

NOMINATION OF ARTHUR J. GOLDBERG

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE EIGHTY-SEVENTH CONGRESS SECOND SESSION ON

NOMINATION OF ARTHUR J. GOLDBERG, OF ILLINOIS, TO
BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE
UNITED STATES

SEPTEMBER 11 AND 13, 1962

Printed for the use of the Committee on the Judiciary



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NOMINATION OF ARTHUR J. GOLDBERG

TUESDAY, SEPTEMBER 11, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland (presiding), Kefauver, McClellan, Ervin, Dodd, Hart, Dirksen, Hruska, Keating, Fong, and Scott.

Also present: Joseph A. Davis, chief clerk.

The CHAIRMAN. The hearing this morning has been scheduled for the purpose of considering the nomination of Arthur J. Goldberg of Illinois to be Associate Justice of the Supreme Court of the United States.

Notice of the hearing was published in the Congressional Record of August 31, 1962.

Senator Douglas, by formal notification, approves the nomination.

Senator Dirksen, by formal notification, approves the nomination.

By letter of September 7, 1962, the Standing Committee on Federal Judiciary of the American Bar Association states the nominee is "highly acceptable from the viewpoint of professional qualification."

By letter of September 6, 1962, the president of the Illinois State Bar Association and the members of the board of governors of that association with whom he has had an opportunity to confer are of the opinion that the nominee is exceptionally well qualified.

(The letters referred to are as follows:)

AMERICAN BAR ASSOCIATION,
STANDING COMMITTEE ON FEDERAL JUDICIARY,
September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, U.S. Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Thank you for your telegram affording this committee an opportunity to express an opinion or recommendation on the nomination of Arthur J. Goldberg of Illinois to be an Associate Justice of the Supreme Court of the United States.

Our committee, as constituted at the time of the nomination, is of the view that Mr. Goldberg is highly acceptable from the viewpoint of professional qualification.

Since the form of this opinion differs from that previously used with regard to judicial nominations, a few words of explanation may be in order.

This committee has conceived its responsibility to be to express its opinion only on the question of professional qualification, which includes, of course, consideration of age and health, and of such matters as temperament, integrity, trial and other experience, education, and demonstrated legal ability. We intend to express no opinion at any time with regard to any other consideration, not related to such professional qualification, which may properly be considered

NOMINATION OF ARTHUR J. GOLDBERG

by the appointing or confirming authority. This position is, of course, not in any way confined to Secretary Goldberg's case, or prompted by his nomination.

Furthermore, the committee is now of the opinion that, as to nominations for the office of Justice of the Supreme Court it would be unwise for the committee to continue to attempt to give comparative ratings such as "qualified," "well qualified," "exceptionally well qualified," which we use generally in our reports to your committee. As to nominations to this Court, we wish to confine ourselves to a statement that the candidate is, or is not, acceptable from the viewpoint of professional qualification without, in the future, the use of any adjective which might suggest a comparative rating. Once again, this is a matter which has been the subject of discussion in the committee for some time, and the decision to limit ourselves in this fashion is not related in any way to this particular nomination.

I trust that this explanation is adequate and am gratified that your committee continues to ask for our opinion on such matters.

With kind regards.

Sincerely yours,

ROBERT W. MESERVE,
Chairman.

ILLINOIS STATE BAR ASSOCIATION,
Morrison, Ill., September 6, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: Your telegram of September 4, advising me as president of the Illinois State Bar Association of the public hearing scheduled by your committee for Tuesday, September 11, on the nomination of Arthur J. Goldberg to be an Associate Justice of the Supreme Court of the United States is acknowledged. Shortness of time does not permit the convening of the board of governors of our association, but I am happy to give you my personal opinion as to Mr. Goldberg's qualifications.

His exceptional intellectual abilities, his experience in the practice of law, his personal and professional integrity, his capacity for hard work and his devotion to the cause of justice and to his country make him exceptionally well qualified to serve on the Supreme Court of the United States.

To assist you in evaluating the validity of my judgment in this matter, I should perhaps inform you that I have known Arthur J. Goldberg since our days in law school together. I am a Republican, and a somewhat substantial portion of the practice of my law firm has been the representation of management in labor disputes.

I appreciate your consideration in giving the association, of which I have the honor to be president, an opportunity to express its views. The members of our board of governors, with whom I have had an opportunity to confer, agree with my judgment.

Sincerely yours,

MASON BULL,
President.

The CHAIRMAN. First, who desires to testify against the nominee? Mr. WALSH. I do.

The CHAIRMAN. Would you report to Mr. Davis in this room so that he can get your name and information about you?

Senator Douglas, do you want to testify?

Senator DOUGLAS. If I may, sir.

The CHAIRMAN. I think Mr. Goldberg should come up too.

Senator DOUGLAS. May I ask that Congressman O'Hara come up too?

The CHAIRMAN. Yes.

**STATEMENT OF HON. PAUL H. DOUGLAS, A U.S. SENATOR
FROM THE STATE OF ILLINOIS**

Senator DOUGLAS. Mr. Chairman, and colleagues of the Senate Judiciary Committee, it is a privilege to endorse my long-time personal friend and constituent, Arthur J. Goldberg, for appointment to the U.S. Supreme Court.

Mr. Goldberg's remarkable and illustrious career could only have happened in America. The son of immigrants, he had to struggle for an education. Working nights, he put himself through the Northwestern University Law School. Though nearly dropping from fatigue, he graduated at the head of his class from that institution. Admitted, like Stephen A. Douglas, to the bar at the age of 21, he quickly won a leading place in Chicago as a respected and successful appeals lawyer, or a lawyer's lawyer, who, like the late Justice Cardozo, by the clarity and excellence of his briefs, won many well-merited successes before the court of appeals.

In the middle and later thirties, he was asked to represent a number of democratic trade unions in their legitimate efforts to organize and bargain collectively. He was a force for good in a multitude of civic ventures in Chicago.

The late Philip Murray became attracted to Mr. Goldberg and appointed him as the leading attorney for the steelworkers and the CIO. With the coming of the war, he went into the OSS under the direction of a great American, William J. (Wild Bill) Donovan. Here he performed distinguished service in Europe by his organization of underground movements and intelligence from the democratic trade union movement of occupied Europe.

Returning to civilian life after the war, he became the official counsel of the United Steelworkers and the CIO. He represented these organizations before the courts, in negotiations with employers and advised them on internal problems. Mr. Goldberg was largely instrumental in summoning to trial a number of unions infiltrated by the Communists, and believed to be under their control. After a fair hearing, these unions were expelled by the CIO, and they have since rapidly withered on the vine. This was perhaps the most effective action taken in these last years in behalf of true democracy and genuine anti-communism.

Mr. Goldberg followed this up by helping to devise the formula which brought about the merger of the A.F. of L. and the CIO, and he was the moving spirit in formulating the code of fair ethical practices adopted by the merged organization. It has been this code which has enabled the A.F. of L.-CIO, under President Meany, to take corrective action against many misleaders of labor, including many in the unions of teamsters, bakers, laundry workers, wine and distillery workers, and many others as well.

During all this time, Mr. Goldberg frequently appeared in court, always arguing his case with legal learning, clarity, and with gentlemanly courtesy and personal charm.

His record since his appointment as Secretary of Labor, 20 months ago, is known to all and speaks for itself. He has shown himself to be humane and yet impartial. He has put the interest of the public and the Nation first, and above that of any more restricted group.

The President of the United States honored himself and the country by appointing Mr. Goldberg to the Supreme Court. Many public figures with diverse viewpoints have honored themselves by endorsing this appointment, and I hope the Senate will honor itself by confirming the appointment.

Mr. Chairman and colleagues, you have before you a good and able man, a loyal scholar, and a true patriot, with a warm heart and an impartial judgment. I predict he will make a notable Justice of the highest Court in our land, and it is one of the rare privileges of my life to have been given the chance of appearing before you in his behalf.

The CHAIRMAN. Any questions?
Congressman O'Hara.

STATEMENT OF HON. BARRATT O'HARA, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF ILLINOIS

Mr. O'HARA. Mr. Chairman and gentlemen of the committee, the Second District of Illinois is rich in constituent quality, as I think you know from association with Paul Douglas. From the Second District of Illinois I bring to this committee word that everybody in our district is delighted and happy because no one has ever served and lived in the Second Congressional District of Illinois who has been held in higher esteem than Arthur Goldberg.

And I shall always regard this as one of the greatest privileges of my life, to appear before this honorable committee saying a word for Arthur Goldberg.

The first great joy that came to me, gentlemen, was when it was announced that Mr. Brandeis was to go on the Supreme Court. Mr. Brandeis had been an idol of mine. It so happened that the Governor of Illinois at that time, Governor Downey, was expected to be appointed. The President did not appoint Governor Downey but appointed Governor Brandeis.

And even though that deprived me of the honor of becoming Governor of Illinois, I have never experienced such great joy as I did when the word came, Mr. Brandeis would go to the Supreme Court. That joy has now been exceeded. I think that the President, and I am sure that you gentlemen in the Senate will confirm the appointment. I predict that Arthur Goldberg will go down in the history of the Supreme Court as one of its greatest Justices.

Thank you, gentlemen.

The CHAIRMAN. Any questions?
(No response.)

The CHAIRMAN. Who desires to testify in support of this nomination?

(No response.)

The CHAIRMAN. Mr. Secretary, I am sending you a biography. Will you see if it is correct, and we will save time before putting it in the record.

TESTIMONY OF ARTHUR J. GOLDBERG, NOMINEE FOR APPOINTMENT AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. GOLDBERG. Mr. Chairman, I would like to make one or two very minor corrections in the biography that you have distributed.

The CHAIRMAN. All right, sir.

Mr. GOLDBERG. I received my college education in a junior college in the city of Chicago which is a public institution. This was called Crane Junior College. It is a city college of the city of Chicago. And I attended that college from 1924 until 1926.

I also moonlighted. In addition to my attendance at the junior college, I took an additional course so I could get into law school with the proper credits at DePaul University, a university located in Chicago.

My degrees from Northwestern University Law School are B.S.L., bachelor of science in law, instead of B.S., and then I received a juris doctor degree.

When I was inducted into the Army I was not inducted as a major, I was inducted as a captain. I was promoted to the rank of major. So that in my Army career it should be listed as captain in the U.S. Army and then major.

I was promoted to major. I never was promoted to colonel until I was put into the Reserves much later, recently.

(The corrected biographical sketch of Mr. Goldberg is as follows:)

ARTHUR J. GOLDBERG

Born : August 8, 1908, Chicago, Ill.

Education :

1924-26 : Crane Junior College, DePaul University.

1926-30 : Northwestern University Law School, Chicago, Ill.; B.S.L. and J.D. degrees.

Bar : 1929—Illinois, District of Columbia.

Experience :

1929-48 : Private Practice of Law, Chicago, Ill.

1939-42 : John Marshall Law School, Chicago, Ill.

1942-44 : Office of Strategic Services.

1943-44 : U.S. Army, captain, major.

1946-48 : Part-time instructor.

1948-61 : Goldberg, Devoe, Shadur & Mikva, Chicago, Ill.; Goldberg, Feller & Bredhoff, Washington, D.C.; law partner.

1948-55 : CIO, general counsel.

1955-61 : AFL-CIO, special counsel.

1948-61 : United Steel Workers of America, general counsel.

1961-present : Secretary of Labor of the United States.

Marital status : Married, two children.

Office : U.S. Department of Labor, Washington, D.C.

Home : 2811 Albemarle Street NW., Washington, D.C.

To be an Associate Justice of the Supreme Court of the United States.

The CHAIRMAN. I forgot to swear you, Mr. Goldberg.

Do you solemnly swear that the testimony you give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GOLDBERG. I do.

The CHAIRMAN. Mr. Goldberg, I would like for you to file with the committee a list of every organization you have joined since you began to practice law.

Mr. GOLDBERG. Since I began to practice law——

The CHAIRMAN. I want you to take your time, you probably can't think of all of them off the cuff.

Mr. GOLDBERG. Since I began to practice law in Chicago in 1929 I joined and became a member of the Chicago Bar Association, the Illinois Bar Association, the American Bar Association. I was a member of the National Lawyers Guild. I have been a member of many organizations identified with the Jewish faith, the American Jewish Congress. I think I have been identified with the American Jewish Committee.

I have probably belonged to other groups, the names of which I do not recall.

The CHAIRMAN. I say, I want you to take your time, I want just as accurate a statement as you can give.

Mr. GOLDBERG. I will be glad to furnish that.

The CHAIRMAN. We can't finish today, because the Senate convenes at 11 o'clock, so we will have to quit at that time. But you will be back, and you can file it, and I hope we can have you back on Thursday to finish the hearing.

Mr. GOLDBERG. I would be delighted, Mr. Chairman, if you would like me to file a list of all the organizations.

The CHAIRMAN. That is what I want.

Mr. GOLDBERG. I have been a member of the American Civil Liberties Union in Chicago, I have been a member of the Independent Voters of Illinois—these are the principal organizations—I am a member of the Democratic Party and have been for many years.

The CHAIRMAN. That was going to be my next question.

Mr. GOLDBERG. I think in my own capacity I am a member of 56 committees for the President, or thereabouts—this is probably an exaggeration of the many committees of the President. I shall be glad to file as complete a list as I can.

The CHAIRMAN. Senator Kefauver.

Senator KEFAUVER. I am sorry I was late in getting here.

I have known Mr. Goldberg a number of years as a public official, lawyer, and man, and I have a very high respect for him. And I have great respect for the distinguished Senator with him.

The CHAIRMAN. Senator Dirksen.

Senator DIRKSEN. I have no questions.

On the day that the appointment of Arthur Goldberg was announced, I had immediate inquiries from the press asking if I had any comment. And I did. I said I had known the appointee for 25 years or more, I esteemed him as one of the ablest lawyers in the country, I found him impeccably fair at all times, I was confident that if anyone believes because of the nature of his practice that there was any bias in that direction, he could out of his competence, his ability, and his fairness completely disassociate himself and render an impartial judgment as a Justice of the Supreme Court.

And I felt that it was a well-merited appointment, and he would bring to it a skill and a capacity and a judicial temperament and a background that eminently qualified him for the High Court.

And I am delighted to see him before us this morning, and to confirm my earlier judgment.

The CHAIRMAN. Senator McClellan.

Senator McCLELLAN. Mr. Chairman, you have just announced that the Secretary is coming back?

The CHAIRMAN. Unless we get through this morning.

Senator McCLELLAN. Mr. Chairman, I am going to ask two or three questions.

First I want to say that I know the nominee quite well and I also have confidence in his ability. I think there have been instances where by cooperating with a common objective in mind that we have been able to succeed, and in doing so, serve the best interests and welfare of this country.

And I want to say before I ask these questions that I have been very happy and pleased with his cooperation and with the Secretary in this particular field. We are now confronted, however, with another decision to make on an issue before us, that is, his confirmation to the highest court in the land.

If it were a matter of personality, a matter of personal friendship and relationship, there wouldn't be a question that needed to be asked. But we are dealing with an institution that is basic to the preservation of our system of government. And the Senate has a heavy duty and responsibility, it is charged with that duty and that responsibility by the Constitution, to give its advice and consent to an appointment to this branch of the government.

Therefore, I think, Mr. Chairman, that we should inquire into the philosophy and viewpoint of an applicant insofar as we can. I think it is our duty to do that. And for that reason I am going to ask you a few questions. Some of these have been in a sense asked by request, and, the three I am going to ask I am going to adopt them as my own for the purposes of interrogating the nominee.

And I think these questions are pertinent, I think they ought to be answered, and I think a full and fair understanding of your viewpoint and your philosophy should be made in that regard.

Question 1: In connection with several cases involving constitutional issues now pending before the Court, certain news commentators have undertaken to predict that your background and your thinking would prompt you to side with those who prefer so to interpret the Constitution as to permit them to actually write new law.

In that connection would you mind telling us whether you subscribe to the statement made by your predecessor, Justice Frankfurter, in the 1943 dissenting opinion in the *Barnette* case. This is what Justice Frankfurter said:

* * * as a member of this Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them * * *

The question is, do you subscribe to that? And, Mr. Secretary, I will not press you for an answer now, if you want time to consider it, very well.

Mr. GOLDBERG. I don't need time to consider that. Senator McClellan, I believe very strongly as a great jurist once said, Justice Brandeis, that in the exercise of the high power which is vested by the Constitution in Justices of the Supreme Court, we must ever be on guard lest we erect our own prejudice into legal principle.

And I subscribe to the view that one of the high obligations of a Justice of the Supreme Court is to guard against—perhaps the high-

est—is to guard against putting into his opinion his own private predilections. And I would hope that all the human failings that a man has, that if the Senate confirms my appointment, that I will be able to see to it that when I participate in the Court's opinions, that I will be able to prevent my own views as a private citizen, my own predilections, my own prejudices—I have them, because I am a human being—from being exalted into legal principle.

I think this is the first obligation of any man whom the Senate would see fit to confirm as a Justice of the Court.

Senator McCLELLAN. I assume, then, you agree with me that it is possibility one of the most difficult tasks that a person has to face in trying to serve on that high tribunal.

Mr. GOLDBERG. There is no more difficult task, because a person like myself who has led an active life and who has expressed himself on many subjects, who has had deep feelings about those subjects, which he still has—I am not a different person from the person that I have been in my prior appearances before the Congress—nevertheless, if I am approved by the Senate, when I take office as a Justice I would regard my first task and the primary task of being a Justice of the Supreme Court to be on guard, as Justice Brandeis said, lest my prejudices, my convictions, my predilections, are erected into legal principles.

My obligation will be, if I am confirmed, and when I am confirmed, to enforce, as the Congress does in its own right and in its own way, and as the President does in his own way and in his own right, to enforce and apply the Constitution of the United States. That is a different obligation, much more serious obligation than the one that a private citizen has when he expresses himself on many problems.

Senator McCLELLAN. This soliloquy reminds me of the procedure we go through in qualifying a jury. Quite frequently in interrogating a juror you learn that he has heretofore formed or expressed some opinion with regard to the merits of the particular case or some particular aspect of it. And then we direct a question to him notwithstanding that, can you lay aside that opinion that you may have heretofore formed or expressed, lay it aside completely, wholly disregard it, and proceed in your deliberations to weigh and determine this case strictly upon its merits in the law and evidence usually here and the law as given you by the Court.

And many of them answer that they can and they will, and I am confident they honestly believe they can, sincerely mean to and will. And sometimes possibly they succeed, and sometimes possibly they don't. In the case of a juror, I would say, it depends largely upon his ability, his mastery of himself so that he can lay those opinions aside, long preconceived opinions, and so forth, that he may have formed, lay them aside and proceed to hear the case and decide as though he had never known about it or formed any previous opinions regarding its merits.

It is not easy to do.

Mr. GOLDBERG. No, this is a very difficult thing, because we are human beings who are a product of our environment, our experience. But I know no higher obligation of a judge than to guard himself against his own predilections and to try to decide cases on the basis of the law and the facts.

Senator McCLELLAN. Another question. A commentator has stated that it is an unspoken national issue as to whether you, as the incoming Justice, will lean "toward that reformist experimentation and innovation, that thirst to legislate the law and amend the Constitution from the High Bench rather than to referee the law as written by Congress, and the Constitution as written by the Founders." May we indulge the hope that you will oppose making the Supreme Court a third legislative body?

And I would like to have your comment thereon.

Mr. GOLDBERG. Under the Constitution of the United States, we have a separation of powers. Under article 1, section I, of the Constitution, all legislative powers are vested in the Congress. This I hope and I intend, if I am a Justice, to respect. This is the secret of our great democracy.

The executive power under article 2 is vested in the President. Under article 3, the judicial power is vested in the Supreme Court and such inferior courts as the Congress of the United States shall establish. It would be my intent, my philosophic conviction, that we must pay due respect to the Constitution. This is what a Supreme Court Justice is called upon to apply in the cases before him.

And I would hope within human fallability to observe the great principle written into the Constitution by the Founding Fathers of our great Republic.

Senator McCLELLAN. I have one more question at this time.

It is apparent that there has been a trend on the part of the Supreme Court in recent years—at least I subscribe to that belief—to restrict the substance and the procedures of investigative committees of the Congress in a way which, in many instances, has greatly hampered their effectiveness in obtaining information for legislation purposes.

It is distressing to many that the Court appears to have gone further in this direction in investigations involving national security. Do you not agree that the Supreme Court, in recognizing the doctrine of separation of powers, should refrain from such encroachment upon purely legislative functions of the Congress?

Mr. GOLDBERG. Senator McClellan, you and I have worked together in this area, I think, in the past, as you commented earlier. But I was functioning, of course, as either a private citizen or a member of the executive branch of the Government.

I would like to say this. There are several cases I have seen on the docket of the Supreme Court involving this question. If I am confirmed by the Senate, I would hope to participate in these cases. I would not like any remark of mine to lead any litigant to believe that I am prejudiced for or against any particular form of view.

Senator McCLELLAN. Mr. Secretary, may I interrupt? Of course, we all know that cases have different factors involved; they are not all identical. But this is covering a general principle.

Mr. GOLDBERG. But I would have no hesitancy in saying, with due regard for the merits of any particular case, and without expressing an opinion upon any particular case, that I have found, in my experience, that the Congress, in exercising its necessary role in conducting investigations appropriate to legislation, has exercised a very salutary and important function in the operation of our democracy.

I sit next to a Senator, on my left, whose investigations into the abuses in welfare funds on the part of employers and some small minority of unions resulted in a fine piece of legislation which I, as Secretary of Labor, have had the opportunity to administer.

I answer a question of a Senator who conducted investigations which led to legislation of great importance to safeguarding the benefits and rights of people who have joined unions. I respect the necessary rule of Congress in this area, and I see no dichotomy in this and the functions of the Court.

Senator McCLELLAN. Mr. Secretary, I believe you have observed, and know as I have, that these three areas in which I have interrogated you are areas in which possibly our Supreme Court has been more frequently criticized for its ruling. Without trying to argue either the merits or lack of merits in any such criticism, I think it is significant that this committee and the Senate should take cognizance of such criticism, and should undertake to make a record at the time of a nominee's consideration for confirmation, particularly as to his general viewpoint in these areas, and try to ascertain, insofar as they can, whether his confirmation and his service on the Court might tend to serve to further implement the conditions which have brought about such criticism.

And again we can't go into any specific case; I know that; I am not trying to do that. But I can say, and I think without any reservations or qualifications, that a lot of good Americans today are concerned about the trend of some Supreme Court decisions.

And I share that concern. And I am hoping that there will be more profound deliberation in some of these areas in the future, and that possibly, if it is in the interest of our country, that is what we should all desire, if it is in the interest of our country that there be some change, that that change will occur.

I wish to thank you for your courtesy in answering.

Senator KEFAUVER (now presiding). Senator Eastland asked me to serve as chairman while he is out.

Senator Hruska, do you have any questions?

Senator HRUSKA. Mr. Secretary—and perhaps I should address you more differentially—but, Mr. Secretary, I first of all want to say that I am personally gratified at your appearance here, and pleased that you are here on this kind of an occasion. I would like to reflect, just a little bit, that it was not always this way with nominees for Supreme Court justiceships. If my memory serves me right, it was the man whose place you are taking who, on the occasion when he was invited to appear personally, took exception to the procedure, and thought that it was just a little bit out of order.

Of course, that has long been worn out as an objection or as any reflection on any nominee for the justiceship. And so I want to say I am gratified at your being here.

Of course, this isn't the first time that you have appeared before a Senate committee or before the Senate for confirmation. And perhaps some of the answers which you will give me in reply to my questions will find their history and their origin in those answers which you gave when you were before another committee of this Congress.

Since the announcement of your nomination has been made, each of us on this committee, I presume, have received more or less mail on

this nomination. Some of these letters which I have received I am sure are perhaps not necessarily based on facts as they exist, but they do reflect the thinking and the concept that their writers have as to the situation at hand.

And so, without adopting the views which are expressed in them, I will raise two questions, at least, as of this time which frequently have cropped up in letters which I have received. Now, one is that Secretary Goldberg is not a member of the judiciary, nor has he been a member of the judiciary, and, in the thinking of some people, that is considered desirable as a prerequisite for appointment to the Supreme Court.

I might say, personally, that I do not believe in that prerequisite. I do believe that there should be a balance which should be observed in those who are nominated and confirmed to that Court, that some should be members of the judiciary with judicial experience.

On the other hand, it is good, and it does lend balance and serves many purposes, to have some members of that Court who are from the general practice or who have had some legal experience which will be helpful to preserve a balance.

What comments, if any, would you have on this suggestion? Many of my letters point out that you have not had judicial experience, and therefore I should inquire into this matter.

Mr. GOLDBERG. Senator, I would like to make two comments about this. I have read the same comments that you have in many of the articles. And first I would like to say this:

The impression, perhaps, has arisen naturally from those who have observed my career most recently, that I am a specialized lawyer, I have represented labor organizations—for which I have no apology; they are fine organizations, the AFL-CIO, the Steelworkers Union, the Textile Workers Union, the Amalgamated Clothing Workers, the International Ladies' Garment Workers' Union, and many others.

But I would like to say that before I did this—and this is in the most recent part of my career—I also represented many employers, I represented many lawyers, I think, going back 33 years—which I am reluctant to admit to, but which the record shows—

Senator HRUSKA. It is a third of a century, Mr. Secretary.

Mr. GOLDBERG. Since I was admitted in 1929, that my practice has been a varied practice. I think I have handled as many legal problems as most lawyers do in the course of this practice. I have handled corporation matters, I have handled personal injury cases, I have filed briefs in criminal cases, I have handled wills and trusts, I have handled reorganizations and bankruptcies, I have, I think, handled tax and patent matters.

I think that in the background of my career I have had a well-rounded legal experience.

Now, it is a great problem which the Senate always faces and which I am sure a President faces when he makes an appointment, as to how he appoints a nominee to the Court. I am sure that there is great virtue in appointing men with prior judicial experience.

On the other hand, being a judge is not the only way that a lawyer acquires the experience that qualifies him for any appointment that the President makes in the judicial area. In our history, we have had

great judges who have not had prior judicial experience. Some cases come early to mind. Our great Chief Justice, Chief Justice Marshall, had no prior judicial experience.

My distinguished predecessor, Mr. Justice Frankfurter—whose resignation, by the way, I regret very deeply—I would have hoped that his health would have permitted him to resume his position on the Bench; I looked forward to this and to many years of service on his part—he had no prior judicial experience.

Mr. Justice Roberts had no prior judicial experience.

Chief Justice Stone, as I recall, had no prior judicial experience.

And Mr. Justice Hughes and later Chief Justice Hughes, when he had his first appointment, as I recall it, had no prior judicial experience.

Really what is involved is the character, the background, the integrity, the objectivity of the man. We have had great judges who have come from the bench. We have had great judges who have come from the practice of law. I don't know what kind of a judge I will make. I occupy a seat which is a very great seat, if you confirm my appointment. When I look back, I approach it with great humility.

This is a seat which has been occupied by Mr. Justice Frankfurter, most fittingly, recently; Mr. Justice Holmes, who had prior judicial experience; Justice Cardozo; Justice Gray; Justice Story—I don't believe he had; I think he was a teacher—this is a great seat. All I can say is that I think it depends upon the character, the integrity, the background of the man.

You can be a great judge if you come out of the bar. You can be a poor judge if you come out of the bar. You can be a great judge if you come off the bench, and you can be a poor judge if you come off the bench.

This is a matter which I think will depend upon the individual and his dedication, devotion, capacity, and ability. This I cannot answer other than in the manner in which I have.

Senator HRUSKA. From the list of types of cases you have recited, it would appear that you in your practice have engaged in all aspects of litigation, administrative law, appellate work, presumably, equity work and also jury work, and trials in all of those categories.

Am I correct in that assumption?

Mr. GOLDBERG. You are entirely correct. My practice from 1929 on ranged over the whole panoply of law.

Senator HRUSKA. Now, the next question of general nature is this. And this again was raised in many of the letters. You have answered it in part.

Many of the letters I have received have said, well, now, here is a man who has represented a single client—and to all appearances, in fact, has represented them well and effectively. First of all; I would like to ask what your position is and what your relationship was with the Steelworkers Union?

Mr. GOLDBERG. Senator Hruska, my relationship with the Steelworkers Union dates back many years. In 1937 or 1938, I don't recall the exact date, I was asked to represent this union as a lawyer in Chicago, when they were first attempting to get established. I represented them as their counsel in Chicago, and in fact throughout the Midwest, reaching out to the Far West.

Some years later, I was asked by Mr. Murray, the deceased president of that union, and the deceased president of the CIO, to become their general counsel. That was in 1948. I became their general counsel. I represented that union until I was nominated by the President to be Secretary of Labor. I resigned that post in January of 1961, prior to my confirmation by the Senate.

Since then I have had no professional relationship with the Steelworkers Union. When I acted as general counsel for that union, I did not become an employee of that union. Part of the conditions under which I accepted that designation was that I would be able to act for them as a lawyer, as a lawyer with independence, and as a lawyer who represented them in a professional capacity.

Senator Hruska. So you were not an officer of the union; you were a professional man in the true sense of the word?

Mr. GOLDBERG. That is correct, sir. And, of course, I need not tell you that since January of 1961 I have had no connection whatsoever with the Steelworkers Union.

Senator Hruska. Generally in appointments of this kind—certainly you were confronted with it when you were considered for confirmation to the Cabinet—we do ask some questions as to any possible interests which the nominee might have which might produce a conflict, any relationships or any status he has which might conflict with the official duties which he will assume.

Is there anything that you can think of, Mr. Secretary, that would fall in this category?

Mr. GOLDBERG. Well, I was confronted with that problem when I became Secretary of Labor.

Senator Hruska. I understand so. And that is why I said earlier that very likely some of this testimony that you will give here this morning will reach back into that earlier hearing.

Mr. GOLDBERG. I made two decisions at the time which are irrevocable decisions, and which, regardless of what happens to this hearing or regardless of what happens to my confirmation as Secretary of Labor, are firm, irrevocable decisions. The Steelworkers Union, because they felt, rightly or wrongly, that I had served them well during all these years, by action of their governing body, voted me a pension plan as part of my retainer, which was a substantial pension plan. I renounced that when I was nominated to the office of Secretary of Labor.

I do not feel that I could function as a representative of the Government and of the people and still have an association, even though it was vested—even though it could not be affected by anything I did—and still receive benefits in future years which might originate from that union.

I have no regrets about that, because I felt the public was entitled to an assurance that a Secretary of Labor serving all of the interests of the people of the country, management, and labor alike, would not be affected by having an association, even of that type, with a client that he had represented.

It goes without saying that that renunciation is a definitive renunciation which persists in this particular post.

And then, secondly, I announced at the time—and, of course, if I am confirmed here, it is obviously true—that under any circumstances,

whether I am confirmed or not confirmed, that I do not and did not expect to resume any association, not only with that union, but any union, if I were to go back in the practice of law as an ex-Secretary of Labor. I would go back into general practice and not the labor practice, and certainly not the practice of representing the Steel-workers Union.

I did that, Senator Hruska, for a very simple reason, not because this is wrong—and I don't attempt to lay down this as a principle that anybody else ought to follow—but the public is entitled to feel, it is not only the substance but the appearance that is important—the public is entitled to feel that an official of the U.S. Government is not treasuring an association and going, in the future, to capitalize an association which might lead him into any activity when he is functioning for the Government that might prejudice the position, in the public eye, of the Government.

That is the fixed position with me, and that still exists.

Senator Hruska. I would like to make this observation. I think you are to be commended for both of these commitments which you have stated publicly before and which you now restate. As you know, the conflict-of-interest issues are difficult for this committee to pass upon and for the Senate to pass upon. And where we see that burden removed from our shoulders, that is a matter which I do believe is a proper subject for commendation, which I very forthrightly and happily extend.

Mr. GOLDBERG. Senator, I don't want to say that this is a rule which I commend to anybody else, but I thought the position of the Secretary of Labor was such that, in the public mind, there should be no doubt that a Secretary of Labor who has to handle problems as an adviser to the President on labor matters is free from any public indication that he has a lingering association.

I don't know that this should apply to anybody else, and I don't profess this to be a rule applicable to anybody else. This was a personal decision which I made voluntarily and which I think was the right decision for me. I don't want to profess that it should be the right decision for anyone else.

Senator Hruska. Each case stands on its own feet. I know this committee has been confronted with many various situations, and, of course, each one has to be interpreted and decided and construed according to the facts upon which it is based.

Mr. GOLDBERG. I agree with that.

Senator Hruska. I want to thank you very much, Mr. Secretary, for your very forthright and very complete answers to my questions.

That is all, Mr. Chairman, that I have at this time.

Senator KEFAUVER. The chairman has instructed me, after Senator Hruska finishes his questions, to recess the full committee until, perhaps, Thursday, or to a time fixed later this week, at which time we will continue with the hearing on Mr. Goldberg, because the nomination of Mr. Thurgood Marshall is to be considered, and the chairman and some other members of the committee wish to be there at that time. So the full committee will stand in recess.

But the chairman has appointed me as chairman of a subcommittee together with Senators Ervin, Dodd, Dirksen, and Hruska, to hear Mr. David A. Walsh, who the chairman has asked that we hear, and who is here today.

So, Mr. Goldberg, I am sorry that we cannot continue with you. But you will be called back.

We appreciate the appearance of Senator Douglas, a very distinguished Member of the Senate, and Congressman O'Hara.

And we thank you for your appearance, Mr. Goldberg.

(Whereupon, at 11:15 a.m., the committee recessed until Thursday, September 13, 1962.)

(Subsequently, the committee received the following for insertion in the record :)

STATEMENT OF HON. CLAIBORNE PELL, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

I strongly endorse the nomination of Arthur J. Goldberg as an Associate Justice of the Supreme Court of the United States. His record has, indeed, been a most impressive and distinguished one. He graduated from Northwestern University Law School, ranking first in his class. As counsel for the CIO, and for the United Steel Workers, he proved himself one of the ablest lawyers in this country. He played a very active role in the writing of the merger constitution of the AFL-CIO. His oral argument before the Supreme Court against the Taft-Hartley injunction, in 1959, won him great respect from its members and a warm tribute from the Justices for his efforts.

Throughout Mr. Goldberg's career, I have been highly impressed with the broad scope of his knowledge, his grasp of legal questions, his great administrative ability, and his integrity. When he was appointed Secretary of Labor, he demonstrated conclusively that his career as a labor lawyer was ended. He approached his new position with a degree of objectivity, greatly to his credit. He has performed as a loyal servant of the public interest, taking into account the views of business and Government, as well as those of labor. I know that Mr. Goldberg's performance on the bench will be in accord with the highest traditions of our Supreme Court.

Although I regret the loss of his services as Secretary of Labor, it is my belief that, in the long run, the country will benefit greatly from the use of his talents as a member of our highest judicial body. I wholeheartedly endorse his nomination.

THE CHICAGO BAR ASSOCIATION,
Chicago, September 6, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee of the Senate,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: The board of managers of the Chicago Bar Association has authorized and directed me, as its president, to transmit, to your committee, our views concerning the Honorable Arthur J. Goldberg, hearings by your committee on whose nomination to become an Associate Justice of the Supreme Court of the United States we understand will take place on next Tuesday, September 11.

Mr. Goldberg joined our association shortly after being licensed to practice law in Illinois, and graduating from the Northwestern University School of Law at the top of his class.

He has been a valued member of the Chicago Bar Association since early in his professional career, and served successively for 2 years on our committee for the defense of prisoners, 3 years on our labor law committee, and for 2 years on our civil rights committee, the subject matters of each such committee constituting areas of the law in which he was intensely interested.

