PSF National Recovery Adm. (NRA) Subject File Box 158

PSF: N.R.A.

There should be established a body which, for want of a better name, let us call "The High Court of Commerce", composed of five or seven men, to which industry, labor, or the consuming public, could go to ask for relief from uneconomic losses or economic injustices. This Court would take the place of the National Recovery Administrator. A judge or a number of judges could hear each case and if it were deemed proper, could appoint an administrator for that particular industry to make up a code which would become effective when the Court had approved it. The High Court of Commerce would take up where the N.R.A. ended and take over such codes as N.R.A. has approved.

Before approval of the Court is given, labor, industry and the public or consumer would present their case. If any are absent, the Court representing all of the public, even without the appearance of interested parties, would itself take cognizance of all interested parties. The Court must have sanctions to enforce its decisions. Industry must be self-policing. Any infraction of the code must be brought first to a body within the industry, set up by the industry, composed of a representative of capital, labor and the public. If no decision is then made, an appeal is made to the High Court of Commerce whose decision and adjudication are final. This will prevent the Court from being cluttered up with a lot of minor complaints. If industry knows that the Court will make a decision, industry will decide much for itself.

The Court can suspend the code at any time whenever its rules are infringed, bringing the industry under the Sherman Anti-Trust law and making the offenders punishable under that as well as the sanctions that will be provided the Court. The Court will have the right to suspend any code of its own volition, or by request of any of the parties, after a hearing in which all will have an opportunity to be heard.

This Court is meant to take over what has been done by the N.R.A. It can act any time an emergency arises. The Court would be selected not to represent capital or labor or industry, but, like the Supreme Court, to represent the public. A labor leader might well be a member of the Court but he must no longer be an official of a union. A business man might well become a member of the Court but must have no connection with industry. A lawyer, a doctor, a minister or an engineer - anyone - might become a member of the Court, but, like the Supreme Court, must be entirely detached.

This Court would represent the people, labor, industry and the consuming public. Labor disputes as well, will be handled by this Court.

[Baruch?]

PSF: NRA

1

SUMMARY OF

CRITIQUE OF NRA POLICIES AND ECONOMIC PLANNING

PART I

BACKGROUND OF RECOVERY PROGRAM

The origins and the reasons for the NRA are, it is contended, to be found not in the popular but highly dubious theory of under-consumption, or other popular theories about the depression and the way out, but in the conditions of an economy that by the time of the trough phase of the depression had come to be operating at a practical deficit on current account, while still subject to dynamic deflationary forces. By historical comparisons with our own previous depressions and contemporary comparisons with the impact of the Great Depression on other industrial economies, a picture is given of the chaotic conditions in which our cumulative and dynamic deflation culminated in that trough phase, from late autumn 1932 to March 1933. The resultant deficit economy, threatening disintegration of the very social structure, was represented by and made manifest in the following: (a) the reduction of the agricultural price level to a virtual zero price to producers and the submergence of agricultural income below ability to meet fixed charges and in many areas even taxes and communal charges; (b) the combined contraction and deflation of employment and payrolls to a bare subsistence level, with wage-rates and labor standards receiving the brunt of the cut-throat competition, especially in the textile and related groups of consumers' goods industries in which the business activity was concentrated; (c) the virtual elimination by that time of any profits above operating expenses and charges for the whole aggregate of American industry and transportation; and finally, (d) the cumulative pressure to the breaking point of the competitive liquidation and pursuit of liquidity by the banking system.

Under those conditions - with slumping prices bearing down on agriculture and magnifying the overload of debt; with contracting production and diminishing purchasing power aggravating the dual problems of maintaining the current consumers' goods production and the fourteen million unemployed; and with falling capital values so imperilling the already propped socially important creditor institutions as to render, by that time, no longer practicable the corresponding scaling-down of interest rates, freight and other distribution costs - the deflation process, far from effecting balanced readjustments and providing a base for so-called normal recovery, exploded in a banking collapse.

PART II

ORIGINS OF THE NATIONAL INDUSTRIAL RECOVERY ACT AND ADMINISTRATION

The emergency measures adopted inevitably had to deal with solutions to the synchronization of urgencies rather than any order of priorities. The reopening of the banks through governmental readiness to liquefy the assets of banks solvent at then current values placed a bottom to the deflation. But, against the background of a deficit economy, such governmental support in turn required, economically as well as politically, improvements in the submerged agricultural price level and income, and in the similarly submerged industrial

purchasing power and wage level. The agricultural problem was dealt with by a number of devices ranging from crop controls and correlative processing taxes, subsidies, loans and debtor relief down to currency depreciation.

Passing by those problems and issues which are outside the scope of this study, the problem of increasing industrial re-employment and purchasing power was very different from that which generally obtains in "normal" recovery from depressions - "normal" being the name for the smoothed-out, common features, deduced from a select number of the previous score major depressions since the founding of the Republic, all of which had been surpassed by the present in point of accumulated depth, gravity, and social distress. That general problem called then for synchronized and integrated solutions for these specific problems: (1) how to increase employment by the demanded work-sharing and yet overcome the difficulties inherent in a uniform work-week, such as was provided in the 30-hour Black Bill; (2) with the then existing wage level for unskilled having fallen in certain industries and areas to bare subsistence, how apply hours' limitation without its becoming for the most part a distribution of the burden of the numbers thus re-employed on those employed at prevailing hours and rates, in other words, without its becoming poverty-sharing; (3) since the excessive and unbalanced wage deflation of the preceding year was accompanied and aggravated by cut-throat competition and a lowering of trade as well as labor standards, how can any member or part of, or an entire industry singly assume the burden of increased wages and preserve competitive position within the industry or as between industries; and (4) with employment and wages in certain capital goods industries suffering mostly from starvation of activity below even the 30-hour figure proposed by the Black Bill, how to provide for increased employment for all the workers attached to those industries and also to support the increased employment in the consumers' goods industries? By combining the urgency of re-employment and wage reflation with that of restoring industrial order - which in the opinion of the President of the U. S. Chamber of Commerce had threatened "economic demoralization" - a synthetic program for the emergency was developed with the sympathetic cooperation and full accord of business interests. Instead of enacting a uniform work-week and uniform minimum wage law, a flexible organization was provided, through the National Industrial Recovery Act, whereby the industries concerned could participate in determining the work-week or maximum hours and the minimum wage, and at the same time could lawfully make agreements and "codes" insuring "fair competition". To supplement and reenforce re-employment in and reorganization of industries currently active, Title II of the National Industrial Recovery Act was added providing for the administration of a fund of $3.3 billion for public works, railroad rehabilitation, housing and related expenditures to further re-employment in and reactivation of the capital goods industries.

It remains to note that in administering the first part of the Act - which was divorced from the administration of the second part - it was soon realized that re-employment at improved minimum wages could not be carried out according to priorities of codification. For, successive and serial codification of industries tended to overproduction - all the more so in the atmosphere of inflation-induced activity - to "beat the gun" of prospective increases in labor costs, to the disadvantage of the codified industries and employers in their competition with those as yet uncodified. The administration of the NRA, however, instead of handling the re-employment as an emergency task, separate from the work of self-determined reorganization and planning of industries, combined the re-employment drive with a drive for mass-codification of industries.

PART III

EVALUATION OF NRA AS RE-EMPLOYMENT AND WAGE REFLATION PROGRAM

To evaluate the contribution of the NRA to general recovery, and more particularly that of purchasing power, it is advisable to focus on the improvements which have occurred first and predominantly in the wage level, secondly in employment through the limitation of hours, and thirdly in the initial elevation of the tone of business, in the wake of removal of restrictions against cooperative action for the solution of common problems, ranging from balancing of production and consumption within industries to elimination of destructive trade practices. Obviously, the NRA cannot be credited with the whole of the gains in manufacturing and trade, employment and payrolls, because these depend on the extent of the total recovery and the intensity of restored vitality in the whole economy; nor can it be charged with the inadequacies and the slow pace of the execution of public works and with the failure to provide, as the economic authors of the Act intended, a coordinated stimulation of public and private capital goods industries. The main work of the NRA in that respect has been the combination of re-employment with reflation of the wage level. By the end of 1933 the hourly wage rate which had declined about a third from 1929 - against a fifth for Germany and practically none for Great Britain - was within 10% of the 1929 rate. A comparison with the record in the emergence in 1921-23 from the post-war depression shows that in the half year since the inauguration of the NRA there has been greater recovery in the wage rate than in the longer stretch of the earlier recovery; and in respect to manufacturing employment and payrolls the recovery has been from half to a third of that experienced in the 1921-23 revival. Admittedly the divergences from the earlier period do represent "planned" departures from a pattern of recovery in which (a) employment and wage rates lagged behind the turn in production, (b) the payrolls' index lagged still more and made its low half a year later than production, and (c) conversely, the work-week rose steadily with the increase in production against the curtailment effected this time in weekly hours.

Turning from such comparisons and contrasts to the criticisms which they evoked abroad and here, primarily against the very effort at raising the deflated wage level, it is noted first of all that the extent of the wage deflation, as well as the magnitude of unemployment, exceeded those of earlier depressions and of other industrial economies in this depression. It is further noted that the British avoidance of wage deflation also represented a departure from the normal pattern of depression and recovery. In that connection reference is made to the rejection by the Macmillan Committee, and more especially by Mr. Keynes, of a policy of wage reduction - which according to him would have had to be 20-30% or close to that which the American wage level actually suffered - as a remedy for the emergency which faced Great Britain prior to gold suspension, for the reasons, adduced by him, that wage reduction might produce "social chaos" and react unfavorably on internal purchasing power.

The corresponding American criticisms turned out, on examination, equally or even more unrealistic in that they assumed that the economy could have waited for the catching up of the "normal lags" and ignored the "social chaos" that had threatened by reason of the unparalleled unemployment and excessive and disparate wage deflation. The American economy was in such desperate straits that a repetition of the continued decline in wage rates and payrolls such as had occurred in the 1921-22 emergence was out of the question because, for one thing, that supplementary deflation had already been exceeded in the second depression phase inaugurated in the autumn of 1931. What is

more, the enormous disparities in wage levels within as well as between industries made wage readjustment and accompanying industrial reorganization an urgent pre-condition of recovery. The limited Detroit strike in an automobile body plant on the very eve of the banking collapse, where the effective wage rate for unskilled labor was as low as 10 cents an hour as against over three times that in other automobile plants, and the scattered prevalence of textile wages of $5 to $6 for a fifty hour week, - all that attested to the practical inescapability of the triple tasks of placing a bottom to the wage level, cancelling part of the excess deflation, and limiting hours to effect re-employment.

But the very progress already made, by the past winter, in accomplishing these purposes makes it all the more necessary that the balancing and complementary objectives - set for NRA at the outset by those concerned with its formulation and utilization as a recovery instrumentality - be adhered to, - to wit, (a) that labor costs be kept down to what industry can afford; (b) that costs and prices be balanced against each other and against consumer purchasing power; (c) that increase in business volume at reasonably low prices is preferable to low volume at high prices; (d) that the main need of the economy is to create new instead of dividing existing employment; and (e) that therefore the profit motive be given scope and governmental efforts be directed to liberating the spirit of and opportunities for enterprise and investment.

