STOCK EXCHANGE PRACTICES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

S. Res. 84

A RESOLUTION TO THOROUGHLY INVESTIGATE PRACTICES OF STOCK EXCHANGES WITH RESPECT TO THE BUYING AND SELLING AND THE BORROWING AND LENDING OF LISTED SECURITIES THE VALUES OF SUCH SECURITIES AND THE EFFECTS OF SUCH PRACTICES

PART 1

APRIL 11, 12, 18, 21, AND 22, 1932

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STOCK EXCHANGE PRACTICES

MONDAY, APRIL 11, 1932

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met, pursuant to call, at 10.30 a. m., in Room 301, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Blaine, Carey, Couzens, Steiwer, Fletcher, Glass, Wagner, Bulkley, Morrison, Gore, and Costigan.

Present also: Senators Copeland and Coolidge, and Claude Branch, Esq., temporary counsel to the committee.

The CHAIRMAN. The committee will come to order. The committee was called together this morning for the purpose of beginning hearings under S. Res. 84, which is as follows [reading]:

Resolved, That the Committee on Banking and Currency, or any duly authorized subcommittee thereof, is authorized and directed (1) to make a thorough and complete investigation of the practices with respect to the buying and selling and the borrowing and lending of listed securities upon the various stock exchanges, the values of such securities, and the effect of such practices upon interstate and foreign commerce, upon the operation of the national banking system and the Federal reserve system, and upon the market for securities of the United States Government, and the desirability of the exercise of the taxing power of the United States with respect to any such securities; and (2) to report to the Senate as soon as practicable the results of such investigation and, if in its judgment such practices should be regulated, to submit with such report its recommendations for the necessary remedial legislation.

For the purposes of this resolution the committee, or any duly authorized subcomittee thereof, is authorized to hold such hearings, to sit and act at such times and places during the first session of the Seventy-second Congress, to employ such experts, and clerical, stenographic, and other assistants, to require by subpœna or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony and to make such expenditures, as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $50,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Senator COUZENS. Mr. Chairman, might I suggest that the resolution adopted by the committee on Friday afternoon be inserted in the record at this point?

The CHAIRMAN. That is a very proper suggestion. It is as follows [reading]:

RESOLUTION OF THE COMMITTEE ON BANKING AND CURRENCY, APPROVED UNANIMOUSLY, APRIL 8, 1932

That the Committee on Banking and Currency of the United States hereby instruct the chairman or acting chairman of the committee to issue a subpœna

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requiring the appearance of Mr. Richard Whitney upon Monday, April 11, 1932, at 10.30 a. m., and that he bring with him all records necessary to provide the following information:

(1) A list of all corporations in whose stock there is a short account in excess of 10,000 shares at the close of business on April 8; (2) the total number of shares of such stocks in which there is a short interest in each such corporation; (3) a list of all stock exchange members through whom such stock was traded; (4) the names of all clients for whom such stock was sold, and the number of such shares sold for each client in excess of 200 shares; (5) a list of all persons and/or corporations from whom such stock or stocks were borrowed and the amount or amounts so borrowed in numbers of shares.

The CHAIRMAN. The first witness will be Mr. Whitney, president of the New York Stock Exchange, who will now be sworn. Please stand and hold up your right hand: You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matter now under investigation by the committee, so help you God.

Mr. WHITNEY. I do.

TESTIMONY OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.

The CHAIRMAN. Mr. Whitney has been asked to appear before the committee and answer certain questions. If there are no questions by any member of the committee, he may now make his own statement.

Mr. WHITNEY. Mr. Chairman, I should like to ask if I might make a very brief statement regarding the information requested in the subpœna?

The CHAIRMAN. You may proceed.

Mr. WHITNEY. I am appearing before the committee to-day in response to the subpœna conveyed to me by a telegram which I received at my house in New York about 8 o'clock Friday evening last. I immediately replied, accepting the telegram as service of the subpœna.

In view of telephone communications had with one of the members of this committee on Friday morning and Friday afternoon which indicated that the committee might request information in regard to short selling, I asked the committee on business conduct to have the members of the exchange submit to it certain additional data, beyond that already required in their answers to the questionnaire, as to the position of the short accounts held in their offices. On Saturday further communications were sent to all members so as to secure the data necessary to answer the specific questions contained in the telegraphic subpœna. As the members of the exchange have offices in practically every State of the Union, it takes several days to collect any information or data requested by the exchange. I mention this to explain why the information requested by you and in turn by us of our members will not be available to the exchange for compilation until noon on Tuesday.

We have had a large force of men working, on both Saturday and Sunday, on such data as has already been received and, starting to-day, the entire available force of the Stock Clearing Corpora-

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tion will be assigned to the compilation of the information requested by the committee. I am advised that the mere sorting of the twenty or thirty thousand individual reports which will be received from the members of the exchange will require one full working day for a force of at least 175 men. The tabulation of the data, after the sorting is complete, will require the services of 25 trained men for three full business days. I regret, therefore, that I can not assure the committee that the answers to the questions asked in the subpœna will be in your hands before Friday of this week but I promise that we will use every endeavor to hasten this work.

I am going into these details so that you may understand that the delay in furnishing you with the statistics is due solely to the time required to collect and tabulate the necessary information. I can assure you that it is my desire to furnish to the committee all information which we have available or can possibly secure.

In this connection there seems to have been, in some quarters, a misunderstanding of the position of the exchange in regard to furnishing information to this committee. Because of the fiduciary relationship which exists between its members and their customers, the exchange has always taken the position that it could not voluntarily furnish information about the private affairs of the customers of its members. We have always recognized, however, the right of the committees of Congress to secure such information as is necessary or relevant to their legislative work and we have never in any manner indicated that we would refuse to give such information.

In view of the short time available I have not been able to prepare a formal statement covering the numerous points that are involved in the matter of short selling. I shall be happy to answer, of course, any questions that you may care to put to me here to-day, or at any other time, in so far as I have personal knowledge to give you. On the broader question of the economic aspects of short selling I would like to present as a matter of record, a copy of the hearings before the committee on the Judiciary of the House of Representatives on February 24, 1932, at which I appeared. This contains not only my prepared statement in regard to the bills regulating short selling then pending before the committee but also the questions asked and the answers made by me along these lines. I would also like to file with you the brief submitted by our counsel at the request of the committee as to the constitutionality of those bills.

I trust that at some appropriate time in the course of the hearings on Senate Resolution No. 84 I will be given an opportunity of submitting a more comprehensive statement on all of the numerous subjects referred to in the resolution.

I have already explained my inability to produce this morning the detailed information called for by the subpœna. In orded to make perfectly sure that we may furnish to the committee the exact information which it desires, I would like to take up the different sections of the subpœna.

The first section asks for a list of all corporations in whose stock there is a short account in excess of 10,000 shares at the close of business on April 8. I have brought with me the most recent statis-

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tics showing the short position in every stock listed on the exchange. These figures are complete down to the opening of business on April 5, 1932. I might say in this connection that part of this information, and particularly the first volume of statistics, has been given to the public. Commencing in January we have, monthly, made public the day-to-day figures of the total short position. We have in addition furnished detailed information to Government officials. As I have just told you, as soon as the reports for April 8 can be compiled we will furnish the information requested by this first question.

The second section asks for the total number of shares of such stocks in which there is a short interest. The information we will furnish in response to the first section will show the actual short interest in each stock and will, therefore, I am sure, constitute a complete answer to the second question.

The third section asks for a list of all stock exchange members through whom such stock was traded. If the information sought by this question is a list of the members of the exchange who, today, have on their books short accounts for customers, the question can be answered by having the reports received from members specially sorted. This will require at least an additional 24 hours and will delay by that length of time the receipt of the information by the committee. If, however, the information sought is a list of the members of the exchange who originally executed the selling orders of the stock now held in short account, I am afraid that it will be almost impossible to answer the question. Many short positions have been in existence for long periods of time and these accounts may have been moved from the house which originally executed the order to some other firm. Furthermore, many selling orders are made by one firm for an account which exists in another firm. To trace back the original selling order on every short position would require an examination of the books of the individual members of the exchange and would necessarily consume several months.

The fourth section asks for the names of all clients for whom such stock was sold and the number of such shares sold for each client in excess of 200. Am I right in believing that in answer to this section the committee would like to have a list showing each customer of the stock exchange houses who, at the close of business on April 8, 1932, had a short account in excess of 200 shares? If this is the information which the committee desires, the reports which the exchange will receive must be sorted by stocks in order to secure the answers to the first two sections and then resorted in alphabetical order so that the total short position held by each person, whether it be in one or more stock exchange houses, can readily be determined. After this second sorting which would require, as I have said above, about 24 hours, we can have the results typewritten on schedules. This latter work, however, would consume about three days and therefore, if the committee is anxious to have this information at the earliest possible moment, may I ask whether it will be satisfied by having a photographic film which will show each report in alpha-

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betical order by names of customers? I had inquiries made on Saturday and find that it is possible to have such a photographic record made very rapidly and I believe that no delay will be occasioned by using this method.

The last or fifth section asks for a list of all persons or corporations from whom stocks were borrowed and the amounts so borrowed in numbers of shares. I am frank to say that I believe this question is ambiguous. Nevertheless the exchange, using the exact words of the committee, has asked its members to make reports and when this information is received it will be tabulated and the results submitted to the committee.

The CHAIRMAN. Is Mr. Branch here?

Mr. BRANCH. Yes, Mr. Chairman.

The CHAIRMAN. Any questions, Senator Walcott?

Senator WALCOTT. Not at this time.

The CHAIRMAN. Any questions, Mr. Branch?

Mr. BRANCH. Mr. Whitney, have you an extra copy of the statement which you just gave the committee so that you could let me have it?

Mr. WHITNEY. I have given it to the clerk of the committee.

Mr. BRANCH. I wondered if you had another copy that I might have before me.

Mr. WHITNEY. I think I have another copy, Mr. Branch. Do you mean for your present use?

Mr. BRANCH. Yes; and for my permanent use.

Mr. WHITNEY. Here is an extra copy. There are some corrections, possibly, that should be made on it.

Senator BLAINE. Very well, but the record of our hearing will disclose that.

Mr. BRANCH. Yes.

Mr. WHITNEY. All right.

Mr. BRANCH. Mr. Whitney, I think you said you had with you some lists of corporations in whose stock there was a short account at the close of business on April 8, 1932.

Mr. WHITNEY. No, sir; but as of the opening on April 5.

Mr. BRANCH. April 5, 1932.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. Will you produce that list, please?

Mr. WHITNEY. Here it is.

Mr. BRANCH. Have you another copy? If so, please hand one to the committee reporter and one to me.

Mr. WHITNEY. Might I also at this point, in response to the request, submit as exhibits the other data referred to in the statement that you have before you?

Mr. BRANCH. Yes; if you will do that. I will ask the committee reporter to assign a number to each one of the statements as presented by Mr. Whitney and then hand it over to me so that we may be able to identify it by number in the future.

Mr. WHITNEY. You will appreciate that you have the only copy of each statement that I have here, so that if you interrogate me about it I will not have a copy before me in order to testify as to

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what it contains, except from memory, perhaps, as to some individual details.

Mr. BRANCH. Do you mean as to the first paper, Exhibit No. 1, that has just been handed to me?

Mr. WHITNEY. Yes; that is the only copy that I have with me. I think there are only three in existence, as you may see by the list.

Mr. BRANCH. If there is necessity we will allow you to consult this Exhibit No. 1 during your examination.

Mr. WHITNEY. All right; thank you.

Mr. BRANCH. And I would suggest that in future, if possible, enough copies be made so as to avoid any delay. You may now go ahead and present the other tabulations which you have.

Mr. WHITNEY. Then, as your Exhibit No. 2 I hand you a printed copy of the hearings before the Committee on the Judiciary of the House of Representatives.

Senator BLAINE. It is not necessary to insert that in our record. We have or can get copies of the printed hearings of the Judiciary Committee of the House of Representatives.

The CHAIRMAN. Then, that may simply be identified as Exhibit No. 2.

Mr. WHITNEY. Here is a printed copy of my brief submitted to the Judiciary Committee of the House of Representatives on behalf of the New York Stock Exchange, which I understand will be marked Exhibit No. 3.

Mr. BRANCH. As you present these papers will you state for the benefit of the record what they are?

Mr. WHITNEY. Certainly.

The CHAIRMAN. That contains what?

Mr. WHITNEY. It is described in the statement I have just made to the committe.

The CHAIRMAN. What has been described?

Mr. WHITNEY. What has already gone in has been described in my statement. What I am now going to put in, with the exception of what Mr. Branch has there before him, I now will describe.

The CHAIRMAN. All right.

Mr. WHITNEY. This next tabulation, which is your Exhibit No. 4, contains statistics in regard to short selling compiled by the New York Stock Exchange as to each and every stock in which a short interest appeared between May 25, 1931, and November 30, 1931, inclusive. I will state that this data has been sent to anybody who has requested it; it has been given in full to the press and has been furnished to any interested party.

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EXHIBIT No. 4

1931	Number of shares of short interest	Number of stocks in which a short interest was reported	1931	Number of shares of short interest	Number of stocks in which a short interest was reported
May 25	5,589,700	616	Oct. 14	2,254,370	431
June 4	4,948,260	670	Oct. 15	2,254,676	427
June 17	4,384,474	606	Oct. 16	2,246,874	463
June 26	3,978,149	593	Oct. 19	2,241,968	420
July 3	3,634,261	597	Oct. 20	2,239,700	456
July 10	3,770,569	571	Oct. 21	2,239,200	540
July 17	3,645,982	578	Oct. 22	2,243,327	550
July 24	3,718,218	588	Oct. 23	2,300,320	554
July 31	4,038,850	565	Oct. 26	2,328,972	546
Aug. 7	4,374,200	524	Oct. 27	2,440,169	541
Aug. 14	4,342,500	512	Oct. 28	2,540,943	540
Aug. 21	4,271,800	515	Oct. 29	2,652,127	516
Aug. 28	4,408,100	520	Oct. 30	2,676,649	524
Sept. 4	4,338,000	508	Nov. 2	2,764,959	524
Sept. 11	4,480,400	517	Nov. 4	2,816,934	531
Sept. 18	4,241,300	517	Nov. 5	2,846,236	546
Sept. 21	3,961,300	518	Nov. 6	2,949,402	534
Sept. 22	3,162,813	493	Nov. 9	2,897,874	547
Sept. 23	2,929,295	477	Nov. 10	2,925,417	560
Sept. 24	2,949,412	471	Nov. 11	2,988,446	555
Sept. 25	2,987,385	449	Nov. 12	3,020,601	554
Sept. 28	2,985,088	467	Nov. 13	3,013,807	551
Sept. 29	3,063,203	473	Nov. 16	3,104,185	551
Sept. 30	3,036,928	476	Nov. 17	3,131,796	550
Oct. 1	2,814,935	461	Nov. 18	3,237,159	561
Oct. 2	2,643,170	450	Nov. 19	3,364,776	560
Oct. 5	2,612,414	450	Nov. 20	3,429,228	563
Oct. 6	2,597,898	462	Nov. 23	3,537,787	568
Oct. 7	2,173,800	446	Nov. 24	3,584,161	572
Oct. 8	2,243,535	454	Nov. 25	3,568,538	558
Oct. 9	2,163,771	451	Nov. 27	3,690,795	562
Oct. 13	2,182,197	453	Nov. 30	3,745,642	556

Senator COUZENS. Mr. Chairman, might I ask a question right there?

The CHAIRMAN. Certainly.

Senator COUZENS. Mr. Whitney, I should like to ask you this question: In explaining that exhibit you stated it covered any stocks wherein short selling appeared. Is there any short selling where it does not appear?

Mr. WHITNEY. Not that we know of.

Senator COUZENS. Have you ever examined into that matter?

Mr. WHITNEY. We asked certain data from our members, as comprehensive in scope as we could get in an effort to cover every point that we believed would bring out the information you requested. If any member failed to give that information to us he is subject to expulsion. I know of no greater effort that could be exerted on our part to get the necessary information, and I believe it is exact.

Senator COUZENS. So when you stated that that is all of the short selling that appeared, you are confident there is no short selling other than what appears in the record?

Mr. WHITNEY. That is my belief, in so far as our members are concerned.

Senator COUZENS. Have you any knowledge as to what other selling could occur, I mean outside of your members?

Mr. WHITNEY. I have not.

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Senator BLAINE. Let me ask this question: The short selling as to which you have just reported is short selling as defined by the New York Stock Exchange, is that right?

Mr. WHITNEY. Yes, sir.

Senator BLAINE. And there may be other forms of short selling which could be used to cover up short selling as defined by the New York Stock Exchange, is that correct?

Mr. WHITNEY. I do not know.

Mr. BRANCH. Now, may I ask Mr. Whitney a question?

The CHAIRMAN. One minute. Senator Fletcher wishes to ask a question.

Senator FLETCHER. Mr. Whitney, might I ask you to bring that statement down to date?

Mr. WHITNEY. The statement is brought down to date.

Senator FLETCHER. How was that?

Mr. WHITNEY. I say, the statement is brought down to date.

Senator FLETCHER. But it is not here?

Mr. WHITNEY. Yes, sir; it is here.

Senator FLETCHER. But you said that statement was from May 25 to November 30, 1931.

Mr. WHITNEY. That is correct, Senator Fletcher, but these further exhibits that I am going to present bring it down month by month from that time to this, when taken together with your Exhibit No. 1, which is merely for the first three days of April. (See appendix.)

Senator WAGNER. Mr. Whitney, did I understand you to say that these statements have been heretofore given to the press?

Mr. WHITNEY. The first statement that I presented, from May 25 to November 30, 1931, has been given in full to the press.

Senator WAGNER. Do you remember about when that was?

Mr. WHITNEY. On December 16, 1931.

Senator GLASS. What percentage of the newspapers do you think understand it?

Mr. WHITNEY. Having great respect for the press, Senator Glass, I presume that they all do, or those that take an interest in studying it. Some papers throughout this country made very exhaustive tabulations and conclusions from those figures.

Senator BLAINE. That statistical abstract is dated December 15, 1931?

Mr. WHITNEY. Yes, sir. That was when it was finally compiled and given out.

Senator COSTIGAN. Why did you give that statement to the press?

Mr. WHITNEY. Because we desired to put fully before the minds of the people of the entire country the facts that existed with regard to short selling and in order, as we saw it, to prove that the exaggerations with regard to it were absolutely ridiculous.

Senator BROOKHART. Mr. Whitney, it was represented to this committee that there was a list, or a combination rather, of big bear dealers who were selling on Friday last a large quantity of stocks short, and that they had planned to make a black Friday out of Saturday, and that you had the names or knew who they were but refused to disclose that information. Can you tell us about that?

Mr. WHITNEY. I had no knowledge, Senator Brookhart, of any bear raid beyond what was conveyed to me over the telephone with

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particular regard to United States Steel by Senator Walcott. And I have no knowledge now of any bear raid. Our investigations made as a result of the request of Senator Walcott into the operations in four specific stocks, United States Steel, American Telephone & Telegraph, Public Service of New Jersey, and Consolidated Gas of New York, showed no bear raiding, but did show great liquidation for long account.

Senator BROOKHART. Will you explain to us the difference between a bear raid and liquidation?

Mr. WHITNEY. A bear raid is an illegitimate attempt on the part of someone by selling stocks to demoralize the market.

Senator BROOKHART. Well, when you say "an illegitimate attempt" do you mean it is a violation of law?

Mr. WHITNEY. It is a violation of the rules of the New York Stock Exchange. And it does not take place.

Senator BROOKHART. Then you mean nobody violates those rules any more?

Mr. WHITNEY. I would not say that, Senator Brookhart, but if we find such a violation we have penalties to inflict which are conclusive.

Senator BROOKHART. Well then, what do you mean by liquidation such as you have described in the case of these four stocks?

Mr. WHITNEY. Liquidation is the selling of securities, or any other article owned by an individual, that he owns outright or on margin.

Senator BROOKHART. What is the margin at the present time on those stocks?

Mr. WHITNEY. On what stocks?

Senator BROOKHART. Well, those four stocks. Is the margin different on different stocks or the same thing all the way round?

Mr. WHITNEY. The average margin demanded by brokers is 25 per cent of the purchase price.

Senator BROOKHART. And what would it be on those four particular stocks?

Mr. WHITNEY. Presumably the same.

Senator BROOKHART. Were those stocks that were liquidated held on margin or owned outright?

Mr. WHITNEY. Both.

Senator BROOKHART. Have you any idea of the proportions?

Mr. WHITNEY. No, sir.

Senator BROOKHART. Have you any way to determine the proportions?

Mr. WHITNEY. No; except that these shares in general—I mean all shares held on margin to-day—have dropped to a very low figure, and therefore the preponderance of selling and liquidation throughout this period has been from the boxes of investors throughout this country.

Senator BROOKHART. You mean by that answer that they owned the stocks outright?

Mr. WHITNEY. Presumably.

Senator BROOKHART. And they didn't hold them on margin.

Mr. WHITNEY. Presumably.

Senator BLAINE. At this juncture, Mr. Chairman——

The CHAIRMAN (interposing). I suggest that those tabulations that Mr. Whitney has before him should now be put into the record as exhibits.

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Senator BLAINE. At this juncture there is another matter which I think ought to be put into the record. There was a telegram received by Senator Walcott on last Saturday, as I recall. It is not a telegram that is now available to us, and I think in fairness to the committee, as well as to those who may testify before the committee, we ought to have that telegram read into the record.

Senator GLASS. Mr. Chairman, might I suggest that in view of the fact there are members of the committee who did not see that telegram, that the question raised by Senator Blaine be considered in executive session?

Senator BLAINE. Well, I saw the telegram, and I expect to base some of my examination upon it. Now, I submit that it would be hardly fair——

The CHAIRMAN (interposing). If there is objection to taking it up at this time I suggest that we will have an executive session later to consider it.

Senator BLAINE. Well, can there be any objection to our knowing here from whom that telegram came, so we may identify it?

The CHAIRMAN. In the circumstances I am not sure that we should ask a member of the committee to produce it here now, but doubtless he will be willing to have you go into it when we can have an executive session.

Senator BLAINE. I was going to examine Mr. Whitney about it.

The CHAIRMAN. Well, when the Senator furnishes it he can be examined.

Senator BLAINE. I meant to examine Mr. Whitney about the matter, in which case we would need the telegram.

The CHAIRMAN. If you insist on the point we will have it passed upon. It is a matter for the committee to determine.

Senator GLASS. I should like to ask Mr. Whitney one question right now.

The CHAIRMAN. You may proceed.

Senator GLASS. Mr. Whitney imputes to me as a newspaper man vastly more knowledge than I have as a United States Senator. Mr. Whitney, I want to know what you mean by illegitimate short sales. And in the same connection I would like you to explain to me why any short sale should be any more illegitimate than what you term a bull transaction? In other words, if there be any question of irregularity, or immorality as some people contend, in the selling of the markets short, why isn't the same thing involved in selling the market up to an exaggerated figure?

Mr. WHITNEY. Do you wish me to answer that now, Senator Glass?

Senator GLASS. Yes; I want to know.

Mr. WHITNEY. In answering Mr. Brookhart I was not conscious of stating anything about short selling in reference to bear raids. If I did, it was just by way of passing. Bear raiding may be short selling and may be long selling. I said it was illegitimate because it sought and did demoralize the market.

Senator GLASS. Well, that does not necessarily mean that the thing is illegitimate because it demoralizes the market. I think the market is frightfully demoralized when it is carried sky high and beyond all intrinsic values.

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Mr. WHITNEY. I was going to add that the rule of the stock exchange to which I referred, with regard to demoralization or giving a fictitious value to the members' shares, applied both on operations for appreciation of values as well as for depreciation.

Senator BULKLEY. Does illegitimacy depend upon intent as well as the effect?

Mr. WHITNEY. Both.

Mr. BRANCH. Now, Mr. Chairman, shall we proceed with the introduction of the documents?

The CHAIRMAN. If the members of the committee do not desire at this time to propound any more questions, you may proceed.

Mr. BRANCH. Mr. Whitney, have you still some documents which have not been marked?

Mr. WHITNEY. Yes, sir: four, Mr. Branch.

Mr. BRANCH. Will you hand them to the committee reporter, and as you present each one will you designate what it is, please?

Senator BLAINE. Will the committee reporter insert the number of the exhibit before the description of the document?

Mr. WHITNEY. The next is Exhibit No. 5, Mr. Branch, and is a compilation or the setting forth of statistics for the month of December, the next month following those just put in, and ending with November 30, 1931.

Mr. BRANCH. In other words, that gives the same information for the month of December as has been given for previous months, I mean in the compilation which has been marked "Exhibit No. 4."

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. It is merely a continuation of Exhibit No. 4 but bringing it down to what date?

Mr. WHITNEY. Down to including December 31, 1931. Please understand that all dates used are as to the opening of the market on that day.

Mr. BRANCH. Thank you. Now that is put in.

(The statistics for December, 1931, marked "Exhibit No. 5," are as follows:)

EXHIBIT No. 5

1931	Number of shares of total short interest	Total number of stocks in which a short interest was reported	1931	Number of shares of total short interest	Total number of stocks in which a short interest was reported
Dec. 1	3,667,067	566	Dec. 16	3,181,031	620
Dec. 2	3,665,152	567	Dec. 17	3,138,802	614
Dec. 3	3,736,577	579	Dec. 18	3,134,456	608
Dec. 4	3,662,800	576	Dec. 21	2,909,672	613
Dec. 7	3,594,468	573	Dec. 22	2,874,224	618
Dec. 8	3,553,345	572	Dec. 23	2,862,146	616
Dec. 9	3,594,720	572	Dec. 24	2,891,885	608
Dec. 10	3,767,236	591	Dec. 28	2,888,854	610
Dec. 11	3,698,320	608	Dec. 29	2,888,648	614
Dec. 14	3,559,707	616	Dec. 30	2,858,928	603
Dec. 15	3,404,039	609	Dec. 31	2,842,072	597

Mr. BRANCH. You may proceed with the exhibits, Mr. Whitney.

Mr. WHITNEY. Exhibit No. 6, Mr. Branch, is a carrying of these figures forward in every way similar to what has already been described for preceding months, but for the month of January and down to January 31, 1932, inclusive.

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EXHIBIT No. 6

1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported	1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported
Jan. 4	2,962,127	596	Jan. 19	3,069,649	579
Jan. 5	3,122,915	589	Jan. 20	3,136,766	584
Jan. 6	3,092,929	590	Jan. 21	3,145,087	586
Jan. 7	3,087,616	598	Jan. 22	3,171,568	580
Jan. 8	3,072,601	591	Jan. 25	3,266,739	571
Jan. 11	3,076,399	589	Jan. 26	3,327,471	580
Jan. 12	3,137,369	587	Jan. 27	3,277,702	574
Jan. 13	3,152,366	594	Jan. 28	3,463,342	579
Jan. 14	3,121,243	577	Jan. 29	3,536,207	575
Jan. 15	3,068,026	572	Feb. 1	3,600,265	590
Jan. 18	3,064,761	556			

Mr. BRANCH. All right. Proceed with the next exhibit.

Mr. WHITNEY. Exhibit No. 7 is for the month of February, from February 1 to February 29, 1932, inclusive.

EXHIBIT No. 7

1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported	1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported
Feb. 1	3,600,265	590	Feb. 16	3,363,727	593
Feb. 2	3,636,435	587	Feb. 17	3,234,068	596
Feb. 3	3,688,934	590	Feb. 18	3,177,712	600
Feb. 4	3,685,682	586	Feb. 19	3,192,702	586
Feb. 5	3,700,119	577	Feb. 23	2,996,691	583
Feb. 8	3,754,942	580	Feb. 24	2,964,016	581
Feb. 9	3,842,241	589	Feb. 25	2,983,014	587
Feb. 10	3,931,885	590	Feb. 26	3,049,978	583
Feb. 11	3,965,142	590	Feb. 29	3,081,914	578
Feb. 15	3,437,833	599			

Mr. BRANCH. You may proceed.

Mr. WHITNEY. The next is your Exhibit No. 8—I mean that is your number—being a tabulation for the month of March, 1932, from March 1 to March 31, inclusive.

EXHIBIT No. 8

1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported	1932	Number of shares of total short interest	Total number of stocks in which a short interest was reported
Mar. 1	3,102,876	587	Mar. 16	3,162,712	592
Mar. 2	3,098,316	583	Mar. 17	3,240,304	590
Mar. 3	3,018,470	571	Mar. 18	3,242,247	594
Mar. 4	3,100,862	575	Mar. 21	3,465,818	601
Mar. 7	3,096,178	594	Mar. 22	3,422,258	601
Mar. 8	3,131,776	591	Mar. 23	3,560,231	600
Mar. 9	3,164,725	589	Mar. 24	3,479,756	598
Mar. 10	3,163,532	596	Mar. 28	3,427,664	590
Mar. 11	3,133,629	587	Mar. 29	3,315,913	590
Mar. 14	3,107,484	587	Mar. 30	3,305,253	590
Mar. 15	3,131,179	597	Mar. 31	3,299,268	586

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Mr. BRANCH. Is that all?

Mr. WHITNEY. Yes. Exhibit No. 1, I mean your number, is the one you first received, Mr. Branch, for the few days of April, 1932, as to which figures have been already received and compiled by us.

Mr. BRANCH. I do not seem to have that exhibit before me.

Mr. WHITNEY. It was just handed over to you there, and has not a blue binder on it as these other exhibits have.

Mr. BRANCH. Yes, here it is. That was for the month of April, 1932.

Mr. WHITNEY. No, sir; it was for a few days as shown thereon. Without looking at it I could not tell you offhand how many days are included.

Mr. BRANCH. I mean up to the time when you stopped with the other exhibits, and beginning with April 1, 1932.

Mr. WHITNEY. Might I ask in connection with that question whether for April, it was the 1st, 4th, and 5th? If you will look at the list of dates on that statement you will see.

Mr. BRANCH. I see it is April 4, 5, and 6.

Mr. WHITNEY. April 4, 5, and 6, 1932. All right. That is as to the opening of the market on those particular days.

Mr. BRANCH. Then these exhibits which you have given to us give all that information beginning with May 25, 1931, and ending with April 6, 1932; is that correct?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. Now, have you any other documents with you which you wish to present to the committee?

Mr. WHITNEY. No, sir. That is all unless you request some other things that I might have. I have not any other documents to present; no.

Mr. BRANCH. Have you any other compilations of figures prepared in response to the subpœna, I mean with you at the present time?

Mr. WHITNEY. Not directly in that connection. I have an infinite number of papers showing statistics of one sort and another, and depending upon how the hearing progresses and what questions are propounded, I may have to refer to these papers, and then if you desire me to file them with you I will be glad to do so.

Mr. BRANCH. I think for the present we better confine our attention, then, to what papers have already been marked. Have you a copy of any one of these statements before you? I think you will need a copy to refer to in order to answer my questions.

Mr. WHITNEY. I have not a copy of any of them here.

Mr. BRANCH. I will hand this one to you, which is committee's Exhibit No. 8. I am not at the present time going into the figures, but I am desirous of understanding just what is included in the figures shown in the exhibit, and in other exhibits similar to it covering other periods. Will you explain, then, and you will see it in the first part of the statement, just what those figures are, what they include?

Mr. WHITNEY. In the first place, there is listed the names of corporations, and the shares of the corporations in which, during the period under review, any short interest of any amount appeared.

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Mr. BRANCH. That is, any short interest which appeared as of the date designated in the column you have reference to.

Mr. WHITNEY. I was going to say that, but that was not what I attempted to say then.

Mr. BRANCH. Will you explan it, then?

Mr. WHITNEY. First, as I say, there is a description of them—not in the first column but in the second column—of the particular stocks of corporations in which during any time during the month there was any short interest. Before that is shown——

Mr. BRANCH (interposing). Might I interupt you for a minute there? You say in which there was any short interest at any time.

Mr. WHITNEY. During the month.

Mr. BRANCH. Yes. Suppose a short sale was made and was covered during the same market day, would that be reflected in any way in this statement?

Mr. WHITNEY. No, sir. This is our net short position.

Mr. BRANCH. Then the next information which has been given to us would contain figures including that kind of short sales?

Mr. WHITNEY. No, sir; because the sale is made and the covering of that sale is made on the same day, thereby absolutely offsetting each other, certainly in so far as the net position is concerned.

Mr. BRANCH. Has the stock exchange compiled or attempted to compile any figures showing these amounts of such short sales either in the aggregate or in regard to any particular security?

Mr. WHITNEY. Yes.

Mr. BRANCH. Have you such figures before you?

Mr. WHITNEY. There appear in these compilations the number of shares sold and covered the same day, and the percentage of those sales and covering purchases to the total number of transactions on that particular day. It is not broken down, however, into particular stocks.

Mr. BRANCH. The short interest appearing at the close of business on each day is broken down into particular stocks showing the net short position?

Mr. WHITNEY. Showing the net short position in each stock; yes, sir.

Mr. BRANCH. It would be possible, of course, to break that down in regard to the short sales which were covered during any particular day, wouldn't it?

Mr. WHITNEY. It would.

Mr. BRANCH. Has that been done as a matter of fact in regard to any particular security?

Mr. WHITNEY. I think it has been done since the period in September in every security.

Mr. BRANCH. But you have no compilation of those figures with you here?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Have you or has any other officer of the stock exchange or any employee of the stock exchange a compilation of such figures?

Mr. WHITNEY. Do you mean here?

Mr. BRANCH. No; anywhere.

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Mr. WHITNEY. Oh, as to those figures I think we can readily get them in New York; yes, sir.

Mr. BRANCH. At your next appearance before the committee will you please bring such a compilation or compilations for as late a period as you may have them? And I take it, it will not be necessary to serve a new subpœna on you for them.

Mr. WHITNEY. It will be entirely unnecessary. But I should like to get your specific request so that I may fully understand it, and it may be done at some future time in case you do not care to give it to me now. That is another stupendous job. I have not that data in complete form over a period but just day to day. And only rough work has been done along that line. There was no suggestion of that in the subpœna, so we have not started upon any such full compilation of it.

Mr. BRANCH. I think we could discuss the details of that later.

Mr. WHITNEY. You can.

Mr. BRANCH. I merely wanted to know what information was available. And it is merely a question of preparing something from what you already have, it is not?

Mr. WHITNEY. Yes; that we have day by day. I would point out to you that—take March 1 that you referred to, there were 40,800 shares sold that day and covered the same day.

Mr. BRANCH. Are you now referring to some specific security?

Mr. WHITNEY. No, sir; the total number of shares sold and covered the same day were 40,800 on March 1. That refers on any date to the transactions on that particular day, whereas the short position refers to a time as of the opening of that particular day. We can have a list of these transactions broken down into the amounts of particular stocks, the addition or totaling of which makes 40,800 shares.

Senator GORE. Might I ask a question right at that point?

The CHAIRMAN. Proceed, Senator Gore.

Senator GORE. Mr. Whitney, do you figure that these daily transactions of sales and purchases do not have much reaction on the prices of the stocks involved?

Mr. WHITNEY. We do not.

Mr. BRANCH. Might I interrupt in order to be sure I understand the answer? Mr. Whitney, will you make us a further statement in regard to that, for I fear your answer, as it stands on the record, might be interpreted two different ways.

Mr. WHITNEY. Is it not self-evident that when 100 shares of stock are sold, and then later on in the day purchased again, that the transactions are exactly offsetting?

Mr. BRANCH. And do you contend that no transactions of that kind could possibly have any effect upon depressing prices?

Mr. WHITNEY. "Possible" is a very large word, but in my opinion the result is not that of depressing prices.

Mr. BRANCH. That is your opinion of the matter.

Mr. WHITNEY. Yes.

Senator GORE. Mr. Whitney, have you ever checked to see whether it averages out, that the short seller during these daily transactions takes a loss and makes a profit? Have you checked it at all?

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Mr. WHITNEY. No, sir. We have never checked it.

Senator GORE. But it would naturally share in the fluctuations of the market?

Mr. WHITNEY. Yes, sir.

Senator GORE. And sometimes it would be one way and sometimes another?

Mr. WHITNEY. Yes, sir. And if a man is wrong he takes a loss, and if he is right he makes a profit. The short seller is exactly in the same position as the man who purchases on margin, the two can not be dissociated. The man who buys on margin buys because he expects to make a profit on appreciation—in increase in the price of the shares, and the man who sells short is the direct inverse.

Senator GORE. I thought maybe the man who sold and got out on the same day got a little nervous and thought he had made a mistake.

Mr. WHITNEY. Well——

Senator GORE (continuing). And maybe he had to get out at a little higher price than he got in.

Mr. WHITNEY. He very likely does make a mistake. None are infallible.

Senator GLASS. Well, it is astonishing to learn that there have been any mistakes.

Mr. WHITNEY. Senator Glass, I am referring in this connection to the people of the entire United States, not only to brokers.

Senator GLASS. Oh, yes; and so am I. I think mistakes is what is the matter with the country right now, the entire country.

Senator BLAINE. Mr. Whitney, you refer to those whom Mr. Hoover described in 1912 as the idiots who come in and get stocks after they have been pushed up to almost unknown heights, the public, are you not?

Mr. WHITNEY. I have no knowledge of and have never seen any statement made by the President with regard to that.

Senator BLAINE. Then you ought to go over to the Congressional Library and see the London Mining Journal, I believe of May, 1912. It might be very useful to the New York Stock Exchange.

Mr. WHITNEY. I do not doubt it. But we have a great many other things to do at this time.

Mr. BRANCH. Have you finished, Senator Blaine?

Senator BLAINE. Yes.

Mr. BRANCH. To continue with these exhibits which you have presented, Mr. Whitney: Do they show anywhere the sales or short positions against long positions in the same stock where definite instructions have been given to deliver over the stock certificates?

Mr. WHITNEY. They do not.

Mr. BRANCH. You do not consider that short selling?

Mr. WHITNEY. I do not—or am I asked that question?

Mr. BRANCH. Yes.

Mr. WHITNEY. The man who sells stock, so-called against the box, is not a short seller, the distinction being that he at any time has the entire power in his own control to deliver that stock, because he has it, whereas the short seller must at some time buy that stock back and has no stock to deliver without buying back against his contract.

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Senator COUZENS. What the lender of these stocks usually makes is his profit in the transactions, if a profit there be?

Mr. WHITNEY. Senator Couzens, I am afraid I do not understand your question. Will you repeat it?

Senator COUZENS. I understand that the lenders of these stocks so as to cover on the part of the short seller, or in some cases where there is a profit that there is a division of the profit, and that in other cases where there is a loss, the broker has to pay the lender for the stocks that are sold short. Have you any knowledge as to how that is handled?

Mr. WHITNEY. There is no division of profit there between broker and short seller.

Senator COUZENS. I am talking now about the lender of stock, the lender of stock in order to make good the short seller's sale, he gets a profit for lending his stock, does he not?

Mr. WHITNEY. In some cases, where the availability of the stock for lending is slight, where there is a stringency, where there is too great a demand for the borrowing of stock. But in the case of the 587 issues referred to here as of March 1, in which there is a short interest, I do not think any appreciable amount of this, or any large percentage of these, were lending at a premium.

Senator COUZENS. Well, I understand that the investment trusts who hold large portfolios of stocks make a practice of lending stocks in their portfolios to brokers who sell short, and obviously they get a profit for so doing. I wondered if you had any knowledge of the extent of that.

Mr. WHITNEY. I have no knowledge.

Senator BROOKHART. Is that a violation of the rules of the stock exchange?

Mr. WHITNEY. What, Senator Brookhart?

Senator BROOKHART. To make loans of stocks and divide up the profit in the way Senator Couzens suggested.

Mr. WHITNEY. Is it not a violation of the rules of the exchange to make loans of stocks. But, quite frankly, I am not clear as to what Senator Couzens had in mind with regard to dividing up some such premiums as might be paid on those loans.

Senator BROOKHART. It is quite plain that the suggestion is that banks or investment companies that hold stocks for lending purposes want some compensation for the loan of stocks, and the suggestion is as to how they pay them. Now, I wanted to know whether it is a violation of the rules of the exchange for a broker, a member of the stock exchange, to deal in that kind of business.

Mr. WHITNEY. I have not heard, Senator Brookhart, at this hearing or at any other time, proof that investment trusts or banks loan stock in that way. I can not, therefore, answer. As I see it——

Senator BROOKHART (interposing). Assuming that they do it would be a violation of the rules?

Mr. WHITNEY. Whether it would be correct for a lender of stock to receive from the broker he loaned it to a part of the premium; yes.

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Senator BROOKHART. Do you say that would not be a violation of the rules of the exchange?

Mr. WHITNEY. I said it would not be a violation if it was done.

Senator BROOKHART. Now, I have not had enough information yet about this bear raiding business. Will you give us an illustration of how a bear raid can be conducted? Run one for us a little while and let us see what it is like.

Mr. WHITNEY. I never have.

Senator BROOKHART. You know how fellows run them that do run them, don't you?

Mr. WHITNEY. No, sir.

Senator BROOKHART. You do not even know what a bear raid is?

Mr. WHITNEY. Yes; I know what a bear raid is from the point of view of an officer of the stock exchange, in the matter of its effect, and I can tell you what is my presumption as to how a particular bear raid, as an instance, might be attempted, if that is what you desire.

Senator BROOKHART. That is what I should like to get.

Mr. WHITNEY. An individual who wishes to demoralize the market would give an order to sell, let us say, 1,000, 2,000, or 10,000 shares of stock as quickly as possible, and in as demoralizing a way as possible, in order to depress that particular stock.

Senator BROOKHART. Would he be selling them short or selling his own stock?

Mr. WHITNEY. That I do not know. Both might be done. But that act is not allowed by the regulations of the New York Stock Exchange, and I think, sir, it does not take place on the New York Stock Exchange to-day.

Senator BROOKHART. Did it occur at the time of the panic in 1929?

Mr. WHITNEY. I doubt it.

Senator BROOKHART. Well now, you are not a member of Morgan & Co. yourself, are you? You are not a partner in the firm of Morgan & Co.?

Mr. WHITNEY. Do you mean J. P. Morgan & Co.?

Senator BROOKHART. Yes.

Mr. WHITNEY. No, sir.

Senator BROOKHART. There is a Whitney who is a partner in that firm, isn't there?

Mr. WHITNEY. There is.

Senator BROOKHART. Is he related to you?

Mr. WHITNEY. He is my brother.

Senator BROOKHART. Do you do business for the Morgan Co. yourself?

Mr. WHITNEY. I am delighted to do any business for them, sir, that I may be given by them.

Senator BROOKHART. Is that the principal business of your firm?

Mr. WHITNEY. It is not.

Senator BROOKHART. Did you have anything to do with the United Corporation that was organized by the Morgans?

Mr. WHITNEY. Anything to do with it?

Senator BROOKHART. Yes.

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Mr. WHITNEY. May I ask you to be more specific, Senator, because I own some of its stock and my children do, which was bought at prices averaging around 50, selling about 5.

Senator BROOKHART. What was the total value of that as it started?

Mr. WHITNEY. I beg your pardon?

Senator GORE. That was a mistake, was it, Mr. Whitney?

Mr. WHITNEY. A grave mistake.

Senator BROOKHART. That company started at $105,000,000, did it not, in 1921?

Mr. WHITNEY. I do not know, Senator Brookhart. Various questions were asked by Congressman LaGuardia of me at the meeting of the House Committee on the Judiciary. The questions and such answers as were made by me are in the testimony that I have already presented for the record. The facts as stated by Congressman LaGuardia have been pointed out to me since that time as being quite contrary to fact.

Senator BROOKHART. I want to know what the exact facts are.

Mr. WHITNEY. I do not know. I have been too busy since that time to find out those very details, although they have been compiled for me.

Senator BROOKHART. You answered the Congressman that you handled these stocks as a specialist, specialty, or something of that kind, did you not?

Mr. WHITNEY. I said that a partner of my firm was a specialist in that stock on the floor of the New York Stock Exchange.

Senator BROOKHART. And now that started, according to the minutes I have, at one hundred and five million; and how was that stock made up? Where did it come from?

Mr. WHITNEY. I understand that those figures, sir, are not correct.

Senator BROOKHART. What are the correct figures?

Mr. WHITNEY. I do not know. I will get them for you.

Senator BROOKHART. What is it you understand about it, then? Let us have that.

Mr. WHITNEY. I understood that the figures presented were as to what the stock of the company was selling for in relation to the net worth of the stocks held by the company and that the amount of issued stock was very much in excess of the value of the stock held by the company.

Senator BROOKHART. That was in 1921?

Mr. WHITNEY. When it was issued. I have been told that those figures are grossly incorrect.

Senator BROOKHART. Was that 105,000,000 what it sold for then in 1921?

Mr. WHITNEY. That may be, but I have——

Senator BROOKHART (interposing). Yes. Now it is selling for one hundred and seventy-five million—is that about right?

Mr. WHITNEY. If you say so, sir. I can not answer these questions, because I have not those figures before me.

Senator BROOKHART. In 1929 it sold for a billion and four hundred million, did it not?

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Mr. WHITNEY. I have not the facts before me.

Senator BROOKHART. We will have to bring Mr. Morgan himself down to find out about that?

Mr. WHITNEY. I think there are a lot of people that can tell you. I would have been delighted to if you had told me that was information you wanted.

Senator BROOKHART. Well, since your firm was a specialist in it, I thought maybe we might get some information out of it anyhow. What I want to ask you is: Assuming that the stock started at one hundred and five million and was put up to one thousand four hundred million or a billion four hundred million——

Mr. WHITNEY (interposing). By whom, sir?

Senator BROOKHART. What is it?

Mr. WHITNEY. By whom?

Senator BROOKHART. That is what I want to know—by whom and how?

Mr. WHITNEY. By the public, in their desire to buy stock that they believed to be worth the prices at which they purchased it.

Senator BROOKHART. Who got them to believe that?

Mr. WHITNEY. That I do not know.

Senator BROOKHART. Did your firm put out prospectuses of this stock?

Mr. WHITNEY. My firm?

Senator BROOKHART. Yes.

Mr. WHITNEY. No, sir. I do not sell stocks to the public.

Senator BROOKHART. What do you mean by your partner handling it as a specialist, then?

Mr. WHITNEY. He executes orders that are given to him by the public of the United States and they come to our firm in buying and selling stocks on the floor of the exchange. There are other specialists there.

Senator BROOKHART. You have some way of advertising yourselves to that public to get that business, do you not?

Mr. WHITNEY. But we do not advertise ourselves to the public in any way. If you mean by advertising using the press, we do not advertise.

Senator BROOKHART. You do not make statements to the stock exchange?

Mr. WHITNEY. I beg your pardon?

Senator BROOKHART. You make no statements to the stock exchange itself?

Mr. WHITNEY. I have made some speeches, if that is what you mean.

Senator BROOKHART. Well, I mean statements about business. I realize you could make a good speech all right.

Mr. WHITNEY. No, Senator Brookhart. I have not made statements. We do not sell stock, my firm. We are purely brokers, nothing else.

Senator BROOKHART. Well, you take orders and sell it for somebody else?

Mr. WHITNEY. Or to buy it; yes, sir.

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Senator BROOKHART. And you sold this for the Morgan company, or rather the United Corporation which was organized by the Morgan firm?

Mr. WHITNEY. We did not sell it for the United Corporation.

Senator BROOKHART. Whom did you sell it for?

Mr. WHITNEY. Nobody except customers who sent orders on the floor of the exchange after they owned it.

Senator BROOKHART. You simply bought it then instead of selling it?

Mr. WHITNEY. Both. We are brokers, sir. We buy and sell stock on the floor of the exchange, or bonds. We execute orders entrusted to us for execution on either side of the market.

Senator BROOKHART. What I would like to know now is how you got that market up from one hundred and five million to one thousand four hundred million. What kind of a raid was that?

Mr. WHITNEY. I do not know, sir. I had nothing to do with it.

Senator BROOKHART. You mean the president of the Stock Exchange has no idea then at all how these stocks are inflated in those gigantic proportions.

Mr. WHITNEY. I did not say that, or I did not mean to give that impression. I had no part in making that stock go up or down. I have never tried to manipulate it.

Senator BROOKHART. Well, whether you did or not, I would like to know how it got up there.

Mr. WHITNEY. Presumably, as was the case with all shares during 1928 and 1929, the public thought they were worth more than they were selling at, and there were more buyers than sellers.

Senator GLASS. Mr. Whitney, right on that point may I ask you a question: What percentage of the public is speculating in stocks of the stock exchange understand the real intrinsic value of the stocks in which they deal?

Mr. WHITNEY. I know of no figures, Senator Glass, to answer your question.

Senator GLASS. I know there are no figures. I am asking you for your best conjecture.

Mr. WHITNEY. The services put out by stock exchange firms as to statistical informations, as to research into facts with regard to corporations, the services maintained by the Corporation Trust Co. of New York and New Jersey, Standard Statistics, Moody's Manual, Poor's, and hundreds of others that exist are at the disposal of all who speculate or wish to invest and ready at hand in the offices of every member of the exchange, I think, who does that particular type of business.

Senator GLASS. What percentage of the public ever examines those statistics——

Mr. WHITNEY. I have no idea, sir.

Senator GLASS. In order to ascertain what is the intrinsic worth of a stock bought on margin?

Mr. WHITNEY. I have no idea, sir. The facts are before them.

Senator BROOKHART. In this particular corporation, did those institutions put out facts that would sustain that one billion four hundred million value?

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Mr. WHITNEY. I think you stated that in the issuance of a stock it was worth a million dollars.

Senator BROOKHART. The note I have was one hundred and five million to start with.

Mr. WHITNEY. One hundred and five million.

Senator BROOKHART. And then in the boom of 1929 it climbed up to one billion four hundred million.

Mr. WHITNEY. I have no knowledge with regard to those figures, Senator.

Senator BROOKHART. That would be a bull raid, would it not, that put the stock up like that?

Mr. WHITNEY. Indulged in by 120,000,000 people of the United States; yes.

Senator BROOKHART. Led by the New York Stock Exchange?

Mr. WHITNEY. I deny that, sir.

Senator BROOKHART. It does not lead anything?

Mr. WHITNEY. It is a market place.

Senator BROOKHART. It takes their money and lets them go.

Mr. WHITNEY. The New York Stock Exchange does not take anybody's money, sir.

Senator BROOKHART. Well, the members do. It is all the same thing.

Mr. WHITNEY. They are paid for executing orders, just as you are paid for being a real-estate broker or a banker or whatever it may be.

Senator BROOKHART. I have never got any pay in that line.

Mr. WHITNEY. As Senator, sir.

Senator BROOKHART. Well, I do not get a commission in that way. After this reached the 1,400,000,000 peak and dropped back down to 175,000,000, that would be the bear raid, would it not?

Mr. WHITNEY. Then again, as I say, in the control of the 120,000,000 of this country.

Senator GLASS. What I am trying to know is what percentage of the 120,000,000 had any knowledge whatsoever of the intrinsic value of the stocks in which they were investing, to use a polite term?

Mr. WHITNEY. Senator Glass, I know of no corporation that has been more in the forefront in presenting absolute facts and all facts than the United Corporation. If the people of this country, investors or speculators, do not choose to make a study of those facts which are available to them throughout this country, I do not know that either the corporations or the members of the brokerage fraternity are to be blamed. I can not answer your question specifically, because I have no knowledge of it.

Senator FLETCHER. Mr. Whitney, people who were buying this stock then were buying on margin, were they not? They were just buying the stock on margin with no intention of having the stock actually delivered or the transaction actually completed? Was that the situation?

Mr. WHITNEY. That is a double question. I have no knowledge that the people who bought United Corporation—you are referring to it?

Senator FLETCHER. Yes; or any of this stock.

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Mr. WHITNEY. I have no knowledge and no one has knowledge as to whether that stock is bought for investment or speculation in any case or any stock.

Senator FLETCHER. But, as a matter of fact, in October, 1929, and also 1930, when there was this tremendous slump of some twenty-nine billions in security values in 1929 and some twenty billions in 1930, were not those slumps due to speculation in Wall Street on the stock exchange by people who were simply putting up margins with no intention whatever of completing the transaction?

Mr. WHITNEY. I want to go back to that last part of this question and your other. No purchase made on the New York Stock Exchange, either on margin or for investment, is done without the necessity of receiving and paying for the stock bought. In each and every case he buys and pays for the stock he contracts to buy and pay for.

Senator FLETCHER. You mean the intention of the speculator or the man buying or selling was to acquire or to sell or to own the stock actually that he dealt in?

Mr. WHITNEY. He has to.

Senator GLASS. You mean the broker has to?

Mr. WHITNEY. The individual acts. The broker acts as his agent. The individual borrows from the broker the money to buy, but the stock is delivered and has to be paid for.

Senator GLASS. To the broker?

Mr. WHITNEY. I know no distinction, Senator Glass, in that case as between your using an agent for any other purpose.

Senator GLASS. Do you mean to say that the principal in speculative transactions on the stock exchange always receives the stock he buys on margin?

Mr. WHITNEY. Always?

Senator GLASS. Yes; that he always consummates the trade?

Mr. WHITNEY. On the New York Stock Exchange?

Senator GLASS. Yes: the individual.

Mr. WHITNEY. Yes; always through his broker.

Senator GLASS. Yes; through his broker. In other words, the broker has to have the stock in his possession.

Senator BLAINE. Mr. Chairman, I would like to ask Mr. Whitney three questions.

Senator FLETCHER. Otherwise that would simply be a gambling transaction, would it not?

Mr. WHITNEY. Otherwise——

Senator FLETCHER (interposing). Would it violate the laws of the State of New York?

Mr. WHITNEY. I can not answer that. I do not know the legal point.

Senator FLETCHER. If a man simply puts up margin with no intention of completing the transaction, is that not a gambling transaction?

Mr. WHITNEY. Perhaps I can best answer that by saying that bucket shops are against the law of the State of New York so far as I know. It would certainly be against the laws of the New York Stock Exchange.

Senator BLAINE. Mr. Whitney, are there not many psychological factors in any stock boom?

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Mr. WHITNEY. Possibly.

Senator BLAINE. And is not one of those factors the creation of the speculative fever?

Mr. WHITNEY. Possibly.

Senator BLAINE. And is not that speculative fever created by those who have large holdings of stock, who desire to make a great profit on them by feeding that stock into the market; whether by collusion or combination or understanding, the stock gradually rises and rises, keeps going up and up and up, until that speculative fever is on, and then the public is drawn in and makes their purchases because they see this rise in the stock; they feel then that they can make some money—isn't that correct? Is that not one of the psychological factors in these booms?

Mr. WHITNEY. You are speaking of psychology and conjecture, Senator Blaine. You, if I understood you correctly, imply the possibility of fictitious transactions, and therefore, because I deny that fictitious transactions——

Senator BLAINE (interposing). Let me correct you there. I do not imply fictitious transactions. I imply a deliberate plan of unloading on the market—I will use the word "unloading," but say selling on the stock exchange so that there will be no implication, and gradually feeding that stock through with the constant rise in price. Those who are interested in having the price increased, of course, make bids. They may be legitimate or they may be illegitimate; I am not concerned. But in the creation of the speculative fever that is one of the factors, one of the methods by which they drag in the unsuspecting public, the public being led to believe that stocks are going up and up and up, and the fever is on. Do you not have that situation? Did you not have it in 1929 very keenly?

Mr. WHITNEY. Bringing the unsuspecting public into what, sir—into buying securities?

Senator BLAINE. Into the purchase of stocks.

Mr. WHITNEY. I can not believe that, if anybody wished to float an issue of shares, he would not, in the information given out, give facts and figures that could be fallen back upon to show that he was justified in selling that stock, either by direct representation or through a market operation, to the public.

Senator BLAINE. Yes. That is one factor.

Mr. WHITNEY. That is nothing to the detriment of the public.

Senator BLAINE. Yes. That is one factor. Now, the other factor is: Take, for instance, the split shares that were sold on the market; reorganization of corporations and those enormous issues of stock were fed in and through the stock market, gradually going up and up and up, the public buying, at first nibbling, and then buying, and then swallowing it all—that is the way I would put it—and they were the ones who were dragged in because of this speculative fever that had been created through—I presume some of them might be legitimate sales; most of them are fictitious?

Senator GLASS. Senator, it does not mean that they were dragged in. They rushed in.

Senator BLAINE. Well, I mean they were rushed in, yes. They were dragged in and rushed in by force of speculative fever. You can characterize it as either being dragged in or forced in or rushed in.

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I would like you to discuss that factor of the speculative fever that is developed in these upturns in stocks.

Senator WAGNER. Senator, do you mean wash sales in the early stages?

Senator BLAINE. No, no. I am not implying anything, Mr. Whitney. I am just getting at if that is not one of the factors that causes the upturn in stocks and did it in 1929.

Mr. WHITNEY. You particularly referred to the split-ups of corporations.

Senator BLAINE. Well, I used that only as an illustration.

Mr. WHITNEY. It is an excellent illustration. I have stated publicly that the amount of money received by the corporations of this country listed on the New York Stock Exchange from the beginning of 1929 until the panic, was greater, that the attracting of capital of the people to the corporations of our country, than the total increase of brokers' loans for speculative purposes through that particular time. And I do not see how the desire of corporations to get additional capital by a perfectly righteous split-up of their shares or additional issuance of shares can be considered as anything that was wrong or how any blame may be imputed to them or placed at the feet of brokers and those who may sell those shares for them.

Senator BLAINE. I am not implying anything from that. You do not answer my question. Now, let me state it in the words of President Hoover—and using President Hoover I do not imply anything, and I am not criticizing; but when he wrote his article to which I refer he used this language, after referring to the speculative fever:

> In such cases 99 per cent of the capital raised comes from persons who buy shares not on any knowledge of the enterprise beyond its market nickname, but because of the fullness of hope that they may resell the shares to some other outsider on the following morning at a higher price.

He was referring to the outsiders—the public. Does not that state the situation about as it is on these booms, demonstrates what a speculative fever does?

Mr. WHITNEY. As best I can, Senator Blaine, I think I covered that question in my answer to Senator Glass. The information is there for any that desire to have it, and more so to-day than ever before in my knowledge, which is not for so many years. If the public does not wish to use that knowledge, I personally can not understand why they do not want to use it.

Senator BLAINE. I think there is no use pursuing that any further.

Senator BROOKHART. Mr. Whitney, pools are formed sometimes for floating stocks in the exchange, are they not?

Mr. WHITNEY. I imagine they can be or may be.

Senator BROOKHART. Sometimes they indulge in what we call "wash sales" to create a market, do they not?

Mr. WHITNEY. Not on the New York Stock Exchange.

Senator BROOKHART. You think they do not buy their own stuff sometimes to create a market?

Mr. WHITNEY. I do not think they buy their own stuff sometimes to create a market. It is against the law of the State of New York.

Senator BROOKHART. How do they start a market? There are lots of things against the law that get by, you know.

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Mr. WHITNEY. But it is also against the regulations of the exchange, and has very close attention on our part. That is one of the most——

Senator BROOKHART (interposing). You think nothing can get by the regulations of the exchange?

Mr. WHITNEY. No; I did not say so, Senator Brookhart. That is a fictitious transaction.

Senator BROOKHART. How do they make the market?

Now, Mr. Whitney, there is one other matter I want to inquire about.

Senator WAGNER. I do not know whether this would be the place to interrupt, but what I desire to say seems pertinent at this point. I think Mr. Whitney remembers that when I was on the bench there did come a case before me in which the stock exchange did expel an individual for attempting wash sales. As I recall, I upheld the action of the exchange.

Senator GLASS. It is of such a singular nature that you distinctly recollect it.

Senator BROOKHART. Mr. Whitney, I want to call your attention here to a Federal reserve chart gotten up by the Federal reserve bank of prices of common stocks, industrials. This chart goes back, as you will see, to 1872. Well, 1875 is this year here. 1872 is there. This chart shows the ups and downs of speculative stock value through all these years.

Mr. WHITNEY. Only speculative stock value?

Senator BROOKHART. Well, all values. This is a chart of the average value of industrial stocks, the whole list of them. But I want to call your attention to how many ups and downs we had during all these years, up to 1915, when the war inflation began and we have the chart rising then. We find a considerable rise in what is called the 1914 level, but it is still below that 50 line on this chart.

Then it jumped well above during the war period of speculation and in 1921 dropped down just below the 50 line, and then we can see from this chart that something happened, and look where it went to in 1929.

There is nothing in all these 60 years of history to compare in any degree with this inflation of 1929. How do you explain that?

Mr. WHITNEY. Because, there is nothing in the 45 years of history prior to 1917, taking the same period you refer to, that compared to the efforts of the United States Government in interesting the country in securities, Liberty bonds, and since that time, that interest and that greater knowledge of the use of securities, the purchase of securities has increased or become more acute, and I think—along the very lines that I have stated to Senator Glass—that the country to-day has more knowledge and more interest in the ownership, by equity or otherwise, of the stocks of our great corporations.

Senator BROOKHART. You do not claim Government bonds inflated anything like those stock values, do you?

Mr. WHITNEY. No.

Senator BROOKHART. I can not see, and I can not figure out how you can lay that stock inflation onto Government bonds. They depreciated some. How much was it? They were about 85 at the lowest, were they not?

Mr. WHITNEY. In 1929, no, sir.

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Senator BROOKHART. Not in 1929 but in 1921.

Mr. WHITNEY. Yes, sir. So was the market down then.

Senator BROOKHART. About 85. And then the bonds went up as the market went up; is that right?

Mr. WHITNEY. Well, bonds never follow the fluctuations to the same degree of common stocks. But bonds have recovered from that price; yes, sir.

Senator BROOKHART. If I understood your proposition, you meant this extraordinary rise here was due to inflation.

Mr. WHITNEY. I did not say that at all.

Senator BROOKHART. And that inflation was caused by the sale of Government bonds?

Senator GLASS. No, it was due to a superior knowledge of the public as to how to invest in them.

Senator BROOKHART. After talking to the New York Stock Exchange?

Mr. WHITNEY. But the point I was trying to make, Senator Brookhart, is that before the war there was a billion dollars of debt of the United States Government, and they sold approximately twenty billions of bonds to the people of this country, and therefore engendered in those people a knowledge of securities which they have maintained to this day, an interest in securities.

Senator GLASS. Mr. Whitney, do you think the average patriotic American citizen who bought a bond of the Government to carry on the war to liquidate after the war—do you think it gave him any superior knowledge of investment securities or any greater interest in them?

Mr. WHITNEY. Yes; a greater interest.

Senator GLASS. I am talking about the average man now; I am not talking about you gentlemen who are professionals and who understand the machinations and nomenclature of stock transactions. Do you think the average man who bought his stock upon the patriotic appeal of the Government really went to school in the matter of security purchases and sales?

Mr. WHITNEY. I think that his interest as to securities unquestionably was heightened. And you talk about the liquidation of those purchases: Then, already having made a purchase of Government bonds, presumably he looked around to where he would invest the proceeds of the sale of those bonds. I certainly think that great interest was created in the people of this country by their participation in Liberty loans.

Senator BROOKHART. And you claim the whole 120,000,000 men, women, and children are indulging in this speculative game there in New York?

Mr. WHITNEY. No, sir; I do not.

Senator BROOKHART. You have used that 120,000,000 over and over again in describing that.

Mr. WHITNEY. Not entirely, sir, as regards speculation. I have no proof that each and every one of those of that 120,000,000 with property have not at one time or another bought securities.

Senator GLASS. What is your definition of investment, Mr. Whitney?

Mr. WHITNEY. That is a broad question, Senator Glass. I would consider an investment a purchase of something, whatever it may

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be, with the intent of the purchaser to derive income from his investment.

Senator GLASS. From the profit of the security or of the piece of real estate or whatever it is?

Mr. WHITNEY. No, sir; not from the profit, from the income derived from the security or piece of real estate.

Senator GLASS. How may you derive an income from anything except it is at a profit? In other words, when the average man buys a stock or a bond he does it, does he not, with the expectation to derive a dividend from the earnings of the corporation which the stock represents?

Mr. WHITNEY. That is what I said, Senator Glass. He buys it for the income to be derived from his investment.

Senator GLASS. That is an investment, I agree.

Mr. WHITNEY. That is what you asked me.

Senator GLASS. Yes. No man has to stand at a ticker who makes an investment of that kind to find out whether a half an hour later he can sell it at a profit, does he?

Mr. WHITNEY. I think the individual, when he enters an investment, basically depends upon the fact that a liquid market exists in that particular security in which he has invested. He may not wish to use that market to sell, but he wishes, fundamentally and absolutely, to have the market available to him in case he wants to sell.

Senator GLASS. I am not inveighing against the market now. Do not understand that. I am trying to make a distinction between an investment and a gamble, and I accept your definition of an investment. A man invests with some knowledge, he thinks at least, of the real, of the intrinsic value, of the thing in which he has invested. That is an investment. A man gambles in a security when he stands on the side lines, as 90 per cent of them in my judgment do, and simply bets as to what the market price is going to be the next day or the next week. That is a distinction that I make between an investment, a legitimate investment, and a gamble.

Senator STEIWER. Mr. Whitney, of what value is a liquid market to an investor when that market is constantly being depreciated?

Mr. WHITNEY. What advantage is it to the investor?

Senator STEIWER. To have a liquid market that is constantly going down?

Mr. WHITNEY. So that during that time a liquid market, you stated——

Senator STEIWER (interposing). I used the phrase because you used it just a moment ago.

Mr. WHITNEY. So that during that time that investor, if he cares to do so, may sell. We can not blame our lack of judgment in selling at the right time on the market, but the fact that that market at any time exists wherein an investor in shares or securities of other sorts may sell, it is vital to him; and inversely, there are millions of people throughout this country, literally, that during this period of depression have been buying shares and paying for them and putting them in their boxes.

Senator STEIWER. And are they benefited by any operation through the so-called liquid market as it existed, we will say, during the last 12 months?

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Mr. WHITNEY. I referred to that, Senator, a minute ago. I can not believe that the investor is going to put his money into stocks or securities unless he believes a liquid market exists in those stocks or securities that he can use for sale, in case he may want to. I grant there are many securities in this country issued where there may not be markets.

Senator STEIWER. Are there not many securities in the smaller institutions that are not listed at all?

Mr. WHITNEY. Yes; that is true.

Senator STEIWER. And are not investments made in those securities?

Mr. WHITNEY. Yes; that is true.

Senator STEIWER. And in many cases are not the people who made the investments in those better off than those people who had this liquid market up there to dispose of them?

Mr. WHITNEY. No; because, as I see it, in real estate and securities of that type there is no market, and the only place that people come to is the place where they can raise cash, when they can not raise it on anything else, and that is to the organized security markets of this country, of which the New York Stock Exchange is one.

Senator STEIWER. You think, then, that a liquid market is advantageous, even though it is being constantly depressed?

Mr. WHITNEY. I think it is vital. We have some five billions to six billions of loans held by our banks throughout this country on collateral security listed on the New York Stock Exchange. If the stock exchange did not have a liquid market, if that market was closed, as would, in my opinion, happen with the prohibition of short selling, those five to six billions of collateral loans would be frozen, and the gravity of the effect on our banking situation I do not think can be estimated.

Senator STEIWER. Was not the market closed during the war for two months or so?

Mr. WHITNEY. But an entirely different situation then existed.

Senator STEIWER. Did it hurt the banks any?

Mr. WHITNEY. The banks asked that the market close and made certain agreements as to the freezing of their loans, being in a condition to do so. But in a time of depression, of liquidation throughout, of deflation, the banks must have, as I see it, a ready market for the securities on which they are loaning money.

Senator STEIWER. If this constant deflation is to proceed, would not the banks of this country be better off now, to-day, to have their assets frozen, than to have them sold at these constantly decreased and depressed prices?

Mr. WHITNEY. I think you are predicating that idea perhaps on the fact that those banks or investing institutions did not sell at other times when it would have been wiser to have done so. If you advocate, sir, a moratorium for the United States and think it necessary, I might agree with you. I can never believe that a moratorium or freezing of the assets of our banks is anything but chaos. I am a member of the New York Stock Exchange. I therefore believe in the necessity of a market. I hope that my point of view is not warped.

Senator GLASS. There is no market now, is there?

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Mr. WHITNEY. There is a tremendous market now, sir; yes, sir.

Senator GLASS. There is?

Senator MORRISON. Mr. Whitney, as I understand you then, you think that this inflation that reached its peak in 1929 was caused by the public and not by anything the brokers on your exchange did?

Mr. WHITNEY. I think it was caused by the public. I grant that our brokers are part of the public.

Senator MORRISON. Yes.

Mr. WHITNEY. I am not trying to say that they should or do stand on a higher plane than other individuals, but that it should be blamed solely upon brokers or members of the New York Stock Exchange is not my belief.

Senator MORRISON. Would you mind giving us your opinion of why the public did that? I am inclined to believe that they did it. Why did they go so wild?

Mr. WHITNEY. We are stepping, sir, into economics. To-day the earnings of every corporation—I have charts here if anybody is interested. Here is the stock prices index. This heavy line is the earnings of certain corporations listed on the exchange. The stock prices have even held up in relation to the earnings of the corporations. Throughout the country there has been deflation in every way. Why, in these times, with bad earnings, prices should not fall. I do not see.

And in like manner if the 1928–29 period or before, terrific earnings were being made by our corporations throughout this country, terrific earnings. All business was on the road to inflation. I can not think that it is fair to merely arraign stock prices or what the market did. All business was on an inflation basis.

Senator STEIWER. In what period, Mr. Whitney?

Mr. WHITNEY. Why, I think we can make it from 1926 up to 1929.

Senator STEIWER. Do you include agricultural prices in that characterization?

Mr. WHITNEY. No.

Senator STEIWER. Why didn't you?

Senator BROOKHART. On that proposition, let me ask—this chart I have just shown you here coming up to about the 15th of March shows these stock values still about 40 per cent above the 1914 level of stocks in value, whereas agricultural products at that time were about 45 per cent below. How do you explain that?

Senator MORRISON. Well, now Senator——

Senator BROOKHART. Wait; let me have an answer.

Senator MORRISON. If you will excuse me, I was trying to get, and very much desired it, Mr. Whitney's opinion of why this great inflation with a climax in 1929 took place. If we would let him finish that answer I am very much interested in his telling us that, and then I wanted to cross-examine him, and you too, when he gets through with it.

The CHAIRMAN. May I suggest to the members of the committee that quite a number of Senators desire to go over to the Senate Chamber. They are under the impression that the calendar is being called, starting at 12 o'clock or shortly after. I was about to suggest that we recess pretty soon and reconvene here at 2.30.

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Senator MORRISON. That is all right, Mr. Chairman, but I wanted to get—and I think the country would be interested in it—the Senate—Mr. Whitney's opinion as to why the public—he says the public, including the brokers as part of the public—why they went so crazy in 1929 and caused this terrible inflation that has contributed, in my opinion, to the wreck of things. I wanted to get his opinion about it if the Senators would let him give it to us.

Mr. WHITNEY. I think I almost finished my answer to it, sir. During that period—I do not think I would confine it to 1928–29, because the first signs of deflation in the earnings of companies or the ability to make money or to do business had started perhaps in March or July of 1929—but 1926, 1927, 1928, and 1929, the corporations' business as a whole throughout this country—and I farm also, Senator, and I have never found it very successful, and I did not include it in business because I looked upon agriculture as another form of business from that we were just referring to.

Senator GORE (interposing). Do you make money enough as a broker to run your farm?

Mr. WHITNEY. No, sir; not to-day.

It was the earnings of the corporations, terrific earnings, too. I haven't those figures here, but they can be easily obtained. Those facts were prevalent throughout the country. The papers carried it.

Senator MORRISON. But did not prices reach a place that they exceeded any businesslike estimate of the value of the stocks, based on earnings?

Mr. WHITNEY. Yes, sir; the pendulum swung that way too far, just as I believe to-day the public is trying to give this United States of ours away.

Senator MORRISON. Well, now, Mr. Whitney, the charge is made that the brokers were doing that and leading the thought of the country to make money out of it; but the influence of other people who have the attention and the confidence of the public boosting things could contribute to that inflation as much as anything the brokers said, could it not?

Mr. WHITNEY. Unquestionably, sir. I believe that those others you refer to, whoever they may be, have far more influence or have more standing in their utterances than what may be said by brokers.

Senator MORRISON. Yes. If the President of the United States should in such a situation make the boosting statements, Secretary of the Treasury should make the boosting statements, and other great leaders of public thought, it would tend to carry that thing on, would it not, just as much as some broker saying it?

Mr. WHITNEY. Yes, sir.

Senator CAREY. Didn't these high-powered salesmen have a great deal to do with running prices up, that were selling the securities over the country?

Mr. WHITNEY. I think they had an influence, like many other influences.

Senator GORE. Mr. Whitney, I have a theory that human nature has a tendency and the average man has a tendency to buy on a rising market and sell on a falling market, and that there is the tap-root of the trouble. I would like your view on that point.

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Mr. WHITNEY. That may be fear on both sides. In a rising market individuals may be impressed by stories that they may hear at dinner or when they are having tea and some other things that are prohibited, and people tell about how they made money in the stock market and buying this and that—mind you, all articles, whether they were securities, pretty nearly everything, was on its way up—I think as a result of that, people did go in and perhaps had no intention of doing so before, and when a market is falling the fear of not being on the bandwagon in the first case and the fear that their securities or what they held were worth nothing in the deflationary market.

Senator GORE. And the fear of getting caught entirely, is that right?

Mr. WHITNEY. Yes.

Senator MORRISON. About that time the whole country had about reached the state of mind that they thought poverty was about to be abolished in our country forever, had they not?

Mr. WHITNEY. Yes, sir. A new era was with us.

Senator MORRISON. And great public men were leading the country to think along that line, were they not, as well as brokers?

Mr. WHITNEY. Yes, sir.

Senator MORRISON. And the whole public thought the days of hard times and anything like poverty had passed away forever and the high-powered salesman was being tremendously aided by the high-powered political agent of prosperity, was he not?

Mr. WHITNEY. Yes, sir.

Senator GLASS. You gentlemen are referring to "a chicken in every pot."

Senator MORRISON. We did not mention it, Senator, but we had it in mind.

Senator BLAINE. Mr. Chairman, is not this a good place to take a recess until 2.30?

The CHAIRMAN. The committee will take a recess until 2.30 and meet in this room.

(Whereupon, at 12.20 o'clock p. m., a recess was taken until 2.30 o'clock p. m. of the same day.)

AFTER RECESS

The committee resumed at 2.30 o'clock p. m., at the expiration of the recess.

The CHAIRMAN. The committee will come to order. Counsel to the committee may resume his examination of Mr. Whitney.

TESTIMONY RESUMED OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.

Mr. BRANCH. In regard to the numbers on the exhibits offered this morning by Mr. Whitney, I want to make a change. We have marked as Exhibit No. 1 the statistics for the first few days of April. In order that these statistics may follow consecutively I would like to change that Exhibit No. 1 to read Exhibit No. 9, and I will ask the committee reporter if he will change it on the exhibits.

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I will also ask the committee reporter if he will mark as Exhibit No. 1 the statement which Mr. Whitney read this morning, a copy of which he gave me. That will give us a complete list of exhibits numbered from 1 to 9 both inclusive.

The CHAIRMAN. You may proceed, Mr. Branch.

Mr. BRANCH. Mr. Whitney, I am referring generally to these exhibits which are entitled "Statistics in regard to short selling," and I am not now referring to any particular date but just to the general composition of these statistics. Do they show sales against the box?

Mr. WHITNEY. They do not.

Mr. BRANCH. As a matter of fact have you taken any steps, and by you I mean any one in authority in the New York Stock Exchange, to obtain information about such sales by brokers from their customers?

Mr. WHITNEY. We have not, because we do not consider them short sales, as I think I explained to you this morning.

Mr. BRANCH. Wouldn't it be possible for a person to accomplish a depression in price by making sales against the box?

Mr. WHITNEY. Do you mean in the way of bear raiding?

Mr. BRANCH. Yes.

Mr. WHITNEY. That, as I stated to you this morning, would be contrary to the rules of the exchange, and how it could be done to-day I do not see. It does not exist.

Mr. BRANCH. Mr. Whitney, are you prepared to swear on your oath that there is no bear raiding, or rather that there has been no bear raiding during the present year?

Mr. WHITNEY. To swear on my oath that there has been none is something I can not do, but in so far as our constant investigations have shown, bear raiding does not exist to-day.

Mr. BRANCH. What investigations have been made during the last year?

Mr. WHITNEY. Countless investigations. I will cite an instance of what happened on last Friday, and again on Saturday, and again to-day: The business conduct committee themselves, and in communication with other governors of the exchange, together with the specialists of the exchange, reported to the business conduct committee all sales of 500 shares or more. This was on a suggestion that was communicated to me. We found upon looking into this matter, and having them report to us, that there were no bear raids, that there was practically no short selling, and that the selling that did take place was liquidation or sales for long account. I have just been in communication with the chairman of the business-conduct commitee to-day, and asked him what he had found, and that same answer was made to me—very little short selling, no bear raiding, and great liquidation with a falling market.

Mr. BRANCH. How do you distinguish short selling and bear raiding? What are the earmarks of bear raiding as distinguished from short selling?

Mr. WHITNEY. I thought I answered that question fully this morning.

Mr. BRANCH. Well, will you answer it again now?

Mr. WHITNEY. That bear raiding is an effort to demoralize the market.

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Mr. BRANCH. And do you mean to say that during the past year you have been able to find no evidence of anything of that kind?

Mr. WHITNEY. I can not depend upon my memory over a period of a year, but since October 6, 1931, when a rule was put out by the business conduct committee that brokers must be acquainted as to whether selling orders were for long or short account, and the interpretation of that rule, which has been lived up to, that sales may not be made for short account at a lesser price than the last sale, has prevented conclusively a demoralization of the market by bear raiding.

Mr. BRANCH. Do you mean to say that that necessarily is an absolute preventive of bear raiding?

Mr. WHITNEY. Well, evasion and avoidance of rules might take place in any organization or in any place in this world, but so far as we know, bear raiding has been prevented.

Mr. BRANCH. Well, do you mean to say that if the rule was observed, there could not be bear raids carried out? That an observance of the rule would absolutely prohibit bear raiding?

Mr. WHITNEY. I believe that our members have observed the rule in every way possible.

Mr. BRANCH. That is not my question, sir. My question is: Do you believe that an observance of the rule would make bear raiding absolutely impossible?

Mr. WHITNEY. Mr. Branch, your question includes, as I see it, whether or not the New York Stock Exchange could control acts by persons outside of their control. It would be foolish for me to say that they could, but in so far as it lies within our power I believe that rule has been observed, and we have certainly enforced its observance.

Mr. BRANCH. I am not now asking you whether the rule has been observed. I am trying to get at the efficacy of the rule. I am not asking as to what may be done by persons not members of the exchange. My question is this: Will you please answer this question, and I will try to make it clear to you: Do you think that an observance of that rule which you have just mentioned would prevent members of the exchange from participating in bear raids?

Mr. WHITNEY. Yes.

Mr. BRANCH. Absolutely? In other words, do you mean to say that bear raids and an observance of that rule are absolutely inconsistent and impossible?

Mr. WHITNEY. If there is total adherence to that rule by all concerned my answer is, yes. And, Mr. Branch, you will understand that I am not trying to evade your question but it is on the edge of—or I will say, beyond the edge of our control. It is self-evident that the New York Stock Exchange can not control what individuals may do outside of their dealings through our members.

Mr. BRANCH. Well, Mr. Whitney, I think you have made your position clear, and I think I have made my position clear, so now we can go on to something else. I am not trying to get you to answer about anything that is beyond your knowledge of your control. And if I propound any questions that you can not answer please say so frankly.

Mr. WHITNEY. I will gladly do so.

Mr. BRANCH. I am asking from time to time for your opinion as well as for an expression of statements of fact. Now, to go back to

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the question of your investigation of bear raids: You mentioned an investigation which was made a day or two ago. Can you recall any other investigations of alleged bear raids which have been made?

Mr. WHITNEY. I think possibly you misunderstood me. I said we looked and have been looking to see whether any acts constituted bear raiding. I will specifically tell you of an instance that happened approximately a week ago and perhaps it will be an answer to your question. We have told that a sale of some stock on the exchange, a seller contract, was suspicious, and it occurred approximately at 11.30 in the morning. By 1 o'clock our accountants reported to us, after going into the office where this occurred, that although the proof was not conclusive it seemed to be an attempt by the execution of a seller contract below the market, or it looked as if it was a short sale in order to depress and demoralize prices.

Mr. BRANCH. When was that?

Mr. WHITNEY. It was within—now, let me see——

Mr. BRANCH. Just approximately.

Mr. WHITNEY. Within two weeks.

Mr. BRANCH. And what did your investigation disclose?

Mr. WHITNEY. Our future investigation proved that an order had been received by a customer and executed——

Mr. BRANCH (interposing). You mean that an order had been received from a customer?

Mr. WHITNEY. Yes, from a customer, and executed on the floor of the exchange, a seller contract, below the price for regular shares, and that it was a short sale. We immediately informed the house—and I should explain that no partners, no stock exchange men knew the facts, no members of the stock exchange knew the facts, that this was a short sale. But there was something of a collusion between the customer and an office partner. We immediately declared, which is our only power in such a case, that that firm was an undesirable partnership, and the offending man had to get out, and the firm was dissolved.

Mr. BRANCH. Was the member of the exchange suspended or expelled?

Mr. WHITNEY. He was not. He had no part or knowledge in this transaction.

Mr. BRANCH. What was there about that transaction that violated the rules of the exchange?

Mr. WHITNEY. The very fact that the sale was made some three-quarters or more of one per cent below the sales of stock which were taking place as regular transactions.

Senator BROOKHART. And what stock was this?

Mr. WHITNEY. American Telephone & Telegraph.

Senator BROOKHART. And what firm was it?

Mr. WHITNEY. The firm called Phillips & Solomon.

Mr. BRANCH. Was the price for which that stock was sold in violation of the rules of the exchange?

Mr. WHITNEY. Stock was selling at the time of those sales, if I remember rightly, around 115¾ in the regular way, the ordinary market. Those sales, if I remember rightly, were made at 115 seller 15 days flat, and another at 114¾ seller, being short sales with the evident purpose to depress the market, to make sales appear on the tape below the regular price of that stock.

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Senator BULKLEY. What was the amount of those transactions?

Mr. WHITNEY. Two hundred shares each.

Mr. BRANCH. Was that the only case in which you have discovered anybody violating the rules of the exchange in regard to what I have been calling bear raids or short selling, if you can recall?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. Do you mean to say that during all of last year the only case you can remember where you have ascertained that anybody is doing anything to depress prices was that one case?

Mr. WHITNEY. There was another occasion but it was not since October 6. I can not tell you just when it was but it was within the last year or year and a half. I do not truly remember just when it was, but it was where an order was given to sell stock. It was discovered before any execution was made, and the chairman of the business conduct committee prevented that sale at that time being made. It did not occur, but it was an attempt. That was the only other case that occurs to me.

Mr. BRANCH. In all of last year, during all that period, you can recall only those two cases where there was even any suspicion of bear raids going on?

Mr. WHITNEY. I won't say that. There have been frequent cases where we have had suspicions because of the way in which orders were executed that perhaps the desire behind them was to depress and demoralize the market. But investigation has shown in those cases that it was stock sold for long account.

Mr. BRANCH. Approximately how many investigations of that kind have been made by the exchange, we will say in the last year?

Mr. WHITNEY. I suppose 2,000 or 3,000, or 5,000.

Mr. BRANCH. I did not understand you.

Mr. WHITNEY. I supposed 2,000 or 3,000, or 5,000. I haven't any idea.

Mr. BRANCH. Five thousand different investigations?

Mr. WHITNEY. We have 20 accountants, trained men who know the brokerage business absolutely, that work primarily for the business-conduct committee and certain other committees of the stock exchange. They are continually going into offices on cases referred to the business-conduct committee to see whether or not violations of our rules have taken place.

Mr. BRANCH. And they have discovered only one case in which a violation has taken place within the last year?

Mr. WHITNEY. To the best of my memory; yes.

Mr. BRANCH. Does the ticker in any way show whether a sale which is reported on the tape is a short sale or a long sale?

Mr. WHITNEY. It does not.

Mr. BRANCH. It would be perfectly possible to indicate that by simply the use of the letter "S," or something like that, wouldn't it?

Mr. WHITNEY. It would be possible; yes.

Mr. BRANCH. And brokers have that information, have they not, or at least they are supposed to have it; are they not

Mr. WHITNEY. An individual broker who executes the order has that information, only him.

Mr. BRANCH. Yes; and would it not be fair to the public in general to give that information on the ticker in the case of each sale?

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Mr. WHITNEY. I can never divorce in my mind the absolute cohesion between marginal purchasing and short selling. They are the two parts that make up speculation; and speculation and investment make up the market. I have never seen any reason why a short sale should be so designated on the ticker and a long purchase not designated on the ticker.

Senator BROOKHART. Why shouldn't they both be designated?

Mr. WHITNEY. I do not think anything would be gained. I have no idea that because short sales were designated by the letter "S" and long purchases designated we will say by the letter "L"—and we might have to put the letters "LS" in order to designate them, in many instances—but as I say, I do not know what is to be gained thereby.

Senator BROOKHART. That "L" and "S" would be wash sales, wouldn't they?

Mr. WHITNEY. No, sir; not at all. Let us say that I am selling short and you are buying on margin. That would be a stock bought for long account and sold for short account. It is not a wash sale at all. Necessarily I will deliver the stock to you and you will pay me the money as you have to pay it.

Senator BROOKHART. Why shouldn't both the "L" and the "S" be on there in the case of that kind of deal?

Mr. WHITNEY. I do not see any advantage to be gained.

Mr. BRANCH. Mr. Whitney, wouldn't an intelligent broker or an intelligent investor who is familiar with the technique of the stock market be very glad to know whether the selling is being done as short selling or not? Wouldn't that be likely to affect his judgment as to whether it was a good market in which to buy or sell?

Mr. WHITNEY. It might, but not necessarily.

Mr. BRANCH. At least that is one element that the broker would be very glad to know, is it not?

Mr. WHITNEY. From the point of view that in ordinary times, let us say, when a man knows there is short selling, he would be more inclined to buy; I mean in the case of the practical, trained stock market operator.

Mr. BRANCH. As a matter of fact the men who are on the floor of the exchange are familiar with these things and do have some idea whether the selling is short selling or not, don't they?

Mr. WHITNEY. Do you mean some actual idea?

Mr. BRANCH. Yes.

Mr. WHITNEY. Not that I know of.

Mr. BRANCH. Don't they know as a matter of fact if a big amount of short selling is taking place that there is short selling in some volume?

Mr. WHITNEY. Not that I know of. One of the most common practices on the exchange at certain times is when a person or persons are long of a block of stock that they wish to liquidate, to give that stock to a notorious, let us say, short seller to execute the order, thus making it appear that it is not long stock that is being liquidated but is short selling, which does not in normal times have the effect upon the standing of the market as would real liquidation for an important group.

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Mr. BRANCH. I did not mean to indicate that there was anyone who had perfect information as to the whole situation. Of course I suppose there isn't anyone. But as a matter of fact the people on the floor of the exchange who are following things do know when there is a general current of short selling, do they not?

Mr. WHITNEY. Mr. Branch, it is possible that they may know, but I do not know that they know it.

Mr. BRANCH. You are not a floor member yourself? That is, I mean you are not on the floor of the New York Exchange yourself, are you?

Mr. WHITNEY. Well, I am a member, but I am not there very frequently now.

Mr. BRANCH. Don't you know as a matter of fact that those general trends, those general movements are known to those who are skilled and who are continually on the floor of the exchange?

Mr. WHITNEY. That might be their private opinion as to what a man is doing, whether he is selling short or selling for liquidation, or whether he is buying for investment, the long pull, or on margin as a speculative purchase. He may see these things and make up his private opinion on the matter, but I have no idea that such men actually know it to be a fact. And that same information might be available to anybody that inquires, through the medium of his own opinion.

Mr. BRANCH. The general public does not know about these things except as the information may come from these men, do they?

Mr. WHITNEY. I should think that would be true.

Mr. BRANCH. And if each sale were marked as has been suggested, with an "S," the general public would know that very important fact, wouldn't they?

Mr. WHITNEY. Do you mean whether it was a short sale or not?

Mr. BRANCH. Yes.

Mr. WHITNEY. The general public would know if it were so earmarked.

Mr. BRANCH. Don't you think it would be desirable for the general public to have that information?

Mr. WHITNEY. Not any more than I think it would be desirable for the general public to know whether it was an investment purchase or a speculative purchase. Frankly I see nothing to be gained by so marking sales. I do not understand what good it is going to do. I should like to know what good you think it might do and perhaps that might change my opinion.

Mr. BRANCH. Then you don't think an investor who was following market quotations would be a bit interested in knowing whether any big wave of selling was due to short selling or to liquidation?

Mr. WHITNEY. It might interest him very much, but it also might have the effect of scaring him away from buying. You are speaking of investing now?

Mr. BRANCH. Yes.

Senator GORE. Mr. Chairman, may I ask: Do you expect to finish with Mr. Whitney this afternoon? I ask that question because I want to leave the committee room pretty soon.

The CHAIRMAN. I am entirely unable to answer that question, Senator Gore.

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Senator GORE. Mr. Branch, will you permit me to ask two or three questions so I may go?

Mr. BRANCH. Certainly.

The CHAIRMAN. Proceed, Senator Gore.

Senator GORE. Mr. Whitney, I should like to ask you some questions on two or three points. I am trying to get at the causes that brought about the results we have seen, if I can. When anybody sells short that moment they become a potential buyer, do they not?

Mr. WHITNEY. Absolutely. They are not only potential buyers but must necessarily——

Senator GORE (interposing). And sooner or later they become actual buyers?

Mr. WHITNEY. Yes, sir.

Senator GORE. They must become actual buyers in order to get out?

Mr. WHITNEY. Yes, sir.

Senator GORE. In order to cover?

Mr. WHITNEY. Yes.

Senator GORE. So I will assume that people who play the market using that phrase, take account of these potential interests and sooner or later they become an actual purchasing power in the market?

Mr. WHITNEY. Yes, sir. That is often referred to as the technical position of the market.

Senator GORE. I am not at all familiar with the technical terms of the operations of the stock exchange, but there are one or two points I want to clear up now, at least in my own mind if I can: When a person makes a sale long of stock that rids him of the stock and he is not a potential buyer in the future, or at least not necessarily so, as I understand it.

Mr. WHITNEY. In no way.

Senator GORE. So that that kind of stock sale is just a weight on the market, isn't it?

Mr. WHITNEY. Absolutely.

Senator GORE. It has a depressing effect or is a depressing factor on the market.

Mr. WHITNEY. A far more depressing factor than a short sale.

Senator GORE. That is the point I am coming to because I have heard that stated. That is the reason why a short seller has got to buy his way out sooner or later. The long fellow gets rid of his stock, unloads it on the market, and he is done.

Mr. WHITNEY. Yes; he never has to buy again unless he is so inclined.

Senator GORE. Then a long sale has a more depressing effect on the market and on prices than a short sale?

Mr. WHITNEY. That is my opinion.

Senator GORE. Well now, then, as this market has been declining, whether due to short selling or not, as prices went down they would very often touch off stop-loss orders?

Mr. WHITNEY. Yes, sir.

Senator GORE. And as those orders were forced on the market it could be called forced liquidation?

Mr. WHITNEY. Yes, sir.

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Senator GORE. Now take the case of bank loans secured by collateral. When prices decline, whether due to short selling or not, and the margin or safety gets too narrow, banks sell collateral security, isn't that true?

Mr. WHITNEY. I have been told that they do sometimes, and I also have been told that they do not.

Senator GORE. Well, if they do, that is a species of forced liquidation, isn't it?

Mr. WHITNEY. Yes, sir.

Senator GORE. What I am trying to get at is which has the greatest potential effect, short selling as a depressing influence, or long selling. I can see now how when short raids are on, they may be designed or the result was to drive prices down below the stop-loss orders and below the margin of safety in the matter of bank loans, if they had any knowledge of them, and thus forced people to unload, or forced long sales, that would of course be a contributing factor in driving prices down, isn't that true?

Mr. WHITNEY. Yes. In our regulations, and their interpretation on the floor at the exchange, as to short sales below the last sale, we have made it perfectly clear to our brokers that no stock may be stopped for a sale that is a short sale. In other words, only long stock may have the advantage of being stopped, in order to give long stock that advantage. So that short sales——

Senator GORE (interposing). Do you mean on stop-loss orders?

Mr. WHITNEY. On so-called stop-loss orders.

Senator GORE. Yes.

Mr. WHITNEY. In answer to the other part of your question, Senator Gore, I will say I have not had figures arrived at since November 30, but from May 25 to November 30, 1931, the net short transactions, taking those figures in the first exhibit of statistics on short selling, they showed that less than 5 per cent of all transactions on the stock exchange were for short account, and that in excess of 95 per cent were the liquidation of holdings of American securities by their owners.

Senator GORE. I have seen the statement——

Mr. WHITNEY (continuing). And I have no reason to believe that that general percentage ration has in any way changed since that date.

Senator BULKLEY. For what period?

Mr. WHITNEY. May 25 to November 30, inclusive, of 1931.

Senator GORE. I have seen the statement that forced liquidation was really responsible for the severe shakedown of the market rather than short selling. I am trying to get at the truth of the matter if that is possible with reference to that, and you may not want to express an opinion on this because it would be more a matter of opinion, I take it, but after the moratorium last summer stocks rallied, and after the passage of the Reconstruction Finance Corporation act this winter, and the Glass-Steagall Act, prices rallied, and I believe United States Steel went up to 52⅝, and from there it went down to 32⅝ recently. I have wondered whether those two rallies were due to the action of investors who really thought there had come a turn in the tide and it was a good time to buy before stocks went up more, or whether it was due to the short interest being out of the market and bringing about, you might say, an artificial or extraordinary buy-

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ing power into the market on those occasions. Now, Mr. Whitney, as I say, if you care to express an opinion as to which is the major factor, long buying or buying to cover short interests, all right, and if you do not care to answer, all right.

Mr. WHITNEY. I think I can answer you by not expressing any opinion, perhaps by deduction and not an opinion.

Senator GORE. All right. I will be glad to have either one.

Mr. WHITNEY. Following those events you have mentioned, Senator Gore, there was unquestionably, if I remember rightly, according to our records, a covering by the shorts, or by some shorts. It is a time-honored phrase I think that the time to sell is when the good news is out. Proof of that saying lies in the fact that during this period steadily from the panic of 1929 brokers' loans, speculative stock held on market, have been declining; and that at the time of the very events you cite, brokers' loans continued to decline, and in some cases more sharply. Therefore, showing the liquidation as typified by brokers' loans, and also it would probably be true of people who own securities outright and hold them in their possession—that when there was the ability to sell, when the market broadened and there was something of a buying power and desire to purchase stocks, that was the time to get out if they wanted to get out, which they did.

Senator GORE. Do you mean that the short interests would buy out at that time?

Mr. WHITNEY. No, sir: that the long interests would sell.

Senator GORE. Oh! You mean on those rallies?

Mr. WHITNY. Yes, and that they did sell.

Senator GORE. I have the idea, although I do not know about it, that one trouble with the market was when there came a rally the banks were not quite satisfied with the market and would take advantage of the rallies to get out.

Mr. WHITNEY. That is what I tried to signify. It is one of the elements.

Senator GORE. Your theory as I gather it is that men borrow money to buy long and borrow stock to sell short; is that it?

Mr. WHITNEY. I beg pardon, but I did not get your question?

Senator GORE. That the speculator borrows money to buy long and borrows stock to sell short, and that it is the reverse of the operations, is that it?

Mr. WHITNEY. The margin purchaser borrows money to buy stocks, and he goes short of money and long of stocks. The short seller goes long of money and short of stocks.

Senator GORE. That is what I am trying to work through my mind, but it is rather hazy.

Mr. WHITNEY. Credit is involved in each instance.

Senator GORE. And you have a rule that short sales can not be made at less than the last preceding long operation.

Mr. WHITNEY. At less than the last sale of stock. That is the result of the interpretation of our rule: yes.

Senator GORE. Whether the last sale was long or short, so to speak?

Mr. WHITNEY. Yes; and that is not known.

Senator GORE. And do you mean that nobody can buy stock at a higher price than the last transaction?

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Mr. WHITNEY. Oh, yes; he can buy. We gladly greet such customers.

Senator GORE. But he can not buy at a higher price than somebody is offering stock at—do you have that rule?

Mr. WHITNEY. Yes, sir.

Senator GORE. I know that the produce exchanges have that rule.

Mr. WHITNEY. Yes.

Senator GORE. And he can not sell at a lesser price than somebody is bidding.

Mr. WHITNEY. That is right.

Senator GORE. Now, one other point, Mr. Chairman, and I must go, is the reason I am taking your time now. Mr. Whitney, can you in a few words, or would you rather do it later, explain the difference between our cash-sale operations and the term settlement as used in the case of European exchanges?

Mr. WHITNEY. What was that?

Senator GORE. What I want to get is the difference in the matter of actual operation or methods used, and which is the better in the abstract, and if it is better in the abstract what are the practical difficulties in this country in the matter of instituting that better system?

Mr. WHITNEY. Senator Gore, that is a pretty wide subject, but I can attempt to answer it, although it would take considerable time. I should a great deal rather——

Senator GORE (interposing). Would you rather submit that by way of a written statement later on?

Mr. WHITNEY. Yes; I would.

Senator GORE. Well, I think it would be better for all of us.

Mr. WHITNEY. I am perfectly willing to attempt to do it now, but it would take some time.

Senator GORE. Well, I realize that that would require some time and I will not take the time of the committee now for it. I thank you, Mr. Chairman.

The CHAIRMAN. All right, Senator Gore. You may proceed, Mr. Branch.

Mr. BRANCH. Mr. Whitney, I understood you to say that you felt your rule which prohibited short sales at a smaller price than the last sale that had been made, prevented bear raids tending to depress prices, is that correct?

Mr. WHITNEY. That is correct.

Mr. BRANCH. Wouldn't it be possible for a speculator who desired to depress the market through short selling, to sell a small block of stock, say 100 shares, at a certain price way below the market, and then to sell a much larger block short at that same price?

Mr. WHITNEY. How is he going to sell the first 100 shares of stock way below the market, which were your words?

Mr. BRANCH. Well, if the market is at a certain price is it not possible that the market will be dropping?

Mr. WHITNEY. It seems very possible that the market may be dropping, but nevertheless I do not know concretely what you are speaking about. For purposes of illustration let us take United States Steel and say it is 33⅛. Nobody could sell 100 shares at 33 if the bid is 33, and that would be to my mind what would constitute selling way below the market. It can not be done.

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Mr. BRANCH. I mean that he can sell United States Steel lower an eighth or a quarter, can't he?

Mr. WHITNEY. For short account?

Mr. BRANCH. No; for long account.

Mr. WHITNEY. He could if he were long of the stock.

Mr. BRANCH. But I mean by making that kind of sale, of a comparatively small block of stock, that would be the way for him to sell at the same price a much larger block short, wouldn't it?

Mr. WHITNEY. If he desired to do so; yes.

Mr. BRANCH. And that sort of strategy might very well result in depressing the price, might it not?

Mr. WHITNEY. It might. But if we found that our members knew that type of strategy was being exercised by any person not a member, we would take immediate action against our member.

Mr. BRANCH. Have you made any investigations of any such practices as that, or has that practice never come to your attention?

Mr. WHITNEY. That practice concretely has not come to our attention. I have already described to you that our accountants regularly and all the time are going through the offices of members, always with the idea to see that the rules of the stock exchange are adhered to, and particularly just now, and for some time past, in reference to the particular question you are talking about, along those lines.

Senator GLASS. Mr. Whitney, I am beginning to wonder what we are here for. What culpability is involved in selling short?

Mr. WHITNEY. To make the distinction, if I understand your question, Senator Glass, as to what we consider selling short legitimately we know of no culpability. But bear raiding, we are most antagonistic against, and——

Senator GLASS (interposing). I may understand—but at least I do not—but I may understand why you abhor bear raiding, and yet I want to know what there is culpable in it. You talk about demoralizing the market. As I conceive it, the market could be more dangerously demoralized by being bet way up than it might be by short selling.

Mr. WHITNEY. That may be.

Senator GLASS. Why do you make rules against demoralizing the market in short selling and put no restrictions upon betting the market up?

Mr. WHITNEY. Perhaps I failed, Senator Glass, to impress upon you just that point this morning when I stated that our rules were in both directions, that our rules covered absolutely any demoralizing of the market or depressing of the market and giving a tendency toward fictitious prices. I will quote from the constitution of the exchange if we have it here. I do not find it. Anyway it is in a single paragraph. The effect of the rule is to prevent doing something that will demoralize the market or create the impression of fictitious prices whether it be by bear raiding or bull raiding, as you describe it.

Senator GLASS. I am trying to determine, if I can, why one is any worse than the other, and why the newspapers were saying the other day that we were here to investigate short selling.

Mr. WHITNEY. I do not think the one is any worse than the other.

Senator GLASS. Well, I think both of them are bad.

Mr. WHITNEY. I agree with you.

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Senator BULKLEY. Was there any unusually large short account on last Friday?

Mr. WHITNEY. No, sir.

Senator BULKLEY. Was there any unusually large short account on the opening of business on last Friday?

Mr. WHITNEY. Senator Bulkley, I do not know how to answer that question because I do not know what you mean exactly.

Senator BULKLEY. I am asking if the net short account outstanding was unusually large at the opening of business last Friday?

Mr. WHITNEY. The total net short position?

Senator BULKLEY. Yes.

Mr. WHITNEY. I would not say so; no.

Senator GLASS. Well, whence these reports that we had in the offing, so to speak, of organized bear raids on the market?

Mr. WHITNEY. Whence?

Senator GLASS. Yes.

Mr. WHITNEY. I know nothing about that except what I stated this morning.

Senator WAGNER. You heard nothing of it in New York?

Mr. WHITNEY. No, sir.

Senator GLASS. I am wondering why we have you down here. We were told that there had been organized a concerted bear raid on the market.

Mr. WHITNEY. That there had been or was to be?

Senator GLASS. That there had been organized and that it was to be precipitated on Saturday of last week, on Friday or Saturday of last week.

Mr. WHITNEY. I know nothing about it, Senator Glass, other than what I have said, and nothing that we could find would prove that such a bear raid had taken place.

Senator FLETCHER. Mr. Whitney, do you know anything about any foreign influence being exerted in that direction?

Mr. WHITNEY. I do not, Senator Fletcher.

Senator FLETCHER. From your statement made here about the short position at the close of March it appears that it amounted to 3,279,398 shares as against 3,102,876 shares at the end of February, an increase of 178,522, I believe. Is that correct?

Mr. WHITNEY. Yes, sir. But there is a footnote to that statement as to the figures for March 31—making me remember something if I could see the paper and which I should tell you—showing there was a hedge in Kreuger and Toll stock of 136,000 shares, appearing as short but actually being a hedge against stock that was long and which was perfectly properly and legally sold. The fact that it was reported as short was because the stock had to be borrowed, and it so appeared. So the net position between those two dates, instead of being an increase of 178,000 shares, was, as I remember it, about 40,000 shares net increase. Since that time there has been a very material decrease in the short position.

Mr. BRANCH. To come back now to the statistics which the stock exchange has in regard to short selling. When did you first require any information on this subject from your members, just approximately?

Mr. WHITNEY. Some time in the spring of 1917, if I remember rightly.

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Mr. BRANCH. What information in a general way did you ask for then, or am I going back too far for your memory?

Mr. WHITNEY. You are going back quite a little distance now. But if I remember rightly, it was at the request of the Federal reserve system or Federal reserve bank so as to find out possibly—well, we were reporting to them the money used for brokers' loans, and if I remember aright, it was when we first started doing that. Perhaps Senator Glass can correct me on this, but if I remember rightly it was desired to find out what the balance in the short interest was in view of that inquiry. That was the first time, if I remember rightly, that it was put out.

Mr. BRANCH. And did you continually get the information from then on, or was that just a sporadic movement?

Mr. WHITNEY. That continued for—and again I can not be sure of my dates, but for some time, and then was given up. I may be wrong but I think the next time we did it, which was for all members to report in the matter of all stocks where a position of short interest existed, was November 12, 1929.

Mr. BRANCH. Have you required such reports daily ever since?

Mr. WHITNEY. No; we have not.

Mr. BRANCH. How frequently have you required it?

Mr. WHITNEY. That continued for a period of time. I want to point this out, that at various times, as far back as I can remember, we have asked for total positions, long and short, in particular stocks where something was happening or appeared to be happening in that stock about which we wanted full information. That has happened year after year regularly at various times.

We are talking, however, about asking for the short position of all stocks. That was discontinued in November or December, 1929, and the figures were not again asked for, if I remember rightly, until some time in the autumn of 1930, when they were asked for from June 10 until that date, to give us an idea of something to study. It was not until May 25, 1931, that we inaugurated a system of reporting about weekly which continued until September 21, when it became daily or as of every clearing day of the stock exchange.

Mr. BRANCH. Saturday is not a clearing day?

Mr. WHITNEY. No, sir; Friday and Saturday normally are grouped together, as you will see by the notations. You gentlemen, however, will receive as of Friday alone, separate from Saturday, in view of your request, although that is not usually asked for and compiled by us.

Mr. BRANCH. Beginning with May, 1931, you have required daily reports from brokers of the short interests?

Mr. WHITNEY. Weekly, if I remember rightly, about weekly until September 21.

Mr. BRANCH. And since then daily?

Mr. WHITNEY. Practically daily with the exceptions as mentioned.

Mr. BRANCH. And those reports show not only the total short interest but also the specific securities in which there is a short interest and the amount of short interest in each?

Mr. WHITNEY. Yes, sir; all put before you in these various exhibits.

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Mr. BRANCH. What was the reason for asking for that additional information at that time?

Mr. WHITNEY. I do not truly remember. There had been, of course, a great deal of talk about the effects of short selling, and I rather presume that we wished to find out for our own information whether these statements were true or not, and our investigations have proved that the statements that short selling had been the cause of this depression and deflation were not true.

Mr. BRANCH. Do you feel, Mr. Whitney, that you have compiled all of the data you can that will throw any light on that situation for the period since September, 1931?

Mr. WHITNEY. I think so, Mr. Branch.

Mr. BRANCH. You do not think that it would aid at all in determining that question to——

Mr. WHITNEY (interposing). Determining what question?

Mr. BRANCH. The question as to the effect of short selling on prices, to include in short selling sales against the box?

Mr. WHITNEY. I do not, because it is not a short sale.

Mr. BRANCH. Regardless of whether it may be technically a short sale or not, would it not be just as possible to depress prices under unusual circumstances, such as some bad news about a corporation by selling against the box as by what is technically a short sale?

Mr. WHITNEY. If you will explain to me the difference between "selling against the box" and selling outright, I can answer you. Otherwise I do not know the answer.

Mr. BRANCH. Well, what do you call "selling against the box"?

Mr. WHITNEY. I direct my broker to sell so many shares which I own, and I direct him to borrow them against delivery of the contract which he has entered into for me. That is selling against the box.

Senator BULKLEY. What is the motive of that? Why not deliver your own shares?

Mr. WHITNEY. There may be various reasons, Senator. A man does not care to have his name known at that time or until the entire sale has been effected. A man may own 50,000 shares of stock. He may possibly be an officer in a corporation whose shares he is selling. He may think that might have a very bad effect, and he may sell it and borrow, and so, therefore, to let it be delivered after the transaction has taken place.

Mr. BRANCH. Are sales against the box included in these short sales the summary of which you have given us?

Mr. WHITNEY. No, sir; we do not consider them short sales because the shares are delivered on the contract which he has entered into for me.

Mr. BRANCH. Then that means that he must inform himself each time on that?

Mr. WHITNEY. He is ordered by the New York Stock Exchange to so inform himself.

Senator WALCOTT. That transaction would not come under the New York State law whereby it is illegal for a director or officer of a corporation to sell stock in that corporation short?

Mr. WHITNEY. That I can not answer, Senator Walcott. I will try to get an answer, but that is a legal matter. I do not pretend to be a lawyer.

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Senator WALCOTT. You do recall that being the law?

Mr. WHITNEY. I do recall something to that effect. In other words, as I understand you, that would make it entirely correct for that officer or director to sell it in that way.

Senator WALCOTT. If it is not a short sale.

Mr. WHITNEY. It is not a short sale.

Senator BROOKHART. What do you call the buyer in a short sale?

Mr. WHITNEY. The buyer who enters the market and purchases stock does not know, Senator Brookhart, whether he has bought from a person who owned that stock or a person who is selling it short.

Senator BROOKHART. He is not any different from any other buyer, then?

Mr. WHITNEY. No, sir.

Senator BROOKHART. And what is the seller in a long buy?

Mr. WHITNEY. I do not know. I never heard that term before.

Senator BROOKHART. He is just a seller, no different from any other seller.

Mr. WHITNEY. If he exists he is just a seller; I do not know.

Senator BROOKHART. You mentioned now several short sales where you punished somebody, those A. T. & T. sales. What became of those sales after the punishment? Were they canceled or what happened to them?

Mr. WHITNEY. They were not canceled. The purchaser had perfect justification in buying those stocks.

Senator BROOKHART. He kept the stocks, then?

Mr. WHITNEY. When they were delivered to him the next day, yes, sir—when they were delivered to him in fulfillment of his contract. It was a seller contract. So therefore he did not have to deliver for 15 days, as I remember the situation.

Senator BROOKHART. Then in the meantime the short seller had to buy them back so he could return them?

Mr. WHITNEY. He had to buy them back before the expiration of the 15 days or else borrow that stock to deliver against his contract at that time.

Senator BROOKHART. So he could buy it back or borrow in order to pay it back to the fellow he borrowed it from?

Mr. WHITNEY. He could.

Senator BROOKHART. You mentioned this Krueger stock. Do you investigate these stocks before they are listed?

Mr. WHITNEY. Yes, sir.

Senator BROOKHART. What investigation do you make?

Mr. WHITNEY. Complete.

Senator BROOKHART. Well, what are some of the details of what you mean by "complete"?

Mr. WHITNEY. The corporation has a listing application with us. It goes into all the material assets, lists all the material assets of the corporation, states its directors, states what distribution the shares have already received, and hundreds of other points which I can very easily set before this committee by presenting them with our requirements in that direction but which are most intricate and detailed and which I have not all in my head or a large amount in my head.

Senator BROOKHART. Is it in writing?

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Mr. WHITNEY. It is in writing and signed and attested to by officers of the corporation.