Not long after he began his professional career, he was representing clients in important and seriously controverted matters with both distinction and success. His success, both at the Chicago bar, and, in later years, on the national

scene, is well known by all. Throughout his career, his reputation for integrity has always been of the highest, his legal attainments both unusual and outstanding, his judgment mature and wise, and his interest in his fellow men both wide and deep.

In our judgment, if he becomes a Justice of the Supreme Court, his record there will be outstanding, and among the finest in the history of the Court.

Respectfully,

WALTER H. MOSES, *President.*

NOMINATION OF ARTHUR J. GOLDBERG

THURSDAY, SEPTEMBER 13, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:40 a.m., in room 2228, New Senate Office Building, Senator Estes Kefauver presiding.

Present: Senators Kefauver (presiding), Ervin, Hart, Wiley, Keating, and Fong.

Also present: Joseph A. Davis, chief clerk.

Senator KEFAUVER. The committee will come to order.

The chairman, Senator Eastland, has asked me to preside this morning.

The chairman, Senator Eastland, has received a statement of Thomas S. Jackson, president of the Bar Association of the District of Columbia, that he, as president, warmly endorses the nominee. This will be made a part of the record.

Senator Eastland has received and asked that I place in the record at this place a letter from David J. McDonald, president of the United Steelworkers of America, speaking most highly of Mr. Goldberg.

(The statement and letter referred to follow:)

STATEMENT OF THOMAS S. JACKSON, PRESIDENT OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

I am pleased to appear on behalf of the Bar Association of the District of Columbia to add its voice to those who have approved the choice of the Honorable Arthur J. Goldberg to be an Associate Justice of the Supreme Court of the United States. The Justice-Designate is a member of the Bar Association of the District of Columbia. Before he assumed his Cabinet post as Secretary of Labor, he was engaged in the practice of law in the District of Columbia, as a member of the firm of Goldberg, Feller & Bredhoff, a practice which began as ancillary to that of his Chicago office. Before he entered the Cabinet, his professional life became more attached to Washington. He tried, argued, or participated in many important cases in the District of Columbia courts.

We are pleased and proud to number him among the members of our bar, as well as among the members of our association. However much Chicago and the State of Illinois may claim him as a native son, in all respects, the lawyers of the District of Columbia are pleased that so eminent a member of their own association has been appointed to the Supreme Court.

The task he has assumed is so important, and the burden of work is so great, he will carry with him not only our warm professional and personal friendship, but our earnest prayers.

THOMAS S. JACKSON.

UNITED STEELWORKERS OF AMERICA,
Washington, D.C., September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

MY DEAR SENATOR EASTLAND: It is the purpose of this letter to convey to you, and through you, to the Committee on the Judiciary, my views on President Kennedy's nomination of Labor Secretary Arthur J. Goldberg to be an Associate Justice of the U.S. Supreme Court.

I believe that Arthur Goldberg is ideally suited for the high post to which he has been nominated. I wish to make clear that I say this with full regard to the requirements of objectivity and impartiality which I believe should apply to any nominee for the Nation's highest court.

Arthur Goldberg was an extraordinarily able, forceful, and articulate advocate for the United Steelworkers of America during the many years he served as its general counsel. He contributed mightily to the advancement of our working-men to a level of prosperity and well-being not rivaled elsewhere in the world. He also contributed immensely to the development of labor law through his representation of this organization in several landmark cases of the past decade.

But, far more important, for present purposes, is the fact that he was always more than an advocate. In all of his actions, both inside the Steelworkers Union and in his dealings with others on behalf of the union, Arthur Goldberg remained objective, faithful to his own set of values, and candid and forthright with those with whom he dealt. For these reasons, his work and his opinions were respected as highly by the public and management officials with whom he dealt as by the union members whom he represented. I know of no greater tribute to the judicial qualifications of the man than that, although he was in the position of an advocate, he was treated with the respect and trust usually reserved for judges.

The magnificent performance of Arthur Goldberg as Secretary of Labor simply confirmed the existence of these qualities. We in the labor movement knew that, although he had ardently served as counsel for labor unions for years, he would perform his duties as Secretary fairly, objectively, and in accordance with the dictates of his own conscience. The ringing testaments which his work as Secretary has received from public, management, and labor officials alike, demonstrated anew that Arthur Goldberg is, above all, a deeply dedicated American, devoted to furthering the public welfare to the full extent of his capacities.

These qualities of integrity, objectivity, and dedication to the public interest, coupled with the brilliant qualities of understanding, and the legal skills which Arthur Goldberg has always displayed, constitute, in my view, a sound basis for predicting an illustrious career for him as a Justice of the Supreme Court.

I would greatly appreciate it if you would submit this letter to the committee for its consideration in the hearings on the confirmation of Arthur J. Goldberg as Associate Justice of the U.S. Supreme Court.

Sincerely yours,

DAVID J. McDONALD, President.

Senator KEFAUVER. A letter from Frank L. Magee, chairman of the board, Aluminum Co. of America, Pittsburgh, going on record as favoring the confirmation of Mr. Goldberg to be Associate Justice of the Supreme Court.

(The letter referred to follows:)

ALUMINUM CO. OF AMERICA.
Pittsburgh, Pa., September 7, 1962.

Hon. JAMES EASTLAND,
Chairman, Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: Over a number of years it has been my privilege to know the Honorable Arthur J. Goldberg and, prior to his accession to Secretary of Labor, to have had important business relations with him. It is my personal belief that Secretary Goldberg has all of the qualifications to become an outstanding Justice of the Supreme Court, and that he will approach the deliberations of the Court with independence, impartiality, and intelligence. Be-

cause of these convictions, I would like very much to go on record with the Senate Judiciary Committee in favor of Secretary Goldberg's confirmation as a Justice of the Supreme Court.

Sincerely yours,

FRANK L. MAGEE,
Chairman of the Board.

Senator KEFAUVER. A letter from Ralph E. Casey, president of the American Merchant Marine Institute, Inc., New York, saying that he favors Mr. Goldberg and believes he is a great credit to the country, and he would like to have this letter placed in the record.

It will be done.

(The letter referred to follows:)

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
New York, September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: You have before your committee the nomination of the Honorable Arthur J. Goldberg to be Associate Justice of the Supreme Court of the United States. While I am certain his nomination will receive the unanimous approval of your committee and that, therefore, a letter of this kind might be considered unnecessary, I feel so strongly concerning the qualifications of Secretary Goldberg for this position that I must say a word of commendation to you on the matter.

I have known Arthur Goldberg for the past 5 or 6 years. My contacts with him over this period have been quite frequent, due largely to the fact that one of my functions here with the institute is that of principal labor negotiator representing all the large steamship companies on the Atlantic and gulf coasts in their negotiations with the seagoing unions.

When Mr. Goldberg was designated Secretary of Labor by President Kennedy 2 years ago, I can safely say that the entire management segment of our industry approved of the appointment. This, in itself, was quite remarkable when you consider Mr. Goldberg's long career within the ranks of labor. But it was generally recognized that not only is Mr. Goldberg a brilliant lawyer and possessed of the highest moral principles, but his reputation for honesty, fairness, and objectivity was well known throughout the shipping industry.

He is, in my opinion, a "lawyer's lawyer." I am sure he will bring to the Supreme Court all the attributes of an outstanding Justice and take his place among those who have reflected such great credit upon this country in their service on that august body.

I would appreciate having this letter made part of the record of your hearings in connection with Mr. Goldberg's nomination.

Sincerely,

RALPH E. CASEY,
President.

Senator KEFAUVER. A letter from John M. Johnston, Associate Editor of the Chicago Daily News, of September 10, 1962, requesting—

that the editorial appearing in the Chicago Daily News editions of Friday, August 31, 1962, discussing the appointment of Arthur J. Goldberg to be an Associate Justice of the United States Supreme Court—

be made a part of the record.

The letter of Mr. Johnston and the editorial will be placed in the record.

(The letter and editorial follow:)

CHICAGO DAILY NEWS,
Chicago, Ill., September 10, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

MY DEAR SENATOR EASTLAND: We respectfully request that the editorial appearing in the Chicago Daily News editions of Friday, August 31, 1962, discussing the appointment of Arthur J. Goldberg to be an Associate Justice of the U.S. Supreme Court, be made a part of the record of the Senate Judiciary Committee proceedings with respect to his confirmation.

Sincerely yours,

JOHN M. JOHNSTON,
Associate Editor.

[From the Chicago Daily News, Aug. 31, 1962]

FINE ADDITION TO THE COURT

The towering success of Arthur J. Goldberg as a labor lawyer will doubtless cause many to doubt that he can suspend the views he served so devotedly for the olympian objectivity desirable in a Justice of the U.S. Supreme Court.

It is our opinion that he can and will "see the other side" fully and impartially. Goldberg is a superior human being and a remarkable intellect by any standard. He severed his connection with the union movement when President Kennedy appointed him Secretary of Labor, and announced that he would never resume it. His energetic, capable and wide-ranging conduct of the Department's affairs undoubtedly confirmed Mr. Kennedy's opinion that he was of Supreme Court caliber.

It is a pointless exercise to examine the record of new Court appointees for a guide to their future votes. Justice Felix Frankfurter, whom Goldberg succeeds, was almost a symbol of the New Deal when he was named to the Court in 1939. He became a stalwart conservative, Hugo Black, the southern Kluxer, became a leader of the Court's liberal bloc.

Chicago can share the pride in Goldberg's appointment. The son of Russian immigrants, he grew up on the West Side, where his life was not easy. He found in the Chicago schools the first answers to his quest for knowledge. He was the top student in his 1930 graduating class at Northwestern University Law School.

Goldberg has been easily the best and most spectacular Secretary of Labor within memory. He declared that the Department was not the province of any special interest, and then proceeded to extend his frenetic activities far beyond the customary jurisdictional boundaries. He has been a figure in the decisions on everything from economic policy to civil rights. His presence in Chicago, in an effort to avert the Chicago & North Western strike, testifies to the demand for his services in emergency situations.

The blanket approval of Goldberg's talents and judicial temperament by Senator Dirksen (Republican of Illinois), the minority leader, indicates quick approval by the Senate. This is President Kennedy's second appointment of a Supreme Court Justice who was without previous judicial experience. It is not ideal, but one can't have everything, and in Secretary Goldberg we believe the Court will find a member worthy of its best tradition.

The appointment of W. Willard Wirtz to succeed as Secretary of Labor will doubtless have equally clear sailing. As Under Secretary, he has been a diligent and effective aide to Goldberg. A liberal, but not of doctrinaire variety, Wirtz has an impressive background in the labor field.

It may be that he owed his initial appointment to the fact that he was a law partner of Adlai Stevenson in Chicago, but he is an experienced professional who won the promotion on his own performance.

Senator KEFAUVER. Also, an editorial from the Chicago Tribune of August 31, 1962, and a telegram from Dr. Julius Mark, president of the Synagogue Council of America, whom the chairman knows very pleasantly and favorably and has known over a period of many years as a great rabbi, highly praising Mr. Goldberg. They will be placed in the record.

(The editorial and telegram referred to follow:)

MR. JUSTICE GOLDBERG

The appointment of Arthur J. Goldberg to the Supreme Court has been received with general approval throughout the United States. It has been particularly well received in Chicago, where Mr. Goldberg is known most intimately, for here he was born, went to school and college, studied law, and first distinguished himself as a practicing lawyer.

We are not among those who will undertake to predict how Mr. Goldberg will vote on the important cases that are about to come to the Court's attention. We will venture to predict that he is too good a lawyer to accept specious defenses even of causes which he favors, and he is too independent a man to allow former associations with clients or Government to dominate his thinking on the bench.

Mr. Goldberg showed great promise when he was graduated from Northwestern University's Law School at the head of his class. He has been an able, disinterested, and tireless public servant since he became Secretary of Labor. There is every reason to hope that as a Justice of the Supreme Court he will make an important contribution to the law of this country.

Those who think that Mr. Goldberg will be a radical judge because he represented great trade unions as a lawyer may be fooled as others were fooled when Justice Frankfurter was appointed to the Court. They were certain that Mr. Frankfurter would be the least conservative man on the bench and that his agile mind would be at the service of every leftist cause that came to the Court's attention.

In fact, Mr. Justice Frankfurter retires from the Court amid the sighs of conservatives who have come to regard him as their strongest friend on the bench. We doubt that this reputation is wholly deserved, but Mr. Frankfurter has been, indeed, the chief spokesman for judicial restraint, meaning that he doesn't want the Supreme Court to invade the territory that he thinks the Constitution gives to the various State legislatures, State courts, and the State and Federal regulatory commissions. This attitude of his has made him a radical when these bodies have gone that way and a conservative when they have moved in the other direction.

Mr. Frankfurter will be missed from the Court. We may be sure that the new man will be very different but he, too, is a man of outstanding talents and in the long run may prove to be no less influential in setting the Court's direction.

NEW YORK, N.Y., September 10, 1962.

Senator JAMES EASTLAND,
Senate Judiciary Committee,
Senate Office Building,
Washington, D.C.:

The Synagogue Council of America, representing the American Jewish religious community, through its national congregational and rabbinic bodies, respectfully urges that your committee forward to the Senate its approval of Arthur Goldberg's appointment to the U.S. Supreme Court.

Arthur Goldberg has demonstrated his abiding patriotism and his noble character while serving as Secretary of Labor. His splendid intellectual attainments and his high spiritual qualities are hallmarks of his dedication to the service of the American people. His many years in the practice of the law and his respected judicial qualities make him eminently qualified to sit as a Justice of the Highest Court in the land.

We respectfully request that the contents of this communication be inserted into the Congressional Record for all to see and read.

Dr. JULIUS MARK, President.

Senator KEFAUVER. Mr. Davis, the clerk of the committee, has given me a large number of letters from well known and distinguished citizens. He will prepare a list for public information which will be placed in the record, without going through all the letters.

The attention of the acting chairman of the committee has been called to a number of editorials in thoughtful newspapers in Tennessee and elsewhere, speaking highly of Mr. Goldberg and expressing the idea that he will serve with ability and dignity, and is of good caliber to be Associate Justice of the Supreme Court.

There is one in the Times of August 30, 1962, speaking very highly of Mr. Goldberg and recommending him, in which sentiments the acting chairman of the committee wholeheartedly joins.

I believe, Senator Ervin, you were next up for recognition at the recess the other day.

Senator ERVIN. Yes, Mr. Chairman.

Senator KEFAUVER. The Chair will recognize you at this time.

Senator ERVIN. Mr. Secretary, article II, subsection 2, of the Constitution provides that the President:

Shall nominate and by and with the advice and consent of the Senate shall appoint judges of the Supreme Court.

I think this constitutional provision poses a very solemn and a very serious duty upon a Senator, because it clearly implies that the President, acting alone, cannot appoint a Supreme Court Justice, but on the contrary the President, acting alone, can merely nominate a person for such position, and, to my mind, that means to make one eligible for appointment.

And this constitutional provision provides, in effect, that in order for one to receive an appointment, which I construe as meaning to receive title to the office, he must be—the Senate must concur in the appointment—rather in the President's nomination by giving his advice and consent to the appointment.

Now, you have a record of approximately 32 years of active practice as a lawyer. You have served in the Office of the Secretary of Labor, and, I might add, in my judgment have shown very commendable ability to exercise impartiality and to put the public interest above all other interest in the discharge of your duties as Secretary of Labor.

I will make an honest confession. I would have been a little happier over your nomination if you had had about 10 years service as a judge of a State or Federal or appellate court. I happen to believe that experience is the most efficient teacher of all things, and if you had had such judicial experience you would not have had to serve a judicial apprenticeship on the Supreme Court.

In the second place, if you had judicial service of the character you had suggested, we would have a rather accurate measure to determine what your probable judicial performance would be in the future by your judicial action in the past. I agree with Senator Hruska in the idea that prior judicial experience is not an essential part of the requirements for membership on the Supreme Court of the United States. But to my mind it is a rather tragic fact in that practically no man has been selected for membership on the Supreme Court of the United States on account of any outstanding achievement in the judicial office.

In saying this, I do not speak disparagingly of Justices Rutledge, Minton, Vinson, Harlan, Whittaker, Brennan, and Stewart. They had had some prior duty and experience, but it had been so limited in point of time that they had not had time either to develop or to demonstrate any outstanding judicial presence here.

I sometimes find myself on the point of almost taking the pledge that I wouldn't vote to confirm any other person to the Supreme Court of the United States unless they had had prior judicial experience, but I haven't made that pledge yet.

exempt him from the criticism, the comment which emanates from a democratic society.

I would not want it otherwise.

Senator KEFAUVER. Will the Senator yield for a light note?

Senator ERVIN. I would like to put one thing in first.

Senator KEFAUVER. I wanted to say, it is true, as Mr. Goldberg, says, if it is healthy for Congress to be criticized, we must have a lot of healthy people up here on the Hill.

Senator ERVIN. I would like to say this, Mr. Chairman, that the views which the Secretary just expressed are virtually identical with the views expressed by one of the great Chief Justices of the Supreme Court, Chief Justice Harlan F. Stone. He said that where the courts deal as ours do with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action—

Mr. GOLDBERG. I agree with that thoroughly.

Senator ERVIN. I am not going to ask you to agree with what I am going to say, but I am going to ask you this: Are you aware of the fact that many informed, intellectual, and honest and sincere persons, who respect the Supreme Court as an institution of the Government, have expressed thoughts during recent years indicating that, in their opinion, the Supreme Court has usurped and exercised the power of Congress and the States to amend the Constitution, while professing to interpret it, that in so doing the Supreme Court has encroached upon the constitutional powers of the Congress as the Nation's legislative body, and has struck down State action and State legislation in areas clearly committed to the States by our system of constitutional government, and this action has been accompanied by overruling, repudiating, and ignoring many contrary precedents of earlier years?

I am not asking you whether you agree with such views as that, but are you aware of the fact that a great many conscientious persons have expressed such views concerning the Court during recent years?

Mr. GOLDBERG. I am aware of this, and I would like to make a comment about it. And that is this. The Supreme Court is a body of men whom I am sure devotedly are trying to do their part in our constitutional system. They are not immune from criticism. They are not always right. They may be right or wrong, because human beings are fallible. In trying to apply the Constitution and laws of the United States there are many problems involved. Our Constitution was built, as Chief Justice Marshall said, to endure for the ages. And it is a remarkable thing that has endured for the ages.

I think historically, if I am correct, that we have a Constitution, the only written Constitution which has survived for as long as our Constitution has survived. Many people think we are a young nation. But we are no longer the youngest nation in the world. I think we are the oldest nation that has survived under a written Constitution.

It is a testimonial to our country that the Founding Fathers wrote a document that could endure for the ages.

Now, you can't always be right, you can only do your best in any office you occupy in the Government, whether you are a President, a member of the legislature, or a member of the Supreme Court. But one thing that is very important, to me at least, is that there be freedom on the part of every element of society, the press, lawyers, citizens, the Congress, or anybody, to criticize anything that anybody does.

If we didn't have freedom, unlike what other countries do, where there is a closed society, if we did not have the freedom of an open society, then I would be more concerned about our survival than I am. I think our great strength as a country is that we have a free country and people can express themselves freely.

And we all learn from criticism, at least I hope I do.

Senator ERVIN. You have remarked on the fact that we have a written Constitution. I would like for you to tell us briefly why you think the Founding Fathers wrote and ratified the original Constitution.

Mr. GOLDBERG. Because they knew about the British experience where there was no written constitution, and they wanted to profit by the benefits but also avoid the disabilities of an unwritten constitution. And when they wrote the Constitution they wrote it as a written document for several purposes.

One was, they wanted to provide stability in our institutions. They did not want it to be a government which was so fluid that basic rights were not protected, the rights of life, liberty and property which we talked about in the Declaration of Independence. And also they were aware of the fact that we drew our origins from very proud and independent states.

We grew from the Declaration of Independence and the Articles of Confederation into a written Constitution. And they wrote a written Constitution because they wanted to reserve to the States and to the people basic powers.

And they wanted to delegate to the Federal Government certain rights, but they did not want to relinquish in this delegation the rights that were reserved to the people and the States. And they chose a Federal system, unlike Great Britain and other systems, because our origin was different, and this Federal Constitution was to be a Constitution which delegated powers and limited powers at the same time.

And it would be a mistake for anybody to overlook these origins, because the history shows that—I don't think our Constitution could have been ratified if we didn't have the Bill of Rights. The Bill of Rights protected individuals, minorities, and in article X, the States.

So that we have a different origin, a different historical experience, a different background, which I am sure every student of American history must respect.

Senator ERVIN. I would judge from your answer that you would agree with the twofold proposition about the reason for having a Constitution. The first, I think, is expressed very well in the well-known case of South Carolina against the United States, where it says that the Founding Fathers wrote the Constitution for the purpose of describing the kind of government they were creating and the powers which that government was to retain.

Mr. GOLDBERG. That is correct, sir.

Senator ERVIN. And the second purpose was that which is expressed, I think, in the most eloquent words probably in any of our opinions, where the Court said in substance that they wrote a written Constitution which was to be a rule to govern both the Government and the people, and the reason they did it, that they recognized in troublesome times the Government and the people would be tempted

to take sharp and decisive measures which they believed to be good, and that they thought were wise to restrain them by placing upon them irrefutable laws.

Mr. GOLDBERG. I agree with that entirely.

Senator ERVIN. Do you agree with the thought that our written Constitution is all the protection that our people have against autocracy in our Government?

Mr. GOLDBERG. I agree with that entirely.

Senator ERVIN. I want to ask you one question upon which there appears to be some controversy in the United States at the present time. I referred a moment ago to this case of South Carolina against the United States which was reported in 199 U.S. And I want to invite your attention to these words on pages 448 and 449:

The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. Being a grant of powers to a Government its language is general, and as changes come in social and political life, it embraces in its grasp all new conditions which are written the scope of the powers and terms conferred. In other words, while the powers granted do not change they apply from generation to generation to all things to which they are in that nature applicable. This in no manner abridges the fact of its changeless nature and meaning. Those things which are within its grants of power as though grants were under when made are still within them, and those things which are not within them remain still excluded.

I wish you would comment on those words.

Mr. GOLDBERG. One of the great things about the draftsmen of our Constitution is that they drafted a document that, as I said earlier, in the language of Chief Justice Marshall, that was to endure for the ages. No justice of the Supreme Court, in my opinion, should overlook the fact that his primary obligation is to interpret and apply the Constitution and the amendments the way they were drafted. This does not mean—and I am sure you would agree with me—that modern conditions should not be taken into account.

One of the very perceptive aspects of the great men who wrote this Constitution is that they drafted the Constitution in terms where, years later, decades later, centuries later, it can still be applied to modern times.

So they drafted it in broad terms so that new conditions could be taken into account. I am sure they could not perceive—maybe Jules Verne could perceive—that we would be in the space age. But yet they drafted the Constitution so that the interstate commerce clause, the power to regulate commerce, was broad enough so that in keeping with their meaning—and their meaning is very apparent from the debates that took place at the Constitutional Convention—we could have a Federal Government in that age as well as reserve to the States those great powers that existed.

So that while it is difficult for a judge in any given case to arrive at a decision, what is not difficult is the fact that we have a Constitution wisely conceived, broadly drafted, that can apply the meaning of the men who drafted it and take into account modern conditions.

Senator ERVIN. Let me see if I understand correctly what your thought is as expressed in that statement. If I interpret it right, you feel that the Court is correct in saying that the Constitution, the meaning of the Constitution does not change, but that the grants of power which the Constitution makes to government extend into the

future, and enable the Federal Government to deal with all subjects which fall within the purview of those grants of power.

Mr. GOLDBERG. That is correct, sir.

Senator ERVIN. Now, that is a twofold aspect of the Constitution, is it not, which gives us the security of the Constitution, such as that expressed in the Bill of Rights, among other things, and at the same time gives us a form of government which is able to function as conditions change from time to time?

Mr. GOLDBERG. I think so. I don't think there is any need to change the interpretation that the Founding Fathers put on the Constitution, because I think these men were farsighted enough to realize that they were writing a document for, not the moment but for the distant future.

And they wrote it in terms that permitted the adaptation of their language to moderate conditions. We are not dealing with a document which is an obsolete document, nor are we dealing with intentions by the writers of that document that we have to repudiate it. I would regard it to be a violation of the oath that a Justice takes to repudiate the intentions of the men who drafted the Constitution.

While reasonable men may differ, and they do, about interpretation, the fact of the matter is that if you read the Federalist papers, the constitutional debates, you will realize that you are dealing with really an extraordinary group of men, because they wrote a document unprecedented in the history, I think, of civilization, that would endure for their time and for times to come.

I would regard it as my function, for example, as a Justice, not to write my own view of what they did, but to write their view of what they did in the light of the fact that they wrote a document not only for their times but for all times.

Senator ERVIN. Then I would infer that you probably have the same view I have about a statement I saw in a recent history book in which the writer stated in substance that one of the remarkable things about the Constitution was that it could be construed to mean anything anybody wanted it to be construed to mean.

Mr. GOLDBERG. Not entirely.

Senator ERVIN. I don't share that view.

Mr. GOLDBERG. I don't either.

Senator ERVIN. I think that view is an insult to the intent of such men as George Washington, James Wilson, James Madison, and Alexander Hamilton, and the men who drew up that document.

Mr. GOLDBERG. I agree. They didn't write general language, even when they wrote it in broad terms, that was susceptible to interpretation that anybody could interpret in any way. They wrote that language in the light of many problems which the Colonies faced when they were Colonies subject to British jurisdiction. And I think when you read the Constitution you must read the Declaration of Independence, of course, where they stated their grievances which gave rise to the writing of the Constitution.

I think you would be derelict in your duty if you construed the Constitution to be such a broad document that anything is permitted. I do not read it that way. There are many things that are very specific in the Constitution. And whether one's views of social and economic policy coincide with those views is irrelevant. When the Constitution was written they talked about those views, and I think any judge worth his salt has to subscribe to them.

They also recognized that times will change. If you read the Federalist Papers and the debate in the Constitutional Convention, you will see that you had a group of extraordinary men who looked into the future, and they recognized that times would change, they wrote language that permitted the application of their principles to the changing times.

Take, for example, the interstate commerce clause. This is a great source of Federal jurisdiction which the Congress is applying every day. I do not find the Congress acting in modern times contrary to the intention of the Founding Fathers.

The critical debate which took place at the Constitutional Convention was the fact that the interstate commerce clause was a clause of the Constitution. And it is not a derogation of the Constitution when the Federal Congress enacts under that great charter of power appropriate legislation.

There are many specific prohibitions against legislation. There are broad grants of authority which Congress, not the Court, has the right to exercise. My view is that we are the beneficiaries of one of the great written documents of all times, and it is a great document, and that it is a great obligation to construe that document.

That document preserves basic rights which cannot be derogated. It preserves a basic Federal-State structure which must be preserved in the light of history. And it permits progress, but at the same time protects tradition.

This is the way I view the Constitution.

Senator ERVIN. When you say that it creates a State system that must be preserved, would you agree that the preservation of the States to exercise the fundamental functions of local government is essential to the continuance of the kind of government established by the Constitution?

Mr. GOLDBERG. Very much so.

Senator ERVIN. Would you agree with my view that the shortest definition of the purpose of the Constitution in a nutshell is that given in the case of *Texas v. White*, where Chief Justice Chase says that the Constitution in all of its provisions looks to an indestructible union composed of indestructible States?

Mr. GOLDBERG. We have a constitutional amendment—history shows that the Constitution could not have been adopted if at the same time there were not solemn assurances that the first 10 amendments would be adopted. And one of those amendments, of course, is a very plain provision in the 10th amendment that the powers not delegated to the Federal Government will be reserved to the States and the people.

Senator ERVIN. You spoke when you were here before about Justice Brandeis, who was a man I admired very much. And I think that he has probably given the finest short statement of importance of the States that I have ever seen.

He said that the States are the only breakwater against the pounding surf which threatens to submerge the individual and destroy the only society in which the personality can exist. And that is a statement attributed to him by Judge Murray Paine.

You have in effect answered this question, but I would like to put it separate. Do you believe it to be a function of the judge to base his decisions upon his own notions of justice rather than upon the established legal precedents or established legal rules?

Mr. GOLDBERG. No; I do not. I said the other day, and I want to repeat, that a judge is a human being, and all humans are fallible. But I would regard the first function of a judge, whether he sits in a trial court or an appellate court or in our highest tribunal, to make sure as much as any human being can that he puts aside his own prejudices, predilections, viewpoints, prejudices—which we all possess—and knowing that he possesses them, to try to administer justice equally under the law.

We cannot exalt our prejudice into law. If we did that we ought not to serve as a judge. If there is any feeling on this committee that I as an individual am the type of person who could not recognize my own limitations, put that aside, and when I decide a case on the Supreme Court, try to be as objective as any human being can, then I would say to you, you ought to reject my appointment.

And I would not want to serve under those circumstances.

Senator ERVIN. I think one of our greatest legal writers, along with Justice Holmes, was Justice Cardozo who wrote a very wonderful book entitled "The Nature of the Judicial Process." And he stated this with respect to this question about the judges who decide cases according to their personal notions of justice rather than by established legal rules.

He said:

That might result in a benevolent despotism if the judges were benevolent men. It would put an end to the reign of law.

And I take it you agree.

Mr. GOLDBERG. I do. And I agree where Justice Brandeis, if I may quote him again, said something that I think is very significant. This question you asked, Judge Ervin, also relates to the question of how do we apply precedent in law. I have thought about that a great deal. And Justice Brandeis once said in an opinion that for most questions—not all, because I think you faced that problem when you were sitting on the Supreme Court of your State—for most questions it is more important that a question be decided finally, very often, than decided rightly—

Senator ERVIN. I believe I have the exact quotation before me.

Mr. GOLDBERG. I remember reading it.

Senator ERVIN. It says:

It is usually more important that a rule of law be settled than that it be settled right. Even if the error in the kind of rule is a matter of serious concern, it is ordinarily better to seek correction by legislation.

Mr. GOLDBERG. I feel that very strongly, because you can't have a rule of law which changes day by day.

On the other hand, I am sure you would agree from your own experience, there comes a time when there is a question, probably not related to the ordinary affairs of men—for example, I would think of property law where people have bought property and sold property, it would be very bad to change the rule because you disagreed with the rule.

I would think as a Justice my inclination would be—and I can't say, because I am not a Justice, but I speak from this point now—I would say under those circumstances that even if I disagree I would say, where people have relied upon opinions, that they ought

to—that it would be a very bad rule to change a rule because of a personal viewpoint of a Justice that the rule is a bad rule and we ought to change it, because you could not have any stability in your structure if you did it.

On the other hand, I am sure you would agree with me that where there is a fundamental question of human rights, that sometimes you would have to analyze that and say, maybe the Court was wrong.

But that ought to happen rarely, not frequently, because if we live under a rule of law and not of men, rules of law ought to prevail. And a Justice ought to be properly respectful of great traditions, and apply that great tradition even where his personal viewpoint might be that the great tradition is not a correct tradition.

Senator ERVIN. Your answers bring up a question which used to give me trouble when I had to write opinions, and that was the question, when was the Court justified in overruling a decision. We all recognize, or we should recognize, at least, what you expressed a moment ago, that it is necessary for the law to be stable and reasonably ascertainable, otherwise it would fail to perform its function, which I take it to be to furnish rules for the Government and the people.

Now, I never found but one satisfactory test of when a court is justified in overruling a prior decision, and I found that not so much in the law book as in the writings of Judge Learned Hand. He made a speech praising the career of one of his associates, Justice Thomas Swan, and he said this, that Justice Thomas Swan had developed the rule, and Justice Learned Hand laid down this rule as developed by his associate in these words, and I read it in order that you may make any comments that you care to make on it:

He will not overrule a precedent unless he can be satisfied beyond peradventure that it was untenable when made, and not even then if it has gathered around it the support of a substantial body of decisions based on it.

Mr. GOLDBERG. I would say that that is a very salutary rule, and that the only point of departure from it is what you experienced as a judge, which I may experience if I am confirmed, and that is when you come to the profound conviction that there is such a fundamental error that it must be redressed.

Beyond that, the rule of stare decisis ought to apply, because otherwise we don't have a government of law, we have a government which varies when individual men have differences of opinion. And I would say for myself that any lawyer who is steeped in the law and who has reverence for tradition ought to say to himself that there must be continuity in law, otherwise people cannot guide themselves on what a rule of law is, and that you change only when you are fundamentally convinced that there has been such a grievous error in decision that the original purpose of a provision of law, of congressional enactment, or of the Constitution was not observed.

And then of course you would not be faithful to your oath if you did not change your mind. But that ought to be the rare exception, not the usual rule.

Senator ERVIN. Let me ask you this question, which you perhaps have already answered. Do you think that the meanings—rather, do you agree with me on the proposition that the power of the Supreme Court under the Constitution insofar as decisions involved in con-

stitutional questions are involved, is restricted to interpreting the Constitution?

Mr. GOLDBERG. It has no other power, it is under our constitutional system a power to interpret and apply the Constitution of the United States.

Senator ERVIN. Do you think this is a correct distinction between the power to interpret and the power to amend, that the power to interpret involves the power to determine the meaning of the Constitution, and the power to amend is the power to change the meaning of the Constitution?

Mr. GOLDBERG. The Supreme Court of the United States is a great, august body. It is not a constitutional convention. There is an article in the Constitution which states the method by which the Constitution ought to be amended, and that is by act of Congress and by act of the States. That is the provision which ought to be applied to amend the Constitution.

The Supreme Court is not the body to amend the Constitution, it is to do its best to apply and interpret the Constitution.

Senator ERVIN. I infer from that that the same proposition in a different way would be to say that the meaning of a constitutional provision cannot be rightly changed otherwise than by an amendment made in the manner provided in article V?

Mr. GOLDBERG. That is correct.

Senator ERVIN. Just one more question—maybe more than one, but I am about finished.

George Washington, in his farewell address to the American people, pointed out in substance how we had divided the powers of government in the interest of forbidding one branch of the government from encroaching upon the domain of the others.

And he made the statement that to preserve things, that is, the division of powers, must be as necessary as to institute them. And he says this—

If, in the opinions of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates—but let there be no change by usurpation, for though this, in one sense, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

Do you agree with that?

Mr. GOLDBERG. Entirely.

Senator ERVIN. Since the Constitution itself places no limitation on the action of the Court, do you agree with me in the proposition that the only real protection that the Federal Government, the President, and the Congress, the States and the people have at the hands of the Supreme Court of the United States resides in the practice of self-restraint by the members of the Court?

Mr. GOLDBERG. The Supreme Court of the United States is one coordinate agency of our Government. It is not the sole repository of the obligation to enforce the Constitution of the United States. The President has a great obligation. He is bound by his oath of office and the Constitution to enforce the Constitution. The Congress, under its article of the Constitution, article I, has a coordinate responsibility to enforce the Constitution of the United States.

Therefore, each must be respectful of the other. If the Court derogated to itself powers reserved to the Congress under article I, or to the

Executive under article II, our democracy would be in great danger.

I know of no greater function of the Supreme Court of the United States than to exercise the necessary restraint to confine itself to its functions, recognizing that it is not the only body, under our Constitution, which responsibility for enforcing and applying the Constitution of the United States.

The court performs a limited function. Every day, here in Congress, there is exercise of great constitutional authority, and every day in the White House there is exercise of great constitutional authority. Each must exercise the restraint that the Constitution imposes upon each.