In summing up the relationship of the NRA in diffusing and augmenting purchasing power to the whole emergency recovery effort, the all-inclusive claims of both apologists and opponents are rejected. The most extreme claims are those made alike by certain inflationist- and certain deflationist-minded critics who attribute the whole recovery in the one case to the original inflation stimulus, in the other to undefined spontaneous or accidental forces, then blame the flagging of recovery from July to October on the NRA campaign with which it coincided in time, and then respectively attribute the subsequent advance to the new inflation stimulus of the Warren gold experiment toward the end of October or to the currency devaluation-stabilization by mid January and consequent removal of monetary uncertainty. Both analyses, it is suggested, are illustrations of a static and atomic economic interpretation and of what has been called "the fallacy of delusive exactness": they substitute a statistical reel for the economic flow and percentage changes by dates for the overlapping and accumulated increment improvements over time-spans.

An alternative reading and interpretation of the interaction of economic-financial forces and political and administrative factors and business responses is presented in various parts of the article along the following lines. After the prolonged pursuit of liquidity by business as well as banking and the accumulation of shortages, (1) the mere arrestment of banking and general deflation served to liberate suppressed demand and to induce flight from liquidity into goods and values because of the realization that prior prices, at deficits to basic producers and owners, had presupposed continuation of liquidation pressure; (2) that was reenforced towards the end of April by the permissive currency inflation and devaluation legislation of the Thomas Amendment; (3) then in May and June the expectations of higher costs from elimination of excessively low wages and of cut-throat competition as a result of the prospective code system together with the expected effects from related legislation involving the processing taxes and price and other relief to debtor agricultural producers, - all this combined to accelerate the buying of commodities and their conversion into semi-processed inventories: - these rates and samples of productive activity counter to seasonal trend and abnormally concentrated in semi-finished goods, when adjusted by mechanistic statistics for the so-called normal imputed weights,

gave a misleading picture of return to the 1923-1925 average level of production when they represented actually an advance smaller than the published computed figure, but one which constituted all the same an unbalanced, feverish accumulation of semi-finished goods; (4) accordingly the impinging of a new inflationary threat early in July, as a result of the collapse of the World Economic Conference and of currency stabilization plans, could not forestall the sharp declines that ensued in sensitive prices nor a post-dated extra-seasonal business recession to October, after the deferred and belated spring rise from April to July; (5) yet business and consumption held up better than production and remained at a level considerably above the trough of the depression, for the NRA with its increases in employment and wages and the prospects it held out to business of a "new deal" in price and trade practices provided at that stage, to the business men participating in the code making, a base of internal confidence; (6) then, as a result of the serious agricultural price situation in October, came the Warren experiment which proved ineffective; and (7) with the resumption in late November of preparations for spring seasonal activity coincident with new automobile model production and governmental efforts at economic budgetary inflation combined with monetary stabilization, a more balanced advance was inaugurated by the end of the year; (8) but this second consumer and replenishment rally is still lacking in the cumulative and self-regenerating economic forces characteristic of the upward spiral of genuine and sustained recovery; (9) and accordingly, the prime prerequisite is to broaden and deepen the base of the recovery by the coordinated stimulation of capital goods industries and housing, and that involves reopening the capital markets through which the capital goods industries move and have their being and business men make long-term commitments and translate planning into production and employment.

Finally, the furtherance by business interests of the national recovery program and the willing acceptance of the considerable initial labor cost burdens under the codes, which only sustained recovery could validate, constituted a whole-hearted response-analogous to that of the British public to the Conversion Loan a year earlier - and was itself an expression of the national will to recovery, which latterly has been hindered by administrative planlessness in respect to the objectives and the means of industrial planning through the codes.

PART IV

NRA CODIFICATION AS IMPROVISED MISPLANNING OF INDUSTRY

In respect to the long-range task of planned organization of industries under Codes, the whole recent phase of mass codification may be treated sympathetically as a case of uncompleted learning and unlearning of what the thing is about and less sympathetically but just as accurately as unreflective improvised misplanning. In the transition from the hectic propaganda atmosphere of the blanket code to that of mass-codification the centralized administration of NRA did not allow itself time to think out the lower limits of the codification process as to size and significance of industries. The upshot is that instead of an economic order there are nebulae of economic planets, down to mere vapors of industries like gold-fish and artificial feather and flower. Similarly, by ignoring the problem of a reference-frame for the ordering of codes the NRA has multiplied enforcement and other troubles for itself and for American industry. Just as the emergency re-employment and wage reflation program turns out on reflection to be a task

and once accomplished should be treated as apart from that of code organization, so the two divisions of the labor minimum wage provisions and improved trade practices as a new law merchant should have been organized along general lines with appropriate enforcement agencies affiliated with existing governmental departments and legal institutions.

In addition to cooperative action by industries as units rather than by members within industries for the formulation of general or group laws of civilized competition there was an outstanding task in which the two domains of American industry had reciprocal interests to accomplish as a way of planning recovery. In the economic rationale of the NRA, as originally laid down, capital goods revival was intended to run if not ahead at least parallel to and coordinate with the consumption improvement. The administrative severance of the two Titles of the Act, rather than any adherence to a theory of the all-sufficiency of consumption stimulation, was responsible for the purchasing-power propaganda. With the completion, by the end of 1933, of the work division and wage-rate raising program there has been greater urgency than ever for the regeneration of the capital goods industries and attendant liberation of the capital markets through liberalization of the Securities Act. A concrete plan for utilizing the code system to further this end was proposed in connection with the planning provisions in the first approved code, to wit, cooperation between consumers' goods industries, on the one hand, needing machinery replacements and modernization, and the capital goods or equipment manufacturing industries, on the other hand, supplying them, and also the banking system, with governmental aid, supplying intermediate-term industrial credit for financing the equipment rehabilitation on a systematic basis, after the taking by the appropriate code authorities of dated and rated equipment inventory for the respective industries. Apart from the longer-range significance of such a plan as a business stabilizer, it opens up an immediate opportunity for unregimented, self-determined and self-interested cooperation in the furtherance of sustained and cumulative recovery.

PART V

NRA AS INDUSTRIAL MISPLANNING AND SUGGESTED REORGANIZATION

The lack of structural planning in the organization of codes appears in sharpest relief in the price-fixing and other cartel provisions embodied in codes. In the wake of the trying experience of American business with contracting activity and slumping prices, and the attendant continuing disparity between costs and realized prices, the idea developed that merely by outlawing such disparities - by prohibiting through the codes selling below costs - profitable operations could be engineered, and so business men in working out the codes included cost-protection formulas of varying elaborateness, complexity and rigidity. Bemused by price inflation as an economic panacea, business men, accountants, lawyers and the NRA deputy administrators concerned in the making of codes assumed that their respective industries could be aided and offsets against the increased labor burdens could be obtained through the price fixing, production and investment controls written in the codes. Little if any heed was taken by them or by the NRA of the effects of such price-raising on the given or competing demand and their relative elasticities. Nor has there been much consideration given to the economic lessons that price and production fixing cartels, - like, for that matter, governmental price and quota manipulation - introduce rigidities and disequilibria within the price and economic structure

fixing and cartel features are as rationalizations of wish-fulfilments after a severe depression and in the midst of price inflation agitation, it is contended that in this phase of striving for recovery they are, notably in the construction industries, a hindrance to recovery by volume expansion. Furthermore, by trying through price formulas to congeal the capital costs of the pre-depression era - whose artificial price maintenance contributed to its own undoing - the codes are preventing for the longer term the restoration of price parities and economic equilibrium.

It is submitted that if we are to avoid instead of perpetuate the babel of price levels built up by the codes, both business and the NRA need to tackle afresh the basic general problems of how far it is necessary and desirable for them and for the economy as a whole to experiment with placing limits upon competition in prices, production and capital investment, and what is more, how far it is possible to venture in the direction of cartelization of American industry and still preserve the free, rather than the regimented, play of private initiative and self-determined efficiency profits rather than bureaucratically allocated quotas as to production and rates of return. Allowing for some notable exceptions, industrial planning has been conspicuously absent in the code making process, if by planning we mean a coordination of means and ends and an ordering of the governing factors. So far neither the administration nor industry has thought through its position with reference to economic planning within the framework of competitive and enlightened economic democracy.

Resuming the analysis of the problem of planning by types of industry begun in Part IV, the following suggestions are made for the reorganization of the NRA:

(1) Abandon any attempt at price-fixing and control in the service trades which, together with small industries, should be excluded from the industrial planning until specific needs are demonstrated. Similarly, abandon the price-fixing devices and the confusing and futilitarian code machinery for retail, jobbing and distribution trades. But let the existing code authorities devise ways for dealing with specific competitive evils obtaining in their respective industries, such as the "loss-leader" problem in retailing, on which hearings for all interests involved should be held and appropriate solutions evolved. At the same time raise, for all such industries and trades, the standard of ethical competition by expertly formulated provisions that could constitute a new "law merchant" enforced by the courts or carried out by arbitral tribunals.

(2) Segregate out the natural resource industries, coal and oil, as separate economic domains which for national economic reasons may be subjected to greater price and production control than the rest of industry.

(3) In respect to manufacturing and technological industries, limit interferences with the competitive system to such measures as would remove the hindrances to the adequate and efficient functioning of competition.

On the basis of cooperative business and economic study of the specific problems applicable to individual or groups of industries devise indirect rather than price-fixing treatment of destructive price and trade practices. Thus, in respect to prices, ways could be found of establishing and adopting, for highly competitive industries, open-trading associations that could play the same role as the commodity exchanges do for raw material producers in assuring uniform competitive treatment of buyers and sellers. To deal with the problem of

chronic overproduction arising from huge excess capacity that has obtained throughout the post-war period, the various textile industries have adopted machine-hour limitation as a means of balancing production and consumption, and as a means of sharing the work throughout the industry and eliminating the so-called "graveyard" shift. While that appears appropriate for that group of industries, for industry as a whole there should be developed systems of inventory controls, the details of which would have to be carefully worked out so as not to be transformed into allocations of production. In general, the cooperative devices should only be allowed to become parts of codes after due consideration by the interests involved of the specific problem and of the repercussions of the proposed solution.

In conclusion, the question of the compatibility of planning with capitalism, raised both by thoroughgoing adherents of laissez faire and of collectivism, is brought under consideration. After a summary statement of the interdependence of means and ends involved in planning and an equally summary statement of the nature of the competitive system and its fundamental connection with the institutions of liberty and free scientific inquiry and progress, it is urged that whatever the dialectical difficulties, the economic urgencies in the whole post-war period have called for adaptations of competition and individualism to new forces. The very fact that these problems have been thrust forward by practical experience, as in the case of coal and textiles in the Anglo-Saxon economies, means that there is need and there is room for the inventiveness and adaptability of our system to solve these problems as, in previous major depressions, it has solved problems that appeared equally insoluble, and through such solutions raised the general standard of living. Given resolute will and judicious thought - as distinguished from confused improvisations under the guise of so-called planning - American business can be relied upon to develop the kind of competition informed by planning that is suitable to American economic democracy, and so foster the continued functioning of the objective and free price and profit system within which individual initiative and economic progress proceed and are validated.

