By Mr. LYNCH:

H. R. 7932. A bill to amend section 2883 (d) of the Internal Revenue Code, as amended by Public Law 448, Eighty-first Congress; to the Committee on Ways and Means.

By Mr. TACKETT:

H. R. 7933. A bill to provide for the sale of certain lands acquired by the United States in connection with the construction of the Narrows and Blakely Mountain Dams in the State of Arkansas; to the Committee on Public Works.

By Mr. PHILLIPS of California:

H. R. 7934. A bill to reduce and revise the boundaries of the Joshua Tree National Monument in the State of California, and for other purposes; to the Committee on Public lands.

By Mr. SCUDDER:

H. R. 7935. A bill to authorize the development of the Feather River Basin for irrigation, reclamation, flood control, and other purposes, as an integral part of the Central Valley project, California; to the Committee on Public Lands.

By Mr. HAGEN:

H. R. 7936. A bill to amend the act of July 6, 1945, as amended, with respect to automotive-equipment maintenance payments to special-delivery messengers in post offices of the first class, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. PATTERSON:

H. R. 7937. A bill to provide for the payment of sums in lieu of real-property taxes on Government properties transferred to the national industrial reserve; to the Committee on Armed Services.

By Mr. STEED (by request):

H. R. 7938. A bill designating the second Sunday in April as National Daughter's Day; to the Committee on the Judiciary.

By Mr. ANGELL:

H. R. 7939. A bill to provide for additional time for presenting certain tort claims against the United States; to the Committee on the Judiciary.

By Mr. BAILEY:

H. R. 7940. A bill to provide financial assistance for local educational agencies in areas affected by Federal activities, and for other purposes; to the Committee on Education and Labor.

By Mr. WHITTINGTON:

H. R. 7941. A bill to amend and supplement the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented, to authorize appropriations for continuing the construction of highways, and for other purposes; to the Committee on Public Works.

By Mr. COLE of Kansas:

H. J. Res. 447. Joint resolution giving the consent of Congress to an agreement between the State of Missouri and the State of Kansas establishing a boundary between said States; to the Committee on the Judiciary.

By Mr. DOUGHTON:

H. Con. Res. 192. Concurrent resolution providing for the printing of 1,000 additional copies of hearings relative to revenue revision held before the Committee on Ways and Means during the current session, including an index; to the Committee on House Administration.

By Mr. HAGEN:

H. Res. 528. Resolution to provide funds for expenses of the investigation and study authorized by House Resolution 525; to the Committee on House Administration.

By Mr. DOLLINGER:

H. Res. 529. Resolution favoring the embracing within the Republic of Ireland of all the territory of that country; to the Committee on Foreign Affairs.

By Mr. DONDERO:

H. Res. 530. Resolution to authorize the appointment of a bipartisan committee of the House of Representatives to conduct a reinvestigation of the disposition of the case against certain individuals charged by the Federal Bureau of Investigation with espionage and possession of confidential Government documents; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GOSSETT:

H. R. 7942. A bill for the relief of Mr. and Mrs. Randolph Lee Peterson; to the Committee on the Judiciary.

By Mr. HAND:

H. R. 7943. A bill for the relief of Walter Hanus; to the Committee on the Judiciary.

By Mr. JONES of Alabama:

H. R. 7944. A bill for the relief of Mr. and Mrs. Albert Chandler; to the Committee on the Judiciary.

By Mr. JUDD:

H. R. 7945. A bill for the relief of Dr. Zena (Zenobia) Symeonides; to the Committee on the Judiciary.

By Mr. LEMKE:

H. R. 7946. A bill authorizing the Secretary of the Interior to convey certain lands in the State of Minnesota to Signa M. Lodoen and Nels R. Lodoen; to the Committee on Public Lands.

By Mr. MICHENER:

H. R. 7947. A bill for the relief of Palmer-Bee Co.; to the Committee on the Judiciary.

By Mr. MOULDER:

H. R. 7948. A bill for the relief of Paul D. Morefield; to the Committee on the Judiciary.

By Mr. THOMAS:

H. R. 7949. A bill for the relief of Constantinos Papavasiliou; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

2038. By Mr. CANFIELD: Resolutions from the Department Council of New Jersey, Jewish War Veterans of the United States, favoring the continuation of Federal rent control until the supply of available homes approximates the demand; to the Committee on Banking and Currency.

2039. By Mr. GROSS: Petition of Thomas C. Teas, chairman, Hoover Commission committee, Junior Chamber of Commerce, Mason City, Iowa, together with 725 other signatures, favoring the adoption of the Hoover Commission Reports for the Reorganization of the Executive Branch of the Government; to the Committee on Expenditures in the Executive Departments.

2040. By Mr. WILLIAM L. PFEIFFER: Petition of Russell H. Droman and 47 other residents of Gasport, N. Y., requesting lower taxes and reduced Government expenditures and rejecting the philosophies of socialism and communism; to the Committee on Ways and Means.

SENATE

FRIDAY, MARCH 31, 1950

(Legislative day of Wednesday, March 29, 1950)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The Chaplain, Rev. Frederick Brown Harris, D. D., offered the following prayer:

Our Father God, from the tumult of an angry world we seek the sanctuary of Thy presence, not that we may escape the world but that we may turn to the perplexing maze of its baffling problems with strong spirits and quiet minds. As we face ruthless foes without who threaten the precious things we hold nearest our hearts, may we be masters of ourselves, remembering that a nation's worst foes may be those of its own household, and that he that is slow to anger is better than the mighty, and he that ruleth his own spirit than he that taketh a city. Make us worthy to look unashamed into Thy face as we say with full purpose of heart, "We lift our living Nation a single sword to Thee."

In the name of Jesus Christ our Lord. Amen.

THE JOURNAL

On request of Mr. MCFARLAND, and by unanimous consent, the reading of the Journal of Thursday, March 30, 1950, was dispensed with.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Miller, one of his secretaries.

LEAVES OF ABSENCE

On request of Mr. WHERRY, and by unanimous consent, Mr. MCCARTHY was excused from attendance on the sessions of the Senate today because of a severe cold.

On his own request, and by unanimous consent, Mr. THOMAS of Oklahoma was excused from attendance on the sessions of the Senate during the next week.

On his own request, and by unanimous consent, Mr. FREAR was excused from attendance on the sessions of the Senate on April 3, 4, and 5, 1950.

CALL OF THE ROLL

Mr. MCFARLAND. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hickenlooper	Maybank
Anderson	Hill	Millikin
Bricker	Hoey	Morse
Bridges	Holland	Mundt
Butler	Humphrey	Murray
Byrd	Hunt	Neely
Cain	Ives	O'Conor
Capehart	Jenner	O'Mahoney
Chavez	Johnson, Colo.	Robertson
Connally	Johnson, Tex.	Russell
Cordon	Kem	Saltonstall
Darby	Kerr	Schoeppel
Donnell	Kilgore	Smith, N. J.
Douglas	Knowland	Sparkman
Dworshak	Langer	Stennis
Eastland	Lehman	Taylor
Ecton	Long	Thomas, Okla.
Ellender	McCarran	Thomas, Utah
Ferguson	McClellan	Thye
Flanders	McFarland	Watkins
Frear	McKellar	Wherry
Gillette	McMahon	Wiley
Gurney	Magnuson	Williams
Hayden	Malone	Withers
Hendrickson	Martin	Young

Mr. MCFARLAND. I announce that the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. GRAHAM], the Senator from Rhode Island [Mr. GREEN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Illinois [Mr. LUCAS], the Senator from Pennsylvania [Mr. MYERS], and the Senator from

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Florida [Mr. PEPPER] are absent on public business.

The Senator from Connecticut [Mr. BENTON] is necessarily absent.

The Senator from Kentucky [Mr. CHAPMAN] is absent on official business as a representative of the National Defense Department in New York.

The Senator from California [Mr. DOWNEY], the Senator from Georgia [Mr. GEORGE], and the Senator from Rhode Island [Mr. LEAHY] are absent because of illness.

The Senator from Maryland [Mr. TYDINGS] is absent by leave of the Senate on official business, attending the Defense Council and the Defense Chiefs' meeting at The Hague, Netherlands.

Mr. SALTONSTALL. I announce that the senior Senator from Maine [Mr. BREWSTER], the Senator from Massachusets [Mr. LODGE], the junior Senator from Maine [Mrs. SMITH], the Senator from Ohio [Mr. TAFT], the Senator from New Hampshire [Mr. TOBEY], and the Senator from Michigan [Mr. VANDENBERG] are necessarily absent.

The Senator from Wisconsin [Mr. MCCARTHY] is absent by leave of the Senate because of a severe cold.

The VICE PRESIDENT. A quorum is present.

Under the unanimous-consent agreement previously entered into, the displaced-persons bill becomes the unfinished business automatically, with a limitation of debate.

Mr. MCFARLAND and Mr. MCCARRAN addressed the Chair.

The VICE PRESIDENT. The Senator from Arizona.

Mr. MCFARLAND. Will the Senator from Nevada yield to me in order that I may ask unanimous consent for the transaction of routine business?

Mr. MCCARRAN. I thought the Chair recognized the Senator from Arizona.

The VICE PRESIDENT. The Chair recognized the Senator from Arizona in his capacity as acting majority leader.

TRANSACTION OF ROUTINE BUSINESS

Mr. MCFARLAND. Mr. President, I ask unanimous consent that Senators be permitted to transact routine business without debate and without comment.

The VICE PRESIDENT. Without objection, it is so ordered.

NATIONAL POLICY FOR FEDERAL AID FOR HIGHWAYS

Mr. LANGER. Mr. President, I present for appropriate reference and ask unanimous consent to have printed in the RECORD a resolution adopted by the American Association of State Highway Officials, and particularly I call the attention of the Senate to the fact that 15 States concur in all these recommendations; namely, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin, comprising the Mississippi Valley Conference.

There being no objection, the resolution was referred to the Committee on Public Works and ordered to be printed in the RECORD, as follows:

Whereas the American Association of State Highway Officials has adopted an important and far-reaching statement of national policy on new Federal aid for highways; and

Whereas this national policy will be submitted by the association to the Congress of the United States for its consideration; and

Whereas it is essential that Federal-aid authorizations for highways be enacted well in advance of the actual date of availability of funds, in order that both Federal and State Governments may make the necessary long-range plans well in advance of the actual initiation of the program for which the funds are provided; and

Whereas this national policy is composed of the following eight recommendations:

1. Four authorizations of Federal-aid funds on an annual basis;

System	Proposed	1948 act
Interstate	$210,000,000	0
Primary	270,000,000	$202,500,000
Secondary	180,000,000	135,000,000
Urban	150,000,000	112,500,000
Total	810,000,000	450,000,000

2. That the Federal-aid primary, secondary, and urban allocations be distributed among the States in accordance with the regular formulas and matching basis, as provided in the Federal Aid Highway Acts of 1944 and 1948; that not more than 25 percent of the amount apportioned to each State for the primary and secondary systems may be switched from one system to the other, provided the State highway department makes such request and it is approved by the Commissioner of Public Roads as being in the public interest.

3. That the interstate funds be apportioned on the basis of population of the States and that no State receive less than three-quarters of 1 percent; that the matching ratio be 75 percent Federal funds and 25 percent State funds.

4. That these interstate funds may be utilized at the option of any given State to apply on the principal of general-obligation bonds on toll-free facilities that may be used by such State for the purpose of expediting the improvement of the interstate system of roads.

5. That the provision in the Federal Aid Highway Act requiring the withholding of Federal aid from any State failing to properly maintain a Federal-aid project be amended so that in the case of secondary and urban projects where a county or city has accepted responsibility for maintenance, future Federal-aid funds will be withheld from the county or city failing to maintain rather than from the State as a whole.

6. That a section be added to the proposed Federal-aid highway act authorizing an amount not to exceed $10,000,000 to be utilized by the Bureau of Public Roads, under specific emergency conditions, for the purpose of cooperating with the State highway departments in highway disaster relief on an area basis when an emergency has been declared by a governor of a State and concurred in by the Commissioner of Public Roads, without limitation as to systems, and on a 50–50 matching basis.

7. That a specific appropriation of $100,000,000 be authorized for the purpose of advancing funds to the State highway departments for the acquisition of rights-of-way to be repaid over an extended period of years.

8. That the present one-third limitation on Federal aid for right-of-way purposes be increased to 50 percent; and

Whereas the 15 States, viz, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin, comprising the Mississippi Valley Conference, concur in all these recommendations: Therefore be it

Resolved, That the Mississippi Valley Conference of State Highway Departments, in regular session at Chicago, Ill., on March 9, 10, 11, 1950, endorse this Statement of National Policy for Federal Aid for Highways adopted by the American Association of State Highway Officials; and be it further

Resolved, That copies of this resolution be transmitted to the secretary of the American Association of State Highway Officials for presentation at the congressional hearings on national highway legislation; to the Members of Congress representing all States in this conference; to the Bureau of Public Roads; and to the President of the United States.

H. E. FURMAN,
Secretary, Mississippi Valley Conference of State Highway Departments.

Adopted March 11, 1950, at Chicago, Ill.

PROPOSED RETURN TO GOLD STANDARD

Mr. MARTIN. Mr. President, I present for appropriate reference and ask unanimous consent to have printed in the RECORD a statement and a resolution by the Conference of American Small Business Organizations asking for a return to the gold standard.

There being no objection, the statement and resolution were referred to the Committee on Banking and Currency and ordered to be printed in the RECORD, as follows:

BUSINESSMEN SUPPORT RETURN TO GOLD STANDARD

The Conference of American Small Business Organizations today endorsed an immediate return to the gold standard. Meeting in the Nation's Capital, small-business men from all parts of the country adopted a resolution saying that continued use of paper money, irredeemable in gold, would eventually lead this country into communism.

The conference resolution asserted that there was more than enough gold in this country to assure a successful return to the gold standard with all paper money redeemable at $35 an ounce. This is the price the Treasury now pays for newly mined gold. The resolution asserted that foreign countries could get gold for dollars while Americans could not.

The resolution was adopted unanimously by the committee on monetary policy and later adopted by the conference in plenary session. Members of the committee expressed fears that with an unbalanced budget the Government might resort to printing-press money if it did not return to the gold standard. This they said would lead to socialism or communism and ultimately to financial chaos, making worthless all savings accounts, insurance policies, and Government bonds.

The full resolution, as adopted, follows:

"Whereas our country is in peril from the continued use of irredeemable paper money, which Lenin is reported to have said was the most effective way to take over a capitalistic country for communism; and

"Whereas the industry, toil, ingenuity, risk-taking, and thrift of American citizens have been such as to deserve the best form of currency, namely, the gold-coin standard of money with all nongold currency redeemable to the holder thereof in gold; and

"Whereas the evidence of that earning is the $24,000,000,000 now in our Treasury in gold, given up in exchange for dollars which have been used to buy the products of our toil and industry; and

"Whereas that quantity of gold in our Treasury is a higher percentage of gold relative to our total net outstanding currency

plus bank deposits, than experience had found to be necessary in the past when the United States Treasury maintained redeemability to citizens at our gold standard of value; and

"Whereas under our present laws the Treasury may make redeemability good to foreigners, through foreign central banks, at our present standard of value, $35 per ounce of gold, and has been redeeming claims of foreign central banks on our Treasury at that rate (for example sending Italy 116.2 metric tons (over $200,000,000) at $35 per ounce within the past year, and $25,000,000 to Egypt and to other countries); and

"Whereas it is unjust to offer to Americans, whose gold it is, any other standard of value than that by which the Treasury tenders to foreign countries in exchange for dollars; and

"Whereas the alleged emergency under which specie payments were suspended for American citizens on March 6, 1933, no longer exists and was described by the Secretary of the Treasury at that time as 'a suspension for the time being'; and

"Whereas since January 30, 1934, the dollar has been defined as one thirty-fifth of an ounce of gold and the right of the President to change it further expired in 1943 and after consideration by the appropriate committee of the United States Senate such authority was not renewed or extended, thus leaving such standard in existence during the past 16 years, transactions having been based upon that standard by millions of citizens, with the reasonable expectation that in due time convertibility would again prevail: Now, therefore, be it

"Resolved, That the Conference of American Small Business Organizations, meeting at Washington, D. C., expresses itself in support of H. R. 3262 by the Honorable DANIEL A. REED, to put the country back on the gold-coin standard on the basis of $35 per ounce of gold; and be it further

"Resolved, That the chairman of the Conference of American Small Business Organizations and the officers of the conference be instructed to convey this expression to the appropriate committees of the Congress and such other persons in authority as have to do with this subject."

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. THOMAS of Oklahoma:

S. 3334. A bill to amend the Internal Revenue Code by increasing the excise tax on imported crude petroleum and crude petroleum derivatives; to the Committee on Finance.

By Mr. FERGUSON:

S. 3335. A bill for the relief of Joseph Girardi; to the Committee on the Judiciary.

By Mr. O'MAHONEY (for himself and Mr. BUTLER):

S. 3336. A bill to provide for the organization of a constitutional government by the people of Puerto Rico; to the Committee on Interior and Insular Affairs.

By Mr. FERGUSON:

S. 3337. A bill for the relief of Palmer-Bee Co.; to the Committee on the Judiciary.

REORGANIZATION PLAN NO. 1 OF 1950

Mr. ROBERTSON. Mr. President, I ask unanimous consent to submit for appropriate reference a resolution disapproving of Reorganization Plan No. 1 of 1950.

The purpose of this plan is to take from the Comptroller of the Currency his independent status and his control of national bank examiners and to vest his powers in the Secretary of the Treasury.

All national banks are against the proposed change. The Comptroller does not favor it, and I have good reason to believe that the Secretary of the Treasury is not seeking this additional power.

No economy is involved, since all national banks pay the costs involved in their periodic examinations by the Comptroller. No efficiency is involved unless it be claimed that the indirect control by the President through his Secretary of the Treasury of credit policies of the national banks means greater efficiency for a program of deficit financing. That is not the kind of efficiency in which I believe.

The chairman of the Senate Committee on Expenditures in the Executive Departments, to which the resolution will be referred, has assured me that hearings on the resolution would be conducted promptly.

There being no objection, the resolution (S. Res. 246), submitted by Mr. ROBERTSON, was referred to the Committee on Expenditures in the Executive Departments, as follows:

Resolved, That the Senate does not favor the Reorganization Plan No. 1 of 1950, transmitted to Congress by the President on March 13, 1950.

Mr. ROBERTSON. Mr. President, I ask unanimous consent to have printed at this point in my remarks a statement of reasons for opposing Reorganization Plan No. 1.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

RE REORGANIZATION PLAN NO. 1 OF 1950

REASONS FOR OPPOSING THE REORGANIZATION PLAN

1. For 86 years the Office of the Comptroller has enjoyed, and still does, a semi-independent status.

Other branches, bureaus or divisions of the Treasury Department do not possess this standing. The plan, therefore, primarily would affect the Comptroller.

The Comptroller is appointed by the President with the consent and advice of the Senate. He administers the functions of the office under the general direction of the Secretary of the Treasury. He is accountable to Congress through annual reports and through reports on salaries of all bank examiners. He makes recommendations to Congress concerning legislation affecting national banks. He enjoys a position of prestige on the same plane as the heads of other supervisory authorities, such as the FDIC and the Board of Governors of the Federal Reserve System.

The plan would result in the Secretary of the Treasury absorbing all functions of the office and severing the Comptroller's present direct relationship with Congress.

2. The Comptroller's Office does not constitute, in any way, a burden upon our Federal budget.

One of the principal objectives of the Reorganization Act of 1949 is to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government. With this sound principle we are all in accord.

At this time, the Comptroller's Office is entirely self-sustaining, dependent in no way upon appropriations made by Congress or funds supplied by the Treasury Department. The expenses of the office are defrayed exclusively by the assessments on national banks for examinations made by it. Therefore, no reduction of Government expenditures would result from the proposed reorganization plan.

3. Under the plan the Secretary of the Treasury could effect transfers of the funds of the Comptroller's Office, as well as records, property and personnel.

The sum paid to the Comptroller by national banks therefore would be subject to this provision. The Secretary of the Treasury would have control of these funds and any unused portion thereof could be appropriated and used by him to carry out other functions of the Department.

4. It would be a step toward the breaking down of our existing dual banking relationship.

This plan might be only the forerunner of still an additional reorganization plan which would transfer either to the Board of Governors or the FDIC the examining, statistical and other functions of the Comptroller, excepting perhaps the chartering national banks.

5. It would place the Comptroller in an inferior position with relation to the heads of other supervisory bodies, such as the FDIC and the Board of Governors of the Federal Reserve System.

6. The Secretary of the Treasury could reassign duties which might seriously interfere with the efficient operation of the Comptroller's functions.

The Secretary of the Treasury, under the plan, would have complete direction and control over the duties now performed by the Comptroller's Office. The Secretary could authorize any other officer, agency, or employee of the Department to handle any of the functions now performed by the Comptroller's Office. This could lead to serious difficulties in the enforcement of the National Bank Act, as the proper administration of national banking laws requires quick decisions by experienced supervisory authorities, whose decisions are final.

The national banks, at this time, have confidence and are satisfied with the splendid past performance of the Comptroller's Office, and certainly do not desire any change which might in any way jeopardize the same.

7. The plan possibly would involve the replacement of the Comptroller by the Secretary of the Treasury on the Board of Directors of the FDIC, unless the Secretary delegates that function specifically to the Comptroller or to some other official.

8. An Administrative Secretary would be appointed who would perform such duties as prescribed by the Secretary, particularly in supervising and directing the policies and the programs of the Department.

This would inject outside interference in the determination and administration of policies and regulations now carried out by the Comptroller and his assistants.

9. The Office of the Comptroller enjoys the confidence of the national banks of the country.

There are approximately 5,000 national banks in this country, representing over 56 percent of all the commercial banking resources of the United States. These banks look to the Comptroller of the Currency as their sponsor in Washington, a Federal official free to speak and act on their behalf and without censor or influence from a superior. While the banks of the country have the highest respect and confidence in our present Secretary of the Treasury, the Honorable John W. Snyder, there is apprehension that some future holder of this office might use his powers and authority in a way not conducive to sound banking or for the general public welfare. It is a matter of law, rather than a matter of personalities. Over the long years of its existence, the Office of the Comptroller has built up a splendid record. It is our belief that nothing should be done which would in any way disturb the present satisfactory operations of national banks and the public confidence in them.

10. The Office of the Comptroller of the Currency should be kept out of politics.

Congress provided that the term of office of the Comptroller should be for 5 years and, therefore, it would not be concurrent with the tenure of office of the Secretary of the Treasury.

Formerly, his appointment was made by the President on the recommendation of the Secretary of the Treasury, to be confirmed by the Senate. In the Banking Act of 1935, this was changed to provide for the appointment of the Comptroller solely by the President, without the recommendation of the Secretary of the Treasury, but with the advice and consent of the Senate.

Apparently, these provisions were made for the purpose of protecting the national banks with a leadership independent of undue influence from other governmental authority. The Comptroller is responsible for momentous decisions which would insure sound operations for the National Banking System. These decisions should be unbiased and final.

Mr. CAPEHART submitted the following resolution (S. Res. 247), which was referred to the Committee on Expenditures in the Executive Departments:

Resolved, That the Senate does not favor the Reorganization Plan No. 1, of 1950, transmitted to Congress by the President on March 13, 1950.

ADMISSION OF DISPLACED PERSONS INTO THE UNITED STATES—AMENDMENTS

Mr. McCARRAN submitted 47 amendments intended to be proposed by him to the bill (H. R. 4567) to amend the Displaced Persons Act of 1948, which were ordered to lie on the table and to be printed.

Mr. WITHERS submitted an amendment intended to be proposed by him to the amendment in the nature of a substitute intended to be proposed by Mr. KILGORE (for himself and other Senators) to House bill 4567, supra, which was ordered to lie on the table and to be printed.

Mr. ROBERTSON submitted an amendment intended to be propsed by him to the amendment in the nature of a substitute intended to be proposed by Mr. KILGORE (for himself and other Senators) to House bill 4567, supra, which was ordered to lie on the table and to be printed.

Mr. ROBERTSON also submitted an amendment intended to be proposed by him to the committee amendment to House bill 4567, supra, which was ordered to lie on the table and to be printed.

CONTRUCTION AND REPAIR OF CERTAIN PUBLIC WORKS—AMENDMENTS

Mr. ROBERTSON submitted an amendment intended to be proposed by him to the bill (H. R. 5472) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes, which was ordered to lie on the table and to be printed.

Mr. WILEY submitted amendments intended to be proposed by him to House bill 5472, supra, which were ordered to lie on the table and to be printed.

TREND TOWARD SOCIALISM MAY BE HALTED—ADDRESS BY SENATOR CAPEHART

[Mr. CAPEHART asked and obtained leave to have printed in the RECORD a radio address delivered by him on March 19, 1950, which appears in the Appendix.]

WHO ARE "THE PEOPLE"?—EDITORIAL FROM THE INDIANAPOLIS (IND.) STAR

[Mr. CAPEHART asked and obtained leave to have printed in the RECORD an editorial entitled "Who Are 'the People'?" published in the Indianapolis (Ind.) Star on March 21, 1950, which appears in the Appendix.]

APPLICATION OF SOCIAL SECURITY BILL TO WISCONSIN RETIREMENT FUND—STATEMENT BY FREDERICK N. McMILLAN

[Mr. WILEY asked and obtained leave to have printed in the RECORD the statement made by Frederick N. McMillan, executive director of the Wisconsin retirement fund, before the Senate Committee on Finance, on March 23, 1950, regarding House bill 6000, which appears in the Appendix.]

AMERICAN INFORMATION POLICY—LETTER FROM J. EARNEST FISHER

[Mr. SMITH of New Jersey asked and obtained leave to have printed in the RECORD a letter from J. Earnest Fisher regarding the importance of a revised and expanded American information policy, from the Washington Post of March 29, 1950, which appears in the Appendix.]

EFFECT OF TAXES ON WORKERS' INCOMES—EDITORIAL FROM THE PHILADELPHIA DISPATCH

[Mr. MARTIN asked and obtained leave to have printed in the RECORD an editorial entitled "Taxes Are Hijacking Workers," published in the Philadelphia Dispatch of March 26, 1950, which appears in the Appendix.]

BASING-POINT LEGISLATION—ARTICLE BY W. K. KELSEY

[Mr. DOUGLAS asked and obtained leave to have printed in the RECORD an article dealing with the proposed basing-point legislation, written by W. K. Kelsey, and published in the Detroit News of October 18, 1949, which appears in the Appendix.]

REDUCTION IN FLOUR CONSUMPTION

[Mr. SCHOEPPEL asked and obtained leave to have printed in the RECORD an article entitled "Unhappy Millers," written by Edward Hughes, and published in the Wall Street Journal, which appears in the Appendix.]

CAPEHART IS TOUGH FOE OF ISMS—ARTICLE FROM HAMMOND (IND.) TIMES

[Mr. WHERRY asked and obtained leave to have printed in the RECORD an article entitled "CAPEHART Is Tough Foe of Isms," written by Harold Cross and published in the Hammond (Ind.) Times on Sunday, March 26, 1950, which appears in the Appendix.]

OPPORTUNITY AND JUSTICE FOR ALL AMERICA—ARTICLE FROM HAMMOND (IND.) TIMES

[Mr. WHERRY asked and obtained leave to have printed in the RECORD an article entitled "Opportunity and Justice for All America," written by Harold Cross and published in the Hammond (Ind.) Times on Monday, March 27, 1950, which appears in the Appendix.]

STATEHOOD FOR HAWAII AND ALASKA—EDITORIAL FROM THE SALT LAKE TRIBUNE

[Mr. THOMAS of Utah asked and obtained leave to have printed in the RECORD an editorial relating to statehood for Hawaii and Alaska, published in the Salt Lake Tribune of March 10, 1950, which appears in the Appendix.]

MENTAL-HEALTH PROGRAM

[Mr. MORSE asked and obtained leave to have printed in the RECORD a release by the American Psychiatric Association, regarding appropriations for medical personnel in Veterans' Administration psychiatric hospitals, and an article entitled "Tragedy at Mental Hospital Near Philadelphia," published in the Washington Daily News of March 30, 1950, which appears in the Appendix.]

THE KERR NATURAL-GAS BILL—ARTICLE BY THOMAS L. STOKES

[Mr. KEM asked and obtained leave to have printed in the RECORD an article by Thomas L. Stokes entitled "On 'Special Interests,'" published in the Evening Star of March 31, 1950, which appears in the Appendix.]

RUSSIA'S PORTRAIT OF US MUST NOT HANG ALONE—EDITORIAL FROM THE LOUISVILLE COURIER-JOURNAL

[Mr. SPARKMAN asked and obtained leave to have printed in the RECORD an editorial entitled "Russia's Portrait of Us Must Not Hang Alone," published in the Louisville Courier-Journal of March 30, 1950, which appears in the Appendix.]

EASTERNERS HAVE A LOT TO LEARN—EDITORIAL FROM BEDFORD TIMES-MAIL

[Mr. CAPEHART asked and obtained leave to have printed in the RECORD an editorial entitled "Easterners Have a Lot To Learn," published in a recent issue of the Bedford (Ind.) Times-Mail, which appears in the Appendix.]

INAUGURAL ADDRESS OF MORRIS FIDANQUE DE CASTRO, GOVERNOR OF THE VIRGIN ISLANDS

Mr. BUTLER. Mr. President, I ask unanimous consent to have printed in the RECORD at this point the inaugural address of Morris Fidanque de Castro, Governor of the Virgin Islands, delivered at Charlotte Amalie on Friday, March 24, 1950.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

INAUGURAL ADDRESS OF MORRIS FIDANQUE DE CASTRO, GOVERNOR OF THE VIRGIN ISLANDS, DELIVERED AT THE EMANCIPATION GARDEN, CHARLOTTE AMALIE, MARCH 24, 1950

Mr. Chairman, Mr. Secretary, distinguished guests, fellow citizens of the Virgin Islands—

ACCEPTANCE OF TRUST

The great American statesman, Henry Clay, once stated:

"Government is a trust, and the officers of the Government are trustees; and both the trust and the trustees are created for the benefit of the people."

With deep humility, with keen awareness of the great responsibility which I have just assumed, and conscious of the significance of the oath which I have taken, I accept that trust. I call upon Almighty God to bear witness to my pledge that I shall ever hold it sacred and inviolable.

PRESIDENT HONORS VIRGIN ISLANDS

This day, my friends, is not my day. It is a great day for the people of the Virgin Islands. The President of the United States has not only honored me in calling upon me, as a native, to administer the government of these Virgin Islands. He has honored the people of the Virgin Islands by thus recognizing our ability to govern ourselves. In your name, therefore, I pledge loyalty to President Truman's administration and to the great principles for which our Nation stands. One of my first recommendations as governor will be a request which I shall send to the legislature to rename our airport the

Harry S. Truman Airport in recognition of the benefits which have come to us during his administration.

GOOD GOVERNMENT A COMMUNITY UNDERTAKING

As I said in my statement upon my nomination, I am conscious that my responsibility to administer good government in these islands is greater than that of any of my predecessors, because I am the first Virgin Islander to become your governor. These islands are my home and have been the home of my family for generations. I have shared your problems, your joys, and your sorrows. I am one of you. If I fail, you fail. If I succeed, you succeed. My administration, then, must be a community undertaking, and I plan to make it so.

SUPPORT FROM VIRGIN ISLANDERS

I am grateful for the support which has come to me, during the past few months, from the municipal councils of the Virgin Islands and from various organizations, groups, and individuals here and in the United States. It is encouraging to know that, as I enter today upon these arduous tasks, I have the confidence of a large majority of the people of the Virgin Islands, including most of our new continental American residents. In the days that are ahead we shall undoubtedly have differences on many important issues. I sincerely hope that I may be able to retain the confidence of the people and that when differences arise, as they must, we may be able to discuss them constructively; on the basis of principles rather than on personalities and without distortion of motives. I shall come before you, from time to time, in person or by radio appearances, to keep you advised of progress or lack of progress, and the reasons therefor.

SUPPORT FROM HIGH OFFICIALS AND MEMBERS OF CONGRESS

I am impressed, as I know you are, with the support which has come to me and, through me, to you from high Government officials, Senators, and Congressmen. The increasing interest in the affairs of the Virgin Islands by Members of both Houses of Congress has been amply demonstrated. We must prove ourselves worthy of that reservoir of good will. We can and we will capitalize on that good will and interest only if we demonstrate to the people of the United States that, as good American citizens, we are prepared to do everything that is possible for ourselves and to help ourselves. I shall do my utmost to provide the necessary leadership for such a program of increasing self-dependence.

EXECUTIVE-LEGISLATIVE RELATIONSHIPS

In our classification of the functions of government, we consider the legislature as an institution which formulates the will of the people. Legislation, in our democracy, is the united expression of the judgment of the legislative and the executive branches of the government. In my relationships with the two municipal councils and with the legislative assembly, I shall hope to operate on the principle of giving the legislators all the facts and trusting them to make the decisions, reserving to myself the statutory right of the executive to disapprove such decisions when, in my judgment, the public interest demands such action. I hope that there will be few such occasions. We shall have no insurmountable obstacle to harmonious working relationships if each coordinate branch respects the opinions and clearly delineates the sphere of the activity of the other branch; if we draw, as we must draw, a clear line of demarcation between the function of the legislature to make laws and the function of the executive to execute them. In this spirit, my administration shall offer the fullest cooperation to the legislatures. I shall hope to initiate a policy of regular meetings with them to discuss the legislative programs, to keep me abreast of legislative policies and thinking, and conversely to keep them abreast of executive policies, progress, and thinking.

A PLANNING AGENCY

I consider it extremely important to organize a planning agency for the Virgin Islands. In terms of the practical affairs of our municipal governments, hard pressed with immediate problems, and with a shortage of funds and personnel to meet them, a competent planning agency can be of real help in solving or ameliorating some of these problems. By advance planning, public expenditures can be better held within the financial means of a community. Intelligent planning makes it possible to check on wasteful spending by eliminating duplication of expenditures by several agencies. An active planning agency can make a comprehensive land-use, economic, and social survey. It should be able to develop a modern zoning plan for furthering the rational use of land throughout the islands.

LABOR RELATIONS

I shall continue to advocate measures for the protection of labor, to insure the workingman a living wage, and proper conditions of employment. I believe that we already have the nucleus of such a program in our wage-and-hour legislation, workmen's compensation acts, and labor-relations act. At the same time I shall expect that labor will cooperate by giving a full day's work for a full day's pay and, with the guidance of wise and honest leadership, create confidence in their ability to do their jobs and to earn the highest possible wages consistent with existing economic conditions. I am happy that Secretary Chapman, as Chairman of the Board of Directors of the Virgin Islands Corporation, has tentatively authorized that the wages of agricultural workers of the Corporation be increased to $2.40 per day, subject to review at the Board's meeting to be held in Washington, April 17. This is in keeping with the minimum-wage rates stipulated in the recently enacted Wage and Hour Act for the Municipality of St. Croix. Such recognition of a local policy is very significant and reassuring. As soon as funds become available, we should create a Department of Labor in our government.

COMMERCE AND INDUSTRY

I recognize a serious deficiency in the administration in that it has had no department of commerce to promote the commercial and industrial interests of the islands. Until funds can be made available for the creation of such a department as a regular agency of the government, I shall designate an outstanding and progressive businessman in each municipality to act as my adviser on commercial and industrial relationships and problems. It is essential that business shall have no doubt of the good will and full cooperation of the Governor and the administration as a whole. There must be a unity of purpose between the executive, the legislature, labor, and business. This can be achieved by thoughtful leadership in each branch. I shall do everything within my power to create that better spirit of cooperation and, with full support from all sources, all aimed at the economic stability of the islands, much can be accomplished.

DEPARTMENTAL ORGANIZATION

I plan to send to the Legislative Assembly of the Virgin Islands proposals to establish each department of the government on an organized basis in order to fix their responsibilities and define their functions. The lack of statutory authority for most of our departments has been the source of much confusion and some inefficiency. I shall expect every department of the government to perform its functions at the highest level of efficiency consistent with personnel and fiscal limitations. I shall remind all government officials and employees that they are servants of the people. I shall hold them strictly accountable for orderly, economical, and efficient operation of our public services.

FINANCIAL SITUATION

The financial condition of the two municipalities is a source of grave concern to us all. We must find new sources of revenue in order to maintain our essential services without adversely affecting the economic life of the communities. We must simultaneously reduce our operating expenses, eliminate unnecessary and extravagant expenditures, and bring our budget into balance with our revenue together with such deficit appropriation as Congress may make for the Virgin Islands. I want an outside, impartial, and thoroughly competent agency to examine our tax laws and our departmental operations for the purpose of advising us whether and from what sources we can obtain more revenues, and whether our departments are being operated efficiently and economically. I shall ask the Congress to appropriate funds for such an expert survey and study of our government by an independent agency. I want to obtain as much revenue as we can properly raise to provide necessary funds for efficient operation of our departments and institutions, but I am unwilling to destroy what wealth there is in the community by arbitrary use of the taxing power without expert assurance that we have not arrived at the point of tax saturation. The taxpayers have a right to know and to demand that we shall get a dollar's worth for every dollar spent by the community for its public services. Our newly established public auditor's office will serve as a check, preventing extravagant, unnecessary, and irregular expenditures.

AGRICULTURE

Agriculture has been the base of the economy of the island of St. Croix through all past years and will continue to be at least one of its two greater bases for the future. Neither tourism nor anything else can replace it. In St. Thomas, agriculture has not played an important part in the island's economy. In this island as well as in the island of St. John conditions must be found to encourage more and better production of vegetables, fruits, and livestock. I am counting heavily on the recommendation now before the Congress to provide that the Department of Agriculture will take over the management of the agricultural program on July 1, 1950. Under the Department of Agriculture, and with the cooperation of the Virgin Islands Corporation, an adequate agricultural extension program can be established, a program of forest improvement and management can be undertaken, with necessary research, and the provision of additional technical assistance to our soil-conservation districts. The Virgin Islands Corporation should be given the means to provide the kinds of agricultural credit in the islands not now provided by the Farmers Home Administration, as well as other services and direct aids.

EDUCATION

If the Virgin Islands are to stand as a respectable and respected American community, we must find ways and means of providing better educational facilities. Such facilities cannot exist without an adequate staff of capable teachers; nor without adequate housing; nor without the necessary tools, supplies, and audio-visual aids. Adequate provision for elementary and secondary education is a prime objective of our school program. We must embark on a well-conceived plan to advance the minimum qualification of teachers from high school graduation to not less than 2 years of professional training. However, we must get full return for every dollar expended in the better education of our younger generation as responsible citizens in a democracy, willing and able to work in all fields of endeavor.

HEALTH PROGRAM

Our health program must be focused on the need for enlarging the public health phase through programs in the field of nutrition for the young, and forestalling the effects of the regenerative diseases in the older population; on strengthening the quality of the medical care phase and organizing programs similar to the Blue Cross or Blue Shield plans so that that segment of the people who can pay may contribute to the support of our health facilities; and by emphasizing the salvageability of old people by recognizing that many of our old persons can be effectively treated and returned to society as useful citizens. We will need funds for a sufficient number of physicians and other medical workers to implement this ambitious program.

LAW AND ORDER

We are a law-abiding people. Organized crime does not exist here. We must maintain that record. We must reduce juvenile delinquency by eliminating those economic and social ills which produce it. We must maintain respect for law and order. Our policemen must be properly trained in their indispensable role as preservers of the public peace. My administration will be dedicated to the vigorous and impartial enforcement of law. We must be ever vigilant to keep our surroundings free from unwholesome influences.

PUBLIC WORKS

The $10,000,000 program must be revitalized. I am encouraged by the recent action of the President in transferring to the Department of the Interior the supervision of this program. We must provide the means whereby all city properties within a reasonable distance from sewer, salt water, and potable water lines shall be connected thereto as soon as possible. A revolving fund must be established from which loans may be made at low interest rates for this purpose. We must reshuffle our garbage collection service, after procurement of satisfactory equipment, and diligent enforcement of the sanitary code, so as to recapture our reputation as the cleanest islands in the West Indies.

ELECTRIC ENERGY

My administration will be committed to public ownership and operation of light and power facilities. I believe that, as a long-range measure, public ownership assures reasonable rates, and services which are amenable to comunity needs. There is every reason to believe that power plants will be made available to us in the near future.

SOCIAL WELFARE

We are well on the way to securing the extension to the islands of the entire Federal social security program. We must unite all forces in the islands to make this program work successfully in all its phases including the social insurance, the public assistance, and the child welfare programs. We must provide adequate facilities for the efficient care of children with special problems. We should establish a program to promote profitable use of leisure time among our children and youth, including the development of a good apprenticeship program. We should sponsor a program of community thinking to study ways and means to improve family life, child care and training, and the obligations of the citizens to their community. We must enlist professional studies of problems which confront us in these fields.

HOUSING

We should eliminate from all the islands as rapidly as possible all slum housing, and replace it with adequate housing at rentals within the reach of low-income families. We must also promote the provision of suitable housing for the middle-income group. As a complement to this program, the redevelopment of our communities should be planned. For all these objectives, we will utilize all Federal resources which are available and secure local participation.

PERSONNEL MERIT SYSTEM

We have already established a personnel merit system with the objective of creating a public service in which merit—and merit only—is recognized as the basis for appointment, tenure, and promotion. Our municipal employees stand to gain tremendously through this program. We must have in the public service the best character and capacity of the islands. There must be public recognition of the fact that in our civil service we are purchasing services for which we expect full value. Our public contacts through the public service must be skillful, intelligent, responsible, honest, and impartial. Our insular civil service system is in its infancy. As we advance in experience in this field we will make improvements until the system is functioning in the best interest of both the Government and the employees.

TAX ASSESSMENTS

I have already directed a general review of real property valuations with the view of determining whether present assessed valuations are in conformity with current market prices. In communities within the Virgin Islands where vast areas of land are held in an undeveloped stage by private individuals or concerns, consideration should be given to measures which will hasten the development of such areas for community growth and increased revenues. A critical analysis must be made of other tax laws and a uniform tax code adopted for the islands.

TOURISM

The past 6 months have seen the groundwork laid for the first constructive and professional tourist program which these islands have known. In the tourist industry we must develop an ever expanding economy based on the very real assets which God has given us—perfect climate and natural beauty. I cannot sufficiently stress the importance of a successful tourist program to these islands. I am sure that there are thousands of persons who will wish to come to the Virgin Islands to enjoy our Old World atmosphere, our sunshine, our beaches, and the hospitality of our people. We prefer these real values to any superficial or tawdry ones.

NO DISCRIMINATION

Here in the Virgin Islands we have been accustomed to welcome people of all races and of all nationalities to our shores. We have been accustomed to treat a man as a man, without preference as to race, religion, or nationality. We pride ourselves on being a cultured people. Our culture is based on the recognition and respect of human rights. There is an antidiscrimination law on our statute books. It may need to be strengthened as the occasion arises. But laws of this kind are not worth the paper on which they are written if they are not implemented by proper human relationships. All those who come to our shores are welcome as men and women. We appreciate their contributions to our economy and to our culture. We shall do everything possible to help them live comfortably and harmoniously among us. We must find ways and means of integrating them into our community life. But we do not want any discrimination.

CONGRESSIONAL LEGISLATION

My immediate objectives before the Congress of the United States will be to urge early adoption of a bill to provide a Resident Commissioner in Washington for the Virgin Islands; a bill to return to the Virgin Islands the proceeds of the United States internal-revenue taxes; a bill to provide for the establishment of National Guard units in the Virgin Islands; a bill to transfer the agricultural stations to the Department of Agriculture; and a bill to provide for the full extension of the social-security program to the islands. I shall also seek funds from Congress to provide for harbor dredging in St. Thomas and harbor improvements in St. Croix. Revision of our organic act should also occupy our attention, but I believe that we, in the Virgin Islands, should first decide just what basic reforms we desire in order to present a unified approach to Congress on this important matter. Our people have voted against an elective governor, against a single legislature, and against a single treasury. These important basic reforms should be placed before our people again.

SELF-DEPENDENCE

I cannot emphasize too strongly the importance of self-support and self-dependence. We must make every effort gradually to reduce our dependence on the Federal Government. Our limited economic resources may make this a truly difficult goal and one which may take some time to achieve. In the attainment of this objective, we shall expect that the Federal Government will treat us the same as our brothers on the mainland and in Puerto Rico by making us eligible to receive all social security, educational, health, and welfare grants on the same basis as other American citizens. We shall ask Congress to grant us the simple justice of returning to us the internal-revenue taxes which Puerto Rico has enjoyed over a period of many years. But we must not ask for and expect these benefits without actively supporting in these islands those measures which will bring us closer to the goal of self-support. We need the tourist dollar. We need to cash in on increasing continental interest in business enterprises. We need small industries. We need to produce more food and to import less. We need to provide more and better local handcraft. Visitors to these islands want to take back home distinctive local products. We need credit facilities. Our more prosperous citizens need to have more faith and confidence in the future of these islands, and to express that faith in active political as well as financial participation in local affairs and enterprises. These objectives cannot be accomplished unless our people provide the same degree of efficient and interested service as is offered in other American communities, unless we provide training opportunities for our young people to raise their own standards and those of the community, unless our communities can offer the skills which are necessary for them, and promote opportunities for such skills to be used here rather than elsewhere.

CONCLUSION

As I assume full responsibility today, in my own right, for the affairs of the government of the Virgin Islands, I do so without any delusions or imported notions, but rather with the knowledge of the events and experiences of 30 years of Government service. I have outlined the important objectives of my administration. These objectives cannot be accomplished without good will and without the wholehearted cooperation of all Virgin Islanders, and friends of Virgin Islanders, here and abroad. They cannot be accomlished without hard work and intelligent and painstaking efforts on the part of all our citizens. For my own part, I shall offer my people the leadership which I believe they want. I shall welcome constructive criticisms and suggestions. My office shall be open to all, as before, although I must promptly free myself of burdensome details in order to give more time and energy to thinking and planning. I shall work hard. I shall expect my staff to do likewise and to follow the pace which I shall set. I ask that my people give me understanding and cooperation. On the success of my administration will depend, to a large extent, how much

greater autonomy will be given to the Virgin Islands in the future. In the past few months I have been supported by numerous persons and organizations. I am proud to say of our people that no one has asked me for any political commitment or special favor. I have made commitments to none. My sole commitment is to give to my task all my time, all my energy, all my experience, and whatever skill I may possess, to advance the true interests of and to provide good government for these beautiful islands which are my home. So help me God.

