regulate and say who may operate in or out of the yards that would be revoked by this bill?

Mr. WELDING. Well, it is the elimination that was brought out by Mr. Ecker, it is the elimination of the wording that covers our market agencies, which under the act is both the commission firms and the order buyers.

Senator JORDAN. You mean the old law.

Mr. WELDING. Yes, sir. Under the new law, these do not appear. This disturbs us, because we feel that we are just as much a factor at the stockyards as the stockyards company itself. Under the new rule, where you have to ask for their approval, what you do now under the act, as was pointed out, then you file with the Secretary of Agriculture, and if he approves you, then the yards company neither approve you nor disapprove you. This is the reverse now.

We don't question that they have to have the approval, but by the same token, we feel that the agencies operating on this market should have some say, too, on who is going to operate on our markets and whether they fit into the categories that we want to have. We are not going to try to eliminate any business on our markets, but by the same token, these are people that our people have to work with every day.

Senator JORDAN. Do you now have any say so as to who will and who will not operate on the market?

Mr. WELDING. Today?

Senator JORDAN. Yes.

Mr. WELDING. At least we have some line of communication in most cases.

Senator JORDAN. You or a new person could apply.

Mr. WELDING. Yes, sir.

Senator JORDAN. He would make his application, and if it were not granted, if there was discrimination, he could take an appeal to the Secretary of Agriculture now under the present act.

Mr. WELDING. Yes, sir.

Senator JORDAN. And the secretary would prescribe remedial action?

Mr. WELDING. Right.

Senator JORDAN. You think this action would be done away by the new bill?

Mr. WELDING. This is our opinion.

Senator JORDAN. That is your opinion?

Mr. WELDING. Yes, sir.

Senator JORDAN. You may proceed.

Mr. WELDING. We agree that the stockyards owner has vested interest in the operation of the agencies and dealers at these stockyards, but this amendment, as written, overlooks the fact that the same agencies and dealers have a sizable investment at stake also. In the proposed form, the stockyards company could decide for any arbitrary reason, at its discretion, that a market agency or dealer was not good for the industry or that the firm was no longer beneficial to the yards and they could be put out of business with no recourses available to them except through court action. It is our opinion that whenever you can avoid a lawsuit it is wise to do so.

Also, in cases where a foreign corporation owns such stockyards, their principal motives are solely for profit, and in many cases the customers are slighted by not receiving services that should be provided to them, because such corporations often look only at profit and loss statements and not at what is in the best interest of the customers and agencies operating on said stockyards. With full authority being placed in the hands of these yard companies, there is fear that it would leave no recourse in the areas where we feel service should be negotiable.

Under section 307, this places complete authority of agencies in the hands of yard companies and with complete authority at their discretion in determining whether a person engaged in the purchase, sale or solicitation of livestock in the yards is conducting the operation in the best interest of the market. With this authority being controlled by one party, it certainly could cause an adverse effect and place our agencies in a detrimental position insofar as meeting competition.

Service is the main factor which our agencies and dealers have to sell to our customers. Therefore, in conducting their operation, they must foster, preserve, and insure an efficient, competitive market, because there are so many different ways that livestock can be procured or sold. Under this proposed language, we feel that it places power over our agencies that would not be to their benefit or to the benefit of the industry as a whole.

The members who make up the exchange and all other people doing business at the stockyards have as much at stake as our stockyard companies and as we have explained, they have a monetary investment plus the fact that they have devoted their lives to this business. We, therefore, feel that consideration should be given so that representation from our segment of the industry could be granted and they could have a voice in equalizing power and authority, which would be in the best interest of our patrons and would insure our patrons of receiving adequate services.

(The opinion previously referred to follows:)

RIVER MARKETS GROUP SPRING MEETING, ST. LOUIS, MO.—PROPOSED
AMENDMENTS TO P & S ACT

I

Section 302(a) (7 U.S.C. 202(a)) of P & S Act of 1921, is amended to read: "When used in this title the term 'stockyard' means any place, establishment, or

facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce."

This paragraph of the P & S Act used to read as follows: "When used in these sections the term 'stockyard' means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules or goats are received, held, or kept for sale or shipment in commerce."

It would appear from reading the amendment as opposed to the existing statute that the new definition is more inclusive and would act to bring additional facilities under control of the P & S Act. This probably would be of some benefit to the industry as the small operators and possibly the packers who operate small stockyards for no profit would come under the rules and regulations of the act. The wording in the amendment where they define stockyards to mean any place, establishment or facility commonly as stockyards lead to some confusion because you might be getting into a construction of what is commonly known as a stockyard by past custom and usage. Therefore, it is difficult for me to conclude with any certainty as to what areas of the industry would become included within the provisions of the act but there is an attorney's general opinion issued in 1923 which stated that "a stockyard was not a public market within this section but a private stockyard operated as part of a packing plant."

Of course the construction there turned upon the words public market and if our courts were to agree then such private stockyard would still be outside the definition. However, by adding the words "for livestock producers, feeders, and buyers" it is my opinion that such a stockyard would become subject to the act under this new amendment.

Sub-section (b) of this section would remain unchanged, thus the Secretary still would ascertain the stockyards which come within the foregoing definition and give notice to the stockyard owners concerned and post notice of such determination in the stockyards so notified. Then after giving of such notice to the stockyard owner and public, the stockyard shall remain subject to the provisions of the act.

II

The second proposed amendment is Section 303 (7 U.S.C. 203) which is amended to read as follows: "After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of section 302, by posting copies of such notice in the stockyard, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, and has given written authorization to such person, and (2) he has registered with the Secretary under such rules and regulations as the Secretary may prescribe, his name and address, the character of business in which he is engaged, and the kinds of stockyard services, if any, which he furnishes at such stockyard. Every other person operating as a market agency or dealer as defined in section 301 of the Act may be required to register in such a manner as the Secretary may prescribe. Whoever violates the provisions of this section shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

The change brought about by this amendment is the subparagraph 1 wherein they state that no person shall carry on the business of a market agency or dealer at such stockyard unless the stockyard owner has determined that his services will be beneficial to the business and welfare of such stockyard, its patrons, and customers, and has given written authorization to such person. This change gives to the stockyard owner the right to determine the qualifications of market agencies or dealers to operate on the stockyard and it would be a prerequisite to any agent or dealer to obtain the written authorization of the stockyard owner before he may commence business.

This amounts to giving the stockyard owner absolute and complete discretion over who shall operate at the stockyard. The power to approve ordinarily carries with it the power to revoke that approval; thus the stockyard owner

could arbitrarily revoke approval at any time and it is my opinion that this is bad law especially in the proposed form. The proposed amendment gives no guide lines for this determination except as to the discretion of the stockyard owner.

Under the section presently existing an applicant who wishes to be an agent or dealer on the stockyard must register with the Secretary under such rules and regulations as the Secretary may prescribe. Such rules and regulations have been set forth by the Secretary to some extent and thus there are certain guide lines to go by. This amendment as proposed would give arbitrary discretion with but one segment of the stockyard industry.

It is my thinking that the stockyard owner has a vested interest in the operation of the agencies and dealers on his stockyard but they seem to overlook with this amendment the fact that these agents and dealers have a sizable investment and interest at stake also.

In the proposed form the yards company could decide for any arbitrary reason at its discretion that a certain dealer or market agent was not good for the industry and they could possibly decide that an established firm is no longer beneficial to the welfare of the industry and there are no recourses available or established under the amendment.

I feel that this amendment, if passed, would eventually lead to discrimination and thus lead to court actions to test the fairness of the stockyard owner. It is my opinion that whenever you can avoid a law suit it is wise to do so.

I feel further that this amendment defeats the purpose of the P & S Act. The Act was promulgated to regulate the affairs of the stockyards and related industry. The Act is a police power type of function with the Secretary as the policeman. Now the stockyards want to be named a policeman. In effect, this is giving the stockyard the power to act as a vigilante on equal basis with the police force.

I can see some benefit to the principle laid out by this amendment in that there should be some self-regulation within the industry but I feel strongly that this should be by representation of each segment of the industry and not the granting of complete power and authority to one such segment. If there is to be such an amendment along these lines I would recommend a committee of stockyard owners and agencies or dealers operation on the yards. The stockyard owners and the market agents and dealers have a common interest in keeping central markets strong and they will be weakened if they do not stand on equal footing.

As a possible suggestion only, some thought should be given to the advantages of a three man committee to give authorization to such persons to operate as agencies and dealers on the yards. This committee could consist of the stockyard owner, Secretary of the Livestock Exchange or a representative of the agencies and a member of the P & S Division.

This form of amendment with a committee rather than a stockyard owner determining such qualifications would put more teeth in your industry from the standpoint that a person whom you know will be detrimental to the welfare of your industry should not be allowed to operate on the market. One bad apple can cause a lot of damage and if there are cut-throat operators at any stockyards they give a bad name to those who are trying to be ethical and honest in their dealings with the customer.

It is too easy for you as a commission man or order buyer or dealer to overlook the unethical conduct or practices of a fellow operator on the yards. He is a friend of yours and even though you know his conduct and his operations hurt your business you probably would never bring yourself around to imposing strict sanctions on him. Therefore, such a committee could pass upon these matters and if there is such an operator on the yards who is hurting the industry itself by his actions they could have the power and authority to deny him the right to operate on the yards. In fact you all know of specific instances where certain members on the market do violate rules or regulations or prescribed methods of conduct and because of friendship you hesitate to enforce any strict sanctions. I feel that a committee such as this would exercise such authority and perhaps the whole industry could profit from it.

III

The third proposed amendment is section 304 (7 U.S.C. 205) which is amended to read as follows: "All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall

be reasonable and nondiscriminatory: Provided, that in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this Act, and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this Act he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in Section 315 of this Act."

This section used to read as follows: "It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard: Provided, that any state where the weighing of livestock is conducted by a duly authorized department or agency of the state, et cetera."

This changes the law by no longer making it a duty to furnish such reasonable stockyard services and making the law read that whatever services are rendered upon reasonable request shall be reasonable and nondiscriminatory.

It is difficult to understand the legal significance behind this amendment. Perhaps the yards company feels that this would remove them from the classification of a public utility but I am not convinced that it would do so. As a public utility the stockyard and the agencies and dealers on the yards have a certain duty to render services to the public but I think the duty follows the utility; the utility does not necessarily follow the duty. In other words the entire act makes the yards owner and the agencies a public utility subject to these regulations.

It has been brought to my attention that there have been instances where a commission man or order buyer has been going directly to the country to conduct his business of buying or selling with his customer. It could be the purpose of the stockyards company in proposing this particular amendment to grant to themselves the power to prohibit this practice.

In this light the Supreme Court decision in *Denver Union Stock Yards Company v. Producers Livestock Marketing Association* has some effect. In this case the U.S. Supreme Court reasoned that since a market agency had a duty, under the statute, to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard, the stockyard company, by regulations could not preclude or prohibit an agency on its yards from soliciting business for other markets for sale at outside feed yards or country points.

In this case the commission firm operated on the Denver Stockyard and also the Kansas City Stockyards and the Denver Stockyards Company issued a regulation prohibiting the firm from soliciting for other markets. This particular commission firm had a customer who they sent to the Kansas City yard and the Supreme Court in its decision held that since the commission firm as an agency on the yards had a duty to furnish reasonable stockyard service, such regulation was invalid and contrary to the intent of the P & S Act.

By passage of this amendment the duty as such is withdrawn and perhaps then such regulation could be enforced by the stockyard company. Whether this would benefit or hurt your particular interests I am not qualified to answer.

To completely analyze the purpose of this proposed amendment it may be necessary to consider and discuss the last amendment which the stockyard company has proposed.

IV

The fourth and last amendment proposed to the P & S Act is as follows: "Section 307 (7 U.S.C. 208) is amended to redesignate the first sentence as paragraph 'a' and to add a new paragraph (b) as follows: (b) It shall be the responsibility and right of every stockyard owner to manage and regulate his stockyard in a just, reasonable, and nondiscriminatory manner, to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market."

Inconstruing this amendment with the last amendment we discussed it is my thought that the stockyard companies are trying to protect themselves as a public market. Generally, I would assume that what is good for the stockyards from an industry standpoint is good for you as market agencies. However, it is possible that such rules or regulations established by the stockyard owner could restrict a market agency to such an extent that he would be in a detri-

mental position as far as competing with a packer who buys direct from the producer or feeder.

I personally believe that direct buying is not going to be the answer to the producer but it is remotely possible that direct buying will become such a trend that in order to compete you are going to have to go to the country yourself to conduct your business. If the stockyard company could by regulation prohibit this particular practice your hands could be tied if this comes to pass. I suggest this only as food for thought but I do wonder if that loss of flexibility would prove to be detrimental to you in the future.

I believe that for an industry such as yours to compete and grow you must be allowed to remain flexible to meet changing conditions and competition.

It is distinctly possible that the more regulations or inhibitions imposed upon you the less able you are to meet changing conditions in your industry.

Actually, under section 307 as it now exists, the stockyard owner and market agency had the duty to establish, observe and enforce just, reasonable and non-discriminatory regulations and practices in respect to the furnishing of stockyard services and this amendment merely adds sub-paragraph (b) which constitutes the amendment, whereas the section involved provided a duty for the stockyard owner and the market agency. The addition or the amendment states that it shall be the responsibility and right of every stockyard owner only to manage and regulate his stockyard and to prescribe rules and regulations and to require those persons engaging in the purchase, sale or solicitation of livestock at that stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market.

Again this brings us back to the fact that the market agencies have as much interest in fostering, preserving, and insuring an efficient competitive market as does a stockyard owner, and it is my thought that the two should act together and not for the benefit only of one.

A danger which I feel is manifested by this fourth proposed amendment is that once again it gives the stockyard owner a certain area of discretion to determine whether any person engaging in the purchase, sale or solicitation of livestock at the stockyard is conducting his operations in a manner which will foster, preserve, or insure an efficient, competitive public market. This discretion left with the stockyard owner alone is too arbitrary. It lends itself to sanctions to be imposed by the stockyard owner over the market agencies and that type of broad power would not benefit you or the industry.

Again this particular amendment has some merit in principal but I do not feel that it would be beneficial to you as market agencies in the present form.

MR. WELDING. Now, if I may add a couple of other points that were brought up yesterday.

Senator JORDAN. Yes, indeed, proceed.

MR. WELDING. We think a good example of why our people are so vitally concerned about this is, for example, last year approximately \$600,000 was spent for getting producers at our market, and this does not include the men's salaries that would be doing the solicitation. From this, in cattle, it would amount to about \$1,700,000 in yardage, which covers this so-called free space that we are talking about. This is the yardage that was paid for the use of these pens by our customers.

Senator YOUNG. The feed costs were in addition to that?

MR. WELDING. Yes, sir. Now, our concern along this line would be from our people the fact that as this is written, with the authority placed so heavily on one side, that, for example, it doesn't do us any good to go out and solicit this business if we can't handle it properly at our stockyards. This could be involved in truck lineups, unclean pens, limited weighing from the standpoint that when the livestock is sold that we can move it to the scales in a very limited time, which is to the advantage of our customer.

Senator YOUNG. They also lose weight the longer they stand?

MR. WELDING. Yes, sir; and where it has been talked about these standards of performance on our agencies, we certainly feel that there should be some standards of performance on our stockyard

companies also, because all of us have only one thing to sell, and that is a service that will bring our customers back to our markets.

We have long wondered about the area of where we offer to the management of the stockyard companies members in our side of the association, the exchanges, and they can take an active part in our exchanges, but by the same token, we have often wondered, and this is the area that bothers us, where we have not been granted an opportunity sometimes to sit down with the board of directors or with top management. After all, we are the strong selling arm of these markets. We are the ones that are procuring the business on a personal basis, and I can't think of any other business that is in existence today where you have a selling agency or department, where they are not part of or are given more consideration by top level management. We feel that this is an area that is very important to us.

One other statement that was brought to my attention by one of our agency men the other day that was very vitally concerned about this is the fact that he brought up the example to me, he said, "What is the difference in our business, whether I own a building downtown and have many separate individual private businesses renting space from, and I all of a sudden walk in and tell them, 'You are going to operate your business this way or that way or you are going to get out of my facilities.'"

Certainly there are rules and regulations which we have to follow and if we break these rules we should be taken care of, but by the same token, where these are all private businesses that are operating in the best interests of the market, because if they don't, they don't get the business, and we can't understand where they want this dictatorial power, that these private businesses, whether a partnership or small corporation, would not have some say in the operation of the overall market.

Senator JORDAN. Where do you live, sir?

Mr. WELDING. I live in Sioux City.

Senator JORDAN. You live in Sioux City?

Mr. WELDING. Yes, sir.

Senator JORDAN. This is the only livestock market located there, is it not?

Mr. WELDING. Yes, sir.

Senator JORDAN. I believe you said there is only one in Chicago, also.

Mr. WELDING. Yes, sir.

Senator JORDAN. They are probably different in size. The Chicago yards are probably larger.

Mr. WELDING. No, we are larger than Chicago.

Senator JORDAN. You are larger than Chicago?

Mr. WELDING. Yes, sir.

Senator JORDAN. Do you have any packing plants at Sioux City?

