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STATE OF NEW JERSEY
DEPARTMENT OF AGRICULTURE

HEARING ON THE ISSUE OF

DEREGULATION OF MILK PRICES.

State House
Assembly Chambers
West State Street
Trenton, New Jersey
Wednesday, August 22, 1979
1:00 P.M.

B E F O R E:

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GOVERNOR BYRNE: I'd like to begin at this time first with my apologies to any of you who appeared this morning. We tried to give as much notice as possible, the fact that the hearing would not begin until one o'clock.

And having done that it's my intention to start as promptly as possible to hear as many witnesses as we can who have indicated they want to be heard.

Let me just put these all in perspective, make it clear, that I drink milk. I'm for milk. I probably drink a quart of milk a day, have been doing that for as many years as I care to remember.

I had a physical examination during the winter and I was told that my cholesterol level was extraordinarily low, and so that drinking milk hasn't hurt me, or it hasn't hurt most of you, either.

I'm a good market for milk. But we're not dealing with whether milk is good, whether we like milk, but really whether we've got the correct or logical pricing mechanisms for milk in New Jersey.

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I go into this hearing as I have in several other instances where I've addressed the problems facing citizens in this state with an open mind.

If I have one bias, it's been in favor of protecting consumers, and we have identified areas in New Jersey where we thought that retail price maintenance was not in the best interest of consumers.

Our most recent example of that has to do with alcoholic beverage and liquor prices.

The Attorney General in that instance moved to remove most of the retail liquor prices.

Some challenge exists to that, it is now in the courts, and I would hope that the courts would deal promptly with that matter on the theory that prompt justice has been a hallmark of the outstanding judicial system in New Jersey.

I am willing to listen to anyone who wants to be heard this afternoon. I would hope you would limit your remarks to ten minutes.

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There may be instances in which I have a particular interest in your testimony and will prolong it past then, but we would ask you to tailor your testimony so that you could be heard in ten minutes.

That does not foreclose you submitting a lengthy presentation in writing if you wish to do so, nor does it foreclose your ability to comment on anyone else's testimony in writing to me following this hearing.

I am being aided in the hearing by my counsel, Mr. Light, Mr. O'Hern, and by the Governor's Office on Policy Planning headed by Mr. Linky.

Mr. O'Hern will be of some help to me, technically as well as legally. He's given me an agenda which indicates that our Secretary of Agriculture, Phil Alampi, is the first one who wants to be heard in this matter.

This hearing has not much precedent and very few rules, so we do not swear witnesses; we will hear your testimony, recognize that most testimony is a mixture

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of fact and opinion.

So I look forward to being enlightened at these hearings.

Mr. Alampi.

MR. ALAMPI: Governor Byrne, members of your staff, let me begin by thanking you for the opportunity to appear before you today to talk about New Jersey's milk control system.

As Secretary of Agriculture I serve both the producers and consumers of the Garden State's agricultural products, and I believe New Jersey's present system of milk control provides maximum benefit for both.

Indeed we welcome this public scrutiny of the program, because we believe that this program, which is unique in the United States, is a good one. This forum can only serve to strengthen public confidence in it.

New Jersey is considered a national leader in many areas of state government and in the area of milk control it occupies that role. Imitation is the highest form of flattery and other states are now in the process of following our system.

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For example, Mr. Robert Stevenson, Administrative Assistant of the Alabama Dairy Commission, told the Southern Dairy Marketing Conference earlier this year: "The system of determining costs that is currently in use in New Jersey would seem to be the system of choice."

During the last few weeks the Commissioners of Agriculture in both Massachusetts and Wisconsin have called me personally concerning how we administer our milk control law. In those states laws prohibiting sales below cost have not been effective; and especially, in Massachusetts there is much interest in improving their program.

The New Jersey Supreme Court has described the milk industry as both "unique and volatile," and the court observed that "its economics are complex and hard to understand."

My experience says that the court was exactly right in its analysis of the industry. But once we understand how the industry operates, and its importance to the people of New Jersey, we condlude

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Dr. Stewart Johnson, Professor of Agricultural Economics, University of Connecticut; Dr. Jesse W. Markham, Professor of Economics, Princeton University; and Dr. C. W. Pierce, Professor of Agricultural Economics, The Pennsylvania State University. The committee filed its report in November of 1963 and in it provided a candid analysis of New Jersey's milk marketing system and recommended changes to our milk control program.

The committee was unanimous in concluding that changes should be made in our milk control program, but they differed concerning the type of program which should be followed. One key element ran throughout the recommendations: there should be more competition in the market place.

Based upon the committee's recommendations, our Division of Dairy Industry first removed minimum prices on everything except whole white milk sold to consumers. Both wholesale and retail prices were fixed. But in 1968 hearings were begun to consider changes in the program to provide even more competition in the

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market place.

Following lengthy hearings, an order was entered providing a method to determine the minimum retail price to consumers by adding a single minimum marketing margin to the farmers' raw milk price. This order was appealed. The matter was remanded to the Division of Dairy Industry for additional hearings. It was not until September 1972 that the matter was finally resolved with the unanimous opinion of the New Jersey Supreme Court affirming both the constitutionality of the act and the order which had been entered by the Director.

The Supreme Court's affirmation of Order 69-1 began a new era of milk control in New Jersey. The order, based upon the recommendations of the committee of economists, set a "floor price" to prevent milk prices from spiraling downward to unreasonably low levels, while permitting a maximum of competition in the market place. It was not expected that this floor price would be the market price and it has not been.

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Though not fully anticipated before the order became effective, the system has operated to keep milk prices in New Jersey lower than neighboring markets and much lower than most other markets throughout the United States.

This has greatly benefited our consumers while providing stability in the milk market. This stability is very desirable in the dairy industry and permits it to operate on a very narrow margin.

We began the experiment in 1972. Now seven years later, in 1979, we are able to say that it has worked and should be continued.

Based upon experience in other states, we believe that there is little question that removal of minimum prices in New Jersey will result in substantially higher prices to consumers. In other states higher prices have been the result. In Georgia, minimum prices were removed in 1967 and prices have been among the highest in the nation since that time. In July gallons of milk were selling in supermarkets for $1.95.

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In Mississippi, where controls were removed in 1970, milk was selling in many supermarkets for up to $2.19 per gallon. In South Carolina, where milk prices were suspended as a result of court action, the July price for gallons of milk in supermarkets ranged up to $1.99. In North Carolina, where the agency has chosen not to set minimums, milk was selling for up to $2.13 per gallon in supermarkets. In the Midwest, milk in Iowa was selling for up to $2.03 per gallon. Keep in mind that New Jersey's July minimum price was $1.62 per gallon.

There are many similar illustrations, and even in California which has been cited as justification for removing minimum prices in New Jersey, milk prices are now higher than they would have been with milk controls. This only two and one-half years after minimum prices were removed.

We should benefit from experience of other states and avoid falling into the trap which says that the removal of minimum prices will result in lower prices to consumers. The opposite is true.

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We believe that because there is very low minimum price existing in New Jersey, it is not likely there would be even a modest drop in prices if controls were removed. However, there remains the possibility that they could drop on a temporary basis. If that were to happen, we are certain -- and I would underline "certain" -- that the smaller, though possibly more efficient dealers, would be forced out of the market leaving only the most affluent plants in operation. Without becoming involved in any overt collusion, those remaining would be in position to push prices to unreasonably high levels as has been done in other areas. Who is the loser? The consumer.

Our minimum pricing system works for several reasons, and among them are these three and in my conclusions:

First, the minimum price is based upon the costs of only the most efficient dealers and stores in the state;

Second, enforcement of one state-wide minimum price on whole white milk only assures competition in the industry

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and makes the cost of government enforcement minimal;

Third, the result of this healthy competition in the industry is that New Jersey consumers are assured a ready supply of milk and pay less for it than consumers in other states.

And I have a quick graph, Governor, that I'd like to show.

First, the price of -- I don't know whether you can see it, but it shows three lines on the graph. One is the index of food prices, the top one, going considerably up since 1967; second is the consumer price index; and third is the milk price line.

So you can see that milk has not risen as high as all commodities, and particularly food.

Also important, we bought six gallons of milk in Northern New Jersey yesterday and six gallons in New York City and it shows the unregulated six gallons on this level ranged from $2.03 to $2.09; and Newark, New Jersey, $1.68 to $1.76. And I

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have some samples of milk here available here on display from New York -- of the New York and New Jersey prices, one regulated and one unregulated.

In conclusion, the Director of our Division of Dairy Industry and others will provide more detail with respect to this issue. But, in closing, let me urge you to consider this matter very carefully because we believe that if you do, you will recognize the benefits to our consumers and endorse the continuation of minimum prices of milk in the Garden State of New Jersey.

GOVERNOR BYRNE: Can I ask you, Mr. Alampi, why you feel that there is a price differential between New York and New Jersey?

MR. ALAMPI: We regulate it, we set the minimum, and they don't.

GOVERNOR BYRNE: What does that mean, that more dealers have been driven out of business in New York?

MR. ALAMPI: I don't know the numbers, Governor. Maybe Mr. Moffett will be able to answer.

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But I've noticed whenever they've had controls and taken off, there is a short drop temporarily and then when the big companies took over they drove the smaller people out and drove the prices up.

GOVERNOR BYRNE: Do you believe that in New York they've driven out small dealers?

MR. ALAMPI: Oh, my own opinion, I think a lot of small dealers.

GOVERNOR BYRNE: Can New Jersey dealers sell in New York?

MR. ALAMPI: I don't know. Why don't you raise that question to Mr. Moffett. I don't know what the law is, I'm sorry.

GOVERNOR BYRNE: Why do you think in North Carolina the price has gone up for milk?

MR. ALAMPI: Again, I repeat, I think what's happened, wherever they have controls that they removed, the price finally shot up. They dropped for a while and then go up, because they remove the competition.

GOVERNOR BYRNE: Because they have

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driven people out of business, Mr. Moffett's statistics --

MR. ALAMPI: It can be answered in a brief answer.

GOVERNOR BYRNE: Okay.

Incidentally, is there a minimum price which dealers sell to schools or the public agencies?

MR. ALAMPI: We used to have a price into the store and out of the store; we removed all into the store. All we control are the prices out of the store on whole white milk.

GOVERNOR BYRNE: That's only the stores, that's not if the dealer is selling to a hospital, he doesn't sell it at minimum prices, not bound by minimum prices?

MR. ALAMPI: No. Open competition.

GOVERNOR BYRNE: Are you sure of that?

MR. ALAMPI: Yes.

GOVERNOR BYRNE: Okay, there is no minimum.

The Attorney General.

MR. DEGNAN: Thank you, Governor.

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In January 1979, Governor, in this chamber you suggested the need for a regulatory diet on the part of government. That call was altogether consistent with what has become a relentless effort on the part of the federal and at least this state's governments to impede the seemingly inexorable spiral of inflation and higher consumer costs.

And there should be no mistake about it: there is a cost to the consuming, tax-paying public in government regulation. To be sure, sometimes it is warranted - where overriding social objectives justify such in imposition. But that ought to be a conscious decision - employing a critical balancing process - and not the product of continued acquiescence in a regulatory scheme which, while once historically justified, no longer passes the test. That is the case in liquor; it is the case with public movers; and with respect to retail minimum price regulations of New Jersey's Division of Dairy Industries it is the case today.

I do not hold forth today - as I

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have in the past in the case of liquor deregulation - the prospect of massive consumer savings flowing from the proposal I shall make to deregulate retail sales of milk. There may very well be some small reduction in consumer prices, for retail chain store management has candidly admitted that if milk prices to the consumer are deregulated, they will cut prices; they will seize upon the opportunity of imposing feature prices on making milk a loss leader in the supermarket. Many will say, as Secretary Alampi, that that is a short-term or transient impact. Maybe so, but I think the consumer in New Jersey ought to have the benefit of such a possibility.

"The need to insure an uninterrupted supply of fresh whole milk" are the watchwords of proponents of the regulation of milk. We have seen variations of this argument before and we ought to have learned to recognize the danger signals by now. When once again the citizens of New Jersey find themselves confronted by an industry and a regulatory entity that does not merely

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submit to rigorous regulation but is eager to have it and will resist all efforts to undue it, we should be skeptical.

Unlike many of the speakers who may appear today, I cannot sit before you with a claim to know all the answers. The issues are complex and the implications that precipitate this action difficult to discern. Indeed, this was also the case in liquor. It has occurred to me more than once that a good way to ensure that industry protective regulation not be subject to scrutiny by those whose interests lie primarily elsewhere is to make it sufficiently complex that no one else can understand it well enough to improve it. But in this case I am of the unwavering opinion that the public policy of this State and the public interests of its citizens mandate that proponents of regulation bear the burden of coming forth to justify the need for such regulation. Had we experienced 40 years of free competition and were we now considering the imposition of controls, I know that all would agree with that stance. But the mere

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reason of having had 40 years of almost uninterrupted regulatory control seems to argue for retention of the status quo until such time as change can be proven a necessity.

You have heard and will continue to hear that the price of milk in New Jersey is low -- Secretary Alampi said that -- not only in comparison with our neighbors, but nationally. That's true. It is low. But the further argument that our system of price controls can be credited with this cannot withstand objective evaluation. It is probably far more accurate to say only that New Jersey's present regulatory scheme has only minimally interfered with natural market forces, thus allowing our favorable consumer prices.

New Jersey has several natural advantages over other states which also contribute to our relatively low prices. Geographically we are compact, thereby creating efficiencies unavailable elsewhere. Labor costs in New Jersey are less in comparison to New York and to a lesser extent Pennsylvania. The supply of milk in

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this region is plentiful and our dealer processors are relatively efficient.

Finally, the marketing strategy of New Jersey retailers has resulted generally speaking in consumers receiving the minimum price allowed by law.

To suggest that state-set minimum prices guarantee or contribute to low prices is simply misleading. If the observed price in the market place approaches the floor price, the most that can be said is that competitive levels are certainly no higher, for otherwise businesses would either raise prices or go out of business.

You will also hear the argument - as we have heard so often in other areas - that if controls are removed destructive price wars will occur at the retail level and thereby adversely affect the entire chain of distribution, right on down to the farmer. Deputy Attorney General Sapienza, head of the Anti-trust Section, Division of Criminal Justice, will also address this argument in greater detail later. But let me suggest here that such an argument implies a present

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lack of competition at the dealer and retailer levels, a situation that may indicate the existence of agreements to fix prices and allocate customers.

If a factual basis for such a scenario is found, very serious antitrust violations may be occurring. To suggest that the regulatory structure should be preserved in order to sustain such behavior is to make ludicrous the concept of regulation in the public interest.

The regulatory scheme contains three primary controls. First and foremost, the Division of Dairy Industries sets, actually establishes, the minimum out-of-store price of whole fresh milk to the consumer.

Thus, an A & P, a Shoprite and a Pathmark, all vigorous competitors on other foodstuffs, may not market milk freely. They do not compete in milk. It is my considered opinion that the benefits that were intended to thereby accrue to the farmer -- and we should all understand that it is the farmer and not the retailer who is the intended beneficiary of the minimum consumer price -- are so speculative as to

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be meaningless.

The existence of a minimum price which now under 69-1 -- but not necessarily under 79-1 -- admittedly seems reasonable, perhaps even low, only lays the groundwork for artificially raising prices in the future. The mechanism is in place to rip off the consumer. That it has not yet been so employed does not afford to me much solace.

And bear in mind, the principle that I suggest ought to govern the approach to the question is that "no regulation" is the desired state, and only under a showing of compelling need should we do otherwise.

The second control is a prohibition against sales below cost at any level of the industry. Again, Mr. Sapienza will expand on this issue, but let me point out that because of its relative unenforceability, it is a seldom-used control. Moreover, it does act, in my opinion, as an unnecessary entry barrier to the market place and, as such, should be eliminated.

The final control is commonly called the 60 day rule whereby any supplier

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or customer within the chain of distribution is required to give 60 days notice prior to dropping a customer or supplier.

The effect of this rule is to virtually lock merchants into dealing with parties irrespective of the competitive advantage of change. While I can see, albeit reluctantly, the advantage of this rule as it applies to the producer or farmer level of the industry, there is, in my mind, no weighty argument for its retention at the other levels of the chain.

You will hear a further argument this morning that if dealers are driven to strong competitive practices, some will go out of business and the ability of a farmer to market his products will be in doubt.

Based on our analysis of the milk market in New Jersey, we believe that New Jersey milk is extremely marketable and that there is no likelihood of farmers being unable to sell their product.

There is already a decided pattern of concentration; it has not resulted in a lack of markets. We do not have a

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concern, because of the credit system in this industry which provides for payment to the farmer on the 25th day of the month following delivery, about ensuring payment by dealers to farmer-producers and would, as a result, suggest a substantial increase in the surety/bonding obligations of the dealers.

Before I offer the recommendations of my department, allow me to make clear that the recommendations that I propose are by no means precipitous.

While I reject the notion that the burden of justification rests with those opposing regulation, I am nonetheless mindful of the long history of state control, mindful of the effort required to undo habits of long standing, and certainly mindful of the need to ensure a stable transition and the avoidance of panic.

Perhaps more than any other obstacle, fear of change and the panic that it causes are the greatest threats to a successful transition. As unfounded as a fear might be, its existence is no less real and of no less consequence, both to the

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individual and the system in which that individual operates. But this recognition does not argue against decontrol, only for its careful implementation.

With that in mind, I offer the following recommendations:

That the authority of the Director of the Division of Dairy Industries to fix a minimum, out-of-store retail price for fresh whole milk be repealed by legislation to become effective January 1, 1980.

Two, that the prohibition on sales below cost, now governing each level of the industry, be removed effective January 1, 1980.

Three, that the requirement that 60 days notice be given prior to terminating either a supplier or a customer -- a practice which currently governs all levels of the industry -- be retained solely at the producer level. This, too, would become effective January 1, 1980.

Fourth, that the bonding requirement which guarantees payment to the producer be increased from the current $100,000 to

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$500,000.

Fifth, that in the interim period between now and the effective date of these proposals a group be appointed by you to recommend any additional or clarifying measures needed to a stable and orderly transition that effects the implementation of the above recommendations.

And finally, sixth, that in this interim period, Order 79-1, that would raise the current minimum out of store retail price of whole milk almost 5¢ per gallon to the consumer, be indefinitely suspended, retaining instead the current Order 69-1.

By way of conslusion, I would point out that as in the case of almost every other industry a line must be drawn between legitimate competitive activity and unfair trade practices. And as those other industries look to vigorous enforcement of this state's antitrust laws for protection, so, too, should this industry. Thank you.

GOVERNOR BYRNE: Do you know what the minimum retail price is now for a gallon of milk in New Jersey?

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MR. DEGNAN: $1.64 per gallon.

GOVERNOR BYRNE: $1.64. And none of that milk that Mr. Alampi brought was less than $1.64?

MR. DEGNAN: It's generally true that in North Jersey the price for the retail of milk generally floats above the minimum.

That's not the case in South Jersey where in many instances the minimum price is the actual price.

GOVERNOR BYRNE: Do you have any indication how many retail dairies went out of business in that ten years?

MR. DEGNAN: We have some statistics available which indicate the reduction in numbers of dealer processors over the last ten years.

Unfortunately I don't -- I know that there are approximately 66 dealers and 338 subdealers.

Since 1973 the dealer category has remained relatively stable, although New Jersey has lost in that five, six year period 150 subdealers.

I have numbers over the last ten

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years which we can get for you.

GOVERNOR BYRNE: Okay.

MR. DEGNAN: I might add, there has -- as to the concentration of the industry, there has been a decrease in the number of dairy farms from 1969 through '78 from 1,326 to 644, and also the production of milk is down.