PSF: NRA

Prepared by Rose Schneiderman

LABOR REPRESENTATION ON CODE AUTHORITIES

During the first year of the NRA there has been discussion of its import and significance from every possible point of view, and both its friends and foes seem to have a variety of different, and sometimes conflicting reasons for supporting, disapproving or condemning the program. But whatever position any conscientious observer of affairs has taken toward the NRA, there is practically no one, even in the ranks of extreme opponents, who has not sensed that the effect of the NRA has been to throw upon the horizon a new conception of the nature and purpose of industry. It was not so long ago when people talked of industry as meaning exclusively employers or management. To be sure, some lines of business were supposed to be "affected with the public interest," and the purely private and acquisitive point of view of the business man was restrained by some social conception of the obligations of those particular business activities, at least to the consumer, if not to labor. In addition, in particular states, social legislation of a not very penetrating type laid down the broad framework within which competition might take place; and in the case of women and children particularly, there was some protection of the least skilled and most easily exploited workers.

Probably the major significance of the NRA has been that it has impressed upon <u>all</u> business the realization that it is a major institution of modern life; that it affects us as deeply and continuously as such older institutions as the State, the Church and the Family; and that consequently what is done in business cannot be considered merely from the private and acquisitive point of view.

The whole world has recognized the profound social significance of

business activities in the present situation. Because the operation of business from the private and acquisitive point of view has brought disaster everywhere, the whole world is experimenting with new controls of this monstrous mechanism.

We change our habits slowly, even when under the stress of the greatest trials; and there are, of course, opponents of any socialized conception of business. In the present temper of this country all evidence leads to the conclusion that these dissenters might well be ignored, even though, in a democratic society, it is just as well to give them all the avenues of protest available. The drift of evidence leads unerringly, as indeed it has now for many decades, toward greater social responsibility and the questioning of all business and social arrangements which do not lead toward a fuller livelihood for the great mass of the population.

There is, of course, no question that under the NRA these sound social and economic trends have been sharply accelerated, and that developments which might have taken a decade or more were completed within a year under the impetus of a national emergency bordering upon disaster and the grim seriousness with which our nation finally tackled the problems facing it. That is, of course, the fundamental reason for the persistence of some opposition and for the existence of such time-worn epithets as "rugged individualism," "regimentation," "orders from Washington," "the good old American way," etc. As if it were the good old American way to handle real problems with easy or shop-worn phrases !

Specifically, in the field of industry, the newer social conceptions

are evidenced in the emphasis placed upon the cooperative as over against the competitive phases of business. Business has been urged to organize itself and to consider its social responsibilities. Codes were submitted, not by individual firms but by whole industries, representing the collective point of view of large and small firms, efficient and inefficient, North, East, South and West. In all the processes of the NRA business was always made to feel its social responsibility and the deliberations and decisions in the formulation of codes were not left exclusively to the representatives even of collective business, but were participated in by representatives of labor, the consumers and the various divisions of the Government.

During the time codes were being planned and written, the representatives of labor were deeply disappointed and chagrined that they were placed upon the defensive in their efforts to seek representation on Code Authorities, which were the most important instruments of self-government under the NRA. One would have thought that the ideal of industry at the heart of the National Industrial Recovery Act which had been carried through the negotiations in the formulation of codes would have been continued in their administration; and this was the normal expectation of the Labor Advisory Board and the liberal elements outside the Administration who were enthusiastic about the new social orientation in industry. Aside from all questions as to the proper function of Code Authorities, and giving recognition to the normal expectations of the working people of our country, this failure has been construed by all liberal elements as a backward step and one which must be corrected.

Of the approximately 450 codes which have been approved only some 37 permit labor representation on code authorities:

LABOR REPRESENTATION ON CODE AUTHORITY

I. Provided in Code.....Total 26

1. Provided in Code - Mandatory.....16
   Provided in Code - Mandatory - When labor is affected.....3
   19

2. Provided in Code - Permissive..... 7

   Of groups 1 and 2 above - with vote 18
   without vote 8

II. Not specifically provided in Code - Actually appointed..... 11

   with vote 11
   without vote 7

Total number of Code Authorities with Labor Representation..... 37

I. Provided in Codes - Total 26

1. Provided in Codes - Mandatory - Total 16

Name of Code	No. of Labor Representatives	Voting Power
Blouse and Skirt	2	Voting
Cap and Cloth Hat	2	"
Cigar Manufacturing	1	"
Coat and Suit	2	"
Covered Button	1	"
Dress Manufacturing	3	"
Hosiery	2	"
Ladies' Handbag	1	"
Legitimate Full Length Dramatic and Musical Theatrical	6	"
Men's Clothing	5	"
Millinery	2	"
Transit	2	"
Undergarment and Negligee	2	"
Infants and Children's Wear	2	Without vote
Men's Neckwear	1	"
Nottingham Lace Curtains	1	"

1 (a)Provided in Codes - Mandatory - When Labor is Affected Directly or Indirectly - Total 3

Name of Code	No. of Labor Representatives	Voting Power
Motion Picture	1 (from each class affected)	With vote
Motion Picture Laboratory	2	"
Radio Broadcasting	1 (" " " ")	"

2. Provided in Codes - Permissive - Total 7

Name of Code	No. of Labor Representatives	Voting Power
Cotton Garment	4	With vote
Leather and Woolen Knit Glove	1	"
Cotton Cloth Glove	1	Without vote
Hat Manufacturing	2	"
Light Sewing	1	"
Pleating, Stitching and Bonnas and Hand Embroidery	1	"
Schiffli, Hand Machine Embroidery, and the Embroidery, Thread and Scallop Cutting Industries	1	"

II. Not Specifically Provided in Code- Actually appointed - Total 11

Name of Code	No. of Labor Representatives	Voting Power
Artificial Flower & Feather	1	Voting
Bituminous Coal	1	"
Corset and Brassiere	1	"
Handkerchief	1	"
Barber Shop Trade	1	Without vote
Construction	1	" "
Cotton Textile	1	" "
Fur Dressing and Dyeing	1	" "
Photo Engraving	1	" "
Retail Trade	1	" "
Ship Building and Ship Repair	1	" "

Total of all Code Authorities with Labor Representation - 37

A cursory glance over this group of industries clearly shows that they have been in the vanguard in the struggle for self-government, peaceful industrial relations and the development of conciliation devices which are giving form and substance to the ideals of industrial democracy. It, therefore, seems perfectly clear that labor's ability to secure representation on code authorities in these 37 industries is a mark and measure of the place in industry which it has been able to achieve through its own organizations, even before the NRA. Now, one of the most important reasons why we may be sure that the NRA can be made a lasting instrumentality for the benefit of our industrial life is that it is definitely in harmony with tendencies in our economic and social life of long duration. This is, of course, apparent in the shorter work week, in the extension of minimum wages from women and children to include all unskilled workers, in the encouragement to collective bargaining, etc. In all these respects the NRA has made a definite contribution and has, in a sense, artificially stimulated more slowly moving changes. It is perhaps of even greater importance that this be done in the field of labor representation and self-government. Here our ideas are truly backward and, if business men are ever to become socially-minded, to the degree that they understand that business is more than money-making for a few, it is incumbent that this fundamental change in habit of thought and in the very language of our discussions be made. Let it be clearly known that the workers are as important to industry as management and that without them industry ceases. Let it be clearly known that the people who buy the products of our industry sustain it by their purchases and that there is an obligation to them beyond the injection of intimidating innuendoes that they will not be good company or that their best friends won't tell them about it, or that they will not keep up with

the Joneses unless they purchase this product. The National Industrial Recovery Act, with intuition and insight, has popularized what has been hitherto the heterodox economic thought; namely, that the three great factors in any industry, each absolutely dependent upon the other, are management (and capital), labor and the consumers. Together they constitute an industry.

It does seem, therefore, like a misstep to go on with the administration of codes of fair competition on the ground that business is merely private and acquisitive; that the business man has only the stockholders to take into account; that in the management of his affairs he is to think of workers and consumers as elements to be played upon for his own aggrandizement. All this is not in the spirit of the NRA, and it is grievously disappointing to its friends.

Specifically, labor representation on code authorities may be calculated to attain the following results:

First, it should influence the deliberations of the code authorities at critical times when policies are being formed and should be a constant reminder to the leaders of industry that they are not the only ones who have a stake in it. It is still perhaps an unusual view that a man who invests his life in industry is to play as important a role as the man who invests his capital in it. But this is the view which the twentieth century will most certainly establish, by one means or another. Labor feels that it is its own obligation to take an advanced position and that ultimately, in the not too distant future, the welfare of the workers in industry will be the major consideration in the formulation of policies for all business and industry.

Secondly, labor representation is essential in order that we may have

access to dependable information concerning the actual operation of codes. There is no doubt that many situations which lead to strikes or threats of strikes could be cleared up by early consultation. It is probably safe to say that no one can ferret out a chiseler as well as an honest labor leader. If the deliberations of code authorities are not made available to representatives of labor, we shall all be quite in the dark, not only with respect to all compliance matters, but even with respect to the effect of of the codes and their administration upon the daily grind of working people.

Third, and perhaps most important: Trade unionism in this country is acknowledgedly backward. Until only a year or two ago it was desperately on the defensive and through injunctions and yellow dog contracts, as well as because of the long American tradition of individualism, it was in large sections of our country looked upon as an alien and vicious force. As a result of all this, labor leadership quite naturally has reflected the conditions out of which it developed; and pugnacity, stubbornness, incredulity went along with geniality, good-fellowship and simplicity, as desirable traits in labor leadership. There is no intention of being unfair to the labor leadership of this country in saying that intellectual power and the qualities which make for great success in administration and in the professions has been comparatively scarce. This is especially true in the lower ranks of labor leadership. The responsible heads of the labor movement - the National Presidents and the officials of the American Federation of Labor - do not always have the developed manpower of local leadership which they would like to have. Here is an opportunity to place perhaps up to 1000 promising labor leaders on code authorities to serve as schools of experience where they would learn how industry operates; where they would secure a knowledge of the industrial problems and the difficulties of the business man; where they would learn their first

lessons of the necessary cooperation of the vital elements in industry and could carry back to the workers in the ranks a simple understanding of all the problems in industry.

Whether or not these labor representatives are to be given votes on code authorities is a secondary matter, so long as the elected representative or representatives of the workers may always be present. The aim is to use this instrumentality to create in business men a more socialized conception of their responsibilities and obligations, to enlist the active interest of working men and their organizations in the analysis of the effect of codes and in compliance; and to create an opportunity for labor leadership to develop in the better industrial order we are forging.

On different occasions the Labor Advisory Board has made its stand clear on this issue to the higher officers of the NRA. The Board has never faltered in this respect and has even refused to appoint so-called labor advisers to Administration members of code authorities who may or may not be called upon on specific issues when the Administration member requests. The Labor Advisory Board intends in the second year of its operation to make the attainment of labor representation on code authorities a major point of policy and rightly takes the position that anything less than that would be a sore disappointment to the labor and liberal elements in the country and an opportunity lost to industry and to code administration.

PSF: N.R.A.

COPY OF F. D. R.'S LONGHAND MEMORANDUM

Bd. of Control

Harriman Sidney Hillman Leon Marshall Clay Williams Blackwell Smith	To choose a Chairman and an Exec. Sec. from their number.

For Monday's story on Pres. Spec. Bd.

"Having given this leave of absence to H. S. Johnson, the existing organization of N.R.A. will conduct its affairs under my personal direction until such time as I am prepared to inaugurate a more permanent set-up.