Mr. WELDING. Yes, sir, we have seven packing plants located in Sioux City. We have 65 possible buyers on every load of cattle, and about 35 on every load of hogs, and about seven on the so-called lambs that you mentioned. But this again—

Senator JORDAN. I knew you had some packing plants.

Mr. WELDING. Yes, sir.

Senator JORDAN. But I didn't know this regarding the Chicago area, which of course has been known for many, many years as one of the big packing plants or centers of this country.

Senator Young, do you have some questions?

Senator YOUNG. Just one. Isn't Omaha the biggest cattle market now?

Mr. WELDING. Omaha is the largest market; yes.

Senator YOUNG. The thing has changed a lot in the last 20 years, hasn't it?

Mr. WELDING. Yes.

Senator JORDAN. Well, as I said earlier in this hearing, this whole business is being distributed more and more over the whole country.

Mr. WELDING. Yes, sir.

Senator JORDAN. Because in the first place cattle are being grown more and more in different areas of the country. North Carolina today is a very large producer of cattle.

Mr. WELDING. Yes, sir.

Senator JORDAN. The business is growing every year. Florida has become one of the leading producers of cattle, and not so many years ago you thought most of the steers came out of Texas.

Mr. WELDING. Yes, sir.

Senator JORDAN. And they did have a lot of them. That is where longhorns came from.

Mr. WELDING. We happen to be a large stocker and feeder market, and we will receive stock cattle going back into feed lots out of 30 States into our market.

Senator JORDAN. At Sioux City?

Mr. WELDING. Yes, sir. Of course the majority of our stock cattle come from the Western States. We consider your State western, sir, North Dakota, South Dakota, Montana.

Senator JORDAN. Do you buy any feeder calves out of North Carolina?

Mr. WELDING. Very few would come in.

Senator JORDAN. Too far away?

Mr. WELDING. Yes, sir.

Senator JORDAN. Is that correct?

Mr. WELDING. Yes, sir.

Senator JORDAN. They are going into the feeder calf business.

Mr. WELDING. We do get quite a few from Alabama.

Senator JORDAN. From where?

Mr. WELDING. Alabama.

Senator JORDAN. Thank you very much. We appreciate your testimony.

Mr. WELDING. Thank you, sir.

Senator JORDAN. Mr. Schramm and Mr. Walter, you may proceed.

STATEMENT OF MARTIN C. SCHRAMM, PRESIDENT, AND RALPH A. WALTER, CHICAGO LIVE STOCK EXCHANGE, CHICAGO, ILL.

Mr. SCHRAMM. My name is Martin C. Schramm.

Senator JORDAN. I will stay with you as long as I have to stay.

Mr. SCHRAMM. I would appreciate having this entered completely in the record.

I am president of the Chicago Live Stock Exchange, an organization consisting of 38 of the 41 commission firms operating on the Chicago market. I have been on the Chicago market for 28 years in various

capacities; namely, livestock handler, packer, buyer, dealer, cattle salesman, and currently as a partner in a commission firm.

I have also served on the board of directors of the Chicago Livestock Foundation, an organization consisting of all market interests initiated for the purpose of analyzing the problems of and promoting the central public marketing system. I appreciate the opportunity to present my views regarding the proposed legislation S. 1149.

Testimony before this committee by proponents of this bill will probably be in essence similar to that before the Subcommittee on Livestock and Grains of the Committee on Agriculture, House of Representatives; therefore, my testimony will be based mainly on statements at that hearing recorded in Serial K, and statements recorded in the Congressional Record on February 28, 1967, at the time this bill was introduced, and the recording of the debate on H.R. 10673 in the House at the time of the passage of the bill on September 29, 1967.

There was a question brought up here why the House passed this with such a majority. I would say that one of the questions, there was considerable discussion recommending consultation between exchanges and stockyard owners and it was even recommended to have this proviso written into the amendment, but this was not done.

In the debate at the time of passage of this bill by the House, it was questioned again. I refer to page H12752 of the Congressional Record of the House where Mr. Mayne questioned Mr. Purcell.

All this testimony regarding the intent of the committee and the views of the Department of Agriculture is very misleading, that there would be consultation. This proposed amendment as written specifically gives unilateral authority to the stockyard owners, and I doubt if any market agency taking recourse in the courts could get the court to consider the intent of the committee or the views of the Department of Agriculture when they did not insert a clause necessitating consultation in the amendment.

In introducing this bill, Mr. Purcell on page H1906, Congressional Record—House, states and I quote :

It is a basic law of economics that true market value for both buyer and seller results only when the highest possible proportion of a commodity is sold under conditions of true competition. This is, of course, true in the livestock industry. As the number of livestock sold under other than competitive conditions increases, there is less likelihood for any livestock to be sold at its true value.

The amendments which I am introducing today are designed to bring the act up to date by redirecting the focus of federal regulation so that the competitive forces of the free market system can more effectively determine the price of livestock, so that the producer and consumer each obtain true value. This is done by clarifying the rights and responsibilities of market owners and operators so that today's livestock markets can be operated in the most efficient and competitive manner.

Let me repeat: If we do not act, and we let the present trend continue, the industry may well return to the noncompetitive situation that existed before 1921. We must not allow this to happen. We must not allow the forces of competition to be destroyed.

Gentlemen, I sincerely agree with Mr. Purcell's reasoning, and wholeheartedly endorse the need of legislation to accomplish his intent; however, the amendments proposed will not and cannot accomplish this intent.

I am of the firm belief that the only accomplishments of these amendments as proposed will be a possible increased profit for the

stockyard owners, under prevailing conditions, and will not strengthen the competitive forces of the market system.

My feelings seem to concur with Mr. Cahill, Representative from New Jersey, who made the uncontested statement recorded on page H12753, Congressional Record—House, and I quote:

Mr. Chairman, perhaps coming from New Jersey, I should not participate in this debate because probably I am not fully aware, even after a reading of the report, of the real purposes of this legislation or the implications therein. But as I read it, I have come to the conclusion that this legislation in effect is a private bill for the owners of stockyards whose business has been reduced perhaps 50 or 75 percent in the last several years due to changes in practices regarding the purchase and sale of livestock.

Now, let us analyze the specific amendments proposed, (b) section 303 (U.S.C. 203) is amended to read:

No person shall carry on the business of a market agency or dealer at such stockyard unless (1) the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, and has given written authorization to such person * * *.

This is simple language and does not leave any loopholes. The power to authorize usually carries with it the power to revoke said authorization. On page 70 of Serial K, Mr. Bennett, president, Union Stock Yards Corp., St. Joseph Stock Yards Co., states and I quote:

This language is prospective in application since it does not relate to or affect either registered market agencies or dealers presently doing business on a posted stockyard or stockards * * *.

However, on page 11 of Serial K, Mr. Mayne, Republican from Iowa, asks Mr. Leonard, Deputy Assistant Secretary of Agriculture, would the owner also have the right under these proposed amendments to make it impossible for a commission firm to continue to operate in the yard if he had been operating there for some years? Mr. Leonard's answer was "Yes."

There was considerable discussion recorded in serial K recommending consultation between exchanges and stockyard owners, and it was even recommended to have this proviso written into the amendment, but this was not done.

If the debate at the time of passage of this bill by the House, it was questioned again. I refer to page H12752, Congressional Record—House—where Mr. Mayne questions Mr. Purcell, and I quote:

Mr. MAYNE. I would further ask the gentleman is it intended by the Agriculture Committee that this bill should give a stockyard owner complete control over market agencies on the yard with absolute and complete discretion as to who can operate on that yard?

Mr. PURCELL. That is not the intent of the committee or of this legislation. It is intended that the owner shall be required to furnish stockyard services on a fair, reasonable, and nondiscriminatory basis. If a commission firm feels that it has been treated unreasonably, it can bring a complaint to the Secretary of Agriculture who will investigate the complaint and take appropriate action if he finds a basis for the complaint.

Mr. MAYNE. Referring to the testimony of Deputy Assistant Secretary of Agriculture, Mr. Rodney E. Leonard, who appeared before the subcommittee, I will ask the distinguished chairman of the subcommittee if he recalls Mr. Leonard's testimony that where there is an association of commission firms which is actually functioning and policing its own members, such as the Sioux City Livestock Exchange, then the department would consider that the stockyards owner should consult with the association or exchange before revoking the authorization of any firm to operate on that particular market.

And I believe that testimony appears at page 23, lines 34 to 45 of the hearing transcript.

Does the gentleman recall that testimony?

Mr. PURCELL. I do distinctly remember that testimony, and this is my understanding of the intent of this particular piece of legislation.

Mr. MAYNE. And I believe Mr. Leonard further stated that he would have no objection to having a safeguard actually written into this law providing that the stockyards owner would be required to consult with the livestock exchange or association at a market before revoking the authorization of any firm to operate on that market?

Mr. PURCELL. That is correct.

Mr. MAYNE. In order to further clarify the congressional intent in passing this bill, I would ask the gentleman if it is his intention and the intention of the committee that if this bill is passed it would be considered unreasonable within the meaning of the act for a stockyards company to take any action against any market agency as defined in the act without first consulting with the livestock exchange or association at the market where such agency was doing business?

Mr. PURCELL. Yes, such is my intention and I believe it to be the intention of the committee.

All this testimony regarding the intent of the committee and the views of the Department of Agriculture is very misleading, and probably had a strong effect on the passage of this bill by the House. This proposed amendment as written, specifically gives unilateral authority to the stockyard owners, and I doubt if any market agency taking recourse in the courts, could get the court to consider the intent of the committee or the views of the Department of Agriculture, when they did not insert a clause necessitating consultation in the amendment.

Most of the major markets have adopted now what they call a foundation. All major interests are represented, stockyard companies, buyers, commission agencies. You have even your American Stockyard Association, which Mr. Jennings represents here.

In a sense it is a promotional organization for the improvement of the competitive markets, the terminal markets.

Now, at Chicago we have the foundation, the stockyard company participates. It is an organization, and I serve on the board of directors of the Chicago Livestock Foundation, an organization consisting of all market interests, initiated for the purpose of analyzing the problems of and promoting the central public marketing system.

It seems that the intent of this is that the stockyard company can get control through prescribed regulations and all of a sudden they will be able to improve the setup of the market—I mean increase the volume. If, as participants in these promotional organizations, they have never been able to come up with the answer, I don't understand how they propose they will do it if they are given this unilateral authority.

We can analyze the specific amendments proposed. I won't repeat this. Section 330 has been mentioned often enough and it is clear, but it is simple language and it does not leave any loopholes. The power to authorize usually carries with it the power to revoke. In the House hearings testified to by Mr. Bennett, president of the Union Stockyard Corp. of St. Joseph's Stockyard, and yesterday by Mr. McCreight, it was mentioned:

This language is prospective in application since it does not relate to or affect either registered market, agencies, or dealers presently doing business on a posted stockyard or stockyards.

However, on page 11 of serial K, Mr. Mayne, Representative from Iowa, asked Mr. Laird, Deputy Assistant to the Secretary of Agriculture:

Would the owner also have the right under these proposed amendments to make it impossible for a commission firm to continue to operate in the yard if he had been operating there for some years?

Mr. Laird's answer was, "Yes."

I shall give a few specific cases that happened in Chicago to illustrate the authority exercised by the stockyard owners under the present law. A few years ago, two brothers who were employed as cattle salesmen by separate commission firms wanted to start their own commission firm, but were refused any allotted pen space by the stockyard company. The basic argument of the stockyard company was that these two men in starting their own business would not bring increased volume to the yards, but merely divert business from the firms by which they were currently employed to their new firm. This, by the way, is how the majority of the present market agency owners started in business.

The stockyard company, however, was of the opinion that there should be fewer commission firms; consequently, these two men were not allowed to go into business.

In the latter part of 1966, the Chicago Livestock Exchange was informed that the stockyard company was going to allow a new commission firm on the market financed primarily by Harold Heinold, a registered dealer who, of years, had operated several hog-buying stations in the country, and that this firm would not have to be a member of the exchange. Prior to this, only two cooperatives, namely, Farmers Union and Interstate Producers, operated commission firms at Chicago without being exchange members. One of the original stipulations made by the stockyard company was that he bring in new personnel for salesmen rather than hire help away from existing commission firms. This stipulation was disregarded and finally condoned by the stockyard company. He hired two young hog salesmen away from two commission firms that were operating a profitable, efficient hog business, and he was also dickering with currently employed cattle salesmen. The exchange objected to letting a new firm come in under these conditions, and I believe rightfully so.

Our reply from the stockyard company was that they had made their decision and were not going to be put in any position to defend it.

We as an exchange then went to the Department of Agriculture through the Chicago office of the packers and stockyards division, with the argument that this new firm as set up was in violation of regulation 201.67 of the Packers and Stockyards Act of 1921, as amended. This regulation states:

No packer subject to the Act, or independently operated and separately registered dealer shall have an ownership interest in, finance, or participate in the management or operation of a market agency selling livestock on a commission basis * * *.

Our answer from the Department of Agriculture was that they were no longer enforcing this regulation because it was inconsistent with other regulations, and as a result on January 1, 1967, the United Commission Co. started business.

Gentlemen, when a specific regulation like this can be enforced or omitted at the discretion of the Department of Agriculture what protection can the market agencies expect from the vague terms fair, reasonable, and nondiscriminating that the Department of Agriculture representatives repeatedly propound?

There is one good result that could be accomplished by the amendment to section 303 and this was the testimony in serial K in the House hearings, the gist of most of the testimony favoring the stockyard owners is that commission firms, selling livestock at a terminal stockyard are injuring their consignors if they dilute packers' buying needs by "off market" transactions with the same packers who are buying from them at the stockyards. With this point I readily agree, and the Chicago Livestock Exchange has rules preventing any member from making "off market" deals.

For a while Interstate Producers at Chicago which is not an exchange member firm had a program whereby they operated as a market agency at Chicago and also set up a contract system with the livestock feeder under which they would bring buyers to his feedlot. They would thereby collect a commission whether the producer shipped to the stockyards or sold direct. Our exchange protested this program on the basis that it undermined our price setting competitive marketing system by giving the packers an opportunity to dilute their buying needs. Disregarding our protest Interstate Producers initiated this program. The stockyard company also objected to this policy, but said that they did not have the authority to stop it.

This, however, makes it hard to understand why they later allowed the United Commission Co. to come on the Chicago market without requiring them to be an exchange member. They gave up the only control that they had. If the new firm had to belong to our exchange we could stop this, but they allowed them to come in without belonging to our exchange.

Senator JORDAN. You mean the Department of Agriculture?

Mr. SCHRAMM. No; the Chicago Stockyard Co. All they had to do is let them be handled like any other firm, be a member of our exchange and this problem would have been solved.

Therefore, instead of giving the stockyard owners blanket authority over the market agencies as this amendment would, why not spell out this specific control in an amendment. The argument that the stockyard owners also need this proposed amendment in order to have the authority to expel drunks, tollkeepers, and painters engaged part time in the commission business don't hold water. Regulation is not necessary, because competition eliminates this man, and I can't see where the stockyard owners have to fear the courts in restraining a man that is definitely detrimental to the industry.

One of the best statements made in opposition to the proposal to amend section 303 was by Paul Woodson, president, St. Louis Livestock Exchange, in his letter addressed to the Honorable Graham Purcell entered on page 77 of serial K. I quote:

A market agency which sells a producer's livestock does so as the producer's agent. Over the years the selection of a market agency by the producer has been guided by the producer's confidence in the knowledge and expertise of the market agency in the selling of livestock at the highest prices available and at a cost which can be calculated in advance. This knowledge and expertise of a market agency does not depend on its size or on the relative number of head which it handles, though such factors may, and often do, determine whether a market

agency is operating with a minimum degree of efficiency which will return a profit at the approved rates and charges sufficient to enable it to continue its operations. Moreover, the producer's confidence in a particular market agency is grounded on experience, either his own or that of other producers which has come to his knowledge, and involves a reliance on the personal judgment and advice of the agent. The best interests of livestock producers who wish to sell through market agencies require not only that such agencies be independent and free from control by other private interests at the stockyards, but also that there be active competition and as wide a choice as possible among market agencies registered.

H.R. 6231 proposes to amend section 303 of the Packers and Stockyards Act to impose a monetary penalty upon any person carrying on the business of a market agency at a stockyard "unless * * * the stockyard owner has determined that his services will be beneficial to the business and welfare of said stockyard, its patrons, and customers, and has given written authorization to such person." Thus, the producer's choice of a market agency would be completely limited to a choice among market agencies preselected by the stockyard owner.

The gist of his statement was that this proposed amendment to section 330, that the producer's choice of a market agency would be completely unlimited to a choice among market agencies preselected by the stockyard owner.

Next let us look at the proposed amendment to section 304. The present law reads:

It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard * * *.

The proposal as analyzed by Secretary of Agriculture Orville L. Freeman, in his letter to W. R. Poage states on page 2 of serial K:

It would relieve the stockyard owner or market agency of a duty to furnish stockyard service to all persons upon reasonable request without discrimination * * *.

In essence this would allow the stockyard owners to refuse a market agency any service requested on behalf of the producer as long as they refused everyone. I am not so naive as to think that stockyard owners will expect to operate a stockyard without providing some services, but I have my conclusions as to what will be done by stockyard owners if section 304 is amended.