And one of the virtues of our system is that through stress and strain we have succeeded in accommodating these coordinated branches. It is a terrific responsibility, of which I am very well aware.

Senator ERVIN. I tried to find a definition of what "judicial restraint" is. I couldn't find one, so I manufactured one myself. As a closing question, I would like to ask this, what you think of this definition. In other words, do you agree with me personally, is restraint apparent in the judicial process itself when that process is properly understood and applied?

Mr. GOLDBERG. Very much so.

Senator ERVIN. What do you think about this as my manufactured definition—

the restraint inherent in the judicial process is a mental discipline which prompts a qualified occupant of a judicial office to lay aside his personal notion of what the law ought to be and base his decisions on established legal precedence and rules.

Mr. GOLDBERG. I agree with that, with the reservation that I expressed to you earlier, that if there is a finding that an established doctrine violated the original intention and ran contrary to it, that then any judge worth his salt would acknowledge mistake and error. But like I quoted Brandeis before, in most instances you have to follow precedent because we must have settled doctrine, we can't change it with every wisp of the wind.

But the primary obligation of any judge who is respectful of tradition is to observe tradition unless there is such clear and unmistakable error—error in the judge, not in the original purpose of the Constitution, because that is not an error, any judge worth his salt would say that he adheres to the original view—but if there has been an error in interpretation, of course the judge must acknowledge that. But beyond that, I agree with what you have said.

Senator ERVIN. I want to beg the pardon of the committee members on the amount of time I have taken, but I feel very strongly about these things. And I want to thank the Secretary for his very frank and very illuminating answers.

Mr. Chairman, I made two speeches on these general subjects which I would like to put in the record. I don't think they are of any value for what I have to say, but I do think they are valuable for what quotations I have given of what far wiser men have said on the subject.

Senator KEFAUVER. The two speeches will be made a part of the record.

(The speeches referred to follow:)

ALEXANDER HAMILTON'S PHANTOM

(Address by Senator Sam. J. Ervin, Jr., Democrat, North Carolina, to the State Bar of Texas at Houston, Tex., on July 7, 1956)

Ladies and gentlemen of the State Bar of Texas:

I am deeply grateful to President Bullock for inviting me to the Lone Star State, which is represented in the U.S. Senate with so much ability and distinction by my good friends, Lyndon Johnson and Price Daniel.

Price Daniel is one of the truly great constitutional lawyers of America. As one who has been aided on many occasions by his wise counsel, I view, with a feeling little short of dismay, his prospective withdrawal from the Senate. I wish there were two Price Daniels—one for Texas and the other for the Senate.

For reasons which will become obvious, I entitle my remarks to you "Alexander Hamilton's Phantom."

Some years ago, Jim's administrator was seeking to hold a railroad company civilly liable for Jim's death on circumstantial evidence. The administrator called to the stand a witness who testified that he was walking along the railroad track just after the train passed and that he observed Jim's severed head lying on one side of the track and the remainder of Jim's body on the other. The counsel for the administrator then put this question to the witness:

"What did you do after discovering these gruesome relics?"

The witness replied, "I said to myself, something serious must have happened to Jim."

Something serious has been happening to the law of the land and the sovereignty of the States. I propose to talk to you about this. In so doing, I am activated by motives somewhat akin to those which resulted in the conviction of Job Hicks in the superior court of Burke County, N.C., a half century ago on the charge of disturbing religious worship.

John Watts took a notion that he was called to preach. John was skilled in the science of a bricklayer, but was sadly deficient in the art of an exhorter. He was nevertheless expounding the Gospel in a rural church one Sunday, when Job Hicks, who had partaken too freely of Burke County corn, happened to stagger by. Upon observing John in the pulpit, Job Hicks entered the church, dragged John to the door and threw him out upon the ground. When Job Hicks was called to the bar to be sentenced for his offense, Judge W. S. O'B. Robinson, the presiding judge, remarked to him in a stern tone of voice: "Mr. Hicks, when you were guilty of this unseemly conduct on the Sabbath Day, you must have been so intoxicated as not to realize what you were doing."

Job made this response to His Honor: "Well, Judge, I had had several drinks. But I wouldn't want Your Honor to think I was so drunk I could stand by and see the Word of the Lord being 'munnicked' like that without doing something about it."

If I am to talk to you about what is happening to the law of the land and the sovereignty of the States, I must discuss, with candor, how and why the Supreme Court of the United States is usurping and exercising powers which the Constitution of the United States vests in the Congress or reserves to the States.

I know it is not popular in some quarters to tell the truth about the Supreme Court. Admonitions of this character come to us daily from such quarters: "When the Supreme Court speaks, its decisions must be accepted as sacrosanct by the bench, the bar, and the people of America, even though they constitute encroachments on the constitutional domain of the Congress, or reduce the States to meaningless zeros on the Nation's map. Indeed, the bench, the bar, and the people must do more than this. They must speak of the Supreme Court at all times with a reverence akin to that which inspired Job to speak thus of Jehovah: 'Though He slay me, yet will I trust Him.' "

Such admonitions are intellectual rubbish. Americans are not required to believe in the infallibility of judges. They have an inalienable right to think and speak their honest thoughts concerning decisions of Supreme Court majorities and all other things under the sun. When all is said, a public officer receives the confidence and respect he merits, no more and no less, whether he be President, Senator, judge, or dogcatcher. This is as it should be. The Supreme Court will justly forfeit all claim to the confidence and respect of the bench, the bar, and the citizens of our country if it flouts George Washington's warning that usurpation "is the customary weapon by which free govern-

ments are destroyed" and refuses to confine its activities to its own constitutional sphere.

My endeavor to tell the truth about the Supreme Court must begin with the Constitutional Convention of 1787.

The men who composed the American Constitutional Convention of 1787 comprehended in full measure, the everlasting political truth that no man or set of men can be safely trusted with governmental power of an unlimited nature. In consequence, they were determined, above all things, to establish a government of laws and not of men.

To prevent the exercise of arbitrary power by the Federal Government, they inserted in the Constitution of the United States the doctrine of the separation of governmental powers. In so doing, they utilized the doctrine of the separation of powers in a twofold way. They delegated to the Federal Government the powers necessary to enable it to discharge its limited functions as a central government, and they left to each State the power to regulate its own internal affairs. It was this use of the doctrine of the separation of powers which prompted Chief Justice Salmon P. Chase to make these memorable remarks in his opinion in *Texas v. White*:

"Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indissoluble Union, composed of indestructible States."

In their other utilization of the doctrine of the separation of powers, the members of the Convention of 1787 vested the power to make laws in the Congress, the power to execute laws in the President, and the power to interpret laws in the Supreme Court of the United States and such inferior courts as the Congress might establish. Moreover, they declared, in essence, that the legislative, the executive, and the judicial powers of the Federal Government should forever remain separate and distinct from each other.

The members of the Convention of 1787 did not put their sole reliance upon the doctrine of the separation of governmental powers in their effort to fore-stall the exercise of arbitrary power by the Federal Government. They balanced the President's power to veto the acts of Congress against the power of Congress to legislate, and they balanced the power of Congress over the purse against the President's power as Commander in Chief of the Army and Navy. They made the Supreme Court of the United States independent of the President and the Congress by giving its judges life tenure during good behavior and by providing that their compensation should not be diminished during their continuance in office. They failed, however, to place in the Constitution any provisions to restrain any abuse of its judicial power by the Supreme Court of the United States.

This significant omission was not overlooked at the time. Elbridge Gerry, a delegate from Massachusetts, asserted:

"There are no well defined limits of the judiciary powers, they seem to be oft as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, *thus far shalt thou go and no further*, and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labor to attempt to describe the dangers with which they are replete."

George Mason, a delegate from Virginia, made this more specific objection:

"The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several States. * * *"

Others declared, in substance, that under the Constitution the decisions of the Supreme Court of the United States would "not be in any manner subject to * * * revision or correction;" that "the power of construing the laws" would enable the Supreme Court of the United States "to mold them into whatever shape it" should "think proper;" that the Supreme Court of the United States could "substitute" its "own pleasure" for the law of the land; and that the "errors and usurpations of the Supreme Court of the United States" would "be uncontrollable and remediless."

Alexander Hamilton rejected these arguments with this emphatic assertion: "The supposed danger of judiciary encroachments * * * is, in reality, a phantom." He declared, in essence, that this assertion was true because men selected to sit on the Supreme Court of the United States would "be chosen with a view to those qualifications which fit men for the stations of judges," and that they

would give "that inflexible and uniform adherence" to legal rules "which we perceive to be indispensable in the courts of justice."

In elaborating this thesis, Alexander Hamilton said: "It has been frequently remarked with great propriety, that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived, from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence, it is that there can be but few men in * * * society, who will have sufficient skill in the laws to qualify them for the station of judges."

By these remarks, Hamilton assured the several States that men selected to sit upon the Supreme Court of the United States would be able and willing to subject themselves to the restraint inherent in the judicial process. Experience makes this proposition indisputable: Although one may possess a brilliant intellect and be actuated by lofty motives, he is not qualified for the station of a judge in a government of laws unless he is able and willing to subject himself to the restraint inherent in the judicial process.

What is the restraint inherent in the judicial process? The answer to this query appears in the statements of Hamilton. The restraint inherent in the judicial process is the mental discipline which prompts a qualified occupant of a judicial office to lay aside his personal notion of what the law ought to be, and to base his decision on established legal precedents and rules.

How is this mental discipline acquired? The answer to this question likewise appears in the statements of Hamilton. This mental discipline is ordinarily the product of long and laborious legal work as a practicing lawyer, or long and laborious judicial work as a judge of an appellate court or a trial court of general jurisdiction. It is sometimes the product of long and laborious work as a teacher of law. It cannot be acquired by the occupancy of an executive or legislative office. And, unhappily, it can hardly be acquired by those who come or return to the law in late life after spending most of their mature years in other fields of endeavor.

The reasons why the mental discipline required to qualify one for a judicial office is ordinarily the product of long and laborious work as a practicing lawyer, or as an appellate judge, or as a judge of a court of general jurisdiction are rather obvious. Practicing lawyers and judges of courts of general jurisdiction perform their functions in the workaday world where men and women live, move, and have their being. To them, law is destitute of social value unless it has sufficient stability to afford reliable rules to govern the conduct of people, and unless it can be found with reasonable certainty in established legal precedents. An additional consideration implants respect for established legal precedents in the minds of judges in courts of general jurisdiction and all appellate judges other than those who sit upon the Supreme Court of the United States. These judges are accustomed to have their decisions reviewed by higher courts and are certain to be reminded by reversals that they are subject to what Chief Justice Bleckley of the Supreme Court of Georgia called "the fallibility which is inherent in all courts except those of last resort," if they attempt to substitute their personal notions of what they think the law ought to be for the law as it is laid down in established legal precedents.

The States accepted as valid Alexander Hamilton's positive assurance that men chosen to serve on the Supreme Court of the United States would subject themselves to the restraint inherent in the judicial process, and were thereby induced to ratify the Constitution notwithstanding the omission from that instrument of any express provision protecting the other branches of the Federal Government, the States, or the people against the arbitrary exercise of its judicial power by the Supreme Court.

For several generations next succeeding its utterance, the people of America had no reason to doubt the accuracy of Alexander Hamilton's assurance. With rare exceptions, the Presidents selected for membership upon the Supreme Court of the United States men who had long and laboriously participated in the administration of justice either as practicing lawyers or as judges of State courts or as judges of the Federal courts inferior to the Supreme Court. As a consequence, the overwhelming majority of the men called to service upon

the Supreme Court were able and willing to subject themselves to the restraint inherent in the judicial process and to perform their tasks in the light of the principle that it is the duty of the judge to interpret the law, not to make it.

I was taught in my youth to repose an absolute confidence in the Supreme Court by my father, an active practitioner of law in North Carolina for 65 years, who was accustomed to refer to the Supreme Court with reverential awe. He used to say that this tribunal would administer justice according to law even though the heavens fell.

I regret to say, however, that the course of the Supreme Court of the United States in recent years has been such as to cause me to ponder the question whether fidelity to fact ought not to compel us to remove from the portal of the building which houses it the majestic words, "Equal Justice Under Law," and to substitute for them the superscription, "Not justice under law, but justice according to the personal notions of the temporary occupants of this building." In making this statement, I reveal my acceptance of this observation made by the late Justice Robert H. Jackson in *Brown v. Allen*: "But I know of no way that we can have equal justice under the law except we have some law."

Candor compels the confession that on many occasions during recent years the Supreme Court has to all intents and purposes usurped the power of the Congress and the States to amend the Constitution. This abuse of power was made manifest even before the decision in *Brown v. Board of Education*, which repudiates solely upon the basis of psychology and sociology the interpretation placed upon the 14th amendment in respect to racial segregation by Federal and State courts, the Congress itself, and the executive branches of the Federal and State governments throughout the preceding 86 years. Time does not permit me to cite all the other cases supporting my present contention. I mention only one other case; namely, *Williams v. North Carolina*, where the majority of the Court altered the meaning of the full faith and credit clause of the Constitution by overruling the holding of *Haddock v. Haddock* to the effect that a State court, even of the plaintiff's domicile, could not render a judgment of divorce that would be entitled to Federal enforcement in other States against a nonresident who did not appear and was not personally served with process. In so doing, the majority of the Court held, as the late Justice Jackson asserted in his dissenting opinion, that "settled family relationships may be destroyed by a procedure that we would not recognize if the suit were one to collect a grocery bill."

Recent decisions make it manifest that the Supreme Court has usurped the power of Congress to legislate. Perhaps the most glaring of these decisions is *Girouard v. United States*, where the Court overruled three previous decisions and a subsequent confirming act of Congress simply because a majority of its members did not believe that Congress had exercised its legislative power wisely in denying the privilege of citizenship to aliens who were unwilling to bear arms in defense of this country. To be sure, the majority of the Court did not say that it thought that Congress had legislated unwisely. But a statement to this effect would have been a far better reason for its decision than any of those it gave.

In addition, to its revolutionary decisions on constitutional and statutory subjects, the Supreme Court of the United States has substantially impaired the doctrine of stare decisis and the stability of the law of the land which this doctrine formerly insured by overruling, repudiating, or ignoring its established precedents of earlier years. Former Justice Owen J. Roberts, a recent member of the Court, made this comment in this connection in his dissenting opinion in *Smith v. Allwright*: "The reason for my concern is that the instant decision, overruling that announced about 9 years ago, tends to bring adjudications of this Tribunal into the same class as a restricted railroad ticket, good for this day and train only."

It must be added, moreover, that the Supreme Court has handed down numerous decisions which place limitations on the powers of the several States wholly inconsistent with the constitutional principle that the States of the Union are indestructible. This is particularly true in the field of criminal law. By their virtual abolition of the doctrine of res adjudicata, these decisions make it extremely difficult for the States to enforce their own criminal laws against their own citizens in their own courts.

To satisfy these decisions, the States have been compelled to enact statutes providing for postconviction hearings which, in plain English, permit the accused to try the State court after the State court has tried the accused.

Other decisions of the Supreme Court sanction a practice by which the lowest court in the Federal judicial system, to wit, the U.S. district court, can set at naught the decisions of the highest court of a State. This practice seems particularly ironic and indefensible in the light of Alexander Hamilton's explanation as to why the Supreme Court was invested with original jurisdiction in cases "in which a State shall be a party." His explanation was as follows: "In cases in which a State might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal."

In protesting against this practice, I am not a lone voice crying in a legal wilderness. I have in my possession a clipping from the New York Times for August 14, 1954, disclosing the fact that on the previous day the chief justices of the 48 States of the Union had unanimously proposed that the Congress should amend Federal procedural laws so as to curtail the power of lower Federal courts to interfere with the administration of criminal justice in State courts.

In passing from this phase of the matter, I will observe those of us who are gravely concerned by the apparent determination of the present Supreme Court majority to nullify the constitutional doctrine of the indestructibility of the States can find no comfort in the decisions in *Chessman v. Teets*, *Pennsylvania v. Nelson*, and *Slochower v. Board of Education*, which were handed down during the last term.

The question naturally arises: Why does the Supreme Court of the United States prefer to make constitutions and laws rather than to interpret them?

The answer to this question appears in the assurance which Alexander Hamilton gave to the States when he was urging them to ratify the Constitution. It is simply this: The majority of the members of the Supreme Court during recent years have been either unable or unwilling to subject themselves to the restraint inherent in the judicial process.

When all is said, it is not surprising that this is so. The custom of past generations of appointing to membership upon the Supreme Court men who had worked long and laboriously in the administration of justice either as practicing lawyers or as State judges, or as judges of Federal courts inferior to the Supreme Court, has been more honored of late in its breech than in its observance.

All of the members of the Supreme Court are genial gentlemen of high attainments and significant accomplishments. But the majority of them have not worked either long or laboriously as practicing lawyers, or as State judges or as judges of the Federal courts inferior to the Supreme Court. As a consequence, the majority of them have not undergone the mental discipline which enables a qualified occupant of a judicial office to lay aside his personal notions of what the law ought to be and to base his decisions on what the law has been declared to be in legal precedents.

The writer of the Book of Proverbs said:

"There be three things which are too wonderful for me, yea, four which I know not: The way of an eagle in the air; the way of the serpent upon a rock; the way of a ship in the midst of the sea; and the way of a man with a maid."

Experience is undoubtedly the most efficient teacher of all things. This being true, there is one thing more amazing and more incomprehensible than the four mysteries enumerated by the writer of the Book of Proverbs. It is this: Why do Presidents of the United States ignore the numerous servants of the law who have performed years of devoted judicial service on State courts and on Federal courts inferior to the Supreme court when they are called upon to make appointments to the Supreme Court of the United States?

These facts are astounding:

1. No member of the Supreme Court as it is now constituted, ever served as a judge of a court of general jurisdiction, either State or Federal.
2. No member of the Supreme Court as it is now constituted, ever served as a judge upon an appellate court in any one of the 48 States.
3. Only two of the nine members of the Supreme Court, as it is now constituted, ever served as appellate judges on Federal courts inferior to the Supreme Court before they were elevated to their present offices. The combined prior service of these two members totaled only about 9 years. Moreover, a majority of the members of the Supreme Court, as it is now constituted, did not devote their major efforts to the actual practice of law before their appointments to the bench.

It is high time for the bench and the bar and the people of America to ponder the question whether the country ought not to take action by constitutional amendment or otherwise to make it certain that, in the future, men will be selected

for service upon the Supreme Court because of their possession of what Alexander Hamilton called those qualifications which fit men for the station of judges, and because of their ability and willingness to subject themselves to the restraint inherent in the judicial process.

It may be that in making these observations, I am merely enacting the role of a fool who rushes in where discreet angels fear to tread. If so, I can plead in extenuation of my folly that I love the American Constitution and know that an indissoluble Union composed of indestructible States cannot endure if our government of laws is destroyed by judicial usurpation.

THE ROLE OF THE SUPREME COURT AS THE INTERPRETER OF THE CONSTITUTION

Address by U.S. Senator Sam J. Ervin, Jr. (Democrat, North Carolina) before a meeting of the State bar of South Dakota at Yankton, S. Dak., on July 1, 1961

Ladies and gentlemen of the South Dakota bar:

I am grateful to you for the privilege of being in your great State which is so ably represented in the Senate by my good friends, Francis Case and Karl Mundt.

The constitution of my native State of North Carolina has always contained a warning which all Americans would do well to heed. It is this: "A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." Let us pause for a few moments, and recur to some fundamental principles.

The men who composed the Constitutional Convention of 1787 were wise men. They had read the history of the long and bitter struggle of many for freedom, and had found this shocking but everlasting truth inscribed upon each page of that history: No man or set of men can be safely trusted with governmental power of an unlimited nature. As a consequence, they were determined, above all things, to establish a government of laws and not of men.

To prevent the exercise of arbitrary power by the Federal Government, they embodied in the Constitution the doctrine of the separation of governmental powers. In so doing, they utilized this doctrine in a twofold way. They delegated to the Federal Government the powers necessary to enable it to discharge its functions as a central government, and they left to each State the power to regulate its own internal affairs. It was this use of the doctrine of the separation of powers which prompted Chief Justice Salmon P. Chase to make this trenchant observation in *Texas v. White*: "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

In their other utilization of the doctrine of the separation of governmental powers, the members of the Convention of 1787 vested the power to make laws in the Congress, the power to execute laws in the President, and the power to interpret laws in the Supreme Court and such inferior courts as the Congress might establish. Moreover, they declared, in essence, that the legislative, the executive, and the judicial powers of the Federal Government should forever remain separate and distinct from each other.

This brings me to my subject: The Role of the Supreme Court as the Interpreter of the Constitution.

In discussing this subject, I must tell you the truth about the Supreme Court.

I know it is not popular in some quarters to tell the truth about this tribunal. Admonitions of this character come to us daily from such quarters: When the Supreme Court speaks, its decisions must be accepted as sacrosanct by the bench, the bar, and the people of America, even though they constitute encroachments on the constitutional domain of the President or the Congress, or tend to reduce the States to meaningless zeroes on the Nation's map. Indeed, the bench, the bar, and the people must do more than this. They must speak of the Supreme Court at all times with a reverence akin to that which inspired Job to speak thus of Jehovah: "Though He slay me, yet will I trust Him."

To be sure, all Americans should obey the decrees in cases to which they are parties, even though they may honestly and reasonably deem such decrees unwarranted. But it is sheer intellectual rubbish to contend that Americans are required to believe in the infallibility of judges, or to make mental obeisance to judicial aberrations. They have an inalienable right to think and speak their honest thoughts concerning all things under the sun, including the de-

cisions of Supreme Court majorities. It is well this is so because the late Chief Justice Harlan F. Stone spoke an indisputable truth when he said: "Where the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action, and fearless comment upon it."

As one whose major efforts have centered in the administration of justice, I have the abiding conviction that "tyranny on the bench is as objectionable as tyranny of the throne" and that my loyalty to constitutional government compels me to oppose it. In entertaining this conviction, I find myself in the company of such great Americans as Thomas Jefferson, Andrew Jackson, and Abraham Lincoln, who refused to accept, in abject silence, what they conceived to be judicial usurpations.

I do not find it easy to express my disapproval of the action of the Supreme Court. I was taught in my youth to repose an absolute confidence in that tribunal by my father, an active practitioner of law in North Carolina for 65 years, who was accustomed to refer to it with almost reverential awe. He used to say that the Supreme Court would administer justice according to law though the heavens fell.

I regret to say, however, that the course of the Supreme Court in recent years has been such as to cause me to ponder the question whether fidelity to fact ought not to induce its members to remove from the portal of the building which houses it the majestic words, "Equal Justice Under Law," and to substitute for them the superscription, "Not justice under law, but justice according to the personal notions of the temporary occupants of this building."

The truth is that on many occasions during recent years the Supreme Court has usurped and exercised the power of the Congress and the States to amend the Constitution while professing to interpret it.

In so doing, the Supreme Court has encroached upon the constitutional powers of Congress as the Nation's legislative body, and struck down State action and State legislation in areas clearly committed to the States by our system of constitutional government. This action has been accompanied by overruling, repudiating, or ignoring many contrary precedents of earlier years.

A study of the decisions invalidating State action and State legislation compels the conclusion that some Supreme Court Justices now deem themselves to be the final and infallible supervisors of the desirability or wisdom of all State action and all State legislation.

This is tragic, indeed, because there is nothing truer than the belief attributed to the late Justice Louis D. Brandeis by Judge Learned Hand, that "the States are the only breakwater against the ever-pounding surf which threatens to submerge the individual and destroy the only kind of society in which personality can survive."

Time does not permit me to analyze or even enumerate all of the decisions which sustain what I have said. I must content myself with stating, in summary form, the effect of only a few of them.

Congress was told by the Court in the *Girouard* (328 U.S. 61) and *Yates* (354 U.S. 298) cases that it really did not mean what it said in plain English when it enacted statutes to regulate the naturalization of aliens and to punish criminal conspiracies to overthrow the Government by force. Congress was told by the Court in the *Watkins* case (354 U.S. 178) that its committees must conduct their investigations according to rules imposed by the Court which make it virtually certain that no information will ever be obtained from an unwilling witness. Seventeen States and the District of Columbia were told by the Court in the *Brown* (347 U.S. 483) and *Bolling* (347 U.S. 497) cases that the equal protection clause of the 14th amendment and the due process clause of the 5th amendment had lost their original meanings because the state of "psychological knowledge" had changed. California was told by the Court in the *Lambert* case (355 U.S. 225) that it cannot punish its residents for criminal offenses committed within its borders if such residents are ignorant of the statutes creating such criminal offenses. California was told by the Court in the first *Konigsberg* case (353 U.S. 252) that it cannot resort to cross-examination to determine the fitness or qualifications of those who apply to it for licenses to practice law in its courts. New Hampshire and Pennsylvania were told by the Court in the *Sweczy* (354 U.S. 234) and *Nelson* (350 U.S. 497) cases that they cannot investigate or punish seditious teachings or activities within their borders. New York was told by the Court in the *Slochower* case (350 U.S. 551) that it cannot prescribe standards of propriety and fitness for the teachers of its youth. North Carolina was told by the Court in the first *Williams* case (317 U.S. 287) that it cannot determine the

marital status of its own citizens within its own borders. Pennsylvania and the trustees of the will of Stephen Girard, who had slumbered "In the tongueless silence of the dreamless dust" for 126 years, were told by the Court in the *Board of Trustees* case (353 U.S. 280) that the 14th amendment empowers the court to write a post-mortem codicil to the will which Stephen Girard made while he walked the earth's surface and entertained the belief that disposing of private property by will is a matter for its owner rather than judges. And within the last fortnight, 24 States have been told by the Court in the *Mapp* case that the fourth amendment has somehow lost its original meaning 170 years after its ratification, and that in consequence they no longer have the power which they possessed in time past to regulate the admissibility in their own courts of evidence obtained by searches and seizures.

In saying these things, I am not a lone voice crying in a legal wilderness. The concurring opinion of the late Justice Robert H. Jackson in *Brown v. Allen*, and the resolution adopted by 36 State chief justices in Pasadena, Calif., disclose that a substantial portion of the judges and lawyers of America believe the Supreme Court is not confining itself to its allotted constitutional sphere.

I quote these words from Justice Jackson's concurring opinion: "Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of the Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles." Justice Jackson closed his observations on this score with this sage comment: "I know of no way we can have equal justice under law except we have some law."

Let us consider and weigh the reasoning of those who seek to justify the proposition that it is permissible for the Supreme Court to amend the Constitution under the guise of interpreting it.

They make these assertions: The Constitution must change to meet changing conditions. As its authorized interpreter, the Supreme Court has the rightful power, at all times, to make the Constitution conform to the views of the majority of its members. Since the doctrine of *stare decisis*, i.e., the rule that judges stand by and follow the decisions of their own court, might handicap the Supreme Court in making the Constitution conform to the views of a majority of its members on some occasions, the Supreme Court is not bound by its own decisions on constitutional questions.

These arguments rest upon a wholly fallacious premise, namely, that the power to interpret and the power to amend are identical. The distinction between these powers is as wide as the gulf which yawns between Lazarus in Abraham's bosom and Dives in hell. The power to interpret the Constitution is the power to ascertain its meaning, and the power to amend the Constitution is the power to change its meaning.

It seems at first blush that those who advance these arguments overlook the significant fact that article V of the Constitution vests the power to amend the Constitution in the Congress and the States, and not in the Chief Justice and Associate Justices of the Supreme Court. But not so. They simply nullify article V with these neat assertions.

The method of amendment authorized by article V is too cumbersome and slow. Consequently, the Supreme Court must do the amending. "The alternative is to let the Constitution freeze in the pattern which one generation gave it."

To a country lawyer, this is merely a "high falutin" way of saying that the oath of a Supreme Court Justice to support the Constitution does not obligate him to pay any attention to article V or any other provision displeasing to him.

When all is said, the thesis that the Supreme Court has the rightful power to amend the Constitution under the guise of interpreting it is repugnant to the end the Founding Fathers had in mind when they gave this country a written Constitution. In deed, it is incompatible with the primary object of all law.

The Federalist, Judge Thomas M. Cooley's monumental treatise on "Constitutional Limitations," and certain great decisions of the Supreme Court antedating the last quarter of a century, reveal with unmistakable clarity the end the Founding Fathers had in mind in giving our country a written Constitution.

The Founding Fathers "were not mere visionaries toying with speculations or theories, but practical men, dealing with the facts of political life as they understood them" (*South Carolina v. United States*).

They understood the facts of political life exceedingly well. "The history of the world had taught them that what was done in the past might be attempted in the future." In consequence, they foresaw that the fundamentals of the Government they desired to establish and the liberties of the citizens they wished to secure would be put in peril in troublous times by both the Government and the people unless they protected such fundamentals of government and such liberties by "irrepealable law" binding equally upon the Government and the governed at all times and under all circumstances (*Ex Parte Milligan*).

The Founding Fathers knew that the surest way to protect the fundamentals of the Government they desired to establish and the liberties of the citizens they wished to secure was to enshrine them in a written constitution, and thus put them beyond the control of impatient public officials, temporary majorities, and the varying moods of public opinion. To this end, they framed and adopted a written Constitution, thereby putting into form the Government they were creating and prescribing the powers that Government was to take (*South Carolina v. United States*; "Constitutional Limitations").

The Founding Fathers knew that "useful alterations" of some provisions of the Constitution would "be suggested by experience." Consequently they made provision for amendment as set out in article V. James Madison, whom historians rightly call the Father of the Father of the Constitution, informs us that the Constitutional Convention preferred this mode for amending the Constitution because "it guards equally against that extreme facility, which would render the Constitution too mutable, and that extreme difficulty, which might perpetuate its discovered faults" (*the Federalist*).

Since the Constitution is a written instrument, its meaning does not alter, unless its wording is changed by amendment in the manner prescribed by article V. "That which it meant when adopted it means now. * * * Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded" (*South Carolina v. United States*).

Chief Justice John Marshall declared in his great opinion in *Gibbons v. Ogden* that "the enlightened patriots who framed our Constitution and the people who adopted it must be understood * * * to have intended what they said."

This being true, it is as clear as the noonday sun that the role of the Supreme Court as the interpreter of the Constitution is simply to ascertain and give effect to the intent of its framers and the people who adopted it (*Gibbons v. Ogden*; *Ogden v. Saunders*; *Lake County v. Rockne*). As Justice Miller said in *Ex Parte Bain*, "It is never to be forgotten that in the construction of the language of the Constitution here relied on, as indeed in all other instances where construction becomes necessary, we are to place ourselves as nearly as possible in the condition of the men who framed that instrument."

Since the meaning of a written constitution is fixed when it is adopted and is not different at any subsequent time when a court has occasion to pass upon it, Judge Cooley was justified in declaring in his "Constitutional Limitations" that "a court * * * which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders would be justly chargeable with reckless disregard of official oath and public duty."

I know that in recurring to fundamental principles I lay myself open to the charge that I am setting the clock back. As one who believes truth to be eternal, I am not troubled by this charge. Moreover, I have observed that the charge is usually made by those who labor under the delusion that there was little, if any, wisdom on earth before they arrived. It was a wise man and no wag who suggested that these persons object to setting the clock back because it would require them to adjust their clocks and their minds forward.

Let us reflect at this point on the primary object of all law.

Laws are designed to furnish rules of conduct for government and people. As a consequence, a law is destitute of value unless it has sufficient stability to afford reliable rules to govern the conduct of government and people, and unless it can be found with reasonable certainty in established legal precedents. Justice Louis D. Brandeis had this truth in mind when he said: "It is usually more important that a rule of law be settled, than that it be settled right. Even where the error in declaring the rule is a matter of serious concern, it is ordinarily better to seek correction by legislation."

If the thesis that a majority of the members of the Supreme Court have the rightful power to change the meaning of the Constitution under the guise of interpreting it every time a sitting Justice wavers in mind or a newly appointed

Justice ascends the bench should find permanent acceptance, the Constitution would become to all practical intents and purposes an uncertain and unstable document of no beneficial value to the country. Yea, more than this, it would become a constant menace to sound government at all levels, and to the freedom of the millions of Americans who are not at liberty to join Supreme Court Justices in saying that Supreme Court decisions on constitutional questions are not binding on them.

I cannot forbear expressing my opinion that the notion that Supreme Court Justices are not bound by the decisions of the Court on constitutional questions exalts Supreme Court Justices above all other men, and is of the stuff of which judicial oligarchies are made. Be this as it may, what Justice Benjamin N. Cardozo said in "The Nature of the Judicial Process" concerning the contention that the judge is always privileged to substitute his individual sense of justice for rules of law applies with equal force to this notion. "That might result in a benevolent despotism if the judges were benevolent men. It would put an end to the reign of law."

What I have said on this point finds full support in the ringing words of Edward Douglas White, one of the ablest lawyers and wisest judges ever to grace the Supreme Court Bench. He said: "In the discharge of its function of interpreting the Constitution, this Court exercises an august power. * * * It seems to me that the accomplishment of its lofty mission can only be secured by the stability of its teachings and the sanctity which surrounds them. * * * The fundamental conception of a judicial body is that of one hedged about by precedents which are binding on the court without regard to the personality of its members. Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its Bench, and our Constitution will, in my judgment, be bereft of value and become a most dangerous instrument to the rights and liberties of the people."

What has been said does not deny to the Supreme Court the power to overrule a prior decision in any instance where proper judicial restraint justified such action. A sound criterion for determining when proper judicial restraint justifies a judge in overruling a precedent is to be found in the standard which Judge Learned Hand says his friend and colleague, Judge Thomas Swan, set for his own guidance: "He will not overrule a precedent unless he can be satisfied beyond peradventure that it was untenable when made; and not even then, if it has gathered around it the support of a substantial body of decisions based on it."

In ending this phase of my remarks, I wish to emphasize that precedents set by the Supreme Court on constitutional questions were tenable when made if they conformed to the intention of those who framed and adopted the constitutional provisions involved, no matter how inconsistent they may be with the views of Justices subsequently ascending the Bench.

This brings me to the argument that Supreme Court Justices must nullify article V and usurp the power to amend the Constitution while pretending to interpret it to keep the Constitution from freezing "in the pattern which one generation gave it."

I assert with all the emphasis at my command that there is really no substantial validity in this argument. I take this position for three reasons:

First. Although the Constitution does not change its meaning in the absence of amendment under article V, the provisions of the Constitution are pliable in the sense that they reach into the future and embrace all new conditions falling within the scope of the powers which they in terms confer (*Missouri P.R. Co. v. United States; South Carolina v. United States*). Existing grants of constitutional powers will enable the Federal Government to take action in virtually all new fields in which action on its part will be appropriate.

Second. As the possessor of all the legislative power of the Federal Government, Congress has complete authority at all times to make, amend, or repeal laws relating to all matters committed by the Constitution to the Federal Government.

Third. For these reasons, occasions which really call for amendments to the Constitution are comparatively rare. While it is frequently asserted that the method for amending the Constitution prescribed by article V is too cumbersome and slow for practical purposes, those who make the assertion furnish no satisfactory proof of its truth. To be sure, they cite as evidence the failure of Congress and the States to make constitutional changes they deem desirable. They

overlook the fact, however, that the evidence they cite has just as logical a tendency to prove that the wisdom of Congress and the States exceeds theirs. Thomas Riley Marshall said that "it is as easy to amend the Constitution of the United States as it used to be to draw a cork." While this statement is not literally true, it is substantially true in instances where Congress and the States believe a constitutional amendment to be advisable.