DISPLACED PERSONS

The Senate resumed the consideration of the bill (H. R. 4567) to amend the Displaced Persons Act of 1948.

Mr. McFARLAND. Mr. President, I ask unanimous consent that the unanimous-consent agreement entered into with respect to the displaced-persons bill be modified so as to provide that voting on the bill and all amendments be concluded not later than 4 o'clock next Wednesday.

The VICE PRESIDENT. Is there objection?

Mr. KNOWLAND. Mr. President, reserving the right to object, will the Senator yield?

Mr. McFARLAND. I yield.

Mr. KNOWLAND. As I pointed out heretofore, I shall object to any unanimous-consent agreement which does not provide for at least 5 minutes of explanation on each amendment.

Mr. McFARLAND. That is already provided in the original unanimous-consent agreement.

Mr. WHERRY. Mr. President, reserving the right to object, as I understand, the unfinished business at the present time is the displaced-persons bill. Furthermore, it is my understanding that when the Senate disposes of the displaced-persons bill, it will resume the consideration of the so-called flood-control and rivers and harbors bill. I ask the distinguished acting majority leader if he would consider making a part of his unanimous-consent agreement a provision that, although on the conclusion of the displaced-persons bill, the consideration of the rivers and harbors bill will be resumed, since it is the unfinished business, the conference report on the basing-point bill will be made the unfinished business after the displaced-persons bill has been disposed of.

Mr. McFARLAND. Mr. President, I could not do that without the consent of the senior Senator from New Mexico [Mr. CHAVEZ]. The conference report is a privileged matter, which could be moved to be taken up at any time, and if it were so moved, undoubtedly it would be.

Mr. McCARRAN. Mr. President, to what is the Senator referring? I apologize to the Senator.

Mr. McFARLAND. The minority leader asked the Senator from Arizona to include in the proposed unanimous-consent agreement a request to make the conference report on the basing-point bill the unfinished business following the disposition of the displaced-persons bill.

Mr. McCARRAN. Mr. President, I could not agree to that because I shall move to take up the conference report on the basing-point bill today. The conference report has been pending before the Senate for weeks. It should have been taken up earlier. It is a privileged matter.

Mr. KNOWLAND. Mr. President, will the Senator yield for a question?

Mr. McFARLAND. I yield.

Mr. KNOWLAND. I have read the proposed unanimous-consent agreement, but I am not sure that it covers a point I have in mind on the question of debate immediately preceding the vote on amendments. I understand from reading the agreement that in addition to the debate on the bill there shall be 2 hours of debate on each amendment, but the 2 hours of debate on an amendment might come considerably ahead of the actual vote by the Senate on the amendment. I want to be sure that there is at least a 5-minute explanatory period provided for, before the Senate is called upon to vote on an amendment.

Mr. McFARLAND. Then I modify my request, Mr. President——

The VICE PRESIDENT. The Senator from California is in error in stating that there is provided in the unanimous-consent agreement a 2-hour period of debate on each amendment. The unanimous-consent agreement provides for 1 hour of debate on each amendment, and 2 hours on the substitute.

Mr. KNOWLAND. Mr. President, I stand corrected on that point. But I want to be sure that the point I raised is covered.

Mr. WHERRY. Mr. President, reserving the right to object, if the distinguished Senator from Arizona, who now is acting majority leader, feels that the unanimous-consent request that a vote on the displaced-persons bill be had next Wednesday may be defeated by adding the suggestion of the Senator from Nebraska that after disposition of the displaced-persons bill the conference report on the basing-point bill be made the unfinished business, I withdraw that request, because I do not want in any way to hurt the consideration of the displaced-persons bill or a vote on that bill. But I say to the acting majority leader that I feel that the time has arrived when the conference report on the basing-point bill should be made the unfinished business, because it is privileged, and it has been before the Senate for more than a month.

The VICE PRESIDENT. Is there objection to the request of the Senator from Arizona [Mr. McFARLAND]?

Mr. McCARRAN. Mr. President, reserving the right to object, I will say that I now understand the Senator from Arizona amends his request for unanimous consent so as to fix an hour on Thursday for the vote. Is that correct?

Mr. McFARLAND. If the Senator objects to Wednesday I will so amend the request if thereby we can secure an agreement. I would prefer to have Thursday set as the day on which to vote, rather than not have any agreement at all. Is that the wish of the Senator from Nevada?

Mr. McCARRAN. If I agree to the request at all, the request should contain a provision that the vote be had on Thursday at some given hour.

Mr. McFARLAND. Mr. President, I so modify my request; to make the day Thursday instead of Wednesday.

Mr. WHERRY. At what hour?

Mr. McFARLAND. At 4 o'clock p. m.

Mr. McCARRAN. Mr. President, I think I have the floor, though I am not certain. Will the Chair please advise me as to that?

The VICE PRESIDENT. The Chair recognized the Senator from Arizona to make a request, and he still has the floor.

Mr. McCARRAN. Very well.

Mr. FERGUSON. Mr. President, reserving the right to object, I should like to obtain some information. If an hour is fixed on Thursday for the vote, will that mean that in the meantime the conference report on the basing-point bill may be taken up and consume all the time, or that the rivers and harbors bill may be taken up? I should like to obtain information on that point.

Mr. McCARRAN. Mr. President, may I be heard on that question for a moment, please?

The VICE PRESIDENT. Does the Senator from Arizona yield to the Senator from Nevada? The Senator from Nevada is reserving the right to object, is he?

Mr. McCARRAN. Yes. If the Senator from Arizona will yield to me, I wish to make a brief statement.

I want to be fair with the Senate, and to state exactly what my views are. I desire to get through with the displaced-persons bill as expeditiously as possible. By the provisions of the unanimous-consent agreement under which we are now working, we can discuss amendments to the displaced-persons bill all day long to empty seats and address empty desks, and get no vote on anything, because the gentlemen's agreement, so-called, provides that no vote shall be taken today. That was stated by the majority leader on the floor of the Senate. So those of us who have worked for months on the displaced-persons bill, and who desire to have Members of the Senate present during discussion of the bill, will find ourselves addressing empty seats all day long, with no vote whatever being taken. I do not think that is fair either to the Members of the Senate or to those of us who are interested in either the passage or the defeat of the amendment of the pending bill. That being true, there is before the Senate a privileged matter of the first magnitude, namely, the conference report on the basing-point bill which I propose to try to have brought before the Senate today. It can be debated all day today, and we can consume the day in that manner. Then on Monday the conference report can be laid aside, and we can proceed with consideration of the displaced-persons bill. But the basing-point bill conference report is a privileged matter, which should be considered and disposed of. It has twice been before the Senate, first in the form of the bill, and subsequently as a conference report; and the conference report was returned to a further conference. The House has voted on the report coming from the further conference, and

it has now been before the Senate for several weeks, and should be disposed of.

I should prefer to take up either the basing-point bill conference report or any other measure which is of vital importance, and discuss it today, and then let us proceed to consider the displaced-persons bill at a time when we can vote on the amendments as they come forward, which we cannot do today, under the agreement.

If the program is to be as now appears, I must move, and shall move, that the Senate take up the basing-point bill conference report.

Mr. FERGUSON. Mr. President, reserving the right to object, what the Senator from Nevada has just stated is my reason for rising at this time. If we are going to take up the basing-point bill conference report, its consideration may run along for some time, and it may not be voted on until perhaps Wednesday, for I now see standing on the floor two Senators who will wish to discuss the report, and I suppose they will wish to be heard on it in some detail. Senators on this side of the aisle will also wish to be heard on that subject. So we might find ourselves in such a position that there would be very little debate on the displaced-persons bill.

I agree wholeheartedly with the distinguished Senator from Nevada, the chairman of the committee, that we could find ourselves speaking to empty desks today, because no vote can come today on the amendments to the displaced-persons bill. I think it very important that the bill be discussed in the presence of Senators, so that they may ask questions, and so that there may be a real debate. That is the reason why I raise this point.

Mr. McCARRAN. Mr. President, again asking the Senator from Arizona to yield to me, let me say that I am perfectly willing to agree to have the Senate vote on the displaced-persons bill at an hour certain some day next week. I am perfectly willing to agree to have all the time from Monday of next week until the hour of voting on the displaced-persons bill divided between the proponents and the opponents. My reason for taking that position is that I do not wish to be talking to empty desks when we are considering that subject.

Mr. McFARLAND. Mr. President, in view of the colloquy that has taken place, I wish to revise my unanimous-consent request, so as to provide that beginning Monday, instead of today, the time on the displaced-persons bill be divided between the proponents and the opponents, in the same manner as is provided in the present unanimous-consent agreement; and that all amendments and the bill itself and all motions pertaining thereto be voted upon not later than 4 o'clock on next Thursday.

Mr. WHERRY. Mr. President, reserving the right to object, I should like to suggest to the distinguished acting majority leader that the hour should not be later than 3 o'clock. If it is the desire of the Senator from Arizona to have the time equally divided between 12 o'clock and 4 o'clock, then if the acting majority leader would amend his request so as to provide that the Senate convene at 11 o'clock on Monday, and then provide that the time be equally divided between 11 a. m. and 3 p. m. on Monday, he would accomplish a great deal because several Senators have informed me, as I am sure the Senator from Arizona is aware, that they wish to offer amendments in addition to those presently at the table, and there are about 20 amendments there. Furthermore, many Senators wish to leave the city on the 5:30 p. m. train to spend Easter Sunday with their families.

So it seems to me that the vote should be set for 3 o'clock, and the agreement should provide that the Senate convene at 11 o'clock on Monday morning. There would be no discomfort to Senators by having the Senate convene 1 hour earlier on that day. It is perfectly agreeable to me that commencing Monday, at 12 o'clock, the time be divided equally, as is now provided in the present agreement, with the exception of the point raised by the distinguished Senator from California [Mr. KNOWLAND], namely, that any amendment or motion which might be offered even after the hour of voting has arrived certainly should receive some consideration, and some time should be allotted to discussion of it, after the hour of voting—3 o'clock—arrives.

So I suggest that at least 5 or 10 minutes be allowed for debate on any new amendment—in other words, 5 minutes to each side—in order to provide that opportunity to any Senator who might wish to offer an amendment to the bill after the hour of voting arrives.

Mr. LONG. Mr. President——

Mr. McFARLAND. I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, reserving the right to object, there are those of us who are opposed to the conference report on the basing-point bill who would like to have it brought to a vote, preferably next week. However, we would like to debate it for 2 or 3 days. If it comes up today, we could debate it today and one more day following today, or after the displaced-persons bill is acted upon we could debate the conference report on the basing-point bill.

We should like to have time available next week for debate on the conference report. I wonder whether we could arrange for sufficient time today or tomorrow, or else perhaps sometime next week we could proceed with debate on the basing-point-bill conference report.

Mr. McCARRAN. Mr. President, how would it be to amend the displaced-persons bill by making it a displaced-persons conference report? [Laughter.]

Mr. McFARLAND. Mr. President, I am only trying to expedite the business of the Senate. If the unanimous-consent agreement now proposed is entered into, so as to provide for the further proceedings on the displaced-persons bill to commence on Monday, then any business may be transacted today that is brought up. However, if such business is not finished today, we would have to return to consideration of the displaced-persons bill on Monday and continue with it until that bill is finally disposed of.

In order to accommodate the wishes of the Senator from California——

Mr. McCARRAN. Mr. President, if the Senator from Arizona will permit me to do so, I should like to make a suggestion to him: I make the suggestion that some other business be taken up today; and that from the convening of the Senate on Monday until some convenient hour—possibly 3 o'clock on Thursday, which will be satisfactory to me—the time be devoted to the further consideration of the displaced-persons bill; and that the basing-point bill conference report follow that, as a privileged question.

Mr. FERGUSON. Mr. President, reserving the right to object——

Mr. WHERRY. Mr. President, a point of order.

The VICE PRESIDENT. The Senator will state it.

Mr. WHERRY. I make the point of order that the Senate is not in order.

The VICE PRESIDENT. The point of order is well taken.

Mr. FERGUSON. Mr. President, reserving the right to object——

The VICE PRESIDENT. The Senate will be in order. Senators will resume their seats. The Chair will not recognize any Senator until he is at his seat.

Mr. FERGUSON. Mr. President——

Mr. McFARLAND. I yield to the Senator from Michigan.

Mr. FERGUSON. Do I correctly understand that the proposal is that the time from Monday noon be controlled time until on Thursday the hour of voting on the displaced-persons bill is reached?

Mr. McFARLAND. That is correct; that is the proposal.

Mr. FERGUSON. I have no objection, under those circumstances.

Mr. McFARLAND. Mr. President, I again wish to propose the unanimous-consent request in the manner now modified, namely, that the voting begin——

The VICE PRESIDENT. The Chair would like the Senator from Arizona to state the unanimous-consent request as now modified, because the Chair must submit it to the Senate for consideration.

Mr. McFARLAND. Very well. I ask unanimous consent that the unanimous-consent agreement previously entered into in regard to House bill 4567 be modified, so that the debate will begin on Monday at 12 o'clock; otherwise, that the unanimous-consent agreement previously entered into, including the provision as to germaneness, remain in effect; further, that all votes be taken on or before 3 o'clock next Thursday; provided, that if any amendment or motion has not been debated before 3 o'clock, each side shall have 5 minutes to debate it thereafter.

The VICE PRESIDENT. Let the Chair state the request as he understands it. It is that the unanimous-consent agreement heretofore entered into be modified by postponing the further consideration of the displaced-persons bill until Monday next, that the limitation of 1 hour on each amendment and 2 hours on the substitute be retained and

be effective, as is provided in the unanimous-consent agreement heretofore entered into; and that the vote be taken at 3 o'clock—Is it the suggestion that the vote be taken at 3 o'clock, or not later than 3 o'clock?

Mr. McCARRAN. Not later than 3 o'clock.

The VICE PRESIDENT. That the vote be taken not later than 3 o'clock on Thursday next; and that, at the hour of 3 o'clock, any amendment which is offered shall be entitled to 5 minutes' debate on each side.

Mr. McFARLAND. Provided the amendment has not been debated previously.

Mr. KNOWLAND. No, Mr. President.

The VICE PRESIDENT. The Chair will state that raises the question as to the interpretation of the agreement relating to debate.

Mr. McFARLAND. Very well. I withdraw the suggestion as to amendments which have previously been debated.

The VICE PRESIDENT. The fixing of a definite hour for a vote on a bill and all amendments has heretofore been presumed to mean that there would be no votes on either the bill or the amendments prior to that time. Under the unanimous-consent agreement heretofore entered into for an hour's debate on each amendment, any amendment could be offered and debated for an hour, to be voted on at the end of that hour.

Mr. McFARLAND. That is correct.

The VICE PRESIDENT. But if we fix a time for voting at a definite hour on Thursday, or on any other day, with the provision that the bill and all amendments shall be voted on at that time, or thereafter, it may raise the question whether any amendment on which there has been an hour's debate prior to that time can be voted on until that hour arrives.

Mr. McCARRAN. I want that clarified, so we may debate amendments at any time.

Mr. CHAVEZ. Mr. President, I intend to object, anyway; so there is no use prolonging the discussion.

The VICE PRESIDENT. The Senator from New Mexico objects. The Senator from Nevada [Mr. McCARRAN] is recognized.

Mr. FREAR. Mr. President, will the Senator from Nevada yield?

The VICE PRESIDENT. Under the unanimous-consent agreement which is in effect up to this time, the Chair would think that the first committee amendment should be stated, in order that Senators may address themselves to it.

DELIVERED-PRICE SYSTEMS AND FREIGHT-ABSORPTION PRACTICES—CONFERENCE REPORT

Mr. McCARRAN. Mr. President, I submit at this time the conference report on Senate bill 1008, the so-called basing-point bill.

The VICE PRESIDENT. The conference report will be read.

The Chief Clerk read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1008) to define the application of the Federal Trade Commission Act and the Clayton Act to certain pricing practices, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendment numbered 1: That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: "(*except where such absorption of freight would be such that its effect upon competition will be to substantially lessen competition*)"; and the House agree to the same.

Amendment numbered 2: That the Senate recede from its disagreement to the amendment of the House numbered 2, and agree to the same with an amendment as follows: Omit the matter proposed to be inserted by the House amendment; and the House agree to the same.

Amendment numbered 3: That the Senate recede from its disagreement to the amendment of the House numbered 3, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: ", *and this may include the maintenance above or below the price of such competitor, of a differential in price which such seller customarily maintains, except that this shall not make lawful any combination, conspiracy, or collusive agreement; or any monopolistic, oppressive, deceptive, or fraudulent practice*"; and the House agree to the same.

Amendment numbered 4: That the Senate recede from its disagreement to the amendment of the House numbered 4 and agree to the same.

PAT MCCARRAN,
HERBERT R. O'CONOR,
ALEXANDER WILEY,
Managers on the Part of the Senate.

EMANUEL CELLER,
FRANCIS E. WALTER,
EARL C. MICHENER,
CLIFFORD P. CASE,
Managers on the Part of the House.

Mr. McCARRAN. I move that the Senate agree to the conference report.

The VICE PRESIDENT. Is there objection to the present consideration of the conference report?

Mr. SMITH of New Jersey. I object.

Mr. RUSSELL. Mr. President, reserving the right to object——

The VICE PRESIDENT. The Chair hears an objection. The Senator from New Jersey objects.

Mr. RUSSELL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state the inquiry.

Mr. RUSSELL. Until this juncture, the Senate is operating under a unanimous-consent agreement which would limit debate to 30 minutes to any individual Senator. I should like to inquire whether, if the Senate should decide to displace the pending business and take up the conference report, that limitation of debate would apply to the conference report.

The VICE PRESIDENT. It would not.

Mr. RUSSELL. The Chair therefore rules that if the conference report should be taken up, it supersedes the displaced-persons bill. Am I correct?

The VICE PRESIDENT. It would temporarily displace it, because of the privileged character of the conference report; but, as soon as the conference report was disposed of, the Senate would automatically return to the displaced-persons bill.

Mr. McFARLAND. Mr. President, I should like to renew the unanimous-consent request.

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Arizona?

Mr. McCARRAN. I yield.

Mr. McFARLAND. I desire to renew the unanimous-consent request. The Senator from New Mexico was under the impression that, if the unanimous-consent request were agreed to, the Senator from Nevada would make a motion with respect to the conference report, but the Senator from Nevada informs me he has no intention of making the motion in the event the unanimous-consent request is agreed to.

Mr. McCARRAN. That is correct.

Mr. CHAVEZ. Mr. President——

The VICE PRESIDENT. The Senator from New Mexico.

Mr. CHAVEZ. Let the Senator from New Mexico speak for himself. The Senator from New Mexico has been most tolerant and patient in awaiting action on H. R. 5472, which is the unfinished business of the Senate. I am going to object to anything, except the privileged matter, which would in any way interfere with a matter which has been delayed in the Senate for 6 months. If the Senator from Nevada will assure the Senate—not the Senator from New Mexico—that the unfinished business, H. R. 5472, will be next in order, I shall not object; otherwise, I shall.

The VICE PRESIDENT. The Chair might state that if the conference report is taken up by unanimous consent or on motion, being privileged, it temporarily sets aside the pending displaced-persons bill, debate on which was by unanimous consent to proceed today.

Mr. CHAVEZ. I understand.

The VICE PRESIDENT. Upon the conclusion of the consideration of the conference report, the Senate would, because of the unanimous-consent agreement, automatically return to the consideration of the displaced-persons bill, which would temporarily suspend consideration of the bill, H. R. 5472, commonly known as the rivers and harbors bill. But immediately upon the conclusion of consideration of the displaced-persons bill, the Senate would resume automatically the consideration of the rivers and harbors and flood control bill.

Mr. CHAVEZ and Mr. WHERRY addressed the Chair.

The VICE PRESIDENT. The Senator from New Mexico.

Mr. CHAVEZ. Mr. President, there is no objection whatever on the part of the Senator from New Mexico to having any privileged matter submitted. There is no objection whatever to taking up the unanimous-consent agreement, so far as the displaced-persons bill is concerned; but anything aside from that will be objected to.

PROPOSED UNANIMOUS-CONSENT AGREEMENT ON DISPLACED-PERSONS BILL

Mr. WHERRY. Mr. President, reserving the right to object, it looks as

though we are getting to an agreement. There are one or two provisions I should like to have clarified, or at least brought to the attention of the acting majority leader, if there is to be a unanimous-consent request. First, the hour to vote should be fixed at 3 o'clock—not on or before, but at 3 o'clock—on any motion, on any amendment which is germane, or on any amendment that may be offered thereafter. It is immaterial to me how the time is divided between Monday and 3 o'clock Thursday, except that it is the sense of those on this side of the aisle that, starting Monday noon, the displaced persons bill should continue to be the pending business continuously until the vote is taken on Thursday afternoon at 3 o'clock. That is my second point. Third, any amendment offered after 3 o'clock—and I have suggested 3 o'clock simply for the convenience of many Senators, and while it is immaterial to me, I think it would be well for the Senate to convene at 11 a. m. on Thursday, that as to any amendment offered after the hour of 3 o'clock, opponents and proponents of the amendment shall be given at least 5 minutes on a side—I think it ought to be 10—in order to explain the amendment.

I think that with those provisions, the Senate would know that voting would begin at a definite time; that the displaced-persons bill would be continuously the pending business, although, of course, other speeches could be made, and that no action could be taken on the amendments or the bill until the time fixed. I do not care how the time may be divided. If the time is divided, it would be necessary for a Senator desiring to speak to obtain the consent of those controlling the time.

Under such an agreement, the distinguished Senator from New Mexico would know when the vote is to be taken. His bill would then be reinstated automatically as the pending business, unless a privileged matter were brought forward afterward.

Mr. CHAVEZ. The Senator from New Mexico is not interested in what happens after next Thursday, or whenever it may be agreed to vote on the displaced-persons bill. The Senator from New Mexico is interested, and every other Senator is interested in the flood control, rivers, and harbors, and navigation bill. I want to know what is going to happen today and tomorrow.

Mr. WHERRY. Mr. President, since the Senator seems to address that question to me, my suggestion is that since the Senate probably will not sit on Saturday, nothing will happen tomorrow. But today, there will be no vote on the displaced-persons bill. It is my judgment that speeches would be in order, and that anything the Senator from New Mexico wanted to take up would be in order. I do not know whether a privileged matter might be called up; but I should think that a privileged matter which could not be concluded today would be taken up. So in my judgment the Senator from New Mexico would be able to proceed with the consideration of his bill today.

Mr. CHAVEZ. And that is what I want.

Mr. NEELY and Mr. McFARLAND addressed the Chair.

The VICE PRESIDENT. The Senator from West Virginia.

Mr. NEELY. Reserving the right to object, let me inquire whether the complicated and confused unanimous-consent request includes a requirement that the Senate vote not only on all the amendments, but also on the bill.

Mr. McCARRAN. Mr. President, if I may answer, I should like to have votes on the amendments and on the substitute as we proceed. I do not like to put over to an hour on Thursday the votes on all amendments, the substitute, and the bill. I should like to debate them and to have votes taken after the debate. That would be my desire.

Mr. NEELY. Mr. President, further reserving the right to object, unless the request provides for the final vote on the displaced-persons bill itself not later than next Thursday night, I shall object. Without this safeguard, delaying operations in this important matter might be continued till doomsday.

The VICE PRESIDENT. The Chair will state that the unanimous-consent request contains the provision that the vote shall be not later than 3 o'clock on Thursday; that thereafter, there shall be 5 minutes of debate, on each side, on each amendment offered.

Mr. WHERRY. Reserving the right to object, I thought I had clarified the issue which has risen, by stating that the minority leader would have to object to the unanimous-consent request unless the hour is fixed at 3 o'clock.

Mr. McFARLAND. Mr. President, the Senator from Arizona was trying to accommodate every Senator, which is a little difficult to do. The Senator from California [Mr. KNOWLAND] wants 5 minutes of debate on each amendment.

Mr. WHERRY. That is all right.

Mr. McFARLAND. The intention of the Senator from Arizona was to ask for unanimous consent that the present unanimous-consent request be modified in the manner in which the Senator from Nevada [Mr. McCARRAN] has stated, that we proceed to debate and vote upon amendments as they may be offered, and vote on all amendments and the bill not later than 3 o'clock next Thursday.

Mr. NEELY. Mr. President, further reserving the right to object, what is the justification for the suggestion of the distinguished minority leader that all amendments offered after 3 o'clock—the hour at which the Senate is supposed to vote—shall be subject to a 5- or 10-minute debate?

Mr. KNOWLAND. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. KNOWLAND. I should like to say to the able Senator from West Virginia that the reason, I think, is very clear. On a number of occasions the situation has arisen that after debate has been concluded and we came to the hour of voting, amendments were offered in rapid-fire order, and not even a 1-minute explanation of the amendments was permitted. The suggestion is merely to give to the Members of the Senate who may have missed some of the debate an opportunity to have a brief explanation of amendments. It will not prolong the debate, and I think it will improve the legislative process. The situation to which I have referred occurred with reference to the housing bill. I think this would be an improvement over that situation.

Mr. NEELY. By what rule could the Senate properly debate amendments to a bill after the final disposition of the measure to which the amendments refer?

The VICE PRESIDENT. As the Chair understands the request, it is that, beginning on Monday, instead of today, the displaced persons bill shall be taken up under the unanimous-consent agreement; that at not later than 3 o'clock on Thursday next the Senate shall vote on all amendments and on the bill itself; that in the meantime, up to the hour of 3 o'clock, amendments can be received in order and an hour's debate can be had on each amendment, 30 minutes on a side; that at the conclusion of the hour, the amendment shall be voted upon; that after 3 o'clock, 5 minutes' debate will be allowed on each side until all amendments are disposed of.

Mr. NEELY. Mr President, when is the final vote on the bill to be taken?

The VICE PRESIDENT. Whenever the amendments are disposed of.

Mr. NEELY. I object.

Mr. McFARLAND. Mr. President, will the Senator withhold his objection?

Mr. NEELY. Mr. President, I shall object to any proposal that would make it possible to debate amendments for the next 6 months and for the same length of time prevent the final vote on the passage of the bill.

The VICE PRESIDENT. If the Senator from West Virginia will give heed to the Chair, the Chair will state that when the hour is fixed to vote on a bill or on amendments, under the universal practice that does not mean that at a particular hour a vote must be had on the bill. Amendments may be offered and voted upon, and when they are all disposed of, then there comes the final vote on the bill. There can be no debate on amendments after the hour fixed for voting unless the agreement provides for it. In this case all amendments not voted upon by the hour of 3 o'clock on Thursday would still be entitled to be offered. That is always the case. If an agreement is entered into providing for 5 minutes' debate on each side on amendments, when all the amendments are disposed of, then there is a vote on the bill.

Mr. NEELY. And if 5,000 amendments should be offered, there would be 5,000 times 5 minutes of additional debate. I object.

The VICE PRESIDENT. There is no way in which to prevent a Senator from offering an amendment to a bill after a time has been fixed to vote upon it, except by unanimous consent.

Mr. RUSSELL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. RUSSELL. Under the terms of the agreement which is now in effect and which will remain in effect if objection should be made to its modification, the opponents of the bill could offer 5,000 amendments and address themselves to them for 1 hour.

The VICE PRESIDENT. The Chair thinks the Senator's inquiry is pertinent. There being no time fixed for a vote, a Senator could, under that agreement, offer as many amendments as he desired.

Mr. RUSSELL. So the request of the Senator from Arizona is much more definite in bringing the displaced-persons bill to a final conclusion on Thursday than is the existing unanimous-consent agreement which has no time fixed in it for the conclusion of the matter.

Mr. McFARLAND. Mr. President, the Senator from Arizona would like to make one more request. It is important that we expedite the business of the Senate. The only way we can do that is to reach some kind of an agreement on voting. I plead with Senators, let us try to work out an acceptable agreement. Would it be agreeable if the unanimous-consent request contained a provision that all amendments be submitted by 2 o'clock, that the time between 2 and 3 o'clock be equally divided between the proponents and the opponents, and that there be no further debate after 3 o'clock?

Mr. CHAVEZ. Mr. President——

Mr. WHERRY. Mr. President, will the Senator yield? I have asked him to yield for the last half hour.

Mr. McFARLAND. I apologize to the distinguished Senator from Nebraska.

Mr. WHERRY. Mr. President, I should like to refer to the statement made by the distinguished Senator from West Virginia [Mr. NEELY], for whom I have the highest regard. I know what is in his mind, but I want him to understand why the minority leader made the suggestion regarding a 5-minute explanation, on each side, of amendments that might be offered after the voting starts. The distinguished Senator has been in the Senate longer than I have; he has been in both the House and the Senate; and I am sure he knows that the suggestion does not in any way change the present procedure, because all amendments will be voted on, under the unanimous-consent agreement, at 3 o'clock, with this one exception, that if he himself wanted to offer a clarifying amendment, he would have an opportunity to do so after the hour of voting arrived, and in explaining it, it would be limited to 5 minutes. I am satisfied that if the Senator from West Virginia will bear with the Senator from Nebraska, he will agree with me. I made my suggestion in order to comply with the request of several Senators who felt that because of the way we have been operating under unanimous-consent agreements, when an amendment is offered and goes to the desk, as happened in connection with the housing bill, there was no opportunity to know the purport and purpose of the amendment, and Senators had to ask that the Senator who offered the amendment might be granted 5 minutes to explain it. I know how fair the Senator from West Virginia is, and I believe that if he will reflect upon it a moment, he will realize that the request is not out of the ordinary. It is not for the purpose of enabling Senators to continue to offer amendments, so that there might be a delay in voting on the bill.

The minority leader withdrew a request regarding which he was very much concerned, namely, that after action on the displaced persons bill the conference report on the basing point bill should be made the unfinished business. I feel very strongly that that should be done, without further delay. However, I have withdrawn the request in order to help the acting majority leader get a unanimous-consent agreement for a vote on the displaced persons bill.

In order that the acting majority leader may not misunderstand my request, I conclude my remarks with the statement that we on this side of the aisle feel that after Monday noon the only measure which should be considered as pending is the displaced persons bill. I should like to have the acting majority leader listen to this.

Mr. McFARLAND. I am listening.

Mr. WHERRY. That at the hour of 3 o'clock—not before, but at a time fixed and certain—the Senate begin voting on any amendments which are germane to the bill, and on the bill, until the bill is disposed of.

Finally, my suggestion is—and I hope the distinguished Senator from West Virginia will accept the suggestion—that in the event an amendment is submitted after the hour of voting arrives, on each such amendment 5 minutes be allowed to each side, so that proponents and opponents may have an opportunity of making such explanations or statements with respect to it as they may desire.

Mr. NEELY. Mr. President, reserving the right to object, my sole purpose is to make it as certain as possible that the unanimous-consent request, if granted, will not enable those who are opposed to the pending measure indefinitely to prolong the debate on amendments and, by so doing, prevent for days or weeks the final disposition of the displaced-persons bill. I shall not object to a unanimous-consent agreement which includes a provision to the effect that after amendments are offered, regardless of their number, the Senate shall on next Thursday remain in continuous session until the final vote on the passage of the bill shall have been cast.

Mr. McFARLAND obtained the floor.

Mr. CHAVEZ. Mr. President, will the Senator from Arizona yield to the Senator from New Mexico?

Mr. McFARLAND. First I should like to answer the distinguished Senator from West Virginia.

The unanimous-consent agreement with respect to the natural-gas bill contained a similar 5-minute provision, and we disposed of the gas bill within a very short time after we began consideration of amendments. Several amendments were offered, as the Senator will remember, but the 5-minute provision in the unanimous-consent agreement expedited the business of disposing of the natural-gas bill.

Mr. NEELY. That is probably true. But there was no such opposition to the gas bill as there is to the displaced-persons bill.

Mr. McFARLAND. Very well; I shall include the request of the Senator from West Virginia.

Mr. CHAVEZ. Mr. President, will the Senator yield?

Mr. McFARLAND. I yield.

Mr. CHAVEZ. I could almost cry in my solicitude that some action be taken on the displaced persons bill. I am on the side of the Senator from West Virginia. However, I wish to assure the Senate that unless some action is taken in the United States with reference to navigation, rivers, harbors, and flood control, we shall have no occasion to worry about displaced persons. All I am asking is that the unfinished business, the consideration of H. R. 5472, be given its place in the Senate. I do not care when the vote on the displaced persons bill is had. I still maintain that our domestic business is extremely important to every Member of the Senate. Irrespective of how anyone interested in displaced persons may vote, there will be no necessity whatsoever for worrying about displaced persons unless we do something for the people of our own country. Legislation with respect to rivers, harbors, and flood protection, which has been made the unfinished business of the Senate, is extremely important, as every Senator knows, regardless of which State he represents.

All I ask is that we proceed in order. Senators are asking for a unanimous consent agreement to vote on the displaced persons bill. Why should we delay further? If the Senate wishes to go ahead with it, all well and good. All I ask is that later we be allowed to proceed and expedite the business of the Senate. As every Senator knows, there is other important business to be considered by the Senate aside from the displaced persons bill.

Mr. McFARLAND. I agree with the Senator from New Mexico, and I believe we have now come to the point where we can reach a unanimous consent agreement and proceed.

Mr. IVES. Mr. President, will the Senator yield?

Mr. McFARLAND. I yield.

Mr. IVES. The Senator from New York would like to inquire whether the unanimous consent agreement could be enlarged to provide that the Senate shall remain in continuous session on Thursday until there is a final vote on the displaced persons bill itself.

Mr. McFARLAND. I was going to include that in the unanimous-consent request.

Mr. CHAVEZ. Mr. President, will the Senator yield?

Mr. McFARLAND. I yield.

Mr. CHAVEZ. Would the unanimous-consent request to do some business next week include a provision that the Senate will stay in session today and tomorrow to see if we can take action on H. R. 5472? That may not be so important as the displaced-persons bill, according to the opinions of some. A dam in Minnesota, a flood-control project in the Mississippi Valley, something in

North Adams, Mass., a dam in the State of Wisconsin—there is not a State that has not something in the bill that is important. There is a request for unanimous consent as to what we will do next Thursday, but we are not willing to stay here today and tomorrow to see what we can do for the United States. All I insist on is that we do something for Uncle Sam once in a while.

Mr. McFARLAND. Mr. President, I should like to state the situation as it is today. There has been a gentleman's agreement that we would have no vote today, but we can proceed to a discussion of the rivers and harbors bill. We want to expedite all these bills. We have one unanimous-consent agreement which displaces, unfortunately, I will say, the bill of the distinguished Senator from New Mexico. All we want to do is to expedite business.

I desire to state the unanimous-consent request once more and see if we cannot come to an agreement.

The VICE PRESIDENT. The Senate will be in order so that Senators and the Chair can hear the request.

Mr. McFARLAND. I ask unanimous consent that the unanimous-consent agreement previously entered into with regard to H. R. 4567 be modified in the following manner: That the debate start next Monday at 12 o'clock, instead of today, and that the time be equally divided as provided in the original unanimous-consent agreement; that the present unanimous-consent agreement be further modified to provide that a final vote on the bill, and any amendment not previously disposed of, or on the amendment in the nature of a substitute, be had beginning at the hour of 2 o'clock next Thursday, except with respect to amendments which may be offered after 2 o'clock; that each side have 5 minutes to discuss such amendments; and that the Senate remain in continuous session until all amendments have been voted on and the bill shall be finally disposed of.

Mr. WHERRY. Reserving the right to object——

The VICE PRESIDENT. The Senator from Nebraska.

Mr. WHERRY. I ask the distinguished acting majority leader—and I hope he will comply with the request—that the hour for a vote at 2 o'clock be made as definite and certain as possible, that no amendments be voted on before that time, but that we start voting at 2 o'clock on all amendments or motions which may be offered or made. That will have to be in the unanimous-consent agreement if it is to amount to anything, because otherwise there will be 3 or 4 days when amendments would come up and Senators would not be here, and that would make the proposal very indefinite and impractical.

The VICE PRESIDENT. Let the Chair understand what the Senator is proposing. The request of the Senator was that amendments offered prior to 2 o'clock Thursday may be voted on as offered after an hour's debate.

Mr. McFARLAND. I modified that.

The VICE PRESIDENT. The Senator modified his request so that no amendment could be voted on prior to 2 o'clock, but that thereafter there could be 5 minutes' debate on each side, and the Chair would have to interpret that to mean that the provision for an hour's debate on each amendment would thereby be abrogated, and it would not be effective, because they would be voted on as offered and debated until 2 o'clock arrived. It might be possible that amendments would be offered after 2 o'clock which would have gotten the hour's debate if offered prior to 2 o'clock.

Mr. McFARLAND. I will restate the unanimous-consent request to provide that beginning Monday at 12 o'clock the time be divided equally between the proponents and the opponents of the bill, the proponents' time to be controlled by the senior Senator from Nevada [Mr. McCARRAN] and the opponents' time to be controlled by the senior Senator from West Virginia [Mr. KILGORE]; that the Senate vote upon all amendments and the bill at that hour, except that there be no debate on any amendment or the bill after that hour, with the exception of amendments which may be offered after the hour of 2 o'clock; that each side be given 5 minutes to debate such amendments, and that the Senate remain in continuous session until all amendments and the bill are disposed of.

Mr. CAIN. Mr. President, reserving the right to object——

Mr. CHAVEZ. Mr. President, reserving the right to object, let us get the matter clear. We have before us the pending business. The request of the Senator from Arizona affects what might be anticipated business next week. I am going to object. The Senate agreed to set today as the time for consideration of the displaced persons bill. I shall object to the unanimous-consent request which is now being considered unless we proceed with the pending business, and set an hour this week for a vote on it. It could be voted on this afternoon, because all committee amendments except two have been adopted, and action on the bill is practically complete.

Mr. President, I do not suggest, of course, that the Senator from Arizona or any other Senator who wants to have action taken on the displaced persons bill be carried over until next week is unfair, but it is unfair that a bill which was reported to the Senate last October, and which has now been acted upon up to the point that all committee amendments, except two, have been adopted, should be byplayed around for the benefit of any other bill which it may be desired to consider. If the Senator from Arizona will proceed with the unfinished business, H. R. 5472, and arrange for setting an hour this week when action on it can be taken——

Mr. WHERRY. That cannot be done.

Mr. CHAVEZ. Why not? An attempt is now being made to reach an agreement respecting action on the displaced persons bill. Why not have similar action taken respecting the unfinished business, H. R. 5472?

Mr. WHERRY. I will say to the Senator from New Mexico that I am just as much interested in the rivers and harbors bill of which the Senator from New Mexico is in charge, as is the Senator from New Mexico.

Mr. CHAVEZ. From a dollars-and-cents standpoint, the Senator from Nebraska should be more interested in that bill than the Senator from New Mexico.

Mr. WHERRY. But there are two things in that connection which the Senator from New Mexico should appreciate. First, there are Members of the Senate who are absent today who left with the complete knowledge that there would be no votes taken today in the Senate. That is point No. 1.

Mr. CHAVEZ. Just a moment. They knew of the agreement?

Mr. WHERRY. Certainly.

Mr. CHAVEZ. And who has the right to tell them that there will be no vote?

Mr. WHERRY. On the floor of the Senate a gentleman's agreement was entered into that even though the displaced-persons bill would come up today, there would be no votes taken in the Senate on Friday, which is today. That was the agreement. It was made with the majority leader, and was accepted.

Point No. 2 is that in my judgment the Senate will consider the rivers and harbors bill immediately after the unanimous-consent request is entered into. I think the Senator appreciates that we can expedite action on his bill if there are no controversial amendments. My judgment is that we should proceed to debate the bill and not worry over what may result from entering into the proposed unanimous-consent agreement.

Mr. CHAVEZ. I am just as much worried about the rivers and harbors bill as I am about the displaced-persons bill. I want the Senator from Nebraska to understand that.

Mr. WHERRY. I understand.

Mr. CHAVEZ. I take my stand with the Senator from West Virginia on the subject of displaced persons. But I think it is unfair to the committee which reported the rivers and harbors bill, I think it is unfair to the people of the United States, it is unfair to every State of the Union that there should be byplay with respect to such a bill, which would afford protection against floods on the Mississippi, and would actually produce wealth for the people of the various States affected by it. I feel it is unfair to byplay such a bill in order to take action on the displaced persons bill, simply because it will make headlines. Two years ago many persons lost their lives on the Columbia River in the State of Oregon. Two months ago there was loss of life and great loss of property in the State of Mississippi by reason of floods. There is not a Senator who has not presented some amendment to the rivers and habors bill. Still it seems that some want to delay action on that bill. All I ask is that we take action on it today or tomorrow.

Mr. McFARLAND. May I reply to the distinguished Senator from New Mexico by saying that we can only secure one unanimous-consent agreement at a time. The bill sponsored by the Senator from New Mexico is the unfinished business, and the Senate will proceed to consider it. I will say to the Senator that I will do my best to expedite the disposal of that bill. I shall try to work out a unanimous-consent agreement today, if possible, to expedite that bill. That is the

best I can do. It has been agreed that the Senate shall go ahead with the displaced persons bill. As it looks now we might debate it for 2 or 3 weeks. That would not expedite action on the distinguished Senator's bill. If the Senator will bear with us we will try to work out something that will bring his bill to a vote at any early date.

Mr. CHAVEZ. The Senator from Arizona can say now whether we will work on the rivers and harbors bill today or tomorrow. That can be said without securing a unanimous-consent agreement.

Mr. McFARLAND. I will find out whether Senators want to make any commitment respecting working on Saturday. As I understand, there is an understanding not to have a session on Saturday. I will talk that over with Senators and let the Senator from New Mexico know about it sometime later today. If promises have been made that we not have any votes today or tomorrow, those promises must be respected.

Mr. CHAVEZ. I tried to be a gentleman last October and agreed that another committee consider the bill. By reason of my having been a gentleman, we have been delayed in our consideration of the measure for 6 months.

Mr. McFARLAND. I think the Senator from New Mexico knows that the junior Senator from Arizona has tried to work with him in every way possible. I plead with him to let the unanimous-consent agreement be entered into, because it will expedite the consideration of his measure. Nothing will be gained by defeating the agreement. That would only result in further delaying action on the very bill he is interested in expediting.

Mr. CHAVEZ. The agreement respecting the displaced-persons bill was made not last week or yesterday; the unanimous-consent agreement to take up the displaced-persons bill was entered into some time in the early part of February.

Mr. McFARLAND. Unfortunately that unanimous-consent agreement was not worked out in the manner I think it should have been.

Mr. WHERRY. I agree with the Senator.

Mr. McFARLAND. I am not criticizing anyone. It does not provide for a time for voting. The debate could be prolonged indefinitely. Anyone could offer amendments and debate could continue for 2 weeks.

Mr. CHAVEZ. Then why was not provision made to cover that situation in the agreement?

Mr. President, I object.

Mr. WHERRY. Mr. President, will the Senator reserve his objection?

The VICE PRESIDENT. The Senator from New Mexico objects.

Mr. WHERRY. Mr. President, will the Senator from New Mexico withhold his objection so I may ask him a question?

The VICE PRESIDENT. Does the Senator from New Mexico withhold his objection?

Mr. CHAVEZ. Yes.

Mr. WHERRY. I highly respect the Senator for his courtesy. I believe something might be worked out so a vote can be taken on Monday on the Senator's bill. I cannot guarantee that now, however.

Mr. CORDON. Mr. President, will the Senator yield?

Mr. CHAVEZ. I yield.

Mr. CORDON. I can guarantee to the Senator that that will not happen.

Mr. WHERRY. Then, Mr. President, that is out. But I should like to say, so the Senate will know that I was not making an unwarranted statement, that the majority leader, as appears on page 3030 of the RECORD of March 8, on the question as to whether there would be any votes in the Senate today or tomorrow, said:

> Mr. LUCAS. There will be no vote on Friday or Saturday.

Mr. CHAVEZ. Will the Senator answer a question?

Mr. WHERRY. Yes.

Mr. CHAVEZ. Is the Senator from Illinois [Mr. LUCAS] a Senator such as the Senator from Nebraska?

Mr. WHERRY. Mr. President, the Senator from Illinois is the majority leader.

Mr. CHAVEZ. But he does not happen to be present at the moment.

Mr. WHERRY. I cannot help that. He gave the assurance that there would be no vote today or tomorrow. He was speaking of the displaced persons bill. I was anxious to join with the Senator from New Mexico to make his bill the unfinished business. We have before us today the displaced persons bill. But the agreement which was reached runs to any vote, no matter whether on the rivers and harbors bill or on the displaced persons bill, and so long as I remain minority leader I shall see to it that we keep faith with agreements we make. I sincerely trust that all Senators will see the situation in the same light. I am as anxious as is the Senator from New Mexico respecting his bill.

I am also interested in a matter which is just as important to me as is the Senator's bill to him. I did not ask that it be brought up, even though it is a privileged matter, today or during the debate on the displaced persons bill. I withheld the request in the interest of orderly procedure. I beg the Senator from New Mexico to let us proceed with the unanimous-consent agreement, enter into it, and then proceed with the Senator's bill. We can debate it all day. We can make up our minds respecting it. That will be the quickest way to expedite the measure.

Mr. CHAVEZ. Mr. President, still reserving the right to object, Mr. President——

The VICE PRESIDENT. The Chair recognizes the Senator from New Mexico.

Mr. CHAVEZ. When the unanimous-consent agreement was entered into 6 weeks ago it was orderly procedure. No one objected to it. It was what should be done. It was an agreement that on this day we would take up the displaced persons bill. Very well. If it was orderly procedure then, and was agreed to, and the Members of the Senate agreed to that situation, why can they not go ahead with the bill? What is the difficulty? If they cannot go ahead, let us proceed with something else in which the people of the United States are interested.

The VICE PRESIDENT. Will the Senator from New Mexico allow the Chair to make a suggestion in the interest of being helpful, if possible?

Mr. CHAVEZ. Certainly. With the greatest of respect and consideration, I say I feel that what the Vice President will say will be in the best interests of the United States, and I shall certainly be glad to have him speak.

The VICE PRESIDENT. The Chair thanks the Senator from New Mexico.

Under the present parliamentary situation, the rivers and harbors bill cannot be voted upon until the displaced-persons bill is out of the way, and the conference report on the basing-point bill, which is privileged, if any Senator moves to take up that measure. So that in the absence of any agreement to the contrary, both measures, the displaced-persons bill and the conference report on the basing-point legislation, must be disposed of before the Senate can resume consideration of the rivers and harbors bill. In the absence of agreement, either of the two measures can be debated indefinitely. The Chair would suggest to the Senator from New Mexico that any agreement that brings a vote closer on the displaced-persons bill is calculated to expedite the consideration of the river and harbor bill.

