Robert G. Porter

HISTORY OF THE

U. S. FOOD AND DRUG ADMINISTRATION

Interview between:

Robert G. Porter, Retired
Planning Officer, Region VIII

and

Fred L. Lofsvold

Denver, Colorado

October 19, 1981

INTRODUCTION

This is a transcription of a taped interview, one of a series conducted by Robert G. Porter and Fred L. Lofsvold, retired employees of the U. S. Food and Drug Administration. The interviews were held with retired F.D.A. employees whose recollections may serve to enrich the written record. It is hoped that these narratives of things past will serve as source material for present and future researchers; that the stories of important accomplishments, interesting events, and distinguished leaders will find a place in training and orientation of new employees, and may be useful to enhance the morale of the organization; and finally, that they will be of value to Dr. James Harvey Young in the writing of the history of the Food and Drug Administration.

The tapes and transcriptions will become a part of the collection of the National Library of Medicine and copies of the transcriptions will be placed in the Library of Emory University.

Robert G. Porter

DEPARTMENT OF HEALTH & HUMAN SERVICES — Public Health Service

Food and Drug Administration
Room 500 U.S. Customhouse
721 19th Street
Denver, Colorado 80202
303-837-4915

TAPE INDEX SHEET

CASSETTE NUMBER(S) 1-3

GENERAL TOPIC OF INTERVIEW: History of the Food and Drug Administration

DATE: October 19, 1981 PLACE: Denver, Colorado LENGTH: 174 min.

INTERVIEWEE	INTERVIEWER
NAME: Robert G. Porter	NAME: Fred L. Lofsvold
ADDRESS: [redacted]	ADDRESS: U. S. Food & Drug Admin.
Denver, Colo. 80231	Denver, Colorado

FDA SERVICE DATES: FROM 1942 TO: 1977 RETIRED? Yes

TITLE: Planning Officer, Region VIII
(If retired, title of last FDA position)

CASS. NO.	SIDE NO.	EST. MIN. ON TAPE	PAGE NO.	SUBJECT
1	A	0	1	Introductory Remarks.
		1	1	Early inspection work in San Francisco and Denver.
		6	3	Goat cheese mfg. in S. Colo. and cheese factory work in general.
		10	5	Transfer to Chicago - OTC (sale of dangerous drugs over-the-counter) work in Chicago.
		14	7	Central Pharmacy, Gary, Ind. (OTC) case, early use of portable recorder, procedures in OTC close-out inspection.
		20	10	2600 S. State Drugs, Chicago (OTC case)
		26	13	General discussion of court work, arraignments, testimony in court.
1	B	0	16	Continuation of above.
		4	18	Additional remarks about goat cheese industry in S. Colo.
		9	20	Inspection of cream used in butter making.
		16	24	Destruction of peanut butter during the war, comments about Commissioner Paul Dunbar.
		22	27	Wendell Vincent.
		27	30	FDA attitude about publicity in the 1940's, Vincent's attitude.
2	A	0	33	Salk Polio vaccine.
		4	35	Oleomargarine in Public Eating Places.
		10	38	Investigation of side effects of antibiotics

CASS. NO.	SIDE NO.	EST. MIN. ON TAPE	PAGE NO.	SUBJECT
		22	44	Major inspector recruitment and training program in the mid 50's.
		29	48	Establishment of position of supervisory inspector, inspector training.
2	B	0	49	Continuation of above.
		2	50	Transfer to Washington in 1963, Bureau of Program Planning and Appraisal.
		5	57	T&P System.
		6	52	History of FDA Field Management Information Systems, Project System, Flex-Site System, Forms "O" and "P", T&P System, PODS (Product Oriented Data System).
3	A	0	62	Continuation of above.
		12	68	Field Workload Study.
		22	73	Project Hire.
		24	75	Discussion of FDA work of Mildred L. Porter (wife), pesticide residue methods.
		26	76	Transfer to Denver as Regional Planning Officer.
		29	77	Retirement, re-employment to work on FDA history project.
3	B	0	78	Continuation of discussion of FDA history project.
		4	80	Discussion of Commissioners, Walter G. Campbell, Paul B. Dunbar.
		6	81	Charles Crawford, George Larrick.
		12	84	James Goddard.
		20	88	Dr. Ley, Dr. Edwards, John L. Harvey.
		22	89	Sherwin Gardner.
		24	90	End of interview.

This is a recording in the FDA oral history series. We are recording today Mr. Robert G. Porter who retired as Planning Officer at Denver Field Office. Recording is being made at the Denver office of the FDA. The date is October 19, 1981. Interviewer is Fred L. Lofsvold.

Lofsvold: Mr. Porter would you please give us a brief run-down on your career with the FDA.

Porter: Sure Fred. It feels different being on this side of the interview since I was the interviewer in most of these, in all the history recordings that I did. I was hired by the Food and Drug Administration as a Food and Drug Inspector in 1942, and reported for duty at San Francisco District. I don't think I'll go into too much detail about how new inspectors were handled out in the Western District because we got that pretty well outlined I think, in your interview. After only two months in San Francisco, John L. Harvey who was the District Director, called me in and asked me if I'd like to go back to Denver, which was my home part of the country and I was glad to come, so after only two months I was transferred to Denver. About two months later I was transferred to Salt Lake City as a junior resident over there. I think my career can be sort of divided into fourths. About the first ten years I spent in Denver District; most of the time in resident

posts, either at Salt Lake City or Albuquerque. The next approximate ten years I spent at Chicago District. The next approximate ten years I spent in Washington at headquarters, and then I spent a final five years in Denver as Regional Planning Officer. Retired in 1977 and have been a part time employee since that, working on the history project. To go back then to the beginning. In San Francisco, after a real brief training program which had been shortened a great deal during the war in order to get new inspectors out and doing productive work, actually I mostly sampled butter. That seemed to be the training grounds in San Francisco, and I sampled butter for two months. It was only after that time that I was taken out on a trip and given some training in factory inspection work. Consequently, when I came to Denver in November of 1942, I was treated as if I already knew how to be a food and drug inspector, and actually about all I knew how to do was to sample butter. So I was just thrown assignments and I did the best I could and I was corrected later. Maybe that's a good training method. Denver in those days was working very heavily in the dairy industry. We not only inspected more than once a year all of our cheese plants and butter plants, but we even covered such small industries as the goat cheese manufacturing down in southern Colorado, in the

Trinidad/Walsenburg area. I had some pretty interesting experiences driving back through the hills to where families would have three or four hundred goats. These weren't real milk goats, these were goats that they had purchased down in Mexico and they were kind of, I don't know what you'd call them, they were Mexican goats. They only gave as I recall, about a half a pint per milking. They milked them twice a day and had no way of keeping milk so they made cheese twice a day. At least one of the places I went to there was no road, and I actually drove the car up a dry creek bed to get within walking distance of the, what was really their home, but they had a little cheese room outside.

The main thrust in those days on the cheese program was sanitation. Milk generally, in Colorado and Utah, and really my experience was mostly in Utah, in most cheese plants the milk came in from, sometimes as many as a 100 or a 120 producers. Each of whom milked a few cows, often they milked them out on, just right out on, outside wherever they found the cows when it got to be milking time. The milk was filthy, so that we would run sediment tests on all the milk that came in. As an exhibit, in addition, we would get the actual milk filter that they used to run the milk through, and this would be our evidence of the

filthiness of milk. I think we did a lot of good, certainly the industry improved. Incidentally that industry has almost disappeared now. There aren't very many cheese plants, or the kind I'm talking about. They're mostly large manufacturers. They have few big producers and the whole picture is different now. But it was an interesting time and as I look back, in view of the experience I've had since then, I know we did good, but on the other hand I think we were sort of obsessed with that industry here in Denver, and put too much time on it. It wasn't unusual to go on a road trip and inspect a cheese plant every day of the week, for literally, weeks at a time. It wasn't unusual to cover the same plant 3 or 4 times in a year. I believe this was an inordinate amount of time for that one industry.

I was a resident, most of the time I was in the Denver District. I was a resident in Salt Lake City in 1943 and 1944 and then I came back to Denver and worked out of headquarters for a couple years. I was then made resident in Albuquerque. At that time Denver covered New Mexico and west Texas and I traveled so extensively that I sold my personal car and just lived in a room, and most of the time was on the road in a government car. The work down there was rather varied, we still were doing a lot of dairy work.

Most the work was in the Amarillo, Lubbock, and El Paso areas. There was very little going on in New Mexico at that time that was of interest to us. I came back to Denver for a short tour of duty. Then I was sent back to Salt Lake City for another 2 year stint. From there in 1952, I was transferred to Chicago.

In Chicago, a place which I did not want to go to and I had no choice, I actually, once I got settled I found that the work was very, very, interesting. Chicago, in some respects, the center of the food industry, the big food corporations had their headquarters there. And in addition, there was drug work, very, very interesting work in the City of Chicago. I think one of the big projects while I was there was the OTC work, the investigation of the sale of dangerous drugs over the counter. Some of my most interesting court work was in this project. I recall that when I first went to Chicago, they had been doing a series of investigations on the sale of drugs and they had about 7 or 8 drugstores that were ready for the close out investigation. There was a great deal of concern by the management in Chicago that these drugstores all had a gang connection. They were somewhat worried about our going out and making the close out investigations, so they scheduled them all at one time. We divided up into groups, or into

pairs, I should say and we all arrived at our respective drugstores at the same time. One inspector, a senior inspector was designated to do nothing but to drive from one store to the other to see if we were all right. This was kind of my initiation to Chicago. The store I got was down on 47th street. To a boy raised out west and who had never seen the kind of conditions you do see in a very large city, it was a very frightening experience. We had no problems and we did build a number of prosecution cases based on those investigations.

Lofsvold: Did you consider having local police accompany you?

Porter: No, I was not in management at all at that time but I'm sure the reason was that you couldn't be sure but what the local police would tell on you. They would alert the stores, and of course that was the whole idea of doing this on a simultaneous basis. For if there was any connection between these stores they wouldn't be able to alert each other if we started just on a piece-meal basis.

Lofsvold: Bob, you mention the close out inspections in these drug cases and we've talked about it on other recordings. I don't think anyone has ever described what it was we did and what we were looking for during that kind of an inspection.

Porter: Well, as you know, the original buys were made incognito. You would try to dress and act like you were a resident of the area or truck driver, or whatever the background of the investigation would indicate, that you would go in there and be sort of a normal customer for that particular store. After you had made a number of buys in this fashion, we did what was called a close out inspection. At this time, you would go into the store, usually you would make one final buy, still incognito. Then once that purchase was consummated, you would identify yourself, and inspect the pharmacy department of the store. Your main goal was to find out who the responsible parties were and then to determine the source of the drugs, so that they could be traced to interstate commerce and you could build a federal case. I recall at least a couple rather interesting close outs that I was involved in, while I was in Chicago. One was the Central Pharmacy case at Gary, Indiana. This was a second offense. This store was run by a fellow named Max Capestani. Max had been prosecuted for selling drugs over the counter. Then several inspectors had made buys at the store so I was assigned to go down there and make a few buys and do the close out investigation. I remember that I always planned to arrive at exactly the same time in the afternoon as if I was a local

workman getting off from work. I would try to dress as a workman would and usually buy a little something at another store in the neighborhood so that it looked like I was coming home with the groceries or with a piece of hardware that I'd bought on the way home. The idea being that I was giving the opportunity to sell to me as if I were someone in the neighborhood who did drop in his store from time to time. I made my buys and at the time of this close out investigation, we decided that we would record the conversations that took place during the close out. Now this was in the very early days of the use of such equipment. We had rather a bulky, wire recorder. It was about the size of an ordinary building brick. I had to dress in some way so I could cover up such a device and what I used was an old leather jacket that sort of pouched out around my middle. This was I think, I suspect it wasn't the first, but I'm sure it was one of the early uses of that kind of equipment, and I did record our entire conversation during the close out. We had no real problems. We were able to trace the drugs and the case was brought. Since it was a second offense, the case was brought before a grand jury in Gary, Indiana. We got a true bill and we did not use the recording. The United States Attorney and our own people had decided that they weren't just sure what the court

might think of this kind of concealed use of a recorder. It was just kind of going to be our ace in the hole, if we had problems.

The case went to trial, again we didn't use a recording, but I was all set up to use it, I had a speaker system that I could have used to broadcast in court what happened. We didn't need it. Essentially during this close-out I had my conversations with Capestani about the last buy, I then identified myself, went into the back room and searched out the drugs that he had been selling me, copied their labeling and got a sample of the drugs so they could be compared and then went through his records and found where he had bought them in interstate commerce. In Gary, Indiana, it was almost for sure that he had bought his goods from a wholesale druggest in Chicago, which of course would give us the interstate commerce that we needed.

Then another aspect of the close-out invesgitation was to go through the drugs store's file of prescriptions and rather painstakingly record all the prescriptions for the drugs we were interested in, go through his invoices of drug purchases and see if, in fact, the comparison of the figures of the prescriptions as compared to purchases tallied up or if there were many purchases that could not be accounted for in the prescription file. This is, of

course, what we found in at this store, that he had made buys of a great deal of the drugs on a wholesale basis and only had a relatively few prescriptions to show for what happened to them.

Still another thing that we wanted to do in these close-out investigations was to make sure that the druggist knew that such sales were wrong. Obviously any druggist should know that. But what we did was to see if he was a member of associations, if he took publications directed towards pharmacists, because by this time such publications often had articles and advice to pharmacists telling them that this was an illegal thing to do and cautioning them against doing it. So when you got through with your close-out investigation, you knew how many of the drugs in question he bought, how many went out on prescription, you had an idea whether--at least you had some document that would show that he had every reason to know what he was doing was wrong and you had traced the drugs to interstate commerce. I believe if you got all four of those items you pretty well had your investigation pinned down and you had a case that would hold up in court.

I did have another interesting close-out in Chicago and I'd like to talk about it briefly. It was the 2600 South State Drug Store in Chicago. It was sort of a

combination situation. There was a drug store on the corner and right next door was a night club and there was a connecting doorway between these two establishments and they were run by essentially the same people, although I think they actually did have two different corporations and overlapping corporate officers. This case had been built by other inspectors, I was assigned to do the close-out, which I did without too much actual difficulty.

When the case came to trial, though, and we put on our case and the defense started their case, the first thing they did was to say that I--the first position they took was that I had performed an illegal inspection because I had not given a notice of inspection to the person in charge of the drug store. When I had given the notice to the one of the partners he'd accepted the notice, told me that he was the president of the corporation and now their position was that when I gave the notice of inspection we were actually standing over on the night club side of this connecting doorway and that this man was the president of the night club and had nothing to do with the drug store. Well, there was all sorts of overlapping, practically everybody, the officers of one of these establishments was also an officer in the other and I don't think we had very much trouble with that. But it was an interesting defense

and I suppose if true--I don't know. What happened this case was before Judge Hoffman who later became quite almost--I guess notorious isn't the right way to talk about a federal judge, but very well known in the case against--who was it, the Chicago Seven?

Losfvold: Yes, and he also sat in the case that we brought against that cancer cure.

Porter: Oh, on the the Krebiozen case he was the judge. Well, I liked Judge Hoffman tremendously and I think one of the reasons I did is that when this 2600 State case was finished and he made his statement in open court, he just accused the defendants of lying, said the federal inspectors had given excellent testimony and that they had no axe to grind, they had--he believed them, in fact he chose to believe them over what the defendants had said. And he found them guilty and he actually imposed a jail sentence. This is kind of an interesting thing right there, it's one thing to do all the investigation and get all the evidence and go into court and testify, but it gives you a funny feeling when these people you've been dealing with suddenly are put in handcuffs and dragged out of court in chains, so to speak. It isn't a feeling of great satisfaction, it's kind of a sad thing.