Senator BROOKHART. Do you investigate the values behind the stock issue?

Mr. WHITNEY. We do not.

Senator BROOKHART. You investigate the earnings?

Mr. WHITNEY. The company states to us.

Senator BROOKHART. You take their statement?

Mr. WHITNEY. As of a period of time; yes, sir.

Senator BROOKHART. You took a statement of the Krueger stocks as to the values and earnings and everything?

Mr. WHITNEY. We did.

Senator BROOKHART. Were those statements true?

Mr. WHITNEY. It has been stated that perhaps they were not true as of certain dates.

Senator BROOKHART. It might be that a good many of these statements might be exaggerated in the same way?

Mr. WHITNEY. It might be. I do not believe it.

Senator BROOKHART. Does not the big inflation of 1929 and then the present value prove that they were?

Mr. WHITNEY. No, sir.

Senator BROOKHART. You still think that present value is too low?

Mr. WHITNEY. I have never so stated that that I know of.

Senator BROOKHART. Well, that is an important point with me. The chart I showed you shows that present value still to be 30 or 40 per cent above the 1914 level and the 1914 level was 33 per cent above the 1904 level.

Mr. WHITNEY. Have you taken into consideration the hundreds of instances where there have been mergers and additional stock issued and split up of stock?

Senator BROOKHART. Well, the statisticians took that all in consideration in making up this chart. While those stock values remain up in the air, as I put it, 30 or 40 per cent above 1914, which was a high level, commodity prices are below 1914 and agricultural prices are 45 per cent below 1914. Does not that indicate that things are still out of joint badly in the United States?

Mr. WHITNEY. I can not answer that question, Senator, because I do not pretend to be an authority on agricultural questions.

Senator BROOKHART. Is that the reason now prices have gone so low, because the stock exchange pays no attention to us and gives us no chance in values?

Mr. WHITNEY. Agriculture has never that I know of organized itself in a business way comparable to what the other industries of this country have done, and since 1914 at the beginning of the war, due to the necessity for munitions and other goods, I think there has been or was a perfectly tremendous stimulation of industry at that time. I think that is one of the very important reasons why to-day we find corporations in the position that they are.

Senator BROOKHART. The corporations inflated stocks in boom times to compare to the boom earnings and even beyond that, did they not?

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Mr. WHITNEY. They did not. I can not understand how it is an inflation of themselves by corporations to issue stock and get cash. That is an asset of the most virulent kind and is not inflation.

Senator BROOKHART. If they can fool somebody into buying them at an exorbitant price more than they are worth, that is an inflation, is it not?

Mr. WHITNEY. I do not see why, sir.

Senator BROOKHART. You think that is perfectly legitimate?

Mr. WHITNEY. Well, who is to prove as to the worth of the company's stock?

Senator BROOKHART. There is one general proof that is quite reliable. That is the earning of American capital altogether, the average of all of them, production of the American people, all labor, all capital, unearned increment and everything else added together, which is a little less than 4 per cent a year when we rub out cycles and get to as near level as possible. Now, then, if blocks of stock are capitalized and taken out of this 4 per cent pool, or more than that, somebody else is going to lose, is he not?

Mr. WHITNEY. Not if that is earned by the corporation.

Senator BROOKHART. But it is impossible for all these corporations to earn 10 or 15 or a hundred per cent when there is only 4 per cent to be earned?

Mr. WHITNEY. Nevertheless, certain of the corporations that we discussed this morning were earning 10, 15, 20, 35 per cent.

Senator BROOKHART. The reason they earn 10 or 15 per cent is because they charge the farmers and the laboring people of the country an exorbitant price for their products and beat down the price of the farmers' products which they use for raw materials; is that not true?

Mr. WHITNEY. Not that I know of, sir. If I may cite a homely instance: Supposing a farmer, which has often happened with me, sold me a cow at a good round price, and what he and I thought it was worth at that time. If a week or two or a month thereafter that cow developed tuberculosis, although she was tested and proved not to have it at the time of purchase, or she develops garget or various other ailments of that sort, can I blame that farmer who sold me that cow if he and I both knew she was correct in every way at the time of purchase and if a good, high, round price was paid for her?

And I can not see that there is any great distinction from that to the corporation who sold its stock or the people who sold the stock for the corporation at a time when the corporation had great assets, was making great earnings, and at a time when the prospect of still further earnings was immediately ahead.

Senator BROOKHART. The only comparison you make then is with diseased cattle. You do not make any with the healthy ones.

Mr. WHITNEY. I would rather think that business conditions in this country to-day seemingly are also diseased.

Senator BROOKHART. Well, now, let us see something about this price of farm products compared to stocks and industrial products. We have a protective tariff system that gives us a price level for industrial products above the world level, have we not?

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Mr. WHITNEY. I believe so, but I do not pretend, Senator Brookhart, to be conversant with this general subject you are now discussing.

Senator BROOKHART. Yes. In agriculture there is about 10 per cent of our products that are exported to foreign countries on an average; about 50 per cent of cotton and 20 per cent of wheat, but it is less than 1 per cent of corn, the biggest crop, and less than 1 per cent of oats, and only 7 or 8 per cent of livestock products. It averages less than 10 per cent for all of them. But that 10 per cent breaks down the tariff rates and protection on farm products, floods over into the free-trade markets of the world, is sold in competition with all the world in the price fixed by that sale. Then it is cabled back in a few days by the board of trade or the cotton exchange and the products, the other 90 per cent at home, the price runs along with the free-trade world price. Whereas, when the farmer comes to buy something he has to buy in the highly protected level of the American market.

Can you see any disadvantage to agriculture in that?

Senator GLASS. No; you do not see any, because when the next election comes on you vote for the same protective tariff. [Laughter.]

Senator BROOKHART. If the Senator will look for the record, he will find I voted against the protective tariff.

In this matter now, if agricultural prices are driven down to 45 per cent below the 1914 level, which would put them all below 1904 even, that destroys the buying power of agriculture, does it not?

Mr. WHITNEY. Depending upon what it costs agriculture to produce those products.

Senator BROOKHART. You do not think agricuture ever got more than cost of production even with its best prices, do you?

Mr. WHITNEY. I do not know what it has done, Senator. I believe that it might be able to.

Senator BROOKHART. How? I would like to know that?

Mr. WHITNEY. By using more businesslike methods possibly in the production of agricultural products.

The CHAIRMAN. Like Helena, Mont., tried. Did you help finance them?

Mr. WHITNEY. I did not, sir.

The CHAIRMAN. Your friends did.

Senator BROOKHART. You would like to have the farms then changed into corporation farms and sell their stock up on the stock exchange?

Mr. WHITNEY. Oh, no. No.

Senator BROOKHART. Well, you know the agricultural plant is in full operation in the United States and has been since 1900, do you not?

Mr. WHITNEY. I presume so.

Senator BROOKHART. And you know that the agricultural production has been declining in comparison to population since that date and the surplus in getting smaller instead of larger?

Mr. WHITNEY. I do not know those facts, Senator Brookhart, do not pretend to.

Senator BROOKHART. That is one thing I am complaining about. Here you are in the financial center of the country and the world and do not know about the biggest, most important situation in our coun-

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try with reference to this depression. Agriculture is about a third of the buying power of the whole country, and that buying power has been reduced and cut down since 1920 and the credit of agriculture almost entirely destroyed, and for that reason agriculture can not buy the necessities of life at this time. It is in a bankrupt condition; nearly 2,000,000 farmers have lost their homes or their life savings, and that does not seem to concern you down in Wall Street at all.

Mr. WHITNEY. It concerns us vitally, but you are going into details that I say I do not know.

Senator BROOKHART. That is what I am complaining about. You ought to know that.

Mr. WHITNEY. What good would that do?

Senator BROOKHART. You talk about better business methods. Are you going to cure this depression with a third of the American people driven down into peasantry or bankruptcy?

Mr. WHITNEY. You are not accusing me, Senator Brookhart, of being able to cure this depression, are you?

Senator BROOKHART. Yes; I think you and the crowd that boss you could.

Mr. WHITNEY. I did not know I was bossed.

Senator GLASS. Mr. Whitney.

Mr. WHITNEY. Sir?

Senator GLASS. The New York Clearing House has adopted some regulation, has it not, against what is technically known as "loans for others"?

Mr. WHITNEY. I believe so.

Senator GLASS. You are not familiar with the regulations though?

Mr. WHITNEY. I am familiar with the general regulation, not with its details, Senator Glass. I know in general, yes, that they have put on some such regulation of loaning for individuals or corporations other than out-of-town banks.

Senator GLASS. I hope you are intimately acquainted with the regulation, but I want to ask you how comprehensive it is, what effect it would have on the stock market. Would it lessen the operations on the stock market—the regulation that was adopted?

Mr. WHITNEY. That would be purely conjecture on my part to answer. It would certainly give to the banks seemingly far greater power than they have had in the past as to where they would grant credit. If your question is whether I believe it is a proper thing that the granting and extension of credit should lie in the banks, I certainly do think so.

Senator GLASS. You think then that corporations that are not chartered or licensed to be money lenders ought not to be permitted to engage in that sort of business?

Mr. WHITNEY. I think it is better for all concerned for them not to be.

Senator WAGNER. Mr. Whitney, in answer to Mr. Branch a little while ago you said that you had conducted over 2,000 investigations to ascertain any effect of possible so-called bear raids. I take it that these investigations also are as vigilant to determine if there are any fictitious prices attempted to be made through wash sales and other methods to increase prices?

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Mr. WHITNEY. Senator Wagner, I do not mean to give the impression that those investigations that I spoke to Mr. Branch about were only in reference to bear raids.

Senator WAGNER. That was my impression.

Mr. WHITNEY. I stated that the 20 accountants were continually going into and making investigations of this question or another, and there had been a tremendous amount of investigations, I said two or three thousand or 5,000 even over a long period of time, within perhaps the last two or three years. They are continually going on. It is the regular function.

As to specifically inquiring as to bear raiding, that is something that is being done by them when they are so instructed and when they are investigating an office, if they see anything that would tend to disclose such facts, they immediately report them. I meant to give the impression that either the business conduct committee or the accountants under the business conduct committee are forever investigating our firms to see that they adhere to the regulations of the exchange. Mr. Branch gave me somewhat the impression that he had in mind that we did not use those efforts.

Mr. BRANCH. I did not mean to convey that impression. I was asking for information, sir. May I ask you for further information, and I am not trying to convey any impression at all one way or the other; have you—and by you I include of course employees under your supervision—made any charts showing the relation between short selling and prices?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. Can you tell me what, if any, such charts have been prepared?

Mr. WHITNEY. We have made a chart that shows the price of stocks, those given by the Standard Statistics Co., beginning with January, 1931, down to date, or practically date, to April 4 or 5. It also shows the total number of shares composing the short interest, starting from May 25, 1931, and the Federal Reserve report of New York members' Street loans, what is commonly known as brokers' loans, from January, about the 7th, 1931, to date.

Mr. BRANCH. Is that the chart that you have in your hand, sir?

Mr. WHITNEY. I am reading from it; yes.

Mr. BRANCH. I do not mean to interrupt you. Have you finished your designation?

Mr. WHITNEY. There have also been put upon this chart at the dates on which they occurred world-wide and country-wide happenings, so that anybody who wishes to compare the indexes of the chart may see when these particular happenings of international or at least national consequence took place with relation to what happened in the price of stocks, the brokers' loans, and the short interest.

Mr. BRANCH. I should like to have that and have it marked "Exhibit 10."

(The chart under discussion is here printed in the record in full, as follows:)

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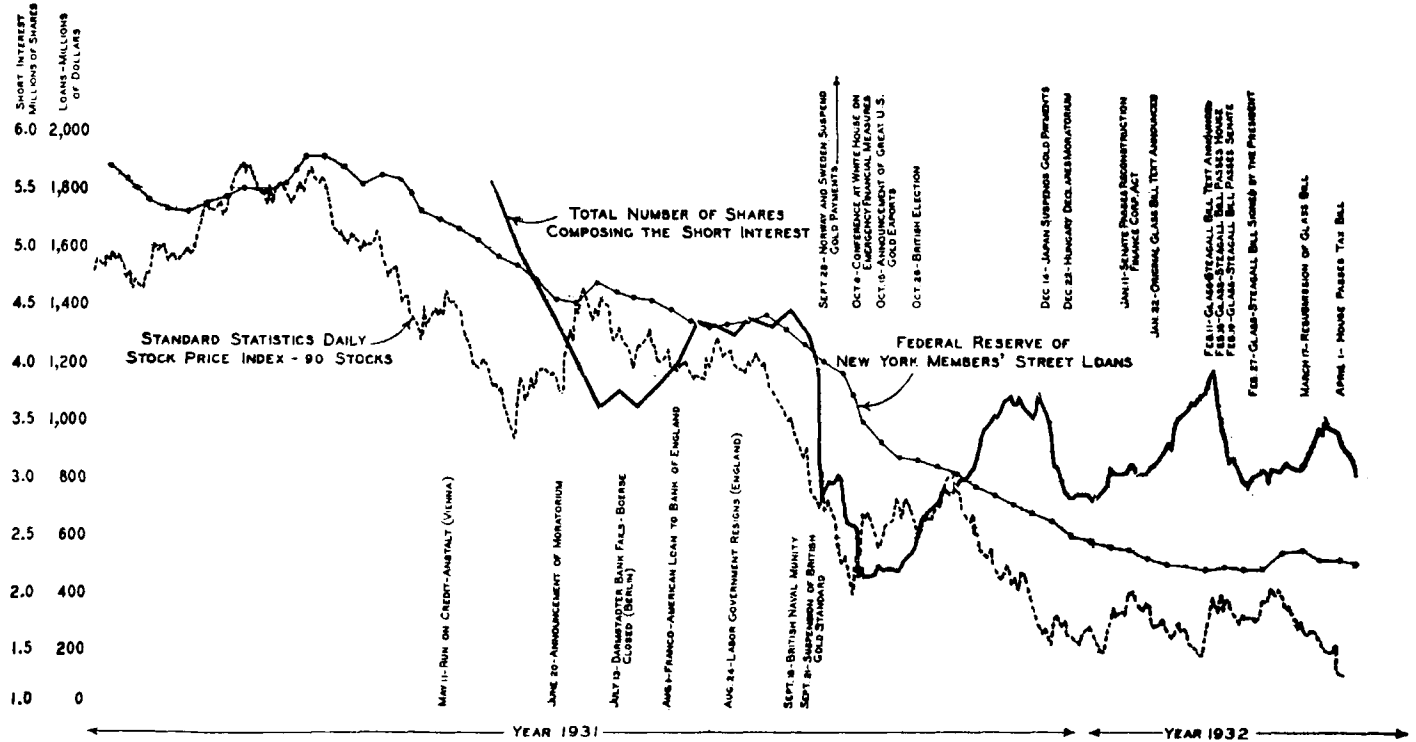

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Senator BLAINE. Mr. Whitney, before you pass that over, will you give the last item on that chart that you regard as a national happening?

Mr. WHITNEY. I will. Senator Blaine, the last article on that chart is April 1, "The House passes tax bill."

Senator BLAINE. What was the result on the stock market?

Mr. WHITNEY. The result on the stock market—or I leave to your opinion the result—the stock market declined at that time, as did the short interest.

Senator BLAINE. What was the world or national happening at the next prior decline in the stock market to April 1?

Mr. WHITNEY. I beg pardon?

Senator BLAINE. I say what was the next nearest stock decline comparable with the April 1 decline? What happening, what national or international happening, occurred?

Mr. WHITNEY. May I read from January 1 the various items? [Reading:]

January 11. Senate passes Reconstruction Finance Corporation act.
January 22. Original Glass bill text announced.
February 11. Glass-Stegall bill text announced.
February 15. Glass-Stegall bill passes house.
February 19. Glass-Steagall bill passes Senate.
February 27. Glass-Steagall bill signed by the President.
March 17. Resubmission of Glass bill.
April 1. House passes tax bill.

Those are all the occurrences that we have put down for 1932.

Senator BLAINE. The market fluctuated up and down during that period?

Mr. WHITNEY. The market has fluctuated during that period, yes, sir, as has the short interest.

Senator BLAINE. So that during none of this time from January 1 has any of these happenings, world or national, had any permanent effect on the stock exchange?

Mr. WHITNEY. That remains to be seen.

Senator BLAINE. Well, I mean from your map regardless of what happened?

Mr. WHITNEY. Perhaps it goes up and down with direct relation to what happened.

Senator BLAINE. That is on January 1 when the Senate passed the Reconstruction Finance Corporation act stocks went down.

Mr. WHITNEY. No, sir; stocks rose.

Senator BLAINE. No; the number of shares composing the short interest began to rise but not very rapidly. In fact, they did not rise for several days, and then they went up when the Glass-Steagall bill was passed. Then they took a sharp decline to the point before the passage of the original Glass bill..

Mr. WHITNEY. They took a sharp decline——

Senator BLAINE (interposing). Or before the announcement of the original Glass bill.

Mr. WHITNEY. They took a sharp decline, sir, from the announcement of the Glass-Steagall bill until it was signed by the President. The short interest I am talking about. Are you talking about the price of stocks?

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Senator BLAINE. I am talking about the short interest. They were at a high point when the Glass-Steagall bill was signed or passed by the Senate.

Mr. WHITNEY. When it was announced.

Senator BLAINE. That was the final passage. Then there was a very abrupt decline.

Mr. WHITNEY. That is right.

Senator BLAINE. And there was no increase in the number of shares composing the short interest until March 17 when there was resubmission of the original Glass bill.

Senator GLASS. Well, to show you how absolutely mythical all this variation on the stock exchange because of the Glass-Steagall bill is, Mr. Whitney, would you be able to tell us how many applications for loans have been made under the Glass-Steagall bill which was signed by the President six or seven weeks ago?

Mr. WHITNEY. No, sir.

Senator GLASS. I will tell you—just one—just one. And now why the stock market should have gone up or down on account of the Glass-Steagall bill is just one of those unsubstantive things that are constantly occurring on the stock exchange.

Mr. WHITNEY. My only purpose in compiling this chart is with relation to the stock market, or vice versa, the relation of the short interest to the stock market prices. That is all of my purpose of having this compiled, which I did not have compiled for this committee; I have had it for some long time. And also to show that the so-called brokers' loans representing, by and large, the long interest, have steadily been declining since the beginning of this compilation, with a few fluctuations.

Senator BULKLEY. This chart shows a pretty steady drop all of last week. You would say that the selling was pretty heavy and persistent last week, would you not?

Mr. WHITNEY. It has been dreadful.

Senator BULKLEY. What do you attribute that to?

Senator GLASS. Not to the Glass-Steagall bill, I hope.

Mr. WHITNEY. I attribute it to liquidation, Senator Bulkley, and that liquidation has been caused by many things. The enlargement of withdrawals of gold from this country. The statements of decreased earnings. There have been statements to the press by one of our firm's auditors, Price, Waterhouse & Co., that the Krueger & Toll figures back as far as 1930 have been falsified, and if I may say so, the proposed tax on security transfers has been one which in my opinion naturally has created great concern in investors throughout this country.

Senator BULKLEY. So you think the decline has been accounted for sufficiently by actual reasons without looking to any conspiracy?

Mr. WHITNEY. Or short selling; yes, sir.

Senator FLETCHER. Can you give us any figures as to what this great amount of gold withdrawal amounts to?

Mr. WHITNEY. I heard it is approximately twenty millions in the last day or two.

Senator BROOKHART. Does not that mean that foreign securities are being sold; that is, holders of our securities in foreign countries, are selling them and withdrawing the gold?

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Mr. WHITNEY. I do not know, Senator Brookhart. It is perhaps the desire of foreign countries to receive back their gold which they had on deposit here. I am sure the Treasury Department or the Federal reserve system can give advice that I am not capable of giving on that.

Senator BROOKHART. There are still great holdings of our securities in foreign countries, are there not?

Mr. WHITNEY. If you are sure of that, sir, it may be so. I think they have diminished tremendously.

Senator BROOKHART. I have one report of one of these confidential agencies that reported to big business saying it is about three times the amount of gold we have in this country.

Senator GLASS. Do you participate in the view, Mr. Whitney, if it is fair to ask you, that France is undertaking to embarrass this country by precipitant withdrawal of earmarked gold?

Mr. WHITNEY. I have no knowledge of that, Senator Glass, whatever.

Senator BULKLEY. Do I interpret this chart correctly that during the very time of this pronounced liquidation the net short position had gone down, that there are less people short than usual?

Mr. WHITNEY. Yes; Senator Bulkley. The short position on April 1, the date on which the House passed the tax bill, was, if I remember, 3,279,000 shares. Mr. Branch, you have got to correct me now. You have got my figures. And the last figure as of the opening of April 6 was 3,059,000 shares, a drop of 220,000 shares.

Senator BULKLEY. Then the big decline last week was in spite of short covering; was it?

Mr. WHITNEY. It was in spite of short covering; yes, sir. From September 11, 1931, to October 9, 1931, the market was consistently going down, and fast. That was the time that England came off the gold standard. I think our lowest prices were October 5 during that period, and yet during that period the short interest decreased, decreased by 2,200,000 shares. I can not see the argument that the short interest causes the declines from those two points.

Mr. BRANCH. Mr. Whitney, have you or any of the employees of the stock exchange under you prepared any charts or graphs in regard to the selling price of specific securities and the short interest in those specific securities?

Mr. WHITNEY. I believe our economist has prepared certain charts along that line, Mr. Branch, but I am not conversant with what they may be.

Mr. BRANCH. At your next appearance—I do not mean to-morrow——

Mr. WHITNEY (interposing). We will be glad to give you anything you want.

Mr. BRANCH. When you have an opportunity will you submit everything of that kind which you have available?

Mr. WHITNEY. Prepared since when? We have an economist who has a large office and is a hard worker. You do not want all these prepared on every subject, do you? You can have it. We will be glad to give them to you.

Mr. BRANCH. That goes back for some period.

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Mr. WHITNEY. Fifteen or twenty years he has been preparing charts.

Mr. BRANCH. No; I meant merely in regard to short selling and the prices of specific securities.

Mr. WHITNEY. Oh, well, whatever on that we have for a period of six months or a year?

Mr. BRANCH. Yes.

Mr. WHITNEY. Very good.

Mr. BRANCH. I will leave it to your judgment whatever is relevant.

Mr. WHITNEY. I will leave it to your judgment, whatever you want.

Mr. BRANCH. If you have more than we want we will let you know.

Senator BROOKHART. I would like to have that which shows the inflation too in 1928 and 1929.

By the way, just to keep the record straight, Senator Glass has jumped onto me twice now about this tariff business. I want to call his attention to the fact that the tariff bills would not have passed if five Democrats had not voted for it.

Senator GLASS. I am not in favor of the five Democrats who did vote for it.

Senator BROOKHART. But neither am I.

Senator GLASS. I do not think that was a very creditable exhibition of democracy, if you want to know my opinion.

Senator BROOKHART. I will agree with that; but your Democrats declared for a protective tariff and took the issue out of your campaign in your own State.

Senator GLASS. You will go up next November and vote for the highest protective tariff the Republicans present perhaps.

Senator FLETCHER. The question there was largely whether the 1930 bill was an improvement over the 1922 bill.

Senator GLASS. Of course, I do not mean anything personal in that.

Senator BROOKHART. Oh, certainly not.

Senator GLASS. Because I think you have been a pretty good Democrat.

Senator BROOKHART. Much better than some on your side of the aisle.

Senator BULKLEY. Mr. Whitney, does any of the data that you have submitted give the volume of the sales of the most active stocks last Friday?

Mr. WHITNEY. No, Senator, we haven't got those figures, you see.

Senator BULKLEY. Can you give us the volume traded in, say, the 30 most active stocks last Friday? I would like to have that in the record.

Mr. WHITNEY. I can get that from the sheets of from a newspaper; yes, sir.

Senator WAGNER. Yes; the newspaper will give you that.

Senator BULKLEY. I would like to have it in our record, Mr. Whitney, if it is not asking too much. Then it will be officially in.

Mr. WHITNEY. The last figures I have of what I referred to as information we had already compiled for all stocks that would an-

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swer Nos. 1 and 2 sections of your subpœna—the latest figures I have are as of the opening of April 6.

Senator BULKLEY. I am not at all sure that this has anything to do with the question in the subpœna, but I would like to have it appear in our record, the volume of sales with respect to the 30 most active stocks last Friday.

Mr. WHITNEY. It is my understanding of your question of the most active stocks traded in or wherein there was the largest short interest?

Senator BULKLEY. No; the total trades.

Mr. WHITNEY. I haven't that with me, but, of course, that can be easily gotten.

Senator BULKLEY. Yes; thank you.

Senator BLAINE. Mr. Whitney, do you match orders sometimes to cover either long sales or short sales? Is it possible, I mean?

Mr. WHITNEY. If I understand you correctly, what we consider as a matched order is more or less of a wash sale and therefore absolutely against the rules of the exchange.

Senator BLAINE. A wash sale as affecting a long——

Mr. WHITNEY (interposing). A wash sale is a fictitious transaction and it is against the law of the State of New York and absolutely against our regulations.

Senator BLAINE. I am not familiar with the terminology of the stock exchange. But a match sale we will assume to be an order to sell on the part of some individual and then an order to buy. That is reported on the stock exchange, as I understand it?

Mr. WHITNEY. And those two people met with deliberate intent?

Senator BLAINE. No; I would leave out the deliberate intent.

Mr. WHITNEY. Then I do not quite know what you mean.

Senator BLAINE. As I understand, where there is an order to buy and an order to sell the same stock, we will assume U. S. Steel at 40, 5000 U. S. Steel at 40, and an order to sell U. S. Steel at 40, and the ticker shows the bid at 40.

Mr. WHITNEY. The ticker will not show the bid, sir, at all.

Senator BLAINE. Will not show the bid?

Mr. WHITNEY. The ticker will not show it except on rare occasions.

Senator BLAINE. How does the stock exchange report those transactions? As long as there is some control on the stock exchange I assume that the type I have described can not be transacted?

Mr. WHITNEY. If you want to buy 5,000 shares of steel and I want to sell it, we give our orders to a broker and he goes into the steel crowd on the exchange, and both the brokers go in with no preknowledge that the other broker has the opposite order, and he will execute his order as he best may in that crowd.

Senator BLAINE. And report it on the stock exchange?

Mr. WHITNEY. When executed, report it, and it will go on the tape. If we found that those two brokers had matched their orders and by prearrangement gone on the floor of the exchange, one buying from and the other selling to each other, and if that in any way affected fictitiously the market, we would consider that a direct violation of the rules of the exchange.

Senator BLAINE. But assuming the traders, the ones who hold the stock or who are selling or buying the stock did not inform the

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brokers. Might not that be used as a method to cover up long or short sales as the case may be?

Mr. WHITNEY. Not that I can see; no, sir.

Senator BLAINE. It seems to me that it would.

Mr. WHITNEY. Then I may not understand your question.

Senator BLAINE. I may not understand the proposition.

The CHAIRMAN. I suggest we are not going to get through to-day anyhow and we should like a short executive session before we recess, and we will meet again to-morrow morning at 10.30 in this room and Mr. Whitney will continue to be with us, and everybody is excused now except the members of the committee and the reporter.

(Thereupon, at 4.05 o'clock p. m., the committee adjourned the hearing of further testimony until 10.30 o'clock a. m. the next day, Tuesday, April 12, 1932, and proceeded to executive session.)

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STOCK EXCHANGE PRACTICES

TUESDAY, APRIL 12, 1932

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met at 10.30 a. m., pursuant to adjournment on yesterday, in room 301 Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Blaine, Couzens, Fletcher, Glass, Wagner, and Bulkley.

Present also: Senator Copeland and Claude Branch, Esq., counsel to the committee.

The CHAIRMAN. The committee will come to order.

Mr. Branch will proceed.

TESTIMONY OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.—Resumed

Mr. BRANCH. I should like to make a statement as to my idea of the future conduct of this matter. If the committee does not agree with this I suppose they will let me know. I have very few more questions which I contemplate asking this morning.

Mr. Whitney's statement was that it would take him several days to get the information which the subpœna calls for, and it seems to me it would be better to defer the most of the examination until those figures and statistics are forth coming. There will undoubtedly be other statistics that we will require in the future and which were not mentioned in the subpœna.

Mr. Redmond, it may interest you to have an answer to those questions which Mr. Whitney suggested in his written statement and, of course, I am giving merely my ideas and I assume that if the committee disagrees with me about the matter they will so state at the present time.

Mr. Whitney said in regard to the third section that if the information sought is a list of the members of the exchange who originally executed the selling orders of the stock now held in short account he was afraid it would be almost impossible to answer the question. It does not seem to me that at the present time it is worth while going into that. Unless the committee dissents I think you may assume that that information will not be required at the present time.

Mr. WHITNEY. And that you merely desire to know in what firms the short accounts now reside.

Mr. BRANCH. That is, we do not need to go back to the previous accounts at the present time. That was the point you made, was it not, Mr. Whitney?

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Mr. WHITNEY. Yes.

Mr. BRANCH. Then, in regard to the fourth section of the request, Mr. Whitney cited that a compilation of typewritten schedules would consume several days, and he asked whether we would be satisfied with having a photographic film which would show each report in alphabetical order by names of customers. My answer to that is that that will suffice for the present.

I think, Mr. Redmond, that answers the questions which Mr. Whitney asked in regard to the subpœna. With these explanations I understand you will be prepared to furnish all the information requested in the subpœna at your earliest convenience, which will probably be several days hence.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. It is for that reason, it seems to me, we could proceed better if the most of this investigation waited until we got those figures, which were what we called for originally and which could not be produced within the limited time.

Now, Mr. Whitney, you produced on yesterday a compilation of statistics in regard to short selling covering the first few days of April—April 1, 4, 5, and 6. That was marked originally our Exhibit No. 1 and changed to Exhibit No. 9. I understand that since yesterday you have some figures showing the number of shares of the total short interest for April 7. Is that correct?

Mr. WHITNEY. That is correct.

Mr. BRANCH. And that number is 2,849,895 shares.

Mr. WHITNEY. That is right.

Mr. BRANCH. And that shows a decrease of 214,033 shares from the previous market day.

Mr. WHITNEY. That is right.

Mr. BRANCH. And as I understand it, you have no figures for any day subsequent to that, at the present time I mean.

Mr. WHITNEY. No, sir. Might I touch on that subject?

Mr. BRANCH. Certainly.

Mr. WHITNEY. Senator Bulkley on yesterday asked me to produce the 30 most active stocks in transactions and trades on April 8, 1932. I have that information here, and it was derived from the quotation sheets published by Francis Emory Fitch (Inc.). I should like to put that in as requested as an exhibit.

(Exhibit No. 11 is as follows:)

Thirty most active stocks on April 8, 1932

Alaska Juneau	25,300	Kreuger & Toll	30,400
Allied Chemical & Dye	39,300	National Dairy Products	18,500
American Can	51,700	New York Central	18,800
American Telephone	64,200	North American	38,900
Anaconda	27,700	Paramount Publix	18,400
Auburn	28,900	Radio	19,100
Case	36,400	Sears Roebuck	20,300
Columbia Gas & Electric	33,500	Socony Vacuum	19,300
Commonwealth & Southern	27,400	Standard Oil of New Jersey	36,200
Consolidated Gas	29,400	Union Carbide	39,600
DuPont	39,300	United Corporation	21,600
General Electric	48,700	United Gas Improvement	37,900
General Motors	100,500	United States Steel	56,400
International Nickel	23,800	Westinghouse Electric	27,900
International Telephone & Telegraph	54,400	Woolworth	19,200

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The foregoing information was derived from the quotation sheets published by Francis Emory Fitch, Incorporated.

In that connection I should like to point out, as I said on yesterday, that the total short interest as of April 1 was 3,279,000 shares, and that as of the opening of April 7 it was 2,849,000 shares, or a reduction in the short interest of 429,503 shares since the close of business on March 31, to the opening of business on April 7, during which period a very drastic decline has taken place in the stock market.

I have also gathered the figures of all stocks as of——

Senator BLAINE (interposing). Mr. Whitney, if that paper has not already been marked as an exhibit and made a part of our record, I should like to have it done.

Mr. WHITNEY. I believe the committee reporter has already marked it Exhibit 11, and doubtless he will make it a part of the record as you request.

Senator BLAINE. And what was that paper?

Mr. WHITNEY. The 30 most active stocks on April 8, 1932, as requested by Senator Bulkley.

Mr. BRANCH. In order that I may understand, is that the document which Senator Bulkley has in his hands now?

Mr. WHITNEY. Yes, sir. Now, I had taken off, or rather I took off myself last evening, the stocks in which there were transactions of 10,000 shares or more, in line with the questions in the subpœna, occurring on April 6, the last day for which we have the total short figures, our figure being as of the opening of April 7, but including transactions of April 6, in the trading of which day there was a reduction in the short position of 214,000 shares.

There are 48 stocks in which there were 10,000 shares or more traded in on April 6, the day I am speaking about. I have picked out 12 of those stocks: Of General Motors there were traded 116,600 shares, with a net loss for the day of three-fourths of one point. Of Kreuger and Toll there were 116,500 shares traded in, with a net loss of one-eighth of one point, but the final price was three-eighths of a point. American Telephone and Telegraph, 93,900 shares at a net loss of $1. United States Steel, 92,000 shares with a net loss of $1.25. General Electric, 76,400 shares with a net loss of one-half a point. United Corporation, 58,500 shares with a net loss of three-fourths of one point. Consolidated Gas, 49,200 shares with a net loss of two and one-fourth points. North American Co., 46,600 shares with a net loss of three-eighths of a dollar. DuPont, 45,400 shares were traded in with a net loss of one and three-eighths. Commonwealth & Southern, 43,000 shares were traded in with a net loss of three-eighths of a point. American Can, 37,900 shares were traded in with a net loss of $1.25. Auburn Automobile, 35,100 shares were traded in at a net loss of $1.50.

I have taken these 12 stocks out of the 48, being the 12 most active during that day in the transactions of the 48; and in each and every stock there was a small or a considerble net change loss, during which identical period the short interest decreased 214,000 shares.

Senator BULKLEY. Mr. Whitney, do you mean that the short interest decreased as to each of those stocks you just mentioned?

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Mr. WHITNEY. No, sir; I do not. We have not broken it down by stocks yet, but the total short interest decreased that day 214,000 shares. And the 48 stocks, Senator Bulkley, that we gathered for that day shows hardly an instance where there was not a loss, but I have merely given you the most active of them.

Senator COUZENS. The imprint being that short selling had nothing to do with the decrease in price?

Mr. WHITNEY. Quite. And it was because of that situation which prevented a greater loss.

Senator FLETCHER. What day of the week was that?

Mr. WHITNEY. Wednesday.

Senator FLETCHER. Why do you select April 6, 1932?

Mr. WHITNEY. Because it is the last day for which we have the final net short position.

Mr. BRANCH. I should like to ask you a few questions in regard to that.

Mr. WHITNEY. But may I first submit this as an exhibit?

The CHAIRMAN. Yes. Let it be made a part of the record.

(The paper which was marked "Exhibit 12" was made a part of the record, as follows:)

Transactions of 10,000 shares or more on April 6, 1932

	Volume	Net change		Volume	Net change
Alaska Juneau (50%)	22,400	−½	Kreuger & Toll	116,500	−⅛
Allied Chemical & Dye (6)	22,700	−⅛	Montgomery Ward		
American Can (15)	37,900	−1¼	Nash (2)		
American Telephone & Telegraph (9)	93,900	−1	National Dairy Products (2.60)	18,700	−1
American Tobacco B (16)	7,800	−1¼	New York Central	28,700	−1⅛
Anaconda	12,900	−⅛	North American Co. (10% St.)	46,600	−⅛
Auburn (4)	35,100	−1½	Packard Motor		
Bethlehem Steel	10,500	−¾	Paramount Publix	17,000	−¼
Canadian Pacific (1¼)			Radio	16,500	0
Case (J. I.) Co.	28,600	−¾	Sears Roebuck (2½)	13,100	−1¼
Chesapeake & Ohio	11,900	−1⅛	Socony Vacuum (1)	15,300	−⅛
Chrysler (1)			Standard Brands (1.20)	11,300	−¼
Columbia Gas & Electric (1½)			Standard Oil of New Jersey (2)	12,700	−⅛
Commonwealth & Southern	43,000	−⅛	Texas Corporation (1)		
Consolidated Gas (4)	49,200	−2¼	Texas Gulf Sulphur (2)	6,400	−¾
DuFont de Nemours (4)	45,400	−1⅜	Tide Water Association Oil		
First National Stores (2½)			Union Carbide & Carbon Corporation (2)	29,400	−1⅛
General Electric (1)	76,400	−½	United Aircraft		
General Foods (3)			United Corporation	58,500	−⅛
General Motors	116,600	−¾	United Gas Improvement (1.20)	16,900	−⅛
Gillette Safety Razor (1)			United States Steel (2)	92,000	−1¼
International Nickel	10,600	−¼	Westinghouse Electric & Manufacturing (1)	28,600	−¾
International Tel			Woolworth Co. (2.40)	23,000	−⅛
Ken. Copper					
Kresge, S. S. Co. (1.60)					

Mr. BRANCH. Mr. Whitney, you have no information as to the decline or rise of short interest in these particular stocks, as I understand you?

Mr. WHITNEY. No, sir; not at hand. But it is now being compiled.

Mr. BRANCH. That would give a more complete picture of the situation, would it not?

Mr. WHITNEY. It would give a more complete picture; yes.

Mr. BRANCH. And it is perfectly possible, is it not, that the short interest in those particular stocks rose although the total short interest of all stocks declined?

Mr. WHITNEY. No, Mr. Branch, it is not perfectly possible. I have no belief that the short position in the most of these 48 stocks

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will not show a decrease. Any such amount as 214,000 shares would naturally be reflected in the more active stocks.

Mr. BRANCH. But you do not know now, do you, what short sales were made in those particular securities which were covered during that day?

Mr. WHITNEY. No, sir.

Mr. BRANCH. And that compilation of course does not consider in any way sales made against the box, does it?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Don't you think it would give a more accurate picture of the situation if you had statistics showing sales against the box on that day?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Why not?

Mr. WHITNEY. Because I do not think that in any way, shape, or manner, can a sale against the box be construed as a short sale.

Mr. BRANCH. As a matter of fact, any sale against the box means the seller usually borrows stock to fulfill his order, does it not?

Mr. WHITNEY. There are hundreds of reasons for borrowing—or perhaps not hundreds, but 10 or 20 reasons for borrowing stocks as against sales in which cases there is no short sale occurring.

Mr. BRANCH. Well, if he did borrow stock, although he had it in his box, it would be in effect the same thing as a short sale, wouldn't it?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Why not?

Mr. WHITNEY. Well, let us say I am a resident of California. I own 500 shares of Union Carbide and I have that stock in my safe deposit vault in San Francisco. I give my broker in San Francisco an order to sell 500 shares of Union Carbide. It is sold. By no stretch of the imagination could those 500 shares constitute, and we will say presumably they are in five certificates, an actual delivery the next day before 2.15 p. m. to the broker in New York for delivery against my contract. Therefore, my broker in New York has to borrow 500 shares of Union Carbide to deliver against that contract under the rules of the New York Stock Exchange. My stock is shipped from San Francisco by air mail, or however it may be shipped, and when received by my broker in New York he returns that stock to the broker or whomever he borrowed from. And that is only one of many instances where the borrowing of stock is necessary in order to fulfill contracts of sales which in no way possible could be construed as short sales. And I hold that contention to absolutely apply to sales against the box.

Mr. BRANCH. Well, that is only one kind of sale against the box, is it not? Are not sales against the box often made where the reason for making the sale is not necessarily delay in making delivery but the fact that the seller has no intention of delivering his own certificates but intends to borrow?

Mr. WHITNEY. Mr. Branch, I can not set myself up as having knowledge of the intent of all the people in the United States who wish to adopt that particular practice.

Mr. BRANCH. Don't you know as a matter of fact that that is a common practice?

Mr. WHITNEY. I believe it is done for one reason or another.

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Mr. BRANCH. Yes.

Mr. WHITNEY. But I know of many instances also where the so-called sale against the box has been wrong in the estimation of the individual; I mean wrong in so far as the price is concerned, and that individual has either bought at a higher price, and possibly did buy back that stock, or has delivered the very shares he had in his box against his contract.

Mr. BRANCH. That is quite possible, but isn't it true that as a practical matter there are many sales made against the box which have exactly the same effect as the typical short sale?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Let us suppose that I have some securities, and that I am an officer of a corporation, and that because of the requirements of New York law, or for any other reason, I do not wish to have a sale of that particular stock shown; I wish to remain the holder of record of that stock on the books of the corporation. May I not make a sale of an equivalent number of sales of stock without designating that it is a short sale although I never intend to deliver that certificate, but intend to borrow another certificate in order to fulfill the contract?

Mr. WHITNEY. I quite agree with you that that may be an instance of what an individual may intend, but I still firmly believe that that is not a short sale. As I stated on yesterday, that individual at all times has in his power the right to deliver the stock that he has in his box against the sale. The mere fact that in the interim he is borrowing I do not think affects the question. And as I also said on yesterday, that individual at no time has to buy any stock back, whereas the short seller at all times must eventually buy that stock back. And that is the real definition and distinction that we feel exists between a short sale and a sale against the box which we do not consider a short sale.

Mr. BRANCH. But you do know that the kind of sale against the box which I have just described is very common practice, do you not?

Mr. WHITNEY. I do not, sir.

Mr. BRANCH. You do not believe that that has been done in any considerable volume?

Mr. WHITNEY. I did not say I did not believe, but said I did not know. That it may be done I will grant you as a matter of your knowledge, but I do not know.

Mr. BRANCH. Have you no information from current conversation around the New York Stock Exchange as to whether that is the common practice?

Mr. WHITNEY. One hears of it being done; yes. But as to a common practice, or a practice that is having any vital influence on the market, I have no knowledge.

Mr. BRANCH. You have no knowledge one way or the other.

Mr. WHITNEY. No, sir.

Mr. BRANCH. You can not say it has not been done in great quantity in the last few months, can you?

Mr. WHITNEY. I can not say it has not been done in great quantity, but I do not know of it.

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Senator COUZENS. Would the information be valuable to the stock exchange if it were collected?

Mr. WHITNEY. It might be valuable to this committee, but in my opinion it is not valuable to the exchange.

Senator COUZENS. You say it is not valuable to the exchange?

Mr. WHITNEY. We do not think it is any of our business. It does not constitute a short sale.

Mr. BRANCH. Had you finished, Senator Couzens?

Senator COUZENS. Go ahead.

Mr. BRANCH. As I understand it, the stock exchange has no statistical data at all on sales against the box?

Mr. WHITNEY. No, sir.

Mr. BRANCH. And there has been no effort made to collect any such data up to the present time?

Mr. WHITNEY. No, sir. I know that in our questionnaire as to reporting short sales we specifically told our brokers that we did not wish those facts sent in because we did not consider that a short sale.

Mr. BRANCH. Is it not true that the bulk of the selling against the box has been done by powerful banking groups?

Mr. WHITNEY. Mr. Branch, how can I answer that question when I have just made my previous answer?

Mr. BRANCH. I am not asking for your absolute knowledge but for the best information you have as to it.

Mr. WHITNEY. I am not willing to acknowledge any intimation in that direction because I have no knowledge.

Mr. BRANCH. You do not even know what the current opinion on it is?

Mr. WHITNEY. I do not.

Mr. BRANCH. We will come now to the chart which you presented on yesterday at the end of the session, the one marked "Exhibit 10," of which I think you have a copy before you there.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. I want to make this statement at the outset because I think it may avoid explanations. I do not understand that this chart, or any chart, would show that in every case the increased short interest was accompanied by a decline in price. I realize that you can point out a large number of days probably where that was not so, and maybe where the direct contrary was the fact. Consequently I am not attempting to get you to make an inclusive statement because I realize that this chart does not warrant any such statement. But I am asking you about the general situation. Wouldn't you say that this shows that, generally speaking, a rise in price is accompanied by a decline in the short position, and the contrary, although I am not asking you to say that one is dependent upon the other? I am merely asking whether those two situations do not usually exist during the period that both of those facts are displayed upon this chart.

Mr. WHITNEY. My answer is no. I appreciate that no chart along the very lines you have mentioned is very conclusive in almost any way. But I believe that the majority of instances here taken up in connection with a consideration of the events rather tend to show that when the market was declining the short interest was also declining.

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Mr. BRANCH. Well, if you will start with me now. You begin to show the total number of shares composing the short interest as of about the beginning of June, 1931, do you not?

Mr. WHITNEY. That is right.

Mr. BRANCH. And at that time there was a very large short interest, was there not, something over five and one-half million shares?

Mr. WHITNEY. That is right

Mr. BRANCH. And at that time the price index of those 90 stocks shown by the Standard Statistics list was at its low for the year up to that time, was it not?

Mr. WHITNEY. Yes; and going down.

Mr. BRANCH. Very well; and it reached a new low, did it not, in the early part of June, 1921?

Mr. WHITNEY. Yes; at which time the short interest was steadily declining.

Mr. BRANCH. You haven't anything showing whether the short interest had declined prior to May 25, have you?

Mr. WHITNEY. No, sir. But I am only taking what is on the chart and trying to answer you as you request.

Mr. BRANCH. The short interest went down very abruptly from the latter part of May to the latter part of June, did it not?

Mr. WHITNEY. That is true.

Mr. BRANCH. It went down nearly to 3,500,000 shares according to this graph.

Mr. WHITNEY. During which time the market was also going down, and then it went up slightly.

Mr. BRANCH. Well, isn't it true that the market index for those stocks on the 1st day of June, by the line indicating the total number of shares composing the short interest, was in the neighborhood of 108?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. It was 108.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. And the short interest declined very precipitously, but on or about June 26, or I will say 25, the price index of those 90 stocks had mounted to somewhat over 120, had it not?

Mr. WHITNEY. I won't quibble with you as to prices.

Mr. BRANCH. I am not trying to get the exact price.

Mr. WHITNEY. Approximately; yes.

Mr. BRANCH. Then it is true that during that period of about a month the short interest constantly declined but the price index rose after some fluctuations pretty constantly?

Mr. WHITNEY. That is true. But from the beginning of the time which the chart shows the price index declined and then went up.

Mr. BRANCH. Yes; but taking the period of a month. That was only for a day or two, was it not?

Mr. WHITNEY. I am taking the period of a month.

Mr. BRANCH. Taking the period of a month it is true that the short interest declined drastically and the price index went up materially, did it not?

Mr. WHITNEY. It went up approximately 10 points.

Mr. BRANCH. Which is somewhat over 10 per cent of the previous index figure.

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Mr. WHITNEY. Yes.

Mr. BRANCH. So that in that month at least it is true that there was a great decline in the short interest and a material rise in the index price?

Mr. WHITNEY. I think that is so.

Mr. BRANCH. And then to take the next period——

Mr. WHITNEY (continuing). Pointing out to you, Mr. Branch, that at that time, June 20, there was the commencement of the moratorium on debts.

Mr. BRANCH. Yes; and the short interest declined at that time, didn't it?

Mr. WHITNEY. It declined.

Mr. BRANCH. And isn't it generally true that the short interest declines at a time when things are going well or when there is good news?

Mr. WHITNEY. It is apt to, yes; naturally, for that is human nature.

Mr. BRANCH. Yes, of course. And isn't it a fact that the short interest was very low during the period of great inflation in 1929?

Mr. WHITNEY. So far as we know. May I also point out to you——

Mr. BRANCH (interposing). May I stick for a minute to 1929, although I am not trying to hedge you off, but would now like to consider that.

Mr. WHITNEY. So far as we knew. But we had no comprehensive data for any long period of time.

Mr. BRANCH. So you can not tell us what, if any, effect short selling had at the time when the market started to go down after the peak.

Mr. WHITNEY. At the panic?

Mr. BRANCH. Yes.

Mr. WHITNEY. Or at the peak?

Mr. BRANCH. Yes; commencing from July of 1929.

Mr. WHITNEY. Commencing from July of 1929 and well into November of 1929 we have no figures on the short interest.

Mr. BRANCH. Yes.

Mr. WHITNEY. But what I wanted to say there was that during that very period you have just pointed out to the committee, as I stated on yesterday, the long interest as shown by brokers' loans showed a steady decrease from approximately $1,600,000,000 to $1,400,000,000, or $200,000,000 in values of shares.

Mr. BRANCH. You will understand, Mr. Whitney, that I am not saying the decline in the short interest is shown by this chart or anything else to be the main reason for those things. But I am asking whether as a matter of fact this does not show that usually that situation exists, that where there is a decline in the short interest there is a rise in the price, and vice versa, during the period covered by this chart.

Mr. WHITNEY. That was not your question put to me. It was the reverse of that as I understood it.

Mr. BRANCH. Maybe I suffered a slip of the tongue.

Mr. WHITNEY. It is my understanding that you in the beginning asked me if I felt that when stocks were declining in price the short

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interest was not necessarily declining at the same time. My answer was, no; because I think the preponderence of what is shown on this chart signifies that the short interest in declining markets rather is following that of prices in the decline. Now, I also prefaced that by saying that I do not believe charts are conclusive in their proof, but it has been pointed out that the contrary existed, and hence this chart.

Mr. BRANCH. Well, we will leave the chart to speak for itself. I am not going through the thing day by day because I realize there are exceptions, and if the members of the committee desire to see it, I will pass it around the table. I have it here if any Senator wants to see it. But it seems to me that generally it does show that a rise in price is accompanied by a decline in the short interest, and vice versa, although there are some exceptions. But I understand you do not draw that inference from this chart.

Mr. WHITNEY. I do not draw that inference from this chart. And I think you are failing to point out situations that took place at those times that would induce a short seller or somebody who thought the market was going down, to sell stocks short, it being his opinion when he looked at the shares of a particular corporation that they were not worth buying but rather selling because they were going down, and therefore he sold, and the result showed his judgment was better than that of the other man. But his judgment was predicated upon things of one sort and another that were not optimistic. What I pointed out to Senator Bulkley to-day and on yesterday was that in spite of very serious announcements coming out in the last week or two, or three weeks, which would naturally cause the market to go down, that during that period, strange to relate, the short interest also went down.

Mr. BRANCH. And the short interest has been going down for the last week.

Mr. WHITNEY. Yes, sir; and for the month of March there was an increase of 40,000 shares only net.

Mr. BRANCH. I do not want to quarrel with you any longer as to what this chart shows. It is here and anyone can draw his own conclusions, and we have your views which we wanted to get.

Mr. WHITNEY. And I will say that I explained this chart in detail in my appearance before the Committee on the Judiciary of the House of Representatives.

Mr. BRANCH. And that was introduced then in evidence as I understand it.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. We do not need to go into that again here.

Mr. WHITNEY. All right.

Mr. BRANCH. I understand that you have also a chart which shows the stock price index as compared with the actual-earnings index for the period beginning in the early part of 1929 and going down to the latter part of 1931.

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. I do not think that has been marked as an exhibit by the committee reporter. Let us have that done.

Mr. WHITNEY. I do not remember having submitted this as an exhibit, but I did casually refer to it.

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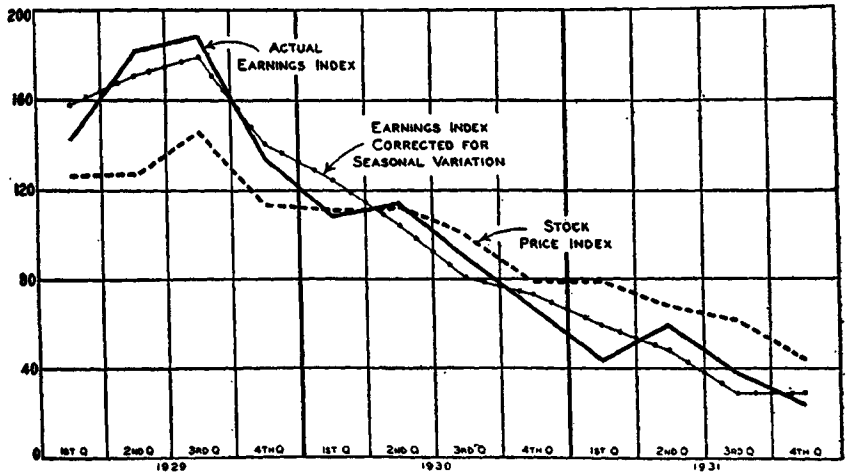
Mr. BRANCH. Well, let it be marked.

(A graph designating actual-earnings index, earnings index corrected for seasonal variation, and stock price index from the beginning of 1929 to the end of 1931 was identified by being marked "Exhibit No. 13," and is inserted at this point.)



Mr. BRANCH. Mr. Whitney, I am now going to ask you a few miscellaneous questions for the sake of information. Members on the floor of the exchange are not supposed to be told by specialists what buying or selling orders the specialists have on their books, are they?

Mr. WHITNEY. Do you mean specifically as for whom?

Mr. BRANCH. Are the specialists supposed to give any information at all about such matters to members of the exchange on the floor?

Mr. WHITNEY. Well, if a member asks what the market is up and down in a reasonable way, to find out the breadth of the market, there is no reason why that information shall not be given. But specialists may not give information as to stop orders. And if a specialist has any idea or thought that the information he is asked to give is going to be used in a detrimental way, then of course he may not give that information and would not give it. But he is there telling brokers that inquire how the market is, he may say 30⅛ to a ½, or if 500 shares are wanted, that he would say yes. If he were asked whether there was a fairly full market down and up he would answer, but always with the idea in mind that he was not giving information that was going to be acted upon in a detrimental way. And if acted upon in a detrimental way, the specialist would report that to the governors.

Senator BARKLEY. Is a specialist permitted to trade for his own account?

Mr. WHITNEY. Yes; but with very great regard as to his duty to the customer. He may not trade at a price for his own account for which he has orders for customers. They must be executed first. The same thing would apply to the execution of a market order for a customer.

Mr. BRANCH. But he can use for his own advantage knowledge that he has if other orders were standing there?

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Mr. WHITNEY. Yes.

Mr. BRANCH. Has the committee in charge of such matters ever investigated specialists giving information improperly, or reported to have given information improperly?

Mr. WHITNEY. Yes; I think so.

Mr. BRANCH. Do you recall whether any specialist has ever been disciplined for an improper giving of information?

Mr. WHITNEY. I do not now remember any such case. I believe there have been cases where individuals have been disciplined for such acts; but it is something I can look into and let you have.

Mr. BRANCH. A very serious situation might arise from specialists violating their duties with regard to withholding information about stop orders? I am not now asking whether it has arisen, but whether it might not be the result if a specialist revealed the fact that he had a great many stop orders at a certain point.

Mr. WHITNEY. Yes.

Mr. BRANCH. That would be a very serious matter, would it not?

Mr. WHITNEY. To answer your question that it might be, I will say yes.

Mr. BRANCH. Do you know whether or not any specialist has divulged such information improperly?

Mr. WHITNEY. That I do not know.

Mr. BRANCH. Have any reports that they have done so come to your attention?

Mr. WHITNEY. Do you mean have there been complaints, or have there been rumors at times, as rumors are rife as to one thing and another? There are rumors about almost everything.

Mr. BRANCH. And there have been rumors about that?

Mr. WHITNEY. Not specifically as to specialists, but that there are large stop orders. I have not heard that lately, but that was one of the things in the early days of the decline.

Mr. BRANCH. Were any complaints made about it?

Mr. WHITNEY. No, sir.

Mr. BRANCH. You have never had any complaint about it?

Mr. WHITNEY. Not that were ever proven; no, sir.

Mr. BRANCH. Now, I want some information as to the lending of stock to a short seller. If a broker——

Mr. WHITNEY (interposing). Are you willing to make that as a question separate and distinct, because they are not absolutely allied as I tried to tell you this morning. The lending of stock is a necessity in many instances outside of and distinct from where a short seller operates.

Mr. BRANCH. Well, let us confine this just to the case where it is a short sale.

Mr. WHITNEY. O. K.

Mr. BRANCH. And if the answer applies to other cases, well and good, and if it does not I should like for you to explain it.

Mr. WHITNEY. All right.

Mr. BRANCH. If a broker loans his customer stock, there may be a premium paid for the use of that stock, may there not?

Mr. WHITNEY. There may be.

Mr. BRANCH. And sometimes it is done?

Mr. WHITNEY. Yes, sir.

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Mr. BRANCH. Does the customer get the benefit of that premium?

Mr. WHITNEY. It all depends. In the case of some houses it is allowed, and in the case of some other houses it is not. I think the most common practice is not to allow the premium because the broker is assuming all of the risk. In some cases where the premium is allowed or a part of the premium, the customer has to assume the risk and not the broker.

Mr. BRANCH. Are there any rules of the stock exchange governing that matter?

Mr. WHITNEY. No, sir.

Mr. BRANCH. That is left entirely for the customer and the broker to arrange?

Mr. WHITNEY. Entirely.

Mr. BRANCH. And up to about the 1st of April the broker ordinarily got the right to lend stock by virtue of some stipulation printed on the original sale note or something of that kind, didn't he?

Mr WHITNEY. No; not something of that kind at all.

Mr. BRANCH. What was it?

Mr. WHITNEY. The broker got that permission from the customer by reason of the agreement, which is sometimes called a consent card or customers' agreement. It was a separate paragraph in every instance that I have ever seen, specifically allowing the broker to loan as well as to pledge securities in carrying the customer's account.

Mr. BRANCH. What do you mean that was in? Was it in an agreement that was signed relating solely to that matter or was it in some other document?

Mr. WHITNEY. In the document that relates to the customer's account, in general and specific language.

Mr. BRANCH. That document had no relation to anything except the terms under which the account was to be carried.

Mr. WHITNEY. Yes, as I remember it and understand it.

Mr. BRANCH. That was changed as of April 1, wasn't it? I mean the method of giving consent.

Mr. WHITNEY. The method of giving consent was not changed as I understand it in its wording at all. It was made at the instigation of the exchange a separate document so that the right that always existed and solely existed in the hands of customers as to whether or not their stock should be loaned, but for the benefit of those who did not understand, little words for little fingers, should have it put before them so that they would know absolutely that only the people who own stocks have it in their power to say whether or not they should be loaned.

Mr. BRANCH. But you felt it was fairer that that matter should be specifically called to their attention rather than be incorporated in with a lot of other provisions of the contract.

Mr. WHITNEY. Not fairer, because that has been in existence for as long a time as I can remember, but there was misunderstanding as indicated by a great many complaints, from a great many pieces of information that arrived at the exchange, and we thought it would be wise to forcibly, if you will, put before the public their rights, rights which they have exercised, but there has been no change whatever in the actual situation as to the borrow and loan market.

Mr. BRANCH. And that took effect as of April 1, I mean that change, didn't it?

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Mr. WHITNEY. Yes, sir; and it was announced some time in February.

Mr. BRANCH. But as a matter of fact that doesn't seem to have affected the supply of stock available for loans, does it?

Mr. WHITNEY. No, sir. If anything, I think it has increased the supply of stock, because people realized more particularly.

Mr. BRANCH. I understand you to have expressed the opinion that this step has not tended to decrease the amount of short selling.

Mr. WHITNEY. I am not conscious of ever making such a statement.

Mr. BRANCH. Well, what is your opinion on that? Have you any opinion on it as to whether that step has had any effect upon the volume of short selling?

Mr. WHITNEY. That step never was intended to have any effect upon the volume of short selling, and I do not think it has had any effect upon it, no.

Senator COUZENS. Let me ask the witness a question right there.

The CHAIRMAN. Proceed, Senator Couzens.

Senator COUZENS. Just what is the relation between a broker and his customer that gives the broker permission to use his property at will?

Mr. WHITNEY. What is the relationship?

Senator COUZENS. Yes. Say I am dealing with a broker.

Mr. WHITNEY. Just why does an individual deal with a broker?

Senator COUZENS. I am just wondering what the customer gets out of it. If I order an agent to buy a piece of property I do not necessarily consent that the agent may use that property at will. So I wondered just what developed the practice about that relationship between broker and customer.

Mr. WHITNEY. You do not necessarily allow an agent to use your property at will, no; and neither need a customer of a brokerage house agree to this. But they seem to have done so.

Senator COUZENS. That is what I am trying to find out. What brought that about? What is the history of that matter whereby a broker or agent may at will use his customer's stock without written permission?

Mr. WHITNEY. Oh, no, Senator Couzens. They always have written consent or permission.

Senator COUZENS. It is mostly oral, is it not?

Mr. WHITNEY. No, sir. It is signed, sealed, and delivered as a document always.

Senator COUZENS. And he does it without compensation, just in order to give the broker that power?

Mr. WHITNEY. No, sir; there is a real compensation in it. That is one of the ways of financing the carrying of stocks by the broker for the customer. I believe, Senator Couzens, that it is only in these days, where the finger has been pointed at short selling, that there has ever been any question on this point. Mind you, if I borrow stock from you for delivery against contract, whatever it may be, short selling or otherwise, I pay you at that time the full market value in cash and you pay me a rate of interest or you get the money flat, or I may even have to pay you a premium for that stock.

Senator COUZENS. For the use of the stock?

Mr. WHITNEY. The borrower.

Senator COUZENS. The lender gets the premium?

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Mr. WHITNEY. Yes, sir.

Senator COUZENS. And prior to this new arrangement which went into effect on April 1 what was the agreement usually between borrower and the lender of stocks—what kind of agreement did they have?

Mr. WHITNEY. There is no essential difference between the present agreement made between customer and broker than existed in the past. Your question is, what was the agreement between lender and borrower. That agreement is a contract which is made through the rules and under the regulations of the New York Stock Exchange, which we see is fulfilled.

Senator COUZENS. That is what I am trying to get at. What is the usual arrangement made between a broker and a customer whose stock is borrowed?

Mr. WHITNEY. That, sir, is the customer's agreement or consent card that I referred to, giving the broker the right to loan or pledge the customer's stocks, and that agreement or that type of agreement has been in effect for 15 or 20 years, I believe.

Senator COUZENS. Yes; but the form that is now being executed does not detail the relationship between broker and customer because I have seen the card, I mean as to the terms. Now, what I am trying to find out is, if you know, what are the usual terms between broker and customer.

Mr. WHITNEY. Do you mean the usual consent card that is given to the customer to sign?

Senator COUZENS. Oh, no. The usual relationship that exists between broker and customer when the broker was permitted to loan the customer's stock, prior to the signing of the card which is public property.

Mr. WHITNEY. Well, I am sorry, and I may be very stupid, but I do not understand you, Senator Couzens.

Senator COUZENS. Well, perhaps I do not speak good English. But prior to April 1 you required no filing of any consent as I understand it, between the broker and his customer.

Mr. WHITNEY. That is correct, although those consents were always on file, and have to be or it would be a violation of the laws of the State of New York.

Senator COUZENS. Then what happened to bring about this new order that was put into effect on April 1?

Mr. WHITNEY. Well, I just tried to tell Mr. Branch, there were many complaints made by those who did not understand their rights, many letters came in, or there was a feeling on the part of our brokers more particularly that their customers did not understand the whole situation. Therefore, in order to make it perfectly clear, we insisted upon this separate agreement, in order to call the matter directly to the customer's attention.

Senator COUZENS. Prior to that time what kind of contract existed between broker and customer? That is what I am trying to find out. Is that plain?

Mr. WHITNEY. A contract existed setting forth certain agreements on the part of the customer to the broker in the handling of the customer's account by the broker.

Senator COUZENS. Now, that is what I was getting at. What kind of agreement was it?

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Mr. WHITNEY. Well, I would have to get one of those for you in order to answer properly.

Senator COUZENS. Are they uniform?

Mr. WHITNEY. I think they are very nearly uniform.

Mr. BRANCH. I think I have such an agreement here.

Mr. WHITNEY. We could send out to some brokerage house and get some.

Mr. BRANCH. Is this paragraph that is marked the matter you are speaking about, Mr. Whitney?

Senator COUZENS. While Mr. Whitney is reading that paragraph, it has come to my attention that it is quite possible for the broker to use his customer's stock to depress the value of the customer's stock, and I wondered what kind of an agreement existed between a broker and his customer which gave the broker the opportunity of selling short and depressing the value of his customer's own stock.

Mr. WHITNEY. Senator Couzens, I deny it.

Senator COUZENS. Deny what?

Mr. WHITNEY. I deny that.

Senator COUZENS. Deny what?

Mr. WHITNEY. That a broker may use his customer's stock in depressing the market. No broker under our regulations may sell stocks short and use his customers' stock or may he sell stock in any way for his own account and use his customers' stock. That is an absolute violation of our rules.

Senator COUZENS. How do you detect that when that happens?

Mr. WHITNEY. When it happens?

Senator COUZENS. Yes. Oh, it does happen. No use to be so innocent about it.

Mr. WHITNEY. I am not innocent about it, I regret to state. The last case I remember was E. W. Wagner & Co. of Chicago. They were short in their own account some 300,000 shares of stock which they had taken from their customers' accounts for delivery. It was nothing more nor less than a bucket shop operation, and we expelled them promptly from the New York Stock Exchange.

Senator COUZENS. When was that?

Mr. WHITNEY. Some time in 1920 or '21, some time around there.

Senator COUZENS. And since that they have been able to obscure all those transactions from the observations of the New York Stock Exchange?

Mr. WHITNEY. I do not think those transactions take place. That is bucketing.

Senator COUZENS. You contend that there is no bucketing in the New York Stock Exchange?

Mr. WHITNEY. I contend there is not bucketing in the members, on the part of the members of the New York Stock Exchange, yes.

Senator COUZENS. At least you do not know of it. You could not say whether it happened?

Mr. WHITNEY. We have twenty and odd men, Senator Couzens, going into every office throughout this whole United States continuously, and you imply that the books are manipulated. We can not find it out, and I think we have the only accountants in the world that accurately know brokerage accounting from bottom to top.

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Senator COUZENS. Going back to that agreement again, does the agreement that Mr. Branch handed you just now specify the detailed relationship between the broker and his customer?

Mr. WHITNEY. Yes, sir; in general.

Senator COUZENS. What are the terms that are usually included in that agreement?

Mr. WHITNEY. Shall I read the whole agreement? Some are far longer than this.

Senator COUZENS. What I was trying to get at is not so much the "whereases" and the lending of the stock as what is the financial relationship, if any, between the broker and his customer when the broker is authorized to use the customer's stock to make good on sales.

Mr. WHITNEY. It states, amongst other things:

All transactions are subject to the rules, regulations, and customs of the exchange or market, and its clearing house, if any, where executed by you or your agents.

Whenever I am indebted to you, and/or whenever you have entered into any open commitment for me, and/or whenever I have a short position with you, all securities, now or hereafter held by you, or carried by you in any account for me (either individually or jointly with others), or deposited to secure same, may, from time to time and without notice to me, be carried in your general loans and may be pledged, repledged, hypothecated or rehypothecated, or loaned by you either to yourselves as brokers, or to others, separately or in common with other securities for the sum due to you thereon or for a greater sum and without retaining in your possession or control for delivery a like amount of similar securities.

Then it goes on as to the protection—

Whenever you shall deem it necessary for your protection to sell any or all of the securities which may be in your possession, or which you may be carrying for me—

That is a matter of selling out of an account when the customer may not possibly be reached by the broker.

Senator COUZENS. Does that only apply when the stock is bought on margin?

Mr. WHITNEY. Oh, yes, sir; entirely.

Senator COUZENS. It does not apply if the customer has paid in full for the stock which the broker is holding for the customer?

Mr. WHITNEY. No; and he may not loan that stock under any circumstances without the express permission of the customer.

Senator COUZENS. So that the consideration that the customer gets out of that agreement is the consideration of a broker carrying the loan?

Mr. WHITNEY. That is right.

Mr. BRANCH. I think it would be a good idea to have that agreement made a part of the record, and I will ask the reporter to mark it Exhibit No. 14.

(The document referred to was thereupon marked "Exhibit 14 M. D. R. April 12, 1932," and is here printed in the record in full, as follows:)

EXHIBIT 14, M. D. R. APRIL 12, 1932

In consideration of your acting as my brokers in the purchase and sale of stocks and securities (hereinafter collectively referred to as securities) and opening the account in which they will be recorded, whether designated by name or number or otherwise, I agree as follows:

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All transactions are subject to the rules, regulations, and customs of the exchange or market (and its clearing house, if any) where executed by you or your agents:

Whenever I am indebted to you, and/or whenever you have entered into any open commitment for me, and/or whenever I have a short position with you, all securities, now or hereafter held by you, or carried by you in any account for me (either individually or jointly with others), or deposited to secure same, may, from time to time and without notice to me, be carried in your general loans and may be pledged, repledged, hypothecated or rehypothecated or loaned by you either to yourselves as brokers, separately or in common with other securities for the sum due to you thereon or for a greater sum and without retaining in your possession or control for delivery a like amount of similar securities:

Whenever you shall deem it necessary for your protection to sell any or all of the securities which may be in your possession, or which you may be carrying for me (either individually or jointly with others), or to buy in any securities of which my account or accounts may be short, such sale or purchase may be made according to your judgment and may be made at your discretion on the exchange or other market where such business is then usually transacted, or at public auction or private sale, without advertising the same and without notice to me and without prior tender, demand, or call of any kind upon me—it being understood that a prior tender, demand, or call, or prior notice of the time and place of such sale or purchase, shall not be considered a waiver of your right to sell or buy any securities held by you, or owed you by me, at any time as hereinbefore provided.

Whenever in your opinion circumstances require it, you may apply and/or transfer any of or all my equities interchangeably between all my said accounts, without notice to me in the premises.

In case of the sale of any security by you at my direction and your inability to deliver the same to the purchaser by reason of my failure to supply you therewith, then and in such event, I authorize you to borrow any security necessary to make delivery thereof, and I hereby agree to be responsible, for any loss which you may sustain thereby, or by reason of any loss you may sustain by your inability to borrow the security sold.

This agreement shall continue until revoked by me in writing and all my open accounts and/or contracts for my account have been closed.

Dated, NEW YORK, ———.

Mr. BRANCH. I'll show you, Mr. Whitney, a card which I understand to be the form of agreement relating to this matter, which is now used.

Mr. WHITNEY. Mind you, I do not agree that that is the only form.

Mr. BRANCH. Oh, yes; a typical form.

Mr. WHITNEY. It is a possible form.

Mr. BRANCH. Yes; and is this a form which is now used [handing document to Mr. Whitney]?

Mr. WHITNEY (after perusing document). I believe so; yes, Mr. Branch.

Mr. BRANCH. I ask that that be made a part of the record and mark it Exhibit 15, and I will read that for the benefit of the committee. If the Senators would like to hear it, this is the form of agreement that is used now. I do not suppose this is the only form, but it is a typical form. There is nothing on this agreement, by the way, gentlemen, except what I am reading. I am reading the whole thing except the date and signature, of course [reading]:

EXHIBIT 15, M. D. R. APRIL 12, 1932

Date ———

The undersigned, the customer, agrees with ——— the broker, that any and all securities from time to time carried in any marginal account standing in the customer's name or in any marginal account carried by the broker for the

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customer, or any and all securities deposited by the customer to protect the said marginal accounts, may be loaned by said ——— to themselves as brokers or to others, either separately or together with other securities, either for the sum due thereon or for a greater sum, all without further notice to the customer.

This agreement may be cancelled and rescinded by the customer at any time upon written notice sent to the broker by registered mail.

Customer

Senator COUZENS. May I ask Mr. Whitney one other question there: Is there any percentage or range of percentage that a customer owes his broker when he signs that agreement? Does he pay 50 per cent on his stock or 75 per cent or 10 per cent, or what does he pay?

Mr. WHITNEY. As margin?

Senator COUZENS. Yes.

Mr. WHITNEY. The minimum margin indicated as good business by the New York Stock Exchange is 25 per cent margin.

Senator COUZENS. And do they oftentimes or do they occasionally go higher than that?

Mr. WHITNEY. Yes, sir.

Senator COUZENS. Pay a higher percentage?

Mr. WHITNEY. Yes, sir. It is not a rate; sir.

Senator COUZENS. I mean percentage on the principal.

Mr. WHITNEY. Yes; a deposit. Particularly in 1929 during the summer, some of our brokers, intentionally to curtail and to stop speculation, went as high as 50 per cent margin.

Senator COUZENS. And do they ever go less than 25 per cent?

Mr. WHITNEY. Not if we know it; sir.

Senator COUZENS. That is your rule, is it?

Mr. WHITNEY. Absolutely.

Mr. BRANCH. As a matter of fact, Mr. Whitney, though, brokers would take a margin account without an agreement in substantially the form shown by the two exhibits which we have just mentioned?

Mr. WHITNEY. I do not think that is so, Mr. Branch; no.

Mr. BRANCH. You think that brokers sometimes do take margin accounts without getting such an agreement?

Mr. WHITNEY. Not without the first agreement, without his consent to loan. I think brokers are glad to get accounts now under any circumstances with this agreement.

Mr. BRANCH. Without the loan agreement?

Mr. WHITNEY. Without the loaning agreement. That is loaning, not pledging—loaning.

Mr. BRANCH. So that it is a fact that that is not necessarily required by the broker?

Mr. WHITNEY. I answered your question and I meant what I said, that I think brokers would take accounts without that second agreement.

Mr. BRANCH. Have banks any right to lend the collateral of their customers ordinarily? I am asking you, I suppose, as to what the agreements are, but you know what is customary in case a bank lends money secured by collateral.

Mr. WHITNEY. Well, I do not think that perhaps they loan securities, no, but I know I sign some very comprehensive agreements with the banks when I want day loans and things of that sort.

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Senator FLETCHER. Do you read the agreement?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. What do they say in regard to such a matter?

Mr. WHITNEY. You mean as to the loaning?

Mr. BRANCH. Yes.

Mr. WHITNEY. Well, from what I remember they have the right to do pretty nearly anything with my securities.

Mr. BRANCH. It is a fact, is it not, that you can not remember what all those terms are?

Mr. WHITNEY. That is right. I know at the time. That was some time ago, that I last read it. No; I do not grant that, not with that last agreement. If a man or person can not read that loan agreement as put out by the exchange to start as of April 1, he is a fool.

Mr. BRANCH. Oh, yes; I am speaking about the agreement, the form that was in vogue prior to that.

The CHAIRMAN. Are the majority of those on the market fools?

Mr. WHITNEY. No, sir.

The CHAIRMAN. That lost their money?

Senator GLASS. They are fools or there would not be so much disaster in stock speculation.

Mr. WHITNEY. May I point out one thing in that connection, Mr. Branch?

Mr. BRANCH. Certainly.

Mr. WHITNEY. I do not want to disagree that perhaps a lot of people may not have seen or paid any attention to the old consent card with particular reference to loaning of stocks or pledging of those stocks. However, this hue and cry, perhaps helped by the gentlemen of the press, with regard to the loaning of customers' stocks has been in vogue throughout this land for the last two years, and certainly with that knowledge being put on record in that way, I can not believe that the customers of the brokerage houses did not know, did not remember, did not know about the paper they had signed, and I think that my opinion there is backed up by the fact, when it was specifically put in front of their noses, there was no change in their desire or the situation.

Mr. BRANCH. Well, you understand there is no criticism for what you have done. I think there is nothing but praise for this particular thing. But is it not a fact that you did feel that it would be an improvement to require brokers to get a specific agreement covering this single matter?

Mr. WHITNEY. For the reasons as I have stated.

Mr. BRANCH. Yes. And you do feel that the present method is fairer than the old method, do you not?

Mr. WHITNEY. It is certainly more pointed; yes.

Senator COUZENS. And certainly anybody who signs the agreement now held in the hands of Senator Copeland seems to me must have been a goat, if I understand the consideration that was given to the customer for signing such an agreement.

Mr. WHITNEY. It is under that agreement, Senator Couzens, and only under that, that a broker may use the securities of the customer

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to carry them for him. A broker is not a banker. He goes out and borrows the money to carry them. He is an agent.

Senator GLASS. If not a goat, he may be a scapegoat.

Senator COUZENS. Well, you can add as many adjectives as you choose, but that agreement there seems to absolutely put everything in the power of the broker without any auditing or checking or consideration by a speculator or securities purchaser, whichever you choose to call him.

Senator BROOKHART. Let me ask some questions on that. Will the brokers after getting these agreements use these stocks against their own clients?

Mr. WHITNEY. Against their own clients?

Senator BROOKHART. Yes.

Mr. WHITNEY. I do not know what you mean, sir.

Senator BROOKHART. Well, supposing their client is a buyer. He will want the market to advance. They will sell him short then expecting the market to decline.

Mr. WHITNEY. No, sir; they can not. The broker may not sell short and deliver stock against his contract belonging to his clients.

Senator BROOKHART. I do not see anything in the contract preventing that.

Mr. WHITNEY. I never said there was, Senator Brookhart. That is a rule of the exchange which is over and above any contract signed by any customer with any broker. There are certain things in these contracts, in this contract that Senator Copeland has, that are there in order to conform with the law of the State of New York. There are certain rules, however, of the exchange that will not allow a broker to go as far as that permission grants him to go. It says that he may use his customer's entire account, the securities in it, for pledging purposes. We do not allow a use of those securities more than is necessary to borrow from the bank the money to carry the actual securities of that particular customer.

Senator COUZENS. When it may be pooled under that agreement then there is no possibility of the broker pooling all the securities that he owns with all of his customers' with which he has that agreement, for any kind of a loan? In other words, that is the way I understand that agreement.

Mr. WHITNEY. He may perhaps under that agreement seemingly, but not under the rules of the exchange. He may not use in his loans or use securities of his customers more than in an amount necessary to procure money to carry those securities for his customers.

Senator COUZENS. Do I understand the exchange checks up each one of those transactions?

Mr. WHITNEY. Absolutely. We have a questionnaire from our firms at least twice a year, sometimes far more often. Each one of those questionnaires is checked by our accountants, and besides that our accountants will go into the offices of our members to check that those questionnaires are correct in comparison with the books of the firm.

Senator COUZENS. That questionnaire that you get requires the statement of every single transaction that occurs between the time of the questionnaires; is that right?

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Mr. WHITNEY. No, sir.

Senator COUZENS. Well then, there may be many transactions that happen between the times of the questionnaires that are not dealt with, and in those cases——

Mr. WHITNEY (interposing). In the questionnaire.

Senator COUZENS. That in those cases the auditors do not check, as I understand?

Mr. WHITNEY. The auditors do not check every transaction during that period, they may not inspect the questionnaire answer, but they are at all times going into brokerage offices, members of the exchange, not necessarily at the time of the questionnaire at all, merely for a call to see that our rules are adhered to.

Senator COUZENS. At the time of that call every transaction is checked by your auditors?

Mr. WHITNEY. All transactions then existing at that time, yes.

Senator COUZENS. And so at some time or other all brokers are checked?

Mr. WHITNEY. Yes, sir.

Senator COUZENS. How many times a year?

Mr. WHITNEY. I would say two, three, four times a year, Senator.

Senator COUZENS. Something on the same order as the checks by the bank examiners?

Mr. WHITNEY. I think more frequently.

Senator FLETCHER. How many members have you, Mr. Whitney?

Mr. WHITNEY. One thousand three hundred and seventy five.

Senator FLETCHER. How many in New York?

Mr. WHITNEY. You mean members or firms, sir?

Senator FLETCHER. Well, members. I am referring to members as shown by your records. For instance, if you have one member of the firm, does that mean the whole firm are members?

Mr. WHITNEY. Yes. One member of the stock exchange in a partnership makes the firm a member for all purposes and intents of the exchange. Some firms have 4 or 5, 8, 10 members of the exchange, as partners. I believe there are something like 480 to 520 stock exchange firms located in New York City. I would say that the actual members of the exchange are probably a thousand who have their place of business in New York City or thereabouts.

Senator FLETCHER. No corporations are members?

Mr. WHITNEY. No, sir.

Senator FLETCHER. You confine it to individuals or partnerships?

Mr. WHITNEY. Yes, sir; confined to individuals entirely.

Senator BROOKHART. How many are on the governing board?

Mr. WHITNEY. There are 40 governors, Senator Brookhart, making up the governing board, including the president and the treasurer.

Senator BROOKHART. Where do they reside?

Mr. WHITNEY. You mean their actual residence?

Senator BROOKHART. Yes.

Mr. WHITNEY. New York State, New Jersey, and one in Pennsylvania.

Senator BROOKHART. How many are in New Jersey?

Mr. WHITNEY. Oh, I think half a dozen, 10, 12, possibly.

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Senator BROOKHART. Some in Philadelphia and the balance of them in New York?

Mr. WHITNEY. Yes.

Senator BROOKHART. How many agencies do they have over the country?

Mr. WHITNEY. Branch offices?

Senator BROOKHART. Yes.

Mr. WHITNEY. I think they run through into the many thousands.

Senator BROOKHART. They are extended to almost every community in the United States?

Mr. WHITNEY. To every State of the United States, I believe. I would not say their own branch offices are in every community. They may have correspondents in most communities.

Senator BROOKHART. What prospectuses or advertisements or statements do they put out to induce people to engage in business with them on the stock exchange?

Mr. WHITNEY. The common practice is to advertise in the newspapers, their card, that they are members of the New York Stock Exchange, and may say they carry accounts or will accept accounts on margin or that they are dealers in stocks and bonds.

Senator BROOKHART. How long have you been president?

Mr. WHITNEY. Since early May, 1930.

Senator BROOKHART. And were you on the board of governors before that?

Mr. WHITNEY. Yes, sir.

Senator BROOKHART. How long there?

Mr. WHITNEY. Since early May, 1919.

Senator COUZENS. Will the Senator permit an interruption just a moment?

Senator BROOKHART. Yes.

Senator COUZENS. May I ask the chairman if he is going to have an executive meeting this morning?

The CHAIRMAN. I thought we should, Senator.

Senator BROOKHART. Just a few more questions.

Senator COUZENS. But I was wondering how long we were going to run. I have an appointment. I would like to be here during the executive session.

Senator BROOKHART. I will be through in a moment, I think, and then I will let you go.

Now, in 1929 when did you, if at all, foresee the overinflation of values that would result in a panic later?

Mr. WHITNEY. I do not know, Senator Brookhart. I thought I saw it at some periods, and then I got discouraged because I seemed wrong and thought I saw it again, but I was carried away like everybody else.

Senator BROOKHART. So during all the time you continued to do business with your clients and advise them just as you always had?

Mr. WHITNEY. I did not. I do not advise my clients, Senator Brookhart.

Senator BROOKHART. You do not advise them at all. And you did not give them any warning that there was a panic ahead as a result of this overinflation, did you?

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Mr. WHITNEY. No, sir; because I think my clients know more about conditions than I.

Senator BROOKHART. You do not have any clients, except the smart ones, then?

Mr. WHITNEY. That is very kind of you, but that is not what I said.

Senator BROOKHART. Did anybody in the exchange advise the country in any way that the panic was impending as a result of that overinflation?

Mr. WHITNEY. I think, frequently. I will not go so far as to say a panic was impending, but certainly that we would have to pay for the orgy of inflation. I pointed out, I think, to Senator Couzens a minute ago that during that period of 1929, the summer-spring even, our brokers felt that terrific inflation had taken place and raised their margin requirements from a customary 20 per cent which existed prior to that time to anywhere between 35 and 50 per cent, putting drastic rules into effect in their dealings as to certain stocks for which they would demand almost 100 per cent.

Senator GLASS. Were you not encouraged to believe from down here in Washington that you were mistaken in the idea that there was too much inflation?

Mr. WHITNEY. No, Senator Glass, I would not say so. I felt that the Federal reserve bank in New York certainly was doing its utmost, as I could see it, to tighten money and to impress people that conditions were not quite as they should be.

Senator GLASS. I did not say anything about the Federal reserve bank. That is a confession without an accusation.

Mr. WHITNEY. Then you want me to answer something? Because I do not quite understand. I will try to.

Senator GLASS. I simply asked the question if you were not somewhat encouraged to believe by notable utterances here in Washington that the stock market was not beyond a reasonable limit.

Mr. WHITNEY. Well, I do not truly remember.

Senator BROOKHART. Was it not true that statements were published by the economists and others all of the time to the effect that we had reached a new economic level and that prices never would go back? Was that not the information that emanated from a good many sources?

Mr. WHITNEY. Certainly, Senator Brookhart.

Senator BROOKHART. And that is what the stock exchange encouraged, that kind of scientific opinion?

Mr. WHITNEY. Not at all; no, sir. There were some of the most worthy economists and organizations, I believe notably the National Industrial Conference Board, that issued a warning in 1929, in March, I believe, of most dire character, and there were many others. I do not say or grant that the stock exchange was promoting or advocating or stating that a new era was in effect.

Senator BROOKHART. You can not name any other except the National Industrial Conference Board, can you?

Mr. WHITNEY. Right off, no; but I can name a great many men who were warning.

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Senator BROOKHART. I can name you quite a number, I think, that said the opposite.

Mr. WHITNEY. But did they have necessarily anything to do with the New York Stock Exchange?

Senator BROOKHART. Well, that is what I would like to know.

Mr. WHITNEY. I will tell you, sir, if you will give me their names.

Senator BROOKHART. The fact is that the New York Stock Exchange, the whole operations, promoted that inflation in every way it could and that was the intention, was it not?

Mr. WHITNEY. It was not.

Senator BROOKHART. Did they find out, did they know when the thing was coming on anyway, when that turn backward would take place?

Mr. WHITNEY. I think the governors of the New York Stock Exchange were exceedingly fearful during that entire period of what was going on. The business-conduct committee, of which I happened to be chairman, was meeting three and four and five times a day on questions involved.

Senator BROOKHART. But you did nothing to stop the volume of business or stop the inflation?

Mr. WHITNEY. That is, as I have always maintained, Senator Brookhart, none of our business. We are a market place in which we endeavor, under the most stringent rules and regulations, to offer a place of trading to those who wish to trade in this country and throughout the world. We are not evaluators of securities.

Senator BROOKHART. You mean by that that you want the market to move either up or down and you do not care much which way, so it moves?

Mr. WHITNEY. I grant that we like activity in the market, but I can show you some staggering figures as a result of the deflation and depression upon brokers contrary to many statements that have been made.

Mr. BRANCH. Just a few more questions, Mr. Whitney, and I will be through for to-day.

Senator FLETCHER. May I ask Mr. Whitney there about the commission charges of brokers generally on sales and purchases and what they amount to? Do they vary at all?

Mr. WHITNEY. They vary according to price, Senator Fletcher, running from approximately one-sixteenth of 1 per cent up to around, if a stock is selling at 200 shares or more, a quarter of 1 per cent. So far as I know, they are the lowest commissions charged for any transaction involving the exchange of money.

Senator FLETCHER. That applies to sales as well as purchases?

Mr. WHITNEY. Yes, sir.

Mr. BRANCH. To come back to transactions in which brokers lend customers' stock on short sale, sometimes you said there was a premium paid for the use of the stock, sometimes a stock is loaned flat, as it is called, is it not?

Mr. WHITNEY. Yes, sir; meaning that the lender of the stock pays no interest to the borrower of the stock for the use of the borrower's money.

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Mr. BRANCH. In case such is the situation what is the practice among brokers in regard to charging their customers interest on the loans? They continue to make the same charges as they did before, do they not?

Mr. WHITNEY. On the carrying of the account?

Mr. BRANCH. Yes.

Mr. WHITNEY. I believe so.

Mr. BRANCH. Although in that case the broker would have the use of the money or short seller who borrowed his customers' stock, would he not?

Mr. WHITNEY. He would.

Mr. BRANCH. And that would not inure in any way to the benefit of the customer, would it?

Mr. WHITNEY. Except in this way, Mr. Branch: It is the custom of a brokerage house to charge its customers at the end of each month a reasonable amount or rate of money for carrying the accounts. That charge is arrived at by the broker upon the cost to him of money, and if he by chance is loaning any large amount of stock flat that would be reflected in the price or rate made to his customers for the cost of money to him during that particular month.

Mr. BRANCH. The customer would not necessarily get the full benefit of that situation, would he?

Mr. WHITNEY. No, sir; but there is risk involved and bookkeeping and a good many other factors, and if you work it down into dollars and cents, Mr. Branch, it is exceedingly small.

Mr. BRANCH. As we haven't any particular transaction before us, I do not know how we can do that. Now, I am going to ask one or two questions which certain persons have wanted information on.

What steps in general does the New York Stock Exchange take to protect investors by requiring statements of corporations whose securities are listed?

Mr. WHITNEY. That is something I told Senator Brookhart yesterday I would be delighted to answer by getting from our committee on stock list any and all of their requirements, which are in printed form, for the listing of securities. We have different requirements, different in that foreign securities must be listed under one situation. We have others for bonds than we have for stocks. They are many pages in volume, containing countless questions that have to be answered, as I said, over oath by an official of the company, and I shall be very happy to submit that and any other information with regard to the listing of securities, at your pleasure.

Mr. BRANCH. What I had in mind was just an outline. You do require every corporation whose stock is listed to submit a statement at least annually of its position, of its assets and liabilities?

Mr. WHITNEY. At least annually, and where possible, quarterly.

Mr. BRANCH. But some of them only annually?

Mr. WHITNEY. Some of them only annually. Please remember that many of the railroad companies were listed on the New York Stock Exchange in the late or middle 1800 figures; that at those times neither we nor perhaps anybody else in the world felt the necessity of the strict requirements and regulations that we now

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have, and an agreement, for which actual money was paid in consideration, was made between the New York Stock Exchange and, let us say, the Reading Railroad, and that was to report once a year.

Senator COUZENS. Mr. Chairman, I would like to make a motion. The call of the Senate has just been made. I would like to move, Mr. Chairman, that the committee adjourn these hearings until 10.30 next Monday and give us the balance of the week to consider the Glass bill, and that during that time we go into executive session to take up the subject matter that we contemplated taking up after these hearings.

The CHAIRMAN. I did not hear the last part of it, Senator Couzens.

Senator COUZENS. I say, I move, Mr. Chairman, that these hearings be adjourned until 10.30 next Monday morning, in view of Mr. Whitney's statement that the records will not be ready until Friday, and that in the interim we take up the Glass bill and postpone the executive session that we contemplated at the end of this meeting to-day for consideration during later in the week.

The CHAIRMAN. You have heard the motion.

Mr. WHITNEY. May I, Mr. Chairman, be allowed to make one more statement? It is very brief. It is in view of a question asked yesterday.

The CHAIRMAN. If there is no objection, the motion will be carried.

Senator FLETCHER. That is, when we do adjourn.

The CHAIRMAN. We will adjourn until Monday at 10.30.

Senator FLETCHER. Not that we adjourn now?

The CHAIRMAN. No; if there are no objections.

Mr. BRANCH. I think I can be through in five minutes.

Senator COUZENS. I understand that my motion was carried?

The CHAIRMAN. Yes; the motion was carried unanimously.

Mr. WHITNEY. The point was raised by various Senators in the committee, I think by you too, Mr. Branch, yesterday, and certainly to-day, with regard to selling against the box. Senator Walcott made some reference to the New York State law. This is what I wish to insert in that connection, which confirms Senator Walcott's understanding, I believe.

I am advised by counsel that the law of the State of New York referred to yesterday by Senator Walcott is section 664 of the New York Penal Law of the State of New York, which reads in part as follows:

> **An officer or director of a stock corporation who sells or agrees to sell or is directly or indirectly interested in the sale of any share of stock of such corporation or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share, is guilty of a misdemeanor.**

I am advised by counsel that this statute, although passed in 1892, has never been interpreted by the courts. In view of the fact that it is a penal statute and must therefore be strictly construed, our counsel is of the opinion that no officer or director would be guilty of a crime under this statute unless the aggregate amount of stocks sold by him exceeded the aggregate amount of stock which such officer or director owned.

Mr. BRANCH. Does that answer your question, Senator Walcott?

Senator WALCOTT. Yes; it does. Thank you.

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Mr. BRANCH. I do not want to go into a long discussion of this matter, but is this not a correct summary of the matter that I was asking you about; that the requirements in regard to furnishing reports of any corporation whose securities are listed on the board is dependent upon the agreement made at the time of the listing?

Mr. WHITNEY. And subsequent listings, yes.

Mr. BRANCH. Yes. Now, you do require statements quarterly as a rule, do you not, in any new listing?

Mr. WHITNEY. Dependent, sir, upon the facts with respect to each corporation. There are some corporations with branches or operations throughout every country of this world. Of necessity they could not answer quarterly statements. They could not gather it, or if they could it would cost them millions of dollars to do it.

Mr. BRANCH. You do require a statement at least once a year from every corporation whose stock is listed?

Mr. WHITNEY. We do.

Mr. BRANCH. And from some corporations as many as four statements annually?

Mr. WHITNEY. Yes, sir.

Senator FLETCHER. What is generally required to make them eligible for listing, just a general statement, not the details of it, to make a corporation eligible?

Mr. WHITNEY. That it is a company of standing; that it has background, not only of earnings, but of standing in the community as a whole; that its directors are men known to be men of standing and integrity, and its officers, and a very thorough explanation is required, Senator Fletcher, in the answers made on the application to the exchange.

Senator FLETCHER. And of course it must be held to be solvent and responsible?

Mr. WHITNEY. Exactly. It must be also of sufficient size in its capital issue or its stock issue so that no question of a corner may arise. In other words, if it were but of a few shares or a few thousand shares, we would not list it, for fear that some advantage might be taken of that situation. There are a great many essential facts that we must have information on before we will agree to list.

Senator BROOKHART. Does not that rule encourage the watering of stocks and enlargement of the number of shares beyond reason?

Mr. WHITNEY. No, sir.

Mr. BRANCH. Mr. Whitney, it may be, in fact it seems probable, that we will want to get a picture of the transactions in certain issues for certain vital days, to find out what sales were made at what times, whether they were short sales or not, and get a complete running picture of that day. I understand that is something that would be rather difficult to reconstruct for any particular day now, would it not?

Mr. WHITNEY. Impossible. I will say that it would be impossible.

Mr. BRANCH. Of course, the ticker tape is kept.

Mr. WHITNEY. But that has no reference to whether it is a short sale or not, Mr. Branch.

Mr. BRANCH. No, but have you not some way of looking up all of the sales shown on the ticker to show whether they are short sales

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or not? The tickets or something of that knid, would they not show that?

Mr. WHITNEY. Only by asking 500 or 600 houses all over the country that fact.

Mr. BRANCH. Does not the stock exchange have a record as to whether each sale made is a short sale or not?

Mr. WHITNEY. No, sir. The broker has.

Mr. BRANCH. And the broker is required to leave no record whatever with the stock exchange?

Mr. WHITNEY. No, sir, except announcing to the exchange at the end of every day the short position in every stock that occurs or is occurring, that occurs in his office.

Mr. BRANCH. How do you compile these figures showing the transactions during the day on which short sales were made and covered during the day?

Mr. WHITNEY. The same way, by answers from our members from every part of this United States and abroad, as to what they had done during that day. One of the reasons, sir, why I assured you of the necessity of delay in compiling what you asked for.

Mr. BRANCH. Then if we should start to reconstruct the picture as to what happened to any particular stock during any particular day, there would not be sufficient records in the possession of the stock exchange at the present time to do it?

Mr. WHITNEY. And I believe, Mr. Branch in the possession of no soul in the world at the present time, unless you took a very recent day.

Mr. BRANCH. If you took a very recent day could you not by sending to the brokers who handle those transactions to get sufficient information, with that that the stock exchange has, to do what I have indicated?

Mr. WHITNEY. To reconstruct sale by sale the transactions in a million shares for a day?

Mr. BRANCH. No, in a particular stock, I say.

Mr. WHITNEY. Ah, but how are you going to pick that out of the tape as it goes along? We will try. We will do anything in the world that you gentlement want us to do.

Mr. BRANCH. Maybe we better not take the time of the committee to go into that, but I did want to let you know that we have something of that kind in our mind and I have no doubt that you will cooperate.

Mr. WHITNEY. Absolutely. We will try.

Mr. BRANCH. That concludes my questions.

Senator BLAINE. Mr. Chairman, I would like to ask Mr. Whitney some questions to ascertain just what records the New York Stock Exchange has for practical purposes. Take sales where an operator sells short and covers his position the same day; that is, the type of short sale which involves short position for one day only, where a sale is made early in the session of the market and then covering his position before the close. Does the New York Stock Exchange have a record of that type of sale?

Mr. WHITNEY. Of all, Senator Blaine, since September 26, 1931.

Senator BLAINE. Is that type of sale earmarked?

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Mr. WHITNEY. When?

Senator BLAINE. At all, any time?

Mr. WHITNEY. You mean at the time of making?

Senator BLAINE. I do not care when. Is it earmarked? In other words, can this committee send an auditor to the New York Stock Exchange and go into your books and ascertain the number of that type of sales?

Mr. WHITNEY. Yes, sir. Well, Mr. Branch asked for the submission of, or was going to discuss with us——

Senator BLAINE (interposing). I can hasten things along. I want to get what we can do. An operation which involves a position in which the seller actually owns the stock but goes short on it on a margin account at some brokerage office, and where at the beginning of the operation a seller is actually short that stock on a margin account and at the end of the operation the seller has to cover his commitment—are those sales reported on the Exchange?

Mr. WHITNEY. Senator, that has got to be reconstructed, that sentence, because you stated in the beginning that he was long of the stock and went short of it. That is an impossibility.

Senator BLAINE. No; you may commonly term it selling against the box. Now have you a record of that type of transaction?

Mr. WHITNEY. If your question is have we a record of sales commonly called "against the box," my answer is no.

Senator BLAINE. I am speaking of an operation which involves a position in which the seller actually owns the stock, he owns it I assume in the box, then goes short on it on a margin account at a brokerage office. Now, at the beginning of the operation the seller is actually short of the stock on the margin account. At the end of the operation he has to cover his commitment. Is that character of transaction reported?

Mr. WHITNEY. No, sir; and he never has to cover his commitment.

Senator BLAINE. I was not asking for that. I just wanted to get what we may use.

Mr. WHITNEY. Let me point out something.

Senator BLAINE. You do not need to go on. I am not accusing you of anything.

Mr. WHITNEY. Now I want to make it plain to you. Your question I can answer doubly, if I understand you. If the person individually owns stock, owns it, has it in his box, if he goes to a brokerage office and then says "Sell 100 shares of stock short for me," and the broker has no knowledge that he owns that stock but merely has received the order to sell it short, that transaction we will have.

Senator BLAINE. Thank you. Now, another transaction: If, after a customer has gone short to the extent of 150,000 shares, he again goes short to the extent of 10,000 shares, additional shares, which successfully drives the market down, of course, and at one time he buys 10,000 shares, then immediately sells 10,000 shares again, buying 40,000 shares, and so forth, until he completely covers his total short account, will these sales from time to time be reported on the Stock Exchange?

Mr. WHITNEY. Yes. If I understand your question correctly; yes; because, as long as the short position exists we would have a

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record of it. If, however, his covering cleaned up his short position in a particular stock, then no longer would we have any record of that. I am not granting about the——

Senator BLAINE (interposing). I understand.

Mr. WHITNEY. Of course, I do not agree with your expression that it forced the market down or that it may so operate.

Senator BLAINE. I do not want a constant defense being made, because I am making no accusation. I am entitled to find out just what the stock-exchange records, and the committee will determine whether or not they are characteristic of short sales. I think the committee ought to go into the books of the stock exchange.

Mr. WHITNEY. We have no books, please understand. These are merely reports and slips sent by members.

Senator BLAINE. Records of the stock exchange to ascertain what are in fact short sales, and then ascertain from that same record what the committee may understand to be the transactions that have the same effect as short sales, and that is why I am asking you these questions.

Senator GLASS. May a transaction such as you describe take place in the course of a day's trading?

Senator BLAINE. Well, Mr. Whitney says that they have a record of those transactions. I am simply laying a foundation for this committee to make a real investigation if it intends to proceed, and not asking Mr. Whitney as to what the stock exchange does. I am trying to get at what records the stock exchange has.

Has the stock exchange any record whereby a customer borrows securities off the exchange, then comes to the exchange and completes what would be known as a regular sale for liqidations?

Mr. WHITNEY. No, sir.

Senator BLAINE. Is it possible for a customer to do that?

Mr. WHITNEY. Possible. It is not possible for the exchange to have any record of it.

Senator BLAINE. I just want to get the fact. Would the respective brokerage firms who handle those stocks have a record?

Mr. WHITNEY. No, sir; there is no possible way that they would get it unless the customer voluntarily told the broker.

Senator BLAINE. Well, the broker would have the name of the customer would he not?

Mr. WHITNEY. Who delivered stock to him for sale?

Senator BLAINE. Yes; and the broker may or may not know what the fact is, but the customer would know?

Mr. Whitney. Presumably, yes, absolutely.

Senator BLAINE. Now is it possible for him to furnish the committee, that is, is it possible for the New York Stock Exchange to furnish the committee, with an analysis of the lenders of stock for the activity of shorts or for stock transactions?

Mr. WHITNEY. I do not understand your question.

Senator BLAINE. Is it possible for your exchange to furnish the committee with an analysis of the lenders of stocks or the names of the lenders of stocks for any activity on the stock exchange, whether for shorts or otherwise?

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Mr. WHITNEY. Along the lines of section 5, yes, and which I understand is what the committee wanted according to Mr. Branch. Yes, along that line we can.

Senator BLAINE. Will your records disclose what percentage of loaned stocks comes from banks and large corporations?

Mr. WHITNEY. No, sir.

Senator BLAINE. You have no record? Have you any record that will state approximately what percentage of the total of some outstanding issues, such as United States Steel, the American Telephone & Telegraph, American Can, outstanding issues, which are or have been held by lenders of stocks during that crucial period just prior to the break in the stock market? I am asking you whether you have any records that will show that in your stock exchange.

Mr. WHITNEY. What do you refer to as the crucial time of the break?

Senator BLAINE. October, 1929.

Mr. WHITNEY. We have no records along any of these lines as of that time.

Senator BLAINE. Would your members have records?

Mr. WHITNEY. No, sir.

Senator BLAINE. Where could the committee obtain information on that proposition?

Mr. WHITNEY. I do not want to seem to defend anything, but I do not believe it can be done from any source.

Senator BLAINE. I am not asking you——

Mr. WHITNEY (interposing). I do not think it could be done, Senator Blaine.

Senator BLAINE. But is there any place where the committee may find some information respecting that situation?

Mr. WHITNEY. Not that I know of.

Senator BLAINE. It can not be found from the records. Can it not be found from the investment houses that were making loans?

Mr. WHITNEY. Making what kind of loans?

Senator BLAINE. For stock transactions.

Mr. WHITNEY. You mean making collateral loans?

Senator BLAINE. Yes.

Mr. WHITNEY. But that would not prove anything along the lines you speak of. Why, there may be a record of the particular bank at which I borrowed money in October, 1929, and put up collateral to secure that loan. That record will exist probably in my office too.

Senator BLAINE. Yes; that is personal. I am not speaking of you personally.

Mr. WHITNEY. I am a broker, that is all.

Senator BLAINE. Any broker. Brokers obtain their loans on collateral through the large financial institutions?

Mr. WHITNEY. Possibly.

Senator BLAINE. Some through investment houses?

Mr. WHITNEY. Possibly some, yes.

Senator BLAINE. And mostly through banks?

Mr. WHITNEY. Mostly through banks, I believe.

Senator BLAINE. Banks that were members of the Federal reserve system?

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Mr. WHITNEY. That I do not know. Presumably, yes.

Senator BLAINE. Do any comparative number of small holders of stock lend their stock?

Mr. WHITNEY. How do you mean, comparatively small holders?

Senator BLAINE. Well, what would you state to be a small holder?

Mr. WHITNEY. I will answer your question——

Senator BLAINE (interposing). No; you asked me a question and I want you to answer mine. I am not familiar with the stock exchange business. What do you consider to be a small holder of stock? Of course, we all know that a man who has one share is a small holder, but in the language of the street, in the language of the exchange rather, what do you consider to be a small holder of stock, 50 shares, 100, such a matter?

Mr. WHITNEY. Our unit of trading is 100 shares. I think it is the language of the street that a lot of shares less than 100 shares is considered the smaller unit.

Senator BLAINE. That is what I am getting at. Do a very large number of those holders lend their stock to the shorts?

Mr. WHITNEY. It is my understanding, Senator, that those individuals, just as the individuals who have a hundred or a thousand or ten thousand shares on margin, have signed these agreements allowing their stock to be loaned.

Senator BLAINE. Now I want to ask you for an opinion.

Senator FLETCHER. Senator, may I ask there, is this matter determined by the number of shares without regard to their par value? Some may be worth $100; maybe some shares are worth $10, and others $100 a share.

Mr. WHITNEY. In what connection, Senator Fletcher?

Senator FLETCHER. Any transaction.

Mr. WHITNEY. You mean this agreement to lend?

Senator FLETCHER. Yes.

Mr. WHITNEY. Any transaction on margin?

Senator FLETCHER. Without regard to the value of the shares, just the number.

Mr. WHITNEY. Just as to the shares held in the account for a particular customer, that particular customer signs an agreement.

Senator FLETCHER. I understand that.

Mr. WHITNEY. Presumably, from what we have heard, he signs an agreement along the lines of that one.

Senator FLETCHER. You spoke of small holder and large holder of shares and you base it altogether on the member.

Senator BLAINE. Well, as to the number; I was speaking of the number.

Senator FLETCHER. Yes.

Senator BLAINE. Now, Mr. Whitney, with your large experience in banking circles, stock exchange, you may be able to throw some light upon the proposition.

Mr. WHITNEY. I am no banker. I haven't that honor.

Senator BLAINE. I accept the amendment. In periods such as the present is it your belief that banks as large lenders on securities stand to gain control over particular corporations?

Mr. WHITNEY. Seek to? Certainly not.

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Senator BLAINE. Is it the tendency?

Mr. WHITNEY. Certainly not.

Senator BLAINE. You think that the present situation is not going to bring about the control of corporations by and through banks and financial institutions?

Mr. WHITNEY. Through stock ownership? Certainly not. Absolutely not. There is a mass of data and figures to indicate the other direction.

Senator BLAINE. Now you modified your answer by saying "through stock ownership."

Mr. WHITNEY. I had in mind, sir, where a corporation failed and became insolvent owing money to a bank and the bank had to reorganize and put the corporation on its feet. That is one question. But you were talking about shares and I wanted to be specific, or attempted to be.

Senator BLAINE. Banks and large investment houses, primarily banks, may contain a larger control over corporations through the holding of securities of the corporations, stocks, and bonds?

Mr. WHITNEY. They may.

Senator BLAINE. That is, the theory being that the man who is the lender has certain powers. They may determine the policy of industry, the policy of railroads, the policy of all business activity, because they have a hand on the financial stability or instability of the institution.

Mr. WHITNEY. By paying good dollars for ownership of those shares, just as I, if I have enough dollars, may go out and buy every corporation in the world.

Senator BLAINE. Or by loaning money on those securities, the shares and bonds, thereby not only receive interest but also a control or substantial control?

Mr. WHITNEY. You mean by loaning money on them to brokers or to individuals?

Senator BLAINE. To individuals.

Mr. WHITNEY. My answer is no, not in any way does that give them control, and the proof or the real answer, as I see it, to your question, sir, may be entirely found in the stock records of our large corporations, railroads, communication companies, etcetera, and I think you will find a situation to exist, an instance of which I will tell you: Take the 69 largest and leading corporations of the United States of America, all listed on the New York Stock Exchange, roughly, January, 1930, they had 4,453,000 stockholders, and January, 1932, they had 6,700,000-odd stockholders, an increase of almost 50 per cent during that period, which to my mind shows conclusively that the ownership is going into the hands of the people of this country and not into the hands of large corporations, banks, those to which you referred.

Senator BLAINE. This large number of people of the country, they have lost substantially all of those securities?

Mr. WHITNEY. No, sir; they have not lost them at all. They have got them in their boxes. They paid for them right in the last year or two.

Senator BLAINE. They are not putting them on the market?

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Mr. WHITNEY. They are not putting them on the market and they are not putting them in loans.

Senator BLAINE. And they are not receiving any income from them?

Mr. WHITNEY. Oh, yes, from some, Senator.

Senator BLAINE. Oh, yes, from some. But let me call your attention to a recent fact. The Reconstruction Finance Corporation loaned a very large sum of money to a railroad for the purpose of paying J. P. Morgan & Co. its loan. Now, J. P. Morgan & Co. had the power to threaten and the power to not only threaten but to actually accomplish the receivership of that railroad. The Reconstruction Finance Corporation, of course, advanced the money. I am speaking of that control by large investment houses, large financial institutions, large banks, having the power and control over industry and transportation.

Mr. WHITNEY. To my mind—our minds may not be as one on this—I have always held that there is justification in expecting the debtor to pay his debts. Your statement indicates that you believe a moratorium would be wise, particularly perhaps with regard to the railroads of this country, if they owe money, that they should not be made to pay.

Senator BLAINE. No; I choose to state my own opinion, Mr. Whitney.

Senator GLASS. Do you think it is sound economics to tax the American people to pay the money for the railroads that do not choose to pay?

Mr. WHITNEY. That, Senator Glass, is something to be decided by those in power.

Senator GLASS. I am asking your judgment upon that point.

Mr. WHITNEY. Without specifically answering the question as to a particular railroad, I think it would be a catastrophe of the utmost import if the railroads of the United States all stopped turning their wheels, and I think it is up to the——

Senator GLASS (interposing). But do you think it proper for the United States Government to tax you and me to pay J. P. Morgan & Co. for a debt owed to it by a railroad?

Mr. WHITNEY. I hardly see that that is the argument. My feeling is that a debt should be paid.

Senator GLASS. Yes, but I am talking about who should pay it.

Mr. WHITNEY. The railroads should pay it.

Senator GLASS. Yes, but the railroad did not; the taxpayers paid it.

Mr. WHITNEY. I understand. I thought that the railroad did pay their debts but they got it from the Reconstruction Finance Corporation.

Senator GLASS. Well, that is one way around. I am going directly to the point. Where did the Reconstruction Finance Corporation get the money?

Mr. WHITNEY. I understood that they borrowed it from the people of the country. I do not know quite what railroad we are talking about. It may be that soon they will pay back to the Reconstruction Finance Corporation.

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Senator GLASS. Any railroad company, I am talking about.

Senator BLAINE. Just one other question, Mr. Whitney.

Senator GLASS. Do not misunderstand me. I voted for that uneconomic transaction, but all the same it is not right.

Senator BLAINE. Mr. Whitney, do you know a Mr. M. J. Meehan?

Mr. WHITNEY. I do.

Senator BLAINE. With what brokerage firm is he?

Mr. WHITNEY. M. J. Meehan & Co.

Senator BLAINE. Was he a specialist in the stock of the Radio-Keith-Orpheum Corporation?