D. R. and I talked over the 5 sections of the Richberg Report on work of the different Gov. Departs & agencies, which is to be issued immediately in printed form. We also discussed the work of the Executive & Emergency Councils and of the Indust. Emergency Com. of which D. R. is Director and in these connections we continued the surveys of the new agencies and their relationship to each other and to the older Departments.

file "personal" PSF: N.R.A

Memorandum for The President

Two leading industrialists on the Board would insure a favorable response from industry. Then if Smith and Henderson are added as ex officio members, the Board will be well-balanced.

A. D. Whiteside would be very useful as the second industrialist. Or you might wish to consider Gerard Swope or George Mead (present Chairman, Industrial Advisory Board), or Nelson Slater.

It would be desirable to ask Averill Harriman to continue to serve as personnel adviser to the Board and A. R. Glancy as organizer of the Compliance Division. Both men have valuable experience and would help to get a strong organization re-established.

PSF: N.R.A.

Suggested Membership of National Industrial Recovery Board.

Clay Williams, (Chairman)

A. D. Whiteside

Walton Hamilton

Sidney Hillman

Leon C. Marshall (Executive Secretary)

---

ex officio

Blackwell Smith,
Legal adviser

Leon Henderson,
Economic adviser

Descriptive List:

Clay Williams, present Chairman, Business Planning and Advisory Council, Department of Commerce; Industrial Advisory Board, NRA; Reynolds Tobacco Company.

A. D. Whiteside, former Divisional Administrator, NRA; President, Dun & Bradstreet.

Walton Hamilton, formerly of Yale, present Chairman, Advisory Council, NRA (representing Consumers Board).

Sidney Hillman, Labor Advisory Board, NRA; President, Amalgamated Clothing Workers.

Leon C. Marshall, Policy Board, NRA; Brookings Institute; formerly of Chicago and Johns Hopkins.

Blackwell Smith, Assistant Administrator for Policy, NRA; Acting head of Legal Division.

Leon Henderson, Director, Research and Planning and Economic adviser, NRA.

PSF: N.R.A.

file

~~CONFIDENTIAL~~ PSF: N.R.A.

Wm. H. Davis
May 31, 1934.

MEMORANDUM

In my opinion, any permanent incorporation of NRA or its equivalent, in the governmental structure (or even the successful continuation of NRA as the administrative agency for the National Industrial Recovery Act) will require two things:

1. The complete separation from NRA of all compliance and enforcement functions and activity; and

2. The segregation of the normal code administration functions (including code writing and code amendment) from the functions of observation and planning; with a gradual reduction of the code administration functions and with greater attention to the observational and planning functions.

1. It is my belief that all government compliance and enforcement activities in connection with the codes should be divided between the Department of Labor and the Federal Trade Commission, supplemented, when necessary, by such court action as is provided in the Federal Trade Commission Act, the National Industrial Recovery Act and the Wagner Bill, if that Bill becomes law.

I think governmental activities for compliance with and enforcement of the labor provisions of the codes should be directed by the Department of Labor with the assistance of the National Industrial Adjustment Board proposed in the Wagner Bill; and that governmental activities for compliance with and enforcement of all other code provisions should be directed by the Federal Trade Commission.

Labor compliance activities under the Department of Labor.

For this purpose, the Department of Labor should take over control of the labor compliance staffs of the State Compliance Directors; developing them as necessary along the lines already laid down, that is, by the employment of personnel trained in the enforcement of labor laws in the several states. With the help of this state machinery the burden should be carried by the Federal Government; but it should be reduced to a minimum as labor compliance machinery (like that in the cotton textile industry and in the bituminous coal industry, for example) is built up in each industry or trade large enough to justify such machinery.

If this is done, I think the trade practice compliance activities of the State Directors offices should be dispensed with and turned over to the Code Authorities cooperating with the Federal Trade Commission for enforcement.

Trade Practice compliance activities under the Federal Trade Commission.

I have already discussed at some length with Commissioner Landis and with members of the Compliance Division and the Litigation Divisions of NRA a plan of procedure for enforcement of code provisions by the Federal Trade Commission under the authority of the Federal Trade Act and the Industrial Recovery Act.

Briefly stated, the proposed procedure is as follows:

When there has been a violation of a code provision other than a labor provision, the Code Authority will present to the Federal Trade Commission in affidavit form, a prima facie showing of violation, together with a request (a) that the Federal Trade Commission issue a complaint and (b) that the code authority be permitted to intervene and to be represented by counsel at the final hearing of the complaint. When such papers are filed in approved form the Federal Trade Commission will issue the complaint and set a time for final hearing and the Code Authority will assume the duty of presenting at the final hearing evidence to justify the issuing of a cease and desist order.

That procedure is, I believe, well within the provisions of the Federal Trade Commission Act as it now stands, and would require no further legislation.

2. If NRA were thus freed of the embarrassment of compliance and enforcement activities, it would be left with two primary functions:

1. normal code administration including code writing and code amendment; and

2. cooperation with industry in the observation of the results of the experiment in industrial self-government and in planning for the improvement of the industrial situation.

Normal Code Administration.

I would expect that by next Fall the - - - first of these headings will have been greatly - - - simplified; that all of the pending codes will either be completed or dropped or consolidated with existing codes, and that with the co-operation of industry, labor and consumers, there will have been brought about agreements on certain fundamental policies (hours of work, price stabilization, code authority expenses, etc.) which have not yet been formulated definitely.

Observation and Research.

My thought as to the function of observation and planning is that in the rush and confusion of the initial stages of the experiment these things have been in part neglected, and in part confused with other functions. There is no use to conduct an experiment unless you observe the results and use them to guide subsequent action. It seems to me that the Research and Planning Division of NRA should be reorganized and perhaps developed into a bureau separate from the administrative divisions of NRA; that by an appropriate redistribution of functions there should be made available to the new unit (which might even be called the "Bureau of Industrial Statistics and Research" or the "Bureau of Industrial Observation and Research) all industrial and commercial statistics that are anywhere available to industry, commerce, or the government; and that it should be the primary duty of this unit to observe the result of the codes in industry and commerce and to supply to the Administrator cold, hard, statistical facts uncolored by any preconceptions or economic theories.

Planning.

With that information in hand, and with an adequately equipped industrial planning unit of small but carefully selected personnel, the Administrator could proceed, in cooperation with industry, to plan for and agree upon improvements of the codes.

The general policies arrived at by this method would, of course, control the administrative activities of normal code administration.

Remarks

I have been led to these conclusions by my experience in Washington and by my understanding of the fundamental purposes of NRA. I think those fundamental purposes have to some degree been lost sight of, or at any rate neglected, in the rush and confusion of the initial work.

Those purposes are well stated in the "Declaration of Policy" of Title 1, of NIRA, but even so, a clear understanding of them is facilitated, I think, by recalling the fundamentals of what occurred before the passage of the Act. I am not an economist and do not pretend to have any knowledge of economic theories. What I have been concerned with is not the whole of the new deal but only the deliberately chosen purpose of the National Industrial Recovery Act.

The background of NRA

As early as August 20, 1932, Mr. Roosevelt, in outlining his own economic creed, said:

> "I believe that the Government, without becoming a prying bureaucracy, can act as a check or counterbalance . . so as to secure initiative, life, a chance to work and the safety of savings to men and women . . . "

And he suggested getting back to first principles to "make American individualism what it was intended to be - equality of opportunity for all, the right of exploitation for none."

It was recognized that the industrial revolution, notwithstanding the provisions of the anti-trust laws, had brought about a condition of inequality of opportunity and unsound distribution of the products of industry, and even before his election Mr. Roosevelt said:

> "Our task now is .. the .. business of administering resources and plants already in hand, of seeking to reestablish foreign markets for our surplus production, of meeting the problem of under-consumption, or adjusting production to consumption, of distributing wealth and products more equitably, of adapting existing economic organization to the service of the people."

> "As I see it, the task of government in its relation to business is to assist the development of an economic declaration of rights, an economic constitutional order. This is the common task of statesmen and business men."

Throughout the whole discussion prior to the passage of the Act, emphasis was everywhere put upon the extra-ordinary paradox that we have a super-abundance of raw materials, of manufacturing equipment and of transportation and commercial facilities and yet with this equipment and facilities largely standing idle, we had millions of able-bodied and intelligent men and women in dire need and clamoring for the opportunity to work. It was recognized that this paradox can be resolved only by better distribution of the products which our vast economic machine is capable of yielding, and it was pointed out that the basic trouble was an insufficient distribution of buying power. This was to be overcome by deliberate planning for group action as distinguished from rugged individualism and laissez faire. In that planning, for group action we were, however, to be careful to preserve the fundamentals of our system- opportunity for initiative and a chance to work, plus equality of opportunity - and were were to press always toward security. This meant cooperation within and among industrial groups plus government control, and everyone agreed that the government control should be reduced to that minimum which would preserve these fundamentals; but that governmental advice and cooperation might well go further toward a regulation of balance within the business structure.

In addition to his reference to the government as a check or counterbalance - not a prying bureaucracy - the President spoke of a partnership between government and industry "not partnership in profits, for the profits would still go to the citizens, but rather a partnership in planning and partnership to see that the plans are carried out." He said:

"Some measure of regularization and planning for balance among industries, and for envisaging production as a national activity, must be devised"; and I think the ultimate function of NRA beyond the function of code writing, is summed up in the following quotation from one of the President's speeches:

> "It is up to the government to maintain its most sacred trust, the welfare of its citizens. And such a trust requires the regulation of such balance among productive processes as will tend to a stabilization of the structure of business. That such a balance ought to be maintained by cooperation within business itself goes without saying."

It is this regulation of balance among productive processes, which balance is primarily maintained by cooperation within business itself, that seems to me to be the planning function of NRA; and I think that function can be performed only on the basis of adequate, intelligent and continuous observation and analysis of the practical results of the codes.

I think it was in the light of these ideas, expressed by the President in the words above quoted and elsewhere by others during the same period of time, that the National Industrial Recovery Act was drawn and I think they are clearly reflected in the "Declaration of Policy" of Title 1.

The Act expresses and attempt by Congress to set up machinery under which American industry, to overcome the terrible paradox that confronted it, may cooperate within the limits of the competitive system. The Act is entitled "An Act to encourage national industrial recovery, to foster fair competition, etc.," and among its declared purposes it includes "to eliminate unfair competitive practices" by promoting the organization of industry for the purpose of cooperative action among trade groups.

This "fair competition" aspect of NIRA cannot, of course, be divorced from the other aspects of its broad general policy. Nor can any sharp line of division profitably be drawn anywhere among the stated policies of the Act. But it is convenient at least, to discuss them separately.

The Fair-competition Policy

If we lay aside for the moment the matter of price-stabilization with all its attendant difficulties, I think it can fairly be said that the fostering of fair competition and the elimination of unfair competitive practices can be left to vigilant administration of the unfair practice provisions of the codes under the direction of the Federal Trade Commission, as I have proposed above. I only want to say in this connection that I think experience has already shown that it was a fundamental mistake to combine compliance and enforcement activities with normal code administration activities under NRA. Indeed I think the same mistake exists to some extent, and has had a very baneful effect, in the Federal Trade Commission Act itself.