Lofsvold: I think that's true for any FDA employee, we're engaged in the business of making investigations, with a view to charging people criminally. I know for myself in the beginning I had some problems dealing with the possibility of people going to jail because of my activities. I found that when I looked at it objectively and impersonally, we were dealing with people who were in a business that could menace the public health or sensibilities and they knew the rules, we knew the rules and if they chose not go abide by them it was not my fault that they found themselves in difficulty.

Porter: You know, I had a few court related experiences that I might just kind of bounce around a little bit and talk about because court experience is kind of a rare thing nowdays and in those times we were bringing a lot of cases. I was a resident, as I mentioned in Salt Lake City and in Albuquerque all together for many years and it was a resident's duty in those days to be the Food and Drug representative at arraignments. Consequently, you appeared in court quite often as the representative of FDA. Very often the Assistant U.S. Attorneys, at least the ones I had experience with, rather than familiarize themselves thoroughly with the case at the time of arraignment would make some statement like, "Your Honor, I have Mr. Porter of

the Food and Drug Administration here in court with me and I would like him to give the statement regarding the facts of the case." And then you stood up in court and did just that. It's good experience for a young inspector, kind of frightening in a way and yet, I think you learned a lot and you learned to discuss the cases in a formal atmosphere of court and so on, and I think it was very good.

Also during my years as a resident down in Albuquerque, actually I spent most of my time in Texas, we had the interesting situation in Amarillo and Lubbock where the court had traveled from Fort Worth to that point. All the court officers did too and they would often be staying in the same hotel you were in and you would find yourself in conversations with them and while you didn't discuss the current case maybe that you were all interested in, it was a very educational thing to sit in a hotel lobby in a little circle with a federal judge and his clerk and maybe the Chief Marshal and the U.S. Attorney and the Assistant U.S. Attorney and sit around in a bar or in a hotel lobby with a drink in your hand and just talk. I wasn't too old and I knew I learned a lot and it was an experience that I think doesn't happen any more. I believe if those experiences are still going on they're pretty much compliance officers who are handling the cases and the inspector doesn't have

that kind of a contact. But you see down there in Lubbock and Amarillo I would build the case, I would make the inspections, I would collect the samples, I would attend the arraignment and make a statement. I'm speaking of myself as typical and this is what all residents did all over the country. If the case went to trial I went to see the witnesses and gathered them up and saw that they got into town, sort of shepherded them during the trial and often, of course, had to testify myself. So this was really a tremendous thing, I think, and you learned things that stood you in good stead later in life.

I've had some interesting experiences in court. When the new judge in Utah came in--who was the judge later on caused us a lot of trouble?--Judge Ritter. Actually, we had an arraignment based on a substandard cottage cheese case in Ogden, Utah, scheduled the very first day that Judge Ritter sat on the bench in Ogden and two things I think were of interest there. The Bar in Ogden had practically all of their members attend this first open court session of Judge Ritter's to welcome him to the Ogden area and to make some fancy speeches. After all of this fal-de-ral took place, the very first thing that happened was the United States versus the "X" cheese company and I found myself not only standing up for the arraignment in

front of Judge Ritter, but at my back the entire public area of the courtroom was full of lawyers who had come to honor the judge.

Judge Ritter instituted something which I think maybe was always true in other court jurisdictions and which I think is a good idea. He would not just let a government agent stand before the bench and discuss a case at arraignment. He insisted that if the U.S. Attorney didn't make a statement himself, then the representative of the government agency must be put on the witness stand and sworn and be opened up to cross-examination. An excellent idea, I think, and it caused me no trouble because in some respects testifying from the witness stand is really easier than just standing up giving a kind of a monologue sort of statement. It does open up the case for cross-examination. It's been my experience since Food and Drug doesn't bring cases unless they have real good evidence. It's really been my experience that the defense attorney often did his client more damage in cross-examination than he did him good. I had the occasion, I remember in, later, in Amarillo in a case against a dirty bakery company, where we got a plea of guilty, but that judge insisted that if I were to make a statement before he sentenced them, I must get on the witness stand and be open to cross-examination.

Based on my inspection, I was able to tell some real kind of horror stories, this was a dirty place. While I was walking up the stairs with the manager, a mouse came running down the stairs and the manager actually crushed him with his foot. Pretty gruesome evidence that there were mice in the plant. Also I had found some extremely dirty bread pans, just almost beyond description they were so dirty. I had wrapped a section of bread pans, in a commercial bakery, I believe there are four pans as I recall welded together and I had taken these pans, wrapped them in wax paper and then in heavy paper and sealed them, and the office had kept these as an exhibit to be used in court. So these were handed to me in court. I opened them up on the witness stand and they were, not only were they obviously to the eye were they filthy, but the judge said, "Let me see those." And so I walked from the witness stand and handed these dirty pans to the judge. He looked at them just a few minutes, handed them back to me, and it was interesting to see him wiping his hands on his robe, because they were greasy and dirty and horrible. Well, you have some interesting situations in court like that and I had quite a few of them because I was a resident.

Lofsvold: You mentioned earlier your experience in inspecting the goat-cheese industry in southern Colorado. I think that no longer exists either, but what kind of an industry was this, really, how did they make that cheese?

Porter: Well, the cheese they made for most parts was called incanestrato cheese and they also made a hard romano type cheese. The goats would come down, well in the first place this was a family industry, a cottage industry. They would have a little cheese house out in the yard, near the pens where the goats would come in. The goats would come down out of the hills, there was usually a little boy in the family that took the goats up into the hills to eat all day. Come down in the evening, the goats would be milked, they had kind of a place where the milker could sit and the goats kind of jumped up on a little shelf beside him. They were milked between the back legs. The goats were very smart and they knew when they were through giving their milk, they would jump off and the next goat would be nuzzling right there to jump up and get herself milked. They would get a small amount of milk, maybe ten or twenty gallons or something, out of three hundred goats. The cheese house, often was a little adobe shack. The cheese kettle was just a large half-round kettle, usually imbedded in adobe in such a way that from the outside of the

building there was a fireplace opening and they could build a fire in there and that would heat the cheese inside. They had no hot water for cleaning and they would make one cheese out of this milk. All of it would go in a pot, be heated and the rennet would be added. And when the cheese was ready to cut and press, it was just taken out of this one kettle and that was one cheese. Or if it was ricotta, well you know you don't press it, it's a little different kind of cheese. Basically it was the equivalent of probably, don't hold me to it, but maybe a ten pound cheese. Most of this cheese went to the east coast. There was one wholesaler, a concentrator of cheese in Trinidad, he was a physician. His name was Stonebreaker, and he would go around and buy cheese from all of these little family operations and when he had a load and had a sale for it, it would be shipped off, usually to New York or Chicago. He was one person we inspected regularly and seized quite a bit of his cheese because this cheese was really filthy. It's hard to believe what that milk looked like when it went into the cheese vat. In the first place, goat cheese gives a little bit of an unsightly effect because it has such a high butter fat content, little globules of fat are floating on top. But then when you mix this up with all sorts of manure fragments, it was a pretty sorry looking

mess to be something that later on you were going to eat. There's kind of an interesting story about Stonebreaker. He was a physician and surgeon in Trinidad, and when Gene Spivak sort of took over this assignment, which I'd had a couple of years in going down there inspecting these plants. He was down there one time and he came down with acute appendicitis, and they took him to the hospital and operated on him and the surgeon was Stonebreaker. He didn't know who Spivak was, he was an emergency case. A few days later, the doctor came into see him and at this time he, you know, asked him who he was and what he did, and when he mentioned that he was an inspector for the Food and Drug Administration, Stonebreaker pretty near had a fit. He said, "I'm not sure I would've saved your life." I hope he was kidding, but...he was not a friend of the Food and Drug Administration. So Spivey tells that story and it is true. Stonebreaker somehow got into this cheese business on the side.

Another aspect of the dairy work that we did in those days involved the inspection of cream used in butter making. It was customary for farmers all around the area to milk and to separate the milk and save the cream and periodically, once a week or some such matter, ship it into the nearest big creamery. There were several of these

operating in Denver back in those days. You would get one or two cans of cream from each producer. Come in Railway Express. Cream that had been saved over a period of a week, where the can was probably on the back porch of the farm, often had remarkable things that had fallen into it. During the course of this time we, I didn't, one of my fellow inspectors found one with a whole leather jacket in there. Not uncommon to find mice in it. It was a pretty bad operation and it's a thing of the past.

Here in Denver, Wendell Vincent, who was the Director, who was a very good law enforcement officer, very avid, very interested in catching people doing what was wrong, had started a cream campaign. It was his idea that we would go and sample the cream for filth, now I'm talking about, at a time when they would least expect us. So at least two years, and I think three years, hand running, we had a cream campaign on New Year's Day. We had to get up early New Year's morning and go, each to an assigned creamery, sample all the cream on hand. The laboratory people had to work that day, and our sample custodian in a car would go from one creamery to the other, pick up what we had sampled up to that time, take it down to the laboratory. They would filter it, check it for filth elements and before the end of the day we would know which cans

of cream were dirty enough to take action against. We then did something, which I suspect was illegal, but which worked. We had stipulations, blank stipulation sheets which we would fill in as to the name of the shipper and how many cans of cream were involved and so on. Get the manager of the creamery where they made the butter to sign it and to dump the cream. The stipulation would, in effect be an agreement on their part that the cream was filthy and unfit for use. Very expeditious way of handling it, although, I don't think due process maybe was involved.

Lofsvold: At that point I guess the farmer still owned the cream, and the creamery operator was agreeing to have it destroyed although it wasn't his cream.

Porter: That's right, because he certainly wasn't going to pay that producer for bad cream. Well, now, I think before, a little bit before my time, or maybe in some other areas, in addition to running the cream for sediment we had people who were trained as cream tasters. They would use a glass rod and dip it into the cream and taste it and they could, through their experience and training, could tell when the cream was decomposed and unfit for use. I didn't ever have that training, and I didn't do that kind of work, or was not involved in that kind of work, and I think it's because there was a danger to health involved. Some of

this cream could transmit brucellosis. To my knowledge none of our people ever got sick although, I, it might have been true that they did, but in any event, we were not tasting cream during my career. But you have some experience with that I presume.

Lofsvold: No, I never was involved in that kind of work but I know that it was a practice before you and I came to work for the agency, to conduct cream tasting campaigns and condemn cream on the basis of decomposition. Before we had adequate ways of testing cream for filth.

Porter: Well that's, as I say, that is true, but I just didn't get involved in that kind of thing. We did alot of work on filth in cream, as well as filth in milk for cheese making.

Lofsvold: None of that problem I think exists anymore, because of the change in methods of preparing butter where practically all of it's made from milk that is brought, as milk, every day to the creamery. Separated on the spot and churned, so that they don't have the opportunities for contamination and decay that you had when the cream was held for long periods of time under questionable conditions on the farm.

Porter: You know there's a little side light to that. During World War II, housewives and everybody, but

housewives particularly, were asked to save fats of all kinds and they could actually, I think, take a pound of fat back to their butcher who acted as a collecting agent. This would go into industrial uses. We were not allowed to throw, literally dump the cream during the war, but what happened, it was set aside, and then we would have to prevail on some creamery operator, some butter maker, to take this filthy, and by the time it sat around for awhile, decomposed cream, and churn out the butter fat. This was a little hard to do because it meant they had to thoroughly clean all their area and their churn afterwards. And then this butter would be delivered to a rendering plant for non-edible use in the war era. This was true of anything that we seized in those days that had a high fat content, instead of just dumping it. It had to go to rendering plants. All of this under bond after seizure, and at the rendering plant they would get out the fat and it would be non-edible fat for the war effort.

I had an interesting experience involving Commissioner Paul Dunbar in regard to this. I sampled some peanut butter which we seized either because it was short weight or because it was high in, I believe it was called alcohol insoluble solids. Anyway, that would be shell, and this was seized up in Idaho Falls, Idaho. The U.S.

attorney hadn't gotten the word about saving fat and hadn't so made out the papers, and the marshal was directed and did take this out and dump it. Well, an alert reporter in Idaho Falls picked this up and realized that here the government was making housewives save all their fat and return it back to get it into the war effort and the government itself was dumping what amounted to thousands of pounds of fat just out in the land fill. His article was picked up by the International Press or the Associated Press and they caught Dr. Dunbar on a train between Washington and New York during the first week as his incumbancy as Commissioner and asked him, what are you doing out there throwing away all this fat in view of the war effort, so on. Well Dunbar had no personal knowledge of the whole thing. I don't know what his exact comment was, but he was quoted later in the papers as saying that his agent out there must've goofed. Well this made me feel pretty bad because all I did was sample it, I had nothing to do with the preparation of the papers that would've involved the salvage of the fat and I was really a pretty innocent party, and yet I was his agent out there. It was probably three or four months later when Dr. Dunbar made his first tour of the country. He came out and went to every district I think, or a large number of districts. George Larrick was with him to carry his briefcase

and buy the train tickets. Course George Larrick later became Commissioner, a very fine man too. Both of these men were very fine men, I thought. Well they got off the train at Salt Lake City. I met them, and the first thing Dr. Dunbar said after we were introduced was, "Bob, I want to apologize to you. In regard to that peanut butter incident up in Idaho, I did not say what I was quoted as having said", but he said, "I know how it must have sounded to you, and I want you to know that I didn't say it, and I apologize that it happened." Well of course, how could you help but like a man like that, you know, here I was kind of a lowly inspector, and he was the commissioner and he remembered my name, he remembered the incident, and he did not let a second go by without bringing it up and apologizing. I think that's just a little side light on Dr. Dunbar's personality, that he would do a thing like that. We did know the commissioners so much better in those days because we were a small organization and they learned to know us as individuals. One of the advantages of being small.

Lofsvold: What you have said about the emphasis that Denver placed on dairy work, confirms the suspicion that I had, and I believe, many other people had in FDA at that time, that the Denver office put a great deal more emphasis on the dairy industry than any place in the country.

Porter: I think that's true Fred, and that might be kind of an opening for me to talk a little bit about Wendell Vincent who was the Director, or Chief of Station, as we called them, at that time at Denver. Wendell Vincent was an extraordinary man. A man of great ability and of some great faults. He was knowledgeable to the nth degree of Food and Drug Administration work, of the applications of the food, drug and cosmetic act. He was however, a man who had a mind of his own, and I think it was sort of a law unto its own in Denver in those days. He carried out the projects which he thought were important, which would do the consumer the most good. He did this, if necessary, he would fly in the face of any plans or directions from higher ups. Probably you can trace this back somewhat to his career. He came into the Food and Drug when he was a young man out of college. Was apparently, and I've heard from some old timers that, undoubtedly he was a very brilliant man. We've had people say that he was the smartest man they ever knew in Food and Drug. In any event, he became Director at Seattle before he was thirty, I recall, and became Chief of the whole Western District a very few years later.

As we have talked about in other interviews, under that old three district system, the district chiefs were

quite independent. They established much of the, many of the priorities and the programs that were carried out in the district, under rather general guidance from Washington. So he was accustomed to working that way. Some time before I went to Denver, and this must have occurred, I would have to guess in the late thirties, you might know the exact date.

Lofsvold: I think 1937.

Porter: At about that time, because of some difficulties with his, in his personal life, he incurred some debts and he was criticized, and maybe justly and probably justly so for some of the things he did. The upshot of it was, he was removed as Western District Chief and moved to Denver as the Denver Station Chief. It was at that time that John L. Harvey became Chief of Western District, I believe. He had been in Seattle.

Lofsvold: Yes, Harvey had been Wendell Vincent's assistant prior to about 1934 and '35, and had gone to Seattle then, with Vincent's blessing as the Station Chief and now was brought back to take Vincent's job as Western District Chief.

