DIRECTOR A. H. MARTIN, Jr., DISCUSSES MARKETING LAWS SURVEY.

Following is speech to be delivered by Mr. A. H. Martin, Jr., Director of the Marketing Laws Survey, Works Progress Administration, on Friday afternoon, May 20, 1938, at 3:30 P.M., before the National Federation of Sales Executives Convention, at the Baker Hotel, Dallas, Texas:

I could not have anticipated, when I was a member of the Pittsburgh chapter of this Association, that you would honor me by asking me to appear as a speaker before your national convention. Even had I foreseen that you would do so, I should have expected it to be in the role of a sales manager who would talk about his experiences in selling goods, and not in the role of a government official in charge of the Marketing Laws Survey which plans to collect information that may be of use to you in carrying out your selling jobs.

In view of developments, I wonder whether I could possibly qualify to handle a sales manager's job today. Ten years ago, a sales manager's main function was selling; his success depended upon how well he could push his particular lines in the market. Today, it seems to me that a sales manager must have much of the training and experience of a Philadelphia lawyer in order to be able to grope through the maze of local, state and federal laws, which are daily growing more and more complicated, and to all of which he must conform if he hopes to avoid spending most of his time in a court room.
Of course, there have always been state laws governing intra-state business, but the field covered by these laws is expanding rapidly. The recent avalanche of laws regulating prices and price policies, particularly, has made the sales manager's problems very difficult. He should be a composite lawyer, economist, political scientist and clairvoyant.

Even the actual shipment of goods from one state to another requires the careful checking of highway laws of every state through which the shipment must pass. If this trend toward minute state regulations continues, the job of merchandising on a national scale may take on much of the aspect of doing business with forty-eight foreign countries.

Of course, some of these regulatory laws are of old standing, and businessmen have long become accustomed to do business under their provisions. State anti-trust acts, local food and drug laws, the inspection of weights and measures, regulations as to the quality of certain types of product such as milk; labeling laws; laws prescribing the size of containers; and, of course, the ever-present tax laws, are all old friends whose acquaintance you have made so long ago that you are scarcely aware of their presence. Then, too, there are the thousands of laws prescribing the forms under which business must be done; the form and nature of contracts, and so on. All these, too, have become familiar by now. In the last few years, however, these regulations have multiplied very rapidly, and despite the heroic efforts of some trade associations to draw up detailed charts for the guidance of their members indicating exactly what these laws say, it seems a safe guess that there is no one in the United States today who is familiar with all of them.
Quarantines frequently impede the free movement of goods from state to state; chain store taxes and heavy licensing fees have been passed to discourage certain types of business. What is more significant from your point of view, the manufacturer's freedom to determine his price policy, which was subject to a moderate degree of control under the provisions of the old Clayton Act, is today exposed to increasing regulation under the federal Robinson-Patman Act which prohibits certain types of price discrimination between different customers, and under various state laws patterned after these federal acts. There are the unfair practices acts, which prohibit sales below cost, each with its own definition of what cost is supposed to be. Then, there are laws which are permissive in character but which, none the less, must exercise a major influence on sales policy. The most notable of these are the fair trade laws which permit manufacturers who desire to do so to establish resale prices for their products.

Almost every phase of your marketing policy is affected in some way and, in some states, by such regulations. The city of Camden just passed a law imposing a license tax of $10,000 upon self-service establishments. New York provides minute regulations requiring the grading of eggs and many other food stuffs. Florida canners of orange and grapefruit juice have just appealed to the U. S. Supreme Court to declare unconstitutional a Florida statute requiring the word "Florida" to be embossed upon every can of citrus fruit canned in that state.

My invitation to address this convention reads as follows:
"We have billed the subject of your talk as "Laws to Help or Hinder"."

These telegraphic instructions of your secretary, Mr. E. F. Anderson,
constantly brought me back into line whenever I showed any inclination
to wander into discussion of abstract theories. I would imagine that you
are most interested, first, in what these laws are; second, what you must
do to comply with them; and last, whether they help or hinder your business.