Mr. CHAVEZ. Mr. President, I am not apologizing either to the Senator from Nebraska or my good friend and neighbor, the Senator from Arizona. I have the greatest respect for the concept of Americanism of the Presiding Officer. His suggestion appeals to me, except I want the Senate to strictly understand that there is other business of the Senate, in addition to the displaced-persons bill, that merits consideration.

Regardless of whether any other Senator thinks so or not, please believe me, Mr. President, House bill 5472 is extremely important to the people of the United States. My purpose now is not simply to have a bill passed. There is no State in the Union that is not interested in House bill 5472, from the standpoint of doing something for itself and its neighbors, for the citizens of the United States. That is the point I am trying to make.

Pollution of the water of the Ohio River is an extremely important matter. Floods on the Ohio River affect practically everyone in the United States. A dam in Arkansas is important to practically everyone in the United States. The Merrimac and the Connecticut Rivers are extremely important to the people of the United States. The Missouri River flowing through the State of my good friend, the Senator from Missouri, is extremely important. Rivers in North Dakota, Massachusetts, Missouri, or elsewhere, are very important.

All I ask is, after having been delayed for 6 months because the 13 members of the Committee on Public Works were gentlemen and were good enough to let the Senate consider other measures, that the Senate now give us our day in court to do something for the United States.

The VICE PRESIDENT. The Chair should have stated to the Senator from New Mexico, and will now do so, that im-

mediately upon the conclusion of the consideration of the displaced persons bill and of the conference report on the basing point bill, automatically, without motion, the Senate will proceed to the further consideration of the river and harbor bill. It will then be the unfinished business, although, of course, it may then be laid aside by unanimous-consent agreement or by a motion for the consideration of a conference report, which is always a privileged matter.

Mr. CHAVEZ. I understand that.

Mr. President, I say these things because I want every Senator to understand that the river and harbor bill is an important matter. I want Senators to be here when that bill is being considered by the Senate. That is all.

The VICE PRESIDENT. Is there objection to the unanimous-consent request of the Senator from Arizona?

Mr. CAIN. Mr. President, reserving the right to object, let me say that the junior Senator from Washington, as a member of the Public Works Committee, wishes to associate himself fully with the observations which have just been made by the chairman of the committee, the distinguished Senator from New Mexico [Mr. CHAVEZ], and further wishes to suggest that he will help the Senator from New Mexico in any conceivable way to bring up again the omnibus river and harbor bill as early as possible.

Mr. CHAVEZ. That bill is now before the Senate. It is the pending question.

Mr. CAIN. My understanding is that we shall begin to debate it as soon as the proposal made by the Senator from Arizona has been disposed of.

Mr. LONG. Mr. President, reserving the right to object, I should like to see opportunity provided for debate on the conference report on the basing-point bill, and to have it debated before a filled Senate Chamber just as the Senator from Nevada would like to see the displaced persons bill debated before a filled Senate Chamber.

I must object until I can see how the proposed agreement would affect the conference report on the basing-point bill. I should like to see the proposed unanimous-consent agreement in writing. Until that time, I must object to it, because I should like to have an opportunity afforded us to dispose of the conference report on the basing-point bill, and first, to have it debated, for the benefit of Senators, in order that they may be sure in their own minds about it and may be fully informed regarding it.

Mr. McCARRAN. Mr. President, reserving the right to object, let me say, as chairman of the conferees on Senate bill 1008, the basing-point bill, that we shall not call up the conference report on it if we arrive at a unanimous-consent agreement in regard to the other bill which has been discussed here for the last hour. We shall not call up the conference report on the basing-point bill until the displaced persons bill is disposed of. I hope it will be disposed of not later than Thursday of next week.

On the other hand, if no unanimous-consent agreement is reached today in regard to a time for disposing of the displaced persons bill, then I propose to call up the conference report on the basing-point bill.

The VICE PRESIDENT. Is there objection to the request of the Senator from Arizona?

Mr. McCARRAN. I should like to know what it is at this time.

Mr. CORDON. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. CORDON. The distinguished Senator from Nevada has stated that as chairman of the conference committee, he, acting for the Senate conferees, will not call up the conference report on the basing-point bill until immediately following disposition of the displaced-persons bill.

My question is, May not any Member of the Senate call up the conference report at any time he desires to do so?

The VICE PRESIDENT. No Member of the Senate, not even the chairman himself, can call it up automatically. Any Senator may move that the Senate proceed to consider the conference report; and if that motion is carried by a majority vote, it is taken up; and in such case it temporarily displaces until it is disposed of, whatever business was pending theretofore.

Mr. CORDON. My question was unhappily worded. I said, "call up," although, of course, I intended to say "move to bring up."

However, I believe a motion to bring up a conference report may be made at any time by any Member of the Senate.

The VICE PRESIDENT. Yes; at any time when some other Senator does not have the floor.

Mr. CORDON. Mr. President, reserving the right to object to the unanimous-consent request, let me say it was my understanding, from the statements which were made when the unanimous-consent agreement with reference to the displaced-persons bill was made some weeks ago, that that bill would be made the unfinished business when the Senate convened today, and would remain such, by unanimous consent, until action on it was concluded. Relying upon that understanding, I have been preparing certain data with reference to a matter which will come up when the public-works bill is further considered by the Senate. The data are not fully prepared for use this afternoon. They would have been prepared for use this afternoon had this understanding not intervened. I have no objection to a unanimous-consent agreement now to set any time that is satisfactory to the Senate for voting on the displaced-persons bill or on any amendment thereto. The sooner that is done, the better I shall like it.

However, the unanimous-consent agreement now in effect provides that the displaced-persons bill is now the unfinished business. If the consent agreement presently asked for is entered, then the displaced-persons bill will not be the unfinished business now, but the public-works bill will become the unfinished business, but will remain so only for a little while this afternoon, and will again be displaced on Monday.

Mr. President, it seems to me that we who wish to have the public-works bill acted upon by the Senate have a right, and that we are on sound ground in that respect, to suggest and insist that the displaced-persons bill, which now is before the Senate, be debated and disposed of, without being displaced by any other measure, until the vote on it is taken. Unless agreement can be entered to carry out that procedure, I am constrained to object to the unanimous-consent request.

The VICE PRESIDENT. The Senator from Oregon objects to the request.

Mr. McFARLAND. Mr. President, I wish to make a final effort to obtain agreement. Will the Senator from Oregon withhold his objection?

Mr. CORDON. I shall be happy to do so.

Mr. McFARLAND. Mr. President, I wish to make a final effort——

The VICE PRESIDENT. The Senator from Oregon objected to the request as submitted. The Senator from Arizona may submit another unanimous-consent request, without having the Senator from Oregon withhold his objection to the other request.

Mr. McFARLAND. Yes; I am going to submit another request.

I ask unanimous consent that the Senate now proceed to the consideration of the displaced persons bill that the remainder of today, Monday, Tuesday, and Wednesday be divided equally between the proponents and the opponents of the bill; that we begin to vote at not later than 2 o'clock on Thursday upon all amendments to the displaced-persons bill and upon the bill itself except that in the case of each amendment presented after 2 o'clock, the proponents will have 5 minutes and the opponents will have 5 minutes.

Mr. KNOWLAND. Mr. President, reserving the right to object, let me say that suggestion was not quite the one made by the Senator from California, which was based upon the procedure under which the Senate operated in connection with the last bill voted upon, when there was provision for 5 minutes for either side.

That arrangement was that as amendments are called up in rapid-fire order, there be opportunity for a 5-minute explanation by the proponents and a 5-minute explanation by the opponents of each amendment, because the fact of the matter is that, much as we may hope we shall have a full attendance in the Senate during Monday, Tuesday, and Wednesday, yet practical experience indicates that we shall not have; and there may be quite a number of amendments. I believe that in the interest of good, orderly legislative procedure, there should at least be given to the Senators who are on the floor at that time a 5-minute explanation pro and a 5-minute explanation con.

The VICE PRESIDENT. Is there objection to the request of the Senator from Arizona?

Mr. LONG. Mr. President, reserving the right to object, if the Senator would simply modify his previous unanimous-consent proposal so as to provide that the vote come on Wednesday, instead of

on Thursday—in other words, dividing the time, with 1 hour for debate on each side on Monday and Tuesday; and providing that on Wednesday there be the arrangement in regard to debate which the Senator formerly proposed in regard to Thursday, namely, 5 minutes for each side, I believe that might work out satisfactorily. That would leave us Thursday to dispose of the conference report on the basing-point bill, and also would afford opportunity to consider the rivers and harbors and flood-control bill, if it is not disposed of today or tomorrow.

Mr. McFARLAND. If that is agreeable to the Senator from Oregon, I shall be willing to modify the request accordingly. Is that agreeable?

Mr. CORDON. Mr. President, will the Senator yield?

Mr. McFARLAND. I yield.

Mr. CORDON. My understanding of the request now proposed by the distinguished Senator from Arizona is that the displaced persons bill will now, by unanimous consent, be the unfinished business and will remain the unfinished business, and that the proceedings indicated in the request will be had next week. I have no objection.

I would object to any request which would substitute for the pending business, which is the displaced persons bill, the public works bill, which then would necessarily become the pending business. I think it will be to the advantage of those who desire an early conclusion of consideration of the displaced persons bill, I know it will be to the advantage of those of us who are interested in the public works bill, if we proceed now to an orderly conclusion of first the one and then the other. I shall not object, if my understanding is correct as to the request of the Senator from Arizona. I should like to have him restate his request, if he will. I do not want to prolong the discussion.

Mr. McCARRAN. Mr. President, may I inquire of the Senator from Oregon whether he has had brought to his attention the full purport of the present unanimous-consent agreement respecting the displaced persons bill?

Mr. CORDON. The Senator from Oregon has just stated his understanding of it. He would be glad to be corrected, if his understanding is erroneous.

Mr. McCARRAN. There is no limit or any day set for voting on the displaced persons bill.

Mr. CORDON. I am fully conversant with that fact, and I want to do anything I can to correct that unanimous-consent agreement by getting finality into it.

Mr. McCARRAN. Very well, that is what we are trying to work out—we are trying to get finality.

Mr. CORDON. I should have no objection to a unanimous-consent agreement which would continue the displaced persons bill as the pending business until it is concluded, and which would provide for a definite time to vote.

Mr. McCARRAN. The thought the Senator from Nevada has is that if the displaced persons bill were taken off the floor today, the rivers and harbors bill would come right in and might be disposed of today, as a matter of fact.

Mr. CORDON. That is the very point to which I first called attention. I want that bill to go over, now, as the agreement was that it should go over, because I expect to debate one major amendment at some length, and I am not prepared to do so today, because my understanding was it would not come up today. I would have been prepared, had I understood that the flood control and river and harbor bill was due to be taken up as the pending business today.

Mr. CHAVEZ. We have known that for 6 weeks.

The VICE PRESIDENT. The Senator from Arizona has been requested to restate the request.

Mr. McFARLAND. Mr. President, I will restate the unanimous-consent request once more, in an effort to come to an understanding. I ask unanimous consent that the bill (H. R. 4567) remain the pending business until disposed of; that, beginning Monday, at the hour of 12 o'clock, the time be divided equally between the proponents and the opponents of the bill; that no amendment may be offered which is not germane; that the Senate proceed to vote upon the bill and all amendments at the hour of 2 o'clock, except that——

Mr. NEELY. Mr. President, that refers to what day?

Mr. McFARLAND. Wednesday. I continue—after the hour of 2 o'clock that as to any amendment which may be offered, as it is called up, each side may debate the amendment for 5 minutes; that is, the proponents and opponents.

Mr. WHERRY. That is correct.

Mr. IVES rose.

Mr. McFARLAND. I continue—and that the Senate remain in continuous session until the bill is finally disposed of.

The VICE PRESIDENT. Does that mean from now until next Wednesday, or merely on Wednesday?

Mr. McFARLAND. On Wednesday.

Mr. McCARRAN. Mr. President, reserving the right to object, does it mean we would proceed to the consideration of the displaced-persons bill today?

Mr. McFARLAND. If anyone wanted to talk on it, yes; if they did not, Senators could talk on something else.

Mr. McCARRAN. What about the time today? I notice the proposal is to divide the time on Monday.

Mr. McFARLAND. It would be anyone's time who wants to talk.

Mr. McCARRAN. Why did the Senator abandon Thursday as the day for the vote? Since some Senators must be absent on Wednesday, why not provide that the vote shall be taken on Thursday?

Mr. McFARLAND. The explanation is that certain Senators wanted to get through with another bill on Thursday.

Mr. LONG. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Arizona yield to the Senator from Louisiana?

Mr. McFARLAND. I yield.

Mr. LONG. If we do not control debate today, those of us who want to be heard on the basing-point legislation can say a few words about it today, and make our views known, which would expedite the handling of the basing-point matter possibly on Thursday.

Mr. McFARLAND. That is correct. Then the Senator would have no objection to Thursday; is that correct?

Mr. LONG. That might make it possible for us to conclude consideration of the basing-point matter Thursday for sure, after a few words about the subject today.

Mr. McCARRAN. So far as I know, then, there is no limit today on the displaced-persons bill.

Mr. LONG. And no division of time.

Mr. McFARLAND. That is correct.

The VICE PRESIDENT. Is there objection to the request?

Mr. WHERRY. Reserving the right to object, I compliment the distinguished Senator from Arizona on his working out of this agreement; but I certainly want Senators to understand thoroughly what the proposal is, as I hope they do; and as I should like to be certain that I understand it. First, the displaced-persons legislation is now the pending business, as provided in the earlier unanimous-consent request; today there is no division of time, but starting at noon, Monday, and until the hour of 2 o'clock on Wednesday, the time is to be equally divided between proponents and opponents of the measure, the time to be controlled, as set forth in the original unanimous-consent agreement; after the hour of 2 o'clock shall have arrived, any amendments which have been offered will be subject to 5 minutes' explanation to each side; all amendments must be germane to the subject matter; and the Senate is to remain in continuous session on Wednesday, after the hour of 2 o'clock, until all the amendments and motions and the bill are disposed of.

Mr. McFARLAND. That is the complete unanimous-consent request, except that all amendments offered must be germane.

Mr. WHERRY. I included that.

The VICE PRESIDENT. Is there objection?

Mr. LANGER. Mr. President, reserving the right to object, I may say that during all the time I have been in the Senate I have never before known of a time when two Senators controlled Monday, Tuesday, and Wednesday, during which time no one else could talk, except as they might be permitted to talk, by those controlling the time. It seems to me that is a very long time. Can it not be changed to provide that the time shall run from Tuesday morning, or from 12 o'clock Tuesday?

Mr. McFARLAND. Would there be any objection to that?

Mr. WHERRY. No; that is all right.

Mr. McCARRAN. Mr. President, I think if we go back to our original agreement and make it applicable to Monday, Tuesday, and Wednesday, debate on each amendment will be limited to 1 hour.

The VICE PRESIDENT. Is there objection? The Chair must call attention to the requirement of the rule that there be a quorum call at this time. That will be waived if there is no objection. Is there objection to such a waiver? The Chair hears none, and it is so ordered.

Mr. LONG. Mr. President, do I correctly understand the vote will be on Wednesday?

The VICE PRESIDENT. It will be on Wednesday. Is there objection to the request of the Senator from Arizona [Mr. MCFARLAND]? The Chair hears none, and it is so ordered.

The unanimous-consent agreement, as subsequently reduced to writing, is as follows:

Ordered, by unanimous consent, That the bill (H. R. 4567) to amend the Displaced Persons Act of 1948 remain the pending business until disposed of; that beginning Monday, April 3, 1950, at the hour of 12 o'clock noon the time be equally divided between the proponents and the opponents of the bill and controlled, respectively, by the Senator from Nevada [Mr. MCCARRAN] and the Senator from West Virginia [Mr. KILGORE]; that no amendment or motion may be offered that is not germane; that the Senate proceed to vote upon the bill and all amendments or motions at the hour of 2 o'clock p. m. on Wednesday, April 5, 1950; that after said hour of 2 o'clock p. m., each side shall have not exceeding 5 minutes' debate on any amendment or motion that may be offered as it is called up; and that the Senate remain in continuous session on said day of Wednesday, April 5, until the bill is finally disposed of.

The VICE PRESIDENT. May the Chair ask the Senator from Nevada whether he withdraws his motion to proceed to the consideration of the conference report?

Mr. MCCARRAN. I withdraw the motion.

The VICE PRESIDENT. The motion is withdrawn. The Senator from Nevada.

Mr. CAPEHART. Mr. President, will the Senator yield that I may put something in the RECORD?

Mr. MCCARRAN. Very well; but I shall only hold the floor a minute or so.

Mr. CAPEHART. Very well. I shall wait.

Mr. MCCARRAN. Mr. President, there are three messages from the House, which I ask the Chair to lay before the Senate.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to Senate Concurrent Resolution 48, favoring the suspension of deportation of certain aliens, which were on page 2, strike out lines 21 and 22; on page 4, strike out line 4; on the same page, after line 7, insert "A-4542639, De Caldas, Manuel, or Manuel Caldas or Joe De Caldas"; on the same page 4, after line 12, insert "A-7582526, Denicke, George"; on page 6, after line 4, insert:

A-6971387, Korosi, Alexander.
A-6971388, Korosi, Nina (nee Danenberg).

On page 7, after line 18, insert:

A-7635473, Michael, Joyce.
A-7635472, Michael, Lulu.

And on page 9, strike out line 21.

Mr. MCCARRAN. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

MRS. LORRAINE MALONE

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 507) for the relief of Mrs. Lorraine Malone, which was, on page 1, line 6, to strike out "$5,000" and insert "$3,500".

Mr. WHERRY. Mr. President, will the distinguished Senator give us an explanation?

Mr. MCCARRAN. Mr. President, this is a private relief bill, which concerns the claim of a lady in Gallup, N. Mex., for compensation for personal injuries received as the result of an accident involving a United States Army truck.

As it was reported from the committee, this bill called for the payment of $2,000 to the claimant. By adoption of a floor amendment offered by the sponsor of the bill, the senior Senator from New Mexico [Mr. CHAVEZ], this amount was increased to $5,000 and the bill passed the Senate in that form. The House has amended the bill to provide for the payment of only $3,500, which is $1,500 less than the amount for which the Senate voted but $1,500 more than the amount recommended by the Senate Committee on the Judiciary.

Mr. WHERRY. I thank the Senator for the explanation.

Mr. SPARKMAN. Mr. President, may I inquire of the able chairman of the Judiciary Committee whether the amendment meets with the approval of the Senator from New Mexico [Mr. CHAVEZ]?

Mr. MCCARRAN. I am advised that the senior Senator from New Mexico is willing that the Senate should concur in the House amendment. I so move.

The VICE PRESIDENT. The question is on the motion of the Senator from Nevada.

The motion was agreed to.

EARL B. HOCHWALT

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 738) for the relief of Earl B. Hochwalt, which was, on page 1, to strike out all after line 9, down to and including line 4, on page 2.

Mr. MCCARRAN. I move that the Senate concur in the House amendment.

Mr. WHERRY. Mr. President, is this another private claim?

Mr. MCCARRAN. This is the case of a retired lieutenant colonel in the United States Army who, through error in the finance department, received retirement pay in excess of that to which he was entitled by law.

Mr. WHERRY. Did the House cut the Senate figure?

Mr. MCCARRAN. The total amount of the overpayment made to this claimant was $3,379.18. Of this total, $1,100 had been repaid through deductions from the claimant's retired pay up to the end of March 1950. Thus, under the House amendment, the amount of the obligation from which the claimant will be relieved is approximately $2,300.

Mr. WHERRY. I have no objection.

The VICE PRESIDENT. The question is on the motion of the Senator from Nevada.

The motion was agreed to.

PROBLEM OF SECURING COMPETENT EXECUTIVE OFFICERS

Mr. JOHNSON of Texas. Mr. President, there is no more serious problem in the Federal Government today than the problem of securing for public service men of great capacity and unselfish dedication.

With so many pressure groups harassing good officials in their work, it is even more difficult to retain in public office men who prove themselves uncompromising fighters for the public good.

Realizing this, I am sure Senators welcomed, as I did, the heartening news yesterday from Key West, where President Truman announced that three of the finest and ablest young men in public service today are undertaking new and greater challenges.

We are glad, I feel sure, that Secretary Gordon Gray will spend the next few months trying to solve the problems of the dollar gap between this country and our allies abroad. Gordon Gray's talents and capacity are such that I am sure he will be called to public service many times again, even after he assumes the university post at Chapel Hill.

Frank Pace, Jr., is another remarkable young man who, with many other opportunities available to him, unselfishly chose to dedicate his considerable talents to public service. His fine progressive labors already have served the Nation well; I am sure the national security will be further strengthened by his service now at the Pentagon.

I especially believe the Nation will benefit enormously by the elevation of Secretary of the Air Force Stuart Symington to the chairmanship of the National Security Resources Board. Stuart Symington has one of the finest minds in Government service today. His capacity is virtually limitless. His tireless devotion to duty is equaled by few men: exceeded by no man.

Presiding at a most difficult task, Stuart Symington has brought the Air Force to maturity, has successfully pleaded the case for air power before the court of public opinion, and—as much as any one man—helped maintain a realistic balance of military strength to support the cause of freedom in the cold war.

In all that he has done Stuart Symington's personal unselfishness and personal courage has served the Nation and free people everywhere well.

President Truman could not have made a happier decision than to draft Stuart Symington for this new assignment as Chairman of the National Security Resources Board. Stuart Symington has the very rare experience and know-how of a man who has been a success in both private industry and public service. His experience and his personal abilities and personal characteristics make Stuart Symington an ideal choice for this most important role in the defense of freedom.

Mr. President, I believe that, at long last, the job has found the man.

THE CENTRAL EUROPEAN SITUATION

Mr. LANGER. Mr. President, I desire to invite the attention of the Senate to an article which appeared in the Washington Times-Herald of March 17, 1950, in which Winston Churchill is reported to have said that the Allies need German aid.

I ask unanimous consent that the entire article be inserted at this point in my remarks, and I invite particular attention to this paragraph:

Churchill called on the Labor Government—

1. To stop the dismantling of German industries and the trial of Germans for war crimes, and to get western Germany actively into the western European set-up. He implied that this meant limited and strictly controlled German rearmament.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ALLIES NEED GERMAN AID, SAYS WINNIE

LONDON, March 16.—Winston Churchill said tonight that Russia has land, air, and submarine forces unmatched by any other power and that America's atom bomb is Europe's only shield against mortal danger.

Even with the A-bomb, Churchill told the House of Commons, Europe cannot be successfully defended from a Russian invasion without the active aid of western Germany.

ARMS FOR GERMANY HINTED

Churchill called on the Labor Government:

1. To stop the dismantling of German industries and the trial of Germans for war crimes, and to get western Germany actively into the western European set-up. He implied that this meant limited and strictly controlled German rearmament.

2. To start building a big force of light aircraft carriers and auxiliary carriers—capable of carrying antisubmarine planes, such as the United States Navy's long-range Neptune fighter.

3. To build "far higher numbers of first-class aircraft" to combat Russia's enormous air force.

DOOR FOR TRUCE OPEN

4. While urgently building up its defenses, and seeking with France to get western Germany into the defense organization, to "leave no door closed to any hope" of reaching a settlement with Russia.

Churchill spoke in debate on the Labor Government's defense appropriations of £780,820,000 ($2,186,296,000) for the fiscal year that starts April 1.

The Conservatives offered no vote of misconfidence against the Government on defense policy.

Mr. LANGER. Mr. President, on Tuesday, March 14, in the Senate Chamber, the junior Senator from Indiana [Mr. JENNER] and the distinguished minority leader [Mr. WHERRY] broke the shocking story of what we continue to be a party to in central Europe.

I refer to the policy of savage destruction of Germany's peacetime industrial capacity, which, up to this very moment, 5 years after the end of the war, our own Government continues to inflict on the German people.

Imagine, Mr. President. Practically all our generals who were leaders in the war have told us time and time again that in order to control Europe the United States must have a friendly Germany. Yet, after 5 years, we still find the policy of savage destruction of Germany's peacetime industrial capacity continuing.

But, Mr. President, I refer more particularly to the disclosure by my two distinguished colleagues that a week ago today members of the Senate Appropriations Committee were so shocked by testimony that was presented in executive session, and by Mr. McCloy's attempt to justify our State Department, that they issued an ultimatum to Mr. McCloy to call the British High Commissioner, General Robertson, and to demand a halt to what is going on until he himself could personally investigate and report back to the committee.

I understand that Mr. McCloy did call General Robertson and has promised a full report.

Yet, Mr. President, in the midst of a shameful silence the American press has almost completely ignored the implications of these facts. I am informed the committee has not yet heard from Mr. McCloy to get his side of the story. This situation has been further bedeviled by the two recent speeches of our Secretary of State who, in the midst of this gathering crisis in Germany and Europe, has seen fit to try to focus the attention of the American people on the Far East.

Mr. President, at this time I invite the attention of every Senator to the story by Dorothy Thompson which was placed in the CONGRESSIONAL RECORD a few days ago by a Member of the House, stating that never since the war ended has the situation been worse in Germany than it is at this time.

I ask unanimous consent to have placed in the RECORD an article which appeared in the press, written by Dorothy Thompson, saying that unless something is done the results will be very disastrous to our occupation of western Germany.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

RELATIONS BETWEEN WESTERN GERMANY AND EUROPE AT LOWEST POINT SINCE WAR

(By Dorothy Thompson)

A dispatch from Germany states "United States observers in Bonn and elsewhere in western Germany are surprised and, in some cases alarmed at the bitterness that has been aroused * * *" by the agreement concluded between the French Government and the Saar territory.

It is not the bitterness which is astonishing. It is the astonishment of the allied observers which astonishes. Weeks ago this column warned that the Saar proposals would shake the whole west European structure. This has now happened. Relations between western Germany and Europe are at the lowest point since the war.

This deterioration comes in a critical moment. Unemployment in western Germany has reached 2,000,000—and this figure does not include the large number of the partly employed. Popular discontent is rising, the continued dismantling of industries furnishing an additional focus of discontent, especially among the workers.

CRISIS AIDS COMMUNISTS

The Communists are taking advantage of the triple crisis: Saar, dismantling, unemployment. The currency reform produced a boom, as it brought to a famished market long-hoarded goods and opened employment. But the economic structure is basically undermined by the vast augmentation to the population of penniless expellees from that part of Germany annexed by Poland and from the satellite states. These number 9,000,000, including a disproportionate number of women, children, and aged who must be sustained by the labor of others.

Among displaced workers unemployment is far higher than in the indigenous population. Now, in this threefold crisis, Communist Poland has decided to expel those Germans who survived the earlier purges. This will add another 200,000 to 400,000 unemployed, and further complicate the disastrous housing situation.

Although the Allies are protesting in Warsaw and have said they won't take more than 25,000, it is impossible to throw them back, or to refuse Germans asylum in their own country.

The Franco-Saar agreement can be understood from the viewpoint of the Saarlanders, who, under it, are much more prosperous than other Germans. But the repercussions in Germany are inevitable. The Saar becomes, for 50 years, a colony of France. It leases France its coal mines for that period; integrates its railway system with the French; and puts its foreign affairs, customs, monetary and economic policies under French control.

GERMANY DISMEMBERED

The irony is that there is no limit to which the Adenauer government would not go to achieve economic and political integration of the whole of western Germany with France. But what no German Government could accept—and remain in office—is further dismemberment of the gravely mutilated country. Neither will any truth-loving person swallow the argument that the disposition of the Saar is still left to the peace treaty. The disposition of eastern Germany was left to the peace treaty in the Potsdam agreement—while the expulsion of its population was agreed to. Germany has been dismembered by faits accompli and no one will believe that the British and Americans have permitted France to take an action they intend later to reverse.

Thus, the most prowestern and pro-French Government Germany is ever likely to have, has been slapped in the face and, in the dynamics of democracy, has suffered defeat.

Last week, Secretary of State Acheson said America must mobilize the whole of her diplomacy. At the same time, it was announced that we are bringing pressure on the French to give more freedom to the Bao Dai government of Indochina. Now, what sort of diplomacy is it that permits the French to make a colony in Europe—and to take from an extremely friendly German Government what they had granted Adolf Hitler?

The repeated warnings of the rebirth of German nationalism are really silly. For the German has only three political choices: To become a good European, go Communist, or revive nationalism. And while the Communists are uniting communism with nationalism, the western allies are systematically frustrating Europeanism.

Furthermore, it is a very weak France which is thus cutting ties with a friendly German Government with the consent of the British and Secretary Acheson. Communist east Germany has an army on its feet which is stronger now than the French—five fully equipped divisions to the French two—and while French Communists are preventing the landing of American munitions in French ports.

One only can say that whom the gods would destroy, they first make feeble and then feeble-minded.

Mr. LANGER. What I referred to a moment ago, Mr. President, is typical Acheson strategy, which in tragic pattern can be traced through the whole

network of our international commitments, both during and since the end of the war. Secretary Acheson's philosophy continues to be to lock the barn after the horse is stolen and then invite the thieves to get together to steal some more horses.

Mr. President, this is exactly what is going on at this very minute. For Mr. Acheson is continuing to blame Stalin for his own criminal blunders. While Mr. Acheson was hand in glove with Mr. Stalin, he excused the policies he was pursuing by pleading that they could not be changed because Stalin would not agree. Now, after supposedly breaking with Stalin, he pleads we cannot change our policy because they would play into the hands of Communist propaganda. Meanwhile, Mr. Acheson continues to play the role of Stalin's left hand in Europe by destroying the very economic basis upon which the economic livelihood and the social and political stability of the German people are absolutely dependent, if they are to win their struggle against totalitarianism.

Mr. President, my distinguished colleague the Senator from Indiana [Mr. JENNER] told the Members of the Senate exactly what is going on in the British zone in Germany, with the connivance, indeed the sanction, of our own Department of State. He referred specifically to the wanton destruction of the Reichswerke Salzgitter, located near Brunswick in the British zone.

Mr. President, his charges have been confirmed now by Larry Rue, who, writing in the Times-Herald of March 13, contributed the following additional facts of what is going on at this very moment:

In Brunswick another 15,500 persons will lose their jobs when the dismantling of the Reichswerke Watenstedt is completed. This plant was built shortly before the war to make use of the low-grade ore found in the Brunswick-Hannover district.

Altogether 18,000 people are employed in these works. In 1944 they produced 1,000,000 tons of steel, valued at $75,000,000.

Of the blast furnaces here only 10 are permitted to remain in operation. One is in reserve and the other nine are to be dismantled along with the steel works and rolling mills.

Of the 112,000 inhabitants in the Watenstedt-Salzgitter district, 50,000 workers are on the dole.

The British have given two reasons for the dismantling of these plants. One was that they were uneconomical. The second was the plants were war potentials. The Germans reply that the British have a similar plant at Corby, England, and have submitted proposals that the factories be used on nonwar production.

The mines in the Brunswick area had an output of 5,000,000 tons of raw ore a year. If these works were reactivated, the Germans say, it would mean a saving of $27,000,000 annually, now being spent to purchase foreign ores, which ultimately the American taxpayers are paying for.

One of the installations earmarked for dismantling is a gas pipe line, 3½ miles long, which carries surplus gas, used for smelting in the Watenstedt foundry, to the steel works in Brunswick. France, Yugoslavia, and Greece have all asked for this pipe line.

The Germans have made several counterproposals to save this plant so it could be used for peacetime purposes only. Around these works are good workers' homes.

The good offices of the British have been asked to see that these homes could still be used and the people employed. They proposed that a car shop be established there.

Mr. President, I invite attention to what happened last week, after several Senators had protested on the floor against dismantling of a fertilizer plant in Germany. Bids were let, and a New York outfit was the lowest bidder, at approximately three and a half million dollars—which means three and a half million dollars of our taxpayers' money—for which the lowest bidder was to purchase fertilizer in this country and send it over to Germany. Could anything be more foolish or more absurd?

The article continues:

These proposals, however, have been rejected and dismantling is being completed. Even the foundations are being blown up by dynamite, so no other factories can be rebuilt where the Reichswerke Watenstedt stood before. The factory buildings are torn down piece by piece. Nothing is left standing, except homes for workers who have no jobs.

Mr. President, I want to read into the RECORD, as further evidence, an eyewitness report cabled from Salzgitter within the past few days to prove how vicious a policy we are continuing to support in Germany. I quote from this urgent message from Salzgitter:

"British troops arrived a half hour ago and occupied the administration buildings with roughly 100 men. During the day disturbances had occurred and the workers forcefully entered the offices of the British and threw documents and other material out of the window and burned them in front of the building. The German police had to give the British officers and other foreigners protection and guarded their exit out of the building. Nobody was injured. The British made another attempt to blast (to dynamite) the cockery. The workers removed forcefully the fuses from the charges and a British superviser of the blasting operation was beaten up and chased away. On the No. 5 blast furnace the scaffolds were destroyed and several British automobiles were turned over and damaged. The British troops were again removed at 10:30 to return this morning."

From the above you can see that the conditions at Salzgitter are getting more critical every hour. Immediate intervention from Washington is imperative.

Mr. President, I now wish to read from the Christian Science Monitor of March 13, 1950. Surely no one can challenge an article such as this, which shows exactly how the present senseless policies are playing in the hands of the Communists. I quote:

TROOPS IN CHARGE

Incidents have occurred during the dismantlings with which the German police have been unable to deal. Therefore British troops now are in charge while the remainder of dismantling goes on.

The Soviets and German Communists naturally are using this situation for their propaganda. British troops are described in the Communist press as "carrying on war with tanks and motorized formations on German soil against unarmed, peaceful men who are defending their means of livelihood."

"These troops are not any longer occupation troops, but an invasion army," the Communist Nationale Front declares. Communist trade-unions in the eastern zone talk about solidarity for the struggling workers and demand unity of action against the western occupying powers.

Meanwhile, Mr. President, the following story, contained in the same article by Larry Rue to which I have referred, reveals just how the Allied High Commission continues to treat the new federal German Government:

While the Allied High Commission continues to rebuke the German Government for its inability to combat unemployment, now exceeding the 2,000,000 figure, the Allies are continuing to throw Germans out of jobs by dismantling.

With the dismantling of the modern $500,000,000 Krupp steel works and its shipment to Russia as reparations, Essen has now been reduced to the status of a village.

One-third of its working people are living on the dole. Essen before the war had a population of 667,000, of which 60,000 were employed in the steel works. Many other smaller industries and shops were dependent on this pay roll.

Now there are only from 12,000 to 15,000 steelworkers in Essen. As many as 7,500 of these are still engaged in tearing down factories and buildings, the ultimate result of which will be to decrease opportunity for work.

The last of the great Krupp steel, rolling and fine alloy mills was sent to Russia via Bremerhaven last April, when Russia still was maintaining its blockade of Berlin.

In Essen workers are still busy chopping to pieces the largest steel press in the world. This 15,000-ton press did work before the war for England, France, and Italy, making large forgings which could not be produced elsewhere. Now it is being shipped to Yugoslavia.

Fred M. Gillies, works manager of the Inland Steel Co. works in East Chicago, who recently resigned from his post as chief of production of the steel group here, said Yugoslavia is still far too backward in steel production to utilize this type of press. The only profit it might make out of it is to put it on exhibition for admission fees, he said.

Mr. President, the material I have presented is just a simple illustration of the outrageous policy of destruction which Mr. Acheson and our State Department are continuing to inflict on Germany and the whole of Europe. There is no time to go into this matter in all of its ramifications or to bring home to the Members of the Senate all of the illustrations which could be used to prove the suicidal course we are being compelled to follow because we have a Secretary of State who lacks the moral courage to admit the mistakes he has made and who obviously lacks the integrity to clear the stage for a change in policy by handing in his resignation.

I do want to call to the attention of the Senate one more particular illustration of the insanity of our so-called dismantling program.

This memorandum which I want to incorporate in the record reveals what is going on in the Bergische Stahl Werke in Remscheid in the British Zone.

Mr. President, this plant has never been placed on any dismantling list as a war potential. This plant has been in existence 97 years and is known throughout the world for the quality of its products and the craftsmanship of its workers, who have never designed anything but machines for the production of peacetime goods. This factory has never

in 97 years manufactured one single article to be used for war purposes. As this memorandum reveals, we have been busy not only dismantling, but destroying peacetime industrial potentials, which no one can ever use again.

And, Mr. President, the economic absurdity that is involved in this particular instance of dismantling is revealed in the fact that much of the equipment allocated to France was sold by France to Denmark who in turn sold it to Switzerland. And since neither of these three countries could find any use whatever for the equipment, the owners of this German plant have been assured they can buy back the identical machinery as second-hand equipment from Switzerland. Could anything that is going on in Germany in connection with money being spent by the forces of occupation be more foolish than that? That is what is going on, Mr. President, all over Europe financed by the American taxpayer.

I have a memorandum concerning the question of dismantling of steel foundry II of Bergische Stahl-Industrie K. G., Remscheid. It shows exactly where the dismantled property is being shipped. I ask unanimous consent that it may be printed in the RECORD at this point in my remarks.

The PRESIDING OFFICER (Mr. HUNT in the chair). Without objection, it is so ordered.

The matter referred to is as follows:

MEMORANDUM CONCERNING THE QUESTION OF DISMANTLING OF STEEL FOUNDRY II OF BERGISCHE STAHL-INDUSTRIE K. G., REMSCHEID

Dismantling Cind, No. 1335.

Dismantling order, dated May 24, 1948.

Start of dismantling activities, May 31, 1948.

Start of shipments of dismantled goods, November 17, 1949.

Total weight of the material to be dismantled, approximately 3,095 tons.

The object to be dismantled consists of 3 electric arc furnaces with a capacity of 5, 8, and 15 tons, respectively; 283 machine tools and molding machines; 24 annealing and hardening furnaces; 33 cranes; and other foundry equipment.

The material to be dismantled is allocated to—

England—weight 966 tons, representing one 5-ton arc furnace and molding boxes.

Yugoslavia—weight 860 tons, representing cranes, parts of furnaces, and machine tools.

France—weight 870 tons, representing one 15-ton arc furnace as well as machine tools and ladles.

Austria—weight 32 tons, consisting of machine tools.

Greece—weight 34 tons, consisting of testing machines.

Belgium—weight 50 tons, consisting of molding machines and foundry equipment.

Norway—weight 170 tons, consisting of one 8-ton arc furnace, chill molds, etc.

Pakistan—weight 40 tons, consisting of foundry equipment and iron chains for transport purposes.

Denmark—weight 35 tons, consisting of machine tools.

Dispatched so far—

	R/R K loads
To England	39
To Yugoslavia	27
To France	34
To Australia	4
To Greece	1
To Belgium	2
	Tons
At a total weight at	1.530

This means that it has shipped approximately 60 percent of the machine tools, approximately 60 percent of the molding machines, approximately 60 percent of the molding boxes, as well as 5 out of 33 traveling cranes.

Valuation of the object under discussion

	Deutsche-marks
New value ascertained by RDR	3,363,950
Present value ascertained by RDR	1,314,077
New value according to expert opinion of sworn consultant	4,234,014
Present value according to expert opinion of sworn consultant	2,593,158

Hints concerning the dismantling actions and the contemplated use of the dismantled goods:

1. A number of chiefs of foreign RDR missions unmistakenly mentioned that the allocation of the Brussels headquarters for dismantling goods has been made at scrap value and that no other use of the dismantled goods is contemplated.

2. The chief of the French RDR mission in Paris, declared on February 9, 1950, that the 15 tons of arc furnaces allocated to France will be sold to Yugoslavia.

3. Occasional hints of the representatives of the reception nations mentioned that at least part of the material shipped will be cut in the harbor of Emden for scrap.

4. A high value testing machine (for tensile-tests) with all measuring instruments was transported without rolling support to the railroad car by way of fastening the machine head with wire-rope to a truck and dragging it across the floor over a distance of 160 feet.

5. Dismantling of the annealing furnaces was considered impracticable by RDR branch (Colonel Bemfort). Just the same these annealing furnaces lately are being dismantled by way of destroying the brick work and by cutting the remaining iron girders (welding torch) at floor level.

6. The dismantling covers the total equipment of steel foundry II including the mechanical shops although the official dismantling list published in October 1947 stipulated that solely the three arc furnaces were to be dismantled.

The order for the complete total dismantling of steel foundry II was given by the local British resident verbally on May 24, 1948.

REMSCHEID, *February 23, 1950.*

Mr. LANGER. I want to state that the dismantled property is being shipped to Yugoslavia, France, Australia, Greece, Belgium, Norway, Pakistan, England, and to the other countries I have mentioned.

As a further illustration of the economic lunacy that is involved, I want to read into the RECORD a resolution of the workers' council of this German plant, which was issued on February 23, 1950, just 3 weeks ago, and I call especial attention to this resolution so that all of the Senators in this body who claim to be champions of labor and of the underdog will be able to understand how they themselves and their own principles are being betrayed by these policies of Secretary Acheson.

Mr. President, I want to read the resolution because of its great importance to the American people, to the American taxpayers. The resolution is as follows:

RESOLUTION OF THE WORKER'S COUNCIL OF BERGISCHE STAHL-INDUSTRIE, REMSCHEID, CONCERNING DISMANTLING OF STEEL FOUNDRY II

The culminating point of the dismantling action is just behind us after approximately 60 percent of the furnaces, machines, and equipment of steel foundry II have been shipped. In spite of this the worker's council considers it their duty to make herewith for the last time an appeal to the common sense of those offices responsible by drawing their attention to the fact that the working place of 1,200–1,300 men will be destroyed, and that 5,000 inhabitants of the city of Remscheid are losing the base of existence by destroying the above Department of Bergische Stahl-Industrie.

Now, as before, the worker's council does not hesitate to state also in this last hour that it understands the action of the occupying forces concerning the dismantling of plants serving solely the war industry. However, the worker's council decidedly condemns the mischievous destruction of a plant which since decades serves peacetime industry.

The worker's council points out that even a British part has admitted that the reinstallation of the electric furnaces on some other place has to be considered impossible due to the missing switching schemes. Therefore this valuable equipment giving work and bread to a large number of people will be destroyed. With a strange appearance the worker's council takes to knowledge that a rebuilding of the destroyed equipment is not being considered. The manner in which the dismantled equipment is being treated confirms the above remarks of English offices and gives proof of the fact that this dismantling action serves nothing but the destruction of capacity.

THE WORKER'S COUNCIL OF BERGISCHE STAHL-INDUSTRIE,
PAUL MÜLLENBACH.
EWALD MERTEN.

REMSCHEID, *February 23, 1950.*

INDUSTRIEGEWERKSCHAFT METALL F. D. BUNDESGEBIET DEUTSCHLAND, VERWALTUNGSSTELLE, REMSCHEID,

Remscheid, February 24, 1950.

According to our information, the statements of the above resolution prove to be correct; 1,200–1,300 men could find work if steel foundry II, with attached shops, could start operation.

ERICH HOCH,
Labour Union, Metal.

Mr. President, to complete the over-all picture of how we are undermining the economic, the social, and the political morale of the new German Government, I want to read into the RECORD an article from the Christian Science Monitor of Monday, March 13, which shows how our policies are playing directly into the hands of the Communists behind the iron curtain. It is as follows:

DISMANTLING PROTESTED IN BRITISH ZONE

(By J. Emlyn Williams)

BONN, GERMANY.—Policy and sentiment struggle hard for mastery among most west Germans as they contemplate two urgently pressing issues—the treatment of German refugees expelled from Poland and the last dismantlings of war-potential factories in the British zone.

Negotiations for acceptance of a limited number of German refugees from Czechoslovakia and Poland had led to the United States and Britain agreeing to take about 20,000 from the former and 25,000 from the latter country. All these were persons with relatives in west Germany who promised support.

With Czechoslovakia, the agreement hitherto has raised no difficulties. But Poland apparently has taken the opportunity to expel its last remaining Germans from territory east of the Oder-Neisse line—a territory which the United States, Britain, and France refuse to recognize as Polish, though they

have cooperated officially since 1945 in accepting millions of German expellees from there for resettlement in the western zones.

SHARP REPLY BY POLAND

To the recent British note which protested against more than the earlier figure of 25,000 Germans being expelled, Poland now replies that the rest of the Germans are being transferred to the Soviet zone of Germany as the result of an agreement with the provisional government of the German democratic people's republic, which is the highest German authority recognized by Poland. This, of course, is the east German puppet government.

What happens to expelled Germans when they reach that zone, the Polish note added, is not Poland's concern.

On the frontiers of the British and American zones, German refugees have been arriving for days in quite unorganized fashion. Obviously, it is intended that they shall cause confusion and increase the economic difficulties of the west German state.

The British decision not to permit more than a certain number to cross their zonal frontier has been criticized by some German authorities as unduly hard. But it needs little imagination to realize what the consequences for west Germany would be otherwise.

Further, it generally is believed that the Soviet zone's acceptance of thousands of Germans from western Poland will lead very soon to attempts by these same expellees to reach west Germany. This would only increase the distress which already is common in areas like Schleswig-Holstein, parts of lower Saxony, and Bavaria.

In prewar days, 8,000,000 Germans lived in the territory between the Polish frontier of 1939 and the Oder-Neisse line. Today, there are about 125,000 Germans. About the same number, it is reliably estimated, have become Polish citizens, either voluntarily or compulsorily.

LINKED WITH DISMANTLING

Poland wants these Germans moved because there are about 200,000 Poles still in the Soviet Union who are to be transferred to this territory. When that is done, Poland believes it can justify the Oder-Neisse line as its permanent western frontier.

Expellees and dismantling are naturally associated together, since the former require new means of livelihood while the latter in many cases is destroying that very means.

For this reason, it is not surprising that there should be protests against the dismantling of the huge industrial plant at Watenstedt-Salzgitter, in the British zone but very near to the Soviet zone border.

Mr. President, I have called these matters to the attention of my colleagues because this picture is so complicated and has been so deliberately suppressed or misrepresented that the American people and the Members of this Senate do not realize we are engaged in a mad race against time if we are to prevent the ultimate collapse of Germany, and with Germany, what remains of western civilization into the hands of Russia.

In that connection, I repeat that I want every Senator to read the article written by Dorothy Thompson, published in the press this morning. Again I call attention to the speech made by Winston Churchill on the floor of the House of Commons, which I have previously quoted.

This is why I now demand that the shocking story of what is going on that was presented in executive session to the Appropriations Committee of last Friday now be made public. I have not seen the testimony but I have been given to understand that it is so shocking and so outrageous that a goodly portion of it has been stricken from the record at the request of Mr. McCloy himself. This is why I believe that what does remain of that record should now be made public.

