veyor of these products, to protect them from their own ignorant abuse of these products. Infants' and other special foods assume increasingly important places in the modern pharmacy as we follow the advance of the sciencelet, Nutrition. Are we prepared to present essential facts pertaining to it?

Along with the above we may add specialized medical service, such as the presentation of veterinary medicines, especially those for cats and dogs, household pets being an important part of family life in every part of the country. The development of this phase of your service, prompted by local life and practices, is an important move. Dental and osteopathic medicines are others.

PUBLIC HEALTH ACTIVITIES.

Supplementing all the above services is the last, and most important, of the pharmacist's duties: that of the intelligent distribution of authentic information to his patrons. Proprietary medicines govern many laymen's therapeutics, and must be purveyed with discrimination by the pharmacist. By rendering an information service about the latest developments in medications, therapeutics and scientific thought, he may materially aid doctors and dentists, as well as himself. The pharmacist's library should be a factor to his pharmacy, not an appendage.

CONCLUSION.

This lengthy, and somewhat elaborate discourse has been intended to focus the attention of pharmacists upon their possibilities. No pharmacy may measure up completely to this yardstick. If pharmacists consider each of these phases, recognize their importance to the public, and appreciate the opportunities for profit contained in them, every one will benefit. Many of pharmacy's ills may be directly traced to our laziness, lack of enterprise and desire to scrap with a competitor over non-professional competitive lines.

More originality in operation and more emphasis on service to the community should be the aim of to-day's pharmacist. Without further thought, great returns will come unheralded in real and psychic income.

FAIR TRADE—PAST, PRESENT.*

BY SAMUEL SHKOLNIK.[1]

The fair-trade movement, aimed at curbing loss-leader selling and predatory price cutting, is now well established and definitely accepted. The legislatures of some thirty-eight states have decided on the desirability of fair-trade legislation and the so-called fair-trade movement. The Supreme Court has spoken on the constitutionality of it. Now, let us analyze just how it has operated and how it is going to operate, what part the manufacturer and wholesaler have played, will play and must play, and what part the retail druggists have played and must play.

Past Is Cited.—We all know that the predatory price-cutting evil reached its peak during the past two decades and the years of depression. It was during those

* Presented before Section on Commercial Interests, New York meeting, 1937.

[1] Legal counsel for the Illinois Pharmaceutical Association and Instructor in Pharmacy and Business Law at the University of Illinois College of Pharmacy.

years, when volume of sales had reached its lowest ebb, that there was a drastic effort on the part of every manufacturer, in order to survive and in order to satisfy stockholders and creditors, to boost the volume of sales, and that resulted in drives to increase sales. In order to do so, it was necessary for them to play the cards as the purchasers of their merchandise, particularly the large organized distributors, wanted them to play. It was not that manufacturers wanted to see the small retailer driven out of business, but to maintain their balance sheets on the black side and to distribute the output of the production departments it became necessary for their sales departments to make concessions—willingly or unwillingly. However, the more they played into the hands of unethical retailers and organized distributors, the more pronounced became the demand for special allowances and secret rebates, requiring a still more intensified drive for volume to compensate for the loss in margin of profit, until it reached a point where the manufacturers themselves could not cope with the situation any longer. During this frenzy of volume distribution they could not afford to effectively consider, less so enforce, retail price stabilization or price maintenance, even if they could legally do so. In the meantime predatory price cutting was threatening the survival of the independent retailer who was not "in" on any of the special buying concessions.

NRA Era.—Then along came the NRA and temporarily saved the manufacturers from the embarrassing problem of controlling retail prices. Generally speaking, under the NRA and the drug code promulgated thereunder, the manufacturer was saved the fight of prohibiting distribution of commodities, at retail, at less than the wholesale list price. With the collapse of the NRA, the problem again became a serious one, and manufacturers were called upon once more to tackle it in some intelligent and effective manner. The organized retail industry demanded it and, the manufacturers not being able to cope with the situation, our lawmakers were contacted. Retailers began to demand some form of legislative action to keep them in business, and the Fair Trade Act was one of the laws sponsored in practically every state legislature.