Help or hinder are short and familiar words, but their application presupposes a complete knowledge of the effects of these laws. Every
law on the statute books helps some and hinders others, and this is particularly true of all these thousands of regulations which surround the mark-
eting of goods or services. Take one example: chain store taxes may help
the independent retailer, but at the same time hinder the chains. What
helps you today may hurt you tomorrow, and what harms today may be of in-
estimable service tomorrow.

What you want to know is exactly how these laws affect each of
you individually and collectively; whether they are helpful or harmful
to business as a whole; helpful or harmful to the great mass of customers.
I may as well admit that while these questions are fair, I am not prepared
to answer them. Moreover, I think that I can safely say that no one is in a
position to answer them today. We hope, however, to have some answers to
these questions when The Marketing Laws Survey has been completed. There-
fore, I will discuss what we propose to do in order to provide you with
the basic material from which you may derive the answers.

First, let us examine the laws themselves. You know as well
as I do how very many of them there are, and how they vary from state
to state. Some effort has been made to achieve uniformity, and in certain
fields where uniformity is desirable this effort has met with success. We have the uniform Sales Act; the uniform Negotiable Instruments Act; the uniform Warehouse Receipts Act, and others of the same type. Even some of the more recently enacted regulations show a great deal of uniformity from state to state. This is particularly true of the fair trade laws which permit resale price maintenance, and which, follow closely similar patterns.

Indeed uniform state laws are not always helpful. Economic conditions vary from state to state and what fits the need of an agricultural state such as Kansas may be entirely out of place in industrial Pennsylvania. Wyoming, Louisiana, New York and Texas each has its own problems; problems which cannot be solved by any single pattern of laws. Moreover, it is not any more feasible for a legislator than for a sales manager to become acquainted with the whole field of marketing law, to understand why certain laws are drafted in different forms in different states. To a businessman planning a national domestic business, and not an export business to forty-eight different countries, this lack of uniformity is a serious practical handicap.

After the legislators have completed their task, and placed the laws on the books, businessmen, particularly sales managers, are confronted with the problem of deciding what sales policy to follow when statutes permit you to follow several alternative courses. When, for example, is it profitable for you to take advantage of the fair trade laws which permit establishment of minimum resale price contracts?
What will the influence of such contracts be? How will the issuance of such contracts affect your good-will and the volume of your sales? To what extent must you be guided by what your competitors are doing? To what extent do you want to cooperate with retail dealers in programs of this kind?

Assuming that you choose to make use of these laws and to fix minimum resale prices for your products, where are you going to set these prices? Are you going to fix the minimum at $1.00, or 99¢, or 75¢? How much of a mark-up are you going to allow your distributors? You may desire to fix the same prices in every state, or to vary them from state to state, or possibly even from area to area within each state. Local conditions may complicate your problems. Thus, some of your retailers in East St. Louis, which is subject to the Illinois Fair Trade Law, may be competing with others in St. Louis, which has no such law.

Similarly, when laws prohibit the charging of different prices to different customers, or limit the differentials, what are you going to do about it? You may decide to deal with only one type of buyer, such as wholesalers, or continue to sell to wholesalers, independent retailers, chain stores or mail order houses, or to anyone who is willing to pay your price. All of these decisions must be made by you before you can proceed to plan an intelligent sales campaign.
There are similar examples with which you are as familiar as I. Instead, I will try to tell you now what this Marketing Laws Survey is and what it hopes to accomplish. The study will resolve itself into two major phases, - one legal, the other economic. The former will analyze the laws not only as they appear upon the statute books, but also as they have been interpreted by the courts. Actions of administrative agencies under their provisions, and of the procedures and remedies involved in each of them will be examined as well. The Legal Study will inquire also into the manner in which these laws promote or restrict your price merchandising policies. It will examine the manner in which states regulate competition or attack restraint of trade; the manner in which these laws interfere with the freedom of interstate commerce. In brief, the subject matter will include all phases of local, state and federal regulations, with which you as sales managers are directly concerned.