Mr. WHITNEY. One of his partners, yes. When? I judge you mean now?

Senator BLAINE. Well, during the period covered by Exhibit 4.

Mr. WHITNEY. I think so, yes, one of his partners.

Senator BLAINE. And did he handle it personally around the post of the Radio-Keith-Orpheum Corporation on the floor of the exchange, or did he do it through assistants employed by him?

Mr. WHITNEY. A partner, not an assistant.

Senator BLAINE. Not an assistant?

Mr. WHITNEY. And to the best of my knowledge not himself either.

Senator BLAINE. Do you recall that Radio-Keith-Orpheum Corporation went through what we might call voluntary liquidation?

Mr. WHITNEY. I do not.

Senator BLAINE. Do you know that that followed immediately upon the large number of short sales that were made in their stock?

Mr. WHITNEY. No, sir.

Senator BLAINE. I think the records will disclose that, Mr. Whitney.

Mr. WHITNEY. Perhaps they would, Senator.

Senator BLAINE. I just want to call it to your attention.

Mr. WHITNEY. Would you care to have me look up that fact and present the facts as we found them? Because I would be glad to do so.

Senator BLAINE. I think I have the facts and I expect to put them before the committee later on. I just wanted to identify Mr. Meehan. That is all, Mr. Chairman.

Senator FLETCHER. Mr. Whitney, may I ask you whether or not in your judgment, in your opinion, there was an organized raid on the market that brought about that catastrophe in October, 1930, when there was a shrinkage in value of securities of $29,000,000,000, I believe? Was that effort an organized effort to break the market?

Mr. WHITNEY. You mean 1929, Senator Fletcher?

Senator FLETCHER. 1930, 1929 and 1930 both, I believe.

Mr. WHITNEY. Absolutely no.

Senator FLETCHER. How did it all happen so quickly, that depreciation in the value of securities, $29,000,000,000? I think it was 1929, October 1929.

Mr. WHITNEY. Well, I think it was like being out at the end of a limb and no way of getting back. Everybody held the securities. When people decided they wanted to sell them, suddenly, all at once, there were insufficient buyers, and so there was this terrific panic.

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Senator FLETCHER. It all happened in a few days, did it not?

Mr. WHITNEY. Very few days, from October 26, approximately, to November 13 when it stopped—the panic.

Senator FLETCHER. You think there was no organized movement in that direction?

Mr. WHITNEY. To depress the market?

Senator FLETCHER. Yes.

Mr. WHITNEY. Absolutely not.

Senator FLETCHER. That is all.

Senator BULKLEY. Was the Sinclair Oil stock recently struck off the exchange?

Mr. WHITNEY. It was stricken, but an amalgamation took its place, Senator Bulkley, which is Consolidated Oil Corporation.

Senator BULKLEY. It was a consolidation of the Sinclair with some other interest?

Mr. WHITNEY. And then the merged company called Consolidated Oil Co. In other words, on these short figures on page 20 as of April 1 a short position shows in Sinclair Consolidated Oil Corporation common and the preferred, stricken from the list that day, and beginning on April 4, the next day of compilation, the figures will appear, similar figures will appear, in Consolidation Oil Corporation common, and preferred.

Senator BULKLEY. So that if anyone was short of Sinclair on the 1st of April it would simply be carried forward and he would be considered as being short of the Consolidated Corporation?

Mr. WHITNEY. Yes; with adjustments; yes. I do not know what the merger consisted of. I am not acquainted absolutely on that, but in effect, yes.

Senator GOLDSBOROUGH. Mr. Whitney, I would like to ask one question, please. If short sales are legitimate, if they have merit, do they not have their proper place in periods of prosperity and not in times of depression?

Mr. WHITNEY. No, sir; I do not think so. I would liken that situation to the unfortunate man that has but one leg. He has lost his equilibrium to a large extent and his general stability. I have tried to point out here, and I will do so perhaps more fully in my next appearance, that the market for securities—and that is all we are, a market for securities; we do not value securities or attempt to do so—that is left to the people that desire to do so. To make up a security market we must have investment, investment buying and selling. We must have speculation, speculative buying and selling, or marginal purchasing, and short selling. Now, in speculation or in investment what happens is a trend in markets up or down. We have unfortunately been through one down. That may have affected our point of view. But speculation, short selling, marginal purchasing, as some one wisely said, "may smooth out the waves, but it never affects the tides." The tides are the trends. They go with general world-wide or national conditions.

But you can not, as I see it, afford an unbalanced market, or you have no market, and we might as well close. To get a balanced market, as I see it, you must have speculation and you must have the two legs of speculation to give that difference of opinion to a market and its stability.

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And may I, with the best of grace, call to the attention of you gentlemen that the United States of America is in the hands of two parties, and it is their divided opinion which results in the laws under which we are governed. Take away one party and our government machinery certainly would be entirely changed. And I call particularly to your attention the simile between the United States Government of two parties and the government of a security market by the two sides, represented by the speculative element particularly, let us say here, marginal purchases and short sellers. We must have both to give balance.

Senator BROOKHART. Now, on that government business: As a usual thing only two parties, the standpatters of both parties, get together, and then they do something and there is no difference in them. You can not tell the difference between a standpatter in one party and another with a microscope when you analyze them. So I can not see anything in your analysis.

Mr. WHITNEY. Perhaps, Senator Brookhart, I was referring to the theoretical points or the economic points of party government.

Senator BROOKHART. Well, it is theoretical, and why is not all your speculation theoretical?

Mr. WHITNEY. Because it is actual, sir.

Senator BROOKHART. You brought this country to the greatest panic in human history. There never was such an economic failure in the history of mankind as your outfit has brought upon us right at this time, and it is due to this same speculation that you are defending here more than any other one thing.

Mr. WHITNEY. We have brought this country, sir, to its standing in the world by speculation. I claim that this country has been built by speculation, and further progress must be in that line. And it is not gambling.

Senator BROOKHART. I have another chart of 50 years of this business over here. I would like for you to take a look at that, and you will find that in the whole 50 years we have not been 30 minutes on a normal line. And that chart is not made by me; it is made by Col. Leonard P. Ayers, the greatest statistician at this time. The black chart at the bottom of the page over there shows it, and we are first up in a speculation and down in the ocean of depression, and it has been true for 50 years here under this speculative system of business of yours.

Now, there is business going on in the world that does not have those ups and downs, and it does not have any speculation, either.

Mr. WHITNEY. I did not know that there were any, sir.

Senator BROOKHART. Well, you have got something to learn, sir.

Mr. WHITNEY. Agriculture is certainly not in that condition.

Senator BROOKHART. Agriculture is a victim of this speculation.

Mr. WHITNEY. In stocks?

Senator BROOKHART. And has been all the time. But the cooperative organizations of the world wherever they have been developed and where they fix the earnings of capital and take out all the speculation, do not have these ups and downs, and are the soundest systems of business in the world to-day. Take the English system, for instance, if you are familiar with it.

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Mr. WHITNEY. I thought we were talking about America and I confined my remarks to that.

Senator BROOKHART. I thought you had never heard of it.

Mr. WHITNEY. We have seen as great speculation in England as we have in America.

Senator BROOKHART. Well, I have got a chart of that. I did not bring it in, but I will show you that we have not had one-fourth the speculation in England because this cooperative system along beside the speculative has held it down and has prevented these wild orgies that you promoted up in New York.

Mr WHITNEY. I am sorry. I thought there had been great speculation in the commodities, the grain commodities, and we have nothing to do with that. It seems to me I heard of wheat at large prices and at very low ones.

Senator BROOKHART. Yes; we have another little bit of a side show over at Chicago called the board of trade that runs about like your stock exchange does in New York.

Mr. WHITNEY. You think you can affect the conditions of the world by changing the rules or regulations of a stock exchange or a board of trade? Wheat is grown elsewhere and stocks are bought and sold.

Senator BROOKHART. Yes; we can change them by abolishing the board of trade and stock exchange both so far as speculation is concerned.

Mr. WHITNEY. And then the people of the United States will go to Canada and Europe to do these very things and pay their taxes there.

Senator BROOKHART. Well, I remember the Louisiana Lottery went to Mexico a while, but it did not last long.

Mr. WHITNEY. You are then accusing the 20,000,000 of investors or more in this country of being mere gamblers and lottery players.

Senator BROOKHART. I am not accusing any investor of being a gambler, but I am accusing every margin dealer and every gambler of being a gambler.

Mr. WHITNEY. But you want no markets to exist in this country——

Senator BROOKHART (interposing). Not for gamblers; no.

Mr. WHITNEY. ——for the investors?

Senator BROOKHART. I want to outlaw every gamblers' market.

Senator GLASS. It would be interesting to me, because I have been studying it for 10 years, if Mr. Whitney would define the difference between "speculation" and "gambling." If we can ever reach that definition we might do something.

Mr. WHITNEY. I have always felt, Senator Glass, that speculation as against investment—I am going to get to gambling—but as against investment, is the desire of the individual who speculates to purchase something and by an increased price on that something to derive a profit, and as I said yesterday, the investor purchases something to derive an income therefrom and not depending upon the rise of price for profit.

Senator GLASS. In one of his questions to you a while ago Senator Blaine described the case of a man owning 150 shares in a box and

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then selling short, either with or without the knowledge of his broker, and then buying back all in the course of an hour or two. What would you call that, investing?

Mr. WHITNEY. No; I call that speculation.

Senator GLASS. Well, you are polite, I call it gambling.

Mr. WHITNEY. Senator, some of the finest horses in the world are raised in your State. When one bets on the races that is a gamble.

Senator GLASS. Yes.

Mr. WHITNEY. Whatever you bet you may lose.

Senator GLASS. My bishop says that is not a gamble because—— [great laughter].

And my bishop contends that the element of acute knowledge is involved in betting on a horse race; that you may look up the records of the horse and determine for yourself something about his stamina and you may ascertain whether or not the jockey has been bribed and so on and so forth, and that, therefore, it is not a gamble; it is a speculation.

Mr. WHITNEY. Well, Senator, I need your bishop right beside me to explain this point.

Senator GLASS. But you have not explained yours.

Mr. WHITNEY. I consider that the placing of a bet on the races is gambling. I do not condone it, but I think it is gambling.

Senator GLASS. Well, I am not reprehending gambling, though I do not indulge in it myself. I am not an uplifter like my bishop. What I am trying to do is to reach a difference between investment and gambling, and it seems to me that Senator Blaine's question involved a very accurate definition of what I call gambling. That person was not investing. He was not buying any stock with any intention on earth of deriving a dividend from that stock. He had not the remotest knowledge, I assume, as to the intrinsic worth of the stock, as to the productive character of the corporation represented by the stock, as to the personnel or integrity of its officers. He was simply betting that at a certain hour of the day or at a certain day the market price of that stock would be somewhat different from the market price of it when he began his operations. Is that not so?

Mr. WHITNEY. That was his opinion, but I can not grant that necessarily that individual has no knowledge of the situation, the earning power and the business ability and acumen of the directors of that company.

Senator GLASS. Well, if he had not, was it not a sheer gamble?

Mr. WHITNEY. In a sense, I agree, but I think you are using the word or perhaps you are using the word "gambling" to denote an act that is unethical. Now, I do not grant——

Senator GLASS (interposing). I grant you the New York Stock Exchange has made it ethical. I am not talking about that though. I am talking about what it is.

Mr. WHITNEY. Speculation exists, not only in stocks but in all branches of business.

Senator GLASS. Oh, my, my; that is a story that we have learned long ago.

Mr. WHITNEY. But it is true.

Senator GLASS. Over and over and over again. If that is not a gamble, I do not know what constitutes a gamble. It is just as

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much a gamble as my betting on a horse race and not knowing anything about the horses or the jockey or the owner of the horse, every bit as much. And I am not decrying, you understand. If the New York Stock Exchange or anybody else wants to engage in that sort of business, all right. The only purpose of my life now is to prevent people who do engage in that sort of business using the deposits of people in banks for that purpose. In other words, using Federal reserve banking facilities for the purpose of promoting transactions of that description.

Mr. WHITNEY. Then you think it is wrong for an individual to borrow money for any purpose that may be construed speculative? He may not borrow money on a house or on an apartment building?

Senator GLASS. I think it is utterly wrong for a commercial bank to loan a man money for gambling purposes, whether it be on stocks or horse races or anything else. I do not think people deposit their money in banks to be used for purposes of that kind.

Mr. WHITNEY. People deposit their money in banks, however, expecting the return of that money to them whenever they ask for it, and they expect the officers of that bank to safely loan it.

Senator GLASS. Yes; and they would despair of ever having it returned to them if they knew that at the time of deposit it was going to be used for gambling purposes, and they would not deposit it either.

Mr. WHITNEY. Senator, I know of no call loan made to members of the New York Stock Exchange on listed collateral that has ever failed of being paid.

Senator GLASS. Oh, I am not talking about securities. What do you suppose the proponents of the Federal reserve act meant when they expressly said that the facilities of the Federal reserve banking system, which was a commercial banking system, should not be used for the purpose of purchasing or carrying investment securities, stocks, or bonds, other than the obligations of the United States? What did they mean by it? It simply meant that we were instituting a commercial banking system, textually, for the benefit of agriculture, commerce, and industry, and that its facilities should not be used for speculative purposes.

Mr. WHITNEY. Then, if my knowledge is correct, in the last few years, perhaps many years, industry that sought money from banks, instead of, as in the past, receiving that advance of credit on their own note, would now be unable to get it because the practice has grown up of having collateral security of one sort or another as backing that advance of credit. We have had as high as eight billions of loans on collateral by banks, not including collateral loans to stock brokers, and I venture to say, a very, very high proportion of those loans were made to industry with securities put up as collateral.

Senator GLASS. That does not go to the question at all. That does not go to the question of using the facilities of a commercial reserve banking system for stock speculative purposes or any other speculative purposes. They were not intended to be used that way. The affirmation, as well as the negatives, of the act show unmistakably that they were not intended to be used that way; that they were prohibited. And yet they were used that way in 1929 and constituted

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a very grave contribution to the collapse and to the situation in which the country finds itself now. But all that is foreign to this inquiry.

Mr. WHITNEY. Yes, sir.

Senator FLETCHER. You do not approve, Mr. Whitney, of this large amount of call loans, $8,000,000,000? Is that sound economic business?

Senator BROOKHART. Brokers' loans.

Senator FLETCHER. Brokers' loans.

Mr. WHITNEY. I claim that a call loan is the safest type of loan that I know of if its record can be used. I know of no call loan on listed security collateral that ever failed of being paid.

Senator FLETCHER. Do you think it is a good thing to have this large amount of brokers' loans?

Mr. WHITNEY. They did exist, Senator Fletcher. They were up to eight billions five hundred millions, and if I remember correctly, one billion seven hundred millions was liquidated and paid off without a loss to any bank in one week of 1929.

Senator BROOKHART. There are some of those call loans that did not get called, though, when they were in condition so they would not pay, did they?

Mr. WHITNEY. To the brokers?

Senator BROOKHART. Yes.

Mr. WHITNEY. I know of no such instance, Senator Brookhart.

Senator FLETCHER. What do those loans amount to now?

Mr. WHITNEY. About five hundred millions.

Senator GLASS. Security—you know perfectly well, Mr Whitney, that security is not the sole element of commercial banking?

Mr. WHITNEY. It is a precious important part of it, if I am going to lend the money.

Senator GLASS. Liquidity is just as important as security?

Mr. WHITNEY. True, but the liquidity of what lies back of the loan, its collateral, is just as important, and that is why I claim a market for securities must exist to give collateral on loans a liquid market.

Senator GLASS. I am not contesting your contention about a market having to exist. It is going to exist whether we want it to exist or not, so far as that is concerned.

Senator FLETCHER. Was there not a commission appointed by the Governor of New York, Governor Hughes, now Chief Justice, to investigate this question of marginal transactions and differentiate between speculation and gambling?

Mr. WHITNEY. Yes, sir.

Senator FLETCHER. And did they not make a ruling on that subject?

Mr. WHITNEY. Yes, sir.

Senator FLETCHER. Do you remember what that was?

Mr. WHITNEY. To the effect that the transactions on the New York Stock Exchange were not gambling.

Senator FLETCHER. Do you remember what year that was?

Mr. WHITNEY. 1909, I think, Senator Fletcher.

Senator GLASS. Who said that?

Mr. WHITNEY. The Hughes commission in New York State, so called. The same thing has been stated with relation to grain con-

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tracts, I believe, in the last year by a commission headed by Sir Josiah Stamp in looking into the Winnipeg operations.

Senator BROOKHART. That was a little like the Wickersham Commission, was it not?

The CHAIRMAN. Mr. Whitney, I would like a little information. Some times in your testimony you referred to 120,000,000 people as being the speculators or the investors, who were using the market. Some times other figures were given. Are there fairly definite figures available, for instance, as to how many individuals were on the market at a certain time or at a certain year?

Mr. WHITNEY. My reference to the 120,000,000 was to the population of these United States who had the power to enter the market at any time, and it was their opinion of conditions that by and large constituted the tides that made the market one way or the other. It is variously estimated that the investors of this country amount to between 20 and 60 millions of persons, owning shares of stock. Now these may be stocks listed on one exchange or another or listed on no exchanges. I advocate, contrary to Senator Brookhart, that it is far greater wisdom to buy stock that is listed on an organized exchange where regulations are made for the benefit of the holder of those stocks.

The CHAIRMAN. There are not 60,000,000 adult people in the United States. So that figure can not be accepted for much value.

Mr. WHITNEY. That figure probably not, no, except, of course, where an estate holds stock or a fiduciary holds security for heirs that might be largely added to it.

The CHAIRMAN. What is your best judgment, as to how many were on the market in 1929?

Mr. WHITNEY. When you use the words "on the market," then I do not understand you.

The CHAIRMAN. On the exchange.

Mr. WHITNEY. That own their own securities that are listed on the New York Stock Exchange?

The CHAIRMAN. Rather that dealt in securities on the exchange.

Mr. WHITNEY. That is an impossible answer. I would not guess.

The CHAIRMAN. Then take the other, following your suggestion, that owned securities that were listed on the exchange?

Mr. WHITNEY. That owned or dealt in secuirties, I would think between fifteen and twenty millions.

The CHAIRMAN. Would that cover all securities, or would there be other secuirties? Is New York about the only security market?

Mr. WHITNEY. Oh, no. I think there are 78 stock exchanges throughout this country.

The CHAIRMAN. That is the point I am getting at. Would there be a considerable number of stocks listed on other markets that would not be on the New York market?

Mr. WHITNEY. Yes, sir; a tremendous amount.

The CHAIRMAN. To what extent would that swell your number that you estimate?

Mr. WHITNEY. I do not know, Mr. Chairman. I do not know. There are a lot of corporations listed on other stock exchanges where the stockholders are very small in number, a few hundred. So how

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much it would swell, I do not know. But some figures, for instance, the American Tel. and Tel. Corporation, has of, I believe, March 1, in excess of 640,000 shareholders alone, that one company. Of that amount more than 95 per cent held less than a hundred shares each and 58 per cent, if I remember rightly, held less than 10 shares each.

Senator GLASS. Do you think that any proportion of the 95 per cent either understands or takes any abiding interest in the operations of the New York Stock Exchange?

Mr. WHITNEY. I think a very large proportion do, Senator Glass, because I claim that any investor, whether he wants to use it or not, wishes to know that a market exists for his security so that if he wants to sell his security he may do so. I think that is the vital interest to the investor of this country.

Senator BROOKHART. Henry Ford never wanted a market for his securities, did he?

Mr. WHITNEY. I do not know about Henry Ford. I can not conjecture.

Senator BROOKHART. I thought you did not, because he did not need any market. And I know several other sound lines of business that are really sound that do not need any market for their securities. The unsound ones get their securities marketed up in that speculative market.

Mr. WHITNEY. It is very strange that Henry Ford has had some of his subsidiary companies listed throughout this country and abroad.

Mr. BROOKHART. What ones are they?

Mr. WHITNEY. Ford of Canada, Ford of England, and others.

Senator BROOKHART. That is not an American company.

Mr. WHITNEY. Subsidiaries of the Ford Motor Co., though.

Senator BROOKHART. Yes. I noticed that somebody had some of his stock listed against his will up there.

The CHAIRMAN. Now, to pursue this matter a little further, what would be your estimate as to the number of people, 25 or 30 million?

Mr. WHITNEY. Total?

The CHAIRMAN. Yes.

Mr. WHITNEY. I should think 25, personally, was the top, but I may be away off.

The CHAIRMAN. And the shrink in the value of these stocks amounted to how much?

Mr. WHITNEY. Well, in the last week stocks and bonds have shown a shrinkage of about 6,000,000,000 of dollars, in the last week or two.

The CHAIRMAN. Well, the total shrink from the peak down?

Mr. WHITNEY. Oh, I do not know. I have not followed that.

Senator BROOKHART. About 43,000,000,000.

Mr. WHITNEY. Somewhere in that neighborhood—tremendous. But within the last two or three weeks the decline has been as drastic as at any other time.

The CHAIRMAN. More than $1,500 for every shareholder in the United States?

Mr. WHITNEY. It may be.

Senator GLASS. You mean, Mr. Whitney, that 25 or 30 millions of people who own investment securities, who own stocks. You do not

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mean to say that there are 25 or 30 millions of people who have any intelligent comprehension or appreciation of the processes and operations of stock exchanges, do you?

Mr. WHITNEY. They may not have complete knowledge, no. I think they have, a great majority of them, a knowledge of their own corporations, what those corporations are doing and their activities. I do not mean to say that I think any amount like 20 or 25 million are speculating in the market. I do not mean that. I mean that they are the investors and the speculators.

Senator GLASS. I did not think you could mean that. I did not think that a man of your intelligence and environment could be that credulous.

The CHAIRMAN. If there are no further questions, the committee will adjourn to meet Thursday at 10.30 to take up the Glass bill, and Mr. Whitney will be subject to call when needed. Be here Monday morning at 10.30 as understood.

(Whereupon, at 1.05 o'clock p. m., accordingly, the hearing on this subject was continued until 10.30 o'clock a. m., Monday, April 18, 1932, and committee adjourned to meet and consider the so-called Glass banking bill at 10.30 o'clock a. m., Thursday, April 14, 1932.)

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STOCK EXCHANGE PRACTICES

MONDAY, APRIL 18, 1932

UNITED STATES SENATE
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met at 10.30 a. m., pursuant to adjournment on Tuesday, April 12, 1932, in room 301, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Walcott, Blaine, Carey, Watson, Couzens, Fletcher, Wagner, Barkley, Gore, Costigan, and Hull.

Present also: Claude Branch, Esq., temporary counsel to the committee, and William A. Gray, Esq.

The CHAIRMAN. The committee will come to order. Mr. Branch, who was employed as temporary counsel to the committee, is still in charge. He has brought as his assistant, William A. Gray, of Philadelphia, who will act as associate counsel and help in the examination. Mr. Whitney is on the the stand, and counsel may proceed.

TESTIMONY OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.—Resumed

Mr. GRAY. Mr. Whitney, you have been called upon frequently in the last year or two either in public speeches or before committees of Congress to defend short selling and other phases dealing with the stock exchange, have you not?

Mr. WHITNEY. To explain short selling; yes, Mr. Gray.

Mr. GRAY. Why do you use the word "explain"? As a matter of fact, has it not been because of the criticism of short selling on the New York Stock Exchange that you have been called upon to speak upon the subject?

Mr. WHITNEY. Partly, yes; but more particularly because of the ignorance existing as to it.

Mr. GRAY. In other words, what you mean is that the public do not quite understand the situation with respect to short selling on the stock market and, therefore, they are liable to get ideas with respect thereto that are not in accordance with yours.

Mr. WHITNEY. That are not in accordance with the facts; yes, sir.

Mr. GRAY. And where have you made speeches in the last year or two upon that subject?

Mr. WHITNEY. Well, I think I have probably touched upon that subject in all speeches I have made, Mr. Gray, and in the last year

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or two I think that would be in New York, Chicago, Philadelphia, Hartford, and Syracuse, if I remember rightly.

Mr. GRAY. And then when certain bills offered in the House of Representatives were before the committee here in Washington for the purpose of investigation you testified before a House committee, didn't you?

Mr. WHITNEY. Yes, sir; and presented to them a brief.

Mr. GRAY. And I understand that you have testified before this committee for a period of several days.

Mr. WHITNEY. A day and a half, I believe.

Mr. GRAY. I wish you would state now, Mr. Whitney, if you will, your views on the subject of short selling and its effect upon general market conditions.

Mr. WHITNEY. Mr. Gray, I have stated my views on that subject before this committee both on Monday and Tuesday of last week. What I might state now would be a mere reiteration of those points. And at that time I presented for the record of this committee the testimony and the brief I presented on February 24 before the House Committee on the Judiciary. I think I have pretty fully covered my views and the points. But if you desire——

Mr. GRAY (interposing). That brief was on the question of the constitutionality of certain House acts.

Mr. WHITNEY. Oh, no. It was far fuller than that.

Mr. GRAY. I should like for you to state on the record on this occasion why you think short selling is of advantage to the market.

Mr. WHITNEY. Very well. I believe that short selling is an advantage to the market because it is an integral part of speculation, the other part being marginal purchasing; that speculation together with investment makes up the markets, whatever they may be, of this world, but with particular reference here to the security markets. To take away one part of speculation or one part of investment would leave the remainder like, as I said here last week, and I think on Tuesday, a man with but one leg who has lost his equilibrium and stability.

Mr. GRAY. You don't consider short selling a part of the investment market, do you?

Mr. WHITNEY. I did not so state. I said it was a part of the speculative market, and that speculation was a part of the whole market, the other part being investment. I have stated here that I believed short selling and marginal buying were essential to a stock market, that they tended to smooth the waves of fluctuation but do not go against the tides which are the trends based on large economic conditions.

Mr. GRAY. Do you believe short selling goes with the trend of a downward market? That is to say, that it would decrease as the market goes down?

Mr. WHITNEY. Not necessarily, but of recent days it has.

Mr. GRAY. What do you mean "of recent days"? Do you mean within the last two or three days or the last several months, or for what period of time?

Mr. WHITNEY. The last two or three weeks, or the last week or two, to be exact.

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Mr. GRAY. You have not made clear to me, and I do not know whether you have to the members of the committee, just why you believe—although you have said something on that, and said you believed short selling, as you have expressed it heretofore, is an aid to market conditions when the market is being depressed. In what way does it aid?

Mr. WHITNEY. I tried to say that just a minute ago, that both marginal purchasing and short selling make up speculation.

Mr. GRAY. Yes.

Mr. WHITNEY. And it is only by the activity in the market whereby stability may be occasioned. I do not pretend to state that short selling is going to prevent the market going down or prevent the market going up. Trends take care of that. Nor inversely do I pretend to state that marginal buying is going to make the market go up or prevent its going down. The trends take care of that, the idea existing that these two make up speculation as a whole, and without speculation and without investment, markets could not exist. And therefore no part of these two should or could be taken away if you are going to have markets exist.

Mr. GRAY. I should like to have a direct answer as to why you believe short selling aids the market when the market is on a decline. You have so stated. Why?

Mr. WHITNEY. As one part of the whole situation, the whole question, short selling gives to the market its only compulsory buyers. The short seller must buy. No other person entering the market must buy, except the short seller. That is an aid.

Mr. GRAY. In other words, you have expressed the idea before in some of your speeches and before the Judiciary Committee of the House, that when the market is going down there is someone that must buy at some stage.

Mr. WHITNEY. Yes.

Mr. GRAY. And that that would have the effect of steadying the market to some extent.

Mr. WHITNEY. To some extent. We have invoked that necessary buying on one occasion.

Mr. GRAY. As a matter of fact, is it not true that short selling in general does not begin until there is an indication in the market that a decline is about to take place? And when I say an indication in the market I mean to those who study the market and who understand the signs.

Mr. WHITNEY. I have not record that proves that.

Senator BARKLEY. Mr. Chairman, is it permissible for members of the committee to ask questions while this examination is in progress?

Mr. GRAY. Certainly, at any time, so far as I am concerned.

The CHAIRMAN. Yes; you may proceed, Senator Barkley.

Senator BARKLEY. Mr. Whitney, I should like to ask you whether it is true that, when there is a situation which makes it necessary for someone to buy, it also makes it necessary for somebody to sell?

Mr. WHITNEY. Senator Barkley, if anybody buys, quite naturally someone must sell to him; but I do not see the question of necessity there; no, sir.

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Senator BARKLEY. You were speaking about the creation of a short interest, a large number of men or women who have sold short.

Mr. WHITNEY. All right.

Senator BARKLEY. And, of course, if they do not have what they sell, it makes it necessary later on for them to buy.

Mr. WHITNEY. Yes, sir; they must buy back.

Senator BARKLEY. And if the market goes down, of course, they make more profit in buying back what they have previously sold. And as the market goes down, doesn't it also create a compulsion on the part of many holders of stocks to sell what they have previously purchased?

Mr. WHITNEY. That may be so, but it seems to me that is predicated upon the fact that the short seller is always right. And again I say I know of no record that is proof of any such contention—that the short seller is always right in his judgment.

Senator BARKLEY. That is quite true. The short seller may make a bad guess and his stock may go up and he may have to pay more to get it back than he received when he sold it short. But at any rate that was not his intention.

Mr. WHITNEY. No; nor is it the intention of the marginal purchaser to have the market go down when he buys.

Senator BARKLEY. Quite so. Can you tell me what proportion of the short sellers are able to buy back at a lower price than they sold for?

Mr. WHITNEY. I have no possible idea. I know of no way that that information could be arrived at.

Senator BARKLEY. You do not know whether the proportion is larger or smaller than of those who buy back at a higher price?

Mr. WHITNEY. No. I could only cite the common adage that no bears have died rich. I do not know.

Senator BARKLEY. And not very many bulls have died rich recently, either.

Mr. WHITNEY. Perhaps not.

Senator BARKLEY. That is all. I do not want to get into a general discussion of the matter.

Senator GORE. Mr. Whitney, that would turn more on the general trend, would it not, as to the percentage of shorts with a profit or the percentage of bulls with a profit?

Mr. WHITNEY. Presumably. We can only look at this question from the point of view of trends. I think perhaps there is a great deal of attitude predicated upon the present trend, or the past trend as we hope it is, that is, that the market and everything has been going down. But I feel we have to look at any such subject as this from the point of view of the trends, both ways, up and down.

Senator GORE. But short sales primarily are made because the seller calculates the price is going down and not primarily for the purpose of forcing it down, is that it?

Mr. WHITNEY. Exactly.

Senator GORE. Although I suppose one might contribute to the other.

Mr. WHITNEY. In that case it is the short seller's point of view and judgment that by selling short he will make money because he thinks the market will go down, just as the marginal purchaser buys stock because his judgment dictates that the market is going up.

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Senator GORE. But he does not buy to put it up? He buys because he thinks it is going up, is that it?

Mr. WHITNEY. Exactly.

Senator FLETCHER. Isn't it a fact that short selling does force liquidation?

Mr. WHITNEY. No; I do not think so. I think there is much more forcing of liquidation by those who are liquidating for reasons of one sort or another, because of people liquidating securities. The security market has been probably, and so far as I know, the only market of great importance where cash may be got immediately, or the next day, for what one holds, and so it is that the security markets have been the medium of tremendous liquidation for that one purpose. A man who has bank stocks, who has real estate, who has one thing or another on which he can not get cash, can not realize cash, if he has securities, has gone to the market where he could instantly realize cash. And I think it is that liquidating of securities that has forced the market down.

Mr. GRAY. And in that, Mr. Whitney, aren't you opposed to the opinions that are held by a great many intelligent, clear-thinking people, who know as much as can be known, as much as any others, about market conditions? In other words, aren't there many people who take the opposite view, that short selling causes liquidation rather than liquidation causing selling? And isn't this the view of people of intelligence, people who are supposed to know what they are thinking about?

Mr. WHITNEY. Mr. Gray, I have never denied that intelligent people might not have a different opinion than I; but in this I would say they are wrong.

Mr. GRAY. Isn't it a fact that a great many people who have studied the subject, members of your own stock exchange, have voiced the opinion that short selling is the cause of liquidation?

Mr. WHITNEY. Perhaps so, but I do not know that that is a fact. At the same time I say, perhaps it may be true that that is the view held by some persons.

Mr. GRAY. You say "perhaps" but that you do not know it to be a fact. As a matter of fact don't you know, and I am not referring to any particular individuals in putting this question to you, or to any particular firm, but don't you know that members of your own stock exchange have indicated they thought that short selling brings about liquidation, and that some members of your own exchange are against the maintenance of the practice of short selling in the market?

Mr. WHITNEY. To-day?

Mr. GRAY. Yes, to-day.

Mr. WHITNEY. Not that I know of. No; I think——

Mr. GRAY (interposing). You use the word "to-day." What limitation do you intend to put upon the matter of time by using the word 'to-day"? Are you speaking of this year or of last year or of the last few years.

Mr. WHITNEY. I think it may be true that there has been a discussion at various times perhaps by certain members of the stock exchange as to whether this or that should not be done in a time of

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great emergency, and perhaps relating to a banning of short selling; and particularly let us refer to the time when England went off the gold standard.

Mr. GRAY. I am going to come to that, but will ask you more immediately about this if you don't mind. We will stick to this general subject for the moment. Of course these discussions are brought about as a usual thing when something occurs in the way of a great emergency, a terrific depression, a steady decline, or something of that kind, that brings such discussions about. That is when they arise, is it not?

Mr. WHITNEY. Presumably.

Mr. GRAY. And when those occasions do arise you discuss very frequently the subject whether or not these practices are not bad generally, don't you?

Mr. WHITNEY. Yes; if that is what you are discussing——

Mr. GRAY (interposing). And, Mr. Whitney, if I interrupt your answer I wish you would go ahead and conclude, because sometimes I speak up quite quickly.

Mr. WHITNEY. If that is the question involved, the general question of short selling, I will say I have no knowledge of members of our exchange believing it would be wise to prevent the practice of short selling.

Mr. GRAY. Do you think these things or these views, I mean, are only entertained by members of your exchange in times of great emergency?

Mr. WHITNEY. These views may have been discussed, or these points may have been discussed in times which might have occurred to them as periods of great emergency; yes.

Mr. GRAY. Now, I will come to this matter of September 21 a little bit later. When Senator Barkley started to ask his questions we were discussing the problem of whether or not short selling doesn't usually begin, although of course it occurs at all time, but doesn't it usually begin in its greatest strength and power at a time when there is a declining market? I think you indicated that you did not know that to be true. I am now directing your attention to October of 1929, just prior to the peak market in that year. Isn't it a fact that your short interest was at the minimum almost? In other words, that it was almost negligible or nil at that time?

Mr. WHITNEY. After the market had dropped 40, 50, 100, 150 points?

Mr. GRAY. I am not talking about afterwards but before it reached its peak.

Mr. WHITNEY. No one knows.

Mr. GRAY. Do you mean to say that the stock market or the stock exchange can not determine that fact?

Mr. WHITNEY. They could have done so at the time, but I do not think they could do so now; no, sir.

Mr. GRAY. I will ask you about that in a minute. What is your opinion upon the subject? Your are, of course, familiar with the conditions as of that time?

Mr. WHITNEY. As to my opinion in regard to the volume of the short interest, I have no opinion. But I am perfectly confident that during the rising market, from 1924 up to 1929 and into 1929, there

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were, or it is my opinion that there were, large short interests existing.

Mr. GRAY. What is your opinion with respect to the short interest that existed, we will say, in September of 1929 and the early part of October? Do you think it was a large short interest?

Mr. WHITNEY. I have no means of guessing. And——

Mr. GRAY (interposing). Well, Mr. Whitney——

Mr. WHITNEY (continuing). May I say something more right there?

Mr. GRAY. Yes; Mr. Whitney, stop me if I interrupt your answer.

Mr. WHITNEY. I will say that we guessed at various times, those of us who thought we knew something about the situation in the stock market, guessed as to the short interest as it would appear on several occasions during the time we have been making these compilations. And in no case that I remember have the most of us been correct in estimating the short interest. We have almost universally been wrong. Where we thought it would have an increase by reason of a circumstance, it did not increase; and where we thought it would decrease because of a circumstance, it did not decrease. I have no way of knowing what the short interest was before the crash in 1929.

Mr. GRAY. Well, now, I am going to press the question, and you can call it your opinion or a guess, whichever you want; but I am speaking of it relatively, that is, with respect to times we will say since October of 1929, isn't it a fact that just prior to the peak market in October, 1929, the short interest was quite small?

Mr. WHITNEY. I do not know, Mr. Gray. If you want me to grant it as my opinion, I will do so.

Mr. GRAY. I do not want you to grant anything at all that you do not entertain as a definite opinion of your own.

Mr. WHITNEY. Well, I do not know. The short interest as of November 13 and in this period of panic——

Mr. GRAY (interposing). I will come to that later. I am now talking about before October of 1929?

Mr. WHITNEY. That the short interest was small?

Senator GORE. Let me ask a question right there.

The CHAIRMAN. Proceed, Senator Gore.

Senator GORE. I am only a layman and do not know anything about the matter. But, I take it, Mr. Whitney, the public generally are more inclined to buy on margin, for instance, than they are to sell short. They are not familiar with the technique of the matter, and that is the general tendency so far as I know, although, as I say, I know very little if anything about it. Have you an opinion on that point?

Mr. WHITNEY. Yes. I believe from the facts we have at our command that in normal times, or perhaps at any time, the marginal purchases exceed in number and in volume of dollars the amount involved in short selling.

Senator GORE. And it is more the professional traders, if there be such a category, who take part in short selling than in long buying? That is, they participate more generally in short selling, the specialty dealers, than the public.

Mr. WHITNEY. Senator Gore, that is a common statement. We hear that, that the professionals are the short sellers.

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Senator GORE. Yes, sir.

Mr. WHITNEY. But I truly do not know of any facts that support that contention.

Senator GORE. My point is that Tom, Dick, and Harry, in the street, the average man, does not take much part in short selling. Here is what I am coming to: It looks to me like this peak in 1929 was a sort of speculative debauch, and the judge and the janitor and the waitresses and everybody was buying on margin, and were buying without any reference to intrinsic value, if there be such a thing, and without any reference to the earning power of the companies whose stocks they were dealing in. That sort of situation, it looks to me like, would prove that the professional short was out of the market, because he could not calculate on what the man who had no experience was going to do. The market was not running according to the rules of the game, and he had to get out of that storm. I have always figured, although knowing nothing about it, that it was unfortunate there was not a larger short interest when that skyrocketing took place.

Mr. WHITNEY. That very well might be true. Allow me to point out to you, Senator Gore, with regard to this group of professionals operating on the short side of the market, that the last time we compiled those figures there wese some 10,663 short accounts, occurring in every State of the Union except two. The District of Columbia had some, Hawaii, Canada, and 13 foreign nations were included. Take California and there were 709 short accounts in that State. I can not believe that there are 709 professional operators on the stock market in California. I believe there are a lot of the public constituting those 10,663 short accounts.

Senator GORE. Now, Mr. Whitney, how many long accounts were there at that time?

Mr. WHITNEY. We have no idea, but we reckon—well, we have no figures as of that date, Senator Gore. We have reckoned that at various times there are approximately 50,000,000 shares held on margin, and I have no idea of what the average amount of the separate account is.

Senator GORE. I just figured that the short seller, when we were going through that wild period of speculation and advance and who thought that stocks were too high, was yet a place to sell because people were buying without any reference to actual values or earning power. He could not base any calculation on what that kind of people would do.

Mr. WHITNEY. I think that very well may be so, as I have said. But if the short seller is a professional operator, then presumably he has the capital to support his judgment.

Senator GORE. You mean under ordinary circumstances, when he can calculate what people who know nothing about the market would or would not do.

Mr. WHITNEY. True.

Senator GORE. People were buying then without any reference to what it would do, but just expecting that it would go up.

Mr. WHITNEY. True.

Senator BARKLEY. Doesn't a sudden rise in any stock attract a group of short sellers because of the thought that there will be a reaction in that stock and they can cash out with a profit?

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Mr. WHITNEY. That may be true and that would be the very thing, as I say, that might prevent such a rise, and necessarily with a stock going to a price that was wrong or to a ridiculous figure, that is the very effect that the short sellers would have upon that stock.

Senator FLETCHER. The bigger bears never sell short during a boom, do they?

Mr. WHITNEY. I do not know, Senator Fletcher. If I knew as much as I am expected to know about the operations of so-called bears I would tell you. I do not know. I am not trying to evade anything, but I just do not know.

Senator FLETCHER. Doesn't the record show that the bigger bears never sell short during a boom? Have you that record?

Mr. WHITNEY. I have not the actual record, so I can not tell you. But if we are going to class bears as wise men, just as we may class bull operators as wise men, then I will say their attempt certainly will be to buy at the bottom and sell at the top.

Senator FLETCHER. I am not classifying them but speaking of the actual practice.

Mr. WHITNEY. And as to that I truly do not know.

Mr. GRAY. Mr. Whitney, I am going to take up Senator Fletcher's questions for a moment. You have been a broker for how long?

Mr. WHITNEY. For approximately 20 or 22 years I will say.

Mr. GRAY. And you have been the president of the New York Stock Exchange since 1919, have you not?

Mr. WHITNEY. No; 1930.

Mr. GRAY. Only since 1930?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And you have been on the board of the stock exchange?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Since when?

Mr. WHITNEY. Intermittently since 1912.

Mr. GRAY. And you told Senator Fletcher that you did not know whether or not professional short traders did not avoid buying in a boom.

Mr. WHITNEY. I never said anything about buying, Mr. Gray.

Mr. GRAY. I meant selling. I used the wrong word there, Mr. Whitney; you are correct.

Mr. WHITNEY. Will you repeat your question?

Mr. GRAY. Yes. You told Senator Fletcher that with your experience back of you you did not know that professional short sellers in a market like that which was reaching the peak in October of 1929 did not avoid selling short at that period.

Mr. WHITNEY. At the top of the boom?

Mr. GRAY. I am not talking about the top of the boom but in the boom as it goes along. They may exercise bad judgment and step in at the wrong time, may they not?

Mr. WHITNEY. I will admit that, but isn't it a fact that the public——

Mr. GRAY (interposing). My question is the other way; that they wait until peak prices have been reached and until the market definitely starts to show a decline before they step in.

Mr. WHITNEY. I think I have answered that question before to you this morning, Mr. Gray.

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Mr. GRAY. I think not.

Mr. WHITNEY. I have no knowledge of that. I know of no records that prove it. I can only say, and you may be taking it as an inference from me that I do not mean, that I do not know. I should like to point out to you that I happen to be a bond broker also and not a stock broker.

Mr. GRAY. Do you mean that your concern does not handle stocks?

Mr. WHITNEY. Only in the execution of orders.

Mr. GRAY. But you must admit or profess to have a very full knowledge of the subject.

Mr. WHITNEY. I admit some knowledge of the subject, but as to the details you are asking, whether bears sell on a boom, I can not tell you. Presumably a bear is going to try to get the top price, as is the bull going to try to get the bottom price. I do not pretend, however, to state that either does it.

Mr. GRAY. My question was not whether the bears sell on a boom. I asked you whether or not your knowledge of stock-market conditions would not cause you to say that the professional bear traders will not as a usual thing sell short on a rising market, but whether they won't wait until they think the peak has been reached and the decline starts, and they let that decline get a fairly good start before they step in and try to sell. Isn't that the general practice?

Mr. WHITNEY. That I can not admit because I do not know.

Mr. GRAY. You do not know?

Mr. WHITNEY. No. But I do know that people selling short are selling and have sold during a market's rise. They may have been wrong.

Mr. GRAY. And because they thought it had reached its top.

Mr. WHITNEY. Quite right, just as I was trying to tell you——

Senator COUZENS (interposing). Mr. Whitney, did you ever sell short?

Mr. WHITNEY. Yes, sir.

Senator COUZENS. You have sold stocks short?

Mr. WHITNEY. Yes, sir.

Senator COUZENS. How recently?

Mr. WHITNEY. That I do not know, Senator Couzens, but I do not think in the last nine months or so.

Senator COUZENS. During the last nine months or so I understand that you have not sold short.

Mr. WHITNEY. Not that I remember. If you wish me to find out I will do so.

Senator COUZENS. Does your name appear in the list of short sellers that has been submitted to the committee?

Mr. WHITNEY. I do not think so but I am not positive. I do not think so. I did sell short in the spring of 1929, thinking that the market was entirely too high. But I was wrong.

Senator BARKLEY. Well, you do not mean that you were wrong that it was too high?

Mr. WHITNEY. I was wrong in what happened to the market thereafter.

Senator BARKLEY. It might have been too high then, but it still went up some more.

Mr. WHITNEY. Yes, sir.

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Senator COUZENS. Mr. Whitney, from your own experience in short selling it seems to me you could answer Mr. Gray's question. Your own experience would indicate what the general practice is among short sellers or bear raiders.

Mr. WHITNEY. I have just given the explanation that when I wanted to sell short I did so and was proved to be wrong.

Senator COUZENS. That is only once. How many times have you been proven to be right?

Mr. WHITNEY. Very seldom. I do not operate on the short side of the market except very occasionally.

Senator COUZENS. A man may operate on either side of the market at any time, may he not?

Mr. WHITNEY. Yes, sir; and he may be right or wrong as his judgment is proved.

Senator COUZENS. I mean a short seller is not necesarily always a short seller.

Mr. WHITNEY. Oh, no.

Senator COUZENS. So that bears or bulls change their attitude.

Mr. WHITNEY. They may.

Senator COUZENS. And they do in fact, do they not?

Mr. WHITNEY. I presume so, yes. I think some do.

Senator COUZENS. You are a broker so you must know from your own experience whether you do or do not stay on the bear or the bull side.

Mr. WHITNEY. Yes, sir.

Senator COUZENS. I wanted to bring that up because it seems to me you could answer Mr. Gray's question from your own experience and without trying to make a statement as the cumulative experience of all brokers.

Mr. WHITNEY. I have tried to answer Mr. Gray's question, but it is difficult to answer. I do not know the specific details he asks about.

Senator COUZENS. Don't you know as applying to your own experience, whether it applied to the experience of other brokers or not?

Mr. WHITNEY. Yes. But Mr. Gray's question was whether in my knowledge bear operators do not always or almost always refuse to sell short until they were sure a decline had taken place, or had started, and as to that I do not know. I know of specific instances to the contrary.

Senator COUZENS. It may be that Mr. Gray can direct his questions more to your own experience than to the general experience of brokers.

Mr. GRAY. I might, Senator Couzens, but I thought it was the general practice on the subject that would be more important, because as Mr. Whitney says we might all make mistakes, and he may in one particular instance have made a mistake, although I would hardly give him credit for making as many mistakes as he would indicate.

Senator COUZENS. On that matter I think you wil lhave to leave something to the judgment of the members of the committee.

Mr. GRAY. Mr. Whitney, with all your experience back of you do you mean to say that what I said is or is not the practice? And I believe your answer is that you do not know.

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Mr. WHITNEY. My answer is that I can not specifically answer the detailed points of your question because the record does not show it.

Mr. GRAY. It is not detailed.

Mr. WHITNEY. I beg your pardon but it is detailed. You asked me what bear operators do. I stated that what you suggest is not necessarily so. I have no knowledge that it is so, and I have no record that proves it is so.

Mr. GRAY. I will show you some charts later and will then take this matter up with you. I now want to come back to October 29. You said you did not know that the short interest——

The CHAIRMAN (interposing). Mr. Gray, you said October 29. Did you mean October 29th or October of 1929?

Mr. GRAY. I meant October of 1929. I beg pardon. Mr. Whitney, I am now directing your attention to your testimony given before the Committee on the Judiciary of the House of Representatives, page 105, and wish to ask you if you did not state this, referring to the same subject that you have been discussing here:

Just how important this is can best be illustrated by what took place in the opening days of the panic of 1929.

And that was the peak, of course, or the opening of the decline:

At that time the short position was relatively small, and when the panic started there were comparatively few persons who had sold short at higher levels and were ready and willing to buy stocks.

That was your statement, was it not?

Mr. WHITNEY I believe so, if you have it there.

Mr. GRAY. And you tell this committee that you can not by any records ascertain the position of the shorts at that time, and I presume you would say immediately thereafter. Do you mean that your exchange did not start to get records of those short sales until May 25 of last year; is that correct?

Mr. WHITNEY. That is not correct. It was November 13, 1929.

Mr. GRAY. It was November 13, 1929?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Prior to that time and now you have a stock-clearing house operating, have you not?

Mr. WHITNEY. A stock-clearing corporation; yes, sir.

Mr. GRAY. And that acts in connection with the members of the stock exchange the same as a clearing house in banking circles acts with bank members?

Mr. WHITNEY. Yes, sir; on cleared stocks and bonds.

Mr. GRAY. And that clearing house has coming before it a memorandum of the loans of the various brokers of stocks?

Mr. WHITNEY. No, sir.

Mr. GRAY. You have what you call a loan account that goes before it.

Mr. WHITNEY. No, sir. Do you mean of stocks?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir; of money borrowed.

Mr. GRAY. Of money; and the stocks are set forth, are they not?

Mr. WHITNEY. No, sir. In the paying off of loans, lists of stocks or bonds, not loaned but pledged, are recited to them.

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Mr. GRAY. Is there an account in it that is handed in by the various brokers to the stock-clearing house, indicating the stocks that they have loaned to short sellers, and the amount of money that has been raised by them for those loans?

Mr. WHITNEY. Do you mean specifically?

Mr. GRAY. Yes.

Mr. WHITNEY. No. Will you let me explain that?

Mr. GRAY. Certainly.

Mr. WHITNEY. If a broker loans stock to another broker it is more than possible, and I believe in most instances, that that appears and goes through the stock-clearing corporation records, but it does not specifically record as to whether it is a sale of stock or a loan of stock.

Mr. GRAY. All right. While it does not distinguish on its face as to whether or not it is a sale or a loan, is it not possible for the members of the stock clearing house, or the members of the board of the stock exchange who have access to those records, to determine by virtue of the amount which is loaned on certain stocks whether or not they are short sales?

Mr. WHITNEY. Why, it might be, Mr. Gray, if we looked for that specific thing and compared it each day with the number of shares that were transacted on the floor of the exchange, and looked into the other details. If we were looking actually for it then it might be possible to detect large loans as against the transactions for that particular day. But we do not look for those figures, and we have no records of them.

Mr. GRAY. Haven't you a statement that goes before the stock clearing house indicating the clearings of loans under loan agreements?

Mr. WHITNEY. With banks, sir.

Mr. GRAY. Only with banks?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And not with each other?

Mr. WHITNEY. With banks, trust companies, and loaning institutions.

Mr. GRAY. And not with the different brokerage houses?

Mr. WHITNEY. It may be where they were borrowing money, but only then.

Mr. GRAY. What I am seeking to ascertain is whether or not there isn't on these loaning agreements an indication in the amount that is loaned on stock which would tell you whether or not it was short?

Mr. WHITNEY. No, sir.

Mr. GRAY. All right.

Mr. WHITNEY. No, sir.

Mr. GRAY. All right.

Mr. WHITNEY. I fear you have a totally wrong impression as to what records we have there.

Mr. GRAY. I may have. I am asking you about it, and I may show you later such a loan agreement and indicate what I mean.

Mr. WHITNEY. All right.

Mr. GRAY. Now, Mr. Whitney, you may have before this indicated just what process takes place in connection with a short sale, but will you please indicate it for this record again?

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Mr. WHITNEY. The mechanics of a short sale?

Mr. GRAY. Yes. Assume that we know nothing about short selling and what it means. Will you tell us?

Mr. WHITNEY. Yes; I will try to do so.

Mr. GRAY. All right.

Mr. WHITNEY. An individual makes up his mind with regard to the stock of a particular corporation, that it is selling at too high a price as warranted by the earnings of that corporation or any other data that he may have bearing upon the shares of the corporation, the direct inverse perhaps, in the forming of his judgment, of what a marginal purchaser comes to. The short seller, or the man who makes up his judgment that the price of the stock is too high, will give his broker an order to sell 100 shares, let us say. That order is sent to the floor of the exchange. The broker of the member receiving that order is advised whether or not it is for short or long account, and he then goes to the particular post where that stock, let us say, United States Steel, is traded in. If the market is 33½–33⅝ and the last sale was 33½, he will sell that 100 shares at 33½ and report it back to his house, who in turn will advise the short-seller that he has sold 100 shares of United States Steel at 33½. Thereafter the broker will borrow that 100 shares of stock for the short seller either from another broker or from some customer of his who has given him permission to loan his stock.

Senator BROOKHART. How does he know he can borrow that stock? How can he always know that? How is it possible that he can know in advance that he can borrow?

Mr. WHITNEY. It sometimes happens that he is wrong in his estimation and he can not borrow the stock. Then it has to be bought back as against delivery the next day, to the detriment of the short seller. But by reason of the activity in the borrow and loan market he forms his judgment whether or not it may be borrowed. He borrows that stock and the next day makes delivery of that 100 shares of United States Steel through the Stock Clearing Corporation to the broker who purchases it from him. Thereafter at some time that short seller must buy back the 100 shares of United States Steel in order that his broker may return it to the person from whom he borrowed.

Senator BARKLEY. Does that mean an actual delivery of the certificates, or is it a fictitious transaction?

Mr. WHITNEY. It is an actual delivery of the certificates which the broker borrows, as I have just stated. And in borrowing from the other broker he has to give to him the full market value of that stock as of that time.

Senator BARKLEY. In cash?

Mr. WHITNEY. In cash; or probably by check which represents the cash.

Senator BARKLEY. Is it a real loan or does he hold the check against the delivery of the stock?

Mr. WHITNEY. No, sir; he deposits the check.

Senator BARKLEY. Then it is almost a sale.

Mr. WHITNEY. It is not almost a sale, but it is absolutely a method of financing on the part of the lender or the carrying of those 100 shares of United States Steel for whomever he may have them.

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Senator BARKLEY. After he borrows the stock and returns it at some future day he does not return the identical shares that he borrowed, does he?

Mr. WHITNEY. No, sir.

Senator BARKLEY. He returns another 100 shares.

Mr. WHITNEY. Another 100 shares and receives back the money.

Senator BARKLEY. Which he has bought from somebody else.

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. So as a matter of fact it is not a loan but an actual sale of the identical shares of stock, is it not?

Mr. WHITNEY. No, sir; it is not a sale.

Senator BARKLEY. Well, there is a sale that transpires with reference to it.

Mr. WHITNEY. No.

Senator BARKLEY. What is the meaning of turning over to the lender a check for the amount represented by the stock?

Mr. WHITNEY. That is the method of borrowing the stock, that the lender receives the dollars and the borrower receives the stock.

Senator BARKLEY. Now, when the lender gets his stock back what becomes of the money he has in the meantime held?

Mr. WHITNEY. He pays it back to the borrower.

Senator BARKLEY. The same amount?

Mr. WHITNEY. The market value of the stock at the time.

Senator BARKLEY. At the time of the return?

Mr. WHITNEY. Yes; at the time of the return.

Senator BARKLEY. So that the lender may make a profit out of lending his stock, depending upon the fluctuations of the market?

Mr. WHITNEY. The lender being the individual customer makes that profit. Suppose he is long 100 shares on margin at the time of lending it and it may be selling at 50, and when it is returned it may be selling at 55.

Senator BARKLEY. All right.

Mr. WHITNEY. Then there is the difference, but it is purely a book-entry difference.

Senator BARKLEY. So that the lender does not profit by the lending of his stock to some broker who wants to deliver it on behalf of somebody he has sold to?

Mr. WHITNEY. Not in the difference of money. But he does profit possibly by the interest rate. If there is a scarcity in United States Steel then it may be lending flat and he has to pay no interest. Or, as sometimes occurs, Steel may be lending at a premium and then that premium goes to the lender.

Senator BARKLEY. Well, I do not understand from all I have heard about it.

Mr. WHITNEY. What was that?

Senator BARKLEY. That was just a facetious remark. Never mind.

Mr. WHITNEY. The actual money which the borrower pays to the lender is deposited against a return of that stock, and that amount of money must be kept to the market, as we call it, depending upon the variations in price of the particular stock loaned.

Senator BARKLEY. Let us say that United States Steel is selling at 33.

Mr. WHITNEY. All right.

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Senator BARKLEY. And somebody who has 100 shares is willing to loan them to a broker.

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. And he lets him have the certificate and in return receives a check for $3,300, and he then goes on about his business and deposits that $3,300 in his bank.

Mr. WHITNEY. Right.

Senator BARKLEY. And the broker gets the certificate and delivers it to whoever has bought it the day before.

Mr. WHITNEY. That is right.

Senator BARKLEY. And suppose that transaction remains in status quo for, we will say, two weeks, and in the meantime United States Steel goes up to 40, and the transaction proceeds to its conclusion, so that these 100 shares must be returned to the lender. It is then returned on a value of 40, which would be $4,000.

Mr. WHITNEY. In the meantime, however, the lender has called upon the borrower to put up an additional $700. It is kept at the market at all times.

Senator BARKLEY. He takes out of his $3,300 that he is holding as security for the stock, $700, or whatever amount the stock goes up to?

Mr. WHITNEY. Yes.

Senator BARKLEY. What happens to him when he gets it back?

Mr. WHITNEY. When he gets the stock back?

Senator BARKLEY. Yes.

Mr. WHITNEY. He pays back at the then market price of the stock.

Senator BARKLEY. Which would be 40?

Mr. WHITNEY. Yes; which would be 40.

Senator BARKLEY. Well, has he won or lost?

Mr. WHITNEY. Well, there is no question of winning or losing on that particular transaction. The only question of winning or losing would be when after getting that stock back he sold it out in the market.

Senator BARKLEY. But when he gets it back he has to put up in cash what represents its value at 40.

Mr. WHITNEY. Yes, sir; because he has already received that from the lender.

Senator BARKLEY. It is the lender I am talking about. I am talking about when the lender gets his 100 shares back.

Mr. WHITNEY. You have that inverted. The lender gets his 100 shares back and the borrower returns it.

Senator BARKLEY. The lender has turned over 100 shares for which he has received $3,300.

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. And it goes up to 40 and it is delivered back to him at 40. You say he has to pay at the price of 40 to get his stock back?

Mr. WHITNEY. He pays back to the borrower the amount of money that has been given to him by the borrower in keeping that stock to the market, the money that was on deposit with the lender.

Senator GORE. Then the borrower had to keep putting it up.

Mr. WHITNEY. If the market went against the short seller he had to put it up.

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Senator BARKLEY. Inasmuch as the market went from 33 to 40, the man who borrowed that stock and sold it had to keep putting up a margin?

Mr. WHITNEY. Yes.

Senator BARKLEY. And then he gets it up to $4,000, we will say. Then it is bought back or sold by somebody again and is returned to the original lender. And in that transaction you say he makes neither a profit nor a loss except as the interest charge may affect him?

Mr. WHITNEY. The lender?

Senator BARKLEY. Yes.

Mr. WHITNEY. But the short seller who sold at 33, in your instance, he borrows the stock and lets it ride for, say, two weeks, at which time it is selling at 40, and he decides to cover and buys it in and pays 40. He has lost $700. He returns that stock to the lender and his broker gets back the money that has been put on deposit. The lender, however, has no loss or profit there, except a book loss or profit, unless he goes out and sells that 100 shares on the market thereby completing his situation.

Senator BARKLEY. Out of the price at which he originally bought it.

Mr. WHITNEY. Yes, sir.

Senator COUZENS. That is on the assumption, of course, that the borrower doesn't split with the lender after he makes a profit. That issue was raised when you were here before, as to what the relation was between borrower and lender.

Mr. WHITNEY. Do you mean as to one house against another house?

Senator COUZENS. Yes.

Mr. WHITNEY. There is no split that I know of at all.

Senator COUZENS. Well, no matter. It is alleged and I think can be supported that the borrower of stock if he makes a profit splits with the lender. But I understand you do not admit such a practice.

Mr. WHITNEY. I do not know of any such practice. I stated the other day that where premiums are paid, by agreement between the customer and the broker they were sometimes split or the whole of them given to the customer.

Senator BARKLEY. Does the transaction which I have just recited with reference to a hundred shares of steel stock tend to create a fictitious market?

Mr. WHITNEY. No, sir.

Senator BARKLEY. The man who owned that stock did not desire to sell it; therefore, there was no market so far as he was concerned, but he was willing to loan it to somebody else.

Mr. WHITNEY. There was the market even if he did not care to sell it; yes.

Senator BARKLEY. So far as he was concerned there was no market, but he was willing to loan it to some other man who did not have any steel and therefore allow him to sell it. Does that of itself create a fictitious market and therefore a fictitious value?

Mr. WHITNEY. I can not see it, sir, no.

Senator BARKLEY. Do you know whether, as a matter of experience, it has done it, that practice?

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Mr. WHITNEY. I do not think so, Senator, no. I think it is quite the contrary. I think it is a very real market, not fictitious in any way.

Senator BARKLEY. That is a very, very profound question, whether the practice of selling something that you do not own, but which somebody else owns and which they are willing to loan you in order that you may sell it, creates a fictitious market, either by depressing it below its real value or by creating a situation where it may be brought back, and therefore another fictitious valuation put on it so that it would rise immediately after the sale.

Mr. WHITNEY. Short selling, as far as I know, the making of short contracts, exists in every industry in the world, pretty nearly. It is not confined merely to security markets.

Senator GORE. Let me get your point of view, Mr. Whitney. We will take a pair of Siamese twins.

Mr. WHITNEY. Yes, sir.

Senator GORE. They look at the market quotation and see that United States Steel is 35. One of the twins thinks that it is worth more than that and is going up and he buys on a margin, he buys for rise, he takes a risk of its going down; if it goes up he wins.

The other twin thinks that when it is selling at 35 it is too high; he thinks it is going down; he sells it short. He takes the risk of its going up. If it does go down he wins. It is your contention that the moral character of these two transactions is no different?

Mr. WHITNEY. Exactly. It is a great simile.

Senator GORE. I see.

Senator BARKLEY. In that case the Siamese twins, being inseparable, it is "heads I win and tails you lose," is it not?

Mr. WHITNEY. It is a stand-off, sir.

Senator GORE. I think that is the only way to play the market. Mr. Whitney, have you submitted or can you submit a chart or graph showing the decline of stocks since October, 1929, the decline of agricultural products which are dealt in on the exchanges, and also showing the decline in agricultural products that are not dealt in on the exchanges, so that we could have a graph showing the parallelism or the deviation of those prices and their levels and ranges? Can that be done?

Mr. WHITNEY. I think it can be done. I have not got it. I have here what may be of interest, however, a chart prepared by the Department of Agriculture, and it shows the values of farms throughout the United States, also in the west north central States, and the weighted yearly average in wheat and corn.

These figures show that farm values followed very slowly after the tremendous increase in the prices of wheat in 1916 up through 1919, and with the perpendicular fall in wheat and corn in 1920 and 1921 it was not until almost a year or more later that the farm values fell. It is an interesting point perhaps in that connection, Senator Gore, that——

The CHAIRMAN (interposing). May I ask, do you mean the value of farm lands, or farm commodities?

Mr. WHITNEY. Farm lands.

The CHAIRMAN. As shown from what record?

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Mr. WHITNEY. The Department of Agriculture's chart. This is the chart taken from their very figures, or rather the figures of the Department of Agriculture, and the chart is ours.

It may be significant here that the farm values, financed by mortgages presumably, did not show a decrease in value until some long period after the fall in the commodities wheat and corn. Perhaps the reason stocks and bonds show such a close relationship to earnings of corporations that they represent is because they are carried not on mortgage but on short-term loans.

I also have here a——

The CHAIRMAN (interposing). May I suggest there that it would be interesting to know how the farm values were determined. I know the Agricultural Department depends largely on census figures, and they are five years apart in most States, that is, five years from the Federal census to the State census.

Mr. WHITNEY. I have here, Senator Norbeck, the exact way that these figures were compiled as stated by the department. May I defer until those could be filed?

The CHAIRMAN. Certainly.

Mr. WHITNEY. I think we can, to go back, Senator Gore, find out what you want. We have not it here.

Senator GORE. I have heard it contended, Mr. Whitney, that farm products that are not dealt in on the exchanges have declined more and fluctuated more violently than the products that are dealt in. It would be interesting if that is true, because that benefits both the bulls and the bears and those that have no open market. If they have fluctuated more violently than those that do, it might show——

Mr. WHITNEY (interposing). I think that can be pointed out, at least interesting facts may be developed, on this very chart I have before me, which shows that wheat started at about $1.50 a bushel in 1915 and rose to a weighted price of about $2.20 in 1919, although it went to $3.25. This is a weighted yearly average price.

Senator GORE. It was pegged at $2.20 part of the time.

Mr. WHITNEY. And then it precipitously fell in price, yes; back to almost a dollar, and then later to below a dollar again.

Senator GORE. Does your chart show the range of farm land prices?

Mr. WHITNEY. Yes, sir.

Senator GORE. There is no short interest in that?

Mr. WHITNEY. No.

Senator GORE. The decline would be independent of that?

Mr. WHITNEY. They reached their peak in the United States farm lands in 1920, as did also the west North Central States farm values.

Senator Norbeck, the Department of Agriculture's figures, so stated as we took it off, farm real estate index numbers of estimated value per acre, 1912 to 1929, were taken from the Bureau of Agricultural Economics, United States Department of Agriculture, and in the west North Central States that included Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas. Does that answer your inquiry? Would you like this in the record as a matter of interest?

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The CHAIRMAN. I do not think it is necessary unless somebody wants it.

Senator GORE. I would like to have it in.

The CHAIRMAN. Very well; put it in.

Mr. BRANCH. Mr. Chairman, I think it would be important to have those exhibits marked by the reporter at this point and inserted in the record for future reference.

(Exhibit 16, being tabulation of "Farm real estate index numbers of estimated value per acre, 1912–1929," is here printed in the record in full as follows:)

EXHIBIT 16

Farm real estate, index numbers of estimated value per acre, 1912–1929 (1912–1914=100)

[Source: Bureau of Agricultural Economics, U. S. Department of Agriculture]

Geographic division	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921
United States	97	100	103	103	108	117	129	140	170	157
West North Central States	97	100	103	105	114	122	134	147	184	174
Iowa	96	99	104	112	128	134	145	160	213	197

Geographic division	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
United States	139	135	130	127	124	119	117	116	115	106
West North Central States	150	142	132	126	121	115	113	112	109	97
Iowa	162	156	143	136	130	121	117	116	113	98

NOTE.—West North Central States include Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

Yearly weighted average farm prices of specified crops, by crop years, for the United States as a whole

[Source: Bureau of Agricultural Economics, U. S. Department of Agriculture]

[Cents per bushel]

Crop year beginning	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921
Wheat	83.3	79.3	99.4	98.2	144.4	205.8	206.3	218.6	182.9	104.4
Corn	56.7	71.8	71.4	69.6	119.0	148.1	153.1	151.5	62.1	54.3

Crop year beginning	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Wheat	98.0	92.4	127.8	145.9	123.8	120.5	100.1	105.1	66.4	-------
Corn	76.7	84.0	105.8	71.0	74.9	85.2	85.8	79.8	56.1	-------

(Exhibit 17, being graph of "Farm real estate values per acre and wheat and corn futures," is here printed in the record in full as follows:)

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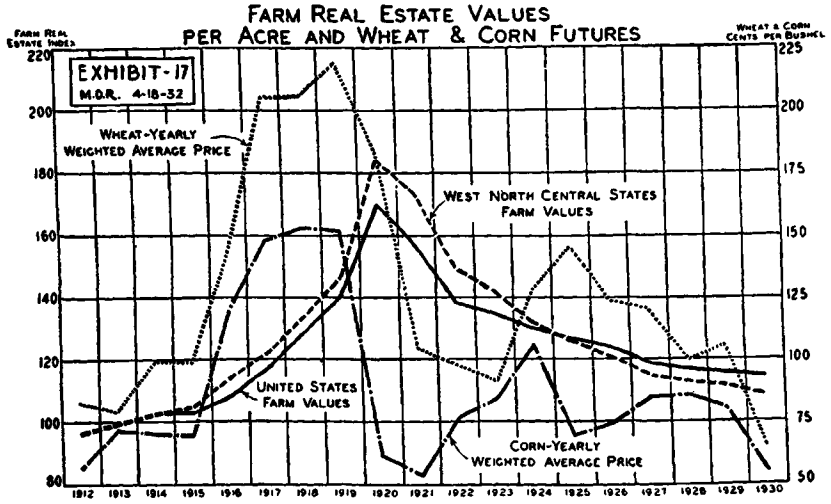

Senator FLETCHER. What was the index in 1926, Mr. Whitney?

Mr. WHITNEY. For which, Senator Fletcher?

Senator FLETCHER. Either farm lands or farm products?

Mr. WHITNEY. The price of corn was 75 cents, wheat $1.25, and farm lands approximately 100, as against the peak of 160 to 180.

Mr. GRAY. Now, Mr. Whitney, if we may bring you back to New York and the mechanics of short selling.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. You had completed your description, I think.

Mr. WHITNEY. I think so, except perhaps for irrelevant details.

Mr. GRAY. One or two little things I may ask—when a broker sells stock for a man short, as far as he is concerned and as far as the buying broker is concerned, it is like every other transaction on the stock market, is it not? It is completed between the two of them in the usual way, with delivery being made the next day and settlement being made through the clearing house?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. So that there are no differences as far as the part of the transaction is concerned between a long sale; that is, between a person who is selling and delivering his own stock, or even between a person who is buying, whether he is buying on margin and paying fully?

Mr. WHITNEY. No difference except in the conduct of the selling broker.

Mr. GRAY. Yes. Well, now, then, we are coming to the selling broker. The selling broker, having to make delivery and his clients not having the stock for the purpose of delivery, goes elsewhere and gets it, and he gets it almost invariably from another broker, does he not?

Mr. WHITNEY. I believe so.

Mr. GRAY. That is to say, either from some other broker or from stocks which he has himself and which he has an authority to lend?

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Mr. WHITNEY. Or from his customers who have given him authority to lend.

Mr. GRAY. I speak of that meaning stocks that he has himself with authority from the owners of it, they being pledged with him to lend.

Now, let us take the situation where he gets it from another broker. There is sometimes what is called a flat loan made, is there not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And that flat loan means that the lender gives the stock to the broker who has just put the transaction through, and the broker who has put the transaction through deposits with him the market value of the stock, but then there is no interest or premium paid—that is correct, is it not?

Mr. WHITNEY. There is no interest paid nor premium if the stock is loaned flat.

Mr. GRAY. And the broker who has borrowed the stock——

Mr. WHITNEY (interposing). That may happen, yes.

Mr. GRAY. Well, I am considering just the——

Mr. WHITNEY (interposing). A case, yes.

Mr. GRAY. An instance of flat loaning with no other elements in it.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. I want to get the entire mechanics before the committee. And the only thing that happens as between the loaning broker and the one who has borrowed the stock from them until the time that it is returned is that the broker who had made the sale and borrowed the stock has to keep in custody and control and possession of the broker who has loaned him the stock an amount of money equivalent to whatever the fluctuating market values are. That is true, is it not?

Mr. WHITNEY. Yes; with a further exception.

Mr. GRAY. Well, tell me the exception.

Mr. WHITNEY. That is, if, during the period at which the borrower is getting stock from the lender, the rate for that particular stock changes, so does the relationship between the borrower and the lender change.

Mr. GRAY. What do you mean by the "rate"?

Mr. WHITNEY. If it started off—your instance—flat, if that becomes a premium to be paid, then the borrower has to pay the premium to the lender; or, if that stock goes off the flat basis and goes on interest basis, then the lender has to pay interest to the borrower.

Mr. GRAY. In other words, if there is a change in the money rate you start with flat, as you would start with scratch in a race, there must be a change with this accordingly?

Mr. WHITNEY. There may be, yes; and if there is the relationship changes.

Mr. GRAY. That is, it changes from a flat lending to lending on interest and possibly lending on interest or premium?

Mr. WHITNEY. That is right.

Mr. GRAY. Assuming that there is no change in the rate, the only thing that must be done is to keep the lending broker on a par with market conditions, and then when the transaction is closed the returning to him of the stock and the securing of the money?

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Mr. WHITNEY. That is right.

Mr. GRAY. Now, in the meanwhile that lending broker has the use of that money for nothing, has he not?

Mr. WHITNEY. Yes.

Mr. GRAY. Does his customer get any benefit of that if he is lending the customer's stock?

Mr. WHITNEY. I explained that at length.

Mr. GRAY. Will you tell me that yes or no and then make any explanation you want? Does he get any benefit?

Mr. WHITNEY. Must I answer yes or no, Mr. Chairman?

Mr. GRAY. Is it not capable of being answered yes or no? If it is not capable of being answered yes or no, of course, I would suggest that it is not necessary.

Mr. WHITNEY. I would say yes and no.

Mr. GRAY. You have been doing that a great deal, I noticed by reading the record.

Senator GORE. That is Andy's method.

Mr. WHITNEY. Do you want an answer?

Mr. GRAY. Yes; I would like to have one.

Mr. WHITNEY. Well then, I will explain, as I explained to the committee before. The rate of interest charged to customers at the end of each month, by their brokers is based on what the money has cost the broker during that month to him. So, therefore, if that broker is loaning any considerable amount of his customer's stock flat, that will go into the reckoning at the end of the month, as to what money cost that broker during that month, and it will be passed on into the rate that he charges his customers.

If you take a specific instance of 100 shares, as I also stated to this committee, the amount of money and interest to the particular customer is almost infinitestimal. So my answer truly I think and properly is yes and no.

Mr. GRAY. Mr. Whitney, do you mean to tell this committee that if we subpœna the books of a brokerage house in New York in accordance with the records, if he were shown to be a very large lender of stocks to brokers who had sold short for their clients, in that instance the books would show that whatever moneys they had made in interest and premiums were taken into consideration at the end of the month in rendering a monthly statement to their clients and determining the interest or service rate, whatever it may be, that they in some States or another to avoid the usury laws they call it, that it would reflect itself there?

Mr. WHITNEY. In the determination of the rate of money cost to them during the month, the fact that they had a large amount of stock on loan would be reflected, in my opinion.

Mr. GRAY. Now, let me see: Do you mean to say that in determining the rate which a broker is going to charge his customer for money that he has loaned on only marginal transactions under which the customer is dealing, is lowered by that broker because he takes into consideration in making his calculation the net amount that it has cost him for money during the month?

Mr. WHITNEY. For money during the month, yes, sir; that is my opinion.

Mr. GRAY. Then if we subpœnaed the books of two different brokers, we will say they are active brokers both doing relatively

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the same amount of business, and one of them, however, was shown on the books during that month to have been a very large lender of stocks, while the other one had done practically no lending, the rate of the first broker mentioned for which he charged his customer would be substantially less than the rate which the other customer was charged? Is that correct?

Mr. WHITNEY. I believe that would be so.

Mr. GRAY. And do you also believe that taking a certain number of brokers dealing on and members of the New York Stock Exchange and in New York City, so that we might not go up against any State regulation, the rates which they charge at the end of the month to their customers—at the end of each specific month—varies substantially?

Mr. WHITNEY. Does the rate to the customer vary?

Mr. GRAY. Yes.

Mr. WHITNEY. Oh, yes; at times tremendously.

Mr. GRAY. Oh, at times—I recognize that, but taking the same month into consideration and taking a dozen different big brokerage houses, do you mean to say that the rate which one big brokerage house during that month would charge their customers would be less than another brokerage house that had made a considerable amount of money by loaning?

Mr. WHITNEY. Perhaps not, Mr. Gray, but you are forgetting, perhaps, that the rates are in small fractions; they are 3¼, 3½ per cent, or whatever it may be.

Mr. GRAY. Yes; but in large transactions they become very important, those fractions.

Mr. WHITNEY. If those large transactions have a tremendous influence or a great influence on the total result, then you have not stated an instance of it, nor have I got it particularly in my mind, any instance.

Mr. GRAY. Maybe I have not made the situation clear. Suppose, for instance, during a month that there was a very large short-sale interest. We take a half a dozen houses that have been actively engaged in the loaning of stock.

Mr. WHITNEY. Yes.

Mr. GRAY. The brokers who are buying for the short interests or selling for the short interests. And we take another half a dozen houses that are on a par with them as to the quantity of business they do but who do not make it a practice of loaning stock.

Would you say that the first half a dozen have charged their clients less by reason of the money that they have made from the money that they have loaned them on marginal accounts at the end of the month, than the second half dozen have?

Mr. WHITNEY. They might.

Mr. GRAY. I would like to know whether they do.

Mr. WHITNEY. Mr. Gray, you have got so many questions involved in this point. It is the type of business they do. It is where they are getting their money, whether by call loans or by time loans. There may be a difference, a lot of things weighing in the final rate arrived at. I do not pretend to state that there may be any great difference between our houses, but I do pretend to state that the cost of money from all sources affects that rate.

Mr. GRAY. What I am trying to ascertain——

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Mr. WHITNEY (interposing). And also that, to the individual whose stock is being loaned, in so far as the interest is concerned, it is a very, very small item.

Mr. GRAY. What I am trying to get at is whether or not these brokerage houses who loan stock, whether it be their own or their customers' stock, and get paid for it by interest rates, get paid for it by premiums——

Mr. WHITNEY (interposing). No, sir; we have not talked about premiums. We are talking about interest only.

Mr. GRAY. I will come to premiums, but let us confine ourselves to interest, if you prefer.

Mr. WHITNEY. Well, that is what you were confining yourself to in the flat rate.

Mr. GRAY. Let us confine ourselves to it then. The interest rate that is paid to that broker who loans that stock, do you mean to tell me that that is taken, either directly or indirectly, into consideration when the interest rate that he charges his customers is reached and fixed?

Mr. WHITNEY. It is taken into consideration in the finding of the cost of money during that period, and in its relationship to the rate charged to the customer, I believe that is a fact.

Mr. GRAY. And you mean that he takes into consideration the interest that he has received in order to figure the net cost of the money to him and he gives a customer credit for it.

Mr. WHITNEY. I think it is reflected——

Mr. GRAY (interposing). In reaching the figures?

Mr. WHITNEY. In reaching the conclusions; yes. But I do contend that that amount is very, very small in its relationship to a particular customer.

Mr. GRAY. Well, you mean because he is dealing with a large number of customers and when it comes to dividing up that interest which he has received from these lending transactions it is comparatively small?

Mr. WHITNEY. Very small; yes.

Mr. GRAY. Small in the first instance and then small because you have to divide it among a large number of customers?

Mr. WHITNEY. As to a particular customer; yes.

Mr. GRAY. Now then, you spoke of premiums. Does he give him the benefit of the premiums that he earns?

Mr. WHITNEY. In some cases; yes.

Mr. GRAY. Well, what cases doesn't he do it?

Mr. WHITNEY. It is a custom where the premium is very small not to give the premium, because the broker runs all risk of loaning the stock, and the bookkeeping and various other detailed actions on his part. There seems no particular reason why he should give that premium. I believe it is a custom that if the premium is requested an agreement is entered into by brokers.

Mr. GRAY. To pay it?

Mr. WHITNEY. To pay the premium, on the condition that the customer takes the risk.

Mr. GRAY. I wil ask you in a moment about the risk. I want to ask you this question now: If interest is received from the loaning of a customer's stock, why is not credit for that interest given to the specific customer whose stock is loaned?

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Mr. WHITNEY. Well, it is a legal question, Mr. Gray, but let me point out something——

Mr. GRAY (interposing). No; it is a practical question.

Mr. WHITNEY. All right, I am going to get to the practical side, because I can not pretend to be a lawyer. Suppose you are a brokerage house. I am going to put you in this position and let you do it.

Mr. GRAY. I may be able to get out of it as easily as you are doing.

Mr. WHITNEY. I am not trying to get out of it. I think this will show you why. There is a brokerage house whose customers have granted that broker by specific agreement the right to loan 10,000 shares of steel. You follow me?

Mr. GRAY. I do.

Mr. WHITNEY. That broker attempts in the loan crowd to loan 10,000 shares of Steel. Or he may be short for other customers and he is loaning for one customer to the others to fulfill their contracts. Out of the 10,000 shares of steel he is able to loan but 2,000 shares.

Now, if you will answer me to whom is he going to credit the interest or the premium on the 2,000 shares out of the 10,000 that he has a right to loan, then perhaps I could tell you how more easily could we adjust this matter by regulation.

Mr. GRAY. You mean he has a quantity of 10,000 shares that belongs to miscellaneous customers?

Mr. WHITNEY. Right.

Mr. GRAY. And he has authority from all of them to lend?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And he is able to loan only 2,000?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. If you are asking me for my answer I should say it should be divided among all of his customers that owned that particular stock and had authorized him to loan, and not divided and distributed among all of his customers who had no interest in that stock whatsoever. So I might suggest that as a change of your rules on the exchange.

Mr. WHITNEY. We have no rules on that.

Mr. GRAY. How do you govern that situation?

Mr. WHITNEY. Suppose that this broker has this 10,000 shares on which he has permission and it is divided among the accounts of a hundred customers a hundred shares each. Do you not appreciate that the bookkeeping there would be perfectly huge for the effort to be gained?

Mr. GRAY. In other words, the broker considers how much trouble he is being put to rather than how much benefit his customers are entitled to?

Mr. WHITNEY. I do not agree that the customer is entitled under the circumstances. I do not see how it can be adjusted.

Mr. GRAY. You spoke of premiums as small premiums. Tell me, in the ordinary times where there is some depression, where there is, we will say, a good deal of short selling—I am not necessarily talking about times of great depression or panic—and stocks for lending purposes in a particular issue become somewhat scarce, what are the premiums; what would they usually amount to?

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Mr. WHITNEY. In ordinary times the highest premium paid is flat. Of later there have been premiums ranging from one-two-hundred-and-fifty-sixths of 1 per cent up to particularly occasions of one-half of 1 per cent.

Mr. GRAY. Was that premium based on a percentage basis, Mr. Whitney, or so much a share per day?

Mr. WHITNEY. So much a share per day.

Mr. GRAY. Then, it is not on a percentage basis at all, is it?

Mr. WHITNEY. Only in the reckoning per day, that is all.

Mr. GRAY. Does it amount at any time to——

Mr. WHITNEY (interposing). That is the way we carry it, sir. Of course, it can be turned into dollars.

Mr. GRAY. Of some of these things I am discussing with you I may not have the knowledge and some I may have. I am just inquiring. With respect to this: A man may borrow a certain stock and may have to pay a premium for it of as high as 50 cents per share per day; is that right?

Mr. WHITNEY. The short seller may have to pay as high as that per day; yes, sir.

Mr. GRAY. That involves a question of a half a point on the stock, does it not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. So that, if a short seller makes a short sale to-day and pays a premium of one-half of 1 per cent for the stock which he borrows, for every two days that he holds that he has got to get at least one point advantage to be even, does he not?

Mr. WHITNEY. Yes, sir; eventually.

Mr. GRAY. As a usual thing, if he borrows stock under those circumstances and agrees to pay a premium of that amount, he anticipates a very substantial decline which is going to give him an opportunity to recoup, does he not?

Mr. WHITNEY. If he maintains his position; yes.

Mr. GRAY. Yes.

Mr. WHITNEY. He thinks he is going to have a profit to cover that, unquestionably.

Mr. GRAY. Premiums have risen to almost unnamable heights, have they not, until the stock exchange stepped in and controlled what might be a possible corner?

Mr. WHITNEY. Yes; they have. What I am thinking of is Wheeling-Lake Erie, and the corner in that stock; I do not know just what the premium was, but the Wheeling-Lake Erie situation was not really a corner; it was a situation where railroads were buying control, if I remember rightly, and the premium did go there very high.

Mr. GRAY. Where the shorts sold more than they could possibly get hold of without paying a substantial premium?

Mr. WHITNEY. I am not sure that there was any real, what might be called real, true, short interest. I think people got locked in.

Mr. GRAY. That is a short interest, is it not?

Mr. WHITNEY. Well, it might be. I do not think new contracts were taking place. That was an exceptional situation.

Mr. GRAY. You mean they were short quite some time before and could not get out?

Mr. WHITNEY. And could not get out.

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Mr. GRAY. The premium went to $7 and $8 a share?

Mr. WHITNEY. I believe so; yes.

Mr. GRAY. That meant $7 or $8 a day they had to have back for the lending of stock?

Mr. WHITNEY. Yes.

Mr. GRAY. So that a person who was short under those circumstances on Wheeling & Lake Erie either had to cover or lose 7 points a day in that particular stock until they did cover?

Mr. WHITNEY. That is right. But not, Mr. Gray, in the instance that you just said, that that person thought he was going to make that profit. In the Wheeling-Lake Erie case it is my opinion that they were locked in and could not cover because the stock was not available.

Senator BARKLEY. Mr. Whitney, did the practice of short selling on the New York Exchange cause this depression?

Mr. WHITNEY. No, sir.

Senator BARKLEY. You are positive of that?

Mr. WHITNEY. I am positive as I can be of anything in this world; yes.

Senator BARKLEY. Well, I will not ask you what did.

Senator GORE. I will ask you another question, too.

Mr. WHITNEY. May I follow that one point? My counsel says it may be of interest to you, Mr. Gray.

Mr. GRAY. All right, sir.

Mr. WHITNEY. There was a situation, to bring out more clearly why I made the remark that I thought people were locked in with shorts of Wheeling. I know of a case in my own office. The preferred, the two preferred issues, had a clause in them that was construed by many to allow the transfer of the preferreds into common stock, thereby allowing the individual to sell the common in which there was a market, take the preferred, transfer it, and deliver it against the contract. I believe there was a ruling by the Interstate Commerce Commission just at that time that that could not be done, and I know one instance, as I say, in my own office where an individual who owned outright the Wheeling preferred did that and found himself in a dreadful quandary.

Mr. GRAY. I understand.

Mr. WHITNEY. And as soon as he could correct his position he did so. I do not think it was the short seller's intent that the market was going down, but merely a hedge position.

Mr. GRAY. Well, I was not referring particularly to Wheeling & Lake Erie because of the purpose I had in mind; only that instance in connection with the loaning of stock and the possible payment of premiums.

Mr. WHITNEY. That is very unusual, such a high premium.

Mr. GRAY. By the way, you are concerned, of course, for your clients—you said you were in the bond business, but you are also in the brokerage business in connection with stocks, are you not?

Mr. WHITNEY. In the execution of orders of stock; yes, sir.

Mr. GRAY. In other words, you do not do any lending or borrowing of stocks for your own account?

Mr. WHITNEY. We do not do a marginal business.

Mr. GRAY. I do not want to get deeply into your personal matters. You say that your house does buy and sell on your own account?

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Mr. WHITNEY. At times; yes, sir.

Mr. GRAY. And you do loan stocks?

Mr. WHITNEY. If we own them, always, if we can; yes.

Mr. GRAY. But you do not have to make a distribution of your profits, not doing a marginal business?

Mr. WHITNEY. That is right. But I have often loaned stocks for customers that they owned, and invariably in such instances I have given them the entire premium.

Mr. GRAY. Because you do not make a business of doing that and that is a transaction where you simply acted as their agent?

Mr. WHITNEY. As their agent and they took the risk.

Mr. GRAY. By the way, you have mentioned that word "risk" several times. You take a transaction where a broker lends a hundred shares of United States Steel, to use an illustration, to another broker who has made a short sale for a client of his. That broker who loans it gets the full value of it and under the agreement from day to day the man who borrowed it has to keep on a level with the market. So what risk does he run?

Mr. WHITNEY. If he can not keep that stock on the level of the market, if by any chance there is any material change in the market, which has been quite frequent of late, and that broker fails. We have had a very pertinent instance of that recently.

Mr. GRAY. You mean by that, if, for instance, that United States Steel is sold to-day and it is at a certain price to-day, and it should go up to-morrow 5 points, it becomes necessary, taking the unit of 100 shares, for the broker that borrowed it to contribute another $500 to the lender to-morrow? That is what you mean?

Mr. WHITNEY. That is right.

Mr. GRAY. And that is settled through the clearing house?

Mr. WHITNEY. In many instances; in most instances.

Mr. GRAY. In every instance with the brokers?

Mr. WHITNEY. Not if it is a private transaction.

Mr. GRAY. I am talking about members of the exchange.

Mr. WHITNEY. No; if it is a private one outside, not done through the clearing house, it is allowable.

Mr. GRAY. Then there may be a number of such transactions aside from the regulations which have been put into effect lately that may never have been reported?

Mr. WHITNEY. No, sir.

Senator GORE. I would like to ask a question, Mr. Gray.

Mr. GRAY. All right, Senator.

Senator GORE. Back to my Siamese twins, Mr. Whitney: We will say they are Ching and Chang, and Ching bought United States Steel at 35, put up a margin, say, of 25 per cent, and his broker carried him for the balance. In other words, Ching borrowed the balance between the margin and the market price at which he bought. He borrowed the money to pay on his transaction.

On the other hand, Chang when he sold he put up his margin and he borrowed stock to consummate his transaction.

In the one case the bull borrowed money to carry on his transaction and the bear borrowed stock to carry on his transaction. That is a fact, is it not?

Mr. WHITNEY. Yes.

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Senator GORE. And your contention is that there is no moral distinction between borrowing money and borrowing stock to carry on these activities on the exchange?

Mr. WHITNEY. Correct.

Senator GORE. That brings me to one point, Mr. Whitney, that seems to raise a moral problem in my mind. Ching, the bull, bought first a hundred shares of United States Steel. He bought for a rise, anticipating a rise. Now, his broker lent his hundred shares of stock to Chang's broker, who sold that hundred shares short, who sold for a fall. It looks like there are two antagonistic forces at work and it looks like it is not fair, hardly, for Ching, who bought for a rise, to have his stock sold, which might have a bearish tendency and induce a decline in prices.

I can understand where, if Ching, the bull, consented to the loan of his stock, that rescued it from any moral iniquity and, of course, made it on the square.

Mr. WHITNEY. Ching's stock is never loaned to the short seller without the permission of Ching. Now, April 1 was not the date that that was inaugurated. That same permission has been in existence as long as I can remember with all customers.

Senator GORE. I understand that, but I also understand that only in a sort of general way and vague way did Ching, the bull, really appreciate what was going on. I understand that under your new rule he does know and he affirmatively consents in a separate agreement.

Mr. WHITNEY. That is right.

Senator GORE. That his stock can be lent for this particular purpose.

Mr. WHITNEY. That is right.

Senator GORE. Of course, he has no complaint in that case. I understand that.

Mr. WHITNEY. Senator Gore, perhaps I was not clear enough the other day on that particular point. I think it is interesting. I tried to state that whether or not the customers who had signed these permissions were cognizant of the various clauses in them might possibly be open to question, as Senator Couzens suggested. But I do point this out, and I want to stress it, that after bringing the attention of all customers throughout this country pointedly to this permission and making them sign the specific consent as to the loaning of stock, there was no change in the situation as to the availability of stock for loan on and after April 1 than what existed before April 1, thus showing that the people of this country, having it in their power and understanding what it meant to have their stocks loaned, allowed their stock to be loaned as it had been in the past.

Senator GORE. Yes; I understand. Now, after April 1 the customer gave his affirmative consent and was conscious of his consent and of the fact that he was giving his consent.

Mr. WHITNEY. Yes, sir.

Senator GORE. That is true under the existing rules?

Mr. WHITNEY. Yes, sir.

Senator GORE. I was not sure that was true under the old rule when it was involved in a general agreement and he might not exactly appreciate what he was doing and the effect of his own act.

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Mr. WHITNEY. Senator Gore, we will grant that for the sake of argument he did not entirely appreciate what he was doing. But the result as to their being stock for loan, available or loaning, did not differ in the past from what the situation is at the present.

Senator GORE. Well, I can see how it might have been more available in the past when they did not know what they were doing except as a matter of assumption rather than as a matter of fact.

Mr. WHITNEY. It was not more available in the past. I think there has been more stock available since this rule went into effect than in the past.

Senator GORE. Well, I could not see how that could be, because I assumed that under the old rule all the stock held by any broker in behalf of a customer was available to be lent if the broker saw fit to do it.

Mr. WHITNEY. I think because certain individuals who were long of stock had this thing brought to their attention and inquired as to there being premiums paid and thought they could make a little money.

Senator GORE. Yes.

Senator BARKLEY. Do these loanable stocks represent stocks that have been put up as collateral by customers in lieu of cash margin?

Mr. WHITNEY. Both, sir. What they have put up as margin and what they have purchased on margin. Any stock existing in their accounts.

Senator BARKLEY. For instance, if I had a hundred shares of Steel and I wanted to buy a hundred shares of General Motors and did not have any money, I would put up my hundred shares of steel as collateral?

Mr. WHITNEY. Yes.

Senator BARKLEY. That Steel, if I agree that you may loan it as broker, may be loaned to any customer who wants it to sell short?

Mr. WHITNEY. Yes, Senator Barkley; but please remember that that hundred shares of Steel in the carrying of the hundred shares of General Motors if it was not loaned would have to be put up in a bank.

Senator BARKLEY. I understand, as collateral for the borrowing of money?

Mr. WHITNEY. For the borrowing of money.

Senator BARKLEY. To enable you to transact your business?

Mr. WHITNEY. Yes.

Senator BARKLEY. We are assuming that, of course. Probably in this case it would not be necessary.

Mr. WHITNEY. I want to in that connection, Mr. Gray, perhaps further amplify my yes-and-no answer.

Mr. GRAY. Go ahead. These are only a few preliminary questions I am asking now.

Mr. WHITNEY. If I go to a bank with stock to borrow on, to get money on, I have to put up a margin at the bank.

Mr. GRAY. In other words, they loan you only part of it.

Mr. WHITNEY. Part. The rule of the exchange is that a broker may not use more of a customer's stock in borrowing money than is necessary to carry the account of the customer.

Mr. GRAY. Is not the rule the other way round; that he may not borrow more money on his stock than he is loaning? Is that not

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the rule? Is not the rule that the broker may not borrow more money on his customer's stock than he has loaned to the customer on that stock? Is not that the way your rule reads?

Mr. WHITNEY. It comes to exactly the same thing.

Mr. GRAY. Well——

Mr. WHITNEY. I will give you the constitution. We have it here. But the rule of the business conduct committee—we try to be very simple in our edicts—is that the broker may not use more of his customer's securities in making loans than is necessary to carry the account of that customer, and it is also true that the broker may not loan out of the customer's account more than is necessary to carry that account. He could not loan all of his shares. He can only loan that sufficient to cover his debit balance.

Now, to go back: When he goes to the bank the broker has to put up a margin, let us say, 25 per cent, the same that he has demanded of the customer. So, if he loans that stock in the loan crowd, the only benefit that he gets, the broker, is his interest on the 25 per cent margin. It is not on the entire amount; it is on the 25 per cent, the difference between what he receives or would receive from the bank in a loan and what he receives from the borrowing broker.

Mr. GRAY. Is that not a violation of your rule?

Mr. WHITNEY. No, sir.

Mr. GRAY. I was going to ask you about that later, but I will ask you about it now.

Mr. WHITNEY. What?

Mr. GRAY. If you have the rule, I will be glad to see the language of your rule, if counsel have it. You may read it fully.

Mr. WHITNEY. Section 4 of chapter 12 of the rules of the exchange [reading]:

> An agreement between a member and a customer, authorizing the member to pledge securities, either alone or with other securities carried for the account of the customer, either for the amount due thereon or for a greater amount, or to lend such securities, does not justify the member in pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said member.

Mr. GRAY. That does not mean that he may not go beyond the amount, then?

Mr. WHITNEY. "Than is fair and reasonable." In other words, if the customer is long 100 shares of stock, we do not make the broker split it up into 75 shares and 25 shares and hold the 25 shares in his office.

Mr. GRAY. But when a broker——

Mr. WHITNEY (interposing). That would be impossible under the mechanics of it.

Mr. GRAY. I understand that, because of the transactions being in hundred shares; but when a broker, however, in the instance of a hundred or any multiple of a hundred shares of stock, where he has bought it for a customer on margin and is so carrying it, loans that stock, he gets 100 per cent of its value into his hands, does he not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Can you make it a little bit clearer to me? It may be my denseness, but I do not quite see it, just where he is running any risk at all when, on the one hand, he has loaned, to use your same percentage, to his customer 75 per cent of the value of that stock,

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his customer is paying him interest on that 75 per cent, he has loaned the stock to some one else and he gets his money back and keeps that money, notwithstanding the fact that the interest is being paid to him, and he is in a position in which his customer has to make good at all times for any fluctuations in the value. What is the risk he is running?

Mr. WHITNEY. I thought I had explained that by saying——

Mr. GRAY (interposing). You may have, but I say I did not understand it.

Mr. WHITNEY. That when the broker lends that stock to another broker and there may be fluctuations in the market and the borrowing broker is unable to meet those fluctuations and fails, there may be in the selling out or the buying in of that contract a loss to the broker. In this particular instance, the buying in of the contract, there may be a loss incurred on a transaction which is first that of the lending broker. He, of course, under our regulations, may put it against the borrowing broker, where it belongs. If the conglomerate claims against that borrowing broker are such that he can not pay them, losses will be incurred by those brokers who have loaned stock to him or who have other contracts.

Mr. GRAY. You spoke of such an instance being in your mind a moment or two ago, but they are rare?

Mr. WHITNEY. Yes; they are rare. Insolvencies are rare on the exchange, but nevertheless they may occur.

Mr. GRAY. Did you ever know of instances where the brokers voluntarily, when they are loaning the customer's stock, offer to the customer the option first of taking the benefit of that if they desire it?

Mr. WHITNEY. I do not understand your question at all.

Mr. GRAY. For instance, you say that the customer himself may get the benefit of that lending agreement, provided he is willing to run the risk. Have you ever known it to be the practice in any brokerage house for the brokers to offer the customers the opportunity to make a profit that the broker makes if he is willing to assume the risk?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. You have?

Mr. WHITNEY. Yes, sir. Mind you, that is absolutely——

Mr. GRAY (interposing). I am not talking about your house.

Mr. WHITNEY. That is a matter between the broker and the customer. That is in the power of the customer in signing the agreement that his stock may be loaned. He may require the premium or he may not. He may move his account elsewhere. All those matters are in his entire jurisdiction, in the jurisdiction and control of the customer.

Mr. GRAY. Brokerage houses up until a certain point of time had a form which they required their customers to sign which included in it the authority to the broker to loan the customer's stock; that is true, is it not?

Mr. WHITNEY. Many forms; yes, sir.

Mr. GRAY. And as a matter of fact some time ago the stock exchange required its members to get a separate form without anything else on it signed by its customers authorizing the loaning of the customers' stock, did they not?

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Mr. WHITNEY. Before their customers' stock could be loaned; yes, sir.

Mr. GRAY. And when was it that that reform came into being?

Mr. WHITNEY. That rule went out in February some time, to take effect as of the 1st of April.

Mr. GRAY. As of the 1st of April of this year?

Mr. WHITNEY. Of this year.

Mr. GRAY. Yes, sir. And as a matter of fact, in practice the various brokerage houses immediately mailed to their customers those forms, with the request that they sign them—is that true?

Mr. WHITNEY. I presume so. I do not know whether they mailed them or whether they presented them by person or what they did.

Mr. GRAY. They got them to their customers in some way?

Mr. WHITNEY. Exactly. That was a necessity.

Mr. GRAY. Necessity from whose viewpoint?

Mr. WHITNEY. In order to conform with the rules of the exchange if they wanted to loan that stock.

Mr. GRAY. Necessity from the broker's viewpoint if he wanted to loan the stock?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And inasmuch as there is a decided advantage to the broker in the loaning of the stock, they pressed their customers for the signing of that authority, did they not?

Mr. WHITNEY. I do not agree with you, Mr. Gray; no.

Mr. GRAY. You do not agree?

Mr. WHITNEY. No.

Mr. GRAY. Would you consider it, if you please—I will not put you in that position because of what you tell me in connection with the manner of your firm's conducting business—do you think that a broker conducting a general business with margin and short accounts and in the habit of loaning stock would consider it an advantage to retain under his control the average customer who would not consent to the loaning of his stock?

Mr. WHITNEY. I believe to-day; yes. Normally, perhaps not. I think you have forgotten or passed over the fact that the loaning of stock, forgetting the state of mind that exists in this country as to the depression and as to the deflation of stocks, you have forgotten the fact that the loaning of stocks is one way of financing the commitments of customers.

Mr. GRAY. I have not forgotten it, because I differ with you as to whether it is, although you have had much wider experience than I have in matters of that kind.

Mr. WHITNEY. Well, I should be interested to be shown where it is not.

Mr. GRAY. Well, to come back to what I was talking about and not get to another subject: Would you consider a letter that I am going to read to you that I have in my hand that was sent out by a brokerage concern under the date of March 16, 1932, a typical letter that was sent to the customers with respect to the signing of this new authority to lend:

DEAR SIR: The New York Stock Exchange has adopted a resolution effective April 1, 1932, under which member firms are required to secure a separate specific authorization in writing in order to lend securities held on margin for any customer.

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We inclose herewith one form of authorization, and if the same is agreeable to you, you may sign it and return it to us.

You may, of course, revoke this authorization by written notice to us, and the inclosed form expressly permits such revocation by you.

Do you consider that a typical form?

Mr. WHITNEY. It sounds so, yes, sir; leaving it to the discretion purely of the customer.

May I in that connection, Mr. Chairman, present as an exhibit——

Mr. GRAY (interposing). Just a minute, please, and then present your exhibit after you let me put my secondary question in connection with this matter, and your answer.

And six days later another letter is mailed out by that same firm that has received no reply from the customer, and would you consider this typical:

DEAR SIR: We have not received any reply to our previous communication. We are now inclosing duplicate card and beg to advise you that it is a matter of importance and we must request you to sign and return the same to us immediately.

Was that typical of what the brokers did where they did not get the cards returned to the first letter?

Mr. WHITNEY. That I can not answer, Mr. Gray. It is true in the letter that you read.

Mr. GRAY. There does not seem to be much option left to the customers in that second letter, does there?

Mr. WHITNEY. If he does not want to he does not have to sign it.

Mr. GRAY. No. In other words, if he is a margin customer and he knows he has got to depend on his broker for the purpose of carrying him, he is very likely to do what his broker wants him to do, is he not?

Mr. WHITNEY. Or else go to another broker or to have the banks carry him, which has been a common practice.

Mr. GRAY. And if he goes to another broker the other broker is going to require him to do the same thing?

Mr. WHITNEY. Not necessarily, at all.

Mr. GRAY. Not necessarily. But, of course, a great many things are not necessarily so, but practically that is what would happen, would it not?

Mr. WHITNEY. You seem to be trying to impute some derogatory action on the part of the broker. Let me explain briefly——

Mr. GRAY (interposing). Only to this extent, that he is working for his own interest at all times, primarily for his own interest. If you want to get what belief of mind I seem to be imparting to you in my questions; yes.

Mr. WHITNEY. Well, I do not agree with the belief of mind, because you are trying to stress that this is all to do with short selling. I am sorry I have to go over and take the time of the committee repeating myself.

Mr. GRAY. If there were no short selling there would be no lending, would there?

Mr. WHITNEY. What!

Mr. GRAY. If there is no short selling there would be no lending?

Mr. WHITNEY. Then you have not read the testimony.

Mr. GRAY. Maybe not. But answer my question—if there were no short selling there would be no lending?

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Mr. WHITNEY. Why, of course there would be lending.

Mr. GRAY. What would the lending be for?

Mr. WHITNEY. Absolute necessity in many, many cases.

Mr. GRAY. What would the lending be for?

Mr. WHITNEY. I will try to repeat verbatim what I stated to this committee before.

Mr. GRAY. Is that answering that question, what you said verbatim?

Mr. WHITNEY. Yes; absolutely.

Mr. GRAY. If it is an answer to the question I have no objection to your repeating verbatim. If not, please answer my question and then repeat what you want verbatim.

Mr. WHITNEY. I will try to answer your question.

Mr. GRAY. All right.

Mr. WHITNEY. I am an individual in California. I have in my safe deposit vault 500 shares of steel. I give an order to my broker to sell it and he sells it in New York. By no stretch of anyone's point of view can that stock of mine in my safe deposit vault in California be delivered to my broker in New York by 2.15 the next day for delivery in accordance with the contract he has entered into for me. He must borrow.

Now, we have hundreds and hundreds of brokers throughout this country dealing with the New York Stock Exchange as members or as correspondents who must in the natural course of their business have their brokers in New York borrow for them against sales which are not short sales.

Mr. GRAY. What you call sales against the box?

Mr. WHITNEY. No, sir.

Mr. GRAY. Well, it is virtually, because the man expects to deliver eventually instead of carrying it on as a short sale?

Mr. WHITNEY. No, sir; not at all. The stock may be carried by a new——

The CHAIRMAN (interposing). In other words, the term "selling against the box" may be the covering of another transaction where a person may have his shares in the box and still not deliver them?

Mr. WHITNEY. That is right. That is another type of transaction.

The CHAIRMAN. It would be short selling and just holding them in the box as a sort of insurance against disaster?

Mr. WHITNEY. It may be. I do not agree, Senator Norbeck, that the man who sells against the box with the knowledge of his broker is a short seller. He may, possibly, without the knowledge of his broker, sell short and give such an order. What I am talking about is the individual in delivering his stock to his broker at the time of sale, if you wish, the broker has it in his control at the time of sale and that is not selling against the box, and the borrowing of stock is of vital necessity in that operation.

Senator BARKLEY. In the case you cited you actually deliver your 500 shares of steel stock to your broker in California?

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. When it is sold?

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. And the reason the borrowing is entered into in New York is because it takes three or four days to get that certificate

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from California to New York and the delivery must be the next day?

Mr. WHITNEY. Absolutely.

Senator BARKLEY. And a period of two or three days before the stock reaches New York elapses and when it does reach New York it takes the place of the stock that has been borrowed?

Mr. WHITNEY. That is right, Senator Barkley.

The CHAIRMAN. If this is a good time to close we will recess until 2.30 and the witness will continue on the stand at that time.

(Accordingly, at 12.32 o'clock p. m., a recess was taken until 2.30 o'clock p. m. of the same day.)

AFTER RECESS

The committee resumed at 2.30 p. m. on the expiration of the recess.

The CHAIRMAN. The committee will come to order.

Senator BLAINE. Mr. Chairman, when Mr. Whitney was before the committee at the last hearing he was requested and he promised to bring certain records, papers, and files, and certain information. I will ask Mr. Whitney if he has brought that information and those files.

TESTIMONY RESUMED OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.

Mr. WHITNEY. I think, Senator Blaine, that everything I was requested to send, and specifically as I understood Mr. Branch to request on Tuesday, was sent down here and delivered on Saturday afternoon.

Senator BLAINE. Well, then, Mr. Chairman, I ask that all those records and all the information which Mr. Whitney was requested to bring, and which he did bring to Washington, be now laid before the committee.

The CHAIRMAN. Very well.

Senator BLAINE. I do not mean that they physically be placed here now, but that they be put in the possession of the committee and that any and every member of the committee have the privilege to go and examine those files and records.

The CHAIRMAN. It is so ordered. Mr. Whitney told me this morning that he was bringing certain papers requested by different Senators, and he asked me how to bring that out, and I told him later in the day I wished he would announce it so that it would be a part of the record, and he said he would. I do not know why it did not come up earlier.

Senator BLAINE. May I ask, Mr. Chairman, if those records and files are available to the committee?

The CHAIRMAN. That is for the committee to determine, but it is my view that they are.

Senator BLAINE. Have they been laid before the committee? If Mr. Whitney has them he could not deliver them to a member of the committee. He could deliver them only to the committee. I

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understand that now by order of the chairman they have been laid before the committee. Now, that carries with it the right of every member of the committee to examine those papers. Am I correct in that understanding?

The CHAIRMAN. Yes. But go ahead, Senator Walcott.

Senator WALCOTT. I think I can clear the situation up for Senator Blaine. The records that were asked for by the subpœna were sent in here to the committee.

The CHAIRMAN. And they were received in this room.

Senator WALCOTT. And the papers that were received here Saturday evening, those are all available to the committee and have been. I will say that they have been in the possession of the committee, ever since then. And I am very much in favor of your resolution, Senator Blaine, that they be laid before the committee formally, but I will say that they have been in the possession of the committee, in the committee room, since they arrived. I might also add that everything asked for in the subpœna of Mr. Whitney has been responded to and that we have everything asked for.

Senator BLAINE. And now they are formally laid before the committee, so that any member of the committee may examine them.

The CHAIRMAN. It has been my understanding that they were available to every member of the committee from the minute they were delivered here. No one asked for them is the only reason they have not seen them.

Senator BLAINE. That is true, as to the chairman's understanding. But there having been no meeting of the committee, and not having formally been laid before the committee I did not feel like asking some member of the committee if he had the records, because no member of the committee is entitled to those records until formally laid before the committee. It is the committee that is entitled to them, and therefore I felt that it became absolutely necessary to lay them before the committee so that the members might go in and examine the files and records. I assume that the clerk of the committee has possession of those papers for the committee and can make them available to any member of the committee upon request of the member?

The CHAIRMAN. Exactly.

Senator BLAINE. Thank you.

The CHAIRMAN. May I state that the attorneys tell me if they could proceed for a couple of hours without much interruption it might not be necessary to have a hearing to-morrow. I just want to request members of the committee to give the attorneys as free a hand as they feel they can, and that whenever they interrupt, not to make it longer than absolutely necessary. We will in that way try to make real headway this afternoon.

Mr. Gray, you may proceed with your examination.

Senator BLAINE. Mr. Chairman, let me suggest that I would urge very strongly that the attorney be permitted to pursue his examination without any interruption. Then when he is through the members of the committee would be at perfect liberty and would have the opportunity as well to examine the witness at such length as the members may desire.

The CHAIRMAN. Do you mean after the attorney gets through?

Senator BLAINE. Yes.

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The CHAIRMAN. That would be the better way to proceed. I understand there are a number of members of the committee who want to ask questions, and they will have an opportunity later on.

Senator BARKLEY. Do I understand that that is any reflection upon the proceedings we had this morning?

The CHAIRMAN. No reflection upon any Senator.

Mr. GRAY. It makes no difference to me.

The CHAIRMAN. The request did not come from the attorneys not to be interrupted. But they did inform me that if they could go ahead without interruption it would not take so long. You may proceed, Mr. Gray.

Mr. GRAY. Mr. Whitney, was there ever any rule prohibiting members from selling short on the New York Stock Exchange at any time? I do not mean by my question what you may have put into effect as an order in an emergency situation, but is there any rule preventing the selling of stocks short?