Supreme Court Decision.—Let us observe just what the title of the fair-trade act provides. We read that it is an act to protect trade-mark owners, distributors and the public against unfair trade practices and predatory price cutting. However, the momentous United States Supreme Court Fair Trade decision disregards, apparently, the plight of the retailer—at least fails to recognize it—and simply declares that the primary aim of the legislation is to protect the trade-mark, brand or name of the producer and that the price restriction program, which is the fair-trade contract program, is merely a means to an end. We, as retailers, were celebrating the victory, but our Supreme Court did not say that the small retailer must be perpetuated in business. There is not even any dictum in the decision where the plight of the independent retailer was taken into consideration or into account.

Artificial Picture.—That is where the fallacy of the whole thing lies. We are not sailing under true colors. If we need legislation to keep us from being extinguished from the business world, then the legislation should be direct. If it is a legislative public policy to perpetuate the existence of small, independent druggists, who serve their community unselfishly, why do we have to sail under the pretext of protecting some one's trade-mark? There is something artificial about the structure. Why advocate the Fair Trade Acts as a manufacturer's aid? Why at-

tempt to defend them from the attack that they are price-fixing statutes and will cause increases in prices of nationally advertised items? Why not advocate and defend them on the ground that they promote fairer and cleaner competition and democracy in business opportunity, eliminating dishonest and predatory business abuses which tend toward monopoly, and thus perpetuate in business the hundreds of thousands of small, independent merchants. Agricultural and industrial tariffs have been passed to aid the farmers and manufacturers, at the cost of higher prices. Why not do the same for the struggling retail distributors? Their turn is long overdue. It would also seem that the slight increase in prices of nationally advertised items is insignificant when compared with the value of the existence of the independent retailer—the backbone of the American community. Unquestionably, the small retailers are entitled to protection even at a small increase in cost to the consumer.

Manufacturers' Attitude.—So much for past history. Now let us ask some pertinent questions: Are the majority of manufacturers really and sincerely behind the fair-trade movement? Are they anxious to operate under fair-trade contracts? In securing the passage of fair-trade laws, how many manufacturers appeared before the legislative hearings in the various states and before the congressional committees considering the Miller-Tydings Bill, to urge the passage of fair-trade legislation? Inventory your experiences and consult your pharmaceutical press and you will come pretty close to the answers. It is a well-known fact that independent retailers, and not manufacturers, are primarily responsible for the passage of all fair-trade acts. Why is it necessary for your fair-trade committees to keep continually fighting with manufacturers' representatives to come under the fair-trade act if it is an act intended primarily to protect the manufacturers' trade-mark? I believe that the manufacturers are still bewildered by the unanimity and tone of the unexpected Supreme Court decision as well as by the terrific force of the country-wide Fair-Trade hysteria; and a good many of them just cannot make up their minds which way to turn.

"Domestication" Not Necessary.—We were told by a goodly number of manufacturers that the reason they cannot come under the fair-trade act, or operate under the fair-trade act, is because it would require domestication in every state where fair-trade acts are in operation. But that is incorrect. The plaintiff in the Illinois Seagram case was the Seagram Distillers Corporation, a Delaware corporation "licensed" to do business in the state of Illinois—not "domesticated" in Illinois. The Seagram Distillers Corporation did not distil whisky and did not own the trade-mark of the Seagram whisky. The Seagram Distillers Corporation was a separate and distinct "wholesaling" corporation purchasing the whisky from Joseph E. Seagram & Sons, another separate and distinct "distilling" corporation, not operating in Illinois. Joseph E. Seagram & Sons, the distillers, the manufacturers, the owners of the trade-mark, were not a party to the suit. They did not enter into fair-trade contracts. The wholesale firm, Seagram Distillers Corporation, the plaintiff in the suit, did enter into fair-trade contracts and did sell in Illinois. And our Supreme Court upheld the wholesaler's right, the Seagram Distillers Corporation's right, to protect the minimum fair-trade contract price of the whisky.