I think you are primarily interested, however, in the economic phase of our study. This is designed to give you an analysis of the practical effects of the more important of these marketing regulations. It is obvious that it would be impossible in a reasonable span of time to attempt a complete canvas of the effects of all forms of marketing regulations. Instead we are going to concentrate attention upon selected forms of regulation of major immediate interest. The recent emphasis upon laws permitting resale price control, of laws prohibiting or limiting price discrimination between different buyers,
and of regulations prohibiting sales below cost, will probably warrant our devoting a considerable portion of our economic research to these three types of statutes. Today 43 states permit resale price maintenance; 24 have anti-discrimination laws, and 18 prohibit sales below cost. All these, in turn, are related to the Federal Robinson-Patman and Tydings-Miller Acts.

There is a pressing need for examining the effects of all these laws upon various types of business. The influence of these regulations upon prices, price terms and merchandising policies, upon the volume of sales of different types of products, upon services rendered in connection with sales and advertising allowances, upon marketing policy and marketing channels, constitute a large field which is very close to the interests of all of us. Due to the dearth of information regarding these phases of the survey we shall endeavor to study them as carefully as possible.

Our survey is in its initial stage and we cannot today forsee in detail precisely the lines that we shall follow. Consequently, the following very brief outline of what we hope to do should be taken not as representing a definite decision but rather as describing the course which at this time seems most probable.

The question of foremost importance in connection with all these new laws is "How are they affecting prices?" Is resale price control, for example, raising or lowering the general level of prices? What is the effect of the fair trade laws in trades in which they are used? Are they raising or lowering the prices of specific types of
commodities, of tooth paste or of aspirin, of radios, books and cigarettes? Those who oppose the fair trade laws will assure you that they have raised prices; those who favor them are as confident that they have reduced prices. We shall make an earnest effort to determine the facts in the case.

We shall attempt to survey the retail prices of representative commodities affected by the fair trade laws in different localities. Is liquor really cheaper in fair trade states or in the states that have not yet adopted such regulation? What has happened to the general price levels in the radio and in the tobacco trade; in the drug and in the book trade? And of equal importance are the price experiences of products not under resale price contracts. These questions we shall attempt to answer on the basis of actual field surveys covering representative commodities in representative areas.

A second problem of major interest is the question of consumer attitudes toward the fair trade laws and similar types of legislation. Of course, public reactions are difficult to measure; yet, they are of major importance in the planning of sales campaigns. There have been vigorous efforts by the opponents of these laws to convince the consumer that he is being hurt by their operation, and equally vigorous efforts by the proponents to convince the consumer that he is being helped. From this point of view the success or failure of laws such as the fair trade acts will depend in large measure upon the consumer's acceptance or rejection. If consumers
oppose, they will prove to be no more effective than was prohibition. We hope to ascertain consumer reactions to these laws.

Another problem of interest to you is the extent to which these laws have affected the introduction or sale of private or distributors' brands. We are told that a large department store has offered to make its private brands available to other distributors. The same store, and many others, have advertised extensively in an effort to convince the public that it should buy private brands rather than manufacturers' brands in order to avoid the necessity of paying the prices fixed for the latter.

You have undoubtedly heard predictions that fair trade laws will inevitably lead to the increased popularity of private brands and the failure of the laws themselves. On the other hand, the advocates of price maintenance have insisted that price regularity will lead to increased popularity for manufacturers' brands. Here again we have conflicting claims. Which of them is true? Only a factual survey can yield an answer.