In my capacity as president of the Chicago Livestock Exchange I have consulted with stockyard company officials at Chicago. It has already been suggested that the market agencies do their own feeding. The stockyard company would deliver a load of hay to our alley and we would feed the individual pens, with a similar arrangement for other grains. Presently they feed our pens individually the amounts that we order.

They also suggested that each market agency clean its individual pens and pile the manure in the alley to simplify the stockyard company's disposal. Presently they do the entire cleaning job.

For several years now most market agencies have cooperated with the stockyard company request that we have a yardman on duty at night to take cattle from the unloading docks to expedite handling. This enabled the stockyard company to reduce their previously required number of men at each unloading dock and still maintain an orderly handling of unloading trucks. Previously this was handled completely by stockyard company personnel.

From this it is easy to understand why stockyard owners want fewer, and larger staffed commission firms. It would make available more

market agency personnel to perform the menial services that are presently the statutory duty of the stockyard owner to perform.

I would add to Mr. Woodson's comments on the need of a wide choice of market agencies for the producer to choose from. Chicago has found that large numbers of market agencies are needed so as to prevent any buyer or coalition of buyers from buying all the cattle or all the hogs on the market to the exclusion of their competitors. The turn system of flipping for a turn has never existed in the cattle or hog alleys in Chicago.

Next let us look at the proposed amendment to section 307 which adds a new paragraph (b) :

It shall be the responsibility and right of every stockyard owner * * * — * * * to prescribe rules and regulations and to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market.

Mr. Ralph A. Walter, a member and former president of the Chicago Live Stock Exchange, and member of the Chicago Bar Association who accompanies me at this hearing gave a complete, direct, and legal basis for rejection of this proposal in his letter of August 21, 1967, to the Honorable William M. Colmer, chairman, Rules Committee, House of Representatives, and every Member of the Senate and House was mailed a copy of this 14-page document. I refer to page 9 of Mr. Walter's document and I quote :

The proposed amendment of section 302(a) (u U.S.C. 202 (a) by the words managed for profit or nonprofit as a public market for livestock producers, feeders and buyers make the stockyard company a private enterprise business and not a public utility. The same concern is not expressed for market agencies who "subject to reasonable regulation in the public interest, the management and right to control the policy of a business affected with a public interest belong to the owners." (*Acker v. U.S.*, 12 F. Supp. 776, 779). The Department of Agriculture now proposes that such reasonable regulations of a business—namely a commission firm which is subject to regulation because of a public interest shall be exercised by a private business—provided the amendments are passed by Congress.

Some arguments by proponents of this legislation giving stockyard owners the right to prescribe rules and regulations are as follows:

Secretary Freeman on page 3 of serial K in his letter of June 5, 1967, states, and I quote :

For example, an addition to the need to control the matters referred to above, some stockyard owners have determined that substantial savings could be effected by a centralized computerized bookkeeping and paying system. A single bookkeeping and paying system at a stockyard might replace 25 to 50 separate accounting systems, leading to reduced marketing costs.

Mr. Walter on page 6 of his letter to Mr. Colmer points out the following :

Such a statement indicates that this is a stockyard sponsored bill rather than of the Secretary and Department of Agriculture. How else can the statement be accounted for as Donald C. Campbell, Acting Administrator, Packers & Stockyards Administration on June 6, 1967 proposed an amendment to regulation 201.61 of title 9 of the regulations under the Packers & Stockyards Act of 1921, as amended which would forbid the bookkeeping of one market agency by another market agency thereby requiring two bookkeeping and paying systems instead of one.

Gentlemen, June 5 and 6, 1967, were the very dates of the hearings before the Subcommittee on Livestock and Grains recorded in serial K.

On page H12750 of the Congressional Record—House, Mr. Purcell in his testimony before the House at the time of the passage of this bill gives this same example regarding a centralized computerized bookkeeping system as a reason for the necessity of this legislation and states that presently stockyard owners generally are afraid to put such practices into operation, because the ability of the stockyard owner to regulate even these normal activities is open to question.

On page 12753 Congressional Record—House, Mr. Cahill asks Mr. Purcell to explain to him the statement on page 9 of serial K; namely,

Consequently, many stockyard owners fear to exercise authority which they probably now have.

Mr. Purcell answered and I quote :

Because the law is unclear, courts have held that some actions of stockyard owners were prohibitive, resulting in civil liability * * *.

Mr. Walters here has made intensive study and can find no case of law to substantiate this statement.

Senator JORDAN. Who made that statement?

Mr. SCHRAMM. Purcell made that statement and it was questioned by Cahill. That is on page H12735 of the Congressional Record of the House.

Mr. Charles B. Jennings in his testimony before the House committee, president of the American Stockyards Association, on page 31 of serial K gives a specific example of why stockyard owners need the right to prescribe rules and regulations. He states that their inability to be more selective in the individuals making up market agencies on the markets have tied their hands so that they could not change with the rapidly changing industry. He states that since the passage of the Packers and Stockyards Act, stockyard companies have been hampered in being selective at all.

Gentlemen, first of all I doubt very much if any stockyard owners gave much thought to this point before 1921, and secondly, I cannot follow his reasoning that stockyard owners have been hampered. For several years now the stockyard company at Chicago has promoted a program to secure college-trained personnel as livestock salesmen. The market agencies gave full cooperation and support to this program by hiring every man recommended by the stockyard company and even requested more. The Chicago Live Stock Exchange even amended its rules to cooperate more with this program. Formerly a man had to work with livestock at the yards for a period of 3 years before being eligible to hold a membership in the exchange. We amended this rule so that there was no time limit. It was left to the discretion of our membership committee and board of directors, that after screening and interview if the applicant was qualified to sell livestock and was of legal age, of good character, intelligence, reliability, and credit, he then would be eligible for membership.

Why can we not get more college graduates and why have several already left the stockyards? The market agencies cannot compete in the labor market. Mr. Walter on pages 2 through 5 in his letter to Mr.

Colmer (previously referred to) and in his letter to the Hearing Clerk, Administration Building, Washington, D.C., concerning rate orders and vacations of such rate orders, a copy of which also was sent to every Member of Congress, goes into detail showing how the Department of Agriculture deprived every market agency of the margin provided in the basic rate order of March 12, 1934—in the case of Chicago—25 percent of the permissible rates. If it were not for this then market agencies would have been able to compete in the market for college educated personnel and could have had funds for training and promotional programs such as every other industry today.

I find no reference in any of the testimony regarding the stockyard owners improving the character of their employees. It is true that the market agencies are the selling forces.

Here is another point that comes up. It was mentioned today and yesterday, and it was mentioned by the Department of Agriculture representatives, that we are the selling arm of the stockyard company. We are not an arm or a branch of the stockyard company. We are the agent for the producer acting in his behalf, and this agent is paying us a commission for selling and handling his livestock as far as sorting, and he is paying the stockyard company revenue through yard and charge for the use of the facilities which includes the pens, the weighing, and so forth. So we are not a branch of the stockyard company. But very often the first contact by the trucker or producer is with the stockyard employee at the unloading dock. Ask any stockyard owner if they have been remiss or lax over the years in underestimating the importance of the caliber and character of this employee. My experience says that they would have to admit their guilt.

Another argument by proponents of the bill is the necessity for the stockyard companies to enforce regulations requiring market agencies to hire a salesman for each species of livestock. This definitely is not a requisite to run an efficient and competent market agency. It overlooks the personal association that exists between the producer and his commission man. I have customers shipping both heifers and steers to me because they have confidence in my judgment of livestock and ability in getting the feel of the market. The market could lose this man if I were restricted to sell only one species. There are many salesmen who can do a better job handling more than one species than some who are handling only one species. This is inherent in human nature. Some people have greater faculties, intellect, and business acumen than others, and don't disregard experience. This terminology of one species of livestock could be very misleading to some members of the committee.

Senator JORDAN. May I interrupt at that point?

Mr. SCHRAMM. Yes.

Senator JORDAN. In my opinion there would probably be places where, if the man you speak of were restricted to one species, there wouldn't be enough business for him to live off of.

Mr. SCHRAMM. That is very true.

Senator JORDAN. He would need to handle maybe more than two kinds of livestock—maybe sheep, cattle, and hogs, all three of them.

Mr. SCHRAMM. Let me clarify that a little for you, Mr. Chairman. This terminology of one species of livestock could be very misleading to some members of the committee.

On the major markets one man might sell different classes of cattle, but he does not also attempt to sell hogs or sheep.

When they talk about species they talk about a bull salesman or a fat cattle salesman. They are not referring that one man would go from cattle to hog to sheep. That is not done.

Senator JORDAN. They don't do that?

Mr. SCHRAMM. No, not on any market of any size. I would say all terminals would come under that classification.

As far as one species, one man can do better than another.

Mr. Elmer R. Kiehl, dean of the School of Agriculture, University of Missouri, Columbia, Mo., on page 5 of serial K, he made a statement before the House committee, and I believe he submitted a statement here that is similar.

He makes mention that inefficient market agencies with resulting high costs may influence the setting of high charges (subject to P. & S. approval) which restricts the ability of a terminal market to compete with other livestock markets, and by the provisions of this bill improvements favorable to livestock shippers may be expected in two areas; first, lower real costs of marketing through the terminal and, second, improved service.

Gentlemen, these market agencies can't be so inefficient when actually at the present time real costs of marketing through the terminals are the lowest of any method of marketing, including direct selling.

Let me prove this point with statistics. For several years commission rates at terminals, although having regulated rates, have approximated one-half of 1 percent on cattle and 1 percent on hogs.

Add to this the cost of feed, fire insurance, and the stockyards company's yardage charge and the total real selling cost of terminal marketing approximately doubles those figures; namely, the total selling cost is approximately 1 percent on cattle and 2 percent on hogs. Transferred to cost per hundredweight the total selling cost averages approximately 30 cents per hundredweight. Rates at auction markets are not uniform and run considerably higher, usually their charges are from 2 to 3 percent. Direct selling has no real selling costs.

Now, let us look at the complete picture; the packer has procurement costs regardless of where he purchases livestock, and this is indirectly transformed into the producer's selling cost.

A recent research project conducted by the Department of Agricultural Economics at the University of Pennsylvania showed that procurement costs of a packingplant located near a terminal market and purchasing solely on the market were 16 cents per hundredweight. When the packingplant's buyer traveled from farm to farm in quest of supplies his procurement costs were 67 cents per hundredweight. Auction market procurement costs fell in between these figures. If auction selling costs and buying costs are higher, naturally their total real marketing costs are higher, and without any real selling costs, direct selling still has the exorbitant total market cost of 67 cents per hundredweight. The loss occasioned by failure of the livestock owner to receive payment to the extent of millions should be added to the total cost to the livestock producer. This legislation, gentlemen, is not being

opposed by a group of weak, inefficient market agencies who fear the threat of being expelled. It is being opposed to by the large, efficient, and fully staffed firms who have no reason for this particular fear. It is opposed by the river markets group, and the livestock exchanges of Omaha, Sioux City, Chicago, St. Louis, and Kansas City. If these organizations thought that this proposed legislation would increase terminal market receipts and enable them to more efficiently cope with the decentralizing trend, what possible reason could they have for opposing it? They must fear from past experience that policies adverse to their interests recommended by stockyard owners would be put into effect if granted the power authorized in this bill. Some of these regulations feared have already been recommended and suggested by various stockyard owners; namely, (1) to dictate when, where, and how often market agency personnel should solicit business; (2) dictate how many salesmen each market agency should have; (3) operate an auction, which would admit superiority to our private treaty system, and would be so time consuming for any volume that it would be inefficient, and it could replace market agency personnel with an auctioneer, whereby the market agencies could possibly be forced to give up 46 cents of the rate which they receive for their selling function of one bovine animal. (This fact was pointed out by Mr. Walter on page 11 of his letter to Mr. Colmer) and (4) a demand of a guaranteed minimum yardage to be paid by a market agency as proposed by the owners of the National Stock Yards and brought to the attention of the committee by Mr. Woodson in his statement on page 78 of serial K.

Senator JORDAN. Is there any auction now, any cattle sold through these yards at auction?

Mr. SCHRAMM. At Chicago?

Senator JORDAN. Any of the big yards?

Mr. SCHRAMM. Yes. Once a year we have a feeder auction at Chicago. I understand other yards have some feeder auctions. I am not aware that they are at terminal markets also operating a fat cattle auction.

Senator JORDAN. You don't have any daily auction of cattle there?

Mr. SCHRAMM. No.

Senator JORDAN. That is what I wanted to know.

Mr. WALTER. No, sir.

Mr. SCHRAMM. I can sincerely say from my experience that most producer complaints over the years have been about the laxity and inefficiencies of the stockyard companies rather than the inefficiencies of the market agencies. Namely, complaints that trucks had to wait in line longer to unload than it took to drive to Chicago; pens in bad condition for lack of cleaning; and abusive language and treatment by stockyard company employees handling unloading of livestock. For years stockyard company officials were independent with the opinion that livestock had to come there; whereas, market agencies always had the competition of each other. I am happy to say that in recent years some efforts by stockyard owners have been made to correct these evils.

Considerable testimony in serial K concedes that where there are strong exchanges such as in the River Markets Group, there is no need for this type of legislation. Why, then, saddle us with unilateral control which could possibly be to the detriment of our market?

That, gentlemen, concludes my testimony pertinent to the issue at hand; namely, the proposed amendments contained in S. 1149. I would, however, appreciate the chance to point out a few facts that are definitely relevant and vital to the intent of this bill.

Mr. Purcell in introducing this bill points out a basic law of economics on page H1906, Congressional Record, House; namely:

As the number of livestock sold under other than competitive conditions increases, there is less likelihood for any livestock to be sold at its true value.

On the same page Assistant Secretary of Agriculture Mehren states:

If (terminal) markets should cease to provide effective competition for livestock, the need for them would be for the most part, be eliminated. This would be a serious, if not a fatal blow to the efficient functioning of open competition throughout our livestock marketing system.

Mr. Leonard of the Department of Agriculture on page 8 of serial K states that—

Diluting packers buying needs can also lead to lower prices received by shippers who are using the public market.

You have the Department's opinion of the necessity of having volume at the central competitive markets; however, on page 9 of serial K Mr. Leonard states:

Our Department does not favor any system of marketing over another. But we would like producers to have available a reasonable number of marketing alternatives.

Mr. Campbell of the Department of Agriculture states on page 22 of Serial K that—

In looking ahead 10 to 15 years, some economists, including economists in our own department feel that terminal markets may not be here 15 years from now.

Following their arguments stating the necessity of terminal markets, I claim that the Department of Agriculture is bound by law to support the terminal market, and stop any system that is giving the packer a chance to dilute his buying needs.

I refer to the findings in the "Report of the National Commission on Food Marketing, June 1966," page 87:

The Packers and Stock Yards Act 1921 (U.S. Code, Title 7, sections 189-299) is among the important laws specifically designed to preserve competition in food marketing and distribution.

On page 86:

Specific regulatory legislation in the food industry has typically been given to the Department of Agriculture rather than the antitrust agencies. * * * But, since the subject here is the economic regulation of the food marketing system, attention is directed toward those regulatory statutes whose major objective is the maintenance of competition, whether accomplished by eliminating anticompetitive practices or by creating an orderly marketing system for agricultural commodities.

References are made to the Sherman Act of 1890 and the Federal Trade Commission and Clayton Acts of 1914. These acts were intended to inhibit any method of competition that might adversely affect the competitive process, and to inhibit business activities which had the effect of substantially lessening competition or tending toward monopoly.

They conclude on page 85 that these acts' broad prohibition against unfair methods of competition and unfair and deceptive acts and practices indicate that there is no lack of substantive authority to insure a market free of crippling and undesirable trade practices. Some parties argue that we can't infringe upon the rights of the producer to choose his method of marketing; however, doesn't it make a difference who initiated this system, the producer or the packer, and for what purpose? The packer initiated it to avoid the squeeze of the market's competitive forces, when the so-called small packer's position was strengthened by the wide use of Federal grades for beef, which makes it easy for small and new firms to compete for customers on equal terms with packers whose trade names were already well known. Most of the livestock feeders today realize the evils and fear the results of direct buying, but feel that the system is firmly established and that they have to live with it.

Some of the reasons stated for the validity of the Packers and Stockyards Act of 1921, in the *Stafford v. Wallace* case in 1921, are prevalent in direct buying today. First, packers controlling facilities for weighing. Most livestock sold direct today are weighed on the packer's scales.

Senator JORDAN. Do they pay for them on the weight as they enter the packer's yard, or wherever they receive them?

Mr. SCHRAMM. At the packinghouse there is a scale and a limited amount of pen space to receive direct shipments.

Senator JORDAN. That is the weight they pay on?

Mr. SCHRAMM. In some instances. In some instances they weigh and pay that weight, or there are methods, too, where they weigh and the understanding of the sale is there would be a pencil shrink, anywhere from one to four, so they are weighed and then also the shrink is deducted.

Senator JORDAN. What I am trying to get at is—are they weighed at the stockyards?

Mr. SCHRAMM. No; at the packer's own facilities. His own plant, not at any neutral stockyard; no.

Senator JORDAN. They are not weighed at all in the stockyards?