Mr. WHITNEY. Not that I remember, Mr. Gray, except on September 21 and 22——

Mr. GRAY (interposing). That was emergency action. Is it not a fact that short sellers, and I am speaking of those who are professionals and who keep closely in touch with the market, endeavor to keep the market at a certain level while they are selling their stocks and fixing their position and before they withdraw their support, and then, with the withdrawal of that support, accompanied by other actions on their part, it takes place for the purpose of driving the market down in order that they may cover?

Mr. WHITNEY. I have no knowledge of any such operation as you suggest; no.

Mr. GRAY. Have you found instances where positions have been assumed on the short side of the market by brokers who have advised their customers to buy that particular stock that they may be short in? In other words, to advise their customers to take a position contrary to the position which the firm is maintaining?

Mr. WHITNEY. No, sir; and if we did we would take immediate action against any such firm.

Mr. GRAY. In other words, in instances of that kind if they were directed to your attention you would consider that they were violations of your rules and regulations?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Have you found any instances where there has been a very large short interest in the market, rumors that have been circulated, we will say, both with respect to it, true in some respects, if you please, but false in the major portion of the rumors, and for the purpose of depressing the market?

Mr. WHITNEY. Do you mean attributable to our members?

Mr. GRAY. Yes.

Mr. WHITNEY. No.

Mr. GRAY. Well, I will divide that question and ask you: First, attributable to your members who are holding a short position?

Mr. WHITNEY. No, sir.

Mr. GRAY. Have you found that it exists attributable to others, who were not members of your stock exchange, but who hold a decidedly short position?

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Mr. WHITNEY. No, sir; not to my knowledge. You are asking me, as I understand, whether we know of rumors as having been started by persons with a large short position, and my answer is, no.

Mr. GRAY. Do you mean by that to say that you do not know it officially?

Mr. WHITNEY. I do not know it personally, either.

Mr. GRAY. You never heard of that?

Mr. WHITNEY. Of the fact?

Mr. GRAY. Yes; of the fact that rumors have been so circulated.

Mr. WHITNEY. Mr. Gray, I have heard of a great many rumors, but that they could be placed at the feet of short sellers specifically or of our members, I have no knowledge.

Mr. GRAY. Isn't it a fact, and if you make an examination of charts that might be drawn for the purpose of showing the relation of the short interest to the market in its ups and downs, isn't it a fact that the short interests usually cover, and the charts so indicate, when the decline runs for a certain length of time, say, for about two-thirds or three-quarters of the actual time? If I do not make myself clear I mean this: Isn't it a fact that the charts in connection with short sales, as compared with market conditions, show that the shorts start to cover at about two-thirds of the decline? Have you ever looked into that?

Mr. WHITNEY. No; and I can not answer your question.

Mr. GRAY. I will show you some charts on that later. But isn't it a fact that the short seller usually sells when the market is in an unfavorable condition?

Mr. WHITNEY. You asked me that question this morning and I can merely refer you to my answer. That is not my understanding. He may do it at that time but that is not necessarily an absolute fact as to his operations.

Mr. GRAY. I directed your attention this morning to the statement that you made before the House committee, showing that the short interest was relatively small at the peak of the market in 1929, in October.

Mr. WHITNEY. That was our belief.

Mr. GRAY. Can you tell us when that short interest began to increase? And then I shall ask you afterwards to what point it increased.

Mr. WHITNEY. No; I can not. We collected the figures beginning with November 13, 1929, and for I think two or three weeks. I have not those figures before me and I do not know. Then we ceased and have not regularly compiled any figures until May 25, 1931. We asked in 1930, in October or November, for some short figures to be brought up to date from June, not on the lines that we have asked of late, but on certain things in order to acquaint ourselves.

Mr. GRAY. From the statistics that you collected, running from November 13, 1929, on down for those few weeks, can you tell us what the short interest was on any of those dates?

Mr. WHITNEY. I believe as of that date, November 13, 1929, it was approximately 1,600,000 shares.

Mr. GRAY. That was not a very large short interest, was it?

Mr. WHITNEY. I do not think so. I wish to point out that the market had gone down very materially in the preceding two or three weeks.

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Mr. GRAY. And for how long did you get those figures, I mean at that time?

Mr. WHITNEY. I am not quite sure. Our counsel tells me for about three weeks, Mr. Gray. We never made any compilations, as I remember it, such as we have made on these figures since May 25, except on that one day.

Mr. GRAY. Can you tell me whether or not in that period of three weeks that short interest materially increased?

Mr. WHITNEY. I do not know. I can probably find it out, but I do not know now.

Mr. GRAY. I should be very glad if you would find out and advise this committee.

Mr. WHITNEY. Very good.

Mr. GRAY. As of any date that would be accessible to you, whether at the end of the three weeks or at the end of one week, or of two weeks, after November 13, 1929.

Mr. WHITNEY. May I first see what we have?

Mr. GRAY. Certainly.

Mr. WHITNEY. I am not at all sure, and after I see what we have then I can communicate with you and advise you as to whether or not such things as you want are possible of compilation.

Mr. GRAY. All right. Now, from November 13, or from three weeks after November 13, 1929, you stated that you kept no records of this matter until May 25, 1931; is that correct?

Mr. WHITNEY. No regular reports of our members to the exchange.

Mr. GRAY. My recollection is that you said a moment ago that you asked for some reports dating back. Do you mean somewhere around May of 1931 you asked for reports covering, we will say, January, February, and March?

Mr. WHITNEY. Around October or November of 1930 we asked for some figures, to include June, July, August, September, and October, if I remember rightly. But they were not, as I say, as specific as these figures we are now having compiled and reported to us and, if I remember rightly, not along the same lines in many details.

Mr. GRAY. They were for the months of June to October, 1929.

Mr. WHITNEY. From June to October of 1930, inclusive, I believe.

Mr. GRAY. You asked for them some time in 1931?

Mr. WHITNEY. No; we asked for them at the end of the period, some time in October of 1930.

Mr. GRAY. Could you tell the committee how high the short interest rose at any time between November 13, 1929, and May 25, 1931?

Mr. WHITNEY. No; I can not, Mr. Gray. But that is another point that we may be able to give you if you wish us to look it up. But I am not positive about it.

Mr. GRAY. Is it not a fact that at times in the early part of 1931, as well as the latter part of 1930, that that short interest rose to seven or eight million shares?

Mr. WHITNEY. We have no knowledge of it.

Mr. GRAY. Have you any recocllection of it yourself?

Mr. WHITNEY. I would have no basis upon which to form such an opinion. May I state here, Mr. Gray, that when we first requested those figures, on May 25, 1931, there were various estimates as to the short position, and those estimates almost universally were made as

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a reckoning of the short interest to be between ten and fifteen million shares.

Mr. GRAY. At what point of time was that?

Mr. WHITNEY. This was May 25, 1931, when we asked for those figures. And the proof was that the short interest was 5,679,000 shares, if I remember rightly.

Mr. GRAY. That is approximately correct, as I recall. I think the figures were 5,600,000 shares—wait a minute. What figure do you give?

Mr. WHITNEY. From recollection I gave it to you just now as 5,679,000 shares. Anyway, it was close to that.

Mr. GRAY. It was 5,589,700 shares, according to your tabulation that we have here.

Mr. WHITNEY. All right.

Mr. GRAY. The short interest on May 25, 1931, taking standard stocks and taking the market in general, was higher than it has ever been at any time since; isn't that true?

Mr. WHITNEY. That is correct. You asked me about the short interest, did you not?

Mr. GRAY. Yes.

Mr. WHITNEY. The short interest was higher on May 25, 1931, than it has been at any time since.

Mr. GRAY. I do not want to repeat my questions, but isn't it a fact that after the peak in October of 1929, in the declining market that short interest gradually increased?

Mr. WHITNEY. I do not know. I can not tell you. We have no schedule of figures, and I do not remember of any compilation being made during that period since November 13, 1929, for any particular day on which I could even base a guess.

Mr. GRAY. Now, the chart which you have in front of you, I believe, and which I think was marked Exhibit No. 10 in this hearing.

Mr. WHITNEY. All right.

Mr. GRAY. Showing the relation of the short interest to the action of stocks over a certain period of time, was based on certain standard stocks. That is correct, is it not?

Mr. WHITNEY. Certain standard stocks that the Standard Statistics Co. used for their index figures.

Mr. GRAY. And in which were included what might be designated as permanent—and the word "permanent" is hardly a correct one—but as a permanent short interest as distinguished from those who buy and sell on the same day.

Mr. WHITNEY. Do you mean our compilations?

Mr. GRAY. Yes.

Mr. WHITNEY. Yes, sir. The net position at the end of each day or at the opening of each day.

Mr. GRAY. Senator Fletcher wants me to ask how many stocks are given consideration by the Standard Statistics Co. in making that compilation. It is approximately 90 stocks, is it not?

Mr. WHITNEY. Ninety stocks, yes. I want to point out to Senator Fletcher, however, that when we have compiled figures as to the short interest we have as of each date shown the number of issues in which a short interest existed. If I could have that compilation for a second I would be able to tell Senator Fletcher.

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Mr. GRAY. Do you mean that you have broken it down as to the various stocks?

Mr. WHITNEY. Yes.

Mr. GRAY. So that some of these schedules that are in evidence now before the committee will indicate, if the members will examine them, of just that short interest, of how much it was in one stock and how much in another.

Mr. WHITNEY. And in how many stocks a short interest existed as to each day. There are 90 stocks taken by the Standard Statistics Co. in order to give their index figure, and there was a short interest as of May 25, 1931, in how many stocks, Mr. Stock?

Mr. STOCK. These 616 different stocks.

Mr. WHITNEY. Yes, in which there was a short interest.

Mr. GRAY. Isn't it a fact, Mr. Whitney, that that short interest, however, is largely concentrated in what are known as the key stocks?

Mr. WHITNEY. The larger short interest is always, of necessity, in the more active stocks. The more active stocks are probably the key stocks. But there is a considerable short interest in many stocks, and I believe in answer to sections 1 or 2 of your subpoena it was shown that in the case of between 53 and 65 stocks there was a short interest of 10,000 shares or more.

Mr. GRAY. Isn't it a fact that where you have a short interest that is divided, for instance on May 25, among 616 stocks, a very large proportion of the total number of shares represented by that short interest are confined to approximately 25 or 30 stocks?

Mr. WHITNEY. To 50 or 60 stocks, I would say.

Mr. GRAY. You would say 50 or 60 stocks.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And what percentage to the 50 or 60 stocks?

Mr. WHITNEY. That I do not want to guess about, but it could be worked out very easily.

Mr. GRAY. You would say it was correct if I called your attention to the fact that Mr. J. George Frederick has made a calculation as of May 25 with respect to 22 stocks, and that he shows the short interest with respect to those 22 stocks represented 35 per cent at that time of the total outstanding? You would say that that was correct, would you not?

Mr. WHITNEY. That may be correct. I do not know Mr. Frederick, and I do not know the source of his information. But as I say it could be easily worked out.

Mr. GRAY. Well, Mr. Whitney, let me say to you that the schedule which he has furnished is accurate when a comparison is made with the schedule that you have furnished as of that date. Will you accept that as being the proper figures, then?

Mr. WHITNEY. In those circumstances I can answer that I think it is.

Mr. GRAY. Now, in the chart that has been marked "Exhibit 10," and in the data which has been furnished in these other schedules, I think you have already stated you only included the definite outstanding short interest, and that you did not take into consideration the short sales that were covered on the same day. You have already told us that, have you not?

Mr. WHITNEY. Because they offset each other.

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Mr. GRAY. What do you mean when you say they offset each other?

Mr. WHITNEY. Because I can not see the distinction between what is the dire effect, or any effect for that matter, of selling 100 shares short on a particular day and 100 shares being bought on that particular day. There is no net change in the short interest.

Mr. GRAY. There is no net change in the short interest. Of couse, it represents selling and buying and therefore it equalizes itself at the end of the day so far as the quantity of stocks is concerned. There is no doubt about that, is there?

Mr. WHITNEY. That is true.

Mr. GRAY. But would you consider it would make a difference if those short operators sold at a certain hour during the days and drove stocks down to a point where they were able to cover?

Mr. WHITNEY. What do you mean by driving stocks down?

Mr. GRAY. Well, don't you know of any methods that are adopted by any short sellers for driving the market down?

Mr. WHITNEY. I do not know of any bear raid that has taken place on the New York Stock Exchange, or of any efforts to drive stocks down, for a long, long period of time. We have not been able to find it.

Mr. GRAY. For how long?

Mr. WHITNEY. At least nine months to a year or more that we have been investigating.

Mr. GRAY. How about before that?

Mr. WHITNEY. We have not any proof that any such action took place.

Mr. GRAY. You do not think that in the last nine months or a year there has been any concerted action on the part of any short interest for the purpose of driving the market down in order that they might cover?

Mr. WHITNEY. Not so far as we can find out.

Mr. GRAY. Do you mean by that answer that not so far as you officially know?

Mr. WHITNEY. No; not so far as we officially, by means of investigation, could find out, and we have investigated hundreds and thousands of cases where a large block of stock was sold, to find out whether it was for short account, and invariably it was not.

Mr. GRAY. On some days the permanent short interest that we have been referring to may change 20,000 shares, and on another day a very much larger amount. It may increase or decrease as your statistics show, don't they?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. But take a case, and it frequently happens, where we will say 160,000 or 200,000 shares are sold short on one day and covered on the same day.

Mr. WHITNEY. That has happened, I believe; yes.

Mr. GRAY. And you do not think that has any depressing effect upon the market?

Mr. WHITNEY. No; I do not think it has a depressing effect upon the market, any more than I think if a short seller sends an order in to sell 100 shares and he sells it to a purchaser who is a short seller covering. I can not see any depressing effect upon the market in that.

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Mr. GRAY. Did you ever make any investigation to determine when this day short selling that was covered, usually took place, at what hour?

Mr. WHITNEY. No, sir. Do you mean that the reconstruction of the tape would give us that?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir. I do not know how it could be done. I should like to know.

Mr. GRAY. Well, it could be done if there was any symbol used to indicate short sales? It could be done in that way?

Mr. WHITNEY. Yes; I suppose it might be done. But I stated here last week, Mr. Gray, that I could not see any distinction between marking a short sale and marking a marginal purchase.

Mr. GRAY. Why not mark both of them?

Mr. WHITNEY. I do not see anything to be gained by it.

Mr. GRAY. Don't you think it would permit the stock exchange to know whether either a great lot of marginal buying had a bad effect on the market by bringing about any wild advances, or short sales had a bad effect on the market by bringing about a serious depression? In other words, you don't think it would give you any information for the purpose of aiding you in determining that?

Mr. WHITNEY. We know when stock is being bought. We do not have to find out whether it is for marginal buying or investment. It is the method by which it is done. We can see that, and vice versa. We can determine, particularly now, very readily whether sales are being made for short account.

Mr. GRAY. You mean under your present system?

Mr. Whitney. Under our present system, and in the past as well.

Mr. GRAY. When I suggested to you that you could determine during what period of the day these short sales were made by the use of a symbol, you then suggested the necessity of marking with a symbol the long sales that were made and where purchases were made on margin. Now I am asking you whether or not if both your suggestion and mine were adopted and you secured that information from the tape, it would not help the stock exchange to determine what effect those marginal sales on the one side and short sales on the other had on the market, in order to adopt such proper rules and regulations as might be necessary to keep the market more level.

Mr. WHITNEY. Grant that if we had such symbols which might give the stock exchange information, I do not understand how they could be of any benefit to the stock exchange or anybody else over and above the information we now have through our power to secure information.

Mr. GRAY. In other words, you do not think it would be of any benefit in the regulation of the affairs of the stock exchange?

Mr. WHITNEY. No, I do not.

Mr. GRAY. Coming back for a moment to the percentages. I read your testimony, page 91, before this committee, to the effect that from May 25 to November 30, 1931, the net short transactions, taking these figures in the exhibit of statistics of short selling, showed that less than 5 per cent of all transactions on the stock exchange were for short account, and that in excess of 95 per cent were liquidation of holdings of American securities by their owners. Do you mean by that to say that the percentage of short accounts which were

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carried over from day to day in this total we have been talking about, was only 5 per cent?

Mr. WHITNEY. No, sir. It was the in and out transactions.

Mr. GRAY. You were talking of them alone?

Mr. WHITNEY. No, sir. I was talking about both, because during that period I referred to the short interest which declined by about 2,000,000 shares, if I remember correctly, so that the net short position materially decreased, and I think you will find that I referred to the net short position.

Mr. GRAY. Now let me understand. By that do you mean that the short interest between May 25th and November 30th declined about 2,000,000 shares?

Mr. WHITNEY. That is what I mean.

Senator BROOKHART (presiding). There is the call for a vote on the floor of the Senate. We will get the clerk of the committee to find out what it is on. In the meantime you may proceed.

Mr. GRAY. I notice in this schedule B of Exhibit 4, you give the percentages of the share that were sold short and covered on the same day as they relate to the total number of shares traded in on that day, from September 26 to October 28, 1931. They vary at the start from 1.76 per cent to as high as 6.31 per cent. That is intended to apply only to the coverings on the one day, as I understand it.

Mr. WHITNEY. I think it so states.

Mr. GRAY. What would you say the percentage of short sales was? I do not know whether you have made any calculations on this or not, but if you take these figures into consideration as well as the short sales that were made on that particular day, that would change the volume. That is, the volume of short sales from one morning to the next.

Mr. WHITNEY. Do you mean the change in the net position?

Mr. GRAY. Yes.

Mr. WHITNEY. In the May 25 to November 30 figures that is what we did take, although we made no credit in reducing the percentages in the 2,000,000 shares decrease. We were merely taking the average short sales that were covered the same day. There was an overbalance of purchases by short sellers during that period of 2,000,000 shares.

Mr. GRAY. That is, during the declining market?

Mr. WHITNEY. Well, it did very materially decline; yes, sir.

Mr. GRAY. How many shares are listed for sale on the exchange? I mean the total number.

Mr. WHITNEY. Do you mean listed to be traded in?

Mr. GRAY. Yes; approximately.

Mr. WHITNEY. About 1,500,000,000 shares. That is something, Mr. Gray, we can easily find out. And I am not sure that we have not got it here somewhere.

Mr. GRAY. I think your data show it to be something like 1,300,000,000 shares.

Mr. WHITNEY. It is ever changing.

Senator BROOKHART (presiding). The committee will stand in recess for a time until we can go over to the floor of the Senate and vote.

(Thereupon, at 3.15 p. m., a recess was taken until 3.30 p. m.)

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The CHAIRMAN. The committee will resume. Mr. Gray may proceed with his examination of the witness.

Mr. GRAY. Mr. Whitney, I had asked you and you had told me, and of course we know that it varies, but at the present time the stocks that are listed, and so far as quantities are concerned of any certain stock on the exchange, can you tell this committee what proportion of that stock is available for dealing? You have some statistics on that, haven't you? In other words, we all know that some of that stock, or a great portion of the stock in fact, is not on the market; it is not bought and sold day in and day out. But has the exchange any record of what proportion of these listed stocks is available for purchase and sale?

Mr. WHITNEY. Do you mean the so-called floating supply?

Mr. GRAY. Well, the floating supply, as I understand it, consists entirely of street stuff, doesn't it, certificates?

Mr. WHITNEY. Well, it may.

Mr. GRAY. Do you consider floating supply not only street certificates but additional certificates dealt in day in and day out?

Mr. WHITNEY. I think the floating supply is what is in brokerage offices or in street names or something of that kind. That is a rather indefinite figure.

Mr. GRAY. Have you any knowledge of the percentage?

Mr. WHITNEY. I have no knowledge any day that 500,000 or 1,500,000 shares could be termed floating supply; no, sir. I do not think we have any statistics.

Mr. GRAY. Could you tell it to me for instance in the matter of any particular stock? That is, as to any of the key stocks, so called?

Mr. WHITNEY. I have no knowledge, Mr. Gray. What may be merely in brokerage offices to-day may not be what is traded in on the stock exchange to-morrow. There may be new buyers to come in and sellers who are long of stock, and so forth, and it is a matter of conjecture only so far as I know.

Mr. GRAY. Don't you get, from your financial papers, sufficient information to keep you generally posted as to what that general average is? That is, within what range of two figures it might be?

Mr. WHITNEY. I do not know. But if the financial papers have such estimates I am perfectly willing, on the basis that they take to compile them, to say that perhaps they are approximately correct. But I do not know.

Mr. GRAY. Do you know as a matter of fact that in the case of United States Steel floating stock it is only about 12 per cent of the actual issue?

Mr. WHITNEY. I would not say that that was so at the present time. In the case of United States Steel, like so many other large corporations, they have tremendously increased their shareholders during the past year or two, and how you can determine what is the floating supply available for trading in the market I do not quite know.

Mr. GRAY. Well, the reason I am asking you that question is because you made the statement, if I recollect aright, in your Hartford speech to the effect that the short interest represented—and if I do not quote you correctly without looking at it please correct me—that the short interest represented about two-fifths of 1 per cent of the stocks listed. But I think I have your statement here.

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Mr. WHITNEY. That is approximately it.

Mr. GRAY. You said:

> The subsequent fluctuations in the short interest I shall recount presently. For the time being I wish to point out that the aggregate short interest in the market, even at its May 25 peak of 5,589,700 shares, constituted only two-fifths of 1 per cent of the 1,305,516,716 shares listed as of June 1.

And that is where I got the figures I referred to. Would the volume of business that was dealt in on the exchange in any one day, from which you gave us your percentage of 5 per cent, approximate in any way the percentage of the floating stock. Would you say that that is a guide we could use?

Mr. WHITNEY. I do not think they have any relation one to the other. The 5 per cent was the percentage of the in and out transactions to the total transactions, which had no relation whatever to the total of listed stocks.

Mr. GRAY. I am not speaking of the total of the listed stocks. In other words, could we consider that the transactions of a day represented in a certain sense the floating stock?

Mr. WHITNEY. No; I do not think so at all, Mr. Gray. I do not know just what you want to deduce here, but I am perfectly willing to go as far as I can.

Mr. GRAY. What I want to know is, how much of the floating stock on the market of the 90 stocks considered by the Standard Statistics Co., what proportion of that floating stock is held by the short interest? Could you give me any idea of it?

Mr. WHITNEY. No, sir; I have no idea. And I do not know how to find it out, either.

Mr. GRAY. Do you know what proportion of United States Steel of the floating stock, I mean, is held by the short interest or controlled by them?

Mr. WHITNEY. Do you mean what percentage is the short interest in United States Steel.

Mr. GRAY. What proportion is represented by the floating supply?

Mr. WHITNEY. No, sir; I do not know.

Mr. GRAY. Do you know that it is about 40 per cent?

Mr. WHITNEY. I can not believe it is as large as that, but I do not know.

Mr. GRAY. You would not say that that is inaccurate, though?

Mr. WHITNEY. I do not know.

Mr. GRAY. You do not know?

Mr. WHITNEY. No, sir.

Mr. GRAY. All right. Now coming back to the matter of your statistics that you have given to this committee, the schedules which indicate the outstanding short interest on the morning of this particular day and then of that particular day.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. That is no guide and would not help this committee to determine what proportion of a day's business was short sales, would it? In other words, suppose there were 3,000,000 shares of stock short at the opening of to-day's business, and there were 2,500,000 shares short at the opening of to-morrow's business, that would not indicate that there had been a coverage of 500,000 shares to-day, would it?

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Mr. WHITNEY. Yes, sir.

Mr. GRAY. Might there not have been a coverage of a certain number of shares of stock to-day and an additional short interest created?

Mr. WHITNEY. But the net would be a coverage of 500,000 shares to-day.

Mr. GRAY. But as a matter of fact that net change of 500,000 shares might exist, and still there might have been 500,000 more shares sold during the day on the short side and 1,000,000 shares covered, which caused that net result?

Mr. WHITNEY. That might be true.

Mr. GRAY. Don't you think the number of shares that might be sold short in a day, or the amount of shares that might be covered in a day, have any relation, whether they are in those bought and sold on the same day or whether in the class we are just talking about, have any relation to market conditions at all?

Mr. WHITNEY. I can not see that they have any relation or interest as to the market conditions; no. In fact, I should be very delighted if you would point that out. It might be something we have overlooked.

Mr. GRAY. I am trying to get information from the gentleman who is supposed to know.

Mr. WHITNEY. And I have given you my answer.

Mr. GRAY. In other words, you think for instance if there were a million shares sold short to-day, and that stock has newly created a short interest of a million shares, and particularly if of the short interest that has been in existence there were 500,000 shares covered, and if on the same day there were a quarter of a million shares that were sold short and covered the same day, that those transactions would not affect the question of the rise or fall of the market at all, all other things being equal?

Mr. WHITNEY. Well, now, you are changing your question or your hypothesis that there was a net decrease of the short position by 500,000 shares in one day.

Mr. GRAY. Well, put it the other way, whether a decrease or an increase, I do not care which way it affects the market. I want to find out whether or not it does not have a decided effect.

Mr. WHITNEY. I think——

Mr. GRAY (interposing). In other words, do not the manipulations of short sellers, in their buying and covering, affect the rises and declines very decidedly?

Mr. WHITNEY. If it were possible to take such a large figure as an instance, which I have no knowledge of as occurring in the net change in the short position in the way of increases, what you say might be so. But the fact that there have been occasional coverings by shorts in the net position of over 500,000 shares on one day—and I only know of one—in spite of the fact that on that particular day the market was going down, or just staying steady during a part of the session, then I will grant that that covering was an important stabilizing effect, which is one of the reasons why we invoked it. But I think your simile is of too large a figure for me fairly to give you an answer. I do not pretend to say that perhaps marginal buying in large proportions, or short selling in large proportions, might not

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have an effect upon the market. They might and probably do. But the figures you take are very tremendous, and I know of no instance in any of these schedules where any such increase of the net short position ever took place.

Mr. GRAY. You mean with the figures which I take, which are quite large as you indicate, it might make a decided change, but you think with smaller figures it would not make a change?

Mr. WHITNEY. I do not think so.

Mr. GRAY. You adopted a rule some time ago, I believe, that no short sales are permitted by members of the exchange at a price lower than the last transaction on the tape, is that correct?

Mr. WHITNEY. That is the interpretation of the rule of the committee; yes, sir.

Mr. GRAY. What was the reason for the adoption of that rule?

Mr. WHITNEY. To make it more simple and easier for the business conduct committee when desiring to make inquiry immediately to find out from the broker who had executed the transaction, whether or not it was for a long or short account. Prior to that time we would have to go into his office and examine the books.

Mr. GRAY. You also adopted a rule which took care of that end of the transaction, did you not, when you required every broker to report in the matter of his sales, whether it was for a short interest or not?

Mr. WHITNEY. Yes; but as I have explained, Mr. Gray, and I am sure you will appreciate, it takes some days to compile these figures, coming into the exchange from all parts of this country. Whereas, if the business conduct committee sees a sale of any appreciable amount of stock that seems to depress the price or make a decrease in the price, that we might think was for short account, now we can immediately ask the broker whether it was or not, instead of going into the office and finding out that fact, or as you suggest, waiting until the report comes from that broker.

Mr. GRAY. I do not think you have made it clear. Let me go back. You first adopted a rule which required all short sales to be reported as such, did you not?

Mr. WHITNEY. The net short position, yes, sir.

Mr. GRAY. No, no; I am not talking about that. To-day if a broker takes an order to make a short sale, the minute that sale goes to the floor it is designated as short, is it not?

Mr. WHITNEY. To the broker.

Mr. GRAY. To the broker. Well, of course, to a member of your body and to your body?

Mr. WHITNEY. If we inquire only; not otherwise sir.

Mr. GRAY. If you inquire. What is the purpose of conveying the information to the broker, and what is the purpose of your making the rule, if it is not for the purpose of keeping control in your particular body or your particular board or committee?

Mr. WHITNEY. Directly, at that time, to bring to the attention of the broker what type of order he is executing, as well as the facilitating our getting information quickly if we desire it.

Mr. GRAY. Don't you have the brokers to whom those reports are made by the other broker when he comes to make the sale and he tells him it is a short sale, furnish that information to you daily?

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Mr. WHITNEY. No, sir, never to the other broker.

Mr. GRAY. Unless you ask for it?

Mr. WHITNEY. Only to us if we ask for it; never to the other broker.

Mr. GRAY. Now let me see: Broker A comes in and he offers for sale a certain number of shares in a certain stock to Broker B. If that is a short sale your rules require him to tell that other broker——

Mr. WHITNEY (interposing). No, sir.

Mr. GRAY. They do not?

Mr. WHITNEY. No, sir. If I go into United States Steel and offer 500 shares at 33½——

Mr. GRAY. Yes, sir.

Mr. WHITNEY. No one knows that, whether it is for short account. We require that broker to tell nobody it is for short account or long account, not even ourselves, unless we inquire.

Senator FLETCHER. Mr. Whitney, you mean that rule is for the convenience of the exchange and not for the protection of the market or having any effect on the market?

Mr. WHITNEY. Senator Fletcher, it is for the convenience and knowledge of the exchange and also for the information to the broker who has the order for execution, so that he may see positively he does not violate any rule of the exchange in executing that order.

Senator BROOKHART. Suppose a customer does not tell him about it—then what?

Mr. WHITNEY. We force our brokers, Senator Brookhart, to ascertain those facts from their customers, and the burden of proof lies with the broker to find it out. He is responsible to us for finding out those facts.

Mr. GRAY. Does not the broker, as a matter of fact, Mr. Whitney, after finding that out, make a report daily to your body of those short sales?

Mr. WHITNEY. Yes and no.

Mr. GRAY. How do you compute your statistics if he does not?

Mr. WHITNEY. If, for instance, he sold a hundred shares of Steel for a customer——

Mr. GRAY (interposing). Yes, short.

Mr. WHITNEY. Short, and later in the day covered it for that customer. That would not appear in the short net position, but it would appear on the in and out transactions.

Mr. GRAY. Suppose he sold it and did not cover it the same day. It appears on the net short position?

Mr. WHITNEY. Then it would appear on the net short position.

Mr. GRAY. Does he report to your body for statistical purposes that day?

Mr. WHITNEY. It comes in two days from the date of compilation.

Mr. GRAY. Now, what is the board's reason for wanting that information? What was your reason for adopting the rule? What is your reason for requiring the broker to get that information from the man when he comes to sell?

Mr. WHITNEY. Well, I am answering one of your questions, the latter. To be perfectly sure that our rules are not violated and to

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put it squarely up to the broker that he knows what he is doing, the broker on the floor, that he knows what he is doing in executing such an order?

Mr. GRAY. All right; then what is the reason for your rule?

Mr. WHITNEY. What rule?

Mr. GRAY. Why, a rule which requires the broker to find out from his customer whether the sale is short or not, keep a record of it, and advise you.

Mr. WHITNEY. Because it has been a rule of the constitution for many, many years with regard to demoralizing a market.

Mr. GRAY. Yes.

Mr. WHITNEY. Both up or down. This is merely a pointed drawing attention to that rule to our brokers, or it was at the time.

Mr. GRAY. In other words, is it not because the short selling has a demoralizing effect and because your board desires to keep posted on all of the short sales that are made, to be thoroughly informed and to keep it within your control?

Mr. WHITNEY. I do not grant that short selling has a demoralizing effect.

Mr. GRAY. I know you do not.

Mr. WHITNEY. We do grant that short selling may be illegitimate, sometimes called bear raiding, and may have a very demoralizing effect, and it is to prevent that latter that our rules are made.

Mr. GRAY. But you say that never happens in your business any more?

Mr. WHITNEY. I say that in the past it has not happened. We have had this rule, sir, for years, to prevent that happening. Now, I grant that some rules may be violated, but it is our stern and constant endeavor to prevent this rule and other rules being violated.

Mr. GRAY. In other words, though you think short selling—I think I use your own words—is "healthy" to a market, though you said without short selling the exchange would have to close, you still think it is so dangerous that it ought to be controlled very carefully in the manner in which you have indicated?

Mr. WHITNEY. We are not controlling, sir, the legitimate short selling. We are attempting as best we may to prevent bear raiding, which has been against our constitution for years.

Mr. GRAY. You say you are not controlling legitimate short selling. Are you not controlling legitimate short selling when you require a broker to find out from the man who sells whether it is a short sale or not, keep a record of it and report it to you, and when you also adopt a rule that you will not permit a short seller to make that healthy sale that you are talking about at any figure below the last sale on the tape?

Mr. WHITNEY. No, sir.

Mr. GRAY. You are not controlling it?

Mr. WHITNEY. No, sir.

Mr. GRAY. Well, what do you call it?

Mr. WHITNEY. Anybody can sell short.

Mr. GRAY. I did not ask you that; I asked you what do you call it?

Mr. WHITNEY. I call it controlling.

Mr. GRAY. I asked you what you called it and you said not controlling.

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Mr. WHITNEY. I thought you asked if it was to prevent short selling, and we have not prevented short selling.

Mr. GRAY. I know you have not, but as a matter of fact you have made an effort to control it, have you not, because you think it is a dangerous factor in the stock market?

Mr. WHITNEY. No, sir.

Mr. GRAY. Then will you tell me why did you control it?

Mr. WHITNEY. Because we wish the information. For the other reasons specifically on the point you raise we put these various rules into effect.

Mr. GRAY. You only put them into effect to furnish statistics to committees?

Mr. WHITNEY. That was one of them; yes, sir.

Mr. GRAY. Well, now, let us see: You have another rule that we have been talking about, and that rule is that a man may not sell short stock at a price lower than the last transaction on the market. Is that correct? Do I quote the rule correctly?

Mr. WHITNEY. You do not, sir.

Mr. GRAY. Well, you quote it.

Mr. WHITNEY. There is no such rule.

Mr. GRAY. There is no such rule?

Mr. WHITNEY. No, sir.

Mr. GRAY. Then you mean to say that if United States Steel was selling at 35 and I wanted to sell it short at 34, I would not be stopped?

Mr. WHITNEY. Last sale at 35?

Mr. GRAY. Yes.

Mr. WHITNEY. And you went and sold it now?

Mr. GRAY. Yes.

Mr. WHITNEY. Short account?

Mr. GRAY. Yes.

Mr. WHITNEY. Yes; we would consider that as a bear raid and on your part or on the broker's part to demoralize and depress the market, and we would take some action upon that broker for so doing. But that, sir, is based upon the constitution rule, section 4, article 17 of the constitution, that has been a rule of the stock exchange for years.

Mr. GRAY. Tell me what that rule provides.

Mr. WHITNEY (reading):

Purchases or sales of securities or offers to purchase or sell securities, made for the purpose of upsetting the equilibrium of the market and bringing about a condition of demoralization in which prices will not fairly reflect market values, are forbidden, and any member who makes or assists in making any such purchases or sales or offers to purchase or sell with knowledge of the purpose thereof, or who, with such knowledge, shall be a party to or assist in carrying out any plan or scheme for the making of such purchases or sales or offers to purchase or sell, shall be deemed to be guilty of an act inconsistent with just and equitable principles of trade.

Senator BROOKHART. Were you not violating that rule all the time in 1928 and 1929?

Mr. WHITNEY. Not that I know of, Senator Brookhart.

Senator BROOKHART. You do not consider that big boom demoralizing the market then?

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Mr. WHITNEY. No, sir; not based on earnings of corporations throughout this land at that time.

Mr. GRAY. Mr. Whitney, I do not want to argue with you about your own rules, and of course I will concede that I may have been misinformed and you know more about your rules than I do. I have been, however, definitely advised that you have a rule, I am not talking about your constitution, but that your body has adopted a rule or regulation to the effect that a declared short sale may not be made for a figure under the last transaction. You say there is no such rule?

Mr. WHITNEY. I say there is no such rule. On October 5, I believe, the business conduct committee sent out a notice to the members demanding of them that each broker in executing a selling order shall acquaint himself whether or not it is for short or long account and so inform his broker on the floor of the exchange, in direct reference to this article of the constitution I have read you. The interpretation put on that request, that demand, by the brokers, has had the effect that you stated.

Mr. GRAY. Yes; and it is a practice and not a rule?

Mr. WHITNEY. It is a practice rather than a rule.

Mr. GRAY. Now that we have the practice fixed. do you know how it can be evaded?

Mr. WHITNEY. I do not know how it can be evadad. That is not saying that it may not be, Mr. Gray.

Mr. GRAY. Do you know that it has been evaded right along?

Mr. WHITNEY. Not that we know of.

Mr. GRAY. Let me ask you: Suppose 100 shares of United States Steel are selling at 43; that is the last sale?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. You would not permit a short seller to sell 100 shares of steel at 42½ under your practice? If he wants to sell 1,000 shares short, is there anything to stop him from actually selling 100 long shares for 42½ and immediately putting his other 1,000 on the market short at that price?

Mr. WHITNEY. I do not believe there is anything to prevent him if an individual desires to do that. I will not grant that is done with the knowledge of our brokers, however.

Mr. GRAY. Well, there are a lot of things that seem to happen over the knowledge of your brokers. I was going to say your board; that there are a lot of things that happen that your board does not know about.

Mr. WHITNEY. What?

Mr. GRAY. Well, the things that you do not seem to have any knowledge of to-day is what I have particular reference to. Have you ever heard of it being evaded in that way?

Mr. WHITNEY. Specifically, no.

Mr. GRAY. Yes; I did not use the word "specifically."

Mr. WHITNEY. Because you said, Have I ever heard of it?"

Mr. GRAY. Yes; I did not use the word "specifically."

Mr. WHITNEY. Naturally, one has heard discussed the possibility of evasions.

Mr. GRAY. Yes.

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Mr. WHITNEY. We have found no such instances, and we are using our very utmost power at all times to see that that rule as well as our other rules are not violated.

Mr. GRAY. You have made investigations because you have heard rumors that is the way it is being done?

Mr. WHITNEY. We have not specifically to my knowledge made investigations about it. We have not heard rumors that it was being done.

Mr. GRAY. Then it is a strange suggestion that comes to you for the first time when I mentioned it that it could be done in that way?

Mr. WHITNEY. No; I have heard that there is that possibility.

Mr. GRAY. You mean you have heard discussed among members of the exchange the possibility of evading the rule in the manner that I have indicated?

Mr. WHITNEY. Not by members; no, sir. I do not think any member would dare to be a party to such a transaction, Mr. Gray.

Mr. GRAY. Well, now, let me ask you if there is another way in which it might be evaded. Some discussion has been had with respect to what are called sales "against the box." I think that the committee thoroughly understands the situation. As I understand it, it is a sale that a man makes when he has his own stock and when he can deliver it but when for some reason he does not care to deliver his own stock and when he gets his broker to borrow other stock for the purpose of making delivery required under the rules. Is that what a sale against the box is?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. All right. And if I walk into a broker's office desiring to make a sale against the box in that way, and I tell my broker that I have the stock and can deliver but do not desire to deliver but that I desire him to borrow the stock, is there any requirement on that broker's part to confirm or investigate my statement to him?

Mr. WHITNEY. The proof of the truth of that statement is up to the broker in his relation with the exchange.

Mr. GRAY. Is it their practice to make an investigation, do you know?

Mr. WHITNEY. I think so; absolutely.

Mr. GRAY. And to what extent do they carry their investigation? In other words, do they not have to see the stock if they really want to find out whether it is so or not, and do they do that?

Mr. WHITNEY. I do not think that they probably actually view the stock. I imagine they take the word of a customer who has been looked up carefully before taking his account, and they believe a man that makes that statement. I see no reason not to.

Mr. GRAY. Now, then, if that man who makes his sale against the box a week hence or two weeks hence changes his mind and simply covers his other sale as an ordinary short sale, there is nothing to stop him from doing it, is there?

Mr. WHITNEY. I believe not.

Mr. GRAY. That is another method by which the rule can be evaded and by which you upset your statistics; is that not true?

Mr. WHITNEY. No; that does not upset the statistics. I grant possibly in that way, if a man chose to do so, that might be a violation or upset the rule.

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Mr. GRAY. In other words, it turns a sale against the box into a real short sale?

Mr. WHITNEY. No; I will not grant that a sale against the box is ever a short sale, because that individual who makes such a sale at no time has to buy it back. He may at any time produce his own stock for delivery against the contract.

Mr. GRAY. Yes; but if he chooses to treat it as a short sale and cover it in the same way as a short seller, there is nothing to stop him from doing it, is there?

Mr. WHITNEY. No. There is no distinction there between that individual and yourself, as I see it, selling and delivering your own shares against your sale and thereafter deciding that you were wrong and buying it back.

Mr. GRAY. Yes; but that is not what he does, is it?

Mr. WHITNEY. Not in the mechanics; no.

Mr. GRAY. By the way, you made a statement before the House committee, and I can turn to it if it is necessary, to the effect that you make or have made some four or five thousand investigations. Do you mean by that the investigations that are made by that staff of about 20 investigators that you have constantly working? Is that what you meant, or did you mean that definite investigations of definite charges of the violations of your rules to that extent were made?

Mr. WHITNEY. I meant both, Mr. Gray, and that statement was made to this committee, and not to the House, as I remember it, but it was made to this committee, and included the regular and special investigations carried on at all times by our staff of accountants.

Mr. GRAY. You stated to the House, however, that, for instance, as an illustration, that one instance of a sale of a thousand shares came to your attention—and I believe this was before—it is handed to me, so I can look at it and read to you:

> "* * * where a man comes in and sells a thousand shares of stock on a declining price, immediately we will investigate whether that was for a long or short account and if for a short account, immediate action would be taken of a penalizing nature.

That is on page 103 starting at the very bottom. You mean by that prior to the time of the adoption of these other rules that we have been discussing, or this rule, that if you found a sale of a thousand shares under the existing market you would immediately cause an investigation to be made?

Mr. WHITNEY. Depress the market; yes.

Mr. GRAY. Now, the effect of the short seller who evades in the way that we first discussed it where he sells a hundred shares of long stock and then puts his other thousand in short out is exactly the same, is it not?

Mr. WHITNEY. Yes, sir; it might have that effect; yes.

Mr. GRAY. Would you punish him?

Mr. WHITNEY. We would punish the broker, absolutely.

Mr. GRAY. In the case that I have indicated where a man, for instance, strictly within your rule, sold a hundred shares long, created a price and then sold a thousand short, at that price?

Mr. WHITNEY. If the broker had knowledge of what the customer was attempting to do and doing; yes.

Mr. GRAY. It is possible for a man under those circumstances——

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Mr. WHITNEY (interposing). You cited the case as an evasion yourself.

Mr. GRAY. I did.

Mr. WHITNEY. Well, I do not think that the New York Stock Exchange looks upon that type of evasion as a proper act in any way.

Mr. GRAY. And you would have no control over the situation, would you, if he sold a hundred shares long through one broker and when the market was created, immediately sold the other thousand short through another broker?

Mr. WHITNEY. If we can not find something out, Mr. Gray, we haven't got control. If we can find it out we have absolute control.

Mr. GRAY. Now, do you keep any record of these sales against the box at all?

Mr. WHITNEY. The exchange? No, sir.

Mr. GRAY. Is there any method by which that can be done?

Mr. WHITNEY. Only by asking for such facts from our houses.

Mr. GRAY. You could get it the same way that you got a report of short sales from your brokers, could you not, and your members?

Mr. WHITNEY. At the present time, yes. Whether that could be got for a period of time dating back, gong back over a period, I do not know.

Mr. GRAY. Back in 1929—I think you mentioned it to-day—in November you said that you secured certain information. Did you not send a questionnaire out to your members at that time?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Is there a copy of that that is available to the committee?

Mr. WHITNEY. Right here.

Mr. GRAY. Let me ask you another question, first, if you please, because you may have a copy of the questionnaire. Did you make a compilation of the replies to that questionnaire that would be available for us?

Mr. WHITNEY. As I told you, sir, this morning, I think this morning, in my belief the only compilation we have made was as of November 13, 1929, the first date on which the members sent in these facts as asked by the questionnaire.

Mr. GRAY. Have you a copy of the questionnaire?

Mr. WHITNEY. We have one, of course, on record.

Mr. GRAY. All right will you see that the committee is furnished with a copy of the questionnaire?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And if the answers to the questionnaire as sent in by the different brokers were tabulated in any way, give us that tabulation so that we will get what statistical information it will give us.

Mr. WHITNEY. Yes, sir. That questionnaire was very similar, Mr. Gray, to the one that has been used since.

Mr. GRAY. We would like to see that one.

Mr. WHITNEY. Yes. We would be glad to give it to you.

Senator FLETCHER. Mr. Whitney, does the exchange undertake to regulate or control in any way the amount of dealing in any particular stock? For instance, a corporation that never has issued over 200,000 shares of stock, never had more than that oustanding; that stock is found to be traded in into millions Have you any way of examining that and controlling it.

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Mr. WHITNEY. You mean traded in in millions throughout the year?

Senator FLETCHER. Yes.

Mr. WHITNEY. No, sir; we do not attempt to control those transactions.

Senator FLETCHER. For instance, Mr. Frederick gives an illustration in his book, the J. I. Case Co. has only 194,960 shares of stock outstanding. Yet in 1931 a total of 13,777,300 shares were traded.

Mr. WHITNEY. No, sir; we do not control that. That particular stock happens to have had and now has a very great interest seemingly to the trading public.

Senator FLETCHER. Do you think that practice going on unrestricted and unrestrained in any way is sound practice?

Mr. WHITNEY. I do not see how we can prevent, sir, people who wish to buy or sell stock from so doing. I cited in answer to that case before the Committee on the Judiciary in the House, in answer to the Congressman from Oklahoma, that that same thing might apply with a group of 500 hogs. A certain man might own 500 hogs and sell them to another man, and so on, he to another, and going along the list they might change hands many times in a short period of time until they eventually reach the packer.

Now, if you multiply that 500 hogs by the number of changes of hands, you get a large figure, possibly. And it seems to me the same thing applies to shares of stock. It is the turnover that counts. We do not control it.

Senator FLETCHER. In those circumstances would not conditions arise at times where a man who borrowed the stock, for instance, could not find other stock to take the place of shares that he had sold or shares where he had sold short, for instance, and borrowed stock?

Mr. WHITNEY. That is the risk that the short seller always takes. He may sell something which does not belong to him, but he has got to buy it back.

Senator FLETCHER. And it really does not exist at all in anybody's hands?

Mr. WHITNEY. Yes; it exists in somebody's hands. I have never known a case where a short interest exceeded the issued capital stock. That could not be, sir.

Senator FLETCHER. I should imagine it might occur where they are selling millions of shares when there is only a thousand or so issued.

Mr. WHITNEY. Well, there are not millions of shares brought in over a period of a day. There may be a great amount dealt in in that particular issue.

Senator BROOKHART. Could not that be stopped by requiring the broker to sell the shares by number, the certificates?

Mr. WHITNEY. Senator Brookhart, for what end to be gained?

Senator BROOKHART. Well, you and I have a different view of it. I think that gambling scheme of selling fictitious, imaginary stock is a very great detriment and always a demoralization of the market myself.

Mr. WHITNEY. There is no sale, Senator Brookhart, of imaginary stock on the New York Stock Exchange.

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Senator BROOKHART. Then why not sell it by the exact number of the certificate? That would not be imaginary.

Mr. WHITNEY. Is it necessary to state the number of the certificate at the time of sale? An actual certificate is delivered against that sale.

Senator BROOKHART. Yes; but the certificate may be theoretically delivered back and forth a dozen times there.

Mr. WHITNEY. During the day.

Senator BROOKHART. Yes, and if you gave the number, why, that would not occur.

Mr. WHITNEY. I do not know what is to be gained, sir, however, by that.

Senator BARKLEY. It would take more bookkeeping and you could do it the same by giving the number. You would just have to report the number each time, is the only difference.

Mr. WHITNEY. That is all. What a man buys he can sell one number. When the next fellow sells it again, it is the same number again.

Senator BROOKHART. Yes; but one fellow on one side can sell a number and the other fellow would not have the same number. He just sells a fictitious number. But if you had to give a number, why, then, he would not make the sale.

Mr. WHITNEY. Senator, I do not know what would be gained by such a rule.

Senator BROOKHART. You think it would not stop any of this piling up of imaginary sales?

Mr. WHITNEY. I do not grant that there are imaginary sales. Each sale is a contract which has to be fulfilled.

Senator BROOKHART. Well, but why not sell them by number, then, and try it and see if it would not stop it?

Mr. WHITNEY. I am afraid I do not know what you have in your mind to stop.

Senator BROOKHART. Here is a whole crowd of brokers in there and they are all offering stock, some buying and some selling, and they do not know anything about whose numbers they are or what numbers they are or anything at all. If they had to sell them by number they would then know what they were doing.

Mr. GRAY. The Senator possibly means that it should be treated as a commodity instead of as a right.

Mr. WHITNEY. Possibly. But I do not know in any market, whether it be on an exchange or whether it be out in the stockyards, that with a particular pig, for instance, with a number on his ear—in selling him we do not give that number. We have to deliver so many pigs.

Senator BROOKHART. When the farmer sells him he sells him according to the number in his ear.

Mr. WHITNEY. I do not think so, Senator.

Senator BROOKHART. But the board of trade does not appeal to me any more in its fictitious sales than your scheme of selling stock.

Mr. GRAY. We were talking, Mr. Whitney, about the efforts that the board have made for the purpose of preventing a demoralization by a sale below the market.

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Mr. WHITNEY. Yes, sir.

Mr. GRAY. A sale according to your theory above the market, or rather an offer to purchase above the market, according to your thought, as to the regulation of the stock market, would have the same demoralization effect, would it not?

Mr. WHITNEY. It might.

Mr. GRAY. For instance, if the market on United States Steel was at 35—I think that was the illustration that we used before—you said that you would immediately stop an effort to sell a thousand shares of steel at 34.

Mr. WHITNEY. For short account.

Mr. GRAY. Suppose, now, that the market was at 35, I went in and offered to buy a hundred shares of it at 36.

Mr. WHITNEY. And the market was what?

Mr. GRAY. Thirty-five.

Mr. WHITNEY. That is not the market, sir. That is the last sale.

Mr. GRAY. The last sale. The market, of course, is what is asked for it. But suppose it was selling at 35. Suppose the range was between 34 and 35. It has not been above 35 to-day, and ample stock was being offered, and I went in and offered to buy a hundred shares at 36. Of course, you have answered this "under the regulations." But I would be forced to close my contract and close my offer at whatever price it was being offered for in the market. If I wanted and insisted on paying 36 for it would I be stopped?

Mr. WHITNEY. If you did it for the purpose of creating a false price for the shares; yes.

Mr. GRAY. You watch that just as closely as you do the short sales?

Mr. WHITNEY. We have tried to watch it. I am not saying that we may not have been lax. We have learned a lot, Mr. Gray, from the panic of 1929 and since.

Mr. GRAY. I haven't any doubt of it. A lot of us have that are not members of the stock exchange.

Mr. WHITNEY. But, to answer you specifically, if the purpose was to create a false price, that is just as contrary to our rules as depressing the price.

Mr. GRAY. Now, you spoke when you were before the House committee about pegging. Will you tell the committee just what you mean by "pegging," pegging the market? It is to hold a market quotation to a certain level and keep it from going below, is it not?

Mr. WHITNEY. Page what is that?

Mr. GRAY. I think it is on page——

Mr. WHITNEY (interposing). Well, that is not very important.

Mr. GRAY. Well, let me be the judge of it.

Mr. WHITNEY. Pegging is——

Mr. GRAY (interposing). You said this: You were asked the question:

> I was thinking of a situation where some corporation had stock it was very much interested in maintaining at a certain price, vitally interested in the stability of that price, and that situation might be seriously disturbed by interlopers trading in that stock on the outside. Is there any evil arising from that standpoint?

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To which your answer was——

Mr. WHITNEY. What page?

Mr. GRAY. Page 120. [Reading:]

My answer is, emphatically, "no." As a broker, when I have been given orders which are called "peg" orders, to prevent a stock going below a certain price, I tell them that is the most ridiculous thing in the world. A "peg" price, whether to short or long selling, always gives the impression there is something artificial in the situation. A normal reaching of a price level is what we are interested in.

Is it not a fact that people who are interested in certain stocks give orders and have their brokers execute orders at certain prices in order that the market might be pegged and kept from dropping below a certain figure or going above a certain figure, whichever way they may want to hold it?

Mr. WHITNEY. That may be done; and as I say, I think it is a very dangerous practice to the interest of the person or individuals that do it.

Mr. GRAY. Is there any regulation of the exchange as to that being done?

Mr. WHITNEY. It is perfectly legitimate.

Mr. GRAY. But it is in one sense of the word the same thing as a short selling, is it not?

Mr. WHITNEY. No, sir.

Mr. GRAY. I mean by that that the short selling has the purpose of driving the market down, while your margin buying has the purpose of driving the market up, while pegging is done for the purpose of either preventing the market from going down below a certain figure or from going up above a certain figure, is it not?

Mr. WHITNEY. Yes; but I see no relationship between pegging and short selling.

Mr. GRAY. I mean it is creating an artificial value all the way through, isn't that true?

Mr. WHITNEY. No; it is not artificial as I see it.

Mr. GRAY. Well, suppose the stock is being sold——

Mr. WHITNEY (interposing). You buy stock; you sell stock.

Mr. GRAY. Yes, sir; suppose the stock is being sold or quoted on the market to-day at about 40, or we will say at 41, use that figure, and the man that is interested in that stock does not want it to fall below 40, and if he lets it alone market conditions would be such that it would probably go to 39 or 38. What he does is put an order in to his broker to buy all of that stock that is offered above 40 in order to keep the price from dropping, does he not?

Mr. WHITNEY. He may.

Mr. GRAY. And is he not creating an artificial value?

Mr. WHITNEY. No, sir. He is buying stock and paying dollars for it.

Mr. GRAY. All right, if that is your answer. I do not know whether I gather from your answer on page 120 when you indicated to your customers that you thought that it was a ridiculous thing to do, your firm is in the habit of executing peg orders or not. Is it?

Mr. WHITNEY. We have executed orders to buy quantities of stocks or bonds at a price, yes; and my advice is that if it seems that they are buying too much of that stock it is to their detriment to continue making that price.

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Mr. GRAY. Do you do it in bonds also?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Do you do it in bonds for the firm of J. P. Morgan & Co., of which your brother is a member?

Mr. WHITNEY. No, sir.

Mr. GRAY. You never have?

Mr. WHITNEY. I would not say that we have not had orders to buy bonds, but we have never had orders to peg bonds for them; no, sir.

Mr. GRAY. Haven't you done it for them on German reparation bonds?

Mr. WHITNEY. Not that I know of, Mr. Gray.

Mr. GRAY. Wouldn't you know?

Mr. WHITNEY. No; probably not.

Mr. GRAY. Will you find out and tell this committee?

Mr. WHITNEY. Exactly what do you wish?

Mr. GRAY. Just what I asked you for.

Mr. WHITNEY. Whether we have ever had an order——

Mr. GRAY (interposing). Whether or not your firm has been engaged in the business of pegging the value of German reparation bonds for J. P. Morgan & Co.

Mr. WHITNEY. Yes; I will give you that answer.

Mr. GRAY. All right; thank you.

Senator FLETCHER. At what figure?

Mr. GRAY. At any figure, but I will suggest to Mr. Whitney that the figure I am informed about is at 90.

Mr. WHITNEY. Is there any date that you want?

Mr. GRAY. You will find the date on your records if you find that you have done it.

Mr. WHITNEY. All right, sir.

Mr. GRAY. Now, is there any short selling in bonds?

Mr. WHITNEY. In some bonds, but not usually.

Mr. GRAY. The bond market does not need short selling for the purpose of keeping it in a healthy condition, does it?

Mr. WHITNEY. It certainly does.

Mr. GRAY. You think it does?

Mr. WHITNEY. I certainly do. One of the reasons it is in such a very unhealthy condition at the present time is that very thing.

Mr. GRAY. Do you recommend that short selling in the bond market be adopted?

Mr. WHITNEY. If it could be.

Mr. GRAY. If it could be. What is the reason it can not be?

Mr. WHITNEY. Because there is not a supply of bonds available for borrowing purposes.

Mr. GRAY. And you think that if you could introduce this healthy thing that you are talking about, such a short selling in the bond market, the market would not go up?

Mr. WHITNEY. I did not say so; no, sir; nor have I implied that in any testimony here, Mr. Gray, with regard to short selling.

Mr. GRAY. You mean rather that it would be kept on a more stable basis? Is that what you mean?

Mr. WHITNEY. That the market as a whole is on a more stable basis because of speculation, both short selling and marginal purchasing.

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Mr. GRAY. And by reason of the practice of lending stock for the purpose of giving the necessary aid to short sell—you think that that is good practice, too?

Mr. WHITNEY. Short selling could not exist without the lending of stocks.

Mr. GRAY. Do banks ever engage in the lending of stocks, or is it all confined to brokers and individuals?

Mr. WHITNEY. I do not know, Mr. Gray.

Mr. GRAY. You do not know.

Mr. WHITNEY. They may very likely within their discretion loan stocks they are long of, but I do not know.

Mr. GRAY. In your experience you are able to tell this committee whether or not any banks have ever been engaged in the practice of loaning stocks to brokers for the purpose of aiding a short sale, are you not?

Mr. WHITNEY. The practitce, I do not know. May I point out——

Mr. GRAY (interposing). Pardon me—if banks do not do it would it not be because they do not consider it is a good safe practice?

Mr. WHITNEY. I do not see any reason for them to think it was not a safe practice.

Mr. GRAY. You do not. Now, you said you wanted to point out something and I interrupted you.

Mr. WHITNEY. Yes. At the time of the Kreuger suicide International Match bonds, I think, had sold the day before around 50. The best bid, I believe, was 30, and bonds were offered for sale. There happened to be a man short of 10 bonds, and he bought them, as I remember, at 36, the best bid other than his being 30, thus saving the seller of those bonds, presumably an investor, from losing an additional 10 points per bond.

Mr. GRAY. Additional 6 points.

Mr. WHITNEY. Six points per bond.

Mr. GRAY. And making for the man who put through the transaction another 14 points?

Mr. WHITNEY. And making for whom?

Mr. GRAY. Making for the man that put through the transaction and bid 36 for them when the last market was 50, an additional 14 for his trouble.

Mr. WHITNEY. Yes; but the short seller did not know that Mr. Kreuger was going to commit suicide.

Mr. GRAY. No; of course not. Neither did any of the other members of the New York Stock Exchange, or it would have been a different story.

Senator BARKLEY. If they had known that there would have been a lot more shorts, would there not?

Mr. WHITNEY. I presume so, Senator Barkley, or people liquidating stocks.

Mr. GRAY. It is a fact, is it not, that banks do not list their stocks for sale on the New York Stock Exchange?

Mr. WHITNEY. Some of them are listed; yes.

Mr. GRAY. Very few, are there not?

Mr. WHITNEY. Not many.

Mr. GRAY. Why do they not list their stocks for sale on the New York Stock Exchange?

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Mr. WHITNEY. I do not know, Mr. Gray. I think perhaps that the point of view has been that fluctuations in bank stocks on an organized market may be in one way or the other detrimental to the interest of their shareholders. There have been various banks listed there, and there are to-day.

Mr. GRAY. They would also consider that the short selling would be quite dangerous, would they not?

Mr. WHITNEY. I do not think so, sir; no.

Mr. GRAY. You do not think so. In other words, you think that their opinion is that the fluctuations on the market would be dangerous for them but that they have no though with respect to short selling dangers affecting them in the slightest? In other words, they would consider that it would be a healthy market?

Mr. WHITNEY. I was talking about the banks' shareholders and possibly the influence upon their depositors as well, if they saw fluctuations taking place. In answer to the last part of your question, from what I know of the attitude of bankers they believed in the necessity of short selling to make up a proper market.

Mr. GRAY. You mean short selling in general stocks that are listed in order to make——

Mr. WHITNEY (interposing). I make no exception, sir, between bank stocks and listed stocks.

Mr. GRAY. You mean the bankers that you know, and in this instance you seem to know something about it, bankers that you know have indicated to you that they consider that short selling is a help generally and they are making no distinction between stocks that are ordinarily dealt in on the market and bank stocks?

Mr. WHITNEY. That is my belief.

Mr. GRAY. All right. Now, Mr. Whitney, I am going to take you back to the 21st day of September when England went off the gold standard.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. September 21st was a Monday. The London Stock Exchange closed, did it not?

Mr. WHITNEY. Did not open that day.

Mr. GRAY. Well, that is what I meant, that from the last business day it did not open. It remained closed how long?

Mr. WHITNEY. I think it opened with restrictions on the 26th of September. Forgive me as to my dates.

Mr. GRAY. Yes; that is all right. What do you mean by "with restrictions"—as to short selling?

Mr. WHITNEY. No; not that I know of, was there any regard to short selling.

Mr. GRAY. What were the restrictions?

Mr. WHITNEY. The restrictions were that they adopted what is known as a cash settlement as against their usual term settlement.

Mr. GRAY. The Berlin Bourse had been closed, had it not, before that?

Mr. WHITNEY. I believe so.

Mr. GRAY. Some time in July?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. The Berlin Bourse opened when?

Mr. WHITNEY. I beg pardon?

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Mr. GRAY. When did the Berlin Bourse open after its closing in July, do you recollect?

Mr. WHITNEY. No. I have it somewhere. I think they opened for——

Mr. GRAY (interposing). A short time in October, was it not?

Mr. WHITNEY. No, not October, I do not think so. Some time later.

Mr. GRAY. It was after England went off of the gold standard, isn't that true? Before that, he says. All right, we will accept that statement. Give me the date that the Berlin Bourse closed, if you can.

Mr. WHITNEY. Yes, I have it. The Berlin Stock Exchange closed entirely June 12, 1931, reopened but only for the cash settlement on September 3, again closed entirely September 21, and on April 12, 1932, reopened again but only for cash dealings.

Mr. GRAY. Now, the Paris Bourse did not close, did it?

Mr. WHITNEY. I believe not.

Mr. GRAY. Let me ask you incidentally a thing I intended to ask you later, but while we are talking about the Berlin Bourse, do you know as a matter of fact that as between the time of the closing of the Berlin Bourse in 1931 and its opening in 1932 what the percentage of decrease in stocks in general was?

Mr. WHITNEY. I do not.

Mr. GRAY. Do you know that it was about 12 per cent?

Mr. WHITNEY. I do not. I do not know anything about it at all, sir.

Mr. GRAY. You do not know anything about it at all. Now, on the New York Stock Exchange, considering these 90 statistical stocks, the difference between September 21 and this spring has been what, about 50 per cent?

Mr. WHITNEY. Why, the price as of May 25 was approximately 105 and the last figures as of April 5 or 6 was 55.

Mr. GRAY. So that within that length of time there was a drop of almost 50 per cent?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Now, your board was met with the proposition when you learned that England had gone off the gold standard as to what you were to do on that Monday morning, September 21, were you not?

Mr. WHITNEY. Yes.

Mr. GRAY. Did you consider closing the stock market?

Mr. WHITNEY. We did.

Mr. GRAY. And you determined that it was inadvisable to do that, did you not?

Mr. WHITNEY. Absolutely.

Mr. GRAY. Why?

Mr. WHITNEY. Because we felt that it would probably cause chaos in our banking structure; that the owners of securities throughout this country that had been using for a long period of time the New York Stock Exchange as a place, and pretty nearly the only place, on which they could get cash, would have denied to them that market, and that we would inflict by such an act a moratorium on this

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entire country and perhaps a further tightening of moratoria existing in other countries as well. We felt that the one thing to do was to remain open.

Senator FLETCHER. May I ask there, you have the right to close the exchange when you like and open it when you like?

Mr. WHITNEY. No, Senator Fletcher. We have that right, but we do not think we should exercise that as against the best judgments of all that may be interested. And those judgments, in so far as we were able to obtain them, we did obtain. Sunday night, the 20th of September, and Monday morning, the 21st of September, before the opening of the exchange. I am not trying to quibble with you. We have that right. It is our power.

Senator FLETCHER. I was not certain whether you contend that you had absolutely the right to do that if you saw fit to do it.

Mr. WHITNEY. We have the absolute power to do it, yes; but we do not exercise that power except under the considerations I have stated.

Mr. GRAY. You made up your mind, for the reason that you have mentioned, not to close the exchange. As a matter of fact, did the outstanding short interests have anything to do with your keeping the exchange open?

Mr. WHITNEY. It was one of the factors in our determination that if we kept the exchange open and banned short selling, as we did, that that would drive the shorts to cover, for fear that their contracts could not be balanced--consummated, if the exchange had to close.

Mr. GRAY. Now, you are discussing the question of one of the effects. I have not got to that yet.

Mr. WHITNEY. One of the effects upon us in making our decision.

Mr. GRAY. I am asking you whether or not the large interest—and whether you and some other members of the board have not so declared since that meeting on the morning of September 21—that the intent of the large short interest to cover if the exchange was closed was a factor that you took into consideration?

Mr. WHITNEY. In remaining open.

Mr. GRAY. That is one of the factors?

Mr. WHITNEY. Yes, sir; and the result of what the short interest would do in that event.

Mr. GRAY. We will come to the result shortly. In discussing this matter you have referred on occasions to the closing of the stock exchange in 1914, have you not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. How long was it closed then?

Mr. WHITNEY. From August until some time in December.

Mr. GRAY. Was there any disastrous effect such as you anticipated might have occurred had you closed the stock exchange on the morning of September 21, 1931?

Mr. WHITNEY. The situation was entirely different.

Mr. GRAY. The situation may have been different, and I will grant you that there were other factors at that time, but I am asking you whether there was any such disastrous results as you anticipated might have occurred had you closed the stock exchange on the morning of September 21, 1931?

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Mr. WHITNEY. Mr. Gray, I do not set up myself or the governors of the New York Stock Exchange as having all the knowledge in the world. Far from it. When we closed in August, 1914, we did so with the assurance from the banks of this country, and, if I remember right, from the Government of this country, that the loans existing at that time based on collateral security would not be disturbed. When we discussed this question in September, 1931, the advice, as I have already stated here this afternoon, based on the situation with regard to collateral listed security loans, was such that we were begged not to close, and all advice given us was that we stay open because of the bank situation of the United States.

Mr. GRAY. There was a very large short interest in the market at that time, was there not?

Mr. WHITNEY. There was a short interest of about four million shares, I believe.

Mr. GRAY. I want to read you for the purpose of asking a question or two about it what you said in your speech at Hartford with respect to the time of September 21, 1931. [Reading:]

> The most drastic step would have been to close the exchange. This was actually done twice before, for a few days in 1873 and for several months in 1914. We knew from experience that closing the exchange would not hold up security prices, but on the contrary would plunge them down to levels such as were seen in the "gutter markets" of August, 1914.

Were those levels in what you have designated as the "gutter markets in August of 1914" very much lower than the last quoted prices on the exchange before the close?

Mr. WHITNEY. Yes, sir, 25 to 50 per cent below. The same thing, to bring it more up to date, has been true with shares where minimum prices have been set in exchanges in Canada not so long ago, where they had minimum prices, and there were dealings taking place elsewhere in that country and in this materially below the minimum prices set by the exchange.

Mr. GRAY. Then any fear that you had that the shorts would not be able to cover if your market was closed was entirely groundless, was it not?

Mr. WHITNEY. The short position, sir, that we are referring to and have been referring to rests with our members, and in 1914 we did not allow our members to trade either one way or the other, to buy or to sell, except at a minimum price and under the specific control of a committee appointed to oversee transactions.

Mr. GRAY. But the customers could have done as they chose?

Mr. WHITNEY. No, sir.

Mr. GRAY. What would stop them from dealing in the gutter market covering their shorts?

Mr. WHITNEY. The contract would not be recognized by the exchange or by our brokers.

Mr. GRAY. What difference would that make to the customers under those circumstances?

Mr. WHITNEY. Well, he would have to pay for the stock outside of any member of the exchange.

Mr. GRAY. Well, your action was not due on September 21 to the protection of the short interests?

Mr. WHITNEY. In no way.

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Mr. GRAY. In no way at all. Let me read you some of the rest of it. [Reading:]

It would have frozen bank loans and investments, with serious consequences to our whole banking structure.

That is the closing.

Obviously, this was a step to be avoided if any other possible alternative could be found.

A second possible emergency measure was the establishment of minimum prices, which the stock exchange had employed with good results when it reopened in the late fall of 1914. But the present situation was utterly different from that occasion, for then the problem was how to open the exchange, not how to avoid closing it. Such a measure would plainly be useless and even dangerous when still unspent liquidation might quickly force prices below the minimum levels and in effect result in a closing of the whole market under fire.

There was left, however, a third expedient, which in all its long history the New York Stock Exchange had never tried, and that was a temporary suspension of short selling. This method in our opinion possessed certain features suited to the current crisis. Accordingly, by a unanimous vote of the governing committee, short selling was forthwith suspended for that day and until future notice.

In other words, you opened, but on Monday, September 21, and until further notice, as you have stated, an order went out suspending short selling; is that true?

Mr. WHITNEY. In the emergency; yes, sir.

Mr. GRAY. You have told us that short selling is a healthy condition for the market, have you not?

Mr. WHITNEY. And it was particularly so in this instance.

Mr. GRAY. Yes; and you have told us that it is a stabilizing influence?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. But as a matter of fact, the reason you abandoned it was because you were afraid that your own members, as well as numbers that were not your members, would start immediately to sell short when the market was opened on Monday morning, September 21, for their own benefit, irrespective of what happened to the country; is not that true?

Mr. WHITNEY. No, sir.

Mr. GRAY. What were you afraid of then that you banned short selling?

Mr. WHITNEY. Because we realized that with such a world-wide happening as England going off the gold standard, the liquidation upon our market, the only one of prominence open in the world, would be something terrific, and so we invoked the necessity of short sellers covering in order to stabilize that market, and they did it.

Mr. GRAY. Yes. But at the same time if short selling as a general thing is a healthy thing for a market—of course, you are talking about the covering—but if you had not abandoned that dangerous end of it there would have been short selling orders galore on Monday morning, September 21.

Mr. WHITNEY. No, sir.

Mr. GRAY. You do not think so?

Mr. WHITNEY. I do not think so.

Mr. GRAY. You think then that your members of your exchange, your brokers and the customers with whom they deal would have been gracious enough to have refrained from endeavoring to take

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advantage of the situation and sell something that they were pretty sure was going to be worth less money in a few days?

Mr. WHITNEY. I have not stated that, Mr. Gray, and I have tried to give a very different impression from that you are trying to put in my mouth.

Mr. GRAY. I think that is true.

Mr. WHITNEY. The reason we opened the exchange with the regulation imposed to stop and ban short selling was because we felt that the short sellers would have to cover and would cover, giving a stabilization in the market, and we felt that if we did not have that buying power in the market there would be no use opening the exchange, because there would have been no market.

Mr. GRAY. I get your viewpoint, but what would be the result had you not banned the short selling; just what I have indicated. would it not?

Mr. WHITNEY. God only knows.

Mr. GRAY. Yes; that is what I thought. Therefore, you considered short selling on that day would be quite dangerous, would you not?

Mr. WHITNEY. No; I will not grant that.

Mr. GRAY. Well, then, why didn't you let them sell?

Mr. WHITNEY. Because we did not know what the market would be, sir, at all, if we did not open with this ban. We were contemplating not opening at all.

Mr. GRAY. I want to find out, Mr. Whitney, whether or not you did not ban short selling on September 21, because you knew it would absolutely demoralize market conditions.

Mr. WHITNEY. We did not ban short selling on that day for that reason; no, sir.

Mr. GRAY. All right then; I want your opinion as a man of experience as to what would have happened had you not banned short selling that morning.

Mr. WHITNEY. The market would have closed.

Mr. GRAY. Well, I mean suppose you left it open and did not ban short selling, what would have happened to the market?

Mr. WHITNEY. The market would have closed.

Mr. GRAY. You mean conditions would have been so panicky that they would have had to close?

Mr. WHITNEY. Yes, sir. I do not grant, however, that short selling would have caused that panic.

Mr. GRAY. What would have?

Mr. WHITNEY. Liquidation, sir.

Mr. GRAY. All right now; you had some liquidation, you had some coverings by the shorts, it is true, but you banned the one dangerous thing, which was short selling, on September 21. You were afraid to let short selling take place, were you not?

Mr. WHITNEY. No, sir.

Mr. GRAY. Why didn't you let it take place then? We are going a little around in a circle, but I am trying to get from you the fact instead of having you argue.

Mr. WHITNEY. Because we wanted the shorts to cover, which they did, and two days later we took the ban off.

Mr. GRAY. I am coming to two days later.

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Mr. WHITNEY. Well, let me come to it.

Mr. GRAY. Yes; go ahead.

Mr. WHITNEY. We took the ban off, and then the short position came down again on that.

Mr. GRAY. So they did, and the market crashed?

Mr. WHITNEY. It did not.

Mr. GRAY. I will demonstrate that.

Mr. WHITNEY. You can not do it.

Mr. GRAY. I think so.

Mr. WHITNEY. By the third day——

Mr. GRAY. Right while you are about it, that short selling: For instance you take United States Steel, short selling was not in effect on September 21, and it was not in effect on September 22, was it?

Mr. WHITNEY. No, sir.

Mr. GRAY. Was it in effect completely on September 23 or with restrictions?

Mr. WHITNEY. Yes, sir; completely.

Mr. GRAY. Completely. All right.

Mr. WHITNEY. Except the restrictions under our constitution.

Mr. GRAY. Oh, why, of course you have regular restrictions. Do you know when on the 23d the short sellers started to operate? Have you any data on that at all?

Mr. WHITNEY. No, sir.

Mr. GRAY. You can not divide the day, can you? Now, as a matter of fact, on September 21—have you that information on United States Steel?

Mr. WHITNEY. No.

Mr. GRAY. Have you any personal recollection on it?

Mr. WHITNEY. No, sir.

Mr. GRAY. All right. As a matter of fact, United States Steel on September 21 opened at about 76 and closed at 80, did it not?

Mr. WHITNEY. If you say so, I will believe it.

Mr. GRAY. All right; when I say to you that I have a chart in front of me that is worked out from the figures that are furnished by your organization and its data, why I will ask you then to believe it.

On the following morning, on the 22d, with short selling it opened at 78 and closed at 80, and on the third day which you allowed short selling it opened at 82, as you have indicated, higher, went a point higher and closed at 83, but when short selling got into its swing the next day it opened at about 82¾ and dropped to 75 and a fraction, or seven points and a fraction in one day, and it never recovered its position and kept on going down after short selling became operative.

Do you still say that it was a good healthy thing to ban short selling and a good healthy thing to open up the right to sell short after several days.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. You do?

Mr. WHITNEY. You are going on assumptions that the short sellers were the only contributing factor to steel going down on the fourth day, but pass over with great lightness the fact that steel went up on the third day when short selling was allowed again.

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Mr. GRAY. I do not pass over it, Mr. Whitney, and if you want my reason it is because of the fact—my belief may be worth little or nothing—that it was not until the afternoon of the third day that the shorts began to operate and its effect was felt the next day when he stock dropped 7½ points.

Mr. WHITNEY. And how about the effect upon the world that owned securities in full realization of what going off the gold standard in England meant?

Mr. GRAY. All right; let me answer that in this way, by asking you a question: On Monday you did not allow any short selling?

Mr. WHITNEY. That is right.

Mr. GRAY. And I think United States Steel is a fair illustration of the market for the day, and I think I can show you a number of other stocks that acted in practically the same way. United States Steel opened at about 76 and went to 80 on that day and kept on in a healthy condition until on the next day it opened at 78, with short selling under ban, and went to 80 on that day. Then short selling was permitted the next day. It opened at 82 and it closed at 83.

Do you think that if you had permitted short selling on the fourth day, thus adding to the liquidation, whether it was forced or not, that that stock would have dropped 7½ points? In other words, it is not fair to put the question to you that way. Let me put it this way to you: Suppose there was a liquidation.

Mr. WHITNEY. There was

Mr. GRAY. Don't you think that that liquidation was decidedly added to by permitting the shorts to come into the market and sell on that day?

Mr. WHITNEY. No, Mr. Gray; I do not.

Mr. GRAY. You do not? It is your opinion, Mr. Whitney, is it not, if you will allow me just a minute——

Mr. WHITNEY (interposing). I wish you would give me the figures of Exhibit 4 that appear as——

Mr. GRAY (interposing). I will be very glad to give it to you.

Mr. WHITNEY. You are asking me things that my memory does not remember.

Mr. GRAY. That is the reason I took the chart.

Mr. WHITNEY. You are not taking charts. You take a specific stock.

Mr. GRAY. I will take any one that you name.

Mr. WHITNEY. I do not think any particular stock really proves the case. I think it is all stocks.

Mr. GRAY. You name a stock and we will take it.

Mr. WHITNEY. I am contented. You can go ahead with United States Steel.

Mr. GRAY. You are contented that United States Steel is probably representative, are you?

Mr. WHITNEY. I think probably that it is.

Mr. GRAY. Then what I wanted to ask you—and this has nothing to do with those figures—you have said that you do not think that permitting short sales on the fourth day caused any dropping in the market either of United States Steel or of any other stocks. It is

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your general belief that short selling, which is liquidation in effect, never is a depression on the market; is that so?

Mr. WHITNEY. It may have an influence, sir. That it is the cause, no; the basic cause, no.

Mr. GRAY. You are not able to tell us, for instance, on that 24th of September, while you are looking at statictics and while I think I know what you are looking for, what amount of United States Steel shares were sold short on that day, are you?

Mr. WHITNEY. Yes; the net position.

Mr. GRAY. You can tell us the net position; yes, sir. Suppose you give it to us.

Mr. WHITNEY. I can not give it to you for that day, because we do not seem to have it, but for the trading on the 21st, there was a decline of but 2,700 shares. The trading on the 22d, an increase of but 100 shares, and then the trading on the 23d, 24th, and 25th——

Mr. GRAY (interposing). Give me them separately. What was the 25th?

Mr. WHITNEY. I have not got them. They are not here. Oh, I beg your pardon. Sorry. Forgive me. I have got the wrong figures.

On September 21 the trading decreased about 45,000 shares.

Mr. GRAY. Are you talking about trading, or are you talking about short trading?

Mr. WHITNEY. The net short position.

Mr. GRAY. Yes.

Mr. WHITNEY. And during the trading on the 22d it decreased about 32,000 shares, and on the 23d it increased about 27,000 shares, and then on the day you refer to, Mr. Gray, when short selling had gotten into full blast again——

Mr. GRAY. Yes.

Mr. WHITNEY. It decreased approximately 39,000.

Mr. GRAY. But you are looking at the wrong day, Mr. Whitney, and I will show it to you. I have not even seen what you have in front of you. Your figures are at the opening.

Mr. WHITNEY. Yes, sir; absolutely.

Mr. GRAY. Are you looking at the opening of the 24th?

Mr. WHITNEY. No, sir; I am looking at the opening of the 25th as compared with the 24th.

Mr. GRAY. And at the opening of the 24th, or rather at the closing, what was the number of shares short?

Mr. WHITNEY. Two hundred and eighty-two thousand.

Mr. GRAY. And what was it the next day?

Mr. WHITNEY. Three hundred, twenty-one thousand.

Mr. GRAY. But as I say to you, that is absolutely no indication how many shares were sold short on that day, is it? You can not tell us, can you?

Mr. WHITNEY. Sold short—but we are taking into account onthing to do with the covering of shorts sold the same day; no, sir.

Mr. GRAY. In other words, there might have been with that reduction a very large number of shares sold short on that day?

Mr. WHITNEY. And a great preponderance of purchases by short sellers that day.

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Mr. GRAY. Now, your Schedule B—I don't know whether you have got the 21st here or not. And now let us take all the stocks, if I may be permitted. These are dates on the opening, are they not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And this schedule that we are looking at, so that you may understand it, is not the position on all the shorts from day to day; this is that which was traded in, is it not?

Mr. WHITNEY. No, sir.

Mr. GRAY. Traded in covered?

Mr. WHITNEY. No, sir.

Mr. GRAY. You are looking at Schedule A or Schedule B?

Mr. WHITNEY. You are doing it.

Mr. GRAY. Don't worry; we will get along very nicely. This Schedule A—I am looking at it up side down. You keep it that way. I can see it this way. That Schedule A is the change in the position on the outstanding short interests, is it not?

Mr. WHITNEY. The total short interest.

Mr. GRAY. On all stocks?

Mr. WHITNEY. On all stocks in which a short interest existed.

Mr. GRAY. On the morning of the 21 what was it?

Mr. WHITNEY. Three million nine hundred sixty-one thousand.

Mr. GRAY. On the morning of the 22d what was it?

Mr. WHITNEY. Three million one hundred sixty-two thousand.

Mr. GRAY. So that with the ban on short selling it dropped considerably?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And on the morning of the 23d what was it?

Mr. WHITNEY. Two million nine hundred twenty-nine thousand, a drop of 233,000.

Mr. GRAY. And on the morning of the 24th what was it?

Mr. WHITNEY. Two million nine hundred forty-nine thousand, an increase of 20,000.

Mr. GRAY. That is the result of the selling of the 23d, the short selling?

Mr. WHITNEY. That is right.

Mr. GRAY. In other words, even your net position increased, did it not?

Mr. WHITNEY. It did 20,000 shares, as against the day before when short selling was allowed of a decrease of 233,000.

Mr. GRAY. No, no.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. You mean to say that on the 23d there was a decrease?

Mr. WHITNEY. On the 23d.

Mr. GRAY. No; I will take you back again.

Mr. WHITNEY. Wait a minute now.

Mr. GRAY. All right; you correct yourself then.

Mr. WHITNEY. On the trading of the 23d there was an increase of 20,000.

Mr. GRAY. Yes; that is what I thought. And on the trading of the 24th there was an increase of what?

Mr. WHITNEY. Of 37,000.

Mr. GRAY. And by the way, just to carry it out to another day, trading of the 25th, what happened?

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Mr. WHITNEY. I have not those figures, but by the——

Mr. GRAY (interposing). That is because, I suppose, the Saturday came in there. What was the difference between the last day you gave us, then, and the next day you gave us?

Mr. WHITNEY. Two thousand.

Mr. GRAY. Well, now then; turn to Schedule B, will you, which is the next schedule on the next page?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Now Schedule B and those statistics used is a schedule showing the amount of stock that was sold short on one day and covered in the same day; that is true, is it not?

Mr. WHITNEY. That is right.

Mr. GRAY. And I suppose you have no statistics for the 21st or 22d of September, have you?

Mr. WHITNEY. No, sir.

Mr. GRAY. All right; how much stock on that schedule was bought and sold on the 23d?

Mr. WHITNEY. I have no figures.

Mr. GRAY. You have no 23d figures?

Mr. WHITNEY. It does not begin until the 26th. That was Saturday.

Mr. GRAY. How was that? There was a short selling on those days.

Mr. WHITNEY. That is when we started this compilation.

Mr. GRAY. Oh, you mean you did not start it until the 26th?

Mr. WHITNEY. No, sir.

Mr. GRAY. That would not be of much help to us, maybe. You started it on Saturday and that was a short day of two hours?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. How much stock was sold short on that day and covered the same day?

Mr. WHITNEY. Twelve thousand three hundred.

Mr. GRAY. How much on Monday, the 28th?

Mr. WHITNEY. Eighty-five thousand nine hundred.

Mr. GRAY. And on Tuesday?

Mr. WHITNEY. One hundred fifty-four thousand.

Mr. GRAY. In other words, it jumped from 12 to 89 to 154?

Mr. WHITNEY. Dependent upon the trading on the floor.

Mr. GRAY. Of course.

Senator BLAINE. Those are all short and covered?

Mr. GRAY. Those are all short and covered?

Mr. WHITNEY. Yes; certainly.

Mr. GRAY. In other words, I have had him indicate to you what the position was during that week where there were short sales that were carried short, and then in order to give the complete story I have had him give this figure also, but it is not available for the 23d, 24th, or 25th, not until the 26th, as I understand Mr. Whitney.

Mr. WHITNEY. Not until the morning of the 26th.

Mr. GRAY. All right.

Mr. WHITNEY. I do not want you to forget, however, as I have contended, that those that sold short the same day bought them back.

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Mr. GRAY. Oh, yes; I know that.

Senator BARKLEY. Is there any reason for leaving out those three days immediately after you lifted the ban?

Mr. WHITNEY. Senator Barkley, we never had those figures for any period before that time.

Mr. GRAY. They did not start until that time.

The CHAIRMAN. The committee will adjourn for to-day, and Mr. Whitney will be here on Thursday morning at 10.30 to continue.

(Accordingly, at 5.05 o'clock p. m. the committee adjourned to meet again on Thursday morning, April 21, at 10.30 o'clock a. m.)

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STOCK EXCHANGE PRACTICES

THURSDAY, APRIL 21, 1932

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met at 10.30 a. m., pursuant to adjournment on Monday, April 18, 1932, in room 301, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Carey, Watson, Couzens, Fletcher, Barkley, Bulkley, and Gore.

Present also: William A. Gray, Esq., associate counsel to the committee.

The CHAIRMAN. The committee will come to order. Mr. Whitney is on the stand. You may proceed, Mr. Gray.

TESTIMONY OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.—Resumed

Mr. GRAY. Mr. Whitney, on page 97 of the House investigation of your testimony you said, and I am quoting your words, that—

> If there had been no short selling of securities on the stock exchange it would have been forced to close many months ago.

Why do you believe that to be true?

Mr. WHITNEY. Because I felt at that time, and have felt since, that short selling, as I have stated here many times before, is a very integral part of speculation, along with marginal buying, and that it with investment makes up the market.

Mr. GRAY. Do you mean to say now that that which you said before the House Committee, that if short selling were not permitted the stock exchange would have to close, is a fact?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. In other words, it is your thought that the market can not be conducted on a basis of buying and selling, prices being regulated by the intrinsic values of the stocks and by the law of supply and demand, but that there has to be some artificial speculating in order to keep that market alive?

Mr. WHITNEY. No, sir; I do not think that short selling or marginal purchasing is artificial.

Mr. GRAY. You do not think so?

Mr. WHITNEY. No, sir.

Mr. GRAY. You do not think it is artificial for a man to sell that which he has not and wait for the price to decline and buy it back again?

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Mr. WHITNEY. No, sir. That same process applies in most if not all types of industry.

Mr. GRAY. Well, I am not going to get into a discussion with you as to the difference between the short selling of stocks and the short selling of commodities for delivery in the future. But isn't the selling of stocks short a pure speculative or gambling transaction?

Mr. WHITNEY. It is not gambling. It is speculating.

Mr. GRAY. What is your distinction between speculation and gambling?

Mr. WHITNEY. I think the distinction is in the endeavor or the act, dependent upon one's purpose. Gambling is an endeavor where there is no useful purpose, and the individual who gambles therefore is a drone. The individual who speculates is using his money, taking a risk, but with the desire for something productive.

Mr. GRAY. What desire do you think a short seller has for something productive? Has he any other desire than to make money on his gamble?

Mr. WHITNEY. That, as I have explained, is the difference in judgment from the man who purchases on margin. Without that you would not have a market. It would be totally artificial without it.

Mr. GRAY. As to any difference in judgment, it is the same difference in judgment when a man bets that red is coming up on the roulette wheel and the other man bets that black is coming up. Isn't that a fact?

Mr. WHITNEY. Oh, no. I do not mean that at all.

Mr. GRAY. You state that the man who engages in short selling has the purpose to make money. But is his purpose other than to make money on the fall of the market?

Mr. WHITNEY. My answer is that I do not think he has any purpose except to make money, but it is exactly the same purpose as has the marginal purchaser when he buys stock—he desires to make money. And as I have said continuously, the two make up speculation, and without the one or other the markets would not exist.

Mr. GRAY. But you are getting away from the question. You gave me your definition of speculation or gambling——

Mr. WHITNEY (interposing). Speculation.

Mr. GRAY (continuing). Or, rather, you showed me what you thought the distinction was.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And you told me that speculation was something that was done with a purpose.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Your answer seemed to indicate it had some other purpose than that of gambling. When a man gambles he does it with the purpose of winning. Is there any other purpose in the world that the short seller has than that?

Mr. WHITNEY. I referred the other day——

Mr. GRAY (interposing). Oh, no. Answer that, please.

Mr. WHITNEY. I am going to answer it.

Mr. GRAY. Well, answer that question. Is there any other purpose? And then you can tell me anything you referred to the other day thereafter.

Mr. WHITNEY. Well, then, will you repeat your question as long as you are going to tell me how I must answer?

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Mr. GRAY. I am not going to tell you how you must answer, but I am going to ask the committee reporter to repeat the question to you.

(Thereupon the committee reporter read the following questions and answers:)

Mr. GRAY. But you are getting away from the question. You gave me your definition of speculation or gambling——

Mr. WHITNEY (interposing). Speculation.

Mr. GRAY (continuing). Or rather you showed me what you thought the distinction was.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And you told me that speculation was something that was done with a purpose.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Your answer seemed to indicate it had some other purpose than that of gambling. When a man gambles he does it with the purpose of winning. Is there any other purpose in the world that the short seller has than that?

Mr. WHITNEY. I referred the other day——

Mr. GRAY (interposing). Oh, no. Answer that, please.

Mr. WHITNEY. I am going to answer it.

Mr. GRAY. Well, answer that question. Is there any other purpose? And then you can tell me anything you referred to the other day thereafter.

Mr. GRAY. Now, please go ahead and answer that.

Mr. WHITNEY. The seller for short account has the purpose certainly of desiring to make money by his act. But there is a grave distinction between gambling and speculation.

Mr. GRAY. But you have not told me yet. Has that short seller, whom you admit has the purpose to make money, any other purpose that you know of?

Mr. WHITNEY. No; I do not think he has any other purpose than to make money. But the fact of short selling is coupled with the fact of marginal purchasing, and you are getting into the economic aspects of this question, which are involved and long, and only in that way could I explain the distinction that I firmly believe exists between gambling and speculation.

Mr. GRAY. The short seller on the stock exchange sells for delivery at any time he chooses to make delivery in the future, doesn't he?

Mr. WHITNEY. He does not.

Mr. GRAY. Subject, of course, to possibly somebody calling on him to make delivery.

Mr. WHITNEY. He must make delivery the next day or full business day.

Mr. GRAY. Of course, under the rules of the stock exchange he has to make delivery, and for that purpose he borrows stock. But as far as covering is concerned he may do it at any time he chooses.

Mr. WHITNEY. He does not have to cover until such time as he wants, subject to certain conditions.

Mr. GRAY. Now, in your distinction with respect to, or rather in your statement with respect to the closing of the exchange in event of there being no short selling of securities, did you include in the expression "short selling," or did you intend to include short selling of the day also which is covered on the same day?

Mr. WHITNEY. No.

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Mr. GRAY. In other words, there is some short selling in which there is no actual covering until a much later period, and there are other short sales which are made during the day and covered immediately, which, of course, does away with the necessity of borrowing and delivering stock. Did you intend to include that in your distinction?

Mr. WHITNEY. I take it I was thinking of the whole aspect of short selling, and not with any specific reference to the in-and-out sales covered the same day.

Mr. GRAY. Do you think that in-and-out short sales covered the same day are necessary, and that if they were not permitted to take place the stock exchange would have to close?

Mr. WHITNEY. They are absolutely necessary to a market. And I should like, if I may, to introduce here for the record my speech on the subject, and I think it is the one delivered at Hartford, in which I——

Senator GORE (interposing). Delivered where, Mr. Whitney?

Mr. WHITNEY. At Hartford. No; it was not in my speech delivered at Hartford, but I should like to put both of those addresses into your record here, the one made at Hartford on October 16 and the one made at Syracuse on December 15.

Mr. GRAY. I have no objection. The committee would like to have them, I guess.

Mr. WHITNEY. If I may, Mr. Chairman.

The CHAIRMAN. They may be made a part of the record.

Mr. WHITNEY. In my speech at Hartford I pointed out the necessity of the type of in-and-out trading, pages 13 and 14, if I may read it?

The CHAIRMAN. Proceed.

Mr. WHITNEY. I said [reading]:

The ban on short selling immediately created a new problem. Within two hours after short selling was forbidden——

Mr. GRAY (interposing). In order that the committee may understand it, you were talking there with respect to the period of time of September 21, when the ban was put on short selling.

Mr. WHITNEY. Exactly. To prove my contention that short selling is a necessity.

Mr. GRAY. Go ahead.

Mr. WHITNEY. I said [reading]:

The ban on short selling immediately created a new problem. Within two hours after short selling was forbidden, the governing committee found there was a real danger of technical corners and of crazy and dangerous price advances. At one time there were accumulated orders to buy approximately 8,000 shares of General Motors stock at the market. No stock was offered for sale within many points of 30¼, which was the last preceding sale and the highest price that the stock reached at any time during this period. Something had to be done immediately or otherwise the buyers would have bid frantically for the stock and a rapid and entirely unwarranted advance would have taken place. An example of what I mean occurred in Reading Co. stock which opened at 48¼, advanced to a high of 75, and subsequently declined to 62. Similar situations existed in leading and active share issues such as United States Steel, American Can, and others. In order to avoid such wild fluctuations, which would have disturbed and disorganized the market, the business-conduct committee was authorized to permit a limited amount of short selling. All such short sales were made, however, under close supervision of the governors of the exchange when it was necessary to prevent violent price

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changes. These facts prove that a complete prohibition of short selling could not be enforced for even two hours without creating an unnatural and dangerous market.

(The speeches delivered by Mr. Whitney at Syracuse on December 15 and Hartford on October 16, 1931, will be inserted at this point for printing in the record.)

EXHIBIT No. 18

SHORT SELLING

(Address delivered by Richard Whitney, president, New York Stock Exchange, before the Hartford Chamber of Commerce, Hartford, Conn., and over the nation-wide network of the Columbia Broadcasting System (Inc.), October 16, 1931.)

Gentlemen, it is a pleasure to address the members and guests of the Hartford Chamber of Commerce which represents so ably one of our oldest and most important financial centers. I particularly appreciate the invitation to speak to you this evening because it gives me an opportunity of discussing, at a timely moment, a subject of the greatest importance. I have entitled my remarks "short selling," but I intend to talk to you not only about the theoretical aspects of short selling but also about the part which short selling has played in the recent financial crisis.

I have complete confidence in the common sense of the people of the United States when forming an opinion if the true facts are before them. I do not believe that the facts with regard to short selling have been thoroughly understood or properly explained to the public, and for this reason perhaps hasty conclusions have been reached and expressed on this problem.

Just what is short selling? Let us imagine a man has become convinced that a certain security is selling at too high a price. He feels that it is certain to sell at a lower price in the future and he wishes to take advantage of this situation. To do so, he tells his broker to sell the stock on the stock exchange. At the moment the order is given the broker usually does not know whether his customer is making a short sale or is actually selling stock that he possesses. The order is sent through to the floor of the stock exchange and is executed in exactly the same way as any other order. The broker who buys is not aware that the man who is selling has not possession of the stock. The contract made between the brokers is for delivery of the stock against payment on the next business day, and the buying broker will demand that the seller deliver the stock to him in accordance with the contract. It is only when the day for delivery arrives that a short sale differs from a sale of long stock. The man who has not in his possession the stock which he has ordered his broker to sell must obtain it in order to carry out his contract. This is done in the usual course of business by the short seller borrowing the stock from other persons who possess it. Stocks can be borrowed just as money can be borrowed. Therefore, the short seller borrows the stock and delivers it on his contract and the short sale is then complete.

You can readily see that a man who thus sells stock short and meets his obligation to deliver by borrowing does substantially the same thing as a man who buys stock and pays for it with borrowed money. The short seller, at the time of the sale, has not got the stock in hand to deliver; just as the long purchaser, at the time of the purchase, has not got the cash in hand to pay for it. In each case, the seller or buyer has sufficient credit to borrow the stock or money with which to meet his obligation. If it is wrong for a man with credit to borrow stock because he is selling it short, it is just as wrong for a man to borrow money to buy stock or any other kind of property.

When we borrow money or stock or any other kind of property what we really do is to obligate ourselves to return the same or equivalent property at some time in the future. Few people seem to realize that a short sale is nothing but a contract to deliver stock in the future. The short seller, when he has made his sale, is obligated to return the equivalent to the person who loaned him the stock. The loan may be due at a fixed time or it may be payable on demand, but in either case the short seller must at some time buy the stock that he has borrowed and return it to the lender. This is the feature of short selling that makes it so essential to an open market for securities. Every man

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who has sold short is, as I have said, a potential buyer of securities, and this is a source of great stability to a market, because experience shows that when prices suddenly decline the short sellers purchase stocks in order to discharge their loans. This is especially true in times of crises when other people hesitate to buy and the short sellers represent the purchasing power which prevents the market from becoming demoralized. The stock exchange has recognized this fact for many years and has always permitted short selling because it was convinced that no securities market could long continue in business if short selling were forbidden.

In spite of all that has been said about short selling, there can be no doubt that it is a lawful practice. There are many decisions by our highest courts upholding it. There is one, however, which is worth quoting, not only because it is a decision of the Supreme Court of the United States, but also because the opinion was written by one of our most eminent jurists, who, with broad vision, has recognized the necessity of upholding the practice of selling for future delivery. I refer to the opinion of Mr. Justice Holmes in the case of Board of Trade *v.* Christie Grain & Stock Co., in which he said:

"* * * Of course, in a modern market contracts are not confined to sales for immediate delivery. People will endeavor to forecast the future and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain. This court has upheld sales of stock for future delivery * * *"

As Justice Holmes so clearly points out, short selling is not only a lawful practice but it is also the expression of the business judgment of an individual or individuals in selling something where the belief exists that the prevailing price is too high to be warranted by existing conditions. This opinion is set off against that of the purchaser, who believes the price is warranted. Of these fundamentally different views, one is right and the other is wrong, as may be proved over a period of time. Human judgment is never infallible, and yet he whose judgment at a particular time is proved incorrect may find himself at a later period justified in his first opinion. However, in the interim, where his judgment has been wrong, either as a purchaser or as a short seller, he should not put the blame for his lack of business judgment upon the market place that affords him the opportunity to buy or sell.

For a great many years the short sale has been a regular feature, not only of all the leading security markets in the world, but also of practically all branches of business. Competent and impartial economic students, both here and abroad, have long declared that short selling, by restraining inflation and cushioning sharp declines, tends to stabilize the fluctuations of prices. That this contention is no mere academic theory, recent occurrences in the stock market have very clearly shown, and I shall have occasion in a moment to allude again to this vital service of the short sale.

In addition, we of the stock exchange are compelled by daily experience in our business to realize other and equally necessary reasons for continuing to permit and approve the practice. For one thing, short sales enable persons who hold securities at considerable distances from New York City to liquidate them speedily and safely. Were short selling to be prohibited, it would mean that no one more than 24 hours' mailing distance from New York could freely sell in our market the stocks which he owns.

Short selling is also regularly employed as a "hedge," not at all for the purpose of making speculative profits, but for insuring against losses due to price fluctuations. Probably the most important cases of this sort occur in our odd-lot business. To forbid such short selling would paralyze the odd-lot business as we know it to-day. It would compel the charging of a huge, instead of a small, price differential between 100-share lots and odd lots of less than 100 shares. This, I would remind you, is no mere question of financial technique, confined in its influence to Wall Street. It would immediately affect the realizable value of securities held by millions of American citizens all over this country.

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Any halt or hindrance to short selling would have the effect of driving from the stock market the most important sources of buying power, and it could only lead to an excess of sellers and further declines in prices. Whether the opponents of short selling know this or not, the New York Stock Exchange knows it, and it is one of the basic reasons for the stock exchange attitude in defense of short selling.

The decline in security prices has not been due to short selling, but has been due to our unsatisfactory business conditions and to the liquidation of securities owned outright or held on margin. I am not making this statement in any doctrinaire fashion, but on the basis of cold fact. I am basing it not only upon the experience of the New York Stock Exchange through business depressions for over a century, but also upon our knowledge of the actual forces recently at work in the stock market. I would remind you that the stock exchange has frequently investigated the facts concerning short selling. In 1917, and again in 1929 and 1930, the stock exchange obtained comprehensive and illuminating statistics concerning it. In May of this year, this work was renewed upon a still more extensive scale. Ever since May 25, 1931, we have obtained, at least weekly, the number of shares which composed the entire short interest in the market, and since September 21 these reports have been made daily. These statistics, to which I am about to refer, prove the truth of my statement that short selling has not been the cause of declining security prices.

On May 25, 1931, when our members again began to report their short accounts to the exchange, the total size of the short interest in the market amounted to 5,589,000 shares. This aggregate fell considerably while stock prices remained relatively unchanged until the news of the proposed international debt moratorium was announced, when the short interest dropped still further as the excited but temporary rise in prices ensued. Through August the short interest increased somewhat, while prices fluctuated uncertainly. It rose to a new peak of 4,480,000 on September 11, but on September 18—the last weekly date before the English sterling crisis struck the stock market—it had again fallen and stood at 4,241,000 shares.

The subsequent fluctuations in the short interest I shall recount presently. For the time being I wish to point out that the aggregate short interest in the market, even at its May 25 peak of 5,589,700 shares, constituted only two-fifths of 1 per cent of the 1,305,516,716 shares listed as of June 1. An estimate of shares in the "long" account carried by stockbrokers puts their number at approximately 59,000,000—or about ten and a half times the contemporary short interest. All listed shares represent potential selling power, and shares in "long" accounts, of course, represent an actual selling threat immediately in the market. Shares in the short interest, on the other hand, represent the only compulsory buying power which the market possesses.

The real cause of declining security prices, as I have said, was not short selling but the continued liquidation of stocks held both outright and on margin. In order to comprehend the reasons for this extensive tendency to liquidate securities we must remember that it arose not in the stock market, but quite outside of it, and the stock market has been its victim rather than its cause. Institutional investors, because of the laws which govern their investments, have frequently been compelled to sell. The indentures of some investment trusts and security holding companies have similarly been responsible for forced liquidation of their investments. Many companies with a surplus in the form of securities in their treasuries have, because of the depression, been compelled to convert these securities into cash. In every depression which we have ever had, compulsory liquidation of this sort has been imposed upon the stock market, in order to keep business going.

There is also another kind of compulsory liquidation of securities in business depressions, which is due to the fact that the stock exchange is the most available market. Owners of land or real estate, of private business enterprises, of inventories of goods, or of unlisted securities, often find that they can not sell these forms of property, and they are inevitably forced to obtain funds by selling securities which are listed on the New York Stock Exchange. Some of the people who thus sell listed stocks in order to continue to carry less salable property forget that their own sales have been an important cause of the decline in security prices and often unjustly attribute to short selling the result which they themselves have been instrumental in bringing about.

A clear proof of the fact that it has been liquidation rather than short selling which has been responsible for declining security prices, has, as a matter of fact, been afforded in the security market itself, at least to those who have eyes

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to see. The decline in prices has not occurred merely in stocks, where short selling is permitted, but also in the bond market where short selling is all but impossible because of the difficulty of borrowing for delivery. I can speak feelingly on this subject, because I am in the bond business myself. Despite the fact that bond prices are usually steadier than stock prices, probably the greatest and most ridiculous declines have taken place in bonds rather than in shares. In some cases the bonds of certain governments bearing a high rate of interest have sold at a price below that of bonds carrying a low rate of interest, despite the fact that both issues were obligations of the same government, were equally secured, and due at approximately the same date. The bonds of obviously sound governments have likewise sold far below bonds of other countries whose financial position has been much more doubtful. Very plainly this has not been due to short selling but to liquidation. Indeed, if bonds could readily be sold short, abnormalities of this sort would have been considerably reduced.

Other cases could be cited where unlisted stocks, which can not be sold short, have shown price fluctuations far greater than the average listed stock issue. This is not a matter of mere conjecture or assertion but of fact. It completely shatters the contention that it is the short seller who has forced prices down. Nor have these facts been difficult to obtain. They have been printed on the news tickers throughout the land and published in practically all of our newspapers. The principal moral to be drawn from the evidence in regard to declining security prices is, therefore, that we must base our opinions on fact and not on conjecture.

With this general background I can now review the financial crisis caused when Great Britain suspended gold payments and the emergency measures which were then taken by the New York Stock Exchange. The sensational news from London had not been anticipated by most of us. In fact the very large American and French credits which had so recently been extended to Great Britain seemed to preclude the likelihood of any such action. I need not explain to this audience how severe a shock the news was, not only to this country but to the whole world. It is sufficient to recall the fact that every important stock exchange in Europe save only Paris closed instantly and that restrictive measures on banking and trade were very commonly adopted. Such a situation in finance had not occurred since the crisis created by the outbreak of the World War, when the New York Stock Exchange and every other important stock exchange in the world had been compelled to close.

When the governing committee of the New York Stock Exchange met on Monday, September 21, at 9.15 a. m., all the important stock exchanges in Europe except Paris had already suspended, and Paris had concluded its Monday session under severe restrictions. In consequence the New York Stock Exchange remained the only great open market in the world where securities could be sold. It was obvious to all that a crisis was at hand, that for the time being a normal market might not exist, and that emergency measures must be taken. The only real question was just what those emergency measures should be.

The most drastic step would have been to close the exchange. This was actually done twice before, for a few days in 1873 and for several months in 1914. We knew from experience that closing the exchange would not hold up security prices, but on the contrary would plunge them down to levels such as were seen in the "gutter markets" of August, 1914. It would have frozen bank loans and investments, with serious consequences to our whole banking structure. Obviously, this was a step to be avoided if any other possible alternative could be found. A second possible emergency measure was the establishment of minimum prices, which the stock exchange had employed with good results when it reopened in the late fall of 1914. But the present situation was utterly different from that occasion, for then the problem was how to open the exchange, not how to avoid closing it. Such a measure would plainly be useless and even dangerous when still unspent liquidation might quickly force prices below the minimum levels and in effect result in a closing of the whole market under fire. There was left, however, a third expedient which in all its long history the New York Stock Exchange had never before tried, and that was a temporary suspension of short selling. This method in our opinion possessed certain features suited to the current crisis. Accordingly, by a unanimous vote of the governing committee, short selling was forthwith suspended for that day and until future notice.

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Of course, the real point in the crisis produced by the lapse of sterling was that a further liquidation of securities was inevitable, and the duty of the New York Stock Exchange was to remain open so that this might be accomplished in an orderly manner. Additional buying power in the security market was vitally needed to achieve this result. It was certain that no buying power great enough to meet the emergency was to be found except in the short interest, created by those who had previously sold short and who were committed under their contracts to repurchase. This short interest of 4,241,000 shares on September 18, was at least mobilized and effective. In the opinion of the committee, a sudden ban on short selling would be likely to force covering by those who were short, thus steadying the market temporarily until the immediate shock of the London news could be dissipated. While this emergency method involved serious drawbacks concerning which I will speak in a moment, in the light of the extraordinary circumstances surrounding the market, it seemed to be the least dangerous and most salutary measure to pursue.

The result completely confirmed the decision of the governing committee. Share prices rallied during Monday, September 21, and Tuesday, September 22. The volume of trading expanded, and all those who had securities and wished to sell them, had an ample opportunity to do so. Time was also afforded the great security markets of Europe, and especially the London Stock Exchange, to adopt suitable emergency measures and to reopen.

The ban on short selling immediately created a new problem. Within two hours after short selling was forbidden, the governing committee found there was a real danger of technical corners and of crazy and dangerous price advances. At one time there were accumulated orders to buy approximately 8,000 shares of General Motors stock at the market. No stock was offered for sale within many points of 30¼, which was the last preceding sale and the highest price that the stock reached at any time during this period. Something had to be done immediately or otherwise the buyers would have bid frantically for the stock and a rapid and entirely unwarranted advance would have taken place. An example of what I mean occurred in Reading Co. stock, which opened at 48¼, advanced to a high of 75, and subsequently declined to 62. Similar situations existed in leading and active share issues such as United States Steel, American Can, and others. In order to avoid such wild fluctuations which would have disturbed and disorganized the market, the business-conduct committee was authorized to permit a limited amount of short selling. All such short sales were made, however, under close supervision of the governors of the exchange when it was necessary to prevent violent price changes. These facts prove that a complete prohibition of short selling could not be enforced for even two hours without creating an unnatural and dangerous market.

The temporary stabilization of stock prices produced by banning short sales almost immediately resulted in a flood of most enthusiastic letters from those who had always condemned short selling. Indeed, the stock exchange authorities, if they had lost their senses, might have courted great popularity by continuing the ban on short selling which would have proved as brief as it doubtless would have been intense. We knew perfectly well that the more cheerful appearance in the market was wholly artificial, that it was not the glow of natural health but the flush of artificial stimulation. Under this temporarily pleasant surface, the real facts were far from reassuring. The emergency action of the exchange had stimulated buying power in the market by inducing the short interest to cover. The market was therefore running on its final resources. At the close of business Monday, September 21, the total short interest had decreased by the large amount of 544,000 shares. By the end of business the following day, Tuesday, the 22d, while short selling was still forbidden, it had fallen a further 535,000 shares. Obviously this rapid exhaustion of the final available and dependable buying power in the market could not continue. Buyers of securities were still unwilling to purchase as much as outright and margin sellers were offering. The inevitable liquidation had been steadied, but it had not been halted. By the morning of September 23 the governing committee was informed that the London Stock Exchange had reopened. The action of our own market on September 21 and 22 seemed to indicate that the shock of crisis had been absorbed and that normal trading conditions could be resumed. Furthermore, the governing committee was constantly concerned by the rapid exhaustion of the short interest, and, for all

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these reasons, the restriction on short selling was removed before the opening of the market on September 23.

The action of the market on the first day when short selling was again permitted was most interesting. Prices advanced; there was real activity, and most significant of all, the short interest decreased by an additional 233,000 shares.

On September 24 the market suddenly became very weak. This was undoubtedly due to the wild fluctuations in foreign exchange. The English pound varied so rapidly in value that the London Stock Exchange adopted stringent restrictions on trading. The fall in security prices was once again blamed on short selling, but the fact that the short interest increased on September 24 by only 20,000 shares clearly proves that this argument was unsound.

From September 24 to October 5 we had declining markets. Prices receded tremendously, and the fact that short selling was permitted during this period brought a great deal of criticism on the exchange. But short selling did not cause this decline in prices. The total short position at the close of business on October 5 was 2,612,000 shares, so that there had been a further decrease in the short position between September 24 and October 5 of 337,000 shares.