There is, irrespective of the existence of the regulatory scheme, a decided tendency toward concentration in this industry.

GOVERNOR BYRNE: So it's been a relative per capita drop off the consumption, isn't it?

MR. DEGNAN: I'm not sure whether the consumption has dropped off.

GOVERNOR BYRNE: Thank you.

MR. DEGNAN: Thank you.

GOVERNOR BYRNE: Mr. Arthur Penn. You're a representative of the Public Advocate?

MR. PENN: That's right, Governor. I'm here on behalf of Stanley VanNess.

GOVERNOR BYRNE: Is he on vacation?

MR. PENN: I believe he is, yes, sir.

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GOVERNOR BYRNE: Okay.

MR. PENN: In this era of double digit inflation government should strive to keep the price of necessities of life, such as food and shelter, as low as possible.

This policy should also hold true for milk pricing. Price control is carried out in the name of consumer protection.

We are told that things are not as they appear, that forcing stores to charge higher prices than they want to charge ultimately results in lower, not higher, prices. We are told that price controls are necessary to preserve a sound dairy industry.

Many economists, however, question this. Seventeen years ago Governor Hughes appointed five of the best economists in the country to a study commissioned to do a comprehensive analysis of our system.

At that time two of the five felt that minimum retail controls could have been abolished with only a prohibition against sales below cost.

It may well be that economists

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today would reach a concensus that New Jersey could without detriment join the other 42 states that find no need for retail milk minimums.

The issue of milk pricing is important enough to our farmers, our industry and the public to demand the best advice and counsel possible.

It is time to reevaluate whether a minimum price on milk is still necessary. Therefore, we recommend that the Governor convene a study commission to consider whether milk controls can be safely abolished.

The second issue before us is whether the proposed price increase for milk should be implemented.

This question should be considered in the light of recent history.

Ten years ago the Division of Dairy Industry sought to implement a new milk control formula, Order 1969-1.

Twice the Supreme Court struck this down because the Division had not adequately justified it.

Only after the Division made

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thorough findings of fact did the Supreme Court uphold the order. That order is still in effect today.

Many experts who have studied the effect of Order 1969-1 have concluded that it has not substantially increased the price of milk to consumers.

It may be unnecessary but it has imposed only small burdens on the consumers.

This spring the Division of Dairy Industry has proposed a new method of milk pricing based upon an index of cost. This new formula could impose substantially higher costs upon consumers.

The economic formula would impose an additional cost of five cents per gallon above present minimum prices.

We believe that Order 1979-1 should not be implemented until it is given the same intensive scrutiny that the Supreme Court required of the Division of Dairy Industry when it adopted its 1969 order, and the same intensive scrutiny that Governor Hughes required in 1962.

This hearing is a start. We request

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that Commissioner Alampi make all testimony today part of the record upon which the Division of Dairy Industry bases its decision whether to implement Order 1979-1.

We also request that new findings of fact be made which give full consideration to the testimony of the experts today and/or the report of the study commission, should it be created.

If the Division imposes higher milk prices on consumers without fully weighing today's testimony and the commission report, the Public Advocate will be obligated to protect the interests of New Jersey consumers by filing litigation which would seek to enjoin the imposition of higher prices.

If state government forces its consumers to pay even one cent more than necessary for a vital product such as milk, then we are failing in our responsibility to the public.

In summary, to prevent this from occurring two things should be done.

A study commission should be convened

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to determine if controls should be phased out and, in the interim, Order 1979-1 should be stayed until the testimony today and the commission report is fully evaluated.

Thank you.

GOVERNOR BYRNE: Did the Public Advocate testify on the last milk order?

MR. PENN: 1969?

GOVERNOR BYRNE: No, this.

MR. PENN: No, we did not, sir, not at the hearing itself.

GOVERNOR BYRNE: Any reason?

MR. PENN: No, the only reason being at that time there was a question of conflict of expert testimony and we are not taking the position today that deregulation is necessary or that regulation is good.

The issue, though, is complex and our position is that it is so complex that further study is necessary before this order is implemented.

GOVERNOR BYRNE: Why is any particular status quo better than any other status quo while you study?

MR. PENN: Well, we know at the

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very least that the prior order, 1969-1, has not imposed substantially adverse impacts on the consumer.

It's not clear that the consumer would be better off or worse off with it, but we know that unless that's maintained the consumer may suffer substantial adverse impacts as a result of this.

So until we can determine what it means to eliminate price controls and whether this order should be justified, we should at the very least maintain the status quo.

GOVERNOR BYRNE: Do you assume if the minimum price went up five cents, that gallon next to you which is marked $1.76 will automatically go to $1.81?

MR. PENN: We would assume that the five cent increase would be felt across the board. That is, prices that now hover just above the minimum would go up the five cents to maintain the margin that they now have in regard to the minimum.

GOVERNOR BYRNE: Questions?

Thank you.

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My list of witnesses would list the next witness as Senator Wayne Dumont. Is Senator Dumont in the room? I know Senator Dumont to see and I don't see him. When he comes in we'll call him.

Mr. Moffett.

MR. MOFFETT: Thank you very much, Governor.

I am Woodson W. Moffett, Jr., Director of the Division of Dairy Industry, New Jersey Department of Agriculture.

And, Governor, I would ask for your indulgence and a little extra time today because I believe my statement is basic and does provide some very fundamental information. It's not that long but it does run more than ten minutes.

GOVERNOR BYRNE: How much longer, because we've got some questions to ask you, I guess.

MR. MOFFETT: Well, I'd be happy to respond to those questions. It's just that I have given much thought to this and if I could have more I would appreciate it.

GOVERNOR BYRNE: How long can we

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keep this milk out before it curdles?

MR. MOFFETT: I'm sure it will last a long time. It's good quality to start with.

First I want to thank --

GOVERNOR BYRNE: I used to say I live kids, I love to curdle them on my knee. I'm sorry, go ahead.

MR. MOFFETT: First let me thank you for the opportunity to provide some information concerning New Jersey's milk control program at the beginning of this hearing.

Secondly, because I will be giving you some opinion comments, you should know something of my background and experience.

My formal education includes BS and MS Degrees in Agricultural Economics with a major in milk marketing, and an LLB Ddgree. I am a member of the Mississippi State Bar, a graduate of the Army's Command and General Staff College, and a retired Colonel in the United States Army Reserve.

My experience in milk marketing dates back to 1952. I served as a research

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associate at Mississippi State University, and as Coordinator of the Southern Regional Dairy Marketing Research Project, before joining the staff of the Mississippi Department of Agriculture in 1954. There I was charged with the administration and enforcement of dairy regulatory acts, including a law prohibiting sales below cost. From 1960-1970 I served as the Executive Secretary of the Mississippi Milk Commission which was charged with economic regulation of that state's dairy industry. I am past president and member of the executive committee of the International Association of Milk Control Agencies.

I came to work with the New Jersey Department of Agriculture in June 1970. Shortly before I came, the New Jersey Supreme Court had remanded a case styled Garden State Farms vs. Mathis. The court instructed the Director to hold hearings on six questions, including the basic question of whether milk control continued to be in the public interest. In addition to holding lengthy hearings and filing a

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finding of fact with the court, I have observed the outstanding success of New Jersey's milk control program.

It is my understanding that you and your staff recognize the need for some type of regulation of the New Jersey dairy industry. The question is whether fixing minimum price is the best form for that regulation to take.

Just as the proof of the pudding is in the eating, so the test of New Jersey's milk control program is in the results, and New Jersey's consumers are saving millions of dollars each year because of it. Alternative programs of regulations would not be as effective and will cost our consumers large sums, both in the short term and the long run. More about this later, but first let me provide some background.

The milk industry is very complex and difficult to understand. Milk is subject to some type of economic control in every developed ocountry in the world.

Regulations from country to country and state to state differ primarily in detail

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because each has the objective of providing the citizens of the various countries and states with an adequate supply of pure wholesome milk at reasonable prices.

Time constraints will not permit a full development of the background really needed for proper understanding of milk regulation, but some brief comments are imperative.

Because of the public issues related to the regulation of milk a large body of law has developed around such controls. Many quotations from various courts, including the United States Supreme Court, would have bearing on the question being considered today, but time does not permit them here.

The 1972 opinion of the New Jersey Supreme Court in Garden State Farms vs. Mathis is very basic and we should look briefly, very briefly, at pertinent quotations from that opinion. Incidentally, this case is reported at 61 NJ406, 294A 2nd 713.

In that case, the court stated that "At this late date it cannot be disputed that the business of producing and distributing

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milk is affected with a public interest and subject to governmental regulation, including price-fixing, provided of course the particular regulation is substantially related to a legitimate end sought to be attained."

The court then proceeded to examine the New Jersey Milk Control Act and Order 69-1 and concluded that each passed muster in our modern day economy.

In Garden State Farms vs. Mathis the court examined a very comprehensive record.

GOVERNOR BYRNE: What was the issue in that first case?

MR. MOFFETT: Garden State Farms vs. Mathis said that minimum price milk controls were still in the public interest and still required based on our modern day economy.

GOVERNOR BYRNE: And the court found they were good for the public and so they were all right?

MR. MOFFETT: The court found they passes the muster at that time and they

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went on to say later that the record supported the idea that some type of economic minimum price fixing or price fixing was in the public interest.

GOVERNOR BYRNE: What muster did the court refer to when it said "passed muster"?

MR. MOFFETT: I suppose it would be muster to the constitution of our -- justice. And the question was at that time was it a constitutional exercise of power and, if so, was it an appropriate exercise.

On both issues the court did affirm.

GOVERNOR BYRNE: So the court said that it's constitutional to regulate milk prices.

MR. MOFFETT: And it was added that the order itself -- entered that the order itself was indicated under the circumstances.

GOVERNOR BYRNE: The order itself was a constitutional application of the constitutional right?

MR. MOFFETT: That's correct.

I believe the court went one

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step further than that in recognizing that this was an appropriate order based upon the record which was forwarded.

GOVERNOR BYRNE: That it was a constitutional --

MR. MOFFETT: That it was constitutional, that's right.

GOVERNOR BYRNE: Nobody in this room really challenges the constitutionality. All right.

MR. MOFFETT: The point is well-taken, sir. But the court in its review of that extensive record was considering the same question that you as governor are considering today.

At that time the court also had before it a comprehensive record, findings of fact based upon testimony representing all points of view, and extensive briefs.

The court spoke to the complex nature of the issue before it when it said, "In approaching this issue, it must be remembered that the milk industry is both unique and volatile. Its economics are complex and hard to understand for those not

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closely connected with it. As the United States Supreme Court said in H.P. Hood and Sons vs. Dumond, 336 U.S. 525, 529, 93 L. Ed. 865, 870, 69 S. Ct. 657 (1940): '...the economy of the industry is so eccentric that economic controls have been found at once necessary and fifficult. These have evolved detailed, intricate and comprehensive regulations, including price-fixing.'" End of quote on the Supreme Court decision.

And continuing with the New Jersey case, court's language, "Milk is a universal food in constant public demand. It must be supplied not only to homes, but to schools, hospitals and other institutions.

It is produced 365 days a year, which cannot be stopped; it is a perishable commodity which must be handled and processed promptly. Profit above the producer level is measured in pennies per unit and unit costs, and thus profit, depent upon volume which can result in sharp and destructive competition and an unstable and disorderly market. At the retail store level, milk is frequently used as a traffic builder, with

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emphasis on price, or even as a loss leader, there being no substantial consumer brand preference," end of quotation.

After such careful review, the court concluded that "... it seems clear beyond any doubt that the record here adequately supports the finding of the desirability for continuing some form of price fixing in this state." Please keep in mind that this conclusion was based upon a careful analysis of many facts which have not materially changed.

The court also suggested that "Continuous reevaluation by the agency and amendment of the order as changed economics and other factors dictate, is certainly called for."

The Division of Dairy Industry has followed the court's suggestion. We have changed regulations to encourage more competition. We have conducted economic and cost studies. And only recently we have carefully reevaluated the market situation, based upon such economic studies and public hearings.

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The testimony at these public hearings showed that a change should be made. In keeping with the Milk Control Act and Administrative Procedure Act, an amended order has been filed with the Secretary of State.

Except for the time and effort consumed in a hearing of this nature, we welcome this opportunity to have full review of the milk control program.

New Jersey's milk control program will stand close scrutiny because it has operated and continues to operate in the interest of the consumers of this state.

There are incidental benefits to the milk industry of the state, including the retail industry, but the greatest beneficiary has been the consumer.

For the last several years we have estimated benefits to New Jersey consumers from our program by relating prices in New Jersey to prices in neighboring states during June of each year. Savings to consumers during this period of time have ranged from $13 million to $20 million per year.

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The question logically follows: How does a minimum price keep market prices down?

To understand the answer one must understand how the minimum price is determined and administered.

As mentioned by the Secretary, the Committee of Economists was unanimous in recommending that more competition be introduced into the market place than had been present in prior years.

Based upon their recommendation, in 1964 minimum prices were removed from everything except whole white milk in consumer size packages. In Order 69-1 they went one step further and removed all except minimum retail prices on whole white milk.

In addition, the method of determining the actual minimum price level was changed. In 69-1, and in Proposed 79-1, costs were considered only for the most efficient dealers and stores thus yielding a very low minimum price.

Because we use the most efficient dealsers and stores as a bench mark, without

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considering profit or return on investment, sales below the established minimum would actually result in losses. Large businesses might be willing to accept such losses for short periods in order to undersell a competitor and capture his market.

Smaller firms, however, could not afford such losses for even short periods and would be driven from the marketplace. This is what we mean when we say New Jersey's minimum price program prevents "destructive below-cost selling."

Dealers and stores can sell at cost but not make a profit if they choose; but under our system, they cannot disrupt the marketplace by selling below the pre-determined "cost floor."

Since the low floor price reflects cost for only the most efficient operators, it was not expected that all milk -- or even most milk -- would sell at minimum prices.

Instead, it was expected that competition would set the actual out-of-store price.

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This has been our experience during the last seven years; and, except for brief periods of time or in unusual competitive circumstances, most milk has sold at prices above minimums.

I'd like to depart from my prepared script because something's been said earlier that although in recent months following the Food Fair closing and the competition to get that business, milk in South Jersey has been selling pretty close to the minimum.

But keep in mind 70 percent of our milk is sold in North Jersey, not in South Jersey.

In administering the minimum price, the Division periodically announces what that price is. These announcements have apparently exerted significant downward pressure on the actual out-of-store price. This is immediately apparent when prices in New Jersey are compred with prices in other states throughout the United States.

Other witnesses will develop in more detail the relative margins in New

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Jersey as compared with other states, but I want to call your attention to comparative prices in my home state of Mississippi.

Following the removal of minimum prices in Mississippi there was a period of very violent price competition. Milk prices fell to unreasonably low levels, even selling for five cents per half-gallon with the purchase of other groceries.

Several of the independents went out of business; and during the last several years prices have been, in my judgment, unreasonably high.

For example, while I was on vacation last December milk was selling in the supermarkets in the capital city for $2.29 per gallon. At that time minimum prices in New Jersey were $1.58 per gallon. Wholesale prices to farmers in both states were essentially the same.

As mentioned by Secretary Alampi, illustrations of this nature can be given for other states.

Prices dropped following removal of minimum prices in California, but current

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prices are above where they would have been if such minimum controls had been retained.

In support of this statement I quote from a paper presented July 31, 1979 at the 43rd Annual Meeting of the International Association of Milk Control Agencies. Mr. Vernon L. Shahbazian, Chief of the Bureau of Milk Stabilization for California, said in part, and I quote:

> "What is the situation today of retail milk prices in California? Prices have gone up substantially since suspension of minimum retail pricing. For example, prices have increased in the Los Angeles area from 68 cents a half-gallon in January 1977, when minimum retail pricing was in effect, to the presently prevailing figure of 85 cents a half-gallon. It should be recognized that before this steady climb there was a period of time after minimum retail price suspension that the prevailing prices decreased to a low of 64 cents a half-gallon in the same area. The San Francisco Bay

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Area has increased from 69 cents to 83 cents and the Sacramento Area from 68 cents to 81 cents a half-gallon. In this same period of time since January of 1977, producer prices have increased the equivalent of about 9.7 cents a half-gallon. Therefore, the difference between the producer increase of 9.7 cents and the retail price increase of 15-16 cents, or about 6 cents per half-gallon, was for reasons other than the passing through of the increase in the producer price..."

In comparing prices in California with prices in New Jersey, two very important facts should be kept in mind.

First, prior to the removal of minimum prices in California, milk control officials were required to include a profit margin as a part of their minimum price. In determining prices in New Jersey no profit margin is included.

Second, raw milk prices in California are much lower than prices in New Jersey and other states east of the

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Rockies. This prevents direct comparisons between New Jersey and California out-of-store prices.

If New Jersey's raw milk prices had been as low during July as Sacramento, California's raw milk, our minimums would have been only 77 cents per half-gallon. This would have been 4 cents per half-gallon lower than the 81 cents price reported by the California speaker.

The statement that consumers in New Jersey get a better buy on their milk than do the consumers in California can be supported further by the fact that the actual marketing margin, i.e., the difference between the farm gate and the check-out counter, is substantially higher in California than in New Jersey.

For example, during April 1979 the average marketing margin for three California cities was 7.3 cents per gallon or 15.6 percent higher than New Jersey's.

One final comment concerning alternative methods of milk regulation in New Jersey. Suggestions have been made that

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prhibitions against sales below cost would be as effective as minimum prices and still provide for stable markets. Such is not the case. Secretary Alampi referred in his statement to the 1963 report of a Committee of Economists.

While the committee members were unanimous in their conclusion that some changes should be made to the New Jersey milk control program, they were not unanimous concerning the program which should be followed.

As part of the evaluation of the various suggested programs they stated that -- and I'll skip part of that quotation, but I would like to point out they said, "The alternative of below-cost prohibition was rejected," and they list a number of other reasons, not least of which was experience in other states with laws and regulations prohibiting the sale of milk below cost has been unfavorable.

Secretary Alampi also mentioned the commissioner from Massachusetts had been raising questions in that area.

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The committee went on to say that they saw little difference in the New Jersey situation than would be in other states and recommended against -- those two members at least -- the prohibition against sales at below-cost and in favor of what we did accept, the minimum margin concept.

Based upon my experience as an administrator, I can say without reservation that the two committee members analyzed accurately the difficulties associated with administering regulations prohibiting sales below cost.

Also, the success of the single minimum marketing margin program in New Jersey has far exceeded even our fondest expectations.

Not only is the program simple and effective from the standpoint of enforcement, it also is the most economical way to get the job done. Because of this we save considerable sums each year in the administration and enforcement of the Act.

As it should be, your goal as Governor and our goal as administrators of the Milk Control Act are identical. We want

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New Jersey consumers to have milk at the lowest possible price, and to do so we must provide a stable milk market in New Jersey. Our milk control program is working for the benefit of our consumers. It has been proven over a seven-year period and should not be abandoned in favor of a system which is doomed to failure before it is begun.

We believe that once you have studied all of the facts in this matter you will, as the New Jersey Supreme Court did in 1972, agree that our activities are in the public interest and that minimum prices give our consumers milk at the lowest possible price, and I thank you for permitting me to run overtime.

Thank you.

GOVERNOR BYRNE: Tell me, what are these federal milk marketing orders in New Jersey?

MR. MOFFETT: Federal milk marketing order establishes minimum prices paid to dairy farmers.

In New Jersey, the State of New Jersey and the New York State Department of

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Agriculture, are joint convening authorities for order number two under memorandum of agreement with the USDA.