So far as NRA is concerned, the compliance activities arose in a peculiar way - and I think an unpremeditated way - out of the blue eagle. The blue eagle, whatever it may become under the new code eagle system, was in its inception distinctly an emergency measure. Its admirable, and, I think, successful cooperative appeal was accompanied by power of enforcement by blue eagle removal, which was incidental and necessary to the blue eagle campaign, but was not premeditated within the Industrial Recovery Act itself. It resulted, nevertheless, in a great and significant enlargement of the compliance activities of the NRA. Whatever may be said for administrative law under the exigencies of modern society - and I think that a great deal may be said for it- yet it is clear, and will be agreed to by everyone, that among the enlarged powers necessarily granted to these agencies punitive or enforcement powers should not be confused with administrative and semi-legislative powers. The enlargement of the semi-legislative functions is a part of administrative law itself. A necessary enlargement of power, I think, but like all other enlargements of power, capable of abuse and therefore dangerous. It tends to become disastrous when it is unnecessarily combined with the judicial function.

When we turn to the Federal Trade Commission law we find the same defect to some extent inherent in it. That law like NIRA (although to a very much more limited extent) contemplates the formulation and governmental approval of rules of fair competition; and the same administrative agency that formulates the rules is also the agency that interprets and enforces them. Anyone familiar with the history of the Federal Trade Commission knows that this has led to very considerable embarrassment. The Commission itself has felt, I am sure, very keenly at times the embarrassment that arises from the fact that after formulating rules of fair competition, it becomes the accuser of those who depart from these rules and then finally becomes the judge who enforces them. Histroy shows that this combination of functions has reduced the effectiveness of the Commission in formulating rules of fair trade practice and has embarrassed it in the enforcement of even those very limited rules which it has succeeded in formulating.

I believe the the formulating of rules of fair competition should be entirely divorced from the- function of enforcing those rules; and it is with this idea in mind that I proposed to Commissioner Landis and discussed with him the modified procedure before the Federal Trade Commission in connection with unfair trade practices under N. R. A. codes.

I think that ultimately all the Federal Trade Commission functions of formulating rules of unfair trade practice should be transferred to N. R. A. or its successor; and that in the meantime all the trade practice compliance and enforcement activities of N. R. A. should be transferred to the Federal Trade Commission as soon as possible.

The Labor Policy

Beyond the "fair competition" policy of NIRA, the next stated policy has to do with labor.

The stated policy as to labor is "to induce and maintain united action of labor and management under adequate governmental sanctions and supervision", "to reduce and relieve unemployment" and "to improve standards of labor".

It is, of course, to reduce and relieve unemployment and to improve standards of labor that the labor provisions of the codes relating to minimum wages and maximum hours have been adopted; and it is to induce and maintain united action of labor and management that the provisions of Section 7a were included in the Act and in the codes.

As I have said, I think the governmental compliance and enforcement activities as to these labor provisions of the codes, should be turned over to the Department of Labor in cooperation with the National Industrial Adjustment Board if the Wagner Bill is enacted, as I believe it should be in some form. I do not believe the Administrator of Industrial Recovery can adequately perform the important functions of code administration plus the observational and planning functions, if he has at the same time to undertake the enforcement of the wage and hour provisions of the codes and to settle labor disputes.

I do think, however, that the determination of what shall be the maximum hour and minimum wage provisions of the codes is, in some part at least, the proper function of the Administrator. I think this because the minimum wage and maximum hour provisions of the codes are directly related to the utilization of the present productive capacity of industry and to the increase of purchasing power. I believe, however, that on these matters of minimum wages and maximum hours, the Department of Labor should be brought into the discussion, which should include also, of course, the representation Of the industries, of labor, and even of the consumer if a representative of the consumer can be adequately identified.

But beyond and back of the question of hours and wages there is the all-important question of inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision. This question is fundamentally involved, I think, in the President's idea of the development of an economic constitutional order. It means voting, representation, parlimentarism and statesmenship. Its answer cannot be supplied by any battle or series of battles between stand-pat industrialists and selfish trade unionists. It involves directly the great mass of workers, and indirectly the greater mass of common citizens, who stand between these two extremes. My own opinion is that it involves a process of growth and cannot be effected by any major operation. I do not think it can be achieved by mere enforcement of the provisions of Section 7a.

NRA has not undertaken to devise any code provisions other than provisions of Section 7a for the purpose of building up in any industry such a constitutional order for united action of labor and management, except as it has proposed to provide for industrial relations boards in the industries; and that is a long way from the constitutional order that we must ultimately come to. I do not know that the development of this constitutional order is any part of the functions of NRA, but it is certainly vitally related to the purposes and policies of the Act.

What I should like to see is a development of proportional representation of the workers, wholly free from interference by management, along the general lines layed down for the settlement in the automobile industry, up to a point where it would be possible to call together for each important industry a national congress of elected members of bargaining committees for the purpose of developing for that industry a national constitutional organization of labor. However, that is getting pretty far away from the subject under discussion - the re-vamping of NRA.

The promotion of full utilization of productive capacity by increasing purchasing power.

The third and final purpose into which the stated policies of the industrial recovery act may be resolved is "to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial *** products by increasing purchasing power".

It is here, as it seems to me, that the observational and planning functions of NRA are most important. Looking back on my experience as deputy administrator, and as compliance director, I have the feeling that while these policies were looked upon as desirable results piously hoped for, they were not adequately planned for. I think this was true particularly in the handling of the price provisions of the codes.

The fault, if there was one, was a fault of execution, rather than a want of purpose. General Johnson, in Bulletin No. 2, emphasized the President's statement that:

> "I am fully aware that wage increases will eventually raise costs, but I ask that management give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public***. If we now inflate prices as fast as we increase wages, the whole project will be set at naught."

And he said:

> "In the drafting of codes, attention is especially directed to this suggestion by the President that the Recovery Administration cannot be effective unless the consumers buying power is protected. There will be full protection for the consumers. The codes should recognize the interest of the public in the matter of prices."

While the codes were being written, there was certainly a terrific pressure to divert attention from these suggestions and to substitute for them, as a practical matter, the bargaining proposition that if the industry was to be compelled to raise wages it must also be permitted to raise prices; and I think that bargaining aspect of the matter tended to lead to the inclusion of unsound pricing provisions as a quid pro quo for vigorously resisted wage and hour provisions.

I do not pretend to know what the correct solution of this important question of price stabilization is, and I gather from the comments of the Durable Goods Industries Committee on General Johnson's admirably chosen 12 points, that the Committee does not pretend to know. But I do know from practical experience, that price fixing provisions in the codes are not enforceable. General Haskell, as executive director of the Code Authority for the Rayon and Silk Dyeing and Printing Industries expressed the common experience of all of us when he said of price fixing provisions to that Code Authority on May 23rd:

> "They create a camouflage and a smoke screen behind which unfair trade practices flourish and are protected by a mantel of hyper-critical respectability to the destruction of the ethical."

It may be possible by court procedure to penalize a manufacturer for destructive price cutting if destructive price cutting is adequately and rationally defined. It has, of course, been partially defined in the history of our common law and in court decisions under the anti-trust laws. But it is not possible to compel a manufacturer to maintain a fixed price applicable alike to all his competitors. It is useless to try to deceive ourselves about that; and until the administrative difficulties, and the bad odor, of attempted price fixing are lifted from NRA there cannot be, in my opinion, any end to its troubles.

If that incubus is removed and the co-operative intelligence of the industries is really directed to the promotion of the fullest possible utilization of their present productive capacity, to the avoidance of undue restriction of production (except as may be temporarily required) and to increasing the consumption of industrial products by increasing purchasing power, I believe real progress can be made. And then it will be possible, I think, to reduce the governmental control to a minimum and to concentrate attention upon "the regulation of such balance among productive processes as will tend to a stabilization of the structure of business."

William H. Davis.

PSF: N.R.A.
file NRA

BERNARD M. BARUCH
120 BROADWAY
NEW YORK

June 18, 1934.

My dear Mac:

Attached is a memorandum I was asked to send to the President. Will you please pass it on to him?

Sorry you had to miss that good fight.

With kindest regards, I am

Sincerely yours,

BMB

Mr. Marvin McIntyre,
The White House,
Washington, D. C.

file N.R.A.

Memorandum

The imperative problem is to establish a deliberative, responsible control of NRA.

Present irresponsibility makes every business organization "jittery" and semi-hostile; and generates increasing public distrust. Meanwhile a good organization disintegrates and a competent personnel cannot be brought in.

The causes of irresponsibility are:

1. Organization, centering an impossible task upon one man.

2. Physical and mental fatigue of a man carrying an intolerable load too long. This psychopathic condition of a man mentally ill from overstrain explodes into scandalous abuses of power.

3. Personal habits of impulsive violent action and sudden reaction, combined with other habits that demoralize an organization with uncertainties, jealousies, suspicions and constant discord.

An immediate solution can be found only through:

1. Definite release of Administrator from active control for

a) complete rest

b) undisturbed opportunity to review accomplishments, and study economic conditions here and abroad

c) make comprehensive recommendations as to policy and future legislation.

2. Publicly announced establishment of a responsible, experienced, representative board of control.

3. Temporary outline of a mechanism of improved Administration entirely under control of the Board appointed by the President.

Practical means of accomplishing results now are:

1. Have Administrator announce that he has recommended these actions and recommended the appointments - and that because of his own need of rest (and ill health in his family) he has asked for a leave of absence until December 1st.

2. Appointment by the President of a Board of 5 - from such names as the following:

W. A. Harriman
L. C. Marshall
Blackwell Smith
Clay Williams
Sidney Hillman
Walter Teagle
Leon Henderson
Walton Hamilton
Leo Wolman

3. Appointment by the Board of an Administrative Officer

To avoid a new selection Col. Lynch could be continued in present position - or either Harriman or Marshall could be named with Col. Lynch as his Assistant.

Outline chart of simple NRA reorganization follows.

N.R.A. June 27, 1934 PSF: NRA

By Leon Henderson.

Most of NRA's energy should be concentrated on positive stimulants to greater productivity, but at present organization, compliance, and other activities looking toward "consolidation" are foremost, which attitude unconsciously assumes stabilization at or near the existing level of production, or that higher levels will be attained automatically. The present plans call for little fundamental revision of codes, and already there is talk of a permanent NRA organization to be ready by September.

Unemployment is still persistent as the real problem. NRA has few weapons with which to attack unemployment directly. It can (a) reduce hours, with increaseases in pay and thus increase costs, or (b) reduce hours without increasing pay, thus sharing the work, or (c) it can concentrate on increasing volume of goods and services.

The NRA record is highly creditable as to organization, increases in real wages, (steel wages for 34 hrs. per week are almost equal to 1929's 55 hrs. in terms of purchasing power for those employed), profit margins, increases in net worth, and restoration of business confidence. I believe, however, that the opportune time has passed when hours could be shortened, with increased pay, without serious damage to business confidence and great political disturbance. Prevailing sentiment seems to regard industry as having no responsibility for getting people back to work.

But by quiet, persistent effort in revising codes so as to reduce prices the basis for volume production would be laid, while relief funds are still adequate for minimum needs. There is little that NRA or any temporary organization can do to effect complete absorption,- this is a task for a long-term, national program, looking toward employment in social services, etc.