In the final analysis, those who contend that Supreme Court Justices are justified in changing the meaning of constitutional revisions while pretending to interpret them confuse right and power.

What Justice Cardozo said of the judge as a legislator in "The Nature of the Judicial Process" is relevant here.

He said: "I think the difficulty has its origin in the failure to distinguish between right and power, between the command embodied in a judgment and the jural principle to which the obedience of the judge is due. Judges have, of course, the power, though not the right, to ignore the mandate of a statute, and render judgment in spite of it. They have the power, though not the right, to travel beyond the walls of the interstices, the bounds set to judicial innovation by precedent and custom. Nonetheless, by that abuse of power, they violate the law."

Let me refer in closing to the Father of our Country, who was President of the Convention which wrote our Constitution. As the Encyclopaedia Britannica says, the weight of George Washington's character did more than any other single force to bring the Convention to an agreement and to obtain ratification of the Constitution afterward.

If the America which George Washington and the other Founding Fathers created is to endure, Supreme Court Justices, as well as Presidents and Congress, should bear in mind what he said in his farewell address to the American people.

I quote his words:

"...likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominate in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern: some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil, any partial or transient benefit which the use can at any time yield."

Senator KEFAUVER. And I want to say that I think the questions asked by Senator Ervin and the answers given by Secretary Goldberg are useful for posterity, and it makes an important record for future appointees of the Supreme Court.

Senator Wiley, do you have some questions?

Senator WILEY. Mr. Chairman and Mr. Secretary, I have a few questions. I won't take very long. And I will be very direct. I know that some of the things I ask probably won't even be necessary.

I received letters intimating that you were a Communist. What have you got to say to that?

Mr. GOLDBERG. Senator, I have been at the bar of the State of Illinois and the District of Columbia and the Supreme Court of the United States for about 33 years. My record is an open record. I have never operated underground or behind the scenes. My activities as a lawyer and as a citizen are a matter of public record.

Everything I have done in my life I have done openly. I have not done anything secretly or in any way that is not subject to public scrutiny. Throughout my life I have been an activist. I hope now not to be such an activist, but I have been an activist, and I have engaged in open activity. And my activities have been reported upon by the press of my hometown, Chicago, the national press, and they have been a matter of open comment.

I have written about this subject, so that I have expressed myself directly upon these issues.

I don't want to disqualify myself. There are some cases coming up in the Court which involve the legal rights of the Communist Party, and I do not want anything I have said or will say to militate against my right to sit in judgment. When you interpret the Constitution you interpret the Constitution in reference to the rights of anybody in our country. We do not act like the Soviet Union or totalitarian countries act, by executive fiat.

We act as a government of laws. And therefore what I am now going to say, I hope, will not be construed by anybody to mean that I cannot objectively pass upon the constitutional rights of any group, including any Communist group.

Having said that, I want to say this: Throughout my life, everywhere I have appeared, in any forum in which I have spoken, in any area in which I have been engaged—and I have been engaged in many forums and many platforms and many areas—I regard and have regarded communism to be a dangerous international movement, incompatible with our democratic traditions. I have never deviated from that viewpoint from the earliest days of my life.

I have never deviated from that in representing any group that I have represented.

I have written upon this subject, it is an open public matter. I have written a book on the labor movement, "The A.F. of L.-CIO, Labor United," which is published by McGraw-Hill. I have a chapter in that book, chapter 10, devoted to communism and corruption. That book states my philosophy in this area. It is not a new philosophy, it is a philosophy to which I have subscribed through my whole life. I regard the Communist movement to be a perversion of what people have a right to expect from government and from life.

It is completely contrary to our way of life. We believe in freedom and democracy, and the right of people to speak their convictions, and their right to live in a society where they can criticize you or me, where they can take issue with a President of the United States, or a Senator, or a Congressman, or a private citizen.

These views are stated in this book, and I would like, with the permission of the chairman, to incorporate in the record the chapter of the book which deals with that subject.

Senator KEFAUVER. Without objection the chapter will be placed in the record at the proper place.

(The chapter referred to follows:)

CHAPTER X. COMMUNISM AND CORRUPTION

Both the AFL and the CIO, as separate federations, were faced at various times with infiltration of their affiliated unions by Communists and by racketeers. Neither federation has been entirely free from either of these scourges, but CIO affiliated unions have been the principal sufferers from the Communists and AFL unions from racketeer penetration. General reference has already been

made to these problems, but their importance, and the special treatment which has been accorded these matters in the constitution of the AFL-CIO, warrant more detailed treatment.

While communism and crookery can hardly be equated, the problems they pose for labor federations have certain points of similarity. In each case a group from outside the ranks of labor seeks to control unions for its own evil, non-trade-union purposes; and in each case the federation is faced with the question of how to deal with the problem in the light of the autonomy normally enjoyed by its affiliated unions. Thus, when the CIO moved to expel its Communist-dominated unions in 1949-50, their principal defense was that their autonomy was being violated; the same cry was heard from the racketeer-ridden International Longshoremen's Association when the AFL moved against it in 1953.

The CIO found it necessary, or at least desirable, to amend the constitution to give special powers to the executive board to deal with the Red-led unions. While the AFL did not similarly amend its constitution as a prelude to dealing with the ILA, its expulsion of that union for internal malpractices was a sharp break with the AFL's long-established tradition. It was because of this history and experience that the constitution of the AFL-CIO has specific provisions dealing with Communists and racketeers. We have already examined these constitutional provisions. Here let us examine in some detail the not uninteresting story of how Communists and crooks got into the labor movement, what the AFL and CIO did about them, and how the merged federation proposes to handle these problems in the future.

The Communist Attempt to Control the Labor Movement

It is a cornerstone of Communist theory that the Communist revolution requires the support of the industrial workers, the "proletariat."

The Communist party in the United States has therefore striven, since its creation, to gain control of labor unions, not only as a step toward eventual revolution, but with a view to using them meanwhile to promote the interests of the Soviet Union. Particularly it has sought to gain control of unions in the industrial field. Needless to say, the Communist party seeks to use trade unions to promote the ends of communism, rather than of trade-unionism.

While the Communist objective of gaining control of unions has remained constant, the techniques by which the Communist party has sought to achieve this end have varied from time to time. Thus the party line has during some periods called for infiltration of "reactionary," i.e., non-Communist, trade unions, while at other times the Communist party has organized its own trade unions to compete with existing unions. Like every other aspect of Party dogma, the policy to be followed in this regard has always been laid down by the Soviet leaders, and blindly followed, with only minor adaptations for the sake of tactical expediency, by American Communists.

1. *The "Infiltration" Period of the Twenties.*—Initially the party line, laid down by Lenin, called for "infiltration" of existing labor organizations, and it denounced dual unionism. The AFL was, of course, the only labor federation in existence in the United States up until 1937, and the initial efforts of the Communist movement were accordingly directed principally against its affiliates.

The first instrument through which the American Communist party sought to effectuate this policy of infiltrating the AFL was the Trade Union Educational League, established in 1920.

The Communist drive in the 1920's to infiltrate established unions through the TUEL met with little success. The Communists did gain control of one union, the Fur Workers, but were defeated in their attempts to acquire influence in such established unions as the International Association of Machinists, the International Ladies' Garment Workers' Union, the Amalgamated Clothing Workers, the Hat and Millinery Workers, and the United Mine Workers.

One student of the subject, Professor Philip Taft of Brown University, summed it up this way in 1952:*

"It needs to be recognized that the initial assault of the Communists upon the American trade-union movement in the 1920's was repelled by the organizations of labor themselves. The unions were a strong barrier to Communist

*This quotation and others of Professor Brown and of Professor Joel Seldman of the University of Chicago in this chapter are taken from the Hearings on Communist Domination of Unions and National Security before a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 82d Cong., 2d sess. (1952).

infiltration of American industry, and strong Communist nuclei were never firmly established in industries where unions had long existed."

2. Dual Unionism: 1928-1935.—In 1928 a major shift in Soviet economic policy took place, and it resulted in a parallel change in Communist technique in the labor union field. It was in that year that the New Economic Policy (NEP), under which the Soviet Union had accorded private capitalism a limited tolerance in certain fields, was abolished. Instead, the Soviet Union launched the First Five-year Plan, with its more rigid state control of the economy and the goal of promoting rapid industrialization. At about the same time the American Communist party abandoned its more moderate policies of a united front and boring-from-within process, in favor of a policy of more frankly revolutionary dual unionism.

Thus, in 1928 and the following years, new Communist-run unions were organized in several fields, including coal mining and needle trades. To co-ordinate these Communist dual unions the TUEL was transformed into the Trade Union Unity League in 1929, as a would-be rival federation to the AFL. However, the largest membership it ever claimed for its affiliated unions was 125,000.

3. The Popular Front Period: 1935-1939.—This avowedly revolutionary, dual-union, policy was pursued by the Communist party until 1935, when new tactics were adopted by the Comintern, following the Soviet realization that Hitler's regime would not quickly collapse and give way to a Communist Germany—as Stalin apparently had believed. The new Comintern line, more defensive and less aggressive than its predecessor, was the "popular front" or "united front" or "people's front."

Since the Soviet Union was menaced by the Axis powers, it sought the help of the Western democracies, and urged them to enter with it into a system of "collective security" against aggression. To promote this policy of the Soviet Union, the Communist party, in various countries including the United States, sought to promote a "popular front" or "united front" with other groups which, for whatever reasons, supported a program of collective security against the aggression of the Fascist nations. As part of this changed technique the Trade Union Unity League was liquidated, and the Communists working in the trade-union field were directed once more to turn their energies to infiltrating the AFL. The Communist party of the United States directed that the unions it controlled should "attempt to join the AFL as organized units." Aware that the AFL might be on guard against this strategy, the Communist party advised its members in unions that "where collective action is not possible, members of revolutionary unions should join the unions of the A.F. of L. individually." ("The Trade-Union Question," *Labor Unity*, Feb., 1935, p. 4.)

For the fact that these successive changes in Communist strategy in this country were directed by the Soviet Union, we have the word of Alexander Bittleman, still one of the top leaders of the Communist party. Writing in *The Communist* in March 1934, he declared:

"In short, at every stage in the development of the revolutionary trade-union movement in the United States * * * it was with the help of the Comintern that the American revolutionary workers were able to find the correct way to correct their errors and, through manifold changes in tactics, to press on to the goal of building a revolutionary trade-union movement in the United States."

In 1935, too, the long developing fight over industrial and craft units came to a head at the AFL convention, and a few weeks later the Committee for Industrial Organization was formed, with John L. Lewis as chairman.

Before it was very old, the CIO had a Communist problem. As Professor Taft pointed out:

"This [formation of the CIO] gave the Communists an unparalleled opportunity. In due course the CIO created unions in jurisdictions where none had existed before. The unions were not only new, but their growth was both sudden and, in many instances, on a vast scale. The difference between their position and that of the older unions with respect to the ability of an organized Communist caucus to function was very great. The officers of older unions are not only quick to recognize attempts to create organized dissension, but have sufficient prestige to deal with such manifestations summarily. Within the newly organized unions there was no established corps of officers, few who had a large amount of prestige, and not many with sufficient experience to do the day-to-day administrative work. These conditions gave the Communists an unusual opportunity."

Several other factors additionally contributed to Communist success in infiltrating certain of the unions affiliated with the newly established CIO.

a. Someone was needed to do the "dirty work"—and the Communists did it. As Professor Joel Seidman of the University of Chicago put it:

"* * * large numbers of volunteer and paid organizers needed to be sent to the strongholds of American industry where arrests and beatings had to be taken in the day's work. The Communists furnished large numbers of organizers in that period, paid and volunteer."

b. Economic and political developments, here and abroad, for a time favored the Communist "popular front" policy. As Allan S. Haywood, an old coal miner who became the CIO's dynamic executive vice president and director of organization, recalled those years:

"The great depression of the early thirties, with its mass unemployment, lowered the stock (literally and figuratively) of the capitalist system and encouraged many to consider the possibility of some alternative economic order. During the years from the rise of Hitler to the signing of the Soviet-Nazi pact in July 1939, the Communists advocated with considerable success a 'popular front' against Hitler, and by that device secured the alliance of numerous anti-Nazi liberal groups. Finally, the heroic war waged by the Soviet Union against Germany during the years 1941 to 1945 won the admiration of people everywhere."

"This admiration tended to check the understanding of the true nature of the Communist state which had begun to spread with the Moscow treason trials in 1937, the Nazi-Russian pact, and the attack upon Finland. The war years of alliance between this country and Russia particularly tended to block any further deterioration in the position of the Communists in this country, and to cover up the vast differences in political and economic philosophy and in their international objectives which separate this country and the Soviet Union."

It must also be remembered that in the midthirties the Communist party was viewed by many of the younger labor people in the new CIO unions with less distrust than the Communists aroused in the older labor leaders who had watched it in action during the 1920's and 1930's. Many people—inside and outside labor—thought of the Communists as a radical party rather than as an American arm of the Russian dictatorship.

c. Finally, during the period from the formation of the CIO until the German invasion of Russia in June 1941, the Communists fulsomely supported John L. Lewis, founder of the CIO and its president until October 1940.

Saul Alinsky, in his semiofficial biography of Lewis, states:

"Lewis was well aware of the degree and proportions of the Communist power within the CIO. To charges of harboring Communist organizers, he would answer, 'I do not turn my organizers or CIO members upside down and shake them to see what kind of literature falls out of their pockets.' Or, again, speaking of Communists, 'If they are good enough for industry to hire, they're good enough for us to organize.'

It is hardly necessary to say that Lewis was himself no Communist. He had fought the Communists in the United Mine Workers, and was wholly free from Marxist ideology. But in the CIO he obviously felt he could use Communist help.

In exchange for their assistance, the Communists used the opportunity to entrench themselves in the new unions. As Seidman said:

"The CIO realized it, I think, in many cases; yet it took the attitude that, once the workers were organized, the Communist organizers that brought them in could be fired and the control of the organizations regained by the CIO without any difficulty. What happened, however, was that in many cases the Communist organizers did a good organizational job and were able to entrench themselves into membership and get themselves elected into office. They won a following in many plants that was not shaken for a great many years."

The combination of these various factors and circumstances enabled the Communists, in the years following 1935, to secure considerable influence in the labor movement.

Professor Seidman concludes:

"By the time of World War II, therefore, the Communists had become a powerful influence in a series of unions which, altogether had perhaps one-third of the total CIO membership. They were in control of a series of significant unions, the United Electrical, Radio and Machine Workers, the National Maritime Union, the Transport Workers Union, the International Longshoremen and Warehousemen's Union, the Mine, Mill and Smelter Workers, the Fur and Leather Workers; and they had strength in a number of others."

During this period the Communists also succeeded in establishing some foothold in the AFL, though they never acquired any position of major influence there. While no AFL international union was controlled by a Communist administration, some local groups did, on a temporary basis, come under Communist domination. But the AFL's problem on this matter was not comparable to that of the CIO. The Lewis relationship in the CIO was clearly a marriage of convenience, and Lewis always felt he could control the Communists. There is evidence, however, that Lewis was surprised, saddened, and angered when the Communists abandoned his isolationist philosophy after the Nazi invasion of Russia in 1941.

Wartime developments tended to conceal the basic underlying differences between the aims of the genuine trade-unionists in the CIO and those of the Communists who had infiltrated it.

4. *The Postwar Period: 1945-1950.*—But postwar differences and tensions between the Soviet Union and the United States were seen reflected in a new series of tensions between the CIO's Communists and anti-Communists.

As Russian and American policies diverged more and more, it became increasingly difficult for the U.S. Communists to conceal the fact that their primary loyalty was to the Soviet Union. These conflicts became particularly marked when the United States launched the Truman and Marshall plans, and came to a head in 1948 when the Communists strongly supported Henry Wallace for President on a platform of discarding the Truman Administration's international program of containing communism. The failure of Wallace to get more than a handful of votes was a body-blow to the prestige of the CIO's pro-Communist bloc, and it set the stage for the final struggle to free the CIO from Communist influence.

The Expulsion of Communists from the CIO

The drive of the CIO during 1948-1950 to rid itself of Communist infiltration developed along two different lines. First, Philip Murray and other leaders of the CIO more openly encouraged and supported the anti-Communist forces in various affiliated unions in their attempts to free those unions from Communist control or penetration. Second, the CIO ultimately expelled outright those unions which proved unable to free themselves from Communist domination, and in most cases set up rival unions to compete for the allegiance of the workers. The two different techniques by which the CIO fought communism in its affiliated unions overlapped chronologically, to some extent. In general, the technique of working informally with anti-Communists was principally relied on up until the CIO convention in the fall of 1949, when two Communist-dominated unions were expelled outright, and procedures were established that led to the ousting of nine others during the next year.

The Freeing of Unions from Communist Influence or Control

During the 1945-1948 postwar period Communist strength in the trade-union movement, as in the nation generally, steadily declined, as it became more and more apparent that the American Communist Party was simply a wholly owned subsidiary of the Soviet Union.

At the November 1946 CIO convention, its president, Philip Murray, sponsored the adoption of a resolution declaring that the CIO delegates "resent and reject efforts of the Communist Party or other political parties and their adherents to interfere in the affairs of the CIO." It was the hope of the CIO leadership during this period that, with its assistance and encouragement, Communist influence would be destroyed in the affected unions, either through a change in policy and heart by their leading officials, or through election of new leadership. For a time substantial progress was made along both these lines.

For instance, shipboard radio operators withdrew from the Communist-dominated American Communications Association and were chartered by the CIO as the American Radio Association. Communist pockets in some other key industries, including electric utilities and telephone, were also wiped out.

In 1946, President Joseph Curran of the National Maritime Union succeeded after a hard fight in breaking Communist control of that union. (See Barash, *Labor Unions in Action*, pp. 211-213.) This union had been of major strategic importance to the strategy of the Communist party.

In 1948 the Transport Workers Union, under the leadership of Michael Quill, likewise threw off the domination of the Communist party. The Communists' insistence that its followers support Henry Wallace for the presidency in that year was a major contributory cause of its loss of influence in that union.

The story of the elimination of Communist influence in the United Auto Workers, CIO, belongs in a somewhat different category. That union was never wholly under Communist domination, but was torn by the fight between the pro- and anti-Communists. In consequence of the intervention of top CIO officials, a compromise slate of officers was elected, and they were continued in their posts until 1946, but during that period the Communist bloc unquestionably exercised considerable power in UAW affairs.

Walter Reuther had been the leader of the UAW opposition to the Communist bloc at the 1939 union convention. In succeeding years he continued relentlessly to press the fight to destroy Communist influence in that union. In 1941 the Reuther group had campaigned, albeit unsuccessfully, to have the convention bar Communists from union office. During the war years the UAW internal political situation remained in uneasy status quo. In 1946, however, Walter Reuther was elected president, despite all-out Communist opposition; but his margin of victory was tiny, and his opponents retained their majority on the UAW executive board. It was not until a year later, at the 1947 convention, that the Reuther forces gained full control and finally ousted the Communist group and their non-Communist political allies.

Reuther, as an observer wrote not long afterward;

" * * * had gambled on the idea that the Communist Party could be defeated in a trade union not by repression but by exposure; not by turning to reaction but by more consistent and aggressive militancy; not by shouting 'red' but by showing the totalitarian strings to which the CP danced; not by high-echelon maneuvering but by going to the rank and file to debate issues. And it had won." (Howe and Widick, *The UAW and Walter Reuther* (1949).)

During this same period the CIO took action to destroy Communist control in various of its industrial union councils. In some cases it was possible to persuade particular individuals or blocs to abandon their Communist alliances. In others it proved necessary to cancel the charters and issue new charters to councils reconstituted under anti-Communist leadership more representative of the workers' attitudes and interests. In each instance the CIO proceeded only after notice and a full hearing, at which all interested parties were given full opportunity to present their cases.

By 1949 it was evident to the CIO leadership, however, that Communist strength in the top circles of the Party-controlled unions had been shaken down to a hard-core of Party members and that fewer defections could be anticipated in the future. It was equally clear that the remaining Communist union officials would not hesitate to use their control of the union machinery to prevent election victories by the anti-Communist opposition.

This was demonstrated at the 1949 convention of the United Electrical, Radio and Machine Workers (UE). This union had fallen under complete Communist control in 1941, the largest union ever to succumb. The pro-CIO, anti-Communist forces in the UE were led by James B. Carey, Secretary-Treasurer of the CIO, who had been president of the UE from its formation until he was defeated for reelection by the Communist bloc in 1941. By 1949 it was evident that the great majority of the rank and file members were actively anti-Communist, and the anti-Communist bloc was confident it would unseat the Communist-line leadership at the UE convention. Instead the incumbent Communist-line officers simply used their control of the convention machinery to override the opposition.

Thus, by the time the CIO convention met later in the fall of 1949, it had become evident that the residue of Communist influence in its affiliated unions could not be eliminated simply by moral support for the democratic forces in each union. Accordingly, the CIO decided to employ stronger measures; that is, to expel the Communist-dominated unions and to charter and support rival unions wherever practicable. The constitution provided that an affiliate could be expelled by a two-thirds vote of the convention delegates, and it was perfectly apparent that more than a two-third vote was available for this purpose. However, a convention vote was not, ordinarily, an appropriate or satisfactory method for determining whether a particular union which asserted that it was a loyal CIO affiliate was in fact devoted to the purposes of Soviet communism rather than of American democracy. For resolving that sort of issue some sort of semijudicial procedure was needed, which would accord to any accused union a full and fair opportunity to defend itself.

The 1949 convention of the CIO therefore took two decisive steps. First, it expelled the UE and the United Farm Equipment and Metal Workers of America (FE) by direct vote of the convention. It took this direct action against them because of their open defiance of CIO principles and policies and their open and notorious adherence to the Communist Party line.

Second, the convention created a new procedure for the expulsion of affiliates. This was done by adding to the constitution a new section (Article VI, Section 10) authorizing the executive board, by a two-thirds vote, to expel any union.

"* * * the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any Fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the constitution of the CIO."

Expulsion pursuant to this provision could be appealed to the next convention, but would remain in effect pending appeal.

Immediately upon the close of the convention, a member of the CIO executive board filed charges against several affiliated unions alleging of each that, in the language of the new provision, its policies and activities "* * * are consistently directed toward the achievement of the program or the purposes of the Communist Party, rather than the objectives and purposes set forth in the constitution of the CIO."

The CIO executive board authorized the CIO president, Philip Murray, to appoint committees of executive board members to conduct hearings on these charges, and to report their findings and recommendations to the executive board. Notice of the charges and of the appointment of the committees was sent to the accused unions.

At each of these hearings, the member of the executive board who had filed the charge presented detailed evidence in its support. The accused union was accorded unlimited rights to cross-examine hostile witnesses and to introduce evidence on its own behalf.

Following each of these hearings the executive board committee prepared a detailed report. This report reviewed the evidence which had been introduced in support of the charges against the particular union; considered the defense made by the union, if any; concluded, in each case, that the charges were well-founded; and in each case recommended that the executive board expel the charged union. After the reports were presented to the CIO executive board, each of the charged unions was afforded full opportunity to be heard. At various sessions of the CIO executive board between February and September of 1950, the board voted the expulsion from the CIO of the following nine unions:

United Office and Professional Workers of America
Food, Tobacco, Agricultural, and Allied Workers of America
National Union of Marine Cooks and Stewards
American Communications Association
International Fur and Leather Workers Union
International Longshoremen's and Warehousemen's Union
International Union of Mine, Mill and Smelter Workers
United Public Workers of America
International Fishermen and Allied Workers of America

Of the nine unions thus expelled by the CIO executive board, only one—the Marine Cooks and Stewards—exercised its right to appeal to the next CIO convention in 1950. The delegates to that convention unanimously denied the appeal and ratified the expulsion of all the nine unions.

Several points may be made with regard to the expulsion of these unions by the CIO:

1. It required determination and fortitude on the part of the CIO. The combined membership of the expelled unions totaled approximately one million members, which was about 20 per cent of the total membership of the CIO unions. While much of the membership of the expelled unions was ultimately regained, the campaign to secure this realignment of their rank-and-file members occupied a large portion of the CIO's resources and energies over a period of several years.

2. The procedures employed by the CIO in expelling these unions as Communist-dominated were fair, democratic, and in accordance with law. In none of the several suits brought by these unions to enjoin their expulsion did they succeed in having the CIO procedures overturned.

3. The eradication of Communist influence from the CIO was accomplished without government intervention. Contrariwise, the government's intervention in this field through the Taft-Hartley non-Communist affidavit, has been singularly fruitless. Almost all the officers of every one of the eleven expelled unions filed these affidavits, either prior to their expulsion from the CIO or since; those who wouldn't "stepped down," by obvious prearrangement, to "staff positions," where the affidavit is not required, but with no diminution of influence. Yet the conclusion of the CIO that these eleven unions were Communist-dominated

has in no case been challenged by any writer in the field, by any government agency, or by any of the numerous Congressional committees which have delved into the subject. On the contrary several Congressional committees have since affirmed their belief in the correctness of the CIO decision.

A footnote on the subsequent history of these expelled unions may be of interest. The largest of them, the United Electrical, Radio, and Machine Workers, has lost the bulk of its membership to its CIO rival, the International Electrical, Radio, and Machine Workers (IUE), which was chartered in 1949. The present membership of the IUE, headed by James B. Carey, is 400,000, while the UE is believed to have a membership of no more than 75,000.

The Farm Equipment Workers, which was in process of merging with the UE when the two were expelled, has since lost almost all of its membership to the United Auto Workers.

The United Office and Professional Workers of America, and the Food, Tobacco, Agricultural and Allied Workers of America both lost many of their local unions to the various CIO unions active in those respective fields. Ultimately, in an attempted salvage operation, these two unions were merged with certain Communist-dominated locals which had earlier seceded from the Retail, Wholesale and Department Store Union, CIO, and the merged union became known as the Distributive, Processing and Office Workers of America. This union in turn ultimately rid itself of Communist influences—including the remnants of the UOPWA and FTA leadership—and rejoined the Retail, Wholesale and Department Store Union.

The United Public Workers of America lost much of its membership to the CIO's new Government and Civic Employees Organizing Committee, and the balance to several other AFL and CIO unions. The UPWA no longer exists.

The National Union of Marine Cooks and Stewards sought refuge in a merger with the International Longshoremen's and Warehousemen's Union. This storm shelter proved inadequate, and the collective bargaining rights formerly enjoyed by this union are now held by the Seafarers' International Union of North America.

The International Fishermen and Allied Workers of America likewise sought sanctuary with the ILWU. However, several local groups in this union have since thrown off the Communist leadership and later rejoined the CIO.

The American Communications Association, never large or strong, has steadily lost membership and now comprises only a few small locals.

The International Longshoremen's and Warehousemen's Union, led by Harry Bridges, has proved the most durable of the expelled unions, having maintained its 1950 position without serious inroads.

The International Union of Mine, Mill, and Smelter Workers has lost more than half its membership to the United Steelworkers of America and to other non-Communist unions. However, it still has a substantial nucleus of membership among the workers in the copper mines and smelters of the Rocky Mountain area.

There remains the International Fur and Leather Workers Union, which will be dealt with later.

Testifying before a Senate Committee in 1952, Professor Seidman said:

"So far as the present strength of the Communist Party movement in the trade-union field is concerned, it has come to the lowest ebb since about 1935. In the current issue of Fortune magazine there is an estimate of the current Communist Party strength in the trade-union field. The most important unions under Communist control are the United Electrical, Radio and Machine Workers, now very sharply reduced in its membership, the Mine, Mill, and Smelter Workers, the International Longshoremen and Warehousemen's Union, the International Fur and Leather Workers, and the American Communications Association. But the total membership under Communist control in these unions, plus the other areas where the Communists still have union strength, is now estimated at just a little over 300,000. Both within the AFL and within the CIO, Communist union strength is negligible today, except for a few scattered locals."

Since Professor Seidman testified, the Communist-dominated unions have continued to lose strength, particularly the UE. The combined strength of these unions is by now probably down to around 200,000, and its continued decrease may confidently be predicted.

The International Fur and Leather Workers Union had a curious history following its expulsion from the CIO.

The top officials of this union were unique among the leaders of the Communist-dominated unions in that they were openly and admittedly Communists. Ben

Gold, long-time president of the union, was convicted of falsely filing a Taft-Hartley affidavit—one of the very few convictions under this section of the law. (Gold's conviction had been affirmed by an equally divided Court of Appeals as this book goes to press.) Irving Potash, chairman of the union's New York Joint Board, was among the eleven top leaders of the Communist party convicted in the first Smith Act trial. He elected deportation to his native Poland in 1955, in preference to facing another trial on another Smith Act charge.

Following its expulsion from the CIO, the International Fur and Leather Workers Union lost a few small locals to other unions but was for several years largely successful in retaining the bulk of its membership. By 1954, however, the union seemed to be about to fall apart. The leather workers in New England were on the verge of secession, while other groups also were restive.

The leadership of the International Fur and Leather Workers thereupon took two steps. First, the old leaders, who were hardly available to serve further, were replaced by new leaders. Second, the union negotiated a merger with the AFL's Amalgamated Meat Cutters and Butcher Workmen of North America. Initially, the AFL executive council refused to approve the merger, pending proof that all Communists among IFLWU officers had been fired and removed from positions of influence. Late in 1955, however, on the basis of evidence submitted to it that Communists had been purged from leadership in the Fur Workers, the council approved the merger.

This was the first time the American Federation of Labor had occasion to consider the Communist issue in connection with an affiliated international union. As stated earlier, a few locals of unions affiliated with the AFL, had, from time to time, been under Communist control. However, no national or international union affiliated with the AFL ever came under Communist domination. Since supervision over the affairs of local unions is normally regarded as the responsibility of the national or international union of which they are a part, rather than of the federation, the AFL had never taken any formal direct action with regard to these local union situations except that AFL state and local bodies have, in special instances refused to seat delegates from affiliated local unions on the ground that either the delegate or the local union was subject to Communist influence.

It was for this reason, apparently, that the AFL constitution did not contain specific provision for disciplining international unions falling under Communist control. However, it did provide for action in the case of Communist-controlled local unions which might seek representation in local central bodies or state federations. This provision, in Article IV, Section 5, said:

"No organization officered or controlled by Communists, or any person espousing Communism or advocating the violent overthrow of our institutions shall be allowed representation or recognition in any Central Body or State Federation of Labor."

The AFL constitution also contained an anti-Communist safeguard in Article IX, Section 13—which provided that the charter of an international union could be suspended by a majority vote, and revoked by a two-thirds vote, at AFL conventions.

Corruption

While the CIO was confronted with a Communist problem, the AFL was the principal sufferer from racketeer infiltration of some unions. A few locals of unions affiliated with the CIO had at times fallen under the control of racketeering elements, but no international union affiliated with the CIO had ever so succumbed. In contrast, the AFL not only had a more serious problem with respect to racketeer-controlled locals, but one of its international unions completely succumbed to gangster control, and at various times other internationals were faced with the threat of serious racketeering influences.

The racketeer-dominated union was, of course, the International Longshoremen's Association. Their control over the ILA existed for several years, but the American Federation of Labor was for a long time reluctant to move against the sinister forces in the union because of the great stress which the AFL had always placed on the autonomy of its affiliated unions.

Racketeering in the ILA has been concentrated on the New York waterfront. It takes several different forms. In his book, *Crime on the Labor Front* (1950), Malcolm Johnson said:

"Organized criminal activity at these piers includes such varied enterprises as smuggling, traffic in narcotics, payroll padding, systematic theft of cargo, extortion, bookmaking, the numbers game, wage kickbacks, and loansharking. * * *

"Both the union and the employers are jointly responsible for the conditions on the waterfront, each being governed by selfish interests operating against the welfare of the worker, against law, order, and efficiency in the port, and against the general public.

"Authorities have agreed that the root of the evil is an antiquated hiring method, known as the 'shape-up.' * * *"

The decision of the AFL executive council to intervene in this situation was precipitated by an investigation conducted by the New York State Crime Commission, which produced a shocking picture of corruption, thievery, and murder around the New York docks. The report of the AFL executive council to the 1953 AFL convention said:

"During the latter part of 1952 and continuing into 1953 the New York State Crime Commission conducted a searching investigation into conditions existing at the New York waterfront. Hearings were held, at which extensive evidence, oral, and documentary, was produced disclosing the existence of crime, corruption, dishonesty, racketeering, and other highly objectionable practices and conditions affecting operation of the Port of New York. Many of the evils disclosed directly affected the International Longshoremen's Association, some of its local unions and some of the officers of the national association and such subordinate bodies. They were of such a serious nature as to require immediate action by the Executive Council of the American Federation of Labor. * * *"

On February 3, 1953, in consequence of the Crime Commission disclosures, the AFL executive council had dispatched to the ILA a letter demanding prompt and effective reformation of the union. The letter enumerated for abuses which it insisted be promptly stopped. They were:

1. Acceptance by international and local union officers of gifts and bribes from employers.

2. Appointment of persons with criminal records as union representatives.

3. The "shape-up" method of job placement, with its accompanying kickbacks to union officials.

4. Undemocratic procedures in local unions.

As respects the AFL tradition of the autonomy of affiliates the executive council letter of February 3 reflected its concern about the ILA problem in view of the federation's traditional problem of autonomy of affiliated unions:

"The Executive Council has no intention of changing the traditional position of the American Federation of Labor in regard to the freedom and autonomy of its affiliated units. * * * However, no one should make the mistake of concluding that the American Federation of Labor will set by and allow abuse of autonomy on the part of any of its affiliates to bring injury to the entire movement. The exercise of autonomy by affiliated units in an organization such as ours presupposes the maintenance of minimum standards of trade union decency. No affiliate of the American Federation of Labor has any right to expect to remain an affiliate 'on the grounds of organizational autonomy' if its conduct, as such, is to bring the entire movement into disrepute. Likewise, the cloak of organizational autonomy cannot be used to shield those who have forgotten that the prime purpose of a trade union is to protect and advance the welfare and interests of the individual members of that trade union."

The executive council's letter ended with a warning that the price of continued affiliation by the ILA must be immediate remedial action "necessary to place the International Longshoremen's Association and its Local Unions above suspicion and completely free of all racketeering, crime, corruption, and other irregular activities disclosed by the recent investigations of crime on the New York City waterfront to the end that the International Longshoremen's Association will serve the legitimate social and economic needs of its members in keeping with true trade union principles traditionally established by the American Federation of Labor."

To this forthright demand, the ILA responded with considerable correspondence but little action. Accordingly, on August 11, 1953, the AFL executive council notified the ILA that it would recommend suspension of the union at the AFL convention the next month.

The details of these developments were placed before the AFL convention in September, 1953. The executive council's report to the convention summarized the evil practices which had developed in the ILA, recited the council's vain efforts to persuade the ILA to clean itself up, and concluded with a recommendation that the delegates "revoke the charter of the International Longshoremen's Association and that the Executive Council be directed to issue a charter for a

new organization of longshoremen, under such conditions and such regulations as will assure the conduct and the control of said organization, within its proper jurisdiction, by the decent elements on the waterfront, free from racketeering, gangsterism, crime, and corruption."

Joseph Ryan, long-time president of the ILA, in a speech to the convention, defended his regime in words that unwittingly sounded like a plea of guilty with a bid for mercy:

"I don't want to take up too much time of this convention, but any other organization that has gone through what we have gone through in the last three years, since they started out to fight crime on the waterfront, may have some similar troubles to what we had with the various investigating committees."