What then is the real significance of this unprecedented two days' suspension of short selling which the stock exchange imposed? Plainly that it was an emergency measure, taken in a great crisis. The definite figures concerning the short interest which I have already quoted to you prove the enormous significance of the short sale in cushioning falling prices. Without such a short interest on September 21, the New York Stock Exchange might have been forced to close its doors. If the suspension of short selling had been continued so that the short interest had become exhausted, the same result might have been inevitable. The New York Stock Exchange provides a market-place, in which security prices are made by all the buyers and all the sellers in the country. If the holders of securities insist upon selling them in the absence of sufficient buying power, prices must decline until buyers are attracted. This is the law of supply and demand, and there is no escaping it. The attitude taken by the New York Stock Exchange, I feel, has been in thorough accord with its own announced principles, and with those fixed economic laws which all business must always obey. The stock exchange in its policy has not yielded to emotional psychology. What it did was to meet a most grave situation by an appropriate emergency measure.

During this whole period, no small part of the burden of maintaining the financial stability of the world fell upon the New York Stock Exchange. I believe that by staying open and maintaining a market for securities, the New York Stock Exchange behaved as the greatest organized market in the greatest creditor nation of the world should behave in a time of crisis.

Nobody can discuss the question of short selling without also considering the practice which is commonly described as "bear raiding". In the public mind the two are often linked together and the evils of "bear raiding" are attributed to short selling. If a person sells stock, not because he believes the stock is too high, but because he believes that by selling quickly and in great volume he can force the price to decline, he is abusing the legitimate practice of short selling. Contrary to what many people believe, the exchange has always opposed "bear raiding". Its constitution specifically provides that any member who sells securities for the purpose of demoraziling the market may be suspended or expelled.

In recent months we have all heard a great deal about "bear raiding". I would like to ask just what proof there is—not blind prejudice, not vague assertions, but actual proof and evidence—that "bear raiding" has taken place in the stock market. The New York Stock Exchange has for many months been investigating this whole subject. It may well be that actually we have investigated it too much rather than too little. We have particularly looked into all sales of shares in big blocks—the supposed method whereby it is alleged that "big operators smash prices." Out of some 50 or 60 cases of this sort recently, we have found only one that was a short sale, and it was an order to sell on a scale up, in every way a legitimate short sale with a stabilizing effect on prices, and in no way aimed at, or resulting in, a demoralization of the market. If we have had no occasion to take definite action under our rule, despite the many investigations of suspicious looking cases, it

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has been because we have found real liquidation rather than "bear raiding" was responsible for declining prices.

One other point on this subject. Our records show that at the close of the market on September 21, the total short interest of 3,697,000 shares comprised the commitments of 9,369 separate accounts. The analysis of these reports has failed to disclose any single individual or group of individuals who might be said to be dominant factors on the short side of the market. On the contrary, these accounts were short, on the average, only about 400 shares each, and I do not hesitate to say that the transactions of the vast majority of these people could not by any stretch of the imagination be called "bear raiding."

In conclusion, let me mention we have required that all brokers, before executing any selling orders, must know whether these are for long or short account. The purpose of this rule was not, as some believe, to prevent short selling. It was to make the brokers, who under our Constitution are responsible for the way in which they execute orders, realize the nature of the sales intrusted to them for execution. It also allows the committee on business conduct to determine instantly whether any sales seeming to have a demoralizing effect upon the market are short sales or actual liquidation. As I have said, the exchange is absolutely opposed to "bear raiding" and has used and will continue to use all of its power to stop this practice and to discover and punish "bear raiders."

It is, of course, a fair question to ask, if short selling is a necessary and beneficial practice, why there is such vociferous objection to it. We all recognize, I am sure, that it is a fundamental tendency of human nature, when severe trials and difficulties arise, to throw logic and reason to the winds, and to indulge in emotional outbursts. I do not believe that clear thinking American citizens will commit any such folly and I am sure that they will not refuse to accept or fail to comprehend the fundamental facts in regard to short selling or any other important problem.

I only wish that our problems in the stock exchange were really as simple as many believe and that our governing committee could halt declining prices simply by abolishing short sales. If we have refused to take such action, if we continue to declare that such a step is perilous, it is because we feel we must speak the truth and do our duty to the whole community.

Stock market prices, as a discerning editorial writer recently expressed it, are not prosperity itself, but simply an index to it. The stock market reflects business conditions. It is not their cause. It is wrong to say that a ban on short selling could halt our business depression. When economic equilibrium in the world's affairs is again reestablished—and make no mistake, gentlemen, it will be—liquidation of securities will stop, buyers will regain confidence, and prices will rise. The prohibition of short selling would delay and can not hasten the process. Neither our governmental authorities by means of legislation, nor the New York Stock Exchange by means of its regulations, can by any magic stroke perform economic miracles.

The policies of the New York Stock Exchange have resulted from a century-old experience with the American security business, from familiarity with the even longer experience of the older yet similar stock exchanges of Europe, from close and intimate contacts with the realities of the market-place, and from an immediate knowledge of the vital facts and circumstances surrounding its daily problems. It is of course always easy for those without responsibility to urge hasty actions upon those who are charged with it. The New York Stock Exchange has been fully aware of its serious responsibilities through the recent critical years. The maintenance of an open market during this period has required and still requires, not only detailed knowledge of the facts and judgment founded upon experience, but also courage to do those things which are right, regardless of how unpopular they may be for the time being. As long as the New York Stock Exchange remains responsible in this way, it will not be deflected from maintaining sound and necessary policies. Knowing the real facts concerning short selling, the stock exchange must continue in the only course which is compatible with courage, conscience, and faith in the future of this country.

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EXHIBIT No. 19

SHORT SELLING AND LIQUIDATION

Address delivered by Richard Whitney, president New York Stock Exchange, before the Syracuse Chamber of Commerce, Syracuse, N. Y., and over the nation-wide network of the Columbia Broadcasting System (Inc.), December 15, 1931

Gentlemen, it is, I assure you, both a privilege and a pleasure to address the members and guests of the Syracuse Chamber of Commerce. I have entitled my remarks "Short selling and liquidation," and, although this topic has been greatly discussed in recent months, I make no apology for speaking again about it, because of its great importance. Some weeks ago in Hartford I devoted all my remarks to short selling and discussed particularly the very dramatic demonstration which the English crisis gave of the necessity of short selling and its usefulness in stabilizing prices in the face of unexpected developments. To-night I will discuss some of the more recent facts and statistics in regard to this subject, but I also wish to touch upon some of the real reasons for the low prices which now exist in the stock market.

I can not help feeling that the criticism which has been leveled at short selling has been due, in large measure, to the desire of the public to find some simple explanation for the tremendous declines which have taken place in the prices of stocks. I am firmly convinced that the real explanation lies in the world-wide disturbance of our business and credit conditions. It is not any single factor, like short selling, but the combination of many more important and basic factors which has brought about the result.

The exchange for many years has taken the position that short selling is a necessary part of an open market for securities. We have always said that in a crisis buying by short sellers would serve to maintain an orderly market. These statements were not based merely on theory. They were the result of the practical experience of the exchange during the last hundred years and they were supported by the experience of the older market places of Europe. During the last year, when short selling was attacked so violently, the exchange, in order to have the fullest possible information on the merits of the question, required its members to report their actual short positions at different periods. From May 25 of this year to September 21 these reports were made on approximately a weekly basis. Since then the reports have been made daily. In my address at Hartford, I gave some of the statistics which were derived from these reports. The exchange since that date has prepared detailed figures in regard to the short positions, including not only the totals for each day, but also separate totals for each stock. A study of these statistics is so illuminating that the exchange has decided to make them public, and they will shortly be furnished to the press. I warn you that the figures are voluminous and will prove of more interest to statisticians than to the average person. Nevertheless, we shall publish these facts as the best proof of the necessity of short selling and the best refutation of the charges against it.

I can not in a speech give you many of these detailed figures. You may be interested, however, in knowing that on November 24 the total short position was 3,584,161 shares or slightly more than 2,000,000 shares below the peak figure which was reached in the spring of this year. On the same date the number of separate accounts having short commitments was 12,254, so that on the average each of these accounts was short less than 300 shares.

If it is true, as so many critics have asserted, that short selling smashes prices then certainly one would expect the stocks with the largest short interest to show the widest fluctuations and the greatest declines. The figures prove that this assumption is entirely false. Altogether there were only 15 stocks which at any time since May 25 have had an individual short interest of over 100,000 shares. Of these 15 issues, only 2 had a short interest which was consistently in excess of 100,000 shares each and only 6 have always had a short interest of more than 50,000 shares each. These 15 stocks, curiously enough, are the very ones which everybody will admit have had the steadiest market and the narrowest price fluctuations. The greatest short interest in any single stock at any time was 406,000 shares in General Motors. This figure may seem very large but you must remember that General Motors has 43,500,000 shares of common stock and, therefore, the short interest was actually less than 1 per cent of the total capital of the company. If you examine the price fluctuations of General Motors you will find that in the whole course of the year 1931 its high price was 48 and its low price slightly above 22. This is

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a depreciation of a little more than 50 per cent. There are many other stocks, as we all know only too well, that show a greater percentage of depreciation. Furthermore, the market action of General Motors has been consistently steady. Great quantities of the stock have been bought and sold and yet it has normally moved by small degrees either upward or downward. It is hard to believe, in view of these facts and figures, that the critics of short selling are justified in saying that this practice smashes prices.

Let us look now on the other side of the picture and observe the issues which have had a very small short interest or no short interest at all. Out of the 15 stocks which have experienced the greatest decline in percentage of value since May 25, none had any sizable short interest at any time, while four never had an individual maximum short interest of more than 100 shares and all of them at times had no short interest whatever. Incidentally, out of the 15, three were preferred stocks. Of the 15 stocks that, in the same period, showed the greatest decline in point of dollars per share, only 3 had any considerable short interest at any time; 5 never had a short interest of over 100 shares, and 11 at different times had no short interest whatever. Of these 15 stocks, 8 were preferred issues.

The statistics I have referred to show the total short position existing at the end of each business day. Some critics have pointed out that the size of the overnight short position does not reflect the short sales made and covered the same day. This is, of course, quite true, and it is a perfectly legitimate criticism of our figures. But it is no proof at all that enormous daily "in-and-out" short transactions have been responsible for smashing stock prices. Since September 26 the stock exchange has compiled the total number of shares which have been sold short and covered the same day. At their maximum, these "in-and-out" short sales have never exceeded 10.41 per cent of the total daily sales on the exchange. For the period from September 26 to November 30 they averaged 4.75 per cent. I know these figures will seem surprisingly small to those who have read repeated statements about the destructive activities of professional traders. The truth, however, is often stranger than fiction.

There is still another factor which should be considered in interpreting our figures. It is entirely possible for one short seller to sell short on Monday and to cover on Tuesday by purchasing from a new short seller. In this case, the short commitment of the first man would be replaced by the new short sale of the second man and in consequence the figures for the short interest would not change. On the other hand such a sale would not be reflected in the compilation of the "in-and-out" daily short selling. Just how extensive short sales of this sort have been no one can state with accuracy, and unfortunately it would take an enormous amount of work to analyze the millions of separate stock-market transactions which occur even in a dull market. However, in testing the influence of this factor on prices, let us remember that the covering purchase by the first short seller neutralizes the new short sale, and prices, therefore, are not influenced by these transactions.

Finally, I will cite an instance of how people have been misled by the circulation of unjustified guesses in regard to short selling. A financial writer on a metropolitan journal, alluding to the market of October 28, declared:

"Yet, in responsible quarters it was stated that several stocks had been under heavy short pressure. A canvass of specialists, so I was told, revealed that approximately 80 per cent of the selling in North American was for short account; 60 per cent of Consolidated Gas; 75 per cent of the United Corporation; 80 per cent of United States Steel, and 70 per cent of General Electric."

This article was promptly brought to my attention and to test the accuracy of this very definite statement I had a special investigation made of the short sales in these stocks. Treating all the "in-and-out" transactions as short sales and adding to them the actual increase in the short position on the day in question, I found that the short sales of United States Steel had amounted to 24 per cent as against the imaginary 80 per cent, of General Electric to 17 per cent as against the supposed 70 per cent, of Consolidated Gas to 10 per cent as against 60 per cent, of North American to 7½ per cent as against 80 per cent, and of United Corporation to only 2½ per cent as against the highly imaginative 75 per cent. This is a good illustration of the false statements and exaggerated rumors so frequently circulated concerning short selling. Misinformation of this sort has been been used, consciously or unconsciously, to build up a prejudice against short selling and has also been the basis of hasty and unsound conclusions about this subject.

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I do not wish to appear cynical, but it seems to me very doubtful if even the most complete statistics will ever convince those who do not wish to be convinced. There is an old saying that you can lead a horse to water but you can not make him drink. It is always easy for people to invent imaginary statistics as in the case cited above, and to assert that the actual figures are meaningless when they do not support the writer's preconceived ideas. The statistics I have cited, both to-night and on previous occasions, should prove to all fair-minded people who wish to know the truth that short selling is not a destructive force, but a vitally necessary part of a security market.

In recent months many statements have been made to the effect that the lending of stocks by brokers was unfair. It has been asserted that this practice has made short selling possible and that there was no justification for a broker using the stock which had been purchased by margin customers for the purpose of assisting the short sellers who are speculating for a decline in prices. In fact it has sometimes been said that this practice was illegal and that brokers had no right to lend stocks without their customers' consent. This last statement is true and brokers do not lend the stocks belonging to margin customers without permission. It is also true that brokers have not an unlimited right to pledge their customers' securities and, therefore, brokers secure an agreement from their customers that the stocks purchased on margin may either be loaned or pledged.

You may well ask why brokers seek the right to lend their customers' securities. In order to answer this question I must first explain how securities are loaned. Very few people apparently realize that when a broker lends stock he receives as security for the loan the market value of the stock in cash. In the last analysis, therefore, the lending of stocks has the same effect as borrowing money against collateral security. When a man buys stock on margin he borrows part of the purchase price and secures his loan by pledging the stocks he has purchased. When a man borrows stocks, he secures the loan by depositing the money value of the stocks borrowed. In both cases the lender insists that the security be maintained at an adequate value. If you borrow money and pledge stocks as security and the stocks decline in value, the lender will require you to put up additional collateral. If you borrow stocks and they appreciate in value, the lender of the stocks will require you to deposit more money. The lending of stocks is a method by which brokers finance their customers' commitments and the pledging of stocks is another method of accomplishing the same result. Both methods are equally fair and I, personally, can see no reason why the right to lend stocks against a deposit of money should be restricted if the pledging of stocks against a loan of money is permitted.

The critics of the lending of stocks do not, however, consider this aspect of the matter, because their real intent and purpose is to prevent short selling. They suggest that the lending of stocks be forbidden, not because it is an evil practice in and of itself, but because they believe that by restricting the lending of stocks they can stop short selling. As I have said above, the exchange is firmly convinced that short selling is a necessary part of a security market, and, therefore, it opposes any restriction upon the lending of stocks, because it recognizes that the proponents of such regulations are attempting to do indirectly what they would not do directly. If the exchange is wrong and if short selling is an evil, then it should be prohibited. If we are right and short selling is both necessary and useful, then let us face the problem frankly and not attempt to restrict short selling by indirect and devious ways.

I am aware that many persons who are not familiar with the methods of Wall Street seem to believe that the lending of stocks is a simple matter by which short sellers can, almost without difficulty or expense, borrow the securities that they have sold short. Many persons have said it was unfair that margin purchasers in 1928 and 1929 had to pay high interest rates on the money which they borrowed to buy stocks, while now, the short sellers seem to escape scot-free. Statements of this kind show a lack of knowledge of what actually takes place when stocks are borrowed. I have just said that the market price of the securities must be deposited with the lender at the time a loan of stock is made. In normal times the money thus deposited bears interest at the current rate for call funds so that, in effect, the lending of stocks and the lending of money are on an exactly equal basis. When, however, there is an excessive demand for the loan of stocks the persons who lend them demand additional compensation for the loan just the way the

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lenders of money ask a higher rate of interest when funds are scarce. In the case of stocks, the first method of increasing the burden on the borrower is to diminish the rate of interest or to cease paying interest on the money which has been deposited as security for the loan. If no interest is paid, the stocks are said to lend "flat." If this method of penalizing the borrower of stocks is not sufficient, the lender requires, in addition, the payment of a daily premium. This premium, as a matter of convenience, is figured in terms of a fraction of a dollar per share, but its effect is exactly the same as an increase in interest rate on the loan of money. It may be unfortunate that the practical method of handling these charges for the lending of stocks differs from the way interest is computed on loans of money, because the public does not seem to realize what a great burden a seemingly small premium imposes upon the borrower of stocks. Let me illustrate this point by an example. Suppose you were borrowing 100 shares of stock which was selling at 75; you would have to deposit with the lender $7,500. If the premium on this stock was quoted at one-sixteenth and you continued this loan for 30 days you would have to pay a premium of $187.50. That is equivalent to 30 per cent per annum on the money value of the stock which you borrowed. To-day, many stocks are lending at a premium which amounts to much more than the highest rate of interest ever charged in recent years for loans of money. The short seller, therefore, who borrows stock does not escape scot-free. He sometimes pays a very high price for the privilege of going short of the market.

It is this very charge on the lending of securities which ultimately may control the volume of short selling, just the way the interest rate for money loans ultimately controls the volume of margin purchases. The effect of interest rates and premiums is not, of course, immediate. We saw that demonstrated very clearly in 1929 when, in the face of very high-interest rates, people were still willing to borrow money to buy stocks. In fact at that time some people even went so far as to assert the interest rate had lost its ability to control the market, and yet before the end of the year the constant pressure of high-interest rates helped to bring about a vast liquidation. In like manner, I am confident that when substantial premiums are charged by the lenders of stock the volume of short selling will necessarily decline.

The premiums on stocks, like the interest rates on money, are governed by the law of supply and demand. Excessive borrowings of stock will result in higher and higher premiums, just the way excessive borrowings of money will result in higher and higher interest rates. Let me repeat that the fundamental economic law of supply and demand will ultimately cure any unsound tendencies. The sound relation between speculation for declining prices and speculation for advancing prices will only come about if the law of supply and demand is permitted to work freely and naturally. If we attempt to interfere and to impose artificial restrictions upon either the purchaser or seller of securities we are bound to create an abnormal and unnatural market which will ultimately bring about worse evils than those we seek to cure.

The facts and statistics I have cited show that short selling has not smashed prices on the stock exchange. What then has brought about the drastic decline of security prices which has taken place in the last two years? We all know we are in the midst of a business depression more severe than any within the memory of man, and yet we do not seem to understand why security prices have fallen so low. I think this is due to the fact that the average man forgets very quickly the tremendous economic events which have occurred in the last two years.

Starting with the recession of business activity in 1929 and consequent unemployment, we have successively seen a more and more rapid falling off of business. At the same time, conditions in many nations of the world have been chaotic. We all know what has been taking place in Russia. The breakdown of reparations payments by Germany, and the resulting moratorium, has affected not only this country but many of our former allies. England and several other European countries have gone off the gold standard. South American nations, with few exceptions, have defaulted in the payment of interest upon their external obligations which are held throughout this country and Europe. The machinery of government in Australia has been on the verge of collapse. There have been revolutions in Spain, serious disturbances in India, and the possibility of a great war in China. Each one of these factors would have been sufficient to disturb confidence in the value of securities. Taken collectively, their force was irresistible.

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The security market has only reflected world conditions and yet there is confusion and misunderstanding, one reason, perhaps, being that it has reacted more quickly to the depression than other lines of business or industry. By its very nature, a security market must reflect existing conditions more rapidly than business which is often carried along for considerable periods of time by inertia. Existing contracts also tend to keep business in operation, even after it is clear that additional orders will not be forthcoming. With securities, however, the effect of a business disturbance is immediate and liquidation takes place much more rapidly than in other lines. Let me remind you that brokers' loans at the highest point in 1929 were almost exactly $8,500,000,000. On the 1st of December of this year they were only about $730,000,000. This indicates a shrinkage of more than 91 per cent and gives some idea of how drastically the stock market has been liquidated. When you consider that this decline in the amount of brokers' loans has necessitated the selling of long stocks it is little wonder that prices have fallen to their present low levels. It is not short selling, but liquidation which has been responsible for the decline in security prices.

In this connection let me point out what a small part short selling has actually played in the stock market. Since May 25, when the exchange first commenced to collect regular statistics in regard to the short interest, down to November 30 of this year, the total short position actually declined by about 1,350,000 shares. Yet in this same period the total number of transactions on the exchange amounted to 264,300,000 shares. Assuming that the daily "in-and-out" transactions of short sellers should be computed at 5 per cent, which is more than it has averaged during the last two months, this type of trading could not account for more than 13,200,000 shares. There would then remain 251,000,000 shares, or 95 per cent of the total sales unaccounted for, with no allowance for the shrinkage which actually took place in the short interest. In other words, during a period of steadily declining prices, short selling amounted to less than 5 per cent of the securities sold. To say that this 5 per cent was the cause of the decline is to ignore entirely the effect of the 95 per cent which represented the sale of securities owned outright or held on margin.

The unwillingness on the part of the public to buy securities has been the real trouble with our market and the cause of declining prices. That there were no willing buyers is easily explained by prevailing business conditions. I do not doubt that many of you have said to yourselves in recent times that such and such a stock looked cheap or that it was selling at an absurd price and yet you hesitated to buy. This was because you were not sure that the worst was over and you still expected that the next day might bring forth bad news. Confidence is bound to return, and when it does, prices will rise. I feel that the basic causes of the depression have been intelligently studied and that in all quarters of the world responsible people are working towards constructive ends. I have no doubt of their ultimate success, and I have supreme confidence in the future of our own country and its great business and industrial organizations.

In conclusion, let me repeat that the exchange is a market place. It does not make prices nor should it be a party to any arrangement or scheme to affect prices. If a market place for securities is to fulfill its function in the economic order of things, it must fairly and honestly permit the forces of supply and demand to determine prices. The exchange, as an institution, must be impartial. It can not for expediency or convenience assist prices to rise when they are low or depress prices when they are high. We are all anxious to see prices rise; to see business become normal and prosperity return, but if the officials of the exchange allow their personal wishes to influence their judgment they will be false to their trust. It is because the exchange knows that short selling is an essential part of a market for securities that it defends the practice and stands firmly against the restriction or impairment of it, directly or indirectly. This is not a hasty nor an arbitrary conclusion, but is based upon the exchange's long experience and upon the definite facts and statistics which our recent investigations have produced. In the light of this knowledge our duty is plain and we must oppose attempts to cure present conditions by unsound means. In so far as the exchange is concerned, the defense of short selling is not a matter of opinion, it is a matter of principle.

Mr. GRAY. Do you mean to say that on September 21 or September 22 when short selling was banned there was an unusual and dangerous market?

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Mr. WHITNEY. There was at times in specific stocks, and in others that I have mentioned.

Mr. GRAY. Is there anything else that you want to introduce before I go further?

Mr. WHITNEY. Nothing that occurs to me at this time.

Mr. GRAY. All right. Your answer to me is that you do include in and out short sales of the day in your statement on short selling.

Mr. WHITNEY. No, sir. Or do you mean that the exchange would have to close?

Mr. GRAY. Yes, sir.

Mr. WHITNEY. I have certainly included it here; yes, sir.

Mr. GRAY. Do you include also in your suggestion sales against the box, that they are necessary or the exchange would have to close?

Mr. WHITNEY. As to sales against the box I have stated frequently that in my opinion they do not constitute short sales on the exchange, but they are exactly the same as liquidation of stock.

Mr. GRAY. In other words, your answer is that you did not include that part in your statement, that short sales are necessary or the exchange would have to close.

Mr. WHITNEY. I naturally did not, because they are not included, either to my mind or that of the governors of the exchange, as short sales.

Senator GORE. Let me ask a question right there, Mr. Gray.

Mr. GRAY. Certainly.

The CHAIRMAN. Go ahead, Senator Gore.

Senator GORE. Mr. Whitney, are sales against the box in any respect analogous to the action of a dealer in cotton and wheat when he buys spot cotton or cash wheat? He sells short or holds a hedge against it. Does that apply at all in regard to selling against the box, where the man has the stock that he holds as a long pull, but sells short in order to protect himself against a decline or a loss resulting from a fall in price?

Mr. WHITNEY. I think, Senator Gore, that very likely it might be somewhat analogous with reference to the commodity markets, where a miller or a manufacturer has bought spot cotton or wheat, and he may very likely hedge that and does in the market, and also in anticipation of sales that he has already made for future delivery of his finished product. The whole question is one that involves the safety of those buying commodities for their processing into finished products.

Senator GORE. Well, now, when a man sells against the box the reason you do not call that short selling is due to the fact that he does not have to buy the stock in.

Mr. WHITNEY. Absolutely; he does not have to buy the stock back at any time if he does not care care to, and at any time may make delivery.

Senator GORE. He may deliver on his sale what he has in his box.

Mr. WHITNEY. Right.

Senator GORE. All right.

The CHAIRMAN. You may continue, Mr. Gray.

Mr. GRAY. Mr. Whitney, I gathered from your testimony the other day that one of the most important things that the members of the stock exchange have to consider is of course the amount of

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money that they can make from the conduct of their business, and that anything which, if prohibited, would restrict the operations of the market, such as short selling and the lending of securities, has to be permitted in order that the proper volume of business may be done and brokers' earnings may be maintained, even though the public may suffer. Is that your view?

Mr. WHITNEY. That is not my view, and it is not true.

Mr. GRAY. You did say, however, didn't you, that short selling and lending of securities were very important factors in a broker's business? And didn't you intimate that without the existence of these things brokers could not carry on?

Mr. WHITNEY. I stated that the lending of securities was a necessity for the conduct of the business of the stock exchange. I did not imply or state that it was profitable and therefore in any way necessary to brokers in what they receive from such lending of stocks. I also pointed out, if I remember correctly, that the lending of stocks was a necessity in the conduct of the market entirely separate and distinct from its necessity with regard to short selling, as applying to many other actions by persons in the market, either investors or speculators, away from the city of New York.

Mr. GRAY. In order that there might be delivery made in compliance with your rules, you mean.

Mr. WHITNEY. In order that the market might be maintained for all of the citizens of the United States; yes.

Mr. GRAY. In connection with the lending of stocks that we discussed the other day, and I want to avoid repetition as much as possible, the exchange's requirements that particular authority must be given by the customer to the broker in order that the broker may lend the customers' stocks which he has in his possession, and which went into effect on April 1, do you recall that?

Mr. WHITNEY. The requirement that the customer must sign or that it is necessary for the broker to have the customer's acquiescence and permission to loan stocks before the broker could lend them, that did go into effect on April 1.

Mr. GRAY. I think you indicated to me that there was no compulsion used to compel customers, particularly marginal customers, to sign that authority.

Mr. WHITNEY. You showed me two letters from a firm to their customers, and I could not say from those particular letters whether compulsion was used. I made no statement, nor do I remember any question being put by you as to compulsion in general.

Mr. GRAY. Well, has it been used?

Mr. WHITNEY. Not that I know of.

Mr. GRAY. You are on the business conduct committee?

Mr. WHITNEY. I am not.

Mr. GRAY. You are not on the business conduct committee of the New York Stock Exchange?

Mr. WHITNEY. No, sir. But I have been.

Mr. GRAY. You have been on it?

Mr. WHITNEY. Yes.

Senator COUZENS. Who composes the business conduct committee of the New York Stock Exchange now?

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Mr. WHITNEY. It consists of the chairman, Mr. Lindley; the vice president of the exchange, Mr. H. G. S. Noble, who is an ex-president of the exchange; Mr. George U. Harris; Mr. E. T. H. Talmadge; Mr. Alexander B. Gale; and Mr. Martin Richmond.

Senator COUZENS. How often do they meet?

Mr. WHITNEY. They have two regular meetings each week, and they are very apt to meet almost daily, and the chairman, I think, spends his entire day on business conduct committee matters.

Senator COUZENS. Do they meet on complaints of brokers or citizens, or how?

Mr. WHITNEY. More particularly on complaints where they may be brought in by customers. They meet on any score that may come under their province.

Senator COUZENS. But there would be no score to come under their province unless there was complaint made, would there?

Mr. WHITNEY. Oh, yes, sir. There are lots of things to do with the questionnaire and the routine business that comes under their jurisdiction.

Senator COUZENS. That is all that I wish to ask at this time.

Mr. GRAY. Mr. Whitney, have you ever known of any complaints to be made to the business conduct committee by the customers of any brokers with respect to pressure of coercion brought to bear upon them to sign this authority to lend stocks?

Mr. WHITNEY. Of that I am not positive. I have had letters from individuals, and very, very few only, stating that they would not sign the consent, which they had an entire right to refuse to sign.

Mr. GRAY. Have you known of any instances where the business conduct committee's attention has been called to the fact that when a customer declined to sign unless he was given the profits which might arise from the lending of stocks, that his account was practically asked to be removed from the brokerage house?

Mr. WHITNEY. No, sir; I do not.

Mr. GRAY. Have you any knowledge of a complaint that was filed with your committee by a man named Thomas A. Kenny?

Mr. WHITNEY. No, sir.

Mr. GRAY. You do not know, then, that in that instance Kenny was requested to sign the form that was issued by a certain brokerage house, that he declined to do so unless an arrangement was made by which he would have an interest in the profits that were made from the lending, and that the firm then indicated to him, or stated to him directly, that he should remove his account, notwithstanding the fact that it was fully margined? You do not know of that instance?

Mr. WHITNEY. I do not.

Senator COUZENS. Would that be against the rules of the exchange, I mean to do that?

Mr. WHITNEY. Senator Couzens, in all sincerity I could not answer that question unless I knew all the facts in the case, both from the point of view of the customer and of the broker.

Senator COUZENS. But I asked, is there any rule of the New York Stock Exchange that would forbid a broker doing that, assuming that the statement is correct?

Mr. WHITNEY. There is no formal rule, but there is absolutely the unwritten rule that the taking of accounts by a broker is entirely

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at his discretion. He is not forced to take accounts if he does not want to. And in like measure no customer has to keep an account with a broker if he does not want to. Those matters are entirely between the broker and his customer.

Mr. GRAY. Mr. Whitney, amplifying your answer to Senator Couzens's question, I now ask you whether or not this letter, and I am going to read it to you, fairly states the position of the business conduct committee of the New York Stock Exchange, or of the managers of the stock exchange upon that point, complaint having been made to your committee about the situation as I have outlined it to you in my previous question and this committee having been advised that this request was made, to remove the account, I want to know whether a letter such as this indicates the attitude of your committee [reading]:

> Your letter of March 25, 1932, has been referred by the secretary of the exchange to the committee on business conduct, by whom I am directed to say that the separate authority to lend referred to in the resolutions of the governing committee of February 18, 1932, was not intended to be obtained for each specific lending of securities but to cover the general right to lend in future, subject to revocation by the client.
>
> Where you are unwilling to sign such a separate authorization, there can be no compulsion upon you that you do so. If your broker does not desire to carry the account otherwise, your obvious course is to secure another broker who is willing to transact your business without such authority.

Now, does that letter fairly express the attitude of the business conduct committee toward such cases?

Mr. WHITNEY. I think so. Naturally the business conduct committee—and I have not the full records here, but I would be delighted to get it—but as I say, naturally, I presume, the business conduct committee investigated that case from all angles so far as lay in its power, and therefore that letter, in my opinion, is a proper answer according to what they found in the case.

Mr. GRAY. The name of the man is Thomas A. Kenny, and the correspondence on the subject with your business conduct committee started by a communication addressed to the secretary on March 25, 1932. Will you be so kind, when the opportunity affords, to have the records of that particular case examined and forward a copy of your investigation, and what your files show with respect thereto, to this committee?

Mr. WHITNEY. Yes, sir. This is just one case out of thousands or tens of thousands, as I understand it.

Mr. GRAY. Do you mean to say that thousands or tens of thousands of complaints have been made?

Mr. WHITNEY. No, sir; of customers of the exchange.

Mr. GRAY. Well, of course we know there are tens of thousands of customers of the New York Stock Exchange, and there might have been more than one without complaint, but——

Senator GORE (interposing). Let me ask a question right there. I suppose, Mr. Whitney, that the owner of stock in a short sale transaction would share in the premiums.

Mr. WHITNEY. In some cases, and in other cases, as I understand it, no. That, again, is a matter purely and entirely of agreement between the customer and his broker. I attempted the other day——

Senator GORE (interposing). Is it a rule or the practice?

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Mr. WHITNEY. It is not a rule of the exchange, and I do not think it is the fixed practice. I stated the other day in order to show one of the many difficulties in this connection that a house might have 10,000 shares of United States Steel which they were carrying for customers from whom they had in each case permission to loan stock. In other words, say they had 10,000 shares that they could loan, but they were unable in the particular instance cited by me to loan but 2,000 shares of the 10,000. And I tried to point out how it was impossible for that house to allocate to any particular customer, constituting perhaps 100 in all, each with 100 shares, whatever premiums might be accruing.

Mr. GRAY. Well now, Mr. Whitney, hasn't the stock exchange ruled that broker and customer are in the position of principal and agent? That is to say, the customer is the principal and the broker is the agent.

Mr. WHITNEY. Do you say ruled?

Mr. GRAY. Yes.

Mr. WHITNEY. I think that is the way we look upon the matter; yes.

Mr. GRAY. All right. Looking upon it in that way, isn't it a fact that when a broker who is the agent of his customer borrows the customer's stock that, in the first place, means that he saves the interest on the money which he would otherwise have to deposit with the lender; that is true, isn't it?

Mr. WHITNEY. Only the margin involved, as I pointed out the other day. Not the full amount, but only the margin.

Mr. GRAY. We realize that there are different classes of borrowings. A man may borrow when he does not have to pay any interest; one broker may borrow from another. But there are also instances where he has to pay interest, isn't there?

Mr. WHITNEY. That is true.

Mr. GRAY. And there is a premium involved at times, isn't there?

Mr. WHITNEY. At times; yes, sir.

Mr. GRAY. Now, then, when a broker can use his customer's stock he saves that premium, doesn't he?

Mr. WHITNEY. I do not quite understand your question.

Mr. GRAY. Let me put it this way: When a broker loans his customer's stock he gets a premium.

Mr. WHITNEY. There is a premium paid if the stock is loaning at a premium; yes.

Mr. GRAY. Then, if the broker is the agent of the customer, why shouldn't the principal, the customer, be entitled to get what he earns from that transaction in the loaning by the broker of that customer's stock?

Mr. WHITNEY. I have never said he was not entitled to it. I have tried to point out the difficulties involved in that entire situation, the various legal aspects as involved in the relationship between principal and agent that you speak of, and there are many other points that bear upon that situation. I have never stated that the customer was not entitled to the premium.

Mr. GRAY. Let me ask you the question the other way: Then you believe he is entitled to it?

Mr. WHITNEY. I do perhaps in certain instances, and I do not in others.

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Mr. GRAY. I will have to follow that along with you then. In what instances do you believe he is and in what instances do you believe he is not?

Mr. WHITNEY. I think perhaps if a customer had 10,000 shares of American Can and there was a demand for American Can in the loan market and a broker went to him and said, Would you like to loan it?—if the customer said yes, then probably the customer and the broker would make some agreement as to splitting the premium, and I certainly think in that case the customer would probably be entitled to a part of that premium. But I have just tried to state to Senator Gore, as I stated to you at the beginning of the week, there are grave mechanical difficulties making it impossible to allocate premiums.

Mr. GRAY. Now, just a moment, please: Every person knows, of course, that when a broker goes to a customer and says politely as you have indicated—and I will say that I have never known them to do it, but you say they do——

Mr. WHITNEY (interposing). Well, I have known it frequently.

Mr. GRAY. You have?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. When the broker says, Would you like to loan your stock? and then discusses the situation under which it is to be loaned and makes an agreement as to the premium, then, of course, the broker must pay it. But I am talking of instances where the broker has this authority we have spoken of signed by the customer to loan the customer's stock, do you believe that that customer should have the profits that the broker makes from that transaction?

Mr. WHITNEY. That is entirely dependent upon the actual situation in each and every particular case, and for that reason the stock exchange has never entered that situation.

Mr. GRAY. Mr. Whitney, you said a little while ago that you had never stated the customer was not entitled to the premium. I then asked you whether or not it was your belief that he is entitled to it, and you have endeavored to indicate that he might be in some cases and might not be in some other cases.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Is there any reason in the world why he should not have it in every instance, because it is his agent who is making the profit, and it is out of his property.

Mr. WHITNEY. Mr. Gray, you are delving into legal aspects that I can not answer. I do not know. But I have tried to tell you just as frankly as I am able what is involved in this lending and borrowing of stocks, and the almost impossibility of allocating a premium to the general run of customers. I have granted that some customers receive parts or all of premiums and others do not. But it is the broadest kind of subject, and I have tried to explain it to you.

Mr. GRAY. Don't you think that is a matter which the stock exchange through its proper committees should investigate and regulate?

Mr. WHITNEY. I do not think the stock exchange ought to regulate on that subject; no.

Mr. GRAY. Is that because of the fact that the stock exchange consists of a number of brokers, who if they were limited at all would lose profits they would otherwise make?

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Mr. WHITNEY. No, sir.

Mr. GRAY. It is not for that reason at all?

Mr. WHITNEY. Not at all.

Mr. GRAY. That never enters into the discussion when you determine what regulations should be put into effect?

Mr. WHITNEY. No, sir; and quite to the contrary. The stock exchange, I expect, if I am to point out certain aspects in connection with this subject, has done many things to the detriment of the profit-making abilities of its members.

Mr. GRAY. Mr. Whitney, do you know of firms or members of firms, and when I say do you know I mean has the attention of the stock exchange ever been called to it, who have been interested in either one side or the other of the market with respect to certain stocks, and have advised their customers to act to the contrary?

Mr. WHITNEY. No, sir.

Mr. GRAY. Has there ever been such an instance called to the attention of the business conduct committee of the New York Stock Exchange for the purpose of action?

Mr. WHITNEY. I cited one here last week, that of E. W. Wagner & Co.; yes, sir.

Mr. GRAY. Is that the only instance you know in your experience?

Mr. WHITNEY. I think that was the cause somewhat but not the primary reason for their expulsion with regard to the firm of Prince & Whitely. The firm of E. W. Wagner & Co. was expelled for that reason primarily.

Senator GORE. I assume, Mr. Whitney, you would expel any firm that was found guilty of it.

Mr. WHITNEY. Yes, sir; absolutely; if they were found guilty.

Mr. GRAY. Do your members as a matter of fact generally follow the policy of refraining from advising their customers with reference to such stock where they are dealing in it themselves either on one side or the other of the market?

Mr. WHITNEY. I did not quite get your question.

Mr. GRAY. I mean by that question that if a certain firm is heavily long of stock would they refrain from advising their customers to act in a way that would be contrary to their interests.

Mr. WHITNEY. I have no knowledge on that subject at all. If I may change it around so as to see if I understand you?

Mr. GRAY. Go ahead.

Mr. WHITNEY. If a firm believes in a security and that it is worthy of investment or speculation because of its prospects, it may very properly in the best of faith advise its customers to purchase that security. And there is involved the entire subject of the merchandising and distributing of securities.

Mr. GRAY. I will put my question a little more directly: Is it the practice of members of the exchange where they themselves are heavily long of stock to refrain from advising their customers to sell?

Mr. WHITNEY. I have no knowledge on that subject. I have no knowledge of specific cases where firms may be heavily long of stock as to what their advice specifically is. If you will give me an instance I will try to answer.

Mr. GRAY. Do you think that would be a matter for proper regulation by the stock exchange?

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Mr. WHITNEY. I think it would be wrong for a member of the stock exchange to advise his customer to purchase stock when he himself was selling it or vice versa. Does that answer your question?

Mr. GRAY. Yes; that answers it.

Mr. WHITNEY. Absolutely.

Mr. GRAY. That being true has the stock exchange any rule governing that situation other than the general rule it has with respect to unethical and improper conduct?

Mr. WHITNEY. No; not that I know of, except of course that that would come if discovered under the immediate jurisdiction of the business conduct committee, and our rules are very broad as to our powers of infliction of penalties.

Senator GORE. Mr. Whitney, since the crash of 1929 has there sprung up a group of advisers, I mean outside the stock exchange and outside of those who hold seats on the exchange, offering to advise customers or persons who might deal on the exchange, for a charge or a commission?

Mr. WHITNEY. I think there are many so-called financial advisers, Senator Gore, but I do not know specifically whether they have particulaurly grown up since the crash. I should rather believe they were more in evidence before that time.

Senator GORE. Perhaps more before then, yes, but I have heard it stated that there has been an increase in the number and the activities of that group since the crash, and that they were peddling their advice.

Mr. WHITNEY. I believe the Deputy Attorney General of New York State recently issued figures that he had put out of business some 403 firms, not members of the New York Stock Exchange, during the month of March because of their endeavors to unload fictitious or fake stocks upon the public. That may be an answer to your question.

Senator GORE. Yes.

Mr. WHITNEY. That is, if they might be properly called advisers. They are certainly improper advisers.

Senator GORE. Well, people who hold themselves out as experts.

Mr. WHITNEY. They may do so.

Senator GORE. And attempt to give advice on stocks to the public.

Mr. WHITNEY. They may try to do that.

Senator GORE. To laymen, I suppose.

Mr. WHITNEY. They may try to do that.

Mr. GRAY. Mr. Whitney, has your exchange a rule that a broker may not borrow more money on his customers' stock than he has loaned his customers?

Mr. WHITNEY. I have read the rules to you containing the words "fair and reasonable," yes, sir.

Mr. GRAY. When a broker therefore has the stock of a customer who is a margin trader and to whom he is lending sufficient money to carry his stock, he loans that stock and receives from the person to whom he loans it the full present market value, isn't that a violation of that rule?

Mr. WHITNEY. No, sir; and I answered that question last Monday. I think the only way we could properly answer that is by taking the case of 100 shares, and it would apply in multiples, that if a customer had put up a margin to cover his account and purchased 100

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shares, the broker receiving permission to pledge and lend that stock would have to borrow on that stock at the bank or borrow on it by lending it to another broker——

Mr. GRAY (interposing). We are talking about the other broker.

Mr. WHITNEY. All right, lend it to another broker, which is as I think you yourself granted the other day, because the unit of trading is 100 shares, it would be impossible to expect the broker to split that stock and only use 75 shares.

Mr. GRAY. I agree with you on that. But instead of 100 shares suppose he had 5,000 shares of stock that was worth $100 a share on the market?

Mr. WHITNEY. All right, Mr. Gray, go ahead. I am listening.

Mr. GRAY. That would be an item of $500,000 which would represent the present market value of that stock.

Mr. WHITNEY. If selling at par.

Mr. GRAY. I mean it was selling at $100. I do not care what the par is.

Mr. WHITNEY. Well, I mean that is a brokerage term.

Mr. GRAY. Now then, the usual amount which would be required from a substantial individual trading with his broker as a margin on that stock would be how much? Remember, he has just purchased it at $100 a share and has 5,000 shares.

Mr. WHITNEY. Approximately $400,000.

Mr. GRAY. Do you say approximately $400,000?

Mr. WHITNEY. Oh, do you mean on the margin?

Mr. GRAY. Yes.

Mr. WHITNEY. It would be $100,000. I beg your pardon.

Mr. GRAY. Well now, let us say that—oh, it is a matter of 20 per cent, isn't it?

Mr. WHITNEY. Yes, sir. And in that connection, Senator Couzens, I want to refer to what I said to you the other day.

Senator COUZENS. Yes, Mr. Whitney, I was just going to remind you of what you said the other day.

Mr. WHITNEY. I did not tell you on last Monday because I did not have the time.

Mr. GRAY. Let us go back to my explanation——

Senator COUZENS (interposing). Mr. Whitney, go ahead and explain what you were going to say on the question of percentages required on these marginal purchases.

Mr. WHITNEY. Yes, Senator Couzens, the other day I find by reference to the record—and the record has been so absolutely accurate that it must have been an occasion of something else being on my mind that caused me to make the statement, and perhaps I was thinking about 1929. The present margin agreement below which we will not allow our brokers to go is 20 per cent. The attitude of the committee, although no official notice was given of it, was changed on June 1, 1931. It had been from June 13, 1929, 25 per cent, and since April of 1929 we had made our houses have sufficient capital—and we consider it necesary for this to be entirely distinct from their other working capital—to equal 30 per cent margin on any securities they carried for their own account. But at the time of changing our requirement, and I wish to reiterate that this was

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not made public but it was a figure below which we would not allow our brokers to go——

Senator COUZENS (interposing). Then how did brokers get advice on this matter if you did not make it public?

Mr. WHITNEY. In the case of each and every questionnaire that is brought in the accountants go over all the accounts and see that that margin at least is adhered to.

Senator COUZENS. What I asked you is, how do brokers know about the change of margin from 25 to 20 per cent?

Mr. WHITNEY. They do not know, and therefore I believe that the margin which most brokers require, or at least that many brokers require at the present time, is still 25 per cent. There was the distinct bearing upon the decision of the committee in arriving at that lower margin, in the fact that practically every New York lending bank as of that time reduced its requirements on loans to but 20 per cent of the collateral, if listed on the New York Stock Exchange. Therefore, in accordance with our rules, we did not think it proper to demand of customers a greater amount of margin than is necessary to carry that account by borrowing from a bank. I referred to that the other day.

Senator COUZENS. Well, now, following up Mr. Gray's question, assuming for instance instead of this purchaser of 5,000 shares at $100 a share, assuming that he paid 40 per cent. He would, therefore, have a margin of $300,000. May I ask if that broker would be permitted to loan that stock and secure a $400,000 loan?

Mr. WHITNEY. No, sir.

Senator COUZENS. So that in fact he could not put up that stock for security for any greater loan than the unpaid margin on that stock?

Mr. WHITNEY. That is correct.

Senator COUZENS. That is all.

The CHAIRMAN. You may continue, Mr. Gray.

Mr. GRAY. So that when we get away from the single 100-share lot and discuss a lot such as Senator Couzens and myself have been asking you about, your statement is, and let me see if I understand it, that if a $200,000 margin had been put up and the broker had loaned to the customer $300,000 in order to complete the transaction and make settlement, that under your rules would not permit him to borrow more than $300,000 on that stock; is that correct?

Mr. WHITNEY. If I remember rightly, you originally used the figures of $500,000.

Mr. GRAY. Yes.

Mr. WHITNEY. If there was a margin put up of $100,000, then, in my opinion, the broker would not be entitled to use that stock for loans with banks or lending to other brokers for more than $400,000.

Mr. GRAY. And if he had put up a 40 per cent margin, not more than $300,000?

Mr. WHITNEY. Whatever the balance of indebtedness is. May I read again [reading]:

> Does not justify the member in pledging or loaning more of such securities—

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And it refers specifically to pledging and loaning "more of such securities than is fair and reasonable in view of the indebtedness of said customer to said member."

Mr. GRAY. All right.

The CHAIRMAN. How old is that rule; or is it a new rule?

Mr. WHITNEY. No, sir. I can not tell you when it was adopted, but it has been going along as far back as I can remember, which is some twenty-odd years.

The CHAIRMAN. As a matter of fact, they do use them to borrow?

Mr. WHITNEY. No more than is fair and reasonably necessary.

The CHAIRMAN. Have there not been cases in court where that matter has been definitely proven?

Mr. WHITNEY. Yes, sir; we expelled that man.

Senator COUZENS. I am still at a loss to understand the necessity for putting in those words "fair and reasonable."

Mr. WHITNEY. Just because of the 100 shares.

Senator COUZENS. Only on account of 100 shares?

Mr. WHITNEY. And fluctuations in the market, too.

Senator COUZENS. Yes; but I still do not understand. If it is specific that a broker can not borrow any more than the unpaid margin on the stock, why the words "fair and reasonable" in the rule?

Mr. WHITNEY. To answer that I would have to go into all the questions relating to pledging and loaning of stocks.

Senator COUZENS. Well, I do not think the issue can be confused by going into details, because it seems to me very specific as to whether or not a broker is permitted to use stock to borrow any more than is due and unpaid on the stock.

Mr. WHITNEY. He certainly is not allowed to.

Senator COUZENS. Well, that answers the question. You do not need to go into details.

Mr. WHITNEY. He is not.

Mr. GRAY. You spoke of one case in answer to the chairman——

Mr. WHITNEY (continuing). May I say one word more in answer to Senator Couzens's question?

The CHAIRMAN. Proceed.

Mr. WHITNEY. Senator Couzens, on the questionnaires the accountants of the exchange investigate that point just as thoroughly as they investigate the carrying of accounts for less than a proper margin, and if any such instances are found they are immediately reported to the committee.

Senator COUZENS. And what does the committee then do?

Mr. WHITNEY. It demands that that be righted at once. And I stated to you, or tried at least to say to you, that there are conditions of stock in transit, and one thing and another, where there may be that momentary situation, but it is absolutely not allowed.

Senator COUZENS. As to the inquiry that you make through these questionnaires, does it develop frequently that you find that rule violated?

Mr. WHITNEY. I do not think so, sir. We have been particularly stressing that rule for many, many years; both the rule as to excess margin and——

The CHAIRMAN (interposing). Let me ask you if the rule was not the direct result of action by the New York State Legislature making

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such a practice a felony, and that when you say you emphasize the rule it is of very little importance because there is a State law compelling that matter.

Mr. WHITNEY. Yes—well, I do not want to say "yes," because I have no knowledge of any stressing of that rule by reason of a law of the State of New York. But under the laws of New York I have no knowledge that specifically the books of the members of the exchange are investigated in this particular direction in any manner covering the extent in detail as we do it ourselves. We see that it is lived up to.

Mr. GRAY. Now, Mr. Whitney——

Mr. WHITNEY (continuing). Senator Norbeck, counsel tells me of a very important point, and I think I stated it here in one of my other appearances. The law of the State of New York, as I understand it, says that such and such will be a felony or is a felony unless an agreement exists between the customer and the broker. The stock exchange went further than the law, as is stated in this particular section, so that the broker may not do certain things in spite of having a pledge:

> An agreement between a member and a customer, authorizing the member to pledge securities, either a loan or with other securities carried for the account of the customer, either for the amount due thereon or for a greater amount or to lend such securities, does not justify the member in pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said member.

The CHAIRMAN. The only point I was making, it was following an enactment by the State legislature which made it a felony, and the initiative was taken by the legislature and not by the stock exchange.

Mr. WHITNEY. That I can not tell you. I do not know.

Mr. GRAY. Now, Mr. Whitney, the point of the questions put to you there is this: We have on the record now that a man who had bought $500,000 worth of stock and had put up a margin of 40 per cent, thus leaving the amount which the broker had loaned $300,000; that that broker may not borrow more than $300,000 on that customer's stock. Now that is settled, is it not?

Mr. WHITNEY. I think so.

Mr. GRAY. You have also told us several times that when a broker takes that stock of the customer it is mixed with other stock. That is true, is it not? In other words, if he has——

Mr. WHITNEY (interposing). What do you mean, "takes it and it is mixed"?

Mr. GRAY. He gets it through his settlement. It is delivered to him. It may be a matter of bookkeeping, but it is delivered to him.

Mr. WHITNEY. When he buys that stock it is delivered to him; yes, sir.

Mr. GRAY. All right. Now, he may have besides that $500,000 worth of that stock, of course, some other shares—that is true?

Mr. WHITNEY. He may.

Mr. GRAY. And when I speak of it being mixed I mean he has all of his stock of that particular kind together. That is true, is it not?

Right here I am going to ask you to explain "street certificates" to the committee.

Mr. WHITNEY. So I see.

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Mr. GRAY. We had better get that first, so that the committee will understand what street certificates are. What are they?

Mr. WHITNEY. Street certificates—the common term is used of a certificate that on the face of it has a broker's name who is a member of the New York Stock Exchange.

Mr. GRAY. In other words, it is a certificate which is continually floating from one concern to another and is used for the purpose of making these various settlements—isn't that true?

Mr. WHITNEY. It may be. Not necessarily. Yes; it may be.

Mr. GRAY. We will distinguish it, will we not, from a certificate that is issued to an individual who buys a stock for investment purposes and has the stock put in his name? There is a transfer to him and he takes a certificate when it is paid for. That is correct?

Mr. WHITNEY. That may be so.

Mr. GRAY. Yes.

Mr. WHITNEY. There are many cases where stock is owned and for one reason or another it is kept in the street certificate.

Mr. GRAY. Yes; I understand that, too. But as a general thing, the certificates that are used in the matter of the transfer or the settling, if you please, are dealings between the various members of the exchange on their lending and are for the most part what they call street certificates—that is correct, is it not?

Mr. WHITNEY. I am perfectly ready to grant it; yes.

Mr. GRAY. All right.

Mr. WHITNEY. I do not pretend to know the whole situation, but I am perfectly ready to grant it.

Mr. GRAY. Well, I think you know as much about it—we are going to try to get some knowledge from you—but I think you know as much about the stock exchange matters as any other man that we could get here—from your side of it.

Now, therefore, to put the definition of "street certificates" in a little different language, they are something that are rarely transferred on the books of the particular corporation who has issued that stock. They place with a bank power of attorney and they go from A to B and B to C and C to D without ever being transferred on the books. That is correct, is it not?

Mr. WHITNEY. No, sir. May I explain?

Mr. GRAY. Yes; I wish you would.

Mr. WHITNEY. If it is a dividend-paying stock—and perhaps regrettably that may be a more rare animal to-day than in usual times—it is usually transferred when it goes from one broker to another—not perhaps usually, but often. Whereas, if it is a non-dividend-paying stock, what you say may be very likely the majority of cases.

Senator BULKLEY. Transferred to what, to the new broker?

Mr. WHITNEY. To the new broker; yes, sir. So that the dividend will come to the broker who is holding the account for the customer who is entitled to it.

Mr. GRAY. That would make it a little clearer. In other words, the transfers are constantly from broker to broker?

Mr. WHITNEY. In many cases; yes, sir.

Mr. GRAY. Therefore, it is rather to be presumed that a broker who is carrying marginal accounts will have a large number of such

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certificates in a particular stock covering all the dividend dealings with his customers or for his customers—that is correct, isn't it?

Mr. WHITNEY. That may be; yes, sir.

Mr. GRAY. All right now, come back to another instance where you have a man who has 5,000 shares of that stock. Do you mean to tell me that when another brokerage house comes along and wants to borrow from that brokerage house 5,000 shares of that particular stock, the broker who is to lend it will not just simply just take a 5,000-share certificate out and loan it?

Mr. WHITNEY. He will not.

Mr. GRAY. What will he do?

Mr. WHITNEY. He will take stock out that he is entitled to loan under the very rules that I have cited.

Mr. GRAY. Do you mean to tell me that broker would be so careful that he would take but—I think we were talking about 500 shares—that he would take but 300 shares of that particular stock out and loan it?

Mr. WHITNEY. Yes, sir. The stock exchange for a long, long time have demanded the keeping of excess margin in separate boxes by our brokers, excess margin of customers.

Mr. GRAY. Is that stock earmarked in any way?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. How.

Mr. WHITNEY. There are various methods, one of which is to put it in an envelope with the name of the customer attached to the certificate.

Mr. GRAY. Did you ever know of any instance where the brokerage house simply loaned that entire stock when there was a great demand for it on the short side?

Mr. WHITNEY. With no relation to the short side, sir. I have known, I believe, of cases where a house has deliberately done that, and we expelled them.

Mr. GRAY. What supervision does your exchange keep watch over the loaning of that stock by brokers to make sure that this rule is not violated?

Mr. WHITNEY. A check up of every questionnaire submitted by our brokers, as well as additional investigations of that and other points by our accountants at odd times throughout the year.

Mr. GRAY. Do you have reports made to you in such a way by the brokers with respect to these lending transactions so that they indicate the particular stock that is loaned and out of whose stock it is loaned? Yo do not, do you?

Mr. WHITNEY. Well, I have said, Mr. Gray, that the brokers keep excess margin on one hand that may not be loaned, whereas what they keep in the other box may be used for pledge or loaning purposes, because it is entitled to be so used.

Mr. GRAY. The reports that are made to you, do not, however, contain anything that you could check up on that situation, do they?

Mr. WHITNEY. We do not have reports on that from our brokers. We go and look into it to see that it is so, and they know the rule.

Mr. GRAY. You think they abide by it?

Mr. WHITNEY. Yes, sir; I do. If they do not care to they are made to.

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Mr. GRAY. You say you——

Mr. WHITNEY (interposing). May I read another article of the Constitution?

Mr. GRAY. Let me get this one question apropos of your answer. Do you mean to say that when you send your accountants around they make a physical examination of these securities so as to know that the proper proportion of them are kept and not loaned?

Mr. WHITNEY. Whether or not, sir, they make a physical examination of all securities—I believe they do not, of all securities held, but——

Mr. GRAY (interposing). Then what check-up do you have?

Mr. WHITNEY. We have an absolute check-up. We have what their books show and we have what they are borrowing and what they are loaning and from banks and brokers.

Mr. GRAY. Well, but that does not differentiate the particular customer's stock, does it?

Mr. WHITNEY. The particular customer's stock, no; but, the particular customer's stock that may be loaned is in that category and it is proper to loan it.

Mr. GRAY. I know, but you have got a customer's stock and under your rules in this illustration that we have been using he may borrow but $300,000. What is going to stop him from loaning that certificate, getting the full amount of the market value of it, as is necessary to be done in the matter of short sales and lending?

Mr. WHITNEY. The New York Stock Exchange.

Mr. GRAY. How do they go about stopping it? I have not seen yet anything that you have told me that is a check-up on it. It may be my dumbness, I do not know.

Mr. WHITNEY. Aren't you trying to imply and to assume something, Mr. Gray, that is greater than even the power of the Government or State or anybody in this world? An auditor in reporting to whoever it may be, Government or State, the Interstate Commerce Commission, certifies that he has done this and that, that he has checked what the bank loans are and where they are or where the cash is, taken the word of other people, and using the books of the corporation that he is investigating he finds that they agree, and it gives him a basis of knowing that the truth exists. That is what we do, sir. Can we do more?

Mr. GRAY. Yes. Do like a good bank examiner would do in connection with the bank: Examine the securities themselves and see if they are there. Now, you have asked me a question and I have told you. Why not?

Mr. WHITNEY. We do it with what is in safe-keeping.

Mr. GRAY. You do not do it.

Mr. WHITNEY. I said with what is in safe-keeping.

Mr. GRAY. With what is in safe-keeping?

Mr. WHITNEY. What is in excess margin or is in safe-keeping which is paid for.

Mr. GRAY. But you have just told me that your auditors do not make a physical examination of these securities to determine that they are there.

Mr. WHITNEY. I said they make an examination of the records, of the loans of the banks, and of the books of the firms, to see that that

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which is used for pledge or for loaning purposes does not exceed what they have a right to lend or pledge.

Mr. GRAY. You asked me whether or not I could suggest to you a method by which it could be done? I have suggested it to you. I ask you whether or not you do not think it would be the proper thing to have your auditors make a physical examination of those stocks for check up purposes?

Mr. WHITNEY. I think it would be an absolute impossibility.

Mr. GRAY. You do?

Mr. WHITNEY. May I read—you said I might?

Mr. GRAY. You have said all you can tell me on that particular subject first, have you?

Mr. WHITNEY. No.

Mr. GRAY. Well, you may tell me anything else you want.

Mr. WHITNEY. Section 2 of chapter 15 of the rules of the exchange states:

"Members of the exchange and firms registered thereon carrying margin accounts for customers shall, as of the date of their answer to each questionnaire, cause to be made a complete audit of their accounts and assets, including securities held for safekeeping, in accordance with such regulations as shall be prescribed by the committee on business conduct, and shall file with said committee a statement to the effect that such audit has been made and whether it is in accord with the answers to the questionnaire."

I believe from what Mr. Redmond tells me, and I believe it to be true, that our auditors in the matter of the safe-keeping of securities spot check just exactly the same way as would bank examiners with regard to stock held in safe-keeping.

Mr. GRAY. Now, just a minute. I don't know just exactly what you mean by "spot check." You do not mean to take back your statement that the auditors do not make a physical examination of these securities, do you?

Mr. WHITNEY. Of all these securities; I do not wish to take back my statement.

Mr. GRAY. No.

Mr. WHITNEY. That they spot check it I believe is true.

Mr. GRAY. By that you mean that they check it here and there for test purposes?

Mr. WHITNEY. Exactly as do bank examiners.

Mr. GRAY. I do not want to discuss with you whether they do or not. I know what they ought to do.

The CHAIRMAN. Bank examiners examine all the assets.

Mr. GRAY. He says that they do not; that they just spot check it.

The CHAIRMAN. No; he was referring to the auditors spot checking.

Mr. GRAY. Yes; but he said that they did exactly as the bank examiners did, and I do not agree with him.

The CHAIRMAN. Oh, we know that is not a fact with the bank examiners.

Mr. GRAY. Well, I thought so.

Mr. WHITNEY. Mr. Chairman, let me understand you. You think that a bank examiner looks at every single security that exists in all the banks when they examine it?

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The CHAIRMAN. They certainly do in the banks that I know anything about. Otherwise the examiners would have no value. How can they determine that it is there if they have not looked at it?

Mr. WHITNEY. Well, all right, sir.

Mr. GRAY. Now, Mr. Whitney, that brings us to the next point: Is it not a fact that most of the insolvencies of brokers are caused by the fact that the securities of the customers have disappeared; that they have gotten the money, and that the money is gone? In other words, that if there was a check-up on the question of their keeping those securities so that there would be an equalizing basis, if you please, it would prevent the numerous insolvencies of brokerage houses and thus help the people, of course?

Mr. WHITNEY. That the securities held in safe keeping are gone?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir; not that I know of.

Mr. GRAY. You do not think that that brings on any insolvencies and you do not think that a check-up——

Mr. WHITNEY. Why, insolvencies may be brought about for many reasons, of course. There are exceedingly few stock exchange members as compared with other people in various types of financial business.

Mr. GRAY. By the way, you have spoken of investigations from time to time.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. After Kreuger's suicide the short interests in Kreuger & Toll become quite large, did they not, immediately?

Mr. WHITNEY. Shortly thereafter, I believe so, for a certain reason which I will explain.

Mr. GRAY. I have no objection to your explaining it if you prefer to do it. But aside from the reason, what I want to ask you is whether the stock exchange made any investigation of that situation. I do not mean that situation that brought about the failure of Kreuger & Toll. We are not going to get into that. But I mean the question of the short interest that developed and whether or not you do not think that that might be just as disastrous as that terrible panicky market that you anticipated on September 21 and 22, and why did you first conduct an investigation, and if you did not, why not?

Mr. WHITNEY. There are four or five questions there.

Mr. GRAY. There are, that is true. You answer whichever ones you remember. Let me put it this way——

Mr. WHITNEY (interposing). I would like to know what you want me to answer.

Mr. GRAY. Did you make any investigation of the short interest of Kreuger & Toll's that grew and grew after Kreuger's suicide?

Mr. WHITNEY. Specifically, how?

Mr. GRAY. In any way.

Mr. WHITNEY. When we saw the short interest, when it really assumed very large proportions, we did investigate to find out what it was, and we found, if I remember rightly—that is why I am asking Mr. Redmond for the figure—the short interest as of the opening of March 21, including the trading days of March 18 and 19, increased from 64,000 shares roughly to 268,000, and it is my best remembrance that we found 211,000 shares of the 268,000 were sold as a hedge for

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protection against an account carried for Mr. Kreuger by a certain firm.

Mr. GRAY. All right; go ahead.

Mr. WHITNEY. In full agreement, under the right given to that firm by an agreement signed between them and Mr. Kreuger.

Mr. GRAY. Why should a person—and I am asking for information—sell as a hedge? It is really a sale of their own stock. They might as well sell their own stock, might they not?

Mr. WHITNEY. They do not have long stock. They were carrying stock for a customer.

Mr. GRAY. You mean that the particular brokerage house that was handling this stock or specializing in it——

Mr. WHITNEY (interposing). No; not specializing in it, sir.

Mr. GRAY. Well, all right. This brokerage house that was handling this particular stock, carrying stock for the customer, hedged on their own account, so that there might not be a loss suffered by them—is that it?

Mr. WHITNEY. In the case of Mr. Kreuger?

Mr. GRAY. Yes. All right.

Mr. WHITNEY. He had died. No authority could be given as to the disposal of his stock, and they under their agreement had a right to sell for their own account.

Mr. GRAY. I understand that situation. Now, on the morning of the 22d that short interest fell off from 268,000 to 255,000, did it not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And in one jump overnight it jumped to 407,000?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. A matter of 152,000 additional short shares, in that stock—is that right?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Did you investigate that?

Mr. WHITNEY. I think that pertained to the same situation. It then fell to 339 and then 276, 256, 249, and 220.

Mr. GRAY. Yes. But you think that applied to the same situation. Do you know?

Mr. WHITNEY. I do not know positively. I can look that up.

Mr. GRAY. Have you a report of your investigation on that?

Mr. WHITNEY. Not with me; no.

Mr. GRAY. I don't suppose you have, but is there a written report of it?

Mr. WHITNEY. I do not believe there is a written report, but we can get one and submit it to you. Be glad to.

Mr. GRAY. Will you do that and submit it to the committee?

Mr. WHITNEY. Yes.

Mr. GRAY. Thank you.

The CHAIRMAN. I was going to say to the members of the committee it is apparent that we can not complete this before noon, and there is one matter I want to take up before we recess. I think we should recess till 2.30.

The matter I wanted to lay before the committee is on the question of whether to make these names public, names of the short traders on a particular day. The attorney advises me that he preferred to keep them from the public until subpœnas could be served, and

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that he has now served the subpœnas and sees no reason for any more secrecy about those names. If the committee does not object, the names will be given to the public.

There being no objection, it is so ordered, and they will be made available the best they can.

Very well; the committee will go into executive session for a few minutes before recessing. Everybody is excused except the members of the committee. We will reconvene for the hearing at 2.30 in this room, and Mr. Whitney will return at that time.

(Thereupon, at 11.55 o'clock a. m., the committee proceeded to executive session, and the hearing of witnesses was recessed until 2.30 o'clock p. m. of the same day.)

AFTER RECESS

The committee reconvened at 2.30 p. m. on the expiration of the recess.

The CHAIRMAN. The committee will come to order. Mr. Whitney is on the stand.

TESTIMONY OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE, NEW YORK, N. Y.—Resumed

Senator FLETCHER. Mr. Whitney, do I understand your view to be that short selling is important in the sense of the market?

Mr. WHITNEY. Yes, sir.

Senator FLETCHER. And is there such a thing as good short selling and bad short selling? In other words, is there such a thing as bad short selling where, for instance, there are combinations or concerted action for the purpose of bearing the market or forcing liquidation? Does that not occur sometimes?

Mr. WHITNEY. There are two classes, Senator Fletcher: One, where the short selling is entirely and absolutely legitimate; and the other, short selling that might be illegitimate, just the same as a bear raid. The latter we are absolutely against, and the former we are for.

Senator FLETCHER. There is such a thing as that—illegitimate short selling?

Mr. WHITNEY. I do not think bear raiding exists to-day in the market.

Senator FLETCHER. Well, may there not be illegitimate short selling when there isn't absolutely a bear rail, for the purpose of forcing liquidation?

Mr. WHITNEY. I do not see how that could take place.

Senator FLETCHER. I was wondering if there was not a distinction there between short selling generally, which you approve, and occasionally when it is very harmful and depressing both to the market and to the public; whether it is not possible for that sort of short selling to take place, and whether, if that is true, there could not be some regulation of restriction imposed so as to prevent it.

Mr. WHITNEY. We at the present time know of no restrictions beyond what we have put into effect that will prevent what I say is illegitimate short selling or bear raiding. Naturally if you gentlemen will point out to us what you think we might do to prevent it,

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anything further that we might do to prevent bear raiding or illegitimate short selling we would gladly give it every consideration and be thankful for the advice.

Senator COUZENS. What about putting a tax on it such as the House put on the transfer of stocks? Wouldn't that help out?

Mr. WHITNEY. I do not think, Senator Couzens, that bear raiding exists to-day. If any tax could be placed upon bear raiding, illegitimate short selling, then all well and good. But I can not see how such a tax could be put on without affecting legitimate short selling, which I contend is a necessity.

Senator COUZENS. But you know sometimes we have to put a burden on the whole in order to catch a few people.

Mr. WHITNEY. Well, as I have said, I do not think bear raiding exists to-day.

Senator COUZENS. Evidently there is some illegitimate selling going on. It seems to me we may have to adopt the House revenue bill and place a tax on transfers so as to get some of the bad ones.

Mr. WHITNEY. I think that would be disastrous to the stock markets, the security markets as a whole, and to the investors of this country.

Senator FLETCHER. Mr. Whitney, your position is, as I understand it, that if there is to be any restriction or regulation or controll it should be through the stock exchange itself and not by way of legislation.

Mr. WHITNEY. Yes, sir. And any advice given to us that we could act upon to further what we are trying to do to-day we would be very glad to consider.

Senator BROOKHART. I can not understand yet what is the difference between this so-called short selling legitimately and bear raiding. The line of demarcation between the two is not clear to me.

Mr. WHITNEY. Bear raiding is an act that depresses and demoralizes the market and tends to make prices fictitious.

Senator BROOKHART. Well, doesn't any short selling tend to do that same thing?

Mr. WHITNEY. No, sir.

Senator BROOKHART. What does it tend to do when it does not tend in that direction?

Mr. WHITNEY. Under the way that short selling is now executed, or sales for short account are now executed, it is no different from liquidation in the market, and it forms a very, very small part of the transactions in the market.

Senator BROOKHART. Well, liquidation depresses the market, doesn't it?

Mr. WHITNEY. Liquidation under the interpretation put upon the rules of the exchange may be done at any price. Short selling under that interpretation is not done except at a price not less than the last sale.

Senator BROOKHART. Well, the reason you have to have that restriction on short selling is because there is something inherently illegitimate in it. If so then you have to have some restriction somewhere.

Mr. WHITNEY. We think anything that will depress or demoralize and bring false prices to the market is illegitimate, as I have stated before.

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Senator BROOKHART. Well, the only reason why short selling is not bear raiding always is because of your restriction that they must sell at the last price.

Mr. WHITNEY. No, sir; because of our restriction, which has been a part of the constitution as long as I remember, applying to both sales and purchases.

Senator COUZENS. Would 50 per cent on the profits of short selling help to curb short selling?

Mr. WHITNEY. I do not know, Senator Couzens, whether it would or not. As I have frequently stated here, any such restriction would tend to take away the stability and equilibrium of the market, and therefore I think it highly undesirable.

The CHAIRMAN. You may proceed, Mr. Gray.

Mr. GRAY. Mr. Whitney, would you like to get home to-night?

Mr. WHITNEY. I do not particularly care, Mr. Gray. I will say that I am very happy here in Washington.

Mr. GRAY. Well, that is very nice. If it is not cutting short your explanations at all, and if you will answer me directly and as briefly as possible in response to some of my questions we will try to get through.

Mr. WHITNEY. All right.

Mr. GRAY. On this subject discussed within the last few minutes let me ask you: Isn't it a fact that not only in years past but right down to the present time there have been many rumors circulated crediting operators on the New York stock exchange with forming pools to either raise or depress prices?

Mr. WHITNEY. There might have been such rumors but I can not say that the New York Stock Exchange is responsible for rumors.

Mr. GRAY. No, but you have heard those rumors, haven't you?

Mr. WHITNEY. At times I have heard rumors; yes, sir.

Mr. GRAY. Did you take any steps to investigate those rumors? And did you hear only by rumor, if you please, of pools being formed for either depressing or raising prices?

Mr. WHITNEY. We do sometimes. And I will say that we took immediate steps on April 8, 1932, on advice of such a rumor from Senator Walcott.

Mr. GRAY. That was with respect to what stock, do you recall?

Mr. WHITNEY. The stocks that were particularly investigated, as I remember, were United States Steel, American Telephone, Consolidated Gas, and Public Service of New Jersey.

Mr. GRAY. That was this year that you are now talking about?

Mr. WHITNEY. Yes; within two weeks.

Mr. GRAY. Within the last several years, and prior to that time, do you know of any investigations that have been conducted by reason of any rumors?

Mr. WHITNEY. Frequently we have investigated rumors. I think I have said that many times here.

Mr. GRAY. Rumors of pools?

Mr. WHITNEY. We investigate for all sorts of purposes.

Mr. GRAY. But, I am now talking about rumors of pools.

Mr. WHITNEY. Rumors that this, that, or the other may be done in a particular stock have caused the business conduct committee of the exchange to watch that stock; yes, sir.

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Mr. GRAY. I am directing your attention to an article that appeared in the Wall Street Journal of July 11, 1930, for the purpose of inquiring as to whether or not that came to your attention, and whether any investigation was made of its truth [reading]:

Wall Street has taken with a grain of salt reports of the formation of a huge pool sponsored by international banking interests. These stories have mentioned sums running up to $100,000,000 as the amounts involved in the alleged operations. While the rumors of big bankers getting together to start a better market are discredited, there is good reason to believe that some prominent operators are organizing groups to work in special stocks. It is thought that the liquidated state of speculative accounts will favor such activities.

In this connection, it is reported that M. J. Meehan's change of plans, which will bring him back to New York Saturday from a European trip originally mapped out for two months longer, had to do with new pools formed in Standard of New Jersey and Vanadium. According to these rumors, W. C. Durant will be associated with Mr. Meehan to furnish the bull leadership which the market has lacked for several months. If such is the case, it will be the first time that these two operators, who were so prominent in the Coolidge bull swing, have actively cooperated for many years.

Did that come to your attention?

Mr. WHITNEY. No, sir. I never heard of it before.

Mr. GRAY. You are the president of the New York Stock Exchange and yet you never heard of this?

Mr. WHITNEY. Yes; I am the president of the New York Stock Exchange now and was at that time, but I do not recall that particular incident or that article as appearing in the paper in any way.

Mr. GRAY. All right. On page 103 of your testimony before the House committee you say you have examined with care the accounts of short sellers in an effort to find out if there is any evidence of concerted action, and you find no such evidence. When was that investigation made?

Mr. WHITNEY. That particular reference was to investigations we have continually been making, as I have said here before.

Mr. GRAY. It had no reference to any particular investigation?

Mr. WHITNEY. Only to the investigations that we continually have made by the business conduct committee.

Mr. GRAY. All right. On page 18 of your Hartford speech you stated that you have records showing that at the close of the market on September 21 the total short interest of 3,697,000 shares comprised the commitments of 9,369 separate accounts. Have you a list of the persons whose accounts were involved?

Mr. WHITNEY. As to the first figure I believe that was found to be an error because it was the first day that we asked for daily transactions from our members.

Mr. GRAY. I am coming to that but that is not what I asked you.

Mr. WHITNEY. Well, if I may go back to it.

Mr. GRAY. This is as to the number of accounts.

Mr. WHITNEY. Whether we have a list of those accounts by names, similar to that given you for April 8?

Mr. GRAY. Yes.

Mr. WHITNEY. I believe we have.

Mr. GRAY. Will you furnish it to the committee?

Mr. WHITNEY. If that is the desire of the committee; yes.

Mr. GRAY. I would request it on behalf of the committee, if you will.

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Mr. GRAY. Now, Mr. Whitney, have you a list of the brokers that were involved in those accounts on the morning of September 21? In other words, does the list also show not only who those short accounts were held by, but the brokers who held them?

Mr. WHITNEY. I think so.

Mr. GRAY. Will you furnish them?

Mr. WHITNEY. Yes, sir. You said at one place as to the morning of September 21. I am not sure whether our records are for the close or the morning.

Mr. GRAY. Your speech said at the close of the market on September 21.

Mr. WHITNEY. Yes. May I now go back to the figure of the short interest, or will you cover it by your questions?

Mr. GRAY. I have it here, but will direct your attention to it later. I thought it must be an error.

Mr. WHITNEY. All right.

Mr. GRAY. We have a paper before the committee, and it has been marked "Exhibit No. 10," which shows in the chart the relation of the short interest to market fluctuations.

Mr. WHITNEY. And to brokers' loans.

Mr. GRAY. And to brokers' loans, but I have not been asking you about that. As a matter of fact, that chart becomes somewhat inaccurate, doesn't it, because of the fact that it does not take into consideration the in and out sales by shorts during any one day.

Mr. WHITNEY. I do not consider the chart inaccurate because it does not take into consideration those in and out sales.

Mr. GRAY. Let me put the question to you, then, in this way: It does not consider the in and out sales?

Mr. WHITNEY. No, sir; because they offset each other.

Mr. GRAY. As a matter of fact, in actual liquidation of stock when it is purchased by a real buyer that stock may be removed from the market, while in the case of a buyer to cover a short sale that stock is delivered to the lender and is in all likelihood kept in the floating supply, isn't that true?

Mr. WHITNEY. No, sir.

Mr. GRAY. Why, not?

Mr. WHITNEY. Because the lender may perfectly well be the owner of that stock just as a new purchaser might be.

Mr. GRAY. As a matter of fact, however, in the majority, and I will say in the large majority, of cases that is simply a part of the floating supply of stock, isn't it?

Mr. WHITNEY. That very well might be; yes.

Mr. GRAY. Isn't it a fact that selling by shorts in a declining market puts an extra burden on the buying power?

Mr. WHITNEY. Puts an extra burden on the buying power?

Mr. GRAY. Yes.

Mr. WHITNEY. The buying power has to assimilate the selling of shorts, yes; but the short seller must himself then buy, either up or down, depending upon whether his judgment was correct or not.

Mr. GRAY. Well, we discussed that before and I do not want to get into it again, when a short seller buys, but I will take it up later. We have talked about pivotal stocks and trading in them, and whether or not the action of pivotal stocks did not generally upset

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the market. Is it not a fact that the transactions of short interests in the New York Central stock in December of 1931 caused an upsetting of the whole market at that time?

Mr. WHITNEY. I do not know, Mr. Gray.

Mr. GRAY. Do you remember the situation then?

Mr. WHITNEY. I do not. What is the date?

Mr. GRAY. During December of 1931. It is the statistics from December 1 to December 31, I believe.

Mr. WHITNEY. Thank you. I believe I have those here.

Mr. GRAY. All right. There was, was there not, a very large short interest in New York Central during the month of December?

Mr. WHITNEY. There was a considerable short interest.

Mr. GRAY. Starting on the 1st of December with a short interest of 81,541 shares and ending with a short interest—let me see what it is.

Mr. WHITNEY. Of 55,570 shares.

Mr. GRAY. At the close of the month.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. During that time it rose to what?

Mr. WHITNEY. To 112,179 shares on December 10, as of the opening.

Mr. GRAY. Don't you know it is a fact that the action of the shorts in New York Central in that month decidedly disturbed the market and brought about a decline of prices?

Mr. WHITNEY. I do not. It may have been possible that some news with regard to the dividends or earnings of the New York Central Railroad affected the market rather than any action of short sellers.

Mr. GRAY. Isn't it a fact that during that month the New York Central short interest was the largest ever in its history, or do you know that from recollection?

Mr. WHITNEY. I do not know that from recollection; but if you say that is so, in so far as our records are concerned, then it is all right.

Mr. GRAY. They so show.

Mr. WHITNEY. Then all right.

Mr. GRAY. Do you consider that intrinsic values have anything to do with the sales price of stocks on the New York Stock Exchange?

Mr. WHITNEY. I certainly do.

Mr. GRAY. And they should have.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. If intrinsic values were the things that were given the highest consideration in the purchase and sale of stock, then sales would be regulated by the law of supply and demand, wouldn't they?

Mr. WHITNEY. Yes; which I think they are.

Mr. GRAY. Now, you will not agree with me, I suppose, that either selling on margin or short sales result in bringing about artificial values.

Mr. WHITNEY. I won't agree; no, sir.

Senator BULKLEY. Mr. Whitney, I should like to get your definition of intrinsic value into the record, if we may.

Mr. GRAY. Will you give that, Mr. Whitney?

Mr. WHITNEY. Senator Bulkley, a great many things go to make up intrinsic values. It is the earnings of a corporation, the general

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situation as to that particular industry, and I do not think I am competent to tell you all the things that go to make up intrinsic value.

Senator BULKLEY. I do not know whether anybody is competent to define this. I know that we have had a good deal of difficulty in trying to find out what it means, but I should like to know in what sense at least you use it. You have talked about intrinsic values, and now I should like to ask you, What do you mean?

Mr. WHITNEY. If we may take the case of a railroad, I suppose in order to get at the basis of its intrinsic value you would try to find out what that railroad is worth if it went out and tried to sell itself. I think particularly with regard to a railroad it is only worth while as a running institution. Mere real estate or rails, if they are not being operated upon, are presumably of no value to anyone. Therefore, in making up the intrinsic value of a railroad we must consider it as a going concern and primarily what business it is doing, what its capital structure is as to its debts and fixed charges, its taxes, and then eventually arrive at what the common stock or preferred stock is worth.

Senator BULKLEY. Well, based upon replacement value, isn't it?

Mr. WHITNEY. Well, I was not taking that into consideration.

Senator BULKLEY. I should like to know what your view of it is.

Mr. WHITNEY. I am trying to get at what the stock may be selling at at a particular time. And one must see the business it is doing, the profits it is making, what its fixed charges are, and then arrive, together with other considerations, perhaps, at what the common shares are worth, the equity shares.

Senator BULKLEY. Well, frankly, I do not think that is a very clear definition of what intrinsic value is, and I do not see how you can be confident whether a stock is selling below intrinsic value when you can not tell better than that what intrinsic value is.

Mr. WHITNEY. Well, I am perfectly willing to withdraw what I have said as to intrinsic value.

Senator BULKLEY. I am not trying to force you to withdraw anything, but am trying to find out whether that phrase means anything definite or not.

Mr. WHITNEY. I presume I used that phrase, intrinsic value, as meaning what seemed to be the true and proper value of the shares at a given period.

Senator BULKLEY. In the opinion of somebody?

Mr. WHITNEY. Yes; of myself in this case, or of all persons when it is reflected in the market.

Senator BULKLEY. Well then, it becomes market value at that time, doesn't it?

Mr. WHITNEY. Yes; there is a market value, and there is also a book value. But book value, many times, rests on situations which to prove up as a fact would necessitate a sale of the property of the particular corporation. There are various kinds of values, if you please.

Senator BULKLEY. In any event it is fair to say that intrinsic value is not a thing that could be computed by any rule, and that it does involve the element of personal opinion, doesn't it?

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Mr. WHITNEY. I think without question——

Senator BROOKHART (interposing). Are sales at the market on the exchange any indication of intrinsic value?

Mr. WHITNEY. In order not to get involved in the question of intrinsic values I will say I think they are a very clear indication of what a stock is worth in the estimation of those in this country that are interested in it.

Senator BROOKHART. You say, then, that sales of stocks do indicate genuine value upon which you can rely?

Mr. WHITNEY. Upon which you can rely if you want to purchase or sell shares. It is the only real place I know of where you can resolve what you own in the shape of shares of a corporation into cash.

Senator BROOKHART. Well, now, at the time the value of the railroads was fixed by the Interstate Commerce Commission the quotations of stocks and bonds showed them worth about eleven and three-fourths billions of dollars, but the commission fixed their value at $18,900,000,000. What would you say was the indication there as to the quotations being of real value?

Mr. WHITNEY. I believe that perhaps since that time that price as to the worth of the railroads has been revised.

Senator BROOKHART. Yes; it has been revised, and the stock boomed up, and then after they gave them a return on that high valuation they were boomed back down again, so that there is about the same difference now that there was then.

Mr. WHITNEY. Market value really shows what the consensus of opinion is as to the worth of the stock at the particular time and at which cash may be realized by the sale of that particular stock.

Senator BROOKHART. Do you regard market value of sufficient reliability that it would be safe for us to say that railroad values should not exceed market value.

Mr. WHITNEY. There are a great many other considerations to come into that point.

Senator BROOKHART. All right, Mr. Gray, you may proceed.

Mr. GRAY. Mr. Whitney, you mentioned book value. As an illustration for the committee of how book value compares with what you call market value or quoted prices, do you happen to know the book value of United States Steel?

Mr. WHITNEY. I have heard recently that it is in the neighborhood of $200 a share.

Mr. GRAY. It is $208 a share, isn't it?

Mr. WHITNEY. Well, perhaps so.

Mr. GRAY. And it sold on the market on yesterday at $29 a share.

Mr. WHITNEY. In that neighborhood, I think.

Senator BULKLEY. Mr. Whitney, do you know what the intrinsic value of it is?

Mr. WHITNEY. No; I do not think I do, unless you could take it as $200 a share, and that is providing you can go out and sell the assets and properties of the United States Steel Corporation to somebody for that price.

Senator BULKLEY. That raises the question, do you mean by intrinsic value the book value?

Mr. WHITNEY. I really can not answer that question. I think book value and market value, perhaps somewhere between the two,

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or at one or the other, rests the actual intrinsic value. But I think intrinsic value also has to take into account the operating business of that particular corporation at the time, and its prospects, orders on hand, and so forth.

Senator BULKLEY. Well, I have tried a number of other witnesses and have not had a definition of intrinsic value yet.

Mr. WHITNEY. Well, I am sorry.

Senator FLETCHER. Do you think the market is never manipulated so that what the quotations express are not really market value? Are not the markets at times manipulated so as to arrive at prices?

Mr. WHITNEY. The market at times may seemingly reflect a market value that is not warranted by earnings and prospects. It seems to me that situation existed in 1929 on the up side, and I think that situation is exaggerated now on the down side. But I do not think that was manipulation.

Senator BROOKHART. You may resume, Mr. Gray.

Mr. GRAY. Mr. Whitney, just one or two brief questions on short selling. Isn't it a fact that large blocks of stock are dumped on the market right after a decline starts by way of short selling for the purpose of forcing liquidation of the market down to a point where they want to cover?

Mr. WHITNEY. Not to my knowledge.

Mr. GRAY. You never heard of them doing it?

Mr. WHITNEY. I do not know of any specific case; no, sir.

Mr. GRAY. Have you ever examined the charts and your own records sufficiently to determine whether or not that is so?

Mr. WHITNEY. I have examined the charts and our records very carefully, and I do not know of any such instance.

Mr. GRAY. You do not know of any instances where the short interest has become very large and has worked almost up to the peak during the course of the year—that is, the high peak of the year—while that market has been steadily declining during that period of time?

Mr. WHITNEY. Well, you have just pointed out a case in the New York Central Railroad. But my point is this, that that does not prove the shorts deliberately depressed the market. It may very well rest upon that fact that bad news came out in regard to earnings or the dividend of that particular corporation. This is a conjecture, however, and I will say that I do not know.

Mr. GRAY. If the history of the pivotal stocks during the last year or two showed, from the charts, that the short interest increased substantially while the declines were on, wouldn't you say therefore it was evidence of dumping for the purpose of depressing prices?

Mr. WHITNEY. No, sir. The so-called pivotal stocks are the stocks in which there is the biggest market, and the individual who is studying the market, either on the bull side or the bear side, knows the normal signs of the market, so that he may reverse his position at will.

Mr. GRAY. By the way, Mr. Whitney, it is the practice of a good many large operators to operate in dummy names, is it not?

Mr. WHITNEY. Not that I know of.

Mr. GRAY. You do not know that even?

Mr. WHITNEY. Who do you mean by dummy names?

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Mr. GRAY. Names other than their own. You know what a dummy director is, of course.

Mr. WHITNEY. I have heard of them; yes.

Mr. GRAY. I thought you might have. And we will learn of other things you have heard about in New York after a while. You have never heard of operators buying and selling stocks in dummy names?

Mr. WHITNEY. In the names of corporations which they own, possibly?

Mr. GRAY. I am not asking about the names of corporations. I am talking about the operator who does not desire his name to appear upon the record in his buying and selling of stocks.

Mr. WHITNEY. Do you mean upon the records given to the New York Stock Exchange?

Mr. GRAY. Upon the records of brokers even.

Mr. WHITNEY. I have known of numbered accounts being used, but when those accounts are reported to the New York Stock Exchange the name of the owner has to be shown.

Mr. GRAY. That is not what I asked you. I asked you whether or not you did not know it is the practice of the large operators, either on the bull or the short side of the market, to use other names than their own in connection with their transactions.

Mr. WHITNEY. No, sir; I do not know that.

Mr. GRAY. You say you do not know that?

Mr. WHITNEY. No, sir.

Mr. GRAY. You have heard the names of a number of very large operators in New York?

Mr. WHITNEY. I beg your pardon?

Mr. GRAY. I say, you have heard the names of a number of very large operators in New York?

Mr. WHITNEY. I have heard, or at least people have said that such individuals may possibly be in the market, interested in the market. If you will ask me specifically, I will try to answer you.

Mr. GRAY. I am not going to ask you about any specific names, but don't you know it is the habit of those people to operate under dummy names?

Mr. WHITNEY. No, sir; I do not.

Mr. GRAY. You do not know that?

Mr. WHITNEY. No, sir.

Mr. GRAY. By the way, your concern you said represented the Morgan concern in some of its transactions.

Mr. WHITNEY. We have done business with the Morgan concern; yes.

Mr. GRAY. How do you carry their account?

Mr. WHITNEY. How do I carry it?

Mr. GRAY. How does your firm carry their account?

Mr. WHITNEY. We carry no account for J. P. Morgan & Co.

Mr. GRAY. You do not carry it?

Mr. WHITNEY. No, sir. All of our business for them is cash. We deliver to them securities and are paid, or vice versa; they deliver to us and we pay them and then deliver them out against sales.

Mr. GRAY. Do you mean you receive from them an order to buy in their name?

Mr. WHITNEY. Certainly, always.

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Mr. GRAY. And you carry no accounts on your books with them at all?

Mr. WHITNEY. Do you mean margin accounts? No, sir.

Mr. GRAY. Oh, of course you do not carry any margin accounts for them, Mr. Whitney.

Mr. WHITNEY. Mr. Gray, you are asking me a question, and I am honestly trying to answer.

Mr. GRAY. You have to do some bookkeeping in connection with that account?

Mr. WHITNEY. Yes.

Mr. GRAY. And you carry them on your books, do you?

Mr. WHITNEY. Oh, I see. I think we use the No. 8 for our own purposes. That is for the purpose of our broker on the floor, when the order goes to the floor, so he will know for whom he is executing the order. And we use it for every single customer of ours, so that the name J. P. Morgan & Co. will not be written on the slip.

Mr. GRAY. You said a little while ago that where numbers were used for transactions, when reported, as they have to be, to the stock exchange, the name is given.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Whose name does appear when it reaches that point?

Mr. WHITNEY. It is my understanding when it reaches the exchange——

Mr. GRAY (interposing). Well, it is your firm and I don't know.

Mr. WHITNEY. But we do not report any position for J. P. Morgan & Co., because we carry no margin account for them.

Mr. GRAY. You would only have to report transactions that were open from day to day?

Mr. WHITNEY. That is all.

Mr. GRAY. Now, Mr. Whitney, I will direct your attention to September 21 again at the time you closed short selling on the exchange.

Mr. WHITNEY. All right.

Mr. GRAY. You have given several reasons why you think the shorts covered on that day.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Don't you believe that one of the principal reasons that actuated the shorts to cover on that day was because the banning of short selling would cause stocks to rise and because, therefore, it might be good judgment to cover?

Mr. WHITNEY. I think the reason for covering was because they were afraid the exchange might close and they wished to protect their contracts, which they could not do on the last date that the exchange was closed.

Mr. GRAY. They could protect their contracts if they had a market, couldn't they?

Mr. WHITNEY. I said that, about last Monday; that the members of the exchange could not do so, and only the broker and the customer——

Mr. GRAY (interposing). Under the membership rules?

Mr. WHITNEY. Under our rules.

Mr. GRAY. Still you do not answer my question. I asked you, Don't you think one of the principal factors that caused the shorts to cover on September 21 and 22 was because they knew a banning

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of short selling would cause stocks to rise and therefore it was good judgment for them to cover?

Mr. WHITNEY. It may have been a factor.

Mr. GRAY. Don't you think it was the principal factor?

Mr. WHITNEY. I do not.

Mr. GRAY. That, of course, would not have applied—I mean the inability to cover would not have applied to shorts who were not members of the exchange, would it? I mean they could have bought on the gutter market.

Mr. WHITNEY. I presume they could have, but they would have to pay for those stocks and could not apply them against their accounts with New York Stock Exchange members.

Mr. GRAY. You mean that brokers would not have accepted delivery of them?

Mr. WHITNEY. They would not.

Mr. GRAY. Now, then, I come to the correction. I mean the correction that you wanted to make. I show what I note from your Hartford speech, and I show what I note from your testimony before the House committee. And I will direct your attention to certain other figures that you have given us, and I will be very glad if you have a statement to make showing which are the correct figures. In your Hartford speech you said:

> At the close of business Monday, September 21, the total short interest had decreased by the large amount of 544,000 shares.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Now, in your House committee testimony, on page 100, you testified that that interest covered on that day 280,000 shares. I want to be fair to you and give you a complete picture first.

Mr. WHITNEY. Are you using the correct dates?

Mr. GRAY. I am, and I have examined it very carefully. I think, I may say, I know where you have made a possible error, and I will direct your attention to it in a moment.

Mr. WHITNEY. The Hartford speech was made on figures that had just been received. A speech of that sort takes some time to compile and some time to print, but the correct figures are in this schedule that you have, Exhibit 4.

Mr. GRAY. It is a fact that you gave the figure on September 21 as 544,000 shares, while before the House committee you testified that it was 280,000 shares.

Mr. WHITNEY. I think I testified before the House committee as of the opening of September 21.

Mr. GRAY. No; and I have looked it over very carefully.

Mr. WHITNEY. May I see it?

Mr. GRAY. Yes. If you have a copy of the House committee proceedings it appears on page 100:

> Our statistics show that 280,000 shares were covered on September 21.

So we are only talking about what was covered. We are not talking about the relative positions of morning and afternoon. I read the Hartford speech to this effect——

Mr. WHITNEY (interposing). The Hartford speech was incorrect and it was corrected again in December.

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Mr. GRAY. Then that is all that I want to know.

Mr. WHITNEY. The facts are exactly as I stated, by check and recheck, as shown in the exhibits.

Mr. GRAY. I want to get to your testimony before the House committee. That is incorrect, too?

Mr. WHITNEY. Yes; by a day.

Mr. GRAY. Now, you have before you I suppose the schedule from May 25 to November 30?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Your position is there stated on September 21 as the morning position.

Mr. WHITNEY. As of the morning.

Mr. GRAY. So if we want to find out what the coverage is during the day, or change of position, which is the same thing, we have to refer to the morning of September 22 in order to get the coverage on the day of September 21, don't we?

Mr. WHITNEY. That is right.

Mr. GRAY. Assuming that your Hartford speech was wrong, and we have that out of the way, and your testimony before the House committee was that there were 280,000 shares covered, while by an examination of the statistics you gave us it appears to be 784,487 shares.

Mr. WHITNEY. Well, the figures are before you. I underestimated very materially.

Mr. GRAY. Your House committee testimony was wrong and your Hartford speech was wrong?

Mr. WHITNEY. I will grant both are, but the Hartford speech we thought was correct at the time of making it, and the testimony given before the House committee was out of my head at the time.

Mr. GRAY. Didn't you have any statistics then before you?

Mr. WHITNEY. No, sir.

Mr. GRAY. Then the correct figure of the coverage on September 21 was in round figures 800,000 shares?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. That was on the first day the exchange was open on the short-selling ban and they covered 800,000 shares of stock, reducing their position by that amount?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And on the second day that the exchange was open and short selling was banned, and I am now speaking by the statistics, they reduced it further by 233,518 shares; is that right?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And on the third day when short selling was permitted it was increased by 20,117 shares; is that right?

Mr. WHITNEY. Up but 20,000 shares.

Mr. GRAY. Well, I will give you the "but." And on the next day there was a further increase of 37,293 shares.

Mr. WHITNEY. Yes, sir; all of which I stated on last Monday.

Mr. GRAY. On the next day there was a slight decrease of 2,297 shares.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Then an increase of 78,155 shares.

Mr. WHITNEY. Yes, sir.

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Mr. GRAY. And then came some coverage which gave a very material decrease on the line down.

Mr. WHITNEY. A very material decrease day by day for six days, ending up with a 424,000 decrease on one day.

Mr. GRAY. That was not an increase to that point. It was increased to 221,000 and then a decrease of that coverage down to 14,000, and then 424,000.

Mr. WHITNEY. Yes, sir; there was a steady decrease day by day in the short interest.

Senator GORE. Mr. Whitney, have you the statistics for the total number of shares traded in each day on the exchange?

Mr. WHITNEY. I think I have it. The total transactions from September 26 on are in the record.

Senator GORE. That is about where in this series of things that you are giving.

Mr. WHITNEY. That is just about in the middle of this series.

Mr. GRAY. In other words, prior to that it is weekly and after that it is daily, as you are answering Senator Gore, but from then on the daily transactions are here.

Mr. WHITNEY. Senator Gore asked me what the total number of shares traded in each day were on the exchange.

Senator GORE. Yes, sir; the same day, in and out.

Mr. WHITNEY. We did not start to compile the in and out sales, the sales for short account and coverings each day, until as of the 26th of September. From that time on we also showed the total number of shares traded in, and the percentage of those in each. We of course have those records for any date past for some considerable time.

Mr. GRAY. Those figures begin on September 21.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. But you have not put in the record the total transactions for those days.

Mr. WHITNEY. No; we have not. There was no reason for leaving them out at all, but we did not know that they would be of any interest.

Mr. GRAY. They might be interesting.

Mr. WHITNEY. I have not got them. The trading on the 21st, 22d, and 23d was very considerable.

Mr. GRAY. What was that?

Mr. WHITNEY. The ratio of short sales to total transactions was what I took the inquiry to be.

Mr. GRAY. Senator Gore has been asking you about the in-and-out sales. Did you so understand him?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And I am asking about the total volume of business done. Do you know what it was on the 21st of September?

Mr. WHITNEY. No, sir.

Mr. GRAY. Was it very much?

Mr. WHITNEY. Very considerable.

Mr. GRAY. Isn't it a fact that the covering of sales in that short business was less than 5 per cent?

Mr. WHITNEY. Less than 5 per cent?

Mr. GRAY. Yes.

Mr. WHITNEY. On the 21st?

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Mr. GRAY. On the 21st and 22d together.

Mr. WHITNEY. No, sir.

Mr. GRAY. You do not think so?

Mr. WHITNEY. No, sir. You used the figure 800,000, and that would multiply it by 20, which would make the results on the 21st 16,000,000 shares.

Mr. GRAY. It is the 21st and 22d I am talking about now, both days together.

Mr. WHITNEY. Well, the same thing applies.

Mr. GRAY. That would be approximately 1,000,000 shares or 20,000,000 for the two days.

Mr. WHITNEY. No, sir. I do not think any such total transactions took place.

Mr. GRAY. But you have not the figures?

Mr. WHITNEY. No, sir; but I am pretty nearly sure of them.

Mr. GRAY. Do you know whether or not over the week-end just prior to the 21st of September there were very large market orders that came in from Europe?

Mr. WHITNEY. I do not know.

Mr. GRAY. You made the statement in connection with the consideration by the exchange of what was a proper remedy to put into effect on the morning of September 21, that you felt if you closed the exchange you would cause insolvency. Do you remember that?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. But you closed the exchange in 1914 and it was closed for some few months.

Mr. WHITNEY. Yes.

Mr. GRAY. Did that cause any insolvencies?

Mr. WHITNEY. I have stated to the committee, I think once, certainly, if not twice, that at the time of the closing of the exchange in 1914, we not wanting or having the knowledge to take full responsibility upon ourselves, consulted with the banks of New York, and I believe the Government, and were assured that the loans of brokers at that time would not be molested or sold out. I also stated that before September 21, 1931, the same effort was made on our part, and we were urged most sincerely by these parties I have referred to, to keep the exchange open at all costs.

Mr. GRAY. Will you answer my question: Did the closing of the exchange in 1914 cause any insolvencies?

Mr. WHITNEY. I think I have answered that. I will say——

Mr. GRAY. You can answer it yes or no.

Mr. WHITNEY. I do not know. Insolvencies of whom?

Mr. GRAY. Of brokerage firms.

Mr. WHITNEY. I do not know. Not of any members that I know of.

Mr. GRAY. What has been the percentage of depreciation between September of 1931 and April of 1932 on the stock exchange, the average reduction in price, I mean.

Mr. WHITNEY. I would have to refer to the chart to tell you.

Mr. GRAY. It is Exhibit No. 10, isn't it? Have you that there? Look at it and tell me, if you please, if it is not approximately 50 per cent?

Mr. WHITNEY. September 21, did you say?

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Mr. GRAY. Well, suppose we take it from—well, let me see what the chart runs from. Take it from September 21.

Mr. WHITNEY. A decline from about 87 to the last day on the chart, which is April 5, of 56.

Mr. GRAY. Did you say 56?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And the decline from January 1, 1931, was what? You have 56 as your last point, and now what is your first point?

Mr. WHITNEY. January 31?

Mr. GRAY. Take when you start your chart, January 1, 1931.

Mr. WHITNEY. It is 125. But I don't see what bearing that has.

Mr. GRAY. You may not. Do you know that the Berlin Stock Exchange closed on June 12? I think you testified to that effect the other day, and that it opened a few days in September and opened again last week.

Mr. WHITNEY. Under certain restrictions; yes, sir.

Mr. GRAY. Do you know what the average depreciation of the principal stocks was on the Berlin exchange, the figure from the time it closed in June of 1931 to the time it opened the other day?

Mr. WHITNEY. No; I do not.

Mr. GRAY. You do not know that it was approximately 12 per cent?

Mr. WHITNEY. No, sir; I have no information on that, but I could find out. The presumption is that because Germany has been in a position of late that perhaps—what date did you say for Germany?

Mr. GRAY. June 12, 1931.

Mr. WHITNEY. The condition in Germany caused a drop in prices before that day, just as conditions have caused a drop in prices here.

Mr. GRAY. But your answer is that you do not know?

Mr. WHITNEY. No, sir. Do you wish that information supplied?

Mr. GRAY. I will be very glad if you will get it for us; yes. Now, when England went off the gold standard September 21, the Paris Bourse did not close.

Mr. WHITNEY. I do not think so; no.

Mr. GRAY. And it has remained open continuously since then?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Do you know what regulations they put into effect with respect to short sellers?

Mr. WHITNEY. I believe they demanded an increase in the margin and the delivery of a certain part of the stock that was sold short.

Senator GORE. What exchange was that?

Mr. WHITNEY. The Paris Bourse. But the transactions on that exchange to the best of my knowledge are inconsiderable.

Mr. GRAY. Inconsiderable?

Mr. WHITNEY. Yes.

Mr. GRAY. As a matter of fact, they require a deposit of 25 per cent of the stock which is sold short. That is, they require the seller himself to furnish 25 per cent of the stock, and in addition to that require him to put up 40 per cent cash margin.

Mr. WHITNEY. I believe that is so, although I am not positive.

Mr. GRAY. Don't you know that the Paris Bourse considered that that was a constructive factor, and that the doing of that thing aided the Paris Bourse to keep the fluctuations of stocks from going over a wide range; that it stabilized and steadied things?

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Mr. WHITNEY. I do not know that.

Mr. GRAY. Do you know that there were articles written shortly after England went off the gold standard, in the papers of this country, dispatched from the other side, indicating that that was so?

Mr. WHITNEY. That it stabilized the market?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir; I have no knowledge of that.

Mr. GRAY. I ask you now whether you think to put the New York Stock Exchange to-day, after we have had and are still having this declining market, in a position where short sellers would be required to make a deposit of 25 per cent of the stocks which they are selling, and to put up a cash margin of 40 per cent, would not stabilize the situation and help to prevent future declines?

Mr. WHITNEY. I can see no reason in the world to believe that it would.

Mr. GRAY. In other words, you believe that the short seller should be permitted to operate freely without such restrictions?

Mr. WHITNEY. Under the regulations of the New York Stock Exchange as they did exist and have existed.

Mr. GRAY. All right.

Mr. WHITNEY. May I point out that in the situation where 25 per cent of the stock sold short must be, as under the Paris regulations, delivered by the short seller, does not in its very essence prevent the short seller operating, because he can borrow that stock and deliver it if he wants to.

Mr. GRAY. Yes. But it puts an additional burden on him, does it not?

Mr. WHITNEY. Yes, sir; artificially. You will appreciate, Mr. Gray, that the conditions of delivery in fulfillment of contract on the Paris Bourse are different from ours, and we demand that the stock be borrowed and delivered the next day.

Mr. GRAY. While their regulations give them a further period of time for the purpose of settlement?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Would you consider that it might be an advantage to put such a regulation as that in effect here?

Mr. WHITNEY. Term settlement?

Mr. GRAY. Yes.

Mr. WHITNEY. I think it would be disastrous, and one direct effect it would have would be to make short selling easier.

Mr. GRAY. Because of the fact, you mean, that they had an additional extra time in which to deliver it?

Mr. WHITNEY. Exactly.

Mr. GRAY. That is what we want to find out.

Mr. WHITNEY. May I just there put into the record as an exhibit—I do not care to read it—a prepared statement with regard to the term settlement, in answer to Senator Gore's request the other day?

Senator COUZENS. Is it your statement?

Mr. WHITNEY. Yes, sir. It has been prepared with me and by me, and I will assume full responsibility, Senator Couzens, for it.

The CHAIRMAN. It may be inserted in the record at this point.

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(The statement on "Term settlement" presented by Mr. Whitney, designated as "Exhibit 20," is here printed in the record in full, as follows:)

THE TERM SETTLEMENT

On the New York Stock Exchange and other American exchanges, contracts to purchase or to sell stocks are usually settled by 2.15 p. m. the next full business day, after they are made, by delivery of the seller's stock and payment of the buyers' money. This system is usually referred to as a "cash" or "daily" settlement.

All European stock exchanges have such cash settlements, too, although under them delivery of securities and payment of money usually occurs not sooner than four days or more after the date of contract. But many foreign exchanges also employ a "term" or "account" settlement for dealings in varying proportion of their listed issues.

Under a term-settlement system contracts made "for the account" are settled upon certain predetermined days each month. In the fortnightly settlement systems of London, Paris, and other centers, two such settlement dates each month are established—one at the beginning, the other at the middle of each month. In the monthly settlement system of Berlin, settlement is effected only at the end of each month.

Until the settlement period arrives, all purchases and sales of securities for the "term" or "account" are simply open contracts which for the time being do not require either the payment of buyers' money or the delivery of sellers' securities. It is not necessary to borrow either money or securities during the interval between the date of original contract and the date of the first subsequent settlement. In London it is not even the custom of brokers to require their customers to put up margin before entering into term contracts for the purchase or sale of securities.

Settlement of term contracts abroad usually takes about four days. During the first three days of this period, security purchases and sales contracts made during the whole preceding "term" of two to four weeks are cleared; on the final date payment of money balances and delivery of security balances occurs.

Under the London term settlement, which is the most conspicuous example of such systems, a brokerage customer who has bought or sold "for the account" rather than for "cash" has three different ways of terminating his commitments. In the first place, he can, if he wishes, deliver securities on a term sale contract at the settlement against money payment in full, or he can make complete money payment on a term-purchase contract against the delivery of the securities which he has bought. In the second place, he can terminate his term sale or his term-purchase contract by making another contract to buy or to sell respectively during the same account; in this case his purchase and subsequent sale contract (or his sale and subsequent purchase contract) are cleared and any profit resulting from his "in-and-out" dealings is paid to his broker and by the latter to him, while any loss therefrom is paid by his broker and collected by the latter from him.

It may be, however, that the customer who has bought or sold securities for one term account may wish to hold his "long" or his "short" position over the settlement date of the first account and into the next account. In this third case, stocks originally purchased will at the settlement be sold for cash, but at the same time purchased again for the next account period, if it is a "long" position which is being carried over; or, if it is a "short" position which is being carried over, stocks originally sold will at the settlement be purchased for cash, but at the same time sold again for the next account.

Although in the form of actual cash and term purchases or sales, these operations actually amount, in the first instance to borrowing money in order to maintain a "long" position, and in the second instance to borrowing stock to maintain a "short" position. In effect these operations enable stock to be loaned against money and money against stock in much the same fundamental fashion as occurs in the case of loans of stock in American stock exchanges. But under the foreign term-settlement systems, the interest on such loans of money for the coming fortnightly term period is expressed by the difference between the prices of the cash and term transactions, the former being usually slightly lower. But when particular securities are difficult to borrow in this way, the price of the cash transaction may slightly exceed that of the accompanying term transaction—a foreign parallel to the American "premium" on borrowed stock.

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The term-settlement system has sometimes been enthusiastically recommended for adoption in this country, but usually by those inadequately informed concerning European and American stock exchange settlement methods. The New York Stock Exchange has maintained its traditional "daily settlement" because it is convinced that this existing system is vastly superior to a "term" settlement in efficiency, safety, reliability, and fundamental accord with actual American conditions. This attitutde is based upon long experience with stock exchange settlement problems in general, and in particular upon comprehensive studies into the realities of foreign term-settlement systems.

A primary objection to the introduction of term settlements in this country arises from the increased facility which they would create for purely speculative activity. The New York cash settlement calls for delivery and payment the next full business day and for this reason compels a margin purchaser to borrow money at once, or a short seller to borrow stocks at once. But between the dates of contract and settlement, a term commitment in securities is merely an open contract, and for a period up to two weeks (or in Berlin up to one month), the "account" trader is completely free from the need of borrowing anything, and his purchases or sales can be proportionately unrestrained. As a matter of fact, an important reason why the term-settlement system has commended itself to so many European stock exchanges is the increased marked activity which it induces. However, well suited term trading may be to European conditions, there is no doubt that in this country its introduction would stimulate a frequently powerful tendency toward intense security speculation.

Term settlements are also less stable than cash settlements. From July through the autumn of 1914 all the stock exchanges in the world were closed. The New York Stock Exchange fully reopened with its usual cash settlement, December, 1914. When subsequently the leading stock exchanges of London, Paris, Berlin, and other European centers reopened, term settlements were forbidden and only cash settlements allowed. This situation continued for several years, and term settlements were not resumed in Paris until 1920, in London until 1922, and in Berlin until 1925. Again, last year, the London Stock Exchange suspended its term settlement September 26, 1931, and did not resume it until January 27, 1932. The Berlin Stock Exchange closed entirely June 12, 1931, reopened but only for the cash settlement on September 3, again closed entirely September 21 and on April 12, 1932, reopened again but only for cash dealings.

The superior stability and safety of cash settlements is due to their ability to keep unsettled security contracts between stock exchange members always at a minimum by frequent daily settlements, instead of allowing them to pile up gigantically for two weeks or more. This factor is freely admitted to have been for many years a principal cause of London brokerage insolvencies, which have long been more frequent than in New York. Also, if a stock exchange is compelled to suspend, prompt settlement of such contracts accumulated over the period of a fortnightly term is impossible. London Stock Exchange term contracts for the latter half of July, 1914, were not completely settled until September, 1922—over eight years later. In a period of severe price declines a great mass of unsettled contracts would endanger the entire market. If the New York Stock Exchange had had a "term" settlement during October, 1929, it is doubtful if the exchange could have avoided suspension, and if the enormous mass of term contracts which would then have accumulated could have been settled even by this time.