Another question often heard today is "Have the anti-discrimination laws actually reduced price discrimination?" Some say that quantity discounts or special price concessions to very large buyers have been diminished. We have heard as well that the price discrimination laws have worked against the interests of the small man, that the manufacturer has figured the cost of dealing with
the little fellow more carefully and found it necessary either to
increase the price charged or to drop him as a customer entirely.
Claims that the anti-discrimination laws have had little effect upon
prices have been opposed by claims that they have forced a
complete revision of price policy. Both business and the government
desire an answer to these questions and in part we hope to be able
to provide it. We cannot, of course, survey price relationships
and discount structures throughout the entire field of business, but
we may be able to do so for a number of representative commodities.

Finally, what has been the effect of these laws and
regulations upon the distribution of volume between different types
of business, different lines of trade and different lines of industry?
For example, in the grocery field, is the chain store losing at the
expense of the independent wholesaler and retailer, or is the
so-called voluntary chain gaining at the expense of both of these?
When individual chain store units are closed and super-markets
substituted, what happens to the total business of the chain concerned?
How much of a factor is the consumer cooperative in this picture?
Answers to some of these questions may be found in the U. S. census
of business. Others may be derived from this Survey.

We expect to get our economic information as follows:

First, a broad field survey of different types of retail
stores in many localities and of consumer sentiment in at least
some of those localities. In this connection we will need the cooperation of retailers and consumers and their organizations.

Second, we will need information relating to wholesale prices and discount structures, volume of sales of different types of commodities; of manufacturers' and distributors' brands, and the like. At this point your cooperation becomes indispensable. If you make it possible for us to obtain the basic data, we will in turn provide you with material which will assist you in meeting your daily problems as sales managers.

And now, perhaps I should say a few words regarding the conduct of this study and the directing personnel. I have been fortunate in obtaining the assistance of two outstanding specialists in the fields of law and economics, respectively; men who have devoted much study to laws and regulations and procedures in the marketing field.

Our legal staff is at present under the direction of our Legal Consultant, S. Chesterfield Oppenheim, Professor of Law in the George Washington University Law School, Washington, D. C. Professor Oppenheim, a member of the District of Columbia and Michigan Bar, is a recognized authority in the field of trade regulation. He has published a casebook on that subject which is widely used not only in the law schools but also by practitioners specializing as trade relations counsellors. By reason of his standing he has enlisted in our behalf the interest and support of the leading law schools of
the country and prominent members of the bar so that we are looking forward to their active cooperation in maintaining the high standards by which the work of the Legal Division will be guided.

In charge of our economic studies is Dr. John H. Cover, Professor in the School of Business of the University of Chicago. His books on retail prices, consumer financing, business failure, and advertising procedure are highly authoritative in their field. In addition to his university associations, he has retained an active participation in business for many years, so that he brings to his task a unique combination of economic and business background which should prove invaluable in the conduct of the survey.

These two have engaged a technical staff especially qualified in the fields of marketing law and marketing economics.

The Marketing Laws Survey has been set up independently of other agencies. But, fortunately it is able to draw upon other Federal groups for assistance and suggestions. An inter-departmental advisory committee has been appointed consisting of representatives of the Departments of Commerce, Labor, Justice, Agriculture, Treasury, and of the Federal Trade Commission, the Consumers' Counsel of the National Bituminous Coal Commission and the Central Statistical Board.

We are not an administrative organization which is attempting to obtain material for use in planning future administrative action or proposing legislative recommendations. We are interested merely in gathering the facts and to present them as such. We have no axe to grind and no thesis to prove. We will gather the in-
formation from all available sources, present it fully, and let the chips fall where they may.

And that, I believe, is pretty much the whole story. This, I may add, is the first business group to which the purposes and scope of the Marketing Laws Survey have been explained. We have, of course, discussed it individually with the secretaries of various trade associations and with many individual businessmen as well as with government officials and with others representing the interest of the consumer. But yours is the first organization to which I have had an opportunity to talk as a group. In a sense that is entirely fitting; it is you as sales managers, as the persons responsible for planning and directing sales campaigns, whom these marketing laws most affect, and to whom, therefore, the plan of our study will be of major interest.