Praising himself as an anti-Communist, Ryan alleged his union was doing what it could to correct the practices cited by the AFL council, and he asked for the appointment of an AFL committee to administer the ILA, instead of expelling it and chartering a rival union. Ryan's speech failed to sway George Meany. Speaking in support of the resolution, he declared the revocation of the ILA's charter and the establishment of a new union seemed to be the only possible method of cleaning up the messy situation on the New York waterfront. The convention adopted the ILA expulsion resolution overwhelmingly.

A happy and speedy conclusion to this episode would have been appropriate. The AFL chartered a new union on the waterfront, the ILA-AFL—later known as the International Brotherhood of Longshoremen—and it competed vigorously with the racketeer-ridden ILA for the allegiance of the longshoremen but with limited success.

The National Labor Relations Board held two elections between the two unions, both won by the expelled ILA. The first election was set aside by the NLRB because of widespread intimidation practiced by the old ILA; and it is likely that the intimidation was also operative in the second election, which the ILA won by a handful of votes. The AFL-CIO has declared its determination to persevere in this fight, and it is to be hoped that the racketeering, masquerading as unionism, will ultimately be driven from the waterfront.

Another quotation from Malcolm Johnson's *Crime on the Labor Front* is perhaps in order:

"Although corruption and chaos predominate in relatively few unions, their excesses are so extreme and so violent that they invariably achieve prominent notice in our newspapers. If two insignificant thugs, in vying for control of the numbers racket in a union local, kill each other, that killing gets more front-page space than any number of welfare funds, pension plans, and wage increases that honest union leaders are earning for their men."

Wrongdoing on the part of a few locals uncovered in the administration of health and welfare funds confronted the CIO, too, with a test of the meaning of autonomy. Here was a situation in which malpractices were committed by local union officials whose line of responsibility runs to the international union and not to the federation, and if these local officials were reachable at all by the federation it was only through the international union.

In the specific case uncovered, Reuther took steps immediately to urge the president of the CIO Retail Wholesale Union to take positive action against the local officials involved. As Reuther told the 1954 CIO convention, "The CIO does not recognize any autonomous right of crooks and racketeers to use the good name of the CIO as a cloak for their corruption."

Subsequently the CIO and the AFL adopted specific standards for the administration of health and welfare funds to remove many of the underlying practices which led to the wrongdoing. Both organizations indicated they were not concerned with dictating the collective bargaining terms under which the substance of these programs were carried on but with recommending minimum standards of administration. In addition, the AFL and CIO recommended federal and state legislation to deal with proper administration of health and welfare funds.

Powers of the New Federation

The constitution of the new federation bears abundant evidence that its drafters benefited from the experience of the CIO with Communist-dominated unions and of the AFL with the racketeer-dominated ILA. Thus, Article VII of the new constitution gives the executive council broad powers to deal with affiliates which fall under the influence of either racketeers or Communists.

The constitution of the merged federation states the basic principle that the organization must be kept free of all racketeering and totalitarian influence. It

goes on to provide specific machinery to facilitate the attainment of this objective—and in doing so advances beyond the constitutions of either the CIO or AFL.

The constitution of the merged organization permits the executive council, either at the request of the president or any member of the council, to investigate any situation "in which there is reason to believe" that an affiliate is "dominated, controlled, or substantially influenced in the conduct of its affairs" by corrupt influences or that its policies are devoted to Communist, Fascist, or totalitarian objectives.

The executive council is given the further authority to suspend by a two-thirds vote any union found guilty of such charges. While the executive council's action may be appealed by the union to the federation's convention, the council's action nevertheless is effective from the date it is voted, pending the outcome of the appeal to the convention.

The text of this important provision (Article VIII, Section 7) of the new constitution follows:

"It is a basic principle of this Federation that it must be and remain free from any and all corrupt influences and from the undermining efforts of communist, fascist or other totalitarian agencies who are opposed to the basic principles of our democracy and of free and democratic trade unionism. The Executive Council, when requested to do so by the President or any other member of the Executive Council, shall have the power to conduct an investigation, directly or through an appropriate standing or special committee appointed by the President, of any situation in which there is reason to believe that any affiliate is dominated, controlled or substantially influenced in the conduct of its affairs by any corrupt influence, or that the policies or activities of any affiliate are consistently directed toward the advocacy, support, advancement or achievement of the program or of the purposes of the Communist Party, any fascist organization or other totalitarian movement. Upon the completion of such an investigation, including a hearing if requested, the Executive Council shall have the authority to make recommendations or give directions to the affiliate involved and shall have the further authority, upon a two-thirds vote, to suspend any affiliate found guilty of a violation of this section. Any action of the Executive Council under this section may be appealed to the convention, provided, however, that such action shall be effective when taken and shall remain in full force and effect pending any appeal."

These provisions are an amplification of those which the CIO added to its constitution in 1949 to empower its executive board to expel Communist-dominated unions. The differences between the 1949 CIO constitutional amendments and the constitution of the AFL-CIO are:

1. The new AFL-CIO constitution applies not only to Communist-dominated affiliates, but to those dominated by "any corrupt influence."
2. It is specifically stated in the constitution that affiliates must remain free from corrupt or Communist influence.
3. The executive council, upon the request of the president or its members, may conduct an investigation of any complaint of corruption or totalitarian domination of an affiliate. While that procedure was actually followed by the CIO in moving against the Communist-dominated unions, its constitution did not prescribe it, nor indeed require any executive board investigation prior to the decision to expel.
4. The new constitution provides that the executive council shall have authority not only to suspend but "to make recommendations or give directions to the affiliate involved." This is somewhat rather broader than the CIO constitution, which only authorized the executive board to expel the affiliate "or to take any other appropriate action" against it.

In addition to Article VIII, Section 7, the new constitution also provides, in Section 9 of Article III, dealing with affiliates:

"No organization officered, controlled or dominated by communists, fascists, or other totalitarians, or whose policies and activities are consistently directed toward the achievement of the program or purposes of the Communist Party, any fascist organization, or other totalitarian movement, shall be permitted as an affiliate of this Federation or any of its state or local central bodies."

The same article provides, in Section 8, that an affiliate may be suspended from membership by a majority vote at the convention, and that a charter may be revoked by a two-thirds vote at a convention.

Mr. GOLDBERG. Now, this is nothing new to me. When I came down here in 1948 to represent the CIO, one of my first tasks was to represent the labor movement in what I regarded to be one of the most important functions of my life. And that was to inaugurate and initiate proceedings to rid the CIO, a great labor movement, of elements in its labor movement which were seeking to subvert our great free labor movement for other purposes.

I represented the CIO in that effort, of which I am very proud. And under my counselship the CIO, with due process, because we all believe in this, conducted trials of unions which fell under Communist domination. Those unions were, after a fair trial, and after a hearing which we accord in a democracy, expelled from the CIO.

The reports which were written in those cases by the committees which tried these unions were written with my help. That has been publicly stated. I was the chief counsel, and I advised the trial committees. I and my associates and my law firm assisted, drafted for the committees at their request, their reports.

These reports are a public document now. They were offered and printed by the Senate as Document No. 89 in the 82d Congress. I would like to make a part of the record, Mr. Chairman, these reports.

These reports reflect my considered view as the chief counsel of the CIO about the nature of the Communist Party, about its attempts to infiltrate the trade union movement, about its attempts to deceive the American people as to its nature and objectives.

And on the basis of these reports the free democratic trade union movement of the United States expelled these unions from the CIO.

I subscribe to every word contained in these documents. And since I was largely responsible for writing these words, as I say, with the assistance of my colleagues and with the approval of the committees which wrote this, who approved this report, I would like to offer this for the record, Mr. Chairman.

Senator KEFAUVER. Do you wish to have the whole volume included?

Mr. GOLDBERG. It is a Senate document, and I would rely upon your judgment as to how it is included.

Senator KEFAUVER. Suppose we include in the record what parts you want, and the rest will be included by reference to the document?

Mr. GOLDBERG. Thank you very much.

(Excerpts from the Senate document referred to above are as follows:)

REPORT OF EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO INVESTIGATE CHARGES AGAINST THE UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

* * * * *

It is not the purpose of this committee to pass on the theoretical political goals of the Community Party. But, from the evidence presented to the committee, one simple conclusion can be drawn. Whatever may be the theoretical goals of the party, its program is based upon one fundamental objective—the support of the Soviet Union, the country in which the Communist Party first achieved its goal of dictatorship. This objective is never expressly stated to be the sole controlling factor in determining the party's program. To the contrary, because of its desire to speak as an American, rather than as a Soviet, agency and to maintain its position within the trade-union movement, the party presents its program as a program for American not for Russian labor. The policies which the party adopts are stated to be policies for the achievement of the goals of American labor—not for the advancement of the cause of the Soviet Union. But, over a period of years it is clear that the goals of American labor, as stated

by the party, are always found to be those policies which will aid the Soviet Union. As the tactical position of the Soviet Union in the world has changed, the program of the American Communist Party "for American labor" has accommodated itself. And, when it seemed in the interest of the Soviet Union for American labor to forsake its heritage and to adopt policies contradictory to the whole fabric of the labor movement, the Communist Party adopted such policies.

* * * * *

On the basis of this evidence the committee finds that the purpose of the Communist Party is to promote the interests of the Soviet Union. It finds that, although the Communist Party has claimed to champion unionism and organization it has always done so in order to carry on Communist work within trade-unions and in order to pervert their policies to the advantage of the Soviet Union. The Communist Party, the committee finds, does not believe in trade-unions. It believes in using trade-unions. And it believes in using them for the purposes of the Soviet Union.

* * * * *

Of great significance is one single fact. Never in the history of the UOPWA has any policy ever been adopted which in any way runs counter to the policies of the Communist Party or to the interests of the Soviet Union as those interests are reflected in the program of the Communist Party. If the Communist Party program had been a consistent one, this absence of conflict might not be significant. But, in view of the fact that in a period of 10 years the Communist Party has taken almost every conceivable position on every issue of public importance in the United States, the absence of any conflict between the position of the party and the position of this union is of great significance. The constant parallel between the position of the Communist Party and the position of the UOPWA cannot possibly be explained as coincidence or as the simultaneous but independent adoption of similar policies. The reason it cannot be so explained is that the policies of the Communist Party, as we have stated, have undergone repeated violent shifts, shifts which are explainable only on the basis of the party's subservience to the interests of the Soviet Union. And the policies of the UOPWA have, in each instance exhibited the same fatal shift.

* * * * *

So it is that this union, the UOPWA, by following the twists and turns, the zigs and zags, of the Communist Party line has prevented itself from genuinely representing the interests of the white-collar workers of America. It has failed dismally to organize those workers and most of the few that it has organized have been driven away from it as the subservience of the union to the Communist Party became more obvious. In the fiscal year of 1946-47, this union reported to the CIO an average dues-paying membership of approximately 45,000. But, as of November 1949, this membership has dropped to the pitiable figure of approximately 12,000.

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REPORT OF THE COMMITTEE TO INVESTIGATE CHARGES AGAINST THE FOOD, TOBACCO, AGRICULTURAL, AND ALLIED WORKERS OF AMERICA

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There can be no doubt about the violent clash between the constitutional objectives and policies of the CIO and the program or purposes of the Communist Party. The CIO is dedicated to advancing the cause of liberty and the never-ending struggle for equality begun by our forefathers; to the end of achieving a world of free men and women. The CIO is further dedicated to organizing the unorganized, to making workers participants in the collective bargaining process, and to securing legislation insuring economic security and extension of civil liberties; prerequisites to a world of free men and women in a democracy. By command of the preamble to its constitution, the CIO is aligned against those who would use power to exploit the people for the benefit of alien loyalties.

The Communist Party is precisely the type of organization which the CIO is under a constitutional mandate to oppose—one which would use power to exploit the people for the benefit of an alien loyalty. It matters not to the Communist Party whether a particular policy will advance or hinder the best interests of American labor. The sole test is whether the policy is required by the needs of the Soviet Union. Only to the extent that the Soviet line permits will the

propaganda mill of the Communist Party grind out platforms which are on consonance with ideals of American labor. In event of conflict between the needs of the Soviet Union and the best interests of American labor, the former must always prevail.

* * * * *

The certificate of affiliation of the CIO is a symbol of trust, democracy, brotherhood, and loyalty in the never-ending struggle of the working men and women for a better life. There is no place in the CIO for an organization whose leaders pervert its certificate of affiliation into an instrument that would betray the American workers into totalitarian bondage.

The evidence is inescapable that by their disloyalty to the CIO, and their dedication to the purposes and program of the Communist Party, the leadership of the FTA has rendered their union unworthy of and unqualified for their certificate of affiliation with the CIO.

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REPORT OF EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO INVESTIGATE CHARGES AGAINST THE NATIONAL UNION OF MARINE COOKS AND STEWARDS

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5. As has been seen, and as is common knowledge, the policies of the Soviet Union and of the United States began to diverge in numerous particulars shortly after the end of the war—a divergence which led gradually to the extremely strained relations which now exist between the two countries. On each of a dozen or more issues which have separated the United States and the Soviet Union, MCS has stood with the Soviet Union and the Communist Party against the United States. Never has MCS criticized the Soviet Union or taken a position at variance with the position of the Communist Party. Never has MCS sided with the United States against Russia.

* * * * *

III. MCS' defense

MCS' defense to the charges against it consisted in part of a series of evasions. MCS' representatives at the hearing attacked the charging party, the witnesses, the committee, the hearing. They asserted that the charges were illegal and unfair, that the committee was illegal and unfair, et cetera. This "defense", like MCS' other policies over a period of years, was of Communist origin—it was taken straight from the Daily Worker. In December 1949 that publication carried a series of articles by John Williamson, labor secretary of the Communist Party, on the attitude which the unions charged with subservience to communism ought to take toward the pending hearings. In their "defense" Messrs. Bryson and Tangen carefully followed Williamson's suggestions, and even his language. As the Daily Worker articles had suggested, MCS asserted that its independence was being violated, and that it was being denied the autonomous status guaranteed to it when it went into the CIO. MCS followed the Daily Worker's suggestion that it emphasize its trade-union activities as an answer to the charges.

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REPORT OF EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO INVESTIGATE CHARGES AGAINST THE AMERICAN COMMUNICATIONS ASSOCIATION

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The Communist Party's single-minded devotion to Russia controls its position on domestic issues, as well as on matters of foreign policy. A peculiar and consistent characteristic of the Communist Party program is that it always finds a tie-in between domestic and foreign policy. Thus, during the collective security period when the Communists supported the Roosevelt foreign policy, they also supported his domestic policy as progressive and pro-labor. In the next period, however, when the German-Russian Pact was in effect, Roosevelt was seen by the Communist Party as a reactionary and a Fascist and his domestic program was roundly attacked as being anti-labor. The most blatant example of the controlling influence of Russian foreign policy on the domestic policies of the American Communist Party was, perhaps, the Tehran period, when the fact that Stalin and Roosevelt had met and agreed was regarded as proof that an era of peace between capital and labor within the United States was

assured. But almost equally blatant was the Communist position with regard to President Truman's domestic policy in the postwar period. The President was charged with a sell-out of labor and a betrayal of the fight for civil liberties. The Fair Deal was denounced as a sham. The administration was, in short, a tool of the reactionary capitalists and its domestic program and its foreign program were both products of the "bipartisan reactionary coalition." Similarly, attacks on the administration's foreign policy were tied in, however illogically, with attacks on Republican domestic policy. Thus, the Marshall plan (which had been opposed by Senator Taft and the most reactionary Republicans) was, in the Communist view, simply the application of the Taft-Hartley Act to foreign affairs.

IV

The Committee has examined the publications of the ACA, the reports of its officers to its conventions and its convention proceedings, and the positions taken by ACA representatives at CIO conventions and executive board meetings. From these materials the committee has ascertained the policies which have from time to time been followed by ACA. The committee has compared these policies with the program of the Communist Party of the United States. From this examination the committee finds that the policies and activities of the ACA have followed and continue to follow exactly, without deviation, the program of the Communist Party.

The Communist line to which ACA has publicly adhered has likewise determined the positions which Selly has taken as the ACA representative on this executive board. Selly opposed the 1947 resolutions censuring Communist penetration of the Mine, Mill, and Smelter Workers. He opposed CIO's position in the 1948 elections, and announced that he would have opposed CIO support of the Marshall plan had he been present when the resolution of support was adopted. Selly opposed the expulsion from the CIO of the New York City Industrial Union Council for its subservience to the dictates of the Communist Party. He likewise opposed the withdrawal of CIO from the WFTU.

The committee has examined the material which ACA submitted to "prove" this preposterous claim. It finds that this charge is wholly false and completely unsupported by the evidence.

The ACA has charged, in substance:

1. That CIO opposed nazism and fascism in 1938.
2. The CIO opposed war in the 1939-41 period.
3. That CIO urged the defeat of nazism and fascism in the fall of 1941.
4. That CIO sponsored a "bring the boys home" campaign in 1945.
5. That CIO repeatedly in the past has deplored Red-baiting.

The committee has examined the record of the CIO and compared it with the record of the Communist Party and of ACA, and finds as follows:

1. The CIO opposed Nazi and Fascist aggression in 1938, as did President Roosevelt and the entire liberal movement in the United States. The Communist Party and ACA also opposed Nazi and Fascist aggression during this period.

2. After the German-Russian pact was signed and war in Europe began, the CIO opposed direct involvement in the war, as did President Roosevelt. The CIO continued to support Roosevelt's program of aid short of war to those fighting Hitler, and it supported the defense program. The CIO in fact proposed several plans (the Murray and Reuther plans) to increase production for aid to the Allies and for national defense, and its representatives participated in the National Defense Advisory Commission and the National Defense Mediation Board. The Communist Party and ACA, on the other hand, opposed aid to the Allies, declared that the war was being fought for nothing but profit, opposed the national defense program, and asserted that the administration was trying to drag this country into the war.

3. The CIO, consistently with its entire prior position, continued to urge the defeat of nazism and fascism in the fall of 1941. The Communist Party and ACA, inconsistently with their immediately prior position and consistently only with the interests of Russia, urged the defeat of Germany only after Hitler invaded Russia.

4. The CIO, in 1945, urged that all surplus troops be brought home. It did not, like ACA and the Communist Party, couple this demand with criticism of American policy vis-a-vis China.

5. The CIO has frequently in the past and still today does denounce those who would use the cry of "Communist" to destroy honest American trade unions. But, at the same time, it has also frequently announced its rejection of communism and "any movement or activity of subversive character, Trojan horses, or fifth columns" (CIO executive board resolution of June 4, 1940). Its members "resent and reject efforts of the Communist Party * * * to interfere in the affairs of the CIO" (resolution adopted by CIO convention, November 18, 1946). ACA, on the other hand, has opposed "Red-baiting" not on the ground that false charges of communism are dangerous and should be opposed but rather on the apparent theory that all charges of communism, true or false, should be rejected.

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REPORT OF EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO INVESTIGATE CHARGES AGAINST THE INTERNATIONAL FUR AND LEATHER WORKERS UNION

* * * * *

The members of the committee were of course aware that Ben Gold, the president of IFLWU, is and has for many years been an avowed Communist. They were aware that Irving Potash, manager of the Furriers Joint Council of New York, is and for some years has been a high official of the Communist Party, and that he has recently been convicted, along with other party leaders, of conspiring to advocate the overthrow of the United States Government by force and violence. These facts would not, however, if they stood alone, sustain the charges against the IFLWU, since those charges are laid under article VI, section 10, of the CIO constitution and are based on the policies and activities of the union. It was therefore necessary for the committee to ascertain what policies and activities the IFLWU has followed and is following, and whether those policies and activities are directed toward achieving the program or the purposes of the Communist Party rather than the objectives set forth in the constitution of the CIO.

The committee has therefore examined the publications of the IFLWU, including its convention proceedings, and the positions taken by the IFLWU representative on the CIO executive Board. From these materials the committee has ascertained the policies and activities which have been and are being pursued by the IFLWU. The committee has compared these policies and activities with the program of the Communist Party of the United States. The committee finds that the policies and activities of the IFLWU have been and are today directed toward the achievement of the program and purposes of the Communist Party.

* * * * *

The charge against the IFLWU is not that it has differed with CIO policy. Unions affiliated with CIO have a right to differ with CIO policies if they honestly believe that the policies which they advocate will achieve the objectives of American industrial unionism set forth in the CIO constitution. The charge against the IFLWU is that it has not adopted its policies on the basis of any honest judgment as to how to achieve those objectives, but has simply taken its policies from the Communist Party.

The basic question posed by the charge against IFLWU is whether it is an honest trade-union, genuinely devoted to the advancement of the cause of American labor and American democracy, or a union whose policies and activities are determined by the Communist Party. To this question there can, in the light of the evidence, be only one answer: The IFLWU has for years followed the tortuous paths of the Communist Party. Over the years it has been interventionist, isolationist, interventionist, and then isolationist again. It has been pro-Roosevelt, then anti-Roosevelt, then pro-Roosevelt again. The IFLWU's occupancy of these contradictory positions has invariably coincided with the Communist Party's tenure of them, and can only have resulted from the IFLWU's subservience to the wishes of the Communist Party and the Soviet

Union. Indeed, the IFLWU's publications are rife with Marxist and Stalinist doctrine, and with Soviet propaganda.

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REPORT OF EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO INVESTIGATE CHARGES AGAINST THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

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Moreover, there is no room in the CIO, or in any other voluntary association of independent members, for an affiliate whose policies over a period of time contravene and tend to undermine the fundamental objectives of the organization. And there can be no doubt about the violent clash between the constitutional objectives and policies of the CIO and the program or purposes of the Communist Party. The CIO is dedicated to advancing the cause of liberty and the neverending struggle for equality begun by our forefathers; to the end of achieving a world of free men and women. The CIO is dedicated to organizing the unorganized, to making workers participants in the collective-bargaining process, and to securing legislation insuring economic security and the extension of civil liberties.

* * * * *

FINDINGS

The testimony, both oral and documentary, at the hearing demonstrates incontrovertibly, and the committee finds, that the policies and activities of the International Longshoremen's and Warehousemen's Union, under the leadership of its international officers and executive board, have long been and are today directed toward the achievement of the program and the policies of the Communist Party rather than the objectives set forth in the constitution of the CIO.

The ILWU has consistently and without a single deviation followed the sharp turns and swerves of the Communist Party line and has sacrificed the economic and social interests of its membership to that line. The defense presented by Harry Bridges and his fellow officers was an evasion of the real issue involved in the trial; they objected on hypertechnical grounds to the introduction of all relevant evidence; introduced extraneous and irrelevant evidence; made unsupported and slanderous attacks upon the witnesses; and generally evidenced a hysterically evasive attitude toward the charges and toward the trial committee.

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REPORT OF THE COMMITTEE TO INVESTIGATE CHARGES AGAINST THE INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS

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One need not look very far to see the reason for such slavish adherence to the ideology of a foreign country. The Communist Party in America is part of the worldwide Communist movement which seeks to organize workers into unions in various countries to spearhead a revolution for the establishment of a proletarian dictatorship. The first such dictatorship was established in Russia and the entire movement is primarily dedicated to protecting and preserving this dictatorship. Hence whenever the policies of the Soviet Union change, the American Communist Party must do a flip-flop no matter how irrational the change may be in terms of the true interests of American workers. * * *

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The false cry of freedom to criticize cannot justify the Communist tactic of systematic assassination against the national CIO, its officers and all affiliated unions who oppose the policies of the Communist Party.

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REPORT ON EXECUTIVE BOARD COMMITTEE APPOINTED BY PRESIDENT MURRAY TO CONDUCT HEARINGS ON UNITED PUBLIC WORKERS OF AMERICA

* * * * *

II

The program of the Communist Party in the United States, from the time of the formation of the CIO to the present, can be divided into six periods, each of them corresponding to a change in the relationship of the Soviet Union with the world.

VI

The new union, UPW, lost no time in declaring its stand. Resolution No. 1 of the convention in which the SCMWA-UFWA merger was consummated reads as follows:

"Whereas the unity of Great Britain, the Soviet Union, and the United States was the foundation for military defeat of fascism, and their continuing unity is absolutely essential if the United Nations is to provide a sound and lasting peace; and

"Whereas the friendship and cooperation between the United States and the Soviet Union is the essential basis for an enduring peace; and

"Whereas powerful influences are attempting to drive a wedge between the peoples of the United Nations for the purpose of furthering their imperialist ambitions, as evidenced by ex-Prime Minister Churchill's speech; the forming of Anglo-American bloc within the U.N. and the policy of assisting by armed force in some cases the most reactionary groups in friendly countries such as China, the Philippines, France, Belgium, and others; and

"Whereas to further these policies the demobilization of American troops now stationed throughout the world is being deliberately delayed; and

"Whereas the failure to establish international cooperation in the development and control of atomic energy and the continued secrecy and manufacture of atomic bombs have created world fear and distrust which weaken the peace: therefore be it

"Resolved, That the UPWA, meeting in convention April 24-26, 1946, calls upon President Truman, Secretary of State Byrnes, and Members of Congress to take the following immediate steps:

"1. To halt the present policy of attempting to isolate the Soviet Union in the U.N. and world affairs and call for an immediate meeting of the minds of the Big Three.

"2. To take positive steps to reestablish friendly United States-Soviet relations by word and deed.

"3. To withdraw American troops and call for the withdrawal of British troops from all friendly countries, including China, the Philippines, France, Greece, India, Indonesia, Belgium, and Iceland.

"4. To support the policy of U.N. regulation and control of all phases of atomic energy, including the immediate possession of all atomic bombs and the passage by Congress of legislation vesting full control of atomic energy in a civilian commission."

According to a story by Jerry Kluttz in the Washington Post, this resolution was adopted out of order, on a day when no resolutions were scheduled to be considered, at the suggestion of George Morris, a correspondent of the Daily Worker, so that the Daily Worker would have a story to offset the criticism directed at Russian foreign policy at the Textile Workers' convention on that day. According to Mr. Kluttz, opponents of the resolution were called reactionaries and Red baiters and a suggestion by a delegate that a line be added to the resolution recommending the withdrawal of Russian troops from Poland, Czechoslovakia, Estonia, and other countries was shouted down.

Other newspapers also reported that the foreign-policy resolution was the only resolution adopted on that day of the convention. Moreover, the UPW representatives, although they made several adverse references to Mr. Kluttz, did not deny the accuracy of the story. The committee, therefore, accepts it as true. The resolution speaks for itself. That it was taken out of order at the behest of an agent of the Daily Worker seems to the committee to be entirely consistent with the pro-Communist text of the resolution and with the history of the union leadership that sponsored it.

In the period following the 1946 convention and continuing up to the present moment, the UPW has never repudiated the basic pro-Soviet position exhibited at its first convention under its new name. Within the councils of the CIO it has continued to support the program sponsored by the Communist Party. The

union, however, did tone down the bluntness of its public position in order to protect its position as a union of Government workers. But it continued, by indirection and subtle phraseology, to serve the Communist Party's purposes even in its official public announcements.

* * * * *

Mr. GOLDBERG. So I say to you, Senator Wiley from the earliest part of my days as a private citizen, representing the labor movement as a lawyer, I never had any question or doubt on this subject. And the Communist Party of the United States, the Communist Party of the Soviet Union, and the international branches, is a body entirely contrary to anything we believe in.

It is inimical to the purposes of democracy, you cannot reconcile any concepts that they advocate with the concepts that we believe in as a free people.

Senator WILEY. Thank you, Mr. Secretary.

The question was asked—not that I had any question about it myself, because I have read that report, and I know the situation, but I do think that in the interest of the public knowledge that should go out.

You have made a presentation that ought to clearly convince anyone who is interested and not completely prejudiced that you have never been a Communist and you are not sympathetic toward their philosophy.

Now, after listening to you and the judge over here talk about the Constitution, I just want to ask you a few questions.

Of course, the Constitution isn't a fetish, you realize that. And it came into being in the days when we were young and we didn't have the economic society that we have now. I wanted to find out whether you agreed, however, with the fundamental thought of the division of power, executive, legislative, judicial residuum in the States, and then again back in that connection, the function of the Court, the function of the Executive, and the function of the legislative branch, and the residuum that is in the States and the people.

If you can do that very briefly, I would just like to see what your ideas are.

Mr. GOLDBERG. I believe strongly in the doctrine of the separation of the powers. Under article I of the Constitution, the legislative power is reposed in the Congress of the United States. That is where the Constitution provided it ought to be, and that is where it should be under any conception of the type of government that we have.

Under article II, the executive power is vested in the President, and that is where it ought to be. Under article III, the judicial power is vested in the Supreme Court and such inferior courts as the Congress may prescribe.

I believe in separation of power. I do not believe that it is a function of the judiciary to legislate. I do not believe that it is the function of the executive to judge. I do not believe that it is the function of the legislature to judge. I believe it is the function of judges to judge and not legislate.

Now, this is not always easy, as we all know. But I would hope, as a judge, if I am confirmed, to follow the great principles of our Constitution, which is separation of powers, checks and balances, and not to try as a judge to perform a function which by the Constitution is vested in another branch of the Government.

Senator WILEY. What is your idea about this economic system in America?

Mr. GOLDBERG. That is a matter which judges should stay away from. That is a matter which ought to be decided in terms of legislative policy and which ought to be decided by legislation. But if you want to ask personally, I believe in the free enterprise system, I have said this many times, I believe we have realized more benefits under our system of private enterprise, capitalism, than any other country in the world.

I believe our laboring people have benefited from this. They have achieved the highest standards of living of any group in the world. Today we have a per capita income in the United States of \$2,400 per person per year. Let's contrast that with any other system. The President sent me to Africa to represent him at an Independence Day ceremony. I found that the per capita income of the people in this new republic—and they are struggling—was \$50 a year. And that is a long way from what we have been able to achieve.

We ought to count our blessings in this country. We have problems. And I have been before the Congress on what I regard to be unfinished business. I haven't changed my views about this, and sometimes Congress has disagreed with me, as is right, about these views.

But there is no question in my mind that under our private, free enterprise system we have achieved a general state of well-being which is superior to the well-being of any other people in the world. And I was very happy to see the Gallup poll the other day which indicated that our people who work in the mines and the factories and the shops know this, they recognize this, and while they have their problems—and there are problems that are unfinished—I think our system has afforded the best protections, the best standards, the best state of conditions of any system in the world.

I am proud of our system.

Senator WILEY. Do you say that in reference to both the political and the economic aspect?

Mr. GOLDBERG. I do by all means.

Senator WILEY. Now, are you conscious, because of your background in the interest of labor, of any prejudice against capital?

Mr. GOLDBERG. When I became Secretary of Labor I said—I had a set of convictions, and I told the Senate Labor Committee that I had not brainwashed myself, and I still haven't. I have a set of views about the status of society which I have always had and which I still have. I did not regard those viewpoints to be incompatible with business. And I am very proud, and I think the chairman will indicate, that in the letters that have been received by this committee are letters from many business groups, including the steel industry, with which I sat in negotiations; many of their leaders have sent letters to this committee supporting my nomination. The maritime industry, the aluminum industry, and many other industries have written very nice letters to the committee, and have asked that they be made a part of the record.

I think this is a little different from the complimentary letters, I am sure, that anyone receives who is nominated for high office.

I am for our system of enterprise. I am for businessmen who must make profits in order to endure. I have said to many labor conventions what I am saying to you, that a laboring man cannot get good wages

unless his employer prospers, unless he makes good profits, because this is part of our system.

The reason an American workingman enjoys the high standard of living he enjoys is because he is a participant in a system of enterprise where both parties have enjoyed the benefits of a system that permits both to benefit. This is my conviction, I have had it, I have expressed it in the past, and I express it to you.

Senator WILEY. From what you have just said, can I draw the conclusion that you feel, within your very soul, that there is no prejudice against creed, class, or race which make up this great country of ours?

Mr. GOLDBERG. That is correct. We are not—first of all, we do not believe in a class society. We reject that concept. And we reject it completely. And I believe in that entirely. In our country there is opportunity for everyone to surmount his origins. And that is the way it ought to be. You can come from an immigrant family or a family which came here many years ago, and you can aspire to any office in the land, from the Presidency to an Associate Justice of the Supreme Court. And when we take office, if I can remember what my distinguished predecessor, Justice Frankfurter, said, we are neither Catholic or Protestant, Jew or gentile, agnostic or believer; when we enter upon the office of judge or legislator we perform our functions under the Constitution.

That is the way I believe.

Senator WILEY. Thank you.

Senator KEFAUVER. Thank you, Senator Wiley.

Incidentally, Mr. Goldberg referred to letters from the heads of steel companies. We do have a number here. We had some of the steel people here yesterday. Later on I will identify them.

Senator KEATING. I hope these letters won't prejudice the nominee against the acting chairman.

Senator KEFAUVER. I say, I think we might have these people stay over until today to testify.

Senator Hart.

Senator HART. Mr. Chairman, I think I can be very brief. I have admired and respected Secretary Goldberg for a long time. I think his nomination is magnificent. But what does that mean? It means that I think he has an intellect that is superior, and character that is fine, and an awareness of the forces that affect the destiny of the Nation. I think it is great that he is here, and I think the Court will be strengthened by his presence. So I am prejudiced for the witness.

It is rare that I have seen a record being made which I would recommend strongly for use in schools around here. But I think, thanks largely to Judge Ervin and Senator Wiley and the Secretary, that this record will reflect credit on all who participated, and will serve as a very useful document for the better understanding of the basic aspects of our system.

Perhaps I ought to give Secretary Goldberg a little elbowroom by a further observation on two points, one not very serious. On this business of criticism, of course you want it understood, don't you, Mr. Secretary, that privately you would—that while publicly you acknowledge that criticism is right, privately you would wish that they would read your opinions before they get on the record with the criticism, wouldn't you like that?

Mr. GOLDBERG. I am sure everyone would hope, as a Supreme Court Justice or as Secretary of Labor, that before a criticism is made that you would look to the viewpoint that is expressed.

But, Senator, I am not too sensitive about that. I made some expressions as Secretary of Labor about observing the public interest in labor disputes. And some of my former colleagues in the labor movement criticized those observations. And I thought—I am human—and I thought they were unjustified, because I thought I was saying something that had general public support. But on the other hand, when I reflected upon it, I came to the conclusion that it was better that people express themselves than inhibit themselves.

I didn't feel any inhibition about saying at the time that I thought those criticisms were unjustified.

Now, a court is more restrained. And I do not intend to comment if I am confirmed. But between choosing between lack of criticism and freedom of expression, I would always choose freedom of expression, right or wrong, because I think that is more valuable for a democratic society.

Senator HART. And then the second and more serious item which I would be glad to give you a little more elbowroom on here, this business of the application of the Standards of Legal Rules, it is extremely difficult to put into language exactly how we should handle this, but I think, in the exchange that you have had with Judge Ervin, the record is magnificent.

But trying to use shorthand to make a point clear on the other side, to the extent that there is another side of this—the role of the Court is the pursuit of justice, to the extent that certainty advances the cause of justice, then we apply certainty. And this is not to challenge at all anything here in the other exchange. But underlying it all is the fact that your responsibility is to insure that justice shall prevail.

And as a result would you not think it fair to say, in addition to all you have said to Judge Ervin, that stare decisis is a very useful tool, but it would be an impossible master?

Mr. GOLDBERG. Senator Hart, what I said I stand by, and that is this. Stare decisis is very important, as every lawyer knows. And we must not abandon this, because we do not have a rule of law if we abandon this.

There are occasions—every judge has faced this—Judge Ervin has faced this, I read some of his opinions when he sat as a judge—when the profound conviction is that there was original error, original error and profound error, and that that profound error was such that you had to change the decision.