FLOOD CONTROL AND RIVERS AND HARBORS

The Senate resumed the consideration of the bill (H. R. 5472) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

Mr. WILEY. Mr. President, I offer an amendment to the pending river and harbor bill for flood protection on the Eau Galle River to be authorized in accordance with the recommendations of the Board of Engineers for Rivers and Harbors made in their report of March 3, 1950. I will not attempt to summarize the four-page report which has been filed by Brig. Gen. J. S. Bragdon of the Board, but I would like to state that it definitely points up the need for flood protection of the residents of the Spring Valley, Wis., area. Floods in the Eau Galle River have caused tremendous damage and, to quote the report:

A lowering of public morale, pollution of water supplies, and the possibility of epidemics.

Three deaths were caused indirectly by floods in this area. A quarter of a million dollars in damage was inflicted by the 1948 flood. In 1942 a million and one-half dollars damage was caused.

Now, Mr. President, we cannot allow this sort of situation to continue. The people of Wisconsin have been most sparing in their requests for flood-control work, as the record will attest.

Had the report from the Corps of Engineers been received by my office earlier, I would naturally have offered this amendment in the Senate Appropriations Committee, but the report has come to my hands from the Department of the Army within a few minutes of noon today.

The Board contemplates construction of a reservoir in the vicinity of Spring Valley, channel enlargement and channel rectification works, all in accordance with the plans of the district engineer.

I respectfully appeal to my colleagues in the Senate to agree to this amendment which, incidentally, assumes the full cooperation of all local officials in providing lands, easements, and rights-of-way, as well as other necessary arrangements.

Mr. President, I ask unanimous consent that the amendment may be printed and lie on the table.

The PRESIDING OFFICER (Mr. O'MAHONEY in the chair). Without objection, the amendment will be received, printed, and will lie on the table.

Mr. WILEY. Mr. President, I offer an additional amendment to provide for merely an investigation by the Corps of Engineers of possible flood control and river and harbor improvements on the Milwaukee River and tributaries in connection with other investigations which have been previously authorized for other States.

This, Mr. President, is not a request for approval of any project but merely for a survey of ways and means of controlling floods along the Milwaukee River. According to a report which I have just received from Major General Pick, Chief of the Corp of Engineers, there has been a considerable amount of community development along the Milwaukee River area on land that was previously vacant. This community development is seriously endangered by inadequate flood protection. General Pick advised me in a letter of February 24 that "floods are frequent in the area with smaller floods occurring almost annually."

Mr. President, I have in my hands a copy of the Wednesday, March 29, Milwaukee Journal. On the very first page there is a very disturbing article on the results of an overflow of the Milwaukee River. A dispatch was filed from Saukville, Wis., stating that—

Acres of water and jagged blocks of ice filled the outskirts of this village Wednesday as overflow from the Milwaukee River drained out of the business district. The jammed floes, which had caused a swirling torrent of water to go over the banks Monday night, remained in place despite dynamiting by the county highway department. Highway 57, east of the river, was still closed Wednesday, but traffic had been resumed on county trunk O to the west.

I respectfully appeal to my colleagues to accept this amendment for a Corps of Engineers investigation of the Milwaukee River and its tributaries.

Mr. President, I ask that the amendment be printed and lie on the table.

The PRESIDING OFFICER. Without objection, the amendment will be received, printed, and will lie on the table.

THE FORTY-NINTH STATE—EDITORIAL FROM COLLIER'S

Mr. CORDON. Mr. President, the House recently passed two statehood bills, one providing for statehood for Alaska and one providing for statehood for Hawaii. Those bills are now pending before the Senate Committee on Interior and Insular Affairs. I know that passage of these two bills will reemphasize to Members of this body the importance of the proposed legislation.

In the April 8 issue of Collier's magazine appeared an editorial entitled "The Forty-ninth State," which summarizes the situation with reference only to Hawaii. I am more familiar with the Hawaiian situation and with the arguments pro and con with reference to the bill providing for statehood for Hawaii than with the Alaskan situation. My attention was struck by the considered character of the editorial. Here will be found summarized the major points in opposition to the statehood bill, and following them a rather carefully considered answer to each of them.

Mr. President, I ask unanimous consent that the editorial may be printed in the RECORD at this point as part of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE FORTY-NINTH STATE

Once, long ago, Americans fought and won a war which freed them from the tyranny of taxation without representation. Yet there are still hundreds of thousands of Americans who are taxed by a Federal Government in which they have no voice. Among them are the people of Hawaii. They've paid that Government more than $1,000,000,000 in the 50 years since the islands became part of the United States.

Today Hawaii's tax bill is greater than that of 11 States—Arizona, Idaho, Montana, Nevada, New Hampshire, New Mexico, North Dakota, South Dakota, Utah, Vermont, and Wyoming. But it hardly gets its money's worth. Its citizens can't cast a vote for President or even choose their own Governor. Their Delegate to the House of Representatives has no vote. They aren't represented in the Senate at all.

Why not? Why the discrimination? Why isn't Hawaii a State? People have been arguing about those questions during most of the island's half century of Territorial history. They have been the cause of numerous statehood investigations and statehood bills in Congress. The investigators turned in favorable reports. Some of the bills came very close to passage. But creation of the forty-ninth State is still around the corner.

You are likely familiar with the most common reasons given for opposing Hawaiian statehood:

The islands are not contiguous to the continental United States.

The natives, we are told, are politically immature.

Statehood would give political equality to the island's large non-Caucasian population, which might vote as a bloc and gain control of the new State.

Hawaii's admission to the Union would increase the disproportionate voting power of small States in the Senate.

The islands are a hotbed of communism.

Well, let's take up those objections in order. First there is the matter of remoteness. Hawaii is closer to San Francisco than San Francisco is to Washington. It is 8 hours from the mainland by air. This air travel is over water rather than land. Is that a valid reason for denying the islanders their well-earned right to vote?

Some Members of Congress would impose on Hawaii a period of political adolescence which, though indefinite, seems unreasonably long. Hawaiians have been Americans since the beginning of the century. Immigration from Europe and Asia has been virtually closed for 18 years. Of the 29 former United States Territories, only one, New Mexico, had to wait longer than Hawaii for statehood. A citizen on the mainland can vote at 21—or at 18, if he lives in Georgia. Isn't a 50-year apprenticeship for Hawaii enough?

The objection to Hawaii's non-Caucasians violates the fundamental principles of our democracy. The fear that they might seize political control for some harmful end shows a sad lack of faith in the freedom and opportunity which make that democracy so blessedly attractive. Under it, Hawaii's yellow- and brown-skinned citizens even now enjoy an equality that might serve as a pattern for the American mainland.

As for the voting strength which the Senate set-up gives to the smaller States, that is a situation which already exists; and if the populous States want to change it, they will have to do so through a constitutional amendment. Their problem will not be solved by denying statehood to Hawaii.

Now, about communism. The comrades are at work in the islands, of course, just as they are here at home. Hawaii is an inviting target for them. The islands are dependent on the outside for many necessities of life. The domestic economy is largely built around the growth and export of sugar and pineapples. The workers in these industries are organized by Harry Bridges' left-wing International Longshoremen's and Warehousemen's Union. In 1946 the ILWU tied up the sugar plantations in a 79-day strike that nearly wrecked them. Last year it called a 6-month strike which paralyzed Hawaii's vital two-way shipping.

Those strikes offered the Communists their big chance, but they weren't able to cash in. And the fact that Hawaii stood up under the heavy blow of the strikes and at the same time stood off the Reds convinces us that communism hasn't made the progress that some opponents of statehood would have us think.

Incidentally, neither these opponents nor anybody else in the Federal Government did much to help the islands when the going was tough. In fact, Washington policy may have made the going a little tougher. During the war the Government was Hawaii's biggest employer. Then, in a postwar burst of admirable, but ill-planned economy, it abolished 12,000 civilian jobs in a little more than a year. The sudden cutting off of 12,000 workers' incomes had a serious effect on Hawaii's whole economy. Largely as a result there are now 33,000 unemployed in a work force of 197,000. Furthermore, Federal authority made no move to invoke the Taft-Hartley law in last year's dock strike, even though the tie-up obviously menaced the islands' health and well-being.

As a result, even though Hawaiian Communists gained no lasting victory, their fellow agitators in China, Japan, and the Philippines have been able to point to the Territory's strikes and unemployment and say, "You see, American capitalism won't work. It is collapsing in a series of crises and break-downs.

We believe that statehood would strengthen Hawaii against these propaganda blows. And certainly our prestige in the Far East, as well as Hawaii, could do with some strengthening right now. The source of that strength is at hand in Hawaii. Already the territory is a model of a harmonious living-together by diverse races and cultures. And its living standard surpasses any that its neighbors enjoy or that Communist blandishments can promise.

We also favor statehood for Alaska, but we think Hawaii has prior claim. It stands on the threshold of the Orient and on the political front line of American democracy. Its citizens today enjoy many advantages that are a part of their American citizenship. If our Government will grant them the full and equal rights inherent in that citizenship, it will correct an old injustice and show the Eastern world a democratic example that might take us far toward the goal of peace and freedom in a most critical theater of the cold war.

MESSAGE FROM THE HOUSE

A mesesage from the House of Representatives, by Mr. Swanson, one of its reading clerks, announced that the House had agreed to a concurrent resolution (H. Con. Res. 190) to provide for the observance and celebration of the one hundred and seventy-fifth anniversary of Patriots' Day for the commemoration of the events that took place on April 19, 1775, in which it requested the concurrence of the Senate.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 190) to provide for the observance and celebration of the one hundred and seventy-fifth anniversary of Patriots' Day for the commemoration of the events that took place on April 19, 1775, was referred to the Committee on the Judiciary.

AMERICAN FOREIGN POLICY

Mr. MORSE. Mr. President, I wish to take a minute or two to read into the RECORD a press release which I issued this morning in answer to an inquiry I received from a group of college students in California asking me for a statement on my views as to some of the things needed in American foreign policy at the present time. After all, these young people are going to have to live with, and I am afraid, pay for some of the great mistakes which my generation probably is making in the field of foreign relations. I pray to God that they will never have to pay with their precious lives and the possible destruction of our whole system of a free society itself for any mistakes we make.

So I felt that, as one Member of the Senate, in this day in our history which I think is both dark and critical, the best advice I could give those young people would be to make a strong plea for putting into practice a true bipartisan foreign policy. I did so in the following language:

It is my opinion that the best help which students can render to the cause of peace in this critical hour of our Nation's history is to help develop an informed and an enlightened public opinion in support of a sound bipartisan foreign policy.

The forces at work in America today to make our country's foreign policy a partisan issue are performing a disservice to the cause of peace. Both major political parties owe it to the American people to form a coalition at the State Department level in support of a unified bipartisan foreign policy. The Administration owes it to the American people to enter into consultation with bipartisan congressional leaders on foreign policy in advance of any international understanding or agreement with leaders of foreign powers.

However, it is time for the American people to appreciate the fact that we can lose the peace right here in our own country by our own actions if we present the picture to the world of disunity among ourselves on foreign policy. This is a time of crisis and in time of crisis the President of the United States should be supported on foreign policy by all the people of the country if he in turn shows good faith action in cooperating with the leaders of both parties in the carrying out of a bipartisan foreign policy. I believe President Truman has demonstrated that good faith by the recent steps he has taken in appointing Republicans to State Department positions, such as the appointment of former Senator John Cooper to the American Delegation for the London Conference and in consulting with Republican leaders on foreign policy questions.

I shall always reserve the right to criticize and oppose any proposal of the administration on foreign policy that I think cannot be supported by the facts. However, as a Republican who places the welfare of our country and the issue of winning the peace above political expediency or party advantage, I urge the American people to make clear to the leaders of both the Democratic and Republican Parties that they disapprove of the playing of politics with foreign policy issues.

The time has come for the American people to make clear that they want their leaders in the Congress and in the executive branch of Government to get together on a sound bipartisan foreign policy motivated by a patriotic spirit of nonpartisan cooperation in the interests of national security and of the peace of the world.

Mr. President, in addition to the statement I made to those college students this morning, I wish to add a word or two so that we can keep the record straight at least as to the position of the junior Senator from Oregon on foreign policy matters: On February 26, 1950, at Atlantic City I gave what I consider to be my major public address this year on foreign policy. I addressed a convention of some 7,700 school administrators. In that speech I made certain recommendations in regard to what I think is necessary if we are to effectuate a bipartisan foreign policy. I suggested that the President of the United States appoint a Republican Under Secretary of State, so that we can have a coalition of party leaders and party points of view at the State Department level. We must face the fact that in a very large measure foreign policy is determined at the State Department level. It seems to me that the American people have a right to the assurance that Republican points of view and suggestions can be channelized at the State Department level and can be brought to bear upon the formation of foreign policy in advance of any international agreements. I recognize that international agreements of various types under our Constitution, through the powers of the Chief Executive, can be entered into by the President. Since the defeat in New York, in recent months, of one of the distinguished Republican leaders on foreign policy, Mr. John Foster Dulles, the fact is that there is at least a feeling—and I think actually it is more than a feeling—that there has not been in the State Department a channel through which there can be expressed, with significant effect upon the formation of foreign policy, the point of view of the leaders of one of the two great parties of the country.

Of course, a bipartisan foreign policy in words alone is no good, Mr. President. A bipartisan foreign policy put to practice is the only good thing which can come out of this fine, patriotic concept that all of us should work together as a united people behind an all-American foreign policy. We need to demonstrate to the world that we stand ready and willing to do the things necessary to be done in order to defend and enforce the peace against any attack upon it by any totalitarian power—be it Russia or any other.

I think in recent weeks, at least in spirit, there has been a remarkable movement on the part of the administration toward the goal the junior Senator from Oregon had in mind when he made the recommendation for the appointment of an Under Secretary of State from the Republican Party. Mr. President, I am not one to stand on form; I am not a perfectionist in the sense that I shall ever take the position that unless one can have his suggestion carried out completely, in every detail, then credit should not be given at all for steps made in the direction of carrying out what he thinks is a sound suggestion. I think the position the executive branch of our Government has taken in recent weeks, and particularly in recent days, is going to give great assurance to the American people that, once again, in dark hours of crisis, all of us, in both parties, will rise to whatever is the national interest.

Mr. President, I may be wrong in my conclusion; I claim no infallibility in regard to it. However, I assure the Senate that I have the deep conviction that the welfare of my country and the peace of the world are dependent upon the unity of the American people behind a foreign-policy program which makes it possible for us to use the great power we have in the world in holding the lines of freedom during the many years it may take until we shall have penetrated the iron curtains of ignorance and the darkness, instead of light, which are kept over the peoples controlled by the iron-curtain-country dictators.

Therefore, Mr. President, I think it simply would not be decent of me not to recognize that in recent weeks and days the leaders of the opposition party have been taking some steps at the State Department level to try to bring about a procedure which once again would permit us to have the benefit of the situation which existed when Senator Dulles served in the State Department, in both official and unofficial capacities, as a spokesman for the Republican Party and also as a spokesman for all the people of America, regardless of party. I think the steps which have been taken in recent weeks and days to return to that bipartisan procedure and policy are steps which should receive from me commendation, which I now give to the administration.

Mr. CAPEHART. Mr. President, will the Senator yield?

Mr. MORSE. I decline to yield at this time.

The PRESIDING OFFICER (Mr. STENNIS in the chair). The Senator from Oregon declines to yield.

Mr. MORSE. Mr. President, I now wish to commend the administration for taking bipartisan steps which I think at least offer great hope for once again establishing and effectuating a sound bipartisan foreign policy. I particularly wish to commend the administration for the appointment of a former Republican Senator from Kentucky, a distinguished leader in our country, Mr. John Cooper, as one of the American delegates to the forthcoming London conference. Those of us who served with Senator Cooper in the Senate of the United States know much about the great spirit of the man, the wonderful sense of values which have formed his character, his devotion to the spiritual and human values of the democratic way of life. His recognition that, after all, our society of free men stems from the roots of the great religious concepts which motivated the founding fathers of our form of government is a source of inspiration to many Americans. I think John Cooper's recognition that, after all, it is the spiritual values which count, that it is the protecting of the dignity of the individual which forms the very basis of a free society such as ours, is going to exercise tremendous influence in the councils of the world. I, for one, am proud that he has been selected from my party to represent, not my party, Mr. President, but the American people at the London conference.

I also am encouraged, and I wish to commend the administration for the news announcements that it is the apparent intention of the administration to appoint other Republicans to responsible positions in the field of foreign policy. I hope those intentions will be carried out. As I said in my press release this morning, I shall always reserve the right to criticize any ruling which cannot be defended on the facts. It is my duty and obligation as a Member of the Senate, to keep myself free to criticize the administration if I think the facts do not support its course of action, on this great issue of foreign policy. However, I believe this issue of foreign policy is so nonpartisan that we must make it bipartisan and give it united cooperative support. Whenever I find the President of the United States exercising a leadership designed to unite the people of America behind a bipartisan foreign approach to these problems, I am not going to hesitate to support him, simply because I am a member of the party of the opposition. I am happy to learn that in recent days the views of the great ARTHUR VANDENBERG are being given the careful consideration they deserve by the White House. I happen to be one who believes that the hour in which we live is so critical that the American people should understand that if we lose the peace many millions of them, within 30 days after the outbreak of war, most probably will be dead on American soil. Let me make perfectly clear, Mr. President, that the junior Senator from Oregon will never follow any course of appeasement in foreign affairs because of the possibility that in defending the peace we may sometime have to go to war, because I am satisfied that the American people will always be true to their great and rich heritage that the principles of freedom are more precious than life. Once they come to understand that those principles are in danger, then life will become inconsequential, because the patriotic force and impulses of the American people have never yet failed those principles, and I am satisfied the time will never come when such failure will be the record of the American people. But what I am pleading for today, out of the sincerity of my heart, is that the American people shall recognize now, before it is too late, that the present hour is an hour of great testing of American unity. The American people should say to their Government, controlled both by Democrats and Republicans, "Get together now on the facts, whatever those facts may be, and give us a foreign policy that can and will receive the united support of the great majority of the leaders of both parties in the Congress of the United States." A foreign policy which recognizes that the overwhelming majority of the American people want no truck with any strategies, proposals, or partisan attempts to take us back to a theory than we can live unto ourselves alone. We can never again do that, Mr. President. I am sure that the American people want no truck with any strategy or political partisanship which would seek to spread along the Pacific and the Atlantic coasts our own economic iron curtains. We must not forget that we

are a Christian Nation. Unless we are willing to put into practice great Christian principles which I think form the basis of American democracy, the spiritual values which motivated the founders of our country, the future is very dark. Underlying all those values, there is no spiritual tenet more important to the formation of our form of society, Mr. President, than the golden rule that we should do unto others as we would have them do unto us.

Mr. MUNDT. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. HOLLAND in the chair). Does the Senator from Oregon yield to the Senator from South Dakota?

Mr. MORSE. I am sorry, but I will not yield at this time.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. MORSE. Mr. President, I think putting into practice that unanswerable Christian teaching is one of the great challenges facing the American people today. I happen to believe, Mr. President, that you cannot reconcile by one iota any proposal for a return to isolationism with the Christian teaching of the Golden Rule.

I also believe, Mr. President, that there is no hope for peace in the world if my country should ever return to the unfortunate isolationist doctrine which once characterized the predominant political philosophy of my party in the field of foreign relations. I want it understood throughout my State as I speak here today that I do not want the votes of isolationists in my State because I cannot support their views on foreign policy. They should know that I could not possibly carry out in the Senate of the United States their objectives in the field of foreign policy, because I think those objectives will assure us war if they ever become the foreign policy of America. I think there are times when men must be willing to make whatever political sacrifices may be necessary in order to hold firm to a deep conviction. I could not have one more deep than my belief that a return to isolationism means war. Thus, as I have said on the political platforms of my State, I want to say on the floor of the Senate, because I think my colleagues on my side of the aisle are entitled to know it, that I disassociate myself from any group within my party or any group within the party of the opposition which seeks to carry us back to a program of isolationism.

As a Member of the Senate, I do not intend to let the phrase or the label "isolationism," tacked on to some proposal, blind me to the facts on which that proposal may rest. There is a great tendency in America today for some people to stick on various proposals irrelevant labels, in order to stir up emotional sanctions against the proposals. There are some proposals which deserve the very careful attention of the Senate, to which the sticker or label "isolationist" has been pasted.

I shall look behind the labels. As the courts say, it is the duty of the court to pierce the veil of superficialities and to look at the record and the evidence supporting the theory of the case. So, when I speak out today, Mr. President, against isolationism, I want to make perfectly clear that what I mean is that when it can be demonstrated that some proposal is truly based upon the theory that we should try to live unto ourselves alone and forget the Christian tenet of the Golden Rule, I shall be opposed to that proposal. My opposition will be based on the conviction that the facts will demonstrate that the proposal will lead us down the road to war and not to peace.

I close, Mr. President, by saying that I seriously doubt that since the War Between the States the Republican Party has ever been confronted with a greater challenge than that which it is confronted with today. The Democratic Party, too, has a corresponding challenge. It is a challenge to all, Republicans and Democrats alike, to demonstrate a willingness on our part to cooperate together in finding the facts in the field of foreign policy, and, on the basis of those facts, working out together in a teamwork relationship a nonpartisan or bipartisan foreign policy, whichever we want to call it, that will deserve the united support of all in the Congress and of all the American people.

That is the challenge of both parties; and as a member of the Republican Party, I intend to do what I can to help my party meet that challenge in accordance with the principles which I have laid down in these remarks.

Mr. WILEY. Mr. President, I am sorry that I did not hear all the comment of my distinguished friend from Oregon, but I did hear him say something very fine with regard to a former Senator, John Cooper. I count him one of my dearest friends, resulting from our acquaintanceship when he was a Member of the United States Senate.

I am very happy to join with the Senator from Oregon in expressing appreciation to the President for appointing John Cooper. He is, indeed, a fine Christian gentleman. Last night I happened to be with him, in company with a number of distinguished gentlemen of this city, Democrats and Republicans, and the consensus there was that the President had done the right thing. We may ask why. I suppose the answer is embodied largely in the compliment which was paid to John Cooper by the distinguished Senator from Oregon. John Cooper is a modest man, but when he gets his teeth into something, they are there. He is also a thinker; and if there is anything needed in this period more than anything else, it is straight thinking. Someone has said, "The time for straight thinking is now." I heard John Cooper give an analysis, a day or two ago, of his experience when he served this country on the United Nations. His statements were those of a thinker, one who evaluated not only from a statesman's perspective, but from the perspective of a Christian thinker, his experience with the representatives of the various members of the United Nations.

So, Mr. President, I am very happy to say these few words and to join with all his former associates in congratulating him, congratulating the President, and congratulating the country in having a man of the humble but great character of Mr. Cooper to go abroad and meet the minds of the people of other nations, to evaluate their techniques, and receive a grasp of the problems we are facing.

EXTENSION OF CERTAIN PATENTS HELD BY VETERANS OF WORLD WAR II—CONFERENCE REPORT

Mr. WILEY. Mr. President, I should like to ask the distinguished Senator from Oregon if he will permit me to call up the conference report on House bill 4692, to provide for the extension of the term of certain patents of persons who served in the military or naval forces of the United States during World War II to which he objected the other day. It is a very simple matter. When the bill was before our committee, we provided that veterans should have an extension of patents up to 2 years, if I recall correctly, while they were in the service of their country. The House bill provided twice that length of service, and the Senate conferees finally agreed with the House conferees.

Mr. MORSE. May I say to my good friend from Wisconsin that if it were a matter of accommodating him, it would be a great pleasure for me to accede to his request. I am personally satisfied that what the Senator from Wisconsin says about the conference report is an accurate statement. I am satisfied that it is probably true that if all Senators were present there would be no objection to its consideration. But, Mr. President, there is a certain matter of parliamentary policy from which I shall not deviate, and that is that when I am on the floor of the Senate I shall not permit the Senate to take up a new piece of business without first having a quorum call. I think that is a courtesy which I should want to have extended to me if I were off the floor of the Senate but within the precincts of the Senate. One never knows whether some Senator might differ with the conclusions which the Senator from Wisconsin and I may have reached in regard to this particular conference report.

I hope the Senator from Wisconsin will take no offense whatsoever when I tell him that I must follow that very sound parliamentary procedure, which provides a protection to which we are all entitled. Therefore, if he wants to bring the matter up after a quorum call, I shall be very glad to suggest the absence of a quorum. Previously the Senator stated that he did not want to take the time for a quorum because a Senator had yielded to him, but he now has the floor in his own right, and if he would care to bring up the matter after I suggest the absence of a quorum, I shall be glad to make that suggestion. I await his pleasure.

Mr. WILEY. Mr. President, I understand that the distinguished Senator from Louisiana [Mr. LONG] is scheduled to speak. I sought the floor for an hour and a half. The Senator from Nevada [Mr. MCCARRAN] brought up certain matters in which he was interested, and I tried to get the attention of the Chair, assuming that I would have the same right-of-way as the Senator had, and then our good friend from North Dakota [Mr. LANGER] rose and talked for an hour. I do not think it would be fair to

the other Senators to do so today, but I have assured the House conferees that as soon as possible I would bring up the conference report.

Mr. LONG. Mr. President, will the Senator yield?

Mr. WILEY. I yield.

Mr. LONG. The Senator realizes that the Senator from Louisiana has no objection to having the matter brought up. The Senator from Oregon feels that he does not want to have it brought up without first having a quorum call.

Mr. WILEY. I assure the Senator from Oregon that I still love him, in spite of his objecting qualities, but I do not wish to call absent Senators back to the floor. I shall try on Monday to obtain the floor, after the quorum call, and I am sure there will be no objection to the conference report.

AMERICAN FOREIGN POLICY

Mr. CAPEHART. Mr. President, I do not claim to be an expert on foreign affairs. I have listened very attentively to the able Senator from Oregon [Mr. MORSE]. I am wondering what the foreign policy of the United States is. I have been a Senator of the United States for approximately 6 years. I have tried to cooperate, and I think I have cooperated. My observation has been that every Senator has cooperated in foreign affairs. However, after listening to the able Senator from Oregon today, I note that he feels the situation is growing worse. My observation over the past 6 years has been that we have had a bipartisan foreign policy and that the Republican Eightieth Congress and every Congress since I have been a Member of the Senate have gone along 100 percent with the administration.

Is it possible that the so-called bipartisan foreign policy is not working? Perhaps what we need is for each Senator, the Senate as a whole, and Congress as a whole, to take a better look and another look, and analyze more carefully the proposals which come before us before we enter into them. It is not my opinion that the situation today is worse. It is not my opinion that we might well have a war at any moment, as the able Senator from Oregon said, which would wipe out, as I recall his statement, many million Americans. I have gone along with the bipartisan foreign policy. I voted for the United Nations, the Atlantic Pact, and for practically all phases of our bipartisan policy.

I should like to propound this question: When is a Senator privileged to speak his mind or to disagree on foreign affairs? What sort of system can we set up? I ask the able Senator from Oregon what system we can set up which would insure a 100-percent bipartisan foreign policy. Does he mean that the senior Senator from Indiana is to have absolutely nothing to say? Does he mean that the senior Senator from Indiana must vote and accept any program respecting international matters without so much as crossing a single "t" or dotting an "i"?

Then who is to present it, and to whom? In other words, some place, somewhere, someone must adopt a policy. It must be adopted either by 1 man, 2 men, 10 men, a hundred men, 500 men, a thousand men, or, in the case of a nation when it holds an election, millions of people. Who is going to do it?

As a duly elected representative of the people of my State, what rights do I have? Is one an isolationist simply because he questions a specific proposal which may come before the United States Senate? Is that being an isolationist? I was under the impression that a man should believe in his principles and be honest and try to represent the people of his State and the Nation. The able Senator from Oregon is always standing on principle, just as he stood on principle a moment or so ago when he said "No, no. You dare not agree to a conference report without a quorum call, so that every one of the 96 Senators may be present." I have no quarrel with that. I have no quarrel whatever with that. That is his principle. He feels that 96 Senators should participate in that particular conference report. My question is, Should not 96 Senators participate in developing our foreign policy?

Mr. MORSE. May I answer the question?

Mr. CAPEHART. No; I do not care to yield.

Mr. MORSE. I thought the Senator was asking me a question.

Mr. CAPEHART. My question is, Should not 96 Senators participate in questions affecting foreign relations? Why should not 96 Senators express their viewpoint? Why should they not argue? I believe they have the right to say: "This is wrong. This is right. I offer this as a substitute. I offer that as a substitute." Why should they not have that right?

Does any American know of a single instance, after Congress has debated a most controversial subject and passed a law, when either political party or any group of people in the Nation have said, "We are going to violate that law. We are not going to obey it"? My observation has been—and my view is borne out by history, if I read it correctly—that when Congress passes a law, it becomes the law of the land, and until it is repealed, nobody questions it, and the President proceeds to administer the law. So I am quite at a loss to understand just what is meant by a so-called bipartisan policy.

I am at a loss to understand why, after many years of enjoying a so-called bipartisan foreign policy in the United States, we find the situation today so critical. Evidently the bipartisan policy has failed. I am just as anxious to solve the problems of the world and have peace as is the able Senator from Oregon, or any other American. I am vitally interested in it. I served in World War I. I have a boy who served in World War II. I know something about war. From reading newspapers, listening to the radio, and listening to Senators make speeches on the floor of the Senate, one would be led to believe that the situation today is worse than it has ever been.

From a newspaper article by one able Senator, and a speech by another, I see building up here and there little clouds in the skies. I see building up some sort of a proposal to be made to the Congress of the United States and the American people of a new foreign policy. I can see it in the making. I have been in the Senate long enough by now to recognize the signs. I can see the little clouds appearing.

The able Senator from Oregon made an excellent speech here today. The senior Senator from Michigan [Mr. VANDENBERG] issued a statement a few days ago. The able Secretary of State is talking about some kind of a new policy. As a Senate, we are going to be asked to go along with that, some of these days, and I expect I shall go along, but I think we all have a right to disagree if in our personal opinion that which is proposed at any time is wrong.

I am fearful some are using the same old scarecrow, crying "isolationism," for what purpose I do not know. I presume when it is not possible to find any other excuse because something fails or fails to work, it is necessary to pick out somebody or some one group and say, "They are to blame for this situation."

Frankly, Mr. President, I do not know who is to blame for the present condition. All I know is that, taking other people's observations and their word for it, evidently our foreign policy has failed. At least, we are about to adopt a new one.

I do not know what the able Senator from Oregon means when he talks about a bipartisan foreign policy. I doubt very much if he knows. If he means that we must take exactly what the Secretary of State and the President send to us, without dotting an "i" or crossing a "t," I am opposed to that. If he means that after the United States Congress has had an opportunity to debate a matter openly and freely, and finally by a majority vote of the Congress has decided what it is going to do, if his thought is that then every Democrat and Republican should get 100 percent behind it, I am 100 percent with him. That is my idea of a bipartisan policy.

Mr. President, I am not unmindful of the fact that in foreign relations we must of necessity arrive at certain conclusions in what might be termed secret conferences. In fact, I suspect I have a better realization of that than many others have. I am not unmindful of that at all. I think it has to be done. But I do not like to see the so-called isolationists—and I do not know who they are—blamed for all the weaknesses of our foreign policy. I do not like to see the United States Congress denied the right to debate any question freely and openly.

Mr. President, I do want peace. I wonder why after 5 years we have been unable to secure peace. I wish to confess frankly and honestly, and I believe that every other Senator, if he were called upon, would have to confess at the moment that he agrees, that I do not know of any effort being made or what efforts are being made to secure a so-called world peace, and to make peace with Germany and Japan.

The able Senator from Oregon says he wants to compliment the administration on doing certain things recently toward reestablishing a bipartisan foreign policy. I think that is what he meant. He

mentioned the appointment of the able former Senator from Kentucky, Mr. Cooper. I agree that Mr. Cooper is an able man, and that it was a fine appointment. I am delighted he was appointed. But if I remember correctly, about a year ago he was appointed to represent the United States in international matters, so there is nothing new in his selection.

I do not know of any Senator who has been consulted about that matter. We would be very happy to sit down with the Secretary of State or any other person or group of persons, and discuss these matters with them.

The point I wish to make, Mr. President, is: What is a bipartisan policy, and how much responsibility does a Senator of the United States have in respect to it? Are we to take it lock, stock, and barrel without a single question, or are we to become partners of the Secretary of State and the President of the United States, and be consulted about these matters in advance as far as possible? Are we to be invited to debate these matters? Are we to be invited to offer suggestions and criticisms?

Talking about bipartisan foreign policy, if I remember correctly, our former able colleague, Mr. Dulles, who was candidate on the Republican ticket for the Senate in New York State, was defeated some time ago by the very persons who are now crying to the high heavens that they want a bipartisan foreign policy. If I remember correctly, some very unkind things were said about this able gentleman, some things that I am certain I would never say in a campaign. So, Mr. President, I am somewhat confused. When I listen to such speeches as we have just listened to by the able Senator from Oregon it certainly does not clear up the situation so far as I am concerned.

I think there is a basis for better cooperation between the Congress and the Secretary of State, and I am hopeful that we will have it. But I do not think we are ever going to have it until we get more cooperation and receive more respect from the President of the United States and the Secretary of State, and more acknowledgment of the responsibility of the respective United States Senators. Until more respect is shown for the office of United States Senator by the President of the United States and by the Secretary of State, I do not think we are going to make as much progress as we should make, and we need to make great progress.

So, Mr. President, as an individual United States Senator, I solicit the cooperation—I put it in that light—I solicit the cooperation of the President of the United States and the Secretary of State, to discuss these matters in advance. But, standing on principle, as the able Senator from Oregon stood a moment ago, I shall reserve the right as a United States Senator, under the Constitution, to oppose or to favor any piece of legislation that comes to this floor, whether it deals with foreign affairs or whether it deals with domestic affairs. As a matter of principle I shall stand as a United States Senator and say I shall oppose that which I think is wrong and approve that which I think is right. That is my idea of a policy. I care not whether it be called a bipartisan policy, isolationism, or internationalism, whatever it may be called, I, as a United States Senator, want the right to vote in that manner which I believe is best for the United States.

Mr. CAIN. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER (Mr. CHAVEZ in the chair). Does the Senator from Indiana yield to the Senator from Washington?

Mr. CAPEHART. I yield.

Mr. CAIN. A few days ago the State Department issued a volume consisting of 726 pages, the title of which was "Postwar Foreign Policy Preparation." I wonder if the Senator from Indiana, a Republican Senator, has ever seen that volume?

Mr. CAPEHART. I have not; no.

Mr. CAIN. I ask the Senator from Indiana if he knows of any Republican Senator whose advise was requested in preparing this volume of 726 pages?

Mr. CAPEHART. I certainly do not.

Mr. CAIN. I raise the question because I think the Senator from Indiana has made a very valid criticism of a prevailing so-called bipartisan foreign policy. The volume consists of plans which were prepared to accommodate the foreign policy needs after the war was over, and so far as I have been able to determine no Republican in the Senate had anything to do with the consultations heading in the direction of preparing plans for our joint future.

Mr. CAPEHART. Mr. President, I have absolutely no knowledge that any Republican Senator participated at all in the consultations or the plans to which the Senator from Washington has referred.

DELIVERED - PRICE SYSTEMS AND FREIGHT-ABSORPTION PRACTICES—CONFERENCE REPORT

Mr. LONG. Mr. President, Senate bill 1008 has always been a very bad bill from its original introduction to the present date. The question has always been merely a matter of degree. As this bill now comes to us from conference it is not quite but almost as bad as it has ever been in any stage of its legislative history. It now represents a list of smooth platitudes, disarming in language but completely destructive of much of our body of antitrust laws. Its faults are: First, it permits endless price discriminations by manufacturers and processors in favor of large retailers and against their smaller competitors; Second, it legalizes the tools which the monopolies have used so effectively over the past 70 years in eliminating price competition in major industries, such as steel, cement, paper, and many others; third, it confuses the present body of antitrust laws by creating new exceptions, provisos, and possible loopholes; and fourth, it delays antitrust action by making necessary long years of tedious compilation of evidence and difficult litigation to regain the ground we will lose by the passage of S. 1008.

Make no mistake about it, Mr. President, the cement trust, which has been found guilty of conspiracy, collusion, and pricing piracy, for the last 50 years, has placed its stamp of approval on S. 1008. The steel trust, which is just as guilty of the same practices, has also given its approval to this bill. The same can be said of the paper trust, the oil trust, and many others.

Now, Mr. President, these great advocates of so-called clarification of the law—and I am speaking of the great trusts—in reality prefer confusion. They are relying most strongly upon the fact that this monopolistic basing-point system is difficult to understand and difficult to explain. Therefore, in the effort to meet this issue, I shall attempt to isolate certain phases of this monopolistic proposed legislation in order that it may be understood by sections.

At this time I shall attempt to show how S. 1008 in its present condition would leave the independent retailers and wholesalers of America, whether they be grocery stores, filling stations, drug stores, drygoods stores, or any others, completely at the mercy of the manufacturers and the large chain operators. Let me give a few illustrations of what I have in mind. As every Senator is well aware, in every State and every sizable city of America we have independent merchants in day-to-day competition with chain stores and other large competitors. If the independent merchant is able to obtain his commodities at a price substantially comparable to the cost of goods to the large operators, then the independent merchant has a fair chance to compete. No tears will be shed for him, and no Congress or State legislature will show him great sympathy if he is driven out of business by superior efficiency and better merchandising methods on the part of the large concern. But the Congress of the United States has wisely seen fit to protect him against unfair price discriminations in favor of the large concerns which make it impossible for the independent merchant to compete, no matter how efficient he may be.

Senators will recall that during the last depression there was a great clamor to save the independent merchants from destruction by the large concerns. At that time we had antitrust laws designed to protect small business. They were the Sherman Antitrust Act, outlawing conspiracies and monopolistic practices in restraint of trade, which had been passed in 1890; and the Federal Trade Commission Act, as well as the Clayton Antitrust Act, both passed 24 years later—in 1914—in an effort to strengthen the Sherman Antitrust Act. Notwithstanding those acts, Congress found that loopholes made them virtually useless for the protection of the independent retailers of the Nation. Congress found that the large chain operators, such as the Atlantic & Pacific Tea Co. and Sears, Roebuck, to mention but two, were given large discounts which were not being accorded to their independent competitors. For example, the committee report of the House of Representatives in 1936, Report No. 2287, relating to the Robinson-Patman Act, contains the statement, on page 4, that from 1927 through 1933, Goodyear Tire & Rubber

Co. was granting to Sears, Roebuck & Co. discounts ranging anywhere from 32 percent up to 55 percent on automobile tires. Those discounts were not being accorded to the independent retailers of automobile tires. The Commission also made the statement, on page 3, quoting from the Federal Trade Commission Report on the Chain Store:

> The ability of the chain store to obtain its goods at lower cost than independents and of large chains to obtain goods at lower cost than small chains is an outstanding feature of the growth and development of chain-store merchandising. These lower costs have frequently found expression in the form of special discounts, concessions, or collateral privileges which were not available to smaller purchasers.

On the same page of that report, Mr. President, the House Judiciary Committee made this statement:

> Your committee is of the opinion that the evidence is overwhelming that price discrimination practices exist to such an extent that the survival of independent merchants, manufacturers, and other businessmen is seriously imperiled and that remedial legislation is necessary.

Mr. President, what was the principal shortcoming of the antitrust laws at that time? Again I quote from the House report, reading from page 7:

> The Commission Act created the Federal Trade Commission and was designed to outlaw all unfair methods of competition from interstate commerce. The Clayton Act addressed itself, in section 2 thereof, to the problem of price discrimination by providing—
>
> That it shall be unlawful for any person engaged in commerce in the course of such commerce either directly or indirectly to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

I continue to quote from the House report:

> This legislation represented the hope of the Congress at that time. The Clayton Act, however, contained the following provisos:
>
> *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition.

I repeat the last line of that proviso for emphasis, Mr. President:

> discrimination in price in the same or different communities made in good faith to meet competition.

There was the worst loophole. I continue to quote from the committee report, regarding the loopholes in the Clayton Act:

> *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

This last proviso was not viewed as a loophole at all by the committee, as we notice from examining the committee report, because the committee recommended that this provision permitting sellers to select their own customers be retained in the exact, same language. The loopholes were contained in the proviso to which I have first referred: First, there was no limitation on the extent to which quantity discounts could be made; second, that there was no limitation upon discriminations in price made in good faith to meet competition. Either of these provisos, in my humble opinion, would have been enough to completely subvert the purpose of the section insofar as a small-business man was concerned.

Mr. President, I digress here to point out that if we leave the door wide open in regard to quantity discounts, the large concerns can gain identically the same advantages, by means of large-scale purchasing, that they can gain by good-faith discriminations made in their favor because of their great purchasing power. Likewise, if we leave the door open in regard to discriminations made in good faith to meet competition, although we do not leave the door open in regard to discounts because of quantity, yet discounts because of quantity can be made on the basis that they are made in good faith to meet competition. Therefore, each of those two loopholes included the other, to all intents and purposes.

What did the House Judiciary Committee think of these provisos, Mr. President? I quote the House committee's language, reading from page 7 of the House report:

> These provisos have so materially weakened section 2 of that act, which this bill proposes to amend, as to render it inadequate, if not almost a nullity.

That is what the House Judiciary Committee thought of the good-faith defense. So the House committee proposed to tighten up section 2 (a) of the Clayton Act. In the first place, it limited the allowances on quantity discounts and tied them to the actual economies that could be effected by mass production or mass deliveries. In the second place, it broadened the definition of "injury to competition" to make it clear that protection was extended to an individual competitor who was being injured or driven out of business by unfair discriminations, regardless of whether his destruction might mean an injury to competition in a broad general sense. There, again, we find a complete difference of philosophy between the Judiciary Committee of the House of Representatives of the Seventy-fourth Congress and the Judiciary Committee today. I shall discuss this matter in greater detail later. But third, and most important of all, the House committee tightened up on the so-called good-faith defense. On page 16 of the same House report we find a discussion of the term "meeting competition," and we find the following House committee language:

> This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further, he must do so likewise with all his other customers—

Mr. President, let me repeat those words for emphasis. Here the House committee of the Seventy-fourth Congress is saying that if a seller in cutting prices to meet competition in good faith, goes further, in price cutting, than to meet the prices of his competitor, he must do likewise with all his customers—

> or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further.

This section was further interpreted by the Congress to mean that the good-faith defense, after the Robinson-Patman Act, was only a relative defense, and that where the actual injury to competition could be shown, even a discrimination made in good faith would not be permitted unless other customers in the same community were given the same consideration.

This act also closed loopholes in the use of brokerage, service, and advertising allowances, and it expressly defined the word "price" in order to make clear that freight absorption and freight allowances amounted to a discrimination in price when made by the seller. That will be discussed in another connection. I am sure all Senators will recall the desperate plight of small business, especially the independent retailers, at the time when the Robinson-Patman Act was passed in 1936. They were being destroyed by the chain stores in every section of the country. Many manufacturers had no desire to discriminate in favor of the large purchasers; but by virtue of the large buying power and the economic coercion of the large merchandisers, the suppliers were frequently compelled to make such discriminations against their will. In many cases these manufacturers were acting in complete good faith. They were competing to get business, and they had no excuse to offer their larger customers for refusing to make large price discriminations. Again I quote from the House report of the Seventy-fourth Congress:

> Of the 26 tobacco manufacturers interviewed, 16 admitted that price preferences were given by means of extra discounts, rebates, or other allowances. Where threats or coercive measures to force discounts and allowances were employed, some of the manufacturers yielded rather than risk the consequences of their failure to meet the demands of these powerful buying organizations.

The Robinson-Patman Act put an end to much of this yielding to such pressure when it outlawed such price discriminations where the effect would be to substantially injure a competitor of the purchaser. How has the independent merchant fared since 1936? The best evidence that I have available is a study recently published by the National City Bank of New York in its regular weekly releases. This study shows that the 100 largest retailers of America were doing 15 percent of the retail business of the Nation 10 years ago in 1939. Although

business conditions have improved, purchasing power of the dollar has gone down, and there is more money today in circulation, which accounts for greater business on the part of all retailers, nevertheless those same 100 large concerns are still doing 15 percent of the Nation's business. Apparently the smaller retailers have been able to hold their own, thanks to our antitrust laws.

But it would be ridiculous, Mr. President, to think that the independent tire dealers of the United States could hold their own if they had to pay twice as much for their tires as the Sears-Roebuck Co. It would be just as ridiculous to think that the independent grocery store operators could hold their own against the Atlantic & Pacific Tea Co. or the Kroger or Safeway chain stores if the independent retailers had to pay 10 or 15 percent more for their commodities than their large chain competitors. It would be equally absurd to think that the small-town druggist could hold his own against the Walgreen chain if he had to pay 20 or 25 percent more for his drugs and medicines than his chain-store competitor. Of course, we know that there are still discriminations made in favor of large concerns. Large concerns are able to buy on the markets at the most favorable time. They are able to buy at distant markets when the price is somewhat higher at local markets. They are able to effect savings on mass deliveries and mass production. They are even free to manufacture their own commodities; and, in addition, let us face the fact that they are still receiving illegal discounts. Nevertheless, the law has not permitted them to receive illegal discounts without restraint; and the limitations upon the favoritism to be shown large concerns have enabled the independent merchant by virtue of his own thrift, economy, and the savings to be effected by his own prudent management, to successfully stay in business. It will be a simple matter for the large concerns to obtain great unjustified preferences if S. 1008 becomes law. Wherever manufacturers and suppliers are making unjustified discounts in favor of the chain stores and the large purchasers, there will always be other manufacturers ready to make similar discounts. To be sure that this is anticipated, let me quote from the report on the bill, S. 1008, report No. 1422, which is now before the Senate. From this report, made in the first session of this Congress, I quote from page 5:

> Competition is a contest between sellers for the business of a buyer.

I may say, Mr. President, that nothing is said in this report about competition being also among buyers, the retailers, to obtain commodities upon terms sufficiently favorable to enable them to compete with their competitors. But I proceed with the quotation from the report on the basing-point bill:

> Competition is a contest between sellers for the business of a buyer. In such a contest one seller gets the order while other sellers lose the order. That is competition. The seller who did not get the order may feel injured, but that does not mean that competition has been injured. In any competitive economy we cannot avoid injury to some of the competitors. The law does not, and under the free-enterprise system it cannot, guarantee businessmen against loss. That businessmen lose money or even go bankrupt does not necessarily mean that competition has been injured. "Competition," Mr. Justice Holmes observed, "is worth what it cost."