Mr. SCHRAMM. Not on a direct sale. One a direct sale they go directly to a packer, and they are weighed on his scales.

Senator JORDAN. Other testimony that was offered here concerned the services rendered by the stockyards, such as weighing, feeding, and so on.

Mr. SCHRAMM. Yes.

Mr. WALTER. That is at the terminal market.

Mr. SCHRAMM. That is the cattle consigned to a terminal market to be sold. They are all weighed on stockyard sales.

Senator JORDAN. Does the packer who buys that accept that weight or does he weigh them again?

Mr. SCHRAMM. Oh, no; he definitely has to pay on that weight.

Mr. WALTER. Title passes as they cross the scale.

Senator JORDAN. I see.

Mr. SCHRAMM. Second, "wiring on" which referred to a feeder not being satisfied with one market would ship east to another market. Packers would have advanced information on the shipment and not compete or bid any more at the second destination. Today packer-buyers bidding on the livestock in the feedlot have information, mostly through the truckers, when a man is shipping his livestock to market, and generally will not compete on this livestock on the market, and in several instances have been waiting at his farm when he returned from the market to buy the remainder of his livestock. Third, cases of collusion among country buyers to set up a feeder by intentionally bidding low have been noted. Fourth, the misleading effect of the yellow sheet which very often quotes limited sales or undesirable lots of a certain grade to be standard for the wholesale carcass price. It also does not show the true dead cost of an animal.

There is one other item I would wanted to bring out. There is one good result that could be accomplished. I went into that. This is testimony in regard to market agencies taking buyers off. I did mention that.

In closing I would say the trouble has been that the agency vested with the authority to deal with antitrust problems has failed to examine the procurement pattern of packers in off-market transactions to the detriment of the producer of livestock and to the detriment of the open, free, and competitive terminal market. There is no excuse for an agency not to vigorously and effectively enforce the antitrust sections of the Packers and Stockyards Act to see what percentage of the procurement patterns of packers in off-market transactions offend the statute.

I believe, gentlemen, that we are all aware of the importance of the central competitive markets, and I hope further study of the marketing system will follow.

I thank you.

Senator JORDAN. Thank you, Mr. Schramm.

Do you object to all of this bill or part of it, or are you in favor of some of it, or do you have any amendments that you wish to offer?

Mr. SCHRAMM. In my testimony here I mention that there is one good thing that could probably come out of it. There would be revision of a market agency to take buyers to the country, but this amendment as proposed is not specific. It gives complete unilateral authority to the stockyard company.

Senator JORDAN. Basically, you are opposed to this legislation?

Mr. SCHRAMM. Yes, and Mr. Walter had one solution that he mentioned in regard to Mr. Whitaker's decision where it wouldn't have to be an amendment but put certain words in italic.

Mr. WALTER. In the *Denver* case, a very able decision that was 15 pages long, he just said that those rules should have gone to the Secretary to determine whether they were reasonable or not.

But may I start now, because I have got something to present?

Senator JORDAN. Yes. How long do you want?

Mr. WALTER. Well, I don't know.

Senator JORDAN. If you don't know you won't be able to finish.

Mr. WALTER. What I have got to say is probably more important than any testimony that has been given here, because I was the one that notified Mr. Poage after they had gone to the Rules Committee of certain things that impair the lawmaking process of the U.S. Congress, and I appear here because Senator Dirksen realized—I told him there was no adversary proceeding in this legislation, that it was a stockyard bill, and we are unalterably opposed.

First, I want to identify myself as Ralph A. Walter, past president of the Chicago Livestock Exchange from 1944 to 1948.

Second, that I am a lawyer and at present on the Administrative Law Committee of the Chicago Bar Association.

I am entering this statement in the record.

(Mr. Walter's prepared statement is as follows:)

Mr. Chairman and members of the committee, thank you very much for the privilege of appearing before this committee to express our opposition to S. 1149.

It would appear imperative for an understanding of the Amendments to the Packers and Stockyard Act, 1921, as amended by H.R. 6231, which was amended July 8, 1967 by H.R. 10673, to examine Serial K and the Congressional Record of H.R. 10673, in Vol. 113 No. 155 of the 90th Congress on September 29, 1967 as well as the Report of the National Commission on Food Marketing of June, 1966, based on Public Law 88.354 as amended by the 89 Congress.

Men, who have believed that they were entrepreneurs in the American free enterprise system, who have been the selling representatives of the livestock producer in the United States and sometimes Canada as the price determining market of the United States naturally are interested in the basis for amendments which will change their duties at the marketplace and may seriously diminish their ability to protect their consignor and owner of the livestock and even destroy the private treaty free, open and competitive market.

We believe that the producer of livestock would expect no less from us.

First, I will address myself to the proposition stated by the Department of Agriculture as the proponents of the bill and Mr. Jennings as President of the American Stock Yards Association in Serial K and the Honorable Mr. Latta and the Honorable Graham Purcell and the Honorable Catherine May that the stockyards were monopolies. It so happens that Mr. Bruce Stafford was President of the Chicago Live Stock Exchange and tested the constitutionality of the Packers & Stockyard Act in our behalf and at our expense in *Stafford v. Wallace* 1921, 258 U.S. 495.

Mr. Chief Justice Taft states in his opinion for the court:

"The Packers and Stockyards Act of 1921 seeks to regulate business of the packers done in interstate commerce and forbids them to engage in unfair, discriminating, or deceptive practices in such commerce, or subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or to establish a monopoly in the business.

"The chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells, and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards". (Incidentally on February 27, 1920, in the Supreme Court of the District of Columbia a decree against Swift, Armour, Cudahy, Wilson and Morris and consented to by them enjoined the packers from doing many acts in pursuance of a combination to monopolize the purchase and control the price of livestock * * * and from continuing to own or control, directly or indirectly, any interest in any public stockyard market company in the United States.)

"The Act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumed that they conduct a business affected by a public use of a national character and subject to national

regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn v. Illinois*, 94 U.S. 113 Professor Ernest Freund in his *Standards of American Legislation* at p. 203. It (the elevator business) was nevertheless declared to be affected with a public interest on the basis of the obscure public or common calling of the common law, and the reliance upon certain monopolistic features which distinguished the business as carried on in Chicago was tacitly dropped in a later case coming from North Dakota (*Brass v. North Dakota*, 153 U.S. 391)."

Mr. Justice Shiras (153 U.S. 391) at 403 states:

"Great stress is laid upon expressions used in our previous opinions *Munn v. Illinois* 94 U.S. 113 and *Budd v. N.Y.* 143 U.S. 517"—Such efforts, on the part of judges, to justify to citizens the ways of legislation are not without value, thus they are liable to be met by the assertion of opposite views as to the practical wisdom of the law thus the real question at issue, namely, the power of the legislature to act at all, is obscured."

From the above, it seems the discussion as to the monopolistic position of the stockyards becomes specious and should not be advanced as the basis of returning the stockyard companies back to the private sector and the control of market agencies by the Stockyard companies.

It would also appear important to the producers and owners of livestock and to the stockyards themselves as well as to the market agencies that the real basis of legislative control is recognized as that of a business affected with a public interest. as the Packer and Stockyard Act 1921, is recognized as being directed against the monopoly of packers and Title II—Packers sec. 202 is the antitrust division of the Packer & Stockyard Act.

In *Wilson & Co. v. Benson* 1961 286 F. 2d 891, at 895 Judge Duffy states: "From the legislative history it is a fair inference that, in the opinion of Congress, Sec. 2 of the Clayton Act, Sec. 5 of the Federal Trade Commission Act and the prohibitions in the Sherman Anti-Trust Act were not broad enough to meet the public needs as to the business practices of packers. Sec. 202 (a) and (b) of the Packers and Stockyards Act was enacted for the purpose of going further than prior legislation in the prohibiting of certain trade practices which Congress considered were not consonant with the public interest."

We submit that the Department of Agriculture who is the proponent of the amendments to H.R. 10673 which is now S. 1149, have failed to protect the livestock producer and the free, open competitive markets from the unfair, discriminating or, deceptive practices of packers for which the Packers & Stockyard Act was passed.

I quote from the Report of the National Commission on Food Marketing June 1966 at page 87:

"The packer section seeks protection for industry and public by creating a maximum competitive environment. It operates as a meat industry counterpart of the Sherman, Robinson-Patman and Federal Trade Commission Acts, with similar scope and responsibility. To this end, its major sections forbid discriminatory prices or deceptive practices, conspiracies to allocate supply and fix prices, and conspiracies to reduce competition in other ways."—"From its inception in 1921 until 1958, the act was given very low priority, within the Department, and very little in the way of supervision of competition resulted, especially as concerned meat packers. Then in 1958, Congress amended the Packers & Stockyards Act:—In livestock procurement cases, price fixing, allocation of product supply, and refusal to pay for livestock have been active areas of division work."

Also from the Text of Findings & Conclusions (ch 13) submitted by Congressman Graham Purcell to the National Commission on Food Marketing on May 9, 1966 and also approved by Senator Roman Hruska, Senator Thruston Morton, Congresswoman Catherine May, Mr. William Batten, and Mr. Albert Mitchell:

(P. 185) "We likewise find that the antitrust enforcement agencies are better equipped than the Department of Agriculture to investigate and prosecute antitrust violations."

(P. 108) "By perishable farm foods, we mean livestock.

"We believe it important that an agency reporting directly to the Secretary shall be established within the Department of Agriculture to administer the laws regulating competition in the marketing of perishable farm foods."

I quote from *Swift & Co. v. U.S.*, 196 U.S. 375 (1905). Mr. Justice Holmes states:

"6. In order to restrain competition among themselves as to the purchase of live stock, defendants have engaged in, and intend to continue, a combination for requiring and do and will require their respective purchasing agents at the stockyards mentioned (Chicago, Omaha, St. Joe, Kansas City, St. Louis and St. Paul) where defendants buy their livestock, to refrain from bidding against each other 'except perfunctorily and without good faith, and by this means compelling the owners of such stock to sell at less prices than they would receive if the bidding really was competitive.'"

(P. 400) "We are of opinion further, that the charge in the 6th section is not too vague. The charge is not of a single agreement but of a course of conduct intended to be continued. Under the Act (Sherman) it is the duty of the Court, when applied to, to stop the conduct. The thing done and intended to be done is perfectly definite, with the purpose mentioned, directing the defendant's agents and inducing each other to refrain from competition in bids."

I suggest that such charges can be made in off market transactions and the reach of Section 202 (2) and (b) is more certain and effective than the Sherman Act.

The Department has failed to live up to its obligation to protect the market and the livestock producer but by a pattern of distortion has come forward with amendments which will not add one animal or one buyer to the free and open and competitive market.

To substantiate my charge of distortion, I incorporate in full the 14-page statement made by me to the Honorable William M. Colmer, Chairman, Rules Committee of the House of Representatives, on August 21, 1967—too late to be incorporated in the proceedings before the Agricultural Committee of the House of Representatives so that it may become a part of the record of the Senate's hearing on S. 1149.

(The attachment to Mr. Walter's statement is as follows:)

CHICAGO, ILL., August 21, 1967.

HON. WILLIAM M. COLMER,
Chairman, Rules Committee,
House of Representatives, Washington, D.C.

DEAR MR. COLMER: The first instance where the proponent of Bill # H.R. 6231 which was amended to H.R. 10673 deliberately misled the forum to which he is addressing his arguments that the Packers & Stockyard Act, 1921 as amended, should be further amended so as to fit the present economics of the business is at page 25 of Serial K where the Department of Agriculture offers the rate case of the commission firms at Chicago as a basis for the *Stockyard owners authority* at the present time.

It does not require a great deal of intelligence to understand the rates established by the modified rate order of March 12, 1934, but it is necessary to be *aware* of the existence of the order and apparently the Secretary as well as the Department of Agriculture are *not aware* that the market agencies at Chicago are under a rate order in the light of the Department's statement at page 27 of Serial K. In a *stockyard rate case*, holding that the Secretary had the power to regulate rates, it was also held that although a *stockyard is* "... subject to reasonable regulation in the *public interest, the management and right to control the policy of the business affected* with a public interest belong to its owners." *Acker v. U.S.* 12 F. Supp. 776, 779 (1935) aff. 298 U. 426. *We agree unequivocally with this statement of the law; in fact that is our position here.* This case is the offshoot of Docket 402. I set it before you as the cornerstone of the right of the market agencies to be free of such controls as the Secretary and Department of Agriculture recommends to the Congress through the Subcommittee on Livestock and Grains of the Committee on Agriculture, House of Representatives, Ninetieth Congress.

I will address myself to a centralized, computerized bookkeeping and paying system; to the danger of great monetary damage to the stockyard owner; and because of *free pens*, the activities of market agencies should be subject to reasonable control by the stockyard owner as set forth on page 3 of Serial K in Secretary Freeman's recommendation of Bill 6231 with the added amendments of H.R. 10673. I will also address myself to other statements of witnesses who are favorable to the bill and show how irresponsible these statements and propositions (both of the Secretary, Department and witnesses) are. I shall disclose how they are an imposition on the forum to which they are presented and a betrayal of the integrity of the lawmaking process.

To lay the foundation, I will first set out the items, found by Secretary Wallace, which compose the total rates on one bovine species, one hog, one sheep, as follows:

BOVINE SPECIES

Items found by Secretary composing total rate	Value or costs as found by Secretary, 1932	Percent of rate	Yield of present rate	Lawful rate on same basis as existed under order as applied to 1932 business	Index or source applied in lawful rate
Salesmanship.....	\$0.1667	31.00	\$0.4650	\$0.5013	Price index.
Yarding salaries.....	.0725	13.50	.2025	.3567	Wage index.
Yarding expense.....	.0075	1.40	.0210	.0225	Price index.
Office salaries.....	.0750	13.90	.2085	.2255	Do.
Office expense.....	.0375	7.00	.1050	.0700	Modified price index.
Business getting and maintaining.....	.0390	7.20	.1080	.1240	Formula as used and allowed by 1934 findings.
Administrative and general expense.....	.0150	2.80	.0420	.0452	Price index.
Insurance.....	.0085	1.60	.0240	.0085	
Interest.....	.0080	1.50	.0225	.0098	Income tax allowance.
Total cost.....	.4297	79.90	1.1985	1.3636	
Profit:					
To cover management.....	.0350	6.50	.0975	.1052	Price index.
To cover uninsurable risks.....	.0040	.70	.0105	.0120	Do.
Total reasonable cost and reasonable profit.....	.4687	87.10	1.3065	1.4808	
Reasonable spread as found by Secretary of Agriculture.....	.0691	12.90	.1935	.2079	Do.
Permissible rates.....	.5378	100.00	1.5000	1.6887	
HOGS					
Salesmanship.....	\$0.0414	21.50	\$0.1075	\$0.1245	Price index.
Yarding salaries.....	.0280	14.55	.0728	.1377	Wage index.
Yarding expense.....	.0004	.21	.0010	.0012	Price index.
Office salaries.....	.0250	13.00	.0650	.0753	Do.
Office expense.....	.0150	7.80	.0380	.0280	Modified price index.
Business getting and maintaining.....	.0120	6.20	.0310	.0388	Formula as used and allowed by 1934 findings.
Administrative and general expense.....	.0155	2.86	.0143	.0166	Price index.
Insurance.....	.0025	1.30	.0065	.0025	
Interest.....	.0025	1.30	.0065	.0030	Income tax.
Total cost.....	.1323	68.72	.3436	.4276	
Profit:					
To cover management.....	.0125	6.51	.0325	.0375	Price index.
To cover uninsurable risks.....	.0015	.77	.0038	.0045	Do.
Total reasonable cost and reasonable profit.....	.1463	76.00	.3800	.4696	
Reasonable spread as found by Secretary of Agriculture.....	.0461	24.00	.1200	.1386	
Permissible rates per Secretary's rulings.....	.1924	100.00	.5000	.6082	

In the above 1934 orders, the Secretary found it is reasonable to associate a salesmanship performance of 27,000 head or above of animals of the bovine species with a salary of \$4,500 and up; a salesmanship performance in the case of hogs of 87,000 head and above with a salary of \$3,600 and above; and a salesmanship performance in the case of sheep of 270,000 head and above with a salary of \$4,000 and above.

The average weekly receipts of livestock at Chicago for the first 7 months of 1967 has been 24,300 cattle, 29,000 hogs and 3,184 sheep.

From the above, it is readily seen that Mr. Wallace expected the hypothetical salesman on such a livestock market should number 47 cattle salesmen, 18 hog salesmen and one sheep salesman.

The present yield of the tariff rates at Chicago are approximately \$1.50 for one bovine species, 50¢ for one hog and 33¢ for one sheep.

Such salesmen at the present rate yield would receive an annual salary of \$12,155 as a cattle salesman, \$9,532 as a hog salesman and \$16,200 as a sheep

salesman. However, at the present rate of weekly sheep receipts based on the actual sheep arrivals to August 1, 1967, such sheep salesman could only receive \$9,934 on the basis of $6¢ \times 165,568$.