Now, this has happened to all courts, it has happened to the Supreme Court, and it has happened to every State court, and then change must be made. But I feel about this very much as Justice Cardozo, who has sat in the seat that, if you advise and consent, I hope to occupy. And I would like to quote what he said in his book "The Growth of the Law":

You shall not, for some slight profit of convenience or utility, depart from standards set by history or logic. The loss will be greater than the gain. You shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order. The gain will be unequal to the loss.

This is the great dilemma of judges. And this is what you are referring to. And this is not an easy task, because you cannot depart from the standards set by history or logic. But, on the other hand, you cannot depart from the standards set by equity or justice. And where you have a profound conviction that equity or justice has been denied by a precedent, you would not be a judge if you did not take it upon yourself to set aside the precedent.

On the other hand, because you have a slight conviction that maybe a prior judge was wrong, but there is an established tradition, you wouldn't be a judge if you allowed this light conviction to lead you to set aside precedent.

So I subscribe to what Justice Cardozo said.

Senator ERVIN. I am encroaching on the Senator's time, but I would like to say that a very significant statement along this line was made by Judge Jackson in the current opinion in *Brown v. Allen*, 344 U.S. 546. He said:

But I know of no way that we can have equal justice under law except we have some law.

Senator HART. It certainly advances the cause of justice, but it is not justice.

Mr. GOLDBERG. That is correct.

Senator HART. We have noted, as you have, that you are seated in Justice Frankfurter's seat. And I am old enough to remember some of the excitement attending his nomination.

Justice Frankfurter had written a book in the late twenties, I believe, long before he was appointed by the Court, which showed that he had an idea of his own about the kind of persons to be on the bench. And I want to read one paragraph from an editorial which I shall ask to be made a part of the record, from the Detroit News, which was written immediately following your nomination, Mr. Secretary.

In the book of Justice Frankfurter he puts it this way:

Throughout its history, the Supreme Court has called for statesmanship--the gifts of mind and character fit to rule the Nation. The capacity to transcend one's own limitations, the imagination to see society as a whole, come, except in the rarest instances, from wide experience. Only the poetic insight of a philosopher can replace seasoned contact with affairs.

Mr. Secretary, in my considered judgment you meet that standard.

Senator KEFAUVER. The editorial in full will be made part of the record.

(The editorial referred to follows:)

[From the Detroit News, Aug. 31, 1962]

GOLDBERG FOR FRANKFURTER: WE ARE NOT WORRIED

The retirement of Associate Justice Felix Frankfurter and the appointment of Labor Secretary Arthur J. Goldberg to his seat on the U.S. Supreme Court confronts the conservative who fears liberal plans and programs with two apprehensions:

The first, and the one more easily disposed of, involves the economic, social, and political philosophy of the new Justice. It is widely assumed that he will join his opinions with those of the liberal persuasion on the bench and that a Court about which many conservatives already have grave doubts will now be more liberal.

This view may well be correct, but it is not necessarily so. The putting on of the judicial robes of the High Court does strange things to men. The best current definition of Justice Frankfurter as a "conservative." The conservatives of 1939 considered his appointment almost as bad as President Roosevelt's

planned enlargement of the Court. Constitutional law, they said, was going to be in a handbasket. The New Deal was about to triumph over law and order and Justice Frankfurter would be leading the legal troops.

Even then, Justice Frankfurter had an idea of his own that the Constitution, when looked at from the bench was safe in the hands of a man of wide experience. In a book he coauthored in 1928 he had written:

"Throughout its history, the Supreme Court has called for statesmanship—the gifts of mind and character fit to rule the Nation. The capacity to transcend one's own limitations, the imagination to see society as a whole, come, except in the rarest instances, from wide experience. Only the poetic insight of a philosopher can replace seasoned contact with affairs."

The Detroit News editorially endorsed Justice Frankfurter's appointment and attempted to comfort the apprehensive in these words:

"To the popular mind, he comes within that roomy classification, the liberal, with all the implications, favorable or detestable, which attach to the term. Those who know best the direction of his mind find him committed to little business rather than any collectivism, and definitely to the survival of the capitalistic system."

And Jay G. Hayden, in a Washington dispatch, wrote:

"The dominant attitude of Senators is that Frankfurter is at least a man of great legal attainments and is preferable to any other man whom President Roosevelt would be likely to name in the event he is turned down (by the Senate)."

The new Justice, in his role of Secretary of Labor, has demonstrated that he possesses some of the qualifications for the Court set down by the man whom he replaces. As a lawyer, he frequently represented organized labor, yet he brought a new concept of labor-management disputes to his cabinet post. He had the capacity to "transcend one's own limitations, the imagination to see society as a whole" and to battle for contract settlements on a basis of the degree to which they were in the public interest.

He was successful in these efforts, frequently to the chagrin and irritation of those union leaders who regard a labor secretary as their man in the cabinet. That irritation was intensified when he openly opposed the new drive of his former clients to get a shorter workweek without a cut in pay.

This ability to rise above the battle and the partisanship should lessen fears of business critics of his selection.

A second apprehension involves Goldberg's successor in the cabinet. Will he be able to keep his eyes steadily on the public interest in the midst of coming struggles?

The appointment of W. Willard Wirtz, chief assistant to Goldberg, gives a possible answer. He must be thoroughly grounded in the Goldberg philosophy and he will, of course, be serving the same President who supported Goldberg in his statesmanlike conduct in a sensitive governmental position. Whether he will have as much influence in restraining union leaders remains to be seen.

Senator HART. Mr. Chairman, I would like to add for the record a letter that was written me by a distinguished member of the Michigan bar, part of which I think I should read.

Senator KEFAUVER. Let the entire letter be made a part of the record.

(The letter referred to follows:)

SCHMIDT, SMITH, HOWLETT & HALLIDAY,
Grand Rapids, Mich., August 31, 1962.

Hon. PHILIP A. HART.
Senate Office Building,
Washington, D.C.

DEAR PHIL: I am delighted at the President's appointment of Arthur Goldberg to the Supreme Court.

When I entered Northwestern University Law School, Arthur Goldberg was the outstanding scholar in a class which included many excellent students who have, over the years, become top-notch lawyers. Art's competition was tough; he stood out above them.

I practiced law in Chicago during his years as a general practitioner, and know the high regard in which he was held by both his contemporaries and the lawyers senior to him. As a practitioner in the labor field, I have watched his distinguished career as counsel for the Steelworkers, the CIO, and the AFL-CIO.

As a citizen—and as a Republican—I have only praise for his service as Secretary of Labor.

I write to you as a member of the Judiciary Committee; and while I know confirmation will be unanimous, I thought you might like to have this testimony from one on the other side.

And I must say that the President couldn't have filled Arthur Goldberg's shoes with anyone more capable than Bill Wirtz. He'll fit them.

Best regards to you.

Sincerely,

ROBERT G. HOWLETT.

Senator HART. It is signed by Robert G. Howlett, who is a very active and effective Republican leader in Michigan, and a very distinguished lawyer.

Senator Carroll, of Colorado, regretted very much that he could not be here. He has asked that his statement reflecting his views be made a part of the record. In this statement, of course, he warmly endorses the nomination and commends the President for his excellent choice. Senator Carroll says he has known Secretary Goldberg personally, and feels that his record of Secretary of Labor has been outstanding, and that he will be a most worthy successor to Justice Frankfurter. Most importantly, Mr. Secretary, he says,

I shall vote favorably on this excellent nomination as a member of this committee, and for his confirmation.

(The statement of Senator Carroll follows:)

STATEMENT OF JOHN A. CARROLL (DEMOCRAT, OF COLORADO), MEMBER OF THE COMMITTEE ON THE JUDICIARY OF THE U.S. SENATE

Mr. Chairman, I warmly endorse the nomination of Arthur J. Goldberg as an Associate Justice of the Supreme Court of the United States, and I commend the President for this excellent choice.

I know Secretary Goldberg personally, having observed him in his capacity as lawyer, administrator, and public servant.

Arthur Goldberg has made an outstanding record as Secretary of Labor. No one can doubt the impartiality of his judgments while energetically carrying out his duties in this important Cabinet post.

I know that Arthur Goldberg will be a most worthy successor to Mr. Justice Frankfurter, and I predict that he will write a brilliant chapter in service on the Supreme Court. Needless to say, I shall vote favorably on this excellent nomination as a member of this committee, and for his confirmation to this extremely important high office.

Senator KEFAUVER. Thank you, Senator Hart.

There is a similar letter from Senator Long of Missouri. I regret that he cannot be here.

(The letter of Senator Long follows:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
September 6, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: Because of a longstanding engagement, it will be necessary for me to be away from Washington on Tuesday, September 11.

If the committee should take action on the nomination of Arthur Goldberg to be a Justice on the Supreme Court, I would appreciate it if the record could show that I would have voted "Yes" if I had been present.

Kind personal regards.

Sincerely,

EDWARD V. LONG,
U.S. Senator.

Senator KEFAUVER. Senator Keating.

Senator KEATING. Mr. Chairman, I shall be very brief.

I would like to just refer briefly to the matter of criticism of the Supreme Court which has been mentioned by Senator Ervin and Senator Hart. I am sure that if criticism of the decisions of the Supreme Court were barred, the Harvard Law School, which Senator Ervin and I attended, would go out of existence.

A favorite device of professors of the Harvard Law School, as you know—and probably the same is true of Northwestern—is to read a decision of the Supreme Court and say to some unsuspecting student, "What do you think of it?"

And he says he agrees with it, and then the professor jumps all over him. And you have properly said that the criticism of decisions of the Court is within our proper province, and in my judgment—I hope you agree—in the case of the legislative branch, they have a duty to review those decisions, and if they feel that they improperly represent the intent of Congress, they have a duty to take corrective measures in the legislative branch.

I am sure you would agree with that.

Mr. GOLDBERG. I agree entirely. The Supreme Court makes many decisions based upon acts of Congress, and if the Supreme Court has ruled and Congress believes that the decision is not compatible with its desires and intent, Congress has the obligation to enact new legislation and reverse it, and in many areas this is the indicated procedure. So I agree entirely.

Senator KEATING. And that is not known, as some layman referred to it, as overruling the Supreme Court or reversing the Supreme Court, it is presenting a new problem which the Court can take another look at?

Mr. GOLDBERG. Quite the contrary. And I think it is the plain duty of Congress, in any situation where the Supreme Court has ruled and Congress has the power to act, if Congress does not agree to enact new legislation. This is one of the constitutional responsibilities of the Congress of the United States.

Senator KEATING. And I have personally been critical of some of the decisions of the Supreme Court. I have always drawn a clear line of demarcation—and I hope that you draw the line—between criticism of the decisions of the Court and criticisms of the motivations or the background of the reasons for those decisions by particular Justices.

Mr. GOLDBERG. I do entirely. I made a speech on this subject to the American Law Institute some time ago, in which I said what you have said, Senator Keating. No one is immune from criticism in our constitutional system. But we should have respect for law, that is basic to all of us. But that does not mean we have to say we agree with any particular decision.

Decisions may be changed by act of Congress within our constitutional system. And very often judges themselves will say that they have decided this case on the basis of what they think Congress meant. If Congress meant otherwise, Congress can change it. That is the way it ought to be under our system.

Senator KEATING. And you have a deep respect, I need hardly ask, for the institution of the Supreme Court, for the institution of Congress, for the institution of the President and the executive branch?

Mr. GOLDBERG. This respect reaches to my fundamentals. I respect the Constitution of the United States. I think we have the greatest document that has been conceived under which a government can function. And that Constitution has been predicated upon the presumption that the Congress has its great functions, the executive has its great functions, and the Court has its great functions.

That is an abiding conviction with me.

Senator KEATING. Your previous experience has been such, and your accomplishments have been so extraordinary, that in my judgment you are amply qualified for consideration by the President for nomination as a Supreme Court Justice.

And I commend the President for the selection he made. Your work in Washington and your entire career has earned, for you, the deep respect both of those who agree and those who disagree with some of your policies.

I think it is a great tribute to you as the general counsel of the Steelworkers Union to have had such really laudatory letters written by leaders of the great steel industry.

Questions of bias are always raised against lawyers who have been closely identified with some particular client or some particular cause in their practice, as you have been. The junior Senator from New York has, in the past—rather distant past—suffered from some such allegations because of his legal background.

However, anybody who is familiar with the careers of the former Justices of the Supreme Court know how unreliable a man's legal practice may be as a guide to his performance as a judge. Laymen don't always understand that it is the lawyer's duty to be a strong and vigorous advocate for his client, whoever that client may be. And I certainly don't suggest any lack of affection between you and your former clients in what I say, but I do express supreme confidence that your decisions on the Court will be controlled by the facts and the law in the cases and will not be controlled by the identity of the parties who come before you, particularly in labor-management disputes, for instance.

If I were not convinced of your capacity and your intentions and your dedication to render justice impartially and objectively, I could not vote for your confirmation. I am convinced, and I certainly shall enthusiastically vote for your confirmation.

Mr. GOLDBERG. Thank you very much, Senator.

Senator KEFAUVER. Thank you, Senator Keating.

Senator Fong.

Senator FONG. Mr. Chairman, I have listened with great intent to the interrogation of Secretary Goldberg, and to his responses. And, No. 14 on this 15-man committee, I find myself in a very advantageous position—some may say it is disadvantageous—because all the questions that I had in mind to ask the Secretary, and all the responses I wished him to give have been given.

I believe, Mr. Chairman, that the essential ground has already been covered, and I shall not delay the committee with similar questions.

I am satisfied that in ability and in experience Mr. Goldberg is eminently qualified to occupy the very important position of Associate Justice.

In addition, I want to say for the record that I am thoroughly satisfied from the responses to questions that have been put to him that Mr. Goldberg recognizes his heavy responsibility of duty and the mandate to judge each case on its merits impartially, and to cast aside any personal predilections and partisanship.

Mr. Goldberg, yours is an office of public trust, and I know you fully appreciate it, one that was designed by the architects of our Republic to be insulated against the shifting winds and transitory emotions and against the temptations of partisanship. These wise Founding Fathers sought, insofar as humanly possible, an environment where each Justice needs to be accountable only to God, to his country, and his own conscience. I am confident, Mr. Secretary, that you will merit the faith which the President, the committee, Congress, and all the many advocates have in you, and you will maintain the Supreme Court of the United States as an institute in which all the American people will continue to repose their trust.

I extend to you, Mr. Secretary, my prayers and good wishes in this very high responsibility.

Mr. GOLDBERG. Thank you very much, Senator.

Senator KEFAUVER. Thank you, Senator Fong.

Are there any other questions?

(No response.)

Senator KEFAUVER. Let the record show that throughout the hearing Mrs. Goldberg has been present, who is very well known to the acting chairman, and known as a very intelligent and attractive lady.

And we are glad to have you here, Mrs. Goldberg.

And with Mrs. Goldberg is Chief Rabbi Weinstein from Chicago. I believe you were a member of his congregation for many years.

Mr. GOLDBERG. And still am.

Senator KEFAUVER. And there are others who are here who would be willing to testify for Mr. Goldberg if they were asked and if it were thought necessary.

I have a telegram from Mr. Whitney North Seymour, former president of the American Bar Association, that is highly complimentary in recommending Mr. Goldberg's confirmation.

(The telegram referred to follows:)

SEPTEMBER 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: I would like to advise your committee that, based upon my personal experience and observation of Hon. Arthur J. Goldberg, and upon my knowledge of his career and reputation, I believe that he would render fine service on the Supreme Court. For several years he was a member of the board of the Carnegie Endowment, of which I am chairman, and there and elsewhere I had an opportunity to observe his character, professional ability, and temperament. His past representation largely, although not entirely of one segment of the community, organized labor, did not prevent him from judging each problem on its merits in a broad and balanced way. He seems to me to have shown this same balance in his performance of his duties as Secretary of Labor. I am sure that he would do so on the Supreme Court, and I hope that your committee will promptly confirm his nomination.

Respectfully,

WHITNEY NORTH SEYMOUR,
Past President, American Bar Association.

Senator KEFAUVER. A letter from Mr. Sylvester J. Smith, the current president of the American Bar Association.

(The letter from Mr. Smith follows:)

AMERICAN BAR ASSOCIATION,
Chicago, Ill., September 8, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR EASTLAND: I am asking Robert W. Meserve, chairman of the Standing Committee on Federal Judiciary of the American Bar Association, to transmit to you the finding of his committee with reference to Secretary Goldberg.

I wish personally to say to you that Mr. Goldberg has been a member of the American Bar Association for many years. I have had the pleasure of knowing him, and have a high regard for his ability as a lawyer, for his integrity, and I feel that he is well qualified to be a Justice of the Supreme Court of the United States. I trust that your committee will report his nomination favorably and promptly.

Sincerely yours,

SYLVESTER C. SMITH, Jr.,
President.

Senator KEFAUVER. And the chairman will try to be objective and refer to the next few letters. We have one from Mr. H. Parker Sharp, vice president and general counsel of Jones & Laughlin Steel Corp.

(The letter of Mr. Sharp follows:)

JONES & LAUGHLIN STEEL CORP.,
Pittsburgh, Pa., September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing to express the hope that the Committee on the Judiciary will make a favorable report with respect to the nomination by President Kennedy of Arthur J. Goldberg to the office of an Associate Justice of the Supreme Court of the United States.

During the period of approximately 12 years, from 1948 to 1960, when Mr. Goldberg was general counsel of the United Steelworkers of America, I was the vice president in charge of legal matters for Jones & Laughlin Steel Corp. and had business dealings with him from time to time. Our relationship has been uniformly friendly. As I became acquainted with Mr. Goldberg, I developed a very great admiration for him. He has a keen and well-educated mind. He works exceedingly hard, and I believe him to be a person of absolute integrity. He is an outstanding lawyer, and I have every confidence that he will be a worthy successor to Mr. Justice Brandeis and Mr. Justice Frankfurter, who made such brilliant records as Associate Justices of the Supreme Court.

Respectfully,

H. PARKER SHARP.

Senator KEFAUVER. And then here is one from my good friend, Roger Blough, in which, members of the committee may be interested to know, after talking about Mr. Goldberg's ability, Mr. Blough says:

I feel that Mr. Goldberg will make an excellent judge and would indeed bring credit to the office to which he has been nominated. I hope your committee will see fit to confirm the appointment.

(The letter of Mr. Blough follows:)

NEW YORK, September 8, 1962.

Hon. JAMES O. EASTLAND,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I wish to support the appointment of Arthur Goldberg as a Justice of the U.S. Supreme Court.

I have known Mr. Goldberg for many years and have worked with him on a variety of matters on numerous occasions. Of course, while Mr. Goldberg represented the United Steelworkers and I United States Steel Corp., we had

different points of view on a number of occasions, although by no means all. I believe, however, that such circumstances often are conducive to learning about and appreciating a man's capabilities.

In my opinion, Mr. Goldberg is a competent lawyer and advocate, as well as a serious student of the law. He is a tireless worker, with intellectual capacity of high order. One of his notable characteristics is his ability to comprehend all sides of a problem and to reconcile opposing views.

In short, I feel that Mr. Goldberg will make an excellent judge, and would indeed bring credit to the office to which he has been nominated. I hope your committee will see fit to confirm the appointment.

Very truly yours,

ROGER BLOUGH.

Senator KEFAUVER. Here is one from Mr. T. F. Patton, president of Republic Steel. I believe we have heard from Mr. Patton before. He is an eminent gentleman. He says:

I am confident that he would not only carry out the responsibilities of this high judicial office with integrity and vigor but would also have the benefit of an invaluable practical experience in many vital phases of our national life.

(The letter of Mr. Patton follows:)

REPUBLIC STEEL CORP.,
Cleveland, Ohio, September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: With the thought that it may be helpful in connection with the consideration by your committee of the nomination of Arthur Goldberg as Associate Justice of the U.S. Supreme Court, I am undertaking to submit to you herein the opinion which I have developed concerning Mr. Goldberg as a result of many years of contact with him, often at opposite ends of the bargaining table. Although, as might be expected, our views on particular matters varied, I always found Mr. Goldberg to be a lawyer of the highest degree of professional ability and character. I am confident that he would not only carry out the responsibilities of this high judicial office with integrity and vigor but would also have the benefit of an invaluable practical experience in many vital phases of our national life.

Very truly yours,

T. F. PATTON.

Senator KEFAUVER. We have letters from Gen. Lucius Clay; Charles Rhyne, a former president of the American Bar Association; a telegram from Richard J. Daley, the mayor of Chicago; a letter from Thomas J. Watson, Jr., whom I believe to be the president of IBM; and a telegram from Archbishop Sheil of Chicago, who is well known.

(The letters and telegrams referred to follow:)

SEPTEMBER 7, 1962.

Hon. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I have sat on the opposite side of the table in labor negotiations with Arthur Goldberg where I learned to have great respect for his ability and his integrity.

I hope I am not presuming in expressing my confidence in his respect for the law and the Constitution. I believe, most sincerely, he will prove worthy of his appointment if confirmed.

Sincerely yours,

LUCIUS D. CLAY,
General, U.S. Army (Retired).

RHYNE & RHYNE,
Washington, D.C., September 8, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: I write to urge confirmation of Mr. Arthur J. Goldberg as Associate Justice of the Supreme Court of the United States. I have known Mr. Goldberg for many years and admire him as one of the great members of the legal profession who has always labored gallantly and effectively in the highest traditions of our profession for his clients. In his public service responsibility he has acquitted himself with high distinction and in a manner which has earned the just praise of all who have come in contact with him or who have been affected by his actions.

I feel that his career as a lawyer and as a public servant admirably equip him for performance of the great duties of a Justice of the Supreme Court of the United States. I am certain that the bar throughout our Nation hold Mr. Goldberg in the same high esteem as I do, and I therefore urge your committee to approve his nomination at the earliest possible time.

Very respectfully yours,

CHARLES S. RHYNE.

SEPTEMBER 11, 1962.

Hon. JAMES O. EASTLAND,
Senator from Mississippi,
Senate Office Building,
Washington, D.C.:

It is a genuine pleasure to speak in behalf of Arthur Goldberg, who has been appointed by President Kennedy as Justice of the Supreme Court.

I have known him well for 20 years, and know of his integrity and intelligence. He represents the very best of American citizenship, and I know he will make an outstanding Justice of the highest court in our land.

Sincerely,

RICHARD J. DALEY,
Mayor, City of Chicago.

NEW YORK, N.Y., September 11, 1962.

Hon. JAMES OLIVER EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: It is a pleasure to endorse the nomination of the Honorable Arthur J. Goldberg to the U.S. Supreme Court and to urge favorable consideration of his appointment by the Senate Judiciary Committee.

During the past year and a half, it has been my privilege to serve on the President's Advisory Committee on Labor Management Policy. In his work with this group, Mr. Goldberg has demonstrated a deep insight into critical national problems. As a member of the business community, I have also been impressed with his integrity and impartiality as Secretary of Labor.

His past achievements make it clear that he is eminently qualified for the Supreme Court. I am confident that he will serve with distinction in the highest traditions of our society.

Sincerely yours,

THOMAS J. WATSON, Jr.

SEPTEMBER 11, 1962.

Senator JAMES EASTLAND,
Judiciary Committee,
U.S. Senate, Washington, D.C.:

Allow me to express my deep appreciation on the appointment of Arthur Goldberg to Supreme Court of the United States. It makes me very happy to see this great man so honored. Please insert in record.

Archbishop SHEIL.

Senator KEFAUVER. We have other letters from:

Malcolm A. MacIntyre, president of Eastern Air Lines, Inc.; Solon B. Turman, chairman, Lykes Bros. Steamship Co.; Ralph C. Gross, executive vice president, Commerce & Industry Association of New York; Rev. Ross Allen Weson, minister, Evanston Unitarian Church, Evanston, Ill.; Harold L. Bache, Bache & Co., New York; Charles C. Tillinghast, Jr., president, Trans World Airlines, New York; H. C. Turner, Jr., president, Turner Construction Co., New York; George Meany, president, American Federation of Labor & CIO; Vincent B. Sillinan, minister, Beverly Unitarian Church, Chicago; Rev. John F. Hayward of Chicago; Randall S. Hilton of Chicago; William E. Dunn, executive director, Associated General Contractors of America; Dr. J. Mark Hiebert, president of Commerce & Industry Association of New York; Joseph F. Johnston, Cabaniss & Johnston, Birmingham, Ala.; Joshua S. Koenigsberg, chairman, Committee on Nominations, Association of Immigration and Nationality Lawyers, Philadelphia; and Rabbi Ernst Lorge, president of the Chicago Board of Rabbis.

(The letters and telegrams above listed follow:)

EASTERN AIR LINES, INC.,
New York, September 10, 1962.

Hon. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I am writing to commend the selection of Arthur J. Goldberg to fill the existing vacancy on the Supreme Court.

It has been my privilege to know and work with Mr. Goldberg as Secretary of Labor, and I have found him to be a man not only of high character but also of keen intelligence and broad and deep understanding.

May I add, as a lawyer of 25 years practice before the bar in New York, Washington, and Virginia, that rarely have I met a man whose knowledge of legal concepts and legal ethics has been so complete and so uniformly applied when faced with executive responsibilities involving many legal issues.

I hope the Senate will confirm this appointment without controversy.

Yours sincerely,

MALCOLM A. MACINTYRE.

LYKES BROS. STEAMSHIP CO., INC.,
New Orleans, La., September 10, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

MY DEAR SENATOR: As you consider the nomination of Arthur J. Goldberg as an Associate Justice of the Supreme Court, I feel I would be somewhat negligent in my responsibilities as a citizen were I to fail to express my personal views on President Kennedy's appointment of Mr. Goldberg to one of the highest offices in the land.

We cannot, any of us, always agree with public appointments to offices of trust in our local, State or National Governments. In this instance, however, I feel so strongly about this nomination that I am compelled to record my expressions as you deliberate the qualifications of this nominee.

As a businessman, representing an industry that has had close association with Mr. Goldberg since his appointment as Secretary of Labor, and having had opportunities to observe him at close range during some mighty difficult and trying times, I, personally, feel that his nomination to the Supreme Court is deserving of the unanimous approval of your committee.

Though our personal contacts have not been frequent, I have, nevertheless, been reasonably well acquainted with Mr. Goldberg and his activities for a number of years. During his term of office as Secretary of Labor, our industry negotiated renewal contracts with various seagoing unions, and I had met with Secretary Goldberg, along with other representatives of our industry, on a number of occa-

sions, which gave me an opportunity to closely observe him and to personally evaluate the depth of his character.

Mr. Goldberg's legal training and experience certainly is an important factor in considering a man's appointment to the highest Court in our Nation, a trust he is a man of great intellect and character, a man of great human feelings and, above all, he is eminently fair in his considerations and decisions. He has an unquestioned personal and moral background. All of these are vital in considering a man's appointment to the highest Court in our Nation, a trust that only a great man is deserving of receiving.

Yours sincerely,

S. B. TURMAN.

COMMERCE AND INDUSTRY ASSOCIATION

OF NEW YORK, INC.,

New York, N.Y., September 10, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: The Commerce and Industry Association represents more than 3,500 New York City businesses, many of them operating throughout the United States and in foreign countries. In my position as executive vice president, I maintain close liaison with heads of these businesses.

Since the Senate is due to act soon on the confirmation of Mr. Arthur J. Goldberg as a Justice of the Supreme Court, I think it is appropriate to pass on some reactions of these top national businessmen to his appointment. Their comments have been completely favorable. Many New York businessmen have noted that Mr. Goldberg has administered his difficult and sensitive assignment as Secretary of Labor with skill, integrity, and admirable objectivity.

The consensus is that he will make a splendid Supreme Court Justice, and there is universal hope that he will be confirmed without delay.

Sincerely,

RALPH C. GROSS,
Executive Vice President.

EVANSTON, ILL., September 11, 1962.

Senator JAMES EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.:

Chicagoans who have observed Arthur Goldberg and the developing record of his life and activities respect especially his judicial temperament and ability to approach all problems with objective intelligence. We recommend his confirmation.

Rev. ROSS ALLEN WESON,
Minister, Evanston Unitarian Church.

BACHE & Co.,
New York, September 10, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: It has been my privilege to meet the Honorable Arthur J. Goldberg, Secretary of Labor, before he was appointed to his present position, and to sit in on various conferences with him. As the head of one of the leading New York Stock Exchange firms, I have followed, with a great deal of interest, his handling of the relations between business and labor—a field in which he has demonstrated the kind of judicial temperament that would well equip him for the now proposed honor of Associate Justice of the Supreme Court.

His broad experience in labor and business relations should, in my opinion, be a strong recommendation for his approval in this new activity.

It is my privilege to express to you not only my own feelings but those of other people in business and to urge Senate approval for the appointment of the Honorable Arthur J. Goldberg as Associate Justice of the Supreme Court.

Sincerely,

HAROLD L. BACHE.

TRANS WORLD AIRLINES,
New York, N.Y., September 10, 1962.

Hon. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This is to commend the appointment of Arthur J. Goldberg as an Associate Justice of the Supreme Court of the United States.

In connection with recent labor problems in the airline industry, my associates and I have had an unusual opportunity to work with Mr. Goldberg. We have found him to be a man of unusual intelligence, deep understanding and high character. His distinguished career as both a lawyer and public servant fit him well for the heavy responsibilities which he must bear as a Justice of the Supreme Court.

It is my recommendation that the Senate confirm this appointment promptly.
Sincerely,

CHARLES C. TILLINGHAST, JR.

TURNER CONSTRUCTION Co.,
New York, N.Y., September 10, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: I would like to add my support to the nomination of Arthur J. Goldberg to the position of Justice of the Supreme Court of the United States.

I have met and talked with Arthur Goldberg on a number of occasions and I have been greatly impressed with his dedication to public service and to the interest of the United States. I am sure he will prove to be a fine Justice of the Supreme Court, but, at the same time, he will be greatly missed as Secretary of Labor. I hope that the U.S. Senate will confirm his appointment without delay.

Sincerely yours,

H.C. TURNER, Jr., President.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: Since the Senate Judiciary Committee will shortly begin hearings on President Kennedy's nomination of Arthur J. Goldberg as an Associate Justice of the Supreme Court, I would like to express the strong support of the American Federation of Labor and Congress of Industrial Organizations for this nomination.

We in the AFL-CIO are extremely pleased with the President's choice of Arthur Goldberg for the vacancy on the Court. We believe that this nomination is fully merited by his own proven character, ability, and integrity as well as by his long record of distinguished service as an attorney and legal adviser to the trade-union movement, and in high public office.

Mr. Goldberg has been a capable, impartial, and devoted public servant during his term as Secretary of Labor, applying to that office the same energy, ability, and sense of dedication that he had given to the advancement of the ideals and objectives of the trade-union movement during his association with the AFL-CIO.

I am entirely confident that he will bring to the role of Associate Justice of the Supreme Court, the same high order of ability and dedication that he has demonstrated so abundantly throughout his career, and will serve with distinction and with complete devotion to the welfare and interests of the United States and all of its citizens.

On behalf of the AFL-CIO, I strongly urge the approval of your committee and of the Senate for the nomination of Arthur Goldberg to the U.S. Supreme Court.

Sincerely yours,

GEORGE MEANY, President.

SEPTEMBER 10, 1962.

Senator JAMES EASTLAND,
Senate Judiciary Committee,
Senate Office Building, Washington, D.C.:

Respectfully urge confirmation Arthur Goldberg as Supreme Court Justice on basis of integrity, learning, brains, wisdom, Americanism. Request this wire be read into record.

VINCENT B. SILLINAN,
Minister, Beverly Unitarian Church.

SEPTEMBER 10, 1962.

Senator JAMES EASTLAND,
Senate Judiciary Committee,
Senate Office Building, Washington, D.C.:

Please act favorably on the appointment of Arthur Goldberg to the Supreme Court, and read into your records my opinion that this distinguished Chicago citizen and jurist is a qualified and loyal American.

Rev. JOHN F. HAYWARD.

CHICAGO, ILL.

SEPTEMBER 10, 1962.

Senator JAMES EASTLAND,
Senate Judiciary Committee,
Senate Office Building, Washington, D.C.:

I urge confirmation of Goldberg appointment to Supreme Court. No better appointment could be made.

RANDALL S. HILTON.

SEPTEMBER 10, 1962.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.:

Based on our experience with Arthur J. Goldberg during his tenure as Secretary of Labor, we would recommend to you the approval of his appointment as a member of the Supreme Court of the United States. Mr. Goldberg was an able administrator, and, in our opinion, was completely fair in his dealings with both management and labor.

WILLIAM E. DUNN,
Executive Director, the Associated General Contractors of America.

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.,
New York, N.Y., September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: The nomination of Arthur J. Goldberg to fill a vacancy as Justice of the Supreme Court of the United States is, in my opinion, an excellent one, and the Commerce and Industry Association of New York requests that its endorsement of Secretary Goldberg for this post be recorded in the record of the hearings to be held by your committee on his nomination.

In the performance of the demanding tasks of Secretary of Labor, Secretary Goldberg has demonstrated his objectivity, integrity, and ability to deal with matters coming before him on their merits as he saw them. These characteristics, together with his obvious devotion to what he believes to be best for the country, strongly suggest the judicial temperament necessary for a member of the highest court in the land.

Sincerely,

J. MARK HIEBERT, M.D.,
President.

NOMINATION OF ARTHUR J. GOLDBERG

CABANISS & JOHNSTON,
Birmingham, Ala., September 6, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Although I believe it is unlikely that anyone would question his qualifications, I would like to say to you and to the Judiciary Committee that, in my opinion, Mr. Arthur J. Goldberg is in every way qualified for appointment as a Justice of the Supreme Court of the United States.

I have known Mr. Goldberg for a number of years, and I have found that he has not only great ability as a lawyer but a strong sense of fairness and justice in dealing with matters in which there are deep conflicts of interest and intensity of feeling. His scholarship, his wide legal experience, and his thoroughly judicial temperament are assurances of his high qualifications, and I recommend his confirmation without reservation.

Respectfully,

JOS. F. JOHNSTON.

ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS,
Philadelphia, Pa., September 7, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: This association endorses the nomination of Hon. Arthur J. Goldberg to be Associate Justice of the Supreme Court of the United States, and respectfully urges your committee to give favorable consideration to his nomination.

Yours very truly,

JOSHUA S. KORNBLAT,
Chairman, Committee on Nominations.

SEPTEMBER 9, 1962.

Hon. JAMES EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

Please insert into record of Senate Judiciary Committee the respectful recommendation of the Chicago Board of Rabbis representing all religious wings of Judaism in Chicago and Illinois for speedy confirmation of the appointment of Mr. Arthur Goldberg as Justice of the U.S. Supreme Court. The record of service to his country of this distinguished citizen of Chicago, his unwavering loyalty and patriotism and unstinting devotion to this great Nation as well as his concern for justice and equity to all make him worthy, in our opinion, of this great position of trust.

Rabbi ERNST LORBER,
President, Chicago Board of Rabbis.

SEPTEMBER 13, 1962.

Senator JAMES EASTLAND,
Chairman, Senate Committee on Judiciary,
New Senate Office Building, Washington, D.C.

The National Academy of Arbitrators wishes to be recorded as warmly endorsing the nomination of Arthur J. Goldberg as a Justice of the U.S. Supreme Court. Mr. Goldberg is well known to our members. He has served with great distinction as an arbitrator. The wisdom, integrity, and devotion to American ideals which he has demonstrated so outstandingly as an advocate, an arbitrator, and as a public servant convince us that he will be a great Justice of the Supreme Court.

BENJAMIN AARON,
President, National Academy of Arbitrators.