Another difficulty which would arise with "term" settlements in this country would be the increased danger of a revival of nonmember bucket shops. A bucket shop is a pretended brokerage firm which either does not really buy securities for its customers at all, or which, if it does buy them, secretly sells them out at once unknown to the customer. If prices fall, the bucket-shop keeper can then pretend to sell the margin customers out and pocket most or all of their margin. If, on the other hand, prices rise, the customers never obtain their supposed profits because the bucket shop silently disappears. The New York Stock Exchange, of course, does not tolerate bucketing by its members, and for a great many years it has led the fight to stamp out the firms which from time to time organize near the fringes of our financial districts in order to practice this swindle. The adoption of a "term" settlement by our leading stock exchange might, however, lead to a revival of nonmember bucket shops, because it would apparently justify the bucket shop in not having in its possession or under its control the securities which its customers had

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purchased on margin. If the victim of a bucket shop asked where his securities were, the bucket-shop keeper would, with a semblance of truth, be able to say that he had not yet received them because of the delay entailed by the "term" settlement. In New York the only "term" settlement ever practiced was by a small bogus stock exchange, which subsequently New York State authorities closed on this very ground that it deliberately fostered bucketing by its members.

The term settlement may be in sufficient accord with the slower pace of European business, but it would obviously drag behind our much quicker American tempo. People in this country, when they sell securities, expect to be able to get their money in a few days, not after several weeks. Under a term settement system this would, of course, be impossible, and the immediate negotiability of listed securities would thus necessarily be lessened.

Mr. GRAY. Now, Mr. Whitney, it is rather difficult to lean across the table with you to examine this next exhibit. So I will put this chart down here and we may both look at it.

I am showing you a chart of the United States Steel Corporation, covering a period of time from June 1, 1931, down to about the 10th or 11th of April in 1932, and it has in it the fluctuations as to the quotations during that period of time and down to a certain point at the end of January of this year has the openings and closings of the stock, and then has in addition thereto a line indicating the fluctuations of the short interests. (Charts marked Exhibit 21 appears in the appendix.)

As a matter of fact, when stocks started to decline in value as approximately July 1—I am not going to use the exact dates here; it will take up too much time—to about the 15th of September, approximately 25 points—that is correct, is it not?

Mr. WHITNEY. Yes, sir; previously having gone up from a price of 85, as I understand it, to 105, then from 105 down 25 points; yes.

Mr. GRAY. To 80. During that period of time I am directing your attention to the chart with respect to the short-selling position. The short-selling position about the first of July was approximately, say, 280,000, was it not?

Mr. WHITNEY. All right, sir; yes.

Mr. GRAY. And during that time up until the other point of time that I have indicated to you, while the stock was declining 25 points, the short position rose to 400,000, did it not?

Mr. WHITNEY. I believe so.

Mr. GRAY. Where is there in that illustration at that point any indication of short coverings which acted as a cushion for the market to save its decline?

Mr. WHITNEY. I never said, Mr. Gray, that the shorts, specifically in steel—that is one out of many—prevented that decline. I think just during that period the tonnage orders on their books were steadily declining and that they passed a dividend, or rather decreased their dividend.

Mr. GRAY. You think there was some other reason for that, do you?

Mr. WHITNEY. I am confident of it.

Mr. GRAY. You are confident of it. All right; then I direct your attention to the facts, still talking about United States Steel, that if the position with reference to the market price on nearly the end of October, 1931, was that it was about 64 or 65; is that correct?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. It then rose during the next 10 days to 75.

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Mr. WHITNEY. As did the short interest.

Mr. GRAY. All right, as did the short interest—to 75. And then it started at 75 and with very slight variations, came down—I am going to give you two different dates—came down to, about the 7th or 8th of December, about 54, and then toward about the 18th of December to somewhere in the middle forties—that is true, is it not?

Mr. WHITNEY. With the short interest declining the most part of that time.

Mr. GRAY. That is what I am going to ask about. Now, we started with a point of time in October. I ask you whether or not when this stock was about 54 the short interest was not represented by approximately, we will say, 230,000; is that correct?

Mr. WHITNEY. I believe so.

Mr. GRAY. And while that stock was declining to a point where the stock was 55, the short interest grew to 325,000, did it not?

Mr. WHITNEY. Yes; while the stock went up and then went down; yes, sir.

Mr. GRAY. From that period of time for a period of about 10 days there was a vacillating condition, was there not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Then while the stock declined from about the 10th of December during a period of a week's time from a point where it was worth 50 down to a point where it was worth approximately 37—and correct me if I pick these figures wrong at all, please, Mr. Whitney——

Mr. WHITNEY. All right.

Mr. GRAY. The short interest went up from 300,000 to about 375,000 and then dropped on coverings. That is true, is it not?

Mr. WHITNEY. It went up in two days and then precipitately dropped with the stock.

Mr. GRAY. All right then; let me take you over another period of time. Let us see if you can show us reasons for this.

Mr. WHITNEY. I am not pretending to show you the reason for anything, sir.

Mr. GRAY. I am going to try to see whether you know.

Mr. WHITNEY. I am answering your questions.

Mr. GRAY. You stated numerous times that the short interest was necessary because of the fact that it lent the support to a declining market and that it acted as a cushion.

Mr. WHITNEY. I don't remember saying that.

Mr. GRAY. You don't remember saying that?

Mr. WHITNEY. I said that it stabilized the market at all times, both short selling and marginal purchases.

Mr. GRAY. Haven't you also said that it acted as a cushion while the market was declining, to furnish buying power and to prevent the market from further declining?

Mr. WHITNEY. At times.

Mr. GRAY. At times?

Mr. WHITNEY. At times. I do not remember ever specifically saying it about United States Steel, and this chart——

Mr. GRAY (interposing). I am going to ask you to pick the stock you want me to look at when I am through looking at Steel.

Mr. WHITNEY. I will take the whole list.

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Mr. GRAY. Now, I will ask you whether or not at a point of time about the 18th or 19th of December Steel was not selling at about 42 or 43. Is that correct?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. It then moved down and up, that is down to a point where it was selling at about 36, up again to a point where it was selling at about 46, and then down again to a point where it was selling at about 37—is that correct?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. During that period of time is it not a fact that the short interest mounted from about 260,000 to 450,000 in Steel, while those declines were going on?

Mr. WHITNEY. If those figures are correct, sir; yes.

Mr. GRAY. Well, I can only say to you that these charts' statistics are taken from the statistics that you furnished us.

Mr. WHITNEY. Then I entirely grant it. I would like it in evidence, please.

Mr. GRAY. Yes.

Senator COUZENS. May I ask Mr. Whitney if he considered at that time the intrinsic value of Steel Corporation stocks?

Mr. WHITNEY. Did I consider it?

Senator COUZENS. Yes.

Mr. WHITNEY. No, Senator Couzens.

Senator COUZENS. Do you know now what the intrinsic value is?

Mr. WHITNEY. No, Senator Couzens, I do not.

Senator COUZENS. When you sell short or speculate on the market, you do not figure the intrinsic value then at all?

Mr. WHITNEY. I did not know that I said that I had sold Steel short. If I were going to operate in the market I would unquestionably form a judgment or calculation as to the worth of the particular shares of the particular company.

Senator COUZEN. Would you be guided by the intrinsic value or by the stock market value?

Mr. WHITNEY. I would be guided by everything, all information that I could gather.

Senator COUZENS. And you never sold Steel short at all?

Mr. WHITNEY. That I can not answer one way or the other. I do not remember, sir.

Senator COUZENS. You should not have said, "I do not remember," because you had the sentence ending all right before you said that.

Mr. GRAY. Mr. Whitney's counsel asks that certain phases of the chart be put upon the record.

Mr. WHITNEY. No; I will take that upon myself, Mr. Gray. I was going to.

Mr. GRAY. If the chairman of the committee has not any objection, of course I have not any objection. I want everything put upon the record.

The CHAIRMAN. Without objection, it may go in the record.

Mr. WHITNEY. From about September 1 or 8 the short interest decreased from almost 400,000 shares to October 8, two hundred forty-odd thousand shares, and the market in steel during that entire time was on a downward trend. Is that correct, Mr. Gray?

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Mr. GRAY. That is correct. Now, having told you that, I want to ask you—of course, the shorts have to cover sometimes, do they not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And if they feel that there is going to be a boom in the market, that prices are going to go up, then is when they cover, do they not? In other words, if they think the prices are going to continue to go down, they do not cover; they wait for a further decline; that is correct, is it not?

Mr. WHITNEY. If they are wise they cover at the right moment.

Mr. GRAY. Yes, at the right moment.

Senator GORE. Is there any such animal?

Mr. GRAY. Therefore, I want to ask you whether as a matter of fact this picture does not show you—you spoke of that decline along with the general decline—that just prior to that there had been this tremendous rise in short interest of 400,000, while there had been a decline—whether or not you do not think that that chart shows that the shorts then considered that it was the time to cover, and they covered while there was first a slight decline, and then a general average maintained for three or four weeks, and then when the decline started down again they started immediately up again, and then with a slight variation reached the point of 450,000 of shorts while it was declining. Isn't that the history of that chart?

Mr. WHITNEY. Not entirely, sir, because——

Mr. GRAY. It will speak for itself then.

Mr. WHITNEY. On the first of January the stock went up approximately 13 points, almost 33 per cent, and the short interest increased during that time.

Mr. GRAY. Yes, and kept on increasing when the stock went down?

Mr. WHITNEY. Yes; and that stock again had an almost 33 to 40 per cent increase in value, and the short interest materially declined. In other words, Mr. Gray, I do not think that charts are infallible, neither yours nor mine.

Mr. GRAY. I will show you some more. I am not responsible for this chart, Mr. Whitney, and it is not taken from your statistics, but I am showing you a chart touching American and foreign power over the two months of August and September of 1931. The chart will appear in the appendix.

Mr. WHITNEY. Yes, sir.

Mr. GRAY. I direct your attention to the point marked "1" on that chart, which is the 21st of August, 1931. That represents the short interest as being about 122,000 or so shares, does it not, on that chart?

Mr. WHITNEY. Yes.

Mr. GRAY. Stock went down, did it not?

Mr. WHITNEY. What is this [indicating on chart]?

Mr. GRAY. This is the opening and closing prices of the stock at the various times.

Mr. WHITNEY. It went down very, very slightly for a while and then rose.

Mr. GRAY. Then rose for a period of about two or three days?

Mr. WHITNEY. Yes.

Mr. GRAY. From the point I would say about the 24th of the month it has continuously declined with practically no sustaining power; that is true, is it not?

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Mr. WHITNEY. It has continually declined, and the short interest——

Mr. GRAY (interposing). What happened to that?

Mr. WHITNEY. For another few days, 10 or 12 perhaps, increased from about 122 to approximately 140,000 shares, and then——

Mr. GRAY (interposing). And then started to cover?

Mr. WHITNEY. And then precipitately declined when the market was declining.

Mr. GRAY. When you make a comparison of the point that is marked "1" and the point over here that is marked "3," you have got approximately the same short interest, haven't you?

Mr. WHITNEY. Yes.

Mr. GRAY. And within that point of time, where you have the same short interest the coverage is only represented by the increase from August 21, is it not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. In other words, while that stock had been declining from approximately $38 per share—I want to be correct about this—to approximately $20 a share, there is no covering of the short interest except that which had increased during the same period of time; is that true?

Mr. WHITNEY. Not materially, that is right. It increased about 30 per cent though in value, just as the same instance I told you of in steel.

Mr. GRAY. I do not want to take after this chart here, but I want to ask you——

Mr. WHITNEY (interposing). May I have that put in the record as being the issue of the New Republic—oh, pardon me, that is not it.

Mr. GRAY. I will see that it gets in the record, but at this time I want to direct your attention to Case Threshing Machine. Do you know what their total outstanding issue is?

Mr. WHITNEY. One hundred and ninety-five thousand shares.

Mr. GRAY. Do you happen to know how much of that is closely controlled?

Mr. WHITNEY. I do not, sir. Presumably, by the short interest that existed in it, very little.

Mr. GRAY. As a matter of fact, at one time Case & Co.'s stock, while only 195,000 shares, had over 140,000 shares sold short, did it not?

Mr. WHITNEY. If you say so, sir; yes.

Mr. GRAY. Don't you know that your own statistics——

Mr. WHITNEY (interposing). I do not know the statistics in everything.

Mr. GRAY. You accept that statement?

Mr. WHITNEY. Certainly; yes.

Mr. GRAY. That is a matter of about 71 per cent of the outstanding stock, is it not?

Mr. WHITNEY. Yes, sir. We spoke about that case the other day.

Mr. GRAY. I mentioned that to you?

Mr. WHITNEY. Senator Fletcher did.

Mr. GRAY. Oh, possibly he did. You think that is a healthy condition, do you, for the stock market?

Mr. WHITNEY. I do not see where——

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Mr. GRAY (interposing). You said short interests were helpful to an opposition of the speculation on the exchange.

Mr. WHITNEY. I do not see where it is unhealthy, and the short interest of that size in the stock certainly is going to tend to keep that stock stable.

Mr. GRAY. Going to tend to do more than that, is it not; going to tend to bring about a possible corner in it, is it not?

Mr. WHITNEY. No such thing, that we can see, exists in Case Threshing Machine stock at the present time, or at any time.

Mr. GRAY. Now, Mr. Whitney, you spoke about my picking United States Steel. Is there any other stock you would like to put your own demonstration on if I show you the chart? I have some of them here.

Mr. WHITNEY. No, sir; but my point being that I think all shares, as stated on Exhibit 10, are more of proof, if any chart can be of proof, than any particular stock.

Mr. GRAY. On Exhibit 10. You have Exhibit 10 in front of you, have you not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Now, I will grant you, so you do not need to make it as part of your answer, that there are indications on Exhibit 10, which is in evidence in the hearing, where the short interest followed for periods of time the action of the stock itself on the market. But I want to direct your attention to several situations.

It is a little difficult to see these dates here. As a matter of fact, at some period approximating the 1st day of July the stock was quoted at what price? You are probably more familiar with that and can pick it up quicker than I.

Mr. WHITNEY. Stocks were quoted——

Mr. GRAY (interposing). Average of over 120?

Mr. WHITNEY. Yes, sir; just about.

Mr. GRAY. And from that point of time down to approximately what looks like it might be about August 5 or 6, just that one decline, stocks declined to what, about 108?

Mr. WHITNEY. Approximately.

Mr. GRAY. Yes. And in the period of time that we have just described there was a rise and a fall and then another rise that brought the short interest from—what is that figure on the left of the short interest?

Mr. WHITNEY. At the beginning and the end it was almost the same figure.

Mr. GRAY. Oh, no, no.

Mr. WHITNEY. I think so, sir. It was 3,750,000 shares at the beginning of the first of June, approximately, please.

Mr. GRAY. Tell what it became somewhere shortly after the first of August.

Mr. WHITNEY. On August 1 it was——

Mr. GRAY. 4,300,000?

Mr. WHITNEY. Approximately 4,000,000. On August 1, if you look at the Franco-American Loan——

Mr. GRAY (interposing). Look at the height of that rise, which will bring it to about August 4 or 5. It was about 4,300,000, was it not?

Mr. WHITNEY. Yes, sir.

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Mr. GRAY. And during that period of time the general stocks on that chart dropped a matter of about 12 points, did they not?

Mr. WHITNEY. Yes; just about.

Mr. GRAY. Then taking the period of time in the latter part of last year and the beginning of this——

Mr. WHITNEY (interposing). Don't you think perhaps it is better to take it as it continues throughout the chart?

Mr. GRAY. Now, I grant to you, Mr. Whitney——

Mr. WHITNEY (interposing). Oh, pardon me.

Mr. GRAY. In order to save time in my questions, there were instances where it showed that the short interest followed the action of the market.

Mr. WHITNEY. All right, sir.

Mr. GRAY. I am calling your attention to several other specific instances where we have had consistent declines, and what I am interested in is knowing the action of the short interest.

Now take the time starting around the 1st of December. General stocks were quoted, as I see this, at approximately 90. Is that right?

Mr. WHITNEY. No, sir. General stocks were selling at 75 and the short interest was 3,750,000 shares.

Mr. GRAY. All right. Stocks went up from there very slightly, did they not?

Mr. WHITNEY. No, sir; they are practically the same, and then they went down, and then they vary.

Mr. GRAY. What happened to the short interest?

Mr. WHITNEY. The short interest followed it almost exactly until about the 10th of December, when the market went down and the short interest continued to go down to a low in January of all time.

Mr. GRAY. In December, you say about December 10 the market started down?

Mr. WHITNEY. It went down slightly then to about the 15th, and then it rose, and then it zigzagged, and then it went down and it rose and it went up again.

Mr. GRAY. There was a general downward movement until approximately the middle of December, is that not true?

Mr. WHITNEY. From the 1st, a down movement in stocks and a downward movement in the number of shares short.

Mr. GRAY. Mr. Whitney, will you look back at about the end of the second week in November?

Mr. WHITNEY. All right, sir.

Mr. GRAY. Stocks were about 90, were they not.

Mr. WHITNEY. On November 10 they were about 90.

Mr. GRAY. The short interest was about 3,000,000?

Mr. WHITNEY. Yes, sir.

Senator GORE. That is on Steel alone?

Mr. WHITNEY. No, all stocks.

Mr. GRAY. Stocks, generally speaking, declined until they reached a low point. I can not get the exact date here, but it looks as if it might be somewhere around the 20th of December. They declined generally until they reached a low point around the 20th of December until they were worth only about 62, is that right?

Mr. WHITNEY. That is right.

Mr. GRAY. In the meanwhile the short interest rose from 3,000,000 to—what is that?—about 3,100,000?

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Mr. WHITNEY. About 3,750,000.

Mr. GRAY. Then it came down with covering, did it not?

Mr. WHITNEY. Of course.

Mr. GRAY. There has been very little actual change in the market between the 20th day of December and toward the end of March; isn't that true? I mean there has been an up and down movement, but there has been practically no change during that period of time?

Mr. WHITNEY. The end of March, from 62, your figure of the 10th of December, or 64, to about 56 or 57 at the end of March.

Mr. GRAY. The short interest in the meanwhile after that time that we talk about in November and December came down, so that at a point of time around the 1st of January it was approximately what will we say, 2,800,000?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Then it rose again?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. So that in February it was what, the high peak, near 4,000,000, was it not?

Mr. WHITNEY. Just under 4,000,000; yes. Then it came down.

Mr. GRAY. Then it came down with the market.

Mr. WHITNEY. And has followed the market almost——

Mr. GRAY (interposing). No; it came down again, did it not?

Mr. WHITNEY. Yes; but when the market rose, it rose too.

Mr. GRAY. Yes. Well, the chart will speak for itself. Have you any other charts that you think would demonstrate your contention that short selling acts as a cushion for the market when we have a strong decline?

Mr. WHITNEY. No; I think that chart is sufficient, sir.

Senator GORE. Probably it would come in this connection: The short interest in Steel applied principally to the common stock, did it not, Mr. Whitney?

Mr. WHITNEY. There was a very considerable interest in Steel preferred, as well.

Senator GORE. They dealt in it, the shorts, as well as in the common?

Mr. WHITNEY. Yes, sir.

Senator GORE. But of course, the preferred, as a rule, is not regarded as such a specultive stock as the common stock?

Mr. WHITNEY. By no means.

Senator GORE. In regard to bonds, they are not dealt in so much by the shorts, are they, very little?

Mr. WHITNEY. No, sir; not as much. There is comparatively little short selling in bonds.

Senator GORE. I was wondering while we were on these charts if it would be possible to submit a schedule of some bond that would represent the bonds to show whether or not they fluctuated, not so much of course as the common stocks, but more as related to the preferred stocks.

Mr. WHITNEY. I can show you something that is very similar, Senator Gore. I would like to present in evidence, if I may, a chart showing from the beginning of February, 1928, until the 1st of March, 1932, 421 stocks listed on the New York Stock Exchange, including industrials, rails, and utilities, and also showing 20 New York bank stocks dealt in over the counter.

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The bank stocks and the average for the 420 listed stocks started about together in 1928, and then from a figure of about 130 or 135 for the stocks listed and 145 for the banks, at the top of the peak in October, 1929, the 421 listed stocks had reached an average price of 225, whereas bank stocks at that time had reached a peak of 360.

There was a precipitous fall in the bank stocks from 360 to about 205, whereas the listed stocks fell to an average of about 150. (See chart Exhibit 22 in the appendix.)

Senator GORE. And the bank stocks were not——

Mr. WHITNEY (interposing). Dealt on the stock exchange, and to the best of my knowledge did not have any large short position.

Senator GORE. That is what I am trying to get at, as to when these forces and influences are operating and what they are, and see which were at work and which were not, so we can know how much to charge to the activities of the short interest, if that is possible.

Now, do you know whether the same would be true with reference to certain lines of bonds?

Mr. WHITNEY. Yes, sir, I think it would be particularly true. I have seen no more drastic fall in prices than has occurred in bonds of late of all kinds, with possibly the exception of governments.

Senator GORE. Some of the fluctuations of the foreign government bonds have been very violent.

Mr. WHITNEY. I meant United States bonds.

Senator GORE. I think two reasons for that are, one, the stability of the Government, its credit, and the other its tax-exempt securities.

Mr. WHITNEY. United Kingdom five and a halves of Great Britain fell to around 90 and have recovered lately to around par and a half.

Senator GORE. State that again.

Mr. WHITNEY. The United Kingdom five and a halves of Great Britain did fall from well above par to around 90 and have recovered to around par and a half recently. There has been great fluctuation. Those are some of the most active foreign government bonds.

Senator GORE. What I am trying to get at is some sort of a meter to gage the influence of these different forces.

Senator GOLDSBOROUGH (presiding). Mr. Gray, will you proceed?

Mr. GRAY. Mr. Whitney, is it not a fact that the average coverings of the shorts on the way down on a declining market, when the time arrives for them to cover most of that covering takes place when the decline is about two-thirds of the way down? I do not mean that every short picks that time, but I mean to say that the heaviest covering comes about that time.

Mr. WHITNEY. I haven't the slightest idea, Mr. Gray.

Mr. GRAY. Would an examination of the chart show that?

Mr. WHITNEY. Not any examination I have made.

Mr. GRAY. All right; never mind.

Now, you have referred to the pegging of loans. Members frequently take pegging orders to sell on a scale down and buy on a scale up?

Mr. WHITNEY. Selling on a scale down and buying on a scale up—you mean stop loss orders?

Mr. GRAY. No; I mean giving orders to sell at certain prices on the scale up—I used the wrong expression—on the scale up and buying on a scale down. That is frequently done, is it not?

Mr. WHITNEY. I presume so; yes, sir.

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Mr. GRAY. And it is done, is it not, for the purpose of making an artificial market, very frequently?

Mr. WHITNEY. No, sir; not that I know of at all.

Mr. GRAY. Not that you know?

Mr. WHITNEY. I do not think it is artificial.

Mr. GRAY. I beg your pardon?

Mr. WHITNEY. I do not think that is artificial.

Mr. GRAY. You do not think it is artificial. You said that you handled the pegging of some bonds for the Morgan firm, did you not?

Mr. WHITNEY. I did not, sir.

Mr. GRAY. What did you say about it?

Mr. WHITNEY. I said that I handled orders on German Government 5½ per cent bonds. I did not say that I——

Mr. GRAY (interposing). Did you not say that you did execute such orders or some of such orders for the purpose of pegging the market?

Mr. WHITNEY. You asked me if I had and I said I did not believe so, if I remember.

Mr. GRAY. I want to know whether you have had time to find out.

Mr. WHITNEY. Yes; I have the facts before me if you wish to hear them.

Mr. GRAY. You have the facts before you. I would like to get them; yes. Tell me, please, about that.

Mr. WHITNEY. Do you wish the whole story?

Mr. GRAY. Yes; as fully as you can give it to us.

Mr. WHITNEY. German 5½'s were offered on June 12, 1930, at 90, by a syndicate composed of 1,011 participants, dealers in securities, throughout the United States. The bonds sold on that first day, the offering price being 90, on the New York Stock Exchange between 90½ and 91. They continued to sell at a price above the offered price until four days later, June 16. They continued to sell at the offered price and at prices above the offered price of one-eighth or a quarter until July 2, on which date the price agreement of the syndicate was lifted. On that day before that notice was sent out the bonds on the stock exchange sold from 90 up to 90½. That was the range.

The following day, with no syndicate price maintained, the bonds sold on the stock exchange between 88⅛ and 91¼, 1⅞ points below the offering price and 1¼ points above.

Then from there on until the expiration of the syndicate at the end of July, the bonds ranged between 89¼ and 88½, the average being approximately 88¾. At the expiration of the syndicate no bonds were delivered to the participants as against their participating agreements in the syndicate in case bonds remained.

Mr. GRAY. You mean that all had been disposed of that the syndicate desired to dispose of; is that the answer?

Mr. WHITNEY. All so far as I know had been disposed of by the syndicate.

Mr. GRAY. Yes.

Mr. WHITNEY. And during that time purchases were made at the syndicate price until the price restriction was taken off, so that for a period of 18 to 20 days all those who had purchased those bonds could have sold them at the purchase price or for more. And during

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that time we purchased for the account of the syndicate approximately $9,200,000, slightly in excess of $9,200,000 bonds.

Mr. GRAY. When was that that the syndicate put that out; last year you mean?

Mr. WHITNEY. No, sir.

Mr. GRAY. I do not know the year.

Mr. WHITNEY. June 12, 1930. I beg your pardon.

Mr. GRAY. Not blaming it on you, of course, but what are those bonds selling for now?

Mr. WHITNEY. They are selling for around 35½. They have sold at 23 in spite of the fact that they and the 7 per cent German bonds have at all times paid interest, the latter having paid on April 15 last; and I have every reason to believe that the 5½'s will pay interest on June 1. That is the fluctuation in the world situation.

Mr. GRAY. Your firm, now, acting for Morgan & Co., and if I am wrong about this, correct me; I so understood your statement the other day—acted for this syndicate in maintaining that price during the time that the syndicate's operations were in effect; is that correct?

Mr. WHITNEY. Yes, sir; under order.

Mr. GRAY. Under order, of course.

Mr. WHITNEY. Yes.

Mr. GRAY. That means that your brokerage house executed such orders as were given to you by the syndicate; that is correct, is it not?

Mr. WHITNEY. Through J. P. Morgan & Co.

Mr. GRAY. And the purpose of the execution of those orders was to maintain—and I was going to use the word "artificial," but I know you would not agree with me—to maintain a fixed valuation for those bonds; that is correct, is it not?

Mr. WHITNEY. To maintain a price, sir. So that at any time, as I have stated, during some 18 or 20 days any purchasers who did not want to hold the bonds that they had bought could have sold them at the selling price or higher. That is an absolutely usual and customary method of merchandising and distributing securities.

Senator BROOKHART. In that connection did you tell them that you were only going to maintain that price for 18 or 20 days?

Mr. WHITNEY. Tell whom?

Senator BROOKHART. These purchasers?

Mr. WHITNEY. Tell the purchasers—I did not have anything to do with the purchasers, if you mean the persons to whom the bonds were sold.

Senator BROOKHART. You maintained the price 18 or 20 days, so that they could sell and get their money back?

Mr. WHITNEY. No; I said if they wanted to sell.

Senator BROOKHART. If they wanted to sell.

Mr. GRAY. I think Mr. Whitney will admit that no such information was conveyed to those who actually conducted the deals with the purchasers.

Mr. WHITNEY. As to how long the bid would be named?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir.

Mr. GRAY. He will admit that.

Senator FLETCHER. Were those bonds sold to the public generally?

Mr. WHITNEY. That is to be presumed, Senator Fletcher, inasmuch as there were 1,011 participants in that syndicate.

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Senator FLETCHER. How much was the total?

Mr. WHITNEY. A little in excess of ninety-eight millions.

Senator FLETCHER. They were finally sold to the public through this syndicate?

Mr. WHITNEY. Without knowing the absolute fact, I would say the majority of those bonds were sold to banks throughout this country all over. They were considered a prime issue at the time.

Senator FLETCHER. Then the banks sold them to their customers?

Mr. WHITNEY. That I do not know. That I have no reason to believe.

Senator FLETCHER. These transactions did not take place on the stock exchange?

Mr. WHITNEY. The sale of the bonds by the syndicate, no. The transactions that I have referred to did. There were very great transactions on the stock exchange over and above what we did, please understand.

Mr. GRAY. I understand that.

Senator BROOKHART. Is the idea of the syndicate that they have done their duty toward the customers if they maintain the market for 18 or 20 days after they have unloaded?

Mr. WHITNEY. This particular issue was vastly oversubscribed by the public, by the country. It seemed to be an issue that met tremendous success.

Senator BROOKHART. That is not what I asked you.

Mr. WHITNEY. I am trying to explain.

Senator BROOKHART. I asked you if these syndicates that operate on the board of trade in this way, or the stock exchange, considered they performed their whole duty to their customers by maintaining a price for 18 or 20 days in which they could get their money back.

Mr. WHITNEY. Certainly; in this specific case, if there was ever any question of duty, I think it was done. I believe that prices have been maintained for very much longer periods where there seemed any reason to do so.

Senator BROOKHART. Supposing the public had turned around and sold them in 18 or 20 days. Would they have maintained the price anyhow?

Mr. WHITNEY. I believe so.

Senator BROOKHART. There were not many sold in the 18 or 20 days, were there?

Mr. WHITNEY. I think about 20 per cent of the entire issue was sold, or more, on the New York Stock Exchange.

Senator BROOKHART. That was the speculators?

Mr. WHITNEY. No, sir. No speculators got these bonds that I know of.

Mr. GRAY. The point I want to develop, Mr. Whitney, is this: During that period of time your firm, acting under orders from this syndicate or from J. P. Morgan & Co. in connection with those bonds, were maintaining a price on the market. That is correct, is it not?

Mr. WHITNEY. We were bidding a price at which anybody could sell bonds; yes, sir.

Mr. GRAY. Yes. In other words, what you were doing was executing buying and selling orders for the purpose of maintaining that price?

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Mr. WHITNEY. Not selling orders; no, sir.

Mr. GRAY. Only buying orders. In other words, what you had was what in effect you may call either a syndicate and pool, a syndicate for the issuance of the bonds, the underwriting of them, possibly, but a pool for the purpose of maintaining that price at a certain level. Isn't that true, for a certain period of time?

Mr. WHITNEY. Yes; Mr. Gray. The syndicate at all times were selling the bonds.

Mr. GRAY. Yes.

Mr. WHITNEY. And as I stated, at the end of the period of the syndicate all the bonds presumably had been sold by the syndicate participants, all those and the ones they had bought back.

Mr. GRAY. Yes.

Mr. WHITNEY. Because no bonds were delivered by the syndicate to the participants when it was closed.

Mr. GRAY. And in order that the syndicate might get a proper price for the bonds your firm executed these various orders to keep that price up; is that right?

Mr. WHITNEY. I do not think that the implication is correct.

Mr. GRAY. You do not think it is?

Mr. WHITNEY. No, sir.

Mr. GRAY. Did you use some other brokerage firm in the doing of that work?

Mr. WHITNEY. We?

Mr. GRAY. Yes, you.

Mr. WHITNEY. Not that I know of. We may have. I can not tell you that.

Mr. GRAY. Was it not necessary that you should buy through another firm and sell through another at times?

Mr. WHITNEY. I did not sell bonds, Mr. Gray.

Mr. GRAY. If somebody buys, somebody has to sell, do they not?

Mr. WHITNEY. You are implying that I as president of the stock exchange allowed my firm to wash sales?

Mr. GRAY. I am going to ask you directly. I am not going to imply. I ask you whether you did.

Mr. WHITNEY. I did not.

Mr. GRAY. The firm of Asiel & Co.?

Mr. WHITNEY. You mean, did I buy through Asiel and they sell to us, making wash sales?

Mr. GRAY. I asked you whether you used Asiel & Co. in that transaction.

Mr. WHITNEY. For the purpose of washing sales? We certainly did not.

Mr. GRAY. All right. That is what I want you to answer.

Mr. WHITNEY. And there is no more honorable firm than Asiel & Co., and they would not think of doing that sort of thing.

Mr. GRAY. I am not even criticizing your firm, Mr. Whitney. I want to know the facts.

Senator BROOKHART. As I understand this, your firm was selling bonds?

Mr. WHITNEY. No, sir; we were not. We were buying bonds.

Senator BROOKHART. Who were selling them for the syndicate?

Mr. WHITNEY. The syndicate participants, consisting of 1,011 dealers and individuals throughout this country.

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Senator BROOKHART. They were selling these German bonds?

Mr. WHITNEY. I presume so.

Senator BROOKHART. And while they were selling they had you employed to maintain the price?

Mr. WHITNEY. My firm had the orders, had some orders, these orders.

Senator BROOKHART. You were buying them for this same syndicate that was selling them to the public?

Mr. WHITNEY. That is right.

Senator BROOKHEART. And in that way they were double-crossing the whole community in maintaining their price?

Mr. WHITNEY. I see no double-crossing whatever.

Mr. Gray, as to your question, it may have been possible that the member of my firm who would normally be in the foreign bond crowd might have gone out to lunch and he may have at that time given Messrs. Asiel & Co. the order that we had. They were merely acting as our brokers, as we were acting as J. P. Morgan & Co.'s. There is no such thing as wash sales involved.

Mr. GRAY. Let me ask you whether or not those bond transactions are reported through the stock clearing house. They are, are they not?

Mr. WHITNEY. I believe there was what is called a settlement of those bonds.

Mr. GRAY. Through the stock clearing house?

Mr. WHITNEY. At a later date; yes, sir.

Mr. GRAY. Would it be reported through the stock clearing house?

Mr. WHITNEY. Yes; through the stock clearing house.

Mr. GRAY. In other words, what I want to get at is, would the records of the stock clearing house show whether or not Asiel & Co. had or had not on a certain day sold an equal number of bonds with the number of bonds that your firm had bought?

Mr. WHITNEY. I presume at the settlement date it certainly would show; yes. But that does not prove the case. You have got to go and look at our records to see for whom we bought and Asiel's to see for whom they sold.

Mr. GRAY. Yes; but is it not a fact that where prices are to be controlled—now, I am drifting away from this specific, concrete transaction—but where prices are to be controlled and for any reason operators want to control prices, they buy in one name with one firm and sell with another name with another firm?

Mr. WHITNEY. At the same price?

Mr. GRAY. Yes.

Mr. WHITNEY. No, sir.

Mr. GRAY. And at varying prices in order to make the price move the way they want it to move?

Mr. WHITNEY. That latter is to the advantage of the individual who may want to purchase if they are scaling orders at which he can buy.

Mr. GRAY. Oh, you do not understand me.

Mr. WHITNEY. Perhaps I do not.

Senator BROOKHART. Only for 18 days, though.

Mr. WHITNEY. There is no wash sale occurring when a member of the exchange buys bonds at 90 and another individual sells them at 90¼.

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Mr. GRAY. I grant you that. I am not asking you whether or not there were such things as that. I am asking you whether or not an operator, when he desires to put through wash sales for the purpose of either increasing or decreasing the value of the stock, does not give an order to one broker to sell in a certain name and an order to another broker to buy in a certain name at the same price.

Mr. WHITNEY. And at the same time?

Mr. GRAY. Practically.

Mr. WHITNEY. In all instances that we have been able to detect, the gentlemen of the exchange that perpetrated those acts were expelled.

Mr. GRAY. Yes; and I am asking you whether or not, if there were any buying and selling transactions between your firm and the firm of Asiel & Co., they will show on the records of the stock clearing house.

Mr. WHITNEY. My record is open to you.

Mr. GRAY. Well——

Mr. WHITNEY. I am not sure of this other fact, sir. I can assure you of this, that the stock clearing corporation's records would not show for whom I had bought or for whom Asiel & Co. had sold, but our books will show——

Mr. GRAY (interposing). It will show the prices, will it not?

Mr. WHITNEY. That would not have anything to do with the price of eggs.

Mr. GRAY. It would show it, would it not?

Mr. WHITNEY. Yes, sir; but what good does that do? It proves nothing.

Mr. GRAY. You might think so. I am asking you if you know.

Mr. WHITNEY. I know so.

Mr. GRAY. Who is the economist of the stock exchange?

Mr. WHITNEY. Mr. J. Edward Meeker.

Mr. GRAY. I am looking at his book. See whether you agree with some things that he says.

Mr. WHITNEY. Which book, please, sir?

Mr. GRAY. Called "The Work of the Stock Exchange."

Mr. WHITNEY. Yes; he has written another book recently on that subject.

Senator BROOKHART. Let me ask a question there. What was the trading account of the syndicate that had the German bonds?

Mr. WHITNEY. I do not know, sir.

Senator BROOKHART. How much of the issue was oversold by the syndicate. How much was it oversold?

Mr. WHITNEY. I have no knowledge that it was oversold at all. I said that in my belief the issue was greatly oversubscribed; in other words, there were far more purchasers desiring bonds than there were bonds available.

Senator BROOKHART. You mean subscribed by orders on the exchange?

Mr. WHITNEY. No; to the syndicate.

Senator BROOKHART. To the syndicate direct?

Mr. WHITNEY. Direct.

Senator BROOKHART. And were these sales made direct or through the exchange?

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Mr. WHITNEY. The sales by the syndicate and their salesmen and themselves were presumably, so far as I know, made direct.

Senator BROOKHART. And then what use do we have for a stock exchange in distributing bonds? Why can't that all be done that way?

Mr. WHITNEY. The stock exchange's prime function is to maintain a market after the distribution has taken place, or to effect distribution in the way of speculation, as has often occurred.

Senator BROOKHART. It is not to help investors that want to keep the bonds, then; it is to help speculators that want to gamble?

Mr. WHITNEY. It helps the investor, absolutely. It is essential to investors in securities, or else there would not be the quantity, if any.

Mr. GRAY. Referring to the giving of scale orders, he said:

> The grounds for objection to this practice of employing scale orders are not so much that it stimulates the activity of trading in the new security, as that it may amount to a manipulation of prices at which sales are made. Scale orders can not be used without fixing upon some one figure above which the syndicate will sell and below which it will purchase. This, of course, tends to confine the price approximately to this figure, since, if heavy selling orders come into the market, they will meet the syndicate's scale buying orders, and thus prevent the price from declining severely, while heavy buying orders will similarly meet the syndicate's scale selling orders and prevent a sharp rise in price. If the figure around which the syndicate tends temporarily to confine the movement of prices is a fair one and in accord with the real value of the security, no economic harm is done. On the other hand, should the price set by the syndicate be higher than the inherent value of the security warrants, the possibility of causing ultimate losses to investors arises.

Do you agree with that?

Mr. WHITNEY. Yes; I believe I do, if one can judge what "inherent value of the security" is with relation to Senator Bulkley's reference this morning.

Mr. GRAY. Yes. Then the permission, or the implied permission, if you please, that is given to members of your exchange to act for outside operators in executing these pegging orders or in accepting these orders on a scale up or a scale down, is a permission that is given to a member of your exchange to help control these prices artificially, is it not?

Mr. WHITNEY. No, sir.

Mr. GRAY. You do not think so?

Mr. WHITNEY. No; I do not see the artificial end of it. I grant the rest of your statement.

Mr. GRAY. It opens the door to a great deal of fraud, does it not?

Mr. WHITNEY. No, sir; I do not see fraud; no. Is there anything wrong—may I ask this question?

Mr. GRAY. Yes.

Mr. WHITNEY. Is there anything wrong for you as an owner of a hundred shares of stock or a thousand shares to make an easier instance, if that stock is selling at $40 a share, to put in a hundred shares to sell at 41 and a hundred shares at 42 and a hundred shares at each point up until your one thousand have been exhausted, and in turn, after perhaps you have sold those thousand or a part of it, to put scale orders down below the market to buy them back at? I know nothing that is illegitimate, constitutes fraud, or that is artificial in such an operation, and I believe that is what you have been

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referring to by stating the putting of scale orders up and down in the market.

Mr. GRAY. But it is a fact, however, that the pools that are formed for the purpose of either depressing or increasing prices use that very method in their stock, do they not?

Mr. WHITNEY. That I can not tell you, because we are talking about a hypothetical case; but I believe the case I have cited is perfectly legitimate in every way.

Mr. GRAY. Can you tell me whether or not these German bonds were not overpriced a matter of about 10 per cent, those that were sold that you speak of?

Mr. WHITNEY. I do not think so, Mr. Gray. You are asking my private opinion as a bond man. I do not think so, not in view of the tremendous oversubscription and the prices at which those bonds sold the first two to four days after they were put out.

Senator BROOKHART. What are calls or options? I am not referring to puts and calls which are sold for cash.

Mr. WHITNEY. Calls or options?

Senator BROOKHART. Yes.

Mr. WHITNEY. I believe they are most commonly a call upon a certain stock to buy it at a certain price, for which I believe a consideration is given.

Senator BROOKHART. What kind of a consideration?

Mr. WHITNEY. Dollars.

Senator BROOKHART. A difference in addition to the price, bonus, or commission or something—is that the consideration?

Mr. WHITNEY. No; I think the option calls allow an individual or a firm to buy stock, or whatever it may be, at a certain price, paying for that in dollars.

Senator BROOKHART. And he pays a consideration for the option?

Mr. WHITNEY. That I can not tell you, but if he takes up the stock he pays for it.

Senator BROOKHART. These options run from 30 to 90 days?

Mr. WHITNEY. I have no knowledge, Senator Brookhart. If you will ask me something specific that I know about, I will try to answer.

Senator BROOKHART. I was trying to find out about the mechanics of that whole thing. By whom are such calls granted?

Mr. WHITNEY. By anybody.

Senator BROOKHART. Are such options extensive by members of the exchange?

Mr. WHITNEY. They may be, sir. In other words, if I have a block of stock that some one wants to buy or get an option on for a consideration, I may be very glad to grant that at a price.

Senator BROOKHART. For a certain time?

Mr. WHITNEY. Yes, sir.

Senator BROOKHART. Would those securities be the property of the broker or does the stock belong to others?

Mr. WHITNEY. I said I thought it could belong to anybody.

Senator BROOKHART. Anybody?

Mr. WHITNEY. Investor, broker, anybody.

Senator BROOKHART. Are brokers permitted to distribute listed stocks?

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Mr. WHITNEY. Only under special regulation and under the jurisdiction of the committee on quotations and commissions and the committee on secondary distribution.

Senator BROOKHART. Why do all those restrictions have to be placed around that particular transaction?

Mr. WHITNEY. In order that no regulation or rule of the stock exchange may be violated in so doing.

Senator BROOKHART. How do the patrons who receive these calls dispose of the securities under option?

Mr. WHITNEY. They sell them.

Senator BROOKHART. In the regulation transactions of the exchange?

Mr. WHITNEY. I presume they may sell them on the exchange or otherwise, sir. If you are referring to listed stocks, then they may sell them only according to the permission given by these specific committees that I speak about.

Senator BROOKHART. What are called pool operations? Are they similar to this syndicate you mentioned in reference to German bonds? What is a "pool"?

Mr. WHITNEY. No, sir; I am not quite sure what is meant by a "pool." What is commonly meant by a pool, if I think or know correctly, is not similar to the syndicate operation of the German bonds.

Senator BROOKHART. How is the pool operated? Set up one here a little bit and let us see what it looks like.

Mr. WHITNEY. May I possibly present to you or the committee an actual case that I will investigate and send you the pool agreements and tell you all about it?

Senator BROOKHART. Yes.

Mr. WHITNEY. Whatever I could say here would be imaginary, because I know of no specific operation that I can recount to you.

Senator BROOKHART. Describe this one, then. That is all right.

Mr. WHITNEY. I haven't got one in my mind. I say I can find out one and send it to you, make a record of it.

Senator BROOKHART. You can not tell me now, then, how they are set up and how they operate?

Mr. WHITNEY. No, sir. There is no general rule and this has nothing to do with the New York Stock Exchange, Senator Brookhart.

Senator BROOKHART. Pools are outside of the exchange, but they operate through the brokers on the exchange, do they not?

Mr. WHITNEY. Members may be participants in what is commonly called a pool operation, but the stock exchange, as such, does not have any agreement that pools have to sign or members of the pool have to sign.

Senator BROOKHART. Well, but they can promote or set up a plan to increase the values in the exchange or to decrease them for their own profit, can they not?

Mr. WHITNEY. I do not know what you mean quite by "set up a plan to increase or decrease the values in the exchange."

Senator BROOKHART. They get their heads together about what they are going to sell and what they are going to bid and work it back and forth in that way to promote a price?

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Mr. WHITNEY. I grant that they get their heads together to decide how pools shall be conducted. That would be necessary.

Senator BROOKHART. What are the purposes of pools generally?

Mr. WHITNEY. To distribute that stock or bonds.

Senator BROOKHART. That kind of a pool wants to dispose of them at the highest possible price, does it not?

Mr. WHITNEY. Not necessarily. At a price.

Senator BROOKHART. And at a profit?

Mr. WHITNEY. Not necessarily. I think most of the instances or the requests that have come to the committee on secondary distribution of the exchange in the last year or two where they wanted to distribute listed stocks, they have been trying to sell something that cost them very much higher than the price at which they were willing to sell those stocks, and we put a definite limit as to the prices between which those shares of stock may be sold.

Senator BROOKHART. Why do you have to put special limits in those cases?

Mr. WHITNEY. What we think is a fair swing, spread.

Senator BROOKHART. You do not do that in all swings, and spreads, do you?

Mr. WHITNEY. In all that are under that regulation, yes, sir.

Senator BROOKHART. That are handled by pools, you mean?

Mr. WHITNEY. Handled by a group of selling agents or firms who wish to sell these securities that come under the jurisdiction of the exchange in secondary distribution.

Senator BROOKHART. They form pools for both purposes, of advancing and depressing the prices at different times, do they not?

Mr. WHITNEY. I know of none of the latter, sir.

Senator BROOKHART. How is that?

Mr. WHITNEY. I know of none of the latter, for depressing prices.

Senator BROOKHART. But they are for advancing prices?

Mr. WHITNEY. To distribute stocks, I said.

Senator BROOKHART. Yes. Now, is there such a thing as a "floor pool"?

Mr. WHITNEY. Not that I know of, Senator Brookhart.

Senator BROOKHART. You never heard of that?

Mr. WHITNEY. No, I do not think I ever have.

Senator BROOKHART. Well, I can not get the difference between them then.

Mr. GRAY. Never heard of any pool.

Mr. WHITNEY. Oh, yes. I never said that, Mr. Gray.

Mr. GRAY. You have heard rumors.

Mr. WHITNEY. Yes; but I can not tell exactly how they operate. You are asking tremendous knowledge on my part, and retention of facts.

Senator BROOKHART. What is a specialist?

Mr. WHITNEY. A specialist is one who executes orders for the other brokers on the exchange in a particular stock.

Senator BROOKHART. And who appoints him? How does he get his job?

Mr. WHITNEY. Himself.

Senator BROOKHART. And what information does he get then in reference to that particular stock?

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Mr. WHITNEY. He may study that stock and the corporation behind it to his heart's content.

Senator BROOKHART. Does he have information of how much each broker has for sale?

Mr. WHITNEY. He has information as to what orders are entrusted to him for execution only, so far as I know.

Senator BROOKHART. He has information as to all the orders to buy and to sell both?

Mr. WHITNEY. No, sir.

Senator BROOKHART. What orders does he have information about then?

Mr. WHITNEY. Those orders that are entrusted to him to execute.

Mr. GRAY. That constitutes 90 to 95 per cent, does it not?

Mr. WHITNEY. Of all orders executed in a particular stock? I would not say so; no, sir; nowhere near. A specialist does not usually or invariably, by any manner or means, get market orders, and I do not think that if you took a particular stock to-day and then looked at the specialist's accounts you would find that he did 95 per cent of the business if there was any activity in that stock at all.

Senator BROOKKHART. I say for what purpose do they have these specialists? Why do they have to be set up?

Mr. WHITNEY. Well, he is a specialist like the man who specializes on the heart, teeth, whatever it may be. He handles that particular stock or a few particular stocks at one post. He never leaves there.

Senator BROOKHART. He gets a great many or most of the orders for both buying and selling from the brokers that are designating him as their specialist, does he not?

Mr. WHITNEY. What he gets, I believe, Senator, mostly are the buying and selling orders, the selling orders above the market and the buying orders below the market, what are called "limited orders." He usually has those given him for the day, for the week, for the month.

Senator BROOKHART. He is the only man that has all of that information, is he not?

Mr. WHITNEY. As to all of those orders; yes.

Senator BROOKHART. That puts him in position to affect the market very much, does it not, by having all this close information?

Mr. WHITNEY. But he may not.

Senator BROOKHART. Why may he not?

Mr. WHITNEY. There are very stringent rules with regard to the action of a specialist.

Senator BROOKHART. How do you detect whether he does or not?

Mr. WHITNEY. By his actions by investigation of his books, in case there is any complaint of any kind.

Senator BROOKHART. If he gets by with it without a complaint, though, it is all right?

Mr. WHITNEY. Well, we are watching it too, Senator Brookhart, all the time.

Senator BROOKHART. You watch every sale of every specialist and every transfer?

Mr. WHITNEY. No; not every sale, but we are watching the conduct of our members steadily.

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Senator BROOKHART. Why do they want specialists? What function is he going to perform?

Mr. WHITNEY. I think I can tell you. There are, I believe some one said, some 1,250 different stock issues listed on the exchange. Supposing I had 1,250 different orders for 100 shares each on all of those stocks. I could not possibly, if the orders were limited or close to the market, be in those 1,250 different places at once. So therefore, with limited orders of that kind, I will naturally leave them with the specialist who is always in that particular stock or where it is traded in, and for that reason he exists.

Senator BROOKHART. He makes these sales or transfers just by bookkeeping them?

Mr. WHITNEY. No, sir.

Senator BROOKHART. How are they made?

Mr. WHITNEY. In the open market.

Senator BROOKHART. Well, it is not any more trouble for the other broker to do it in the open market than it is a specialist, is it?

Mr. WHITNEY. The other broker will do it if he can save giving the order to the specialist, because he has to pay out part of his commission if he does it.

Senator BROOKHART. The commission is divided with the specialist?

Mr. WHITNEY. In a way, not actually half and half. There are certain commissions that these specialists get, or any so-called $2 broker.

Senator BROOKHART. What is an "air pocket"?

Mr. WHITNEY. An air pocket is a name that was given by a very famous gentlemen where no bids existed in the panic of 1929.

Senator BROOKHART. That is a space in between bids where——

Mr. WHITNEY (interposing). No bids.

Senator BROOKHART. No bids at all?

Mr. WHITNEY. No bids at all.

Senator GORE. They just drop down, is that the idea?

Mr. WHITNEY. There were not any bids at all below the last sale, Senator Gore, in some instances. Needless to say, that caused us a great deal of anxiety.

Mr. GRAY. It so happens, Mr. Whitney, that I was going to ask you some questions on the floor traders and specialists at the time the presiding chairman, Senator Brookhart asked you. Before I reach it, there is one other thing I want to ask you.

Does your stock exchange have a list of investment trusts?

Mr. WHITNEY. We have a list of fixed investment trusts.

Mr. GRAY. You mean those whose stocks themselves are sold on your exchange?

Mr. WHITNEY. No, sir. The management type of trusts are the only ones that we list or shares of which may be traded in on our exchange.

Mr. GRAY. Yes. That is what I mean. In those trusts that have stock of their own which is traded in, such as the United Corporation, for instance?

Mr. WHITNEY. Yes, sir. I do not want to quibble, but we do not call that an investment trust.

Mr. GRAY. Yes; but there are investment trusts. What I want to know is whether or not your exchange for purposes of their own

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carry a list of the various investment trusts that are in operation. Do you have such data?

Mr. WHITNEY. I imagine so; yes. I will gladly get it for you. I think our statistical department has it.

Mr. GRAY. If you have in your statistical department data with respect to the existing investment trusts that are doing business with various brokers, wherever it may be—I do not know how extensive your list may be—in the buying and selling of stocks on the New York Stock Exchange, we would like to have it.

Mr. WHITNEY. That I can not answer. I am sure we have not that, because that would necessitate asking each and every one of our firms. Do you want us to do that?

Mr. GRAY. No.

Mr. WHITNEY. There are two types of investment trusts, according to ourselves: Management, some of which are listed on the exchange, the shares of which are listed on the exchange. There are many others. Then there are fixed investment trusts whose shares we do not list on the exchange, although we have specific regulations with regard to those fixed investment trusts—that is included in some of the things I want to put in—allowing our brokers to have association with them.

Mr. GRAY. For further investigation, will you give us such statistics as you have on that point?

Mr. WHITNEY. Yes, sir; be glad to.

Mr. GRAY. Whenever it is convenient to do it. Now let me ask you: Take these various investment trusts—I use that name; I do not know just what you do call them—that are organized for the purpose of buying and selling stocks. Do they do a considerable business in the loaning of stocks to brokers on the exchange?

Mr. WHITNEY. I do not know, Mr. Gray.

Mr. GRAY. What I am endeavoring to ascertain is whether or not short sellers are in the habit of it or whether they make a practice of it, getting the loans of these stocks that they are going short of from any of these investment trusts prior to the time of the making of the short sale to the broker. Tell me whether that practice exists.

Mr. WHITNEY. I have no knowledge of it; no, sir; nor has the exchange in so far as I know.

Mr. GRAY. That is to say, these investment trusts have, of course, large blocks of various stocks in which they see fit to deal?

Mr. WHITNEY. Some have.

Mr. GRAY. I beg your pardon?

Mr. WHITNEY. Some may have now.

Mr. GRAY. As I understand from your other testimony at different times, one of the opportunities which is afforded a broker and those who own large blocks of stocks to make money is by the lending of those stocks.

Mr. WHITNEY. If they are lending at a premium; yes.

Mr. GRAY. Yes; and I take it that it would be very natural for the investment trusts to make money; part of their legitimate business, under the rules of the stock exchange, by the loaning of such stocks. But you can not tell me whether that is a large portion of their business or not?

Mr. WHITNEY. I do not know.

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Mr. GRAY. If such a thing was done, that is, if a short seller with the investment trusts made a deal whereby he got his stocks in the first instance and delivered them, of course, that would not appear as a short sale at all; there would be nothing to so indicate?

Mr. WHITNEY. No, sir.

Mr. GRAY. Now, I am going to come down to the proposition of your floor traders. Tell this committee, if you will, please, first, what a floor trader is. That is information that ordinarily everyone who knows anything about stock transactions should know, but I would like to have it in the record in this hearing—what is a floor trader?

Mr. WHITNEY. A floor trader is a member of the exchange who buys or sells stock for his own account and presumably at a fairly small spread of profit.

Mr. GRAY. Is he a member of the exchange?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Now, following up and then coming back to that, several questions of Senator Brookhart's, as to the way in which business is translated, maybe it would be very buch better if I asked you to tell me instead of telling it to you, instead of asking if that is correct.

Mr. WHITNEY. I wish you would. It would be easier for me.

Mr. GRAY. Is it? I may be inaccurate about it, but I will try to be correct about it. When a broker gets an order it is transmitted through his telephones, which are closely connected with the floor of the exchange. That is the first step, is it not?

Mr. WHITNEY. It is on the floor of the exchange.

Mr. GRAY. It is on the floor of the exchange. And through that telephone message there is transmitted to the representatives of that firm on the floor the order itself; that is correct, is it not?

Mr. WHITNEY. Yes; whether he be a member of that firm——

Mr. GRAY (interposing). Or acting for the firm?

Mr. WHITNEY. Or acting for the firm, or a specialist acting for the firm.

Mr. GRAY. Well, as a matter of fact, of course, every brokerage firm, in order to execute its orders, has to have, either through some member of its firm or a cooperating firm, one member on the floor?

Mr. WHITNEY. Exactly.

Mr. GRAY. Or else the orders could not be executed. Then there are different centralized points on that floor where certain stocks are dealt in. That is true, is it not?

Mr. WHITNEY. Every stock must be dealt in at a particular point.

Mr. GRAY. And that is called a "post."

Mr. WHITNEY. Right.

Mr. GRAY. And if it is a market order, why, then the man who has a market order to buy or sell can go to that post and immediately, if it is a buy order, accept the lowest offer to sell and close the transaction. That is true, is it not?

Mr. WHITNEY. If, in his judgment, that is a good execution of the order; yes, sir.

Mr. GRAY. If it is a market order, he must execute it at the lowest price at which he can buy?

Mr. WHITNEY. Well, it depends. For instance, if the market is 41 bid, 42 offered, last sale 41, and he went in there with 500 shares

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to buy, he will not necessarily pay 42 for them. He will use his discretion.

Mr. GRAY. He has to exercise that discretion within quite a prompt or reasonable time—that is correct, is it not?

Mr. WHITNEY. Yes. It all depends upon the way the order is given.

Mr. GRAY. Yes; but if it is a straight order to buy at the market, it ought to be executed immediately at whatever price it shows?

Mr. WHITNEY. Within the discretion of the broker.

Mr. GRAY. And, of course, the same thing is true on the other side with respect to an order to sell?

Mr. WHITNEY. Long stock; yes.

Mr. GRAY. And following up the explanation given by Senator Brookhart, if a broker has an order to buy or sell a stock at a fixed price which may be slightly out of the range of bids and offers for the moment, that is where the specialist comes in; isn't that so?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. He is a man, for instance, in large stocks who only sells or buys one stock, but in some of the less-active stocks may sell a certain group; that is correct, is it not?

Mr. WHITNEY. Quite right.

Mr. GRAY. And then that person, the man on the floor who is a member of the exchange with that order goes to that specialist and places that order with him; is that correct?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. The specialist keeps a book, does he not?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And that book has in it two accounts or two columns, as you may call it, in which he has in one all of his buy orders and in another all of his sell orders—that is true, is it not?

Mr. WHITNEY. Buy on the left and sell on the right, yes, sir; at the price.

Mr. GRAY. It is a fact that if the specialist discloses the information that he has to any individual or to any group of men or any representative of that group who desires to either depress or increase or advance the price of that particular stock, then the person who secures that knowledge has a decided advantage; isn't that true?

Mr. WHITNEY. Yes; and the giving of that knowledge in such a case is contrary to the rules of the exchange.

Mr. GRAY. I understand that. Don't you know as a matter of fact that the way pools to advance prices or—you don't like the word "bear raids"—or pools to depress prices and thus make a profit to those whose stock is sold short, are generally handled from the knowledge that is obtained from the specialist in that particular stock?

Mr. WHITNEY. No, sir; I do not. If a broker goes into a crowd and watches the operations of that stock, stays there and makes a practice of staying there, not a specialist, he probably can know of his own judgment just as much as any specialist could tell him.

Mr. GRAY. He would not know the range of the orders to buy and sell outside of the market range at that time, would he?

Mr. WHITNEY. No.

Mr. GRAY. No. Now, you say you do not know that there have been instances, frequent instances, where in the pools for the rise

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or for the depression of the market have existed with the cooperation of the specialist. Do you mean you do not know that officially?

Mr. WHITNEY. I do not know it either way. I will grant that I believe often in an operation or a syndicate operation the specialist will be a party, may be a party.

Mr. GRAY. Has he the right to do that?

Mr. WHITNEY. Yes; so far as I know.

Mr. GRAY. You mean to say then that if there are a number of men——

Mr. WHITNEY (interposing). But I am not predicating his right on his using that right to the detriment of his customers who have entrusted orders to him, and there is a distinction.

Mr. GRAY. I am not talking about the particular different customers who have entrusted their orders to him, but he has the right to operate in that particular stock in which he is a specialist and to use the knowledge which is shown on his books to the advantage of himself and the other men who are interested with him, has he not?

Mr. WHITNEY. He may use that knowledge, yes, but when you say to the advantage of himself and the other men interested with him, that seems to imply to the disadvantage of the people who have given him orders. So I can not agree with that.

Mr. GRAY. That does not necessarily follow. Don't you know that as a matter of fact the operations of these large traders are generally conducted with the connivance and the help of the specialist who has an interest in what they are doing?

Mr. WHITNEY. No, sir.

Mr. GRAY. On either side of the market I am talking about?

Mr. WHITNEY. No, sir. You say the large traders?

Mr. GRAY. Yes, sir.

Mr. WHITNEY. I do not know that for a fact.

Mr. GRAY. Of course, if that was done it could not be done without the cooperation of some members of your exchange; that is true, is it not? In other words, a specialist is a member of your exchange, is he not?

Mr. WHITNEY. Yes; but why may a man not operate in stocks on the exchange without having any connivance or agreement or understanding with a specialist? There is nothing to prevent a man from buying stock on the exchange and selling it on the exchange without the specialist knowing anything about it.

Mr. GRAY. Because of what you have just told me, and that is that the man who has that knowledge has a decided advantage over the man who has not that knowledge. Isn't that true? You said that a minute ago.

Mr. WHITNEY. I say that the specialist had the knowledge.

Mr. GRAY. And did you not also say to me that the man who desired to put that stock either up or down had a decided advantage in doing it if he knew what was on a specialist's book?

Mr. WHITNEY. He might have that advantage; yes.

Mr. GRAY. He would have that advantage, would he not?

Mr. WHITNEY. That depends on whether the specialist gave him the information, and I have tried to say in each instance if the specialist, even acting with anybody, gives information that is to the detriment of his customers, that is absolutely contrary to the rules of the exchange.

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Mr. GRAY. Leaving out the question of whether it may or may not be to the detriment of his customers for the moment, you have said first that the man who can get the knowledge of what is on that specialist's book has an advantage, and you have said that the specialist is justified not only in giving it to someone but in cooperating with that someone in the buying and selling of stocks to his own advantage and to the advantage of those that are associated with him, have you not?

Mr. WHITNEY. I have said that with the reservations that I have also stated.

Mr. GRAY. In other words, with the reservation that he should not do it to the detriment of his customer?

Mr. WHITNEY. That is right.

Mr. GRAY. All right.

Mr. WHITNEY. May not.

Mr. GRAY. May not. You could not describe to us how such a pool could operate, could you, with the cooperation of the specialist, if they wanted to depress the value of stocks?

Mr. WHITNEY. I am not granting that pools depress the value of stocks.

Mr. GRAY. Do you know how it could be done?

Mr. WHITNEY. To-day?

Mr. GRAY. I do not know whether or not with the present low condition of the market it would be depressed much further, but in normal times how could it be done?

Mr. WHITNEY. No; Mr. Gray. I told Senator Brookhart I would be glad to look up some pool agreements and try to give him those facts, but I truthfully do not know.

Mr. GRAY. Are they in writing?

Mr. WHITNEY. I think probably.

Mr. GRAY.. You are talking about syndicates such as you spoke of in connection with those bonds.

Mr. WHITNEY. No, no; I am speaking of pool agreements in stock. They exist.

Mr. GRAY. You mean by that agreements between gentlemen who can and do in those instances put it in writing that they will make investments in stock either for the rise or for the fall of the market—that is what you mean, is it not?

Mr. WHITNEY. Who are you talking about?

Mr. GRAY. I am talking about the man who goes in and deliberately sells them facts and by the purchase of the facts, acting in cooperation with a specialist, causes the market to have a rapid rise or a rapid drop in order that he might take advantage of it by then turning to the other side of the market.

Mr. WHITNEY. I haven't any knowledge of such operations.

Mr. GRAY. And you could not tell us how a person could do that?

Mr. WHITNEY. If you will ask me a concrete question to tell me what you have in your mind, I will try to answer it to the best of my ability.

Mr. GRAY. I know nothing about this matter, but I will ask you about this: Do you remember the Alaska Juneau matter?

Mr. WHITNEY. I know nothing about the Alaska Juneau matter. I know there is a stock listed on the exchange.

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Mr. GRAY. Don't you know that it was done in that about eight months ago?

Mr. WHITNEY. What was done?

Mr. GRAY. A manipulation both ways by pools.

Mr. WHITNEY. You have the proof; I haven't, sir.

Mr. GRAY. You don't know about it?

Mr. WHITNEY. I do not. I have heard that the stock went up and down, but that that was a manipulation——

Mr. GRAY (interposing). All stocks do that.

Mr. WHITNEY. Yes. So, therefore, I do not know the proof in the case of Alaska Juneau that it was a manipulation. There can be reasons for lots of things.

Mr. GRAY. There was nothing that ever came to the attention of the business conduct committee of the exchange to indicate that there was ever anything improper in that, or that the specialist had anything to do with it?

Mr. WHITNEY. So far as I know of anything that the business conduct committee knew of the up and down swings in Alaska Juneau nothing was found that was improper.

Senator FLETCHER. I suppose these pool agreements that Mr. Gray is talking about are just understandings among the group of people orally. Nothing in writing?

Mr. WHITNEY. No; I think they are in writing. I think I can discover pool agreements that are in writing, because a man has a commitment to such and such a participation in a pool.

Senator FLETCHER. Let me ask this one question about bear raids: You mentioned about their being discouraged and not favored by the exchange. How can you tell and when do you determine that short selling leads to a bear raid? When does a bear raid begin and the short selling take place?

Mr. WHITNEY. If we find, Senator Fletcher, that, let us say, a block of shares of 500 or more are sold on the exchange and that the sale depressed the stock from the previous price, we will immediately ask the broker or his house whether it was for short account or not, and our investigations have not proved that such sales at a decrease from the last price were for short account; therefore, a bear raid did not exist.

Mr. GRAY. Possibly the Senator wants to know where short selling stops and bear raiding begins.

Mr. WHITNEY. Short selling stops and bear raiding begins when a depression in the price of the security occurs.

Mr. GRAY. Are you through, Senator?

Senator FLETCHER. Yes.

Mr. GRAY. A few more questions. On page 17 of your Hartford speech you state that:

> The New York Stock Exchange has for many months been investigating this whole subject [of bear raiding]—

And further state that you—

> have particularly looked into all sales of shares in big blocks.

That is what you have just reiterated?

Mr. WHITNEY. Yes, sir.

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Mr. GRAY. Your speech indicates that you have looked into 50 or 60 cases of this sort. Have you minutes or transcripts or records of those investigations?

Mr. WHITNEY. I do not think that we have of all of those. That was done by members of the business conduct committee and may have been conducted entirely verbally.

Mr. GRAY. I do not suppose the committee could have any such investigations as you have, should they want them?

Mr. WHITNEY. I will endeavor to find out. I do not think so.

Mr. GRAY. You were asked the other day about a copy of your questionnaire issued in November, 1929. Have you that?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. And have you any sort of a summary of the replies that were received?

Mr. WHITNEY. Yes, I have; complete.

Mr. GRAY. Will you let me just glance at it and then I will offer it coming from you as an exhibit?

Mr. WHITNEY. There is the questionnaire [handing document to Mr. Gray]. The next page shows the total short position, and I believe the last few pages show the breakdown in stocks.

Mr. GRAY. With your permission, Mr. Chairman, I will let the reporter note this as an exhibit that has been offered so that it may be examined hereafter. It is in response to my request that Mr. Whitney furnish such data.

(The questionnaire and summary of replies thereto, designated "Exhibit 23," are here printed in the record in full, as follows:)

NEW YORK STOCK EXCHANGE,
COMMITTEE ON BUSINESS CONDUCT,
New York, November 13, 1929.

To members of the exchange:

The committee on business conduct directs all members to furnish the following information in regard to stocks listed on the New York Stock Exchange (not including odd lots) loaned or borrowed or on which there has been a failure to deliver:

1. A list of all stock borrowed, from whom, and for whose account.
2. A list of all stock loaned and to whom.
3. Intraoffice borrowings, and for whose account.
4. A list of all stock which you have failed to deliver and for whose account.

First report.—The foregoing information as of the close of business November 12, 1929, must be filed with the committee not later than noon Saturday, November 16, 1929, by members not more than one day's distance by mail from New York, and by other members not later than noon Monday, November 18, 1929.

Subsequent reports.—Subsequent reports of the changes occasioned by each day's business must be furnished from day to day thereafter.

Envelopes.—The envelopes containing the foregoing information are to be addressed to the committee on business conduct, room 609, 11 Wall Street, New York City.

Wire houses are requested to cooperate with the committee by transmitting this circular over their wires to their out-of-town member correspondents and forwarding the replies of the latter to the committee.

ASHBEL GREEN, *Secretary.*

Mr. WHITNEY. That is the only day that my records are now existing and complete.

Mr. GRAY. Did you take any minutes of the meeting on the morning of September 21 when you met to determine whether you were going to close or what alternative you would adopt with respect to England going off the gold standard?

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Mr. WHITNEY. I can present the minutes that we took. If I remember rightly, I read to the governors of the exchange my proposed announcement and motion was made upon that and it was carried, and then I read it from the rostrum to the members of the exchange about 10 to 15 minutes to 10.

Mr. GRAY. That announcement covered, of course, more than your simple testimony here to the effect that you were abandoning short selling. Will you furnish a copy of that to the committee?

Mr. WHITNEY. Very glad to. It is practically incorporated in my Hartford speech.

Mr. GRAY. Maybe the substance of it, but we would like to have the transcript of it. Will you do that?

Mr. WHITNEY. Of the announcement given?

Mr. GRAY. The transcript of the minutes of the board with respect to what occurred and such—did it contain any discussion?

Mr. WHITNEY. I do not think there was any discussion.

Mr. GRAY. In other words, what you said went?

Mr. WHITNEY. What the gentleman moved who made the motion went.

Mr. GRAY. I understood you said you read to them what you were going to announce.

Mr. WHITNEY. I did not make the motion, though.

Mr. GRAY. Will you send us a copy of the transcript?

Mr. WHITNEY. Yes, sir.

Mr. GRAY. Thank you, Mr. Whitney. You remember the Manhattan Electrical Supply matter, do you not?

Mr. WHITNEY. Yes, sir; a good deal about it.

Mr. GRAY. There was a pool that operated in that stock, was there not?

Mr. WHITNEY. There was.

Mr. GRAY. And they run the stock up to 120, did they not?

Mr. WHITNEY. Perhaps, Mr. Gray. I don't remember that.

Mr. GRAY. The pool broke and the stock crashed 60 points in one day back to 60, did it not?

Mr. WHITNEY. I believe so, due to the fact that the business conduct committee—because they suspected something was wrong, sent out the questionnaire to all of our members asking facts upon that stock.

Mr. GRAY. As a matter of fact, is it not so that your action was not taken until the attorney general's office of the State of New York started an investigation?

Mr. WHITNEY. I think that is not so.

Mr. GRAY. You think that is not so?

Mr. WHITNEY. But I do not wish to state it as a fact, because I do not know; but I do not think so.

Mr. GRAY. That was undoubtedly a pool, was it not; what we have been referring to as a pool?

Mr. WHITNEY. Either a pool or one individual; yes. It was an illegitimate operation on the market.

Mr. GRAY. That was, by the way, back in 1926 and 1927, was it not?

Mr. WHITNEY. I think there were two episodes in that stock.

Mr. GRAY. I will come to that in a second. As a matter of fact, the exchange was put on notice by the first that there had been somebody illegally handling that stock. That is true, is it not?

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Mr. WHITNEY. It seems so.

Mr. GRAY. Do you remember that in 1929, as it developed afterwards, that Brown, the president of the Manhattan Electrical Supply, employed a broker by the name of McCarthy to operate another such pool?

Mr. WHITNEY. I am not positive about the names, but that may be so.

Mr. GRAY. The occurrence took place?

Mr. WHITNEY. Yes.

Mr. GRAY. And by the operation of that pool they pushed the stock up from 20, to which price it had dropped theretofore, to 50?

Mr. WHITNEY. Very likely, sir.

The CHAIRMAN. I am surprised to hear that. I have been understanding that there had been no such things as pools existing. Now we begin to hear about them.

Mr. GRAY. I understand so.

The CHAIRMAN. It is quite illuminating.

Mr. WHITNEY. I don't know about the details of these pools, Senator.

Mr. GRAY. As a matter of fact, the exchange being put on notice by reason of what had transpired before in that stock, is it not a fact that that fraud was perpetrated and the exchange took absolutely no notice of it and paid no attention to that pool operation until the attorney general of the State of New York stepped in there?

Mr. WHITNEY. That I also have no knowledge of.

Mr. GRAY. You have no knowledge of that?

Mr. WHITNEY. No. The exchange took immediate action in that as soon as anything suspicious happened, so far as we could find out and knew. Will you please mention the date of that second episode?

Mr. GRAY. I can say to you that it started in about December of 1929.

Mr. WHITNEY. December?

Mr. GRAY. I would be glad to have you clear on it.

Mr. WHITNEY. I just wanted that for my own information.

Mr. GRAY. Yes.

Mr. WHITNEY. Because, if I remember rightly, there was—well, I don't know.

Mr. GRAY. The rise continued until May and June of the following year.

Mr. WHITNEY. Of 1931, or 1930?

Mr. GRAY. Of 1930.

Mr. WHITNEY. The market went up in general during that latter part.

Senator GORE. What stock is that?

Mr. WHITNEY. Manhattan Electrical Supply Co.

Mr. GRAY. Did you get complaints during that period of time, directing your attention to this concern and the former manipulation, and the fact that another manipulation was going on, to which you paid no attention?

Mr. WHITNEY. I do not know, Mr. Gray.

Mr. GRAY. You don't know that?

Mr. WHITNEY. No.

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Mr. GRAY. You have said that your business conduct committee would be interested in that.

Mr. WHITNEY. I do not recall either one, and I was chairman of the business conduct committee at that time.

Mr. GRAY. You mean, you do not recall ever having received those?

Mr. WHITNEY. Complaints?

Mr. GRAY. Yes.

Mr. WHITNEY. No; not during that period.

Mr. GRAY. I might say to you the reason I am asking you the question is because the information I have, from proper sources, is to the effect that the complaints could get no satisfaction from the business conduct committee and were compelled to go to the attorney general's office in the State of New York.

Mr. WHITNEY. I would ask that you admit those to evidence, so that I may have knowledge of them, Mr. Gray.

Mr. GRAY. I would be very glad to do so.

Mr. WHITNEY. Because, if I may be so bold as to say, the facts with relation to Mr. Kenny's case as presented this morning are not as full as the business conduct committee has them. Understand I am not imputing anything to you or to anybody else.

Mr. GRAY. We would be very glad to hand you the file in the Kenny matter.

Mr. WHITNEY. I am going to hand you the files, which are very interesting.

Mr. GRAY. I would be very glad to have you do that.

Mr. WHITNEY. And I would like, also, for our benefit, to have the full detail on this complaint, because if that is a fact then something should be done about it.

Mr. GRAY. I will say to you that my information comes from the attorney general of the State of New York, who prosecuted the case.

Mr. WHITNEY. And the complaints?

Mr. GRAY. The names of them, you mean?

Mr. WHITNEY. Yes.

Mr. GRAY. I can not tell you at the moment.

Mr. WHITNEY. But he stated that the complaints came to the exchange?

Mr. GRAY. Yes.

Mr. WHITNEY. And nothing was done about it?

Mr. GRAY. Nothing was done about it; yes.

Mr. WHITNEY. I would like very much the name of the individual, because that individual might have been stretching the truth when he said he complained to the exchange.

Mr. GRAY. I can not advise you at the moment.

Mr. WHITNEY. May I have it?

Mr. GRAY. I will be very glad to get it for you, very glad.

Mr. WHITNEY. Please.

Mr. GRAY. That investigation developed, didn't it, if you recall the facts—if you do not know them, of course there is no use of my asking you about them—that McCarthy, this broker, had bribed customers' men of several stock exchange houses to advise their customers to buy the stock, thus disseminating false information.

Mr. WHITNEY. I believe, sir, that that developed in the later case, in the reports.

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Mr. GRAY. It also developed that McCarthy was operating through a number of different accounts and different names and different brokers, didn't it?

Mr. WHITNEY. Particularly with one house, if I remember, who were suspended for five years.

Mr. GRAY. Do you recall the instance of the Dunhill International stock?

Mr. WHITNEY. No; Mr. Gray, I do not. What is the date of that Dunhill International? May I have that?

Mr. GRAY. It started in August of 1930, followed during the month of August, and early in September, certain things being done, the matter eventually came to the attention of the Attorney General's office, and he took action in connection with the matter.

Mr. WHITNEY. You appreciate that we are a source of a great deal of the information going to the Attorney General's office, I trust.

Mr. GRAY. You may be, but not in these cases.

Mr. WHITNEY. We are.

Mr. GRAY. I say, you may be. I do not doubt that at all.

Mr. WHITNEY. I think you will find, sir, in the case of the Manhattan Electrical Supply Co., that that is so.

Mr. GRAY. My information from the Attorney General, Mr. Whitney, although I do not want to get into a discussion with you on the matter, is to the contrary. Now, going into another subject, can you suggest the means whereby the exchange could be properly informed as to which sales were sales against the box?

Mr. WHITNEY. I did not hear the question.

Mr. GRAY. Can you suggest the means whereby the exchange could be properly informed for their records as to which sales were sales against the box?

Mr. WHITNEY. Only by instructing our brokers to so inform us, but, as I have told you, we see no necessity whatever for that information.

Mr. GRAY. You do not think it would be proper that the information should be public, in order that if there are instances where officers or directors of institutions are selling the stock of the companies, in which they are such officers and directors, in that manner, it should be made known?

Mr. WHITNEY. There is no law that I know of to prevent a man selling stock up to the amount that he owns in any corporation of which he is an officer or director.

Mr. GRAY. I am not raising any question if there is any law against it.

Mr. WHITNEY. But I do want to raise the question about the law.

Mr. GRAY. Yes. Well, go ahead.

Mr. WHITNEY. That is it.

Mr. GRAY. That there is not any law to prevent him from doing it?

Mr. WHITNEY. Yes; in the State of New York or in the United States, as far as I know. Therefore, why should the New York Stock Exchange do something that is conceded to be proper under the law?

Mr. GRAY. Haven't you even testified to-day that irrespective of what the legal rights were, you have adopted regulations because you did not think such things should be done? You said so to-day, didn't you?

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Mr. WHITNEY. Yes.

Mr. GRAY. Therefore, it is no answer to say what you just said.

Mr. WHITNEY. And I reiterate, but we have only done that where we felt, for the best interests of the customers of our members, such regulations should be put in force. We do not think that in the case you suggest.

Mr. GRAY. In other words, your answer in this case then is not whether a man has a legal right to do it or not, but irrespective of legal rights, you don't think it is a proper matter to regulate?

Mr. WHITNEY. We believe he has a legal right and also believe he has a perfect right.

Mr. GRAY. And you should not interfere with it or regulate it in any way?

Mr. WHITNEY. Yes.

Mr. GRAY. That is your answer?

Mr. WHITNEY. Quite. Any more, Mr. Gray, than I would attempt to prevent you selling what securities you desire to sell that you owned; and I see no distinction there.

Mr. GRAY. Mine are gone long ago, but I didn't see any necessity for making that public.

Mr. WHITNEY. I am sorry.

Mr. GRAY. I say I didn't see any necessity for making that public. You called attention to it, so I am telling you.

Mr. WHITNEY. You want that kept off the record, don't you?

Mr. GRAY. No; I don't care. It does not make any difference to me.

Mr. WHITNEY. All right.

Mr. GRAY. Mr. Whitney, it is a fact, of course, that under the law and under the regulations of your stock exchange, all of your members have a right not only to act as brokers and agents for customers who want to buy and sell stock, but they have a right and there are no restrictions on the firms, nor on the members of the firms, in this respect, to deal in their own names and for themselves; that is true, is it not?

Mr. WHITNEY. That is true, with the proviso, however, that there is a strict regulation of the exchange in taking a position opposite to the customer's.

Mr. GRAY. That, of course, we know is against the law as well as your regulation.

Mr. WHITNEY. May I point this out, Mr. Gray?

Mr. GRAY. Yes.

Mr. WHITNEY. I am sorry to take the time, but I feel that some of these things are of interest.

Mr. GRAY. The committee is after information, and of course we will be glad to have anything you can tell us on either side of the matter.

Mr. WHITNEY. Yes. I think a majority of our partnerships, stock exchange partnerships, have specifically the rule that they do not take a position, nor the members of that partnership, for their own account.

Mr. GRAY. Let me see if I understand you correctly. You mean that there are a number of firms which are members of the exchange that of their own accord adopt the rule for the conduct of their own business that they do not buy or sell any stocks?

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Mr. WHITNEY. Under their partnership agreement.
Mr. GRAY. Anything at all?
Mr. WHITNEY. Any securities whatever.
Mr. GRAY. Don't you think that is a very salutary rule?
Mr. WHITNEY. A salutary rule?
Mr. GRAY. Yes.
Mr. WHITNEY. It depends on what the man's business is. Our members deal in all sorts and types of business. Some are commission brokers. Some are just ordinary brokers, like myself. Some do a commission business and are dealers in securities, and some are bankers, and so forth.
Mr. GRAY. What class of members of the exchange were you referring to when you said that there were some of them that had adopted the rule of refraining from that?
Mr. WHITNEY. All classes.
Mr. GRAY. All classes?
Mr. WHITNEY. Yes. And our rules in that respect——
Mr. GRAY. I am not concerned so particularly with other than those houses which buy and sell for customers, whether they do it in the manner you indicate your house does, or whether they do it on a commission basis. Wouldn't it be a good rule for the exchange to adopt, to require those houses which are dealing for customers not to deal on their own account?
Mr. WHITNEY. Possibly. But that is something that we have had under consideration at various times, and we feel that the result to the business of our houses would be so detrimental, where it affected dealers in securities, distributing houses, that the rules that we have cover the situation. I refer to the rule with regard to capital requirements, specifically with regard to securities owned by those houses that own them, and the capital requirements with relation to margin accounts, and to positions taken opposite to what their customers are doing.
Mr. GRAY. If such a rule were in effect, then, of course, a house could not engage in the stabilization of prices, such as you have indicated your house did with respect to this loan; or did you not in that case buy in your own name? You bought in the name of the customer in that case, did you not?
Mr. WHITNEY. I bought in our own name for customers.
Mr. GRAY. For customers?
Mr. WHITNEY. Yes.
Mr. GRAY. Speaking of that for a minute, the stocks you bought had to go around in a circle and had to come around in the market again from the syndicate; in other words, the customers you were buying for were practically the same customers you were selling for?
Mr. WHITNEY. No; I do not know of any proof of that.
Mr. GRAY. I do not know of any proof of it either, sir. There are a lot of things we ask about that we can not prove.
Mr. WHITNEY. I do not know why, if you sell for a member of a syndicate, under general orders.
Mr. GRAY. Your orders to peg were on behalf of the syndicate, weren't they?
Mr. WHITNEY. Yes.
Mr. GRAY. And your orders were to buy.

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Mr. WHITNEY. But I have not admitted that the syndicate was selling to me.

Mr. GRAY. But the syndicate was selling at the same time.

Mr. WHITNEY. Yes; but I do not admit that they were selling these bonds on the floor of the stock exchange. They were attempting to sell to investors.

Mr. GRAY. And while they were attempting to sell to investors, where there were any offers in the open market, you picked them up, so as to not let the price drop?

Mr. WHITNEY. At the price at which I had the order.

Mr. GRAY. In order to keep up the price, while the syndicate was selling these bonds privately to the banks all over the country, any that were offered in the open market you bought, and then when the syndicate had sold all its original stock, it stopped, didn't it?

Mr. WHITNEY. The syndicate, yes. But the price had not been a pegged price during that period.

Mr. GRAY. You indicated that as soon as it stopped, the price dropped a couple of points.

Mr. WHITNEY. It had a range.

Mr. GRAY. It had a range, and then went lower.

Mr. WHITNEY. It sold at many times above the price of the offer.

Mr. GRAY. Don't you think that commission houses and other houses buying for their own customers should be stopped from buying on their own account?

Mr. WHITNEY. I do not believe they could be, except perhaps over a period of time, because the results would be too grave and disastrous to our business.

Mr. GRAY. In what way?

Mr. WHITNEY. They would have to change their entire business. They would have to change from being a steel factory to a rubber factory.

Mr. GRAY. You mean they would have to abolish that part of the business in which they went into business for themselves?

Mr. WHITNEY. Suppose they had things on their shelves that they had to sell.

Mr. GRAY. As a matter of fact, that regulation is in force on the London Exchange, is it not?

Mr. WHITNEY. There is no comparison between the London Exchange and the New York Exchange.

Mr. GRAY. I didn't ask you that. I asked you whether that regulation is in effect on the London Exchange.

Mr. WHITNEY. No, sir.

Mr. GRAY. Don't you know that the London Exchange——

Mr. WHITNEY. I know what is in force, but the answer to your question is no.

Mr. GRAY. Will you tell me what is in force then with reference to the rights of brokers on the London Exchange who engage in buying and selling of stocks of customers, with respect to buying and selling on their own behalf?

Mr. WHITNEY. On the London Exchange a member has to signify whether he is going to be a dealer, or a jobber, or a broker. If he signifies he is going to be a broker, he executes orders for the account of customers——

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Mr. GRAY. He may buy?

Mr. WHITNEY. On the floor of the exchange. I know of no law which prevents his buying for his own account off the stock exchange. Am I right?

Mr. GRAY. Perhaps you are.

Mr. WHITNEY. Whereas on the stock exchange the dealer or jobber of the other type of member may only deal for his own account, as I understand it, and not for the account of customers or as agents. But what their business is off the exchange, I do not know, and I do not know the regulations affecting it, and that is a question that would be most grave for our members.

Mr. GRAY. Seeking again to find out whether a change in some of your methods upon the stock exchange might be of an advantage and serve to avoid terrific rises and terrific depressions, may I ask you to give us your thought as to whether or not a regulation of this type would be of any moment: To provide, if you please, that short sales may not be permitted after the opening of the market on a certain day, to sell short except within a certain percentage below the closing price of the day before, and, if you desire to put that into effect on the other side, providing that margin buyers, not outright buyers, may not be permitted to buy except within a certain range of the closing price of the night before; and in order that you may clearly understand my thought, I will give you an illustration of what I mean. A stock closing at 100 at 3 o'clock one afternoon may not be sold short the next morning, we will say, at a lower price than 99, or may not, if you please, be bought at a higher price on margain than 101.

Now, my thought is—and I will be glad to have you tell me whether I am wrong or right, however you may view the matter, or I would like to have you express your views in any way at all—that if a person who desires to sell short because he thinks the market is going to drop, is permitted to sell short within a range as I have indicated, or between 100 and 99, he has that opportunity; he may sell short; and if his judgment is good that the market is going down, he is going to have an opportunity to cover at a later time to his advantage, because his judgment was good. But if the market does go down decidedly during the day for legitimate reasons, we will say, and there is a flood of liquidation that comes into the market below 99, it adds to that liquidation and the furthering of the depression of prices by his continuing his short sales during that day, at least down the line, until he has accumulated a very large short position. Now, taking that merely as a suggestion from one who does not know very much about it to one who should know a great deal about it, will you give me the benefit of your opinion as to that, as to whether or not it would not regulate stock movements, if you please, or help the stock on the one hand and decidedly increase the advantages on the other, in a tremendous liquidation?

Mr. WHITNEY. Why, Mr. Gray, that would have the effect of doing away with speculation in the market. And I am reiterating here again.

Mr. GRAY. Yes.

Mr. WHITNEY. That as soon as you take away speculation you take away at least one-half of the market, the other half being investment.

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You stultify, stifle, and pretty near put an end to the speculative side of the market?

Senator GORE. It would leave a falling market to the seller of long stock.

Mr. GRAY. Senator Gore asks if that would not leave the falling market to the seller of the long stock.

Mr. WHITNEY. Our regulations at the present time, Senator Gore, do in large measure just that. I think that would cause eventually the security markets to close. If that is the desire, then they had better close.

Senator GORE. If you could evolve such a plan, it would be a good idea for the Farm Board to handle it, perhaps.

Mr. WHITNEY. I believe there has been some criticism in that respect, in the fluctuations in cotton prices. We—I, let us say—have never heard anything but contrary views, not only, if you please, from cotton brokers but from cotton growers, shippers, millers, and all, that they thought it stultified and hurt the market.

Mr. GRAY. Now, Mr. Whitney, in answer to Senator Gore, you stated that your rules and regulations to-day prevent to a certain extent that being done, but a short seller to-day, under the interpretation of your rules, is permitted to sell, as long as he does not sell below the price of the last sale.

Mr. WHITNEY. As long as he does not depress the market, right.

Mr. GRAY. If the market is naturally being depressed by liquidation, by the owners of long stock, and he steps in, he is adding that much more to the torrent, isn't he?

Mr. WHITNEY. That may be.

Mr. GRAY. Yes.

Mr. WHITNEY. And vice versa.

Mr. GRAY. You do not think, therefore, that it gives the shorts all the opportunity they should have in the proper exercise of their speculative judgment—now, I don't know whether one point is a proper percentage basis, but you do not think that he is given the opportunity to exercise his proper speculative judgment if he is permitted to go down to a certain point and sell short, with the opportunity to cover. He is making his speculation, but he is being stopped from continuing that during the decline and thus creating that much additional liquidation, bringing about a depression, isn't that so? Don't you think he gets enough speculation out of it?

Mr. WHITNEY. I do not grant that the short seller is the cause of the depression.

Mr. GRAY. I know you do not.

Mr. WHITNEY. But we won't argue that point. My answer, Mr. Gray—and I am giving it just as honestly as I can—is that you by any such method stultify in your final results the security markets of this country. If that is the desire and that is the effect upon seventeen to thirty millions of Americans who are investors to-day, then it may be a wise thing to do, but the exchanges, in my opinion, will close.

Mr. GRAY. In other words, your opinion is very plainly then that there is no merit in such a suggestion?

Mr. WHITNEY. The suggestion, sir, will have my most sincere consideration and thought, but I am giving you my honest opinion.

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Mr. GRAY. But your present answer is that it is your honest opinion that such a suggestion, though it may be worthy of some consideration, should not be adopted, because if it is adopted it would cause eventually the markets to close, is that your answer?

Mr. WHITNEY. The final result; yes, sir.

Mr. GRAY. And that is because of the fact that it deprives the short seller of the right to sell at any time at all that he wants, as long as he keeps within his offers of the price of the last sale, is that right?

Mr. WHITNEY. You and I were altogether a minute ago. You were talking about short sellers and marginal purchasers in the same breath. If you talk about speculation, I will say yes. There is too much predicated on short selling and depression.

Mr. GRAY. In my examination of you, Mr. Whitney, it has been my intention in discussing the matter, when I refer to short sales, not particularly to refer to that, because that is not the only evil in the market, and I recognize the existence of all of the other evils that you have so characterized, or the other matters that you have characterized as evils. I personally agree with you that there is more than one evil in the stock market. You may not think that short selling is an evil; I may think it is. But it is not my intention to attack in my questions that side of the market which has to do with short selling.

Mr. WHITNEY. Any sale.

Mr. GRAY. I only refer more frequently to short selling because of the fact that it is looked upon generally—whether you look upon it as such or not—as one of the evils that has caused the depression, and, I suppose, if I may be permitted to testify to this extent, that the reason the public does not complain so much about the evils that caused the rise in the market is because it brings to them what they think is prosperity, while they recognize immediately a depressing situation that arises as the result of a decline in the market. Whether I am right about that or not, I do not know. Therefore, I fell naturally into the error, if you want to call it an error, of discussing with you as a prominent evil the matter of short selling.

Mr. WHITNEY. Which I do not grant.

Senator GORE. May I ask a question there?

Mr. GRAY. May I ask just one more question, Senator, and then I am through, I believe.

Senator GORE. Certainly.

Mr. GRAY. The difference between you and me, however, Mr. Whitney, is this, is it not: You do concede that short sales require some regulation, because you have regulated it?

Mr. WHITNEY. I grant that transactions on the floor of the exchange of necessity have to have regulation; yes.

Mr. GRAY. And if you conceded that short selling, extensive short selling in a declining market added trouble, brought about increased liquidation and tended to depress the market, then you would believe that such a regulation as I have suggested would be a wise one, wouldn't you?

Mr. WHITNEY. No.

Mr. GRAY. In other words, if you can predicate the situation upon my belief that it does depress the market, you think it would be wise to do some such thing, don't you?

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Mr. WHITNEY. No, sir. I think that if it is proved, if it possibly can be proved, that the majority of the people of these United States think a market should be one-legged, should be artificial, and, therefore, would eventually result in doing away with speculation—if they think that, then it is better for us to go back 50, 75, and 100 years, and have no investments in this country's industries.

Mr. GRAY. The matter of the regulation of prices, then, in such an exchange would be governed by the law of supply and demand, wouldn't it; and, though I hate to use this language again, you would have intrinsic value, stock that would be worth something one day and might, by reason of business conditions, be worth less or more the next day?

Mr. WHITNEY. Or nothing.

Mr. GRAY. That gives you the speculative element, then?

Mr. WHITNEY. It is the speculative element, as I said before, that smoothes the waves, but can not affect the tides.

Mr. GRAY. But you have indicated just now that if that speculative element was ended it would be up and down, as you indicated.

Mr. WHITNEY. Voluntarily.

Mr. GRAY. All right; that is all a speculator's heart desires, is it not?

Mr. WHITNEY. But you have eliminated the speculator, under your plan.

Mr. GRAY. But he would come back very fast if he saw a condition such as you have described existing.

Mr. WHITNEY. But, in the meantime, the markets would have been closed entirely.

Mr. GRAY. I imagine they would be, if they had been under your control.

Senator GORE. We are hearing a good deal about these bulls and bears. There is one other animal that I am concerned about and that I want to ask you about, Mr. Whitney. As I recall, in January, 1929, United States Steel was selling around 165 or 166. In September, 1929, it got as high as, I think, 261 and a fraction. United Corporation, I think, went on the board in 1929 around 28. In September it got up to about 75. And other stocks went up proportionately. Is that a sort of a bull market, Mr. Whitney?

Mr. WHITNEY. In the eyes of the people of this country, sir, yes.

Senator GORE. I figure that there were three classes of people in that market. There was the investor who thought United States Steel was a good buy, who bought it and looked it up, and thought he was making a good investment when he made it. He was the investor. Then, there was the speculator, who checked the market conditions and market trends and tendencies, who investigated the assets and earnings and orders of the company, and who felt the stock was selling too low and it would go up, and he bought it for a rise. I figure he was a speculator.

Then, there were a lot of people in this country who did not know anything about United States Steel, did not know where its plants or offices were, who did not know anything about market conditions generally, did not know anything about the assets, earnings, or orders of the company, but they had seen the stock advance for a month and just thought it would keep on going up. I figure they

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were gamblers. They were the lambs, Mr. Whitney. They just kind of wandered into this bear corral.

Is there any way, Mr. Whitney, to keep those gentle creatures out of this market? He is the fellow who got us into trouble to start with, buying without rhyme or reason. I remember one stock that was selling at sixty times its earnings. I do not think any investor bought that stock who figures things conservatively. I do not think speculators did. But there are a lot of these gamblers who had seen it go up who thought it would keep on going up, without any knowledge about it at all, without any knowledge of the conditions that should govern the value of the stock. They bought and, of course, their buying had a bullish tendency, and kept on shooting it up. If there is any way on earth to guard the fool against his folly, there is the place to start.

Mr. WHITNEY. I agree.

Senator GORE. But I don't know whether there is or not.

Mr. WHITNEY. But to start with, Senator, such a situation occurs not only in stocks and bonds, but in everything else that there is. It happend in copper, the metal. It happened in land. It happened in wheat and corn at other periods.

Senator GORE. Yes.

Mr. WHITNEY. It has happened in everything. I think that is an American trait.

Senator GORE. It happened in Florida on land.

Mr. WHITNEY. Yes.

Senator GORE. It happened in Long Island on land.

Mr. WHITNEY. Yes.

Senator GORE. Prices just kept skyrocketing.

Mr. WHITNEY. That is right.

Senator GORE. Of course, I assume if there had been a short interest in real estate it would not have gone so far or so fast. I don't know. But we did have a possible short interest in these advancing stocks, but I can see how no bear who relied on the real facts and conditions would venture in, when everybody came in who did not know anything about it and bought it without knowledge of the real value. I had a letter to-day, suggesting that you require these lambs to give their notes for the balance between the price and the margin. I do not think that would be of any service.

Mr. WHITNEY. That would keep the lambs out.

Senator GORE. It would.

Mr. WHITNEY. If they gave their notes. I don't think we would take their notes any more than perhaps real estate owners would.

Senator GORE. That might be a good rule, then. These lambs get shaken on every hand, and they do a lot of mischief. There are some people, Mr. Whitney, who seem to think that the people who study conditions and think that prices are going up and values will advance, and buy on margins for a rise, and if prices go up they make a profit—some people look on them as financiers and public-spirited patriots, but if, on the other hand, when they think prices are going up and they make a miscalculation, and they go down, and they lose money instead of making money, they are the victims of a bear raid.

Mr. WHITNEY. True. That is what the common thought is.

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Senator GORE. Now, on the other hand, the speculator is figuring the prices are too high, that they are fabulously high and can not stay up, and he goes in and sells, figuring they are going down, and they do go down, and he makes a profit. That is a bear raid. He has broken the price of the stock. If, on the other hand, he figures the price is going down and sells short and makes a mistake and the prices go up, he gets stung and takes a loss. He is just as foolish to start with, and it serves him right. [Laughter and applause.] Is not that the mental process of people of that sort?

Mr. WHITNEY. That, I think, is the way the people of the country are thinking.

Senator GORE. That is all, Mr. Chairman.

The CHAIRMAN. I want you to get through, Senator Gore. I do not want to interrupt you.

Senator GORE. I am through, Mr. Chairman. I am just trying to get the lamb in the fold, if I can. I would let the bulls and bears fight it out. [Laughter.]

The CHAIRMAN. Vanadium earned $1.50 in 1930 and pays no dividend now, but in 1930 hit a new high at 134. Was that the result of a pool operation?

Mr. WHITNEY. I do not know it, Mr. Chairman. All the steel stocks were selling at tremendous prices in that period. You say 1929?

The CHAIRMAN. No; in 1930. It hit the high price in 1930. What action would be taken if it was found that there was a group of brokers whose own records would show they had optioned large amounts of stock for the benefit of pool operators; would that be in violation of the rules?

Mr. WHITNEY. If they had options to buy stock for pool operators?

The CHAIRMAN. If they had optioned large amounts of stock for the benefit of pool operators, if they had gone in with the pool operators to buy the necessary stocks for them?

Mr. WHITNEY. It would all depend, Mr. Chairman, on what the operation was with reference to the conduct of the pool. There is no objection, certainly, to a man giving an option to another man in a legitimate way. Each and every case would have to stand on its own bottom.

The CHAIRMAN. I intended to go into that pool matter quite fully, but it is getting so late that I will just ask a few questions. Is it not a fact that such options are often secured without the payment of cash?

Mr. WHITNEY. I can not answer that, Mr. Chairman. I do not know.

The CHAIRMAN. Is it not a fact that in rigging the market they go out and take options for a certain time, at a certain price, and then later at another price, and then often it is done even without the investment of cash and without a single question being asked?

Mr. WHITNEY. I will try to answer that question in connection with Senator Brookhart's.

The CHAIRMAN. All right.

Mr. WHITNEY. I don't know what you mean. I would like you to explain what you mean by rigging a market.

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The CHAIRMAN. Oh, every person in this room knows what rigging a market is. I am not going to try to explain that to the best informed man on the stock market present. [Laughter.] Market letters have gone out indicating rises. Pools have been formed for the purpose of effecting them. Even houses of good reputation have aided in advancing the prices of stocks which sold for ten times what they are worth now.

Mr. WHITNEY. That may be, but is that proof that the prices were not realistic and proper?

The CHAIRMAN. There will be a good deal of proof brought out to show they were not realistic; yes. I will admit it is hard to demonstrate between what is realistic and what is artificial in a market of this kind. The artificial element is introduced so often and the blame is placed on the natural trend. Have you any knowledge of financial writers who prognosticate great increases in prices and hold options on shares of stock that they are trying to boost?

Mr. WHITNEY. I have not, sir.

The CHAIRMAN. All right. We just want to get you on record on some of these. Is there such a thing as a floor pool?

Mr. WHITNEY. I have answered that. I never heard of it before.

The CHAIRMAN. Is it not really a well-known fact that pools are sometimes formed on the floor, together with the specialist, to hold the price up at a certain point for a certain length of time? You are not going to admit that?

Mr. WHITNEY. No. I will admit that people may get together and try to buy stock in a particular security, but I can not understand——

The CHAIRMAN. The specialist has his book before him and he knows the exact status of the whole matter, and sometimes brokers on the floor get together with him or get together among themselves and form pools for the purpose of holding the market up a certain length of time.

Mr. WHITNEY. But to whose detriment is that?

The CHAIRMAN. That is the way you have been answering us for five days.

Mr. WHITNEY. But I don't see, Mr. Chairman——

The CHAIRMAN. I ask you whether it is a fact and you ask to whose detriment is it.

Mr. WHITNEY. I just said it could be done, but I don't think that anybody is being hurt, that any rigging of the market is taking place.

The CHAIRMAN. You admit it is done?

Mr. WHITNEY. I say it may be done.

The CHAIRMAN. Referring to wash sales, you say they are not permitted, I understand.

Mr. WHITNEY. They are not permitted.

Senator GORE. May I ask one question there, Mr. Chairman?

The CHAIRMAN. Certainly.

Senator GORE. I wish you would put in there in connection with Mr. Gray's question, as to what is the definition of a wash sale, what is a matched order.

Mr. WHITNEY. I should consider a matched order a wash sale. They are both of the same nature.

The CHAIRMAN. What is churning, according to your ideas?

Mr. WHITNEY. We have no such thing.

The CHAIRMAN. Is not the effect just the same as a wash sale?

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Mr. WHITNEY. Mr. Chairman, I don't understand you. Churning, by its name, would seem to be buying and selling stock actively.

The CHAIRMAN. You know that the papers have carried that churning story all the way from 1929, and yet the managers of the exchange don't know anything about it. You don't read the papers, evidently.

Mr. WHITNEY. I don't agree with everything the press says, not always. I don't always agree with them.

The CHAIRMAN. Is it not a fact that churning is a wash sale?

Mr. WHITNEY. No, sir.

The CHAIRMAN. Is it not a fact that the same time that they buy they also sell?

Mr. WHITNEY. If they sell——

The CHAIRMAN. That the operations are in connection with the specialist, who has the books there and knows everything?

Mr. WHITNEY. If a purchase is made at one price and a sale is made at another by the same individual, that is not in any way a wash sale.

The CHAIRMAN. In other words, to sell for the purpose of creating action, where nobody gains anything and nobody loses anything, is not a wash sale, unless it is called a wash sale; if it is called churning, it is not a wash sale, is that it?

Mr. WHITNEY. No; it is not a wash sale in either case, as I understand you.

The CHAIRMAN. But it washes, doesn't it?

Mr. WHITNEY. No, sir.

The CHAIRMAN. It washes out.

Mr. WHITNEY. Some one must lose on such a transaction.

The CHAIRMAN. Yet if they are on both sides of the market they don't need to lose, do they?

Mr. WHITNEY. I said if they traded, sir, at the same price, that is a wash sale. If they trade at different prices, the same individual, that is not a wash sale, and he must lose the difference.

The CHAIRMAN. What is the object of churning then, if your statement is correct?

Mr. WHITNEY. The object of churning, as you interpret the word, is activity in the market.

The CHAIRMAN. Is activity in the market for the purpose of fooling the public? Won't you admit that it has no other purpose?

Mr. WHITNEY. I do not think you have asked me a specific question as to what you want me to answer, Mr. Chairman.

The CHAIRMAN. I just asked you whether that was not the whole purpose of it.

Mr. WHITNEY. But aren't we assuming that something illegal or improper has been done; and that I do not grant.

The CHAIRMAN. You don't grant that anything on the street is improper or anything is illegal?

Mr. WHITNEY. Oh, yes, I do.

The CHAIRMAN. We are thoroughly convinced of that.

Mr. WHITNEY. Yes; I do.

The CHAIRMAN. We are not going to argue that with you. We can not convince you. You are hopeless. [Laughter.]

Mr. WHITNEY. I grant that lots of things are improper and illegal, sir. I have only tried to tell you that I thought the New York

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Stock Exchange was doing its utmost as a body of men to prevent illegal practices.

The CHAIRMAN. I notice in several cases that I called your attention to that there was not one where the New York State legislature had not forced the hand of the exchange. My attention has been called to other matters since. The rules against improper practices on the exchange can be traced right back to the State law that forced them. I notice that.

Mr. WHITNEY. And we have gone further than the State law in many cases.

The CHAIRMAN. And sometimes the rule you make is a paper rule and is not observed.

Mr. WHITNEY. That I do not agree with, sir.

The CHAIRMAN. No; of course not.

Mr. WHITNEY. Well, I ask for proof. I think that is but fair.

The CHAIRMAN. You attend these hearings for a while and we will give you some proof.

Mr. WHITNEY. I have. [Laughter.]

The CHAIRMAN. After a while we will have some other witnesses. Does the pool operator know the condition of the stock from the speculator?

Mr. WHITNEY. He may.

The CHAIRMAN. He may?

Mr. WHITNEY. As I have answered you, sir.

The CHAIRMAN. You will also admit that the public knows nothing about it, won't you?

Mr. WHITNEY. I will not.

The CHAIRMAN. Of course, we should not expect you to admit it.

Mr. WHITNEY. Mr. Chairman, if an investor came to me and asked me to find out about a specific stock, as to how he could buy a thousand shares, I would go to the specialist and ask him, and find out, and tell that investor, he being a part of the public.

The CHAIRMAN. He is a very small part of the public that deals on the market though, is he not? You tell one man, and he is part of the public, but the public itself would not know, would it?

Mr. WHITNEY. If they were interested, I see no reason not to tell them.

The CHAIRMAN. Of course, that is getting outside of the question.

Mr. WHITNEY. No; it is not getting outside of the question.

The CHAIRMAN. The specialist has information the public can not have, and therefore the public gets soaked, isn't that true?

Mr. WHITNEY. No, sir; I don't agree with that.

The CHAIRMAN. You and I don't agree on many things. Therefore, we will have to leave it there. Is it not a fact also that rigging the market and sending the values up to a high point works pretty good, but as soon as the support is withdrawn, then down it goes?

Mr. WHITNEY. I don't know, Mr. Chairman. The market went up and sustained itself on an upward curve with respect to almost every share, until the panic came.

The CHAIRMAN. There is a great difference in shares. The pool operations are quite evident.

Mr. WHITNEY. I do not know of pool operations in September and October of 1929.

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The CHAIRMAN. Sir?

Mr. WHITNEY. I do not know of pool operations at that time.

The CHAIRMAN. We don't expect to prove that by you; not at all. But I thought you would admit that one stock that did not pay a dividend, but still getting way up, and maybe going up while the general trend of the market was high, would almost in itself be proof of a pool support; but you won't admit that.

Mr. WHITNEY. Supposing that particular company discovered some very valuable oil on its property or discovered a gold mine or one thing and another; those things happen.

The CHAIRMAN. Supposing in two weeks it all went to the dickens, after the support is withdrawn.

Mr. WHITNEY. Yes.

The CHAIRMAN. And supposing the report of the discovery of oil was just a paper report, one of these letters we talk about, that is, to fool the public. Now, you won't admit wash sales, of course.

Mr. WHITNEY. No, sir.

The CHAIRMAN. But don't you think we can prove that from the market tape?

Mr. WHITNEY. No, sir.

The CHAIRMAN. You don't think we can?

Mr. WHITNEY. No, sir.

The CHAIRMAN. Well, we will try to.

Mr. WHITNEY. I will be glad to have you do it.

The CHAIRMAN. We think we are going to prove some of these things by your own records.

Mr. WHITNEY. There are a great many things, Mr. Chairman, that I would like the opportunity to put in the record, too.

The CHAIRMAN. We have quite a record already and we will give you some more chance. But we will go on. Is there any stock exchange rule that prevents any trader on the floor from selling 10,000 shares of stock to the specialist and then buying it from him at an eighth of a cent or a quarter of a point higher?

Mr. WHITNEY. Yes.

The CHAIRMAN. There is such a rule?

Mr. WHITNEY. Yes.

The CHAIRMAN. Have you any knowledge of the fact that it is done?

Mr. WHITNEY. I have not, sir, nor do we know of its having been done of late. That is not an actual rule of the exchange. It is an interpretation of exchange rules. I myself stated that to the specialists and other members of the exchange some time in the past.

The CHAIRMAN. What is meant, for instance, by a strong opening of a stock?

Mr. WHITNEY. More buyers than sellers as it opens up.

The CHAIRMAN. Is it not also a fact that a great deal of stock may be offered and some interested in boosting the market will buy a few shares just before the close of the day, and that goes out as a high quotation, showing a strong market in the stock. The stock may be bought at a relatively high price and it may make it look as though it is a good market for the public to get into. Do not those things happen?

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Mr. WHITNEY. That is not going to affect the price at the close if there are a lot of shares offered at a price and they take two or three hundred of them.

The CHAIRMAN. Is it not a fact that the sale is reported at a higher price and goes out at that price and is an invitation?

Mr. WHITNEY. It is perfectly proper for an individual, if the market is 15½–16, to pay 16 at the close.

The CHAIRMAN. Isn't that one of the methods used to boost the stock?

Mr. WHITNEY. It may be, Mr. Chairman. You have not cited to me any pool operation on which I can give you a proper answer. These are hypothetical questions.

The CHAIRMAN. They are hypothetical questions asked of a man who is a perfect encyclopedia of information in this matter and whose business, as Senator Brookhart has said, is not to know anything. I agree with the Senator on that. We have not had frank answers to many of the questions we have asked you.

Mr. WHITNEY. I am sorry, Mr. Chairman, but I have endeavored to do my best.

The CHAIRMAN. We will see if we can develop our case anyway.

Mr. WHITNEY. Yes.

The CHAIRMAN. You will be subject to call, Mr. Whitney, but you do not need to be here to-morrow. It is time that we adjourn now until then.

Mr. WHITNEY. Mr. Chairman, you gave me your word that I could put in certain evidence.

The CHAIRMAN. Certainly.

Mr. WHITNEY. And that is going to take me a considerable length of time. I have also asked your permission at a previous hearing, the first hearing, for the right to file a more formal brief to this whole question on the affirmative side of this matter. I have been merely here attempting to answer questions on things that I still claim that I do not know.

The CHAIRMAN. We have not dismissed you, Mr. Whitney. You understand that. You are still under the subpœna. It is a question of whether you want to put those in to-night or the next time you come here. Certainly we want to give you a chance to put in your side of the case.