The actual market experience at this time however is 88 cattle salesmen and 30 cattle yardmen; 28 hog salesmen and 6 hog yardmen and 3 sheep salesmen. Applying the items of salesmanship and yarding salaries to the present rate yield on cattle results in $.6675 \times 1,263,600$ cattle or \$843,453.00 or an average annual salary of \$7,148 for 118 cattle personnel; the same items to the present yield on hogs results in $.1803 \times 1,508,000$ hogs. However, the \$18.03 must be reduced by $2\frac{1}{2}¢$ which the commission firm pays the stockyards company to deliver the hogs to the pens assigned to the particular firm so that $.1553 \times 1,508,000$ hogs produces \$234,192 or an average salary of \$6,888 for the 34 hog personnel of the market.

Most young college graduates now start at \$8,000 and up so it becomes futile to say as Mr. Jennings does on page 31 of Serial K "We cannot hope to attract this young educated producer to our way of doing business unless we have salesmen who are equally capable and as current in their knowledge."

Now as to the statement of Dean Elmer R. Kiehl at page 5 of Serial K "Because market conditions affecting different classes of livestock do not change together it is often necessary for an individual to specialize in selling one class of livestock." At Chicago where the context of the receipts are approximately 10% cows, 15% heifers and 75% steers, the Wallace formula would permit 5 cow salesmen, $7\frac{1}{2}$ heifer salesmen and $37\frac{1}{2}$ steer salesmen. Dean Kiehl's statement becomes meaningless when applied to actual conditions. His statement at page 5 of Serial K "Inefficient market agencies with resulting high cost may influence the setting of high charges (subject to P & S approval) which restricts the ability of a terminal market to compete with other livestock markets—costs of livestock marketing may be greater than they need be if some high-cost market agencies were to withdraw from business" is absurd. Secretary Wallace deliberately designed the rate so this could not happen; commission firms who cannot operate within the rates permitted go broke.

There are 40 registered commission firms in contrast to 106 firms operating in 1932 who now handle cattle and hogs at Chicago. There are less than 8 firms registered to handle sheep. In 1932, the average weekly receipts of cattle were 38,572, of hogs 126,967 and of sheep 76,196.

Such thinking as Dean Kiehl's and of Mr. N. K. Carnes at page 74 "One such rule that we desire to see placed in effect is the one requiring every market agency to have in its employ a qualified salesman for each species of livestock handled and sold," results in attempts to insist on 2 hog salesmen to a firm as was insisted on by the Stockyard Company at Chicago within the year or go out of business. It becomes obvious when one understands the items composing the total rate found by Secretary Wallace that a stockyard regulation which would require 2 hog salesmen for a firm to remain in business actually becomes a tax on the right to do business.

The commission rate as set up, $1,508,000$ hogs \div 87,000 warrant under the Wallace hypothetical salesman, 18 hog salesmen at Chicago.

Another type of regulation by the stockyards company under the proposed legislation which commission men fear is as the St. Louis Livestock Exchange stated at page 78 of Serial K "One such regulation would have required every market agency which did not pay to the stockyard owner a stipulated amount in yardage charges annually to pay over the difference upon pain of being excluded from the stockyard." Even more apparent than the example of the requirement of 2 hog salesmen, this regulation would be a tax on the right to do business at the stockyard. If the ratemaker were to allow such charges in the rates, it would be an unfair burden on the consignor. It is a problem which parallels the judgment that a private business cannot be benefited by the taxing power (*Loan Association v. Topeka* in 1875 (20 Wall 635)).

As the right to engage in a traditionally lawful business, the market agency will be subjected to the burden to defend such right by spending his money to upset such a stockyard regulation.

At page 19 of Serial K Mr. Kleppe. Would it be helpful if we were to amend this bill to state that the Secretary's review is final?

Mr. Leonard. We have never asked for that authority. We have always felt that if an individual believes the Secretary's decision is wrong that he should have the right to appeal to the courts.

I believe the members of the Sub-Committee who are not lawyers should understand more of what Judge Rarick undoubtedly had in mind at page 10 of Serial K when he said "These words 'reasonable and nondiscriminatory' I find very flattering, but just what they mean I do not know." I quote Professor Ernest Freund from his book on Administrative Powers over Persons and Property at page 88, in regard to the conferring of broad powers of discretion.

"Another form of emphasizing discretion is by referring for the exercise of power to the widest scope of considerations, such as public interest (advantage of, or detriment to, the people) or to tendencies instead of present defects * * *. Such a form may make judicial control difficult or impossible.

At page 100, Professor Freund observes: "The foregoing review tends to establish 2 functions of discretion (in addition to its service as an instrument of flexibility) only one of which is perhaps readily conceded; it may be a 'trial and error' method of establishing a definite rule, and it may be a disguised form of setting up a standard not yet reached, or perhaps not fit to be set up, as the law of the land."

I submit that the proposed amendments do this very thing—set up standards which are not fit to be set up as the law of the land.

Now as to Secretary Freeman's statement at page 3 of Serial K, "For example, an addition to the need to control the matters referred to above, some stockyard owners have determined that substantial savings could be effected by a centralized, computerized, bookkeeping and paying system. A single bookkeeping and paying system at a stockyard might replace 25 to 50 separate accounting systems, leading to reduced marketing costs. Such a statement indicates that this is a stockyard sponsored bill rather than of the Secretary and Department of Agriculture. How else can the statement be accounted for as Donald C. Campbell, Acting Administrator in the Federal Register of June 6th, 1967 proposed an amendment to regulation 201.61 of title 9 of the Regulations under the Packer & Stock Yard Act, 1921, as amended which would forbid the clearing of one market agency by another market agency, thereby requiring 2 bookkeeping and paying systems instead of one.

In order to reduce the substantial savings to something tangible, I examine Secretary Wallace's items as to office salaries and office expenses which at the present time produces $31.35¢ \times 1,263,600$ cattle and $20.80¢ \times 1,506,000$ hogs or \$396,138 and \$313,248 respectively for a total of \$709,386. There are at present at Chicago 40 firms of which 32 rent office space of about 60 units at \$85.00 monthly and 64 office employees of whom 32 answer phone calls and write the letters at a weekly way of \$100 or more. The annual rent approximates \$61,000 and the annual wages of \$166,400 for 32 basic employees for services which do not include bookkeeping. \$709,386 minus \$227,600 becomes \$481,786 to pay for the use of such computer. The question remains most conjectural as to the money saved, if any. If there is a saving, the further question remains to whom it must first be allotted—to the business getting and maintaining item which has a substantial deficit as shown below or to the item of reasonable spread and the proper lawful rate which the Department of Agriculture has denied to the commission firms as set out in the chart on bovine species of an estimated $18.87¢ \times 1,263,600$ cattle and $10.82¢ \times 1,506,000$ hogs which results in \$238,461 and \$162,949 respectively or a total of \$401,390 for the year 1967. This amount would help to make the commission business more attractive to young men.

There also remains one other item of the rate to be examined and that is business getting and maintaining which amounts to $.1080¢ \times 1,263,600$ cattle and $.0310$ cents $\times 1,506,000$ hogs or \$136,462 and \$46,566 or a total of \$183,028. One would reasonably expect that of 116 salesmen at the market $\frac{1}{2}$ or 39 would be out 3 days and driving an average of 1000 miles to get and maintain business. This would result, on the basis of 1000 miles at 10¢ per mile, in a car expense of 100×39 and a motel and meal expense of 25×39 or \$3900 and \$975, respectively for a total of 4875×52 weeks of \$253,500 which results in a deficit of \$70,472. No allowance has yet been made for telephone calls which should be charged to business getting and maintaining but that expense must be substantial. As stated above, this deficit must be charged to the profit, if any, of some other item of the rate structure.

Next, I will address myself to Mr. Freeman's statement at page 3 of Serial K that "Stockyard owners presently have broad powers to manage and control their

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stockyards. However, the precise extent of their authority is subject to serious question. Any mistake by a stockyard owner as to his authority, resulting in preventing a person from operating in a certain manner on his stockyard, could result in great monetary damages imposed against the stockyard company."

This statement in fact lacks foundation and borders on an untruth. I challenge Mr. Freeman to point to one judicial decision where great monetary damages were imposed against a stockyard company.

I invite examination of United States Code Annotated Title 7 U.S.C.—208 Agriculture, Sec. 307 "just, reasonable, and non-discriminatory" the following cases are cited:—

Serial K Page 7:

Producers v. U.S. 356 U.S. 282 (Stock Yards Co. v. Market Agency).
Farmers L.S. Com. Co. v. U.S. 5 & Fed. 2d 375 (1932), boycott case of commission firms.

Sullivan Co. v. Wells 89 F. Supp. 137, owner of cattle v. commission firm.

Birmingham v. Rice Bros. (1947) 26 N W 2d 39, Market agency v. shipper of livestock.

Inghram v. Union Stock Yards (1937) 303 U.S. 1946, Stock Yard Co. v. dealer to collect reweigh charges.

Midwest Farmers v. U.S. 34 F. Supp. 91 (market agencies and employees forbidden to purchase own consigned livestock).

Hyatt v. U.S. 276 F 2d 308 (Commission firm false records forbidden).

Berigan v. U.S. (1958) 257 F 2d 852 (commission firm forbidden to buy feeders sold to feeder dealer on his own orders).

Kirk v. St. Joseph Stockyards 206 Fed. 2d 823, Stock Yards Co. not liable to owner of sheep destroyed by dogs.

Serial K Page 27:

Farmers Union L. S. Assn. v. St. Paul Union Stockyards 97, F. Supp. 539 (assignment of pens at Billings, Mont. on basis of size rather than seniority is O.K.).

Wallowa Natl. Bank v. Sevier Com. Co. 287 U.S. 575. (Commission firm liable as to proceeds to customer on failing to follow instructions.)

Serial K Page 27: Carnes v. St. Paul Union Stock Yards, 1928—175 Mim. 294. (Stockyard company permitted to exclude on basis of Exchange finding of dishonesty and suspension of 30 days from St. Paul L. S. Exchange. Stockyards Co. not allowed to bar from yards when he found employment with a responsible employer.)

As will be noted, there are 12 cases listed as under Sec. 308. Most of these cases do not involve a Stockyard company. As noted in the margin, the Department cited 3 of these cases as judicial decisions involving the present authority of stockyard companies at page 26 of Serial K. Two relate to the relationship of landlord and tenant between the Stockyards Co. and the market agencies. The other Producers involve the same relationship and the right to exclude because of off the market transactions.

The 1966 Supplement of United States Code, annotated lists one Case McClure v. E. A. Blackshare Co. 231 F Supp. 678—sec. 208 unreasonable or discriminatory practices did not confer on Secretary, jurisdiction over alleged nonpayment where bill was *disputed*.

Title 7 U.S.C. sec. 213 or sec. 312—prevention of unfair, discriminatory or deceptive practices cites 7 cases of which 2 are listed under sec. 308:

U.S. v. American Livestock 279 U.S. 435, boycott activities of a commission firm.

Mirotnik v. U.S. 64 Fed. Supp. 635 (poultry case-license).

U.S. v. Donohue Bros. 59 Fed. 1019 (relates to commission firms use of proceeds).

Cited under sec. 208: Midwest Farmers v. U.S. 64 F Supp. 91 (market agencies and employees forbidden to purchase consigned livestock).

Cited under sec. 208:

Berigan v. U.S. 257 Fed. 852. (Market agency forbidden to sell and then buy the feeders he had sold to feeder dealer to fill his own orders).

U.S. v. Brown 4 F 2d 271—Government sought to prosecute for conspiracy in boycott by commission firm.

Aikens v. U.S. 282 F 2d 53—Secretary forbids dealer turn sys. Which clarifies the *need of trial de novo* by stating "Responsibility for efficient regulatory operation of matter is in Secretary solely—review is limited to

errors of law and to the *consideration of sufficiency of evidence* forming foundation for factual findings, but *weight of evidence and inferences to be drawn therefrom are for judgment of expert and administrative body.*

The 1966 Supplement of United States Code annotated shows Capitol Pkg. Co. v. U.S. 350 Fed 67 which was not a case involving a stockyard company. (Market agency could order in cattle)

I submit that Mr. Freeman's statement and Mr. Campbell's response to Mrs. May at page 13 of Serial K "Some of these have been filed in the past" is a gross misrepresentation to the committee and a fraud on the Sub-Committee and on the integrity of the law making process.

Mr. Freeman cites Denver Stock Yard Co. v. Livestock Assn. 256 U.S. 282, 289 "If the act does not fit the present economics of the business, a problem is presented for Congress." But again, he does not quote the case to include Justice Douglas at page 288 "and the legal problem here would be quite different if the Act envisaged stockyards as strictly private enterprise." The proposed amendment of sec. 302(a) (7 U.S.C. 202(a) by the words *managed for profit or non profit* as a public market for livestock producers, feeders and buyers makes the Stockyard companies a private enterprise business and not a public utility. The same concern is not expressed for market agencies who "*subject to reasonable regulation in the public interest, the management and right to control the policy of a business affected with a public interest belong to the owners* Acker v. U.S. 12 F Supp. 776, 779. The Department of Agriculture now propose that such reasonable regulation of a business—namely a commission firm which is subject to regulation because of the public interest shall be exercised by a private business—provided the amendments are passed by the Congress. I suppose the next step will be to get the provision as to rate control of Stock Yard Companies repealed as they will no longer be a public utility and subject to rate control. *No longer a deterrent of market costs.* If the purpose of the bill is to give the Stockyard Company the right to exclude commission firms who are rendering service on other markets or in off market transactions is really the purpose of the amendments as the statement of Mr. Freeman and of Mr. Leonard would indicate but Mr. Campbell's statement at page 24 would limit the implications of the amendments to country selling, I suggest that both aspects of control might be accomplished by changing to italics in section 304 (7 U.S. 205) at such stockyard to give effect to Mr. Justice Whittakers very able dissenting opinion of 15 pages in Denver Stock Yard v. Livestock Assn. 256 U.S. 282.

We are unalterably opposed to the amendment to give the Stock Yards Company control of market agencies who are the seller's representatives at the market. Mr. Leonard's statement at page 9 "our Department does not favor any system of marketing over another" is contrary to Bowles v. Albert Glauser 61 F. Supp. 428 discussed later. It is also contrary to the views of the late Senator Joseph C. O'Mahoney of Wyoming. The following is an excerpt from his special "Economic Freedom and Control of the Market Place," delivered in 1957 at the Ninth Annual National Pasture-Forage-Livestock Conference at the Livestock Exchange Building, Omaha, Nebraska.

"The Packers and Stockyards Act was conceived by Congress for the purpose of breaking the hold the packers were alleged to have held over the price the producers must be willing to receive and the price the consumers were compelled to pay. It was felt to be against the public interest for a small group to have control over the market—a market for the animals on the hoof in one instance and the market for the meat upon the other. This was a measure in full agreement with our national tradition of freedom both political and economic. It was in harmony, with the ancient common law, even with the law of William the Conqueror who, making a gesture of friendship to the conquered tradesmen of England, gave approval about 900 years ago to a law which required the sale of livestock to be made in the city and before "three faithful witnesses." Somebody must have known from experience long ago how *both producer and the terminal market may be exploited by direct buying* which short cuts the public market. This was a practice which under the *common law* was called "forestalling" and regarded an unfair practice."

Mr. Bennett at page 70 of Serial K referred to the policy statement as sec. 203.80 of Part 203, Chapter II Title 9, Code of Federal Regulations, subparagraph "(C) The Consumer and marketing service does not favor or endorse any one system of livestock marketing over any other system of marketing." This is very interesting as to the interpretation of the Department's duty when in Chester Bowles Price Administrator v. Albert Glauser, Dist. Ct. E.D. Missouri E.D. July 21, 1945 61 F. Supp. 428, the Federal Judge said "It is the *declared public*

policy of the Government to *maintain* public stockyards Title 7 U.S. C.A. sec. 181 et seq. Governmental supervision of public stockyards has for one of its prime purposes the maintenance of open and free competition among buyers, aided by seller's representatives."

Again quoting from sec. 203.8 subparagraph "(e) The Packers and Stockyards Act does not prohibit a stockyard owner from changing the character of the market business. Nothing in the act prohibits a stockyard owner from converting his operations from a terminal market to an alternative method by doing business. Nothing in the act prohibits the stockyard owner from operating the new business alone or in association with other persons, including some or all of the market agencies previously engaged in business at the terminal stockyards." My only comment—the Department as proponent of the amendments is *most generous* with my life and fortune in giving it away to a stockyard Company.

Besides being protected at common law, it may be vital to the United States government that the market be protected because of the necessity of centralized control at the market place to insure observance of controls and the saving of man power in time of national emergency—which seems ever present with us. Another paramount consideration in preserving the terminal market is to insure a supply to the small packer as well as a place for the small producer to sell his livestock on an equal basis with commercial feedlots.

I must hasten to add that at Chicago, we have only temporary fears that the Union Stock Yard and Transit Co. will become an auction or the selling agency itself because their view is a matter of record as expressed by the General Manager of the Union Stock Yard & Transit Co. in *Swift v. U.S. & The Interstate Commerce Commission—No. 50-C-1017, 1951, Northern District of Illinois, E.D.* "Carried through to its logical conclusion, the loss of packer directs and a resulting reduction in open market receipts, will bring about a vicious cycle of higher marketing costs per animal and lighter and lighter receipts. The result can be only one thing. As the net earnings of the Stock Yard Company become smaller and smaller, so as to yield little or no profit, the owners of the property will probably have to find some other use for it than as a livestock market, and the great Chicago livestock market would then become a thing of the past."