The Joseph Triner Corporation was the plaintiff in the second Illinois suit, involving Schenley Whisky products. The Joseph Triner Corporation is a Chicago

wholesale liquor concern. That corporation does not own the Schenley trade-mark but is engaged in marketing Schenley products. The Supreme Courts of the state of Illinois and of the United States held that, as a wholesaler, the Joseph Triner Corporation had a right to protect the minimum fair-trade contract retail prices and the trade-marks of the Schenley brands of liquor.

Dr. West's Case.—The recent decision of the Wisconsin Supreme Court in the Weco Products Company case, which relates to direct Manufacturer—Retailer contracts rather than Wholesaler—Retailer contracts, is even more conclusive on the subject. In that case the Court upheld the right of Weco Products Company, an Illinois corporation "licensed" (not "domesticated") to do business in Wisconsin, the plaintiff in the suit, to protect the good-will of the trade-mark "Dr. West's" used by it in connection with the tooth brushes and tooth paste which it produces and markets, and held that it is entitled to an injunction restraining a Wisconsin price-cutter from advertising or selling "Dr. West's" products below the minimum prices provided for in outstanding fair-trade contracts in Wisconsin covering same, even though the price-cutter is not a party to such contract and notwithstanding the fact that the plaintiff ships its merchandise to Wisconsin from Illinois—interstate—and is not "domesticated" in Wisconsin.

Fair-Trade Contracts.—Apply the principles of these decisions to our fair-trade problem, and you find a perfect set-up with or without the Miller-Tydings Bill. Under the two Illinois decisions, there is nothing to prevent any wholesaler in Illinois, or any other fair-trade state having a similar law, from entering into fair-trade contracts covering any and every commodity which bears a trade-mark and is in free and open competition with commodities of the same class produced by others, regulating the minimum resale price of that commodity, whether the manufacturer wishes it protected or not. Indeed a paradoxical situation may arise if a wholesaler should enter into fair-trade contracts providing for the minimum resale price of a commodity contrary to the wishes of the manufacturer thereof. If in a suit to enforce such wholesaler's fair-trade contracts, the manufacturer should intervene and assert its stand as being opposed to the price-restriction plan, what would the decision of the Courts be? While it is unlikely that a manufacturer would risk taking such a stand openly, it remains for the Supreme Court to have its final say on it, if, as and when it comes up. And under the Wisconsin decision there is nothing to prevent any manufacturer of a branded competitive commodity from entering into fair-trade contracts covering same even though such commodities are shipped in interstate commerce and the manufacturer thereof is not domesticated in the particular Fair Trade state.

Miller-Tydings Bill.—These remarks would not be complete if I did not touch upon the recent developments in the Miller-Tydings bill. That bill, as you know, was reported on favorably by committees of the House and Senate, and was to come up for a vote. Its passage was almost a certainty until the presidential stop order was announced. There have been some speculative rumors and guesses as to what prompted the presidential action, but one guess is as good as another. The administration economists have another side to concern themselves about—the consumers' side—which we, as retailers, in our sincere effort to extricate ourselves from the burdens placed upon us by the predatory outlets, are prone to underestimate, if not overlook. I wonder just how much effect the insistence by so many of

the fair-trade committees on the so-called $33^1/_3$ per cent mark-up had on the opinion of the administration economists and on the presidential stop order? Even though we assume that a $33^1/_3$ per cent mark-up is needed, that is an average mark-up, and by an average mark-up we do not mean a mark-up of $33^1/_3$ per cent on the fast moving items. The term average presupposes, of course, some figures below and some above, and which products should be sold below the average if not the products for which manufacturers have created a public demand, which require no professionalism to sell and for which we assume no responsibility to society.

Coöperation Essential.—Failure, if any, encountered in the practical operations of the Fair Trade Act, is due chiefly to misunderstanding, uncertainty, lack of cooperation and novelty of the plan rather than any fallacy of the Fair Trade principle. In order to have it operate smoothly and efficiently, a sincere effort is required on the part of each branch of the industry, although it would seem that there is now no moral force left to appeal to. Branches of industry are fighting just as much as governments all over the globe to perpetuate their own existence. Each industry is struggling to get along, even though it must do so at the expense of others. That only means that our responsibility as an organization is still greater. But what can we do?