Porter: So now, Harvey becomes Vincent's boss, although I think they got along fine. I never saw any other indication. But, I think because of his background, because

he felt completely secure in his knowledge of what should be done and how it should be done, Vincent just took very little instruction from anybody in the district or in Washington. This was particularly troublesome after the districts were abolished and he worked directly under the Bureau of Field Administration in Washington which was run by Allan Rayfield. They were two very opposite sort of types. Rayfield was used to the eastern district methods of operation and these were more regulated sort of operations. They weren't as free and easy as they had been out west, and Vincent never accepted that kind of direction and consequently he and Rayfield were at loggerheads until the time Vincent retired. Be that as it may, here was a man who had great personal charm, great managerial ability, a way of handling people, you did things that you didn't want to do. You went on the road for weeks and weeks and weeks at a time. You worked at night at his direction. Somehow you took the kind of treatment that I don't believe that anybody would really take these days, and yet you somehow loved him for it. You knew he was doing some things in his personal life that you didn't really agree to, I don't mean terrible things, but a way of life that certainly was not my way. And yet I, the man had what it took to make you still respect him for all of that. I enjoyed working

for Wendell Vincent, very much. I think I had, well, I would accept most any kind of treatment from him and do it gladly because I wanted to please him. I was not unique. I think he affected many people that way. However, there were people he affected the opposite way too. He was very much disliked by certain people. In the end I think, when he retired he was in effect, forced out and it was a very sad end to what might have been a brilliant career, and really involved personal things rather than his professional career. I think his professional career was one of excellence. Well, that's why we did things in Denver, that maybe no one else did, or we had priorities that no one else had because Vincent set his own and we lived our own life out here in Denver district in those days.

Lofsvold: I believe Vincent also was ahead of his time in dealing with the press, as compared with what generally prevailed in FDA.

Porter: I think that's true. He had good connections with the Denver Post, and he was not at all slow to call them if something was going on that he thought was news worthy. And often there were articles, I would expect that we had more articles in the Denver newspapers than any other district had in its local newspaper. Vincent's picture

would often appear, he enjoyed this kind of thing. He was a very good public speaker and he enjoyed that. He was a public man. As part of his independent manner, Vincent not only did not always cooperate with his superiors, but he for a period of time, had sort of a running fight with the Colorado State Health Department, because he didn't think they were doing just what he thought they should do. This, I guess got into the newspapers and this was against the policy of the Food and Drug Administration. We were not in those days seeking publicity, and certainly we didn't want to become the subjects of controversy in the press. Vincent personally, I think, loved that kind of thing, but he was severely criticized by his superiors and I guess by the commissioner, himself, for getting involved in this kind of a public controversy. We just didn't do it in those days. I think, as you say, he was ahead of his time in that, now we often, we give out a lot of press releases, we often call the newspapers if there's something we think is news worthy and make information available to them. Of course Food and Drug is a different organization now too. There's a much more public knowledge of the Food and Drug, and interest in what it does. In those days, we weren't secret, but we just operated in our own sphere of interest. Didn't seek publicity and we tried to enforce the law. So,

for a young inspector, Denver was a very interesting place to be, it was a unique place to be. Vincent was a unique man to work for. He was, I said he was a good manager but he wasn't in all respects a good manager. He wanted to run his district and he did not like chief inspectors and chief chemists to get between him and the actual people who did the work. He was a kind of a one man management and after the system of having chief inspectors and chief chemists formally designated, after that came about, I believe Vincent fought with every chief inspector and chief chemist he had from that time. I don't know of a single chief inspector that really got along with him, and from their standpoint I don't blame them. He would come to us, to the working inspectors, give us assignments, not only without the knowledge of the chief inspector, but sometimes in the areas where he and the chief inspector had different ideas about what should be done. The inspector often found himself in the position of having to go to the chief inspector who was his immediate supervisor, and say look, the chief has told me to go do so and so, and I thought you ought to know it. I remember when Frank Clark was here, Frank and Vincent often didn't agree. I remember going to Frank one day and just saying I'm going to be gone all day, Vincent has asked me to do so and so. I knew it was

something that Frank didn't want done or it didn't have any priority as far as he was concerned. I remember his jumping up and running into the chief's office, and the door was shut but loud talk came through it, so I know these were problems and I don't consider that good management.

Now, I've already mentioned that I was transferred to Chicago in 1952 and I am not going to try to do anything more other than take out a few things that are highlights, maybe things that have not been mentioned in previous interviews that occurred during the fifties in Chicago. One interesting episode occurred in fiscal year 1956. The Salk vaccine for poliomyelitis had been developed and limited quantities were available to the general public. The Congress--I don't know that this was instigated by FDA--but Congress decided that there probably would get to be a black market in Salk vaccines and that there should be some control over this. They appropriated money and gave the job to the Food and Drug Administration to monitor the distribution of Salk vaccine. And with the appropriation, we hired special inspectors around the country paid out of that appropriation, they were not regular Food and Drug inspectors, didn't necessarily have the qualifications necessary for a regular food and drug inspector.

In Chicago, we hired two such men and it was their job to inspect every warehouse where drugs were distributed to check on the purchases and sales and to follow through on the sales to the users of this vaccine to see that it was not diverted into black market channels. This only happened for one year. No black market developed that we ever discovered, I think that probably the production of the vaccine caught up with the need for it during that year and that there really was no occasion to do this kind of work any more. It was a one shot affair, one year. Actually, in fiscal 1956, I recall looking at the record later when I was interested in data of various kinds, we made 33,000 inspections of distributors and users of the vaccine and basically found no violations except minor technical ones that had no connection to black market activities. But it's interesting that Congress put this emphasis on the vaccine and it's hard now to realize what a terror polio was in those days and how great the demand was for something which would prevent it.

Losfvold: And of course in those days FDA did not have the responsibility for enforcement of the Biologicals Law covering vaccines. That was in the National Institutes of Health. Our program was, I think, directed toward the distribution, rather than any of the mistakes that happened

in manufacture. When a few batches from Cutter Laboratories caused cases of polio it was not our responsibility then to investigate. But I think perhaps it was one of the reasons why ultimately the Biologics Program came to FDA.

Porter: Yes, I should stand corrected on that when I mentioned that we did inspect the producers, we did not and actually these special inspectors that we hired were not trained to--wouldn't have been capable of doing that kind of work.

Let me add another thing, that again I don't know how important it was, that came about in those years, and that was our work on serving oleomargarine in public eating places. I mention this to get it on the record because I don't believe anybody else in our history interviews has. I don't know just what year Congress passed this law, but it was probably in the early fifties, making it illegal to serve colored oleomargarine in a public eating house unless you did one of two things. You had to either post a sign up on the wall some place in an easy to read place stating that you served oleomargarine or you had to put it on your menu. And we were given appropriations specifically to see that this was done. Consequently, we made many thousands of inspections of public eating places, we called it PEP

work, to see that they had the proper signs up to the public that met the requirements of the law and a lot of it was educational initially. We had little pamphlets that we gave each operator of a restaurant and which notified him as to what was to be done and then if we inspected him later and he hadn't done it, presumably we took action, I don't recall, I expect we had some citations, I don't remember if we prosecuted anybody--do you remember, Fred?

Losfvold: If there were, they were very few and far between.

Porter: It was a very time consuming thing and very frustrating for inspectors who were accustomed to doing what we felt was important work in our inspection of food and drug manufacturers and the distribution of these products. While I suppose the dairy lobby liked this law, I don't think it did the public much good and it wasted a lot of our time and was kind of bad on morale. I, at that time, was sort of a senior inspector in Chicago and one of my assignments was to take a very large part in the training of our new inspectors, and I recall that it didn't make us seem very important to do this kind of work.

The work lapsed after a number of years when Congress, instead of giving us a special appropriation that could only be spent for that work it was merely incorporated in

our general budget and then its priority left it clear at the bottom of the list. For all I know, the law still exists, I don't know.

Lofsvold: Yes, those sections of the statute are still on the books, but as you say, we pay little attention to them.

I remember a story that circulated in FDA at the time that that law was being passed by the Congress. The dairy lobby was very concerned about the possibility of yellow oleomargarine being sold as butter and representatives of the industry came to Dr. Dunbar to talk to him about the enforcement of the prohibition against, or the requirement to declare that oleomargarine was served. They offered to lobby in the Congress for an extra appropriation of five million dollars which could be used to enforce this amendment to make sure that no oleomargarine was misrepresented. Dr. Dunbar declined with thanks, saying that he thought it could be handled for something less than that. At the time I believe our total appropriation for enforcement of all of the laws which we enforced was less than two million dollars.

Porter: Well, it's interesting that a special interest group can get something through congress and force an agency to do something which maybe in itself isn't wrong, but which certainly is a misuse of their abilities and

facilities and the kind of manpower, technically trained manpower that we had developed in FDA.

One other thing in my Chicago years that I would like to talk about briefly are the surveys we made on the side reactions to antibiotics. This first came about in the early fifties, in 1952 or 3, when it came to light that the antibiotic, chloramphenicol, trade name Chloromycetin, was causing--well, it was a very effective antibiotic in many ways and was being widely used and it was causing in some patients very, very severe side reactions which were often fatal. These were such things as aplastic anemia, agranulocytosis--I've forgotten, my medical knowledge isn't such that I can remember all of the other illnesses that were caused by this, but they were various serious blood dyscrasias. And this all sort of came to a head, as I recall, just before the 4th of July this particular year, and we got a very rush assignment to begin to investigate these cases, to learn the extent of this problem. The districts received notification that they were immediately, as a priority item, to drop everything else but extremely important things, to go out and to survey through the hospitals and through the medical professions what reactions were occurring, how serious they were and what the extent of them were, what the incidence was.

I know in Chicago we had to immediately list all of our hospitals in the district, we had to--oh, incidentally, we were given rather rudimentary instructions because they wanted to get this investigation going and nobody really knew that much about it at the time, but we were told that we would find these reactions in those cases where a certain list of diseases occurred and they listed these diseases which were unknown words to me at the time but, as I say, aplastic anemia and agranulocytosis were two of them and where we found these diseases or conditions associated with the administration of chloramphenicol, we were then to copy the entire hospital record and send it to the doctors in Washington who could properly evaluate it. So we were not evaluating the circumstance, but we were ferreting out those instances where the chloramphenicol might have caused the reaction and then we were getting all the information we could together for the Washington people. We divided up our hospitals in Chicago--and they were doing this all over the country, this was typical--we instructed the inspectors to the best of our ability as to what to do. And as I recall the method that we decided was to go, after we got permission from the administrator, to go directly to the medical files, the medical librarian and using the coding that did exist at that time, determine the codes that were

given these named diseased conditions and then search, by whatever means available, to locate the cases where these conditions occurred and then look through the file and see if chloramphenicol was involved.

When I say we did this any way we could, hospital records were not all kept uniformly, there were at least two different existing nomenclature codes--that's not the right way to say that, but that's all right--and some hospitals were already automated, they had IBM card sorting equipment, I don't believe anybody had computers yet, in fact I don't think they existed yet, but some of them used automated equipment and some still had hand recording entirely.

It was a very interesting thing to do and I certainly got kind of a medical education out of it by spending weeks pouring over hospital records. What you did then when you found a case where the drug was associated with the reaction, you then would inteview the doctor--this would often require getting a medical release from the patient, usually the patients were dead and you got it from their families so that you had this kind of a thing to do. Many doctors talked to you without getting such a release, so it wasn't always required. But by the time we got through, we had located many, many cases, we had interviewed the doctors,

we put the cases in sort of a package form with the hospital record, the doctor interview--often several doctors would be involved--and get it all to Washington.

This was then used as a basis for some change in the antibiotic regulations and for a lot of publicity to the medical profession that mainly said this is a very effective but a very dangerous product and should only be used where it is the only antibiotic that will effect a cure, and I guess there are some diseases that you can get a cure from this antibiotic and not others. Rocky Mountain Spotted Fever I believe is one, if I'm not mistaken.

Losfvold: I believe it's the preferred drug for typhoid fever, also.

I think as a result of that, too, we pushed the manufacturer to revise the labeling to more prominently play up these warnings in the hope that physicians would prescribe it less.

Porter: It was sort of a blood curdling sort of a thing because initially the drug was so effective it was usesd for the flu and almost for the common cold and it was heartbreaking to read the story of a child who had some very minor thing that would have been taken care of by another medication and he'd have probably gotten well without medication, but he was given the Choromycetin and he

developed aplastic anemia or one of these other things and died.

Lofsvold: As I remember, too, one of the frightening things about the survey was the relatively high percentage of physicians and physician family members who were involved in these injuries. Physicians knowing that it was so effective had used it on themselves and on their families, to an even greater extent than they did on their patients.

Porter: It was its very effectiveness that made the thing so grim because obviously this resulted in its very widespread use and there were many sad cases from it. After that had been analyzed and the changes had been made, our Bureau of Medicine in Washington I think realized that while the chloramphenicol was certainly, very probably, the very worst or the most dangerous drug in this sense, other antibiotics also were causing serious reactions. And so--oh, three or four years later I would presume on a less emergency basis--there was a developed a very broad assignment to use the techniques we had used in the chloramphenicol case, but to broaden the assignment to all antibiotics.

I was designated in the Chicago district to have this assignment, I worked on it to the exclusion of everything else for a solid year. I at all times had another

inspector assigned to assist me, but these assignments would rotate partly for training purposes and partly to not restrict all the inspectors or many inspectors to this one thing. And I went to every hospital, I believe, in the Chicago district which included the Chicago area of Illinois and the eastern part of Wisconsin and all of the State of Michigan and I became very familiar with all of these medical terms--I remember towards the end of the assignment I was working at the University Hospital at Ann Arbor, Michigan and I was in talking about this problem with the head of the allergy department. This doctor and I talked for an hour or two about cases and about the problem and when I got up to leave he said well, I'm very glad to have met you, doctor. And this was because within this very restricted field I knew all the words. But we did uncover reactions and I think labeling was changed, regulations were changed, I think the medical profession's knowledge of the dangers of antibiotics was greatly enhanced and, consequently and hopefully, they are used with a little bit more knowledge and care.

I remember also while I was in Detroit on that particular assignment, that I got sick myself and I went to the hospital to work--I wasn't that sick, but I really felt lousy--and one of the doctors persuaded me to take a shot

of penicillin. He just ran me through their out-patient clinic free of charge and ahead of everybody else that was waiting and he got me a shot of penicillin so I could keep on working. I had mixed reactions because I had been reading where in some cases people get very severe actions from penicillin and somehow it didn't seem right to be getting a shot at the same time I was reading these grim case histories. Well, I think that was a very major assignment in the Food and Drug Administration during the fifties and a very worthwhile one and has resulted in a great improvement in public health, I have no doubt.

One other rather major occurrence in the Food and Drug Administration during the fifties, during my years in Chicago, resulted from the work of the Citizen's Advisory Committee which had been asked for by Commissioner Larrick and which had come out in about 1955 with the recommendation that FDA needed a four-fold increase in personnel to properly do its work. Influenced by this report, Congress did over a period of four or five years rather generously increase our appropriation and this, of course, resulted in a very active recruiting campaign. It's been discussed in other interviews how in the early fifties we had actually had our appropriations cut and dropped to a relatively small investigation and analytical force.

I did play a fairly interesting role in Chicago in this recruiting effort that occurred in the last half of the fifties. It was pretty much my assignment to make the recruiting trips and then to deal with the Civil Service Commission and eventually when we got people on board to monitor the training of the new inspectors. It went something like this: We did have some recruiting literature, although less adequate than we had later, but we would go to all of the colleges in our districts, go to the student placement office--we usually worked through the student placement office and through them make appointments--get out the publicity, get some notices on the bulletin board and the school paper, in any way we could--and make appointments with students who were interested in working for the Food and Drug Administration. In order to carry out this assignment, we got what I believe the Civil Service Commission called Plan B recruiting authority in which those of us working for the Food and Drug Administration who were doing recruiting were trained by the Civil Service Commission to give the Civil Service test which at that time was the F.S.E.E. test for professional jobs in government.