The codes need revision mainly in the price clauses- not so much that all of them will work and hold prices at artificial levels, but that the

failure of these to operate, and the breakdown of attempted compliance, will discredit NRA and the code process. Few, if any, of the price stabilization schemes have any hope if reliance must be had on enforcement by law. (There are 150,000 retail tire outlets. A spot checks shows 13-15 o/o violations already.)

There is little actual price-fixing in codes in the real sense of the term, because price-fixing to be effective calls for rigid supervision over all elements of price,- standards, terms of sale, discounts, guarantees, advertising, quality standards, and examination of records of sellers. But practically all codes have some provision for price maintenance or price stabilization. These provisions are undergoing greatest strain, not so much from chiselers, but from efficient producers who have always relied on volume, secured by price competition. (I spoke to 150 comptrollers of large corporations recently. Many confirm this view. An article in a recent issue of Fortune indicated that 70 o/o of large corporations canvassed are opposed to price provisions in codes.)

A program for the NRA looking toward increased productivity could be prosecuted by dealing with codified industries one at a time to prevent organized opposition and general alarm. First moves would be against the "ultra codex" activities of some code authorities. (Metal screens, cement, paper and pulp.) I am confident that the efficient producers would help.)

But the building material group is most important. Building materials are too high-priced, and unless prices are reduced, the federal building program is endangered. Mill lumber prices should be reduced from 10-15%, and I made such recommendation two months ago. (The prices are on a doubtful legal basis at best. the cost formulas includes, by code permission, interest payments.) The recommendation was forwarded to the code authority, which organized its political and other pressure. The industry knows its prices are out of line, that stocks have mounted, but wishes to make its consent to small reductions in price as the bargaining basis for NRA enforcement of its price-fixing and for imposed regulation of wholesalers under the lumber code. The "markups" in the retail lumber dealers and the building material dealers codes are excessive and far above those warranted even by the dubious cost formulae in the codes. (I believe we can get these reduced somewhat real soon.)

Brick is pegged at a ridiculous level, thru a most informal and arbitrary

cost formula. Tile furnishes another example. Tile sold under 10 cents a foot last year. The tile manufacturers raised prices to about 16 cents, and in May, in concert, went to about 22cents. The tile contractor's code specified that, pending approval of a cost system, an arbitrary basis would be used, and all bids would have to include tile at the current price of the tile manufacturers list. The price went up because a big order was in prospect on a housing project for which RFC was supplying some of the funds! The builder probably will not use tile because of the high price.

Similar situations prevail in other building materials, including cement, for which the government receives uniform bids on all contracts.

The same is true of many codes,- too many. Paper and pulp codes are run by an accounting firm specializing in price maintenance. Printing prices follow a most elaborate cost formulae, which is published for use by every printer in the country. Retail coal prices are being fixed in every trade area on "lowest reasonable costs", and the resulting prices, as found by NRA and NEC (Nat'l Emergency Council), show guaranteed profit, in some areas, for 75% of the trade.

Manufactured articles should find, freely, the price that will give the greatest employment, highest real wages, and decrease the disparity with agricultural products. Real competition in manufactured articles carried on concurrently with benefit payments would reduce the disparity. Similarly, a monetary policy looking toward enhancement of wholesale prices would help.

The price and cost protiection provisions of codes, such as cost formulae, selling below individual cost prohibitions, etc., were designed to prevent destructive price cutting which was blamed for the depression. The solicitude is worthy, but it is not necessary, and it is highly restrictive, to make these cost provisions apply to every transaction of every member of a code. All that is needed is a brake to be applied expeditiously in real emergencies.

The newly-announced price policy contemplates that price protection will be afforded in emergencies which threaten the purposes of NIRA. Unfortunately the new policy applies only to new codes, whereas 95% of industry is codified/

Already the deputies and the personal administrator are advising industries that the policy is not to be strictly interpreted, and several exceptions have been made. Most alarming of all, however, is the determination of the Administrator to include in the basic code the provision forbidding sales below individual cost, which was specifically omitted in the new form of the policy of June 9th. This will undoubtedly serve notice to codified industries that little, if any, revison is to be made in approved codes.

I hold that if these price protection clauses are maintained, an increasing amount of ill-will will snowball against the New Deal. Already the protests of purchasing agents, government buyers, and consumers are many, and the mail-order houses have supplied me with considerable material on high-unifrom prices, which, added to that collected in the open price studies by NRA, is fairly conslusive that price maintenance is being tried in many codes. If the cost-protections break down (viz. cleaning and dyeing), public opinion turns against NRA.

Cost protections tend definitely to make for high unit costs at a time when national policy, seeking reciprocal tariffs, almost require lowered costs of production. (Japan's unit costs in textiles is amazing,- our costs are increasing.) Unit costs can come down only thru volume production.

The Cabinet Committee on Price will be at work this summer trying to determine how prices have resulted in the past, whether the codes have brought radical changes, and particularly which elements are essential to a proper national price policy. First of all, it seems to me, the Committee must know what goal is desired, and how price may be used as a mechanism for achieving the desired result. The prevailing explanation of cost provisions in codes is that these are necessary to prevent downward spirals of prices. This thesis treats price decline as the main cause, rather than a result of, or a function of, depression. Loss limitation is sought. If losses are to be limited for private industry, thru governmental interposition with the forces of bargaining, why should not profits, salaries, and maximum prices be limited

by the same authority. This is particularly in point when an emergency is declared, and prices are fixed by NRA. At present too great liberality is shown in granting emergency decrees. Retail tobacco, for example. One is requested for mayonnaise. Ice, in certain areas, and all retail coal. Cotton textile has a curtailment of machine hours, and the hosiery and woolen textiles wish curtailments, too, for in this way, by limiting the supply side of the equation, prices rise. It seems fair to suggest that any industry requiring governmental stabilization of its prices should submit to considerable supervision and yield certain advantages to consumers. At present, emergecny prices are looked upon asx industrial rights.

This results in a curious combination of the bargaining and rationing methods within the same industry. Wages are fixed, losses are limited, marginal producers are protected against efficient competitors, but profits and salaries are left to bargaining. For example, auto tires are fixed by NRA because of a great emergency, but one large manufacturer reported a profit for the first six months of 1934 equal to his losses in the last six months of 1933. (The government is regarded as a chiseler because it wishes to obtain competitive bids for its tire supply, and to have advantage of its mass buying.)

Experience under NRA so far seems to indicate that the American economy may require the bargaining technique for some industries, such as automobiles, and the rationing technique for others, such as natural resources, like lumber and coal. The automobile industry is the prize example of the competitive system,- large values, high wages, high production, high employment, constant advance in production technology, but prices determined by free competition. In this inudstry the marginal producer is always on his way out. Not so with the self-governing coal and lumber cartels. Price-fixing in these codes have brought many units back into production, and the governement looms as an executioner if prices are not fixed high enough to reward the least efficient. (Prices are high enough, but even the NRA cannot compel

the consumer to buy. Therefore prices are quoted which will move the lumber, and coa
A drive is to be made to enforce these prices.)

Before Congress again convenes, decision must be made as to the future of codes. Some industries will probably require extensive governmental participation in management. (Coal, oil, lumber.) It seems equally plain that the obligations of this group of industries need to be as clearly fixed as are its privileges. Possibly these codes could best operate under specific legislation for each, but certainly those industries related to natural resources need to have consideration in terms of national mineral policy. A large group of industries may need no separate codes, but only to have access to the code process when the industry's ability to function ceases. For such industries, federal legislation as to hours, wages, child labor, etc. might be sufficient, with administration of this legislation lodged with the Department of Labor. Wages above the minimum give NRA the greatest trouble. The surplus of wage earners available for employment presses heavily on the high wage groups. Legislation or procedure under NRA which would set the frame of collective bargaining above the minimum seems desireable. This proposal is not new,- many businesses have detailed classifications of all jobs, with clear definition of each, and the place of each job in the wage-rate structure. In coal, all wage rates are related to a basic day rate. Such legislation or NRA procedure is particularly necessary for non-unionized industries, if the bargaining technique is to be retained alongside associations of competitors. To date NRA has made no progress on wage-standards above the minimum.

The elemental confict between the NRA and the Federal Trade Commission will have to be rationalized. Essentially this is a contest between an agency charged to prevent illicit trade combinations, and another agency with a mandate to bring industry into agreements, most of which negate competition in one form or another. Gradually it is becoming clear that the functions are not necessarily mutually opposed. NRA is needed to determine and assist in bringing about the concert

of industrial action that will give positive gains, while the Trade Commission is needed to prevent anti-social activities of trade groups. Whatever is retained of NIRA, in my opinion, should provide the mechanism for speedy organization of all industry in national emergency, as well as for organization of individual industries. There will continue to be needed, also, an agency to assist industries to make unit decisions, and to compel acceptance of the decisions, particularly as to inter-industry conflicts which are on the increase. (e.g. Wool vs. cotton vs. rayon. Dress goods mfg. vs cotton garment mfg. Furniture vs. lumber. Paper and pulp conflicts.) Finally, provision is necessary for preparation of the materials of planning, to collect statistics of business and industry, and to conduct large economic studies.

The functions of the Federal Trade Commission need to be broadened if industries are retained under codes. There is reason to believe that many monopolistic features have taken deeper root in codes, and that some industries are guilty of ultra codex. The concept, newly introduced, that it is chiseling to "sell below cost", tho such sales are implicit in competition, will present new problems. The Federal Trade Commission, or some agency apart from the NRA, must act, too, as do the Kartel Tribunals of European countries, to restrain monopolies, and if necessary, to dissolve combinations.

Finally, the Administration will need to determine rather quickly the place of NRA in the New Deal, and relate it more closely to New Deal activities. Most pressing, however, is the need fordecision as to the powers which codified industries will be permitted to retain, as well as the requirements to be made of each for the good of the entire economy.

LLeon Henderson

Smith - Blackwell - Nat Ind
Lynch - Tex. for Policy

PSF: NRA

August 24, 1934.

MEMORANDUM

Difficult or Controversial matters requiring attention in immediate future.

-oOo-

Leon Henderson and I, on the basis of a cursory survey of impending difficulties, developed the following as those most on our minds:

(1) Extension of Automobile Code (which expires September 4th): "Merit clause", construction of Section 7(a) and other labor provisions in contest and no application for extension yet received from the industry raising possibility of an imposed Section 7(c) labor code.

Learning aft is in N.Y. Keeping.

(2) Newsprint Price fixing and Production Control Agreement: Newsprint producers of the United States and Canada have agreed and are now asking our approval of such an agreement which will have vital effect on newsprint publishers, particularly Hearst, and to which publishers have not assented.

will hope.

(3) Rubber Price Fixing: Manufacturers of everything made of rubber are insisting on signature of mandatory cost recovery formula which would raise rubber prices and force inclusion in price of difference between low cost inventories and present market. Small manufacturers insist that this is vital but since it raises prices (tire prices even above retail fixed prices under emergency provisions) and since price differentials between branded and unbranded goods would have to be dealt with, we are withholding approval.

H. J. should not act.

(4) Limitation of machine hours for the Textile Industry (expiring presently): Extension of limitation essential from industry's viewpoint and bound to have repercussions from labor if granted.