Mr. President, in the Seventy-fourth Congress when the Robinson-Patman Act was passed in 1936, where were the people who had the same thinking as the House conferees or the Senate conferees now have on Senate bill 1008? So far as I am able to determine, when that great piece of antitrust legislation was enacted, none of them objected to such legislation. At that time the independent merchant was clamoring to be saved from being driven out of business by the chain operators. He did not feel so safe and secure as he does today. He was well represented here in Congress at that time. He was watching Congress, asking for help and relief. No one rose then to say, as the House conferees of this Congress reported back to their group—and again I quote their language:

> That businessmen lose money or even go bankrupt does not necessarily mean that competition has been injured.

No, Mr. President, at that time the Seventy-fourth Congress of the United States wisely recognized that competition had been injured when businessmen, no matter how small, were permitted to be driven out of business, one by one, by ruthless, unfair price discriminations, until they were all gone. That, Mr. President, was the attitude of the Seventy-fourth Congress, which passed legislation designed to protect each individual businessman. Again I refer to the language of the House report of the Seventy-fourth Congress. According to the report, it was felt that competition had been injured when an individual competitor was permitted to be driven bankrupt by unfair price discriminations, when small-business men by the hundreds of thousands were afforded no protection by law. On page 8 of the House report, there will be found a broadening of the definition and classification of purchasers. I wish to quote the language of the House report:

> Subparagraph (1) permits price differentials depending solely upon whether the purchaser buys, "for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture," and makes specific provision for the classification of customers in those several categories. This exemption is contained by implication in present section 2 of the Clayton Act.

Then, Mr. President, the report goes on to say that the provision should be broadened, so that the definition of injury to competition would include not only injury to competition, in a broad generic sense, such as the House conferees propose in their report to the House, but that it should include the injury to the individual competitor, recognizing that when progressive injury to great numbers of small independent competitors is permitted over a period of time, competition has been injured.

Mr. President, in order that Members of the Senate may have the benefit of the wisdom of this House report, I ask unanimous consent at this time that the report of the House committee considering the Robinson-Patman Act be printed in its entirety at this point in my remarks.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[H. Rept. No. 2287, 74th Cong., 2d sess.]

PROHIBITION OF PRICE DISCRIMINATIONS

The Committee on the Judiciary, to whom was referred the bill (H. R. 8442) which amends section 2 of the act of October 15, 1914, entitled "An act to supplement existing law against unlawful restraints and monopolies and for other purposes," report the same back favorably to the House with amendments with the recommendation that, as so amended, it do pass.

The committee amendments are as follows:

Strike out all after the enacting clause and insert in lieu of the language stricken out, the following:

"That section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), is amended to read as follows:

"'SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, whether either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, or with customers of either of them; and that it shall also be unlawful for any person, whether in commerce or not, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality where in any section or community and in any line of commerce such discrimination may substantially lessen competition in commerce among either sellers or buyers or their competitors or may restrain trade or tend to create a monopoly in commerce or any line thereof; all subject to the following provisions:

"'(1) That nothing herein contained shall prevent or require differentials as between purchasers depending solely upon whether they purchase for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture; for the purpose of such classification of customers as wholesalers or jobbers, or retailers, the character of the selling of the purchaser and not the buying shall determine the classification, and any purchaser who, directly or indirectly, through a subsidiary or affiliated concern or broker, does both a wholesale and retail business shall, irrespective of quantity purchased, be classified (1) as a wholesaler on purchases for sale to retail dealers only, not owned or controlled, directly or indirectly, by the purchaser; and (2) as a retailer on purchases for sale to consumers.

"'(2) That nothing herein contained shall prevent or require differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however,*

That the Federal Trade Commission, after due investigation and hearing to all interested parties, following insofar as applicable the procedure and subject to the recourse of the courts, provided in section 11 of this act, may issue an order fixing and establishing quantity limits and revising the same as it finds necessary, as to particular commodities or classes of commodities, and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established.

"'(3) That nothing herein contained shall prevent price changes from time to time wherein response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

"'(4) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona-fide transactions and not in restraint of trade.

"'(5) That the word "price" as used in this section 2, shall be construed to mean the amount received by the vendor after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor.

"'(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

"'(c) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

"'(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"'(e) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

"'(f) Nothing in this section shall prevent a cooperative association from returning to its members, or a cooperative wholesale association from returning to its constituent retailer members, the whole or any part of the net earnings resulting from its trading operations, in proportion to their purchases or sales from, to, or through such association.'"

Amend the title so as to read:

"To amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

STATEMENT

The purpose of this proposed legislation is to restore, so far as possible, equality of opportunity in business by strengthening antitrust laws and by protecting trade and commerce against unfair trade practices and unlawful price discrimination, and also against restraint and monopoly for the better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

To accomplish its purpose, the bill amends and strengthens the Clayton Act by prohibiting discriminations in price between purchasers where such discriminations cannot be shown to be justified by differences in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which such commodities are to such purchasers sold and delivered. It also prohibits brokerage allowances except for services rendered, and advertising and other service allowances unless such allowances or services are made available to all purchasers on proportionally equal terms. It strikes at the basing-point method of sale, which lessens competition and tends to create a monopoly.

In the consideration of this bill, your committee has also had before it H. R. 4995, H. R. 5062, and H. R. 10486, all dealing with price discrimination and related subjects. Extensive public hearings have been held, both during this and the last session of Congress. It has also had the benefit of hearings conducted by a committee of the House on the investigation of the American Retail Federation and large-scale buying and selling. Your committee has also had the results of the Federal Trade Commission's several investigations and reports, including its investigation of the chain-store problem. (S. Doc. No. 4, 74th Cong., 1st sess.) Other sources of material for study of this legislation include the NRA codes and NRA code authority hearings; also studies of independent students and economists.

Your committee is of the opinion that the evidence is overwhelming that price discrimination practices exist to such an extent that the survival of independent merchants, manufacturers, and other businessmen is seriously imperiled and that remedial legislation is necessary.

On page 24 of the final report of the Federal Trade Commission report on the Chain-Store Investigation (S. Doc. No. 4, 74th Cong., 1st sess.) the following statement appears:

"As shown elsewhere, the ability of the chain store to obtain its goods at lower cost than independents and of large chains to obtain goods at lower cost than small chains is an outstanding feature of the growth and development of chain-store merchandising. These lower costs have frequently found expression in the form of special discounts, concessions, or collateral privilges which were not available to smaller purchasers. * * *

"A vivid idea of the enormous bargaining power embodied in chain-store purchases may be gained from the fact that the Great Atlantic & Pacific Tea Co. makes purchases of merchandise amounting to over $800,000,000 annually and other large chains make purchases in proportionate amounts.

"There were interviews with 129 manufacturers in the grocery group, 76 of which admitted that preferential treatment in some form was given. Thirty-three of the manufacturers interviewed stated positively that threats and coercion had been used by chain-store companies to obtain preferential treatment."

The report continues on page 26:

"There were 88 manufacturers interviewed in the drug group, 36 of which admitted that price preferences are given to chains. * * *

"Of the 26 tobacco manufacturers interviewed, 16 admitted that price preferences were given by means of extra discounts, rebates, or other allowances. Where threats or coercive measures to force discounts and allowances were employed, some of the manufactures yielded rather than risk the consequences of their failure to meet the demands of these powerful buying organizations."

The granting of preferences is not confined to any one line of industry or distribution. In entering its cease-and-desist order in the matter of Goodyear Tire & Rubber Co., Docket 2116, recently, the Federal Trade Commission in summarizing its findings of facts stated:

"Pursuant to the terms of these several tire contracts between respondent—Goodyear Tire & Rubber Co.—and Sears, Roebuck & Co., respondent has sold tires to Sears, Roebuck & Co. at prices substantially lower than it sold tires of comparable grade and quality to independent retail tire dealers. This difference in sales price has averaged, on four popular sizes of tire casings, from 32 to 40 percent in 1927; from 33 to 55 percent in 1928; from 35 to 45 percent in 1929; from 36 to 46 percent in 1939; from 35 to 50 percent in 1931; from 38 to 48 percent in 1932; from 35 to 53 percent in 1933. The average gross discrimination on these four sizes for the entire period of time from May 1926 to December 1931, was approximately 40 percent. On other sizes the gross discrimination over the entire period varied from 32 to 42 percent.

"The net average sales price discrimination remaining after deductions has been made from the dealer prices for discounts and allowances and transportation, over the entire period, varied from 29 to 40 percent on eight sizes of tires. The total aggregate net discrimination, after making such allowances, amounted to approximately $41,000,000, or approximately 26 percent of the net sales price to independent dealers on a volume of business comparable to the volume sold to Sears, Roebuck & Co."

The Commission further found as a fact that such discriminatory prices were not made to Sears, Roebuck & Co. in good faith to meet competition; and also that the Goodyear Tire & Rubber Co. concealed the prices and terms at which it was selling tires to Sears, Roebuck & Co. from its own sales organization and from the trade generally, and at no time did it offer to its own dealers prices on Goodyear brands of tires which were comparable to prices at which respondent was selling tires of equal or comparable quality to Sears, Roebuck & Co.

In 1932 the Economists Committee on Antitrust Policy made its report. This report was signed by over 125 leading American economists representing 45 American colleges and universities located in 24 States and the District of Columbia. Their statement respecting antitrust policy was published in the American Economic Review (vol. 22 (1932), p. 467). The statement is as follows, to wit:

"The undersigned as independent students of the subject believe that the weakening of the Sherman Antitrust Act would involve

consequences of a radical nature, inconsistent with the very principles of private industry. The widening and extension of the realm of public price fixing in industry and commerce resulting from such action must impose an impossible burden upon governmental agencies of control and irreparable injury to the political and social, as well as economic, interests of the whole people. Without entering in detail into the reasons for these views, we respectfully urge the adoption of an antitrust plank in the platform of the party embodying the following propositions and principles:

"1. Opposition to the amendment of the existing antitrust laws in any manner that would weaken them as agencies for preserving the policy of free markets for industrial products whereby individual and small corporate enterprise may be assured unhindered opportunity to demonstrate through efficiency, service, and low prices to the public, its right to survival in business.

"2. Reaffirmation of the essential principle of fair competition in all lines of industry not given over to public price control through commissions; recognition that unless there be such public protection the policy of free markets is essential to the interests of the great mass of people—the consumers, workers, and multitudes of independent businessmen.

"3. Rejection of the assertion made by those seeking to break down the Sherman Act that it makes necessary the development of excessive capacity and wasteful overproduction, and the equally false assertion that this was one of the causes of the present industrial depression. On the contrary, the most competent economic opinion, as well in Europe as in this country, can be cited in support of the view that a strong contributing cause of the unparalleled severity of the present depression was the greatly increased extent of monopolistic control of commodity prices which stimulated financial speculation in the security markets. There is growing doubt whether the capitalistic system, whose basic assumption is free markets and a free price system, can continue to work with an ever-widening range of prices fixed or manipulated by monopolies.

"4. Recognition of the antitrust-law legislation has been frequently violated with impunity, and has been inadequately enforced throughout much of the period since its inception; this has resulted in the control of large areas of the industrial field by great combinations and by monopolistic practices having neither legal nor economic justification.

"5. Pledge, for the party, of a genuine and effective enforcement of existing laws aimed to secure regulated competition, with needed publicity in large corporation affairs, and to this end such changes in administrative practices as are needed to correct well-recognized evils and to redress the injured right of citizens in their business relations.

"6. Pledge of further legislation to remedy widespread evils manifestly resulting from the abuse of the corporate fiction, and from the enormous excesses of the holding-company device.

"NAMES OF SIGNERS

"Arizona: University of Arizona, E. J. Brown.

"California: Mills College, Glenn E. Hoover; Occidental College, Arthur G. Coons, John Parke Young; Pomona College, George S. Burgess, Kenneth Duncan; Stanford University, M. K. Bennett, Eliot Jones, Holbrook Working; University of California (Los Angeles), J. C. Clendenin, Constanine Fannunzio, N. S. Noble, George W. Robins, Marvel N. Stockwell, Gordon S. Watkins.

"Colorado: State Agriculture College, D. N. Donaldson, L. A. Moorehouse.

"Connecticut: Trinity College, G. A. Kleene; Wesleyan College, Clyde Olin Fisher; Yale University, Winthrop M. Daniels, Clive Day, James Harvey Rogers.

"District of Columbia: The Brookings Institution, C. O. Hardy.

"Georgia: Emory University, L. E. Campbell, T. J. Canley, M. G. Evans.

"Illinois: Rawleigh Foundation, H. R. Mohat, W. J. Rawleigh; University of Chicago, Paul H. Douglas, S. E. Leland, H. A. Millis, S. H. Nerlove, Henry Schultz, Jacob Viner, Chester W. Wright; University of Illinois, E. L. Bogart, David Kinley, N. A. Weston.

"Indiana: Indiana State Teachers College, Waldo F. Mitchell.

"Iowa: Iowa State College, A. G. Black.

"Massachusetts: Amherst College, Willard L. Thorp; Massachusetts Institute of Technology, Carroll W. Doten.

"Michigan: University of Michigan, H. L. Caverly, Z. C. Dickinson, M. Elliott, Howard Ellis, Max Handman, W. A. Paton, Shorey Peterson, I. L. Sharfman, Fred M. Taylor, V. P. Timoshenka, Leonard Watkins.

"Minnesota: University of Minnesota, Ralph Cassady, George Filipetti, Frederick B. Garver, Alvin H. Hansen, E. A. Heilmar, Arthur W. Marget, Bruce D. Mudgett, Emerson P. Schmidt, J. Warren Stehman.

"Missouri: Washington University, I. Lippincott.

"New Hampshire: Dartmouth College, William A. Carter.

"New Jersey: Dana College, William L. Nunn; Princeton University, J. Douglas Brown, Denzel C. Cline, Frank T. DeVyver, Frank H. Dixon, Harold W. Dodds, Frank A. Fetter, Frank W. Fetter, Leslie T. Fournier, Stanley E. Howard.

"New Jersey: Princeton University, George F. Luthringer, A. M. McIsaac, George M. Modlin, Vernon Mund, James G. Smith, Raymond C. Whittlesey.

"New York: Brooklyn Law School, Henry Ward Beer; University of Buffalo, Shaw Livermore, Thomas L. Norton, Charles S. Tippetts; Columbia University, James C. Bonbright, John Bates Clark, Reavis Cox; New York University, Willard E. Atkins, Lewis H. Haney, Walter E. Spahr; New York City, John Bauer, James E. Pope; Union College, W. W. Bennett.

"Ohio: Ohio State University, M. B. Hammond, F. E. Held, C. C. Huntington, Virgil Willit.

"Oklahoma: University of Oklahoma, Arthur B. Adams, Frederick L. Ryan.

"Pennsylvania: Bucknell University, A. B. Biscoe; Haverford College, Don C. Barrett, John G. Herndon, Jr., Frank D. Watson; University of Pitsburgh, A. E. Boer, Prentice Dean, George McCabe, Francis Tyson; Swarthmore College, Robert C. Brooks, Herbert F. Fraser; Washington and Jefferson College, M. C. Watersdorf.

"Texas: University of Texas, George W. Stocking.

"Virginia: University of Virginia, A. J. Barlow, Abraham Berglund, E. A. Kincaid, T. R. Snavely, G. T. Staines.

"Washington: University of Washington, S. J. Coon, T. S. McMahon, H. H. Preston, H. E. Smith.

"West Virginia: West Virginia University, Arnold W. Johnson, Louis A. Rufener, E. H. Vickers.

"Wisconsin: Lawrence College, M. M. Bober, W. A. McConagha; Public Service Commission, E. W. Morehouse; University of Wisconsin, John R. Commons."

Attention is also directed to the unequivocal pronouncement contained in the Democratic national platform of 1932 as follows:

"We advocate strengthening and impartial enforcement of the antitrust laws to prevent monopoly and unfair trade practices, and revision thereof for the better protection of labor and the small producer and distributor."

More than 20 years' experience and observation with respect to the operation of the Clayton Act, together with new methods of trade and industrial organization that have since developed, have convinced your committee of the shortcomings of existing legislation, and of the need for strengthening existing laws and of fitting them more perfectly to the methods and needs of today. This your committee has striven to do with a careful regard to the preservation of full freedom and sound and honest business methods in all its necessary and proper operations; but with a firm resolve not to permit the desire of privilege to masquerade under the claim of right. It has been our effort to disturb nothing that is essential.

Its guiding ideal is the preservation of equality of opportunity as far as possible to all who are usefully employed in the service of distribution and production, taking into consideration their ability and equipment to serve the producing and consuming public with efficiency and the protection of the public from a threat of monopoly or oppression in the production and manufacture of the things it needs and the distribution of the same fairly and honestly without employment of unfair trade practices and unlawful price discrimination.

EXISTING LAW

The basic Federal antitrust law is the Sherman Act, enacted July 2, 1890. This law was intended to preserve the competitive system as our economic order by maintaining the natural flow of trade and freedom of competition in interstate commerce. To accomplish its purposes, the act outlawed from interstate commerce any concerted industrial action in undue restraint of interstate commerce and also the misuse of such commerce to create or maintain private monopoly.

Experience established the fact that the Sherman Act alone was inadequate to accomplish its purpose and that additional legislation was required to reach and prevent unfair methods of competition. President Wilson in 1914 sent a special message to Congress on January 20, expressing his stern opposition to monopolies and to oppressive monopolistic practices, and recommended the enactment of supplemental legislation. Consequently, and acting in accord with the President's recommendation, Congress enacted the Federal Trade Commission Act on September 26, 1914, and shortly thereafter on October 15, 1914, enacted the Clayton Act. These acts have been in effect for over 21 years. Together with the Sherman Act, they constitute the existing legislative plan at this time.

The Commission Act created the Federal Trade Commission and was designed to outlaw all unfair methods of competition from interstate commerce. The Clayton Act addressed itself, in section 2 thereof, to the problem of price discrimination by providing "that it shall be unlawful for any person engaged in commerce in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

This legislation represented the hope of the Congress at that time. The Clayton Act, however, contained the following provisos:

"Provided, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

These provisos have so materially weakened section 2 of that act, which this bill proposes to amend, as to render it inadequate, if not almost a nullity. Some of the difficulties of enforcement of this section as it stands are pointed out in the Annual Report of the Federal Trade Commission above referred to, at pages 63 and following.

ANALYSIS OF THE BILL

I. General object

The object of the bill, briefly stated, is to amend section 2 of the Clayton Act so as to suppress more effectually discriminations between customers of the same seller not supported by sound economic differences in their business positions or in the cost of serving them. Such discriminations are sometimes effected directly in prices, including terms of sale, and sometimes by separate allowances to favored customers for purported services or other considerations which are unjustly discriminatory in their result against other customers. The bill is accordingly drawn in six lettered subsections, of which the first four—(a), (b) (c), and (d)—contain substantive measures directed at the more prevalent forms of discrimination, while the fifth—(e)—and the sixth—(f)—contain added precautionary provisions.

II. Definitions

The special definitions of section 1 of the Clayton Act will apply without repetition to the terms concerned where they appear in this bill, since it is designed to become by amendment a part of that act.

III. Price discriminations

Section 2 (a) attacks directly the problem of price discrimination. Like present section 2 of the Clayton Act, it contains a general prohibition against such price discrimination, from which certain exceptions are then carved.

Section 2 (a) attaches to competitive relations between a given seller and his several customers. It concerns discrimination between customers of the same seller. It has nothing to do with fixing prices nor does it require the maintenance of any relationship in prices charged by a competing seller.

Discriminations in excess of sound economic differences between the customers concerned, in the treatment accorded them, involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them. When granted by a given seller to his customers in other States, and denied to those within the State, they involve the use of that interstate commerce to the burden and injury of the later. When granted to customers within the State and denied to those beyond, they involve conversely a direct resulting burden upon his interstate commerce with the latter. Both are within the proper and well-recognized power of Congress to suppress; and the following clause, contained in the opening portion of section 2 (a): "where either or any of the purchases involved in such discrimination are in commerce" * * * is of first importance in extending the protection of this bill against the full evil of price discrimination, whether immediately in interstate or intrastate commerce, wherever it is of such a character as tends directly to burden or affect interstate commerce.

The next important clause governing the jurisdictional scope of the bill is as follows:

"Where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, or with customers of either of them." * * *

This provision accomplishes a substantial broadening of a similar clause now contained in section 2 of the Clayton Act. The existing law has in practice been too restrictive in requiring a showing of general injury to competitive conditions in the line of commerce concerned, whereas the more immediately important concern is in injury to the competitor victimized by the discrimination. Only through such injury in fact can the larger, general injury result. Through this broadening of the jurisdiction of the act, a more effective suppression of such injuries is possible and the more effective protection of the public interest at the same time is achieved.

The specific exemptions carved from section 2 (a) are more particularly explained as follows:

Classification of Purchasers

Subparagraph (1) permits price differentials depending solely upon whether the purchaser buys "for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture," and makes specific provision for the classification of customers in those several categories. This exemption is contained by implication in present section 2 of the Clayton Act, since it places no limit upon quantity differentials of any kind nor upon differentials not affecting general competition. Since added restrictions are here imposed in these respects, a separate clause safeguarding differentials between different classes of purchasers becomes necessary. Such differentials, so long as equal treatment is required within the class, do not give rise to the competitive evils at which the bill is aimed; while to suppress such differentials would produce an unwarranted disturbance of existing habits of trade.

It should be noted that there is nothing in this exemption to prevent consumers when buying cooperatively or otherwise in quantities characteristic of retailers or retailers when buying in quantities characteristic of wholesalers from being accorded the same prices as those dealers respectively so long as their prices are respectively justified within their own class on the basis of differences in cost as required by subparagraph (2) noted below.

Wholesalers frequently find it necessary to supplement existing stock by additional purchases in smaller quantities and the above exemption, subparagraph (1), permits wholesalers to be accorded wholesale prices on these smaller purchases as incident to his business without the seller having to accord them at the same time on the whole body of purchases in similar quantities on sales direct to retailers. This protects the usefulness of the wholesaler in serving retailers dependent upon him for the source of supply.

Differentials between purchasers in each classification as set forth in the above exemption must, of course, be justified by differences in cost as provided by subparagraph (2) below.

Whether retailers acting cooperatively in their purchasing activities will be classified as wholesalers or retailers will depend naturally upon whether their cooperative organization functions as a separate entity taking title and reselling it to its retailer members, or merely as representing them severally in their dealings direct with the selling source of supply, but in either case there is nothing in the bill that requires prices accorded retailers to be higher than those accorded wholesalers or vice versa.

Cost Differentials

Subsection (2) permits "differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered."

This proviso is of great importance, for while it leaves trade and industry free from any restriction or impediment to the adoption and use of more economic processes of manufacture, methods of sale, and modes of delivery, wheresoever they may be employed in streams of production or distribution; it also limits the use of quantity price differentials to the sphere of actual cost differences. Otherwise, such differentials would become instruments of favor and privilege and weapons of competitive oppression.

In the above exemption the phrase "which make only due allowance," is carried over from the present act, but as coupled with the remainder of the clause, is here extended to limit quantity differentials to differences in the cost of manufacture, sale, and delivery as provided in said subsection (2). It marks the zone within which differentials may be granted.

The bill neither requires nor compels the granting of discriminations or differentials of any sort, and the words "or require" are expressly inserted in both the above subparagraphs to make that clear. It leaves any who wish to do so entirely free to sell to all at the same price regardless of differences in cost, or to grant any differentials not in excess of such differences. It does not require the differential, if granted, to be the arithmetical equivalent of the difference. It is sufficient that it does not exceed it.

The following clause from subparagraph (2) should be noted: "Resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered."

This limits the differences in cost which may justify price differentials strictly to those actual differences traceable to the particular buyer for and against whom the discrimination is granted, to the different methods of serving them, and to the different quantities in which they buy.

But such differentials whether they arise in operating or overhead cost must, as is plainly stated in the phrase quoted above, be those resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

This, in its plain meaning, permits differences in overhead where they can actually be shown as between the customers or classes of customers concerned, but it precludes differentials based on the imputation of overhead to particular customers, or the exemption of others from it, where such overhead represents facilities or activities inseparable from the seller's business as a whole and not attributable to the business of particular customers or of the particular customers concerned in the discrimination. It leaves open as a question of fact in each case whether the differences in cost urged in justification of a price differential—whether of operating or of overhead costs—is one kind or the other. That is, whether or not it answers the above requirements as to differences resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered.

Quantity Limits

The proviso contained in subparagraph (2) permits the Federal Trade Commission to fix, as to particular commodities, quantity limits beyond which quantity-price differentials shall not be permitted, even when supported by cost differences of the character authorized earlier in the paragraph. This proviso rests upon the principle that where even an admitted economy is of a character that is possible only to a very few units of overshadowing size in a particular trade or industry, it may become in their hands an instrument that lessens competition and that tends to create a monopoly; and that in forbidding its use and foregoing its benefits the public is merely insuring its freedom from monopoly control.

A similar limitation has been applied without challenge for nearly half a century in the field of transportation in refusing to extend freight-rate differentials beyond the car-lot

quantity. To apply such a blanket limitation to quantity-price differentials in the commodity field seems at present unwarranted, since similar protection may not now be needed with reference to all commodities, nor as to some may it ever be needed, depending, as it does upon such questions of fact as the distribution of business in the given line among large and small competitors, and the degree to which peculiar economies are technically possible only to those competitors of overshadowing size. The above proviso commits to the Federal Trade Commission the power to act in the premises as and when the need arises, and to act appropriately to the nature of the need, after possessing itself of all pertinent information. It is not designed to confer upon the Commission carte blanche authority to regulate quantity discounts without rule or guide, but only to permit it to fix limits in quantities for which quantity-price differentials may be granted, guided by the principle long recognized in antitrust-law administration; that the economies of mere size do not justify the risk of monopoly.

Market Price Changes

Subparagraph (3) exempts price changes "in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deteriorations of perishable goods, obsolescence of seasonal goods, distress sales under court process or sales in good faith in discontinuance of business in the goods concerned." While it is not believed that the principal prohibitions of section 2 (a) apply in any case to such price changes, nor has such construction ever been suggested or contended for under present section 2, this specific exemption is included as an added precaution to safeguard the ready disposition of goods characterized by fluid market conditions.

Selection of Customers

Subparagraph (4) embodies an exception retained from the present act, permitting the seller to select his customers in bona fide transactions and not in restraint of trade.

Definition of Price

Subparagraph (5) defines the word "price" as used in the bill in the following words:

"(5) That the word 'price' as used in this section 2 shall be construed to mean the amount received by the vendor after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor."

This paragraph defines the word "price" as used in this bill in terms of the amount realized by the seller as distinguished from the amount paid by the buyer. The true price received by the seller being the amount left after deducting actual freight or cost of other transportation allowed or defrayed by the vendor.

An increasing number of industries in recent years have adopted what is known as the basing point, multiple basing point, and delivered price systems under which delivered prices only are quoted by manufacturers and sellers dealing in certain commodities. Under these systems, each manufacturer defrays the actual transportation costs and charges either the railroad freight from some arbitrary point or an average zone freight rate. The result is identical delivered prices at any given destination.

There are various results of these systems:

The manufacturers refuse to quote prices f. o. b. their manufacturing plants. They charge freight at the railroad rates and then often delivery is made by waterway or highway. They thus obtain the benefit of what has been spent on public works to the exclusion of purchasers and the public.

Each manufacturer ships his product beyond other competitors' plants, frequently throughout the country, and allows competitors to enter his local territory without offering any price concession to hold his own high net return area. Each maintains base prices high enough so that he may defray the cost of distant shipments. The public pays the cross-finding bill.

Either the manufacturer who sells f. o. b. his plant charges distant customers a higher price than local customers when he leaves the former to pay the transportation costs or the basing-point manufacturer charges his local customers a higher price than distant customers when he pays freight charges to deliver goods to his distant customers and accepts from them a substantially lower net rate.

The former obtains the same monetary consideration from all alike. The latter accepts from many distant buyers a less monetary return or true price, than from local customers whom he sacrifices to join with competitors in avoiding price discrimination.

As illustrative of the way basing-point methods of sale actually operate, and as affording good opportunity for study of the effects of this system, there is presented below two examples, one taken from the cement industry and one from the steel industry:

The Iowa State Highway Commission on December 5, 1929, received bids for 2,000,000 barrels of cement to be delivered at 44 different destinations in the State of Iowa, to be used in building cement highways. There were 20 bidders, consisting of 15 well-known cement-manufacturing companies and 5 cement dealers. As high as 14 and as low as 6 companies submitted bids on furnishing the amount of cement designated for the 44 different destinations. Those who bid quoted identical delivered prices for each destination for which they made bids, with the exception of one company located at LaSalle, Ill., which company quoted 5 cents a barrel less than the basing-point formula price on 3 bids, and quoted higher than the basing-point formula price on 10 bids, ranging from 2 to 17 cents per barrel.

The first three destinations were located nearest the mill at LaSalle. The other 10 locations were on destinations in territory adjacent to the mills at Mason City and Gilmore City, Iowa. The basing-point formula price used by bidders was the base price at Mason City, at that time $1.30 per barrel, plus railroad freight from Mason City to the destination where the cement was to be delivered. The companies bidding outside of the mills at Mason City were located in the following cities and towns:

Gilmore City, Des Moines, Valley Junction, and Davenport, Iowa; Dixon and LaSalle, Ill.; Buffington, Ind.; Louisville and Superior, Nebr.; Hannibal, Sugar Lake, and St. Louis, Mo.; Bonner Springs, Mildred, and Humboldt, Kans.

Regardless of the location of the mill, all bids except that of the Marquette Cement Manufacturing Co. at LaSalle, Ill., were identical and all quoted delivered prices. A check up on this entire transaction by the Federal Trade Commission revealed the fact that each company bid exactly the same amount, except the Marquette company. The bids were not only identical but in each instance were the exact amount of the basing-point price at Mason City plus the railroad freight from Mason City to destination. The result was that no company except the Mason City Mills received the same net or true price for the cement sold at these destinations. The system therefore has resulted both in price fixing and in price discrimination. It has destroyed competition and has created in effect a cement monopoly throughout that area.

The following facts are illustrative of the results of the basing-point system in the iron and steel industry. The facts herewith submitted are contained in the November 1934 report of the Federal Trade Commission to the President, with respect to the basing-point system in the iron and steel industry. There were 61 bidders scattered throughout the entire United States, extending from the Atlantic to the Pacific Oceans, that submitted individual bids on lots 354, 355, 356, and 357 of schedule No. 2840, United States Navy drawings on July 20, 1934. The bids were lump-sum bids. For lot 354 there were 37 bidders, of whom 23 bid $4,321.28; 8 bid $3,341.29; and 1 bid $4,365.23. On lot 355 there were also 37 bidders, on which 36 bid $5,289.69; and 1 bid $5,301.57. On lot 356 there were 54 bidders, of whom 52 bid $50,079.15; 1 bid $50,087.27; and 1 bid $50,088.94. On lot 357 there were 58 bidders, of whom 55 bid $43,571.20; one bid $43,572.64; 1 bid $43,591.20; and 1 bid $43,481.38.

The names of the companies bidding, the amount of their bids on each lot number, the shipping points of the successful bidders, and the delivery points, together with items and units of each of said lots of schedule 2840, United States Navy drawings, July 20, 1934, together with Executive orders, form of bids, together with specifications and itemized form for estimates on each item for each of the said lots 354, 355, 356, and 357, are all set out in said report of the Federal Trade Commission beginning on page 45 and following.

It should be further noted that under the basing-point system as applied in the iron and steel industry, there is practically no competition, that price quotations are with very few exceptions delivered prices, and are fixed by the base price on a multiple base system rather than a single base point system and that in each instance every mill or factory or bidder receives a different net price, or true price, for a product sold at different destinations.

It should also be noted that this system of price discrimination has resulted in the building up of a practical monopoly in the iron and steel industry. In addition thereto, it should also be noted that the largest cement manufacturing corporation in the United States, to wit, the Universal Atlas Cement Co., was organized by the United States Steel Corporation which owns and controls over one-half of the iron and steel industry in the United States. With both the cement and steel industries controlled by practical monopolies and the largest operator in both the iron and steel industry and the cement industry owned and controlled by the same interests, we cannot expect real competitive conditions between the iron and steel industry and the cement industry, to say nothing of expecting competitive conditions in those industries separately.

The matter of the basing-point system in both of these lines of industry has been the subject of careful study for some years by the Federal Trade Commission. The following is quoted from the report of the Federal Trade Commission to the President with respect to the basing-point system in the iron and steel industry, dated November 1934:

"In economics, as in medicine, diagnosis is fundamental. The diagnosis which the Commission makes is that the basing-point system not only permits and encourages price fixing, but that it is price fixing.

"It is price fixing so absolute that purchasing agencies of the Federal Government are reduced to a position of such helplessness that they literally place each bid in a separate capsule, shake them up, and draw one out of a hat. It is price fixing so rigid that violations of the delivered price are actually penalized at the rate of $10 per ton even on sales to the Federal Government, while fines have been assessed on sales of as little as a fraction of a ton. It is price fixing so self-centered that as the Commission pointed out in its former report, the advantages bestowed by nature on particular sections or communities have been nullified.

"Not only that, but the immense sums invested by Government in improving the gifts of nature and by private industry in the faith that natural advantages and their improvements would accrue to the benefit of the buyers, fabricators, and consumers of steel as well as the producers, have been in effect largely appropriated by the producers. The basing-point system with its supporting formula in essence withholds the gifts of nature from consuming classes and monopolizes them in the hands of the producers and sellers of iron and steel. Only aims of a blindly selfish character can account for the arbitrary abnormalities and flagrant fictions which are inherent in this basing-point system.

"The necessary implication of statements by leaders of the industry is that the basing-point system in steel is a price-fixing system. As an instrument of price fixing, it has the sanction of the code whose provisions make its operation more definite and certain without in any degree lessening its inequities. The inequities of the system, whether for producer, fabricator, or consumer, arise fundamentally out of this fact, that it depends upon artificial and wholly arbitrary arrangements in the making of price, rather than upon competition automatically and impersonally working out into a price accurately reflecting a balancing of supply and demand forces. * * *

"Generally speaking, when a price-fixing combination is successful in raising prices, consumption will decrease. The process of holding for a fixed price in the face of decreasing consumption means reduced employment and reduced income for labor. If consumption continues to decrease, a price-fixing system calls for still higher prices in order to protect profits and thus a new cycle of reduced consumption is initiated.

"It is a most significant fact that the steel industry was able to show satisfactory profits for the first 6 months of 1934 without operating to more than half its producing capacity. * * *

"The situation involves social and economic consequences of far-reaching and fundamental import. If the capitalistic system does not function as a competitive economy there will be increasing question whether it can or should endure. The real friends of capitalism are those who insist upon preserving its competitive character."

The above quotations will be found in said Federal Trade Commission's Report on pages 35 and following, with respect to the basing-point system in the iron and steel industry, November 1934.

It would seem that the basing-point method of selling commodities clearly results in unlawful price discrimination, that it results in the lessening of competition, and that it tends to create a monopoly. In effect, this provision of the bill is designed to put an end to price discrimination through the medium of the basing-point or delivered-price system of selling commodities. It will require the use of the f. o. b. method of sale.

IV. Brokerage

Section (b) deals with the abuse of the brokerage function for purposes of oppressive discrimination. The true broker serves either as representative of the seller to find him market outlets, or as representative of the buyer to find him sources of supply. In either case he discharges functions which must otherwise be performed by the parties themselves through their own selling or buying departments, with their respective attendant costs. Which method is chosen depends presumptively upon which is found more economical in the particular case; but whichever method is chosen, its cost is the necessary and natural cost of a business function which cannot be escaped. It is for this reason that, when free of the coercive influence of mass buying power, discounts in lieu of brokerage are not usually accorded to buyers who deal with the seller direct since such sales must bear instead their appropriate share of the seller's own selling cost.

Among the prevalent modes of discrimination at which this bill is directed is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. But the positions of buyer and seller are by nature adverse, and it is a contradiction in terms incompatible with his natural function for an intermediary to claim to be rendering services for the seller when he is acting in fact for or under the control of the buyer, and no seller can be expected to pay such an intermediary so controlled for such services unless compelled to do so by coercive influences in compromise of his natural interest. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a "broker," so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who bring the buyer to the seller, would render the section a nullity. The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume.

Section (b) permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf. Likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the other.

V. Service allowances

Still another favored medium for the granting of oppressive discriminations is found in the practice of large buyer customers to demand, and of their sellers to grant, special allowances in purported payment of advertising and other sales-promotional services, which the customer agrees to render with reference to the seller's products, or sometimes with reference to his business generally. Such an allowance becomes unjust when the service is not rendered as agreed and paid for, or when, if rendered, the payment is grossly in excess of its value, or when in any case the customer is deriving from it equal benefit to his own business and is thus enabled to shift to his vendor substantial portions of his own advertising cost, while his smaller competitor, unable to command such allowances, cannot do so.

Sections (c) and (d) of the bill address this evil by prohibiting the granting of such allowances, either in the form of services or facilities themselves furnished by the seller to the buyer, or in the form of payment for such services or facilities when undertaken by the buyer, except when accorded or made available to all competing customers on proportionally equal terms.

The phrase "proportionally equal terms" is designed to prevent the limitation of such allowances to single customers on the ground that they alone can furnish the services or facilities or other consideration in the quantities specified. Where a competitor can furnish them in less quantity, but of the same relative value, he seems entitled, and this clause is designed to accord him, the right to a similar allowance commensurate with those facilities. To illustrate: Where, as was revealed in the hearings earlier referred to in this report, a manufacturer grants to a particular chain distributor an advertising allowance of a stated amount per month per store in which the former's goods are sold, a competing customer with a smaller number of stores, but equally able to furnish the same service per store, and under conditions of the same value to the seller, would be entitled to a similar allowance on that basis.

It should be noted, however, that there is nothing in this section or elsewhere in the bill to limit or restrict the widespread custom of manufacturers and others selling sources of supply to engage and pay for exhibit space at trade association exhibitions, or for advertising space in trade-association publications, nor to limit the freedom of newspaper or periodical advertising generally, so long as not employed in ways calculated to defeat the purposes of this bill.

VI. Procedure

Section (e) down to the proviso merely lays down directions with reference to procedure including a statement with respect to burden of proof.

Meeting Competition

This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. It he goes further, he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further.

VII. Cooperatives

Section (f) affirms the right of cooperatives to distribute their net earnings resulting from their trading operations among their members on a patronage basis in proportion to their purchases or sales from, to, or through such cooperative association. While the bill contains elsewhere no provision either express or implied to the contrary, this section is added as a precautionary reservation in a spirit of encouragement to the cooperative movement.

CONCLUSION

In conclusion, your committee wishes to correct some important misapprehensions, and even misrepresentations, that have been broadly urged with regard to the probable effect of this bill. There is nothing in it to penalize, shackle, or discourage efficiency, or to reward inefficiency. There is nothing in it to fix prices, or enable the fixation of prices; nor to limit the freedom of price movements in response to changing market conditions.

Any physical economies that are to be found in mass buying and distribution, whether by corporate chain, voluntary chain, mail-order house, department store, or by the cooperative grouping of producers, wholesalers, retailers, or distributors—and whether those economies are from more orderly processes of manufacture, or from the elimination of unnecessary salesmen, unnecessary travel expense, unnecessary warehousing, unnecessary truck or other forms of delivery, or other such causes—none of them are in the remotest degree disturbed by this bill. Nor does it in any way infringe the seller's freedom to give a part or all of the benefit

of the saving so effected to others with whom he deals, whether in higher prices paid to the producer from whom he buys his raw materials, or in higher wages to those who labor in production or handling of his goods, or in lower prices to the customer, including the ultimate consumer who buys them.

It is not believed that the restoration of equality of opportunity in business will increase prices to consumers. Unfair trade practices and monopolistic methods which in the end destroy competition, restrain trade, and create monopoly have never in all history resulted in benefit to the public interest. On the contrary, for the most part, they have been symbolic of lower wages, longer hours, lower prices paid producers, coercion of independent manufacturers, domination of that field of industry, and in the end high prices to consumers and large profits to the owners.

It is the design and intent of this bill to strengthen existing antitrust laws, prevent unfair-price discriminations, and preserve competition in interstate commerce. It is believed to be in the interest of producer, consumer, and distributor. No business institution need have any fear of this legislation if it will conduct its business honestly and without the use of unfair trade practices, and unjust price discriminations.

In compliance with clause 2a of rule XIII there is printed below, first a comparison of the bill as introduced with existing law, and second a comparison of the committee amendment with existing law. Present law is in roman, matter proposed to be omitted in black brackets, and new matter in italics.

H. R. 8442 AS ORIGINALLY INTRODUCED

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price *or terms of sale* between different purchasers of commodities [which] *of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, and where such* commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States: [where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce;] *Provided,* That nothing herein contained shall prevent [discrimination] *differentials* in [price] *prices as* between purchasers [of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or] *depending solely upon whether they purchase for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture; nor differentials* [that makes] *which make* only due allowance for differences in the cost of [selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition] *manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

"(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation to an agent, representative, or other intermediary in connection with the sale or purchase of goods, wares, or merchandise, where such intermediary is acting therein for or in behalf or is subject to the direct or indirect control, of any party to such purchase and sale transaction other than the person by whom such compensation is so granted or paid.

"(c) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless—

"(1) such payment or consideration is offered on proportionally equal terms to all other customers competing in the distribution of such products or commodities; or unless

"(2) the business, identity, or interest of such customer are in no way publicly associated, by name, reference, allusion, proximity, or otherwise, with or in the furnishing of such services or facilities, and the consideration paid therefor does not exceed the fair value of such services or facilities in the localities where furnished.

"(d) For purposes of suit under section 4 of this act, the measure of damage from any violation of this section shall, in the absence of proof of greater damage, be presumed to be the unit amount of the prohibited discrimination, payment, or grant concerned, multiplied by—

"(1) the volume of business involved in such violation in case the plaintiff shall be in competition with the grantor therein in the distribution of the products or commodities concerned; and

"(2) the volume of plaintiff's business in the respective products and commodities, and for the period of time concerned in such violation, in case the plaintiff shall be in competition with the grantee therein, or, in cases under paragraph (b) of this section, in competition with the intermediary or with the person for or under whose control such intermediary shall act therein."

COMMITTEE AMENDMENT TO H. R. 8442

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities [which] *of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce where such* commodities are sold for use, consumption, or resale within the United States or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, *and* where the effect of such discrimination may be [to] substantially to lessen competition or tend to create a monopoly in any line of commerce, [: *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further,*] *or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, or with customers of either of them; and that it shall also be unlawful for any person, whether in commerce or not, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality where in any section or community and in any line of commerce such discrimination may substantially lessen competition in commerce among either sellers or buyers or their competitors or may restrain trade or tend to create a monopoly in commerce or any line thereof; all subject to the following provisions:*

"(1) That nothing herein contained shall prevent or require differentials as between purchasers depending solely upon whether they purchase for resale to wholesalers, to retailers, or to consumers, or for use in further manufacturer; for the purpose of such classification of customers as wholesalers or jobbers, or retailers, the character of the selling of the purchaser and not the buying shall determine the classification, and any purchaser who, directly or indirectly, through a subsidiary or affiliated concern or broker, does both a wholesale and retail business shall, irrespective of quantity purchased, be classified (1) as a wholesaler on purchases for sale to retail dealers only, not owned or controlled, directly or indirectly, by the purchaser; and (2) as a retailer on purchases for sale to consumers.

"(2) That nothing herein contained shall prevent or require differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission, after due investigation and hearing to all interested parties, following insofar as applicable the procedure and subject to the recourse of the courts, provided in section 11 of this act, may issue an order fixing and establishing quantity limits and revising the same as it finds necessary, as to particular commodities or classes of commodities, and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established.

"(3) That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

"(4) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona-fide transactions and not in restraint of trade.

"(5) That the word 'price', as used in this section 2, shall be constructed to mean the amount received by the vendor after deducting actual freight or cost of other transportation, if any, allowed or defrayed by the vendor.

"(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchasqe of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

"(c) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

"(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as a compen-

sation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"(e) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discriminaiton: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

"(f) Nothing in this section shall prevent a cooperative association from returning to its members, or a cooperative wholesale association from returning to its constituent retailer members, the whole or any part of the net earnings resulting from its trading operations, in proportion to their purchases or sales from, to, or through such association."

Mr. LONG. Mr. President, the bill, which is now the Robinson-Patman Act, after having been passed by the House, went to the United States Senate, and although there were certain amendments added in the effort to further strengthen the act, the philosophy and the language were somewhat the same, and evidenced the same intent. At this point I should like to read particularly from page 4 of the Senate report, discussing the same weaknesses which existed in the antitrust legislation as of 1936, when the Robinson-Patman Act was passed to tighten up on this so-called good-faith defense. Quoting from page 4:

The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill.

At that point the Senate committee of the Seventy-fourth Congress was speaking of the Clayton Act, section 2. There, Mr. President, it will be noted that the Senate Judiciary Committee pointed out most clearly that this "good faith" defense which is now proposed to be restored as a part of our antitrust laws was the principal weakness of section 2 of the Clayton Act. I may state that section 2 of the Clayton Act is one of the strongest parts of our entire antitrust-law structure. Quoting further from the same 1936 Senate report:

Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere is in its unmasked effect the liberty to destroy competition.

Mr. President, no one heard the Judiciary Committee of the Seventy-fourth Congress talking about Justice Holmes, saying "competition is competition." Oh, no. The Senate committee of the Seventy-fourth Congress in 1936 said that liberty to cut prices to favor the big competitor is liberty to destroy competition.

Let me quote further, Mr. President:

* * * liberty to destroy competition by selling locally below cost, a weapon progressively more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size.

Mr. President, I ask unanimous consent that this report be printed in its entirety at this point in the RECORD, for the benefit of Senators.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[S. Rept. No. 1502, 74th Cong., 2d sess.]

TO AMEND ANTITRUST ACT

The Committee on the Judiciary, having had under consideration the bill (S. 3154) to amend section 2 of the act of October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", report the same back with the recommendation that the bill be amended as follows, and that, as so amended, it do pass.