Consequently, when we went to these colleges, we could not only talk to prospective students, but particularly to

the seniors who were about to graduate, we could administer the F.S.E.E. test, grade it and put it into the regular channels of the Civil Service appointment procedure. This facilitated greatly our--not only getting people interested, but in getting people on board because the F.S.E.E. test was normally given periodically on a Saturday in various communities by the Civil Service Commission, but even in the larger cities I don't believe it was given more than about once a month and in some of the smaller places where the colleges were located it was probably much more seldom than that. So we could do it on the spot, we did recruit many good recruits at Chicago, we had a successful effort. While they came from all parts of our district, they mostly came from Wisconsin. There seemed to be a supply of college graduates there who had the basic scientific qualifications to take the test for food and drug inspector, but there weren't as many jobs in that area as in some of the larger population areas. So I was quite successful, particularly from the Wisconsin State schools of which there are a number in eastern Wisconsin to recruit good people.

It's of interest that in those early days--I don't know whether I should say this, but we made very little effort, although we did not keep females from taking the test or from talking to us if they wanted to--we did not

push it like we have under the influence of Equal Opportunity programs. And I know that in my recruiting I did not recruit a single woman there in that period and I think this was typical. I suppose we should be ashamed to say that now, but you have to remember that what we were doing was pretty much in line with general customs at that time and I don't know when, there was time when the Food and Drug inspector, you had to be male. I don't know when that was changed, but I suspect it had changed before this time.

In any event, I'd take trips up into Wisconsin, up into Michigan, down--I even went to some of the colleges that weren't in our territory, I went to the University of Illinois. I went to some of the schools in Indiana, both in and out of the Chicago territory. We were quite aggressive in Chicago under the leadership of George Daughters who was the director, and we, I think, did a good recruiting effort. We developed extremely good relationships with the Civil Service Commission so that they took every step that was within their regulations to be of help to us in expediting our recruiting. Is there anything more about that?--of course, this thing resulted in a large training effort and I often kind of under my wing in the one district in Chicago, would have as many as--oh, I think I had at one time as many as eight people who were still in their

first six months that were under the formalized training program that we had.

In 1959 FDA had established a position of supervisory inspector, one in each district, and all of these supervisory inspectors met in a conference at Detroit in 1959 and their major assignment was to revise and hopefully improve the training manual for new inspectors and I worked on that for a week. Training involved lecturing in regard to the law itself and to the procedures, techniques used by the Food and Drug Administration and the set-up of the organization, and then to the training on the job, how to collect samples, how to obtain the necessary records to prove interstate commerce, and then how to make inspections. And by the end of six months, I believe, if I recall, every inspector had to have made one independent inspection in about at least three or four commodities. Our projects or planning at that time was based on a commodity system which one commodity code or one program as we might say, would be bakeries; another would be beverages; her would be cheese making; another butter making; another spices; another warehousing of foods. And the training program was based on these commodity groupings so that the the new inspector had on the job training by an experienced inspector in each of a number of these commodities

and then finally made an independent inspection on each.

My efforts--I was rather proud of my efforts at least initially, because I think I did find and recruit and hire and, of course, I only had a part in all this, but I did play quite an important part and in the training of some very fine inspectors. The disappointing thing about my efforts were that the lads that we brought in from Wisconsin were raised in the country where there were woods and there was hunting and fishing and not in large population areas. And many of them, although they became fine, young inspectors after about a year or two in Chicago, just could not stand that kind of life and were willing to go back to Wisconsin at a job which paid less and had less in the way of future prospects just to be able to live up there. So that because of circumstances that which were a little beyond my control, not too many of them stayed and moved on ahead, a few did, and were quite successful.

I think I should mention in connection with this rather major recruiting effort, that there was one place we failed. Most districts were able to do a good job of the recruiting and the on-the-job training of their people, but we were limited in some respects because nothing was done to get us more space, more equipment, more supplies. I'm

sure that something was done, but not an adequate effort was made in that direction. So that we found that we sometimes shoved inspectors' desks closer and closer together and even had to have two men share a desk with the hopes that one of them could use it while the other one was out working or vice versa. Similarly, we often were scrambling for necessary cameras and other equipment and cars--we did not have enough cars. So that this was a rather major failure during that time and it's one--we learned some lessons which we applied later on and did a much better job when we came to a major recruiting effort later, some ten or fifteen years later.

I think now I'll move on to the next phase of my career which was a drastic change for me. I had, by this time, spent twenty years as an inspector and as a supervisory inspector, strictly in the enforcement aspect of the Food and Drug Act, strictly in the field, traveling, inspecting, sampling and training others to do the same. In 1963 an opportunity came for me to take a job which seemed to have better prospects in Washington for the Bureau of Program Planning and Appraisal. Walter Ernst had a job in that bureau in which he, with the assistance of a professional statistician and one statistical clerk, handled all of the management and much of the extraction of data and

information from the field management information system.

When it was known that he was going to retire, Shelby Grey, who was the Director of that bureau, began to look for a person who could fill his shoes and who could come in six months before he retired because it was sort of a very singular sort of job there was no other job like it in Food and Drug, there were many aspects of it that there was really no way to learn but to get in there and learn by doing it. Well, through a chain of circumstances I was selected for that job and I went into Washington in 1963 and never really returned to the enforcement activities of the Food and Drug Administration.

The job involved entirely the field in the sense that I dealt with the field management information systems only, I dealt with field budget problems only, with field program planning and with field manpower allocations. So that my background in the field was essential, really, to the job and certainly it was not one that should have gone to anyone who did not have broad field experience and of course I had that.

At that time our major field management information system was called the time and production--or for short the T and P system. Each professional employee would make out

a card--we at that time were using a mark-sensing card--and for each of their activities in which they would show the time, the commodity code. These cards were then mailed into Washington, were centrally sorted, tabulated, and from that we had data as to what kind of projects the fields were working on, how much time was put into each, how many inspections were made in each, how many samples were collected and examined in each. Because of a special section of this reporting system we knew whether or not the inspection or the sample was found to be violative. This was basic knowledge that we had and the tabulations from this system could be used for making many different management decisions involving program planning and budgeting.

I think this might be a good time to break in with something of a history of the field management information system as I know it. The earliest systematic way of looking at work in the Food and Drug Administration that I'm aware of is the project system. The project system started back in maybe as early as 1918 or around that time. I heard that it was the idea of Mr. Campbell who was the first Commissioner of the Food and Drug Administration. The system classified the industries regulated by the Food and Drug Administration into separate parts which, for the

most part, depended on the product made. There was, for instance, a bakery project, a beverage project--now this would be a fairly wide group of things, it would be all beverages, it could be alcoholic beverages or non-alcoholic beverages.

Losfvold: Coffee, tea.

Porter: Coffee, tea--it's a very broad definition of beverages, but at least it gave a specific area of the industry that could be classified for planning and for setting priorities. The drug industry was initially separated only into prescription drugs and non-prescription drugs. There were also projects which were not exactly commodity oriented but were in a sense: food warehouses were a project and so were drug warehouses.

In this way, they could talk about the work, they could decide what they wanted to give emphasis to, they could also maintain statistics based on this kind of a classification. There developed in the districts under this project system, a way of keeping track of the regulatory history of any particular firm and we called it the Flex-Site System, named after the mechanical way of using cards in a flex-site holder.

In the Flex-Site System, the manufacturers were first classified under which project they fell and within the

project then the manufacturers were listed alphabetically and each time a sample was collected or an inspection was made or a sample was analyzed or a citation was issued or a prosecution was recommended, the Flex-Site card had a place to make note of that.

So by going to the Flex-Site, you could get a sort of capsule history of all of our dealings with the firm. You could get very quickly a feeling whether this was a firm who tended to have violations or did not. In addition to being classified under their major project, as you can imagine, many firms actually operated under more than one project. An example would be a firm that made bakery products and also candy. The other project was also noted on the card so that very quickly you could see what kinds of products the firm made and what our experience with the firm had been.

It was possible then if you needed statistics, on our experience in a whole project area, that the clerk who managed the Flex-Site System could rather rapidly thumb through all the firms in a given project and jot down whether or not they had been inspected that year and whether there had been a violation and any other thing that might answer a question management would pose.

The project system gradually, at least in the terminology of the people in the field I think, took on the aspects of the code that described the various projects. And so we thought of firms in terms of commodity codes, commodity 01 was beverages, commodity 02 was bakeries, commodity 03 was grains and grain products, commodity 04 was--I guess I've forgotten, but it doesn't make any difference--commodity 06 was butter, commodity 07 was cheese, commodity 09 was eggs and egg products and so it went. And it became customary for us really to think in terms of these commodity codes which represented the various projects.

The first data retrieval system that I'm aware of was a system under which inspectors and chemists kept track of the time they spent in each projects and also of the number of inspections they made in each project and samples they collected and samples they examined. This information, once a month, was taken from their daily diary and placed on a large sheet of paper called a Form O. Later it was somewhat revised and called a Form P. These were submitted to Washington once a month and were hand tabulated so that management in headquarters would know how much time we spent on each project and what our accomplishments were in terms of number of activities and legal actions and so on.

Gradually, under development I presume in the Form O and Form P days was the T and P system, which was essentially the same kind of a system but it was broader and more timely and at the time I came in 1942 they were still using the P monthly report form. Very shortly after that we went into the T and P system where we made a daily report of our activities on a specially designed form in which we showed what the activity was, that is an inspection or sample collection, a sample examination, showed the commodity code involved, the amount of time we spent at it and the number of such actions we did because it was conceivable, of course, to make two inspections in one day. These were prepared daily, they were submitted, they were collected in the district and submitted weekly to Washington. There they were hand tabulated and again this gave management the kind of information it needed to evaluate what we had done and how much time we had spent doing it and to set forth priorities and make plans for the coming period.

I don't know how long we filled these forms out by pen or pencil, but I think for several years. Then there was developed a form that contained the same information, but it was designed to be handled mechanically and this was a mark-sense form. The mark-sense form had a space in which

you could show by filling in the space with a special pencil the same items that I mentioned above--the commodity code, the activity, the time spent and so forth. The mark-sensing card could be read mechanically in Washington and thus save the time of hand tabulation. It could be read and tabulated on the old IBM, I believe it was called a 2200 but it doesn't make any difference, tabulator. This tabulator was capable of putting the data together in the form of a large sheet which could be used by management, again for the same purposes.

The T and P program was a very interesting one, it was a total time program. Each professional employee filled in T and P forms covering all his time each day, including overtime, if there was any. Consequently, from a mathematical standpoint, it was very nice from the fact that you could actually take all of the time tabulated and turn it into man years because every hour that had been spent was in the system. You could take all of the hours reported into the entire system for an entire year and it would give you the average manpower use. You could do this on a breakdown by project or by district or by position classification. It was a good system so far as the information that it covered. It was used to answer Congressional inquiries, it was used specifically for project planning and it was used for evaluation of past accomplishments.

I don't know, because my experience is pretty well limited to the Food and Drug Administration, but I have heard people who came into the Administration in management positions who have indicated that this was probably the best system of its kind used in the government.

Well, now my personal involvement in the system comes into play because when I went to Washington in 1963 this T and P system was my baby. I made the revisions if any were necessary, I got the tabulations and distributed them as necessary, answered questions from Congressmen, dealt personally with our budget officers and this data was very fundamental to most of the things that we did, and it really served us very well. However, it was limited. There were many things about inspections, for instance, that we wanted to know, but that could only be found by hand search of the Flex-Site.

So a new system was developed strictly for tabulating inspection information in much greater detail. It was called the 481 system. It was intended to compliment the T and P system. It was not total time, it involved only the time spent on factory inspection work. But it displayed information in detail as to what we had found, whether we had found insect contamination. It gave more details as to how we classified the plant, as violative or non-violative,

or a plant that should be followed up or not and this information was furnished to Washington in the form of a cover sheet which had been coded by the inspector making the inspection. These cover sheets came to Washington and were punched on machines which produced a paper tape which then again could be fed into the tabulating equipment and produce tabulations of detailed information about inspections.

The systems were supposed to compliment each other, but there was a--well, in the area of inspections they duplicated each other. The T and P had some of the same information that the 481 system had in it. Now you must realize that the cover sheet was part of the inspector's report which he turned in. The T and P card which he turned in was something he prepared at a different time and often it involved--well, you had to take into consideration the fact that an inspector would work on an inspection and then maybe be asked to go do something else and then he would come back and work on the inspection. So consequently, the time reported as inspection time was different from the two systems, although theoretically it should be the same. And a competition more or less developed between the systems and it caused some problems because you could

answer the same question different ways depending on which system you went to and this was an impossible situation.

This difficulty was really coming to a head about the time that several other important things were happening. Computers happened. Automated keypunch equipment, IBM card punching equipment became widely available and was installed in the districts so that data could be reported mechanically.

So there were these mechanical things that allowed us to do a lot more than we had done in the past. That and the competition between the two systems and I would say a third fact that new management under Dr. Goddard came to Washington. And some of the high level people that he brought in with him were very much interested in changing the entire aspect of our field data collection. They were interested in problems. Now, all of our date up until this time was by commodities within projects. It had been refined, it had been broken down, I think we were up to a five place code on inspection information so that we didn't know it was just beverage, but we really knew whether it was a coffee grinder. But it still didn't relate very heavily to the problem, although under inspection we did collect information as to what we found wrong.

Those of us in the field data system area, were assigned to develop a whole new system that would have as its main classification the problems that we found. Now, this came about also because we had, within that same period I'm talking about, had a management firm of Booz, Allen, and Hamilton, make a study of the field's management information system and its work planning system. It was a two year study and they, too, recommended that we deal with our data in a problem oriented system rather than a commodity oriented system. I don't know whether our new management in Washington brought this up independently--I suspect they got their thoughts from the Booz, Allen, and Hamilton study.

I was in charge of what was by this time a branch that dealt with management information systems--I should say field management information systems, project planning, manpower allocation and budgeting and we were given the assignment to develop a whole new system and to do it as rapidly as possible. We worked very closely with the Booz, Allen, and Hamilton people in the second year of their study. I worked with them personally in my office hours and days at a time. I visited the districts with them and we did begin to develop a system which would be compatible with the recommendations of Booz, Allen and Hamilton. What evolved was a management information system called the

problem oriented data system, the acronym PODS. I have been told I was the father of PODS, and I guess I had a lot to do with its development. I like to think I'm responsible for the good parts and that I was directed by other people to put in the bad parts.

This system was presented in a preliminary form at a meeting of the regional Food and Drug Directors with Dr. Goddard and his Deputy, Winton Rankin. I presented the system and it took a lot of--these were people who had been thinking in terms of commodities, so it was kind of difficult for them to accept it. Frankly, it was difficult for me to accept it because I had lived--by this time for twenty-five years either in the field or in Washington--under a system that was commodity oriented. But we had the preliminary procedures and forms developed and we did present it. We had done this in a period of about three months. This was a major management information system different from anything we'd had before. It was developed by a small staff of people. It had not been adequately tested. Certainly good systems development would indicate that it should have been run parallel with the old system for an extended period of time.