Mr. WHITNEY. I would like, if you can spare the time, to put them in to-night. Or I will appear and very shortly put them in in the morning.

Senator GORE. Mr. Whitney, would it be too much trouble for you to put in a chart, beginning in about the middle of May, 1929, and give the course of the prices of United States Steel, General Motors, American Telephone & Telegraph, until the crash in October, and also the course of the prices of Standard Oil of New Jersey and two or three independents like Phillips, Skelly, and Barnsdall.

Mr. WHITNEY. Yes, sir.

Senator GORE. I wish you would do that.

Mr. WHITNEY. From June, 1929, until when?

Senator GORE. From about the middle of May.

Mr. WHITNEY. The middle of May?

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Senator GORE. There was a rally in oil at that time in the Standard of New Jersey and these independent petroleum companies. I think it would be an interesting revelation as to the course of these independent stocks. They went down in the crash and these other stocks went up. There might be some inference drawn later on, if we could get the short interests in those stocks, whether the decline in those independents could be laid to short selling, what the reason might be.

Mr. WHITNEY. We would be glad to get that, Senator Gore.

Senator GORE. It had a very marked effect, whatever the cause was.

Are you through for the night, Mr. Chairman?

The CHAIRMAN. No; Mr. Whitney may place these matters in the record. Do you want to make a statement in connection with them?

Mr. WHITNEY. Mr. Chairman, it is going to take quite some time. I can do it to-morrow.

The CHAIRMAN. I will say this, Mr. Whitney, that as far as putting the record in, you can do it at this time, and as far as making any statement we will give you a chance to make it—your statement will take how long?

Mr. WHITNEY. The statement and the records are all dovetailed into each other, Mr. Chairman. I think I can do it in about a half to three-quarters of an hour, unless there are a great many questions on these matters.

The CHAIRMAN. In view of the lateness of the time, Mr. Whitney, and the fact it is going to take that long, I suggest you let that go until you appear next time as a witness.

Mr. WHITNEY. And I may not have that opportunity to-morrow morning?

The CHAIRMAN. You will have the opportunity. I promise it to you.

Mr. WHITNEY. But not to-morrow morning?

The CHAIRMAN. To-morrow morning we have a number of witnesses who were subpœnaed for to-day, who have waited all day for you to get through, and we have got to give them a chance, too.

Mr. WHITNEY. Well, I am sorry that that is your decision.

The CHAIRMAN. If you want to place your records in, you can do that. If it is going to take an explanation of a half an hour or three-quarters, we can not do it to-day or to-morrow, but we will do it for you.

The committee is adjourned until 10.30 to-morrow morning.

Mr. WHITNEY. Mr. Gray, do you want to be present while I put these things in now?

Mr. GRAY. I have no objection to your putting them in now, if you care to do it that way. I will ask the reporter to see that I get a look at them a little bit later on.

Mr. WHITNEY. I want to put in a copy of the constitution of the New York Stock Exchange (as of October 28, 1931), to which reference was made several times to-day.

(The book referred to was marked "Exhibit No. 24," and will be printed in the appendix.)

Mr. WHITNEY. I wish to put in a bound copy of statistics in regard to short selling, April 1 to April 12, 1932, inclusive.

(The bound copy of statistics referred to is marked "Exhibit No. 25" and will appear in an appendix to be printed hereafter.)

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Mr. WHITNEY. I wish to put in three memoranda, Nos. 1, 2, and 3, on United Corporation, with reference to which Senator Brookhart was interested.

(The document referred to is marked "Exhibit No. 26," and appears as follows:)

EXHIBIT No. 26

MEMORANDUM NO. 1, UNITED CORPORATION

The highest market value of stocks of United Corporation reached in 1929 appears to have been on September 23, 1929. The number of shares outstanding on that date of each class, the quotations and the portfolio values are shown below:

Common:	
Shares	7,178,438
Price	75½
Market value	$541,972,069
Preferred:	
Shares	1,779,367
Price	48⅜
Market value	$86,076,879
Total highest market value	$628,048,948
Portfolio value	$545,818,219

The number of shares outstanding April 8, 1932, were as follows:

	Shares
Common	14,529,456
Preferred	2,488,658

Of these, 7,275,972 shares of common were not outstanding at any time during 1929, and 7,351,018 shares of common were not outstanding on the date of highest market valuation.

Of the preferred stock outstanding April 8, 1932, 709,291 shares were not outstandinf either at the date of highest market valuation or at any other date in 1929.

MEMORANDUM NO. 2, UNITED CORPORATION

United Corporation has outstanding certain option warrants entitling holders to purchase common stock at $27.50 a share. The highest number of these at any time outstanding was 3,994,757. On September 23, 1929 (the date of highest market valuation for the securities as a whole), 3,804,204 option warrants were outstanding, of which a very small proportion were available for trading. The highest market price of these option warrants on September 23, 1929, was 46¼ bid. (Actual sale price, if any, can not be ascertained.)

Assuming that the references to the market value of the securities was meant to include these option warrants, it must also be assumed that $27.50 per warrant had been paid into the company's treasury and added to its assets. This gives the following comparison:

	Total highest market value		Portfolio value
1. Common and preferred stocks (memorandum No. 1).	[1] $628,048,948	Actual from memorandum No. 1	$545,818,219
2. Add market value option warrants same day.	[2] 175,944,435	Add additional portfolio value from assumed exercise of option warrants at $27.50.	104,515,610
3. Highest market value, including option warrants.	803,993,383	Adjusted value, including exercise of options.	650,333,829
4. Statement in record regarding corresponding valuations.	1,397,000,000		267,000,000

[1] The market value assigned in the record to the securities of United Corporation is approximately two and one-fifth times the highest market value reached in 1929 by the preferred and common stocks, while the valuation assigned to the portfolio is only one-half its actual valuation on the same day.

[2] The market value assigned in the record is approximately one and three-fourths times the highest market value reached in 1929 by all securities of United Corporation, including option warrants, while the valuation assigned to the portfolio is only two-fifths of its valuation on the same day, adjusted to give effect to the exercise of the option.

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MEMORANDUM NO. 3, UNITED CORPORATION

Surmised basis which may have been used in arriving at statement appearing in record as to market value of securities of United Corporation ($1,397,000,000) and as to valuation of securities held by United Corporation ($267,000,000).

	Actual securities of United Corporation outstanding at date of highest collective market value, Sept. 23, 1929	Present outstanding securities (Apr. 8, 1932)	Highest market price reached by each during 1929	Market value of present securities at highest 1929 quotations
Common shares	7,178,438	14,529,456	75½	$1,096,973,928
Preferred shares	1,779,367	2,488,658	49⅞	124,121,818
Option warrants	3,804,204	3,732,059	47⅞	178,672,324
				1,399,768,070
The total market value of securities actually outstanding on day of highest collective market value, was, as shown on Memorandum No. 2				803,993,383

The nearest approximation which has come to light of the figure of $267,000,000, quoted in the record as the highest value of the securities in the portfolio, is that the annual report for 1931 gave the estimated market value of total investments December 31, 1931, as $269,405,996. This compares with a portfolio value of $545,818,219 on September 23, 1929. (See statements Nos. 1 and 2.)

Mr. WHITNEY. I wish to put in the record a memorandum regarding the work of the committee on stock list.

(The memorandum referred to is marked "Exhibit 27," and is printed in the record in full, as follows:)

MEMORANDUM REGARDING WORK OF THE COMMITTEE ON STOCK LIST

It is difficult to make a statement as to the precautions taken by the New York Stock Exchange in the admission of securities to the list without creating a wrong impression. A perusal of the requirements for listing would tend to create the belief that the committee on stock list, which considers and makes recommendations to the governing committee upon all listing applications, functions in a purely perfunctory manner. On the other hand, a full statement of the activities of this committee might tend to create an impression that investors in listed securities are safeguarded to a degree which would be impossible. The truth, of course, lies between these extremes.

The committee on stock list does not attempt to pass upon the value of securities covered by a listing application. It does, however, attempt to assure itself that such securities have some real value at the time of admission. Listing, however, provides no assurance that a business may not become less profitable in the future than it has been in the past, nor that the securities listed may not decline in market value or intrinsic value, or both, after listing. There is a distinct recognition by the committee of responsibility to provide the investor, as far as is practicable, with means of judging a value for himself, and to afford the investor such reasonable protection in other respects as is available under the conditions applicable to the work of the exchange.

The committee has general listing requirements, special requirements for listing foreign-bearer shares, special requirements for listing securities of management type-investment trusts, special requirements for listing foreign government bonds, special requirements for passing upon the association of members of the exchange with investment trusts of the fixed or restricted management type, together with forms of agreement pertinent to different types of application, lists of documents to be filed in support of applications, and other similar matter.

These requirements deal with the nature and extent of the information to be furnished, which information must be embodied in a printed application.

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An application may conform literally to requirements in all respects, but the information therein disclosed, or brought out at the hearing of the initial application of any company, may show that the securities in question are not available for listing, in which case such application will be deferred until the faults are cured, or rejected altogether.

In passing upon applications, the committee on stock list considers the following points, among others:

1. The character of the officers and directorate of the company, if the applicant is a corporation or association as distinguished from Government, State, and municipal issues.

2. The validity of the issue. With each original listing application, and with each application to list additional securities of like character, an opinion of counsel must be forthcoming as to the validity of such issue.

3. There must be clear evidence that there is something to be listed, either a substantial amount of property, or a substantial amount of earnings, or both. The exchange will not list a void or anything depending upon mere hopes and prospects.

4. The size of the corporation and of the issue. There must be a sufficient volume of securities to be listed to meet the needs of an orderly market, and the corporation as a whole must be large enough to have a reasonable prospect of success in the particular line of business in which it is engaged.

5. Sufficient distribution of the securities to be listed, to avoid the liklihood of a corner or other troublesome market condition, must be assured.

6. Objection is made to listing the securities of a corporation whose business or accounting practices, as disclosed by its application, at the hearing before the committee, or in any other manner becoming known to the committee, are such as appear likely to mislead the public.

7. Each application (excepting one for listing certificates of deposit representing securities already listed) must contain a substantial amount of financial information, including balance sheet, income account, and surplus statement, in such form as to be readily understood. The surplus statement, however, if relatively simple, may be combined with the income account. Applications must be accompanied by an agreement that all future financial reports will be in the same form as those submitted in the listing application.

8. The corporation must agree to publish, once in each year, and to submit to its stockholders at least 15 days in advance of its annual meeting, the above-described financial statements. In the case of holding companies, the agreement provides either for full consolidated reports of all majority-owned subsidiaries, or, in lieu thereof, for information in other form sufficient to determine the aggregate gains or losses of the system as a whole. The corporation must also agree to publish statements of earnings quarterly or semiannually wherever conditions permit. Careful consideration is given to all cases in which representations are made objecting to the rendition of quarterly statements.

9. Each listed issue of stock must have a transfer agent and a registrar, without whose signatures the certificates representing the stock are not valid. To qualify as an acceptable transfer agent and registrar, a formal application, with accompanying documents, must be approved by the committee on stock list. Individuals, as such, are not acceptable in either capacity, but a corporation may act as its own transfer agent. A registrar must be a bank or a trust company. Registrars of all stocks listed on the exchange are under written agreement not to register any additional shares without the written authority of the exchange. Applicants for listing both stocks and bonds are under agreement not to bring out additional issues without first making application for listing. These precautions are taken to prevent, as far as may be, the possibility of an overissue. They appear to have been fully effective since they were first designed.

10. No security may be admitted unless it is prepared by an engraving company or a bank note company upon whose work the committee on stock list has been authorized by the governing committee to pass. This authorization is given only after formal application by such engraving or bank note company, and involves careful inspection of the premises and other precautions. Specimens of all securities to be listed must be submitted to the committee on stock list for examination as to workmanship, in order to see, as far as is practicable, that the certificate is protected against counterfeiting and conforms to the required standards as to engraving.

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Each application for listing is carefully scrutinized by members of the office force, and is submitted to the members of the committee on stock list with a comment or analysis, pointing out its salient features and the objections, if any, raised thereby to listing. When an application is approved by the committee on stock list, it is recommended by them to the governing committee of the exchange for final approval.

New forms of securities are frequently evolved, and changes in the corporation acts of the estates, together with changes in economic conditions, give rise to frequent new problems as to forms of charters, accounting methods, and business practices. The attitude of the exchange is one of constant watchfulness to prevent the admission to its list of securities of corporations the nature of whose business and character of whose charters, or whose business and accounting practices, do not appear to adapt such securities to widely disseminated public ownership.

The work of the office force of the committee on stock list involves daily many consultations and interviews with corporation officials or representatives, lawyers, accountants, and others, upon old or new corporate practices and problems, with a view to the determination of the manner, if any, in which these practices or problems affect the availability for listing of the securities. In such consultations it is usual that both parties endeavor to secure the correct answer, rather than to establish, defend, or attack any particular practice.

The requirements of the exchange are well known, and but few manifestly unfit companies apply for listing. In cases of doubt as to whether a company can qualify, there are usually preliminary conferences with members of the office staff which tend to prevent the formal submission of applications which the committee would manifestly have to reject. In such cases, prospective applicants are always advised, however, that application may be made, and will be considered by the committee, if desired by the applicant. There are thus relatively few rejections of applications submitted. The more usual causes for such rejection are the size of the corporation, or the volume of to securities outstanding and to be listed are inadequate, or that the distribution is inadequate.

Mr. WHITNEY. I wish to put in the record a complete set of listing requirements, including papers in regard to fixed investment trusts.

(The document referred to is marked "Exhibit 28." Same will appear hereafter in an appendix.)

Mr. WHITNEY. The next is a set of typical applications, with an index as to what is contained.

(The documents referred to are marked "Exhibit 29," and are retained in the committee files.)

Mr. WHITNEY. I also wish to file a pamphlet entitled "Accounting for Investors," written by the executive secretary of our committee on stock list.

(The pamphlet referred to is marked "Exhibit 30," and is retained in the committee files.)

Mr. WHITNEY. I wish to file a list of circulars of the committee on business conduct with regard to advertising.

(The circulars referred to are marked "Exhibit 31." Same will be included in the appendix.)

Mr. WHITNEY. I wish to file a memorandum showing the holdings of listed stocks by other listed corporations.

(The memorandum referred to is marked "Exhibit 32." Same will be included in the appendix.)

Mr. WHITNEY. I wish to put in a chart showing the relation of farm-land prices in Iowa to corn prices in that State during the period of 1912 to 1930, inclusive.

(The chart referred to is marked "Exhibit 33." Same will appear in the appendix.)

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Mr. WHITNEY. I wish to put in an exhibit of typical forms of contracts between customers and firms registered on the New York Stock Exchange covering margin accounts, and commonly called margin agreements.

(The documents referred to are market "Exhibit 34" and are retained by the committee for its purposes.)

Mr. WHITNEY. The next is a set of typical collateral loan agreements used by various New York banks and trust companies.

(The documents referred to are marked "Exhibit 35." Same will appear in the appendix.)

Mr. WHITNEY. Next are typical forms of day-loan agreements used by various New York banks and trust companies.

(The documents referred to are marked "Exhibit 36." (See appendix.)

Mr. WHITNEY. I want to put in a chart and a copy of data on which this chart was based, showing the variations for 1928, 1929, 1930, 1931, and for the first few months of 1932 in prices of corn and wheat traded in on exchanges, and a chart showing the prices of apples and potatoes not traded on exchanges.

(The charts referred to are marked "Exhibit 37." Same will be printed in appendix.)

Mr. WHITNEY. Also a chart appearing in the New York Times of April 16, entitled, "Comparison of the stock averages with reserve loan figures."

(The chart referred to is marked "Exhibit 38" and is retained by the committee for its purposes.)

(Whereupon, at 6.10 o'clock p. m., Thursday, April 21, 1932, an adjournment was had to 10.30 a. m. of the following day, Friday, April 22, 1932.)

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STOCK EXCHANGE PRACTICES

FRIDAY, APRIL 22, 1932

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met at 10.30 a. m., pursuant to adjournment on yesterday, in room 301, Senate Office Building, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Townsend, Walcott, Blaine, Carey, Couzens, Fletcher, Glass, Barkley, Bulkley, and Gore.

Present also: William A. Gray, Esq., associate counsel to the committee.

The CHAIRMAN. The committee will come to order. I will ask Senator Brookhart to take the chair.

Senator BROOKHART (presiding). Who is your next witness, Mr. Gray?

Mr. GRAY. Mr. Matthew C. Brush.

Senator BROOKHART. Mr. Brush, will you please stand and hold up your right hand to be sworn: You do solemnly swear that the evidence you will now give and the answers you will make to the questions propounded to you will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRUSH. I do.

Senator BROOKHART. Be seated.

TESTIMONY OF MATTHEW C. BRUSH, NEW YORK CITY

Senator BROOKHART. You may proceed, Mr. Gray.

Mr. GRAY. Mr. Brush, will you give to the committee reporter your full name?

Mr. BRUSH. Matthew C. Brush.

Mr. GRAY. Where do you reside?

Mr. BRUSH. 128 West Fifty-ninth Street, New York.

Mr. GRAY. New York City?

Mr. BRUSH. Yes, sir.

Mr. GRAY. Try to keep your voice up so that everybody can hear you.

Mr. BRUSH. I will.

Mr. GRAY. Mr. Brush, would you be designated as having any special business or profession?

Mr. BRUSH. I am president of an investment trust, and an officer in several other types of companies.

Mr. GRAY. The investment trusts you refer to are what?

Mr. BRUSH. The American International Corporation.

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Mr. GRAY. When you say you are interested in several other companies, do you mean as an officer or director?

Mr. BRUSH. Mostly as director. I am an officer in some companies, and am chairman of the executive committee, or chairman of the finance committee, or on some committee, but not president of those companies.

Mr. GRAY. Officially you are interested in approximately how many corporations in one capacity or another?

Mr. BRUSH. May I answer that question in this way: I am associated perhaps with approximately 50 corporations.

Mr. GRAY. Are those corporations in the main corporations whose stock are traded in on the New York Stock Exchange?

Mr. BRUSH. Yes, sir.

Mr. GRAY. As a matter of fact, you, in addition to the associations that you have indicated and from which you may gain some knowledge of the New York Stock Exchange, have been a pretty heavy trader in stocks, haven't you?

Mr. BRUSH. It depends on what you mean by trader. I have traded substantially in stocks; yes, sir.

Mr. GRAY. We will develop that a little more later on, but we may say at this time that you have been a trader on the New York Stock Exchange.

Mr. BRUSH. Yes.

Mr. GRAY. And you——

Mr. BRUSH (interposing). Pardon me, Mr. Gray, but I want to say here I am not a member of the New York Stock Exchange.

Mr. GRAY. I know you are not, and I was going to develop that point. You are not a stockbroker.

Mr. BRUSH. No, sir.

Mr. GRAY. Are you affiliated in any way with any brokerage house or houses?

Mr. BRUSH. No, sir.

Mr. GRAY. And do you do any trading for anybody else than yourself?

Mr. BRUSH. For myself and friends. That is, we handle no trades for the public.

Mr. GRAY. For how long have you in the way you have indicated, for yourself and such others as may be associated with you, been trading on the New York Stock Exchange?

Mr. BRUSH. Well, I will say approximately since the summer of 1921.

Mr. GRAY. Did you say approximately since the summer of 1921?

Mr. BRUSH. Yes, sir; but I am not dead sure of that date. It may have been in the fall of that year or the first of the next year, but that date is substantially correct.

Mr. GRAY. Now, Mr. Brush, on the question of the volume of your trading I should rather leave to you what gauge you will adopt to indicate the volume of it. What has been the extent of your trading?

Mr. BRUSH. Well, when I first started to trade it was pretty skinny trading. A man ordinarily trades in the market to the extent of his capital, or to the extent that his finances will permit. I started in probably buying and selling—well, before I came to New York I would buy 100 shares or 50 shares of stock on the Boston

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Stock Exchange. But I have traded as high as—well, I have had a long position in the market, in 1929, and you will understand that I am guessing at this because I did not have this thought in mind, but, say, 125,000 shares.

Mr. GRAY. That is to say, on the up move in 1929, prior to the time when the stock market reached its peak, along in the month preceding that time.

Mr. BRUSH. Yes, sir.

Mr. GRAY. You were long on approximately 125,000 shares.

Mr. BRUSH. Yes, sir.

Mr. GRAY. Does that represent your greatest long position?

Mr. BRUSH. I think so, Mr. Gray. Now, you will understand that that is not exactly correct, but I think it is approximately correct.

Mr. GRAY. All right. You trade on both sides of the market, I suppose, on whichever side you think is to your own personal advantage?

Mr. BRUSH. Yes, sir.

Mr. GRAY. And what can you say to the committee as to the greatest or the largest position that you have ever assumed on the short side of the market?

Mr. BRUSH. I will say it was approximately the same figure.

Mr. GRAY. In other words, there was a period of time when you were approximately 125,000 shares short on the market?

Mr. BRUSH. Yes, sir.

Mr. GRAY. Now, on the question of volume which that represents in dollars and cents, can you indicate to the committee that short interest, either in the matter of its gross or its average price per share, and you will understand that I do not expect you to be exact about this, but just want you to give the committee the best information you can.

Mr. BRUSH. May I ask my associate here about that?

Mr. GRAY. Oh, yes. There is no objection to your consulting him. Let Mr. Millar bring his chair up closer to you there.

Mr. BRUSH. I thank you. Now, Mr. Gray, I want to answer this in the way that you want it.

Mr. GRAY. Go right ahead, in your own way.

Mr. BRUSH. The liquidating value of my position in August of 1929, which we will call the peak of the market——

Mr. GRAY (interposing). You say that was in August of 1929?

Mr. BRUSH. Yes, sir.

Mr. GRAY. Wasn't the peak of the market rather a little bit later than that?

Mr. BRUSH. No, sir. September 22, 1929, I think, was the high date; but this time I am talking about was in August or September of 1929. It was not when the market broke, on October 24. It did not break during the peak of the market. It had broken maybe four or five weeks before that, in a way. I would say that the liquidating value of everything I had on the market at that time was in the vicinity of $15,000,000.

Mr. GRAY. Mr. Brush, you have already stated that there were times when you thought it was to your interest to maintain a short position. Let me ask you whether or not when stocks were climb-

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ing in 1929 you ever at any time during that period maintained a short position?

Mr. BRUSH. I do not think, Mr. Gray, I was ever short of stock until—well, let me consult my associate?

Mr. GRAY. Certainly. Go ahead.

Mr. BRUSH. My associate confirms my impression that I was never short to amount to anything—oh, I might have been short 1,000 shares—but not to amount to anything.

Mr. GRAY. In other words, your figure of 125,000 shares on the long side would probably represent your net position?

Mr. BRUSH. Yes, sir. And on the short side I will say I did not start in on the so-called short selling until the spring of 1930, and as a matter of fact, it was in April of 1930.

Mr. GRAY. And then you thought you were exercising good judgment.

Mr. BRUSH. That was the idea I had, and I stayed with it.

Mr. GRAY. The point I want to ask you about in respect to that is this: A man who trades as you do and steps from the long to the short side of the market when in his judgment he thinks that the proper thing to do, as a matter of fact waits, does he not, until after, like in a movement such as 1929 and followed by 1930, until that peak is reached and he thinks it is on a steady decline and it gets thoroughly started, before he takes a short position; isn't that true?

Mr. BRUSH. Well, Mr. Gray, there are two distinct schools in both the matter of buying and selling stocks. I might say that I am definitely and distinctly of one school, although there are a great many very successful men who do not agree with me. I do not believe in selling stock on the scale down and I do not believe in buying stock on the scale up. If I think a stock is going to go up eventually and is a good purchase, I buy it, because it is my belief that if it is not a buy at that price then it is not a buy at all.

Mr. GRAY. You do not keep buying as the price advances?

Mr. BRUSH. No, sir; nor sell as the price declines.

Mr. GRAY. In other words, you mean that you take your position with your first substantial purchase.

Mr. BRUSH. Mr. Gray, you understand that I am not a trader from day to day or during the day. In other words, if in my own mind I think the short position is the correct one, according to the way I view it, then it is an investment in the short position for me. I may be short by a thousand shares of stock and long of 10,000 shares of another stock, or vice versa.

Mr. GRAY. Because you think one is going up and the other going down.

Mr. BRUSH. Yes; or if I can not sell one I am long of. For instance, I am a director in a bank, and I am a member of the executive committee of the same bank. I want to remain in that bank. I want to stay in it, and I own a substantial block of stock in it. In order to protect my long position—and I will say that I am, or have been for a year, thoroughly confident that the bank stock would hit a lower price. I do not think I would exercise good sense to stay very long of stock which I thought would sell lower; therefore I sold short in a readily marketable stock, against my position in the bank stock, in order to keep my position. Now, Mr.

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Gray, I do not want to make my answers so long, but you asked me and I got going. [Laughter.]

Mr. GRAY. I do not care how long you make your answers so long as you make them intelligible to us.

Mr. BRUSH. Well, I will do my best, and if at any time I fail to make myself understood just ask me over again.

Mr. GRAY. All right. Now, Mr. Brush, you spoke of that being your own method, but I take it even in following your own method you would rarely assume a short position, of course, unless it might be in some particular stock, while the market was having a general move upward, and that you would rarely assume a long position while the market was having a general decline. Is that a fact?

Mr. BRUSH. That is a difficult question to answer, because the only time you can sell stock short is when there is a demand for it. You certainly can not sell stocks short if there is not a buyer. For instance, if you start in selling 1,000 shares of stock at 70, and if it is a thin stock, probably by the time you get off the last 500 shares it will stand at 60, so that would be poor trading. But, if you are going to take a substantial short position you ought to begin selling while the market is advancing, which gives you a demand.

Mr. GRAY. In other words, try to pick the time of the turn.

Mr. BRUSH. Yes; or rather be ahead of the turn and take a licking down if necessary. If you buy stock and if the condition exists as it does to-day, at a time when the market has seen its bottom, which a lot of people think it has seen, and a man wants to take a position himself and says, "I don't want to sit here and see the parade go by," he puts in buying orders on the scale down. Now, Mr. Gray, my policy may be wrong and the other fellow may make more money his way, but I should rather miss the market for 10 points on the rise and thereby see the condition of the market sufficiently reflected and miss those 10 points than to try to buy at the bottom of the market.

Mr. GRAY. Mr. Brush, you spoke of stocks in which you might find a thin market. As a matter of fact, traders like yourself deal pretty much in stocks that might be called pivotal and of which there is generally a supply, do they not?

Mr. BRUSH. Yes, sir.

Mr. GRAY. You find it safer to do that?

Mr. BRUSH. Oh, yes; it is a dangerous thing to be short of the market when there is a very scant supply.

Mr. GRAY. What is your opinion with respect to its effect upon the market, whether it be on the up side or the down side, when there are extensive dealings in some of the pivotal stocks? Does it control generally the movement of other stocks?

Mr. BRUSH. I do not think, Mr. Gray, it controls it, but it is a factor.

Mr. GRAY. It has a decided effect upon other stocks.

Mr. BRUSH. Yes, sir; and it depends upon thousands of things that affect the market. Really the market is affected by supply and demand and by whether a man—well, if you take it in the matter of the liquidation of stocks so-called, and our term, as we understand the term, liquidation means that you may finally get discouraged about it, let us say, United States Steel, that you have in your drawer, and you go to your box and get it and sell it. That means

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liquidation. And it is the same thing in the case of a bank or any other institution. And if there is a big supply of any stock, then the market will go down, because it is a question strictly of supply and demand no matter whether it be a case of cattle, or horses, or the securities market, or paintings, or anything else; the buying or selling of stocks by you and I certainly is a contributing factor.

Mr. GRAY. Although I want to go into that further a little bit later, I want to ask you this question here: As stocks are bought and sold on the New York Stock Exchange, the law of supply and demand of course affects them. On the other hand, they are affected decidedly by artificial manipulation, are they not?

Mr. BRUSH. Mr. Gray, I can not answer that question yes or no. But I will say that stocks could be manipulated.

Mr. GRAY. All right. Suppose we let that rest until I come to the point of asking you about some of the practices of the New York Stock Exchange, which I will do later on.

Mr. BRUSH. All right.

Mr. GRAY. You mentioned what you have told us as being one school that you followed. You also said there was another school, whose methods were different from this school that you have mentioned and that you follow. Won't you explain how they operate?

Mr. BRUSH. Well, say a man decides he wants to have a long line of United States Steel. In other words, he wants to own 10,000 shares of United States Steel, and we will say United States Steel is selling at 50. He will put in an order to buy 1,000 shares at 50 and 1,000 shares at 49½ and 1,000 shares at 49¼, and so on down. If he does not get the whole 10,000 shares within a 5-point range, he misses that portion.

I might state to the committee that I know of a specific instance, the case of a man who is now dead, a man whose name everybody is familiar with, although I do not care to mention it here, and I sat in his office with him and he put in an order to buy 10,000 shares of stock selling at par. He put in an order for 1,000 shares at 100, and then 1,000 shares each at one-eighth down. While I sat with him he got a report on his order and he owned his 1,000 shares at 100, but the market never sold below 100. He was trying to buy 10,000 shares. Then the market went up 100 points. Now, he missed one hundred times 9,000 shares profit by trying to buy the stock at points one-eighth down.

Now, that illustrates my point, which is the opposite of that school of thought, that if a stock is a buy at 99 it is a buy at par or it is not a buy at all. But that is the idea of the other school; and in selling it is the same way. If a man has 10,000 shares of United States Steel and it is selling at par and he wants to get rid of it, or if he is going to sell 10,000 shares short, he puts in an order to sell 1,000 shares at par and 1,000 shares each at fractions on the way down. He may get his Steel all off or he may not, dependent upon the market.

Mr. GRAY. That means selling on the scale up or buying on the scale down.

Mr. BRUSH. Yes, sir.

Mr. GRAY. What is wrong in back of that method? Is it better to assume the average position?

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Mr. BRUSH. The average position. And as I say, a fellow will use the expression to-day that he does not want to see the procession go by. I do not know what United States Steel is selling for to-day——

Mr. GRAY (interposing). Well, it is low enough, 29 or 30, I believe.

Mr. BRUSH. Oh, well, I will not comment on that. I was going to say something along that line, but I think I better not.

Mr. GRAY. Go ahead. The committee wants your comments.

Mr. BRUSH. Well, I am no prognosticator.

Mr. GRAY. The committee would like to hear your comments.

Mr. BRUSH. Well, I won't attempt to do it. I think I better not. And, too, it is difficult for me to defend the other fellow's school.

Mr. GRAY. But you have heard it discussed. Go ahead and tell us.

Mr. BRUSH. All right. But United States Steel may not go down, and it is selling at 30, we will say. On the other hand, the man is scared to death not to be long of steel. Ordinarily he would be long of steel. Ordinarily he would want a position of 10,000 shares. So he figures if he buys 1,000 shares at 30 and 1,000 shares at 29½ and 1,000 shares at 29¼ he will not be able to get his desired 10,000 shares. So he will take his position and will pocket his pride and be satisfied if he can buy some of it at the bottom. And it is the same way in selling; he sells on scale. He does not attempt to make the entire sale at once but is satisfied to sell 100 shares right at the top or to buy 100 shares right at the bottom.

Do I make myself clear, gentlemen?

Mr. GRAY. I think so.

Mr. BRUSH. Well, I don't know, but I will try.

Mr. GRAY. Well, now, Mr. Brush, will you give this committee your opinion, irrespective of what your own interests may be, very briefly as to the effect, and we will take one side of the market first; as to the effect of outside heavy short selling in a declining market?

Mr. BRUSH. Oh, it influences the market.

Mr. GRAY. Decidedly influences it, doesn't it?

Mr. BRUSH. Needless to say, I can not guess—but let me illustrate it, and perhaps that will give you a better explanation of what I mean: Let us assume that United States Steel is selling at 30, and you, as the representative of a large institution, have 100,000 shares of steel. And you have in mind to get rid of it. You start in to sell some at 30. There is not sufficient demand for you to get off more than 4,000 or 5,000 shares at 29⅞. Let us say that I know what you are doing, and I come in and offer 5,000 shares of United States Steel at 29⅞. If there is long United States Steel that has been sold ahead of that price then I am in competition with you, selling my short position against your liquidating your long position at the same price. That shows that the supply is greater than the demand to the extent that I have sold short at that price, if I know you are selling long, and then I think it has an effect in depressing the market.

Mr. GRAY. Well, Mr. Brush, I am quite sure that the committee appreciates whatever information you can give them.

Mr. BRUSH. Oh, well, Mr. Gray, this is not a technical question that you and I are talking about. I don't care whether you sell chickens or rabbits or milk bottles, the situation is about the same. If there are too many milk bottles being offered, then the fellow

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has to lower his price in order to get rid of what he has to sell. Some of these gentlemen sitting around this table no doubt have worked on the farm, and they know what it means to get rid of agricultural commodities, and they also doubtless know that the stock market is no different. For me to sit here and tell you if I have 5,000 milk bottles to sell and only 500 are wanted, that that situation does not affect the price of the 500 milk bottles that are wanted would be foolish.

Senator BROOKHART (presiding). If you sell 500 milk bottles and then someone else comes in and offers to sell 5,000 milk bottles, he does not know what he will get for them.

Mr. BRUSH. That is what I say, it increases the supply.

Mr. GRAY. Well, I will say that we tried to convince Mr. Whitney of that but he would not be convinced. That is to say, when there was a large short interest that stepped into a declining market it aided liquidation, sometimes to the point of giving the market a decided depressed condition.

Mr. BRUSH. Of course, Mr. Gray, I should say in all justice that if somebody should come in while we are working on these milk bottles and desires to purchase 10,000 milk bottles, there would be another situation. While it is not a controlling factor, yet it is a contributing factor.

Mr. GRAY. On a declining market the short interest increases decidedly down to a certain point in that market, where the experienced shorts come to the conclusion it is time for them to begin to cover, isn't that so?

Mr. BRUSH. Mr. Gray, that is an awfully hard question to answer.

Mr. GRAY. Well, you have of course made a study of the various movements of stocks.

Mr. BRUSH. I have a chart here which I think partially answers your question.

Mr. GRAY. I will be glad for you to look at it, but our experience has been in examining charts as to the market in general and as to certain pivotal stocks that when we reach a point in the decline in price of 15 points, we will say, generally that short interest will go up a few hundred thousand shares.

Mr. BRUSH. Well, Mr. Gray, I won't quarrel with you on figures, but if there is a declining market, and a man who has a profit is convinced—and you must remember that you are backing your judgment with money on stocks or anything else—if there is a declining market, and he is convinced there is either going to be a sufficient short interest or long interest liquidating in the stock to make a further decline, he sees a good chance to take a short position in the market until it reaches a point where you have definitely buyers of stock, when he can not duck buying. But if you want to buy stock, say, this morning, you go, if you please—but you understand that I am not on the stock exchange—but say I figure that the market is likely to turn on me, then I have got to buy, because I owe this other man 1,000 shares of United States Steel, and I must either borrow it, or buy it over the counter, or go into the market. When you get to a certain point, and you used the figure 15 points, and as to that I say it depends on so many things that it would be in the nature of a guess, and yet the principle is sound.

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Mr. GRAY. Short sellers remain with that declining market as long as, and are adding to their holdings, as long as they feel it is going to decline.

Mr. BRUSH. Not adding to holdings but increasing the short position.

Mr. GRAY. I am very apt in discussing matters with you to talk on the wrong side of the market, and if I do correct me. They add to their holdings on the way down until stocks reach a point where they will level off or turn up, isn't that so?

Mr. BRUSH. No; they sell on the way down.

Mr. GRAY. They add to their short interest, then.

Mr. BRUSH. Yes, sir.

Mr. GRAY. If you want to look at that chart which your associate has, it will be all right.

Mr. BRUSH. Well, do not bother about that. I think I have answered your questions, and charts are very difficult to explain to a large group of men. I can explain it to Senator Walcott who is sitting here next to me. Here is the declining market, Senator Walcott, and here is the short interest. We can not go back of that, except——

Senator BULKLEY (interposing). At what period is that?

Mr. BRUSH. September of 1931. That was the first figure I have that I could secure as to the volume of the short interest.

Senator BULKLEY. What does that cover, the stocks used by Standard Statistics Co.?

Mr. BRUSH. It is the Dow-Jones average. The Standard Statistics Co. have another group, and the New York Herald-Tribune another group, and the New York Times another group.

Senator BULKLEY. But this is the Dow-Jones group?

Mr. BRUSH. Yes.

Mr. GRAY. We happen to have the Standard Statistics and it will doubtless help us to have that chart also.

Mr. BRUSH. This is the declining market [indicating on chart]. When you get to this you have the bottom of the market, and here is your short interest, and it increased——

Senator BULKLEY (interposing). What is the date of that bottom?

Mr. BRUSH. October 10. That shows that the short interest was 2,400,000 shares approximately. Now your short interest increases right through here [indicating on chart]. At the same time your market went up, and in that particular case your increasing short interest did not depress stocks, and then this rally followed, and then they were selling short until it got to this point here [indicating on chart].

Mr. GRAY. That buying was done because they thought it was necessary to cover.

Mr. BRUSH. In order to get their line out. The short interest was nil here [indicating on chart]. As the market went up it gave them an opportunity to buy stocks, and in that case the increase in the short interest did not depress the market at all. That is not exactly the standard practice, but that was the actual case in this situation. Then the market went straight down finally from 116 until it shows an average of 70.

Senator BULKLEY. What dates do you refer to?

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Mr. BRUSH. Between November 1 and January 7. In that case your short interest increased while the market was going down, as you will see here [indicating on chart]. Then you had a rally again and the short interest went up because the market would take it, and the market stayed here about the same, and then next decreased to here [indicating on chart].

Senator GOLDSBOROUGH. What date was that?

Mr. BRUSH. This carries us to about last Monday, I think.

Mr. GRAY. In other words, there are times when the market is moving up and the short interest moves with it because of the fact that they are taking their position.

Mr. BRUSH. That is right. So that it is very difficult to answer a general question in the matter of the whole market. Sincerely it is very difficult for either you or I to try to conclude whether the short selling affected it or not. There are so many things that have to be taken into consideration that you do not see on a chart.

Senator FLETCHER. Do you mean to say there is no general rule to show it?

Mr. BRUSH. Yes, sir. But I do not quarrel with anybody who will admit with me that supply and demand takes care of it, and if they think this law of supply and demand doesn't come in, if the demand doesn't increase then the market will go down.

Senator BULKLEY. Does that chart show the total volume of short selling as compared to the total volume of trading?

Mr. BRUSH. No, sir.

Mr. GRAY. Do you mean the volume of short selling during that particular time, Senator Bulkley, because there are other exhibits here that contain all that data?

Senator BULKLEY. I wanted that information as it might relate to that chart.

Mr. BRUSH. You mean if 1,500,000 shares are traded in on any day, how much of it is short selling?

Senator BULKLEY. Yes.

Mr. BRUSH. That is not on this chart. Mr. Whitney may have that data.

Mr. GRAY. Senator Bulkley is talking about what has been referred to here as in and out selling. There is no way to get at the in and out selling, that is, where the shorts make their position and cover on the same day, except by going to the statistics for each particular day. That is true, Mr. Brush, isn't it?

Mr. BRUSH. That is right.

Mr. GRAY. I now want to ask you with respect to the charts and statistics showing the change in the short position from day to day. In your opinion are statistics that show the change in the short position from day to day an accurate guide, or isn't it a fact that when the coverage is during any particular day, by shorts who maintain their position, and an additional short interest comes in on that day which is not given consideration, then in your opinion does the figure from day to day showing the changes give an accurate picture of the situation?

Mr. BRUSH. How was that?

Mr. GRAY. In other words, I mean this—if there happens to be a decrease in the short interest to 500,000 shares from one morning to another, it is a fact that that short interest might have been increased

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1,500,000 shares during the day while there may have been a coverage of 1,000,000 shares, and that duplicates the net position.

Mr. BRUSH. You understand that I am not a member of an exchange. As I understand the figures they give out, and Mr. Whitney has a book somewhere, he gives you the actual number of shares that are short as of 3 o'clock to-day.

Mr. GRAY. Yes.

Mr. BRUSH. And that is the short position. To-morrow at 3 o'clock he gives you the number of shares short that day. But I do not understand that his chart shows what took place between 3 o'clock to-day and 3 o'clock to-morrow.

Mr. GRAY. No. And without that information as to what took place that chart is not accurate guide of what effect short selling had on the market.

Mr. BRUSH. No; because a man at half past 10 this morning may have sold 1,000 shares of United States Steel, and then at half past 2 o'clock he may have covered them. I may be in error on this, but as I understand that does not show in the short position.

Mr. GRAY. You are not in error. As a matter of fact, the in-and-out trader selects a propitious time to sell, which is frequently in the morning.

Mr. BRUSH. I seldom trade by the day. If I take a short position in the market I take it for a period of time, of weeks or months or a year.

Senator GORE. Mr. Brush, I am interested to know if you can translate the psychology of the man who gets in and out on the same day. Is that due to a nervous market or to sudden news?

Mr. BRUSH. It is not due to a nervous market but to a nervous man. (Laughter.) And I do not mean to be facetious. What I am talking about is the average man who trades. And I am not a member of the exchange. I have never been on the floor of the exchange in my life. In fact, I have never seen the floor of the exchange, even from the gallery, but once in my life. I do not suppose I have been in three brokers' offices in New York in 10 years. The man who trades as I do would be crazy to try to do that kind of work. It is too fast for him. The man who does that must stand at the post and play that racket. They are what we call in New York chiselers, and that means any man who chisels in and out. If he is not a broker he has to pay a commission, and if he is in that position he at least has to get one-fourth of a point, and then he has the tax. If he is short of stock he has to pay a premium.

Senator GORE. This may be Greek to you as it is to me, but I understand some men might engage in that sort of thing because of limited capital, and others might get in in the morning and get out in the afternoon because of some sudden news or unexpected turn in the market that changes his calculations.

Mr. BRUSH. Senator Gore, both of your suggestions are correct.

Senator GORE. But that there are some men who make it their business or profession of chiseling in and out.

Mr. BRUSH. Well, I do not know that you would put it quite as raw as that. And yet it is the natural inclination of a man on the floor of the exchange, I assume, if he sees United States Steel selling at 30, and he anticipates good news and that it will sell at 31, he buys some at 30, and then at 2 o'clcok he may sell at 31¼. It depends

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upon how many shares he trades in. Ordinarily that type of trader would not trade in over 300 or 400 shares of stock.

Senator GORE. But it must often be a sudden and unexpected turn in the market apart from the general trend.

Mr. BRUSH. Of course, if the President of the United States comes out with a proclamation at half past 11, and this fellow sold short stock at 11, it is just too bad.

Senator GORE. Well, that depends upon the sort of proclamation, doesn't it?

Mr. BRUSH. Well, we can not guess on that kind of thing, but in case of a catastrophe we might say.

Senator GORE. That is what I figured, that that fellow had missed his guess, is that so? I thought that was the motive or the controlling force that caused a good many people to get in and out, and then when they started to get out that affected something else.

Mr. BRUSH. I do not think the volume of that kind of trading amounts to much. That kind of trader can not trade in enough stock, and he probably gets a licking almost as many times as he makes money.

Senator GLASS. In all these hurried transactions, how much thought is given to the real value or the intrinsic value of stocks? Is there very much, if any?

Mr. BRUSH. By me?

Senator GLASS. By anybody.

Mr. BRUSH. Of course, I am trying to give you a lot of information about stuff I am not a party to. This speculation in and out by the day or week is not my business. I never buy stock, Senator Glass, that I do not know all about. And when I say I know all about, I not only know the entire statistical position of the company, its earnings, the relation of earnings to market price, but the people who are running it, the men on the board of directors, the officers of the company, the location of the company's business, whether in Maine or California or somewhere else. I must then know somebody who is in the business, and then——

Senator GLASS (interposing). You are a professional. I am talking about the outside public. What do they know about the intrinsic values of stocks that they buy with the expectation of selling them the next day?

Mr. BRUSH. Well, I suppose I might as well get shot right now, for that will be the result of this anyway.

Mr. GRAY. Go ahead and answer Senator Glass.

Mr. BRUSH. I wish you could leave this off the record. Well, to be perfectly frank with you, it is a pathetic basis on which the average man buys stocks.

Senator GLASS. You would not say that a proclamation by the President of the United States would either increase or decrease the intrinsic value of a stock, would you?

Mr. BRUSH. It increases or decreases the desire to buy or sell.

Senator GLASS. Oh, yes.

Mr. BRUSH. And the man that does that has probably assumed that as a result of the proclamation it may make that stock worth more money. But, Senator Glass, that is going pretty well into the future.

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Senator GLASS. How do you mean, make it worth more, to earn a greater dividend?

Mr. BRUSH. To earn a greater dividend; yes.

Senator GLASS. Do you mean to say that a proclamation issued by the President of the United States would make a stock earn a greater dividend?

Mr. BRUSH. Well, I am not a politician, Senator Glass.

Senator GLASS. Well, it does not require a politician to answer a simple question like that.

Mr. BRUSH. I would say that if the President of the United States had the power to issue a proclamation which would have an effect upon a certain kind of business, that would increase the earning power and dividend-paying ability of the companies that are engaged in that kind of business.

Senator GORE. Wouldn't that react more on the demand side? It would not, of course, affect the supply side. That factor would not change. I can see how it might materially affect the demand side, and it would affect the price.

Mr. BRUSH. I would not try to guess at it, and yet I might say that it is the same thing as in the case of congressional action. Now, if the Congress in its various activities takes some position which is likely to have a material effect upon the earning power of a company, that would be a time for the man who is interested to study that very thing and attempt to know what he is talking about.

I do not know whether I answered your question fully, Senator Glass.

Senator GLASS. You answered it all right in one word, pathetic. [Laughter.]

Mr. BRUSH. All right.

Mr. GRAY. If I may supplement the question as to what affects the public, isn't it a fact that a good many people watch the board and when that indicates a movement they get the idea that a certain stock is a good thing to follow and they step in?

Mr. BRUSH. Perhaps they do that.

Mr. GRAY. Then, to follow that up a little bit further, on the question of its being pathetic, will you add to your answer?

Mr. BRUSH. They may get a circular this morning from Henry & Kabibler, or two fellows who have just come over from Greece two months ago, saying that the XYZ stock is a good stock to buy, and they go ahead. That sounds like an exaggeration, but the Senator on my left (Mr. Walcott) will bear me out, as he was in the business long before I was.

Senator FLETCHER. Mr. Brush, you said something to the effect that prices depend upon the law of supply and demand, that whether a man ought to sell short or go long depends upon supply and demand. How can you determine supply and demand? What are the factors entering into that?

Mr. BRUSH. The condition of the country, the condition of the company, prices of commodities, all these and other things govern your supply and demand, influence supply and demand. For instance, if you and I are convinced that the condition of a certain business is good or is promising, then there are a lot of other people who will think the same way and will want to buy stock, and vice versa. If conditions are such that we think we ought to sell, that

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increases the supply, or it may be the economic factors, I will say. It may be over my head, but that is the way I will answer.

Senator FLETCHER. Does that develop on the stock exchange, or is it outside in the country?

Mr. BRUSH. It develops on the stock exchange by reason of customers in brokers' offices. Senator Fletcher, if you and I should decide to say that the wheat situation will be affected by reason of some tremendous damage to wheat, then you and I know perfectly well, if our opinion or guess is right, that there will be a scarcity of wheat and more people will want to buy. If there would be a scarcity of wheat then the supply would fall off, and on the question of supply and demand we would buy.

Mr. GRAY. Now, taking up the illustration that you have given us of the effect on the mind of a member of the public who receives a letter and acts on it, that situation is used by some crooked manipulators of the stock market, and by some brokers at times, of course, who cooperate, I think, for the purpose of increasing or making an artificial demand for that particular stock, isn't that so?

Mr. BRUSH. It can be.

Mr. GRAY. That happens, you know.

Mr. BRUSH. Oh, Mr. Gray, there are undoubtedly influences by means of crooked circulars—and we are talking of outside the stock exchange now—of those people who put out dope sheets, but the exchange has more to do with it than you and I have.

Mr. GRAY. But at times there is cooperation in that work on the park of the exchange or some of the houses.

Mr. BRUSH. It is possible that they could do it with a brokerage house and not a member of the exchange, either.

Mr. GRAY. Isn't it done sometimes?

Mr. BRUSH. I do not think it fair to say, for I have never had any knowledge of any member of the New York Stock Exchange working in cohoots with that character of information to the detriment of the public and to his own advantage.

Mr. GRAY. That trading is done, however, through brokers on the New York Stock Exchange?

Mr. BRUSH. It has to be.

Mr. GRAY. And it should be in some instances very apparent to those brokers from the information available to them, I mean that that character of manipulation is going on.

Mr. BRUSH. That is a hard question for me to answer. You are asking me now to judge what this or that fellow is thinking about, and I do not think it fair to try to do it.

Mr. GRAY. Let me come back to the question of short selling. There are some traders in the market that are—I was going to use the words, constantly operating on the short side. I do not mean that they are constantly selling short but who prefer as a general thing to play the market from that end, isn't that true?

Mr. BRUSH. Yes, sir.

Mr. GRAY. Mr. Whitney has said there is nothing in existence and has not been for years past that might be designated under the name of bear raids. I think I understand, and possibly some of the members of this committee understand, by the use of the expression "bear raids" was meant some concerted attack made upon the market by those who operated continuously on the short side

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for the purpose of depressing prices in order that they might, having assumed the short position, cover at a point decidedly to their advantage. Doesn't that happen?

Mr. BRUSH. I do not think it has happened since the time when they put in that restriction. Up to last November when they put in the restriction, which I will explain as best I can, or I will explain to you what I have always understood bear raiding to be, although you will understand that I am not in it.

Mr. GRAY. You may take any length of time on this subject that is inspired by my question that will exhaust it, if you will.

Mr. BRUSH. Do you mean that will exhaust the subject, or me?

Mr. GRAY. Oh, I think you will be able to stand the strain.

Mr. BRUSH. Before this restriction was put into effect, if you had had a crook in the game somewhere, and if United States Steel was selling at 30, and he had a good line of Steel out, after he had started Steel at 35, 33, 32, and so forth, and then the market was selling at 30, and then he put in an order to sell 5,000 shares of United States Steel at 29—that is, a point under the market—it is a cinch that he would get that 5,000 shares off, because the people who are willing to pay 30 for the stock will pay 29. That is bear raiding.

Mr. GRAY. And that has been done?

Mr. BRUSH. Not to my knowledge, Mr. Gray, and it can not be done to-day.

Mr. GRAY. Well, now, you gave us the definition of it, and a thing can not be defined unless it exists.

Mr. BRUSH. Well, I will put it this way: I know of instances where a stock toward the close, that is, either before last November or two years ago, where the stock was either closed up a point or down a point, and to my mind the climb up is as bad as the climb down, because it pulls in every sucker in the United States. You can still close them up because there is no restriction. If Steel is selling at 29 and 5 minutes to 3 o'clock I go in and buy a thousand shares at 30, I have closed the market up a point, and the fellow at Keokuk, who perhaps sits with his brother over a stein of beer, well, if they had it out there, would say: "Look at that market. See Steel is up a point. Let us buy some." And the fellow who closed it up a point, sells in the morning. It is just as big a crime to close a stock up as down.

Mr. GRAY. And is that done to-day?

Mr. BRUSH. I sat in a room and saw it done two years ago, but I have not seen it done since.

Mr. GRAY. As I understand, when you buy or sell stocks, you make a thorough examination as to the particular issues. I take it also that you find it necessary to keep yourself thoroughly posted on the methods that are followed in the market.

Mr. BRUSH. Not particularly, because that kind of stuff does not last 24 hours. If I buy something it is for a year or six months or three months. I do not attempt security trading of any other kind. It is to fast. I am not trying to protect myself against that kind of trading, it is too fast.

Mr. GRAY. There are people in the market who are doing that very thing now, are there not?

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Mr. BRUSH. I will make a good guess that it is probably true, but not on the up side these days. I won't say to-day. And they can not do it on the down side.

Mr. GRAY. That is because of the rule of the exchange to the effect that there may not be a short sale made at a price lower than the last sale on the market.

Mr. BRUSH. No, sir.

Mr. GRAY. But don't they evade that in this way—and it occurs to me that it might be easily evaded: We will say that steel is selling at 30, and we will say that somebody wants to dispose of 1,000 shares short for the purpose of depressing the market. Can't they very easily do that by putting in 100 shares of long stock which they own at 29½ and immediately affect it with the 1,000 shares thereafter?

Mr. BRUSH. Can it be done with 100 shares?

Mr. GRAY. I will ask you that and you may take any figures you wish.

Mr. BRUSH. I do not know. I do not trade that way. I do not think it affects it, Mr. Gray.

Mr. GRAY. All right.

Mr. BRUSH. I assume of course, that he would have to have 100 shares of stock.

Mr. GRAY. He would have to have 100 shares long which he would sell at 29½ for the purpose of creating a short market on which to dump the 1,000 shares. The 1,000 shares may not damage the market, but it is easily done in larger lots. I used these figures for illustrative purposes.

Mr. BRUSH. I am not a member of the stock exchange, but I should guess that you would immediately have a member of the board of governors of the exchange over at that post. Some time ago, after the Kreuger & Toll situation, or one of the situations anyway, where the market the next morning opened off decidedly, there was one stock that did not open until about 11.30 because of no bid, and no trading was allowed in that stock until a member of the board of governors went over and tried to reconcile the bids and the selling prices. I am guessing at this but I would say in the case you describe if a man went to work to sell 100 shares at 29, and followed that with 1,000 shares at 29 short, that a member of the board of governors would be there and stop the sale.

Mr. GRAY. It is strictly within the rule of the board though.

Mr. BRUSH. Yes; as far as I know.

Senator GORE. On the cotton exchange I understand a pool can not sell cotton at a lower price than somebody is bidding, if somebody is bidding a higher price on a bona fide bid. He can not sell it for less than that. Is there any rule of that sort on the stock exchange?

Mr. BRUSH. I can not answer that. And I do not know anything about cotton.

Senator GORE. It works the other way around on the cotton exchange.

Mr. BRUSH. As far as the stock market is concerned, I would say that a member who undertook to sell stock, even after this happened, a big block of stock, the exchange would take it up. But I can not answer that as I say, for I don't know. I am not close enough to the stock exchange management to know.

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Mr. GRAY. Had you answered Senator Gore's last question?

Mr. BRUSH. I tried to. I do not qualify to answer, Mr. Gray.

Mr. GRAY. I mean I did not want to interfere with it.

Mr. BRUSH. Did I satisfy you, Senator Gore?

Senator GORE. Yes; you said that you knew of no rule. So that answers the question, of course, if you did not have the information on the point.

Mr. BRUSH. No; I have not.

Mr. GRAY. Mr. Brush, you are familiar with what a specialist is and what his duties are and how he carries them out, are you not?

Mr. BRUSH. In a general way, Mr. Gray.

Mr. GRAY. Won't you say to the committee what a specialist is, what his duties are, and how they are carried out?

Mr. BRUSH. I have personally never seen a specialist that I know is a specialist, but I understand——

Mr. GRAY (interposing). No; but you found it necessary in your study of the things to know the complete operations of the market, have you not?

Mr. BRUSH. Substantially, yes. To my best knowledge a specialist is a man who stands at the post of the particular stocks that you may have in mind, whatever it is. And each stock has a specialist. Some specialists may cover 5, 10, or more stocks when the stocks are rather thin trading.

And if I give an order to a broker to buy a thousand shares of steel he calls his floor man. His floor man goes to that post where the other people are there buying and selling steel and makes the bid, and this fellow records it in his book, and he has in his book the bids and sell prices of people who put in an order to buy and sell a stock at X points above or below the market when the market reaches that.

In other words, I can put in an order, Mr. Gray, to-day "G. T. C.," good till canceled, to sell a thousand shares of steel at 32. I may not get it off for a month and in the meantime if I want to cancel it I can.

I assume that that is on his book. I have never seen a specialist's book in my life.

Mr. GRAY. In other words, he is the man who in the larger stocks trades in one stock alone or carries out orders.

Mr. BRUSH. Two men in some of the larger stocks?

Mr. GRAY. Yes; in some of the larger stocks there is more than one. He has a report in his book of every order that is placed, and the time which it is to remain good, both on the buying and selling side of the market in that particular stock, unless—I said every order—unless some orders are just placed as they come in, market orders for instance, are executed, if you please, through some other broker who is there ready to accept that market order?

Mr. BRUSH. I do not know, Mr. Gray, absolutely, whether if a broker went to the post and bid 30 for a thousand steel and the other brokers said "sold," I have absolutely no knowledge whether that goes into the book or not. The stuff, I am quite sure, in his book is that if I put an order in there, steel selling at 30 and I give a broker an order to buy a thousand shares of steel at 29, that I am sure must go in the book.

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Mr. GRAY. In other words, all the pending orders on either side of the market at a fixed price that are not able to be immediately executed go into that specialist's book?

Mr. BRUSH. To the best of my knowledge.

Mr. GRAY. So that he has a record of all of the bids that have been made through every broker on the New York Stock Exchange and can tell from that record what the range on the bid is, what the lowest price is that is offered for stock, what the highest price is that it is offered for, and what the lowest and highest price is at which stock is operated for sale—that is correct, is it not?

Mr. BRUSH. I think you are correct.

Mr. GRAY. Now, to the man who is trading in large blocks of stock the knowledge of what appears upon that specialist's book is rather important, is it not?

Mr. BRUSH. I would think it would be.

Mr. GRAY. Will you tell this committee frankly, Mr. Brush, if you please, as to whether or not it occurs——

Mr. BRUSH (interposing). I have no knowledge——

Mr. GRAY (interposing). I was going to ask you—you may be anticipating—whether or not it occurs that some of these large operators cooperate with the specialist, take him in on some of these deals, and by the use of that information put into effect buying or selling orders for the purpore of manipulating the market in one direction or the other.

Mr. BRUSH. Frankly, Mr. Gray, I do not know. I do not know whether the book is exposed to them or not. I know I never saw it, and I was never able to get it.

Senator COUZENS. Mr. Brush, perhaps without mentioning any names, you could disclose to the committee as vividly as you did to me yesterday just how these specialists operate, at least according to your understanding. As I understood it, you just had indirect knowledge of how they operated. Would there by any objection to your telling the committee just how you understand they operate at times?

Mr. BRUSH. Senator Couzens, I will guess at it the best I can.

Senator COUZENS. You were telling me a little story yesterday of how they operated. I do not think that there is anything that you can not tell the committee along those lines.

Mr. BRUSH. I am handicapped to intelligently do it, because, as I say again, I am not a member of the exchange. I have never been in a pool in my life. I could not say to save my soul to-day that I could name a single man who is a specialist, nor the stock in which he might be a specialist, and that is absolutely true.

Senator COUZENS. You do know that they exist, though, do you not?

Mr. BRUSH. The specialists exist, and pool managers exist, undoubtedly.

Mr. GRAY. And pools exist?

Mr. BRUSH. And pools exist; yes, sir.

Mr. GRAY. On both sides of the market?

Mr. BRUSH. I think so.

Mr. GRAY. You have learned that in your little experience outside, while the president of the stock exchange does not get that.

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Well, I think he did slip up and say that some pools did exist, yesterday.

The CHAIRMAN. After denying it for several days.

Mr. GRAY. Will you answer Senator Couzens' question, please?

Mr. BRUSH. The only way I can answer that intelligently, the best I can, Senator, is, if you and I, Senator, should join with half a dozen other people with the idea of operating a pool, there is only one reason on earth for doing it; that is to make money, because I do not know anybody that is in Wall Street for their health, and any trade that ever was described to you is made because the fellow expects to make money some way. And you and I and six other men form a pool in XYZ stock with the idea of getting an accumulated supply of it and selling it at a profit. Now, I am doing a lot of guessing and a lot of hypothetical stuff here.

Mr. GRAY. Don't apologize for it. We all know it, but we would like to have the people like you tell it.

Mr. BRUSH. All you have got to do is buy me a ticket south, not back to New York. [Laughter.]

After we have accumulated our supply of ten, twenty, or thirty thousand shares, whatever we are going to do, depending upon our finances, if we knew that on the book there was a certain amount of stock on the sell side—and I don't know, and I give you my word—whether the book is ever exposed to any other member or not. I have never seen a book, nor has any broker that has ever worked for me been able to give me a book; I mean over the phone, to tell me what the supply and demand for stocks were.

But if he can see the book he knows that there are 5,000 shares a point and a half or two points up. He would do what they say "clean the book," and there is no more stock there. Naturally, then the law of supply and demand would go into effect, and if there is no stock, the stock will go up. If there is too much stock on the other side the stock will go down. If he cleans the book on the down side, then there is no demand for stock, and when there is no demand for stock, stock prices go down.

Now, that is a hypothetical imagination, because I have never had contact with it in my life, but I will do the best I can.

Mr. GRAY. You have heard that exists?

Mr. BRUSH. Yes; I have heard that exists.

Senator BROOKHART. You have mentioned twice about being afraid to go back to New York. Is that run like Al Capone's racket up there?

Mr. BRUSH. Al Capone is a piker compared to what it will do to me.

Senator GORE. Would there be any chance of Caponizing these bulls and bears?

Mr. BRUSH. Do what, Senator Gore?

Senator GORE. I was wondering if we could Caponize the bulls and bears.

Senator WALCOTT. Mr. Brush, don't you think that the capital gains tax has had a very pronounced influence in making a shortage in many shares of stock on the way up?

Mr. BRUSH. Yes; I do. I really think it has.

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Senator FLETCHER. These people would not sell because of the tax they would have to pay to the Government; therefore, they kept holding?

Senator TOWNSEND. That is absolutely true.

Mr. BRUSH. I guarantee that. I would hate to tell you what it cost me.

Senator WALCOTT. That's one of the biggest factors in the speculative market.

Mr. BRUSH. You never would have had, Senator Fletcher, in the world, your market from the 1st of March to September 22, 1929, if it had not been for that tax.

Senator GORE. Had not been for what?

Mr. BRUSH. The capital gains tax.

Senator FLETCHER. Do you have any experience with brokers in connection with what is known as brokers' loans?

Mr. BRUSH. No; because I never go back of my broker, Senator Fletcher. I ask my broker to buy or sell me some stock. Now as to where he takes that stock, if it is long stock, and goes and borrows money on it at the bank or where he borrows the stock to sell it, I have absolutely no knowledge, and I am not interested.

Senator FLETCHER. These brokers' loans amounted to $8,000,000,000 loaned to 15,000,000 speculators over the country. All of them were in debt and they were loaned without any note or obligation in writing or anything of the kind, just loaned outright.

Mr. BRUSH. But with collateral, Senator.

Senator FLETCHER. Collateral; yes. There had to be a collapse of that some time, don't you see? Wasn't that a very bad practice?

Mr. BRUSH. You had people buying stocks in the summer of 1929, including yours truly, who ought to have had their heads examined. Now, as to the contributing factors which knocked it off in September, there were all kinds of them, Senator. I don't think you could attribute it to any one situation myself.

Senator GORE. That market was sort of a delirium, was it not?

Mr. BRUSH. It certainly was, Senator Gore.

Senator GORE. A good deal like the South Sea bubble in England and the Mississippi bubble in France, the bubble in Holland?

Mr. BRUSH. We had every man, woman, and child and church and school house and library in the market.

Senator COUZENS. I want to take exception to that, Mr. Brush.

Mr. BRUSH. I am sorry, Senator Couzens.

Senator GORE. Judge and janitor and waitress.

Mr. BRUSH. I would say the occupants of these institutions, not the officials of the institutions.

Senator BLAINE. Of course, that was the era of prosperity.

Mr. BRUSH. You don't want me to comment, Senator?

Senator GORE. I think there is the trouble, Mr. Brush. You can not keep folks from buying on a rising market or selling on a falling market. It is just human nature and you can never repeal that law.

Mr. BRUSH. You can never stop it, Senator Gore, any more than you can stop a man from buying a horse that is worth $100 and paying $500 if some other fellow wants it.

Senator GORE. It is due to lack of horse sense, and you can not mend that.

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Mr. GRAY. Mr. Brush, it has been stated by Mr. Whitney—I think the committee would like to have your opinion, if you feel that you can give it—that if short selling is stopped the stock exchange would practically close. Will you venture an opinion upon that?

Mr. BRUSH. Well, I would not like to comment on what would cause the exchange to close, but I do think this, Mr. Gray, that if you prohibit short selling you would get terrific swings in your market, because if I wanted to buy some stock there would be no stock available to me except out of a box. I would have to actually buy the stock from somebody who owned it, and if I wanted to sell some stock I would have to find a buyer who is willing to buy it outright and lock it up. I think one man's guess is as good as another as to what the result would be, but my impression would be that you would get swings of 10, 15, or 20 points either way in the market.

Senator BROOKHART. Some regulation of the long buying would help that, would it not?

Mr. BRUSH. Senator, I do not like to guess at that, because I do not really qualify.

Mr. GRAY. Would it not, if this marginal buying on the up side and the short selling, the selling of something that you haven't got on the down side, were abolished, take the market out of the gambling element or out of the position of conducting a gambling institution and let the question of prices be controlled by the natural law of supply and demand.

Mr. BRUSH. I think you would have terrific swings in your market. If I may volunteer this, I think, Mr. Gray——

Mr. GRAY (interposing). I do not know what it is.

Mr. BRUSH. I think, Mr. Gray, the word "short selling" has become an extremely unfortunate word for a man to use at all, because a short sale, as I understand it, is a contract. In other words, you have made contracts for whether it is horses or wheat or stock or anything. I contract with you or I go to a bank and instead of borrowing money I borrow a certificate of stock, and I sell it to Tom, Dick, or Harry. But I agree with you, from whom I borrow it, to return it to you on a moment's demand. So I am really making a contract, a "future contract," which is the term I like to use, rather than the term "short selling." I am making future contracts the same as you make them in wheat. Senator Gore knows you make them in cotton. You make this kind of a contract, Mr. Gray, if I may illustrate——

Mr. GRAY. Go right ahead.

Mr. BRUSH. For instance, say, during the war Guy Tripp sent for me from Texas and said, "Brush, I want a thousand horses." I have got five, but I know a lot of my neighbors have probably got some. I don't know what they are selling at, but my best judgment as a Texas man is that I can deliver those horses and make some money at $50, and I make a contract with the Bureau of Ordnance to deliver a thousand horses in New York at $50 a horse.

Now, I go back out there and I assemble these horses at $37 and bring them down to New York and deliver them, and I did not have a horse when I started to make the contract.

This may be a very homely comparison, but to my mind this is the way I understand it. It is the same as though you contract to deliver a quart of milk every morning to me at my house; your milk

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man does not have milk, God knows, for the last day, and he may have enough cows and he may not have enough cows. It is a future contract to me, and not the term "short selling."

Mr. GRAY. There are going to be a lot of Senators that will differ with you.

Senator GLASS. Suppose that horse trading would go on indefinitely with the 500 horses. What would you call that—with no expectation of ever delivering the horses and with nobody ever having any use for the horses? What would you call that?

The CHAIRMAN. And there being no horses in the deal?

Mr. BRUSH. Senator, I can not answer that question.

Senator GLASS. Well, your illustration is exceptional. The thing that you cited would be an actual trade for something that somebody wanted and expected to get and to use, whereas these transactions we are talking about, nobody invests his money for 5 minutes; nobody invests his money and has to stand at a ticker to find out whether it is going to be high or low within the next 15 minutes.

Mr. BRUSH. I do not think, Senator Glass, the amount of 15-minute trading is large enough to amount to anything at all.

Senator GLASS. Well, who invests his money for a day? That is not investment. That is speculation.

Mr. BRUSH. I can not qualify as to that because that is not the way I trade.

Senator GORE. Mr. Brush, this is a sort of a study in psychology, and I would like to get your reaction if you care to express your opinion. Now, you take a bull speculator who checks the market situation, trends, and other factors. He decides the market is going up and he buys. Now, he buys because he thinks the market is going up and not in order to make the market go up primarily, isn't that true?

Mr. BRUSH. I think so.

Senator GORE. The fact that he does buy may have a tendency to raise prices if there is a trend upwards, but whenever he buys somebody sells?

Mr. BRUSH. Right.

Senator GORE. And those two factors cancel each other unless there is a market trend upward.

Now, on the other hand, you take two men who are going to sell stock. One is long of stock and he sells his stock outright. He thinks the market is going down and he will sell before it does go down and get rid of his long stock to avoid a loss.

A short seller figures the market is going down, after his investigations, and he sells short because he thinks the market is going down and not in order to make it go down.

Isn't that the general psychology of this business?

Mr. BRUSH. That is my impression, Senator Gore.

Senator GORE. Now, when he sells short, of course, somebody buys it, and those two factors, the buying being a bullish factor and selling being a bearish factor, those two factors, of course, would cancel each other?

Mr. BRUSH. That is right.

Senator GORE. Unless there is a trend downward?

Mr. BRUSH. That is right.

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Senator GORE. The holder of long stock just unloads his stock on the market and that is a weight on the price, and when the short seller sells he is bound to buy back sooner or later?

Mr. BRUSH. Yes, sir.

Senator GORE. I was wondering whether that necessity to buy back would offset the tendency which his selling had to depress the market.

Mr. BRUSH. Senator Gore, I do not think the man lives—at least I could not answer that question, except that I know that when the man has sold his stock short or made this future contract, as I have termed it, he is a potential buyer.

Senator GORE. Yes.

Mr. BRUSH. He is going to buy the stock.

Senator GORE. And that is his only way out. Now, we have had some charts here in which the curves seemed to be erratic, which would indicate that there are some other forces controlling the trend other than just the short selling and long buying.

Now then, suppose a man sells Steel short at 100 and it goes down to 90. There have been some questions or answers here which indicate that a man ought to step in and get out at that point. I figure that if he thought the dip had about reached the lowest point and there is liable to be an up turn he would cover and get out. But if he thought the trend was still downward, it might go down to 80, he would not get out, but he might sell some more short and go on down. Isn't that true?

Mr. BRUSH. Yes.

Senator GORE. Now, you take it when Steel was 261. It is down to 29. There may have been some short sellers who rode all the way down through all the gyrations; isn't that true?

Mr. BRUSH. That is possible, yes.

Senator GORE. Others would get in and out.

Mr. BRUSH. Yes, sir.

Senator GORE. They calculated on the up turn and the down trend. So that it is rather an estimate of the future trend of the market that controls a short seller as to whether he covers or sells more and goes on down.

What I am getting at, you notice these curves here; sometimes the shorts increase and the stock goes up.

Mr. BRUSH. This curve shows that.

Senator GORE. Yes. Well now, he calculates that it is a temporary up turn and that the down trend will counteract that and it will still go on down further. Would that not be his psychology?

Mr. BRUSH. Yes. He is what we call "bucking the trend." No man ever makes money in the market that bucks the trend. I don't care what he does.

Senator GORE. He is one of those that loses?

Mr. BRUSH. He loses.

Senator GORE. I have been told—I do not know whether it is true or not—that 97 per cent lose anyhow. I imagine that is true. You know, there is an old saying that "every instance is an exception to the general rule."

Mr. GRAY. By the way, it might be interesting, Mr. Brush—have you ever known any of these statisticians, maybe not some of the big ones, to endeavor to work out the percentage of people that eventually lose on the stock market?

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Mr. BRUSH. No, but I know plenty of them, Mr. Gray, that can tell you very definitely just what the market is going to do at 3 o'clock next Thursday.

Mr. GRAY. I am coming to that.

Senator GORE. He ought to be in a strait-jacket.

Mr. GRAY. But in that connection don't you also know, Mr. Brush, many a man that has been closely allied with some specific corporations—I don't know whether you have been in this position or not—who can pretty well say, because they know what is going to be done, that they are safe in putting in an order to buy a particular stock of the corporation in which they might be interested at 2 o'clock this afternoon?

Mr. BRUSH. That is perfectly possible, Mr. Gray. If a man who is running a business knows that he is going to do something as an officer of that company at 2 o'clock this afternoon that is going to affect the stock——

Mr. GRAY. I do not mean anything meritorious; I mean by reason of manipulations he knows what is going to take place.

Mr. BRUSH. In the price?

Mr. GRAY. In the stock itself; yes.

Mr. BRUSH. If there was a manipulation in a stock of that kind it would not happen that quickly, Mr. Gray. I mean by that it would take days or weeks or months. But certainly any man, Mr. Gray, with inside information with regard to any situation ought to be able to make money out of it, regardless of the nature of it.

Mr. GRAY. There are several other practices that are engaged in for the purpose of manipulating prices on the market. You are familiar with them, are you not?

Mr. BRUSH. Will you cite them to me and I will pass on them, rather than trying to guess at them?

Mr. GRAY. For instance, the matter of the pegging of the market to keep up prices. That is pure manipulation, is it not? Or prices down, either way?

Mr. BRUSH. If it is pegging of the market.

Mr. GRAY. That is done with regularity, is it not?

Mr. BRUSH. No question but what markets have been pegged at a price for a period of time as long as the fellow who is doing the pegging can stand the pressure. You undoubtedly recall that Mr. John D. Rockefeller had an order for a million shares of Jersey at 50——

Mr. GRAY. I am not as familiar with the market as you are.

Mr. BRUSH. During the bad slump, it was put on the ticker that Mr. Rockefeller would be prepared to take a million shares of Standard of New Jersey at 50. It stayed there a little while, and Standard of New Jersey is 21 now.

I don't know whether the story was true or not, but it stayed at 50 for a while, but if he pegged at 50 or at 60 that was good pegging as long as he could stand the pressure against the stock that was made on him by orders.

Mr. GRAY. Now, it is the practice also of traders in order to keep a price within a certain range and at the same time not have to peg or not have to put in money——

The CHAIRMAN (interposing). He said Mr. Rockefeller. The record should show who that is.

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Mr. BRUSH. Mr. John D. Rockefeller.

Mr. GRAY. Manipulators will put in orders to buy with one firm and to sell at practically the same price in another name with another firm; that is true, isn't it?

Mr. BRUSH. I do not know, Mr. Gray, because I do not see what the fellow accomplishes with that.

Mr. GRAY. Creating an active market.

Mr. BRUSH. That is possible, if he has some object in view in creating an active market. I am very sincere in this, because I——

Mr. GRAY (interposing). He does that because he has some reason to keep that market active in order that he might put through some commitment that he and a pool that he is operating for desires to put into effect.

Mr. BRUSH. That is perfectly possible. I am very sincere when I say I do not know of any such case.

Mr. GRAY. Is there something that is known as "rigging" the market?

Mr. BRUSH. I would say rigging the market is the same as rigging anything. If a fellow goes in there and puts out false information and buys the stock and sells it secretly, he has created a bull sentiment in that market. It is an interpretation of words now, because I would say that that would be one type of rigging the market.

Mr. GRAY. All right. Have you known that to be done with the cooperation of brokers?

Mr. BRUSH. No; I have not, sincerely, Mr. Gray. I do not contact with that sort of thing, because I do not trade the way that type of trader trades. But I can understand it is possible.

Mr. GRAY. By the way, it is a fact that a lot of large operators will operate in other names at times? Isn't that true?

Mr. BRUSH. Oh, I do not think there is any question but what that is done.

Mr. GRAY. The general purpose of it is what?

Mr. BRUSH. It is to conceal the activity of that particular man. That has its good and its bad features. As a matter of actual fact, if a man has a reputation of being a bad actor in the market in selling stocks, and so forth, it is a good thing that he operates under a different name, because otherwise the market would fall out of bed if they knew that So-and-so was selling.

Mr. GRAY. You mean by that that if a man having a reputation of a bad actor—there are some in New York, isn't that so?

Mr. BRUSH. Yes.

Mr. GRAY. That he having such a reputation, if it were publicly known what he was going to do, it would have a decided effect on what would happen to that stock on the market right away?

Mr. BRUSH. I think so.

Mr. GRAY. That would be because it would be anticipated that that which he did intend to do was going to be something that was not going to be done in the right way and for the benefit of this particular man or he alone or the pool in which he is interested?

Mr. BRUSH. Well, I would put it a little bit differently. If everybody in New York knew that So-and-So, who was a great short trader, one of the greatest reputation years ago, I don't know what he does these days, if they knew that he was selling stocks right

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across the board, why, the impression would be that he would not be selling them unless he thought the market was going down, and a lot of people would try to follow him and get licked.

Mr. GRAY. Do you happen to know the history of the J. I. Case Corporation with respect to certain market conditions?

Mr. BRUSH. No. I have the same information that everybody in New York has. There was a lot of trading in Case and a lot of buying and selling in Case, and there is relatively a small outstanding issue of Case.

Mr. GRAY. Do you happen to know that there is only an outstanding issue of about 196,000 shares?

Mr. BRUSH. That is right.

Mr. GRAY. Do you happen to know that approximately 90,000 of that is closely held?

Mr. BRUSH. You are talking about Case now?

Mr. GRAY. Yes; Case. If I am wrong in that, please tell me.

Mr. BRUSH. You are naming another one so far as figures are concerned. You are sure of Case?

Mr. GRAY. Yes; I am talking of Case.

Mr. BRUSH. I do not know that, because I do not trade in Case.

Mr. GRAY. You do know that at times during the last year at least 71 per cent of the entire outstanding issue of Case was short?

Mr. BRUSH. Sincerely, I can not qualify on Case at all, because I have seldom traded in a share of Case. I have heard all the stories about Case being a great market opportunity for trading on account of its very small outstanding issues, but I do not know. I have never seen the short position of Case in my life, and I say it honestly.

Mr. GRAY. Is there anything particularly in your knowledge with respect to Auburn and the manipulations of it?

Mr. BRUSH. That is the one I had in mind, and that is the reason why I thought you were using that, because the figures are almost identical. There are 196,000 shares of Auburn. I have never known the total short position. The only place I saw anything about the Auburn operation was in Mr. Whitney's book, and my recollection is it was 50,000 shares.

Mr. GRAY. In other words, that is approximately 50 per cent of the available stock for the short interest?

Mr. BRUSH. My impression is—and this I could not prove to save my life, but this is the kind of information you get in New York—that there are 196,000 shares of Auburn and about half of it is owned by Cord, which leaves the other half outstanding, and that of the other half probably half of it is held by a group of men. So that it left you a very small amount of stock to trade in. I could not prove that to save my life, but that is the universal knowledge around the streets of New York.

Senator GORE. Isn't there a rule, Mr. Brush, that when the amount of floating stock gets down to a certain point, below a certain point, it is ruled off the board?

Mr. BRUSH. I am sorry, Senator Gore, I did not hear you.

Senator GORE. I say, is there not a stock-exchange rule that when the floating stock available for operation or purchase and sale gets down below a certain point or too restricted it is ruled off the board?

Mr. BRUSH. I do not know that that is the rule, Senator, but I do

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know this, that in the case of a corporation when they ask to have their stock listed—I say I know this because it occurred in a corporation of which I am a director—where the stock of this company, utility company, was owned in a very substantial percentage by a holding company, when this subsidiary was to be listed the stock exchange made the directors pass a vote agreeing to always have a supply of that stock in case it was necessary for borrowing purposes.

Senator GORE. I understand there is some regulation of that sort.

Mr. BRUSH. I do not know the rule.

Senator GORE. And that is to obviate so-called corners, is it not?

Mr. BRUSH. Of course, if there is no stock you have a corner.

Senator GORE. As the available supply of stock becomes less it facilitates the organization of a corner?

Mr. BRUSH. Certainly, either an up or down corner.

Mr. GRAY. Just another question or two, Mr. Brush. You are familiar, of course, with investment trusts and know that there are quite a few that exist?

Mr. BRUSH. Yes, sir.

Mr. GRAY. And I think you said that you were president of one, the American International Corporation?

Mr. BRUSH. Yes, sir.

Mr. GRAY. And that trust, as well as the others, of course, buy and sell other stocks on the New York Stock Exchange?

Mr. BRUSH. Yes, sir.

Mr. GRAY. Does your investment trust—and I am only asking about yours particularly to follow it up by asking a question with respect to others and getting general information—loan such stock as you may possess to other short sellers of those stocks?

Mr. BRUSH. Practically, no. The reason I say "practically, no" is that we had one case where a house of issue came to us and said "We are in a jam for stock" and we loaned them a small block of shares for a short time.

Mr. GRAY. You do not engage in that practice?

Mr. BRUSH. Oh, no. I know the case of a company in which we were interested which was a foreign construction company and they in connection with some exchange wanted to borrow some stock, which we loaned. The point that you are making does not apply to our case, Mr. Gray.

Mr. GRAY. Do you know whether it applies generally to other investment trusts in New York?

Mr. BRUSH. I do not know that, but I do know that on two occasions recently on the board of directors on which I was sitting I asked the presidents of two investment trusts who were there what their policy was and they said that they thought under the present situation that it was very unfortunate and unwise, for their investment trusts at least, to loan stocks. So there are two that I know do not do it. Now, as to the others, I do not know.

Mr. GRAY. Don't you know that it has been the habit of some investment trusts to loan and in anticipation of an intended short sale to persons who are selling on the short side of the market their stocks, and that that is a medium by which the investment trusts seek to earn some little additional profit?

Mr. BRUSH. I have heard that, Mr. Gray, but I do not know of any case.

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Mr. GRAY. By the way, your knowledge of the mechanics of the stock exchange is such that of course you would say that that stock being loaned in that way, that transaction would never appear as a short sale in connection with the returns that have been made by the brokers to the exchange?

Mr. BRUSH. I have got to think of things as you ask me, because I never heard of it.

Mr. GRAY. In other words, if an investment trust loans to an intended short seller——

Mr. BRUSH (interposing). Over the counter?

Mr. GRAY. Over the counter.

Mr. BRUSH. No.

Mr. GRAY. That would not appear as a short sale?

Mr. BRUSH. No.

Mr. GRAY. And if it happens with great frequency, then there are a great many additional short sales that we have no record of?

Mr. BRUSH. Except I would assume—I am playing my cards as they are dealt to me here now, because this is a new one for me—I would assume that the broker under his present ruling is supposed to notify his post and the exchange of every short sale.

Mr. GRAY. Yes; but if a short seller comes in with that stock which he has previously borrowed from the investment trust——

Mr. BRUSH (interposing). That is a short sale.

Mr. GRAY. There is nothing to distinguish it at all from a short sale?

Mr. BRUSH. Unless the fellow is dishonest and does not report it as a short sale.

Mr. GRAY. How does he know it if he has borrowed who has made the sale?

Mr. BRUSH. No; I beg your pardon. I thought you meant the broker borrowed it.

Mr. GRAY. Whether that is not the habit of the investment trusts?

Mr. BRUSH. That I can not answer, but this is the way I understand your question; that I go to you, president of the investment trust, and I say, "Mr. Gray, have you got a lot of steel here?" And you will say, "Yes," and I say, "I would like to make a contract with you to borrow from you for three months 5,000 shares of steel," and I make such a contract and you give me the stock. I give you the money, the market price, and I pay you the premium. I put that in my pocket.

Mr. GRAY. Is that done?

Mr. BRUSH. I do not know, Mr. Gray, sincerely.

Mr. GRAY. Do the investment trusts loan to the brokers who need that stock?

Mr. BRUSH. The three that I know about, these two that I mentioned and our own company, no. But I can understand perfectly why they might, because they make the premium and make the interest on the money.

Mr. GRAY. Now, Mr. Brush, this committee, as you know, is endeavoring to ascertain everything that they can to help learn all they can about the New York Stock Exchange and the things that ought to be subject to correction. Can you give them any further information than that which you have already given them on the subject that would be helpful in any manner whatsoever?

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Mr. BRUSH. That is a broad order. That gives me an awful lot of leeway.

Mr. GRAY. Well, we have asked you, I have myself at least asked you, such questions that occurred to me for the purpose of developing anything that we thought we ought to have. Now there may be something that I have omitted that occurs to you that is valuable information for the committee to have, and if such thing occurs to you, why, we would be very glad to have it.

Senator COUZENS. While Mr. Brush is thinking about that, have you been a short seller long, Mr. Brush?

Mr. BRUSH. Since April, 1930.

Senator COUZENS. Prior to that you were not in short selling?

Mr. BRUSH. No; I never sold a share of stock short until I think it was in April, the middle of April, Senator Couzens, in 1930. My associate says that is not quite correct, but practically correct.

Senator COUZENS When you entered into it in 1930, of course as you say, you entered it to make money, but——

Mr. BRUSH (interposing). Please understand, Senator—may I qualify that?

Senator COUZENS. Yes.

Mr. BRUSH. I own to-night and have owned for several years some very substantial blocks of stock of a character that I can not sell or do not want to sell, due to a directorate or an officership or the stock is so thin I can not sell it.

Senator GORE. So what? You used a word there I did not understand.

Mr. BRUSH. So thin. In other words, stock, Senator Gore—I do not want to mention the stock because I think it would hurt the situation—but as chairman of the executive committee and as a substantial stockholder in a building, two years ago I could see where we were going to go on a lot of these rents. I could not sell that stock. I could not, due to my loyalty to my associates. I think eventually the stock is going to be worth a great deal of money, maybe in five years.

So I sold stocks of a liquid nature that are readily salable and that I could buy back readily in order to offset my long position. As I would say, I hedged on them.

Senator COUZENS. In other words, you sold them short?

Mr. BRUSH. I sold them short in order to offset my long position in other stocks. I own a substantial block of stock in a company that is going through a receivership. Now, I can not sell that stock. I think it is going to be worth less money. So, while I sit there having this stock, I have sold stock short to try to hedge against it. I own a substantial stock in a bank. I do not want to sell that bank stock. I am in the bank and I am active in it, and I have quite a little block of it. I think the stock is away below what it ought to be. I think eventually it is going to sell a lot higher, but still in the meantime I think that stock is going to sell 10 per cent lower in the next six months. I do not want to sell it, so I sell another stock to offset it.

Senator COUZENS. How much stock have you sold since April, 1930, approximately?

Mr. BRUSH. Oh, gosh, Senator Couzens, I could not tell you. You mean bought and sold or traded in?

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Senator COUZENS. Yes.

Mr. BRUSH. I could not even guess at it. Senator Couzens, I will be glad to give you that figure, but I do not believe I would be able to guess within 50 per cent of being correct.

Senator COUZENS. You do not carry in your mind these short sales that you have been carrying on all the time?

Mr. BRUSH. Oh, gosh; for two years?

Senator COUZENS. In other words, you have been so active in the market you could not remember?

Mr. BRUSH. No; but that 24 months, Senator Couzens, is a long time.

Senator BULKLEY. What about this year? What about since January?

Mr. BRUSH. How much have I sold so far since January; sold short?

Senator BULKLEY. Yes; since the 1st of January.

Mr. BRUSH. I have got to qualify it, Senator Bulkley. If I am short of A stock and it goes down 10 points and I think it is too low, and B stock over here has not started down yet, I would cover that and put out B stock.

Senator BULKLEY. You have done that sort of thing since the 1st of January?

Mr. BRUSH. Certainly. Done it for two years.

Senator BULKLEY. And have you a short line now?

Mr. BRUSH. At the present moment; yes.

Senator BULKLEY. What do you think about the theory that is advanced that that retards the recovery of the country by holding the stock market down?

Mr. BRUSH. I do not think my short position has any more effect upon the prosperity of the country than a rabbit.

Senator BULKLEY. Is it not a contributing factor?

Mr. BRUSH. I do not think so.

Senator BULKLEY. Now, when you are short of a stock you want to see it go down, don't you?

Mr. BRUSH. Well, if hope has any effect on it, Senator Bulkley, yes, sir.

Senator BULKLEY. Don't you do anything about it? Don't you do anything to help it down?

Mr. BRUSH. I certainly do not.

Senator BULKLEY. Never have?

Mr. BRUSH. Never in my life.

Senator BULKLEY. Have you joined with any other people to have a certain action in selling the stock?

Mr. BRUSH. Never in any way, shape, or manner have I been with a pool or a group of men. I operate absolutely alone.

Senator GLASS. Why shouldn't you if you want to?

Mr. BRUSH. Be with a group?

Senator GLASS. I say, why shouldn't you want it to go down if you make money out of it, just the same as the fellow wants it to go up who wants to make money?

Mr. BRUSH. That is not what Senator Bulkley asked me. He asked me if I did anything to make it go down.

Senator GLASS. You are in the stock market to make money, are you not?

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Mr. BRUSH. Yes; but I am not going out——

Senator GLASS (interposing). Wouldn't you make the market go up if you thought you could make money out of it?

Mr. BRUSH. I have no control to make the market, Senator Glass, go up or down.

Senator GLASS. Well, I say if you could you would, would you not? In other words, I want to find out what harm there is, if harm there be, in gambling high and gambling low.

Mr. BRUSH. Well, Senator, I figure that economic conditions and a million other factors make stocks go up and down and not my trading, and when I take a position, a short or a long position in the market, I do not advertise it to a soul on earth, and I do not undertake to make that stock do anything.

Senator GLASS. I am not supposing that you do. The point I make is that a bear is no worse than a bull, and not as bad.

Mr. BRUSH. Senator Glass, you would never have had your bear picture if you had not had your bull picture in 1929.

Senator GLASS. Of course not; and the country would not be in this condition if you had not had your bull picture in 1929.

Mr. BRUSH. No, sir; that is correct.

Senator BARKLEY. Do you think that this bull market caused the depression or that there was an expectation that the depression was over?

Mr. BRUSH. No, Mr. Gray, I have——

Mr. GRAY (interposing). Don't come to me for help.

Mr. BRUSH. I can not do that. I do not know. I try to follow the economic conditions and not guess why they occur.

Senator BULKLEY. You still think that you are justified in playing short on the market at this time, do you?

Mr. BRUSH. Well, justified in what way, Senator?

Senator BULKLEY. As a patriot.

Mr. BRUSH. I do not think I am affecting the—I do not think patriotism has any more to do with my position in the market than that inkwell; not a bit.

Senator GLASS. Wouldn't you say you are as much a patriot as the fellow who boosted the market up?

Mr. BRUSH. I certainly do.

Senator GLASS. I do too.

Mr. BRUSH. The fact that I am short at the market, Senator Bulkley, has no more effect upon the market than anything in the world you can think of.

Senator BULKLEY. That is just what I want to get at, your opinion. You do not think that the market is any lower on account of your being short in it?

Mr. BRUSH. No, sir.

Senator BULKLEY. And you do not think that it is depressed by playing short and staying that way?

Mr. BRUSH. No, sir.

Senator BULKLEY. You might turn around and sell it short tomorrow?

Mr. BRUSH. I might have to buy to cover my shorts.

Mr. GRAY. I might ask, it is not your staying short, but it is your continually adding to it?

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Mr. BRUSH. That is right.

Mr. GRAY. It is your continually adding to the short position, and therefore offering additional stock that brings about the decline?

Mr. BRUSH. Yes, sir; that is right.

Senator BULKLEY. That is just what I am asking him.

Mr. GRAY. He will concede that the continual adding to the short position brings about additional declines, but you asked him about his present position.

Senator BULKLEY. Yes; I asked him about his present position, and then I asked him if he is prepared to go out and sell some more short to-morrow or the next day.

Mr. BRUSH. No; I am not, Senator Bulkley. I ought not to say this, because I do not like to give out my expert information to all of these fellows over in New York.

Senator BULKLEY. I didn't mean it that way.

Mr. BRUSH. But the man does not live, Senator Bulkley, that can guess—I am willing to go on record with this—what is going to happen in the market of the United States in the next 6 to 9 months or 12 months. I do not care who he is or how smart he is or what position he holds—he does not live. Because all contributing factors pro and con in this picture in the next 9 months, the possibilities just beggar your imagination. So I would not take a position to-day in the market if I did not have one either way.

Senator BULKLEY. As I understand your answer, then, it is that you would not sell short probably to-morrow, because you are not sufficiently confident that it is going down, but would not hesitate to do it if you thought it was going down?

Mr. BRUSH. Well, I don't know. It has been customary—I have had some tough breaks, too, by doing this—to back my judgment with my money if I have got any. And if it is proper for me to buy something if I think it is going up, I think it is perfectly proper for me to sell it if I think it is going down.

Senator GLASS. Why not? That is the game, isn't it?

Mr. BRUSH. That is life, Senator Glass.

Senator BULKLEY. That is just the point I was trying to develop, his whole attitude about it.

Mr. BRUSH. Don't think, Senator Bulkley, that the man who sells the market short always wins. You take a man like myself, who runs through the market from December, 1931, till the following February with a substantial short interest, and then run through the moratorium last June with a substantial short interest, he doesn't sleep much nights, you know, for four or five weeks. If I had quit on September 22, 1929, which I should have had brains enough to do, I would have had a lot more money than I have got to-day.

Senator GORE. Mr. Brush, there was a substantial rally after the moratorium last year. You attribute that to two forces: Some people thinking the drepression was over and stocks were taking a trend upward, and another factor was the shorts who were getting out and covering against thier profits?

Mr. BRUSH. Well, Senator Gore, that is very difficult to answer. That moratorium came without any warning to the man who was short of the market at all. He then immediately had to try to decide, and do it very promptly, whether he thought that was going

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to last or whether they would again sell low. The man who thought that they would still sell lower certainly did not cover his position and run through that with a terrific paper loss. Now, if he had money enough to last through he won. If toward the last of it he did not have money enough to ride through he went broke. So he is just matching his judgment.

Senator GORE. The same thing happened after the reconstruction legislation this winter?

Mr. BRUSH. The same thing has happened. All you have got to do is to look at these charts and see what the fellow had to ride through here if he was going to stay with them.

Senator GORE. Of course, some of the shorts covered and did not ride through, and that had a tendency to put the market up, and I assume that others who thought, in turn, that the market would go down increased their short position, and that had a tendency to depress the market.

Mr. BRUSH. Senator Gore, you see, shorts covered right at the top, some of them, and went along with the market. So it just influenced that both ways. So this is not all just "driving up in a hack with gold dollars."

Mr. GRAY. I was going to ask you the question, supplementing Senator Glass's suggestion, about the pools. It is not the pools either for the up side or the down side that are the danger, but it is the manner in which their object is accomplished in some instances? That is about the trouble, is it not?

Mr. BRUSH. I think that is an excellent statement; yes, sir.

Mr. GRAY. All right; that is all I wanted just now.

The CHAIRMAN. We are going to adjourn. You may consider yourself excused, subject to call, Mr. Brush, and the committee will meet at 2.30 this afternoon. The first witness will be Percy Rockefeller. Is he here?

Mr. PERCY ROCKEFELLER. Yes.

(Thereupon, at 12.20 o'clock p. m., a recess was taken until 2.30 o'clock p. m., of the same day.)

AFTER RECESS

The Senate Banking and Currency Committee reconvened at 2.30 o'clock p. m., Friday, April 22, 1932, at the expiration of the noon recess.

The CHAIRMAN. The committee will come to order. So will the audience.

Mr. GRAY. Is Mr. Rockefeller in the room?

Mr. ROCKEFELLER. Yes.

The CHAIRMAN. You swear that the evidence that you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROCKEFELLER. I do.

TESTIMONY OF PERCY A. ROCKEFELLER, GREENWICH, CONN.

Mr. GRAY. Will you give the reporter your full name, Mr. Rockefeller?

Mr. ROCKEFELLER. Percy A. Rockefeller.

Mr. GRAY. And where do you reside?

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Mr. ROCKEFELLER. Greenwich, Conn.

Mr. GRAY. Have you any particular business or profession that you can designate?

Mr. ROCKEFELLER. I am interested in various industries.

Mr. GRAY. Various industries and different enterprises?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Connected with various corporations?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. On the board, or an officer of some of them?

Mr. ROCKEFELLER. On the board of several of them.

Mr. GRAY. How many?

Mr. ROCKEFELLER. Well, quite a good many. I do not know all together.

Mr. GRAY. Well, approximately?

Mr. ROCKEFELLER. I think possibly 30.

Mr. GRAY. Those are corporations whose stock is traded in upon the New York Stock Exchange?

Mr. ROCKEFELLER. Some of them are and some of them are not.

Mr. GRAY. We have been advised that you have been a very large trader in stocks on the New York Stock Exchange. Is that correct?

Mr. ROCKEFELLER. I have at times sold and bought considerable amounts of securities.

Mr. GRAY. And for what period of time have you been engaged in trading in stocks on the New York Stock Exchange?

Mr. ROCKEFELLER. A good many years. Fifteen or 20 years I should think, probably.

Mr. GRAY. Do you do that trading in your own name?

Mr. ROCKEFELLER. I do, sir.

Mr. GRAY. All of it?

Mr. ROCKEFELLER. I have been interested in various syndicates at times.

Mr. GRAY. What you would call pools?

Mr. ROCKEFELLER. No; I should call them syndicate accounts.

Mr. GRAY. And by syndicate accounts you mean that you are engaged with other men in trading in the market?

Mr. ROCKEFELLER. I have been at times; yes, sir.

Mr. GRAY. Does that mean that you have been engaged in trading in the market on both what they call the long side and the short side?

Mr. ROCKEFLLER. I have for my personal account traded on both sides. The syndicate operations have been on the long side.

Mr. GRAY. Well, is it not a fact, Mr. Rockefeller, that most of those syndicate operations have been on the short side?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. That is not so?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Discussing for a moment your individual operations, will you tell the committee with respect to your position during the last five or six years, without carrying your memory back any further than that? What has been the highest position that you have assumed on the long side of the market, either with respect to the volume of shares or the value involved? In other words, your long operations have reached the point where there has been how much involved?

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Mr. ROCKEFELLER. From memory I should say about 22,000 or 23,000 shares.

Mr. GRAY. Twenty-two thousand or twenty-three thousand shares?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. No more than that?

Mr. ROCKEFELLER. I do not think so.

Mr. GRAY. And the most of your operations have been syndicate, I suppose?

Mr. ROCKEFELLER. No; comparatively few.

Mr. GRAY. You mean that at no point of time in the last five or six years have you ever been long more than 22,000 to 23,000 shares?

Mr. ROCKEFELLER. Well, I have not had an opportunity to check that, but that is my impression, to the best of my knowledge and belief.

Mr. GRAY. Does your position change very rapidly, or is it a position that quite frequently is set for a great length of time?

Mr. ROCKEFELLER. Sometimes it changes fairly rapidly and sometimes it is set for a considerable period.

Mr. GRAY. Well, now, if you will apply your memory, if you please, to your position on the short side of the market. Tell us what is the greatest position with respect to the number of shares of stock that you found yourself in on the short side of the market at any time within that same period.

Mr. ROCKEFELLER. I think at one time I was short 60,000 or 70,000 shares.

Mr. GRAY. So that your position in the main has been greater on the short side of the market individually, than it has been on the long?

Mr. ROCKEFELLER. No, sir. That short position was a very short position, and I think it was in 1927.

Mr. GRAY. Do you mean that short position did not last for as long a time as your long position did? Is that what you mean?

Mr. ROCKEFELLER. As I remember it, just for a month, or possibly two months.

Mr. GRAY. Are you short or long in the market now?

Mr. ROCKEFELLER. I am long in the market.

Mr. GRAY. You are long on the market now?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You have some short positions, I suppose?

Mr. ROCKEFELLER. No, sir; I have not.

Mr. GRAY. No short positions at all at the present time?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. When did you get out of it?

Mr. ROCKEFELLER. Five or six weeks ago.

Mr. GRAY. Five or six weeks ago. When you thought it was a favorable time to do so, I suppose?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. That is natural. What is the extent of your short position with your syndicate operations?

Mr. ROCKEFELLER. I have no short position in syndicate operations.

Mr. GRAY. Have not for how long?

Mr. ROCKEFELLER. I do not think I ever have. I do not recall any.

Mr. GRAY. Well, I will come back to that in a moment or two.

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During the period of time between the spring of 1929 and the latter part of September or early part of October, 1929, individually what was your position in the market, long or short?

Mr. ROCKEFELLER. I think I may have had a small short position at times, but in the main I was long on the market at that time.

Mr. GRAY. And about when did you change that position to the short side of the market?

Mr. ROCKEFELLER. Well, I never changed it in the balance on the short side, but I began selling short, off and on, in the fall of 1929.

Mr. GRAY. You mean by that, after October?

Mr. ROCKEFELLER. October or November, somewhere in there.

Mr. GRAY. Yes. In other words, as a trader, while the market was rising during the summer and early fall of 1929, you remained on the long side?

Mr. ROCKEFELLER. That is my best recollection.

Mr. GRAY. But when the market reached its peak and started on a decline you shifted your position?

Mr. ROCKEFELLER. I think I have had a very consistent long position as well as a short position ever since the autumn of 1929.

Mr. GRAY. Putting it, however, this way, that you began to add to and to strengthen your short position after the break in October, 1929; that is correct, is it not?

Mr. ROCKEFELLER. I think that is true.

Mr. GRAY. I wonder whether you can tell this committee what effect you believe the establishment of a large short position by either yourself or others, or yourself in conjunction with others, when a decided decline starts in the market—what effect that has on the market?

Mr. ROCKEFELLER. I do not think a short position——

Mr. GRAY (interposing). Some of us believe that it decidedly depresses the market and adds to the liquidation. Is that not so?

Mr. ROCKEFELLER. I am not sure of that. It may have a temporary effect, but every short seller has to cover his stock, and I think in the main those operations neutralize each other.

Mr. GRAY. Well, is it not a fact that he does not cover his stock until the decline reaches a point where either he thinks he has made enough money to cover or where he thinks the decline is going to stop? That is your experience, is it not?

Mr. ROCKEFELLER. I think that is true; yes.

Mr. GRAY. Yes. And as a matter of fact, by that time the short interest by the adding to their position have drawn so much liquidation into the market that that liquidation continues—real liquidation—from long holders in the market to a period beyond where the shorts cover, that is true, is it not?

Mr. ROCKEFELLER. I do not quite understand that.

Mr. GRAY. The shorts cover at a period of time where they think, of course, either that they have made enough money or that the market is going to turn. And having accentuated their position on the way down I am asking you whether or not that has not brought sufficient liquidation into the market in your experience to cause that liquidation to continue even beyond the point where the shorts cover?

Mr. ROCKEFELLER. I am not sure that that is true.

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Mr. GRAY. Well, I want your judgment on it. Have you not found from your experience that that is the case?

Mr. ROCKEFELLER. I personally do not think that short selling materially changes the market.

Mr. GRAY. You do not. Let us look at that. You mean you think that there is real liquidation in the market and there is a flood of short selling orders that come in, that it does not add to that liquidation and cause a decided decline or depression?

Mr. ROCKEFELLER. It may temporarily.

Mr. GRAY. What do you mean by "temporarily"?

Mr. ROCKEFELLER. Possibly a few hours or a few days.

Mr. GRAY. Well, you know from your experience that that short selling as a usual thing continues as long as the market continues to show an inclination to decline, is that not so?

Mr. ROCKEFELLER. Well, I have never had any information on that.

Mr. GRAY. Well, I am talking about your own knowledge from your own experience. You do not need any information if what I understand as to the volume of your trading is true.

Mr. ROCKEFELLER. Well, I think as far as my own case went I usually took a position on the short side and covered when I thought that the time was right. And I did not increase my short position on the way down.

Mr. GRAY. Most short traders do, do they not?

Mr. ROCKEFELLER. Well, I do not know what other people do, sir.

Mr. GRAY. Who have you been operating with?

Mr. ROCKEFELLER. What house?

Mr. GRAY. Oh, no. What pools? What syndicate operators?

Mr. ROCKEFELLER. In what period?

Mr. GRAY. Any period during the last two or three years?

Mr. ROCKEFELLER. The last two or three years. I have had a syndicate operation in Air Reduction stock.

Mr. GRAY. Short or long?

Mr. ROCKEFELLER. Long.

Mr. GRAY. When was that?

Mr. ROCKEFELLER. Well, it was an account that started I think back in—five or six years ago, possibly.

Mr. GRAY. Still in existence?

Mr. ROCKEFELLER. Still in existence; yes, sir.

Mr. GRAY. Who are your cooperators in that case?

Mr. ROCKEFELLER. Mr. F. B. Adams, who is associated with me in business, and some of the members of the firm, I think, of Shearson-Hammill.

Mr. GRAY. Who?

Mr. ROCKEFELLER. Shearson-Hammill.

Mr. GRAY. Now, they are brokers, are they not?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. They are members of the New York Stock Exchange, are they not?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. And they were members of the pool that you were interested in in that case; that is true, is it not?

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Mr. ROCKEFELLER. Well, that is my impression. The syndicate papers are old and I have not checked them up, but that is my impression, sir.

Mr. GRAY. They were in a position to get inside information for your pool, were they not?

Mr. ROCKEFELLER. Well, they naturally know how the operations of the company were; yes, sir.

Mr. GRAY. And they naturally know the operations of the stock exchange too, in that particular stock, do they not?

Mr. ROCKEFELLER. Yes; I suppose that is true.

Mr. GRAY. All right.

Senator FLETCHER. That stock went from about 214 to 55, did it not?

Mr. GRAY. Now?

Senator FLETCHER. Fifty-five now, and it was 214.

Mr. ROCKEFELLER. I think that is approximately correct. I think it is below 55 now.

The CHAIRMAN. Is it not a violation of the rules of the exchange for a broker to participate in that way?

Mr. ROCKEFELLER. I am not sure about that, Senator.

Senator BARKLEY. Your long position in this Air Reduction stock is one that you have held since it was 214, or have you been in and out as it went down?

Mr. ROCKEFELLER. It was a little syndicate that was arranged to buy and sell the stock, and has continued over a long period of time.

Senator BARKLEY. So that you do not hold the same stock now as a syndicate that you held a year or so ago?

Mr. ROCKEFELLER. No; we bought it from time to time.

The CHAIRMAN. Mr. Rockefeller, if you will speak a little louder we will hear you better.

Mr. ROCKEFELLER. Yes, sir.

Senator FLETCHER. Do you sell generally through brokers, Mr. Rockefeller?

Mr. ROCKEFELLER. Always.

Senator FLETCHER. Who are your brokers?

Mr. ROCKEFELLER. Well, at different times in the past I have dealt with different brokers.

Senator COUZENS. Well, who are they?

Mr. ROCKEFELLER. At the present time I have an account with Shearson-Hammill, and with Jesup-Lamont, Prentice & Slepack, and with Tucker-Anthony, and a small account with W. E. Hutton.

Senator BLAINE. Are those accounts in your own name or in the name of an agent?

Mr. ROCKEFELLER. The Shearson-Hammill account is a syndicate account.

Senator BLAINE. Well, in the name of the syndicate?

Mr. ROCKEFELLER. I suppose it is in the name of the syndicate. The account in Jesup & Lamont is in my own name. The account in Prentice & Slepack is in my own name. The account in Tucker-Anthony is in my own name.

Senator BLAINE. Are those accounts carried by numbers at all?

Mr. ROCKEFELLER. Well, I think some brokers have numbers and some brokers have names. I think in my case they have both my name and possibly a number to identify the account.

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Senator FLETCHER. The principal brokers are Jesup & Lamont, are they not?

Mr. ROCKEFELLER. No; I would not say that any of them are principal brokers.

Mr. GRAY. I wish, Mr. Rockefeller, you would advise us just how that particular pool in Air Reduction operated, will you please?

Mr. ROCKEFELLER. Well, I have not studied the account, but in general the principle was to buy stock on weak days and hold it until such time as we had a reasonable profit of 5 or 10 or 12 points and then sell it. Sometimes the account would be active for a time and sometimes it would be very inactive for weeks.

Mr. GRAY. Now, Mr. Rockefeller, you are only telling me what every stock purchaser does. He buys his stock and holds it and when he thinks he has made a profit he sells it. But we want to know what that particular pool did to aid itself in making a profit.

Mr. ROCKEFELLER. Nothing that I know of.

Mr. GRAY. Nothing that you know of?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. They depended on the natural rise and fall of the market in connection with this stock, is that so?

Mr. ROCKEFELLER. Absolutely, so far as I know.

Mr. GRAY. Are you connected with the Air Reduction Co. in any way?

Mr. ROCKEFELLER. Yes, sir; I have been a director.

Mr. GRAY. You are a director yet?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. And you were a director at the time that pool started?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Are you quite sure that in that particular case your pool was for the purpose of increasing the value of the stock or for buying and selling at a profit?

Mr. ROCKEFELLER. Well, I think we had two purposes. At that time the Air Reduction Co. was not a very active stock, and it had quite wide fluctuations, and we wanted to stabilize it. And of course we also hoped to make a profit in doing it.

Mr. GRAY. In other words, by "stabilizing" you mean artificially regulating the price of the stock, do you not?

Mr. ROCKEFELLER. No, sir. A number of us thought that it was not advisable to have very wide fluctuations in some of these stocks, and at that time the Air Reduction Co. had a comparatively small capitalization, and we would buy at times when people wanted to sell and we would sell when we had a profit.

Mr. GRAY. Well, now, you say it had wide fluctuations. And then you say you wanted to stabilize, and then you say that you went into the pool for the purpose of selling when it was high and buying when it was low. If it had wide fluctuations it would be an aid to you in your market transactions, and you could make a profit. If you attempted to stabilize it you would interfere with the making of that profit. Which was your primary purpose, and how did you arrange it so that one of your purposes would not counteract your other?

Mr. ROCKEFELLER. Well, I do not know exactly how to explain it. We were all interested in the company as stockholders.

Mr. GRAY. You mean the brokerage firm was too?

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Mr. ROCKEFELLER. I think they were.

Mr. GRAY. Yes?

Mr. ROCKEFELLER. And we wanted as far as possible to have a good market in the stock.

Mr. GRAY. Well, now, in order to successfully operate your pool it was necessary for that pool to take a short position too at times, was it not?

Mr. ROCKEFELLER. Not to my knowledge. I do not think they have been short on the stock.

Mr. GRAY. You were never short on the stock?

Mr. ROCKEFELLER. As far as I know, no.

Mr. GRAY. What have been the high and low quotations of that stock since your pool was organized?

Mr. ROCKEFELLER. I don't remember what the quotation was when the syndicate was arranged. I think it got up to over 200.

Mr. GRAY. What is it to-day?

Mr. ROCKEFELLER. About 40.

Mr. GRAY. About 40. Will you explain to this committee how your syndicate, if it operated only on the long side of the market, with a stock that has dropped from 214 at the time that your syndicate started, to 40 to-day, when your syndicate still exists, could make any money operating on the long side of the market if they operated on that side alone, without operating on the short side?

Mr. ROCKEFELLER. We have not made any money to-day. At one time we had a profit, but to-day we have none.

Mr. GRAY. Well, now, you are talking about the net results.