REYNOLDS METALS Co.,
Richmond, Va., September 7, 1962,

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: One of the nominations now before your committee is that of Hon. Arthur Goldberg, to be confirmed for appointment to the U.S. Supreme Court.

In my capacity as a member of the President's Labor-Management Committee, I have had an opportunity to work very closely with Mr. Goldberg, and to observe, at first hand, his very admirable legal and administrative abilities. Mr. Goldberg's boundless energy, his personal integrity, and outstanding intellect make him, in my mind, an excellent nominee for the Supreme Court.

Sincerely yours,

R. S. REYNOLDS, Jr., President.

Senator KFFAUVER. We have a document from Mr. Walsh, who was given an opportunity to testify previously, which he would like to have added to his testimony, and it will be done at the place where Mr. Walsh testified.

Mr. Goldberg, as acting chairman, I want to say that I had a very high regard for you to begin with, and feel that you would be a well equipped, splendid judge, that you would perform your duties well, and in the best tradition of our Supreme Court and judicial system.

That was my feeling when I first came in the committee. And I want to say that after the colloquy which you had with Senators Ervin, Hart, Wiley, Keating, and Fong, that that high opinion has been enhanced and enlarged. If you are confirmed, I know that all of us wish you well.

And personally I have great confidence in your ability to perform your duties as they should be.

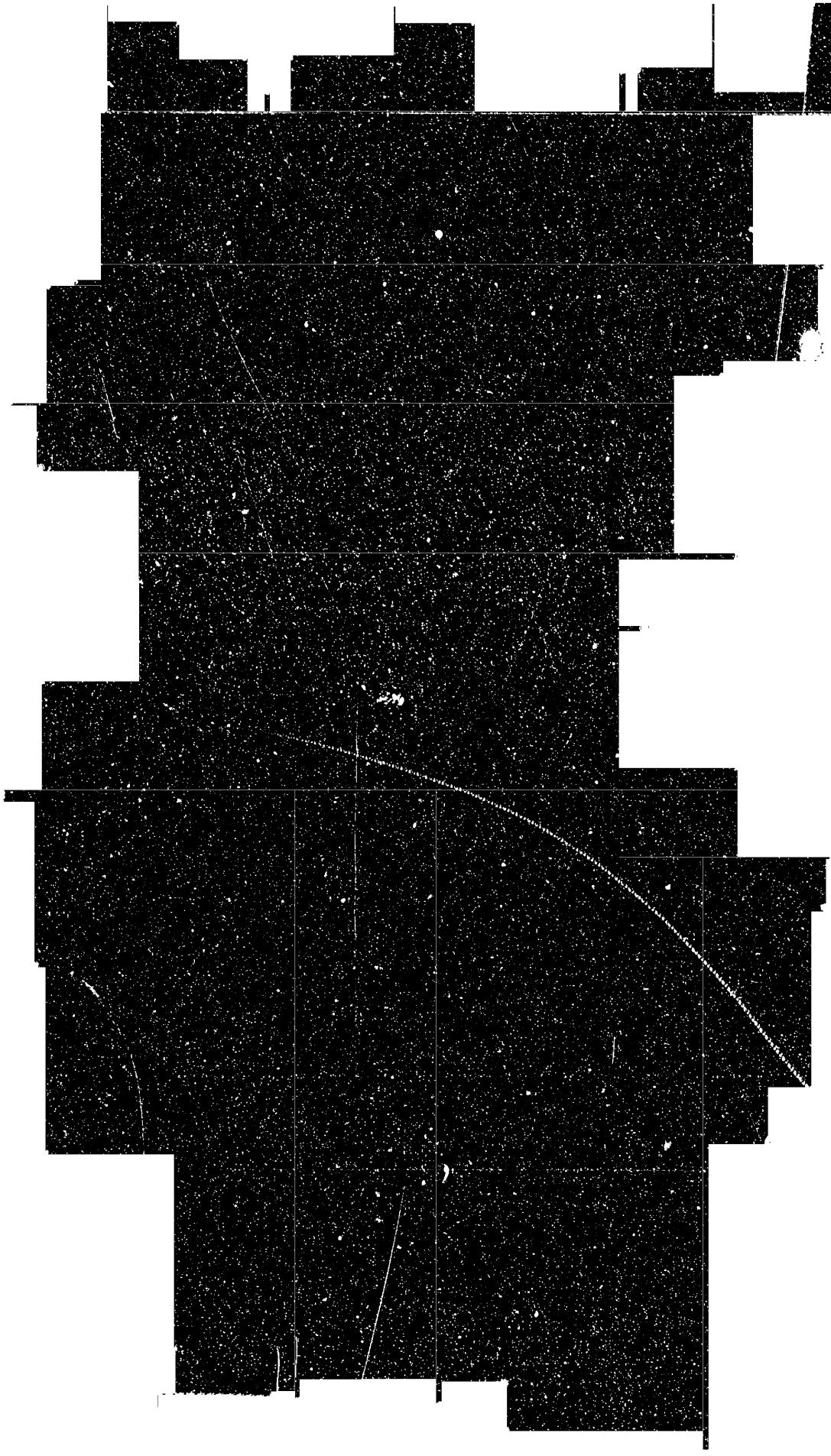
Mr. GOLDBERG. Thank you.

Senator KFFAUVER. That is all the witnesses that I know of.

Senator Eastland did not give me the date on which the committee will sit again, so that it will be recessed subject to further call of the chairman.

(Whereupon, at 11:55 a.m., the committee recessed, subject to the call of the Chair.)

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[SUBCOMMITTEE HEARING]

NOMINATION OF ARTHUR J. GOLDBERG

TUESDAY, SEPTEMBER 11, 1962

**U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
*Washington, D.C.***

The subcommittee met, pursuant to notice, at 11:15 a.m., in room 2228, New Senate Office Building, Senator Estes Kefauver presiding.

Present: Senators Kefauver, Ervin, Dodd, Dirksen, and Hruska.

Also present: Joseph A. Davis, chief clerk.

Senator KEFAUVER. The subcommittee will come to order.

Mr. Walsh, will you be sworn, please?

Do you solemnly swear the testimony you will give to this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. WALSH. I do.

TESTIMONY OF DAVID WALSH

Mr. WALSH. Gentlemen of the Judiciary, I recognize that I am cast in the role of a David against Goliath here, and as nearly as I can determine the only dissenting voice in this request of your committee for a determination.

I would like to take about 10 seconds to tell of a little incident on my way up here from Birmingham.

My ancient automobile broke down—this is important—

Senator KEFAUVER. Mr. Walsh, just 1 second. You wrote the chairman a letter. Will you give your residence and your business?

Mr. WALSH. I am a professional engineer; I am now living in Birmingham. I formerly lived in this city, 3921 Ingomar Street.

Sunday afternoon, after my ancient automobile broke down in Dublin, Va., I was telling the garageman that I had to be here yesterday to carry my case before Judge Walsh against Mr. Goldberg involving the use of perjury by the Labor Department against not only my company but numerous others, some of whom I will detail here to you this morning.

It appeared that I was about to have to walk up here, until I told the man, a laborer, small businessman, that I was going to say something against Mr. Goldberg.

It might be interesting to your committee—you can check out the fact that I arrived with a 1962 Thunderbird—he would do everything to help me get up here to testify against Mr. Goldberg.

So that what I say doesn't represent my individual and personal opinion, but rather it represents probably the majority of the people who work for a living, and certainly the near unanimous opinion of small businessmen.

Now, getting back to the David and Goliath routine, certainly you have heard from Mr. Goldberg's own lips what he intends to do if appointed Supreme Court Justice. In my opinion, though I am not an attorney, I believe that logic should prevail here, and that we should always be clinical in considering such things, and we ought to go by his deeds rather than his words.

It is obvious that from his testimony—he having stated that he has been an attorney, a practicing attorney, for nearly as long as I have lived—he never once committed himself to having made a payroll, which I have done for more than 10 years, doing business with a very irresponsible customer: namely, the U.S. Government.

Now, then, if Mr. Goldberg has never made a payroll, has never been in the position of numerous small businessmen who have suffered at the hands of—the abuse of his Department, particularly the Wage and Hour Division, he certainly isn't qualified to make judgments on items that come before his bench if he is appointed to the Supreme Court.

And before I get into the meat of what I have come here to say, I would like to make an observation, that even Members of the U.S. Senate have been aware that there have been very distinct and obvious abuses of administrative authority. Senator Dirksen has submitted to this Congress his S. 3410, which has to do with these abuses, and intends to correct them in some parts.

Further, already having passed the House and Congress of this session, is H.R. 1960, now awaiting approval of the President. Both of these bills are based upon the record of abuse of administrative authority which I am laying at the feet of Mr. Goldberg here now.

By date of February 6, 1962, Senator Claiborne Pell of the Senate Labor Committee, wrote me a letter, after I had futilely complained to each member of his committee and Secretary Goldberg personally, at his home, and through his assistant, Mr. Stephen Shulman, that obviously false testimony had been used against me, and coaxed from my own employees by Mr. Leo Holstein of the Wage and Hour Division of the Department of Labor, where he is a deputy regional attorney.

I asked for help and got none.

Finally, on February 6, I received a letter from Senator Pell wherein he admits that—

these mistakes—

referring to mistakes of the Department of Labor—

were demonstrated primarily in the initial acceptance of obviously perjured testimony.

Now, Senator Pell, though he is a liberal Senator, and therefore not of my political belief, nevertheless he believes that perjured testimony was used. Yesterday before Judge Walsh in the district court, I learned that Senator Pell had written latterly a letter trying to explain his use of the words "perjured testimony."

His explanation, which he did not send me a copy of, and which was sent to the District Attorney and to Mr. Charles Donahue, a Solicitor

of the Labor Department, went on to say that he didn't mean to use the words "perjured testimony"; he meant to use the words "false testimony under oath," which he concluded after a clinical evaluation of all of the facts.

Included in my complaint is the removal from page 133 of the testimony of evidence proving that one of the Labor Department witnesses was lying. In other words, under Mr. Goldberg's secretaryship, information was taken out of the file, testimony was coaxed out of employees which was known to be false, and after it was known to be false, it was used against an innocent businessman.

Further, Secretary Goldberg was made personally aware of this in numerous petitions to his office. And finally, later in the spring of this year, he wrote me a letter indicating that he was aware of this pretty much, and would try to do something about it.

Less than 3 weeks ago, he wrote Senator Sparkman a letter stating that there was no false testimony used against me. Yet the fact remains, this is the man that we expect might some day make judgments as to small businessmen before the Supreme Court.

As a matter of fact, it might be that my case, if not granted in the District Court, or subsequently the Court of Appeals, might be before him in the Supreme Court, where I will go, if necessary, to obtain justice.

I have brought to this committee 20 pages of amended complaint wherein there are charges made ranging from the deliberate use of false testimony all the way down to the accidental use of false testimony, all of which remain in the record and have not been stricken, though Mr. Goldberg is personally aware of it.

I would like to give the names—incidentally, since approximately March of this year, I have spent a good deal of time canvassing firms who have been sued by the Department of Labor or who have been charged with violations of the Walsh-Healey Act, the Fair Labor Standards Act, or the Davis-Bacon Act.

And I will give you the names of a few people who are still listed and who will corroborate what I am saying here. One of them actually stated that with the knowledge and opinion of a union member in Huntsville, Ala., he was blackmailed into taking a position, admitting his liability when in fact he was innocent. I give you the Swalley Printing Co., of Birmingham.

This isn't an ordinary complaint by a small business with a hundred employees; this is a complaint by a small businessman who was knocked down to 50 employees when he refused to admit his liability when, in fact, he was innocent.

I give you the Birmingham Steel Fabricating Co., also Birmingham, and Mr. Lloyd who has stated and proven that he was blackmailed into taking a position of guilt when he was innocent.

I give you further the Patrick Summers Coal Co., of Baltimore, against whom the Labor Department filed a complaint charging \$30,000 in unpaid overtime.

It might be interesting to you gentlemen to realize that during the process of this, the president of the company dropped dead, Mr. Enrico de Gospo.

Further, the Labor Department finally, after charging \$30,000—and I happen to know the attorney in this case, and the fee for the

attorney was over \$8,000—the Labor Department finally proved a liability of \$139.50, and that was in doubt, and still is in doubt.

Now, I am hard pressed to understand, when, in the State of Alabama alone, last year more than 500 firms were charged, just in one small State, one of the smallest, were charged with violations of the Walsh-Healey Act, I am hard pressed to understand how labor is helped or how the individual employees are helped when their firms are put out of business.

It is also a matter of fact that after canvassing all of these people, I have not found—in trying to reach over 600 firms charged by the Labor Department—I have not found 5 firms who had unions.

Now, this is important for the reason that there appears to be some small protection in having a union in your shop. I have never had one. Nor does Mr. Murray Jones of the Murray Corp. right here in the DuPont Circle Building, who can be reached right today—and I quote from Mr. Murray's hearing before the so-called judge of the Labor Department's administrative board—

Senator KEFAUVER. Mr. Walsh—

Mr. WALSH. One more point and I will terminate this.

Senator KEFAUVER. Don't you think, sir—I understand that you had some matter of your own you wanted to tell the subcommittee about.

Mr. WALSH. I am about to come to that.

In other words, I felt that the committee would not be as inclined to listen to just my complaint if you thought that I were the only complainant. What I want to say is that you can arbitrarily choose 10 percent of any of the people who have been alleged to have violated the Walsh-Healy Act and you will find—Mr. Murray Jones was charged with violations and found liable, when in fact the—Mr. Clifford Grant, the hearing examiner has stated that the witness was completely irresponsible and not believable, yet he awarded them \$600 and debarred him for 3 years.

Finally, as to my own case, I would like to note, Mr. Chairman, that I have been pressured to get into 10 minutes here 1,500 pages of complaints against the Labor Department, and I am the sole complainant against the Labor Department Secretary, and I would like to just have a few more minutes without pressure from the Chair.

The case involving Mr. Goldberg—and he is aware personally of the charges I have made, he has said so—is now before the district court. Yesterday the District Attorney asked for dismissal, and dismissal wasn't granted. The Labor Department witnesses, each of seven, having made false testimony under oath, are now being investigated by the FBI. The FBI has actually tendered its report. And the Chief of the Criminal Division, Mr. Lowther, is evaluating it toward a possible indictment for perjury.

Now, it would seem to me to be incongruous to confirm a man who knew about the use of false testimony in advance of the conclusion of the District Attorney, which might be to the effect that there has been a wholesale use of false testimony against small business firms with the knowledge of the Secretary.

The reason that I am here today is to ask that the confirmation of Mr. Goldberg be withheld until such time as my charges against him have been evaluated by the district court and the results turned in

by the District Attorney on the question of the possible use of perjury in my case, and in all of the other cases which I have mentioned here today.

And that terminates my statement. And I respectfully ask that the committee consider it. And if there are any questions pertinent, I will be glad to answer them.

Senator KEFAUVER. Any questions of Mr. Walsh?

Senator ERVIN. The small businessman has a lot of trouble today, he is regulated by many acts of Congress, and he is regulated by many acts of the State legislature. But there is, in the Department of Labor, an Administrator of the Wage and House Division who has jurisdiction, as I understand it, of complaints under the Walsh-Healey Act, is that not true?

Mr. WALSH. That is correct, sir.

Senator ERVIN. And the Labor Department is a tremendous Department with thousands of employees, is it not?

Mr. WALSH. Yes, sir; it is.

Senator ERVIN. Don't you think that it would be a rather vivid use of the imagination to charge the Secretary of Labor with knowledge of everything that transpires in the Labor Department?

Mr. WALSH. On the contrary, sir, I believe in personal responsibility all the way down the line. He has the prestige, and he is accorded all of the authority of his office, and I don't think it is unfair to say that, for example, George Shaw Walker—whom you know, who was formerly an employee of that Wage and Hour Division, and who is now one of the instructors over at the University of Prague—certainly you wouldn't say that a person such as this—and certainly there are others of this political view who are with the Labor Department still—you wouldn't say that just because it is such a vast Department that we shouldn't take action against the ones that remain there.

Senator ERVIN. I would say that a Secretary of Labor who attempts to have personal knowledge of everything that transpires in the far-flung branches of the Labor Department would be incapable of acting as Secretary.

Mr. WALSH. That is true. But it is his duty to appoint people who can be trusted, and if someone shows him that one of his employees can't be trusted it certainly isn't his position to defend him. In his letters to me he has shown that he is personally aware of this and has done nothing about it.

Senator ERVIN. I think it is the responsibility of the Secretary of Labor—would you like to charge the commander in chief of an army with the responsibility to see that each buck private would receive a substantial amount of "slumgullion"?

Mr. WALSH. Thank you for playing straight man.

But then I might say also that charging a small businessman, or the operator of a company with 40 or 50 employees, charging such a man—because someone falsified his time sheet—which the Wage and Hour Division does regularly, is also unfair. So that if you say that—and I am forced to agree with you—then the charges brought against people of falsifying time sheets by their employees is also unfair. But it is done regularly.

Senator ERVIN. I am not getting all together on one side of the question. I used to practice law, and when my clients were called to

task by the Wage and Hour people they were a little off themselves, and I probably stretched the law a little bit over to my client.

Sometimes I won and sometimes I lost.

Mr. WALSH. If you don't mind, look at the facts this way: If Senator Pell—and I put that bit in there about him being a liberal and also a member of the majority of the committee, because some folks know that I am not, and most small businessmen also are not—the fact is that if such a liberal as the Senator would recognize this and go to the extent of calling the testimony perjury, certainly this isn't beyond the interest of the Secretary of Labor.

In short, the way I go about things, I find out who is in charge. There is no way of escaping the responsibility, Mr. Goldberg was in charge, he did nothing.

And this is not just an isolated case, I am saying that this is a policy of his Department, and for that reason he is liable.

Senator ERVIN. No further questions.

Senator KEFAUVER. Senator Hruska.

Senator HRUSKA. Mr. Walsh, I understand you had written a letter to Chairman Eastland prior to your appearance here.

Mr. WALSH. I have written a letter to every single Senator and every single Congressman. And your office was one of the ones that did not reply, sir. Senator Eastland did not reply. The ones who did reply are Senator Talmadge, Senator Dirksen, Senator Butler, Senator Lausche, and Senator Beall.

Senator HRUSKA. I am glad. Maybe we will get around to answering it at this time.

Mr. WALSH. Thank you, it is not too late at this time.

Senator HRUSKA. It is not the only letter I have received.

Mr. WALSH. I received a copy of Senator Pell's statement that perjured testimony was used.

Senator HRUSKA. The reason I asked was, it is not a part of the record, and it should be made a part. Have you any additional memoranda or additional information in the form of a letter or a statement or anything else that you would like to submit for inclusion in the material that will be available to the committee for consideration? If so, if you would, would you describe it?

I should like to ask, Mr. Chairman, that the witness be given the opportunity to deliver it to the clerk of the committee for our use.

Mr. WALSH. I tender one copy. I am making additional copies. If you will tell me the number you want, I will tender them. This is an amended complaint of 20 pages plus the letter of Senator Pell.

Senator KEFAUVER. That will be received.

(The letter of Senator Pell follows:)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
February 6, 1962.

Mr. DAVID WALSH,
Washington, D.C.

DEAR MR. WALSH: I have sought information and advice from those who are familiar with your conflict with the Labor Department. After consideration of this information and advice, I have reached the following conclusions.

'First, there were several mistakes made in the Labor Department's handling of your case—these mistakes were demonstrated primarily in the initial acceptance of obviously perjured testimony. Second, the Labor Department has recognized these mistakes and has reduced the amount of money assessed against you to a considerable degree.

Given these facts, I do not see what more can be done by any Senate committee. I do not believe that the Department is required to execute the kind of agreement which you have requested. In addition to the legal problems which might arise from such agreement, I do not believe it is sound Government policy to enter into such agreements.

It is my understanding that you have been given an answer similar to this by those staff members on the Labor Subcommittee who have worked closely on your case and, indeed, on your behalf. It would be my own personal recommendation to you that you do follow the advice that has been given to you by those staff members.

Sincerely,

CLAIBORNE PELL.

(Subsequently, Mr. Charles Donahue, Solicitor, Department of Labor, submitted the following letter from the Honorable Claiborne Pell and was ordered made a part of the record.)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
August 3, 1962.

Mr. CHARLES DONAHUE,
Solicitor of Labor, Department of Labor,
Washington, D.C.

DEAR MR. SOLICITOR: It is my understanding that a letter signed by me is being used by Mr. David Walsh to further his efforts to seek review of the Department of Labor proceedings against him for violation of the Walsh-Healey Act.

The particular paragraph that Mr. Walsh cites makes reference to testimony which was used against Mr. Walsh. The phrase, "obviously perjured testimony," is the particular language which Mr. Walsh is citing. I want to make it clear that my use of the words "obviously perjured" represented only a personal evaluation of a witness' original testimony contrasted with evidence which was subsequently revealed.

Under no circumstances can the phrase "obviously perjured" be interpreted to the effect that I thought that any official of the Department of Labor had knowingly accepted perjured testimony. I think it is clear that some of the testimony relating to one of Mr. Walsh's employees was incompatible with persuasive evidence introduced later for the first time at a reopened hearing. However, I understand that appropriate corrective action was taken by the Department of Labor, since the Department has washed out all claims of that employee.

Sincerely,

CLAIBORNE PELL.

(The complaint follows:)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CA 919-62

PLAINTIFF: DAVID A. WALSH ET AL., 8921 INGOMAR STREET NW., WASHINGTON, D.C., v. DEFENDANT: SECRETARY OF LABOR ARTHUR GOLDBERG, COMPTROLLER GENERAL JOSEPH CAMBELL

AMENDED COMPLAINT

Comes now Plaintiff before this Honorable Court and amends his complaint as follows:

ORGANIZATION OF COMPLAINT

- (a) Preliminary Statement.
- (b) List of exhibits and references taken from the record to date.
- (c) List of exhibits and references not yet a part of the record, and the basis of request for new hearing "de novo."
- (d) Allegation of jurisdiction of this Court.
- (e) Enumeration of justiciable controversy before this Court in this case.
- (f) Damages sustained, and petitioned for in Judgment in this case.

(g) Summary of facts and precedents showing that trial "de novo" is justified, and that there is neither a "preponderance of evidence," nor even a reasonable suspicion that the order of the Secretary of Labor is based upon fact, or Law.

(h) Conclusion.

PRELIMINARY STATEMENT

The preponderance of evidence supports the fact that Plaintiff is innocent as charged, and that the Secretary of Labor has ordered seizure and distribution of assets, and debarment for three years on the basis of information demonstrated to be patently false. Plaintiff has acted "in pro se" for the reason that the Department of Labor, under the delegated authority of the Secretary of Labor, acted to prevent a fair hearing on the merits of this case even while Plaintiff employed attorney. (See page 133 wherein time slips, submitted to Mr. Leo R. Holstein, Deputy Regional Attorney, by John J. Nealon, Attorney for Plaintiff, actually disappeared, though they proved conclusively that Government witness Kerper was untrueful.) Plaintiff must now, through circumstance, represent himself, being unable at this point to sustain the substantial attorney fees and expenses attendant proper representation.

Plaintiff maintains, that the proof of wrongdoing on the part of the Department of Labor under the delegated authority of the Secretary of Labor is so evident, that it will be possible for Plaintiff to make an adequate showing before this Court in this Amended Complaint, to be granted the relief he seeks, and maintains is his due under Law.

There remain but five claimants of the original seventeen claimants mentioned by the Department of Labor in its original complaint (12 having been dismissed as being without merit or for other sufficient reason including falsity of claim, Exhibit 28, List No. 1, and Exhibit 1, List No. 2, attached).

This Amended Complaint seeks to disprove the validity of the claims of the remaining claimants; namely, Baer, Clearwater, Novack, Roberts, and Czerw, and offers proof which disclaims their right to any "liquidated damages" under the Walsh-Healey Act on the basis of the Law, and on the facts of the case as well.

This Amended Complaint seeks to accomplish this by bringing to the attention of this Court the following:

(a) That during the period Baer, Clearwater, Roberts and Novack claimed to be working on a Federal contract for Plaintiff, the contract was defaulted, no work authorized, and the Secretary of Labor is not authorized therefore, to make any allegations against Plaintiff whatever.

(b) That during the times, and on the dates stated by Walter Czerw, that he was working overtime for Plaintiff, he was actually elsewhere, and not working for Plaintiff.

(c) That the facts relating to the foregoing, (a) and (b), were kept from the hearing by Labor Department attorney (Ellison Holstein), and the Hearing Examiner (Parkinson), and that Plaintiff was thereby estopped from proving his innocence as charged. Plaintiff will also support (a) and (b) above with new evidence in support of his move for a "de novo" hearing on the merits of this case as set forth herein.

LIST OF EXHIBITS AND REFERENCES TAKEN FROM RECORD (LIST NO. 1)

- (1) Page 262 of transcript, wherein Government witness Charles Cheng testified under oath that he worked specific times for Plaintiff and was not paid.
- (2) Personnel record at Hot Shoppes listing Government witness Cheng as working full time when he was found to have been working full time for Plaintiff by Labor Department Hearing Examiner Parkinson.
- (3) Cancelled checks of Government witness Cheng, where he is shown to have been paid during times he stated under oath at the hearing that he was not paid (transcript page 263).
- (4) Record of page 39 of the record before this Court, where in Labor Department investigator Stephen Folk recorded in an interview with Mr. Czerw (Government witness), that he was absent for a period of 7 weeks during his period of claimancy.
- (5) Record of page 556 of the transcript wherein Mr. Czerw stated under oath that he was never absent this length of time.

- (6) Copy of page 219 of the transcript, wherein Mr. Paul Der asserts that Plaintiff withheld, and made deposits to a bank for Federal withholding taxes. (See also Exhibit 13, list No. 2, attached, wherein this statement is contradicted.)
- (7) Copy of page 242 of the transcript wherein Mr. Czerw, who has been awarded \$812.50 for "overtime" under order of the Secretary of Labor, alleges that he worked at least "sixty hours a week for at least half the time" he was employed by Plaintiff.
- (8) Copy of page 243 wherein Mr. Czerw stated under oath that he worked "20 hours a week overtime for a period of about 25 weeks."
- (9) Statement from Czerw's suit in Municipal Court by Czerw, in which he alleges a different amount of overtime than the amount stated under oath in (7) and (8) above.
- (10) Copy of page 3, Government's reply brief, dated June 15, 1961 wherein the Labor Department alleges Baer, Clearwater, Roberts and Novack worked until the beginning of June, 1959, (though the contract was in default). (See 11, 12, 13 below.)
- (11) Two pages from the record of certified contracts in this case showing the late introduction of evidence of the existence of Plaintiff's contract, by the Labor Department. (WB9675.)
- (12) Ditto, contract N-600-45711 (three pages).
- (13) Ditto, contract 171-17820(a) (three pages).
- (14) Copy of page 518 of the transcript wherein Plaintiff stated that the contracts were defaulted.
- (15) Copy of pages 523-526 of the transcript wherein Plaintiff was estopped from placing in the hearing, evidence that the contracts were in default.
- (16) Copy of pages 554, 555, 558 wherein Government witness Czerw stated that he was absent only for a few days around Christmastime, 1958, while in Exhibit 4, above this same witness admitted to the investigator that he was absent 7 weeks during the period. Copy of page 559 wherein Hearing Examiner ruled that the question of his absence from work during a period he was claiming overtime, was a "collateral matter."
- (17) Copy of list of original claimants, including five remaining and the periods during which they claim payments under the Walsh-Healey Act.
- (18) Copy of original Complaint showing date of filing (exhibited to show effect of two year statute of limitations).
- (19) Copy of page 527 wherein Hearing Examiner denied motion to exclude "contracts" testimony from record, thereby making it a matter before this Court, though not yet complete.
- (20) Copy of page 526 wherein Hearing Examiner notes his obligation to consider question of default, but never does thereafter.
- (21) Copy of page 354 wherein Bela Kerper states he worked overtime with Czerw, also same testimony, page 352.
- (22) Copy of page 531 wherein Bela Kerper states he worked overtime with Czerw.
- (23) Copy of page 337 wherein Bela Kerper is shown to have left March 1958 and therefore precluded working overtime during the period of Czerw's claimancy, namely, subsequent April 19, 1958.
- (24) Copy of page 39 of Court record wherein investigator Folk began counting Czerw's time on April 19, 1958, more than a month after Kerper, who corroborated Czerw's time, left for another job, thereby making Kerper's corroboration of Czerw's overtime an impossibility.
- (25) Copy of page wherein Plaintiff attempted to point out the fact that Czerw was an hourly employee.
- (26) Copy of page wherein Czerw admits keeping a private record.
- (27) Copy of record showing Plaintiff requested a subpoena for Captain Kubistl, Lackawanna, N.Y., Police, the source of new evidence in this case, before this Court.
- (28) Copy of Senator Pell's letter admitting that false testimony was used by the Defendant.
- (29) Part of the Government's statement of the case, against Plaintiff.
- (30) Order of the Secretary.
- (31) Copy of page 25, transcript showing testimony re submission of records, and denial of the fact by the investigator (the records had been submitted).

- (32) Page 559, wherein Czerw states that he did not go to Buffalo with Plaintiff vehicle more than once. See also page 558, Exhibit 16, this list. See contradiction, Exhibit 15, List no. 2, wherein Czerw took three of company vehicles at different times, and drove them to Buffalo on four separate occasions, including times he has claimed to be working for Plaintiff.
- (33) Copy of pages 342, 343, 365, 366 and 367 of the transcript, wherein Kerper, corroborating Czerw's overtime, changes his testimony under oath between pages 342 and 365 after speaking to Attorney Leo Holstein of the Department of Labor, and Miss Sylvia Ellison. After having had lunch with Holstein and Ellison, Kerper returned to the witness stand and stated that the person in addition to Czerw who worked overtime with him (page 342), was in fact Czerw (pp. 365, 366, 367). Kerper's testimony has been cited by Hearing Examiner as proof that Plaintiff was untruthful.

LIST OF EXHIBITS AND REFERENCES NOT YET A PART OF THE RECORD (LIST NO. 2)

- (1) Affidavit in re Charles Cheng, who had been found by the Secretary to have been owed \$873.00 and who's testimony was admitted by the Department of Labor to be false thereafter.
- (2) Affidavits by David A. Walsh, Plaintiff in this case indicating obstruction in his efforts to get facts into the record, and to process his case.
- (3) Letter from Contracting Officer attesting that contract equipment was rejected because the contract terms were not fulfilled and that contract was in a state of default. Plaintiff also states that the complete contract, which is on file at the General Accounting Office, and which the Comptroller General has authority to forward but has not yet done so, reveals that this contract was re-instated after being defaulted, and at a contract cost of \$1,500.00 to Plaintiff. Plaintiff also represents that he has been blocked to date from putting this fact into the record.
- (4) Letter from Administrator Lundquist, attesting seizure of \$5,000 of Plaintiff's cash assets, prior to filing a Complaint. The Secretary is authorized under section 2 of the Walsh-Healey Act to seize funds found due as liquidated damages. Arbitrariness is clear in that \$5,000.00 was seized, and though false, the only remaining claims amount to \$835.24.
- (5) Walter Czerw's time sheets, in his handwriting, which are dispositive of the claim made by him against Plaintiff.
- (6) Walter Czerw's signed agreement to ask to perform overtime work of Plaintiff before doing it. No testimony exists that he asked and Plaintiff denies that any overtime permission was granted.
- (7) Walter Czerw's testimony page 387, 388 wherein he admits keeping another record, and wherein he admits making checks to cash for salary purposes (page —, and wherein Attorney Holstein refers to the existence of Czerw's "private" record (250)).
- (8) Citation through which Plaintiff alleges the Department of Labor (Folk, Holstein, Ellison), carried a burden of knowing that their charges were reasonably accurate before bringing the charges publicly against Plaintiff (especially in the cases of the 12 already dismissed as being unfounded).
- (9) Evidence of unskilled or marginal employees referenced by Plaintiff in original complaint (this action 919-62).
- (10) Citation of Portal Act.
- (11) Copy of other employers similarly treated. All employers who have been approached by Plaintiff, and who have been charged by Labor Department with Walsh-Healey and Fair Labor Standards violations, allege the same treatment outlined herein.
- (12) Final order of the Administrator.
- (13) Statement wherein Paul Der is shown to have testified falsely under oath, to detriment of Plaintiff. Hearing examiner cited Der, Kerper et al, in showing that Plaintiff was untruthful.
- (14) Affidavit of Plaintiff re District Attorney.
- (15) Affidavit re new evidence regarding Czerw's credibility.
- (16) Copy of unanswered telegram asking for complete records from GAO.
- (17) Copy of page 4, Memorandum of Points and Authorities by District Attorney.

ALLEGATION OF JURISDICTION OF THIS COURT

Plaintiff alleges jurisdiction of this Court in that:

(a) The matter in controversy exceeds \$3,000.00.

(b) Action from which Plaintiff seeks relief took place in the District of Columbia.

(c) Defendant is the United States of America.

(d) Plaintiff is a citizen of the District of Columbia.

Plaintiff prays for judgment in the following:

(a) Interest on his cash assets illegally seized on or about July 11, 1960, as follows:

On amount \$5,000.00, from July 1960 through August 1960 at which time Labor Department released \$3,500.00-----	\$25.00
On amount \$1,500.00, from August 1960 through June 1962, at which time Labor Department released \$764.76 of the \$1,500.00 still held-----	178.00
(b) Return of \$835.24 of the original \$5,000.00 seized, and interest from June 1952-----	835.24
(c) Loss of income from June 1960 to date, caused by seizure of operating capital-----	30,000.00
(d) Loss of assets caused by actions of Defendant, which assets were used by Plaintiff-----	15,000.00
Total-----	46,038.24

In addition to the foregoing, Plaintiff prays for costs and such attorney fees as have been paid to date on this matter which he alleges exceed \$1,500.00.

ENUMERATION OF JUSTICIABLE CONTROVERSIES IN THIS COURT IN THIS ACTION

(1) That, the claimants Baer, Clearwater, Novack and Roberts are not entitled to any "liquidated damages" under order of the Secretary of Labor because the Secretary of Labor had no authority to act. (The contracts were breached and/or defaulted, see exhibits and summary.)

(2) That the last claimant, Walter Czerw, on the basis of *new evidence* which was barred from the hearing by denial of subpoena, was in fact, not in Washington, D.C., during the periods he stated under oath he worked "overtime" for Plaintiff.

(3) That the period April 19, 1958 through July 13, 1958 is barred from consideration in re claimant of Czerw by the statute of limitations in the Portal Act of 1947 (USC 29 Sect. 251), assuming arguendo the statements of Czerw to be correct.

(4) That the pre-ponderance of evidence is that Plaintiff is innocent as charged and that there is no evidence whatever or even a reasonable suspicion that the Secretary of Labor's order was based upon fact.

(5) That the false testimony used against Plaintiff in the case of the 12 claimants who have been dismissed as to any right of action against Plaintiff is the same type as the remaining five claimants, and that this type of testimony is the pattern in all cases at the Wage and Hour Division of the Department of Labor.

(6) That the false testimony used against Plaintiff was of massive proportions, and therefore excludes the issue of *error*, and implies direction by the Department of Labor in an abuse of administrative power vitiating the will of Congress.

(7) That the *pattern* of the use of false, misleading or erroneous testimony to find employers liable is a pattern at the Department of Labor.