The above leads to the consideration of the tariff of the stockyards company and how it leads to the search of other revenues. The rate is based on variables due to value of property and the volume of the livestock received. The rate of a commission firm is based on the cost or value of a personal service in relation to the rest of the economy and not on the number of head of livestock received at the terminal. If it were otherwise, he would be getting less or more than what he is entitled to take from the economy.

In *St. Joseph Stock Yards Co. v. United States* 56 Supreme Court Reporter 720, 723 "(1) First. The Secretary's Findings—the findings are elaborate. They include detailed findings with respect to the services rendered by Appellant and its rates, the used and useful character of appellants' property, the valuation of used and useful land, the value of appellant's structures on the basis of cost of reproduction new less depreciation, working capital, going concern, fair value on the basis of the facts found, fair rate of return, reasonable operating expenses (including repairs, depreciation and taxes) necessary revenue, and volume of business." The difference in the rate structures and the relationship to total market cost is a temptation to an ill advised revenue seeking stockyard company to eliminate the market agency without regard for the best interest of the consignor of the livestock.

At Chicago, within the past 4 years, the Stockyard Company in the quest for more revenue, insisted on opening its own auction on a Thursday but this was defeated at the last minute by a determined stand by the market agencies that they would not give up their selling function for which they receive 46c of the rate for the sale of one bovine animal to an auctioneer. The market agencies could not in good conscience receive this money if they did not perform the service. The foregoing points up to the tragedy of giving to the Stockyard Company the right "to require those persons engaging in or attempting to engage in the purchase, sale, or solicitation of livestock at such stockyard to conduct their operations in a manner which will foster, preserve, or insure an efficient, competitive public market."

Who is going to ask the stockyard company to provide a suitable pen for the consignor, water in available and ever present supply, edible hay, corn, oats, alfalfa and straw, weighing services which does not permit delay with the resulting shrink. I can assure you that it is not the Department who is anxious to perform these duties under the statute but the independent and free market

agency who is the consignee and agent of the owner of the livestock who must face up to the full measure of responsibility if the principal is to secure the full value of his livestock. 9 Fed. Supp. 864 "The very object of the existence of the stockyards is to provide the place and facilities by means of which buying and selling, that is the changing of title, in livestock may be carried on. (Union Stock Yards Co. of Omaha Ltd. v. U.S.)

I would also cite *Producers v. Denver Union Stockyard* in U.S. Court of Appeals. Tenth Circuit Feb. 15, 1957. The stockyard company, being a public utility, has the inherent right to adopt regulations in regard to those phases of its business which are secondary to its major functions. These are set out in Docket 298 (St. Joe) and Docket 425 (Sioux City) as 1. to provide a market place; 2. loading and unloading docks; 3. safeguarding of the cattle. These are duties of the bailee to the bailor. They are *not the duties* of the consignee to the consignor which are the 4 duties of an agent to his principal—loyalty, skill of the market, obedience to instructions and a full disclosure to his principal.

I next address myself to Secretary Freeman's statement at page 3. "Market agencies engaged in business at a terminal stockyard are provided with *free pen facilities* furnished by the stockyard owner. Their activities at a stockyard should, therefore, be subject to reasonable control by the stockyard owner. I refer to *Houfburg v. Kansas City Stock Yard Co. of Maine* 283 S.W. 2d 539 Supreme Court of Missouri, 1955 and cited by the Department at page 26, Serial K which belies Secretary Freeman's statement at page 542 where Holman, Commissioner states: "It appears that the relationship of landlord and tenant existed between the Stockyards Company and Producers." The only substantial evidence of the details of the rental agreement came from Mr. Dillingham, President of the Stock Yards Co. who testified that in September 1949, the Company had an oral "leasing agreement with Producers whereby office space and 106 pens were provided for a rental of \$285 a month plus a charge per head on each head of livestock placed in the pens." Page 544, the very page the Department chose to cite, a dicta as to monopoly and the right of control of the stockyard company which was not relative to the personal injury suit by the employee of the tenant, the commissioner stated more in detail, we think that under the Act this defendant was required to have pens available for the use of shippers who desired to market or purchase livestock without using the services of a commission company. It also had a duty to furnish facilities to market agencies and dealers."

I submit that, although this is not a quasi judicial proceeding, but a legislative proceeding to allow Congress to perform one of its most important functions—which relate to its very right to be—the production of law which has the inherent quality of law. The standard required from the Department in this proceeding should be no less than Mr. Chief Justice Hughes stated in #581—October Term 1937 in the *Morgan Case* page 5, "Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." At page 7 "the breadth of the Secretary's discretion under our rulings applicable to such a proceeding (*Tagg Bros. & Moorhead v. U.S.* 280 U.S. 420; *Acker v. U.S.* 298 U.S. 426) places in a strong light the necessity of maintaining the essentials of a full and fair hearing, with the right of the appellants to have a reasonable opportunity to know the claims advanced against them." Page 8 "The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must *accredit* themselves by acting in accordance with the cherished judicial tradition of fair play.

I would dispose of Mr. L. Blaine Liljenquist statement at page 66 and the credence of his testimony. What a wonderful philosophy—put the other fellow in a strait jacket but don't do it to me! "Be sure to enact under a closed rule."

As to Mr. Long at page 61 of Serial K who wants everyone at the market in his mold; he is advancing the theory of closed competition for market agencies. The First Amendment protects the competition of ideas. Mr. Long's philosophy believes that size is all important to efficiency. That great little black man of great heart and great staying powers and of great humility, George Washington Carver did it all by himself and by his knowledge made possible the great industries which have contributed so much to the wealth and comfort of the people of the United States. The exponent of size and organization—says George Wash-

ington Carver should never have been, as all the great things of life have been accomplished by the organized and regimented groups of specialists. George Washington Carver came from Missouri, Kansas and Iowa where the young men came who started most of the commission firms at Chicago. They did not know they were not supposed to do 5 men's work; to start small to become big.

All of these sponsors and proponents of the amendments to the Packer & Stockyard Act, 1921, as amended do not believe that competition is the great regulator that will and can eradicate inefficiency and ineffective selling more effectively than any stockyard company or institutional method of control.

In closing, I submit that here we have all the ingredients which that remarkable teacher of administrative Law, Ernst Freund foresaw 50 years ago in his Standards of American legislation stated at page 102 :

"In view of the absence of a sharp line of demarcation between business that should be free and business that may be placed legitimately under qualification tests, it would be almost impossible to make a satisfactory constitutional issue upon the result of legislative judgment *fairly invoked* and *fairly exercised*. Practically the entire difficulty lies in the *diversion* of legislative power to improper ends. No other phase of legislation presents this *sinister* aspect as strongly as this one. It is not generally a question of legislative good or bad faith, but in most cases it is evident that the legislature has yielded too readily to *specious* arguments advanced by interested parties and has not sufficiently appreciated the more remote but more important general interest of the *freedom* of pursuit of livelihood."

I submit that the Secretary and Department have failed to make a case for their amendments. Their general statements were deceitful and deliberately misleading and do not measure up to the rudiments of fair play to which the Congress is entitled in a proceeding of this nature where the lives and property of free men are at stake.

Respectfully submitted.

RALPH A. WALTER.

Mr. WALTER. Mr. Chairman, just give me about 10 minutes.

Senator JORDAN. I could do that.

Mr. WALTER. Just give me 10 minutes.

Senator JORDAN. All right. I could do that.

Mr. WALTER. I would ask your permission, this is going in the record, I hope.

Senator JORDAN. The buzzers you hear mean we will have to finish the hearing soon.

Mr. WALTER. To depart from my prepared statement, I want to discuss some matters which disturb me and I believe will disturb you greatly that come from the testimony of the proponents of this bill.

The first thing is in regard to the standards that this bill will give the stockyard company the right to ask of a marketing agency.

The next thing is that the proponents have presented a pattern of disorganization that doesn't become the Department of Agriculture.

I question the authenticity, fairness, and scholarship of four statements they have made.

That stockyard companies give market agencies free pens.

Two, market agencies are the selling arm of stockyard companies.

Three, that stockyard companies are considered monopolies.

Four, that the market agencies are amply protected by the right of the department to review the rules and regulations promulgated by the stockyard company that can even forbid him the use of that marketplace.

As regards the standards for market agencies, I read from page 33 of the proceedings of the National Livestock Exchange at Denver on

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June 6, 1946, where Mr. Peck, chairman of the Legislative Committee of the American Stockyards Associates states:

Nothing is said here like the Sioux City case about volume, although I do think that when a fellow gets down to where he can't get over one percent of the business, that is coming to a market, it is time that he should close.

In 1945 the valuation of livestock at Chicago was \$507 million. One percent of that equaled over \$5 million.

I ran a commission business in Chicago, and I never did over \$12 million in business in 1 year.

Now, when it comes to the right of entry into the lawful business of being a market agency, I think that Arleigh Berigan of Linton, N. Dak., John Bacon of Hazleton, N. Dak., Charlie Speirea, Billie McGregor, decided that I had the right of entry, but the man that decided that I met a standard was Mr. Art Anderson that ran the Yankton Livestock Association, and he shipped everything to me, and he knew he sold every damn thing. He had a volume of business probably greater than mine, but starting in January, he came down to Chicago with a certain class of heifer that you can turn a handspring if you know your business. And he also sent all those 10 or 11 load of steers at a crack out of the feedlots at Yankton, S. Dak. I think it is recognized in South Dakota that Art Anderson was one of the most able cattlemen in the West or in the United States.

Senator JORDAN. I don't quite understand your reference to that. What did it do?

Mr. WALTER. Because he said, "You meet the standards, my standards, that you can sell any cattle, calf or anything for me," and he was one of the greatest cattlemen in the Dakotas. They had a sale. I went there to his funeral. He dropped dead beside the scale. Armour Payne, who sells at Huron, S. Dak., told me this. I am putting this in the record for Mr. McGovern.

One morning Bill Anderson—they ran the Rapid City Livestock—called Art up and said: "Art, these buyers are going to put us out of business." They were in a conspiracy if you know what I am talking about. "What in the Hell are we going to do?"

Art said, "I will be there."

Armour Payne and he got out in a car, they went out into Mitchell and straight west into Rapid City, and he averaged about 100 miles an hour, and when he got there he started to bid on those cattle. He protected his own sale. But that was the deal, you see, and those patterns exist and God help Mr. McGregor that said to me at McIntosh, he knew every hill and dale between the Little Cannon Ball and the Missouri River, he said to me one day when I said, "You have got a steer in here that will sell for cornfed steer as a prime steer in Chicago." He said, "Ralph, I don't know that, I don't know that."

But that is what these packers are paying men and they have got the right to be represented by market agencies such as us.

Then I want to get into the question of the free pens. It was in the Missouri case, *Hoffberg v. Kansas City*. The Department of Agricultural quoted it in serial K. That decision, they didn't bring it out, but the president of the Kansas City Stockyards said:

We have a leasing agreement with producers whereby office space in 106 pens were provided for a rental of \$285 a month plus a charge per head on each head of livestock placed in the pen.

Now, in the *Omaha* case, to show that there aren't any free pens, that is fraud and deception of the rankest kind.

Senator JORDAN. Who said there were free pens, what testimony?

Mr. WALTER. My Mehren said it here.

Senator JORDAN. That there were free pens?

Mr. WALTER. Mr. Mehren said it here.

Senator JORDAN. That there were free pens?

Mr. WALTER. Damn right. He said there were free pens, and we don't have free pens.

Senator JORDAN. I thought I heard some reference to it. I didn't understand that anybody said they had free pens.

Mr. WALTER. In the serial K they made it the basis for the reason for the amendment.

Senator JORDAN. Go ahead.

Mr. WALTER. And the facts are these. I won't go into it but I will mention the dockets that decide the question.

The *Omaha Stockyard* case, 9 Federal Supplement 864, required that they went into the question and the rate that the stockyard company had to, traders had to pay half commission, yardage, and if they didn't pay it, why, the stockyard company would have to bear the loss. Those were the only free pens that they found, and they corrected that. The Secretary of Agriculture corrected that.

And then docket 6 of *Omaha*, docket 7 in the *Agricultural* decisions states:

The term yardage as used in the respondent's tariff consists of the market, the yarding of livestock, the use of pens for an indefinite period, the use of viaducts and alleyways, water, weighing, driving from the scales after sale, use of pens awaiting final disposition, locking the locking gates and the assumption of responsibility for livestock.

Docket 289, *St. Joe* and docket 425, *Sioux City*, says that the functions of the stockyard company are threefold: To provide a market-place, to provide a depot for unloading and loading livestock, and third, the warehousing of the livestock so brought to the market.

I again repeat we are unalterably opposed to this amendment, and the adversary proceeding, what happened in the House of Representatives. I will quote from my letter to Mr. Dirksen:

The debates on the floor of the house can naturally hardly ever go into discussion of details—

I am quoting from Professor Freund, on page 392 on the standards of American legislation—

can hardly ever go into discussion of details which must be reserved for committee. In committee there is often keen and valuable criticism, and leaving aside the absence of competitive participation, this stage may well be handled as a committee discussion and an urbane quarrel. But there is no assurance that an intelligent adverse interest will develop in the committee, and if not, the measure is likely to be accepted in reliance upon the sponsors good intentions, and sometimes as a matter of courtesy for all members are both petitioners and granters of petitions, and it would be strange if there is no mutual accommodation. There is most definite allotment of reciprocal responsibility that sharpens both wits and conscience.

That is why it is so important that I make this statement here. Let me go further.

Senator JORDAN. Let me ask you a question at this point.

Mr. WALTER. Yes.

Senator JORDAN. Are you referring to the action of the House on this particular bill?

Mr. WALTER. No, sir. I am referring to the action of the Department of Agriculture's proponents of the bill and that it is a stockyard bill, and it is a private bill, and it reverts them back to a private enterprise, and we still remain a public enterprise, and for the record, for Senator Young, *Stafford v. Wallace* is our case. Through Stafford we paid them to go to the Supreme Court and test the constitutionality. There is not a damn word in that thing about the monopoly of stockyards. Your control is based on *Warren v. Illinois*.

Ernest Freund says in its standards of American legislation the monopolistic feature of that was withdrawn in the North Dakota case of *Brass v. the State of North Dakota*. The judge said:

Judges see a lot of things, but the question is the power of Congress, and you have got the power to do whatever you damn please as far as the public cause.

Senator JORDAN. What I was trying to find out—this bill as you well know passed the House by a very large majority—

Mr. WALTER. That is right. It didn't develop any adversary procedure, did it?

Senator JORDAN. Well, I wondered why.

Mr. WALTER. It was a stockyard company bill, and the Department went through the rigmarole of saying things that weren't so. It was a pattern of deceit and distortion, and my testimony that is here supports that. That is why we are unalterably opposed to this legislation. It doesn't become the lawmaking process of the Congress of the United States, and we most emphatically oppose any amendment to the Packers and Stockyards Act.

Senator JORDAN. That is the reason this hearing is being held today.

Mr. WALTER. That is right, sir.

Senator JORDAN. And yesterday.

Mr. WALTER. That is right.

Senator JORDAN. We want all the facts on it and we want to bring them out.

Mr. WALTER. That is why I insist, I do it reluctantly, but I insist to present this point of view of adversary.

Mr. Ecker, I agree with everything he said, but he didn't go far enough. The act will destroy the private treaty system of doing business, and we are the only people that represent the producer. The producer owns the terminal market, because we are his agent, and it is just as simple as that, Mr. Chairman.

Senator JORDAN. Incidentally, the statement has been made here that the stockyards have gotten into the hands of a very few people.

Mr. WALTER. That is right.

Senator JORDAN. Can you submit any information for evidence? That may be the case and it may not be the case so far as I am concerned; I don't know.

Mr. WALTER. Well, that testimony is in serial K, as to how many, and Kansas City, I think it is called Kansas City Stockyards of Maine.

Senator JORDAN. Does that testimony tell how many stockyards there are in the United States and who owns each one of them?

Mr. WALTER. I think Mr. Jennings testified to that in the serial K. Can I put serial K in the record?

Senator JORDAN. Do we have it? We have copies of that. That is in the hearings.

Mr. WALTER. And that will be considered as part of the record, Mr. Chairman?

Senator JORDAN. Yes. We will use all of that.

Mr. WALTER. Thank you, sir.

Senator JORDAN. We will use all the hearings that the House had. We always do.

Mr. WALTER. Yes.

Senator JORDAN. In considering legislation, a great many times the Senate will not hold a hearing on a bill if the House has had sufficient hearings on it. We take their hearings, unless there is opposition to the bill, and sometimes there is no opposition. However, there seems to be some opposition in this hearing.

Mr. WALTER. Would you be interested in another thing about the Chicago Livestock Exchange?

We hired Professor Smith to start the eradication of bovine tuberculosis in the United States, and Mr. Davidson, who is the president of the American Meat Institute, worked for us as an assistant commissioner.

Senator JORDAN. Who is "we," now?

Mr. WALTER. The Chicago Livestock Exchange.

Senator JORDAN. The Chicago Livestock Exchange.