(5) Revision of Section 17 of Textile Code (Collective Bargaining instrumentalities): The revision imposed on the industry is being refused by them and precipitation of the problem probably unavoidable due to the strike.

(6) The Textile Strike (in effect for revision of code): NRA will necessarily be brought in due to the insistence of industry that there shall be no revision of codes under strike coercion.

(7) The Labor Relations Board decision due next week announcing majority rule for collective bargaining: This interpretation, inconsistent with the joint interpretation by Messrs. Johnson and Richberg, is bound to precipitate trouble with industry as a whole and NRA being asked to remove the Blue Eagle on the basis of this interpretation will be drawn in.

(8) Federal Trade Commission - NRA basing point study: This study, long overdue, has been held up by the Federal Trade Commission impasse with specialists brought in by NRA on temporary basis to do the NRA portion of the study.

(9) Settlement of Greif case: This case, involving one of the largest clothing companies and much publicized, must be settled or further open battle commenced during the coming week. The union is insistent on adjustment by Greif and facts being produced by NRA show a weak case against Greif.

(10) Chicago Motor Bus controversy: The Eagle has been removed but the controversy is not settled.

(11) Harriman Hosiery Mills: Controversy still alive, the last position of the Labor Advisory Board being insistence upon rehiring of union strikers only.

(12) Compliance organization crisis: Program for elimination of "rotten" spots held up and Director of Enforcement, Glancy, planning to leave because of inability to make progress as indicated by reinstatement of St. Louis Director without consultation after removal with the approval of Director of Emergency Council (other similar incidents).

(13) Service codes: Notorious impossibility of obtaining compliance. Will not hold unless local price fixing demands granted by NRA. This is likely to be precipitated by an emergency price protection granted to the Photo Finishers (not strictly service but generally so considered). Complete retreat from codification to Presidential Agreement on labor (with no price fixing) can hardly be delayed for another two weeks. Hotel and restaurants are verybad).

(14) Phillipine Cordage Agreement: This agreement being pressed upon us for signature precipitates the conflicts between the American Industry, the Phillipine Industry and prison industry. This is hot at the moment.

(15) Structural Steel imposed code: By condition in an Executive Order the Construction Code was in effect imposed on this industryas to erection activities and numerous substantial changes were made in their labor provisions. The stay of the code which resulted

from the industry's refusal to accept imposition expires soon and no solution is in sight.

(16) Cotton Garment Revised labor provisions: These are almost certain to have a series of bothersome repercussions due to the lack of assent of the industry and particularly due to the feeling of Southerners that New Yorkers obtain provisions discriminatory as to such Southerners. The present Code Authority enters a vigorous protest to one of the provisions.

(17) Complaint of customers of the Steel Industry: Members of the Pipe Fabricating Industries are restricted by Steel Code Authority resolutions based on the Steel code so that their competition with steel jobbers and members of the steel industry is seriously hampered. The pressure of some of these concerns due to their possibly being driven to the wall is so great that this may not hold.

(18) Flood of demands for Emergency Price Fixing: The general impression of industry that whenever they themselves believe that they have an emergency which can only be treated by price fixing NRA should forthwith deliver, causes serious complications when NRA finds that the emergency is not such as to require such action (Wholesale Confectioners and many other now current).

(19) Retail Coal Price Fixing: A notoriously unsound structure set up by Code Authorities with administration members is being rapidly dug into by Leon Henderson but may not hold without serious flareups until correction completed.

(20) Wholesale differentials: Demands for fixation of differentials for wholesaling under the Wholesale Code (involving Resale Price Maintenance at the wholesale level) is becoming extremely embarrassing.

(21) Bread Price Fixing: The pressure upon NRA to prevent price cutting in bread is increasing rapidly and informal action of NRA to ascertain facts and prevent serious price wars is likely to have political repercussions on the basis of the first slip.

(22) Hosiery production curtailment: Action of this nature, possible on approval of the administration member, is now demanded or has just occurred. This involves the repercussions that all limitation steps involve.

(23) Mandatory cost protection formulas: We are now confronted with more or less of a flood of such formulas which are consistent with code provisions but inconsistent with policy, having the result if

approved in the forms demanded by industry, of substantially raising price floors and presumably prices.

(24) Bituminous Coal settlement: As part of the adjustment of the Bituminous coal labor provisions a study by Research and Planning was called for to be based upon statistics furnished bythe industry. The "four horsemen" are balking on furnishing the statistics and a showdown cannot be delayed.

(25) Governmental Purchasing: Retail Lumber units are maintaining that they are being driven out of business in droves by provisions of Administrative Order X-48 which permits manufacturers to give the Government as good prices as they give wholesalers or retailers. Likewise the 15% provision of Executive Order 6767 is being attacked by building supply and other industries, the building supply particularly endeavoring to get an exemption without adjustment of their mark-up provisions.

(26) Lumber export quotas: The limitation of export being insisted upon by the Code Authorityseems to demand that we take this matter away from the Code Authority.

(27) Woodward Iron case (Coal Code): An injunction obtained against a Code Authority, entered without any knowledge of NRA enjoined the Code Authority from reporting to NRA any violations of the code. This being much publicized action is necessary.

(28) Public flaunting of code assessments: This is reaching a point where litigation at the possible cost of breaking down the assessment structure must be faced as a possible alternative to the certain breaking down of continued successful highly publicized flaunting of attempts to collect assessments for code administration.

(29) Multiple assessments: The pressure against assessments where concerns doing a number of types of business and thereby coming under a number of codes, is becoming serious.

(30) Imposition of codes: Numerous industries which have stayed out of attempts to terminate code making must be subjected to initial steps looking toward imposed codes or their codification abandoned in the very near future due to the expiration of announced time for termination of code making and due to the shortness of continued life of the Act. Some of these industries are large and thus important to the economy and others are important because of competitive advantages enjoyed or key positions.

Blackwell Smith

Blackwell Smith,
Assistant Administrator for Policy.

BS:MC

Dr. R.
Perkins
Ickes
Hopkins
Barnett
Davis

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Blackwell Smith,
Assistant Administrator for Policy.

BS:MC

THE WHITE HOUSE
WASHINGTON

file personal
PSF: N.R.A.

9/13/34

Memorandum for the President:

Colonel Lynch just called me on the 'phone:

He said that Johnson had told him that the President did not feel that there would be any place in the new N. R. A. organization for an army officer, since they lacked political sense and would not fit into the picture; that he, Johnson, agreed with this and was afraid that if Colonel Lynch stayed on it would be impossible for him, Johnson, to give Colonel Lynch the sort of letter of commendation that would help his army record any; furthermore, that he, Johnson, will be back and take charge on Saturday.

Colonel Lynch said that he took this as a hint and was passing it along to me for my consideration.

He said also that Johnson, shortly after talking with him, had evidently told his son that he was not coming back to Washington at the present time, but was going to the beach and to New York.

The Colonel wanted to know whether there was any change in the orders he has been operating under during the time of Johnson's vacation. The Colonel also said that he had contemplated getting out around the latter part of September, and had so informed Johnson prior to the events of this morning.

Is there anything I can advise Colonel Lynch, since he asked me to call him back as soon as I have anything definite.

MHM

PSF: N.R.A.

THE NATIONAL EMERGENCY COUNCIL

WASHINGTON

OFFICE OF THE
EXECUTIVE DIRECTOR
COMMERCIAL NATIONAL BANK BUILDING
14TH AND G STREETS NW.

File personal

September 15, 1934.

Dear "Mac":

Herewith I am enclosing in the order of anticipated use:

1 - A memorandum concerning membership on the President's Special Board.

2 - An Executive Order creating the President's Special Board.

According to the President's program, the creation of the President's Special Board and the letter to General Johnson would be made public Monday, September 17th.

3 - An Executive Order creating the National Industrial Recovery Board.

4 - An Executive Order changing the membership of the Industrial Emergency Committee.

These two Orders would be issued later - after the meeting of the President's Special Board.

Since I have not assumed that these Orders would be issued exactly as written, I have made one or two corrections on the face. It is late Saturday and I must get this into the mail so that it will reach you Sunday. However, I have prepared these with great care.

I assume that in view of the General's radio speech of last night with its blazing indiscretions, the President will be very anxious to act as soon as possible. Insanity in public performance, added to insanity in private relations, is pretty dangerous. Governor Winant conferred with me today (on his own motion) regarding the effects of the General's explosion. I only hope it does not produce an outbreak of violence parallelling the one he helped to produce by a similar speech in San Francisco.

One of the press association men called me up last night within ten minutes after the General's speech and asked: "For God's sake how long is the President going to let him perform?" Of course, I didn't make any comment for publication or express any private opinion as to what the President would do, but I merely repeat this to show you how fast the reaction came.

I may telephone you tonight or tomorrow, or you can reach me at home on Sunday, Wisconsin 2236.

I hope you are having a good time at the races!

Sincerely yours,

Rechberg

DRR:AH

File "personal"

Richberg
N.R.A.

Memorandum

A question has arisen since I wrote on September 14, as to naming Averill Harriman to the NRA Board. The indictment returned in New York may not be serious, but if the President felt it unwise to name H., or H. felt it unwise to accept, the substitute name is very important. I have assumed the Board might elect Harriman as Chairman and Marshall as Executive Secretary. One of the industrialists ought to be Chairman, with Marshall (pro-labor) as Executive Secretary. Neither Hillman nor Smith are advisable for either place - one being straight-out labor and the other too young.

If Harriman is not named, I suggest either Walter Teagle or A. D. Whiteside - as men very familiar with NRA. (I would think Whiteside a very good man; because he is not nearly as "conservative" as generally assumed, and not tagged to a big industry. He is a notably good executive and sound on the New Deal. Also he knows, and cannot be influenced by, H.S.J.) I would suggest Louis Kirstein, but the presence of Hillman - and other reasons - make him inadvisable.

A "daring" idea might be to put Chrysler on the NRA board - as <u>one</u> outside man of national standing. This would almost require that Clay Williams be made Chairman.

Mrs. Rumsey has strongly urged Walton Hamilton in the control set-up. He is a good man, but most valuable right where he is, as Chairman of the Advisory Council, - which should be retained. He would give a strong "professorial" complexion to the Board, which ought to be avoided. Marshall would be <u>much</u> more effective. He is a practical man of real executive ability, with enough "professorial" background, but not too much.

Richberg

EXECUTIVE ORDER

By virtue of the authority vested in me by the National Industrial Recovery Act, approved June 16, 1933, and otherwise, and to effectuate the purposes of said Act and to assist the President in the performance of his constitutional obligation to "take care that the laws be faithfully executed"; I hereby create a temporary advisory board, to be known as the "President's Special Board" and appoint as members thereof, the following persons:

(Insert list of names)

It shall be the function of said Board to examine into and to discuss with me methods of simplifying the operations of the various federal agencies which have been established by legislative action, or by Executive Order, to meet emergency conditions, and of fitting such activities as may have a desirable permanence into the regular structure of the government, and to perform such other duties as shall be prescribed by the President.

The members of said Board shall act in an advisory capacity to the President and shall serve as such members without compensation. Additional members may be added to said Board or vacancies filled, in the discretion of the President, and the expenses of the Board shall be met from funds allocated to the National Recovery Administration, or to the National Emergency Council, in accordance with the directions of the President.

EXECUTIVE ORDER

Creating the National Industrial Recovery Board.