In any event, Dr. Goddard took it upon himself to decide whether or not this system would be installed as the management information system for the field and he stated that he would make the decision within ten days of this meeting and that if his decision was go, we would do what was necessary to install it by the 1st of July which I believe was only six weeks ahead. Well, the word was go, the PODS was installed, all the forms were printed up. My staff and I divided into...no we formed a cadre of teachers and we held meetings at several central locations in the United States so that every district professional went to these things. At these meetings we gave an overview of the system, we had system analysts then who described in detail the various parts of the system and various processes that would go forward. We furnished forms, many of which were still in just a mimeographed form, in fact probably all of them were, and we went ahead. Now, of course I can say in retrospect, but even at the time those of us who were involved knew that the decision to go ahead was made too hastily. It wasn't that we were ashamed of the system that we had developed, but we knew that it was not yet in a form that was free from problems, and that is an understatement. We had designed the forms hastily. We had designed an instruction book hastily. We couldn't possibly

in the short time available and without testing, particularly parallel testing with the old system, we couldn't anticipate all of the problems and there were some important aspects that just escaped our attention entirely. We struggled ahead. I believe that it is fair to say that we had two years when we had, in effect, no management information system to use. There were just too many problems, and you couldn't depend on what we were getting. This is aside from the computer programming problems. All of this was to go on the computer, which required the writing of computer programs. The computer programs were not written under my direction, but in a different part of the administration by people who were not acquainted with field needs and there was an inadequate time and I think to some extent a reluctance on their part to become as thoughly knowledgeable of the field needs as they should have before they began the work. So, we had computer programs that were not very adequate and that were very, very slow in coming.

It has been my experience in working with computer people that what they promise you to do in a month, they might produce in a year. I know this might be unfair and would be resented by some people but they tend to be enthusiastic about what they can accomplish. They are aware,

I guess, of the real potential of the computer and the potential is there. In the early days the program writing was in its infancy and many errors were made, awkward ways of going about things were done, which maybe accomplished the immediate need but what which were not amenable to subsequent revision when that revision was indicated. So, we would be locked into our mistakes. I suppose all of this is in a sense an apology, but I don't feel apologetic, I just think that the records should show that we did have these problems. I don't think that we were by any means the only organization who jumped into the computer world too rapidly, but we did. Dr. Goddard didn't stay around to live with the problems of his decision. He had other problems which caused him to resign within a year or so of this time and those of us who were left struggled over the years and developed, I think, a very good management information system after many years.

The system is based on operations. An operation is something that you do. It is an inspection or sample collection. Each operation is described in regard to the kind of product involved, the kind of project that you are working under and the amount of time involved and also includes a number identifying the employee who did the work, the district where the work was done, the state and

judicial district where the work was done, so that you could make sorts through the computer of your work, or a cut based on anyone of these various aspects. To bring this up to some currency we now have computerized equipment in each district. They can do some programming themselves. They enter their data directly into their computer, which in turn feeds it into the master computer in Washington. This has resulted in the Districts having much more access to their data than they had in the first 10 years of the PODS system.

A major fault in the system was that it was developed for headquarters use, the districts pumped information in but had a hell of time getting any thing out of it and what they did get out of it was too late to be of much value to them. These problems were all recognized in my office and by the Executive Director of Regional Operations, Paul Hile, whom I worked for for a number of years. We were in no way unaware, but it is a long difficult road and it takes lots of computer programming and lots of understanding. I think we have a good system now. I am away from it, I am not involved in it and haven't been for five years but I have looked at it enough to believe that finally PODS may have come of age some 20 years later or I guess it has been at least 15 years. I have forgotten. Well, I think

that doesn't cover all the things. Maybe I have made our management information systems sound like they weren't any good, actually they are still better than most government agencies have and they give us a great deal of information. They suffer from some of the problems of any such system in that they take too much professional time for input. I think every attempt is being made to reduce that time. In the end it will always seem that way to the people who are out on the firing line trying to do things. They don't like to spend the time to report into a management information system. In these days it is absolutely necessary that an agency know what it has done and what it is going to do and have a good basis for making its plans.

I neglected to mention one important change that has occurred over the years in the system. I mentioned earlier that PODS stood for Problem Oriented Data System. As the years have gone by we have really dropped the problem designation and substituted a code with stands for the compliance program involved. Compliance programs are programs developed by the Bureaus to cover just about all of the problems that Food and Drugs encounters or works on. This is a program which is quite specifically directed towards a specific problem and sets forth how the problem is to be

approached, how corrections are to be made, and it sets certain standards I would say for inspections and for sample collections. I think it describes...it cites the methodology that is going to be used by the laboratory. Each of these programs, of which there must be would you say several hundred, I think there are several hundred such programs that are available to field on microfiche. An Inspector about to engage in an inspection under one of the programs can get a great deal of direction as to what the administration wants by going through this program first. As I say, this program is coded and is used as one of the basic descriptors in the field of management information system. Rather fortunately the word program and the word problem both start with "P" so PODS remains PODS but it now stands for Program Oriented Data System.

One of the interesting things that I worked on, in Washington, was the development of a scientific workload for the field of the Food and Drug Administration. This work developed in the Division of Review and Appraisal, in the branch I was the Chief of. What we did was take all the data that we had involving the number of firms in each project, by county, and this was in the system so it could be handled by the computer. We developed weighting factors based on the philosophy that what we were developing was an

inspection workload. So, we gave drug plants greater weight than food plants, for instance. We considered for the purposes of the study, such things as, an assumption that all of the plants in the county were equally accessible to inspectors. We gave a lot of thought to how we could weight the data to make it realistic, to make it really represent the workload of an inspector. One of the weighting factors was the population in each county because this would have a relationship to the number of samples that would be collected at destination. So, based on all the factors that we had available to us, either in our own data or from the Bureau Census data tapes that we were able to obtain, we developed a computer program and actually had printouts which showed the percent of the entire Food and Drug Administration inspection workload that existed in each county. We were capable then of massaging this material according to priorities because we had it not only by county but we had it by project. So, if the Food and Drug Administration was going to put in more time on drugs we could weight it in that direction. By having this by county we could then combine these workload figures in to judicial districts, or into states, or into split states by knowing which counties would go in each part of the state. The idea of this was to have some scientific basis for

allocating manpower. For years we had known, at least we had suspected and had good bassis for believing, that the manpower was not allocated to the districts according to their workload. In my own experience I realized that when I was transferred to Chicago, they were not able to give their industry the indepth coverage that Denver had been able to do. It seemed obvious to me that in relation to Denver, for instance, Chicago needed more people. I knew from talking to other people and from looking at the data that came in that New York was quite a bit like Chicago. So, we wanted to be able to say that Denver should have, whatever, 4.3% of the manpower in the country, because there existed a Denver District 4.3% of the workload and if the District configuration was changed as happened subsequently a number of times we wanted to see how this would change the relative numbers of people in each of the Districts. This was major job and there was a lot of handwork, as I recall we did not have the counties in the system, but we had judicial districts in the system and we had to literally look up the county designation for each and every firm that we were considering. So, there was a lot of work to this, but over the period of several months we got it all finished up and we did have these figures. We were able to ask the computer programmers to tell me

what is the workload load not only by county, but by state, by judicial distrist, and by any other combination of counties that we wanted. On the basis of this we drew large maps showing the percentage of the workload in each district, and in each state. Any manager could look at this and by looking at the relative numbers of people in the District as compared to the figures on the map, could see which Districts should get more people if we had more money to hire and, I guess, the converse too, if we had to cut down, where to cut down in order to keep the workload as balanced as possible. I think this was a valuable piece of work. It was one that was so written that it could be updated periodically. We found it very valuable when we were directed under the Nixon administration to regionalize and to adapt ourselves to regions all ready established for other agencies. These regions were not particularly the proper way of dividing up the work of the Food and Drug Administration, but since the workload study was done in such detail we could, whether we liked it or not, we were able to adapt and to develop what the workload should be under the new regional configuration. Subsequently these figures were used each and every time regions were changed, or I shouldn't say that because they haven't been changed

that much but when consideration was being given to changing. We had a basis to go on. I think you, Fred, actually used them for that kind of thing.

Lofsvold: Yes, when I made a study as to whether we might change the number of regions.

Porter: As far as I know that workload study was still getting occasional use. It had been updated a couple of times but it hadn't been drastically changed. It was being used for different considerations right up to the time I left Washington and I suspect it's still being referred to. You can do some interesting things with it, some of them were very theoretical. We had a man in Washington in the Food and Drug Administration who was a mathematician, who for instance, thought we should use that to determine statistically by using refined statistical techniques to determine where we should have resident posts. Using certain given figures, certain assumptions, which you always have to do in this kind of study, he had the computer actually draw a map showing where all the resident posts should be and how many people should be in them. It wasn't practical, and the reason it wasn't practical is the assumptions took no consideration really of where mountains were, where roads were, where railroads went, so far as distribution areas were concerned. It took no consideration of

political matters. Those of us who have been in the business a real long time realize that every figure in the book can say you should close a certain office or move it, but if it's in a congressmans' district sometimes strictly political considerations are really what determines what happens. So it was a fun thing for him to do and didn't take any of my groups time, he just used our figures and our program but it was just that, a sort of theoretical game playing. But still figures are amenable to a lot of uses and when they're on a computer so you don't have to, when they're already on a computer tape then you can apply programs to them to get what you want.

Another very interesting thing that went on while I was in Washington was project HIRE. This occurred in 1972. The Food and Drug Administration received a large increase in appropriations specifically designated to increase our inspectional coverage. It was necessary over a period of one fiscal year to hire, I think it was several hundred inspectors, to equip them, train them, and get them, and actually since we had told Congress what we could do if we got the money, we really had a goal of within six months to get them into production. When the money came forth on a certain day, I very well remember that a group of us who were on Paul Hile's staff, Paul being the Executive Director of

Regional Operations, were called together. We sat in his room and said now we've got to decide what to do and we talked about it a while and we developed a plan of action. The first step being to select, designate a Project HIRE Director who would be a person of great energy and great forcefulness, and still have great knowledge and judgement of the field activities of the Food and Drug Administration. It was an interesting exercise because we put on the flip board the names of all of the candidates that any of us in the room suggested as possibilities. Then we chalked off their good and bad points, not necessarily their own ability, but were they in a place where they could be spared for what we anticipated to be six months or a year's effort. It wasn't long before we unanimously agreed on Cliff Shane. At the present time, Cliff is the Director of the Kansas City Region. He was selected in 1972 to this effort, he was called on the phone, by the next day he was in Washington sitting down with us to go into more detailed plans. Putting together a small staff for him and deciding what each of the regular EDRO staff people would do. Project HIRE involved recruiting, training, and equipping inspectors with every conceivable thing from a camera and a flour trier to an automobile. Included getting space, desks, everything that has needed and I believe it was a

tremendously successful effort. We realized that our regular training, which was more or less each district training its new employees, we recognized that this was not a method that would work with such a large influx of people, that they would disrupt the regular operations too greatly. So training schools were established, academies if you will, in which these people were trained by a specially selected cadre of trainers. In the end we hired all the people we were supposed to hire. We gave them all the basic training, we had them equipped, and they were productive in six months. This is an effort that I think Paul Hile deserves great credit for, and Cliff Shane deserves great credit for, and I suspect it really was the basis of Cliff Shane moving on to Regional Director jobs and being one of the really senior executives in the Food and Drug field.

I don't want to pass over my Washington days without mentioning some of more personal things. My wife, Mildred L. Porter, had been a chemist with the Food and Drug Administration at the time we were married. And when we were transferred to Washington she went to work as a research chemist in the Bureau of Foods in the Pesticide Residue Laboratory. I was quite proud of the fact that her work there was productive and actually, she produced a paper

for the A.O.A.C., at least one such paper each year, on pesticide methodology. Her work was basically on the extraction of residues from field incurred pesticides. She worked particularly on an analysis and method for residues in meat, fish and poultry. And that is a method that was adopted by the World Health Organization, and to the best of my knowledge is still being used world-wide for the extraction of residues from those products. These methods she developed were official methods, and are used widely. She worked under the direction of Jerry Burke who's well known in this field. He's a leader in pesticide residue methodology. And for her work in 1972, she received the FDA Award of Merit.

Lofsvold: That's the highest award the agency has to offer.

Porter: So my career in the Food and Drug Administration was not just my career but she and I both had careers in the organization. We didn't ever work in the same area, but we had many common interests of that kind and in her field of work she was very successful.

Well, in 1972 I had an opportunity to move back to Denver which was my home area. A job of regional planning officer had been established in a number of regions, and a decision was made to establish such a position in the

Denver region. And I asked for and received the appointment to that job. So I came to Denver to work for Fred Lofsvold in that region. I had an interesting job, I was regional planning officer about half the time, and I still remained, more or less on Paul Hile's staff to work on special problems that came up. I think that was one of the conditions of my transfer, that I make myself available to that. Because Fred and Paul worked closely together it was worked out. It was very satisfactory for me.

About the time I was getting ready to retire in 1977, Fred and I had had a number of conversations, and I know he had them with a number of other people, about the facts of historical interest in the Food and Drug Administration being lost when our retirees died. I think this was brought to a head when Mr. Mc Kinnon, who had retired as San Francisco regional director died. And about the same time, Iman Schurman who had been Chief Inspector, excuse me, Chief Chemist at Chicago for many years and who had been a leader in the scientific work of the food and drug field died. And we both knew them and we realized they knew all kinds of things that were now lost to history. The upshot of these conversations which were then carried on with Don Healton, who had become Executive Director of Regional Operations, with Paul Hile, and especially with Gerry Meyer,

the Associate Commissioner for Business Affairs, was that we developed a project, a Food and Drug Administration history project. It's initial phase was to query all of the retired people that we could locate and ask them to send in any written, printed material which they had taken home with them at the time they retired, that had historical interest and that they were willing to send back to us. We received replies from at least 100 individuals who sent materials all the way from one piece of paper to a briefcase full of mementos, papers, forms, letters, publications, some of which were of value, some of which weren't. But they all have been preserved and will be kept for historical reference.

The second phase of this project was to instigate a number of interviews with selected retirees in an effort to capture their recollections, particularly of things that might not be of record in the files or readily available to future historians. To use this material as reference for historians, to preserve it for that purpose, and also to use it where applicable in the training and the morale building programs of our current personnel. FDA has grown so much and so fast that many of our employees do not really have a sense of history of the organization in which they function.

I carried out, initially, the first of these interviews. Since then Fred Lofsvold, who has always cooperated in this work and in fact was one of the leaders in developing the project initially, has retired and he is conducting such interviews. In fact this interview is one of that series. At the time that we developed this project, unknown I think to Fred and me in Denver at that time, Gerry Meyer had contracted with Dr. James Harvey Young, a noted historian, a medical historian, who had specialized in the history of medical quackery and consequently who had a great deal of Food and Drug Administration information... Gerry Meyer had contracted with him to write a history of the Food and Drug Administration. Well, obviously these two projects were naturals as far as complimenting each other and in addition Dr. Young provided expertise that certainly I did not have or that was had really by anybody working on this project. Consequently we met--Fred Lofsvold and I met with Dr. Young in Atlanta and we developed procedures. He taught us many things about how to conduct interviews. He told us the kinds of things he would like to have available for his history, so that we could work them in to the interviews and we have had a very pleasant and I hope worthwhile relationship with Dr. Young in the four years that the history project has been going

on. This is a continuing thing. It has been a very interesting thing for me to do. A nice way to cap off my career. It is only part time work and it is enjoyable work and hopefully it is work that has some value.

Fred, I think unless you have a question or something else that you would like to add that as far as I am concerned can close the tape.

Lofsvold: Bob, one of the questions that I think we have put to most of the people we have interviewed is to ask them what they can tell us about the various Commissioners that they have known in the FDA--the personalities of these men, their management style, any anecdotes about them and so on. Could you do something like that, too?

Porter: Sure. Walter G. Campbell I didn't know. He was a distant figure, I know nothing that would in any way add to what some of our previous interviewers that did know him have said.