South Jersey, New Jersey and USDA cooperate in that area or admitted manage marketing area.

We have two orders, one covering South Jersey which is associated with the Philadelphia market, called the Mid-Atlantic market; the other in North Jersey, which is called the New York-New Jersey one.

GOVERNOR BYRNE: And tell me again what price that regulates.

MR. MOFFETT: The minimum price to dairy farmers.

GOVERNOR BYRNE: For the farmer.

MR. MOFFETT: Right.

GOVERNOR BYRNE: The guy who milks the cow.

MR. MOFFETT: Right.

GOVERNOR BYRNE: What does he get now in North Jersey?

MR. MOFFETT: In North Jersey the price is fixed at the 201, 210 mile zone so that a farmer living closer to the market

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would have additional amounts up to 36 cents a hundred. But the quoted price at the present time is $13.01 for that area.

GOVERNOR BYRNE: I don't understand that.

MR. MOFFETT: For 100 pounds of milk.

GOVERNOR BYRNE: Can you tell me what that means in terms of a gallon of milk?

MR. MOFFETT: That produces 11.62 gallons of milk. 46 and a half quarts in 100 pounds.

GOVERNOR BYRNE: Can you tell me what that means for a gallon of milk?

MR. MOFFETT: I don't have a calculator.

A VOICE: 27.09 cents a quart.

GOVERNOR BYRNE: 27.09 cents a quart.

A VOICE: $1.12 a gallon.

GOVERNOR BYRNE: So the farmer gets $1.12 a gallon when he sells it?

MR. MOFFETT: There may be some -- may I ask that fellow who provided the information, does that include the direct

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delivery differentials for New Jersey?

A VOICE: Just the quoted price.

MR. MOFFETT: He used 13.01 and I was concerned that he didn't add to that some other costs.

But a farmer in the 201, 210 mile zone would get $1.12 a gallon. The dealer buying that milk would have some additional costs associated with it bringing it into the marketplace.

GOVERNOR BYRNE: I understand that. And then he sells it for no less today than $1.64?

MR. MOFFETT: No. That $1.64 represents the store margin also. We fix only the minimum out-of-store price.

So that the margin we refer to, the margin between the farm gate and the check-out counter, is that difference between the raw milk price and the minimum price of $1.64.

GOVERNOR BYRNE: So he can sell it to A & P or Safeway at any price he wants to sell it to?

MR. MOFFETT: As long as it's not below cost.

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GOVERNOR BYRNE: Is there competition there?

MR. MOFFETT: Yes, team competition.

GOVERNOR BYRNE: And does that drive out some middle men?

MR. MOFFETT: Well, as indicated earlier, there has been some attrition in the marketplace in recent years. I'm not prepared today to give you specific numbers. I can supply those to your office.

GOVERNOR BYRNE: What percentage of his milk supply does he supply for retail consumption?

MR. MOFFETT: Home delivery you mean?

GOVERNOR BYRNE: No, from retail consumption, fluid milk.

MR. MOFFETT: The dealer or the farmer? I'm not sure I understand the question.

GOVERNOR BYRNE: All right, let's go back.

What percentage of the farmer's milk ultimately goes to a price control retail consumption market?

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MR. MOFFETT: Thank you. In the New York City-New Jersey market as a whole, about 50 percent of the total milk produced by the 17,000 or 18,000 farmers supplying the market goes into the bottle for fluid consumption, and about 50 percent goes into products such as cheese, butter, cottage cheese and so forth.

GOVERNOR BYRNE: That 50 percent that goes to retail consumption is not all price-controlled. Some of it's non-fat, low-fat?

MR. MOFFETT: Minimum price is fixed on all of them by the federal order for class two and class one.

GOVERNOR BYRNE: That's what you pay the farmer.

MR. MOFFETT: That's correct.

GOVERNOR BYRNE: How about the consumer?

MR. MOFFETT: The minimum price for the consumer is established only on whole white milk.

GOVERNOR BYRNE: And I want to know what percentage of the total product

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that represents.

MR. MOFFETT: The total product line? For a long time it represented 80 percent. I'm not sure at the present time because we have a shift; somewhere between 75 and 80 percent of the total volume.

We've had a shift to low-fat milk as diets change and we get more diet-conscious more people are using non-fat and low-fat milk.

GOVERNOR BYRNE: But are you telling me that 80 percent of the milk that comes out of the cow is ultimately price-controlled by our retail price mechanism?

MR. MOFFETT: No, I didn't intend to. The 50 percent of the total milk that comes out of the cow in the New York-New Jersey milk area goes into fluid milk products.

75 to 80 percent of that 50 goes into whole milk, which does have a minimum price.

GOVERNOR BYRNE: So a little over a quarter of the total milk maybe is ultimately price-controlled?

MR. MOFFETT: In New Jersey, yes,

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that's correct.

GOVERNOR BYRNE: Okay. Now, how do you arrive -- you've started to tell us I think and -- how do you arrive at the retail minimum price, what do you throw into that?

MR. MOFFETT: Okay, in determining what the minimum price is, the basic minimum price is, we take into account the costs for the most efficient dealers in the stores.

Those costs would include cost of receiving, cost of processing, cost of packaging, overhead, all of those things associated with processing, and the cost of distributing it through the stores.

Those costs are considered in determining what the basic price is.

Now, once that price is determined, we then have in our orders what we refer to as brackets where we have automatic price changes which occur as changes in raw milk prices change.

Each time under 69-1 -- I'll use that as a reference point -- under 69-1, each time the price of raw milk to the farmer changes

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19 cents per 100, the price to the consumer rises one half cent per quart, minimum price.

GOVERNOR BYRNE: Is that the only factor?

MR. MOFFETT: At the present time that's the only factor used.

Now, in 79-1 we do have provision for taking into account changes in labor and utility and other costs associated with the distribution of milk.

But in 69-1 the only factor that has been considered has been the raw milk.

In candor I think I should say that each time -- I mentioned a moment ago that the milk price changes one half cent for each 19 cent per 100 weight change in price.

Now, the consumer would pay a total of 23 cents more because you've got 46 quarts of milk. So that there is four cents of that that goes to cover things other than changes in raw milk price.

So, in all candor, that is considered to some extent but not as fully as considered in 79-1.

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GOVERNOR BYRNE: When you did your last change, you used the most efficient dealers?

MR. MOFFETT: That's correct.

GOVERNOR BYRNE: And what figures did you come out with?

MR. MOFFETT: As suggested earlier by witnesses, we came out with prices which would be five cents a gallon higher than ours, but a cent a quart, what they were, under 69-1.

As a basis for that study we used six large dispensers in the study -- they handled 70 percent of the total distribution in the state -- and that became the fundamental basis for the pricing, to which was added consideration for the store costs.

That study was done by Rutgers, a contract with Rutgers University.

GOVERNOR BYRNE: The six largest plants handle 70 percent?

MR. MOFFETT: About 70 percent. We have Tuscan, Johanna Farms, Farmland, A & P, Cumberland Farms and Garden State Farms.

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GOVERNOR BYRNE: Are they going to drive each other out of business if we decontrol retail milk?

MR. MOFFETT: I'm not as concerned about them as I would be about the people we didn't study.

People we did not study would be the people that would probably have less capital base to withstand the effects of any kind of a price war which might break out.

GOVERNOR BYRNE: Well, they may be heard now.

MR. MOFFETT: I'm not suggesting that they're all getting rich; profit margin is bearing down and that's one of the things that our studies bore out, that the return on investment to the dairy industry is very low and there is some real question whether it's adequate to prevent the dealers to adopt innovative things they need to adopt in order to give the consumers the benefit of low costs.

GOVERNOR BYRNE: So our present system represents some danger to the small producers?

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MR. MOFFETT: Our present system does provide. They've got to compete to live. They've got to get efficient to live.

GOVERNOR BYRNE: It represents some danger because they've got to conform to the efficiency standards of the very large.

MR. MOFFETT: The key element in the two is this: high risk capital is much more expensive than low risk capital.

If we can assure the industry that it would not be faced with the risk of a price war, they are able to operate on a very narrow margin and they couldn't without it, and I'm convinced that's what happened in many of the other areas.

GOVERNOR BYRNE: Is anybody selling milk below their cost today in New Jersey?

MR. MOFFETT: Well, I'm not suggesting they are not selling milk below their cost to beat competition. But the major dealers to the major supermarkets are not selling below cost.

But there may be somebody trying to meet their cost on a given account that

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might be selling below cost.

I have some questions whether 96-1 provides adequate margins as indicated in my final facts for '79 would cover the costs directly associated with even the most efficient operators.

And I mentioned in findings of fact in 69-1, we had exhibits in the record indicating that the stores were not getting what normally would be considered adequate margin, if they were, in fact, selling at minimum prices.

GOVERNOR BYRNE: In any event, you don't know if anybody is selling below cost?

MR. MOFFETT: Specifically, no.

GOVERNOR BYRNE: What order have you held up as of today?

MR. MOFFETT: The order I refer to as 79-1. That order was entered by me in April, 1979, based upon testimony received at hearing in March and early April, and in that order we, in the finding of fact which was to follow with report, which has been followed with your attorney's office, I have

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in turn found based upon the record that the margin is not adequate and should be adjusted.

And we proposed to adjust that margin by four cents a gallon, one cents a quart, in two stages, in June and in September.

But it was held up; presently we have not implemented it.

But in my judgment, based upon the record and my experience in the industry, it's in the long range best interest of our consumers to have that price increased at this time. Because it is necessary to have a healthy, viable industry, not only from the standpoint of the farmer, but also from the standpoint of the consumer.

GOVERNOR BYRNE: You've held that up at my request.

MR. MOFFETT: Yes.

GOVERNOR BYRNE: Has there been any noticeable discomfort in the weeks that you've held it up?

MR. MOFFETT: We're still operating under Order 69-1.

Of course, somebody had suggested

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whether new price wars were going on in the state.

Well, there is no price war because we have a minimum price. But it might be argued that sales at the down-to-the-minimum price would indicate some intense price competition, because, as you see from the North Jersey market situation, there is not many people selling at minimum prices in North Jersey.

And it's my judgment based upon the evaluation and the hearing record that they are not selling -- they are not making an unreasonable profit on that.

In fact, I doubt very seriously if the stores are making even 13 percent on a gallon of milk, and based upon the hearing before the Food Council back in the 1960's, testimony was placed in our record in 1970, 13 percent mark-up in the stores would be appropriate for stores. But I don't think that the four cents extra would necessarily increase the price by that much.

GOVERNOR BYRNE: When you talk about minimum prices and you talk about

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13 percent mark-up, you're talking about a minimum of 13 percent?

MR. MOFFETT: That's right. Actually what I'm talking about is to cover their costs.

Doctor -- I can't remember the doctor's name now that testified concerning Order 69-1 -- he said that if the milk part of the business carried its proportionate share of costs in the store, they should mark up 13 percent on gallons, 15 percent on half gallons and 18 percent on quarts. That was his judgment at that time and we see nothing to change that.

We know that most stores operate on bare margin now and I don't know what their actual mark-up is on milk in New Jersey today.

But if you use a 13 percent mark-up, the price that the stores, which are selling at minimum prices during 1977, 1978, would have been selling substantially below their cost.

We do have the prices, the lowest price, at which milk has been sold in the

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stores in the State of New Jersey and we've compared that with the price at which the milk would be sold out of the stores at minimum price, and we found that that would roughly be running 10 cents a gallon below cost if you consider 13 percent for the stores.

GOVERNOR BYRNE: Nobody's stopping them from charging 13 or 15 percent?

MR. MOFFETT: No one is stopping them. Competition is.

GOVERNOR BYRNE: What other products in the supermarket have a mandated market?

MR. MOFFETT: I guess cigarettes and I guess liquor. So I guess cigarettes would probably be the only thing.

GOVERNOR BYRNE: If they have a license to sell liquor in the supermarkets.

MR. MOFFETT: I'm not familiar with that.

GOVERNOR BYRNE: That's cigarettes, milk and liquor, if they have it.

MR. MOFFETT: That's the way I understand it.

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GOVERNOR BYRNE: Anything else is on a free market concept?

MR. MOFFETT: That's true. And of course that's the reason why I think when we talk about and think about this we have to distinguish milk from other commodities and look at things the courts have been looking at for many years, why milk and not other things? And there are valid answers for that.

GOVERNOR BYRNE: And not peaches.

MR. MOFFETT: Right.

GOVERNOR BYRNE: Do you think we would have more peach farms if we regulate the price of peaches?

MR. MOFFETT: I'm not in a position to --

GOVERNOR BYRNE: What did the Attorney General mean when he suggested that some antitrust encouragement may result in minimum milk prices?

MR. MOFFETT: I'm not sure I understand because, in my judgment, the electives or our office would deter those activities rather than encourage them.

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Now, I'm certain -- I've been working closely with the Attorney General's office for the last several years, several months at least, and I know of no reason for him to make that statement.

And he has his reasons for it and I'd like to -- I'd like to talk with him about that.

GOVERNOR BYRNE: You haven't been talking to him?

MR. MOFFETT: I have not specifically on that point, no.

I have talked with him a lot in the last several months because they have worked very closely with our industry and I have worked everywhere I can. I am anxious for them to understand it.

I believe once you understand our program you'll be sold on it. And that's really why I think I take every opportunity I can to talk with both our adversaries and our friends.

GOVERNOR BYRNE: He's got to understand it beyond a reasonable doubt.

MR. MOFFETT: I'll buy that.

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GOVERNOR BYRNE: What about the Attorney General made the argument which in Latin is summarized by the statement post hoc, ergo propter hoc.

MR. MOFFETT: I think I'll let you interpret that.

GOVERNOR BYRNE: That means after it, therefore because of it.

He says that your argument about prices being lower in New Jersey because we've had price-fixing is something that's existed for 40 years and therefore you take credit for.

MR. MOFFETT: I think I can respond to that this way and I think it has validity.

As I mentioned a moment ago, we studied the prices in all the states regularly to see how we stand. It has been my observation that states which have no controls or states which prohibit sales below costs and don't announce that crisis, there is a tendency on the part of the stores to creep up on the prices.

The first part of 1978 and '79 has

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been a period of very rapid increases in milk prices nationwide.

We have lagged behind and we haven't caught up yet and we don't plan to.

But I think that there are two factors that are involved here in keeping our prices lower in New Jersey.

The most important is this: that we announce minimum prices regularly when prices change. That has a strongly depressing influence on the marketplace, down toward that minimum price.

Number two, that minimum price is based upon cost for the most efficient dealers in the stores.

So that we keep informed, the buyers in the groceries, the merchandisers and whoever else is involved and the consumers, the fact that the most efficient operators can sell milk to us at these prices.

As I mentioned in my paper, this was not fully anticipated when we adopted 69-1, but it has been one of the fallouts and I think a very important one from the standpoint of the consumer.

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GOVERNOR BYRNE: When you finished your hearing you tell me you came to the conclusion that five cents a gallon increase minimum price was justified.

MR. MOFFETT: That's correct.

GOVERNOR BYRNE: Your order says four cents.

MR. MOFFETT: Well, what I said actually, technically, the total of five cents. There was a minor change in what we refer to as brackets, which really gives it a total of five cents.

It will be reflected to the consumer under ordinary percentages in the form of a cent a quart, but in time it will reflect a five cents a gallon.

Incidentally, much of the testimony at that hearing supported the idea of ten cents would be an appropriate increase.

However, it was my judgment based upon consideration for the consumer interests and otherwise that the five cents would be an appropriate rate adjustment, and if necessary to do something more later we could do it.

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But if I erred, I wanted to err in favor of the consumer.

GOVERNOR BYRNE: Well, I want to express my appreciation for you for holding that order pending my digesting of these hearings.

MR. MOFFETT: Thank you very much. I appreciate the chance to share this testimony with you and answer your questions.

GOVERNOR BYRNE: Thank you.

I saw Senator Dumont walk in, if he's been patient with us.

Senator, this has to be the 5,749th time you've spoken in one of these halls.

SENATOR DUMONT: Could be, Governor, and I appreciate very much the fact that you are giving this your personal attention all afternoon, your chief counsel and former Commissioner Daniel O'Hern is here with you and the other gentleman, too.

I'm not going to take long and I'm sorry I was not here when you first called me, but this is a very difficult subject. It has been over all the years, as a matter of fact, as I've had the privilege of serving here.

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I remember in 1953, I think it was in the late winter or early spring, the late Alfred E. Driscoll who was then Governor held an all afternoon meeting on the question of milk in the old Stacey Trent Hotel.

I was impressed with the fact that with his busy schedule, same as yours is today, that he would devote a half day to the subject of milk.

It hasn't become any less complicated over the years. When you mentioned the name it sounds simple, but it isn't.

GOVERNOR BYRNE: I pointed out earlier I probably drank more milk than anyone around here.

SENATOR DUMONT: For one thing, I think that the health standards we impose in New Jersey, and very rightly so, are higher for the most part than they are in our sister states, that therefore it costs more to produce milk in New Jersey.

This isn't the only reason it costs more than perhaps it does in New York or Pennsylvania and this is not to be derogatory to those states, but simply to

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point out the merits of our own state.

It's also a rather difficult state for agriculture. Farmers represent about one percent of our total population.

I have a lot of dairy farmers in the district that I'm privileged to represent, which includes all of Sussex and all of Warren Counties.

Even with the Farmland Assessment Act -- and I'm the only sponsor of that left -- not the only sponsor of it, the prime sponsor was Jack Waddington, who is now the Director of the Division of Motor Vehicles -- the only one left in the legislature, and when we enacted that and since we've enacted it -- and we believe that it has slowed down substantially the loss of farms in New Jersey -- at the same time New Jersey farmers I think pay about six times the average property tax per acre, even with the Farmland Assessment Act, of any other state in the nation. Six times higher.

So it is a difficult state because the farmers who are independent, hard-working, very thrifty people find that it's difficult

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to find labor that's willing to work the kind of hours they have to put in in order to eek out even an existence or a rather small profit based upon the profits that many people earn through their enterprise.

Farm machinery and equipment have gone up substantially in price along with labor; so has the cost of feed and grain and fertilizer.

I remember when we put the words "Garden State" on the license plate. In fact, we got it there by overriding a legislature a vote by then- Governor Robert B. Meyner and we'd like to be sure as we go ahead in the future that the words "Garden State" mean something more than a couple of words on license plates.

Now, milk is very important obviously to the health of every single person in that state, no matter where that person lives: urban area, suburban area, rural area. And, therefore, it's important that milk be produced in this state under high health standards, and despite the difficulties that exist economically for a farmer to survive.

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I have to give great credit to the Department of Agriculture in New Jersey. That's without any attempt to be unfair to any other commissioner in the state, present or past.

But I think one of the reasons why the Department of Agriculture operates well is because of Phil Alampi, who has organized in that department a highly efficient system. It's a small department granted with a small budget. But we know -- you know as well as I do -- that he's lasted for some 25 years now and that's not easy under governors of both parties.

GOVERNOR BYRNE: He says it gets easier as he goes along.

SENATOR DUMONT: I hope so. But he does a splended job and over the years we tried to work with various kinds of orders and legislation and so forth.

The previous speaker was talking about Federal Order #2, which was enacted, as far as I can recall, by the federal government around 1950.

If I think there was one mistake

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made in this order it was combining the Northern New Jersey counties with some New York counties, which are not only much larger in land area and probably have more farmers, but also I'm not at all convinced they produce their milk under as high health standards as we do in New Jersey.

So over the years the farmers in the northern part of the state have tended to be hurt rather than benefited by the fact that New Jersey -- New York counties, excuse me, are included with New Jersey counties.