Amendment: Beginning with the words "SEC. 2", in line 3, page 2, of the printed bill, strike out all thereafter, and insert, in lieu of the language stricken out, the following:

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price or terms of sale between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials in prices as between purchasers depending solely upon whether they purchase for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture; nor differentials which make only due allowance for differences in the cost, other than brokerage, of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

"(b) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction, or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

"(c) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless—

"(1) such payment or consideration is offered on proportionally equal terms to all other customers competing in the distribution of such products or commodities; or unless

"(2) the business, identity, or interests of such customer are in no way publicly associated, by name, reference, allusion, proximity, or otherwise, with or in the furnishing of such services or facilities, and the consideration paid therefor does not exceed the fair value of such services or facilities in the localities where furnished.

"(d) For purposes of suit under section 4 of this Act, the measure of damages for any violation of this section shall, where the fact of damage is shown, and in the absence of proof of greater damage, be presumed to be the pecuniary amount or equivalent of the prohibited discrimination, payment, or grant involved in such violation; limited, however—

"(1) Under subsections (a) and (b) above, by the volume of plaintiff's business in the goods concerned, and for the period of time concerned, in such violation;

"(2) Under subsection (c) above, to the amount or share, or its pecuniary equivalent, to which plaintiff would have been entitled if the payment concerned in such violation had been made or offered in accordance with paragraph (1) of said subsection (c)."

In its consideration of this bill, the committee has had the benefit not only of the diligent studies of its own members, but of the record of hearings on a similar bill (H. R. 8442) before the Committee on the Judiciary of the House of Representatives, also of the hearings before a special committee of the House on Investigation of the American Retail Federation, and of the report of the Federal Trade Commission on its chain-store investigation (S. Doc. No. 4, 74th Cong., 1st sess.). These have developed so fully the facts, trade and industrial, pertinent to the objects of the bill, together with representations of all interested parties for or against its specific provisions, that this committee has felt able to reach its decision without the delays of further hearings.

The Clayton Act of October 15, 1914, addresses itself in section 2, which this bill proposes to amend, to the problem of price discriminations. It represented the hope of that time, in the words of the House committee report (H. Rept. 627; 63d Cong., 2d sess.) that it would go far to bring about the desired objects of readjustment "with as few, as slight, as easy, and simple changes as the object sought will admit of."

More than 20 years' experience and observation with respect to its operation, together with new features of trade and industria

organization that have since developed, have convinced us of its shortcomings, and of the need to strengthen its provisions and fit them more perfectly to the needs of today. This your committee has striven to do, with a careful regard to the preservation of full freedom for sound and wholesome business in all its necessary and proper operations, but with a firm resolve not to permit the desire for privilege to masquerade under the claim of right. Again in the words of the earlier House report:

"Nothing essential has been disturbed, nothing torn up by the roots, no parts rent asunder, which can be left in wholesome combination."

Your committee, in its deliberations, has held steadily as its guiding ideal the preservation of equal opportunity to all usefully employed in the service of distribution comportably with their ability and equipment to serve the producing and consuming public with real efficiency, and the preservation to that public of its freedom from threat of monopoly or oppression in obtaining its needs and disposing of its products.

The aptitude of the means here chosen to that end will more fully appear from the following:

ANALYSIS OF THE BILL

I. General object

The bill proposes to amend section 2 of the Clayton Act so as to suppress more effectually discriminations between customers of the same seller not supported by sound economic differences in their business position or in the cost of serving them. Such discriminations are sometimes effected directly in prices or terms of sale, and sometimes by separate allowances to favored customers for purported services or other considerations which are unjustly discriminatory in their result against other customers. The bill is accordingly drawn in four subsections, of which the first three contain substantive measures directed at the more prevalent forms of discrimination, while the fourth is designed to facilitate private remedies in damages to persons immediately and actually injured by its violations.

II. Definitions

The special definitions of section 1 of the Clayton Act will apply without repetition to the terms concerned where they appear in this bill, since it is designed to become by amendment a part of that act. Thus the term "commerce", as used herein, becomes by force of those definitions interstate and foreign commerce of the United States and commerce in and between its various possessions.

III. Discriminations in prices and terms

Section 2 (a) attacks directly the problem of discrimination in prices and terms of sale. Like present section 2 of the Clayton Act it contains a general prohibition against such discriminations, from which certain specified exemptions are then carved, thus throwing upon any who claim the benefit of those exceptions the burden of showing that their case falls within them. This feature represents no new departure. The changes lie rather in the exceptions themselves, and in the spheres of commerce to which the protection of the bill is extended.

The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition, and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill. Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere, is in its unmasked effect the liberty to destroy competition by selling locally below cost, a weapon progressively the more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size.

Specific phrases of section 2 (a), as now reported, may be noted as follows:

One:

"Where either or any of the purchases involved in such discrimination are in commerce."

Section 2 (a) attaches to competitive relations between a given seller and his several customers, and this clause is designed to extend its scope to discriminations between interstate and intrastate customers, as well as between those purely interstate. Discriminations in excess of sound economic differences involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them. When granted by a given seller to his customers in other States, and denied to those within the State, they involve the use of that interstate commerce to the burden and injury of the latter. When granted to those within the State and denied to those beyond, they involve conversely a directly resulting burden upon interstate commerce with the latter. Both are within the proper and well-recognized power of Congress to suppress.

Two:

"Where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States."

This clause is retained from the present act.

Three:

"Where the effect of such discrimination may be substantially to lessen competition or tend a create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, or with customers of either of them."

This clause represents a recommended addition to the bill as referred to your committee. It tends to exclude from the bill otherwise harmless violations of its letter, but accomplishes a substantial broadening of a similar clause now contained in section 2 of the Clayton Act. The latter has in practice been too restrictive in requiring a showing of general injury to competitive conditions in the line of commerce concerned, whereas the more immediately important concern is in injury to the competitor victimized by the discrimination. Only through such injuries, in fact, can the larger general injury result, and to catch the weed in the seed will keep it from coming to flower.

Four:

"Provided, That nothing herein contained shall prevent differentials in prices as between purchasers depending solely upon whether they purchase for resale to wholesalers, to retailers, or to consumers, or for use in further manufacture."

Although not specifically so provided, the present section 2 of the Clayton Act also permits these differentials, since it places no limit upon quantity differentials of any kind; nor upon any differentials not affecting general competition. Since added restrictions are here imposed in these respects, a separate clause safeguarding differentials between different classes of purchasers becomes necessary. Such differentials, so long as equal treatment is required within the class, do not give rise to the competitive evils at which the bill is aimed, while to suppress them would produce an unwarranted disturbance of existing habits of trade.

Five:

"Nor differentials which make only due allowance for differences in the cost, other than brokerage, of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered."

In this clause the words "other than brokerage" are added by recommendation of the committee, and are required to harmonize this subsection with subsection (b) considered below, which deals directly with the question of brokerage.

This proviso is of greatest importance, for while it leaves trade and industry free from any restriction or impediment to the adoption and use of more economic processes, and to the translation of appropriate shares of any savings so effected up and down the stream of distribution to the original producer and to the ultimate consumer, it also strictly limits the use of quantity price differences to that sphere, since beyond it they become instruments of favor and privilege and weapons of competitive oppression. Certain of its constituent phrases should be further noted as follows:

"(a) '* * * which makes only due allowance'."

This phrase is carried over from the present act, but, as coupled with the remainder of the clause, is here extended to limit quantity differentials, as well as those on account of selling and transportation costs. It marks the zone within which differentials may be granted. The bill neither requires nor compels the granting of discriminations or differentials of any sort. It leaves any who wish to do so entirely free to sell to all at the same price regardless of differences in cost, or to grant any differentials not in excess of such differences. It does not require the differential, if granted, to be the arithmetical equivalent of the difference. It is sufficient that it does not exceed it.

"(b) '* * * resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered * * *'."

This limits the differences in cost which may be honored in support of price differentials, to those marginal differences demonstrable as between the particular customers concerned in the discrimination. It is designed, among other things, to preclude the grant of a discrimination to a particular customer equal to the whole saving in cost resulting to the seller's entire volume of business as augmented by that customer's patronage; to preclude also differentials based on allocated or imputed, as distinguished from actual, differences in cost, representing particular facilities or departments which the favored customer may not have immediately utilized, but with which the seller cannot dispense in the general conduct of his business.

It is designed, in short, to leave the test of a permissible differential upon the question: If the more favored customer were sold in the same quantities and by the same methods of sale and delivery as the customer not so favored, how much more per unit would it actually cost the seller to do so, his other business remaining the same? The particular words "resulting from" and "to such purchasers," as here used, are deemed competent to narrow the permitted differentials to those limits, and it seems eminently fair and just that they should be so limited. No particular customer should be permitted distinctively to claim the benefit, nor required distinctively to bear the burden, of the immediate use or nonuse of facilities which the seller must maintain for his business generally.

Six:

"Provided, however, That the Federal Trade Commission may, after due investigation and

hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established."

This proviso is added by recommendation of your committee. It is designed to enable, when necessary, the determination of quantity limits as to various commodities, beyond which quantity price differentials shall not be permitted even though supported by differences in cost. It rests upon the principle that where even an admitted economy is of a character that is possible only to a very few units of overshadowing size in a particular trade or industry, it may become in their hands nonetheless the food upon which monopoly feeds, a proboscis through which it saps the lifeblood of its competitors; and that in forbidding its use and foregoing its benefits the public is but paying a willing price for its freedom from monopoly control. A similar limitation has been applied without challenge for nearly half a century in the field of transportation, in refusing to extend freight rate differentials beyond the car-lot quantity.

To apply such a blanket limitation to quantity price differentials in the commodity field seems at present unwarranted, since similar protection may not now be needed with reference to all commodities, nor as to some may it ever be needed, depending as it does upon such questions of fact as the distribution of business in the given line among large and small competitors, and the degree to which peculiar economies are technically possible only to those competitors of overshadowing size. The above proviso commits to the Federal Trade Commission the power to act in the premises as and when the need arises, and to act appropriately to the nature of the need after possessing itself of all pertinent information.

Seven:

"*And, provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

This proviso is retained from the present act.

IV. Brokerage

In section (b) the phrases "or any allowance or discount in lieu thereof" and "either to the other party to such transaction" are added by your committee's recommendation. As so revised, this section forbids the payment or allowance of brokerage, either to the other principal party, or to an intermediary acting in fact for or under the control of the other principal party, to the purchase and sale transaction.

Among the prevalent modes of discrimination at which this bill is directed, is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases, or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a "broker," so labeled, enters the picture at all, it is one whom the buyer points out to the seller, rather than one who brings the buyer to the seller, is but to permit the corruption of this function to the purposes of competitive discrimination. The relation of the broker to his client is a fiduciary one. To collect from a client for services rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume.

V. Service allowances

Still another favored medium for the granting of oppressive discriminations is found in the practice of large buyer customers to demand, and of their sellers to grant, special allowances in purported payment of advertising and other sales promotional services, which the customer agrees to render with reference to the seller's products, or sometimes with reference to his business generally. Such an allowance becomes unjust when the service is not rendered as agreed and paid for, or when, if rendered, the payment is grossly in excess of its value, or when in any case the customer is deriving from it equal benefit to his own business and is thus enabled to shift to his vendor substantial portions of his own advertising cost, while his smaller competitor, unable to command such allowances, cannot do so.

Section 2 (c) of the bill addresses this evil by prohibiting the granting of such allowances unless made available to all other customers of the seller concerned on proportionately equal terms, or unless in the rendition of such services the customer's own business is kept out of the picture. The first of these conditions is designed to rob this practice generally of its discriminatory character, and the second to leave open a legitimate field for the use of customer services as mere employees or agents in local advertising, in lieu of salaried representatives sent it from without, or of other local personnel strangers to the seller's acquaintance. The frequency with which limited advertising appropriations admit of their expenditure only in selected communities makes it important both to the seller and to the local community to preserve this freedom so long as it is properly protected against discriminatory use.

The phrase "proportionally equal terms," used in clause 1 of section (c), is designed to prevent the limitation of such allowances to single customers on the ground that they alone can furnish the services or facilities in the quantity specified. Where a competitor can furnish them in less quantity, but of the same relative value, he seems entitled, and this clause is designed to accord him, the right to a similar allowance commensurate with those facilities. To illustrate: Where, as was revealed in the hearings earlier referred to in this report, a manufacturer grants to a particular chain distributor an advertising allowance of a stated amount per month per store in which the former's goods are sold, a competing customer with a smaller number of stores, but equally able to furnish the same service per store, and under conditions of the same value to the seller, would be entitled to a similar allowance on that basis.

VI. Measure of damages

Section (d) represents a revision, approved by your committee, of the corresponding part of the bill as referred. It states a presumptive rule for the measurement of damages in private suits for violation, which are authorized by section 4 of the Clayton Act. As the practices against which this bill is directed are injurious, not only to the public interest but as well to the private parties victimized by them; as, in fact, they work their public injury only through their power to damage private competitors, your committee feels strongly that every reasonable facility should be afforded the latter to enable them to recover the damages they have suffered, and thus also to induce their active vigilance in enforcing the act, relieving the Government correspondingly of the burden of its cost. Private remedies in damages for violations of antitrust law have been authorized since its first enactment, but their use has been much impeded, due partly to the speculative character of damages based on loss of business and to the limited facilities of private parties for obtaining evidence of a kind to satisfy the narrower requirements of the common law to which such suits were unknown.

The measure of damages provided in section (d) is the amount of the forbidden discrimination or allowance found to have been granted, limited, however, to the volume of the plaintiff's business in the goods concerned, or to the amount which he would have received had the allowance been granted to all on the equal basis which the bill requires. The underlying principle of the bill is the suppression of unjust discriminations, and it seems both fair and just, and in harmony with that principle, to enable those victimized by its violation to restore themselves, through the recovery of damages, to the equal position which they would have occupied had the violation not been committed. Confronting the intending violator, as it also does, with the prospect that he will be liable to restore to others in damages tomorrow the discrimination which he grants to some today, it robs such arrangements of their business advantage, and so may well be expected to serve as a wholesome and self-enforcing deterrent against violations of the principle of equal treatment which the bill as a whole exemplifies.

Mr. LONG. In order that the RECORD may be complete at this point, I ask unanimous consent that the conference report on the Robinson-Patman bill be printed in the RECORD to complete the legislative history of that bill.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[S. Doc. No. 267, 74th Cong., 2d sess.]

PROHIBITION OF PRICE DISCRIMINATION

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 8442) to amend section 2 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"That section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), is amended to read as follows:

"'SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the

jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

"'(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

"'(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

"'(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"'(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

"'(f) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.'

"SEC. 2. That nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 2 of said act of October 15, 1914, prior to the effective date of this amendatory act: *Provided*, That where, prior to the effective date of this amendatory act, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 2 of said act of October 15, 1914, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since the effective date of this amendatory act, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 2 as amended by this act, it may reopen such original proceeding and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 11 of said act of October 15, 1914. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since the effective date of this amendatory act, or is being committed, used or carried on, in violation of said section 2 as amended by this act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 11 of said act of October 15, 1914, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 11 the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

"SEC. 3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

"Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than 1 year, or both.

"SEC. 4. Nothing in this act shall prevent a cooperative association from returning to its members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association."

And the Senate agree to the same.

FREDERICK VAN NUYS,
GEO. MCGILL,
WM. E. BORAH,
WARREN R. AUSTIN,
Managers on the Part of the Senate.

HUBERT UTTERBACK,
JNO. E. MILLER,
CHARLES F. MCLAUGHLIN,
U. S. GUYER,
JOHN M. ROBSION,
Managers on the Part of the House.

Mr. LONG. Mr. President, it has been very unfortunate that Senate bill 1008 has never been subjected to adequate committee hearings. I am sure it will be recalled that a bill was introduced providing for a 2-year moratorium on pricing practices, so that certain businessmen who had been charged and had been found guilty of monopolistic practices might have time to adjust themselves to the new competitive pricing situation. When that bill had been reported from the committee to the Senate, without previous notice and without hearings, a substitute was offered by the Senator from Wyoming [Mr. O'MAHONEY] and at that time it was proposed that we pass a law to change the antitrust laws for all time in the future, as a permanent remedy, rather than to follow a piecemeal program for 2 years.

With very little consideration and debate, save only for amendments offered by the Senator from Tennessee [Mr. KEFAUVER] designed to protect small-business men against the same unfair discriminations which I am discussing today, the bill was rushed through the Senate without a yea-and-nay vote. Thereafter the bill went to the House of Representatives, and the Judiciary Committee of the House held rushed hearings, permitting only two or three witnesses to appear before them. I think the Senator from Wyoming was permitted to testify. A representative of the Antitrust Division of the Department of Justice, Mr. Bergson, was also permitted to come before the committee and testify. He testified that the Department of Justice had no objection to the bill.

There was a peculiar situation, Mr. President. The bill did not purport to take from the Department of Justice any of its rights to prosecute antitrust violations. The Department of Justice prosecutes violations under the Sherman Antitrust Act, and it comes into the picture under the Clayton and Federal Trade Commission Acts only when the Federal Trade Commission has prosecuted unfair practices and discriminations and the subject goes before the Supreme Court on appeal. The Department of Justice was not being stripped of its powers. It was the Federal Trade Commission which was being stripped of

power. So the Assistant Attorney General graciously went before the House committee and explained that, as the assistant in charge of the Antitrust Division of the Justice Department he had no objection to the Federal Trade Commission, another agency of Government, being stripped of its powers to protect small competitors.

Then, Mr. President, the bill, with practically no further consideration, was rushed to the floor of the House of Representatives. When it reached the floor Representative PATMAN, the chairman of the Small Business Committee, who had been one of the authors of the Robinson-Patman law to protect the small-business people of America, conducted hearings of his own, giving an opportunity to small-business men to voice their objections to this piece of monopolistic legislation.

I hold in my hand, Mr. President, a copy of those hearings. They were called rump hearings because they were held by a committee which did not have the bill before it. They were rushed hearings, because there was very little time, so anxious were the Steel Trust, the Oil Trust, and other trusts to rush the bill through Congress. The small-business men's objections related to the good-faith defense.

When the bill reached the floor of the House of Representatives a motion was made to strike the so-called Kefauver amendments, which were designed to protect the small-business people of America. At that time a Representative from Colorado, Mr. CARROLL, offered amendments of the same general nature as the Kefauver amendments, except that they were much more carefully drawn and much more protective, because they had received greater consideration before they were offered.

At the time Representative CARROLL offered his amendment to strengthen the Kefauver amendments, he had in his hand a letter from the Senator from Tennessee himself, stating that the amendments proposed by Representative CARROLL went much further toward protecting small-business men and were much more carefully written than were the amendments offered by the Senator from Tennessee.

The House, at that time, rather than to strike the Kefauver amendments designed to protect small-business men, adopted the Carroll amendments which were even more carefully drawn to protect the small-business man.

The bill came back to the Senate. The junior Senator from Louisiana at that time made a speech saying that it was still a bad bill, but that it would be better so far as the people of America were concerned, to go ahead and agree to the bill as passed by the House, because it contained the Carroll amendments to protect the independent retailers of America.

It will be recalled that the junior Senator from Louisiana stated that he wanted to move to agree to the House amendments, because he felt that without them it would be still worse legislation if it were permitted to go to conference. Unfortunately, the junior Senator from Louisiana did not get an opportunity to move to agree to the House amendments, because, prior to that time, the Senator from Nevada [Mr. MCCARRAN] succeeded in obtaining an agreement of the Senate to send the bill to conference without permitting a vote on the motion to agree to the House amendments.

We now see the bill back on the floor of the Senate, with every harm anticipated by the Senator from Louisiana now in the bill. We see that by section 3 the so-called good-faith defense has been restored. It means nothing more than that two wrongs make a right.

Let me explain it, briefly, Mr. President. Under this great loophole bill, Senate bill 1008, it would be illegal for a large distributor of canned goods and other grocery commodities, such as General Foods, acting alone, to discriminate in price in favor of the Safeway chain stores. But, on the other hand, if he can find any of his competitors who would be willing to do the same thing, it would be completely legal for him to discriminate, world without end, although it would result in small independent merchants who were trying to compete with the chain being driven out of business.

That is simply to say that although it is illegal and wrong for a great manufacturer of commodities to discriminate to the destruction of some of his customers, acting alone, it is completely legal to discriminate in that fashion if he has a "dancing partner" or if anyone else is willing to commit the same discrimination in favor of large concerns.

Is it any wonder, Mr. President, that the small-business men of America are sending their representatives here, as fast as they wake up to the situation, asking for some protection?

I hold in my hand a copy of a letter which has been sent to every Member of the United States Senate. The letter is signed by the National Association of Retail Druggists, George H. Frates, Washington representative; National Farmers Union, James G. Patton, president; National Congress of Petroleum Retailers, Inc., Rankin Peck, president; National Federation of Independent Business, George J. Burger, vice president; International Association of Machinists, George Nelson, Washington representative; Cooperative League of U. S. A., Wallace J. Campbell, director of Washington office. The letter points out the objections of these small business organizations to the basing-point bill.

Mr. President, I ask that the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AN OPEN LETTER TO OPEN MINDS ON S. 1008, THE BASING-POINT BILL

MARCH 30, 1950.

DEAR SENATOR: The supporters of S. 1008 have stated over and over again that the purpose of the bill is merely that a seller can be sure that he may absorb freight and that he may charge a delivered price.

The opponents have stated, and still state, that this is a sham argument, that everybody knows a seller may absorb freight, which simply means reduce his price, and that he may charge a delivered price—provided that he does not violate the antitrust laws, particularly the Robinson-Patman Act in regard to price discrimination and lessening competition.

But, say the bill's supporters, there are certain dicta of the Supreme Court in the Cement case, which, although they do not hold to the contrary and in any event are not necessary to the decision, create a doubt. And meanwhile Big Steel and Big Cement, those loyal and obedient followers of the antitrust laws, pretend that they are bound by this sham doubt, and they refused to reduce their prices to the South and the West—all for the purpose of putting the squeeze on the small fabricators and buyers so that they too will come out favoring S. 1008.

Now, if the supporters of S. 1008 are sincere that the purpose of the bill is what they say it is, we would like to know why the bill does not consist of just one sentence saying that, but saying no more. We are not supporting or agreeing even to a single sentence, inasmuch as we do not believe any bill is necessary to legalize freight absorption or delivered pricing, and we believe that the real supporters of the bill have something else in mind. However, we are suggesting to you that you ask the supporters of the bill, the following questions:

1. Why doesn't S. 1008 simply consist of a single sentence as follows?—"The absorption of freight or the charging of a delivered price in any sale, shall not, in and of itself, constitute a violation of any law of the United States."

2 Why does S. 1008 go much further by amending the Robinson-Patman Act and the Federal Trade Commission Act all over the lot—so that the courts will be occupied another 20 years construing these laws, while Big Steel and Big Cement again run riot in maintaining identical delivered prices by all so-called competitors?

3. Why does S. 1008 have to get into the Standard Oil of Indiana case which raises an issue not peculiar to freight absorption at all but relates to all pricing affected by the Robinson-Patman Act?

4. Why does S. 1008 in section 3, have to go out of its way to add more difficulties to the Government's burden of proof—not only in freight absorption cases, but in all Robinson-Patman Act cases?

5. Why does S. 1008 have to legalize the zoning system, and incidentally something far beyond the zoning system, as it does in the first part of section 2, a provision which has sneaked into the bill and which has hardly even been debated?

6. Why does S. 1008, also in section 2, have to contain a provision protecting customary price differentials—in effect a "grandfather's clause"—legalizing present discriminations even if illegal?

7. Why—unless small business is being sacrificed to big steel and big cement, and unless the South and the West are being sacrificed to a small portion of the great State of Pennsylvania and other producing areas.

Sincerely yours,

The National Association of Retail Druggists, George H. Frates, Washington Representative; National Farmers Union, James G. Patton, President; National Congress of Petroleum Retailers, Inc., Rankin Peck, President; National Federation of Independent Business, George J. Burger, Vice President; International Association of Machinists, George Nelson, Washington Representative; Cooperative League of U. S. A., Wallace J. Campbell, Director of Washington Office.

Mr. LONG. Mr. President, in order that we may have a fuller understanding of objections by independent retailers of America to the proposed basing-point legislation, I turn to page 21 of the hearings which were conducted by the Small

Business Committee of the House of Representatives. On pages 21 through 28 I find the statement of George H. Frates, representing the National Association of Retail Druggists. I ask unanimous consent to have the statement of Mr. Frates before the committee printed at this point in the RECORD as a part of my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF GEORGE H. FRATES, WASHINGTON REPRESENTATIVE OF THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS, WASHINGTON, D. C.

Mr. FRATES. My name is George H. Frates. I am the Washington representative of the National Association of Retail Druggists, located at 1163 National Press Building, Washington, D. C. Our organization comprises over 34,000 small independent retail pharmacists, practicing their profession in every State of the Union and in the District of Columbia. We appear before you today to show why the Robinson-Patman Act should be kept inviolate.

When President Franklin D. Roosevelt placed his signature on the Robinson-Patman antidiscrimination bill, June 20, 1938, it represented the final stroke in an outstanding victory for the small independent retail druggists of the Nation as contrasted to the chain stores and other groups clothed in financial security. It was hailed as a striking victory against monopoly as expressed by the Congress of the United States, the people's representatives. Now, almost 13 years after the enactment of the Robinson-Patman Act, we must again appear before the Congress in defense of that legislation and again affirm our belief in and support of the RP law.

The National Association of Retail Druggists vigorously opposes S. 1008 because we believe the bill would emasculate the original intent of Congress, when it passed the Robinson-Patman law. Small business does not oppose big business, merely because the latter is large. However, we want big business to play by the same set of rules required of small business. With no attempt at being facetious, may we remark that if big business gives its favorite customer an elephant, then little business wants an elephant also—a little one, but it must be an elephant, with no substitution in quality pound for pound.

The Robinson-Patman Act clarifies a situation not noticeable in other antitrust laws and sets forth specifically the terms and conditions upon which price differentials, quantity, discounts and rebates, of one kind or another are legitimate.

As we see it, the Robinson-Patman Act poses two questions: (1) Does it unduly restrain competition? (2) Is it fair as between individual competitors?

The Robinson-Patman Act does not prohibit price differentials per se; rather it permits the granting and receiving of quantity discounts and similar allowances provided they are limited to actual savings in cost of manufacturing, selling, or delivering. Moreover, the provisions of the act are available on an equitable basis to all firms dealing under like conditions.

Executive secretary and general manager of the National Association of Retail Druggists John W. Dargavel was one of the first national leaders to recognize that the small independent retailer was due for an economic slaughtering unless Congress did something to permit independent operators to conduct honest, upright, worthy businesses and to support themselves and their families from the fair earnings of such enterprises.

The history of the enactment of the Robinson-Patman Act reveals that from its inception powerful opposition appeared to delay and stifle the bill. Upon close scrutiny almost every argument used against the bill proved to be a web of fabrications. That is, unless it was thought legitimate to use dishonest, deceptive, and discriminatory methods in business practice. By control of many of the large daily newspapers of the country through advertising manipulations; by insinuating propagandists in the women's clubs; by decree to chain store employees; by pamphlet, publication, circular, they sought to hoodwink the public into the belief that the Robinson-Patman bill would inaugurate an era of distinct hardship upon the public.

Time and experience have proved beyond the question of a reasonable doubt that monopoly does not like the Robinson-Patman Act. The only business—big or little—that is handicapped by the effectuation of the act is that one that finds it impossible to operate on a fair and honest basis.

In our opinion, freight absorption, calculated to stifle competition, is a subterfuge of the worst kind unless it can justify the discrimination on a cost basis. Here the burden of proof is, and should be, on the respondent.

May we illustrate how the Robinson-Patman Act puts a decided restriction on that method of purchase indulged in by some chain stores and other large buyers, known as listing before the enactment of the law. For example, the purchasing agent at headquarters negotiates with the manufacturer for the goods which the branch stores of the chain handle and prices are agreed upon between them. The merchandise was then entered into the official list which in turn became an authority to the district or local branch store managers to buy them from the manufacturer at the price quoted in the list. It will be noted that the headquarters' agent bought nothing.

He merely granted the manufacturer an opportunity to sell to the several branch stores at the list prices. To all intents and purposes this modus operandi was in reality a brokerage service. Paragraph (C) of section (2) of the Robinson-Patman law now prohibits such actions.

It will be readily seen that if the list prices include the cost of delivery to the branch stores, a discrimination at once appears between these delivered prices to the branches of the chain, and prices to other buyers from the manufacturer who are sold f. o. b. factory. This is quite as illegal for the manufacturer who grants as for the chain which receives this discrimination.

Years of experience and observation with respect to the operation of the Robinson-Patman Act have convinced us that the legislation preserves equal opportunity to all usefully employed in the service of distribution and protects the consuming public with real efficiency and the preservation of that public of its freedom from threat of monopoly or oppressions in obtaining its needs and dispensing of its products. The act suppresses more effectually discrimination between customers of the same seller not supported by sound economic differences in their business position or in the cost of servicing them. Such discriminations are sometimes effected directly in prices or terms of sale, and sometimes by separate allowances to favorite customers for purported services or other considerations which are unjustly discriminatory in their result against other customers. The road to monopoly is strewn with wrecks of independent business. It would, therefore, seem good policy on the part of Congress to consider carefully whether the hurried action on this bill is in the public interest. No public hearings were held on S. 1008. No opportunity has been granted to those who oppose this bill to make their wishes known to Congress with the single exception of the opportunity granted by the House Select Small Business Committee at this hearing.

Monopoly in the field of distribution develops when big business is able to get concessions that are not available to all retailers, and to continue this practice long enough to wear down the reserves of the independent retailers. Antimonopoly laws ironically prevent these little retailers from taking any joint action in their own defense; consequently big business has been able to enjoy more and more of the ill-gotten fruits of discrimination. Big business is able to subdue competition by working on one sector at a time. Competition is subdued and independents who survive are on the brink of bankruptcy. They become so in debt to big-business-controlled sources of supply that they are deprived of any independence of thought or action. Unless the entire distributional system of the Nation is to be revolutionized and the little independent units that now comprise the greater part of it eliminated, we must get back on a sound, fair, economic basis. Laws must be amended to eliminate, instead of fostering, discriminatory practices.

Small independent retail druggists of the Nation worked hard to promote the passage of the Robinson-Patman Act. It has given them a fighting chance with big business.

The basing point may or may not be of vital importance to our industry, but when an attempt to settle a squabble belonging to the cement and steel giants, and so forth, takes place and the result weakens the protective legislation for the small retailer, then we feel like innocent bystanders on whom there has been dumped an avalanche of steel and cement.

Page 2, beginning on line 9, of S. 1008 states:

"That it shall not be an unlawful discrimination in price for a seller, acting independently—

"(a) To quote or sell at delivered prices if such prices are identical at different points or if differences between such prices are not such that their effect upon competition may be that prohibited by this section."

The report which accompanies S. 1008 says that the Federal Trade Commission has publicly stated that a showing by a seller of meeting competition "in good faith" should be a full defense to a charge of price discrimination. "Good faith" is susceptible to many meanings.

S. 1008, the Capehart-O'Mahoney bill, is really appeasement—appeasement of big business, because it was slapped down in the basing-point decision of the Supreme Court. We can readily understand how big business is concerned but we oppose any action which weakens the Robinson-Patman Act.

We call attention to the fact that S. 1008, as amended, and reported by the House Judiciary Committee, permitted no opportunity for opponents of the basing-point legislation to be heard in open meeting. Proponents of the legislation have been heard at various times during the past year. S. 1008 is designed as permanent legislation which expert opinions on the bill indicate will effectively upset many issues previously decided by the Congress. Should this come to pass, it may be expected that a series of litigations on the Federal Trade Commission's Act of 1914 and the Clayton Act, as amended by the Robinson-Patman Act, will be in the offing.

Protests from small independent retail druggists from all over the country have reached us opposing S. 1008.

The CHAIRMAN. Would you like to ask some questions, Mr. HALLECK?

Mr. HALLECK. Not at the moment.

The CHAIRMAN. Mr. KEOGH?

Mr. KEOGH. No questions.

Mr. BURTON. No questions.

Mr. HALLECK. I got here a little late, but I was interested in the statement made on page 5 in which you say:

"The basing point may or may not be of vital importance to our industry."

I take it that as a matter of direct concern in the basing-point controversy that simply means you are not particularly concerned with that but you are concerned with any weakening of the Robinson-Patman Act?

Mr. FRATES. That is correct, exactly, Mr. HALLECK.

Mr. HALLECK. And if the legislation that might finally be enacted preserved the provisions of the Robinson-Patman Act, so far as you know, you would have no quarrel with the legislation?

Mr. FRATES. That is correct, sir, if it did not interfere with the Robinson-Patman Act, we would not be here making our presentation.

The CHAIRMAN. Mr. Kaufman?

Mr. KAUFMAN. Without asking for any qualification on that, you still reserve, I presume, the rights to examine the effect of the basing-point system on the total economy and, therefore, its effect upon you indirectly. Is that not right?

Mr. FRATES. That is correct. It is like throwing a rock into a pool. The rock hits in the middle of the pool but the ripples finally affect us as independent retail druggists if it interferes with the Robinson-Patman Act.

Mr. KAUFMAN. You are acquainted with the fact that the Supreme Court did declare that the basing-point system was "a handy instrument" of monopoly?

Mr. FRATES. That is my understanding.

Mr. KAUFMAN. When you come here today you are not coming to speak for or against the basing point, but only for protection of the Robinson-Patman Act?

Mr. FRATES. That is correct. The basing point or the zone system will not materially affect our independent retail druggists unless it vitally affects the Robinson-Patman Act.

Mr. KAUFMAN. Correct.

May I ask him other questions, Mr. Chairman?

The CHAIRMAN. Surely, go ahead.

Mr. KAUFMAN. You spoke of many protests that have been received from retail druggists. Have you any evidence of that, or could you give us any idea of the number or the variety?

Mr. FRATES. Yes, sir; we have had protests from all over the United States from our National Association of Retail Druggists members. From Massachusetts, from California, from Chattanooga——

The CHAIRMAN. Just read them out.

Mr. FRATES. Sir?

The CHAIRMAN. Just read out where they are from.

Mr. FRATES. All of them?

The CHAIRMAN. Yes.

Mr. FRATES. Billings, Mont.; Chattanooga, Tenn.; Monroe, Ga.; Haverhill, Mass.; San Diego, Calif.; Long Beach, Calif.; New Jersey; Kentucky; Montana; San Francisco; Minnesota; South Carolina; New York; Tennessee; Washington; Colorado; Oklahoma City; Illinois; New York; California; Arkansas; North Dakota; Massachusetts; Colorado——

The CHAIRMAN. You have probably covered about half of them, I would say, Mr. Frates?

Mr. FRATES. Yes.

The CHAIRMAN. You have gotten them from practically every State in the Union?

Mr. FRATES. Yes, sir.

The CHAIRMAN. And they are protests against any change in this law?

Mr. FRATES. That is correct.

Mr. KEOGH. You mean by "this law" the Robinson-Patman Act?

The CHAIRMAN. Yes. They are not testifying on the basing point as such. They have not investigated that phase of the legislation if I understand them correctly.

Mr. FRATES. That is correct, sir.

Mr. KAUFMAN. You are acquainted with the Kefauver amendment in respect to this bill?

Mr. FRATES. Yes, sir.

Mr. KAUFMAN. And as it passed the Senate it contained the Kefauver amendment.

Mr. FRATES. Yes, sir.

Mr. KAUFMAN. And what happened in the House Judiciary Committee?

Mr. FRATES. It eliminated the amendment, the House Judiciary Committee.

Mr. KAUFMAN. Do you consider that elimination a benefit to you?

Mr. FRATES. No; the opposite is true.

Mr. KAUFMAN. Will you explain that?

Mr. FRATES. At least the Kefauver amendment offered some protection, as we understand it, to our people, and they were eliminated in their entirety in the Judiciary Committee, and then it went right back to the fact that the legislation proposed in S. 1008 is detrimental to the Robinson-Patman Act and as a result affects our independent operation.

Mr. KAUFMAN. In other words, the Kefauver amendment was designed to preserve the present burden of proof as it now exists in the present Robinson-Patman Act; is that correct?

Mr. FRATES. That is correct.

Mr. KAUFMAN. And by striking it out the present burden of proof is changed, is that correct?

Mr. FRATES. Similar to the operation before the enactment of the Robinson-Patman Act.

Mr. KAUFMAN. So that if the Kefauver amendment is left out, is it your understanding that it would be impossible for the Federal Trade Commission to show that competition among the retailers would be diminished?

Mr. FRATES. As I understand it, it just reverses the process of making the respondent responsible for his actions.

Mr. KAUFMAN. Is it your understanding in general that the amendments made by this bill to the Robinson-Patman Act change the burden of proof?

Mr. FRATES. Yes, sir.

Mr. KAUFMAN. So it would become difficult, in many cases, perhaps impossible, for the Federal Trade Commission to prove a case even though it might have had one before?

Mr. FRATES. We think it is almost fantastic.

Mr. KAUFMAN. I notice you testified in regard to the inception of the Robinson-Patman Act in 1936. Do you know whether or not that was sponsored by any particular political party, or what kind of support did it get in that Congress?

Mr. FRATES. No; it was bipartisan.

Mr. KAUFMAN. As a matter of fact, was the vote almost overwhelming, almost unanimous?

Mr. FRATES. As I recall, the vote in the House was something like 290 to 16.

The CHAIRMAN. That is correct.

Mr. KAUFMAN. And in the Senate?

Mr. FRATES. Just a few scattering votes against the enactment of the Robinson-Patman Act there. As we understand, it showed a crying need of the independent retailers and small-business men for such legislation.

Mr. KAUFMAN. Can you think of any reason why the Robinson-Patman Act should be particularly singled out for attack in a bill which apparently is designed, at least on the face of it is supposed to be designed for some other purpose?

Mr. FRATES. I can only give you my own thinking in the matter, sir. I am inclined to believe personally that the basing-point decisions—Steel, Cement cases, and the like of that—did not directly have the intention of hurting the Robinson-Patman Act but the repercussions were such that this legislation was enacted which vitally stabs the heart out of the Robinson-Patman Act.

Mr. KAUFMAN. Affecting all businesses?

Mr. FRATES. Yes.

Mr. KAUFMAN. And not just steel and cement?

Mr. FRATES. Regardless of whether independent operators around the corner, or whether Pittsburgh steel or portland cement.

Mr. KAUFMAN. Now, is it not true that under the Robinson-Patman Act treble damage action could be brought in case of violation?

Mr. FRATES. Yes.

Mr. KAUFMAN. And is it not true that the treble-damage action has been the thorn in the side of violators of the antitrust laws?

Mr. FRATES. It has been an absolute deterrent.

Mr. KAUFMAN. And would not that be a very special reason for picking on the Robinson-Patman Act?

Mr. FRATES. If you remove that threat, then you give big business a Roman holiday in my opinion.

Mr. KAUFMAN. And coming to that, of course, we do not have treble-damage action under the Federal Trade Commission Act?

Mr. FRATES. No; we do not.

Mr. KAUFMAN. It is also amended in this bill but amended more mildly, is it not?

Mr. FRATES. That is my understanding, sir.

Mr. KAUFMAN. Now, supposing a change were necessary in the Robinson-Patman Act, you are a reasonable person, supposing changes were necessary, do you think we have had sufficient time to consider and deliberate on such changes?

Mr. FRATES. No; because we would suggest to the Congress that they strengthen the Robinson-Patman Act, but we surely would not do it in the limited space of time this bill has appeared on the calendar.

Mr. KAUFMAN. As a matter of fact, there have been no hearings at all on this bill, have there, any public hearings?

Mr. FRATES. Not to my knowledge unless the proponents of the measure had some hearings in the Senate.

Mr. KAUFMAN. There were no hearings. I may say that.

Mr. FRATES. I called your attention to the fact in my statement that this is the first time small retailing has had a chance to appear before the Congress.

The CHAIRMAN. It is strange to me that the Supreme Court rendered the same decisions in 1945 in the Staley and the Corn Products cases, and we did not hear a chirp from anybody. But 3 years or 4 years later, when they made the same decision in the Cement and Steel cases, they made a noise to hear around the world, and there was no demand for any legislation until it stepped on the toes of Big Steel and Big Cement, although the decisions first were rendered by the Supreme Court in 1945, 4 years ago.

And if, after 4 years, if we have not had anything come up that is detrimental to the general welfare, it occurs to me that we can well afford to go along until something does spring up to threaten the general welfare before taking any action, hasty or otherwise.

Are you through, Mr. Kaufman?

Mr. KAUFMAN. Yes.

The CHAIRMAN. Mr. HALLECK?

Mr. HALLECK. Reference was made in Mr. Kaufman's interrogation to the so-called Kefauver amendments which, I understand, are not included in the bill reported by the Judiciary Committee. Do I understand from that, if those amendments were included in the legislation as finally enacted, you would feel that the Robinson-Patman provisions were adequately protected?

Mr. FRATES. To the degree that they would modify the impact of S. 1008; yes, sir, Mr. HALLECK.

Mr. KAUFMAN. Would that be enough to satisfy you?

Mr. FRATES. No; we do not want the Robinson-Patman Act touched in any of its provisions. We want it strengthened, if anything.

Mr. HALLECK. Suppose there were some language in this legislation if it should come to the House to be enacted that specifically provided nothing contained in this legislation should in any way interfere with the provisions of the Robinson-Patman Act?

Mr. FRATES. We would have to explore it and study it, Mr. HALLECK, and know exactly what the phraseology meant.

The CHAIRMAN. Thank you very kindly, Mr. Frates.

Mr. LONG. Mr. President, I turn to the statement of Mr. W. A. Quinlan, general counsel, United States Wholesale Grocers' Association, Associated Retail Bakers of America, and the National Candy Wholesalers Association, Inc., which appears at page 9 of the hearings, and I ask unanimous consent to have Mr. Quinlan's statement printed in the RECORD at this point as a part of my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF W. A. QUINLAN, GENERAL COUNSEL, UNITED STATES WHOLESALE GROCERS' ASSOCIATION, ASSOCIATED RETAIL BAKERS OF AMERICA, AND THE NATIONAL CANDY WHOLESALERS ASSOCIATION, INC.

Mr. QUINLAN. Thank you. I am William A. Quinlan, a member of the bar of the District of Columbia, appearing here as general counsel of three national associations of as many industries, each of which is composed of small independent businesses. These organizations are the Associated Retail Bakers of America, the National Candy Wholesalers Association, Inc., and the United States Wholesale Grocers' Association, Inc. They have no connection with each other, but their interests and views on the matter before you coincide, and this statement is on behalf of each of them.

We are grateful, Mr. Chairman, to you and your committee for this oportunity to be heard. It is not the first occasion, and we hope it will not be the last, for your committee to provide a forum not otherwise available for these and other small businesses to make their problems, grievances, needs, or recommendations known to the Congress.

To make our position perfectly clear at the outset—we believe that the bill S. 1008 should be denied a rule, and that if and when it is called up without a rule it should be voted down by the House or recommitted to the Committee on the Judiciary.

The CHAIRMAN. Might I interrupt you there, Mr. Quinlan?

Mr. QUINLAN. Yes, sir.

The CHAIRMAN. I have requested the chairman of the Committee on Rules to hold up consideration of the application for a rule on this bill until we have sufficient time to develop the testimony in opposition to it; that testimony has not been developed elsewhere.

Without criticizing any committee, we are just developing the testimony in opposition to it.

I do not know how long the rule will be held up for that purpose, but if it comes up before we have finished our hearings here in opposition, why, I expect to ask the Committee on Rules to continue to hold it up until we finish our hearings.

Mr. QUINLAN. Likewise, Mr. Chairman, nothing I say here is intended to imply any criticism of any committee or Member of Congress, but we were very much pleased to note that action on your part.

The CHAIRMAN. Proceed.

Mr. QUINLAN. S. 1008 is a bad bill belatedly substituted on the floor of the Senate, dealing with statutes in which every word is vital and any slightest change in which should have the benefit of exhaustive study and criticism by the Congress and industry and their legal counsel, but passed by the Senate and amended and reported by the House Committee on the Judiciary without such study and criticism.

We do not question the ability or purpose of the members of the Senate or the House committee who voted for this bill, but we do not hesitate to say that no bill amending the Federal Trade Commission Act or the Robinson-Patman Act should be passed so hastily and with so little study and opportunity for criticism not only of its objectives but of its precise language.

The Federal Trade Commission Act was enacted in 1914, last amended in 1938. The Robinson-Patman Act was enacted in 1936, amended in one respect in 1938. Both are magna cartas of American free enterprise and fair competition, vitally beneficial to the public welfare and to all business, but especially small business and any American who wants a fair opportunity to start a small business.

The existing body of law under these statutes is the product of their language and of thousands of Commission and court decisions construing and applying that language to the practices of industry. And while the language of these statutes is short, the practices affected are multitudinous, reaching into every recess of the economy, so that virtually each word of the basic provisions has a far more than ordinary legislative significance, and there should be no change in any word unless there is clear and compelling reason for the change.

As to the Robinson-Patman Act, for example—in which, we are especially interested—judges, lawyers, and legal scholars for more than a decade have studied and interpreted its every word and phrase in relation to the practicabilities of commerce as a part of the process by which it has become a living and effective document.

Now this bill, without any need or reason that we have been able to ascertain, would throw away the charts and compasses of the businessman and his lawyer, if it did not do worse by kicking out the front teeth of the Robinson-Patman Act and its protection for small business against the predatory competition of chain stores and others whose superior economic power and oppressive buying practices would otherwise destroy small business and produce monopoly.

The bill is a bull in a china shop.

The original demand for new legislation came from industries using uniform industry-wide basing-point pricing systems, because of the decisions in the Cement and Rigid Steel Conduit cases. But as we see it, this bill does not alter the legal status of uniform industry-wide basing-point pricing. Who, then, wants the bill?

If any one does, we assume he will come forward here. But it appears to us that the bill, without meeting any substantial need or request from those industries disturbed by the Cement and Rigid Steel decisions, meritorious or otherwise, would simply make gratuitous and haphazard changes in the present law which should please none and displease most.

In their campaign for new legislation those who would like to remove the "cloud" on their uniform industry-wide basing-point pricing systems have had support from some who like ourselves have no interest in such systems but who are concerned that dicta in the Cement case may presage an ultimate agreement by the courts with the contention of at least one member of the Federal Trade Commission's employed staff that the term "price" as used in the Robinson-Patman Act means the so-called mill net, or in other words, that it is per se a price discrimination for a seller to charge a uniform delivered price to competing customers when delivery or shipping costs differ. But while we have been interested in that possibility, it now seems too remote and nebulous to call for new legislation at this time. We think the courts read the newspapers. They will not adopt the impracticable mill net idea in ignorance of its repercussions on the economy. Certainly any remote possibility that they might is no warrant for a premature rehashing of the provisions of the Robinson-Patman Act.