Paul Dunbar who followed Walter G. Campbell. Dr. Dunbar I did know. I met him personally at...I told one incident earlier in this interview about the peanut butter that was destroyed and so on. That particular visit that I referred to then was really the only time I personally met Dr. Dunbar, but it was a long and good meeting because he and Mr. Larrick came through Salt Lake City on their way

from Denver to San Francisco and for some reason decided to weekend at Salt Lake City. Arnold Morton who was the senior resident in Salt Lake and I--we were the two who were there--had the opportunity to spend the big part of two days with these two men who were the Commissioner and the Chief Inspector of the Administration. Dr. Dunbar was just so easy to know. He was warm and pleasant, you could sit there and converse with him without feeling the awe you might feel of a Commissioner and yet that isn't entirely true because he gave you a feeling of knowing everything, in terms of Food and Drug. He was well acquainted with any aspect you might bring up and could talk fluently about it. He was quiet and just a very fine man to get along with. George Larrick in a different way also was that way.

The next Commissioner was Charlie Crawford. I didn't know Charlie Crawford except to be at meetings where he spoke. It is hard for me to talk about him without being influenced by what other people who know him much better have said. It is interesting to me he was quite a cold and distant figure and I am sure he was not a cold man at all, from what other people have said. All I can say is my contact with him was when he spoke before a group, I presume the Denver District when I was here, he was not very approachable, that was my feeling.

George Larrick was a very different person. He made it his business to know all of the employees in the field. I remember that when I was in Denver District I had met George Larrick at this Salt Lake weekend that I mentioned and one day a number of us were sitting in the inspector's room, which was a very small room in Denver District. We only had five or six inspectors and two or three of them were always on the road. We were sitting in the office at the end of the corridor when George Larrick completely unannounced came walking down the corridor and he walked directly into our office. Well, I was the only inspector there that knew him. Of course, I jumped up and I did remember him and I introduced him to the inspectors that were present, assuming that he would immediately then head in to the main office and see the Chief. Instead of that, we had a stool that was off in the corner of the office, he went over and sat in the corner on the stool and just chatted with us I would say for a good half an hour about why he was there and what he was doing and what some of the interesting events about Food and Drug were and he talked to us a little bit personally, asked us questions about our work, very informally, just perched on the stool there. This was the kind of man that George Larrick was. He was capable of being completely informal and he didn't have the airs of a

Commissioner, although he did have a great deal of personal dignity about him. Then he went on in and conducted his business with the Chief. In those days most everybody traveled by train and Denver was a stop-over for people going to the West Coast. So, we tended to see people more than now, because now they would just take a direct flight and we wouldn't even know they had gone through.

Later I got to know George Larrick when I went to Washington. I had occasion as one of the very first assignments to work on the invitation list for the Second Quackery Congress that was held in Washington. This wasn't exactly part of my job but it had been a job handed to the Bureau of Programming Planning and Appraisal and somebody had to do it so I got thrown into the thing and so I dealt with Larrick's secretary quite a bit. I remember one time I was over there and he came to the door and he said, "Hi, Bob, what are you doing in Washington?" I said, "Well, I was transferred here not very long ago." I told him what I was doing and he said come on in. So, I went in to his office, just the two of us, and we had a real friendly and informal chat. I remember we looked out the window at the construction going on at the new F.O.B.8. building, which was nearing completion at that time and how proud he was of that building. George was a person who knew you by your

first name and while I speak of him as George, I didn't call him George, I called him Commissioner when I was in his presence. You didn't feel distant from him at all, he was a man that you could think of as George even if you didn't literally address him that way.

I think that I don't know very much about his actual conduct of his office. I only know that from these personal contacts that he did direct the administration in many ways in a very personal way and he knew the people he was dealing with in the organization and had a great deal of influence, I think, just on that basis alone. Was Goddard the next Commissioner?

Lofsvold: Yes.

Porter: Well, Goddard was a very interesting man. He frightened you. He was a very, I think probably on purpose, he put on a display, a little bit of imperial sort of display. I don't know if that's the right word, but he acted when you were in a group of people, pretty distant in a way, I thought. But when you dealt with him in a very small group or in person, he was quite different. He was, at that time, he became very warm and very informal and he was quite easy to talk to on that basis. I remember at least two incidents where I had some personal relationship with him. At the time we worked on, we had developed a

work load study that I mentioned earlier. I was in the Division of Review and Appraisal and the director of that Division was Tom Brown and we were asked to make a presentation to the commissioner in his office. We had all of our data, we had all of our maps drawn. It was my project, and I was very well acquainted with it but as division director, it was Tom's job to actually make the oral presentation. When we went to Dr. Goddard's office, there were Winton Rankin, the deputy commissioner, I think all of the associate and the assistant commissioners and I don't know that we had Bureaus yet or not, but people who were division directors and people in high places. There must have been at least a dozen of the leading people in Food and Drug in the office. Tom, who was always good on his feet, he could speak to a group rather easily as a rule, I guess he was a little overawed by this, I think partly because when he and I went in we expected it was probably with Dr. Goddard alone and it was going to be a lot less formal--in any event, Tom opened his mouth and nothing came out. I remember a great sinking feeling myself because I thought something was wrong with Tom and I was going to have to do it and while I did have the facts in my mind, I really hadn't prepared myself to make the presentation. Well, Dr. Goddard looked him and he kind of, he said,

"Tom", in a very kindly way, he said, "Tom, you know that happens to all of us once in a while. You just take a deep breath, start all over and it will go fine." And that's exactly what happened. Tom made a very fine presentation. I told this story to Winton Rankin, who had some rather uncomplimentary things to say, I think about Goddard, and he was surprised. He had forgotten this incident, although he was present and surprised that there was this kindly side to Goddard at least, that he had not talked about very much.

Then there was a meeting which I will never forget with the regional directors when I had to discuss the new PODS system. Goddard was there, and Rankin was there. As I look back, I don't think they did anything wrong, but I felt a little bit like they threw me to the wolves. I was directed by them to do this. I did the best I could. They obviously were trying to get all the reactions good and bad they could get out of the regional directors. They were all bad and they were all directed at me and they showed no sign of support, I felt. There was nothing wrong with it, I should have been able to defend myself and I only could do that to a certain degree.

Goddard was disliked by those of us in Washington at that time because of the changes he made at that time that

we didn't think made any sense, because of some of the people that he brought it, that we felt...he brought them in high places and they were making decisions that we felt they were not really capable, because of their knowledge and background, to make. We were being directed by them and having to deal with them personally and this was an extremely difficult time. We were doing things we didn't think were right. We were doing things precipitously. The sense we had of security within the organization was suddenly shattered. We didn't know what was going to happen to us next. We saw people that we admired and respected being forced out. All of these things were going on around us. People at my level were not privy to any of the whys or anything like that. All we saw was what was happening and we really lost our sense of competence and our sense of security and yet with those feelings we were still being required to perform sometimes outside even of our own knowledge in order to do what we were being told to do. We tended to personalize this a great deal in terms in believing it was all Goddard's fault. Maybe now, as time has gone by, I realize that probably a lot of it was Goddard's fault and probably a lot he had been directed to do and it was his way of carrying out his direction. I did not like the man, and very few people that I knew and worked with in

the agency did. In fact, I'm not sure that I knew anybody that did. We felt he was destroying, or at least, going in the direction of destroying the organization.

Dr. Ley, who followed him was not a man I ever had any personal dealings with. Nothing particularly happened, to my knowledge, during his regime that affected me or my work and that I can remember.

When Dr. Edwards came in as commissioner, I was in a position where I was not a regular attendant of commissioner staff meetings but when certain subjects were the order of the day, I did attend and I found him to be a very distant figure. He took very, very, little part in discussion at such staff meetings or at other meetings which he attended. He sat there, sometimes, appeared to go to sleep, acted bored. Again, it's not fair, obviously, for me to characterize him particularly. I can only say that this is the view I had of him. Subsequent commissioners I didn't really know very well. I don't believe I met any of them. Deputy commissioners..., John L. Harvey hired me. I worked for him when he was chief of the western district. He was a hearty man, a very, very able man. When I was a brand new inspector and was in his office for training sessions, I used to say to myself, "I'm in the presence of a man who probably has the capability of being president of

the United States." He had such command of everything that was going on. He could talk to us it seemed about any subject, excuse himself for a moment, pick up some papers from him desk, call in his secretary and dictate what I considered to be fabulous letters. They just came out of him like he hadn't thought about them. Then he would turn back to us and lecture again on another subject. I was greatly impressed by John L. Harvey. I always was impressed by him. In later life and as I began to get older myself I recognized the fact that he had a tendency to be pompous. This in my opinion reduced his effectiveness in the eyes of some people that he could have maybe had more influence on the agency if he had been a little less pompous. But it was part of his personality and it was not to a degree that was bad. He, incidentally, also on a personal basis was very friendly and warm. I've been invited in to his office when he was deputy commissioner for just a personal chat, just because he saw me in the hall and asked me to come in. He was that kind of a man.

Sherwin Gardner, who was deputy commissioner for a long time, was a man I got to know, although he came into the agency late as Associate Commissioner for Planning. Since I was in the planning area for field planning and the field was a big part of the agency I worked very closely

with Sherwin, developed a close personal relationship with him one which allowed us to talk pretty well in an uninhibited and friendly fashion about things we sometimes did not agree upon. I found him to be extremely intelligent. He applied business techniques to the Food and Drug Administration that on one hand were good; on the other hand they were a little bit unknowing of all the problems of the Food and Drug Administration and consequently, didn't always work too well. He applied management techniques in every direction and I think that they didn't always take, and sometimes they were more time consuming than they were of value. By and large, I think that he was good for the Food and Drug Administration. He was deputy commissioner through the changes of three or four commissioners and added a continuity and after he had been in a while a knowledge of the organization that I think was very good. I believe that would be all I can think of, unless you have a question, Fred.

Lofsvold: No, I don't have any questions. Thank you very much for this recording. It will be a valuable addition to our collection.

Porter: Thank you.

Powder X Case

By: Robert G. Porter

This was another case that I was involved in rather early in my career that may not teach any lessons, but I did have some rather interesting experiences in this case. Minneapolis District prosecuted a company called the Powder X Company. It was run by a man by the name of Gray, and this company was distributing, a powdered product which they recommended as helpful in the treatment of ulcers. The Product was known as Powder X.

A little background here; Mr. Gray was accustomed to taking vacations in the mountains of Colorado, and one year he was in the vicinity of Rosita, Colorado, which is up in the mountains above Canon City, Colorado, up the Hard Scrabble Creek. There was a woman who had lived in that area for a long time had decide that she could grind up rock which was found in a certain outcropping near Rosita, and use it for curing all the ailments of cattle. She wrapped it on sores and she gave it to them when they were sick. The product came to a lot of local notoriety as being a useful thing to treat many ailments of cattle. Mr. Gray was a promoter and he heard this story and he decided that he would make a patent medicinal product from this rock, and would promote it for the treatment of ulcers. He had a local man who lived down in Florence, Colorado, but who was familiar with the country up around Rosita, to blast out quite a large amount of rock from this outcropping and ship it to Minneapolis. He had a whole freight carload of these big chunks of rock from this outcropping. This was his raw material, sufficient for many

years of production since all he did was grind it and put it in small boxes and promote its sale. (We had determined that the rock was pumice.)

Just about a week or ten days before the case was to go to trial, Minneapolis District decided that, while they had samples of the product from several different places, they would feel better if they had an authentic sample taken directly from the outcropping to analyze. They would then be in a position to say that the product was the ground rock from this location in Colorado and that nothing had been added to it.

At the time they made this decision I was headquartered in Denver and happened to be working down in Pueblo, Colorado. It was the middle of the winter and it was a very, very cold and snowy spell. I was asked to go to Florence, locate the old sheepherder who had actually blasted the rock out of the outcropping, get him to go with me to the outcropping and identify this as the place where he had gotten the raw material from. Then I was to (with my little hatchet) hack off a piece of this rock, prepare it as an official sample, and ship it to Minneapolis. I did this, but it was quite an experience since the weather was so bad. I recall I had a brother in Pueblo who was very reluctant to let me head up alone into the mountains under such weather conditions so he opted to go with me. We loaded the car with shovels and we had chains, and we also took some food so that we would be prepared as well as we could to go up to the mountains. We picked up the old sheepherder who I had located a few days earlier in his home in Florence and off we went up into the high mountains, up to Hard Scrabble Creek. I don't think I could have ever gotten the car up there. We would spin out and head into the banks of snow that were on the side of the road. It was really a pretty rugged trip

and on one section I never could get the car up, even though I backed down and tried it again and again. Finally the old sheepherder said "I think I can get it up there," so I let him drive my car. He was used to getting his truck up this ranch road, and he got us up there. We got up as near as we could with the car to the location of the outcropping. The old sheepherder and I hiked through the snow. It was almost waist deep in some places but other places, because the outcropping was on the south side of the hill, it was almost bare. We were able to get there, we chipped off our sample and went back and I prepared it and sealed it and shipped it to Minnealpolis.

The following week, the sheepherder and I went to Minneapolis so that we could testify as to the authenticity of the sample, that it was actually taken from the outcropping that had been the source of the material used by the Powder X Company. I think the sheepherder didn't like to fly and he had gone a day early by train but I flew to Minneapolis from Denver and had an interesting experience. The Western Airlines plane made a number of stops. At Spearfish, North Dakota, when we went out to start again, (it was an old two motored DC3) the starting motor in one of two motors would not work. We waited and waited but they were unable to get another plane, and finally the pilot got three employees of the airport to go out and they wrapped a rope around the hub of the propeller of the plane and they spun it like a top. The motor started and we went on to Minneapolis. We got there and by this time it was the middle of the night. It was -30 degrees, and I didn't have a hotel reservation. The weather had been so bad earlier that day that the airline told me that they wouldn't make the flight. I had called Minneapolis and so they cancelled my hotel room reservation and then of course the airline called and we did make the trip. In any event I got into a hotel that cost me more than my per diem

was in those days and spent the rest of the night. The next day I moved into another cheaper hotel where the District usually put visitors. The next morning, I was to be one of the witnesses in court. When I tried to get out of my hotel room the next morning I couldn't get out, the lock was broken, and I was due in court. It was kind of a trying experience. The upshot of it was that a mechanic that worked for the hotel tossed some tools through the transom to me so that I could knock the pins out of the door and get out, and I took off for the courthouse. After all of that, and all the testimony was in, we got a hung jury.

The case was retried the following year and in the intervening time, Minneapolis decided that it would like to have expert testimony from a geologist as to what this outcropping contained, someone who could describe it in scientific terms and serve as an expert witness. By this time I had been transferred to Salt Lake City as a Resident Inspector. Inspector Davidson of Denver located a Professor of Geology at Colorado State University who was willing to take a trip up to the outcropping and later go up to Minneapolis and testify about it. But Davidson couldn't find the sheepherder; it was summer time and he had gone to Idaho to herd sheep. So using my report, which fortunately was quite detailed as to the location of this outcropping, he and the professor went up to the mountains. They did locate the outcropping and the Professor made his observations and was prepared to give testimony. By the time the case was to go to trial it was winter again. As our attorneys and our people were going through the evidence they were going to present, they realized that they did not have the proper continuity in their testimony regarding the rock sample which I had originally collected and sent to Minneapolis because Davidson and the Professor were merely using my

description and the drawn map on my report. Actually there was no one who could testify that yes this was the same place. So it was decided that I would have to go to Denver and that Davidson and I would go up to Posita and stand at the site of the outcropping and I could assure him that this was the place where I got the sample. He of course knew that this was the place where he and the Professor had gone. This would fill in our chain of testimony.

Well it was winter again, but not bad weather and Davidson and I did get up there and we walked over and stood on the spot and agreed this was the place. Then we went to Minneapolis where the case was set to be tried. We got there and to everybody's consternation the Professor in Colorado had gotten sick. So we had to do without his testimony after all. Well I remember, I wanted to do anything to try to salvage the situation. I wondered if it would be of any value if we could somewhere find a detailed geologic map of Colorado there in Minneapolis that might tell us something about the rock — about the geology of that immediate area. I was hopeful for an old mining map. We did go down to the Public Library and searched for their maps, and they surprisingly had a good collection, but we didn't find anything helpful.