It would have been better had it been confined to northern New Jersey only. It would have helped our milk producers more than it had if that had been done.

I'm not familiar with the operation of the other federal order that pertains to the counties of South Jersey which places them, as far as I know, in the Philadelphia milk shift with some Pennsylvania counties probably.

But I do think that order could have worked better than it has had it been limited to North Jersey alone.

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Legislation was attempted here even before I started serving in the Senate and most people in government can't remember that far back, as a matter of fact, but in any event, at that time Senator Alfred Littell, the late Senator, who was the father of Assemblyman Robert Littell from the 15th District, tried to pass legislation which would have had an impact on the price of milk as it came across state lines.

The legislation I think passed the Senate in those days but then we had one representative per county no matter what the size of the county. But the Assembly was based primarily on population and it failed in the Assembly because of the fact that there was a fear that it would be an unconstitutional interference with interstate commerce, particularly in trying to regulate the economics situation.

Over the years I think it's been true that New Jersey milk producers probably at no time of the year can produce sufficient milk to take care of the New Jersey consumption, and therefore a certain amount of milk has to

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come into the state from outside the state. And that has resulted in times when much of the milk production in New Jersey having to be sold at what we call "blend prices"; that is, milk that's used for cheese and butter, ice cream, so forth, rather than sold as fluid milk which brings, of course, the highest price to the milk producer, and the fact that as I read some of these statistics and tables that have been submitted to us by the New Jersey Milk Industry Association, and I note that for example we have 45,000 cows in the state in 1978 as against 69,000 cows in 1970, eight years earlier. And that we have only 644 average number of producers in 1978 as against 1,146 in 1970, that obviously it's been difficult for producers to stay in business and also to get the kind of return that makes it possible for them to remain in business.

But I admire those that have.

Incidentally, it used to be said of Sussex County, there were more cows than people. That situation has been just reversed the last couple of decades, because there are

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far more people since it has the second fastest rate of growth, second only to Ocean, in the decade between 1960 and 1970.

So it is important to worry about consumers, and I'm concerned about them, too, because after all, every one of us is a consumer.

But I'm concerned in this situation primarily I think about the producer, because if they don't stay in business, they don't continue to produce milk in this state, we may very well find that the health of our people is not being protected as well as it can be by virtue of the fact that we would have to then import nearly all or at least most of our milk. And I don't think that would benefit the people of this state.

GOVERNOR BYRNE: Can I ask --

SENATOR DUMONT: Sure, go ahead.

GOVERNOR BYRNE: (Continuing) -- your emphasis thus far, Senator, has been on protecting the farmer, the man who owns the hoe.

SENATOR DUMONT: I think it also leads to the protection of the health of the

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people.

GOVERNOR BYRNE: He's now governed by a federal marketing order which you suggest may be inadequate, but that's what protects him so that he gets a minimum price for his milk now.

Regardless of that minimum price or if we assume that minimum price were guaranteed to him, what difference does it make to the farmer what the consumer then pays for that milk?

SENATOR DUMONT: If the price supports were removed, what I'm fearful of is we would go back to the same situation we used to have prior to the advent of price supports. And that is that there would not only be price wars, which might benefit the consumer for a short time but would probably not benefit anybody over the long haul, and we might also go back to the dumping of milk which used to occur right on our highways in this state.

GOVERNOR BYRNE: That's if we pull the federal marketing order.

SENATOR DUMONT: Well, if we pulled

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all the price supports.

GOVERNOR BYRNE: If we left the federal marketing order in tact -- and I understand we've got a state statute backing that up in case they pulled it -- if we left that in tact the farmers had no particular concern about what the A & P in West Orange sells that quart of milk for, as long as they get their price as dictated by the federal marketing order.

SENATOR DUMONT: Well, you mean keep the state statute in effect?

GOVERNOR BYRNE: No, keep the federal and back it up with the state statute at the original purchase level, but eliminate the other aspect of the marketing process, and that is the price to consumers.

SENATOR DUMONT: I'm not sure how it would work out. I'm not sure I can give you a very good answer on that because of the fact that an awful lot that the average consumer pays, housewife pays, is expended in the middle. The farmer doesn't get a disproportionate amount of that.

I would say, if anything, a farmer

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gets a small share of it because so much is expended in hauling the milk and delivering the milk. And that's where I believe most of the price --

GOVERNOR BYRNE: But if we protected the farmer on his price, then the market might be able to argue out.

SENATOR DUMONT: Maybe, but I don't see how the farmers are going to survive unless there was some kind of support system.

And if they don't survive, I'm afraid the health of the people of this state is going to deteriorate. That's what I'm worriet about.

I know that some people in government -- and I'm not one of them, really -- argues always in favor of private enterprise.

I will never hesitate to believe that government intervention is important and necessary where private enterprise is failing. Just recently I supported legislation which I know you were responsible for and Commissioner Gambaccini for taking over the bus lines, because I don't think we're getting out of $50 million in subsidies what we ought

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to be able to get as far as service to people, and I hope this is going to improve greatly in the future.

GOVERNOR BYRNE: Even Mr. Iaococca is starting to see things our way.

SENATOR DUMONT: Very good.

MR. O'HERN: You've used up a few of the Senator's ten minutes.

SENATOR DUMONT: I'll only take a moment or two longer.

If you're contemplating the removal or the recommendation of the removal of all price supports, I would have to try to step into the briefs and try to block that by any legislative procedure that I could, and I am somewhat familiar with the legislative process and, therefore, -- and also I think with the problems of the state I wouldn't think this is a way to resolve the prices that consumers are paying, to take off the price supports.

Because in the long run I'm sure that the health of the citizen is going to be hurt and that can only come if we lose agriculture, particularly dairy farmers, in this state. And you know their importance

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because of the fact that there is a Division of Dairy Industry in the Department of Agriculture.

And I might add, for example, that in Warren County alone it's a $15 million a year business. That's more, I believe, than in any other county in the state, in the amount of gross revenue that it produces to the farmers themselves, or at least maybe not to the farmers themselves, but overall to $15 million a year. It's probably almost as much in Sussex County.

GOVERNOR BYRNE: Thank you.

SENATOR DUMONT: Again, I commend you for holding this hearing and I hope you will not go the deregulation way.

GOVERNOR BYRNE: Not for farmers.

SENATOR DUMONT: Thank you.

GOVERNOR BYRNE: Thank you.

Okay, Robert Masson.

MR. MASSON: My name is Robert Masson and I am an economist for the Anti-trust Division of the United States Department of Justice and an associate professor of economics at Cornell University.

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My graduate training was in economics with a specialty in industrial organization and public policies towards business at the University of California, Berkeley, where I received my Ph.D. in 1969.

Since 1973 I have worked extensively for the United States Department of Justice on issues of milk pricing regulation and anti-trust.

I would like to thank the State of New Jersey for inviting my views in this inquiry and commend the Governor for calling this hearing which follows the new national consciousness of systematically reviewing the necessity of regulation of business in several areas of endeavor.

Given the short time available, I shall submit a written draft to more fully explain several of the points I shall cover today and to cite studies which support these views.

The question posed to us today is whether the state's current system of retail price regulation should be modified or eliminated, and specifically whether the

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minimum retail pricing regulations are necessary in today's economic environment.

The proponents of minimum retail price regulation in milk markets state that the regulation benefit all who come in contact with the milk marketing system from the farmers through to the processors, retailers and the consumers.

This I find suspect. Minimum price regulation is administratively costly. It by its nature removes market flexibility and may lead to higher prices and reduced innovation.

Finally, it must be subject to continuous monitoring to make certain that it does not lead to substantially higher prices.

Regulations should be retained only if its benefits exceed its costs.

In today's marketing environment I feel that the benefits in reducing the potential for destructive competition are virtually nil and the costs are potentially great.

State minimum price laws originated

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in the 1930's before the development of the federal milk marketing order system and before the development of strong cooperatives.

In the economic environment of that time which included highly localized markets and depressed demand, destructive competition was a real threat. At that time the loss of a processor could severely hurt the farmer who relied on the local processor to sell his milk.

Often the collapse led to not getting paid for a few months' production and a battle to find any alternative fluid outlet.

Consumers were impacted because prior to widespread pasteurization and refrigeration a failing processor who might cut corners would imperil the public health and, after exit, possibly only a few remaining processors might be an important part of the local market.

But conditions have changed. Minimum price retail regulation does little to help guard the farmer.

The federal milk marketing order system establishes the price the farmer will

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receive, and New Jersey processors are able and willing to buy New Jersey milk.

Bonding and cooperative risk sharing can protect the farmer from any substantial loss from processor insolvency.

Indeed, the farmers' best interests are generally best served by best serving the consumer with low prices and high quality products, because under the federal order system the more milk consumers buy, regardless of the price the consumer pays, the higher the price the farmer receives.

The farmer and consumer interest in lower retail prices are generally parallel on this market.

The key to the system is, of course, regulated margin between the federally regulated price the processor pays for raw milk and the retail prices, the processor-distributor margin.

I want to emphasize the aspect of the margin because it does little good to compare prices between areas for different raw milk prices or different times.

Obviously, if retail prices fall,

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some processors and/or retailers will earn less profit.

Proponents wish to set this margin by law rather than let it set by competition. They would argue that lower margin would result in a higher market concentration and higher profit.

They would have us note that the number of processors have been declining over time and removal of the guaranteed margin would speed this process.

However, the declining number of processors actually mirrors changing technology and the vigor of competition. And in today's markets, absent the localization of the past, there may even be more competitors and potential competitors to any one city than in past decades.

Most studies have shown that when taking into account various cost differences between areas in general for most states without minimum retail milk prices, there may be fewer processors in the market, but they consistently operate with lower costs, with narrow margins, and with innovative operations

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than in most regulated states.

However, New Jersey is not typical of all the regulated states. New Jersey costs have been moderate. So what costs do the margins have for New Jersey?

Stating that margins are low does not mean they could not be lower. The fact that prices is South New Jersey are frequently at or near the minimums indicates that prices could be lower in this area.

But even prices above the mandated minimums might be lowered by deregulation of the retail price.

Oligopolistic coordination, the agreement whether tacit or explicit to charge higher prices, is facilitated by minimum retail pricing.

The simple agreement to charge four cents or eight cents per gallon above the retail minimum would reduce the uncertainties associated with most oligopolies which face changing costs over time.

Many oligopolies even establish such single public price movers to facilitate coordination.

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The minimum prices also guard any oligopoly pricing from outside competition.

This barrier to entry exists because the most effective mode of market entry is aggressive promotional pricing.

This barrier retards competition from processors who could ship milk into the market to compete.

Incidentally, this same barrier may retard competition from new products, packages or marketing systems as well.

This has briefly detailed some of the costs of retail price regulation. What about its supposed benefits?

Vast areas of the United States which do not have minimum retail pricing laws have demonstrated that in today's environment milk pricing is rare. Prices can be reasonable without regulation, and the consumers can be assured a product.

Predation in a market like New Jersey would be fruitless.

First, it would require that any predatory use very costly, pronounced and prolonged sales below cost. And even if it

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eliminated several competitors, the predator would not be able to charge high prices.

Given today's transportability of milk, numerous potential competitors who have borne no costs from the predation ring the market and would enter if prices were to be raised to unreasonable levels. The benefits from predation would be nil and the costs great.

Second, we should note that predation is seldom, if ever, observed where a single firm does not already have well over half the market.

Third, the federal antitrust laws of today are capable of dealing with predation. Litigation by the Department of Justice, Federal Trade Commission and private litigants has strengthened the law in recent decades.

The FTC's merger policy has eliminated the ability of a firm to use predation to force a firm into a merger.

Predatory pricing, particularly in the densely populated areas with many potential competitors, is estremely unlikely

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to occur, and federal antitrust laws are sufficient safeguards against such actions.

Of course, removing minimumus would lead to some lower prices for at least some areas. The competitive stick would be added to the carrot.

This helps ensure economic efficiency, and if the capacity to supply exceeds the demand for product, some competition exit is desirable.

In conclusion, minimum prices regulations have not been shown to protect consumers from the emergence of monopoly power.

States with high population and popultion densities in particular are not likely to be subject to monopoly power flowing from destructive competition.

Indeed, minimum pricing regulations themselves may be more likely to produce monopolistic pricing than would occur without these regulations.

State which have the regulations must carry the administrative burden of the laws. They must also be forever vigilant to

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keep the minimums from being increased well above the most efficient cost of production.

Experience in South Jersey where prices have frequently been at or near the minimum attests to the fact that efficient firms can produce at low costs in New Jersey.

We firmly believe that in the context of today's marketing linkages and with today's antitrust laws, that if the State of New Jersey is to protect its consumers and farmers, minimum pricing regulations at the retail level will not be needed and will, in fact, be generally counterproductive.

In closing I would like to commend the State of New Jersey for undertaking the review of these regulations. Probably all regulations should be subject to periodic review to establish whether they are well-designed to meet their goals in the changing economic environment.

But far too often a system becomes entrenched and is not subjected to periodic review. Regardless of the final outcome of this review we are hopeful that the process

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and issues will be clarified and be of benefit for policy guidance.

Thank you.

GOVERNOR BYRNE: Why souldn't I be concerned about the testimony I've heard as to other states that have eliminated retail price maintenance and seen a dramatic rise in the price of milk?

MR. MASSON: In various studies which I have done -- and I have not necessarily covered all the states that were referred to, but I have covered, for instance, the Mississippi situation -- we've looked at what has actually happened to the margins as opposed to the prices over time and there is no consistent pattern of elevation afterwards, even after waiting, let's say, six months or a year.

In fact, there appears to be a more consistent pattern of decrease. This decrease period seems to be relatively long-lasting. The more recent states which have deregulated, I do not have the data on those particular states.

GOVERNOR BYRNE: We had testimony

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that the price in Mississippi has gone up dramatically. You say that's accounted for by what?

MR. MASSON: The milk margins in Mississippi don't show -- if you look at individual cities, going over individual cities -- the milk margins don't show any pattern of having gone up consistently across the state or anything else. In some cities they've stayed down more than gone up and some cities they've gone up a little.

GOVERNOR BYRNE: Is there a federal marketing order in Mississippi?

MR. MASSON: There was until approximately 1972, I believe, when that federal marketing order was removed. All the prices went crazy at that point. The producers and everyone else were in trouble for a period of time.

The order was reinstated about 1974, I believe, and since that time I have not done any systematic study of the retail prices in Mississippi.

GOVERNOR BYRNE: The philosophy behind your testimony would have you eliminate

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the federal marketing order as well, wouldn't it?

MR. MASSON: I have been critical of federal marketing orders, the primary reason being that I think the price that has been set is too high.

There are different considerations I think in raw milk with thousands of producers, farmers, than there are in the area of processing and retailing of milk.

I think that, yes, with qualifications, the logic would go on in that direction. However, the qualifications would have to do with things to ensure stability of prices.

The stability of raw milk prices paid by processors is assured in this particular case, whereas the stability of the cost of feed for farmers is not assured and this changes the whole spectrum.

MR. O'HERN: Can you explain to me or to the panel why the New Jersey producers don't enter that New York market with the margins of difference that we see there?

MR. MASSON: New York has a

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protectionist policy, I would call it, keeping down the numbers of processors allowed to sell products in particular counties, on a county-by-county basis. So you don't have pure flexibility in being able to essentially sell your product in New York.

MR. O'HERN: So there is no free movement of milk, you're saying, from New Jersey into the New York market as such?

MR. MASSON: I wouldn't state it quite that strongly, but certainly a processor couldn't just decide, Well, we want to sell in New York tomorrow.

MR. O'HERN: All right.

GOVERNOR BYRNE: Even if there is a strike in New York. Thank you.

Let's hear Mr. Morris, Counsel of the Milk Industry., and then after that I hope to take a short break.

MR. MORRIS: You have listened attentively and I was going to suggest a seventh inning stretch for those of you who have listened so carefully.

If I may, the single-most significant

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thing --

GOVERNOR BYRNE: Tell us who you are first.

MR. MORRIS: I'm Roland Morris, sir, General Counsel for the New Jersey Milk Industry Association, and even before that I was going to start out to suggest to your Honor that the single-most significant thing that I think you have heard today comes both from your Attorney General, from a consumer advocate and from almost every other witness, to wit, that the prices that consumers pay in New Jersey today are among the lowest, and that the margin which dealers and processors whom I represent take as a part of the total consumer dollar is among the lowest in the nation. Your system has done this.

GOVERNOR BYRNE: Well, we're not so sure about that and we could save another $400,000 if it isn't our system that is doing it.

MR. MORRIS: Or lose $400 million is you disgard a system which eventually does create an oligopoly, which the evidence suggests has occurred elsewhere, and which

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seems to be the only explanation for the fact that we are a low price and others are a high price.

I do represent, sir, the New Jersey Milk Industry Association and I will submit to you a prepared statement of which will be significantly longer than the brief moments I have for remarks here.

Let me start with the testimony of the Attorney General and in so doing move I think in an orderly way through what I think your questions are and why the system you have in New Jersey works well.

It is a unique one and a novative one.

The Attorney General suggested now at a time when you have some of the lowest prices and lowest margins in the nation that you have a transitional period and no control.

I suggest to you that as a matter of history exactly this was done in 1963 when the five economists to whom you have heard much reference looked at the New Jersey milk industry and said, We need a transitional

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period and we need a long run program.

The industry went through a transitional period from Order 64-1 to Order 69-1, and then, as validated by the Supreme Court, went into a long-range program. That is the long-range program that's recommended.

But it is not a complex one. Actually, it's a very simply one, and I'm going to refer to what the economists said to your government then and I think basically will affirm now. They were choosey. Go between two alternatives, a below cost regulation which almost everybody -- perhaps not everybody, perhaps not Mr. Masson agrees is an appropriate and necessary restraint in the milk industry and in many other industries, and a single minimum margin, a low margin, which is the alternative that was selected.

Actually they conceived those to be much the same and that's the way it's worked out. What you have is a single minimum margin, one price, which is a much more efficient administrative way to enforce a

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below cost situation than to have to prove -- and you I'm sure both as a lawyer and a judge are familiar with -- costs-type suits.

It's a much more efficient way to accomplish whatever one agrees should long range be accomplished.

Now, the only apprehension the economists had when they made their report is if they used a single minimum margin the presure in the industry would be such, either from industry or from others, that it would creep slowly up and it would become a market price rather than a below cost type price. That hasn't happened.

And the main suggestion I want to make to you, sir, is that that is a fact that hasn't happened is the reason why you enjoy the consumer prices you do and why you risk so much if you now turn down a system of regulation which has worked.

We are not talking about liquor prices, cigarette prices or other regulated prices; we're talking about a system which is completely different, nationally innovative and really worked.

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GOVERNOR BYRNE: Well now, let's assume we have a guaranteed price to the farmer. Why is milk different -- making that assumption -- why is milk different from any other product?

MR. MORRIS: For two reasons, sir.

First of all, I think you are under the misapprehension that the federal order price protects farmers as far as the price they receive. That is not correct.

The farmers themselves operate plants and sell in the market as cooperatives.

The federal milk marketing orders do not regulate what the cooperatives pay their members.

Therefore, for example, we have in the market as a prominent force, we have Allied Cooperative Farmers; we had until recently Dairylea. They left a charge account and left the state and may be back soon. You had United Milk Producers; they went bankrupt.

Those cooperatives in their major activity, selling milk at retail and wholesale, are not in any way protected by the federal orders.

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Secondly, the reason why milk from the farmer even for those who do buy from the farmer as proprietary entities is different from other products in the way it then moves through the store is the method of its use.