And even if it were, the bill S. 1008 would do a poor job in that respect, in addition to seemingly pointless, and in any event ambiguous and dangerous, changes in the act.

With the hope that they may be helpful in your deliberations, I would like to submit some more specific criticisms of the bill, section by section.

Section 1 (addition to sec. 5 (a) of the Federal Trade Commission Act): This says that it shall not be an unfair method of competition or an unfair or deceptive act or practice "to quote or sell at delivered prices." But the right to sell at delivered prices has never been in question.

The thing that was involved in the Cement and Rigid Steel Conduit cases was concerted industry-wide use of the highly artificial basing-point method of establishing uniform delivered prices which the courts found by its nature eliminated competition and was in unreasonable restraint of trade. So far as we know, the proponents of this bill do not offer it for the purpose of legitimatizing that practice, and we cannot see that it would.

It is a reported purpose of the bill to bar the so-called mill net contention, the idea that "price" in the Robinson-Patman Act means the mill net, so that a seller commits a price discrimination when he sells at a uniform delivered price to competing customers despite differences in delivery or shipping costs. We have said that that contention on the part of one Government lawyer or a few of them is not sufficient warrant for a hasty rewriting of the statutes.

But even if it were, this portion of the bill seems to do nothing about it. It says it shall not be an unfair method of competition or an unfair or deceptive act or practice "to quote or sell at delivered prices." It doesn't say at uniform delivered prices to competing customers.

We have never heard anyone contend that it is unlawful to sell at delivered prices, nor is there any conceivable basis for such a contention.

Further, the mill net contention as such has to do with the Robinson-Patman Act, whereas this provision of the bill is an amendment to the Federal Trade Commission Act.

Therefore this provision of the bill seems meaningless. Yet the courts must strive to give some meaning to any change which the Congress may make in the statutes. Persons charged with unlawful practices most certainly would argue that this change must mean something, and there is no way of knowing what significance it might ultimately be given in the rash of litigation that would follow enactment of the bill.

This section of the bill also says that it is not an unfair method of competition or an unfair or deceptive act or practice to absorb freight. But that is a broad phrase of apparently unknown effect.

Neither bit of language is clarified by the proviso.

Section 2 (addition to sec. 2 (2) of the Clayton Act): This says that it shall not be an unlawful discrimination to quote or sell at delivered prices if such prices are identical at different delivery points. But suppose they are identical at some different delivery points, and not at all delivery points, when deliveries are made at all such points to competing buyers? Suppose, for example, that three competing purchasers buy as of three different delivery points; the seller charges an identical price at different delivery points but only two of them; can he

lawfully discriminate against the purchaser at the third?

If the intent is merely to provide that it is not an unlawful price discrimination to quote or sell at an identical price to all competing customers even though at different delivery points, perhaps the courts would read that intent into the amendment, and perhaps they would not. If that is the intent the question might well be raised, Why does the bill not say so?

The bill says that it shall not be an unlawful discrimination to quote or sell at delivered prices if differences between such prices are not such that their effect upon competition may be that prohibited by this section. The effect to which reference is intended apparently is an effect which, in the language of the present statute, may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them, but that is not certain. Does an effect upon competition * * * prohibited by this section instead have reference to all the other provisions and proviscs of the section?

Is this intended, for example, to modify the present proviso allowing differentials making only due allowance for differences in costs?

Since the statute even now provides that a discrimination is not unlawful unless "the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of [Interstate] commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them," what could be the purpose of providing redundantly that discriminations are not unlawful if they "are not such that their effect upon competition may be that prohibited by this section"? The change seems meaningless, yet, again, the courts would have to strive to give it meaning.

Again, we do not know at this time what might be the ultimate interpretation of this language.

The amendment to section 2 (a) says that it shall not be unlawful discrimination "to absorb freight" when that is "to meet the equally low price of a competitor in good faith," but again, there is no way of knowing what would be the ultimate interpretation of this broad phase "to absorb freight"; nor can we determine the actual intent of those who wrote it into the bill or the need for it in this connection.

Section 2 (b) of the act already provides that a seller may rebut a prima facie case of unlawful price discrimination "by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor," regardless of whether he does it on the theory of "absorbing freight" or no theory at all. Then what is the purpose of writing a similar provision into section 2 (a)? If the change is not redundant its purpose (although what of the then inconsistent proviso remaining in section 2 (b)?) must be to shift the burden of proof and require counsel in support of a Commission comcomplaint or plaintiff in a civil action to show the absence of this excuse of meeting competition, despite the fact that this involves information peculiarly within the knowledge of the seller charged and placing upon others a burden of negative proof would gravely weaken if not emasculate the act.

The bill also says, as to the language "to absorb freight to meet the equally low price of a competitor in good faith," that "this may include the maintenance above or below the price of such competitor, of a differential in price which such seller customarily maintains." This goes far beyond "clarification" of the act, introducing new substance and new language of apparently unknown effect. Apart from difficulty of determination of "a differential in price with such seller customarily maintains," it offers serious threat to the purposes and effectiveness of the act and would to an unknown extent permit the compounding of price discriminations to the injury of competition.

The elimination from the bill as passed by the Senate of the language "(except where the effect of such absorption of freight will be to substantially lessen competition)" probably would make meeting competition a complete defense regardless of injury to competition and to the small buyers whom the Robinson-Patman Act was especially designed to protect from unfair and oppressive discrimination.

Section 3 (amendment of sec. 2 (b) of the Clayton Act): This appears to make wholly unnecessary changes in section 2 (b) of the act, the effects of which are uncertain. For example, there is again the ambiguous new language "the effect of which upon competition may be that prohibited by the preceding subsection."

Again, the elimination from the bill as passed by the Senate of the language "(other than a discrimination which will substantially lessen competition)" probably would make meeting competition a complete defense regardless of injury to competition and to the small buyers whom the Robinson-Patman Act was especially designed to protect from unfair and oppressive discrimination.

Section 4: There appears to be no need for the definitions provided in this section and they promise only further confusion.

As previously stated, we are vigorously opposed to any legislation which might alter the basic purposes of the provisions outlawing price discrimination or weaken their effectiveness; we regard the Robinson-Patman Act as a vital protection against unfair and destructve discrimination, and do not want it weakened in any way; for that reason we are opposed to the bill S. 1008.

Thank you very much, Mr. Chairman, and members of the committee, for your courteous consideration of our views.

The CHAIRMAN. Thank you, Mr. Quinlan.

Mr. Smith, would you like to supplement your statement before we interrogate these witnesses?

Mr. SMITH. No; thank you just the same.

The CHAIRMAN. I would like to ask Mr. Rowe how many States have passed what are known as "junior R.-P. Acts."

Mr. ROWE. I do not know, Mr. PATMAN. You mean small Patman Acts of the States?

The CHAIRMAN. Yes, sir. And a couple of years, in that time, 19 different States have passed them. I know that. But I did not keep up with this after that. They were to take care of the intrastate part.

Mr. ROWE. I knew of that, but I have not kept up with it.

The CHAIRMAN. Anyway, it was a popular law all over the country?

Mr. ROWE. Yes, sir.

The CHAIRMAN. Any questions, Mr. KEOGH?

Mr. KEOGH. No.

The CHAIRMAN. Mr. HILL?

Mr. HILL. I would like to ask the gentleman: Did you appear before the Senate when they were considering this legislation and give the same testimony you have given us, or about the same, Mr. Quinlan?

Mr. QUINLAN. There was no opportunity, sir, because no hearings were held on this measure. I did appear before the Senate Committee on Interstate and Foreign Commerce with respect to the bills then pending and offered criticisms of many other provisions, some similar and some dissimilar which appeared to us also to weaken the Robinson-Patman Act.

When that committee was discharged and the matter was referred to the Senate Committee on the Judiciary, I do not remember the situation as to hearings, but we filed a number of memoranda indicating to the committee our detailed criticisms of the measure then pending.

This bill which now bears the number S. 1008 was substituted on the floor of the Senate for the measure which had been reported out, and no public hearings were held. It happened in the space of a day, and we had no opportunity to even register criticisms in writing.

When it came over to the House, I filed a detailed memorandum with the chairman of the subcommittee handling the bill which in substance expressed all of these points I have just indicated to you.

Mr. HILL. Then the House Judiciary Committee has those points?

Mr. QUINLAN. No hearings were held. The memorandum was sent to the chairman of the subcommittee, but I noticed 5 days later the Journal of Commerce quoted the chairman as having said he had received no criticisms from industry; so I assume that our written memorandum had not reached his attention.

Mr. HILL. Thank you.

The CHAIRMAN. Mr. MANSFIELD, do you have any questions?

Mr. MANSFIELD. No questions.

The CHAIRMAN. Mr. RIEHLMAN?

Mr. RIEHLMAN. No questions.

The CHAIRMAN. Mr. EVINS?

Mr. EVINS. Is the conclusion of your testimony in substance, Mr. Quinlan, that the language is ambiguous; that it weakens the basic act, and is not necessary or desirable?

Mr. QUINLAN. That is correct, sir. And, speaking generally, I cannot see that the bill would accomplish anything that anyone wants, and yet it would do as you have just said—endanger the provisions of the Robinson-Patman Act.

Mr. EVINS. May I state, Mr. Chairman, I think the gentleman has given a very excellent statement. He has gone to the heart of the matter which the committee has before it.

The CHAIRMAN. Mr. BURTON, would you care to ask any questions?

Mr. BURTON. May I ask Mr. Quinlan whether he is opposed to basing-point pricing—that is, absorption of freight by the shipper—or whether he is merely interested in protection against discrimination?

Mr. QUINLAN. Mr. Congressman, I would like to say, very respectfully, first, I do not like the term "freight absorption" because it is a very loose term that has very many meanings.

With respect to the basing-point method of pricing, the industries for which I am appearing here today have no interest. They do not sell according to that method and they do not, to any substantial extent, buy from other sellers who sell according to that method. In other words, I do not intend to imply any position on the merits of the basing-point system.

But, again, I would like to point out that the bill does not seem to do anything even for the people who want something done with respect to that method of pricing, and yet it does something in which we are very much interested; it endangers the basic provisions against price discrimination.

Mr. Chairman, in answer to your previous question, if I may, I might mention that I have before me here the Commerce Clearinghouse Trade Regulation Law Reporting Service; and, without having looked at all of the provisions of these State statutes, I notice that the reporter lists 26 States as having enacted anti-price-discrimination statutes.

The CHAIRMAN. Similar to the national act we are now discussing?

Mr. QUINLAN. The degree of similarity, Mr. Chairman, I do not know, but it is my recollection that many, if not most of them, are quite similar.

The CHAIRMAN. Twenty-six States?

Mr. QUINLAN. Twenty-six are listed as having anti-price-discrimination statutes.

The CHAIRMAN. Mr. Kaufman, counsel for the committee, would you like to ask any questions?

Mr. KAUFMAN. I would like to if we have time.

The CHAIRMAN. Go right ahead.

Mr. KAUFMAN. I would just like to get the record straight on the basing-point aspect of the bill.

As I understand from your testimony, you recognize that this bill was introduced as a result of the basing-point decision in the Cement case. That is correct; is it not?

Mr. QUINLAN. In one sense, as a result of that, but in another sense as a result of a great deal of confusion, misunderstanding, and emotionalism. It is hard to ascribe the bill to any particular circumstance. That was the first occurrence which gave rise to the interest in legislation of this kind.

Mr. KAUFMAN. And you understand, of course, there is a great deal of sentiment, emotional and otherwise, which has arisen as a result of that basing-point decision. There is no doubt about that?

Mr. QUINLAN. No question about that whatever.

Mr. KAUFMAN. But in trying to reach a remedy in this bill they sail into the Robinson-Patman Act. That is your point; is it not?

Mr. QUINLAN. Yes, sir; necessarily so.

Mr. KAUFMAN. And the people whom you represent throughout this entire Nation are not interested in the basing-point system one way or another; is that correct?

Mr. QUINLAN. That is right, sir, except if legislation dealing with that system impinges upon the purposes and effectiveness of this act. Then our interest becomes very acute.

Mr. KAUFMAN. Right. So the picture you have really drawn for us is that you wholesale grocers of the country and the other people whom you represent are innocent bystanders who in the past have been depending upon the Robinson-Patman Act and now find in this bill they are going to be hurt if it passes. Is that the picture?

Mr. QUINLAN. That is right, sir.

Mr. KAUFMAN. So that when you come to us and you have no interest in the basing-point situation as such directly, in a sense would you think it fair for us to conclude for our purposes that in at least that sense you come to us as a neutral witness, neutral so far as the basing-point issue is concerned?

Mr. QUINLAN. I think that is a very fair statement.

Mr. KAUFMAN. Is it fair then for us to assume that your sole motive for coming here is the protection which you feel has been given to you by the Robinson-Patman Act?

Mr. QUINLAN. That is right, sir.

Mr. KAUFMAN. Now you have referred before to the lack of opportunity you have had to be heard by other committees. And, if I understand correctly, the Senate bill passed in about 24 hours or so; is that correct?

Mr. QUINLAN. Well, the exact number of hours I do not recall, but the circumstance was that another bill under this same number had been favorably reported by the Senate Committee on the Judiciary, and in the course of consideration of that bill on the floor this bill was substituted under that number and passed by the Senate.

Mr. KAUFMAN. Right. Well, the prior bill was entirely different from this bill?

Mr. QUINLAN. Quite different.

Mr. KAUFMAN. Entirely, was it not?

Mr. QUINLAN. Yes, sir.

Mr. KAUFMAN. This bill is completely a new bill?

Mr. QUINLAN. It dealt in general with the same subject matter, but the thing of vital importance here is the precise wording as I have indicated, and the wording was not the same.

Mr. KAUFMAN. Right. And this bill is a proposed permanent amendment to the antitrust laws, is it not?

Mr. QUINLAN. That is correct.

Mr. KAUFMAN. Whereas the prior bill was simply a moratorium bill, is that correct?

Mr. QUINLAN. As I recall, the bill reported out by the Senate committee was a moratorium bill. I am a little fuzzy on that at the moment. There was so many bills.

Mr. KAUFMAN. I believe that is correct.

Were you active at all when the Robinson-Patman Act was passed, or was that Mr. Rowe entirely?

Mr. QUINLAN. I personally was not. At that time I was not general counsel of Mr. Rowe's association.

Mr. KAUFMAN. Perhaps Mr. Rowe could tell us.

Mr. Rowe, have you any estimate of how much time was taken in debate on the passing of the Robinson-Patman Act? Was it done within 24 hours?

Mr. ROWE. No. The bill went before the Senate and the House, and then went through hearings in both, extensive hearings. And then there was meeting of the conference committee. The whole matter lasted over two sessions of Congress. The bill was introduced in 1935 and it was not passed and signed until 1936, June 1936, a whole year.

Mr. QUINLAN. I might say in that connection that I had occasion in a hearing before the Interstate Commerce Commission to read every word of all the reports and all the debate in the Senate and House on this measure, and it took me a good number of days just to finish that job of reading the record on that measure. So it was not a hasty proposition by any means.

Mr. KAUFMAN. Would you say that one of your main objections to the present bill is the speed with which it is being considered?

Mr. QUINLAN. Yes, sir. We would object in any event to a hasty rewriting of the act because of the vital importance of each word in the act. And I think that the faults we have to find with the measure in its present form confirm the danger of haste in attempting to amend the statute.

Mr. KAUFMAN. In that connection, I pick up your statement in respect to one of the amendments proposed, and it states:

"It shall not be an unlawful discrimination for the seller acting independently to quote or sell at delivered prices if such prices are identical at different delivery points."

Do you remember that language?

Mr. QUINLAN. That is the language of the bill.

Mr. KAUFMAN. Yes.

Mr. QUINLAN. One of the items we have just criticized.

Mr. KAUFMAN. That is right, which you discussed in your testimony.

Mr. QUINLAN. Yes, sir.

Mr. KAUFMAN. Now, as I understand your testimony, this would make it possible, or at least be a possible construction, that a manufacturer or producer could pick out two purchasers and sell them at identical prices and not charge the same price to a third, or a fourth, or a fifth, is that correct?

Mr. QUINLAN. I do not know that would be the case. In fact I think it is likely that would not be the construction, but we do object to leaving the road open to such a construction.

Mr. KAUFMAN. The road is left open to that construction, is it not?

Mr. QUINLAN. Certainly the language should be clear and more definite than that particular language is.

Mr. KAUFMAN. Have you a copy of the act before you by any chance?

Mr. QUINLAN. The act itself?

Mr. KAUFMAN. A copy of the bill, rather.

Mr. QUINLAN. Yes, sir.

Mr. KAUFMAN. Referring to page 2 of the bill, lines 11 and 12—do you have that?

Mr. QUINLAN. Yes, sir.

Mr. KAUFMAN. Do you note any restriction whatever imposed by the bill on the wording which I quoted a moment ago?

The CHAIRMAN. In other words [reading]: "that it shall not be an unlawful discrimination in price for a seller, acting independently, to quote or sell at delivered prices if such prices are identical at different delivered points."

And legally there would be a period there, I believe you agree?

Mr. QUINLAN. Yes, sir.

Mr. KAUFMAN. So there is no limitation of any kind, is there, in the bill on this language? It may be inadvertent on the part of the draftsman, but I am asking you if in your opinion as a lawyer that is a correct statement.

Mr. QUINLAN. I am not certain I clearly understand your question yet.

The CHAIRMAN. Mr. Kaufman, since we are going to have experts on the basing point, and this relates to the basing point about which he is not testifying in particular, suppose we wait for them.

Mr. KAUFMAN. You have made other references to the shifting of the burden of proof. And in your opinion would such a shifting of proof mean the Federal Trade Commission would be expected to prove facts which are peculiarly within the knowledge of defendant or respondent? Do you think that would interfere with the enforcement of the Robinson-Patman Act?

Mr. QUINLAN. We consider that change particularly vital. I think that would be an extremely serious blow to the effectiveness of this act, and where that came from I have no idea.

Mr. KAUFMAN. Although I know you are not primarily interested in the basing-point system, if the burden of proof would change, would that not also make it very difficult to prove collusion in the use of the basing-point system?

Mr. QUINLAN. I do not know that that has any bearing on the question of collusion, Mr. Kaufman. I doubt that it does. But it certainly is vital to the things in which we are interested, the prohibition of unlawful price discrimination.

If the burden were placed upon complaining parties of showing an absence of the excuse of meeting competition, it certainly would be difficult and in many instances impossible to make a case where a case should be made. That is a matter which is peculiarly within the knowledge of the seller. If the seller has that excuse the burden should rest upon him to show it.

Mr. KAUFMAN. I have some further questions, Mr. Chairman, but I can reserve them.

The CHAIRMAN. Mr Dalmas is a member of our staff and has charge of arranging these hearings. Would you like to ask any questions?

Mr. DALMAS. No questions, thank you.

Mr. LONG. Mr. President, I turn to the statement of Mr. Harold O. Smith, Jr., executive vice president, United States Wholesale Grocers' Association, which appears at page 3 of the record of the hearings, and to the statement of Mr. R. H. Rowe, vice president and secretary, United States Wholesale Grocers' Association, which appears at page 4 of the same committee hearings, and I ask that their statements be printed in the RECORD at this point as a part of my remarks.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT OF HAROLD O. SMITH, JR., EXECUTIVE VICE PRESIDENT, UNITED STATES WHOLESALE GROCERS' ASSOCIATION

Mr. SMITH. Thank you, Mr. Chairman.

I am Harold O. Smith, Jr., executive vice president of the United States Wholesale Grocers' Association, with headquarters in Washington, D. C.

Mr. Chairman, I would like to, before we get into the testimony, supplement slightly the reference that you made to this association to identify the testimony and the viewpoints to be expressed.

Primarily, that the wholesale grocers of the United States are pretty well represented in every congressional district in considerable numbers. A recent survey by the Curtis Publishing Co., a study that was made this year, indicates that the wholesale grocer as an average puts in about 14 percent of his time in civic matters. He takes a very prominent part in the matters of the community, whether it happens to be war bonds, Community Chest, Red Cross, or many other things of a civic nature. In other words, he is a very civic-minded individual. The wholesale grocer represents a group of retail grocers numbering anywhere from, say, 500 to several thousand whom he serves regularly every week, and therefore he has an opportunity to reflect what is to the best interest of the independent retailer, whether he be a retail grocer or other merchant in the community.

So the scope of the coverage of what we feel affects the independent merchant, I believe, is rather broad in what we have in the way of testimony to offer.

I would like, however, in view of the fact that I know your committee is entering here on a most important and most timely undertaking, to give you the benefit of the various qualified experience that we have available. Mr. R. H. Rowe, who is secretary and vice president of the association, and has been with us for 30 years, is well qualified through long years of experience along this line through the fact that he was very close to the picture at the time of the Robinson-Patman Act, or the Robinson-Patman bill, which later became the Robinson-Patman Act.

Mr. William A. Quinlan is general counsel for the association and I would like to have him give some views on the legal aspects since he is highly qualified along those lines.

So, with your permission, Mr. Chairman, I would like to introduce Mr. R. H. Rowe.

The CHAIRMAN. Thank you.

Mr. Rowe was here when he commenced the campaign for the passage of the act. I worked with him all during that time, 1935 and 1936.

STATEMENT OF R. H. ROWE, VICE PRESIDENT AND SECRETARY, UNITED STATES WHOLESALE GROCERS' ASSOCIATION

Mr. ROWE. Mr. Chairman and gentlemen of the committee, my name is R. H. Rowe. I am vice president and secretary of the United States Wholesale Grocers' Association, a national trade organization of wholesale food and grocery distributors, with headquarters in Washington, D. C.

Our opposition to S. 1008 as approved by the House Judiciary Committee is that its language jeopardizes the effectiveness of the Robinson-Patman Act in its provisions against price discriminations in favor of chain stores and other large buyers.

This proposed legislation has had many quirks and turns, advances and backing-ups, and changes of authorship and phraseology in its course so far. It really originated in the investigation conducted by the Capehart committee, a subcommittee of the Senate Commerce Committee, on basing-point practices and court decisions applicable thereto. Its avowed purpose was clarification of the rights of sellers and shippers in interstate commerce.

Senator EDWIN C. JOHNSON introduced S. 236, the original clarification bill. A revised clarification bill was later introduced by Senators JOHNSON and CAPEHART. Senator FRANCIS J. MYERS introduced S. 1008, not for permanent legislation but for moratorium or stopgap purposes. Then all these bills were transfered to the Senate Judiciary Committee. Then Senator JOSEPH C. O'MAHONEY offered a substitute bill on the floor of the Senate. This substitute which passed the Senate dropped the moratorium feature and reverted to permanent legislation. It was in effect a new bill. The bill as passed by the Senate went to a subcommittee of the House Judiciary Committee which further amended it. As so amended it was approved by the full Judiciary Committee and reported to the House.

So we now have before us what might be called, because of its many changes and fingers in the pie, the Capehart-Johnson-Myers-O'Mahoney measure.

In order to explain our position, and our interest in this legislation, it is necessary that we review the circumstances connected with the origin and passage of the Robinson-Patman Act, which we believe is endangered.

And this will supplement the statement already made by the chairman.

In the years prior to 1935, complaints and protests against price and other discriminations granted by food and grocery manufacturers to big mass buying organizations, had reached vast proportions—in effect, amounted to a national trade scandal.

In order to do something about this situation, our association in the spring of 1935 drafted proposals to amend the Clayton Act, designed to eliminate discriminations in price, quantity discounts and brokerage and advertising allowances. These proposals were approved by our annual convention held May 21–23, 1935.

At that time the NRA codes were still on the books. We were never satisfied with the trade practice rules in the grocery codes. They were not specific enough and did not go far enough in their application to price and other discriminations. Moreover, the codes were practically inoperative from lack of enforcement. Then on May 27, 1935, the Supreme Court declared unconstitutional the National Industrial Recovery Act and the codes framed under it, leaving reliance only on the Clayton Act. The Clayton Act had never been effective in preventing the discriminations that were working havoc in our trade.

At that time also, Congressman WRIGHT PATMAN, of Texas, under House resolution, was chairman of a committee investigating the American Retail Federation, also large-scale buying and selling, including the discriminatory practices which we sought to have banned.

We submitted to Congressman PATMAN our proposals for amending the Clayton Act. He agreed with their principles and objectives and on June 11, 1935, introduced a bill embodying them. A similar bill was introduced in the Senate on June 26, 1935, by the late Senator Joseph T. Robinson, then Senate majority leader. The measure after a number of amendments was enacted at the next session of Congress and was approved by the President on June 19, 1936.

The Robinson-Patman bill passed the House by a huge bipartisan majority of 290 to 16. It passed the Senate with only a few dissenting voices.

It seems tragic to us, Mr. Chairman, that now after 14 years, we should be compelled to make this fight all over again; that representatives of small business should be under the duty and necessity of appearing before another committee headed by you, again considering big-scale buying and selling and changes in the antitrust laws boomed to the front of congressional attention by representatives of big-scale buying and selling. Eternal vigilance is also the price of protection of the antitrust laws. We believe, Mr. Chairman, that you and the House Small Business Committee are the foremost exemplars of that vigilance.

The investigation of large-scale buying and selling methods that the Patman committee conducted in 1935 prior to and after the introduction of the Robinson-Patman bill disclosed that the Great Atlantic & Pacific Tea Co. alone was receiving annually from its manufacturer-suppliers $6,000,000 in advertising allowances and off-the-invoice quantity discounts and $2,000,000 as brokerage fees, making a total of $8,000,000 in concessions that either were not available to the individual food distributor or available in very much less amounts.

A list of the names of manufacturers together with the amount of their discounts and allowances to A. & P. appeared in the record of the Patman committee hearings. It had wide circulation. It rocked the grocery trade and industry from center to circumference. Many distributors who had been assured by certain manufacturers that they were getting as low a price and as favorable treatment in discounts and allowances as A. & P. or anyone else, were shocked and disgusted. Members of our organization who had been receiving a modicum of such concessions declared their willingness to forego any advantages that had been obtained in order that the entire iniquitous system might be broken up.

Trade reaction to the list was thus immediate and emphatic, and proved very effective in securing the enactment of the Robinson-Patman bill.

The investigation also revealed that most other large buying concerns in the grocery and other fields were receiving discriminatory discounts and allowances in varying amounts and ratios, while the small buyer was left holding an empty bag.

How could the individual merchant compete against concession piled on concession—brokerage fees piled on special quantity discounts and that aggregation heaped on advertising allowances? He was stayed in his tracks. He was defeated in the competitive fight before he started. No amount of good management and efficiency of operation could overcome such handicap.

The Robinson-Patman Act stopped this flood of concessions to the big buyer as against the average buyer and in doing so it also affords protection to manufacturers against the coercive discount and concession demands of big buying organizations.

The acts permits price differentials but only as related to saving in cost to the seller and freedom from injury to competition. It is with respect to these provisions that we believe S. 1008 with its ambiguous changes in the law upsets the apple cart and invites the return of the discrimination tide and the submergence of small business.

It is insisted in some quarters that under the restrictions of the Robinson-Patman Act we have "soft competition" which is declared to be terrible and that without those restrictions we would have "hard competition" which is said to be very desirable.

But competition and competitive methods can go to extremes. The Big Five meat packers went to extremes. They were rapidly establishing a vertical monopoly in the handling of meat and other food products. The Government and the courts called a halt and the hard competition of the packers was ended.

We subscribe to the maxim, "Competition is the life of trade," but carried to extremes and with unfair methods, it can mean the death of the small trader. We think that the competitive race should begin on an even basis; that the small horses should not be compelled to go from the starting post, while

the big horses get the gun from advanced positions.

It seems ironical to us that, with all the furore and concern in the present Congress over the rapid encroachment of monopolies and investigations planned to ascertain their extent, a substitute bill on delivered pricing should pop up in the Senate and be quickly passed and then hurried through the House Judiciary Committee without benefit of open public hearings—a bill that would jeopardize the law that affords the greatest protection the small-business man has against monopoly and the aggressions and oppressions of monopolistic practices.

After the passage of the Robinson-Patman Act all sorts of schemes and devices were attempted to evade it, but in every case they were knocked down by the Federal Trade Commisison and the courts. The Robinson-Patman Act has been through the mill of court adjudication and stood every test.

We have the impression that this very fact is the prime cause of these proposals to change the antitrust laws: First, attempted evasion and when that doesn't work, effort to change the laws to legalize the evasion.

Seemingly we have come to the pass that when the antitrust laws as interpreted by the courts in line with their objectives crack down sharply on any section of trade and industry, that section sets up a cry and an effort to have itself freed from such interpretation.

This striving to obtain hard competition seems to us to be nothing more than an attempt to soften the antitrust laws and let monopolistic practices flourish unrestrained. Such whittling-down process can only result in final destruction of the antitrust laws, the triumph of monopolies and the extinction of small business.

In these circumstances, it seems highly important that Congress stop and take another look at the view-panel of this situation, lest it be found that its fumbling and hopskotching with the control knobs, instead of bringing the avowed clarification, has resulted in tuning the welfare of small business completely out of the picture.

Mr. Chairman, that concludes my testimony.

I have a resolution here passed by our last annual convention held at St. Louis on the Robinson-Patman Act and its protection. That resolution was passed on the day, June 1, that the O'Mahoney substitute passed the Senate. And this resolution was passed without the convention knowing of such action in the Senate. I will be glad to read it if you desire.

The CHAIRMAN. Suppose you put it in the RECORD, Mr. Rowe. It is the endorsing act, I presume?

Mr. ROWE. Endorsing and supporting the Robinson-Patman Act.

The CHAIRMAN. Suppose you read the resolved part.

Mr. ROWE. Yes, sir. [Reading:]

"*Resolved*, That we strenuously oppose any moratorium bill, permanent delivered pricing measure, amendment or revision of existing antitrust laws that would in any way weaken or emasculate the Robinson-Patman Act or that may be construed to do so, because of intentional or unintentional use of language that goes too far, or does not go far enough; and be it further

"*Resolved*, That we caution wholesale grocers against efforts to kill the Robinson-Patman Act which may be presented in seemingly harmless proposals but which on analysis reveal their intent to destroy; and be it further

"*Resolved*, That we call on all wholesale grocers to urge their Congressmen and Senators to defeat any and all such measures."

(The resolution is as follows:)

"ROBINSON-PATMAN ACT

"Whereas delivered pricing moratorium bills now pending in Congress contain serious defects, jeopardizing, as they do, the provisions of the Robinson-Patman Act against price discriminations and other unfair practices, and

"Whereas other bills, investigations, and movements are under way in Congress to amend, revise, or codify the autitrust laws, and

"Whereas such efforts offer opportunity to opponents of the Robinson-Patman Act to nullify the protection it affords to independent business against the encroachments and aggressions of big mass buying organizations: Therefore be it

"*Resolved*, That we strenuously oppose any moratorium bill, permanent delivered pricing measure, amendment, or revision of existing antitrust laws that would in any way weaken or emasculate the Robinson-Patman Act, or that may be construed to do so, because of intentional or unintentional use of language that goes too far, or does not go far enough; and be it further

"*Resolved*, That we caution wholesale grocers against efforts to kill the Robinson-Patman Act which may be presented in seemingly harmless proposals but which on analysis reveal their intent to destroy; and be it further

"*Resolved*, That we call on all wholesale grocers to urge their Congressmen and Senators to defeat any and all such measures."

The CHAIRMAN. Would any member of the committee like to interrogate Mr. Rowe before Mr. Quinlan proceeds?

Mr. HALLECK. First of all Mr. Chairman, as you indicated the meeting was called by the chairman of the committee, and with that I have no quarrel.

Speaking only for myself, however, I do not know as I would want to indulge in the criticism of another committee of the House of Representatives. I am jealous of the prerogatives of the Small Business Committee, and likewise very proud of its work and effort through the years to protect the interests of small business. And as one of the originators of the Small Business Committee, I am sure you understand that.

I just might say, also, Mr. Rowe, I was here when the Robinson-Patman Act was adopted. The chairman, Mr. PATMAN, will recall my discussing the matter with him many, many times, and my active support of that legislation. I have never deviated from my support of that legislation. Likewise, insofar as this freight absorption question is concerned, I have been disturbed at its implications to many small businesses and to many communities. And I would be less than frank if I did not say that I thought some legislative attention should be paid to the matter.

I was very much interested in your statement and in your continuing support of the Robinson-Patman Act and its purposes, and I am still supporting it.

Possibly Mr. Quinlan is to testify as to the specific things in this proposed legislation that will destroy the provisions of the Robinson-Patman Act. But it occurs to me, Mr. Chairman, that that is the significant important thing. If there is anything in the legislation that is proposed that can be established as being in violation of the provisions of the Robinson-Patman Act, it would seem to me that should be the thing that we should have.

The CHAIRMAN. Would you like to ask any questions, Mr. HALLECK?

Mr. HALLECK. No.

It is expected, Mr. Rowe, that the specific language in this proposed legislation that is contravention of the Robinson-Patman Act will be pointed out by Mr. Quinlan?

Mr. ROWE. Yes; Mr. Quinlan will be prepared to do so. My statement was in the nature of a general statement and review of the whole situation as bearing on our interests.

Mr. HALLECK. As I understand it—I know I am right about it—the Robinson-Patman Act requires there be no discrimination in respect to prices given by any seller to a purchaser that cannot be justified in some real differential in the cost of providing the service or delivering the goods, something of that sort. And it would also seem to me if you operate under a freight-absorption principle, it still could have the same price to the independent fellow or the local fellow in any community that you would give to the man doing the larger business.

Mr. ROWE. As I said, Mr. HALLECK, Mr. Quinlan has prepared a most excellent statement going int the specific objections.

The CHAIRMAN. Suppose we hear from Mr. Quinlan, then, on that point, and we can interrogate later.

Mr. LONG. Mr. President, I turn to the statement of Mr. George J. Burger, vice president, National Federation of Independent Business, Inc., Washington, D. C., at page 225 of the hearings, and I ask that his statement be incorporated in the RECORD at this point as a part of my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF GEORGE J. BURGER, VICE PRESIDENT, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., WASHINGTON, D. C.

Mr. BURGER. I am George J. Burger, vice president, National Federation of Independent Business, Inc., Bond Building, Washington 5, D. C. The federation is a nonprofit organization representing independent and small-business men, and professional men, from all parts of the country in all lines of endeavor. It is supported solely by membership fees secured from these independent and small-business men and professional people. It has the largest individual membership of any business organization in the Nation.

The position of the federation on all issues is determined by direct vote of the entire membership through its publication, the Mandate.

In our mandate No. 153 we queried our membership as follows: (1) Are you for or against any manufacturer paying freight charges to local or distant markets in the United States when such practice is for the purpose of creating monopoly? And (2) are you for or against agreements between manufacturers to pay transportation charges to local or distant markets in the United States for the purpose of making industry-wide price-fixing arrangements? Both of these questions have particular application to the issue of basing-point legislation now before the Congress, which you are now considering.

It is interesting, and significant, to note that in face of all the confusing publicity current over the Nation at the time this vote was taken, our independent and small business and professional membership voted 75 percent against on issue No. 1, above, and 68 percent against on issue No. 2, above. It is also interesting, and significant, to note that our membership has consistently voted in favor of enforcement of our antitrust laws, and for the strenthening of these laws, for the protection and preservation of free, competitive enterprise—and so independent and small business—in our Nation.

Frankly, we of the federation do not agree—we have never agreed—that there is any need for this bill to legalize freight absorptions and delivered pricing. As stated clearly in our testimony of December 8, 1948, before the Trade Policies Subcommittee of

the Senate Interstate and Foreign Commerce Committee, we see nothing in any antitrust laws, or in any court decisions on any of the antitrust laws, that makes either of these pricing practices illegal, provided they are not used collusively or with the intent or effect of discriminating against and injuring businesses.

However, we will not object to the passage of legislation declaring that these pricing practices are not, and have not been made illegal, subject to the qualifications cited below, if the Congress finds itself convinced that honest confusion does exist over recent antitrust decisions in the fields of cement and steel.

We do not here criticize any person for being confused on these matters, but we do say that very likely the confusions that do exist result from the operations of certain interests who would like to invalidate these decisions to permit a return to the monopolistic pricing systems and practices which have been condemned. We do not ask you to take our word for this. Rather do we refer you to the remarks made on the Senate floor, May 31, by Senator WAYNE MORSE, Oregon (CONGRESSIONAL RECORD, May 31, 1949, pp. 7025–7032). It is significant to note that not one Member of the United States Senate took issue with Senator MORSE on these matters. We refer you also to a statement made recently before the Senate Judiciary Committee by Mr. Otis Brubaker, of the Congress of Industrial Organizations.

We will not object to the passage of such legislation provided that:

1. It in no way infringes on and in no way impairs either the antitrust laws themselves or any court decisions reached under these laws, the effect of which has been and is, to preserve the independent, competitive business system of our Nation and to beget simple justice and fair play in trade relations for independent and small business.

We refer here specifically to the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act. The integrity of these laws, and the integrity of hard-won decisions which have been reached under them, must be protected and preserved if we are to maintain freedom of opportunity in our Nation; if we are to maintain a free, democratic country.

2. It in no way beclouds the antitrust laws mentioned above and in no way confuses the court decisions that have been reached on these laws. To pass any act that would have either, or both, of these effects would have the same practical result as passing legislation which would overturn these laws and decisions. We do not ask you to take our word for this charge. Rather, we refer you to remarks made on the Senate floor, May 31, by Senator WILLIAM LANGER, North Dakota (CONGRESSIONAL RECORD, May 31, 1949, pp. 7023–7025). Commenting on S. 1008 and some of the terms used therein, the Senator said:

"The antitrust statutes represent an established body of laws which the Congress framed with infinite pains in choosing exact words to convey congressional intent. Through the years of judicial interpretation, these words have come to have definite meanings which are understood by both business and the legal profession. It is like throwing sand into the gear box to force new words and phrases into this carefully developed body of law without giving a clue to their intended meanings."

In this connection, we call your attention to testimony given before the Trades Policies Subcommittee of the Senate Interstate and Foreign Commerce Committee by Federal Trade Commission Commissioner Ewin L. Davis and former Federal Trade Commission Chairman Robert E. Freer, June 2, 1948 (Study of Methods of Competition in Commerce and Impact of Legislation and Government Regulations on American Consumers, hearings before a subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 80th Cong., 2d sess., on S. Res. 241, June 2 and 4, 1948).

Replying to questioning by Senator HOMER CAPEHART, Indiana, Mr. Davis explained the former United States Attorneys General Mitchell and Daugherty had made some determined efforts to clarify antitrust laws for business so as to establish a set of exact guides. He stated that these efforts were dropped when more confusion than clarification promised to ensue (pp. 25 and 26). Mr. Freer recalled for Senator CAPEHART that former United States Attorney General Donovan had made similar efforts to clarify antitrust law; but again the effort was dropped because the clarifications promised only additional confusion (p. 22).

We hold that Congress cannot be too cautious about tampering with the antitrust laws. We recall for you how some of our most highly placed Congressmen erred seriously in their judgments on the Reed-Bulwinkle bill. Prior to the time the Congress passed this measure, the sponsors of the bill were questioned about the effect the measure might have on certain important Justice Department antitrust suits then in process against the railroads. In testimony before this House Small Business Committee last year, Mr. Arne Wiprud—formerly United States Assistant Attorney General—said that the bill's sponsors assured questioners that the measure would not in the least affect these suits. Mr. Wiprud continued:

"Late in September of this year, counsel for the defendants (the railroads) urged upon the Federal court at Lincoln, Nebr., * * * that the Reed-Bulwinkle Act struck at the heart of the Government case. In his rebuttal, Government counsel read the statement of Senator Reed. The court's comment was 'The court does not need to consider the comparatively nonsensical statement of Senator Reed that Public Law 662 does not affect the case. That is not even entitled to respect.' And the court also observed that the Senator's statement was merely designed to get votes for the legislation."

If, because of the stated qualifications in our partial endorsement of "clarifying" legislation, we are regarded as overly cautious, we have only this to say:

We are more than worried over the trend evident in past Congresses, and to some extent in the present Congress, to give antitrust exemptions to giant industrial combinations. We refer specifically to the action of the Seventy-ninth Congress in the matter of insurance and the action of the Eightieth Congress in the matter of the railroads. In both of these cases the Congress effectively overturned existing antitrust law for the benefit of business combinations that were under antitrust attack. In doing so, we are convinced after study, the Congress effectively legislated against freedom of economic opportunity, and against independent and small business.

If any doubt exists about the effect of the railroad antitrust exemption legislation, we are prepared to place your committee in contact with one independent businessman who alleges that over a period of years he has been deprived of his rights to economic opportunity by an alleged coterie of private industrialists working allegedly in collusion with various agencies of Government. This businessman has offered written evidence to us to prove his charges. He says he is prepared to disclose just how the Reed-Bulwinkle bill has further deprived him of his legitimate economic rights to compete in an open and fair market.

Gentlemen, we are shocked over the changes that have been written into present antitrust law, and the changes that have been made in some hard-won, significant, antitrust decisions by the House Judiciary Committee during its capsulated consideration of the so-called O'Mahoney basing-point bill, S. 1008. We are astounded, to put it mildly, over the speed with which the committee reversed decisions which it had taken the United States Senate almost 10 months to arrive at. We firmly believe that these changes will deprive independent and small business of certain key antitrust protections without which they cannot prosper or even have a fair chance to succeed. And we firmly believe that in acting as it has—knowingly or not—the House Judiciary Committee has not only opened the way for an overturning of our antitrust laws, but has prepared to sacrifice independent and small business, free competitive enterprise if you will, on the altar of big, monopoly business. Let us show you the reasoning behind this charge.

In the first place the committee eliminated the so-called Kefauver amendments to the O'Mahoney bill. These amendments would have sustained the rule of the United States Seventh Circuit Court of Appeals in the Detroit Standard case. Here the court ruled that "good faith" meeting of a competitor's price is not a justification for a price discrimination that cannot be sustained by proof of savings from economies in manufacture, sale, or delivery, if the price discrimination results in unfair competitive injuries to some dealers in favor of others, if it results in a substantial lessening of competition.

We call your attention to the fact that these Kefauver amendments were accepted by the Senate and by the sponsor of the present basing-point bill, Senator JOSEPH C. O'MAHONEY, Wyoming, after the need for them had been carefully explained on the Senate floor by Senators ESTES KEFAUVER, Tennessee, a former distinguished member of this House Small Business Committee, and RUSSELL B. LONG, Louisiana (CONGRESSIONAL RECORD, June 1, 1949, pp. 7064–7092). During the course of this debate, Senator O'MAHONEY (who in the beginning did not accept the reasoning of Senators KEFAUVER and LONG readily) admitted several times that these amendments were needed to preserve the seventh circuit ruling on "good faith," and so protect the rights of independent and small business to fair competitive opportunity.

In this case Standard was accused of discriminating unfairly in price between various of its dealers. What happened was that Standard had allowed a few of its dealers in the area a price much lower than that it gave its other outlets. The price to the favored few was such that the unfavored dealers declared they were prevented from competing and that they were being forced out of business. When challenged by the Federal Trade Commission, Standard declared that it had offered the price to the favored few in order to meet competition from other suppliers. It said that it had done so in "good faith." As indicated above, the court declared this defense was inadequate for the requirements of the Clayton Act, as amended by the Robinson-Patman Act, because unfair price discrimination between the favored and the unfavored had been involved.

This decision of the seventh circuit court afforded relief from unfair price discrimination to dealers in the Detroit area, relief to which they were entitled by every norm of fair play and by the terms of the Robinson-Patman Act, but which they wouldn't have received had the court interpreted the Robinson-Patman provision of the Clayton Act as provided in the House Judiciary approved version of the O'Mahoney bill. We do not ask you to take our word on this. Rather, we refer you to remarks on the Senate floor,

by Senator JOSEPH C. O'MAHONEY (CONGRESSIONAL RECORD, June 1, 1949, pp. 7067–7068), and by Senator CHARLES TOBEY, New Hampshire (CONGRESSIONAL RECORD, June 1, 1949, p. 7071). Statements by both of these gentlemen, as well as by Senators KEFAUVER, LONG, and HUBERT HUMPHREY, Minnesota, without contradiction from Senator HERBERT O'CONOR, Maryland, the floor manager of the earlier moratorium bill for which the O'MAHONEY measure substituted.

Let us illustrate our point:

Let us suppose there is a supplier, A, who is dealing with the public through B, C, D, and E. B is a larger, more important outlet than either C, D, or E. This may be because he has been in business longer than his competitors, or it may be because he is a more efficient businessman. Now, B is enjoying a better buying price than either C, D, or E. But the differential is one that is justified under the Robinson-Patman amendment to the Clayton Act due to economies effected in costs of manufacture, sale, and delivery. Let us suppose the price to B is $5 and the price to C, D, and E is $10 (the figures are used merely for illustration).

Now, along comes supplier Z looking for a place in the market. He offers B a price of $2.50. To hold the account, A meets the $2.50 price. But since there is no competition for the business of C, D, and E, no price adjustments are made for them.

With the exceptionally favorable buying price he now enjoys, B is able to undersell C, D, and E to the point, perhaps, where they are driven out of business—they are prevented from competing with B for any share of the market.

Now, under the O'Mahoney bill as passed by the House Judiciary Committee these outlets—C, D, and E—would have no recourse to law for protection, for A could easily demonstrate that in allowing B the more favorable price he had merely been meeting competition from Z. Because of this, the economic opportunity that C, D, and E supposedly enjoy under our system of life would become nothing more than an idle dream—pleasant but meaningless. And in this way competition would become self-destructive.

But those who agree with the House Judiciary Committee, and the House Judiciary report on its action on the O'Mahoney bill (defining the application of the Federal Trade Commission Act and the Clayton Act to certain pricing practices, Union Calendar No. 353, 81st Cong., 1st sess., H. Rept. No. 869), contend that retention of the Kefauver amendments would make effective competition impossible, at least under the circumstances cited above. Because the House Judiciary cites such eminent figures as Senator O'Mahoney, United States Assistant Attorney General Herbert Bergson, and Federal Trade Commissioners Davis, Ayres, and Ferguson, in support of its action, the situation is approached with caution.

However, we are almost forced to observe that even if the Kefauver amendments were retained, A could meet the $2.50 price offered to B by Z if at the same time he lowered his price to C, D, and E, so as to create a differential that would reflect only the economies made in costs of manufacture, sale, and delivery to B. In this way economic opportunity would not be foreclosed to any of the participants—yet competition would be met. The Robinson-Patman amendment to the Clayton Act permits such meeting of competition.