In any event, this story ends rather quickly. We all got to court and were prepared to testify when the defense changed its plea to nolo contendere. I have forgotten just what kind of a sentence was imposed, but in fact no testimony was necessary and the Powder X case was finally over.

RGP/FLL.

New Palestine Canning Company Case

January 21, 1984

By: Robert G. Porter

(Addendum to FDA History Project)

There were two cases that I was in that would seem to be of some interest. The first is an injunction action against the New Palestine Canning Company, New Palestine, Indiana. That was tried and an injunction was obtained in January 1952. I got involved because in 1951, while I was a resident Inspector at Salt Lake City, Utah, there was a tomato school in Indianapolis which lasted a week and I was sent there from Denver District. The school involved three days of talking about some new techniques and mostly new ways to try to quantify your observations in regard to the use of rotten and insect-infested tomatoes in tomato products.

On Thursday of the week of the school, we divided up into pairs and were assigned to tomato canneries in the area to inspect and try out the techniques we had been talking about. On the last day of the conference, we discussed our experiences. I happened to be assigned to work with Inspector Weisenberg from Cincinnati District to make an inspection of the New Palestine Canning Company. I experienced during the inspection of this plant the very worst tomato cannery I had ever seen. My cannery experience previously had been entirely in Utah and Colorado and for the most part they used good tomatoes. Their packing conditions weren't always good but at least the tomato stock that I had been used to seeing was better than at this particular plant in

Indiana. They were receiving truckloads of tomatoes, it was at the very peak of the season and the tomatoes were loaded out on a concrete platform beside the plant. There was a tremendous pile of these tomatoes -- far more than the plant could process in a day. Since they were constantly working off of the part of the pile of tomatoes that was the oldest, it seemed to me that they were turning the tomatoes into garbage before they packed them. That's an exaggeration, but it gives some picture of what the conditions were. The tomatoes were infested by many flies and maggots and there was a lot of rot in the tomatoes. The plant was quite primitive. Conditions on the trimming and sorting line were the worst I had ever seen. As the belt carrying the tomatoes carried the supposedly trimmed and sorted tomatoes to the cyclone chopper, there were just tremendous amounts of sloppy, rotten tomato material on the belt. It wasn't unusual for the rot the trimmer had trimmed off the tomato to fall back right on the line and go on to the chopper along with the rest of the material. We wrote up a report (this was an official inspection for the FDA in addition to being part of this tomato school) and submitted numerous photographs that we had taken during the inspection.

In January 1952, I was transferred from Salt Lake City to Chicago District. I drove across some time in the middle of January and planned to stay my first weekend at Chicago with Oliver Field who was an ex-Food and Drug Inspector and a good friend who lived in the Chicago suburbs. The office in Chicago knew that I plannned to do this and it was my intention to come into the office Monday Morning. I had only been at Oliver's house a short time when Deputy Director Jim Herring of Chicago District called me and said that I was needed in Indianapolis at the trial of the New Palestine Canning Company on Monday morning. There were some frantic last minute arrangements and my

transportation was arranged. On Sunday evening I went to Indianapolis so that I could testify at the trial.

On Monday morning, I was informed that I was the first witness to be called. The case was already in progress and, during the previous week, the main evidence had been given by Mr. Weisenberg regarding the conditions in the plant. Originally it had not been their intention to call me at all since my testimony would presumably be the same as his. However, during the testimony put on by the defense, testimony was given which was directly contrary on a number of points to the testimony of Mr. Weisenberg. I was called then simply to corroborate his testimony and add strength to the government's case.

One of the points that had come up that was probably crucial to the case was that Sid Weisenberg had testified that the tomatoes were rotten and much rotten material went directly into the cyclone and was incorporated into the product. The defense put on the witness stand an employee whose job mainly had been to swab down the floors and do general work of that kind in the plant, and he testified that the hopper above the cyclone was set out an inch or two past the end of the belt which brought the tomatoes and the effect of this was that only the wholesome tomatoes had enough momentum to more or less jump over this space and go into the hopper. They contended that small pieces, juice that contained all the bad rotten material etc., would simply drop off the end of the belt and not have sufficient momentum to carry across the gap and into the hopper. One of the reasons they asked me to come and give testimony was to clear up this particular point. I had gotten in late the night before and the next morning I went directly to the courthouse and had only just a very brief meeting with the Cincinnati District people before

court was called in session. I was at that moment looking at some of the pictures that Sid and I had taken which I had never seen: they had developed them in Indiana and kept them there. I was looking through these pictures when suddenly someone came and said that I should come to the courtroom immediately. As I entered the courtroom, the defendant, the defendant's attorney, Sid Weisenberg and Mr. Hubble who was Director of Cincinnati District at that time, and the US Attorney were standing before the Judge. The Judge was saying that this circumstance placed great doubt on the Government's entire case. Immediately, they called me to the stand. I had one advantage that Sid didn't have. I had had time early that morning for a brief conversation with Sid and he had told me about the discrepancy in testimony regarding the gap between the end of the belt and the cyclone hopper. He told what he had testified to which was that the gap was short and rotten material was going into the hopper. To be sure, he and Mr. Hubble had gone to the plant over the weekend (this was winter time and the plant was not in operation) and they had measured the distance between the belt and the hopper and found it to be from a quarter to a half an inch. And so I had my memory refreshed on this point.

When I testified I just sat there rather calmly and cooly, testified simply to the facts and didn't show aggression towards the defendant, but merely described all the conditions in a dispassionate way. When I got off the witness stand, I met Mr. T. E. Sullivan who was the head of the Indiana State Food and Drug Commission, a highly respected man. He said that my calm, cool testimony probably saved the case. Well, this is what had happened. When Sid Weisenberg and Mr. Hubble went to the plant to verify the gap between the belt and the cyclone hopper, the plant was not in operation. There was a caretaker

there who did not want to let them in the plant. They were so eager to get in and get this information that they opened the screen door, which they actually forced it open. They went in and made their observation of the equipment and left. The caretaker subsequently informed the plant owner and he and his attorney had gone down and sworn out a complaint against Sid and Mr. Hubble for breaking and entering. Of course, the minute court convened the next morning, they immediately informed the Judge. It was a conversation before the bench in front of the Judge that was just concluding as I entered the courtroom to be sworn in as the next witness.

I think that there are some lessons to be learned about this case. Certainly, we might tend to sympathize with Weisenberg and Hubble for going to the plant and wanting to verify a piece of information on which they were sure that we were correct, but which had been directly denied in testimony put on by the defense. However I believe that we would find it hard to countenance breaking and entering the plant in order to get the information. I believe that we would all agree that that was very wrong. It may also be interesting to consider the contrast between me and Weisenberg. Weisenberg was an extremely able Inspector, but his personality is such that on the witness stand (I was not there at the time he testified but I was told by others) he showed what some people might have considered bias because of the aggressive way he talked. I sat there rather quietly and just stated the facts. I think it is imporant when you do give a testimony, that you let the facts carry the case, and if they don't carry the case, there's not very much that you can do about it.

Well, there is a second chapter in my involvement with New Palestine Canning

Company. The following year, the State of Indiana seized all of the tomato products still in the warehouse at this plant and this seizure case went to trial in court in Indiana. I was asked by the state to testify at that trial. Here we had a trial about the same product, all of the same facts in regard to the plant were the same. This time the trial was in the summer time in an unair-conditioned courtroom in a little town outside of Indianapolis, Greensborough, Indiana.

One interesting thing that happened is that the defense attorney had taken a case of tomato juice from the warehouse of the plant and had refrigerated it so it was nice and cool, and he managed to get the Judge to let him open these chilled cans of tomato juice and pour out a glass full for each member of the jury so they could taste the product, with the idea that if it tasted all right, it was all right. Obviously, this influenced the jury favorably because it was hotter than the dickens in that courtroom and that chilled tomato juice would have tasted good no matter what its quality might have been. Also we are talking about defects in the product which couldn't be determined by taste test anyway.

I had an interesting experience again in testifying in this case because the State's Attorney had some facts that he wanted to get before the jury which he did not feel he could bring forth by direct question without objections. So, he told me that when he asked me certain questions I was to answer the questions and then to continue to talk about the situation in such a way that we would bring before the jury information that went beyond the question itself, and that he wanted to get before the jury. I agreed to this, although I had misgivings and I thought it was improper. I did as he asked the first

time and, as might the Judge jumped all over me and told me that I was to answer the question and the question only and then stop. He was very severe with me and I made up my mind right then that despite the State's Attorney's request, or not I was not going to place myself in a position of testifying in an improper way. I restricted myself to answering the questions after that. I felt that if the defense attorney wanted to get additional facts and information before the jury he would have to do it in a proper way by asking questions.

So, all in all I think my experiences in the New Palestine Canning Case, both the Federal and the State cases, might teach us a few lessons, and certainly illustrate the kind of things that you can run into when you testify in a trial.

Robert G. Porter

New Palestine Canning Co. Seizure case

TOMATOES AND TOMATO PRODUCTS

22335. Canned tomatoes (3 seizure actions). (F. D. C. Nos. 32448, 32460, 32614. S. Nos. 6-012 L, 6-366 L, 7-885 L.)

QUANTITY: 2,256 cases, 24 1-lb., 3-oz. cans each, at Somerville, Mass., and Pittsburgh, Pa.

SHIPPED: Between 10-26-51 and 12-21-51, from New Palestine, Ind., by New Palestine Canning Co.

LABEL IN PART: (Can) "Yacht Club Tomatoes."

LIBELED: 1-25-52, Dist. Mass. (2 libels); 1-21-52, W. Dist. Pa. Libels amended 6-24-52.

CHARGE: 402 (a) (3)—contained fly eggs, maggots, and decomposed tomato material; and, 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: Pursuant to a stipulation between the New Palestine Canning Co., claimant, and the Government, an order was entered by the United States District Court for the Western District of Pennsylvania on 4-25-52, directing that the 3 libel actions be consolidated and removed for trial to the United States District Court for the Northern District of Indiana. Thereafter on 6-24-52, the libels were amended upon the motion of the Government to include the charge of adulteration within the meaning of 402 (a) (4). Subsequently, interrogatories served upon the Government by the claimant were answered.

On 7-23-52, the claimant filed exceptions to the libels on the ground that they were insufficient in that they failed to allege that the products seized were adulterated to the point of being unfit for human consumption. Thereafter, a request for admissions was served upon the claimant by the Government and was answered. On 12-31-52, the Government filed a motion for summary judgment on the ground that no genuine issue of material fact existed. The court, after consideration of briefs and argument, granted the Government's motion on 6-30-53.

On 7-31-53, the claimant served the Government with a notice of appeal. The United States Court of Appeals for the Seventh Circuit, on 3-12-54, reversed the judgment of the lower court and remanded the cause for further proceedings, handing down the following opinion:

SCHNACKENBERG, *Circuit Judge:* "This action is based upon a libel in rem filed by the plaintiff to condemn canned tomatoes produced by the claimant, Virgil Etchison, for alleged violation of the United States Food, Drug and Cosmetic act. From a summary judgment for plaintiff, claimant appeals to this court.

"The libel, filed June 10, 1952, as amended, alleges that the canned tomatoes were shipped in interstate commerce from New Palestine, Indiana, on or about November 19, 1951; that said article of food was adulterated in interstate commerce, within the meaning of said act (21 U. S. C. 342 (a) (3)), in that it consisted wholly or in part of a filthy substance by reason of the presence therein of fly eggs and maggots and of decomposed tomato material and within the meaning of 21 U. S. C. 342 (a) (4), in that it was prepared under insanitary conditions whereby it may have become contaminated with filth. The libel asks for a decree of condemnation.

"Plaintiff's motion for summary judgment alleges that all questions herein were adjudicated in favor of libelant and against claimant in civil action No. 2929 in the United States District Court for the Southern District of Indiana, Indianapolis Division; that the charges of adulteration made in the instant case are the same as those alleged and tried in case No. 2929; that, in response to requests for admission filed herein, the claimant has admitted that the

Robert G. Porter

canned tomatoes involved in this case were processed at the New Palestine plant during the 1951 canning season; that the canned tomatoes involved in this case bear the same code numbers as did the canned tomatoes found to be adulterated by the court in No. 2929; that the judgment in No. 2929 was entered after a full trial on the merits and constitutes an estoppel by judgment against the claimant as to the issue of adulteration of the tomatoes under seizure in the instant case.

"The motion was supported by certified copies of the pleadings, findings of fact, conclusions of law, and memorandum judgment of the court in No. 2929 and the affidavit of the chief of the Cincinnati district of the Food and Drug Administration.

"Among the findings of fact in No. 2929 were the following: the unsorted stock of tomatoes used by claimant in his 1951 canning operations contained large numbers of decomposed and partly decomposed tomatoes and was infested with flies, fly eggs, and larvae; claimant, by failing to take proper sanitary precautions, etc., permitted the plant to become infested with scavenger flies; the operations in the plant in 1951 were not adequate to remove all eggs and larvae from the tomatoes, and much decomposed tomato material went into the tomato juice; representative samples were taken by the government from the stock of canned tomatoes and tomato juice packed by claimant in 1951, examinations of which disclosed they contained fly eggs and larvae and mold.

"From the foregoing facts, the court concluded that a permanent injunction should be granted restraining the claimant from introducing into interstate commerce canned tomato products 'heretofore packed' at the New Palestine plant 'which are adulterated,' within the meaning of said act. An order for a permanent injunction was entered accordingly.

"Claimant's answer to the motion for summary judgment alleges that there is one issue only raised by said motion, to wit: whether the injunction in No. 2929 directly adjudicated the question at issue here. The answer contends that the goods in issue here were shipped before the injunction proceedings started and, therefore, they were not a party to that case; that the fact that the code numbers on the cans remained the same does not indicate that the goods involved here were a part of the same goods involved in No. 2929, because the code numbers were not changed from day to day and there is no evidence that the goods were packed at the same time as the goods involved in the injunction. Furthermore, the answer asks the court to take judicial notice that packing conditions change from time to time during the canning season and the conditions shown at one time may not be the same as the conditions at another time when the goods in this case were packed.

"With said answer is the affidavit of claimant alleging that the code numbers do not represent the pack of any particular day during the canning season and that the code number was not changed from day to day but was continued for many days' pack; that during the canning season beginning in August and ending in October packing conditions changed from day to day both by weather changes and also the rate at which the tomatoes ripened, and that as a result the factory condition on any particular day does not indicate the same condition existed at other times; that the goods seized in this case were shipped before case No. 2929 was filed and that their condition does not necessarily correspond with the condition of the goods which were the subject matter of the injunction suit nor does the condition in the factory when the goods seized were packed correspond to those on the day about which the government inspectors testified in case No. 2929.

"In this court the plaintiff contends that the motion for summary judgment and its supporting affidavits and records, together with the claimant's answer, and its supporting affidavit, clearly show that the prior injunction judgment is res judicata in this case. Claimant contends that no case for summary judgment has been presented.

"Rule 56 (a) of the Rules of Civil Procedure for the United States District Courts provides that 'A party seeking to recover upon a claim, * * * may, * * * move * * * for a summary judgment in his favor * * *.'

"Under Rule 56 both parties may file affidavits.

"Rule 56 (c) provides that 'judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'

Robert G. Porter

"Factual issues are not to be tried or resolved by summary judgment procedure. Once it is determined that there exists a genuine and material factual issue, summary judgment may not be granted. In making this determination doubts (of course the doubts are not fanciful) are to be resolved against the granting of summary judgment. If a conflict appears as to a material fact the summary procedure does not apply unless the evidence on one or the other hand is too incredible to be accepted by reasonable minds or is without legal probative force even if true. *Dewey* v. *Clark*, 180 Fed. 2d 766, at 772.