It is a product which is needed by consumers every single day or nearly every day.

It is one of the best -- as a matter of fact, the par excellence, low-ball, loss leader available to anybody who markets many products and does not, therefore, have to make his profit on milk. That fits the bill of any store but no dairy plant which sells only milk.

Now, in that connection your Honor expressed a particular interest in what has happened to dairy plants who process milk as such in the state.

I did pick up these figures while other witnesses were testifying and they are attached to my prepared statement.

But I will simply point out that New Jersey milk processing plants declined

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precipitously in the '60's during the transitional program from 131 in '71 to 46. And then the situation stabilized somewhat; however, with some additional losses, which is to be expected.

You do, however, --

GOVERNOR BYRNE: Mr. Masson explained that to me a minute ago.

MR. MORRIS: I thought, sir, entirely out of context and I simply don't agree with what he said, but I guess you may expect me to feel that way about his comments.

Secondly, those plants enjoy the smallest portion of the consumer dollar and I think you know the minimum price now is approximately $1.64.

You also know that the hauling allowances and other costs, the farmer gets $1.15 of that. The tables attached to my statement will demonstrate to you that farmers in the State of New Jersey take the highest percentage of the consumer dollar, not only of other food products, but of farmers selling milk in other markets.

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Therefore, your system has not only maintained low consumer prices, but has also provided farmers with the largest portion of the dollar, larger either than other farmers in other states and areas and larger than other farmers selling other food products.

Now, has there been competition? Yes, intense competition; otherwise, you would not have lost plants that you lost. You would not have the low price you have.

What you risk is the situation you have seen in other states and will see by economists who will be testifying today who are much more apt than I as a lawyer to state the actual statistics.

What you will see is that in other states the competitive situation either because of lack of numbers of competitors or lack of intensity has resulted in higher consumer prices.

Now, let me turn finally to what has actually happened to prices.

The price to the consumer has gone up. It has gone up as a matter of minimum price some 20 cents since 1976. Every penny

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of that went to farmers. Not one penny to producers who have asked for an received no increase in margins since about 1972.

GOVERNOR BYRNE: Couple of guys doing this while you're testifying.

MR. MORRIS: That was done. I can't control who does what behind me.

That was accomplished and I think the farmers were entitled to every penny, in part by the federal milk market order system which, of course, Mr. Masson is critical of. I am not. I think they needed it.

But it is not in that context at all extraordinary that you would expect even under a low price system to have some increase in processors' margins in something like seven or eight years, and the first one, I might add. Thank you.

One last item, I come back to the consumer advocate and I suggested at the beginning that it was extremely significant that the consumer advocate did not come to you as have others who I think may have less knowledge and less feeling for the subject

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and say, This regulation ought to be taken out. He said, Let's take a careful look at it. But if it works and it's good, let's keep it, for consumers.

Why would that individual take that position? I want to suggest what I think the reason for that is.

The consumer constituency is not one constituent. It's many kinds of consumers. It's the affluent and the poor; it's the old and the young.

If you have a system in which there is less intense competition and very limited profit margins, where is it that you would think and I would think the dealers that needed to make the maximum dollar would sell?

They don't sell in the areas of need; they sell in the areas of affluence for obvious economic reasons.

This was pointed out in the record in Order 69-1 and it's even footnoted by your own Supreme Court, 406 New Jersey; it's footnote three in that opinion.

A consumer constituency is not one

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thing. One must be careful as we look at this problem.

Even if our price were not low, which it is, who are you helping?

Thank you very much, sir, for the opportunity. If you have any questions I'd be happy to try and answer them.

MR. O'HERN: Who is the milk industry that you represent, is it including farmers and the processor or just the processor?

MR. MORRIS: It includes mainly processors. It also has as members at least one cooperative organization which represents farmers and a list of the membership is attached to the statement which will be presented to you.

But it does represent basically all of the processors in the state: Cumberland Farms, Garden State, although they are now bankrupt, and some other processors.

But it is the overwhelming majority of the processing, handling industry, but it does include one cooperative which represents farmers.

GOVERNOR BYRNE: Thank you.

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MR. MORRIS: Thank you very much, sir.

GOVERNOR BYRNE: We're going to take a ten-minute recess. I wish that you'd at least put the New Jersey milk in the refrigerator.

Anybody's who's scheduled to testify and feels at this point could adequately be represented by submitting a written statement to counsel may do that. These hearings take a little longer than I had anticipated.

(There is a short recess.)

GOVERNOR BYRNE: Okay, Charles Sapienza.

MR. SAPIENZA: Yes, sir.

GOVERNOR BYRNE: Can I ask that the same courtesy be extended to this witness that was extended to the other witnesses.

MR. SAPIENZA: In an effort to keep within the time limits of these proceedings I'll shorten my remarks and, of course, be available for questions later.

Initially I'd like to address three items that have come forth during the testimony of other witnesses.

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There was a reference to the Supreme Court decision in Garden State Farms vs. Mathis. The reference indicated that this decision stood for the proposition that the actions taken by the Director of the Division of Dairy Industry were proper and desirable.

That decision was more limited. The court went to great pains to indicate that the issue before them was only whether the director's findings and order could reasonably have been reached on sufficient credible evidence in the record.

The court stated that the question was not whether they would have to reach the same conclusions.

GOVERNOR BYRNE: My lawyer explained that to me in the recess.

MR. SAPIENZA: Pardon me, sir?

GOVERNOR BYRNE: My lawyer explained that to me during the recess.

MR. SAPIENZA: Oh.

Senator Dumont's comments were poignant to me in that they indicated a desire that we should do everything possible to protect

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a vital segment of New Jersey's economy, the farmer.

He also indicated that in his opinion New Jersey had very high sanitary standards of milk.

He's absolutely right. The product is of an exceptionally fine quality.

I would like to point out that those standards, the promulgation of them and the enforcement of them, are not done by the Division of Dairy Industry.

The credit for that should rightly go to the Department of Health and to the United States Department of Agriculture that inspect and make sure that that quality is high standard.

GOVERNOR BYRNE: Is it different in New Jersey from New York?

MR. SAPIENZA: As to the inspections, I do not know.

GOVERNOR BYRNE: All right.

MR. SAPIENZA: I also want to reiterate Attorney General Degnan's statement of the issue, for I feel that in very large part may determine where we come out.

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For us the issue is not why should we have it or why should we continue it, but rather why should we have it?

From an antitrust point of view, any system of government-imposed regulation should not exist unless it advances some substantial public purpose. And I note that New Jersey is only one of six states that now sets a minimum retail price. Those states are Maine, Montana, Nevada, North Dakota and Pennsylvania. And I'm sure you will quickly recognize that New Jersey and Pennsylvania have a market somewhat similar.

Five other states have repealed the minimum retail price since 1969, four of them since 1976.

Their experience has been somewhat of a mixed bag, and it is important I believe to note that their experiences cannot be matched against New Jersey.

We cannot foretell what would happen from their experiences.

Mention was made of Alabama and the situation there. But last week I spoke to Mr. Robert Stevenson, who is the executive

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director of the counterpart of the Division of Dairy Industry in Alabama.

He explained the situation there; he explained that there was no present movement to reimpose minimum retail prices.

I discussed the situation in Alabama with the federal milk market administrator. We agreed that that factual situation where Alabama has become a dumping ground for excess milk would probably never occur in New Jersey.

There is a history of milk regulation in New Jersey. It goes back to the days of the Depression in 1933.

That first piece of legislation was intended to protect the consuming public, insure a sufficient supply of wholesome milk, and meet an emergency that was clear to everyone.

We have been meeting that emergency for 36 years, even though times have changed and the milk industry has changed.

What apparently has not changed is the perception of harm that farmers, producers as a group, see, if certain controls

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are not there.

You'll hear testimony from one of the economists, Dr. Aplin; he was part of that study committee in 1963 and he will address himself to the industry as it exists.

The arguments that have been made in favor of retaining the existing regulatory structure are two, and in one sense they are two sides of the same coin.

On the on hand the proponents say that the existing regulatory scheme in New Jersey and particularly the minimum retail price act to retard the upward spiral of market price, and we've seen the plastic containers all indicating a price above the minimum retail price today of $1.64.

But if you go to the Acme on the Whitehorse-Mercerville Road in Hamilton Township you can buy milk for the minimum, and I dare say you can buy milk for the minimum in almost every town on city in the state. You must shop, you must look for it, but milk is selling today at the minimum.

The argument goes on that somehow

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the minimum price -- not a maximum, but a minimum -- pulls down market price while insuring a stable market for all levels of the distribution chairn.

The argument also states that it prevents destructive competition at the retail level, thereby insulating the dealers from unfair price demands which the retailers might otherwise make.

The second half of that argument is that if the existing regulatory scheme is repealed, destructive price wars at the retail level will occur. As a result of those wars the retailers will demand lower prices from the dealers who, in turn, will compete against each other in some unfair or predatory manner.

The senario goes on. The smaller dealers will be driven into bankruptcy by a combination of predatory competition and loss of retail accounts.

Dealer bankruptcy will directly impact upon the farmer, and the farmer will lose money if his dealer goes bankrupt and will lose a person who makes a market for

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his milk.

Finally, after all of those things occur, the people that are left will raise their prices to some unconcionable level and impact upon the consumer in an unfair way.

There has been nothing offered in terms of logic, prior history, economic analysis or legal analysis to support this list of horribles, and it is very difficult to fight something or to refute a negative answer.

The first argument is often supported by a reference to low market prices that New Jersey consumers presently enjoy.

But it is our position that the reason for those low market prices is not the regulatory structure, but the competitive economic advantages that the New Jersey market has over other markets similarly situated, such as New York and other states.

In other words, we have a low price not because of the regulatory structure, but in spite of it.

It is inconsistent we feel to argue

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that the minimum price draws down the market price and results in a lower price to consumers, and in the same breath tell us that if we list those minimum prices there will be price wars and the price will go down even further in some destructive way.

Those kinds of arguments have classically been used by cartels or other organizations to justify their existence.

But we should be aware that the same arguments made in a slightly different way would be arguments against any competition at all.

And it is only because of competition at the retail level and at other levels that the ultimate price which we must pay for the product is something we can afford.

It is difficult to accept the argument against deregulation for the antitrust section because that argument assumes that there is no real competition now.

Now, of course, the Division has indicated that there is competition between that minimum floor at the retail level and

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between what milk might sell for at the market price and there is a difference. But there is a floor.

If that minimum were not there, we might wonder what the range would be and what would be the benefit to the consumer.

But it is at least safe to say that the validity of the argument in favor or deregulation rests on an analysis that assumes that there is no real competition now at the retail level. For the argument goes on that if there were serious sustained competition, that would impact adversely on the dealers.

Why isn't that happening now? There is no minimum price between the dealer and the retailer. Why isn't the retailer asking for the best possible price now that he can get?

Or, conversely, why is the dealer supporting minimum retail prices?

When Order 79-1 was considered by the Division of Dairy Industry the people who testified were not the retailers whom benefited from the analysis, but the dealers

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and the processors and the farmers.

The antitrust section stands ready, willing and able to take all legal steps available to prevent truly predatory conduct, because such conduct would fall within the prohibition against attempting to monopolize market or actual monopolization.

The legal tools to prevent an attack of truly predatory conduct are in place in New Jersey as they are in place in the federal government.

Don't take my statement to indicate that that attack or that fight is an easy one. It is not. It is difficult to sustain the burden of proof necessary. But it is certainly possible where the conduct is sustained and repeated.

We wish to reinforce the recommendations previously given to you by the Attorney General that the regulatory structure as it exists today should be repealed effective January 1, 1980, but that the reasonably and logical safeguards to protect that vital area of our economy,

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the farmer, should remain in place. And let me just enumerate them.

There should be protection to the farmer against dealer bankruptcy because he is not protected now by the federal order from that possibility. And the Attorney General has recommended increasing the bonding requirement to meet this objective.

There should be some reassurance to the farmer that the dealer will not cast him adrift precipitously, leaving him with his milk without a market, and the Attorney General has recommended keeping the 60-day notice requirement to allow the farmer to find another dealer, if that should be the dealer's intention.

Finally, the Attorney General has pointed out that the federal milk marketing order today provides a minimum price to the New Jersey farmer. In New Jersey it is the effective price.

That gives all the protection the farmer needs to ensure he will receive a reasonable price for his product no matter

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what use it is put to.

Thank you.

GOVERNOR BYRNE: Thank you. No questions?

Next witness is either Mr. Richard Mascuch or Mr. Lawrence McGinley or both.

MR. MASCUCH: He'll follow me, Governor.

MR. O'HERN: Are you asking for five minutes each or ten minutes?

MR. MASCUCH: We'll take five.

My name is Richard Mascuch; I'm the president of the Milk Drivers and Dairy Empliyees Local 680.

I have been an officer of this union for the last seven years. Prior to that I was a dairy worker for 26 years.

I would like to say at the outset that my organization believes that the retention of price controls is necessary in the milk industry in New Jersey and we favor continuation of controls.

I am satisfied that minimum price controls as they have operated in New Jersey over the last 10 years has held

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the milk price proportionately lower below all other foodstuffs in the marketplace.

New Jersey is a state situated adjacent to two large metropolitan areas. Companies have been able to penetrate New Jersey and to destroy the jobs and well-being of many union members.

The Department of Agriculture of the State of New York maintains a restrictive licensing policy that makes it virtually impossible for New Jersey dairies employing my members to obtain the right to serve the New York areas, whereas out-of-state companies can obtain license in New Jersey for the asking.

I so informed you, sir, in my letter to you of December 19, 1978.

In February of this year there was an informal meeting of the Department of Labor and Industry to receive information concerning a more restrictive licensing policy in New Jersey.

We attended the meeting as did the industry and nothing to this date has come of that, and out-of-state companies can

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raid New Jersey jobs with ease.

One of New Jersey's major competitors in Pennsylvania, with considerably lower labor contract, was able to take over a major portion of business served by Local 680 companies and has caused not only loss of jobs, but contributed to the bankruptcy of the Local 680 pension plan.

In the year since this company took over, 200 union jobs were lost and 200 families were put into dire straits.

Just last month this same company took over a supermarket chain which resulted in a loss of 18 additional jobs directly and many more indirectly.

The company that lost the business went out of business totally in the state. At a time of high unemployment, the heads of many of these families were forced to seek Unemployment Compensation or had to accept lower paying jobs which affected their life-styles.

It is my personal opinion that milk controls have worked to the benefit of the consumer and have kept New Jersey's

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operating margins among the very lowest in the nation.

In fact, I have seen figures that indicate that New Jersey ranks among the lowest in operating margins.

The industry is desperately struggling to develop efficiencies, and to that end my union, recognizing the problem, has made substantial sacrifices to preserve the jobs of its members.

The 1973 milk negotiation we sacrificed the percentage commission paid to our drivers.

In 1975 we introduced efficient delivery systems permitting the use of highly rated drivers and trailers.

In 1975 we also terminated our multi-employer pension plan, knowing full well that the industry could not afford to pay the high cost or maintain the pension plan that had almost twice as many retirees as it had active workers.

Fortunately through the combined efforts of union and management the Pension Benefit Guarantee Corporation took over the

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fund and retirees are now getting their pensions.

In 1977 still cognizant of the problems we gave up more hard-won benefits in an effort to preserve our jobs.

We have also expanded the trailer and hourly rated deliveries and took minimal increases in salaries and fringe benefits.

We need a stable industry to ensure stable jobs. My members and their families are also consumers. We've heard so much about consumers, so much about farmers, the people that might be affected and lose jobs because -- in the event you did away with the price control I have heard nothing of.

I am interested in the jobs of our members and I know if price controls are lifted, a price war of short duration would follow and would result in the elimination of many jobs.

To sum up, I would urge the continuation of the price control program now in effect in this state.

Thank you, sir.

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GOVERNOR BYRNE: We had a witness who testified that the patterns of delivery of milk have changed substantially in the last decade or so.

MR. MASCUCH: Yes, they have.

GOVERNOR BYRNE: Because of the more common use of refrigeration. So that --

MR. MASCUCH: Yes, but now, Governor, you're going way back.

I'm talking about in 1973 is when we had the first incursion of another company from out-of-state coming into our area, and they came in with hourly-rated deliveries, hourly-rated trailers.

Prior to that our Local always had a commissioned form of payment to the driver, a base pay and commission. But we knew we were going to have a problem, and during the middle of a contract -- we have two-year contracts -- and at the expiration of one year we put an amendment in the contract to help the dairies, knowing that they were going to be in trouble with out-of-state competition.

GOVERNOR BYRNE: But you do haul

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milk longer distances now than you did a decade ago?

MR. MASCUCH: I don't think so, I don't think so. You have to remember years ago there was a retailer who went house-to-house. He has been eliminated completely.

And our routes go out, they serve the same stops. They have larger trucks and refrigeration, of course, but I don't say they went further than they did before.

GOVERNOR BYRNE: The point was made that really though there are fewer distributors, there is really more competition because those fewer distributors have access to more market.

MR. MASCUCH: That could be.

GOVERNOR BYRNE: All right.

MR. O'HERN: It's mostly store door delivery now?

MR. MASCUCH: This is store door, yes.

You know, I'd just like to say, I mentioned that one of the companies from out-of-state just took over; customers have run out of dairies and there were 18 people

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involved that were laid off. It's pretty hard when you sit in an office and have somebody between the ages of 48 and 55 with 25 and 30 years service in the milk industry go on Unemployment because his job was taken away by someone else coming in cutting the price.

Thank you, sir.

GOVERNOR BYRNE: Thank you, Mr. Mascuch.

Mr. McGinley.

MR. MC GINLEY: My name is Lawrence W. McGinley and I am the Legislative Representative of Teamsters Joint Council #73 of the State of New Jersey.

I also was President of Milk Drivers and Dairy Empliyees Local 680 of the International Brotherhood of Teamsters from 1938 until 1973 at which time I retired from that position.

During that period of time I testified before legislative committees concerned with the cotninuance of the Division of Dairy Industry and its predecessor, the Office of Milk Industry, which were the successors

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to previous state agencies. As President of Milk Drivers Local 680 I have always been strongly in favor of the continued existence of these agencies because they provided some stability to a shrinking industry that is subject to price wars which hurt everyone, including the consumer.

This position was consistent with the union's efforts to provide job security to its members and to employees of the milk industry in the State of New Jersey. On that issue I have been supported by all segments of organized labor in the State of New Jersey.

We in the Teamsters Unions appreciate the cooperation and support given by Governor Byrne and his administration in their efforts to provide new jobs and to make secure the employment of those workers now employed in the state.

Too often, after jobs have been lost to companies operating outside of the State of New Jersey or by companies moving to other states, public officials have lamented that if they only knew of what could have been

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done before such loss, they may have been able to take some action.

With that in mind, I ask the Governor to maintain the status quo of the Division of Dairy Industry and a minimum price system that at least avoids destructive price wars.

Now, I would like to add to that that there have been statements made here that the labor rates in Pennsylvania were higher than those in New Jersey. That is just not so.

The labor rate in New Jersey is higher, definitely higher, than that in the State of Pennsylvania.

In New York it's a temporary competitive advantage there. New York just went through a nine week strike and they have negotiated a very successful contract, and I would be looking forward or would be seeing something and I'm sure the aggressive officers of Local 680 are going to do their best to catch up with this competitive system, which is not new; we have always had that.

And one of the main fears I've

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had in office, especially the last ten years, was the competition of out-of-state milk companies.

With our new super highways that we have now it's no problem at all to bring milk into an area from 200 miles away into this state, and we have been threatened in the past with a loss of jobs by companies in the southern part of New York State, we have lost jobs through companies in Pennsylvania, eastern Pennsylvania, all of which have a much lower wage rate.