Retailers' Duty.—What is our duty to the manufacturers? We cannot continue to enjoy the benefits, reaping the harvests of the fair-trade victory without being called upon some day to pay the fiddler. Do you suppose that the activities of certain department stores in telling the public that the fair-trade act means increased prices to the consumer on nationally advertised items are bound to boost the sales of the patent medicine manufacturers? Definitely not. Such activities, coupled with extensive clever advertising of competitive items, cannot help but decrease the sales of the patent medicine manufacturers. Under such a program, consumer resistance is bound to be built up.

Maybe manufacturers generally will not realize it until six months or a year or two from now. Maybe some others will not dare to say anything about it until six months or a year or two from now, although they will realize it long before. But how long can we expect them to tolerate it? I believe we are headed right now toward the very thing which is being inaugurated in some of the states, and that is "concentration week" drives. Every week, perhaps, we may be expected to do something for a manufacturer who has fought our battle, who has sacrificed his own volume to protect retail prices on well-advertised, rapid-turnover products, so as to increase our profits or at least keep them at the same level. Unless the majority of the independent retailers get "actively" behind those who are trying to help them in carrying along the fair-trade fight, we may expect to see the defeat of the entire program.

Enforcement.—It would seem highly advisable that retailers, and particularly retailers' associations should keep their hands off the enforcement of the Fair Trade Act and contracts. Remember, the title of the act and the reasoning of the Supreme Court in upholding the act deal directly with the protection of the trademark of the owner or producer of the commodity and not with the perpetuation of the small retailer in business, although that may be written between the lines and may have had a very important bearing upon the court's decision.

Let us not encourage consumer opposition and wholesale revolution against retail groups organizing to enforce fair-trade legislation. If the manufacturer does it or if the wholesaler does it, the consumer cannot point his finger and say, "The druggists got together. They had the bill passed in the legislature and are now trying to enforce higher prices on trade-marked commodities." Let them rather say, "The manufacturer is trying to uphold his good name, his reputation and the trade-mark which is so significant of the origin of his product, of the quality of his product and guarantee of the continuity of that same quality and nature of the product." That is the substance of the act that is the substance of the decision, and the enforcement should be pivoted around the wording of the act and the spirit and language of the decision; otherwise, we may be treading on unsafe grounds. If any action is to be taken by a retailer, it must be by an independent retailer, whose business is being crushed by unfair methods of competition, but not by an association of retailers.

MOTIVATING THE COURSE IN MATERIA MEDICA.*

BY VICTOR LEWITUS.[1]

The writer, who has been teaching Materia Medica and Toxicology for the past ten years, passes on the following material for what it is worth to those who may find something of value in this method as securing motivation for one of the major subjects in the pharmaceutical curriculum; namely, Materia Medica.

The student who begins a new course, has a right to know why it is placed in his program; and the novel method here proposed attempts to point out one way in which the student, by his own findings, can answer the question. This system has been employed by the writer in his recitation classes for the past seven years with apparent success. The difficulty of determining to what extent such a method is successful, is obvious to the experienced teacher of the subject.

It might be pointed out at the outset that this method is applicable to other fields or subjects than those herein mentioned; the method of attack being the important point of consideration for this article.

The first week that the class meets in the recitation, a discussion of the purpose of studying Materia Medica is initiated. There follows more or less of a "free for all" debate, and no particularly definite conclusion is reached, since where liberal discussion is permitted (as it should be) there are often as many "pros" as "cons;" and this is exactly the basis of the psychology which enables the writer to carry out his experiment, or rather to create the desire in the students to test out their several contentions.

Sometimes it takes the first two recitations to convince the class that experimentation is necessary (the term "experimentation" applying to a testing out of one's convictions to see whether they be true or false).

At the opportune time (this varying with each class as has been indicated) the following table is given to the class as an assignment to be brought in the following week:

---

* Presented before the Section on Education and Legislation, New York meeting, 1937.

[1] Instructor in Materia Medica, Columbia University, College of Pharmacy.