"From the record before us it is clear that on the motion for summary judgment in this case there is a genuine and material factual issue to be determined. That question is, Were the seized goods adulterated within the meaning of the sections of the Food, Drug, and Cosmetic act relied on by plaintiff (21 U. S. C. 342 (a) (3 and 4))? This question was not before the court in case No. 2929 and therefore that court did not and could not have decided it. Hence the trial court was in error in sustaining that motion and entering judgment thereon.

"For the reasons hereinbefore indicated, the judgment is reversed and the cause remanded for further proceedings consistent with this opinion."

Subsequently, the Government filed a petition for rehearing, which was denied on 4–9–54. On 12–14–54, the district court overruled the claimant's exceptions to the libels. On 1–10–55, the claimant filed an answer denying that the article was adulterated as alleged. Thereafter, the claimant consented to the entry of a decree, and on 2–4–55, the court entered a decree condemning the goods and ordering that they be destroyed or fed to animals.

22336. Canned tomatoes, corn, and okra, canned succotash, canned green beans, canned lima beans, and canned tomatoes. (F. D. C. No. 37252. S. Nos. 77–114/7 L, 80–682 L.)

INFORMATION FILED: 2–3–55, Dist. Del., against Torsch Canning Co., a corporation, Milford, Del.

SHIPPED: Between 7–27–54 and 8–12–54, from Delaware to Pennsylvania.

LABEL IN PART: (Can) "Red River Brand Tomatoes Corn & Okra [or "Royal Clover Brand Succotash." "Town Crier French Style Sliced Green Beans," "Richville Brand Lima Beans," or "Cardinal Brand Tomatoes"] * * * Distributed by Delaware Valley Grocery Co. Philadelphia, Pa."

CHARGE: 402 (a) (3)—contained decomposed substance when shipped.

PLEA: Nolo contendere.

DISPOSITION: 4–27–55. $1,000 fine.

22337. Canned tomatoes, corn, and okra, canned succotash, canned green beans, and canned lima beans. (F. D. C. No. 37065. S. Nos. 77–114/7 L.)

QUANTITY: 19 cases, 24 1-lb. cans each, of tomatoes, corn, and okra; 139 cases, 24 1-lb., 1-oz. cans each, of succotash; 39 cases, 24 15½-oz. cans each, of sliced green beans; and 227 cases, 24 No. 303 cans each, and 8 cases, 24 No. 2 cans each, of lima beans at Philadelphia, Pa.

SHIPPED: 8–6–54, from Milford, Del., by Torsch Canning Co.

LABEL IN PART: (Can) Red River Brand Tomatoes Corn & Okra," "Royal Clover Brand Succotash," "Town Crier French Style Sliced Green Beans," or "Richville Brand Lima Beans."

LIBELED: 9–22–54, E. Dist. Pa.

CHARGE: 402 (a) (3)—contained decomposed substance when shipped.

DISPOSITION: 10–20–54. Default. Portion of products delivered to Department of Health, Education, and Welfare, and remainder destroyed.

Robert G. Porter

New Palestine Canning Co Injunction

CHARGE: 402 (a) (3)—contained insects, insect parts, and rodent hairs; and 402 (a) (4)—prepared under insanitary conditions.

DISPOSITION: 9-7-54. Consent—claimed by Enoch Packing Co., Inc. Converted to distillery stock.

VEGETABLES*

23071. Canned corn. (F. D. C. No. 38850. S. Nos. 24-930 M, 24-937 M.)

QUANTITY: 135 cases, 6 6-lb., 10-oz. cans each, at Yakima, Wash.

SHIPPED: 12-21-55 and 1-12-56, from Salem, Oreg., by Western Oregon Packing Corp.

LABEL IN PART: (Can) "Lin-Ton Brand Whole Kernel Golden Sweet Corn."

LIBELED: 2-14-56, E. Dist. Wash.

CHARGE: 402 (a) (3)—contained decomposed substance when shipped.

DISPOSITION: 4-3-56. Default—destruction.

23072. Canned corn. (F. D. C. No. 38805. S. Nos. 38-150 M, 38-334/6 M.)

QUANTITY: 69 cases, 48 8-oz. cans each, and 322 cases, 24 1-lb. cans each, at Mexico, Mo.

SHIPPED: Between 8-25-55 and 11-23-55, from Milford, Ill., by Milford Canning Co.

LABEL IN PART: (Can) "Iga * * * Cream Style White Sweet Corn," "Iga * * * Cream Style Country Gentleman White Corn," and "Iga * * * Cream Style Golden Sweet Corn."

LIBELED: 12-23-55, E. Dist. Mo.

CHARGE: 402 (a) (3)—contained worms and worm fragments when shipped.

DISPOSITION: 4-24-56. Default—destruction.

23073. Green olives in brine. (F. D. C. No. 38952. S. No. 28-551 M.)

QUANTITY: 73 275-lb. bbls. at San Juan, P. R.

SHIPPED: 1-18-56, from Woodlake, Calif., by Woodlake Ranch, Inc.

LIBELED: 2-14-56, Dist. P. R.

CHARGE: 402 (a) (3)—contained insects and insect parts when shipped.

DISPOSITION: 4-12-56. Consent—claimed by Woodlake Ranch, Inc. The olives were reconditioned by removal from the barrels and washing and repacking them into clean containers with new brine.

TOMATOES AND TOMATO PRODUCTS

23074. Canned tomato products. (Inj. No. 240.)

COMPLAINT FOR INJUNCTION FILED: 12-28-51, S. Dist. Ind., against Virgil Etchison of Atlanta, Ind., t/a New Palestine Canning Co., at New Palestine, Ind.

CHARGE: The complaint alleged that the defendant was engaged in the preparation, packing, holding, and interstate distribution of canned tomato products and had been and was, at the time of filing the complaint, introducing and causing to be introduced into interstate commerce such articles which were adulterated within the meaning of 402 (a) (3) and (4) by reason of

*See also No. 23062.

Robert G. Porter

the presence in the articles of fly eggs, maggots, and decomposed tomato material, and by reason of their being prepared, packed, and held under insanitary conditions at the defendant's New Palestine plant. It was alleged further that the insanitary conditions resulted from and consisted of the presence of house flies and fruit flies in and around the places in the plant where the articles were prepared, packed, and held, and in and around the machinery, equipment, and raw materials used in preparing, packing, and holding the articles, and also from fly-infested equipment and general carelessness on the part of the defendant. In addition, it was alleged that the defendant had on hand at his plant large stocks of adulterated canned tomato products which constituted a menace to interstate commerce.

The complaint alleged further that the defendant was well aware that his activities were in violation of the law; that he had previously been convicted for shipping in interstate commerce canned tomato products adulterated within the meaning of 402 (a) (3) and (4); that, at the time of filing the complaint, there was pending a criminal action against the defendant for the interstate shipment of decomposed tomato juice adulterated within the meaning of 402 (a) (3); that the defendant's canned tomato products had been seized and condemned on several occasions because of adulteration within the meaning of 402 (a) (3) and (4); and that numerous inspections had been made by inspectors of the Food and Drug Administration, during which the insanitary conditions existing were brought to the attention of the defendant and his employees. The complaint alleged further, on information and belief, that the defendant would continue to introduce and deliver for introduction into interstate commerce adulterated canned tomato products unless restrained by the court.

DISPOSITION: On 1–10–52, a temporary restraining order was issued. Thereafter, on 1–16–52, the defendant filed an answer denying the material allegations of the complaint. The complaint subsequently was amended to include a charge of adulteration within the meaning of 402 (b) (2) in that water had been added to the articles. The case came on for trial on 1–24–52. The trial was concluded on 1–29–52, and on 3–12–52, the court handed down the following findings of fact and conclusions of law:

STECKLER, *District Judge:* "The above entitled cause came on regularly for trial, and the Court, having duly considered the pleadings, exhibits, and testimony of the plaintiff and defendant taken in open court, and the arguments and statements of counsel, and being fully advised in the premises, now finds the following:

FINDINGS OF FACT

"1. The defendant, Virgil Etchison, owns and operates three canning plants under the names New Palestine Canning Company, Omega Canning Company, and Morgantown Canning Company located respectively, at New Palestine, Indiana; Omega, Indiana; and Morgantown, Indiana; where he has been and is engaged in the business of canning tomatoes and tomato juice and introducing such foods into interstate commerce.

"2. The New Palestine Canning Company plant annually disposes of a considerable portion of its canned tomatoes and tomato juice in the channels of interstate commerce.

"3. The unsorted stock of tomatoes used by the New Palestine Canning Company in its 1951 canning operations contained large numbers of decomposed and partly decomposed tomatoes.

"4. The unsorted stock of tomatoes used by the New Palestine Canning Company in its 1951 canning operations was infested with drosophila flies, fly eggs and larvae.

Robert G. Porter

"5. The defendant, by failing to take proper sanitary precautions, including the installation of adequate screening of the plant and privy appurtenant thereto, permitted the New Palestine Canning Company plant to become infested with scavenger flies.

"6. The washing, peeling, trimming, and sorting operations in the New Palestine Canning Company plant in 1951 were not adequate to remove all drosophila and scavenger fly eggs and larvae from the tomatoes used in the 1951 pack.

"7. An insufficient number of sorters and trimmers were used at the New Palestine Canning Company plant in 1951 adequately to remove from the poor quality of raw tomato stock all the decomposed and partly decomposed tomatoes from the 'juice' line and as a result much decomposed tomato material went into the tomato juice.

"8. The tomato juice used in the New Palestine Canning Company plant in 1951 as a packing medium for canned tomatoes contained substantial amounts of decomposed tomato material.

"9. The tomato juice canned in the New Palestine Canning Company plant in 1951 contained substantial amounts of decomposed tomato material.

"10. Representative samples were taken by the Government from the stock of canned tomatoes and canned tomato juice packed by the New Palestine Canning Company in 1951, the unshipped portion of which was and now is located in the defendant's warehouse in New Palestine, Indiana.

"11. Objective examinations of these samples by qualified Government analysts, employing well-recognized and accepted methods, disclosed that the canned tomatoes and canned tomato juice contained fly eggs, fly larvae, and mold.

"12. Examinations of the samples of canned tomato juice taken from the stock processed at the New Palestine Canning Company plant in 1951 and now located at the warehouse of the defendant in New Palestine, Indiana, revealed that cans bearing at least one particular code number had been diluted approximately 50 percent with water.

"13. The New Palestine Canning Company plant was inspected by Federal and Indiana Food and Drug Inspectors in 1949 and 1951 at which times the plant manager's attention was directed to the very poor condition of the raw stock, the insanitary conditions of the factory, and the inadequate washing, cleaning and sorting operations.

"14. Pursuant to the provisions of the Federal Food, Drug and Cosmetic Act a number of seizures in 1949 and 1950 of tomato products shipped by the defendant were made based on allegations that such products consisted in part of filth or decomposed tomato material.

"15. No answers were filed in said seizure proceedings and the articles involved were destroyed upon a showing by the Government that they violated provisions of the Federal Food, Drug, and Cosmetic Act.

"16. In the last two years the defendant has appeared before this Court on two occasions, charged with violating provisions of the Federal Food, Drug, and Cosmetic Act by reason of having introduced into interstate commerce from the New Palestine Canning Company and the Omega Canning Company plants adulterated tomato products.

"17. The defendant, after pleading guilty on the first above occasion and nolo contendere on the second, was fined by this Court.

"18. Unless restrained by the Court, the defendant will introduce or cause to be introduced into interstate commerce canned tomatoes and canned tomato juice consisting in part of filthy and decomposed substances.

CONCLUSIONS OF LAW

"From the foregoing facts, the Court concludes:

"1. This Court has jurisdiction of the subject matter hereof and the parties hereto under 21 U. S. C. 332 (a).

"2. The canned tomatoes and canned tomato juice processed in the plant of the New Palestine Canning Company in 1951 were adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that said articles of food consisted in part of a filthy substance by reason of the presence therein of fly eggs and fly larvae, and of a decomposed substance by reason of the presence therein of decomposed tomato material (21 U. S. C. 342 (a) (3)).

Robert G. Porter

"3. The canned tomatoes and canned tomato juice processed in the New Palestine Canning Company plant in 1951 were further adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that they were prepared and packed under insanitary conditions whereby they might have become contaminated with filth (21 U. S. C. 342 (a) (4)).

"4. Canned tomato juice bearing at least one particular code number, processed in 1951 in the plant of the New Palestine Canning Company was adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that water was substituted in part for tomato juice (21 U. S. C. 342 (b) (2)).

"5. The canned tomatoes and canned tomato juice processed in 1951 in the plant of the New Palestine Canning Company and now stored in the defendant's warehouse in New Palestine, Indiana, are adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act and, therefore, do not constitute legal articles of interstate commerce.

"6. Despite warnings from Federal and Indiana Food and Drug Inspectors resulting from observations of faulty factory operations and notwithstanding seizures of interstate shipments of the defendant's canned tomato products and criminal proceedings against him brought in this Court based on such shipments, the defendants, in 1951, and for several years past caused the introduction or delivery for introduction into interstate commerce of adulterated canned tomatoes and canned tomato juice and will continue to do so unless restrained by this Court.

"7. A large part of the adulterated canned tomato products prepared and packaged by the defendant in 1951 in his New Palestine Canning Company plant has already been shipped in interstate commerce and the remainder of such pack which is now stored in the defendant's warehouse in New Palestine, Indiana, will apparently also be shipped in interstate commerce unless this Court restrains such action.

"8. Plaintiff's prayer for a permanent injunction should be granted restraining the defendant, Virgil Etchison, from causing the introduction or delivery for introduction into interstate commerce of canned tomato products, heretofore packed at his New Palestine, Indiana, plant, which are adulterated within the meaning of Section 402 (a) (3) and (4) and 402 (b) (2) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 342 (a) (3) and (4) and 342 (b) (2)).

"9. Plaintiff is entitled to all costs properly taxable against the defendant, Virgil Etchison."

On the same date, an order was entered permanently enjoining and restraining the defendant from introducing or delivering for introduction into interstate commerce the canned tomato products produced in the year 1951, and on hand at the defendant's New Palestine plant. The order provided also that the defendant should maintain and keep accurate and complete records and accounts showing the amount, location, and disposition of the 1951 pack, which records were to be available to the officers of the court and inspectors of the Food and Drug Administration.

Subsequently, the Government filed a motion to alter or amend the judgment to include an order permanently enjoining the defendant from introducing or delivering for introduction into interstate commerce all canned tomato products adulterated within the meaning of 402 (a) (3) and (4) and 402 (b) (2). This motion was overruled by the court on 6–24–52. Thereafter, the defendant filed a motion to modify and dissolve the injunction, which was denied on 9–14–53.

Subsequently, the Government instituted a criminal contempt action against the defendant, charging that he violated the injunction decree of 3–12–52, by refusing to furnish information concerning the distribution of the New Palestine 1951 pack of tomato products. On 5–13–54, the matter came on for hearing before the court, and after consideration of the evidence and arguments of counsel, the court ordered that the contempt action be dismissed.

Robert G. Porter

Eugene, OR
5/8/91

Dear Bob:

As you requested by telephone day before yesterday I am enclosing the copy of your oral history interview of 10/19/81.

For use in your talk to the lab staff at Denver I am sending you the following:

1. An excerpt from Dunbar's article in the FDC Law Journal that confirms Leach as the first Denver chemist.
2. Excerpt from Ken Monfore's interview about detection of worm fragments in tomatoes.
3. My memo to Mount Warren on early laboratories
4. Various pieces from the Food & Drug Review reporting on personnel who were at Denver for part of their careers.
5. A copy of a magazine article "The Laws of 1938 BC" which may refresh your memory of changes that have occurred during our time with FDA.

Copies sent to ROP at his request

{ In digging this out I found your pieces on the New Palestine Canning and Powder X Cases. If you want copies of them let me know,

Regards
Fred