And anything that will jeopardize that wage rate or jeopardize the security of the employees that we have at this time because of the competition of lower wage rates from lower New York State, from eastern Pennsylvania, certainly would put our people in jeopardy.

And again, Governor, I would like to say this: I listened to Senator Dumont say he's been here testifying at these hearings I think since 1950. I came to the first hearing in this chamber in late 1978.

GOVERNOR BYRNE: You and I remember

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when Becker's Farm delivered milk by horse and wagon.

MR. MC GINLEY: Yes, I do. It took a lot of years to get them unionized, too.

GOVERNOR BYRNE: Then you knew what a Teamster meant.

MR. MC GINLEY: Oh, yes, that was a real Teamster.

GOVERNOR BYRNE: You're also saying that you anticipate that when we call the transmission the cost of milk is going to go up in New Jersey any way, that because of -- well, you identify labor costs and I guess you can identify energy costs.

So that even if we leave retail price maintenance in the concept, prices are going to go up, going to have to.

MR. MC GINLEY: I would say that it would, due to energy costs. You may have increased labor costs in the very near future.

GOVERNOR BYRNE: That's what you sort of told us.

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MR. MC GINLEY: Well, that's not my job anymore. The very capable man who was here before me --

GOVERNOR BYRNE: You do the job very well, too.

Any questions?

Thank you.

MR. MC GINLEY: Okay, Governor, thank you. Nice to be here.

GOVERNOR BYRNE: Dr. William Park.

DR. PARK: My name is William L. Park. I am chairman and professor of the Department of Agribultural Economics at Brigham Young University in Provo, Utah.

I graduated with a B.S. and M.S. degree in Agriculatural Economics from Utah State University in 1957 and 1958, respectively. I received my Ph.D. degree in Agricultural Economics from Cornell University in 1963.

My direct involvement with the dairy industry dates back to 1958 when I was employed by the New York-New Jersey Milk Market Administration involved in the research and evaluation of the roll of milk producer cooperatives under federal milk orders.

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This included a detailed study of the milk cooperatives in New Jersey. After a few years I joined Rutgers University as a professor and later as chairman of the Department of Agricultural Economics and Marketing and served at Rutgers in a close capacity for a period of 11 years.

During that period of time I was involved in three major studies which have a direct impact on this proceeding.

The first one was in 1968 when in cooperation with the Division of Dairy Industry, Office of Milk Industry at that time, we developed a formula for the pricing of milk at resale which would reflect changing costs, which, as I understood at the time, was required by the statute in order to reflect changing conditions accurately as possible.

That procedure was considered in hearings at length and the decision of the director at that time is: More time is needed to evaluate its effect.

You're aware of the hearing which was called last March where this was

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reconsidered and then became a part of 79-1.

Two other studies I was involved in which will have some impact on the proceeding today are, one, "Business Operations Analysis of the New Jersey Milk Processing and Distribution Industry, 1971-1975. I have a copy of this report which I will leave with you.

The second -- or the third report actually, "Economic Formula For Pricing Milk at Resale in New Jersey."

In this I discuss at some length the changing costs associated with the pricing of milk -- or associated with the processing, receiving, distribution and retailing of milk.

It's not just limited to the processor, but also includes retailing costs as well. And I have a copy of that report which I will leave with you, which your staff can study in their leisure if they don't already have it.

I'm not going to cover everything in my statement. That can be studied later. I'd like to hit some of the highlights.

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It has been previously stated it's been the policy of the state since 1933 to subject the milk processing, selling and distributing industry to economic regulation in an effort to protect the production capability of dairy farmers and assure a steady and adequate supply of wholesome milk to consumers at reasonable prices.

To implement the policy of economic regulation, the legislature conferred upon the director of the Division of Dairy Industry powers, quote, "...to promulgate orders, rules and regulations, as deemed necessary, to prevent unfair, unjust, destructive and demoralizing practices in the fluid milk industry."

The purpose of establishing minimum prices under Order 69-1 and 79-1 is to prevent the downward spiraling of prices of milk to unreasonably low levels which, if permitted to exist over protracted periods of time, could be harmful to competition in the fluid milk industry of this state and contrary to the public interest.

My position would be that the

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industry and the state would be well-served is to maximize the amount of competition which would exist here.

I think that everything should be done to be sure that we have as much free exchange and competition and freedom of barriers as possible insofar as one can, at the same time avoiding the predatory factors.

GOVERNOR BYRNE: How do you do that?

DR. PARK: I suggest that a prohibition of sales below cost type of regulation will go a long ways if that level is established beforehand, at somewhat above the lowest cost dealer but way below the highest cost dealer, if you see what I mean.

I would urge then that a price level be established which would reflect the costs of the poor efficient segment of the industry.

GOVERNOR BYRNE: Is that allegedly what we try to do now?

DR. PARK: That's what we're doing now.

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Frankly, in my opinion, the resale price regulations now are misnamed. They are really designed at prohibiting sales below cost by prohibiting sales below a certain level, and that level being the level of costs of the most efficient segment of industry.

And frankly that's the way I think it -- I think would be a more effective way of handling it.

One of the major disadvantages of the major sales below cost regulations, such as exists in Wisconsin and a number of other states, is that by the time a grievance has been filed and a hearing held, the determination made by the agent -- any state agencies that a grievance does exist, that a major share of the damage is done.

GOVERNOR BYRNE: Well, the damage is what?

DR. PARK: What I'm saying is that the damage is to an innocent and efficient but small competitor.

But my concern is that you may have a large competitor acting in response

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to economic incentives may engage in a predatoring price situation where he would for a segment of his market put it below his cost, until the other competitor is out of business and then ultimately prices would rise because competition doesn't exist to hold the prices down.

GOVERNOR BYRNE: Would you trust the Attorney General of Utah to protect those small processors against those predatory practices?

DR. PARK: Well, there is a possibility, although I haven't studied Utah like I have New Jersey, that we may be too late.

GOVERNOR BYRNE: In Utah?

DR. PARK: In Utah. Although fortunately we still have substantial competition from outside areas which comes in, and there is constraint on the part of the limited number of competitors to avoid raising the prices unduly high.

GOVERNOR BYRNE: What I'm really asking is is the antitrust process a sufficient safeguard?

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DR. PARK: I would prefer using a preventive system rather than a punitive one. That is, an ounce of prevention is worth a pound of cure, if you forgive the cliche.

And that is if one were to establish a minimum price which would reflect prohibition of a below cost level of the most efficient segment of the industry, then you are, in fact, prohibiting sales below cost and prohibiting -- or I should say discouraging predatory practices.

GOVERNOR BYRNE: But you told me a minute ago how difficult it was to enforce that.

DR. PARK: That's the reason I recommend we could go to a system of prevention through establishment of the minimum price.

GOVERNOR BYRNE: I thought you were telling me it was difficult to enforce a violation of the minimum retail price.

DR. PARK: No, no, it's on the contrary.

I think the minimum price being

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open and well-understood can be enforced because it's open, it's in the public eye, and it's easy to determine whether a price is -- or a product is being sold below that level.

On the other hand, the principal disadvantage of the traditional prohibition of sales below cost regulation is the delay in getting enforcement and determining whether or not a violation has occurred. That's principle problem.

And in order to get around that, if one were to establish in advance what an acceptable price could be and still not be determined as being below cost, then one has immediate interpretation of whether or not the statute's been violated, and therefore I think frankly more effective.

It's more preventive than it would be punitive. So then the present system is essentially based on the later.

GOVERNOR BYRNE: You heard the testimony earlier that I think the six major processors control 70 percent of the market in New Jersey?

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DR. PARK: Yes.

GOVERNOR BYRNE: They are not going to drive each other out of the market by competitive price-cutting, are they?

DR. PARK: I'll have to refer back to my notes, but based on the 1977 175 data that I have, one of the major competitors in the market was Garden State Farms and they have gone through substantial difficulties.

GOVERNOR BYRNE: Even with the protection we give them?

DR. PARK: Even with the protection we have. Because they were still selling at above those minimums but they were still under pressure. And I really believe that they are under pressure.

In one of the reports I've given you there, especially that one on the Business Operations Analysis, in 1975 based on reports -- I should say notarized reports, surveys that I received from these dairies, 9 out of 43 competitors in the state were operating at a loss.

So we know the industry's been under pressure.

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That same year, 1975, the return on sales was less than eight tenths of one percent. And that is not high enough to attract capital. They had capital turnover rate of about 7.5 that year, so if you want to determine what your return on investment is, it's approximately .2 times 7.5. You're talking about less than two percent and that is not high enough to attract capital into the industry.

GOVERNOR BYRNE: Did you testify, by the way, on 79-1?

DR. PARK: Yes, I did.

GOVERNOR BYRNE: As an expert?

DR. PARK: Those two reports I gave you are included in that proceeding. I did appear as an expert witness.

GOVERNOR BYRNE: Who called you?

DR. PARK: I was called by an invitation of the Division of Dairy Industry and I might add as I am today.

GOVERNOR BYRNE: Thank you, thank you.

DR. PARK: If that's all the time I have, there is another point that's important

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I'd like you to see. Do you have time for it?

MR. O'HERN: One minute.

DR. PARK: Let me highlight then a part of my testimony dealing with marketing margins.

I calculated marketing margins for major cities across the United States based upon the supermarket survey conducted by the International Association of Milk Control Agencies.

I found that New Jersey is second only to New Hampshire and Massachusetts in the level of operating margin for receiving, processing, storing, packaging, distributing and retailing.

GOVERNOR BYRNE: We're the third lowest, in other words.

DR. PARK: Right. If I were to consider low fat milk we're second lowest.

Now, low fat milk margins are higher than whole milk margins. I would expect that to be because a dairy must live upon its composite margins and not just a single margin of a single product.

And dairies have moved away from

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-- they've shifted away from traditional milk alone to bring in other high margin items in order to continue to survive.

So consumers are receiving milk in this state at margins substantially below what the dealers are getting on other products. And that's the only way they can stay in business.

GOVERNOR BYRNE: I like that expression. I once bet a horse that was second to seven other horses.

DR. PARK: I think everything else you need is in that summary.

You might turn to page 11 for one final point.

I grouped the states by three classes: states which establish retail price minimums and states which prohibit sales below costs and price discrimination and related prohibition of unfair trade practices, and other states.

Of the 32 states then the lowest average margins were those that had price control, and I'll have to say this, that that average was a weighted average based

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on population and it was heavily weighted by New Jersey and Pennsylvania.

And the group three which are without regulations of any kind were strongly grouped by cities in the south, and I think that the other may be what you had.

Thank you very much for permitting me to make --

MR. O'HERN: Two questions, if you can answer it very briefly.

What is the difference between milk and other raw foods which would justify this type of regulation?

In other words, why logically wouldn't it apply to other raw food?

DR. PARK: Well, it could do. I think it's a matter of simplicity of regulation.

In other words, the procedure in New Jersey is to regulate a major segment of the market, that part of the market which is most nearly associated with the public interest, and that would be whole milk.

Other products do have an impact

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on the dealers, there is no question about it. But if you simplify the regulations by regulating only whole milk, then you're simplifying the system.

MR. O'HERN: We're talking about other food products. Why not oranges and apples and pears? The Governor asked that before of another witness. Why doesn't the same logic apply as well as to other raw foods?

DR. PARK: I'm afraid that will be a long answer but you wouldn't try to do that.

I think principally it's the nature of the market, the nature of the perishability of the product, the ability to store, does have an effect on the way competitors perform in the market.

Milk has been traditionally used in practically every state that I've had any work in in the U.S., has been used as a loss leader in traffic builders in the stores. And one way to do that is to cut the prices.

MR. O'HERN: Thank you.

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GOVERNOR BYRNE: Dr. Aplin.

DR. APLIN: Governor, I'm professor of economics at Cornell University.

If I might just a moment let me just comment that I'm impressed as the afternoon wears off how you continue to pay attention and ask good questions. I'm re-assured that by this performance that one can overcome a handicap of a Princeton and Harvard education, and that's saying something from someone from Cornell.

GOVERNOR BYRNE: We had a great problem a month or so ago. Somebody claimed he had a degree from Yale and he didn't. And I frankly responded to that by saying that I've never really understood the difference between having a degree from Yale and not having a degree from Yale.

DR. APLIN: I would wonder why would anyone claim that. It's a question of having to admit it.

I will have a prepared statement tomorrow morning which, if you will, I'd like to give you and have entered as part of the record. Thank you.

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I was a member of those five economists on that committee to review the New Jersey milk situation in 1963.

My statement will be much longer again than ten minutes. I will try to summarize the highlights of that statement and be available for questions.

That committee of economists were in complete agreement as to what should be the objective of a state regulatory program.

They unanimously agreed that it was desirable to have a considerably greater degree of competitive freedom in the New Jersey milk industry than have existed under state price control up to that time.

But they also agreed that some safeguards were needed to prevent unfair and destructive fair practices such as price discrimination and possible collusive activities.

The sole difference among the five economists lay with the means by which these objectives could best be reached.

The economists also agreed at that time that the industry needed a transitional period to meet the many adjustments

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of going from a status of what we call full control to that envisioned by the long run program.

Thus we recommended that during the adjustment period certain minimum margins should be fixed at key points, and we suggested the review be made not later than six months following the effective date of those margins we proposed for the transitional period.

Permit me to outline briefly my reasons for having opposed minimum control over the years and for actually having testified on several occasions in various states in support of the repeal of resale price control.

A review of my long-held opposition to statements on resale price control will help you understand my assessment of the New Jersey situation where in recent years minimum price control has worked very well as compared to minimum price control perhaps in any other state that I know of.

I believe the proper role of government is to foster and encourage

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effective competition.

In an industry like the fluid milk industry I believe some safeguards against destructive competitive practices may be appropriate.

In short, my long held conviction has been that the proper policy of government is to foster effective competition and to leave resale milk prices to market determination while providing safeguards against unfair and destructive means of competition.

However, extreme care must be exercised in deciding upon and administering curbs against destructive forms of competition because even minimal ground rules of the competitive game can result in inhibiting competition.

Resale price control laws for milk were initially enacted in many states during 1930 to prevent unfair and destructive competition and to protect and support the minimum price program for producers.

But with the growth of federal marketing orders which protect producer

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prices in the classified pricing plan for raw milk and thus ensure an adequate supply of milk for consumers and with the finding of state minimum price control programs as they were typically administered in most states acted to encourage a large nunber of states that had undertaken the regulation of resale prices abandon this policy.

So today, as was mentioned before, as far as this part of the country goes there were only three states still imposing minimum, Maine, New Jersey and Pennsylvania.

Historically with but one exception to my knowledge -- and that's New Jersey in recent years which I'll address in a minute -- state minimum resale price controls for milk have been poorly managed.

Such programs have seriously interfered with public interest.

Many programs in the industry resulted in exorbitant margins and excessive consumer prices.

Now, the one exception to my knowledge to that poor history of state

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minimal resale price control is New Jersey in resent years.

Let's look for a moment at the minimum resale price control program in New Jersey in recent years.

The minimum resale price control in New Jersey has worked frankly much, much better than I would believed possible in 1963 when I was a member of the committee of the economists of Secretary Alampi. Much, much better than I would have believed.

I come to this conclusion by looking at at least four important things that I will detail in my written statement, these will be amplified.

Let me just mention them. One, the minimum resale price control program has been administered in a way that has allowed the New Jersey milk industry to be innovative and progressive and to adopt more efficient, lower cost methods of processing and distributing milk.

We have to be impressed with at least the plants I'm acquainted with and the business I'm acquainted with in New Jersey

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as far as milk goes.

Secondly, it has established minimum prices that are substantially low -- substantial quantities of milk sell at a price higher than the state-set minimums.

Three, as has been mentioned before, resale minimums in New Jersey has not resulted in wide marketing margins compared with other areas.

I, too -- in my statement you will receive an analysis of the marketing margins for a number of areas, 16 -- 17 other cities in the Northeast, 16 cities in other parts of the United States where we've analyzed for June '74 and June '79 the marketing margin. And it paints the same picture we have been mentioning, namely, that resale minimums in New Jersey have not resulted in wide marketing margins compared with other areas.

Let me just summarize and then give you my recommendations and respond to questions.

To summarize my appraisal of how the resale price in New Jersey working recently

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is, I would say that statement on resale price control on milk in New Jersey of the public interest has worked very well in recent years as compared to minimum resale price control programs in any other state that I've acquainted.

I know of no other state where the results of state resale price control programs would receive anywhere near such a good report card from me.

Basically, the manner in which the minimum resale price control in New Jersey has worked has not interfered with the public interest in recent years.

It's my judgment the Division of Dairy Industry should take important credit for responding to many of the suggestions of the economists 15 years ago and for good management of the Milk Control Act.

In addition, of course, continued opposition to the minimum price control structure and especially to any increases in price provided by the -- that opposition provided some milk processors and distributors whose selfish business interests coincide with

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truly minimum prices or to resale price at all also has been an important factor in New Jersey state minimum resale prices being realistically imposed to truly minimum prices.

My recommendations, with all due respects to the study already given by various people -- those include some people in your office, Governor, some people in the Attorney General's office -- despite those studies I believe the New Jersey milk industry and alternative forms of regulations to which it should be subject in the future deserves a lot more study.

Therefore, I recommend that minimum resale price control under Order 69-1 continue to be operative for another 12 months during which time the industry and alternative forms of regulation are studied carefully.

I would suggest that the Secretary of Agriculture and the Attorney General jointly appoint a committee to take the leadership in such a study.

In my opinion, such a committee should include antitrust economists, dairy

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market economists, an economist or attorney familiar with the dairy industries of Massachusetts, Connecticut, New Hampshire and Rhode Island where there essentially has been zero regulation for years and persons eminently familiar with the New Jersey situation.

The committee should study the New Jersey Antitrust Act, the Milk Control Act and the rules and regulations of the Division of Dairy Industry to determine what changes, if any, from 69-1 are needed to provide an environment which will allow and encourage efficiency in competition to the benefit of the public interest in the long run.

In studying various possible programs I believe such a committee should consider all alternatives, including among others possible continuation of minimum resale price control and, as well, you might say on the other end of the range a program of no curbs against unfair and destructive competitive practices other than those provided by the state's general antitrust

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laws.

In doing this the committee should be mindful that regulatory programs do contain a potential for abuse and ought not to be continued or instituted unless they serve a compelling public interest.

Such a committee should complete its study and make recommendations by February 1, 1980. And I believe this approach could well serve the long run public interest in New Jersey.

Thank you.

GOVERNOR BYRNE: Can I ask you, what, in your opinion, would happen if I immediately implemented the recommendations that the Attorney General made in his earlier testimony?

DR. APLIN: As I recall, those included the removal by the first of the year of the minimum resale price control.

GOVERNOR BYRNE: Elimination of retail price maintenance, elimination of below cost sales, --

DR. APLIN: As you well appreciate --

GOVERNOR BYRNE: (Continuing) --

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the 60-day rule.

DR. APLIN: As you well appreciate, I cannot answer with any certainty and I guess that's one of the reasons I think it deserves more study, in my judgment.

MR. O'HERN: Perhaps we should call a Harvard economist.

DR. APLIN: Sorry, I didn't realize I was offending you also.

I certainly can't be sure. And this may be no particular order, let me just give a few thoughts and then answer further questions maybe.

As far as consumer prices go, they say if 69-1 were removed -- that's the one presently in effect -- although I certainly can't be sure because it depends basically I think on the pricing strategy of the retailers, in other words, what would happen I think depends very importantly on the pricing strategy of the retailers.