Mr. WALTER. And also I happen to be a member of the sanitary committee, of which Mr. Wilson was a member, also Bill Wood Prince, president of the Stockyard Co., and I had the honor to be a member of that committee when I wasn't president of the Chicago Livestock Exchange, and I prepared the constitution and bylaws for livestock conservation when the sanitary committee and the livestock loss prevention were merged, you see.

Senator JORDAN. Did you take his place as president of—

Mr. SCHRAMM. No, sir. I was just president in the past year.

Mr. WALTER. I am associated with Mr. Schramm now in the commission business in Chicago.

Senator JORDAN. You are the president now?

Mr. SCHRAMM. Yes.

Mr. WALTER. May I also add to the record this week Chicago put up the price of cows, bulls, and heifers \$9, from \$5 to \$10 a hundred, and that was broadcast and that enhanced the price of every head of livestock in the United States.

Mr. SCHRAMM. Do you mean per head or per hundred?

Mr. WALTER. Per head. You know, \$5 to \$10, your cattle are worth \$5 to \$10 a head more because of what we did at Chicago.

Senator JORDAN. Do you have any further remarks?

Mr. WALTER. I am through.

Senator JORDAN. The Senate is in session. I do not have permission to sit.

Mr. WALTER. I am sorry if you feel I have imposed on you.

Senator JORDAN. You haven't imposed.

Mr. WALTER. To me it was most important that this point of view be introduced to this committee.

Senator JORDAN. I am glad to have it.

Mr. WALTER. And any time that you come to Chicago, we will be delighted to show you the workings of a real live, open, free competitive market, and we will say the same for any of our competitive markets, that they are performing the same function.

Senator JORDAN. The only thing I want to say—and this is for the record—is that it is not a matter of what I want to hear nor how much. We have rules in the Senate; at the end of the morning hour, which is now over, we do not have permission to sit and it is not legal for us to sit. Since we do not have permission, they could throw all this testimony out if someone objected.

Mr. WALTER. You mean as of now?

Senator JORDAN. It just wouldn't be there. It would be struck from the record. It won't be, however. I can handle that, but it could be if somebody objected.

Mr. WALTER. I thank you so much.

Senator JORDAN. It will all be included, everything you said. Your entire statement will be made a part of the record.

Mr. WALKER. The statement and Mr. Schramm's statement.

We thank you so much, Mr. Chairman.

Senator JORDAN. You are entirely welcome.

May I make this statement for your benefit and the benefit of anyone else?

We will hold this record open until next Tuesday evening for any additional statements that anyone might wish to submit, and they will be made a part of the record.

I also have quite a number of statements from different people who will not be heard, and they will also be included in the record of today.

Mr. WALTER. Mr. Schramm and I will be permitted, if we discover we have missed something under the pressure of this time, to introduce it?

Senator JORDAN. Yes, indeed.

Mr. WALTER. For how many days?

Senator JORDAN. Until next Tuesday evening at 5 o'clock.

Mr. WALTER. Thank you so much.

Senator JORDAN. It will be put in the record.

This will conclude the hearing, and it will be taken up by the committee at some later date.

(Whereupon, at 12:55 p.m., the hearing adjourned.)

(Additional statements filed for the record are as follows:)

STATEMENT OF ELMER R. KIEHL, DEAN, UNIVERSITY OF MISSOURI COLLEGE OF AGRICULTURE AND DIRECTOR, MISSOURI AGRICULTURAL EXPERIMENT STATION, COLUMBIA, MO.

Mr. Chairman and committee members, my name is Elmer R. Kiehl, I am Dean of the University of Missouri College of Agriculture and Director of the Missouri Agricultural Experiment Station. Over the years I have conducted research on livestock marketing as a professional economist and have maintained contact with the terminal livestock markets. My comments will be directed to the effect of this amendment on competition and on quality of marketing service.

We must recognize that the terminal livestock market is in reality a complex of business firms with interrelated functions. The terminal livestock market with the stockyard company-market agency-dealer relationship is an unusual business arrangement. The stockyard company has a substantial investment in physical facilities but the important selling function is performed by the commission firms. The stockyard company revenue is dependent upon the volume of business done by the other agencies. With this important dependence upon market agency performance the stockyard company has no accompanying control. It is a rela-

tionship comparable to that which would exist if a manufacturing firm had little control over its sales department.

Terminal livestock markets with these unusual business relationships were begun more than a century ago. Their early operation and function in the economy qualified them to be regarded as a public utility. However the forces of change at work in a dynamic economy have modified their role and they are engaged in a struggle for survival with competing market institutions. In view of the innovations in livestock production and transportation and the decentralization of meat packing, terminal livestock markets as presently organized and regulated are no longer pertinent to their economic environment. Through time many competing types of livestock markets have developed and provide a degree of competition which makes the public utility concept inappropriate at this time.

Inefficient market agencies with resulting high costs may influence the setting of high charges (subject to P and S approval) which restricts the ability of a terminal market to compete with other livestock markets. Thus the costs of marketing through terminals may be maintained above that necessary to insure adequate marketing service. Since terminal markets are an important part of the livestock assembly and pricing process, costs of livestock marketing may be greater than they need be if some high cost market agencies were to withdraw from the business.

An equally important aspect is assuring that adequate selling service will be provided to livestock shippers. To provide adequate selling service it is necessary that a salesman be experienced and maintain a "feel of the market" for that class of livestock which he sells. Because market conditions affecting different classes of livestock do not change together it is often necessary for an individual to specialize in selling one class of livestock. A commission firm that is prepared to carry on a general livestock commission business must have salesmen competent to sell each of the classes of livestock. The necessity of providing competent salesmen for each class of livestock imposes a minimum on the number of salesmen a commission firm may have.

A look at the volume of livestock handled by each commission firm at a sample of markets suggests that competent selling service for all livestock is unlikely with the small annual volume handled by some firms. At one large midwest terminal that had 24 commission firms in 1966 the average volume per firm of the four firms handling the smallest volume of each specie for 1966 was 1,199 cattle; 61 calves; 4,076 hogs and 68 sheep. At the same time the average per firm of the four firms which had the largest volume of each specie was 73,228 cattle; 4,261 calves, 205,905 hogs; and 20,462 sheep. It is difficult to believe that uniformly high quality sales service can be provided for all species by all firms with the volume distribution as shown.

While the provisions of the bill do not convert the stockyard company into a selling agency they have increased ability to influence the way in which the selling function is carried out. The facts suggest that if stockyard companies determine that commission firms operating on a market do provide services beneficial to the business and welfare of the stockyard, its patrons and customers, improvements favorable to livestock shippers may be expected in two areas: first, lower costs of marketing through the terminal and second, improved service.

To be competitive, market institutions are required to change nature of marketing service provided in response to changes in the nature of the marketing job to be performed and to technology available in providing the marketing service. Improvements in livestock marketing service provided by a specific firm is dependent upon the ability of that firm to adjust to the ever changing economic environment. Because of the relationship of a stockyard company to the market agencies active on a market there is no clearly defined decision making unit that can make and carry out decisions for a terminal market. The decentralized decision making is a great handicap in competing in the dynamic setting in which they operate.

Terminal livestock markets have experienced difficulty in incorporating new technology in their business. One explanation is the nature of the business relationships of stockyard companies to the other market agencies. Examples are innovations which have the potential to improve service or reduce costs and would need to be incorporated into the terminal market complex modifying the operations of the stockyard company as well as other market agencies. Since there is no single decision making unit for a terminal market few system-

wide innovations have been instituted. This is a natural consequence of the substantial variation that exists among market agencies. A change may improve the system and benefit many firms in the system but may not be beneficial to some firms and hence they resist change.

A specific example is the improvement in service or cost reduction that might result if modern computer technology was applied to the substantial record keeping job that must be done at a terminal market. Marketing researchers at the University of Missouri have recognized for more than ten years the feasibility of applying computer technology to the record keeping job. However in the present setting it is practically impossible to incorporate computer technology; as a consequence the possible cost reductions or improvements in service cannot be realized by the terminal markets and the livestock producers who use the market. Another example is the development of personnel training programs so necessary for market agencies to adequately serve livestock shippers. Both of these examples require that they be adopted by the firms constituting the system at a particular terminal market.

Terminal livestock markets have experienced a substantial reduction in the percentage of the total volume of livestock marketed which they handle. There is a question of the role this institution can play in livestock marketing in the future as it is presently organized and operated. The rapid adoption of technological change in livestock production, processing, transportation and merchandising has generated the demand for new market institutions. Can stockyard companies with their investments in physical facilities develop a market institution geared to the future needs if they are given the freedom to innovate? No one knows, but it is clear that their chances would be increased if they were given the responsibility as contained in S. 1149.

SIoux CITY, IOWA,
January 25, 1968.

COTYS M. MOUSER,
Chief Clerk, Senate Committee on Agriculture and Forestry,
Washington, D.C.:

This letter concerns your bill, S. 1149, which has been called to our attention by the president of our Sioux City Livestock Exchange and its board members. We personally, and the owners of this company, are not in favor of this bill and will not support it under any circumstances or conditions. Our country was founded on a free enterprise system and we personally feel that this bill does away with the free enterprise in our business in favor of sale dictatorial power. With this dictatorial power governing, the livestock business has no chance for growth. The reason being that we lose our effectiveness in delivering service and courtesy to our patrons. This service and courtesy can only be regulated by the firm or company directly to their own patrons.

This country cries for younger talent, fresh ideas, new ways of doing business, why put such a strong dictatorial power over their heads that they lose their effectiveness and become discouraged and leave this vital industry.

We dedicate our very lives to promoting this system of marketing on all species of livestock. Therefore, we on the Sioux City Public Terminal Market very strongly oppose this bill. We remain,

Yours truly,

HUDSON-COE COMMISSION CO.,
DEAN PETERSON,
GORDON NELSON.

SIoux CITY, IOWA,
January 24, 1968.

COTYS M. MOUSER,
Chief Clerk, Senate Committee on Agriculture and Forestry,
Washington, D.C.:

On behalf of the Sioux City Livestock Exchange we want to voice unanimous opposition to bill S. 1149.

SIoux CITY LIVESTOCK EXCHANGE,
M. B. BERGESON, *President*.

THE NATIONAL LIVESTOCK EXCHANGE,
Indianapolis, Ind., October 11, 1967.

HON. B. EVERETT JORDAN,
Chairman, Agricultural Research and General Legislative Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR JORDAN: It has been brought to our attention that the Senate version of H.R. 10673 and S. 1149 will be up for Hearing at an early date.

As President of The National Livestock Exchange, an organization representing the sales agencies on the majority of the competitive Public (Terminal) Markets in the nation, I want to inform you of our support of S. 1149.

At the National Livestock Exchange's 79th Annual Convention, held at Wichita, Kansas June 14, 1967, the following Resolution was passed unanimously after a thorough discussion by membership:

"Be It Resolved, that the National Livestock Exchange endorses H.R. 10673 and S. 1149, and its aims and objectives which will remove the "Public Utility Concept" from Stockyards Companies."

This letter, therefore, is to inform you of the National Livestock Exchange's support of this legislation, which we feel will strengthen Competitive Public Livestock Markets.

This letter may be incorporated as a part of the records and minutes of the Committee's consideration of S. 1149.

Sincerely,

ROBERT W. CROSS, *President.*

CENTRAL LIVESTOCK ASSOCIATION, INC.,
South St. Paul, Minn., October 16, 1967.

HON. B. EVERETT JORDAN,
Chairman, Senate Agriculture and Forestry Subcommittee on Agricultural Research and General Legislation, Washington, D.C.

DEAR SENATOR JORDAN: The Central Livestock Association, Inc., with its principal offices on the terminal livestock market at South St. Paul, Minnesota, enjoys the distinction of being the largest livestock marketing agency (as defined by the Packers and Stockyards Act of 1921 as amended) in the world. It is a co-operative institution organized under Chapter 23 of the Laws of the State of Minnesota for 1921 and Chapter 326 of the Laws of the State of Minnesota for 1923.

The Central Livestock Association began business on the South St. Paul Livestock market on August 8, 1921. On December 31, 1966, the Central Livestock Association had as member stockholders 135,064 individual farmer producers residing and operating largely in the States of Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Montana. During the year 1966 the Central Livestock Association and its affiliated companies handled a grand total of 1,894,067 head of livestock valued at \$188,307,401.12.

This association is an outstanding service organization. It has experienced and capable salesmen who have been charged with the responsibility for the sale of each species of livestock consigned to it for sale. It has provided a general marketing service that is second to none.

This association would like to be recorded among those persons who are supporting the enactment into law of Senate Bill 1149, which provides for certain specific amendments to the Packers and Stockyards Act of 1921 as amended.

The Packers and Stockyards Act was enacted in 1921 to correct certain abuses that then prevailed in the marketing of livestock. The Act established a regulatory system based on the premise that the then major livestock markets, or stockyards, were monopolistic and should be considered in the nature of a public utility. In the forty-six years that have intervened since the enactment of the Packers and Stockyards Act we have witnessed major changes in the livestock marketing picture. Today, the terminal livestock markets, or public stockyards, cannot be correctly stated as holding a monopolistic position in the livestock picture. It is a matter of common knowledge that a smaller, and a steadily declining portion of livestock purchased for slaughter and replacement purposes is being marketed, sold, and purchased at the various terminal markets in this country.

We are reasonably certain that you must have received this information in detail from witnesses who have already appeared before your committee, but the following table covering the years 1923 to 1965, and portraying total slaughter

livestock purchased at terminal markets, according to information published by the Packers and Stockyards Division, Consumer and Marketing Service, U.S.D.A., will best illustrate this shift in livestock marketing practices:

[In percent]

	Cattle	Calves	Hogs	Sheep
1923.....	90.0	86.0	86.0	77.0
1965.....	34.0	16.5	25.5	23.4

It is quite apparent that the public utility concept of the Act is no longer applicable, because the so-called terminal livestock markets clearly do not have a monopolistic position today.

In our opinion, the provisions of Senate Bill 1149, if enacted into law, will serve to promote a vigorous and competitive livestock market system. One result from the enactment of this legislation would be that reasonable and just rules and regulations for efficiency and for the orderly conduct of any given market would become effective. One such rule that we desire to see placed in effect is the one requiring every market agency to have in its employ a qualified salesman for each species of livestock handled and sold. This is not the situation existing today.

Another result from the enactment of this legislation would be the orderly promulgation of rules setting minimum standards for livestock salesmen. It is a well-known fact that the existence of sub-standard selling services by a single market agency can be a reflection on the entire market where it operates.

We believe that these, and similar rules, would strengthen the market agency system of selling and buying livestock. The amendments proposed under Senate File 1149 represent a means of adapting the terminal public markets to new conditions and new economics associated with the livestock industry. We believe these new rules and regulation are necessary if our competitive livestock markets are to endure and effectively serve the nation's livestock producers and feeders.

We of the Central Livestock Association enthusiastically support Senate File 1149 and urge its favorable consideration by your committee at the earliest possible date. We also desire, and respectfully request, that this letter be included as a part of the record of the hearings on Senate File 1149 before your Subcommittee on Agricultural Research and General Legislation.

Respectfully yours,

N. K. CARNES,
General Manager.

KANSAS CITY LIVE STOCK EXCHANGE,
Kansas City, Mo., January 18, 1968.

HON. B. EVERETT JORDAN,
*Chairman, Subcommittee No. 4, Agricultural Research and General Legislation,
Senate Office Building, Washington, D.C.*

Honorable Mr. JORDAN: The Kansas City Live Stock Exchange is a member of the River Markets Group.

It is the honest opinion of the members of this Exchange and the River Markets Group that S. 1149 if passed, would be detrimental to the business of buying and selling livestock at posted markets and would work to the disadvantage of the customers of these markets.

We ask that you give consideration to our position on this bill.

Yours truly,

W. G. BERNHARDT, *Secretary.*

STATEMENT OF C.T. "TAD" SANDERS, GENERAL MANAGER, CERTIFIED LIVESTOCK MARKETS ASSOCIATION, KANSAS CITY, MO.

Mr. Chairman and committee, my name is C. T. "Tad" Sanders. I am General Manager of the Certified Livestock Markets Association which is an industry trade association of livestock market businesses. Its offices are in Kansas City, Missouri, where I reside.

I welcome and appreciate this opportunity to present this statement before this important committee in support of the purposes and objectives of S. 1149 to modernize the Packers and Stockyards Act.

That appreciation extends throughout the trade association and I am pleased to express it on behalf of the livestock marketmen who participate in it.

I do not feel any useful purpose would serve in trying to elaborate upon the language employed in the amendment of the Packers and Stockyards Act contained in S. 1149. The objectives sought might be expressed in any number of different ways in the language chosen to be employed.

Of greater importance, in our opinion, will be the report of this committee in the conclusions it reaches from these hearings and the other information available to it, in expressing what this legislation seeks to accomplish and the position it asserts for the direction and guidance of the newly established Packers and Stockyards Administration charged with the responsibility of administering the Packers and Stockyards Act as so amended.

COMPETITIVE LIVESTOCK MARKETS INDUSTRY

The language employed in Title III of the Packers and Stockyards Act, entitled "Stockyard" and that contained in S. 1149 require an understanding and meaning beyond their original concepts because of the development of the public livestock market business and the common meaning of words applied to it today different from those in the Act itself.