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You mean to tell this committee that this pool operating for the purpose of making money—because that was your primary object, was it not? Answer that last question first. That was your primary object, to make money, was it not?

Mr. ROCKEFELLER. We hoped to.

Mr. GRAY. Yes. Of course, the object is always accompanied by the hope. You mean to tell me that that pool was never tempted to operate on the short side of the market in a stock that has declined from 200 and some odd down to 40?

Mr. ROCKEFELLER. As far as I know, sir, we have never been short a share on the stock, sir.

Mr. GRAY. Never been short. Now I wish you would tell this committee in a general way what the business of the Air Reduction Co. is.

Mr. ROCKEFELLER. It reduces the air into its component parts, and it has a considerable sale for the oxygen in connection with the acetylene-welding business.

Mr. GRAY. Yes. And some of its biggest customers are the steel companies; is that not true?

Mr. ROCKEFELLER. They are in prosperous times large consumers.

Mr. GRAY. Yes. Well, during the time when this syndicate was operating on the long side in Air Reduction Co. stock were you short in certain steel stocks also?

Mr. ROCKEFELLER. Yes. I have been short of United States Steel stock.

Mr. GRAY. Well, now, I do not want to confuse the issue, and therefore I want to confine my question first to this particular

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syndicate that you have spoken of, which was operating on the long side of Air Reduction Co. stock, and I am asking you whether or not that syndicate—not yourself——

Mr. ROCKEFELLER. Oh, no, sir; no, sir.

Mr. GRAY (continuing). Were short of stocks of these various steel companies?

Mr. ROCKEFELLER. No. As far as I know, that syndicate has never operated in any stock except Air Reduction.

Mr. GRAY. All right. And while that syndicate was operating on the long side of Air Reduction Co. you were short yourself on United States Steel?

Mr. ROCKEFELLER. I have been at times.

Senator COUZENS. How much short?

Mr. ROCKEFELLER. I do not think I have ever been short more than 4,000 or 5,000 shares.

Mr. GRAY. You were short of Bethlehem Steel, too, were you not?

Mr. ROCKEFELLER. No; I have never been short of Bethlehem Steel. I am a director of Bethlehem Steel.

Mr. GRAY. Well, were you in any syndicate that was short of Bethlehem steel?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Were you short of vanadium?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Were you short of any other steel stocks, either individually or in conjunction with any syndicate?

Mr. ROCKEFELLER. I do not think of any.

Mr. GRAY. Was your short interest in the United States steel stock caused or did you go into it by reason of certain information that you were able to obtain on account of the contracts of the Air Reduction Company with United States steel?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Nothing of that kind?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. You are quite sure of that ?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Now, you were a director of Bethlehem, also, were you?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You were never short of Bethlehem?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. And never were connected with any syndicate that was short of Bethlehem?

Mr. ROCKEFELLER. No, sir.

Senator COUZENS. While Mr. Gray is looking that up I would like to ask how much money was involved in this syndicate that started to regulate the price in Air Reduction?

Mr. ROCKEFELLER. I think the maximum amount of the syndicate has been somewhere between 15,000 and 20,000 shares at any one time.

Senator COUZENS. And how much money did you have to put up in the syndicate?

Mr. ROCKEFELLER. Well, now, we put up the money a great many years ago, and I don't remember what the original subscription was. I do know that I was called to margin on it this week.

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Senator COUZENS. Well, how much have you got in the syndicate now?

Mr. ROCKEFELLER. I can not tell you, offhand.

Senator COUZENS. Roughly, how much?

Mr. ROCKEFELLER. Well, I have approximately one-half of a one-third interest. One-sixth interest about.

Senator COUZENS. What would that amount to in dollars and cents?

Mr. ROCKEFELLER. Well, it would be about—2,500 shares at 40—about $100,000.

Senator BROOKHART. Is this 15,000 shares the floating supply of the stock?

Mr. ROCKEFELLER. It was bought in the market; yes.

Senator BROOKHART. Was that supposed to be substantially the floating supply?

Mr. ROCKEFELLER. No; the company has a capital of 900,000 shares, approximately.

Mr. GRAY. How much of that is closely held and how much of that is floating? That is what Senator Brookhart wants to know, I take it?

Senator BROOKHART. Yes.

Mr. ROCKEFELLER. Well, I could not answer that to-day. I only know of two large holdings, I think.

Mr. GRAY. And they amount to what?

Mr. ROCKEFELLER. One is 15,000 shares I think, and I do not know what the other holding is. I think it is about 50.

Mr. GRAY. About 50,000?

Mr. ROCKEFELLER. I think so.

Mr. GRAY. Well, you do not mean to tell this committee that out of 900,000 shares of stock in that particular company that over 800,000 of it is floating stock, do you?

Mr. ROCKEFELLER. I do not know as you would call it floating stock, but they have a very large stock list, and it is very widely distributed.

Mr. GRAY. Well now, you understand what I mean by floating stock, do you not?

Mr. ROCKEFELLER. Well, floating stock I think is usually considered to be the stock in brokers' names that is in the street.

Mr. GRAY. Yes. What portion of this stock of this Air Reduction Co. is in that condition? What percentage or what number of shares?

Mr. ROCKEFELLER. I have no idea of that. I have not checked.

Mr. GRAY. You have no idea of that?

Mr. ROCKEFELLER. No; I have no idea.

Mr. GRAY. Well now, you did all your business of that syndicate through the brokerage firm of Shearson & Hammill?

Mr. ROCKEFELLER. Shearson & Hammill; yes, sir.

Mr. GRAY. Who were part of the syndicate?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. You did not operate through any other brokers there?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Unless any members of the committee want to ask you anything more about that particular syndicate I want to ask you

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to name any other syndicate or pool that you have been interested in.

Mr. ROCKEFELLER. I was interested in——

Senator BARKLEY. Before that let me ask you this: Being a director of the Air Reduction Co., and a member of this syndicate, and also a dealer in this stock individually, you are in a position to know fairly well the condition of the company and the probable fluctuations in the price of its stock?

Mr. ROCKEFELLER. I do not know the probable fluctuations in the stock; no, sir.

Senator BARKLEY. You, of course, were intimately acquainted with its financial situation?

Mr. ROCKEFELLER. Yes, sir.

Senator BARKLEY. And its business?

Mr. ROCKEFELLER. Yes, sir.

Senator BARKLEY. And if increase in profits or output or general outlook for the company would have any bearing upon the market value of its stock you, of course, would know that in advance?

Mr. ROCKEFELLER. We publish quarterly statements. Of course I get the statements at every directors' meeting.

Senator BARKLEY. To what extent were the purchases of your stock in this company and the purchases of your syndicate actuated by the intimate knowledge that you had of the company's affairs as a director?

Mr. ROCKEFELLER. I had nothing to do with the management of the syndicate. That was in the hands of Shearson, Hammill & Co. They were the syndicate managers.

Senator BARKLEY. They acted under your authority, though?

Mr. ROCKEFELLER. They would consult from time to time.

Senator BARKLEY. They bought when you told them to buy and they sold when you told them to sell?

Mr. ROCKEFELLER. No; they used their own discretion in buying and selling.

Senator BARKLEY. Without any advice at all?

Mr. ROCKEFELLER. Occasionally they would call up, but very seldom.

Senator BARKLEY. Did you impart to them information concerning this company that you had as a director?

Mr. ROCKEFELLER. No; I never have.

Senator BARKLEY. Well, are you able to say to what extent you took advantage of your knowledge of the company's affairs as a director to advise either the purchase or sale of the stock?

Mr. ROCKEFELLER. I do not think in all the time that the pool has been in operation I have talked with them more than perhaps three or four times. We have left it entirely to their judgment.

Senator BARKLEY. Well then, in your individual purchases of that stock did you base your purchases as an individual upon your knowledge of the condition of the company obtained as a director?

Mr. ROCKEFELLER. Well, I have either bought or sold almost nothing of it in the last five years excepting through this Shearson-Hammill pool.

Senator BARKLEY. I thought you said earlier in your testimony that you had on the long side dealt considerably in the stock of Air Reduction.

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Mr. ROCKEFELLER. No. I have held individually a substantial amount, but I have never been an active dealer in the stock personally.

Senator BARKLEY. That is all I want to ask.

Mr. GRAY. Your individual position with respect to the stock holdings in the Air Reduction Co. has been what? What is the greatest number of shares of stock in that company you have owned?

Mr. ROCKEFELLER. Well, at one time I owned a very large amount of the stock. I think I had 30,000 shares at one time.

Mr. GRAY. When?

Mr. ROCKEFELLER. A long time ago. As I recall it I sold out the large part of my individual holdings seven or eight years ago.

Mr. GRAY. What have you now?

Mr. ROCKEFELLER. I have 1,000 shares I think now.

Mr. GRAY. A thousand shares. And you are an officer of the company yet?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You know what selling against the box means, do you not?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Did you sell some of it against the box?

Mr. ROCKEFELLER. I have twice, I think.

Mr. GRAY. Twice?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. When was the first time?

Mr. ROCKEFELLER. I think twice last year.

Mr. GRAY. What was the quantity the first time?

Mr. ROCKEFELLER. I think I sold 900 shares both times.

Mr. GRAY. Nine hundred shares each time?

Mr. ROCKEFELLER. I think so; yes, sir.

Mr. GRAY. When you parted with it—was that an actual sale?

Mr. GRAY. I have not parted with it. I still have my thousand shares.

Mr. GRAY. I know; but you had 30,000 at one time; you have sold two lots of 900 each, and you have a thousand yet. I want to know about the rest of it. Did you sell the rest of it against the box?

Mr. ROCKEFELLER. The large holdings I think I sold back in 1925 or 1926.

Mr. GRAY. Did you sell against the box then?

Mr. ROCKEFELLER. No; I liquidated them in the market.

Mr. GRAY. You liquidated them in the market. When you sold them against the box did you sell them in a dummy name or your own name?

Mr. ROCKEFELLER. Oh, I sold them in my own name.

Mr. GRAY. You sold them in your own name?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Take your first sale against the box, how long before you eventually made a delivery with respect to that?

Mr. ROCKEFELLER. I did not deliver. I bought it back.

Mr. GRAY. In other words, having sold it against the box you waited until the stock depreciated in value, and then you bought it back?

Mr. ROCKEFELLER. Well, let me explain.

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Mr. GRAY. Well, if you will answer that I haven't any objection to your explaining; if you will first answer the question. As I understand your answer you sold against the box, and instead of making any delivery of your stock against the box you eventually bought it back, is that right?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. All right. Now make any explanation you want.

The CHAIRMAN. He did not answer your question.

Mr. GRAY. Yes. He said, "Yes."

The CHAIRMAN. No; you asked him whether he bought it back at a lower price. He did not answer that.

Mr. GRAY. Well, will you answer that question of Senator Norbeck's?

Mr. ROCKEFELLER. I do not recall whether it was a lower price or a higher price.

Mr. GRAY. Well, there would have been no reason for your buying it back at a higher price when you had the stock to deliver, would there?

Mr. ROCKEFELLER. If you will allow me to explain.

Mr. GRAY. All right.

Mr. ROCKEFELLER. Over the last two or three years I have needed considerable amounts of money from time to time to meet commitments at one time or another, and several times during that period I have sold stock against the box, thinking that I might need the money within a week or two. If I found that I did not need the money I repurchased the stock, and if I did need the money I would deliver the stock.

Mr. GRAY. You are talking of Air Reduction stock, or generally?

Mr. ROCKEFELLER. I am speaking of several different stocks.

Mr. GRAY. You are speaking of several different stocks. All right. Now, let us confine ourselves to Air Reduction stock. You sold 900 shares against the box?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You bought that back, did you?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. At a lower price or not?

Mr. ROCKEFELLER. I do not recall.

Mr. GRAY. Well, now, Mr. Rockefeller, that only occurred last year, and it is in a company in which you are yourself interested. Surely you can tell us whether you bought it back at a lower price or not.

Mr. ROCKEFELLER. Well, I can find out very easily and inform you, but I do not recall at the minute.

Mr. GRAY. You do not think you bought it back above the price at which you sold it, do you?

Mr. ROCKEFELLER. I would not be surprised.

Mr. GRAY. You would not be surprised?

Mr. ROCKEFELLER. No. I am not sure.

Mr. GRAY. In a declining market? The present market has been, generally speaking, declining throughout the general list, has it not?

Mr. ROCKEFELLER. It has had its ups and downs.

Mr. GRAY. Well, maybe on the second 900 shares you will have more recollection. Did you buy that back?

Mr. ROCKEFELLER. I bought that back; yes.

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Mr. GRAY. Did you buy that back at a lower price or not?
Mr. ROCKEFELLER. I do not recall.
Mr. GRAY. What time last year was it that that happened?
Mr. ROCKEFELLER. I do not recall.
Mr. GRAY. You do not even recall the time?
Mr. ROCKEFELLER. No. I think it happened twice during the year.
Mr. GRAY. And you can not tell this committee whether you bought it back lower or higher?
Mr. ROCKEFELLER. No; I can not recall.
Mr. GRAY. You have no idea on the subject at all?
Mr. ROCKEFELLER. No.
Senator FLETCHER. What is the par value of that stock?
Mr. ROCKEFELLER. I do not recall what it is. I think it is a nonpar value though. I am not sure. It is incorporated in New York State, and I think it is a nonpar value stock.
Mr. GRAY. There is no question in your mind, Mr. Rockefeller, that if you sold that stock against the box and you bought it back at a lower price, keeping your own stock in the box, but what you actually did was to make a short sale of that stock? That is true, is it not?
Mr. ROCKEFELLER. It was technically short, but I was always long of some stock.
Mr. GRAY. You were always in a position to deliver?
Mr. ROCKEFELLER. Yes.
Mr. GRAY. But your transaction was that when you sold it against the box, and so advised your broker—by the way, I suppose you sold that through Shearson-Hammill?
Mr. ROCKEFELLER. No; I sold that through Prentice & Slepack, I think.
Mr. GRAY. Through Prentice & Slepack. And when you sold that against the box, what actually happened, of course, was that your broker had to go out and borrow that stock and make delivery before the hour the next day that it was required; that is true, is it not?
Mr. ROCKEFELLER. Yes.
Mr. GRAY. And when you bought it back you bought it back through a broker in the open market, and that broker returned the stock to the person by whom it was loaned?
Mr. ROCKEFELLER. Yes.
Mr. GRAY. And that is a short sale, is it not?
Mr. ROCKEFELLER. It was——
Mr. GRAY. Well, we all know it is. We only want you to admit it, that is all.
Mr. ROCKEFELLER. Well, it was a sale against the box I was not in an actual short position.
Mr. GRAY. But it became a short sale because you did not deliver it by the stock that you had in the box; that is true; is it not?
Mr. ROCKEFELLER. Well, I was never actually short of the stock.
Mr. GRAY. In other words, you could have furnished it?
Mr. ROCKEFELLER. I could have furnished it; yes.
Mr. GRAY. You were a director of the company at the time that you did that?
Mr. ROCKEFELLER. Yes.

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Mr. GRAY. And is that the reason you can not tell us whether it was bought back below or above, because you do not want to tell us that it was bought back below?

Mr. ROCKEFELLER. No, sir. I do not recall. I will be glad to find out.

Mr. GRAY. All right. That applies to both of the sales, does it?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. In this pool that was conducted in Air Reduction stock, in what name was it carried?

Mr. ROCKEFELLER. I do not recall what name the account was on in Shearson & Hammill's books.

Mr. GRAY. Was there any name, or was it just a number?

Mr. ROCKEFELLER. I do not know, sir.

Mr. GRAY. Are some of these accounts that you are interested in carried just by a number?

Mr. ROCKEFELLER. I think that they always are with my name connected with the number.

Mr. GRAY. Always your name connected with the number?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Then why the use of a number when your name appears?

Mr. ROCKEFELLER. Sometimes I would have more than one account in an office.

Mr. GRAY. Well, did this syndicate have a name under which it operated?

Mr. ROCKEFELLER. I do not recall. The papers were signed a great many years ago, and I do not recall.

Mr. GRAY. Well, all right. Now, suppose you tell me the next pool that you were interested in, whether it was for the long or the short side of the market?

Mr. ROCKEFELLER. I was interested in a pool in Tucker-Anthony, a syndicate account in Childs Restaurant stock.

Mr. GRAY. In what?

Mr. ROCKEFELLER. In Childs Restaurant stock.

Mr. GRAY. Now, Tucker-Anthony is the brokerage firm?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Is that right?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. When was this pool?

Mr. ROCKEFELLER. I do not recall when it was started. Some considerable time ago.

Mr. GRAY. Well, does that mean a year ago or several years?

Mr. ROCKEFELLER. I think either in 1928 or 1929.

Mr. GRAY. Who was in that pool with you?

Mr. ROCKEFELLER. I do not remember the members of that syndicate. Mr. Moffatt, I think, George M. Moffatt, was one of the members. The others I do not recall.

Mr. GRAY. Any brokerage firm?

Mr. ROCKEFELLER. I do not recall whether Tucker-Anthony had any interest in that at that time or not.

Mr. GRAY. It is a usual thing to take your brokers in on the pools, is it not?

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Mr. ROCKEFELLER. I do not know whether Tucker-Anthony had them.

Mr. GRAY. Sometimes a specialist, too; is it not?

Mr. ROCKEFELLER. I do not know as to that.

Mr. GRAY. As a matter of fact, in the pools in which you have been interested you have furnished a good deal of the money and the other fellows have done the operating; is that not so?

Mr. ROCKEFELLER. No, sir. I have never furnished more than my proportion of the money.

Mr. GRAY. Not more than your proposition. Well, did that pool that was operating in Childs Restaurant stock operate on the long or the short side, or both?

Mr. ROCKEFELLER. On the long side.

Mr. GRAY. Entirely?

Mr. ROCKEFELLER. As far as I know; yes, sir.

Mr. GRAY. Well, do you not know?

Mr. ROCKEFELLER. No, sir; I have not checked up the accounts.

Mr. GRAY. Is the pool still in existence?

Mr. ROCKEFELLER. No. The pool was wound up about a year ago. They broke up with all the stock and they had to divide it among the syndicate members interested.

Mr. GRAY. In other words, being long of stock the pool broke up and the stock was divided among those that were interested?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Well, who did the operating in that pool for you?

Mr. ROCKEFELLER. I do not remember. I was a member of the syndicate, but I do not remember who the syndicate managers were.

Mr. GRAY. Do you not pay any attention to these things?

Mr. ROCKEFELLER. Yes; but it happened a number of years ago, and I do not recall. I could check up.

Mr. GRAY. It could not have happened so long ago because of the fact that you said that last year they just divided the results—that is, they divided the stock?

Mr. ROCKEFELLER. I had to take my proportion of the stock, but I did not check up at that time about the balance of the pool.

Mr. GRAY. In other words, you can not remember back to last year to tell us who was interested in that pool that divided this stock during the year 1931; is that true?

Mr. ROCKEFELLER. I do not recall the names of the other people in the syndicate.

Mr. GRAY. Well, then, the answer to my question is "Yes," that though this pool only divided its stock last year you can not remember who was in it with you, except a man named Moffatt?

Mr. ROCKEFELLER. That is correct.

Mr. GRAY. That is correct, is it?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. All right. What other pools have you been in?

Mr. ROCKEFELLER. I was in a small syndicate in W. E. Hutton's office.

Mr. GRAY. What stock did that operate in?

Mr. ROCKEFELLER. We started to operate in Lima Locomotive.

Mr. GRAY. In what?

Mr. ROCKEFELLER. Lima Locomotive.

Mr. GRAY. I am sorry; I did not hear that. Lima?

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Mr. ROCKEFELLER. Lima Locomotive.

Mr. GRAY. Was that operating on the long or the short side?

Mr. ROCKEFELLER. On the long side.

Mr. GRAY. Mr. Rockefeller, when was that syndicate or pool formed?

Mr. ROCKEFELLER. I think in 1928.

Mr. GRAY. Is it still in existence?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Who are the members of that syndicate or pool?

Mr. ROCKEFELLER. Mr. Bragg and Mr. Smith.

Mr. GRAY. Do you mean Thomas E. Bragg and Bernard E. Smith?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. All right. I was going to mention their names a little later, but now that you have mentioned them I will ask you: They are considered very large operators on the market in New York, are they not?

Mr. ROCKEFELLER. I think they have that reputation.

Mr. GRAY. Well, don't you know it?

Mr. ROCKEFELLER. Not of my own knowledge; no.

Mr. GRAY. Well, you are in a number of pools with them, aren't you?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Where is Bragg?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. And you have no idea?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. It has been variously reported to me that he was in Florida and in California and on his way to Australia. Don't you know where he is?

Mr. ROCKEFELLER. No; I do not know.

Mr. GRAY. Where is Smith?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. When did you see him last?

Mr. ROCKEFELLER. About a week or 10 days ago.

Mr. GRAY. Where?

Mr. ROCKEFELLER. In New York.

Mr. GRAY. Where does he live?

Mr. ROCKEFELLER. He has a home in Bedford, N. Y., and has an apartment in uptown New York.

Mr. GRAY. Whereabout in uptown New York?

Mr. ROCKEFELLER. I don't remember whether it is on Ninety-second or Ninety-sixth Street.

Mr. GRAY. Well, we can not locate him. Do you know anything about where he could be found?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Where does Tom Bragg live—and I apologize for being so familiar with his name, but that is the way I have heard it spoken of so often.

Mr. ROCKEFELLER. I do not know. I think he has an apartment in New York but am not sure.

Mr. GRAY. When did you see him last?

Mr. ROCKEFELLER. I don't think I have seen him in five or six months.

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Mr. GRAY. And you have no idea where he is?
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. How many different pools have you been in with these two gentlemen?
Mr. ROCKEFELLER. I was in this little acount, and then a number of years ago I was in an account in Anaconda with them, in 1928 or 1929, somewhere along there.
Mr. GRAY. Were you in any others with them?
Mr. ROCKEFELLER. Those are the only two.
Mr. GRAY. Are both of these pools in existence now?
Mr. ROCKEFELLER. No. The Anaconda account was wound up within a comparatively short time.
Mr. GRAY. Have you furnished Bragg and Smith money for the purpose of operating other pools of their own?
Mr. ROCKEFELLER. No, sir; never.
Senator FLETCHER. Mr. Rockefeller, were you long or short in Anaconda?
Mr. ROCKEFELLER. I was long in Anaconda.
Mr. GRAY. So that we may not get away from these others, but more particularly now: Do you know William A. Barbour, president of Childs Restaurants (Inc.)?
Mr. ROCKEFELLER. I think I have met him.
Mr. GRAY. Is he in your pool?
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. Are you quite sure of that?
Mr. ROCKEFELLER. Not to my knowledge. I really do not recall who was in the Childs pool.
Mr. GRAY. Well, you were a member of that pool, and you are an intelligent man. Do you mean to say that you can not tell this committee whether Mr. Barbour, the president of Childs Restaurants, was operating with you in Childs Restaurants stock?
Mr. ROCKEFELLER. I do not know.
Mr. GRAY. You do not know?
Mr. ROCKEFELLER. No. I will be glad to find it out for you.
Mr. GRAY. But you say you do not know.
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. It would not impress itself on your mind at all if he was?
Mr. ROCKEFELLER. No, sir; I do not know.
Mr. GRAY. Well, now, let us come to the pool in Lima Locomotive. When was that started—but I believe you said in 1928, didn't you?
Mr. ROCKEFELLER. I think that was the date.
Mr. GRAY. Does it still exist?
Mr. ROCKEFELLER. Yes, sir.
Mr. GRAY. Was anybody else but Bragg and Smith in it?
Mr. ROCKEFELLER. I think some considerable time ago Mr. Smith bought out Mr. Bragg's interest, and I think just he and I are interested in it.
Mr. GRAY. Was there at any time anybody else but Bragg and Smith interested in it?
Mr. ROCKEFELLER. I think that was all.
Mr. GRAY. How much was put into that pool?
Mr. ROCKEFELLER. $150,000.
Mr. GRAY. You say $150,000?

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Mr. ROCKEFELLER. Yes.

Mr. GRAY. Did you three put up the $150,000, each of you putting up $50,000; is that what you say?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. You did not put up the major share of it yourself?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. As a matter of fact, Mr. Rockefeller, you know that these two men are known as a couple of bear raiders in New York, don't you?

Mr. ROCKEFELLER. I suppose they have that reputation.

Mr. GRAY. Yes. But you say they were long of this stock that you were with them on?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Now, Mr. Rockefeller——

Senator BLAINE (interposing). Is this Bernard E. Smith popularly known as Benny Smith?

Mr. ROCKEFELLER. As Ben Smith; yes, sir.

Senator BLAINE. In the Street?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. As a matter of fact, to elaborate on that, he carries some of his own accounts in the name of B. Smith, some in the name of Benny Smith, some in the name of B. E. Smith, and some in his name as Bernard E. Smith, doesn't he?

Mr. ROCKEFELLER. I have no knowledge of his own accounts.

Mr. GRAY. You do not know about his personal transactions?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. All right. We will now come back to Lima Locomotive. Mr. Rockefeller, do you mean to tell this committee that in the operations on the long side of the market in Lima Locomotive, you operating with Bragg and Smith in a pool, that you did not sell short at any time?

Mr. ROCKEFELLER. The account was formed originally to operate in Lima Locomotive alone. We lost some money in the account, and they operated in other stocks after that.

Mr. GRAY. Tell the names of the other stocks.

Mr. ROCKEFELLER. I do not know what they did operate in.

Mr. GRAY. Well, that proves to me and so I want to ask you whether or not it is true as to what actually happened, you were in the hands of Bragg and Smith, and you furnished the money to Bragg and Smith, who did the operating, and you do not know much about what was going on.

Mr. ROCKEFELLER. I did not furnish the money except my proportion of it, $50,000.

Mr. GRAY. Well, at least you left the operations to those two men.

Mr. ROCKEFELLER. I think Mr. Smith handled the account.

Mr. GRAY. You think Smith handled it?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. And that is one of the men who among others is known as a bear raider.

Mr. ROCKEFELLER. I do not know that he is known as a bear raider.

Mr. GRAY. He is known as a bear raider on the stock market of New York.

Mr. ROCKEFELLER. I do not know that he is a bear raider.

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Mr. GRAY. But you say he has that reputation.

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Well, men are known by their reputations. What other stocks did you get in it?

Mr. ROCKEFELLER. Do you mean in this account?

Mr. GRAY. Yes; in that account.

Mr. ROCKEFELLER. Well, as I recall it, the account lost some money, and they operated in various stocks for a while, and until they had about——

Mr. GRAY (interposing). Just give me the names of the various stocks before you get to anything else.

Mr. ROCKEFELLER. Do what?

Mr. GRAY. Give me the names of the other stocks.

Mr. ROCKEFELLER. I do not recall the stocks that we bought.

Mr. GRAY. How many various stocks?

Mr. ROCKEFELLER. I do not remember.

Mr. GRAY. When that pool became a general pool for operations in any stocks that they chose to operate in, and by the word "they" I mean Bragg and Smith, of course.

Mr. ROCKEFELLER. I think at the time when the account was practically even with the $150,000 that we put in, when we got that back or the account was practically even, as I understand it it has not been active since.

Mr. GRAY. What stocks is it interested in now?

Mr. ROCKEFELLER. They own some Alaska Juneau stock, and I think that is all.

Mr. GRAY. They own it now?

Mr. ROCKEFELLER. Yes, sir.

Senator GORE. What is that Alaska Juneau stock worth now?

Mr. ROCKEFELLER. About $14 a share.

Senator GORE. What was it worth when the crash came in 1929?

Mr. ROCKEFELLER. I do not recall what it sold for then.

Senator GORE. It was about 8 then, wasn't it?

Mr. ROCKEFELLER. I do not recall.

Senator GORE. It is about the only one of the stocks that has gone up, as I recall it.

Mr. GRAY. Well, Mr. Rockefeller, from time to time did not this syndicate render to you any reports of its operations?

Mr. ROCKEFELLER. I think they must have every year. I have no personal knowledge of the account recently. I have not personally checked the account recently.

Mr. GRAY. Mr. Rockefeller, you do not mean to tell me that you let Tom Bragg and Benny Smith handle your money for a year without your looking into the matter, do you?

Mr. ROCKEFELLER. Mr. Smith spoke to me from time to time about the account, but I have not checked it.

Mr. GRAY. But he gave you no reports for a year?

Mr. ROCKEFELLER. I would have to check that up with my secretary.

Mr. GRAY. Well, when you would get the report it would be a detailed report of all operations during the period of time from when you had your last report, wouldn't it?

Mr. ROCKEFELLER. As a matter of fact, I have not seen the report for some little time.

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Mr. GRAY. But that does not answer my question. When you did get a report it would indicate to you the details of the various transactions that had taken place between the period of time when you had your last report and the report that they were then furnishing you, would it not?

Mr. ROCKEFELLER. I suppose so.

Mr. GRAY. And therefore you would know what stocks they were dealing in.

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Can not you name one of them?

Mr. ROCKEFELLER. Oh, the accounts were handled by my secretary, and I do not know what stocks they did trade in.

Mr. GRAY. When did they stop dealing in Lima Locomotives?

Mr. ROCKEFELLER. I think about 8 or 10 months after that account was started.

Mr. GRAY. And that was back in 1928.

Mr. ROCKEFELLER. Those figures you understand are approximate. I have had no occasion to refresh my memory on these matters, and the figures I give are only approximate.

Mr. GRAY. I am not asking about figures but about time now. When did they get interested in Alaska Juneau?

Mr. ROCKEFELLER. As I remember it, it was about a year ago.

Mr. GRAY. So that during that intervening period of time, between 1928 and 1931, a period of say three years, they dealt in various stocks.

Mr. ROCKEFELLER. I suppose they did.

Mr. GRAY. And you received some reports during that time.

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Well, can't you name a single stock that they dealt in?

Mr. ROCKEFELLER. I really do not recall.

Mr. GRAY. Then you do not know whether they were dealing short or long during that time, do you?

Mr. ROCKEFELLER. I do not.

Mr. GRAY. Therefore, so far as you know, the syndicate that we have just been discussing may, during that period of time, have been operating on the short side of the market, isn't that correct?

Mr. ROCKEFELLER. It may have.

Mr. GRAY. And they even might have been operating on the short side of the market in Air Reduction or Bethlehem Steel?

Mr. ROCKEFELLER. They might possibly have done so.

Mr. GRAY. Companies of which you are a director?

Mr. ROCKEFELLER. They might possibly have done so, but I do not know about that.

Mr. GRAY. Did they in fact?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. Wouldn't you have considered it a necessary thing for you to find out whether or not this syndicate you were interested in with these two men, men who had the reputation of being bear raiders, were endeavoring to sell short stocks in companies in which you were a member of the boards?

Mr. ROCKEFELLER. Well, I feel quite confident they never have operated in any stock of a company of which I was a director.

Mr. GRAY. Where do you get that confidence from?

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Mr. ROCKEFELLER. Well, I do not think they would do such a thing. But I will be glad to check it up and let you know.

Mr. GRAY. In other words, you will be glad to furnish this committee the reports of all their operations in that syndicate from the time it started down to date?

Mr. ROCKEFELLER. If I can get it; yes.

Mr. GRAY. Well, can't you get it?

Mr. ROCHEFELLER. If I have those records I will be glad to furnish them to the committee.

Mr. GRAY. And if you haven't got them, can you get them?

Mr. ROCKEFELLER. I will try.

Mr. GRAY. Is there any reason that you know of why you can not?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. Please get them.

Mr. ROCKEFELLER. All right.

Mr. GRAY. Now, you got to Alaska Juneau. Don't you know whether you sold short in that stock?

Mr. ROCKEFELLER. No; I think they bought Alaska Juneau about a year ago, and I think it is still in the account, although I am not sure.

Mr. GRAY. It was generally regarded that there were a lot of rotten operations in Alaska Juneau, was it not?

Mr. ROCKEFELLER. I do not know.

Senator GORE. That company produces gold, does it not?

Mr. ROCKEFELLER. Yes, sir.

Senator GORE. That is what I thought.

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. As a matter of fact, were the officers of that company in your pool?

Mr. ROCKEFELLER. There was nobody in the pool except Mr. Smith and myself.

Mr. GRAY. Did you keep close enough in touch with it to know whether Smith and Bragg interested and got into that pool the officers of that company?

Mr. ROCKEFELLER. I do not know, but I do not think so.

Mr. GRAY. There were some very violent fluctuations in that stock, were there not?

Mr. ROCKEFELLER. I have not followed it.

Mr. GRAY. Well, now, you have kept in touch with the market, of course, as a man interested in it?

Mr. ROCKEFELLER. I do not think in the last year or so there have been any violent fluctuations in it.

Mr. GRAY. Isn't it a fact that within the last year, and about the summer of 1931, it was remarkable that Alaska Juneau as the result of some manipulation was going up at a period of time when the general stock market was declining, and at other times thereabouts it was going down when the general market was going up? Don't you know that is true?

Mr. ROCKEFELLER. That is my impression; yes.

Mr. GRAY. Certainly. And how could that be accomplished, I mean with respect to that stock, with market conditions as they were in the summer of 1931 without any manipulation?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. You say you do not know?

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Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Could it be accomplished without the manipulation and the aid of the specialist, who is handling that stock on the floor of the exchange by the giving of information to Smith and Bragg?

Mr. ROCKEFELLER. I do not know, sir.

Mr. GRAY. You say you do not know?

Mr. ROCKEFELLER. No.

Senator GORE. I should like to ask a question right there, Mr. Gray.

Mr. GRAY. Certainly.

The CHAIRMAN. Proceed, Senator Gore.

Senator GORE. Mr. Rockefeller, as I remember it, Alaska Juneau was selling at about 8 when the crash came in 1929, and it went up as high as 20 or thereabouts.

Mr. ROCKEFELLER. That is my impression.

Senator GORE. And that company produces gold.

Mr. ROCKEFELLER. Yes, sir.

Senator GORE. I was wondering and have wondered often whether that stock went up through the crash because it was producing gold and because gold was enhancing in value while other things were going down.

Mr. ROCKEFELLER. That is quite possible.

Senator GORE. It is an interesting subject at any rate and I should like to have your view upon it now. And then when other stocks started up, whether that reflected an increase of value of product they were concerned in.

Mr. ROCKEFELLER. How was that question?

Senator GORE. Does that mean that gold would go down with reference to those products, and the stock in a gold-producing company might go down as a result of that?

Mr. ROCKEFELLER. Let me see if I understand you.

Senator GORE. Have you ever given that any thought? I have thought about it a good deal and I do not know what the reactions would be, but with that stock at a peak record it operated the reverse of other stocks, and its only product being gold I was wondering whether there was any relationship between the value of the gold produced when gold went up as related to other things, and that stock went up; and as gold went down as related to other things that stock went down. Have you any information on that?

Mr. ROCKEFELLER. Well, I think in the last year or so people have been inclined to invest in gold-mining properties, feeling that that was as safe an investment as they could have in times like this.

Senator GORE. And gold has a greater purchasing power now?

Mr. ROCKEFELLER. Of course, gold now has a greater purchasing power than it had before.

Senator GORE. And do you think that might be reflected in this stock?

Mr. ROCKEFELLER. It is quite possible.

Mr. GRAY. Well, now, Mr. Rockefeller, let us see a little further about that. Smith was a member of the New York Stock Exchange, was he not?

Mr. ROCKEFELLER. Yes, sir.

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Mr. GRAY. As a matter of fact, before your pool started, Smith went to Alaska to secure options, didn't he?

Mr. ROCKEFELLER. I do not recall whether he went there before or afterwards.

Mr. GRAY. But he went there?

Mr. ROCKEFELLER. How is that?

Mr. GRAY. You said you did not recall whether he went there before or afterwards, and by that answer I suppose you meant he did go there.

Mr. ROCKEFELLER. I think the $160,000 or whatever we had, was invested in Alaska Juneau sometime last spring.

Mr. GRAY. Yes.

Mr. ROCKEFELLER. And my best knowledge is that it has not been an active account since that time. It is just holding the 6,000, 7,000, or 8,000 shares.

Mr. GRAY. I did not ask you whether the account was active. I asked you whether Smith went to Alaska.

Mr. ROCKEFELLER. I think he went to Alaska some time last summer.

Mr. GRAY. And you said Smith was a member of the New York Stock Exchange?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. And Smith was on the floor, wasn't he?

Mr. ROCKEFELLER. He was a floor member.

Mr. GRAY. And he was the specialist in Alaska Juneau stock, wasn't he?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. You say you do not know that?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. In other words, you do not know that Smith, being the specialist in Alaska Juneau stock, and having inside information, was a member of your pool in that stock?

Mr. ROCKEFELLER. No, sir; I do not know that.

Senator BARKLEY. Mr. Rockefeller, why did you pick him to represent you in the pool?

Mr. GRAY. Might I suggest at this point to the Senator that they picked Mr. Rockefeller, that Mr. Rockefeller did not pick Smith.

Senator BARKLEY. Well, the public got the picking probably after all.

Mr. ROCKEFELLER. Well, he started in very casually anyway in Lima Locomotive, and we lost some money, and we tried to make up that money in other things, and when we got approximately even we stopped trading and it just stood that way.

Senator FLETCHER. Mr. Rockefeller, what has been the story of Alaska Juneau stock, I mean what has been the history of that stock?

Mr. ROCKEFELLER. Well, I can not give you a definite statement of the whole thing.

Senator FLETCHER. I mean since you went into it.

Mr. ROCKEFELLER. It has been approximately steady. I think the fluctuations have been almost nominal since that time.

Senator FLETCHER. And standing at about what?

Mr. ROCKEFELLER. Perhaps between 12 and 15 or something like that.

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Senator FLETCHER. Was this syndicate interested in Consolidated Gas?

Mr. ROCKEFELLER. Well, I have just testified that I did not know what stocks they traded in.

Senator FLETCHER. I thought if I mentioned names you might remember. How about International Match?

Mr. ROCKEFELLER. I do not remember. I would have to look that up and will furnish you the information if I can.

Senator FLETCHER. What about U. S. Industrial Alcohol?

Mr. ROCKEFELLER. I do not know what they have traded in.

Senator FLETCHER. Have you traded in this stock yourself?

Mr. ROCKEFELLER. I have traded in U. S. Industrial Alcohol; yes.

Senator FLETCHER. On which side of the market?

Mr. ROCKEFELLER. On the long side.

Mr. GRAY. What names or name or number did that syndicate do its business in?

Mr. ROCKEFELEER. Which syndicate?

Mr. GRAY. This syndicate we are talking about that started with Lima Locomotive and is now with Alaska Juneau, and that had a lot of stocks you do not know anything about in between.

Mr. ROCKEFELLER. Well, I really know so little about it I think you better let me get the information and furnish it for the committee.

Mr. GRAY. In other words, your answer is that you do not know what name or number it was carried in.

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Did you give us your broker in that case?

Mr. ROCKEFELLER. W. E. Hutton.

Mr. GRAY. W. E. Hutton & Co?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Was any of it carried in Bragg's name?

Mr. ROCKEFELLER. Not as far as I know.

Mr. GRAY. Was any of it carried in Smith's name?

Mr. ROCKEFELLER. Not so far as I know. I really do not know.

Mr. GRAY. They have both got individual accounts with Hutton, haven't they?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. Did you have any individual trades yourself in Lima Locomotive?

Mr. ROCKEFELLER. No.

Mr. GRAY. Or in Alaska Juneau?

Mr. ROCKEFELLER. No.

Mr. GRAY. Well, now, Mr. Rockefeller, tell us the next pool you were interested in, or suppose we for the moment confine ourselves to the gentlemen you have mentioned, tell us what other pools you were interested in with Smith and Bragg.

Mr. ROCKEFELLER. Those were the only two.

Mr. GRAY. Well, you say those are the only two. But I have heard only about one.

Mr. ROCKEFELLER. Well, there was a syndicate account in Anaconda back in 1928 or 1929 that ran for a few months and was closed up.

Mr. GRAY. Were Bragg and Smith in that?

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Mr. ROCKEFELLER. Mr. Smith was. I do not know whether Mr. Bragg was or not.

Mr. GRAY. Was anyone else?

Mr. ROCKEFELLER. I think there were quite a number of people in that.

Mr. GRAY. Who were the others?

Mr. ROCKEFELLER. I would have to refresh my memory.

Mr. GRAY. You can not tell us that?

Mr. ROCKEFELLER. I do not recall.

Mr. GRAY. Were you on the long or short side in Anaconda?

Mr. ROCKEFELLER. On the long side.

Mr. GRAY. Mr. Rockefeller, were you ever short or don't you know in connection with either Lima Locomotive or Alaska Juneau, or any of the stocks you traded in between them?

Mr. ROCKEFELLER. I am not familiar with the operations of that account, and I think the only thing to do is to get that account and furnish it to the committee.

Mr. GRAY. All right. Now, did this pool in Anaconda operate on the long or the short side?

Mr. ROCKEFELLER. It was a long account.

Mr. GRAY. Well, isn't it a fact that in order for these pools to be successful they have to operate on both sides of the market?

Mr. ROCKEFELLER. I really do not know.

Mr. GRAY. You say you do not know about that?

Mr. ROCKEFELLER. No, sir. My acquaintance with these accounts is what I have just described, and I do not know as to that.

Mr. GRAY. Tell me what other pools you went in.

Mr. ROCKEFELLER. Those are the only ones I recall.

Mr. GRAY. Have you forgotten Radio?

Mr. ROCKEFELLER. I do not recall that I was in Radio.

Mr. GRAY. You do not recollect being in a Radio pool?

Mr. ROCKEFELLER. I do not know.

Mr. GRAY. What other gentlemen have you conducted any other pool operations with besides those you have mentioned?

Mr. ROCKEFELLER. I do not recall any others.

Mr. GRAY. Now, you have mentioned the firm of Hutton & Co., and the firm of Prentice & Slepack, and the firm of Shearson-Hammill in connection with your first pool?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Have you yourself either individually or through any pools operated with other brokers or through other brokers?

Mr. ROCKEFELLER. Well, in 1929 I had an account with Clark, Dodge & Co. for a while.

Mr. GRAY. Any others?

Mr. ROCKEFELLER. Those are the only ones I recall.

Mr. GRAY. How about Jesup & Lamont?

Mr. ROCKEFELLER. Well, I mentioned them.

Mr. GRAY. Where you carry individual accounts were they in your own name?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Always?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. Did you carry any other accounts in dummy names?

Mr. ROCKEFELLER. No, sir.

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Mr. GRAY. Or in numbers?

Mr. ROCKEFELLER. Well, when I would have myself one account in an office it would be under my name plus a number.

Mr. GRAY. In other words, you distinguished one account from another, and you would separate them by numbers?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. What is the purpose, by the way, if you will tell the committee, if the accounts are all yours in carrying them in different numbers instead of carrying them in one account?

Mr. ROCKEFELLER. It is for convenience when you are operating in different stocks.

Mr. GRAY. In other words, so as to carry the accounts for different stocks in which you are operating separately so they will not conflict?

Mr. ROCKEFELLER. And sometimes the other way.

Mr. GRAY. Did you ever in your operations carry accounts in one brokerage firm and in any way operate against those accounts in other brokerage firms?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Do you know whether your pools did?

Mr. ROCKEFELLER. Not of my knowledge; no.

Mr. GRAY. Did Smith ever get confidential with you and tell you how he made money or how he operated these pools?

Mr. ROCKEFELLER. No, sir.

Mr. GRAY. Have you any idea how it was done?

Mr. ROCKEFELLER. I have not.

The CHAIRMAN. Well, Mr. Rockefeller, you are nearly as ignorant of these matters as Mr. Whitney was, and we are not making very much headway with it.

Mr. GRAY. Well, Mr. Chairman, I respectfully submit that we have made quite a little headway and we are not through yet.

Senator GORE. Mr. Rockefeller, how did you come out on the whole; did you win or lose?

Mr. ROCKEFELLER. Well, I have done both. I have won and lost over a period of time. But for the last two and a half years I have lost.

Senator COUZENS. Mr. Rockefeller, what stocks are you short in now?

Mr. ROCKEFELLER. None.

Senator COUZENS. You are not in the short market at all now?

Mr. ROCKEFELLER. No, sir.

Senator BULKLEY. Mr. Rockefeller, did you do any short selling in January of this year?

Mr. ROCKEFELLER. I think I did; yes.

Senator BULKLEY. Was that in any way connected with the upturn of the market that came coincidently with the passage of the Reconstruction Finance Corporation bill?

Mr. ROCKEFELLER. I do not know whether it was coincident with that or not.

Senator BULKLEY. You did not pay any attention to the passage of that bill and its effect upon the market?

Mr. ROCKEFELLER. Well, I know it had a good effect on the market.

Senator BULKLEY. Well, if it had a good effect, how did it happen that a lot of shorts came in and took that effect off?

Mr. ROCKEFELLER. That I can not answer.

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Senator BULKLEY. You were not a part of that movement?

Mr. ROCKEFELLER. What was that?

Senator BULKLEY. You did not sell short yourself at that time?

Mr. ROCKEFELLER. I would have to look that up to be sure.

Senator BULKLEY. You are not conscious of thinking the effect of that bill was overdiscounted?

Mr. ROCKEFELLER. No, sir.

Senator BULKLEY. You did not have any desire to counteract any good result that might follow from that?

Mr. ROCKEFELLER. Oh, by no means; no.

Senator BULKLEY. What about the Glass-Steagall bill at the time it passed in February; did you sell short at that time?

Mr. ROCKEFELLER. I do not recall. I would have to look it up.

Senator BULKLEY. There was quite a substantial upturn in the market at that time, was there not?

Mr. ROCKEFELLER. I think there was.

Senator BULKLEY. And who killed that off?

Mr. ROCKEFELLER. I do not know.

Senator BULKLEY. You do not know of any reason why stocks should have been sold off again afterwards, do you?

Mr. ROCKEFELLER. Well, I think the reduction in brokers' loans show that a very large liquidation has been coming into the market continuously for the last few months.

Senator BULKLEY. You do not think there was any concerted effort to destroy the effect of that bill, do you?

Mr. ROCKEFELLER. I do not think so; no sir.

Senator BARKLEY. Was it the general opinion of men who dealt in the market that the exhilarating effect of the passage of those laws would be temporary, somewhat like the effect of the moratorium last year, and that it would be a good idea to sell when stocks were at the peak, looking to a natural reaction a few days or weeks later?

Mr. ROCKEFELLER. Well I could not speak for everybody, but I think the impression was that they were in a very critical time, and that these two bills would be very helpful to the whole general situation. I am under the impression that there has been a tremendous amount of liquidation coming into the market steadily for the last few months, and naturally anybody that had stock to liquidate would take advantage of any strong days to do their liquidating.

Senator BARKLEY. Assuming that the spring it had would be temporary?

Mr. ROCKEFELLER. Yes.

Senator BARKLEY. Did that same situation bring into the market short selling?

Mr. ROCKEFELLER. It may have.

Senator BARKLEY. Did you sell any under that stimulus?

Mr. ROCKEFELLER. I would have to look up the dates on which I sold in order to be sure.

Senator BARKLEY. Will you furnish that information to the committee?

Mr. ROCKEFELLER. Yes; I will be glad to do so.

Senator FLETCHER. Do you know of any effort to force liquidation in any case?

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Mr. ROCKEFELLER. Not so far as I know of.

Senator COUZENS. How many banks are you a director in?

Mr. ROCKEFELLER. I am a director in one bank in New York, and also in a trust company in the town where I reside, Greenwich, Conn.

Senator COUZENS. What is the name of that bank?

Mr. ROCKEFELLER. The Greenwich Trust Co.

Senator COUZENS. And what bank in New York?

Mr. ROCKEFELLER. The National City Bank.

Senator COUZENS. Did the directors ever discuss during their meeting the calling of loans?

Mr. ROCKEFELLER. No, sir; that is for the officers of the bank.

Senator COUZENS. The question whether or not a loan should be called is not passed upon by the board of directors at all, but by the officers?

Mr. ROCKEFELLER. Occasionally, in exceptional circumstances, if a loan is under water, it would be brought to the attention of the directors.

Senator COUZENS. And the directors might order the officials to liquidate or close out the loan.

Mr. ROCKEFELLER. Or try to secure additional collateral to strengthen the loan in some way.

Senator COUZENS. So that in event of anybody sitting on the board knowing just what was going to be sold out, he would have the advantage of that knowledge for his application on the market?

Mr. ROCKEFELLER. I suppose he would. But as far as the National City Bank goes, I do not know of any loan that was directed by the board to be liquidated. I never recall anything of that kind.

Senator COUZENS. But it does happen?

Mr. ROCKEFELLER. Occasionally, I suppose.

Senator FLETCHER. Has the National City Bank its stock listed on the New York Stock Exchange?

Mr. ROCKEFELLER. No, sir.

Senator BLAINE. Mr. Rockefeller, do you know of any syndicate or pool with which Benny Smith was connected and with which you are not connected?

Mr. ROCKEFELLER. I have no knowledge of any of his operations outside of this one account, which I know very little about.

Senator BLAINE. Do you know of any pool or syndicate respecting General Motors with which Benny Smith was connected?

Mr. ROCKEFELLER. I have no knowledge of any his operations.

Senator BLAINE. How about General Electric?

Mr. ROCKEFELLER. No, sir.

Senator BLAINE. Do you know of any syndicate or pool operating to-day in the oil stocks?

Mr. ROCKEFELLER. No, sir.

Senator BLAINE. Or the railroad stocks?

Mr. ROCKEFELLER. No, sir.

Senator BLAINE. You knew that stocks took a tremendous slump to-day, didn't you?

Mr. ROCKEFELLER. No, sir; I did not.

Senator BLAINE. Well, here is a press report that has been handed to me.

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Mr. GRAY. May I say for the benefit of the committee that I have had men endeavoring to locate both Bragg and Smith but without success.

Senator COUZENS. Mr. Rockefeller, how long have you known Mr. Smith?

Mr. ROCKEFELLER. Over 20 years.

Senator COUZENS. And all that time he has been a stock broker and dealer, is that correct?

Mr. ROCKEFELLER. The way I met Mr. Smith first was by way of his being an automobile salesman. He sold me one of my first automobiles. He was then in the automobile business for quite a length of time, and after which went into the rubber business.

Senator COUZENS. Is he a very wealthy man?

Mr. ROCKEFELLER. I have no knowledge of what his means are.

Senator COUZENS. How long have you known Mr. Bragg?

Mr. ROCKEFELLER. Mr. Bragg at one time was connected with the American International, I think during the war period. I have known him ever since he was an officer there in the American International.

Senator COUZENS. What is his business?

Mr. ROCKEFELLER. He left the American International a number of years ago and became a stock broker, and then he retired.

Mr. GRAY. In other words, he has no business now except the manipulation of the stock market, is that true?

Mr. ROCKEFELLER. I do not know what he does now. I have seen Mr. Bragg only two or three times in the last three years.

Mr. GRAY. Now, you stated in response to a question propounded by one of the Senators that you had no short position now but did have in 1931, in January, that is, that you sold short at that time.

Senator COUZENS. He said in January of 1932.

Mr. GRAY. Well, all right. January of 1932.

Mr. ROCKEFELLER. I think I did, but I would have to look to be sure.

Mr. GRAY. When did you cover?

Mr. ROCKEFELLER. About five weeks ago as I recall it.

Mr. GRAY. What was that position? I mean in what stock or stocks and of what quantity or quantities?

Mr. ROCKEFELLER. I would have to get the data. I do not recall.

Mr. GRAY. Do you mean to tell this committee that you went short in something in January of 1932 and that you covered it five weeks ago, and yet you do not even remember what stock it was?

Mr. ROCKEFELLER. I think I was short in three or four different stocks.

Mr. GRAY. Name them.

Mr. ROCKEFELLER. I do not recall them.

Mr. GRAY. You can not even guess at them?

Mr. ROCKEFELLER. No.

Mr. GRAY. Well, I do not want to take you down the whole list of stocks. But how about Standard Oil?

Mr. ROCKEFELLER. I do not recall but think not.

Mr. GRAY. Are you sure?

Mr. ROCKEFELLER. I do not recall.

Mr. GRAY. What about United States Steel?

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Mr. ROCKEFELLER. I do not recall definitely.
Mr. GRAY. How about Bethlehem Steel?
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. How about General Motors?
Mr. ROCKEFELLER. I am not sure.
Mr. GRAY. How abut Allied Chemical?
Mr. ROCKEFELLER. I am not sure.
Mr. GRAY. How about General Electric?
Mr. ROCKEFELLER. I am not sure.
Mr. GRAY. Well, there is no use of my going down the list with you.
Senator BLAINE. How about J. I. Case?
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. You do not mean to tell this committee, Mr. Rockefeller, that you can not name the stocks you went short of in January, and pardon my surprise, and that was just January of 1932. That is, you assumed a short position then, and that you were short before that, which you closed out five weeks ago, and yet you do not know what they were?
Mr. ROCKEFELLER. I do not recall the details, no.
Mr. GRAY. Do you have a number of secretaries to attend to your business?
Mr. ROCKEFELLER. Yes.
Mr. GRAY. You do not let them exercise their own judgment, do you?
Mr. ROCKEFELLER. No, sir.
Mr. GRAY. Could you get along without them?
Mr. ROCKEFELLER. Well, I would have to have somebody.
Mr. GRAY. Yes; I thought so. When was the last time you actually sold anything short? Was it in January of 1932, or since?
Mr. ROCKEFELLER. I imagine it was February. But I would much prefer to get the exact information and furnish it to you.
Mr. GRAY. All right. Were all those short sales made at or about one time?
Mr. ROCKEFELLER. I would have to find out in order to be sure. I have not had any occasion to refresh my memory, and would much rather furnish you the information.
Mr. GRAY. On January 1, 1932, had you any short position at all?
Mr. ROCKEFELLER. I do not recall.
Mr. GRAY. Were you long on January 1, 1932?
Mr. ROCKEFELLER. I have been long——
Mr. GRAY (*interposing*). Never mind what you have been. Were you long on January 1, 1932, in anything?
Mr. ROCKEFELLER. I have my investment stocks; yes. I am long also of certain other stocks.
Mr. GRAY. Speculative; but you do not know whether you were short of anything on January 1, 1932?
Mr. ROCKEFELLER. My short position has been sold and covered from time to time, and I could not give you the dates unless I looked them up.
Mr. GRAY. In other words, you go in and out of the market?
Mr. ROCKEFELLER. Yes.

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Mr. GRAY. You may have gone short the latter part of December and closed it December 31, and maybe had nothing on January 1, or you may have carried it over, is that what you mean?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. When you went into the market and sold certain stocks short either in January or February of this year, does that mean you attained a new position at that time, or that it was the old one?

Mr. ROCKEFELLER. A new position.

Mr. GRAY. So that we have now definitely fixed the time when you were not short of anything, and you went into the market and adopted a new short position either in January or February?

Mr. ROCKEFELLER. Well, that is my best recollection.

Mr. GRAY. And you held that position until five weeks ago?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. And then closed out?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. And you have not gone short since?

Mr. ROCKEFELER. No, sir.

Mr. GRAY. And yet you can not give the committee the slightest idea of the stocks in that transaction.

Mr. ROCKEFELLER. I do not recall.

Mr. GRAY. Well, I guess I will have to leave that alone, then. Did you ever sell short in Standard Oil?

Mr. ROCKEFELLER. Do you mean Standard Oil of New Jersey?

Mr. GRAY. Well, I will take Standard Oil of New Jersey, and then I will ask about the others.

Mr. ROCKEFELLER. I have been short of Standard Oil of Indiana, and that is the only one I recollect.

Mr. GRAY. Why did you ask me about New Jersey?

Mr. ROCKEFELLER. I wanted to understand your question.

Mr. GRAY. Why didn't you ask me about Indiana?

Mr. ROCKEFELLER. When people speak about Standard Oil the only inference is that it is New Jersey.

Mr. GRAY. That company being the biggest company?

Mr. ROCKEFELLER. Yes. And I might add that when I sold Standard Oil of Indiana it was short against the box but not an actual short position.

Mr. GRAY. Did you then deliver from your box or cover?

Mr. ROCKEFELLER. I covered.

Mr. GRAY. How many times have you sold short against the box in the last 15 months?

Mr. ROCKEFELLER. I do not recall. I would have to find out definitely.

Mr. GRAY. Have you ever sold short against the box and then made delivery from your box?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. The majority of times though you have covered?

Mr. ROCKEFELLER. I think probably so.

Mr. GRAY. So that that is really a covering up of a short sale isn't it? And when I say a covering up I mean the making of a short sale without letting it appear so.

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Mr. ROCKEFELLER. It would appear on the books of the broker as a short sale, and it would appear on the records of the stock exchange as a short sale.

Mr. GRAY. No; I will have to differ with you there about making a sale against the box. When you make a sale against the box you tell the broker you have the stock.

Mr. ROCKEFELLER. Well, I think those are the regulations now, but I doubt if they were nine months or a year ago.

Mr. GRAY. You mean that six months or nine months or a year ago you did not have to tell your broken that? You kept that mentally?

Mr. ROCKEFELLER. The regulations have been changed, but I do not know just when.

Mr. GRAY. If you covered that six months ago you did not tell your broker it was a sale against the box.

Mr. ROCKEFELLER. The regulations have been changed within the last year.

Mr. GRAY. Whether changed or not, do you mean to say that six months or a year ago you did not tell your broker it was a sale against the box?

Mr. ROCKEFELLER. Yes, sir.

Mr. GRAY. So what you did was to make an ordinary short sale?

Mr. ROCKEFELLER. It was a short sale.

Mr. GRAY. And, of course, that would be so reported?

Mr. ROCKEFELLER. Yes, sir.

Senator BARKLEY. Since the 1st of January stocks on the average have gone down about 30 per cent. To what extent has short selling contributed to that result?

Mr. ROCKEFELLER. That I do not know.

Senator BARKLEY. Would you say it had contributed any?

Mr. ROCKEFELLER. Very little, if any. I think it has been real liquidation.

Senator BARKLEY. Based upon what?

Mr. ROCKEFELLER. That is just my feeling.

Senator BARKLEY. I know; but what has the general liquidation been based upon outside of short selling if that had very little to do with it?

Mr. ROCKEFELLER. Well, I think the alarm that was occasioned by the proposed tax bill probably had more than anything else to do with it.

Senator BARKLEY. The tax bill with the stock provisions?

Mr. ROCKEFELLER. With the stock provisions and the income taxes and the estate taxes.

Senator BULKLEY. Do you mean to say the defeat of the sales tax had an adverse effect?

Mr. ROCKEFELLER. I think people were greatly alarmed by the whole tax bill, and I think it undoubtedly brought in liquidation.

Senator BARKLEY. Did not people who deal on the stock market know in advance that some sort of tax bill had to be passed? Hadn't the agitation for a balancing of the Budget extended over a year?

Mr. ROCKEFELLER. I can only speak in the way that people spoke to me. I know that people spoke of being greatly alarmed over the

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tax bill, and that many people wanted to sell securities, and I think many people did sell securities.

Senator CAREY. Some have sold and put the proceeds into tax-exempt securities, have they?

Mr. ROCKEFELLER. I think so.

Mr. GRAY. When you went short in January or February of this year, what was the extent of your commitment? Tell me how many hundred or thousand shares you went short at that time.

Mr. ROCKEFELLER. A number of thousand shares. I would prefer to furnish the accurate details.

Mr. GRAY. I understand that; but were you short as much as 25,000 shares?

Mr. ROCKEFELLER. No, sir; 10,000 or 12,000 shares was the maximum.

Mr. GRAY. In other words, your short position that you assumed either in January or February of this year was to the extent of 10,000 or 12,000 shares?

Mr. GRAY. By the way, with what broker was that?

Mr. ROCKEFELLER. That was with Prentice & Slepack.

Mr. GRAY. That was with Prentice & Slepack.

Mr. ROCKEFELLER. May I state——

Mr. GRAY (interposing). Very glad to have you state anything you want, Mr. Rockefeller.

Mr. ROCKEFELLER. Very foolishly in 1929 I did not sell many of my securities. I have a great many securities which have had a tremendous depreciation. Some of those securities I did not sell.

Mr. GRAY. In 1929, had a tremendous depreciation?

Mr. ROCKEFELLER. Since 1929.

Mr. GRAY. Oh, since 1929; yes.

Mr. ROCKEFELLER. Some of those securities are owned outright and some of them are carried on margin.

Mr. GRAY. You carry some on margin?

Mr. ROCKEFELLER. Some of them, yes; long stocks. My object in selling short from time to time has been an offset against that long position which I have had and in which I have suffered a terrible loss and a terrible depreciation.

Senator COUZENS. How much is "terrible" in your judgment, Mr. Rockefeller?

Mr. GRAY. That is a relative term.

Mr. ROCKEFELLER. A good many millions.

Mr. GRAY. What was that answer?

Mr. ROCKEFELLER. A good many millions.

Senator BULKLEY. Now, Mr. Rockefeller, when you said awhile ago that you were short 70,000 shares you did not mean a net position then?

Mr. ROCKEFELLER. I said that the only time I have ever had a large short position was back, I think, in 1927.

Senator BULKLEY. That was not the sort of a short position that you have been talking about here?

Mr. ROCKEFELLER. No; that was a straight short position.

Senator BULKLEY. But you do not think you have had a net short position since the crash in 1929?

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Mr. ROCKEFELLER. Oh, I have never had a net short position, and my net short position has been approximately my net long position on margin. That is approximately.

Senator BULKLEY. So that if we really want to find a bear we have got to look elsewhere?

Mr. ROCKEFELLER. I have certainly had no object in being a bear, sir. I have suffered the most enormous loss in the last two and a half years, and my only hope of salvation is to have things come back and come back quickly. My depreciation has been perfectly terrible.

Senator BULKLEY. You do not think you retarded that good object by selling short as you did in January?

Mr. ROCKEFELLER. I do not. I certainly would not have sold short if I thought that was going to hurt my own position. I did it because it was a necessary insurance.

Mr. GRAY. Mr. Rockefeller, I want to get clear in my mind this situation: During what period of time do you mean that you have suffered that loss of many millions, in the last five or six years or since 1929?

Mr. ROCKEFELLER. My depreciation and loss actually taken since 1929 to the present time has been terrific.

Mr. GRAY. That is paper loss?

Mr. ROCKEFELLER. Some of it has been actual and some of it has been paper.

Mr. GRAY. What extent of it has been actual? In other words, I am not after any exact figures on that.

Mr. ROCKEFELLER. A very considerable part of it.

Mr. GRAY. Millions?

Mr. ROCKEFELLER. A number of corporations in which I had a very large interest have gone into the hands of a receiver and become a total loss.

Mr. GRAY. Well, do you mean that there have been losses that have resulted from transactions which have been started and finished in the last three to four years?

Mr. ROCKEFELLER. Some of them are over a considerable period of time.

Mr. GRAY. Of course, I want to differentiate between those things which you may have been carrying for a long while, back 7 or 8 or 10 years or longer, where there are paper losses in connection with them, or where you have taken a loss by selling.

Do you mean that your actual loss in the transactions in and out on the market in the last few years have been millions?

Mr. ROCKEFELLER. I should say it was a net loss. I do not know just how great.

Mr. GRAY. I tell you frankly why I am asking you these questions. You indicated to me the several pools that you were in and you spoke of your individual operations, and, though we did not ask you the details as to the amount that was involved in your individual operations, your several pools seemed to be very, very small; in other words, $150,000 pools and $160,000 pools, where your interest was only a third.

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I would like you to tell the committee what ventures you have been making in the market, what stocks, what kind of deals, whether they have been on the long or short side, during the last two or three years, that possibly could have, under those circumstances, netted you any such loss as that, because they are out of proportion to your operations, acocrding to what you have told us yur operations were.

Mr. ROCKEFELLER. My largest loss has been in securities of the Cuban Dominican Sugar Co.

Mr. GRAY. Something that you have carried for a long while?

Mr. ROCKEFELLER. A good many years; yes.

Mr. GRAY. Yes. Well, that is the reason I asked you the question as to what the amount of your losses was, generally speaking, during the last few years when the transactions started and finished during that time.

Mr. ROCKEFELLER. The entire investment has been a total loss.

Mr. GRAY. What is your position with respect to the market transactions since October, 1929, stock market transactions in New York that you have dealt in, either yourself in the buying or selling or the poolings? I do not suppose you could tell us.

Mr. ROCKEFELLER. I should say it was a net loss in dollars and cents and a very considerable additional loss in depreciation.

Senator COUZENS. Do you own any railroad stocks?

Mr. ROCKEFELLER. I own two railroad stocks.

Senator COUZENS. What railroads are you interested in?

Mr. ROCKEFELLER. I have an interest in the Delaware, Lackawanna & Western and in the Pittsburgh & Lake Erie.

Mr. GRAY. Now, you said in reply to some question that was put to you by a member of the committee that you had taken these short positions as a hedge.

Mr. ROCKEFELLER. Yes.

Mr. GRAY. If you were suffering such a terrific loss and you took these short positions as a hedge, they must have been acting against you; isn't that true?

Mr. ROCKEFELLER. They were not a complete hedge, only in part.

Mr. GRAY. Leaving the pools out of the question for the moment, what has been your largest individual long position in the market?

Mr. ROCKEFELLER. Around 20,000 shares.

Mr. GRAY. Yes, that is what I thought you told me at the beginning of your examination.

Mr. ROCKEFELLER. Yes.

Mr. GRAY. Do you consider that a loss in the millions?

Mr. ROCKEFELLER. No, sir; a partial hedge.

Mr. GRAY. Have you named to us all of the different pool operators that have ever operated with you or with whom you have operated?

Mr. ROCKEFELLER. Within the last five or six years, or going farther back?

Mr. GRAY. Yes; we are only concerned with that. Have you named all the various brokerage concerns with whom you have dealt either individually or in connection with pool operations?

Mr. ROCKEFELLER. I think so; yes, sir.

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Mr. GRAY. And you are totally ignorant of the method which might be followed by Smith and Bragg for the purpose of either putting the market up or depressing it in order that money may be made by one of the pools that you or either of those two gentlemen are interested in?

Mr. ROCKEFELLER. I have no knowledge of that operation.

Mr. GRAY. I think that is all I can ask, Mr. Chairman, unless there are some other things.

The CHAIRMAN. Just to bring out one matter clearly: One place you stated your losses were very large, several million dollars. In another place you stated, after considerable hesitation, that you had a net loss. Does that mean that your losses were partly recuperated, partly or fully, by the operating on the other side of the market?

Mr. ROCKEFELLER. I think I had a net actual cash loss, and in addition to that, of course, I had a very large loss in depreciation.

The CHAIRMAN. You did not answer my question. Were your losses that you mentioned here as large partly offset by operations on the other side of the market?

Mr. ROCKEFELLER. Yes, partially.

Mr. GRAY. In other words, you made money from your short position?

Mr. ROCKEFELLER. The short position I made money; yes.

Mr. GRAY. While the market was going down?

Mr. ROCKEFELLER. Yes.

Mr. GRAY. That is all I want to ask.

The CHAIRMAN. You may be excused for the present, still subject to call. Mr. Rockefeller.

Mr. ROCKEFELLER. Yes, sir.

Senator FLETCHER. I understood Mr. Rockefeller to say most of these losses were business losses where corporations had failed and business operations put in the hands of receivers, and that sort of thing. They had nothing to do with the stock market?

Mr. ROCKEFELLER. Well, I have had very great depreciation in stocks also that I bought.

Senator FLETCHER. Investments in securities?

Mr. ROCKEFELLER. Yes.

Senator FLETCHER. But there were losses from business failures?

Mr. ROCKEFELLER. Yes.

Senator FLETCHER. In which you were interested?

Mr. ROCKEFELLER. Yes.

Senator FLETCHER. Corporations going into the hands of the receiver?

Mr. ROCKEFELLER. Yes.

Senator FLETCHER. You said you had made money on the short sales. Can you give us an idea about how much you think you have made there?

Mr. ROCKEFELLER. I should say that the total amount of money that I made in the last two and a half years on the short side of the market would be around $550,000.

Mr. GRAY. You made that on the short side of the market?

Mr. ROCKEFELLER. I should say it was approximately that.

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Senator GORE. Did you buy during this bull market of 1929, Mr. Rockefeller?

Mr. ROCKEFELLER. I did; yes, sir.

Senator GORE. While it was going on up?

Mr. ROCKEFELLER. Yes, sir.

Senator GORE. Do you figure any particular difference in the two transactions?

Mr. ROCKEFELLER. Between the——

Senator GORE (interposing). Buying on the margin on the rising market, which you thought would be a rising market, and selling short on what you thought would be a declining market?

Mr. ROCKEFELLER. I do not see any difference in them.

Senator GORE. Selling against the box is more or less a hedging proposition; do you think?

Mr. GRAY. May I interrupt just a moment: Is Mr. Cravath here? I understand, Mr. Rockefeller, the chairman relieves you, but you are under subpœna.

The CHAIRMAN. Mr. Rockefeller, I just want to say that, while you are still under the subpœna, you are excused and you will not be needed to-morrow.

Mr. ROCKEFELLER. Thank you.

The CHAIRMAN. You will be advised when you are desired to come back.

Senator GORE. I want to ask another question, Mr. Chairman. Mr. Rockefeller, I have seen it stated that the reason call money goes so high at times is because the laws of New York limit the rate of interest on time loans. Do you think there is any connection between the two?

Mr. ROCKEFELLER. Would you state that once more, Senator?

Senator GORE. I say, I have seen the statement made that one reason that call money rates go so high in prices is the fact that the laws of New York limit the rate, have a rather low rate on time loans, and you can not obtain money on time loans at a rate of interest to operate on the market. You have to make call loans instead of time loans, the legal limitation not applying apparently to call loans but applying to time loans.

Mr. ROCKEFELLER. Yes; I think that is very true.

Senator GORE. Would it ease the situation any if the interest rate were changed or the law were liberalized with reference to the interest rate on time loans?

Mr. ROCKEFELLER. Yes; I think it would limit the peak of the call loans.

(Thereafter, on behalf of the witness, a letter was submitted for the record, accompanied by three schedules, which letter, with Schedules A and B, are as follows:)

NEW YORK, *May 5, 1932.*

Mr. JULIAN W. BLOUNT,
Clerk Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR SIR: * * * Mr. Percy Rockefeller desires me to call the attention of your committee to a few minor differences between his recollection as given and the facts as I have found them in checking his testimony back against our records.

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Referring to counsel's inquiry at page 660, I note that Mr. Rockefeller testified that he sold "against the box" two lots of Air Reduction Co. stock of 900 shares each in 1931, amounting in all to 1,800 shares. The records show that his sales of Air Reducation Co. stock made against the box in 1931 totaled 1,550 shares, which were repurchased at a net loss as follows:

Date	Shares bought	Shares sold	Cost	Proceeds
Feb. 6, 1931		250		$23,308.75
Mar. 27, 1931	250		$24,725.00	
June 18, 1931		100		7,743.50
Do		300		23,230.50
Do		100		7,768.50
June 26, 1931	200		17,505.00	
Do	100		8,765.00	
Do	200		17,555.00	
July 8, 1931		300		25,143.00
Do		100		8,431.00
Do		100		8,568.50
Aug. 13, 1931		100		7,781.00
Do		200		15,562.00
Sept. 24, 1931	600		44,340.00	
Do	100		7,365.00	
Do	100		7,315.00	
Total	1,550	1,550	127,570.00	127,536.75
Net loss				33.25
			127,570.00	127,570.00

In regard to counsel's inquiry at page 686, Mr. Rockefeller stated that he did not recall any personal transactions in Alaska Juneau stock, but I find under date of April 21, 1931, that he purchased for his personal account 2,000 shares of this stock, which he sold on August 14, 1931.

At page 654 Mr. Rockefeller testified that he had not been short of Vanadium. In this his recollection was at fault. A statement is inclosed, marked "Schedule A," giving his transactions in Vanadium Steel stock from the date of the first transaction, June 2, 1930, to date, and indicating some instances during the period when his net position was short to an amount not in excess of 1,000 shares.

The statement which Mr. Rockefeller was asked to furnish of his transactions in the market since January 1 of the current year, and covering the dates of the passage of the Reconstruction Finance Corporation and Glass-Steagall bills and of his last short sale (testimony, pp. 693 and 698), is inclosed, marked "Schedule B."

Mr. Rockefeller was also asked to furnish reports showing the operations in the accounts in which Mr. Benjamin Smith and Mr. Thomas Bragg participated (testimony, p. 680). Photostat copies of brokers' reports covering these accounts in full are inclosed, marked "Schedule C."

Yours very truly,

CHARLES W. FOY, *Secretary.*

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SCHEDULE A

Percy A. Rockefeller's transactions in Vanadium Corporation stock June 2, 1930, to April 22, 1932

Date	Long account		Short account		Net position	
	Shares bought	Shares sold	Shares bought	Shares sold	Shares long	Shares short
June 2, 1930	500				500	0
June 9, 1930		500			0	0
Sept. 24, 1930				1,000	0	1,000
Sept. 29, 1930			1,000		0	0
Oct. 1, 1930				1,000	0	1,000
Oct. 16, 1930			1,000		0	0
Oct. 22, 1930				1,000	0	1,000
Nov. 12, 1930			1,000		0	0
Dec. 17, 1930	1,000				1,000	0
Dec. 18, 1930		1,000			0	0
Jan. 29, 1931				500	0	500
Feb. 16, 1931	500		500		500	0
Feb. 18, 1931	500				1,000	0
Feb. 19, 1931		1,000			0	0
Feb. 24, 1931				250	0	250
Feb. 25, 1931	500		250		500	0
Feb. 27, 1931	250				750	0
Mar. 9, 1931	250				1,000	0
Mar. 27, 1931	250				1,250	0
Apr. 1, 1931	250				1,500	0
Apr. 2, 1931	250				1,750	0
Apr. 24, 1931		1,750			0	0
1932	None.	None.	None.	None.	0	0
Total	4,250	4,250	3,750	3,750	0	0

SCHEDULE B

Percy A. Rockefeller's market position, January, February, and March, 1932

	Long account		Short account		Net long position
	Bought	Sold	Bought	Sold	
	Shares	*Shares*	*Shares*	*Shares*	*Shares*
Dec. 31, 1931	[1] 20,165			[2] 3,500	16,665
Jan. 4, 1932				1,000	15,665
Jan. 6, 1932				2,000	13,665
Jan. 11, 1932	2,000		6,200		21,865
Jan. 13, 1932	1,000				22,865
Jan. 15, 1932			300	2,000	21,165
Jan. 18, 1932		3,000		4,000	14,165
Jan. 21, 1932				1,000	13,165
Feb. 1, 1932				1,000	12,165
Feb. 3, 1932	100				12,265
Feb. 9, 1932			1,000	[3] 2,000	11,265
Feb. 15, 1932			6,000		17,265
Feb. 16, 1932	1,000				18,265
Feb. 17, 1932	2,000		2,000		22,265
Feb. 18, 1932	2,000		1,000		25,265
Feb. 19, 1932	1,000				26,265
Feb. 25, 1932		5,000			21,265
Feb. 29, 1932		1,000			20,265
Mar. 15, 1932	2,000				22,265
Mar. 16, 1932		1,000			21,265
Mar. 23, 1932		2,000			19,265
Total	31,265	12,000	16,500	16,500	

[1] Balance long. [2] Balance short. [3] Last short sale.

The short account was closed February 18, 1932.

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Summary of long account

Dec. 31, 1931, balance long	20,165
Jan. 1–Mar. 31, 1932, bought	11,100
	31,265
Sold, 1932	12,000
Balance long	19,265

(Schedule C is not printed, but has been made a part of the committee file.)

The CHAIRMAN. Now, Mr. Cravath.

The CHAIRMAN. Mr. Cravath, will you raise your right hand and be sworn? Do you solemnly swear that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CRAVATH. Yes.

TESTIMONY OF WILLIAM B. CRAVATH, PHOENIX, ARIZ.

Mr. GRAY. Mr. Cravath, will you give your full name to the reporter, please?

Mr. CRAVATH. William B. Cravath.

Mr. GRAY. And your residence is where?

Mr. CRAVATH. Phoenix, Ariz., "Where the sun shines every day."

Mr. GRAY. You have an office in New York at 120 Broadway?

Mr. CRAVATH. No; I haven't any office, but I sometimes make my headquarters there.

Mr. GRAY. Were you ever a member of the New York Stock Exchange?

Mr. CRAVATH. I was a member for about three years.

Mr. GRAY. How long ago?

Mr. CRAVATH. From 1916 to 1919.

Mr. GRAY. Since that time have your affiliations been such as you have kept in touch with matters on the exchange?

Mr. CRAVATH. I would not say so. I have been in Arizona, California, so much of the time that I am not as closely in touch as I used to be.

Mr. GRAY. Certain statements have been made by Mr. Whitney here as president of the New York Stock Exchange with reference to short selling, as to his view of it and its effect on the market, and certain questions have been put to him with respect to the way short sellers have operated. We got very little information from him on that point. I understand that you are able to explain that situation to us and to give us a picture of it and its effect on market conditions. Can you do so?

Mr. CRAVATH. I do not know that I can give you any better explanation than Mr. Whitney gave you. Mr. Whitney is the president of the stock exchange and very well informed in such subjects. But I have a very different impression of the effect of short selling from Mr. Whitney's.

Senator FLETCHER. Let us know what Mr. Cravath's business is.

Mr. CRAVATH. I am practically more or less retired now. I have been a trader in the market practically all my life, 30 or 40 years.

Senator FLETCHER. You retired when?

Mr. CRAVATH. And at the present time I am not a member of the stock exchange, but I still keep an interest in the security markets.

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Mr. GRAY. In other words, you mean that you agree with Mr. Whitney as to the mechanics of the operation of short selling but as to its effect you differ, is that it?

Mr. CRAVATH. I differ very distinctly with him as to the effect of short selling on the general situation.

Mr. GRAY. Yes. From our talks with you we were of the opinion that you were able to tell this committee just what the effect was and why you thought that effect would occur. If you will just tell us in your own way without questions from me, I would appreciate it.

Mr. CRAVATH. I believe it would save a great deal of time.

Mr. GRAY. Go ahead.

Mr. CRAVATH. I do not think as a rule people get right down to the fundamentals of markets. They spend a lot of time talking about pools and operators, and so forth, and the best definition that I know of what makes a bull market and a bear market is given in the book of Walter Bagehot, who was, as you know, Governor of the Bank of England, and wrote a book called "Lombard Street." He in that book says:

> When a lot of very stupid money gets into the hands of a lot of very stupid people you are going to have inflation and speculation and boom, and when a lot of very foolish people have spent a lot of very foolish money you are going to have deflation, depreciation, and panic.

I think that really shows the situation.

Now, you take it in 1929: There never was a time in the history of the world when so much stupid money was in the hands of stupid people. By "stupid people" I do not mean that the people were necessarily stupid in their own lines, but they had no knowledge of investment principles. They had learned to invest in Government bonds, and that was about all, but they had a lot of money, and people that were even ordinary workmen were buying and selling securities, people that had no business in the stock market whatever, and they spent their money, and the prices of stocks were boomed up out of all reason, and then you were bound to have deflation and bound to have a fall in prices.

Now, the difference of opinion that I have with the stock exchange people on short selling is this: I do not believe that it is any worse to sell stocks short than it is to go long as far as the ethics of the thing are concerned. If I want to sell stocks to a man and he is willing to buy them, that is perfectly legitimate. If I think they are going down I have a perfect right to do it.

But there is another expression that is very misleading. We are very fond of phrases in this country, and we have this phrase of "free and open market." It sounds nice, but it is the bunk. When you get into a bear market you are not in a free and open market. As soon as the depression has gone to the point where margins are being called and where banks are throwing loans over, where men are selling stocks because they need their money to support their business, where people are selling securities right and left not because they want to sell them but because they have to sell them, it is not a free and open market. A free and open market is where people meet who are willing to buy and sell and who trade because they wish to voluntarily.

In a bear market there is a lot of selling that is not voluntary. Very few of the men that have had to sell stocks in the last month

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or two sold them because they wanted to. They sold them because they had to.

When you aggravate that situation with a lot of short sellers who are interested in destroying the market——

Mr. GRAY (interposing). That is the time they come in, is it not?

Mr. CRAVATH. They may have put their short interest out some time in advance.

Mr. GRAY. Yes.

Mr. CRAVATH. The short seller is interested in destroying the market.

Now, you can say what you are a mind to, it does not make any difference whether the short seller puts the propaganda out, the minute the market begins to have these serious breaks you get all kinds of rumors around the street. The short does not have to start it. You understand that there are dozens of newspaper writers there in the street. They write the stock market articles for the newspapers all over the country. There are writers for stock-exchange houses, and if a big break comes along in steel of maybe five or six dollars a share they have got to explain that. Well, they may not know the reason; they may not be able to find out the reason. It is very difficult to find out what caused a stock to break $5 on a particular day. At one time I spent two years finding out why a stock broke so badly on a certain occasion.

That information is not to be had, and therefore these newspaper writers have got to sit down and make the best explanation that they can, and they may say that it was short selling, and they may say that the steel dividend is going to be cut, and they may say one thing or the other. It may be true or it may not. But the rumors will crop up just as soon as you have these extraordinary breaks in the market, just as they will crop up in a bull market. You let a stock shoot up in a bull market and you will hear more rumors the next morning than you can put in the wastebasket. It is just incidental to the business.

Mr. GRAY. What is done to force that situation on either the up or down side, force it or aid it, whichever expression you use?

Mr. CRAVATH. Well, Jay Gould remarked one time, "If you want to put the market up the way to do it is to buy it, and if you want to put the market down the way to do it is to sell it."

Mr. GRAY. What does the short seller do on that principle?

Mr. CRAVATH. He goes in and he thinks the market is a little bit tired to-day and a little bit weak and he goes in and sells some stock.

Mr. GRAY. What is the effect of short selling on a declining market while the decline is taking place, in your opinion?

Mr. CRAVATH. If short selling was done in the same way that long selling is done, that is if a man went into the market and sold his short stock as carefully as he could, trying to get it off at the highest possible price, I do not think it would do any harm, or any very great harm, because after all, as they say, "A short seller has got to buy it back." That is not the way it is done?

Mr. GRAY. How is it done?

Mr. CRAVATH. A short seller goes into the market and if he wants to put down a line of, say, 50,000 shares of stock, he goes and sells twenty or thirty thousand shares as carefully as he can and then he bides his time, waits till he gets the feel of the market and thinks

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that the market is a little bit weak, and he will send in three or four brokers with orders to sell 2,500 shares at the market, and he delights in taking 5 or 10 minutes of 3 to do that, you know. A broker has a market order and he looks up at the clock and sees that the gong is about to sound in a few minutes. He goes into the crowd. He does not wait for orders to come in. He soaks any bids that he finds there, fills them as fast as he can. And if you have four or five brokers offering stock one against the other, you can knock four or five dollars off of a stock in a weak market so quick that there is nothing to it.

There is where I say the real harm from short selling comes in. A man can go and sell five or ten thousand shares of stock and mark down the price of the entire issue.

Now, take United States Steel: A man goes in and drives it down a couple of dollars a share and he has affected every loan in the United States upon United States Steel stock, every bank loan, every margin account, and he has weakened every holder.

Mr. GRAY. It affects other stocks, too, does it not?

Mr. CRAVATH. And it has its sympathetic effect, of course, on other stocks.

Senator BULKLEY. Do you understand that this operation has been made impossible by the new rule adopted April 1?

Mr. CRAVATH. It obstructs the operation, but it is quite possible to beat the rule.

Senator BULKLEY. How?

Mr. CRAVATH. Well, now, supposing I was bearing the market in a certain stock. I would get out my line, maybe, of 25,000 shares of stock and I would get ready to begin to offer it down. I would get some friend of mine to go and buy 2,500 shares of long stock and I would tell him to instruct a broker to stand there in that stock and every time that the orders for that stock are filled—let us say Steel is sellilng at 30. There will be a certain number of bids there. When those bids have been all filled up, I would instruct him just as quick as a cat to offer the stock as far under that price as he could, maybe 29⅞ or 29¾. That would establish the price. That is a hundred shares of long stock. Then I would go in and fill up all orders that continued to come in and in that way you can mark it down. You can not raid the market in the old-fashioned way.

Senator BULKLEY. And he does not have to sell but a hundred at a time to do that?

Mr. CRAVATH. Yes; and many of my old floor trader friends who are very astute judges of the market think that some of the effects of this rule have been almost as bad as the raiding.

You let steel sell at 30 and a short has got a right to sell at that price, and the orders begin to accumulate there at 30. The shorts will accumulate until maybe there are many thousand shares for sale at 30, and it makes a sort of a ceiling through which the market finds it very difficult to rally, and in that way it is almost as depressing as if they raided the market.

Senator BULKLEY. Is this actually being done now?

Mr. CRAVATH. I do not know that it is actually being done. I simply say that it is possible, but I do not know of any instance where it has actually been done.

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Mr. GRAY. Aside from that rule, Mr. Cravath, there is nothing at all to stop the short trader in the instance that you have mentioned from just dumping his stock at the market?

Mr. CRAVATH. Dumping his long stock?

Mr. GRAY. His short stock at the market.

Mr. CRAVATH. No; he can not dump his short stock at the market.

Mr. GRAY. Not below the last price?

Mr. CRAVATH. Not below the last price.

Mr. GRAY. Now, tell us what else that you can about the evils of that particular situation.

Mr. CRAVATH. I think that the evils of short selling in that way, the destruction of values—now, another point in the market that I want to make: For instance, at the peak of the boom the total brokers' loans were about $8,000,000,000, were they not?

Mr. GRAY. I think approximately that in October, 1929.

Mr. CRAVATH. Yes; as you say, approximately. At that time brokers were requiring a margin of at least 30 per cent on securities.

Mr. GRAY. In some cases higher.

Mr. CRAVATH. Let us say that they only require 25 per cent. That means that only 200,000,000 shares of stock were being carried on margin at the peak of the boom when there were about 1,200,000,000 shares actually issued. In other words, 60 or 80 per cent of all the stock that is outstanding is owned at all times by people who want it for the control or want it for investment, or because they are hooked with it at higher prices and are not willing to sell it. In other words, the great American investment public—and they are the people that have no representation at a hearing of this kind and these are the people that I hope that I can in a way represent, because they are the real backbone of the security markets—now, every time that you depress stock a dollar you affect the buying power and the ability to do things of that whole number of people, the sixteen or seventeen million people in this country that own stocks to-day. Every time the market goes down their buying power is decreased, and their ability to do things.

Senator FLETCHER. The general rule is once it is down the only way to get it up is to buy it back?

Mr. CRAVATH. Buy it back. What people do not understand in the markets is that you take a bull market like we had running over several years, from 1925 to 1929, and you see how the buying power of the country fans out. Everybody is making money. You have a hundred shares of Steel that you bought at $100 a share and it goes to $200 a share. You can go out and put that up on margin on the basis of $200 a share. You can go to your bank and borrow money on it on the basis of $200 a share.

As the prices rise, the buying power of the country fans out and fans out and fans out, until finally in every bull market there comes the day that everybody that can buy stocks or that will buy stocks or that can be cajoled into buying stocks, has bought stocks, and when that day arrives, it would not make a particle of difference what the value of those securities was, they will fall, because some day somebody will have to sell stocks and there will not be any buyer there.

And then you have the other side of it. You have the depression. As prices shrink the buying power of the community shrinks with it. And you take it to-day. I think a number of stocks where very

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wealthy men have waited until those stock sold down to 20 per cent, maybe, of what they sold at in 1929, and they thought that they could offer a little support, and they bought the stocks and tried to support them, and the market has gone on down right through them.

Mr. GRAY. There has been some discussion here and some questions have been asked as to the difference, if any exists, between the selling of a market short in stocks and the selling of commodities. Is there a difference?

Mr. CRAVATH. I think that is one of the things that very few people understand. The commodity markets are markets of goods in process of consumption, and the prices of commodities, wheat, cotton, for instance, are dependent absolutely on fundamental conditions of supply and demand.

Now, the crop of cotton is so much. The consumption of cotton during the following year is going to be so much. The price is going to be an equation between those two factors, and everybody in the trade and everybody doing business knows those facts, you know. It is not as if I had the advantage of you or anything. We may not solve the equation in quite the same way, but we all know the same facts, and we will reach more or less the same conclusion. The price of commodities—wheat and corn and cotton—is made by conditions that no man can tell, and I think that every step that Congress has taken to regulate the commodity exchanges has been a step backward, and it has done the farmers irretrievable harm.

The bigger markets you have, the better prices you get. The commodity markets are so big that no man and no group of men can affect them very far for very long.

Now, when you come to the security markets you are in an entirely different situation. In the first place, instead of dealing in one or two or three commodities, as the Chicago Board of Trade deals in wheat and corn and oats and a few of the great staples, you are dealing in hundreds of securities, and each one of those securities is differently affected by the same set of facts. One company may be affected favorably by lower prices for oil. The oil companies will be harmfully affected. The factors that enter into arriving at the price of a security are so different from the factors that are entered into in arriving at the price of a commodity. The management of a company may make all the difference in the world as to its earning power.

A sudden crop failure may mean that one railroad that was particularly good last year will be particularly bad this year. Good crops in another section mean the reverse.

So that when you get into the security market everybody that deals in securities knows more or less that they can not know all the factors that enter into the price of that security. I do not care—Mr. Brush said this morning that he knew all about every stock that he went into.

Mr. GRAY. He meant all that he could learn.

Mr. CRAVATH. He knew all about it as far as the financial and physical and management factors are concerned, but he could not tell what might happen in the next six months that would change the whole picture for that company. That is the risk that even he has to take.

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People are interested in a security. They are away off in Kalamazoo or St. Augustine or Pasadena or some place. They can only get the facts that they get through the newspapers and some of the services like Standard Statistics, and they see their stock going down and it is going down every day and being offered down. There is no way in the world that they can tell whether it is being put down by short selling, or whether it is going down because the business of the country is on the down grade, or whether a multitude of factors are entering in.

So that when you go into short selling in the security market you frighten people in a way that you can not in the commodity markets.

Senator FLETCHER. Your contention is that short selling depresses the market?

Mr. CRAVATH. Very decidedly, because it is done for that very purpose. Every short seller is interested in seeing the market go down.

Senator FLETCHER. Those people who defended short selling say that the short seller has to buy, and, therefore, it does not depress it.

Mr. CRAVATH. He does, but this is the difference: The short seller when he sells the last of his line and wants to depress the market takes advantage of every moment that he sees a little weakness in that stock. You know that the orders do not come in on the floor of the exchange at the same rate every hour of the day. There may be even in a stock like Steel times when there are very few bids there. You are interested in bearing a stock. You naturally keep very well informed on what the market conditions are. One of your brokers from the floor telephones over, "Well, there are very few bids on XYZ stock at the moment," and you telephone around to two or three of your brokers and say, "Sell a thousand or two thousand shares of that stock," and they go in there and find no bids and they offer it down, and they have broken the price maybe a dollar and maybe $5, depending on conditions. They are selling for the very purpose at that time of breaking the market.

Now, when they come to buy they wait until liquidation comes flowing in, until some day when the market is weak, and then they go in and buy, and while it does to a degree help to stabilize the market, it has not really braced the stock.

When you get liquidation in the market don't forget one thing, and it is a thing that you people overlook and why liquidation has the effect that it has. They get blocks of stock that have to be liquidated, say 50,000 shares, and every block of that stock has got to find a permanent holder before that stock has ceased to be a factor depressing the market. In other words, it has got to get into the hands of the ultimate buyer, and sometimes it may be sold by one speculative buyer to another a half a dozen times before it finds such a permanent buyer.

Mr. GRAY. Just one more question, Mr. Cravath: We are getting into the late part of the afternoon. You have been in touch with this investigation. Are there any other things that come to your mind that would be helpful for this committee to know, and is there any remedy that you might suggest of any kind for their consideration?

Mr. CRAVATH. From the standpoint of this 60 or 80 per cent of what you might call the inert investors, I think that there are cer-

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tain reforms that should be made either by the stock exchange or by law; I do not know which. One of them is, I think, that every commission broker should be compelled to stick to the commission business. I think the stock exchange should pass a regulation that within two years the houses that are going to trade for their own account or be distributing houses, buying and selling new securities, should divest themselves of their commission business.

Senator GORE. Like they do in England; jobbers and brokers?

Mr. CRAVATH. They have jobbers and brokers. But I mean that a commission broker should be strictly a commission broker.

Mr. GRAY. You mean not be permitted to trade on their own account?

Mr. CRAVATH. Not trade for their own account or not to bring out new issues of securities. The minute that a house becomes a house of issue—their tendency is to load their customers up with those stocks. If you are a house of issue you do not go in and buy a stock unless you think it is good. You are sold on it. Now, whether you are right or wrong makes no difference. You are going to try to get your customers to buy a few hundred shares of it, because you think it is a good thing. Well, if it pans out to be a bad thing, why, your customers are loaded with it and you are loaded with it and there is no sale for it, and you probably go under.

In all the 30 or 40 years that I have been in Wall Street I have never known of the failure of a commission house that was strictly a commission house, except where there may have been a heavy defalcation or things of that kind that broke them.

Mr. GRAY. Some extraneous reason that might apply to any other business?

Mr. CRAVATH. Yes.

Mr. GRAY. But not through their operations?

Mr. CRAVATH. A strictly commission house is always liquid.

Senator FLETCHER. In either case, if the market goes up or if the market goes down, he has a sure thing, the commission house has?

Mr. CRAVATH. He gets a commission.

Senator FLETCHER. He gets his commission whether he sells or whether he buys.

Mr. CRAVATH. And then I think the stock exchange should make much more rigid rules than they do for listing. You take a company like the Allied Chemical & Dye Co. There is one of our premier industrials, good sponsorship, and everything. Yet if you look at their annual report you will find that a very considerable percentage of their capital is invested in "other securities."

In the first place, I do not think a manufacturing company has any right to start an investment trust with their stockholders' money. They are two different games. If I want to go into an investment trust I want the privilege of going into it on my own.

Mr. GRAY. That has grown considerably in the last few years, has it not?

Mr. CRAVATH. In all the years that the Allied Chemical has been listed on the stock exchange no list of those securities has ever been published in their annual report or otherwise. I think that a company like that should be compelled to make a report every three months of just what those securities are.

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Mr. GRAY. In other words, as long as they have got their stockholders' money invested outside of the business and in something that is fluctuating, there should be more frequent report given to its stockholders of its condition?

Mr. CRAVATH. And a thing like this Kreuger & Toll should never be possible. In other words, it should not be possible for securities to be substituted under a bond, or so-called bond, without the stock exchange being notified.

Mr. GRAY. Won't you make that a little clearer to the committee, so that they can understand it?

Mr. CRAVATH. As I understand—now, I won't be absolutely positive of this, but it is what is current in the street—these Kreuger & Toll bonds that were issued over here were issued against various foreign bonds that they had taken in connection with their match monopolies.

Mr. GRAY. In other words, when these foreign bonds are marketed in this market sometimes there are some American certificates or bonds issued against them?

Mr. CRAVATH. These are bonds that the Match Trust took for these monopolies, and they put them into a trust company and issued certificates against them.

Mr. GRAY. Yes; that is what I mean.

Mr. CRAVATH. Then some time ago the bonds of the French Government, amounting to a very considerable sum, were withdrawn and bonds of Czechoslovakia and a lot of very much lesser governments were substituted, and, as I understand, the stock exchange was not notified of that.

Now, that notice should have gone out immediately.

Mr. GRAY. In other words, the value of the security which was back of those trust certificates was decreased without the stock exchange, through whose medium it was being distributed in this country, having any knowledge of the subject?

Mr. CRAVATH. Now, I do not blame the stock exchange particularly for that, because if a man is a crook it is very hard to defend yourself against him, but I do say that they should have some rule by which the trust company that handled them should report to them and not to anybody else.

Mr. GRAY. The changes that were made?

Mr. CRAVATH. The changes that were made.

The CHAIRMAN. Was that an American trust company in that case?

Mr. CRAVATH. Yes.

Senator WALCOTT. Mr. Cravath, that would not be possible, the situation like the American Kreuger, in England, for instance. Those securities could not have been issued without more information concerning what was back of them. Is that not true?

Mr. CRAVATH. I do not know enough about the English law to know that. I know they are pretty strict.

Senator WALCOTT. That would be the starting point, and that followed up by the exchange which was listing them.

Mr. CRAVATH. Now, another very important thing is the auditing certificates. I do not know how true it was, but I happened to pick up the New York American the other morning, and their financial editor had a long article showing the number of companies listed on

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the stock exchange which do not have the certificate of an independent auditor attached to their annual report.

Senator FLETCHER. This process of exchanging bonds, substituting bonds, and so forth, would open the way for substituting these forged bonds?

Mr. CRAVATH. Certainly. But now this is a very important point, that I think should be covered by law, and I do not think it should be put up to the stock exchange to do it, and that is that every company whose stock is listed on the exchange should at least once a year publish an annual report and send it to their stockholders with a certificate attached by some reputable firm of independent auditors which would be a real certificate.

Not only are there many stocks listed which have no such certificate, but I have been reading over the annual reports of a great many companies in the last few months, and I think even more dangerous is the fact that some of these annual reports have certificates by firms of independent auditors, but if you read those certificates very carefully you will find that about all the auditor certifies to is that he has checked up the additions and found them correct.

Now, that is not an audit. What you want in a company is a real independent auditor where they go out and check the securities and check the money and check the bank accounts, and more or less check the inventory, and I think a law ought to be passed that would specify the type of certificate that these auditors should sign and that it should be attached to the annual report of every company which offers its stock on a stock exchange.

Senator FLETCHER. That should be a condition imposed on every concern that proposes to list its stock on the stock exchange?

Mr. CRAVATH. Yes.

Mr. GRAY. Just one other thing, Mr. Cravath. You probably knew of Mr. Whitney's statement with respect to his firm doing what is called pegging German bonds, which were distributed through a syndicate. We both understand the expression, so I won't discuss it. Is that permitted in England?

Mr. CRAVATH. I don't know. I know nothing about the English laws.

Mr. GRAY. All right, if you do not know anything about that.

Mr. CRAVATH. No.

Senator GORE. You think that there should be a regulation compelling these companies to make complete reports to their stockholders of the different issues of stock held by the companies and the component shares of each?

Mr. CRAVATH. I do not know what the character of those are. They may be stocks of companies that are helpful to their business. But what I say is that when a company has its stock listed on the stock exchange and invites the public to participate in it, that that public becomes a partner in the business and they are entitled to all the information that other partners have. If a company has 25 or 50 per cent of its capital tied up in outside investments, the stockholders should know what those investments are.

Senator FLETCHER. Do you think it would be feasible to pass a law that would restrict, limit, or prohibit the organization of these pools or syndicates for the purpose of affecting the market?

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Mr. CRAVATH. I am one of those who do not believe that pools are a bad thing on the whole. There are all kinds of pools; some of them are very bad; some of them are just taking advantage of a market like we had in 1929, taking a flyer in some stock and marking it up and trying to unload it on the public. But sometimes they don't get away with it and take very heavy losses. The pools do not win all of the time, by a long shot.

But, on the other hand, I have heard of one pool that has been in existence for eight years. It is a pool of people that are interested in a company. They have large holdings of stock. Their friends have large holdings of stock. They believe it is to their interest and to the interest of the company to have a stable market, a good market for that stock, and they have a man, who is an expert at handling such things, who just follows the market up or down. It does not make any difference to them whether the market is going up. If it is going up they will help it a little. But what they will do, if there comes a time when there are very few bids in the market for the stock, they put in a few, so if you want to go and sell your stock you can sell it, and then when the public comes rarin' in and wants to buy a lot of stock and there are no offerings, they put in some offers, so the price is not carried to a ridiculous figure. In other words, it is really a good thing for every stockholder in the company.

Senator GORE. You do not know of any way to keep the public from rarin' in, do you? [Laughter.]

Mr. CRAVATH. That applies to all kinds of speculation, the real estate market, the stock market, and everything else. You can not prevent people when they have got a lot of money that they have not been used to from going out and gambling with it.

Senator FLETCHER. What I am thinking about is the public. There is an organized pool, say, for the purpose of keeping a stock up. That would be all right if they were the only stockholders, but where they are doing that the public comes in and buys, and after awhile they lose.

Mr. CRAVATH. Very often stocks sell way below what their real, legitimate value is, under the then existing conditions, and I see no harm in a pool going in and buying the stock and bidding it up to what is a fair level. But if a pool takes a stock and carries it up to some perfectly fictitious figure, it is doing a great deal of harm to the community. But if it takes a stock that is selling below its intrinsic value and marks it up to something like its fair value, it is doing something that I think is commendable.

Senator FLETCHER. Have you any other suggestions to make with regard to practices on the stock exchange?

Mr. CRAVATH. I think the stock exchange is one of the most perfectly managed institutions that I know of. Wherever you have anything like the handling of securities or speculation, where human nature and the element of greed enter in, you can not help having some abuses, but the stock exchange have worked out a set of rules that are as nearly perfect as they can be.

Now, my opinion is they ought to prohibit short selling. My belief is that they ought to do something to compel a better audit and more complete annual reports. Outside of that I do not know of much they can do. You can not make a set of rules that are perfect; and the stock exchange, with their business conduct committee, which

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has almost unlimited powers, under the rule that any action detrimental to the interests of the exchange can be punished by suspension or expulsion, can do most anything they like. And they do not wait for somebody to complain. I have seen them any number of times walk right into a crowd and pull a broker off to one side and want to know " what the hell he is doing."

Senator FLETCHER. They frequently have to go to the prosecuting attorney to enforce their rules.

Mr. CRAVATH. You see, they can not control outsiders. The only control that the stock exchange has is over its own members; and I want to tell you that that control is very perfect, and I do not believe the methods of the stock exchange can be much improved upon, so far as their way of doing business is concerned.

Senator GORE. You speak of it as a market place where people want to sell stocks on the level and where people can go and buy them.

Mr. CRAVATH. Have you ever stopped, Senator Gore, to think what a wonderful thing it is? I have had to travel a great deal in recent years. I can walk into a broker's office in Victoria, British Columbia, in Miami, Fla., in Portland, Me., or Los Angeles, Calif., and if I want to sell a thousand shares of United States Steel I walk in and say, "I am Mr. Cravath. Sell a thousand shares of United States Steel at the market and 'give up' Brown & Smith, my brokers." In 10 minutes I get a report back that that stock is sold, and I know at what price it is sold, and I know the transaction will be turned over to my brokers and the money will be available and I can draw on it and I don't have any more trouble or anything else.

Senator GORE. Here is what I had in mind, speaking of the stock exchange as a market where bona fide purchases and sales of stock are made; have you ever tried to analyze what would happen if it were abolished?

Mr. CRAVATH. I have a very shining example of it in my own experience right now. I happen to be interested in a company whose stock is traded in over the country. I wanted a hundred shares of it the other day. The stock was 4 bid, offered at 20. If I wanted to sell 100 shares, I could not get more than 4. If I wanted to buy it, I could not get any better than 20. You don't have any such quotations as a rule on the stock exchange, and you know very well if you went to sell a piece of real estate, you have to wait until some fellow came along, whereas on the stock exchange you can sell your securities at any time within a very small fraction of the last sale.

Senator GORE. It is your idea that the stock exchange has its advantages as well as its disadvantages?

Mr. CRAVATH. Certainly. I think these great eras of speculation are when the country forges ahead. The fact that there were a lot of damn fools who carried the thing to extremes is not any particular argument against the stock exchange.

Senator GORE. Yes; I think we all want to ratify and confirm that expression, and I hope you won't strike it out when you revise your remarks.

Mr. CRAVATH. I am sorry if I used a little too strong language, Senator.

Senator GORE. No; I think they are very apt.

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Mr. GRAY. Mr. Cravath, your suggestion, the main one, is that Congress should and could prohibit short selling, is that correct?

Mr. CRAVATH. I think the stock exchange should prohibit it. I think they are the ones that should do it, and then if it seems inadvisable at some future time, it can be very easily changed.

The CHAIRMAN. You know, Mr. Whitney, the president, thinks that would be all wrong.

Mr. CRAVATH. Possibly it would be interesting to tell you where the opposition largely comes from.

The CHAIRMAN. Yes.

Mr. GRAY. Please do that, Mr. Cravath.

Mr. CRAVATH. You know the stock exchange is, to a considerable extent, dominated by the odd-lot houses and the big-wire houses. The odd-lot houses, several of them, own 15 or 20 memberships, all of which are active, and when you have three or four odd-lot houses owning that many memberships, with the wire houses each of them owning two or three or four or five, they have a very large number of memberships. The general public, or even the average broker, does not know where the odd-lot houses really make their money.

Mr. GRAY. I do not know that most of the members here know what odd-lot sales are, Mr. Cravath.

Senator WALCOTT. Mr. Cravath, will you go into the question of the $2 business?

Mr. CRAVATH. What is that?

Senator WALCOTT. The $2 business and the odd-lot business.

Mr. CRAVATH. A $2 man is simply a man who takes orders from other brokers. For instance, you can not have a broker in every crowd all the time. If I give my house an order, the telephone clerk gives it to one of these men. There are always some of these $2 men standing around within reach.

Senator WALCOTT. That is the amount of his commission on the sale, is that right?

Mr. CRAVATH. He gets $2.50 now.

Mr. GRAY. I was going to ask you to explain the odd-lot proposition, because the expression does not mean anything to some people.

Mr. CRAVATH. The odd-lot houses are dealers as distinct from brokers. They do not do any brokerage business whatever. They only deal with other brokers. If you want to buy 10 shares of United States Steel, you give your order to your broker here in Washington, and he sends it over to the floor of the stock exchange, and it goes right to the odd-lot broker.

Mr. GRAY. That is because your broker does not handle anything under 100-share lots?

Mr. CRAVATH. One-hundred-share lots; yes.

Mr. GRAY. And that odd-lot man has a lot of that stock?

Mr. CRAVATH. He stands there in the United States Steel crowd and he has his odd-lot book, and if you put in an order, at the market or at any price, it is entered on this book. Under the rules, if Steel is selling at 30, you don't get your odd-lot until 100 shares sell at 29⅞.

Mr. GRAY. But if you bid 30, in other words, what you have got to do is to pay the odd-lot man ⅛ above the last sale price?

Mr. CRAVATH. One-eighth above the last sale price; yes.

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Mr. GRAY. That is his extra profit, and then when he has a number of orders accumulated up to a hundred shares, he goes in and buys a hundred shares?

Mr. CRAVATH. Not necessarily.

Mr. GRAY. He may have it?

Mr. CRAVATH. He oftentimes takes a very large position in the market. Here is where the odd-lot houses make their money, and even broker's don't know this.

Mr. GRAY. I would be glad to have you tell us what the broker's don't know.

Mr. CRAVATH. Well, what a great many of them don't know, I would say is: Let us say that the odd-lot houses together have orders for 20,000 shares of steel to buy at 30. That sounds like an awful lot, but I know in one instance—I forgot whether it was in General Motors or Radio—they had orders for 40,000 shares.

Mr. GRAY. In odd lots?

Mr. CRAVATH. In odd lots. In order for them to protect themselves, they put these orders in with the specialist in the steel crowd to buy 20,000 shares of steel at 30. Steel comes down to 30, begins to sell there. Maybe they get 10,000 shares of it at 30. They don't have to put one share of that into their customers until it sells at 29⅞.

Mr. GRAY. Until the next sale?

Mr. CRAVATH. It does not sell at 29⅞, but it turns up, and it may go up two or three dollars a share. They have got a beautiful position with 10,000 shares there that was forced on them, and they make their money out of these positions that are thrust upon them.

Mr. GRAY. And if it goes down, they get their natural percentage.

Mr. CRAVATH. And which percentage does not much more than pay their expenses.

Mr. GRAY. And if it goes up they have that extra advantage.

Mr. CRAVATH. Yes; and another thing, just at the end of a bear market the odd-lot houses are thrust into a very substantial long position; and just after the market turns the crest of a bull market, they are almost thrust into a bear position. It is perfectly legitimate. It is not anything which in any way reflects on them, but it gives them a chance to make a lot of money.

Mr. GRAY. You stated in answer to one of the Senator's questions in explanation of the effect of the abolition of short selling on the market, and you started to say that it was because of the position of these odd-lot houses as well as others.

Mr. CRAVATH. You see, it would interfere with their getting this position.

Mr. GRAY. Yes.

Mr. CRAVATH. You know, they also have thousands of shares of stock in process of transfer all the time.

Mr. GRAY. Is not this the point, Mr. Cravath, briefly, that brokers themselves, both in the exercise of their duty in buying and selling on commission, and in the position that some brokers' houses take where they deal for themselves and in the profits that the odd-lot houses make, find short selling necessary in order to keep their business profits up; that is true, is it not?

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Mr. CRAVATH. No; I don't think that is altogether true.

Mr. GRAY. You do not think that is true?

Mr. CRAVATH. I think in the odd lots, these positions, both long and short, are thrust upon them, and it is where they make their profit.

Mr. GRAY. All right.

Mr. CRAVATH. The other people who are opposed to this are the big wire houses, because they are the big lenders of stocks and there is a good profit in it for them.

Mr. GRAY. When you get down to brass tacks, Mr. Cravath, it is because if you take away short selling from the brokers, they would not make as much money as they are making to-day; isn't that true?

Mr. CRAVATH. Certain ones of them.

Mr. GRAY. I beg your pardon?

Mr. CRAVATH. Certain ones of them.

Mr. GRAY. Just certain ones of them?

Mr. CRAVATH. Yes.

Mr. GRAY. Now, those certain ones of them, along with other brokerage houses, go to make up what the stock exchange is, don't they?

Mr. CRAVATH. To a considerable extent; but I know a great many members of the stock exchange who wholly agree with me, and some of them are governors of the exchange.

Mr. GRAY. But those are men who do not do certain classes of business, isn't that true?

Mr. CRAVATH. Some of them, and some of them do.

The CHAIRMAN. The committee will adjourn until 10.30.

Senator GORE. Let me ask one question before you adjourn, will you, Mr. Chairman?

The CHAIRMAN. All right; go ahead, Senator Gore.

Senator GORE. England, France, and Germany, and even New York State, have all passed laws at different times prohibiting short selling. All of them have repealed those laws. Have you made any study of the repeal of those laws?

Mr. CRAVATH. I do not know so much about what England has done, but it seems to me, as I recollect the German case, they largely did away with all speculation, not only short selling, but all kinds of marginal trading.

The CHAIRMAN. The committee will adjourn until 10.30 to-morrow morning.

(Whereupon, at 5 o'clock p. m., Friday, April 22, 1932, an adjournment was taken to 10.30 a. m. of the following day, Saturday, April 23, 1932.)

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