In my opinion, although on the short run there might be some price cutting, that consumers in the long run certainly should not expect prices on most of the milk

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to be significantly lower than they have been under 69-1.

Other effects, Governor, effects on particular parties or --

GOVERNOR BYRNE: I have not limited --

DR. APLIN: There has been mention that the concern about what might be possible harmful effects on producers with removal of minimum resale price control.

In my judgment, you can't rule out some possible ill effects, but it -- on producers from removal, but it seems to me with the federal order program, although the federal order program does not guarantee a market for producers, with the federal order program with both orders in this state being marketwide pools, the fact that many producers are members of one of five or six cooperatives that operate in the state, the risk of harmful effects on producers I think is relatively low.

It could happen. Some small,

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poorly-located farmer shipping to a processor that went out of basic business could certainly possibly have that problem of finding a market. It could happen but I don't think that it's very likely.

As you appreciate, there are risks and noncertainties with anything.

GOVERNOR BYRNE: Are there any basic characteristics of the milk marketing business which have changed significantly since you made your report in 1963?

DR. APLIN: Oh, yes, sir, many, many. It's a very different industry and perhaps I should, in view of time, I should leave it like that because there are many differences and it would take me quite a lot of time.

GOVERNOR BYRNE: The difference is significant enough to change somebody's conclusion on how government should interact with the industry?

DR. APLIN: Yes, I think I would say yes, and I think that's one of the reasons that I favor the committee that I recommended to take some leadership and

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more study.

GOVERNOR BYRNE: Okay, thank you.

Dr. Richard Stammer.

DR. STAMMER: I'd like to thank you for the opportunity to talk on this subject today.

I'm Associate Professor of Agricultural Economics at Rutgers University. I've been on the staff at Rutgers for eight years and I've received my Ph.D. from the University of Connecticut.

I guess I have to classify myself basically as a free market economist who doesn't believe in government intervention unless it's necessary, and when Dr. Park was at Rutgers we had many heated discussions about minimum retail prices.

However, in preparing my testimony today I looked at two aspects of retail prices and the question of minimum retail prices in relation to public interest.

One was from the theoretical point of view and the other was to develop some empirical analysis of how the New Jersey system has performed.

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I believe from the theoretical point of view, minimal retail prices can serve the public interest. I think there is some misconception that some people have stated that they can prevent destructive competition among the processors. Obviously that doesn't happen. Nothing regulates the wholesale price in the system as it is now.

But I believe that a properly constructed minimum retail price can prevent using milk as a loss leader at the retail level which could have detrimental effects on the processors.

Also, these effects may work themselves through to some sets of consumers, particularly those in inner-city areas that may have to depend on non-supermarket or non-dairy store outlets for milk.

I think there is one other aspect of minimum prices which hasn't been mentioned here today from a theoretical point of view, and that is they do provide the consumer with some knowledge as to what the price of milk ought to be.

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Most products we go into the supermarket and we think something is high or low but we don't really know. When we go into the supermarket to buy milk, since the minimum price is published we do have an idea. And I think in some cases this may actually prevent some price gouging in certain isolated markets.

GOVERNOR BYRNE: That's assuming there is some rationale to the minimum price.

DR. STAMMER: Right. I preface this by saying properly constructed minimum price. Certainly an improperly constructed price would not have any of these benefits, and again I would be very much opposed to a price that in any way inhibited competition, inhibited the adoption of new technologies by the processing industries.

I've seen this happen in some other states.

GOVERNOR BYRNE: Don't you think that the average housewife knows what a reasonable price is for a box of soap suds?

DR. STAMMER: Well, if my wife is any judge, she thinks most prices are

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unreasonable. She can compare some prices. She goes from one store to the next.

GOVERNOR BYRNE: Without any help from me.

DR. STAMMER: Right. But if she lived in -- I mean, I live in a relatively urban area. If we lived in a rural area where you only had one store, it may be troublesome.

GOVERNOR BYRNE: That wouldn't make any difference if you were paying an unreasonable price for milk because that's the only store you can get it at and that store owner knows that.

DR. STAMMER: We may buy powder milk and mix it with water. We may travel some distance to buy it.

So I think on a theoretical basis, a properly constructed price can serve the public interest.

The question is, has it served the public interest over the past several years. And I looked at four measures of performance to try to judge this.

First was a study of retail prices

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as they currently exist in a series of New Jersey stores. One thing, a properly constructed price, you would not find that most milk is selling at that minimum price. Mostly you will find it selling above the minimum price.

This survey showed that approximately 20 percent of the supermarkets milk was selling at the minimum price, which means that 80 percent was selling above the minimum price. And in 89 percent of the convenient stores they were selling above the minimum price.

This at least is an indication to me that the minimum price as it is now constructed probably is constructed at a -- or set at a proper level. That was the first thing I looked at.

Now, the next thing, as several people have mentioned, is the fact of marketing margins, and several people have made comparisons of marketing margins.

Now, as was stated by a few testifiers, there are many, many factors that affect marketing margins: retail

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competition, size of the market, distance of the processors from the market, all these factors as well as retail price legislation affect minimum prices.

So in my study, which I will submit to you later, I tried to take all these factors into account. In other words, if you compare a big market to a small market you'll find margins generally smaller in the big market. So you can look very good if you compare yourself to all small markets.

So I tried to take that into account in this study in making comparisons between margins in New Jersey and in other markets.

Also making this comparison I've used two different sources of data and basically come to the same conclusions, and even when you account for all these differences you still find that New Jersey -- in New Jersey the margins are lower than for the vast majority of other markets.

So even accounting for these other factors which do occur in New Jersey,

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industry has performed well on the basis of margins.

The third measure of performance I looked at was concentration in the processing industry. Economic theory tells us and reports done by the economic research service tell us the more concentrated the processing industry in the state the higher the price is to the consumer. That's good basic economics.

And one thing a properly constructed minimum price should do if it prevents processors from going out of business is to cause the concentration of the industry in the state to be less.

So I compared the concentration of processors in New Jersey compared to about 20 other markets, and the concentration of processors in New Jersey was less than 91 percent of the other markets.

That means the other markets again are much more concentrated in the processing than New Jersey, which is one of the reasons I believe that we have these lower margins in New Jersey.

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And it depends what comes first, you know, the egg or the chicken, but if the minimum retail prices are helping processors stay in the industry which is keeping the concentration ratio down which is translating itself then into lower marketing margins, that would be my hypothetical as to what has happened.

The fourth measure I looked at was returns to net for New Jersey processors as compared to other processors of dairy products throughout the country. And the study mentioned by Dr. Park showed that in the 1974-75 period returns to New Jersey processors on net worth were about 6.6 percent.

In the same period, returns to dairy processors throughout the country were 9.3 percent.

You can see from this that returns to New Jersey processors were about 30 percent less than returns to processors in other areas. Again, I believe this is a measure that the New Jersey system has been performing very well.

I think it's also a measure that

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there is probably not much more you can squeeze out of the system. I don't think we'll see retail prices go much lower if we do away with minimum prices in the long run.

In the short run we may get some price wars, but in the long run I don't think there is much fat left in the system to be squeezed out.

GOVERNOR BYRNE: With or without minimum price controls?

DR. STAMMER: I think in the long run prices will not be lower without minimum price controls. They may be higher. In the short run, through price wars you may get temporary lower prices, but again the net result would be --

GOVERNOR BYRNE: There is nothing that government is doing today that would prevent New Jersey people from getting the national average rather than 6.6 percent.

DR. STAMMER: I think yes -- well, nothing that New Jersey people are doing. It's just competiveness in the dairy industry.

GOVERNOR BYRNE: Right.

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DR. STAMMER: But if we do away with price legislation which then results in some processors being driven out of business, of course then the processing industry becomes less competitive and I would expect --

GOVERNOR BYRNE: Which gets to the basic point everybody's been speculating on all day as to whether that would happen.

DR. STAMMER: I think that's a basic point. I think that in this paper I presented a fair amount of empirical evidence to show that when you compare New Jersey with other markets, that we can feel that we have performed quite well here. Again, I think all --

GOVERNOR BYRNE: That's really not empirical; that comparative. Empirical evidence would have to take place in New Jersey, wouldn't it?

DR. STAMMER: Well, part of the evidence is taking place in New Jersey, a comparison of New Jersey to other markets.

Again, you can't say all the difference in margins is just due to minimum

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retail price. That would be naive.

GOVERNOR BYRNE: Thank you.

MR. O'HERN: The testimony of Mr. Hurdle will be received in written form.

GOVERNOR BYRNE: Mr. Holsapple.

MR. HOLSAPPLE: My name is Earl Holsapple. I have been a resident of New Jersey for the past 35 years, residing in Califon for the past 26 years.

Following graduation from Princeton University, I spent five years in the U.S. Army in Europe. Upon discharge, I joined one of Welsh Farms. Today, I serve as president of Welsh Farms, with headquarters in Long Valley, New Jersey.

I am a director of the International Association of Ice Cream Manufacturers and a trustee and past president of the New Jersey Milk Industry Association. While I join in the statement of that association, my remarks are made only in behalf of Welsh Farms.

Before going into the prepared statement, I'd like to just make a couple comments.

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One is that it should be pointed out that one of the dairies that have been used of the six most efficient in the Garden State has since gone into bankruptcy.

It has been suggested that the producers are protected under the federal order system. This is not the case, in the case of Garden State Farms. It's my understanding they owe some $2 million to the producers and, as such, there is no protection of the federal order.

It was also recommended by someone that the bond paid by handlers should be increased to $500,000 from $100,000.

It is my opinion that no bonding company in an industry with the margin of profit and return on investment this industry has would write a bond for $500,000. I'm sure we could not get it.

Welsh Farms is a medium-sized dairy. We have been in business for more than 80 years. While originally our business was devoted exclusively to the processing and distribution of fluid milk, we are today also manufacturing and distributing ice cream

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mix and ice cream. Our milk business is what is termed in the industry as a full-service dairy.

We serve customers at their homes through about 50 subdealers, each of whom is an independent businessman, as well as our own home delivery routes. In addition, we serve food stores, restaurants, schools and institutional customers.

Within the milk industry, we enjoy the reputation of being a successful milk dealer, but the measure of success in our industry may not apply to most businesses.

For the past two years, our earnings on sales after taxes have been just over one percent and our return on investment for our total operations has averaged for 8 percent to 9 percent.

And I should comment that the processing and distribution of fluid milk provides a lesser return from sales than do our other dairy products. But it is essential for us to be in the fluid milk business in order to successfully engage in

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our other dairy operations.

When our return on capital of 8 percent to 9 percent is compared with a normal average return to business of 15 percent, it becomes apparent that our return on a high-risk business with a very low profit on sales is quite marginal.

We feel strongly that the present milk control price system has been and is a stabilizing factor in New Jersey. The primary beneficiaries of this system are New Jersey's consumers who, on an annual average, pay less for their daily milk supplies than do consumers in most of the nation.

Since the minimum out-of-store price established monthly by the Division of Dairy Industry is based on the lowest cost of the most efficient dairies and super-markets, it only provides a floor under which milk may not be sold. Without this floor, New Jersey could expect milk pricing activities similar to those which have occurred and continue to occur in many U.S. marketing areas.

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It is recognized by store merchandizing authorities throughout the nation that the use of an unjustified low price on fluid milk is one of the best pricing techniques available to entice customers into a food store. A "low-ball" price on milk is considered a sure traffic builder.

The technique, designed to build profits on the sale of other items which customers do in fact purchase, is for a store to run a weekend special on milk -- gallons for 99¢ or a half-gallon free with your purchase of $5 or $10 worth of other products. This may sound far-fetched but, believe me, it has happened in many markets where there are no minimum out-of-store prices.

Such an occurrence in New Jersey could put Welsh Farms out of the fluid milk business and result in the loss of more than 100 jobs for people now depending on the stability of our fluid milk business.

Here's why: when we agree to accept milk from farmers as we do, we agree

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to take every drop they produce every day of the year. As we accept their milk into our plant each day, we must process and package it promptly -- within hours. We must know what our packaging demands for fluid milk are several days in advance of the receipt of the milk from farmers.

Normally, we are able to know quite accurately how much packaged milk our customers will need five to seven days ahead of delivery to them -- and it is essential that our knowledge of their needs be accurate, because once we have received the milk from farmers it is ours and we must pay for it. And once we have processed and packaged it, we must sell it for consumer consumption promptly.

New Jersey law requires that all packaged milk be dated. Five days after packaging, it can no longer be sold for consumer consumption, even though that packaged milk continues to be fresh, pure, sweet and wholesome.

Now, if we have accepted milk from farmers and processed it into consumer

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packages destined for our customers and one or more stores within our serving area announces a "weekend special" on milk, either one of two eventualities occur. Either some of our store customers who had planned to take X quantity from us informs us when we are ready to deliver that packaged milk to them that they can't use it -- or they take it on that delivery day and then on the next delivery day they tell us to take it back because it has not been sold. Why didn't it sell? Because the store up the street had his weekend special and consumers bought this special priced milk.

In either event, we at Welsh Farms are now caught with a supply of packaged milk on our hands that we can't sell. What do we do with it? We can't drink it. We must pay for it. All we can do is dump it from the packaged container and try to make some manufactured product from it. We have lost completely our costs of processing, the cost of the container and the cost of delivering it to the customer and returning it to the plant and the cost

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of physically destroying and emptying each of those consumer packages.

While this occurs, new milk is being received daily from our farmers. We must take it from them -- and pay them -- but what do we do with it?

Fresh milk is not a can of peas. If your customer doesn't want it today, you can't store it and deliver it next week. The cow produces milk every day, and we must find an outlet for it every day.

This problem created by "weekend specials" can be aptly described in one word -- MONEY, wasted money. It has absolutely nothing whatsoever to do with efficiency; nothing to do with low costs of operation; nothing to do with quality or good service. The problem has upset normal channels of distribution, and in the milk business that is fatal.

As a result, the companies that survive a series of problems such as I have just described are those who happen to have the most money, and are willing to lost it in order to be in the market when only the

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wealthiest remain.

Welsh Farms is an efficient, low-cost quality milk company. We are not wealthy. We probably could not survive a series of "weekend special" problems creating chaotic marketing conditions. Our only alternative would probably be to leave the fluid milk business and let employees go, resulting in less service to a wide variety of consumers and less competition in the marketplace.

What happens after the blood bath is over and Welsh Farms, plus many other independent milk companies, are forced out of the milk business? The answer is obvious. Those remaining companies who have lost money to say in business must now recapture their losses. The price goes us, and the very consumers who thought that they were getting a bargain in milk prices will be forced to pay dearly for those "bargains."

At Welsh Farms, we believe it is in the public interest to enable efficient, low-cost companies like ours to remain in business, providing viable

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competition in the marketplace.

New Jersey's system of milk control provides no protection for any dealer who is not extremely aggressive and efficient; but it does assure that competition will be maintained on the basis of efficiency rather than the amount of money any company is willing to lose in order to capture the market.

Our profit is only one percent on sales. We could not compete in a marketplace where the criteria for existence is affluence. We believe the criteria for remaining in the milk business should be efficiency and quality, providing consumers with fresh milk at lowest possible prices over long and continuing periods of time. New Jersey's milk price control system has provided and can continue to provide that criteria.

We urge you, Governor, to weigh carefully all of the facts of the industry as they relate to the consumer's long-range welfare. The New Jersey milk control system has worked well and has given New Jersey

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consumers milk at prices that are lower than those paid by consumers in most of the nation. We urge that it be preserved.

GOVERNOR BYRNE: Let me ask you this, if I took your testimony and every time I saw milk I scratched that and wrote "peaches," wouldn't your observations be just as valid?

MR. HOLSAPPLE: No, sir, I don't think so. Peaches are a perishable crop but they are not coming in every day under a contract basis such as we have from the farmer where we have to take all of his milk every day, regardless of whether we have a market for it or not.

The peach farmer, I assume, has some of those problems, marketing of produce, but I don't think it's the same.

GOVERNOR BYRNE: Isn't the demand for milk in New Jersey fairly constant so that if I'm getting milk for 99¢ a gallon, I'm getting it from the same basic supply of milk that exists in the state?

MR. HOLSAPPLE: They have -- yes, they are quite constant. I think I made the

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point here that we're trying to project five or six days down the road how much milk we'll need, and when there is a substantial market there is a fairly substantial sales pattern.

I think this could be disrupted if you got into a situation where we described here of having price wars or any retailer who decided to be a hero and used milk as a loss leader.

I think this would have a very strong tendency to disrupt the patterns.

GOVERNOR BYRNE: But I don't expand the market for milk by lowering the price.

MR. HOLSAPPLE: I don't think you would extend it very much. I think it's a rather inelastic product.

GOVERNOR BYRNE: Chocolate ice cream is something else.

MR. O'HERN: How come it is the annual contract? Is that the custom in the trade, four year contract?

MR. HOLSAPPLE: That's perhaps a misnomer. We have an agreement with our

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producers that we will take all of their milk and always have, so that regardless of whether we have an immediate need for it or not we take it in.

There are certain times of the year we have had to sell surplus milk on the open market and take a licking on it.

But we are committed to taking all of our producer's milk.

MR. O'HERN: But is that the custom in the industry for the processors to have an annual contract?

MR. HOLSAPPLE: I would not think so. They might have an annual contract with a cooperative where they're buying milk from a co-op, but with producers I would say no.

GOVERNOR BYRNE: Thank you for your presentation.

Mr. Miller.

MR. MILLER: My name is Charles Miller. I am a dairy farmer in Warren County New Jersey milking approximately 90 cows and farming about 300 acres.

I have been a member of the

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New Jersey Farm Bureau Dairy Committee for many years, serving as its vice-chairman for several of those years.

I am also an independent milk producer, which means that I do not belong to a dairy cooperative which markets its members milk for me. I sell to a propriatory handler, Westbrook Farms, who markets mostly fluid or Class I milk to stores in North Jersey. They own Ding Dong Stores and sell some milk in New York.

I speak here today for the New Jersey Farm Bureau Dairy Committee and myself as an independent dairyman. New Jersey Farm Bureau is a voluntary, non-governmental farmer organization with a membership of 4300 farm family members. New Jersey Farm Bureau is a part of the American Farm Bureau Federation, consisting of 49 states and Puerto Rico.

There are two federal orders in New Jersey, Order #3 and Order #4. This situation places New Jersey milk marketing in a complex and fragile situation.

Consumers, too, are caught in this

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situation. Milk in surrounding states is almost always priced higher than in New Jersey, even with so-called jug stores who market milk directly from the farm.

What has kept the price to consumers low in New Jersey is a bombination of marketing practices, chief among them the minimum pricing structure. To consider eliminating this practice would most assuredly throw the marketplace in New Jersey into chaos.

Unlike California and other similar states, milk travels across New Jersey's borders in interstate commerce, requiring some kind of price controls to keep New Jersey farmers competitive, while assuring consumers of adequate supplies at reasonable prices.

Eighty-five percent of the dairymen in Federal Order #2 in New Jersey have chosen to be independent producers. The remaining fifteen percent are members of cooperative either by choice or by some force due to instability in the marketplace.

As an example of how instability in the marketplace can have an adverse effect,

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in the spring of 1977 an amendment to the Federal Order #2 put milk nearby at a disadvantage as far as cost is concerned. It caused 80 North Jersey producers to receive sixty-day cancellation notices from their buyers.

These producers lost their markets and were forced to sell their product to either a dealer not of their choice or a cooperative.

I only point this out to show what can be done through a wrong decision made by people in power who do not understand the complex business of milk marketing. We must always remember that milk is a highly perishable food, and that farmer producers take great pains to keep it fresh and pure.