I particularly refer to such words as "stockyard owner," "stockyard services," "market agency," "dealer," "stockyard" and "public market," as used in the Act.

In terms of common industry and general understanding, a public livestock market business today includes the facilities for the handling, care and merchandising of livestock. It applies a wide range of customer services rendered by one or more business concerns which involve capital, management and highly responsible business enterprise in merchandising and selling livestock on the basis of competitive determination of prices.

This leads to a growingly familiar term applied to the business of, "competitive livestock markets." This includes the business interests involved which when related to terms in the Packers and Stockyards Act are expressed as "stockyard owners," "market agencies" and "dealers."

The central or terminal public livestock market businesses are generally composed of multiple business interests in providing the stockyard facilities and in performing the services and carrying out the functions that they do as competitive livestock markets.

Those public livestock market businesses where fewer business interests are involved, and generally where both the facilities and services are provided under one management, are competitive livestock markets but more commonly known as livestock auction markets by reason of the method employed in selling by auction. "Certified livestock market" is simply no more, and no less, than a trade name relating to those competitive livestock market businesses conducted under one management for the facilities and services they provide which qualify and participate in the trade association of the same name. There are presently more than 800 of these businesses throughout as many trade areas of the country.

In ordinary terms of industry reference and description, all "competitive livestock markets" are in the common category of small business. This is not to say that their importance is any less. On the contrary it is greater because small business still makes up the greater body of our competitive business economy.

These businesses are in no way public utilities. They are businesses with a public responsibility not unlike that of banks. I think the comparison is a fair one for the contrast to public utilities it illustrates.

The best industry estimates are that there are about 1,500 established competitive livestock market businesses in the country in varying sizes measured by the volume of business done.

Those which sell over 10,000 animal units (with an animal unit consisting of 1 head of cattle or commercial calves, 5 head of hogs and 5 head of sheep) total about 900 in number. Together they sell over 90% of the livestock sold competitively by all such markets.

An independent study which our trade association had done last year reveals that all competitive livestock market businesses did a \$9.0 billion volume of business in 1966 accounting for nearly 110 million head of livestock sold. This is a significant measure of the extent of small business employed in this element of the livestock industry.

Such study reveals that the total volume of livestock purchases and sale transactions in 1966 amounted to 218.7 million head of livestock of a market value of \$18.9 billion.

Overall, these figures reflect that about 50% of this volume was sold by and through competitive livestock markets while 50% moved in non-market channels.

Again these figures reveal the fallacy of any public utility concept attached to the business in terms of franchise or monopoly.

I would like to emphasize that the figures revealed by this study reflect a volume of commerce in terms of livestock purchase and sale transactions which during the preceding five years increased at a faster pace than livestock numbers by some 30.7 million head of livestock. This indicates an increasingly greater rate of "turn-over of volume" in the livestock industry. It indicates the important economic role of competitive livestock markets in the services they must provide on an expanding basis throughout the livestock industry.

A continuing study is now in progress as to the volume of livestock purchase and sale transactions in 1967 which we expect to be completed by April. We would be pleased to make its contents available to the committee for such value as it may have related to these hearings.

ATTRACTION AND RELEASE OF VENTURE CAPITAL

Our evaluation of the amendments to the Packers and Stockyards Act as incorporated in S. 1149 leads marketmen to the firm belief that they will serve to attract and encourage extensive venture capital for an accelerated development of the competitive livestock market business. This will serve the livestock industry in its efforts toward higher levels of stable livestock prices.

This is essential for the business to develop and expand in keeping with its role in the facilities and services required to maintain fully competitive determination of prices for all classes of livestock.

The confidence expressed in these respects is substantiated by a body which has recently been established through the efforts of the four industry trade associations of competitive livestock market business interests.

It is a 20-man Competitive Livestock Markets Council made up of 5 marketmen each from, the American Stock Yards Association, the National Livestock Exchange, the River Markets Group and the Certified Livestock Markets Association.

This action has served to establish an industry recognition of a common business identity which the name implies. It has made substantial strides in reconciling a mutuality of business interests in the full development of the potential that prevails.

In my opinion the most important results to be achieved are those involved in the implementation of efficiencies in new facilities and expanded merchandising services which business research, in only a limited scope, indicates are justified. This takes additional capital and the best in business enterprise.

The work undertaken by the Council also reflects an improved mutual understanding of the respective positions and roles of the business interests which make up the structure of any competitive livestock markets business.

This is not limited to those of a "stockyard company," a "market agency," nor "stockyard services," as those terms are presently defined and applied in the Packers and Stockyards Act.

The amendments contained in S. 1149 will serve to lend a meaning and application which will facilitate and encourage competitive livestock market developments which are now pending. These developments will serve the entire livestock industry and the nation's economy to advantage.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,
Denver, Colo., October 10, 1967.

HON. B. EVERETT JORDAN,
Chairman, Agricultural Research and General Legislative Subcommittee, Senate Committee on Agriculture and Forestry, Washington, D.C.

DEAR SENATOR JORDAN: On behalf of the membership of the American National Cattlemen's Association, I take this opportunity to indicate our support of the proposed amendment to the Packers and Stockyards Act encompassed in S. 1149.

The American National Cattlemen's Association feels that one of the great problems which has faced the nation's livestock producers for many years has

been their inability to obtain a sufficient price to cover their constantly rising input costs. The amendments in S. 1149 should provide market owners and operators the opportunity to manage their businesses in a more efficient and competitive manner. Hopefully, this will provide livestock producers with a greater opportunity to receive more adequate prices for the quality product they produce through improved market facilities.

S. 1149 should provide the posted markets an opportunity to up-date their livestock buying and selling services to supply greater competition. Fair and strong competition is what has built this nation's business world. We feel its need also to function more freely in today's livestock marketing programs.

We ask that you please make this letter a part of the hearing record. Thank you.

Respectfully,

C. W. McMILLAN,
Executive Vice President.

STATEMENT OF DON F. MAGDANZ, EXECUTIVE SECRETARY-TREASURER, NATIONAL LIVESTOCK FEEDERS ASSOCIATION, OMAHA, NEBR.

On behalf of the National Livestock Feeders Association, I extend our compliments to the Committee and express gratitude for the privilege of presenting views and opinions relative to the legislation under consideration. This Association consists of members who are engaged in the business of feeding and finishing livestock (cattle, hogs and lambs) for the slaughter market, and who have organized themselves in a voluntary, non-profit and non-political trade association which represents and speaks for those persons who participate.

With specific comments to follow, we make this general observation: *The National Livestock Feeders Association is in agreement with the intent of S. 1149 and is in agreement with its purposes, but recommends the need for some clarification and modification.*

The legislation would largely affect those markets, commonly called terminal markets, where a company or corporation owns and operates the physical properties, and separate individuals or firms perform the service functions as agents and dealers. The Stockyards company provides the pens, loading and unloading facilities, scales, building, and shelters, and maintains these properties. The individuals or firms perform the services, as agents, of solicitation, procurement, selling, order buying, and collection and disbursement of livestock proceeds; and others operate as dealers in the buying and selling of livestock for their own account. The amendments would not, for the most part, concern those markets, generally operating and known as auction markets, where the same persons as individuals or corporations own the physical facilities and also perform the services.

At some of the terminal markets, there are bonafide and operating organizations of selling agents, commonly known as the Livestock Exchange. These persons and firms group themselves into an Exchange organization for various purposes, and do establish certain rules of procedure under which all members of the Exchange conduct themselves.

At other terminal markets, we find there is either no Exchange organization in existence, or one is relatively inactive, or one is disorganized. I am sure that details of the functions, responsibilities, and purposes of these Exchange organizations have already been brought to the attention of this Committee.

Be that as it may, even an active and highly organized livestock Exchange has no real control over all firms which may be operating, or seek to operate, on a given market. If a firm is a member of the Exchange, it must abide by such rules of procedure and conduct as may be decided by the Exchange organization. On the other hand, not wishing to subscribe to such rules or procedure, a member can withdraw from the Exchange, or not be a member in the first place.

At various terminal markets today, some of the largest service firms are not members of the Exchange organization, although they may cooperate fully with the wishes and decisions of the Exchange. The point is that they are not required to be members and thus are able to handle their solicitation, and selling services, in a manner that may not contribute to the business that is drawn to that market where they maintain their base of operation.

Regardless of these various situations, a Stockyards company must rely on the work, effort, and personal contact of these separate agencies for the Stockyard business from which their revenue is derived in the form of yardage charges.

Only limited solicitation by Stockyards company officials is practical, because their work must be done in general for the whole market, and cannot be conducted for any specific firms. Solicitation of receipts is thus left to the people in the selling capacity, because direct contact with these shippers is an important factor in the business of selling and buying livestock on order.

Thus, it is readily apparent that investments in stockyards facilities are largely at the mercy of the activities, ingenuity, aggressiveness, salesmanship, and general goodwill of the separate firms operating on that market, whether they be members of an active bonafide Exchange organization, members of one that is not active, or are not members at all.

As providers of the facilities with the investments involved, Stockyards companies for a number of years have felt they should have something to say about who availed themselves of their facilities, and the degree or extent of performance that took place, in order to bring revenue to the market. This is only logical and would certainly not appear to be unreasonable. Among other things, a Stockyards company cannot prevent a firm which is based at its market from conducting sales at off-market points, and thus contributing, at least, to divert-livestock around a market. Even a well organized Exchange cannot prevent non-members from doing the same. In some cases, Exchange rules actually allow the members to sell in the country, thus realizing a selling commission for the firm, but depriving the Stockyard company of any revenue on that livestock for yardage.

Despite the existence of these circumstances, it is only fair to consider that Stockyards companies have operated under existing arrangements over a long period of time—actually a century in a case or two—and this history of operation would seem to provide justification for not discarding the procedure suddenly, and disregarding some degree of management by the organizations of Exchanges who are active and well conducted, with a profound concern and interest in the preservation of the market where they are based.

In the 89th Congress, this Association initiated legislation that would make numerous amendments to the Packers and Stockyards Act in order to bring it up to date, and to meet the changing marketing conditions. A crowded schedule prevented its consideration by the Congress.

The initial Bill, which was H.R. 7527, contained an amendment to Section 307 of said Packers and Stockyards Act (7 U.S.C. 208) which would have added the following language to this Section: "Nothing in this Act shall be construed to deprive a stockyard owner from exercising the right to manage and regulate his stockyard in a just, reasonable, and non-discriminatory manner, including the right to require those persons engaged in business at the stockyards to conduct their operations in a manner which will foster and insure an efficient, competitive public market."

In the opinion of this Association, such language would be sufficient to accomplish the objectives of the Bill now under consideration. The words "including the right to require", would seem to provide the authority to prescribe rules and regulations to carry out this requirement, although there can be little objection to including provisions for rules and regulations as does S. 1149.

Reference is now made to Paragraph (b) of S. 1149, which would amend Section 303 (7 U.S.C. 203) by changing the language to read: "After the expiration of thirty days after the Secretary has given public notice that any stockyard is within the definition of Section 202, by posting copies of such notice in the stockyards, no person shall carry on the business of a market agency or dealer at such stockyard unless (1) *The Stockyard owner has determined that this services will be beneficial to the business and welfare of said stockyards, its patrons, customers, and has given written authorization to such persons * * *.*" Presumably this new language would apply to new market agencies only, or to new dealers who seek to begin operations in a Stockyards. However, the provision should certainly be clarified so there is not authority to revoke written authorizations in cases where established firms have conducted their selling services in a satisfactory and beneficial manner.

Furthermore, it would certainly serve the best interest of the entire market and be in keeping with the fostering of harmony and good relationship, if a cooperative arrangement was provided for between the Stockyard company and the bonafide operating Exchange organization, if one exists, to participate in the determination of any new agencies on a particular market, and the revocation of written authorization to operate in cases where an agency may not be conducting their operations in a manner which will foster, preserve, or insure an efficient competitive market, and the making of rules and regulations. Provisions

for such a cooperative arrangement would not apply, of course, at markets where no bonafide operating exchange existed, and in these cases the determinations, as well as the rules and regulations which might be prescribed, would be the exclusive authority and responsibility of the Stockyard company.

These recommendations are made in the interest of what the Stockyards companies seek to accomplish, but also with the profound concern for those firms and agencies who have conscientiously formed and participated in livestock Exchange organizations in order to serve the patrons of the market, as well as to employ their efforts and activities on behalf of the owners of the physical facilities.

This Association respectfully requests the consideration of these views and opinions as the Committee addresses itself to the task of making decisions on S. 1149.

NATIONAL WOOL GROWERS ASSOCIATION,
Salt Lake City, Utah, October 10, 1967.

HON. B. EVERETT JORDAN,
*Chairman, Subcommittee on Agricultural Research and General Legislation,
Senate Agriculture Committee, Washington, D.C.*

DEAR SENATOR JORDAN: I would appreciate it very much if this letter could be made a part of the hearing record on the above bill.

This letter is written in behalf of the National Wool Growers Association which has its principal membership in a 22-state area where 86 per cent of the nation's sheep, lambs and wool are produced. The Association was organized 102 years ago and is recognized as the spokesman for the sheep producers of the United States.

One of the big needs of our sheep industry today is to find more efficient and profitable ways to market our lambs. Buying competition has narrowed in recent years as some packers have discontinued their lamb slaughtering operations because of the lack of a uniform year-around supply. If sheep producers are to be encouraged to raise more lambs to insure an adequate year-around supply, they will have to know that their marketing outlets are more profitable than at present.

We are looking for all possible means to create more competition in the buying of lambs. One possible way this could be done would be to free the stockyards from the shackles of regulations that were probably necessary to stop monopoly control some 46 years ago when the Packers & Stockyards Act became law, but which are obviously outdated and unnecessary today. Certainly there have been major changes in marketing in the almost half century since the inception of this Act.

We, at least, would like to see these proposed amendments enacted to determine whether they will permit the competitive forces of the free market system to more effectively determine livestock prices and assure true value for the producer.

We do feel that the management of our livestock markets should be able to exercise control over its operations so as to bring about an efficient and competitive market.

Therefore, in behalf of the National Wool Growers Association, we strongly endorse S. 1149.

Sincerely,

EDWIN E. MARSH,
Executive Secretary.

FRANK W. CONE & Co.,
Sioux City, Iowa, June 21, 1967.

HON. BOURKE HICKENLOOPER,
*New Senate Office Building,
Washington, D.C.*

DEAR SENATOR HICKENLOOPER: I am writing concerning HR 6231 and S 1149 legislation, which has been proposed by Stock Yard Companies.

We believe the Packers and Stock Yards Act has been doing a good job of regulating the stock yards for many years, and that this proposed legislation in placing complete control in the hands of the stock yard companies does not give us equal representation. Therefore we are opposed to it.

Very truly yours,

R. B. LENNON.

FRANK W. CONE & Co.,
Sioux City, Iowa, June 21, 1967.

HON. BOURKE HICKENLOOPER,
New Senate Office Building,
Washington, D.C.

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Very truly yours,

FRANK CONE.

FRANK E. SCOTT COMMISSION CO.,
Sioux City, Iowa, June 21, 1967.

HON. BOURKE HICKENLOOPER,
New Senate Office Building,
Washington, D.C.

DEAR SIR: We are writing you concerning Bill S. 1140—legislation, which has been proposed by Stock Yard Companies.

This legislation, as written, would create hardships on our business and will place complete control of our agency and all market agencies, in the hands of the Yard Company.

Our agency has been in business on the Sioux City market for 49 years and we have always operated in the best interest of our customers. We have dedicated our lives, time and effort on behalf of our customers. Service is a main factor which we have to sell to our customers and we must conduct our operation in a manner which will foster, preserve and insure efficient competitive marketing.

We, therefore, feel that this proposed legislation will not be in our best interest and, in fact, will place undue authority and jurisdiction over us. We feel that our side of the industry needs to be equally represented and that the voice of power and authority should be equal in order that we may insure our patrons of receiving adequate services.

Yours truly,

DWIGHT W. GODFREY.

THE NATIONAL LIVESTOCK EXCHANGE,
Louisville, Ky., May 26, 1967.

HON. ALLEN J. ELLENDER,
Chairman, Senate Agriculture Committee,
Washington, D.C.

DEAR SIR: As the President of the National Livestock Exchange, a trade organization representing livestock sales agencies at the following competitive livestock markets: Baltimore, Md., Billings, Mont., Cincinnati, Ohio, Cleveland, Ohio, Detroit, Michigan, Evansville, Indiana, Indianapolis, Indiana, Louisville, Ky., Memphis, Tenn., Milwaukee, Wis., Peoria, Ill., South St. Paul, Minn., Springfield, Mo., and Wichita, Kansas, I would like to inform you of our support of S.R. 1149.

The National Livestock Exchange is familiar with and sympathetic to the purposes and objective sought to be accomplished through S.R. 1149, and has passed a Resolution in support of this legislation.

This letter, therefore, is to inform you that the National Livestock Exchange does not oppose this Bill, but supports it.

This letter may be incorporated as a part of the records and minutes of the Committee's consideration of S.R. 1149.

Sincerely,

JAMES I. MAGNER, *President.*

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