(8) That the Secretary of Labor set as a condition for removal from the debarred bidder's list, that Plaintiff pay sums of money to employees which is not owed, on which the Secretary of Labor has no authority to Act, (there being no contract on which to base his authority to so order), and that this demand exists now, though no hearing has been held, no complaint filed, and no contract cited on which to base his authority.

(9) That the seizure of Plaintiff's cash assets, preventing Plaintiff from being granted subpoena of indispensable witnesses on his behalf, the illegal demand noted in (8) above, are part of a pattern which require the consideration of a three judge Court.

- (10) That on the basis of the record, Czerw is entitled to nothing.
- (11) That on the basis of the record, Baer, Clearwater, Roberts, Novack are entitled to nothing.
- (12) That Plaintiff is entitled to judgment as a matter of Law.

SUMMARY OF FACTS AND PRECEDENTS SHOWING THAT TRIAL "DE NOVO" IS JUSTIFIED, AND THAT THERE IS NEITHER A PREPONDERANCE OF EVIDENCE NOR A REASONABLE SUSPICION THAT THE ORDER OF THE SECRETARY OF LABOR IS BASED UPON FACT, OR LAW

Exhibit (16), in the List of Exhibits and References Taken From the Record to Date, hereinafter referred to as List No. 1, carries an account of direct testimony by Plaintiff in this action, wherein he attempted, but was estopped by the Hearing Examiner, from putting into the record, the fact that ALL three contracts cited as the authority under which the Department of Labor acted with respect to Plaintiff, were either *defaulted or breached by the Government*.

Had Plaintiff not been prevented from inserting into the record, this pertinent material, he would have established the fact that the Labor Department had no authority to file a *Complaint*, Exhibit 18, List No. 1, or to seize Plaintiff's cash assets, Exhibit 16, List No. 2.

The theory of Plaintiff is this:

Copies of the *certified* contracts belatedly submitted to the record by the Department of Labor 3 months after filing the Complaint, establish conclusively that *defaults* and *breaches* existed as stated by Plaintiff Exhibit 16, List No. 1. The three contracts are listed in Exhibits 11, 12, 13 of List No. 1. Complainants to the Labor Department hereinafter referred to as Complainants, Baer, Clearwater, Roberts, and Novack have testified that they worked on two of the three contracts listed here, namely Exhibits 11, 12, List No. 1, and further that they worked up to "the beginning of June," 1959, on these contracts.

Quite aside from the fact that the Hearing Examiner has awarded these complainants wages through June 11th, eleven days beyond their claim in Exhibit 10, List No. 1, as a matter of Law, the Secretary of Labor *had no authority* to take any action against Plaintiff in this action, because there was no valid contract in force and effect, which is a requirement of the Walsh-Healey Act in order for the Secretary to act as he has done re Plaintiff.

A final and conclusive proof that the contract with the Weather Bureau, on which the above complainants were alleged to have worked, was in fact defaulted during the entire period of their claimancy, is found in Exhibit 3, List No. 2, which evidence Plaintiff was estopped from submitting to the record by action of the Hearing Examiner, Exhibit 16, List No. 1.

Plaintiff points out here, that the records certified by the General Accounting Office were only partial, and that they are not *complete* and for this further reason, they cannot be relied upon as a basis for the action taken against Plaintiff by the Secretary of Labor. Had these contracts been timely tendered to the record, and had they been complete, and had Plaintiff not been estopped from introducing their content into the record, the four claimants above would have been dismissed in their claimancy as a matter of Law.

In the matter of contracts in this case, there was in fact, a valid Labor contract between claimants and Plaintiff in this action during the time when the above contracts were in force and effect. During that period, the testimony has been that they were paid, and no claimancy is made for this period. However, even had they not been paid, there would be no action against Plaintiff open to the Secretary of Labor for the reason that the *full text* of the contracts reflects that the U.S. Government *breached them, and admitted same*, and has caused Plaintiff great loss thereby. Had Plaintiff been unable to pay employees who worked on a Government contract which was breached by the Government, no valid action would lie against Plaintiff from the items noted in (A) below.

(A) "A party cannot take advantage of his own breach, nor of a default of the other party which he has occasioned"—*Corpus Juris Secundum*—17.

See *Cotterill v. Hopkins*, 178 S.E. 444, 180 Ga., 179.

See *King v. United States*, 37 Ct. Cl. 428 (wherein the following is taken from the opinion of the Court): "A contracting party cannot prevent his contractor from performing and then annul the contract because he has not performed."

See *Houston Construction Co. v. United States*, 1903, 38 Ct. Cl. 724: "For an improper interference with the work of a contractor, the Government, like an individual, is liable."

Assuming arguendo that the testimony of claimants is accurate, they would still not be entitled to any recovery under action brought by the Secretary of Labor for the reason that any work done by them would not be in interstate trade, would not be for sale, would not be under a Federal Contract and would necessarily be classified as "research" without a goal, or "make work," and this type of work does not give the Secretary of Labor any authority to act. (See Item (A) below.)

For Baer, Clearwater, Roberts, and Novack then, there is no legal basis in Law, for a claim by the Secretary of Labor against Plaintiff, and in addition to this absolute defense against the claims, Plaintiff cites the contradiction in testimony of these claimants (Plaintiff's answer to Motion to Dismiss).

Exhibit 18, List no. 1, carries the date of filing of the original complaint against Plaintiff. The date thereon is July 13, 1960. Under the statute of Limitations provision of the Portal Act of 1947, the complaint cannot go beyond July 13, 1958 in point of time. (See citation (B) below.) Yet the Hearing Examiner has done exactly this in granting Czerw wages for 26 weeks between April 19, 1958 through February 28, 1959. (See this case, page 4, of Memorandum of Points, listed as Exhibit 17, List no. 2.) Complainant Czerw has testified that he worked overtime *20 hours per week* and also for a period *about 25 weeks* and also *60 hours a week* see Exhibits 7, 8, List No. 1. The entire claim of claimant Czerw is contained in this testimony as is evident from the treatment given this testimony by the District Attorney in re Exhibit 17, List no. 2, limned above.

The entire claim of claimant Czerw is contained in the aforementioned self-serving statement, supported only by an irresponsible witness (Bela Kerper, See Exhibits 21, 22, 23 List No. 1), who testified re Czerw overtime though *he was not present to witness it.*

The Courts have dismissed such claims in the past. (See citation (A) below.) Czerw claim is an *estimated figure*, and therefore the Labor Department is revealed as having granted Czerw wages solely on the basis of *his request*, using a *nebulous estimate* and nothing more.

A further point attacking the credibility of Czerw is the suit he filed in Municipal Court, covering the same allegations against Plaintiff. In that suit, he stated, also under oath, a greatly reduced amount of overtime, 50 hours instead of 500 hours to which he swore under oath at the hearing. (See Exhibit 9, List no. 1.) Obviously both affidavits cannot be true.

In addition to this, claimant Czerw has actually executed handwritten daily report sheets which prove conclusively that he did not work overtime during specific periods claimed by him. (See Exhibit 5, List no. 2.) These sheets were tendered by not accepted during the hearing. They clearly reveal the lack of credibility of claimant Czerw.

In Exhibit 25, List no. 1, Plaintiff attempted to point out that that claimant Czerw was an hourly employee, as all employees. He was prevented from doing so, and thereafter it was "assumed" that Czerw was not an hourly employee. In connection with this item, the Court held that claimant could not be helped in letting the Court decide his position as was done in this case. (See item (B) below.)

In Exhibit 6, List no. 2, claimant Czerw is specifically forbidden to work overtime unless written permission is granted to do so. Yet there is no written permission in the record, and none was granted.

The Courts have held that an employer *can* prevent overtime, and also that the Court "does not look with favor upon the claim for overtime by an employee

(A) Portal to Portal Act of 1947 (USC—29—sect. 251), Gill v. Electro Manganese Corp., 177 Tenn. 81, 146 SW (2d) 352.

(B) "Experimental manufacturing plant was not subject to this act (sect. 201 et seq., of this title) until it began producing goods for sale."

(A) Walling v. Lippold, DC-Neb, 72 F. Supp. 339: "Where a regular hourly rate is not expressly provided, a Court will not supply the deficiency by implication."

(B) Gorchakoff v. California Shipbuilding Corp., DC-Cal, 63 F. Supp. 399, wherein the Court found: "While it is the duty of the Court under this Act to adopt a liberal construction of the record to the end that the remedial aspects of the Act may not be whittled away by technical niceties nevertheless in a concrete action before the Court for a judgment for overtime pay it does not satisfy the requirements of the Act for the employee to base his right to recovery on a mere *estimated average of overtime worked.*"

forbidden by his employment contract to work overtime." (See citation (A) and (B) below.)

Such was the case with Czerw, not only has Plaintiff proven that from the handwritten record of claimant himself he is not entitled to overtime, but in addition, he was specifically forbidden to work overtime without permission, and there was never any permission granted, nor testified to in the record.

In Exhibit 26, List no. 1, claimant Czerw cites a "record" he kept of monies paid. Claimant Czerw was also the clerk in this case, and kept the records for Plaintiff. The Courts have held that in such a situation, wherein the claimant makes a belated claim for wages, he is not entitled to same on the basis of a "private" record. (See citation (C) below.) Regarding a possible statement by the Defendant attorney that "Secret" or "Separate" records were kept, a point anticipated by Plaintiff and denied on the basis of anticipation, the Courts have held that such agreements do not afford the claimant any right under the Law. (See citation (D) below.)

Claimant Czerw has never stated that false records were kept, and there is no testimony anywhere to this effect. For this reason, the presumption must be that the records are not false, especially since they are in claimant Czerw's handwriting.

Claimant Czerw was the clerk, according to his testimony throughout the hearing, and the statement he made to investigator for the Labor Department Folk (See Exhibit 24, List no. 1.) He actually made out payment of wages in cash or check and had authority to pay everyone including himself, and did so. (See Exhibit 17, List no. 2.) In a similar situation, the Court dismissed the claimant's complaint as shown in (citation (A) below).

On this point it is important to note that Czerw *never made a claim for overtime* during his employ, though he was the clerk. Czerw has never testified during the entire hearing that he *had* made a claim for overtime to Plaintiff, but rather developed this claim for overtime after speaking to Holstein and Ellis, of the Department of Labor, and Mr. Stephen Folk, Investigator. Mr. Czerw developed a claim for overtime which he had never asserted before. The Courts have dismissed such a claim in the citations (A) and (B) below. Citation (B) below is particularly applicable in view of the nebulous nature of Czerw's claim. (See exhibits 7, 8, List no. 1.)

The lack of *definiteness* and *certainty* is therefore apparent in Czerw's claim, and for this reason there is no basis for it in this case.

Plaintiff asks the Court to take note of the fact that it is almost unbelievable that claimant Czerw would make out checks, advance cash, or make cash wage payments for approximately 8 months and yet not pay himself, yet that is the position of the Secretary of Labor in this case.

Further on the matter of claimant Czerw's credibility, Plaintiff points out that two witnesses, namely Edward Gorman and Anna Kane of 205 and 206 Kirby

(A) Blakely v. Fresno Oil Co., Inc (TexCivApp), 208 SW (2d) 902, wherein the Court found: "An employer is within his rights when he establishes a policy among his employees that no overtime work would be allowed."

(B) Jackson v. Derby Oil Co., 157 Kan 53, 139 Pac (2d) 146, wherein the Court said: "Courts do not look with favor upon the claim for overtime by an employee forbidden by his employment contract to work overtime."

(C) Gale v. Fruehauf Trailer Co., 158 Kan 30, 145 Pac (2d) 125, wherein the Court found: "Where one of Plaintiff's duty, was to keep the record of his own work hours, and he was paid for overtime according to that record, he was estopped to recover additional overtime pay based upon a private record also kept by himself of which defendant had no notice."

(D) Carter v. Butler, 71 Ga. App. 492, 31 SE (2d) 210, wherein the Court found: "Where Plaintiff predicated his claim for overtime compensation and liquidation damages upon an alleged agreement between him and one of his employers whereby secret records were to be kept and the contents not reported to the authorities and payment was to be made to Plaintiff at a later date, recovery could not be had because the action was grounded upon an illegal transaction."

(A) Cotton v. Weyerhaeuser Timber Co., Inc., 20 Wash (2d series) 300, 147 Pac (2d) 299, wherein the Court found that: "Where the evidence showed that at the end of each month statements were prepared showing, with respect to each employee, including plaintiff, the hours worked, the rate of pay, and the balance owing to each employee, and these statements were submitted regularly to plaintiff, and on the basis thereof he himself signed and issued payroll checks, and at no time while in defendant's employ did plaintiff challenge the accuracy of these statements or the correctness of the salary checks, so far as he was concerned, plaintiff was estopped to assert claim for overtime compensation."

(B) Johnson v. Dieks Lumber Co., Inc., CCA 8, 130F(2d)115; Camfield v. West Texas Utilities Co. (TexCivApp), 170SW(2d) 552; Rouch v. Continental Oil Co. (DC-Kan) 55 F. Supp. 315; Toppin v. 12 East 22nd Street Corp. (DC-NY) 55 F. Supp 887, and 22 other specific citations relying on this same principle to which Plaintiff refers herewith: "In an action for unpaid compensation and liquidated damages brought under this Act, the burden is on the plaintiff to establish by a preponderance of evidence the *number of hours worked* and the amount of wages due, and the evidence to sustain this burden must be definite and certain."

Avenue, Lackawanna, New York, who are neighbors of Mr. Czerw in that town, recall that he visited his home using cars identical to Plaintiff's vehicles, at least four times during the period he stated under oath in Exhibit 32, List no. 1, he had not gone to Buffalo more than once.

Plaintiff attempted to bring this point into evidence at the hearing when he requested a subpoena from the Hearing Examiner but was denied same, Exhibit 27, List no. 1. Plaintiff asked the Hearing Examiner for subpoena for Captain Kubisti, Chief of Lackawanna Police, who was in Washington, D.C., at the time the subpoena was requested and who was described to Plaintiff as the "uncle" of claimant Czerw, by Czerw himself. Plaintiff located Captain Kibisti, and the Captain gave Plaintiff the names of Anna Kane and Edward Gorman 206 and 205 Kirby Avenue, Lackawanna, New York. These people stated that they recalled a Jeep Station Wagon, a Green Station Wagon and a White Station Wagon driven by Czerw during 1958 and 1959. The importance of this is that Plaintiff has testified into the record that Czerw drove to Lackawanna at least four times during 1958 and 1959 in Plaintiff's vehicles, and this was denied by Czerw on page 559, Exhibit 32, List No. 1. Plaintiff was not able to quiz Kubisti on this point because he was estopped from doing so by denial of subpoena as shown in Exhibit 27, List no. 1. Plaintiff's company owned a Jeep Station Wagon, a Green Mercury Station Wagon and a White Mercury Station Wagon during the period of Czerw's claimancy, and Plaintiff has asserted that Czerw used them and agreed to pay for their use, and that he drove to Lackawanna at times shown in the payroll book as absences from work (respondent's exhibit No. Three dated May 2, 1961).

It is clear, from a *preponderance of the evidence* in the record, and that which Plaintiff was estopped from presenting, that the ruling of the Hearing Examiner, and the Administrator, was arbitrary and not based in any way on fact or testimony as to Czerw, and that this ruling is still a part of the Secretary of Labor's order which is being appealed from herewith. It is clear that Czerw could not swear to both 50 and 500 overtime hours, and also that he could not be both in Buffalo New York and not in Buffalo New York during the same time, and the judgment based upon these untrue statements of record is being appealed from herewith.

Simple stated, there is *no evidence whatever, no testimony at all* upon which to base the findings of the Department of Labor as to Czerw. The District Attorney cannot cite any evidence from the record though an attempt has been made to explain the *wages* found due Czerw in Exhibit 17, List no. 2. This attempt by the District Attorney to justify the award is without a hint of evidence and in fact clearly spells out that the award was granted because Czerw *said he worked* 20 workweeks of 60 hours each, when the evidence in the record, and that not yet permitted in the record clearly show beyond any reasonable doubt, that Defendant Goldberg is not now and never was entitled to a presumption that his findings are correct, on the basis that *there was no evidence upon which to base the findings made, only a single unsupported, self serving statement*. During the period prior to the final order of the Secretary, Plaintiff attempted to bring up certain points of evidence *in and without* the record, to the attention of the Secretary. He was estopped. Further, following that, he attempted to bring the proofs of false testimony to the attention of the District Attorney (attorney for Defendant in this case), and Mr. Joseph Hannon advised him to *sit tight*, and that he (Mr. Hannon) would help after the Secretary made his final order.

It is now revealed that the District Attorney is attempting in Exhibit 17, List no. 2, to cite the right of Defendant Goldberg to a *presumption* that his findings are correct, which right he did not have, or could not have had *before the final order* was issued. The extent of help granted by the office of the District Attorney is that of asking this Court to dismiss Plaintiff's complaint, which is based obviously upon a just grievance, and from his past actions, the District Attorney is further referenced in Exhibit 2, List no. 2. While there is no *preponderance of evidence* in the record supporting the Secretary of Labor's order, there is a preponderance of evidence supporting Plaintiff's position. Courts have held in like cases that the claimant *must produce evidence* upon which to base his claim. (See citations (A), (B), below.)

(A) *Collins v. Burton-Dixie Corp.* (DC-SC) 53 F. supp. 821: "Plaintiff must produce evidence this is convincing and prove his cause by the greater weight of evidence, and the evidence which he must submit must be something more than a mere scintilla, and it must not consist of vague, uncertain, irrelevant matter, but must be definite and certain and something of relevant consequence and substantial nature."

(B) *Davies v. Onyx Oils and Resins Inc.*, (DC-NJ), 63 F. Supp. 777: "The burden is still on the plaintiff, regardless of the defendant's failure to keep proper records, to prove that he worked overtime and how much overtime he worked."

Regardless of the theory of Defendant, there is no precedent for the abuse of administrative authority demonstrated in the order of the Secretary. In a similar case, the Court has dismissed the claim as shown in (citation (C) below).

Originally, there were 17 claimants named in the complaint filed by the Secretary. No proof whatever having been offered, 11 claimants were dismissed as to their claim. Though Plaintiff was held up to ridicule by Holstein, Ellison and Folk of the Department of Labor, for not having paid another claimant who was awarded \$873.00, Plaintiff was able to show, *after the hearings were closed, and the findings of guilt published nationally*, that their star claimant, Charles Cheng actually had made false statements under oath, that he had been dismissed from school for cheating, that he had lied to a local University to gain entrance, that he was working elsewhere when in fact he had been found by the Secretary of Labor to have been working for Plaintiff, and that he was actually paid and canceled checks were offered to prove payment during the times he claimed he was not paid. Rather than accept this evidence, the Secretary dismissed this man's claim, and prevented the evidence from being placed in the record in this case, and prevented Plaintiff from relying upon it to show the lack of credibility of Government witnesses in general, and the pattern followed by the Department of Labor in coaching their witnesses. (See Exhibit 1, List no. 2, and Exhibit 28, List no. 1.)

There is an obvious arbitrariness in the action of the Labor Department, and a clear abuse of administrative authority indicated, when the false testimony of their witness Charles Cheng is eliminated and his claim dismissed, but the *even more clearly false testimony of Czerw* remains to become the basis of the order of the Secretary of Labor.

The Administrator, and the Hearing Examiner should have followed the precedents shown in citation (A) and (B) below, when it became obvious that Czerw was contradictory.

The Secretary of Labor has also alleged that Plaintiff violated "record keeping" provisions of the Walsh-Healey Act. Plaintiff directs the Courts attention to Exhibit 30, List no. 1, wherein Folk states that he received 10 to 12 time cards, when in fact two attorneys *affidavited* that he was given more than 150. Though Plaintiff kept the best records possible under the constant series of breaches by the Federal Government under their contracts, it is the belief that the theory that no records were kept is a desperate attempt to justify awarding "liquidated damages" to claimants. On this, however, the Courts have held that the absence of records, does not entitle claimant to make demands for wages during the period not covered by records as in (C) and (D) below.

Czerw's unreliability is a matter of record, and the fact that he made statements which are contradictory is established from the record without the additional proof of new evidence. Yet, the order of the Secretary of Labor finds Plaintiff liable though the following similar situations were decided by the

(C) Ralston v. Karp Metal Products Co., Inc., 179 Misc. 282, 38 NYS (sd) 764 : "Where plaintiff was employed on a weekly basis rate irrespective of the number of hours worked by him, but he kept no record of the hours worked by him, but he kept no record of the hours he claims he worked each week and he accepted his wages without protest and for four years delayed asserting his claim, he failed to meet his burden of proof as to the quantity of his overtime each week."

(A) Byus v. Traders Compress Co. (DX-Okla), 59 F. Supp. 18. The Court held that: "In action for overtime compensation, in view of the testimony, record of defendant of time worked by plaintiff was accepted by the Court over record kept by plaintiff himself."

(B) Feldman v. Roschelle Bros. Inc. (DC-NY), 49 F. Supp. 247 : Wherein the Court found that: "The failure of defendant to keep a record of overtime is not evidence upon which the Court can compute plaintiff's overtime. Plaintiff's claim that they worked before and after they punched their cards reflected upon their credibility."

(C) Clinton Rivera v. Bull Insular Line, CCA 1, 164 (2d) 88 : Wherein the Court found: "Trial court did not exceed its authority in disregarding the evidence submitted by claimant where it considered part of his testimony to be inaccurate, self contradictory and unreliable and was in position to judge credibility."

Further: In the same citation: "Failure of claimant to report overtime could be considered by the trial judge in determining the truth of the claim and the weight, if any, to be accorded his records."

(D) Query v. United States, 1942, 62 S. Ct., 1122, 316 U.S. 486, 86 L. Ed., 1616 : "Relief in the form of an injunction restraining enforcement of a State Statute on ground that it is unconstitutional as applied to complainant can be afforded only by a statutory three Judge Court."

Courts against claimant rather than for claimant as in the subject case. (Citations (A) and (B) below.)

There can be no claim at any time that the 12 claimants who were admittedly without right (of the original 17) were dismissed for any reason other than *that there was no evidence of plaintiff's liability*. In *Strand v. Garden Valley Co.*, the Court has found that the Administrator had no authority to compromise the rights of employee. Therefore, by Law, if the original 17 had just claims, they would have been awarded wages. The fact that the Labor Department made such charges, without attempting to check the facts first, clearly indicates that the Law is being applied *contra* the intent of Congress, and *as applied* it violates the Constitutional right of Plaintiff and all other firms so treated, to due process and the protection of the 1st, 4th and 9th amendments to the constitution. (See *Query v. United States*, Cited in (C) below.)

CONCLUSION

There are 5 claimants remaining of the original 17 noted in Complaint. *Four* of the *five* remaining (Baer, Clearwater, Roberts, and Novack), are revealed to have made claimancy during a period when there was no contract, the contracts being defaulted or breached, and under a defaulted contract the Secretary has no authority under the Law to act as he has acted. Under a breached contract the U.S. Government cannot act against Plaintiff as has been shown. The final claimant, Water Czerw, is revealed as an unreliable witness, who has contradicted himself, stated to have been in two places at the same time, or claimed two entirely different amounts of overtime both under oath (50 hours and 500 hours), and is shown not to have been physically able to perform the overtime he has claimed.

Plaintiff accordingly prays for dismissal of the charges against him, or in the alternative, an order vacating the findings of the Secretary of Labor as to him.

Contrary to the stated but not proven position of the District Attorney, Plaintiff has paid employees, made great sacrifices to do so in the face of nearly constant breaches of contract by the U.S. Government. Plaintiff is entitled to credit for having made these payments, and to relief from the false and malicious charges brought against him in the original complaint.

Plaintiff holds that he has properly asked for three judge Court for the reason that 17 false claimancies are not accident, but rather reveal a pattern, in a continuing abuse of administrative authority, or denial of due process to employers and of violation of intent of Congress in applying the Walsh-Healey Act. (See Exhibit 19, List no. 2.)

Plaintiff further prays this Court to grant that the preponderance of evidence supports his position, and that he has sustained the burden of proving this, before and after the final order of the Secretary was issued.

Mr. WALSH. And if you don't mind, sir, I would also like to submit as an addendum to this the actual exhibits proving the use of false testimony, and I can do that within the next few days.

Senator HRUSKA. That is the type of information I thought perhaps you might want to submit.

I have no questions, Mr. Chairman.

Senator KEFAUVER. I have here a memorandum to Mr. Davis, the clerk of this committee, from Mr. John L. Sweeney, professional staff member of the Committee on Labor and Public Welfare, in which Mr. Sweeney says—we can use it and make it a part of the record—but in this memorandum, Mr. Walsh, Mr. Sweeney recites that they tried

(A) *Johnston v. Firemen's Ins. (Misc)*, 61 NYS (2d) 566: "The plaintiff's interest in the result, the fallibility of recollection, the accuracy of his statements and the accuracy of his memory are still to be weighed by the trier of facts, notwithstanding that the plaintiff's testimony was not contradicted with respect to the time claimed."

(B) Further, "A judgment in an action under this act, cannot rest upon guess speculation, or suspicion" (*Stewart v. Maybee Oil and Gas*, 158 Kan 388, 147 Pac (2d) 731).

(C) *Strand v. Garden Valley Telephone Co. (DC-Minn)*, 51 F. Supp 898: Wherein the Court held: "The age and Hour administration has no power to compromise the rights or benefits given to employees by the act."

to help you in connection with the complaint that you had, and took the matter up with the Labor Department, and that you were offered a settlement—

which would in effect result in his being returned money which had been previously impounded and his complete removal from the so-called "black list" of the Department. Mr. Walsh refused that offer of settlement and his conduct since that time has indicated to me and I think to all others who have dealt with him on this matter, that he is a victim of his own delusions as to the persecution he feels the entire Government of the United States is waging against him.

You were offered a settlement and you refused?

Mr. WALSH. Am I being given an opportunity to reply to your statement as well as the statement that you have read into the record from Mr. Sweeney? Because I haven't seen his statement before this.

Senator KEFAUVER. I only read this part that said you had been offered a settlement.

Mr. WALSH. Mr. Sweeney has also stated that he is aware of the fact that I have been unjustly accused in this particular case. I never discussed any other cases with Mr. Sweeney. But it was said that Mr. Reuther would not permit Senator McNamara to go ahead with this matter and that we might just as well forget about it.

He said there was another time when the pendulum swung in the other direction and the employer got the gravy, and now it is swinging in this direction, and it is just tough, and I ought to forget about it.

Now, if it was just a money matter I wouldn't do anything, because it only involves a few thousand dollars. But on the other hand it involves my personal integrity and reputation and ability to earn a livelihood. So that is the reason I am here today. Mr. Sweeney is one of the parties who said, "You had better forget it, you can't do anything even though you are injured."

And if he is in the room he might want to come forward and say something. I discussed this with great length with Raymond Hurley, and though I have gone to Mr. Sweeney many times, it was not until I went to Mr. Hurley in Senator Goldwater's office that I got results to the extent that I have gotten results so far. In that letter to Mr. Sweeney you will find confirmation of my appointment—

Senator KEFAUVER. My question was, Mr. Sweeney said that on your behalf they took the matter up at great length with the Department of Labor, and that you had presented some new evidence, and that as a result of their intercession in the new evidence that you had produced you had been offered a settlement which would remove you from the so-called blacklist of the Department, but that you had refused the offer of a settlement.

Mr. WALSH. I will acquaint you with the terms of the settlement. This is the blackmail that has been used against Birmingham Steel and which they accepted and which I won't.

Believe it or not, the Secretary of Labor has personally been aware of this, and he has offered—I realize this is a small, a very insignificant case, I am only bringing it out because it is the pattern of the operation of the Wage and Hour Division—I have been offered a settlement and will be removed from the barred bidders list if I will admit liability, and they say if I will agree to the payment of overtime during a period when I didn't even have a contract with it—in other words, I had no contracts over \$10,000 during the time they

wanted me to admit liability—they have thrown it out and said I am not interested.

It is as simple as that.

On the other hand, to show that I have been reasonable about this, in December I had an opportunity to make approximately 4,000 instruments—incidentally that is my specialty, recording instruments. I went to the Labor Department and said, "If you will waive this thing, you can keep the money you have seized illegally, and I will execute a hold harmless agreement."

As you know, as an attorney, Mr. Kefauver, the hold harmless agreement means that I could not bring a claim against them at any time in the future. They refused this. It was after this that the case broke in regard to Senator Pell's letter, and it was after that that finally the Labor Department admitted that they had used false testimony.

So you can see that Mr. Sweeney's letter is a partial statement of the truth, and it might even be desired to get him off the hook, as far as I can see, for having helped me to this extent.

He certainly has been helpful, and I am thankful for it.

I regret he didn't go all the way.

Senator KEFAUVER. Thank you, Mr. Walsh.

(The memorandum of Mr. Sweeney follows:)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,

September 10, 1962.

Memorandum to : Mr. Joseph A. Davis, chief clerk, Senate Judiciary Committee.

Subject : Testimony of David Walsh before subcommittee on the nomination of

Arthur J. Goldberg as Justice of the Supreme Court.

It has come to the attention of the staff of the Subcommittee on Labor, of the Senate Committee on Labor and Public Welfare, that David Walsh has been given time to testify in opposition to Secretary of Labor Goldberg's confirmation as Justice of the Supreme Court. To those of us on the subcommittee staff who have worked on the problems which Mr. Walsh has presented to this subcommittee, the nature of his charges against Secretary Goldberg can be easily anticipated.

To document that statement, a brief history of our relations with Mr. Walsh is in order. In 1961 he came to the office of the subcommittee and presented a rather voluminous record of his dealings with the Public Contracts Division of the Department of Labor. At the time, Mr. Walsh was involved in administrative hearings concerning his alleged violations of the Walsh-Healey and Fair Labor Standards Acts. At the time of Mr. Walsh's initial appearance in this office, no final decisions had been reached by the Department of Labor.

The evidence which Mr. Walsh presented to us was sufficient to cause me, as professional staff member of the Labor Subcommittee, to call the appropriate officials in the Department of Labor and ask that Mr. Walsh be given an opportunity to present these facts to those who would ultimately make a decision as to his allegations. That request was granted. The net result of the new evidence which Mr. Walsh presented was, as far as can be ascertained, highly favorable to Mr. Walsh.

He was offered a settlement which would in effect result in his being returned money which had been previously impounded and his complete removal from the so-called "black list" of the Department. Mr. Walsh refused that offer of settlement and his conduct since that time has indicated to me and I think to all others who have dealt with him on this matter, that he is a victim of his own delusions as to persecution he feels the entire Government of the United States is waging against him. Mr. Walsh's charges, both oral and written, have been of such a virulent and irresponsible nature that the staff of this committee has for the past 6 months refused any further dealings with him. As a former District of Columbia resident and Maryland employer, he exhausted every possible means of access to the Department of Labor, without success. He has recently

moved to Alabama where he has begun anew another campaign through Alabama Congressmen and Senators.

His appearance before the Judiciary will undoubtedly be marked by the same totally unsubstantiated charges that he has made on countless occasions. Even a cursory look at the voluminous record that documents Mr. Walsh's transactions with the Government reveals that he has been given every possible opportunity to prove his case. He has failed to do this and has resorted to personal attacks on all individuals who have refused to bow to his demands, including the Secretary of Labor.

I trust that this information will be of use to the members of the Judiciary Committee who may review Mr. Walsh's charges.

JOHN L. SWEENEY,
Professional Staff Member.

(Subsequently on September 13, 1962, the following statement and letter of August 15, 1962, to the Honorable John Sparkman from the Secretary of Labor were ordered to be made a part of this record.)

STATEMENT BY DAVID A. WALSH AGAINST THE AFFIRMATION OF MR. GOLDBERG TO THE U.S. SUPREME COURT

As the attached letter to Senator John Sparkman indicates, Mr. Goldberg had personal knowledge of my case before the Wage and Hour Division of the U.S. Department of Labor.

As the attached letter from Senator Pell indicates, "obviously perjured testimony" was used by the Labor Department against my firm and myself.

Mr. John A. Sweeney's attempt to ridicule me, in the letter which Mr. Kefauver read into the record while ignoring the letter of Senator Pell, must be accepted as a weak and unethical attempt to smear a good case against Mr. Goldberg.

Mr. Sweeney stated that, in his opinion, I had a persecution complex insofar as the entire U.S. Government is concerned. Mr. Sweeney is a young and untried legal intern associated with the staff of Mr. McNamara, chairman of the subcommittee of the full U.S. Senate Labor Committee which refused to look into the fact that false testimony had been used against my firm and myself as attested by Senator Pell.

It is not necessary to show a specific minimum number of cases wherein the Secretary of Labor, Mr. Goldberg, permitted or condoned the use of false testimony against small business.

It is only necessary to show that on one occasion Mr. Goldberg permitted the law to be skirted, and an innocent party found liable when he (Mr. Goldberg) knew he was innocent. Such an act clearly indicates that Mr. Goldberg is not qualified to sit on the U.S. Supreme Court.

That Mr. Goldberg knew about the use of false testimony under oath, that he did not strike it from the record, and that it still remains in the record are all evidenced in the history of the case now on file with this committee, and in the attached letter from Mr. Goldberg to Senator Sparkman and the letter from Senator Pell.

Mr. Goldberg indicated to a reporter, and was quoted as having stated that he looked into the matter, and that there was "nothing to it" (Washington Post, Sept. 12, 1962).

A man who feels that there is "nothing to" perjured testimony used against an innocent man is not qualified to be a Secretary of Labor, much less a Supreme Court Justice, especially when this has been the policy of his Department while Secretary of Labor.

DAVID A. WALSH.

September 14, 1962.

Attached: Senator Pell's letter charging perjury. Mr. Goldberg's letter denying same.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, August 15, 1962.

Hon. JOHN SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: This is in further reply to your letter of July 26 with which you enclose a copy of a letter to you from David A. Walsh.

Needless to say there is no basis for Mr. Walsh's charge that the Department proceeded against him on the basis of testimony known by me to be false. The charges of improper conduct in the administrative proceedings on the part of Department officials are likewise groundless. These proceedings are at present the subject of judicial review in litigation brought by Mr. Walsh for injunctive relief.

The administrative proceedings in question, PC-801, were brought under the Public Contracts Act against Engenco and David A. Walsh, its president, charging them with violations of the act in the performance of Government contracts. The proceedings under section 5 of the act were conducted in accord with applicable provisions of the Administrative Procedure Act. The ultimate finding was that the respondents had violated the act and, as a result, had become indebted to the United States in the amount of \$835.24 for failure to pay five employees in full. Under section 3 of the act the respondents became ineligible to receive Government contracts for a period of 3 years.

In the course of this proceeding each contention raised by the respondents was given full consideration, including some which were not raised in an orderly or timely fashion. The evidence in the various phases of the case has been scrutinized by two successive examiners appointed pursuant to the provisions of the Administrative Procedure Act. The Administrator of the Wage and Hour and Public Contracts Divisions, in the handling of several petitions to review the examiners' decisions, has given careful consideration to all points raised by the respondents. The respondents' contentions were further reviewed on consideration of a petition to the Secretary of Labor for relief from the ineligible list provisions of section 3 of the act. The respondents have been given every opportunity to avoid the imposition of the debarment provisions of section 3 by making proper representations as to future compliance and by making up wage underpayments to their employees.

Mr. Walsh's letter is returned herewith.

Yours sincerely,

ARTHUR J. GOLDBERG,
Secretary of Labor.

Senator KEFAUVER. The subcommittee will stand adjourned.
(Whereupon, at 11:40 a.m., the subcommittee adjourned, subject to the call of the Chair.)