This is expensive due to the cost and maintenance of sophisticated equipment. Such an investment further intensifies the need for a stable marketplace which the federal orders attempt to do and which the state's minimum price for milk plays an important role.

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Without the minimum price, it is very possible for there to be only a few buyers left to purchase producers milk. This would certainly disrupt the orderly flow of fluid milk to the marketplace and in the long run cost the consumer more money than it does now.

Competition in the marketplace makes for slimmer profit margins, but provide more markets for producers milk. Elimination of the minimum price poses the threat of only a few big companies surviving an inevitable price war.

Government has a history of instituting economic changes in the marketplace which were designed to benefit the small businessman and consumer, which in the long haul forced the small businessman out only to be replaced by big companies.

Governments attempting to improve small business competition only served to make big companies larger -- to say nothing of the increased prices consumers must pay.

We need the Federal Order system and the minimum price system that we now

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have under the Division of Dairy Industry to maintain an orderly flow of milk.

GOVERNOR BYRNE: Thank you.

Mr. Jones is next.

Always nice to welcome David Stepacoff back to a chamber where he sat with such distinction 25 years ago.

MR. STEPACOFF: Seems very comfortable here and it seems very nice to have you as an officer.

GOVERNOR BYRNE: If you can summarize this statement it will be very helpful.

MR. JONES: I will try to.

My name is Lester Jones. My family operates a dairy farm in Lumberton Township, Burlington County, New Jersey. I'm also president of Interstate Milk Producers' Cooperative, South Ampton, Pennsylvania.

We represent 130 milk producers in the Order 4 area of New Jersey, which is about 20 percent of the total produced in New Jersey.

I serve on the board of National

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Milk Federation of UDIA and the National Dairy Council.

I have been active in farm organization in New Jersey and am past-president of the State Board of Agriculture.

My comments today are on behalf of 3,000 members of Interstate.

Federal milk orders have been mentioned quite a bit today and I think it's been brought out that they set a price. They do not guarantee a market. They do not guarantee payment.

They do serve a purpose. The reason why we advocate the penchant of retail prices such as we have in New Jersey are several.

First of all, milk is not -- does not lend itself to a loss leader commodity. I think one of the prior witnesses testified that if they had milk returned after five days it has to come back and then it goes into lower usage. Our cow is milked seven days a week. So the loss there cuts. Though it may help one, it cuts the other. It's different than fixed commodities.

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I used to grow vegetables. They can be stored and processed, but you can't store milk. It's fresh and wholesome and it's one of our basic foods. So we need a stable milke market.

I used -- I could go in one year and grow a vegetable and the second year you don't have to grow it. It takes two years to raise a calf to cow production and you breed the cow nine months ahead of that. It's a long term training. You don't dairy farm one day, one year or five years. It's a long term thing and the improvement of the dairy attests to the splendid job the dairies have done. So we have to have a stable market.

And loss leaders, which you have in areas where they do not have price controls, tend to disrupt everything.

As I said, we do not guarantee a market and we do not get guaranteed payment. The level of prices which we have in New Jersey, it's been testified amply here today, is one of the lowest to the consumer in the United States.

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Through my contacts with dairy farmers in other areas I know it's much higher, particularly through the mid-west and all across the country.

I know of no other area where it's as low a dealer bargain as it is in New Jersey. And I think the fact that there is a guarantee we will not have these tremendous losses stimulates our dealers and processors who do a tremendous job keeping it at a low level.

When I grew vegetables I had some good years to make up for the bads and this is the problem. The net result in dairy will be a higher price to consumers.

GOVERNOR BYRNE: I was with the Vice President. He said the best dairy cows are in Minnesota. That's the only mistake he made all day.

MR. JONES: New Jersey rates up with California who has the highest production.

A few years ago we averaged 8,000 pounds of milk per cow. Now many are averaging 16,000. The average is somewhere around 14,000.

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This results in lower consumer prices. Because we in this area particularly have had -- looking forward to a stable market which is what minimum prices do.

Farmers are always concerned about the spread bean farmers and consumers. And when you see farmers, dairy farmers as they are today, testifying that we do not feel there is a big spread between raw milk price and consumer prices, that indicates that we do have -- that we are doing better in New Jersey.

GOVERNOR BYRNE: Why are we getting a better yield per cow, Phil Alampi?

MR. JONES: Phil Alampi helps, our colleges help, artificial breeding improves the genetics of our dairy cows, the Dairy Herd Improvement Association and our feeding programs, research programs have done a tremendous job. And we do have some industrious dairy farmers.

GOVERNOR BYRNE: Okay.

MR. JONES: And if we do have these loss leaders and a few left processors go out of business, you're left with less

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competition in the long run in the market-place, and it's competition in the market-place which has kept the price so low to New Jersey consumers.

Not long ago we had a head of a small chain in the Philadelphia area. He said he'd like to have retail prices removed. Does that mean the consumer will take home a cheaper basket of cherries? But milk is not the thing to make up for because of its perishable nature.

I think it's been testified about the role of the Department of Health. We have tremendously high standards, particularly in this area which we live in here.

Resale price has contributed to the stability of milk prices in New Jersey. Consumers have derived long term advantages from resale prices and we recommend the present law be continued in the State of New Jersey.

GOVERNOR BYRNE: Thank you very much. I appreciate you not reading this whole thing.

Mr. Wescott.

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MR. WESCOTT: My name is Lloyd Wescott. I've been a dairy farmer in New Jersey since 1936. I've been very active in dairy matters.

I was appointed under Eisenhower's administration to a study committee in 1954 and, Governor, you questioned the complexity of federal order marketing.

The hearing that got ordered in New Jersey into Federal Order #2 started in July. It recessed in December. It reconvened in February and finished in another 30 days. So that's how complex federal orders can get to be.

But Les just commented on the efficiency of farmers. One thing is artificial breeding.

It's interesting to note that one of the greatest bulls who just died had 50,001 progeny. One other had 52,000 known progeny.

GOVERNOR BYRNE: How do you get to know all those bulls?

MR. WESCOTT: I was lucky. It's a lot of bull.

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What I would say is so much repetition; everybody said it and said it. The federal order guarantees us a price. It does not guarantee us a market. And we are dependent upon the market in a very odd way.

We've got to go on farming, milking our cows. It's just as though you struck Ford Motor Company. They couldn't stop making cars. All they could do is make them and roll them off into Lake Michigan. Our problem is the same.

We can't stop milking, feeding our cows. We can't do anything but make milk. We can't wait a day or hours. That is the unique nature of our business.

GOVERNOR BYRNE: Doesn't the alternate market -- the cheese market, for instance, give you some relief from that inextricability?

MR. WESCOTT: Yes, but your handler, he who agrees to take it and who loads it up, send it up to north country. But if I had no market, if my handler went broke, I've got a tank full of 5,000 pounds

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of milk. I've got 120 cows to milk. What do I do?

I turn the faucet and they run out on the ground. Then the State gets back to me for polluting the river, so that it's a problem. I promise you.

One thing we do need is a stable market and price control. Everybody thinks this price control started way back in the '30's. It's a totally different situation.

I don't think we can depend on some of the funding of the past of the marketing of milk control. I think parts of it lasted much longer than they should have, but I think the present system is working.

We do have a stable market. It is not increasing prices unduly and I suppose I would just say if something works, don't change it.

If there is something seriously wrong, something even minimally wrong with the system, change it. But I think the system is working for the consumer, for the handler and for the farmer. Oddly enough.

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We should be interested in selling fluid milk because that's the high-priced milk and we should be interested, therefore, in the higher price of milk but we know that is not going to come about in that way.

We are, however, contributing in the Philadelphia marketing, seven cents one hundred weight, New York State seven cents one hundred weight to promote milk and sell milk and sell fluid milk, so we are interested in our fluid market.

GOVERNOR BYRNE: It was suggested that maybe the retail price maintenance is a contributing factor in possibly to restrain trade now or to fix prices.

MR. WESCOTT: I don't believe that it has. I don't believe that it's demonstrated that it has. I think if it's intimated that it has, I think there are ways to deal with it, adequate ways.

Certainly there is no lack of competition now in our market. It's an excellent market, highly competitive and very active.

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As I say, if a thing works, don't change it.

GOVERNOR BYRNE: Thank you very much.

Mr. Mathis. Again, I would appreciate if you can summarize this and I promise I'll read it.

MR. MATHIS: My observations sitting over there watching people try to summarize their statements extemporaneously, it takes longer than if they read them.

I'm going to try to read it quickly. I think I can read it quicker than if I try to pull it apart and highlight it in my own words and so forth. So start doing this if I get too long.

My name is Joseph C. Mathis. I'm an agricultural economist by profession with specializations in milk marketing and government regulation of business, particularly as it relates to the dairy industry.

I am currently employed as a manager of economics and research for Eastern Milk Producers Cooperative Association, Inc.

My professional education includes

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a Bachelor of Science Degree in dairy science from Cornell University in 1958 with allied study in the fields of business management, agricultural economics, statistics, agricultural policy and milk marketing.

My graduate training, also taken at Cornell University, includes major study in agricultural economics with particular emphasis on milk marketing and a minor in accounting at the Graduate School of Business and Public Administration at Cornell.

In October 1960 I joined the staff of the Market Administrator of Federal Order No. 15 for the Connecticut marketing area as agricultrual economist and supervisor of the Statistical and Public Information Department. I served in that capacity until March 1968 when I accepted employment as an agricultural economist in the New Jersey Office of Milk Industry.

On December 2, 1968, the New Jersey State Board of Agriculture appointed me as acting director of the Division of Dairy Industry in the New Jersey Department of Agriculture, the successor of the OMI.

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While serving in that capacity I was responsible for the economic regulation of the New Jersey dairy industry, which included minimum price regulations at all transaction points from farm to consumer, and the numerous regulations of trade practices deemed to be anti- competitive in nature, or ancillary to the minimum price regulations.

I served as Hearing Officer during 16 of the 42 days of public hearings and then authored the findings of fact, determinations and order now designated as Order No. 69-1. I also was responsible for assisting the Assistant Attorney General assigned to the DDI in successfully defending Order 69-1 through its remand by the New Jersey Supreme Court.

On August 1, 1970, I accepted employment as the economist for Eastern Milk Producers Cooperative Association, Inc. and currently serve in an expanded role in that capacity today. My primary responsibilities at Eastern have related to the economic regulation of the dairy industry at

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both the federal and state levels with particular concentration at the producer milk price level. I have maintained a professional interest and working knowledge of agricultural policy, price theory, government regulation of business, market structure theory and the competitive performance of firms in the marketplace.

The comments I offer before this prestigious body today are made on behalf of Eastern Milk Producers Cooperative Association, Inc., a regional cooperative association of approximately 4,500 dairy farmers residing in the States of New Jersey, New York, Pennsylvania, Vermond, New Hampshire, Connecticut, Massachusetts, Delaware, Maryland and West Virginia. They ship to handlers regulated under Federal Order No. 1, New England, 2, New York-New Jersey, 4, Middle Atlantic, and 36 Eastern Ohio-Western Pennsylvania, and to handlers regulated by the Pennsylvania Milk Marketing Board.

Approximately 75 percent of these producers shipped to handlers regulated

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under the companion Federal-State milk marketing orders for the New York-New Jersey marketing area.

Eastern's members provide a substantial portion of the milk supplies purchased by New Jersey milk dealers and distributed to consumers in the Garden State. In June this year, for example, they shipped over 18 million pounds of milk to those dealers. This represents the production of more than 350 average size dairy farmers on this market. Hence, Eastern has a direct interest in the subject matter here under consideration today.

As one of the largest cooperative associations representing dairy farmers supplying milk to New Jersey consumers, Eastern supports the continued establishment of minimum resale prices as authorized under Chapter 274, Laws of 1971, as amended, and effectuated under Order 69-1 and as scheduled to be amended by Order 79-1.

Since the enactment of economic regulation of the dairy industry in New Jersey in 1933, it has been the declared

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policy and intent of the Legislature of the State of New Jersey, "...to treat the production, sale and distribution of milk as a business affecting the public health and affected with a public interest..."

Under the authority granted by that statute, some 41-days of public hearing were held during the period of August 5, 1968 through May 8, 1969. On the basis of the evidence presented at that hearing, Order 69-1 was promulgated. Extensive litigation, including segeral more days of testimony and affirmation by the New Jersey Supreme Court, delayed effectuation of Order 69-1 until September 18, 1972.

The stated policy adopted by the Division of Dairy Industry, NJDA, underlying Order 69-1 and recently reaffirmed in the issuance of Order 79-1, is to,

> "...establish such minimum prices at retail pricing points to prevent the downward spiraling of prices to unreasonably low levels which, if permitted to exist over protracted periods of time, could be

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harmful to competition in the fluid milk industry of this state and contrary to the public interest.

"This pricing policy, moreover, will continue to permit the free interplay of competitive forces in the marketplace in the determination of the prices at which most milk will be sold."

Underlying that policy declaration was the recognition that price conduct destructive to competition within the processing-distribution sector of the dairy industry not only is contrary to the public interest at large, but that it likely would result in such disorderly marketing conditions as to adversely affect New Jersey dairy farmers.

While we are not here today to justify Order 69-1 or 79-1, as such, the underlying economic forces which necessitated the promulgation of those orders are as much in evidence in the New Jersey dairy industry today as they were in 1969. Time does not permit a detailed recitation of

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those factors in this proceeding, but some of them may be outlined as follows:

1. From a structural standpoint, the New Jersey dairy industry is characterized by relatively few, albeit large, milk processor-distributors. This concentration from the standpoint of dairy cooperatiges and farmers represent fewer alternative outlets for their product. The economic failure of any one of those outlets could result not only in substantial financial loss to producers and to their cooperatives, but a real possibility that no alternative outlet would be available.

2. The concurrent state-federal milk marketing orders regulating the handling of milk at the producer level in New Jersey establish only minimum prices payable to producers and the dates on which such prices are to be paid. They do not guarantee a market for producers nor do they assure that farmers will be paid the prices that are set. Financially disabled processor-distributors not only may be unable to pay adequate handling charges to cover the procurement

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services rendered by cooperatives on their behalf, but also may be unable to pay for the milk delivered to them. Hence, orderly marketing conditions must prevail if milk buyers are to be financially sound so that they may pay cooperatives and producers for the milk and associated services rendered to them.

3. From the standpoint of the public at large, orderly marketing conditions must be maintained so that the structure of the dairy industry does not become so concentrated that price competition is either impaired or destroyed, either of which could result in higher prices to consumers of fluid milk and dairy products, and reduced availability of such products in the marketplace at reasonable prices. That, in turn, could cause consumers to reduce their consumption of these nutritious food products, and adversely affect their health and welfare.

4. The financial viability of the milk processing distribution sector is vital to the economic welfare of local communities, financial institutions, and

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employees, and we've heard several commentators on that. Economic impairment of that sector could have serious ramifications on those institutions and communities.

5. It is our firm conviction that the establishment of minimum below market level prices at resale pricing points, as under Order 69-1 and pending Order 79-1 is the most efficient and effective means of achieving the aforementioned policy objectives and goals. The present regulatory mechanism, as we've heard, seems to have worked well in its history, much beyond my expectations when I drafted it and presented it to the courts, as it turned out. To abandon this unique and proven regulatory scheme for untested and likely less effective control mechanisms is neither advisable nor desirable. Such regulations intended to prevent sales below costs or unjustified discrimination, while laudatory in intent, have proven to be less effective and substantially more costly to administer than the present means of preventing destructive trade practices in the

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MR. MATHIS: I'm a full time employee of Eastern Milk Producers' Cooperative Association.

GOVERNOR BYRNE: Mr. Robert Barry?

No answer, dismissed.

Mr. George O'Brien.

MR. O'BRIEN: My name is George O'Brien of 26 Mountainside Drive in Wayne, New Jersey. I am employed as an agricultural economist by Dairylea Cooperative, Inc., with headquarters at Pearl River, New York.

Dairylea is a marketing co-operative with approximately 4,000 dairy farmer members here in the northwest, of whom 93 are residents of the State of New Jersey. And we sell milk to our largest buyer in this area who is Johanna Farms in Flemington.

We are concerned about the continuance of the resale price regulation because the dairy farmers do have a large stake in the financial stability of their buyers.

For example, an individual dairy farmer advances as much as 40 days credit on

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no production to his buyer. And even when there is twice a month payments, it is at least a 25-day credit outstanding.

The average milk bill, for example, in March of '79 was over $8,000. This is for something like 68,000 pounds or 8,000 gallons of milk.

What we're concerned about with respect to the federal milk order is that the order, while it sets a price, it does not guaranteee the financial stability of the handler by that milk. And, as you know, there was a handler did go into bankruptcy just recently, since about 18 months ago, and dairy farmers involved in delivering to that handler lost about close to $3 million.

So the dairy farmers do have a substantial stake in the business.

There have been many changes as discussed earlier in the way milk is handled and processed, which requires large investments on the part of the handlers and farmers and providing this balancing service for the market.

And the balancing service involves

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the fact that many of the consumers today want to buy their milk on Friday and Saturday for the end of the week and you have peaks, ups and downs, in the bottling during the week with milk being packaged four or five days for the next seven days. Because that's how the cows are milked.

Margins are very tight and it has been demonstrated earlier to the statistics that were shown that handlers' margins are tight and consumer prices are relatively low in the area.

And, to briefly summarize, we're interested in the minimum resale price because we think it provides stability by establishing competitive margins which decrease financial failure.

It promotes full customer service to consumers, which involves the state institutions, schools, restaurants and so forth, and not just the supermarket stores.

And it preserves competition in the markets instead of letting cut-throat process reduce the number of alternative buyers available to the milk producers as

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well as sellings available to the public.

GOVERNOR BYRNE: Thank you.

Is there anybody here who feels now that there is something that's been said this afternoon which cries out for a response or a reaction, because if it's left alone I will be carrying back to my office a great misconception? Never mind conclusions; I'm talking about facts or testimony in that area.

Okay, then let me thank those of you who participated in this hearing.

I'm fond of saying, as I've said to the Legislature on several occasions, that we have to look at what we're doing, that we ought to stop trying to do better what we shouldn't be doing at all, that there are roles for government but that government ought not be participating in those areas where there is no reason to have government participate.

And so in the past years we've tried to get out of the regulation of liquor prices, getting out of the regulation of public movers, something I never wanted to

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get into in the first place; whether the milk market is unique or as unique as it has been portrayed is one of the discussion items here today that has obviously given me pause, the arguments as to the importance of an orderly market, consumer protection versus the arguments that perhaps price maintenance may have some bearing on possible conspiracies to fix prices, the fact that 25 percent or less of the milk actually goes into a retail price-regulated market is a factor.

However, that 25 percent, it's been pointed out, is a very significant factor of the milk production in this state.

In any event, the fact that I had this afternoon and I had the willingness of experts to come and give me the benefit of your views has been very helpful to me and all of us in attempting to arrive at a conclusion and a decision in a very difficult and complicated field.

I'm still a great fan of milk and will continue to drink my quart every day.

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MR. ALAMPI: Will we have a chance to file any rebuttal?

GOVERNOR BYRNE: As I said, anyone who wishes to file anything supplemental or additional or who may have read about this procedure in the papers and wants to write to me, it's not a judicial proceeding at all.

Thank you all again very much.

(Whereupon the hearing was concluded at 5:30 p.m.)

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C E R T I F I C A T E

I, JOELLEN M. FUTEY, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically and was transcribed by me to the best of my knowledge and ability.

Joellen M Futey, CSR

JOELLEN M. FUTEY, C.S.R.

DATE: Sept. 5, 1979

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