By virtue of the authority vested in me by the National Industrial Recovery Act, approved June 16, 1933, and to effectuate the purposes of said Act:

1 - I hereby appoint _____
_____ _____
_____ _____
to serve as members of the National Industrial Recovery Board, which is hereby created to administer under my direction and until further order the provisions of the National Industrial Recovery Act; to recommend, and, with my approval, to promulgate administrative policies and to employ, discharge, define the duties and direct the conduct of the personnel necessary for said administration.

2 - In the absence of the Administrator for Industrial Recovery, the Chairman of said Board is hereby authorized, in accordance with the directions of the Board, and in accordance with any specific directions by the President, to exercise in the name of the Board and in behalf of the President, all those powers heretofore conferred by Executive Orders upon the Administrator for Industrial Recovery and to continue in the exercise of such powers until the further order of the President.

3 - The Board shall elect from its members a Chairman and an Executive Secretary, both to serve at the pleasure of the Board and to perform such duties as may be prescribed by the Board, or by the President. The Executive Secretary shall be charged with the direction of the personnel of the administration and with the detail of administering the Act, in accordance with the directions of the Board and the President.

4 - I hereby direct that Hugh S. Johnson take a leave of absence as Administrator for Industrial Recovery until December 1, 1934, with pay, in order that he may fulfill his duties as a member of the President's Special Board, heretofore created, and such further functions and duties as shall be prescribed by the President.

5 - This Order shall be construed as a modification or amendment of any previous Orders concerning the subject matter hereof, to the extent necessary to make this Order fully effective.

EXECUTIVE ORDER

Amending Executive Order _____, which created the Industrial Emergency Committee.

By virtue of the authority vested in me by the National Industrial Recovery Act, approved June 16, 1933, and to effectuate the purposes of said Act, I hereby amend the Executive Order of June 30, 1934, creating the Industrial Emergency Committee, to conform to the following orders:

1 - I hereby designate as the members of said Industrial Emergency Committee:

The Secretary of the Interior

The Secretary of Labor

The Chairman of the National Industrial Recovery Board

The Administrator of Agricultural Adjustment

The Administrator of Federal Emergency Relief

The Director of the Committee, heretofore appointed by the President.

2 - It shall be the duty of said Industrial Emergency Committee to make recommendations to the President through its Director, with respect to problems of relief, public works, labor disputes and industrial recovery, together with allied problems of agricultural recovery, and to study and coordinate the handling of joint problems affecting these activities.

3 - I hereby extend the leave of absence of Donald R. Richberg, as General Counsel of the National Recovery Administration until December 1, 1934, with pay, in order that he may fulfill the duties of Director of said Committee and of Executive Secretary of the Executive Council and Executive Director of the National Emergency Council and such further functions and duties as shall be prescribed by the President.

PSF: N.R.A.

THE NATIONAL EMERGENCY COUNCIL

WASHINGTON

OFFICE OF THE
EXECUTIVE DIRECTOR
COMMERCIAL NATIONAL BANK BUILDING
14TH AND G STREETS NW.

October 17, 1934.

Honorable Stephen Early,
Assistant Secretary to The President,
The White House,
Washington, D. C.

Dear Steve:

Enclosed is a memorandum for the President concerning some long distance telephoning I did last night and this morning. I think he will wish to read it as soon as possible.

For your information: I ought to be in bed, or else I shall very soon be sicker than I am now. (Feels like the start of a "flu".) I came down to report what I had done. If this is all that is wanted, please give me a ring and I'll go back to bed. But I'll wait until I hear from you so that I can see the President if he wants me.

As ever,

Donald R. Richberg,
Executive Director.

"file personal"

File N.R.A. (52)

October 17, 1934.

Memorandum

To: The President

From: Donald R. Richberg

I telephoned President Hutchins last night entirely on my own responsibility, expressing pleasure that he was coming down here and asking his views on a suggestion which I wished to make to you, which was that his appointment should be announced as National Compliance Director, in general charge of all enforcement and as such Director he would be ex officio a member of the National Industrial Recovery Board.

Reasons given for suggestion were:

1 - A. F. of L. has demanded that Williams be removed. If Hutchins is added and named Vice-Chairman, immediate understanding will be that Williams is going out and Hutchins is to succeed him.

2 - Renewed confidence of industry in NRA which has been built up remarkably this month will be broken down again because of (1) apparent subservience to labor demands; (2) reduced influence of industry in "industrial self-government".

3 - In fact, as well as in appearance, the existing fortunate balance in the Board will be upset.

4 - Conclusion from Hutchins appointment will be either (1) this was intended from the beginning and Williams used as a stalking horse to hold conservative support; or (2) that in actual operation the Board has been unsatisfactory.

5 - The Board has been working very smoothly; conditions have been improving steadily; a high-grade personnel is being attracted to NRA and what is needed above all things is not to disturb the present situation in fact or in appearance for another thirty days at least.

I explained to Hutchins (with whom I have a friendly and sympathetic relationship) that while I was delighted at the idea of getting his energies and capacities into this work, I thought at the present time any move which could properly be interpreted as meaning a new set-up, would be most unfortunate. On the other hand, there was a great need of able direction of the whole compliance machinery and coordination of enforcement work; that he could be named for that and become an ex officio member of the Board with a minimum of disturbance and a maximum of benefit.

Hutchins replied that the compliance side was least interesting and most distasteful to him and that he had obtained permission from the Board of Trustees on the basis that he would shortly become Administrator of NRA and he could not well be placed in any other position. I explained my thought was there would be no change in the plan discussed, except that we would preserve nominally the five man board; that he would not be named Vice-Chairman, but he would be given the far reaching responsibility of national compliance and that he would have, in the next thirty days, opportunity to gain familiarity with all the ramifications of NRA, which is a far more complicated machinery that I believe he realizes.

Hutchins told me he thought it would be better to postpone action entirely on his appointment until such time as Williams would find it necessary to retire and then bring him in at that time, when he could arrange to come down here. I told him I did not want to make that suggestion to you as I felt you very much desired to make an appointment now and you were deeply interested in getting him here. I again explained that I was making my suggestion on the basis of my own information regarding the situation and discussions with members of the Board and my ideas might not be acceptable to you and I hesitated to advance them without his approval. He said he would telephone me again this morning.

This morning Hutchins phoned me again and reiterated his position, advising particularly that in view of the present situation an appointment should be deferred, but not made along the lines of my suggestion. I told him I would tell you what I had done. At the same time I told him frankly that I personally thought it would be most unfortunate after we had spent some months getting away from the obvious evils of "one-man control" if we apparently reverted immediately to the old idea of having a dominant Administrator, rather than a deliberative Board. He agreed with this, although he also stated that he thought it was necessary to concentrate executive power subject to board control - with which I agreed.

I must state to you that I think the immediate appointment of Hutchins as Vice-Chairman would have both a very bad effect on the increasing confidence of industry and, second, upon the operations of the Board itself. I did not say to Hutchins, but I must say to you, that he has a dominating personality and a record of having always insisted on dominating, which would upset the morale of the Board and of NRA and of industry, if it were made evident that he would shortly be running the whole show.

If he were to work with the Board for thirty days without any such implication, it would be possible to find out first if he would be acceptable and effective and, if so, the increase of his power would be natural. On the other hand, if his participation proved undesirable, you would not be confronted with the necessity of finding a way out of a bad situation. All members of the Board, except one, are acutely disturbed by the immediate and permanent prospect of putting Hutchins in a dominant position. I do not know Hillman's attitude, so I cannot speak for him.

Personally, I am convinced that naming Hutchins Vice-Chairman at the present time would largely destroy the good results accomplished after several months of very hard and difficult efforts to bring about a reorganization of NRA. I think it will make it practically impossible for me to accomplish, in my present positions, those things which I understand you wish me to do. I cannot fulfill my obligations to you except by expressing my convictions very forcibly.

It seems inevitable to me that if Hutchins is named Vice-Chairman, Williams would propose, as the appropriate way to help you carry out your purposes, that his resignation should be accepted in line with the understanding with his appointment that his service would be temporary. Obviously for him to remain as Chairman for a brief period with his chosen successor functioning as Vice-Chairman, would be harmful to him and of no help to the Administration. His influence, under the circumstances, would be practically zero and his position most embarrassing. I would not presume to speak for him, but I have the clear impression that he would regard his resignation, not as an action of protest, but as the way to help you carry out your purposes. Again I cannot speak for Whiteside, but in view of the temporary nature of his acceptance, I should assume that he would also withdraw. Finally, I think it would be somewhat difficult to induce other industrialists to fill these places. In other words, there would be a very real prospect that industry, as a whole, would simply walk out of the NRA.

In view of all the circumstances, let me suggest most earnestly that an announcement should be made that you have been discussing with Hutchins the possibility of getting him to undertake certain responsibilities in connection with NRA and that you believe this can be worked out in time, but that no immediate action is contemplated. If you think something more definite must be done at once, I should like to make one other suggestion, which, however, I should prefer to withhold for the time being.

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My advice is that an announcement should be made that you have been discussing with Hutchins the possibility of getting him to undertake certain responsibilities in connection with NRA and that you believe this can be worked out in time, but that no immediate action is contemplated. If you think something more definite must be done at once, I should like to make one other suggestion, which, however, I should prefer to withhold for the time being.

PSF: NRA (5)

THE WHITE HOUSE
WASHINGTON

October 23, 1935.

File
Gen. Johnson

MEMORANDUM FOR ~~MR. EARLY~~ The President:

General Johnson in Saturday Evening Post for October 26th attacks the New Deal in the leading article entitled, "THINK FAST, CAPTAIN!"

A keynote of the article is found in the quotation "It will be a tragedy if, in November, 1936, no other choice is offered but a return to Hooverism or a continuation of the present mess."

General Johnson asks for a cellar to garret renovation of the New Deal and a return to first faiths. Criticizing the Administration's tax policy, he declares also that sound money and a balanced budget are indispensibles of the New Deal.

Declaring that an overwhelming majority of business and labor wants the NRA back, the General says the NRA failed because Public Works failed. Securities and exchange legislation frustrated operations in investment markets and revival in capital goods. "PWA — WPA program is a complete flop in its first half and a thinly disguised and very expensive dole in its second half," he writes.

The General declares that with the exception of Joseph P. Kennedy almost none of the functions of government has been entrusted to men of affairs.

Three outstanding problems are fiscal policy, agriculture and unemployment which were to be solved under the original plan of the New Deal. Original purposes of the New Deal have been defeated through the influence of Professor Frankfurter [redacted], the latter, through his followers, according to the General, dominating every government agency.

He calls Professor Frankfurter "the most influential, single individual in the United States", and terms his followers "THE HOT DOG GROUP", asserting that this group has made business, big and little, believe that the New Deal is anti-business. General Johnson adds that the influence of the Frankfurter group developed into the famous press conference on the Constitution which dealt the New Deal and returning confidence the heaviest blow they have suffered.

"The hot dog pressure group which diverted the New Deal", writes General Johnson, "weakened party organization and conceived the Horse and Buggy comment after the Schechter case, is almost singly responsible for this whole condition."

In conclusion the General says we can recapture the original New Deal through a reborn Republican party or through the Democrats, if the President returns to his original principles.

WILLIAM D. HASSETT

W.D.H.