It might be argued that such a procedure as that outlined immediately above might for all practical purposes prevent A from meeting Z's offer in the case of B, that the specified conditions would be economically impossible of attainment. However, against this it could be argued that if the price finally allowed B were such that it foreclosed competition, than A would be faced with the problem of supplying the entire market served by B, C, D, and E at the price allowed B—or, possibly, with B in a monopolistic position A would raise his price to the consumers who would have to pay, or else. In any event, it is observed that if the final O'Mahoney bill is approved by the Congress in the form approved by the House Judiciary, then the C's, D's, and E's of this illustration and their customers would be placed in the position of effectively subsidizing the preferentials allowed to B by A. And the C's, D's, and E's would be placed in the position of helping B to put themselves out of business and of helping B to deprive themselves of the right to compete.

As we recall it, a somewhat similar situation was found to be present in the dealings of the Atlantic & Pacific Grocery Co. in its dealing through its subsidiary Atlantic Commission Co. In a decision rendered on a Justice Department antitrust suit brought against A. & P. in the Federal District Court at Danville, Ill., Federal Judge Walter C. Lindley condemned this practice in no uncertain terms.

If a supplier can justify a price differential—a price differential that is not justifiable by economics of manufacture, sale, and delivery—on the grounds that he is meeting competition in good faith despite the fact that in doing so he may be discriminating most unfairly between his dealers, then the way would be opened for the justification of a whole host of unfair price discrimination with which the Robinson-Patman amendment to the Clayton Act was enacted to cope.

We wonder what would have happened in the famous Federal Trade Commission Goodyear-Sears case, where it was shown that Goodyear had given Sears a $41,000,000 preferential over its independent distributors, where the effect of this discrimination had been to injure severely Goodyear independents and independents representing all other manufacturers, had Goodyear been able to use the "good faith" defense as provided in the House Judiciary version of the O'Mahoney basing-point bill. Certainly Goodyear was at that time in an excellent position to prove that it had given these preferentials to Sears in order to meet competition for the account from another major manufacturer.

In the second place, the House Judiciary Committee changed the rule of the United States Supreme Court in the Morton Salt case. Here the Court held that it is sufficient for the Federal Trade Commission to establish a "reasonable possibility" that a price discrimination has unfairly injured competition in order to prove a violation of the Clayton Act. The House Judiciary would change this rule to one of "reasonable probability," depriving independent and small business of the benefits of the Court's decisions in future price discrimination cases.

For full understanding of this matter let us see just what the Court had to say on this point of "reasonable possibility." It said:

The Commission here went much further in receiving evidence than the statute requires. It heard testimony from many witnesses in various parts of the country to show that they had suffered actual financial losses on account of respondent's discriminatory prices. Experts were offered to prove the tendency of injury from such prices. The evidence covers about 2,000 pages, largely devoted to this single issue—injury to competition. It would greatly handicap effective enforcement of the act to require testimony to show that which we believe to be self-evident, namely, that there is a "reasonable possibility" that competition may be adversely affected by a practice under which manufacturers and producers sell their goods to some customers substantially cheaper than they sell like goods to the competitors of these customers. This showing in itself is sufficient to justify our conclusion that the Commission's findings of injury to competition were adequately supported by evidence.

Let us emphasize here that the Court stated the Commission had taken upward of 2,000 pages of testimony in this case, that it had heard testimony from many witnesses in various parts of the country, that it had offered experts to prove the tendency of injury from such prices in order to prove the "reasonable possibility" that competition had been injured. The Court rules that having established this "reasonable possibility," the Commission had done enough to sustain its charge.

Had the Court ruled that the Commission had to establish reasonable probability instead of reasonable possibility, it is entirely likely that the task confronting the Commission would have been much greater than it was. Had this been the case, then it is entirely likely that the Commission either would have lost the case—and so failed to bring needed relief to independents—or might still be seeking the required proof for its allegations—and so still be in the position of not having remedied the conditions which were unfairly injuring independents. Certainly with the tendencies shown in past Congresses not to appropriate adequate funds for the Federal Trade Commission investigative arms this move by the House Judiciary to make the Commission's work more difficult is no less than amazing.

We will admit that there is seemingly sound argument in favor of the reasonable-probability rule. However, in face of the everyday realities of the situation—where independent and small business needs protection today, not in the never-never land of 10 years from now—we believe that this argument does not stand up. If the function of the Federal Trade Commission is to afford relief to businessmen from unfair-price discriminations, then the Commission must be given the means to, and permitted to, secure this relief where it is clearly needed. If the Federal Trade Commission is to enforce the Robinson-Patman Act, than it must be permitted to enforce it—not barred from enforcing it.

In the third place, the House Judiciary Committee has amended section 2d of the Clayton Act, as amended by the Robinson-Patman Act, to provide that so-called good faith meeting of a competitor's price is adequate defense against Federal Trade Commission price-discrimination charges nothwithstanding the possible unfairly injurious effect on competition. We do not deny that in so amending the law the committee is logically following its action in eliminating the Kefauver amendments. For its consistency, the committee is to be commended. But from the standpoint of the effect of its recommended changes will likely have on small business, we are far from praising the committee's action.

Let us illustrate our point: In the tire field today independent dealers are in everyday competition with one another, and with mass distributors, chains, and oil company outlets, with department stores with rubber manufacturer-owned and controlled stores—many times an independent will be in competition with a store owned and operated by his own supplier—and with manufacturers selling direct to the consumer. Conditions in the tire field are chaotic. Due to the tremendous price advantages the mass distributors, chains, oil firms, company stores, and manufacturers selling direct have over the dealers, many independents are being driven to the wall.

The Federal Trade Commission is presently trying to bring some justice and fair play into this situation. It is studying the condition with a view toward using section 2b of the Clayton Act for the elimination of the unfair price inequalities that are driving independents to the wall. Under the Clayton Act

as how written and interpreted there is hope that some good will come of this action. Unless some good does come, there is strong probability that the system of independent distribution in the tire field may go by the board. If this occurs, then there is probability that some of the smaller manufacturers who depend on independents for their distribution will also go by the board. And unless some good does come of this, there is strong likelihood that there will be little economic opportunity for new little fellows in the tire field.

The CHAIRMAN. You think, then, the action by the House Judiciary Committee is harmful to independent merchants and local dealers; is that right?

Mr. BURGER. Exactly.

The CHAIRMAN. You do not look with favor upon passage of this bill, or a bill of this nature, without full and complete hearings to make sure that you know what you are doing?

Mr. BURGER. Exactly.

The CHAIRMAN. Proceed, please.

Mr. BURGER. Now comes the Judiciary Committee with an amendment to this section 2b, providing that firms may justify price discriminations on grounds that they have been made in "good faith" to meet an equally low price from a competitor, notwithstanding the effect of these discriminations on competition. What is to prevent the tire manufacturers from showing the court or the Commission that the price to mass distributor A, which is causing havoc among independents, has been made and maintained to meet competition in "good faith" from a competitor? Would this not pull the rug out from under the Commission? And if it were to, then what could we expect to happen to tire independents?

In all this I am not forgetting that the Nation's grocers have for a long time sought action by the Federal Trade Commission under section 2b as a solution to the price discrimination problem that is, and has been, injuring them. I want it known plainly that in commenting on the proposed changes in section 2b of the Clayton Act, I am concerned over the possible effects on tire men—but at the same time I am equally concerned over the possible effects on all independent and small-business men in all lines of effort.

And so, present conditions in the tire field would continue. Present conditions in the retail grocery field would continue. The Federal Trade Commission would have to stand by helpless. And people who are now independents in the tire, the grocery, and other fields would, if they were fortunate, go to work selling tires, bread, and the whole host of other items, for chains, mass distributors, oil companies, and for manufacturer-owned stores. Then will come United States Supreme Court Justice Douglas' "nation of clerks."

On the basis of these three changes in the Robinson-Patman amendment to the Clayton Act we found the charge made earlier that the House Judiciary Committee has prepared to sacrifice independent business, and our antitrust laws themselves, on the altar of big, monopoly business.

Please remember that, according to such responsible and authoritative sources as the Senator from North Dakota, Mr. WILLIAM LANGER, and the former United States Assistant Attorney General Wendel Berge, the reason why we have the business concentration, the monopoly problem—and so the independent and small-business problem—that we have in this Nation today is solely because for the past 50 years our antitrust laws have not been sincerely and adequately enforced. Are we, then, if we are sincerely interested—and is there a Congressman who will say that he is not sincerely interested—in the welfare of independent and small business, the preservation and promotion of the free, competitive enterprise system, to step back gingerly when these laws are enforced and quickly move to emasculate them? Are we to cry out warnings against the devil, and later go to bed with him?

What this country needs today is more—not less—economic opportunity. It needs more fair chance for the laboring and white-collar workers to raise themselves from the status of employees to the status of employers. It needs more fair chance for the independent and small-business people to exercise their glorious God-given skills to serve the people, and serve the people better. It needs more independent business units, competing fairly with one another, in more decentralized locations. It needs more independent, competing businesses—more producers and more wholesalers, jobbers, salesmen, and delivery drivers, using more shoe leather, gasoline, tires, railroad and air-line tickets, and more and better food and clothes and entertainment to consume the products of industry and keep our economic machinery functioning. It needs more independents with a stake in this great land, and with this stake a deeper spiritual appreciation of that for which our flag flies. It needs all these to solve our pressing problems, to keep our Nation safe and intact, to keep it solvent, a going, prosperous, happy bulwark of democracy, and the democratic way of life under God the world over. It needs all these to keep every last citizen who wants to work at work. This is what we of the federation stand for.

Before bringing this testimony to an end, I should like to call your attention to a recent study (Technology and Size, Proceedings of the American Economic Review, vol. XXXVIII, No. 2, May 1948) of our business structure, made by Mr. John Blair, of the Federal Trade Commission. In this study Mr. Blair points out clearly that advances in power, machinery, transportation, and other fields have set the stage for a decentralization from monster producing combines and units to smaller, dispersed producing units. He argues forcefully that this change would be accompanied by a switch from concentrated economic control to widespread independent ownership and control, with little, if any, loss of efficiency of operation. But, he warns, this change to decentralized, independent ownership and control will never be realized fully if the monopoly controls over American business are not broken. It is interesting, and not a little bit disturbing, to observe that Mr. Blair, a man who has long been close to antitrust enforcement is not too hopeful that we will have the needed antitrust enforcement.

In view of what has happened in the House Judiciary Committee we see he is on firm ground.

Gentlemen, a vote by the Congress in favor of the O'Mahoney bill as passed by the House Judiciary Committee will be a vote against the expansion of economic opportunity this Nation needs. It will be a vote against independent and small business, and a vote to break down our antitrust structure.

A vote for the bill as passed by the Senate (and minus any change in the "reasonable possibility" rule) will be a vote for the expansion of economic opportunity this Nation needs. It will be a vote for independent and small business, and for the protection of our antitrust laws, to reinsert the Kefauver amendment with whatever strengthening additions are necessary. However, I wish to make clear that if the bill is so enacted it would only serve to open up the courts for the purpose of litigating all over again all of the issues that have been passed upon by the courts in any number of hard-won cases; then, the new law would serve no purpose at all except help big business become bigger and to make monopoly the rule of the day.

The issues are clear and only Congress can decide them.

Just one final word, Mr. Chairman, and that is just this: Small business is very much disturbed. We have looked to both political parties to carry out their pledges on all-out vigorous enforcement of the antitrust laws. It is our hope and trust we will not be misled, but a year from today, if we are, then, small business will have to take the bull by the horns, if necessary, to protect themselves in a political party, even of their own making, that the white-collar workers and small business is going to be recognized as a part of our economy.

The CHAIRMAN. Thank you very kindly, Mr. Burger. We appreciate your testimony, and it will be considered by the committee and Members of the House; and I will have it inserted in the CONGRESSIONAL RECORD.

Mr. DALMAS. Mr. Chairman, in our study of the basing-point system and its effects on our economy, we have prepared material relating to specific States in our Union as well as several of the departments of the Federal Government. Several of those studies are included as a part of this record.

Mr. LONG. Mr. President, it has been said that the Justice Department of the United States has no objection to the proposed basing-point legislation. As I have already pointed out, I see no strong reason why the Justice Department should object. It is not the Justice Department which would be deprived of any powers. It is the Federal Trade Commission which would be stripped of its power to protect the small-business men of America and the right to proceed against monopolistic pricing practices, which, as has been stated in debate in the Senate, the basing-point system would encourage.

I should like to refer to a letter written by Mr. Peyton Ford, assistant to the Attorney General of the United States, parts of which were read some time ago by the junior Senator from Maryland [Mr. O'CONOR]. The letter refers to the pending legislation. I should like to read a paragraph in the letter which was not read to the Senate by the junior Senator from Maryland. Although the Justice Department stated in the letter that they did not object to the legislation, they said:

> Accordingly, while this Department has never urged the necessity or desirability of legislation with respect to the pricing practices to which this bill is directed, we have no objection to the enactment of sections 1, 2, and 3 in their present form.

Therefore, Mr. President, those who rely upon the statement of the Justice Department are merely relying on a statement by an agency which is not being deprived of any power. The pending legislation concerns another agency of Government, which would be deprived of its power to protect the small-business men and the competition in America. The Justice Department, in effect, says that it is not urging the necessity for the proposed legislation—that it considers no legislation at all to be necessary or desirable—but voices no objection to it. It simply takes a neutral stand in the matter.

In order that the RECORD may be complete in this respect, I ask unanimous consent that the letter written by Mr. Peyton Ford be inserted in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
Washington, January 13, 1950.

HON. HERBERT R. O'CONOR,
Committee on the Judiciary,
United States Senate,
Washington, D. C.

MY DEAR SENATOR O'CONOR: In accordance with your request I am submitting our comments on S. 1008 as amended pursuant to the Report of the Conferees.

Section 1 provides that sale at delivered prices or absorption of freight in the absence of "any combination, conspiracy, or collusive agreement; or any monopolistic, oppressive, deceptive, or fraudulent practice" shall not constitute an unfair method of competition or an unfair or deceptive act or practice under the Federal Trade Commission Act.

Section 2 A provides that sale at delivered prices or freight absorption, within certain limits, shall not constitute an unlawful discrimination under section 2 (a) of the Clayton Act, unless the effect may be to substantially lessen competition. Section 2 B provides further that freight absorption to meet competition in good faith is not permissible "where such absorption of freight would be such that its effect upon competition will be to substantially lessen competition."

Section 3 provides that acts of freight absorption or price discrimination undertaken in good faith, and in the absence of any "combination, conspiracy, or collusive agreement; or any monopolistic, oppressive, deceptive, or fraudulent practice" shall not be a violation of the Clayton Act.

Except for the provision of section 2 (B), relating to the defense of good-faith competition, sections 1 and 2, as we interpret them, merely declare that delivered prices and freight absorption are not unlawful per se, and in so providing merely reaffirm existing law. While this provision, rejecting the defense of good-faith competition where its effect will be to substantially lessen competition, appears both undesirable and somewhat inconsistent with section 3, permitting this defense without a similar qualification, the matter is one of legislative policy for the Congress to determine.

Accordingly, while this Department has never urged the necessity or desirability of legislation with respect to the pricing practices to which this bill is directed, we have no objection to the enactment of sections 1, 2, and 3 in their present form.

Section 4 defines the word "price," and the terms "delivered price," "absorb freight," and "the effect may be" as used in the proposed act. We have no objection to the definitions of the first three. The definition of the term "the effect may be" (sec. 4 (d)), however, in our opinion may well be construed as imposing an evidentiary burden that may go beyond the present requirements of the Clayton and Federal Trade Commission Acts and create an almost impossible burden of proof by requiring positive evidence of facts not yet in existence, and may be interpreted as applying to other provisions of the Clayton Act in addition to those involved in the bill.

In the debates in the Senate and House it was suggested by some that section 4 (D) is not intended to change the law as it now exists but is intended merely to carry out the evidentiary requirements of the Administrative Procedure Act. In view of the plain language of the subsection and other aspects of the legislative history, however, we have grave doubts that statements of the various committees that have reported on the bill or individual expressions of specific Members of Congress can provide adequate assurance that the courts will so interpret it. The Supreme Court has time and again applied as a rule of statutory construction, the doctrine that Congress will not be presumed to have intended to pass a meaningless act. (*United States* v. *Bowen* (100 U. S. 508, 513 (1880)); *Bate Refrigerating Co.* v. *Sulzberger* (157 U. S. 1, 45 (1895)); *United States* v. *American Trucking Association* (310 U. S. 534, 543 (1940)); *Gemsco* v. *Walling* (324 U. S. 244, 260 (1945)); *Ex Parte Collett* (337 U. S. 55, 61, 71 (1949)).)

In view of these considerations there is real danger that the courts will interpret this provision as imposing upon the Federal Trade Commission a greater burden of proof than exists under present law. Nor will any new legislative history at this time to the effect that no such result was intended, remove that danger, particularly since the House of Representatives has already acted upon the conference report. At the very minimum, if the bill should be enacted in its present form, extensive litigation and a substantial period of uncertainty appear inevitable before the issue can be finally resolved.

In view of these considerations and in the very strong belief that the problems raised by section 4–D as it now stands cannot be adequately resolved except by the use of different terminology from that presently contained in it, I recommend that section 4–D of the bill be amended to read as follows:

"D. The term 'the effect may be' shall mean that there is reasonable probability of the specified effect."

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

Mr. LONG. Mr. President, the National Congress of Petroleum Retailers did not enter the fight on this monopolistic legislation for the same reason that other independent retail merchants of America joined the fight. The National Congress of Petroleum Retailers has a special interest in defeating this legislation. In the city of Detroit, the Standard Oil Co. and the major oil companies have been pursuing a very vicious pricing practice, which is almost historic in the oil and gas business insofar as gasoline station operators are concerned. This has been a practice whereby the major oil companies have sold gasoline to some filling stations at one price and to competing filling stations at a different price. The effect of the practice has been to drive a great number of independent gasoline operators out of business. The effect also has been so to depress the business of merchandising gasoline that in many cases it was almost impossible for independent merchants to continue in business.

I understand that the major oil companies of America own 75 percent of the gasoline stations in the United States, and that they constructed only 4 percent, having acquired the other 71 percent either by buying out the independent operators, or by purchasing their stations at mortgage foreclosure sales.

It is easy enough to understand how that can be done, when we realize that a seller of gasoline can make an agreement with a filling station operator that he will drop the price of gas to that operator by 2 or 3 cents, and that saving will be passed on to the public. Over a period of time anyone competing with the favored gasoline station would be driven out of business, or find himself at such a great disadvantage that he would have to find some form of redress.

The Independent Petroleum Retailers have been fighting that practice. In the city of Detroit we found that the Standard Oil Co. of Indiana, as well as the other major oil companies, were pursuing a similar practice. In that case the Standard Oil Co. had merely designated certain favored chains of gasoline stations as being jobbers, and had refused to designate the independent merchants as jobbers, or give them the same consideration. The Robinson-Patman Act permits the Federal Trade Commission to inquire into jobber discounts, or any other kind of a discount that is allowed to certain classes of competitors, in order to see whether they are justified.

The independent retailers joined together, filed a law suit in the Federal court, and won their suit, in a case that is not approved by Mr. Bergson, who is the Assistant in charge of the Antitrust Division of the Department of Justice. By virtue of Mr. Bergson's disapproval of the opinion of Judge Minton, who since has been advanced to the United States Supreme Court, the Department of Justice, based on Mr. Bergson's judgment, saw fit to decline even to defend the case before the United States Supreme Court. So that case is being defended on behalf of the Independent Petroleum Retailers of America by a Mr. Cyrus Austin, who previously was an attorney with the Federal Trade Commission, and now, in his capacity as a private practitioner of law, is pursuing the same case which he originally won in the circuit court of appeals in the State of Michigan.

Mr. President, I should like at this point to insert in the RECORD a letter from Mr. Cyrus Austin, who is fighting the case today for the independent petroleum retailers. Mr. Austin is very much interested in the proposed legislation we are discussing, because he knows that so far as protecting the independent petroleum retailers in a case he is presently fighting is concerned, there will be no hope if the legislation we are now considering is enacted, because of the so-called good-faith defense, the defense which means that two wrongs make a right, that although one seller cannot discriminate, acting alone, in favor of certain of his buyers, he is completely free to discriminate all he desires if someone else will make a similar discrimination in favor of certain buyers. Therefore Mr. Austin has written me, and I am sure he has written other Senators as well as Members of the House of Representatives, urging them to defeat this piece of legislation, knowing that the failure to defeat it will amount to deciding the Standard Oil of Indiana case against the Petroleum Retailers of America, and in favor of the great oil concerns, such as the Standard Oil of Indiana, the Texas Co., Gulf, and others. Therefore, Mr. President, I ask unanimous consent to have printed at this point in the RECORD, the letter from Mr. Cyrus Austin addressed to me, explaining the vicious nature of Senate bill 1008, and its destructive effect on small-business men of America.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NEW YORK, N. Y., *March 20, 1950.*

The Honorable RUSSELL B. LONG,
United States Senate,
Washington, D. C.

MY DEAR SENATOR: I understand that the conference report on the above bill is to be considered by the Senate this week. The declared purpose of S. 1008 is to permit delivered prices and freight absorption. Yet by far the most important and far-reaching section of the bill is section 3, which has nothing to do with delivered prices or freight absorption.

Section 3, if enacted into law, would weaken and largely nullify the Robinson-Patman Act. The proponents of the bill are saying as little about that section as possible. The attempt is being made to pass this bill as a clarification of the law as to delivered prices and freight absorption, before Congress awakens to an understanding of the true significance of section 3. That attempt has already succeeded in the House, and I am writing to explain briefly why it should fail in the Senate.

Section 3 amends the Robinson-Patman Act to provide, in effect, that if a seller encounters competition in selling to one customer, and meets his competitor's price to that customer, he may then charge a higher and discriminatory price to his other customers and will have a complete defense against a charge of unlawful price discrimination.

Section 2 of the original Clayton Act contained a proviso making meeting competition in good faith a complete defense to a seller charged with discriminating in price. Prior to 1936 the Federal Trade Commission had found that this proviso was one of the principal loopholes in the act preventing effective enforcement. The House Judiciary Committee reported:

"These provisos have so materially weakened section 2 of that act, which this bill proposes to amend, as to render it inadequate, if not almost a nullity." (H. Rept. 2287, 74th Cong., 2d sess.)

Section 3 of the present bill is nothing more nor less than an attempt to restore this same old defense which Congress struck out in passing the Robinson-Patman Act in 1936.

In the FTC-Standard Oil case, now pending for decision by the Supreme Court, the Standard Oil Co. has contended that section 2 (b) of the Robinson-Patman Act (which sec. 3 of S. 1008 would amend) still makes meeting competition an absolute justification for price discrimination. The FTC denied this contention, and the Court of Appeals for the Seventh Circuit unanimously affirmed. Not content to await the decision of the Supreme Court, the interests behind this bill are trying to get the law changed to overrule the Commission and the court of appeals. If the Supreme Court should reverse, which I do not anticipate, there would be no need for section 3, but it would then be vitally important to amend the present law to preserve the intent of Congress in enacting the Robinson-Patman Act.

Of course, suppliers of goods usually have to meet competition in selling to large buyers. The purpose of the Robinson-Patman Act was to prevent chain stores and other large purchasers from using their buying power to demand and obtain preferential prices not available to their smaller competitors. If section 3 is made law there will be nothing to prevent large buyers from obtaining an unfair competitive advantage over their smaller competitors, because a manufacturer who supplies them can almost always show that other suppliers were willing to give them an equally low price in order to get their business. This would mean that price competition among suppliers would be only for the business of large buyers and the small independent dealer would have no protection under the law.

I submit that it would be illogical and unreasonable to make a seller's interest in meeting his own competition in selling to large purchasers the sole test of his right to discriminate against smaller purchasers. Section 3 says that if a seller can show that his lower price to a large purchaser was made in good faith to meet competition he does not have to justify his higher price, regardless of the injury to the customers who have to pay it. Such an amendment would defeat the purposes of the Robinson-Patman Act.

When a supplier of goods finds that his competitor is cutting prices to take away a customer, he has an adequate remedy without discriminating in price against his other customers. If his competitor is violating the law he can sue for triple damages or get an injunction. If his competitor is not violating the law, but is merely underselling him, then that is normal price competition and the remedy is to meet the competitor's price without discrimination. If he does not wish to do that he can and should lose the customer. But the dealer whose own supplier discriminates against him has no remedy except what the law gives him, and if section 3 of this bill is enacted he will have no remedy at all.

Very sincerely yours,

CYRUS AUSTIN,
Attorney for National Congress of Petroleum Retailers, Inc.

Mr. LONG. Mr. President, I have an analysis of this piece of legislation by a former member of the Federal Trade Commission. I am certain that the present occupant of the chair, as well as other Senators, will be pleased to know that the letter is from a former Republican member of the Federal Trade Commission, Mr. Robert Elliott Freer. Mr. Freer was formerly Chairman of the Commission. At present he is a private practitioner of law. The opinion is written by Mr. Freer to Mr. Rankin P. Peck, president, National Congress of Petroleum Retailers, analyzing the vicious nature of Senate bill 1008, and explaining what it means. The opinion is one which should carry some weight. It is an analysis which should be carefully considered by Senators. Here we find a former Republican member and former Chairman of the Federal Trade Commission explaining the harmful effect of Senate bill 1008 in a very scholarly opinion.

Mr. SCHOEPPEL. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. SCHOEPPEL. Does the letter purport to cover the conference report on Senate bill 1008?

Mr. LONG. Yes; it does. The letter is an analysis of Senate bill 1008 as it presently stands, allowing for the very small, fractional improvement made by the conferees. It is interesting to note that the former Chairman of the Federal Trade Commission, presently a private practitioner of law, analyzes section 3 of the bill in exactly the same manner as does Mr. Cyrus Austin, who is pleading the case for the independent petroleum retailers of America before the United States Supreme Court. I read from page 2 of the letter from former Commissioner Freer, as follows:

Section 3 apparently would legislatively reverse not only the decision of the United States Court of Appeals in the *Standard Oil of Indiana case* (173 Fed. (2d) 210), but also the considered judgment of the Seventy-fourth Congress regarding the effect of meeting competition in good faith as a defense to a charge of discrimination injuring competition. In the Standard Oil case, if Standard had only reduced its price in good faith to meet the equally low price of another major oil company the result would have been competition. Standard, however, gave unjustified quantity discounts to four customers and not to several hundred other competing customers. The defense was that other oil companies either had offered to meet or would have met the demands of these four favored customers for a "jobber classification" and a lower price. The good faith of such a meeting of a lower price might have been a defense, despite the resulting injurious discrimination, under the good faith proviso of old section 2 of the Clayton Act prior to the 1936 Robinson-Patman amendments; Congress, however, deliberately changed that proviso's status to a procedural status by the Robinson-Patman Act.

Mr. President, at this point I ask unanimous consent to have printed in the body of the RECORD the complete analysis of Senate bill 1008 by former Commissioner Robert E. Freer.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

WASHINGTON, D. C., *March 8, 1950.*

Mr. RANKIN P. PECK,
President, National Congress of Petroleum Retailers, Detroit, Mich.

DEAR MR. PECK: In response to your request, the following brief analysis is submitted of the provisions and probable effects of S. 1008 in the form in which the second conference committee will report it,[1] as indicated by an announcement[2] of the conferee's agreement published in the daily Digest in the CONGRESSIONAL RECORD of March 2, 1950:

SECTION 1

Intended apparently to be a legislative declaration of that which the Federal Trade Commission states the present law to be, section 1 would amend section 5 of the Federal Trade Commission Act so as to legislatively declare the right of sellers to absorb freight in the absence of conspiracy or collusive agreement. The question is whether such legislative declaration is necessary. No decision of the Commission challenges that right, nor can freight absorption, competitively employed, logically be challenged as

[1] A comprehensive analysis of S. 1008 as reported by the first conference committee (and still applicable except as to sec. 4 D) pp. 609–615 of the CONGRESSIONAL RECORD of January 19, 1950.

[2] The announcement reads as follows:

"Pricing practices: In late session yesterday, the conferees on S. 1008 to define application of FTC Act and Clayton Act to certain pricing practices, legalizing the basing-point system in the absence of conspiracy to lessen competition, agreed to file a second conference report on the differences between the House and Senate passed versions of the bill, the first conference report having been recommitted by the Senate on January 20, 1950. The second conference report, as approved by conferees last night, reaffirms the action of the first conference committee except in the case of House Amendment No. 4, an amendment to section 4 (d) of the bill, to which the Senate conferees receded, accepting the House amendment. The report is not expected to come up in the House until after March 13, with the House acting on the report first."

an unfair method of competition under section 5 of the Federal Trade Commission Act. In denying a motion to modify count II of the order in the *Rigid Steel Conduit Case* (D. 4452), the Commission, on July 12, 1949, specifically stated that that order did not prohibit independent as distinguished from collusive use of freight absorption.

While sections 2, 3, and 4 of S. 1008 would amend the Clayton (Robinson-Patman) Act, their inclusion in S. 1008, along with section 1, which would amend the FTC Act, might tend to add to rather than to dissipate any confusion existing as to the status of freight absorption under the latter act.

Additional construction of the new law by FTC and the courts would be required before the Commission could speak with the assurance it did in its previous statements, as to the legality of individual use of freight absorption under the FTC Act and the illegality thereunder of industry-wide employment of freight absorption (or other geographic system) as a means of matching delivered prices to all customers at any given destination.

SECTION 2

Section 2 (a) would exempt from possible challenge under the Clayton Act the limited-zone method of delivered pricing as well as the one-zone or so-called postage-stamp method.

Dicta in the late Chief Justice Stone's opinion in the *Staley case* (324 U. S. at p. 751) indicates that the postage-stamp method may be exempt without necessity of this amendment.

The test applied by FTC under the Robinson-Patman Act to geographic pricing is injury to competition. In the *Cement case* (333 U. S. 683) it was destruction of competition between sellers; in the *Staley case* (324 U. S. 746) the injury was to those buyers paying "phantom freight" charges. Section 2 B would exempt from challenge under the Clayton freight absorption employed to meet the equally low price of a competitor. What has been said about section 1 and section 2 A is applicable here also. If freight absorption is neither collusively employed as a device for eliminating price competition among sellers, nor systematically used to the injury of mill-side purchasers in competition with their more distant competitors, it is not subject to challenge under the Robinson-Patman Act.

SECTION 3

Section 3 apparently would legislatively reverse not only the decision of the United States Court of Appeals in the *Standard Oil of Indiana case* (173 Fed. (2d) 210), but also the considered judgment of the Seventy-fourth Congress regarding the effect of meeting competition in good faith as a defense to a charge of discrimination injuring competition. In the Standard Oil case, if Standard had only reduced its price in good faith to meet the equally low price of another major oil company the result would have been competition. Standard, however, gave unjustified quantity discounts to four customers and not to several hundred other competing customers. The defense was that other oil companies either had offered to meet or would have met the demands of these four favored customers for a "jobber classification" and a lower price. The good faith of such a meeting of a lower price might have been a defense, despite the resulting injurious discrimination, under the good faith proviso of old section 2 of the Clayton Act prior to the 1936 Robinson-Patman amendments; Congress, however, deliberately changed that proviso's status to a procedural status by the Robinson-Patman Act.

Section 2 B did not provide that such good faith lower price would justify an injurious discrimination only that it might serve to rebut the prima facie case made by a mere showing of price differences. Section 3, despite the Carrol amendment, not only might restore this defect in enforcement of the old section 2, but also might add even more difficulties of enforcement than existed in the administration of old section 2. For example, predatory price cutting, a tool of monopoly rather than that of healthy competition, is presently hard to reach because it is defended as a defensive meeting of local competition; under section 3, it might become almost impossible.

SECTION 4

Sections 4 A, B, and C provide definitions of some but not all of the new terms employed in sections 1, 2, and 3, and are of importance in appraising the changes wrought in the law by use, in those sections, of the terms which are here defined.

Section 4 D provides a definition meriting somewhat greater consideration since it would reverse the United States Supreme Court's decision in the *Morton Salt case* (334 U. S. 37) which interpreted the phrase "effect may be" in the act as meaning "a reasonable possibility." Section 4 D's definition is that this phrase shall mean "reasonable probability" of the specified effect.

In practice, the FTC has neither employed the "reasonable possibility" interpretation nor indicated any disposition to do so. Adoption of section 4 D, therefore, appears to be a matter of legislative discretion, depending on whether Congress deems it necessary to take positive steps to prevent "possible" rather than "probable" FTC implementation of this Supreme Court interpretation of the term "effect may be."

To fully appraise the changes in substantive law which S. 1008 would produce there is submitted the following brief recitation of the decisions which led to its introduction:

Geographical pricing

Uniform Delivered Pricing Systems

In any industry where transportation charges are of real importance, some systematic method of equalizing transportation costs must be employed in determining the laid-down cost of the product to the customer so as to enable each seller to be able to match exactly his delivered price quotation to a distant customer with those of all his competitors. The key to this geographic price-matching problem under the FTC Act is "collusion." Various systems found to have been collusively used are: 1. Single basing point, involving both phantom freight and systematic freight absorption, e. g., the *United States Steel* (*Pittsburgh plus*) (U. S. Court of Appeals (3d), Oct. 5, 1948) and *Rigid Steel Conduit cases* (168 Fed. (2d) 175); 2. Multiple basing point, likewise involving both phantom freight and systematic freight absorption, e. g., the *Cement case* (33 U. S. 683); 3. Freight equalization, involving systematic freight absorption and similar to the multiple basing point except that technically no phantom freight is involved, since every mill is a base, e. g., *Milk and Ice Cream Can* (152 Fed. (2d) 478) and *Bond Crown & Cork cases* (176 Fed. (2d) 974); 4. Zone pricing, another variation of the multiple basing point used "to obviate any natural advantage of location from price determination," e. g., *Fort Howard Paper* (156 Fed. (2d) 899) (crepe paper) case.

In all of these cases the evidence before FTC has been held by the courts to have established collusion in the maintenance of such geographic pricing systems contrary to section 5 of the FTC act. None of the cases forbids individual or competitive employment of freight absorption. It is the fixing of prices by collusion which is held to be per se illegal, not the means (system) employed in the particular case, despite intimations in some of the cases that those particular systems were so complex as to warrant a doubt that they could have been employed at all in the absence of the established collusion among the sellers.

The Robinson-Patman Act has sometimes been used by FTC along with section 5 of the FTC Act in basing-point cases. Geographic pricing under the various basing-point systems generally means that customers in different localities are charged different prices which are systematically related to the distance from the controlling base but which bear no relation to the distance from the seller's mill. If these price differences are not shown to injure competition, they do not violate the Robinson-Patman Act. If they do injure competition they are illegal unless justified by the seller. And here it is that the perverse relationship which his price differences bear to his freight costs militates against the seller's successfully claiming that these price differences are not illegal discriminations because justified by differences in cost of delivery (one of the statutory justifications).

Price Discrimination

Just as collusion is the key to the problem under the FTC Act, injury to competition is the key to the price discrimination problem under the Robinson-Patman Act.

Section 2a of the Robinson-Patman amendment to the Clayton Act provides, in pertinent part, "That it shall be unlawful for any person * * * to discriminate in price between purchasers of commodities of like grade and quality * * * where the effect of such discrimination may be to substantially lessen competition," excepting, however, by its proviso, "differentials which make only due allowance for differences in the cost of manufacture, sale or delivery." This condemns price differences not justified by cost differences where the effect is to suppress competition among sellers or to injure competition among competing customers of the discriminating seller. Section 2b recites that a prima facie case is made by the mere showing of a "discrimination in price." but, in its proviso, states that a seller may rebut such a prima facie case "by showing that his lower price * * * was made in good faith to meet an equally low price of a competitor." In several cases, the Commission has found against this defense on the facts. In the Cement case, for example, collusion to avoid competition negatived the good faith of the multiple basing point system of matched prices as a meeting of competition (333 U. S. 683). In the Staley case, the matching of single basing point prices also failed to meet the good faith test (324 U. S. 746, 757). In Standard Oil of Indiana, however, the proof of injury to several hundred retailers of Standard's Red Crown gasoline resulting from Standard's subsidized discrimination practiced through its four so-called wholesalers (all of whom sold Standard's Red Crown gasoline at retail in competition, not with Standard, but with Standard's several hundred other retailers), was considered to counterbalance Standard's defense of good faith meeting competition of other sellers. Section 2b being held to be merely procedural, and not to provide a substantive defense, served only to offset the Commission's prima facie case; and since it did not outweigh the proof of injury to competition, no finding of either good faith or lack of it was found necessary in the case.

As stated by Representative Utterback, "a discrimination is more than a mere difference * * * some relationship * * * between the parties to the discrimination * * * entitles them to equal treatment." The FTC, therefore, proceeds against a sellers' difference in price as an illegal discrimination only where its investigation indicates competition between his buyers or their customers and a reasonable possibility of injury thereto, or where, as in count II in the Cement case, it finds the discrimination to be of collusive origin and to result in injury to competition among sellers. Under FTC policy as a practical matter there must

be more than a reasonable possibility of injury to some level of competition before the Commission will take action.

CONCLUSION

Instead of clarifying the law, enactment of S. 1008 may have the opposite effect. Price fixing is seldom accomplished by formal agreement signed and sealed in the blood. The agreement usually is shown to have existed by reasonable inferences drawn from all the surrounding facts and circumstances, rather than by the introduction in evidence of a written agreement to fix prices. The nub of the controversy over the recent court decisions appears to be whether FTC and the Federal courts should continue to be able to draw a reasonable inference of the collusive agreement to fix prices from the other facts established by direct evidence, such as for example the collective efforts of the industry to maintain its price structure. In the Cement case these were summarized by the Supreme Court at page 710 of its opinion, to include "boycotts; discharge of uncooperative employees; organized opposition to * * * new cement plants; selling cement in a recalcitrant price cutter's sales territory at a price so low that the recalcitrant was forced to adhere to the established basing-point prices; discouraging the shipment of cement by truck or barge; and preparing and distributing freight-rate books which provided respondents with similar figures to use as actual or phantom freight factors, thus guaranteeing that their delivered prices (base prices plus freight factors) would be identical on all sales whether made to individual purchasers under open bids or to governmental agencies under sealed bids."

The Federal Trade Commission has not issued orders against anyone solely or even primarily on the basis of his individually quoting or selling at a price identical to or matched with that of a competitor. In cases where orders have issued they ran against matched prices maintained by collusion and generally were based on some direct evidence of the collusion as well as upon reasonable inferences drawn from the collective efforts of the industry members to effectuate certain programs such as those cited by the Supreme Court in the Cement case.

Whatever the feeling of businessmen generally may be as to whether collusion may continue to be inferred from direct evidence of such collective activities, a part of the business community do not urge S. 1008 on that ground, but on the ground that its enactment would legalize the kind of basing-point selling found illegal as collusive price fixing and in which the injuriously discriminatory geographic prices had the effect of suppressing price competition among sellers.

No case holds freight absorption illegal under the FTC Act in the absence of collusion. Nor can any hold it illegal under the Robinson-Patman Act in the absence of a showing of unjustified injury to competition. Section 1 of S. 1008 in legislatively declaring the legality of freight-absorption attempts to safeguard against a return of the Cement-case type of freight absorption maintained by conspiracy.

As pointed out earlier, the results of litigation to test the adequacy or inadequacy of the section 1 safeguard would have to be predicted to appraise the real effectiveness of this effort to safeguard the public against a return of collusive geographic pricing. Delay and uncertainty in the interim, which is predictable, would handicap FTC in enforcement of its orders against continued use of geographic pricing involving freight absorption, previously found to have been maintained by collusion contrary to section 5 and/or to have resulted in unjustified discriminations destructive of competition contrary to the Robinson-Patman Act.

S. 1008 would legislatively reverse not only several decisions of the United States Supreme and other Federal courts but also, insofar as its amendment of the section 2B—"good faith"—proviso of the Robinson-Patman Act is concerned, the considered judgment and deliberate action of the Seventy-fourth Congress taken after full hearings in both Houses held following submission to the Congress of FTC's chain-store investigation (S. Doc. No. 4, 74th Cong., 1st sess.) showing the destructive effect on competition of price discrimination in favor of large buyers. Such a legislative reversal should be based on a showing of real need for the change rather than the showing of confusion regarding what new pricing methods may legally be substituted for those collusive and injurious geographic systems held illegal in the cases evoking the bill.

Very truly yours,

ROBERT ELLIOTT FREER.

Mr. LONG. Mr. President, it will be further noted in connection with the analysis by former Commissioner Freer that he was of the considered opinion that Senate bill 1008 would in no case improve upon the antitrust laws; that it would in no case clarify the anitrust laws; but that section by section, line by line, it would add confusion to the antitrust laws. It was Mr. Freer's judgment that many of those most interested in Senate bill 1008 preferred confusion to clarity, because certainly the steel companies and the cement companies would like nothing more than what they have had for the past 14 years. I hasten to explain that I think the Robinson-Patman Act was passed with the express intention, as the committee report shows, of outlawing the basing-point pricing system. It took 14 years of litigation by the Federal Trade Commission, it took 50,000 pages of exhibits and 49,000 pages of testimony finally to obtain a decision by the United States Supreme Court that the basing-point pricing system which was outlawed in 1936 could not be any longer pursued by the Cement Trust and the Steel Trust and the others. Certainly, those people would like a little more confusion in the law. As confusing as it may seem to some Senators who have not studied it, it is pretty clear to the Steel Trust and to the Cement Trust that the old basing-point pricing system can no longer be used.

Mr. President, at the time the Robinson-Patman Act was passed in 1936 that act had the support of the leading economists of the United States. The committee reports took notice of that fact, and the committee reports emphasized that the various economists recommended the Robinson-Patman Act in 1936, and undoubtedly the support of the leading economists of the Nation must have had something to do with the fact that the Robinson-Patman Act was passed without ever a yea-and-nay vote having occurred on the bill itself or on any amendment thereto, when that measure was before the United States Senate.

In battling this basing-point bill I am pleased to say that in seeking to retain the Robinson-Patman Act, in seeking to retain the full force of our antitrust legislation, those of us who are opposed to Senate bill 1008 also have the support of the leading economists of the Nation. I have here a letter signed by many economists, whom I believe to be most outstanding in the United States, including the president of the American Economic Association and several past presidents of that association. These outstanding economists of the United States have assured me that they could have found a great number of other outstanding economists who would have joined them in signing this letter had they had a little more time to consult with the others. Nevertheless, Mr. President, I am certain that those who have seen fit to sign this letter showing their disapproval of Senate bill 1008, should have considerable weight with Senators in considering the proposed legislation. Therefore I ask unanimous consent that the letter from the leading economists of the United States disapproving Senate bill 1008 in its present form, be incorporated in the RECORD as a part of my remarks at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

We undersigned economists, fully sharing the conviction of the Congress that the traditional American policy of maintaining a free and competitive economy should be preserved, urge that legislation facilitating the use of basing-point or freight-equalization systems of pricing, in particular the bill S. 1008 now pending before the Senate, be rejected.

We are convinced that such systems have been employed as a means of effecting the sort of collusive price fixing that is condemned by the Sherman Act. We believe that they have promoted the suppression of competition and resulted in serious economic waste.

It has been said that the proposed bill would clarify the law. We do not believe this to be the case. Some of its supporters contend that it would legalize basing-point pricing; others insist that it would not. These interpretations of the bill's provisions are so inconsistent as to make it certain that its enactment would occasion far more confusion than may now exist. Another decade of litigation would be required to remove the uncertainties that these provisions would create. In the meantime, collusive pricing practices now outlawed by the courts would be reinstituted, and others would go unchecked.

The bill would seriously weaken the antitrust laws and hinder their enforcement. It would impose upon the Government, in the case of industries long habituated to monopolistic systems of delivered pricing, a well-nigh impossible burden of proof. It would permit the issuance of an order terminating an agreement to employing a basing-point system, but it would prevent the issuance of an order enjoining the continued use of the system itself.

The bill would go far toward emasculating the Robinson-Patman Act by restoring the good-faith defense of the old Clayton Act, thus enabling a seller to justify any price discrimination, no matter how destructive of competition, by showing that his discriminatory price was adopted to meet the price of a competitor. This defense would serve to bolster the systematic matching of delivered prices under basing-point systems. But it would not be confined to such cases; it could be offered in justification of every form of price discrimination that is now prohibited by law.

Believing in the superiority of a system of free enterprise and fearing that freedom will be endangered as competition is restrained,

we appeal to all Members of the Senate to vote against the bill, S. 1008, or any other bill which could be so interpreted as to legalize the basing-point system of pricing.

Gardner Ackley, University of Michigan; Edward L. Allen, American University; Richard M. Alt, Johns Hopkins University; James W. Angell, Columbia University; George Leland Bach, Carnegie Institute of Technology; Edgar S. Bagley, Kansas State College; Roland W. Bartlett, University of Illinois; Roy Blough, University of Chicago; Walter N. Breckenridge, Colby College; Yale Brozen, Northwestern University; John Buttrick, Northwestern University; William A. Carter, Dartmouth College; C. L. Christenson, Indiana University; Philip H. Coombs, Amherst College; James F. Corbett, New York City School System; John M. Crawford, Carnegie Institute of Technology; Kenneth J. Curran, Princeton University; Charles R. Dean, Rutgers University; Marshall E. Dimock, Bethel, Vt.; John F. Duffy, Jr., Denison University; Durward H. Dyche, Wake Forest Colege; Howard L. Ellis, University of California; Frank Whitson Fetter, Northwestern University; Milton Friedman, University of Chicago; David L. Gass, Williams College; Betti C. Goldwasser, Washington, D. C.; Bernard F. Haley, Stanford University; Milton Hammer, Milton Hammer & Associates; Albert G. Hart, Columbia University; Edward R. Hawkins, Johns Hopkins University; Charles H. Hession, Brooklyn College; Henry G. Hilken, Washington, D. C.; Simeon Hutner, Princeton, N. J.; Martin V. Jones, Chicago, Ill.; Richard A. Kahn, University of Miami; William F. Kennedy, University of California; Robert R. Kibrick, New York Sun; Frank J. Kottke, University of North Carolina; Frank H. Knight, University of Chicago; Ben W. Lewis, Oberlin College; Clarence D. Long, Johns Hopkins University; Arthur F. Lucas, Clark University; Friedrich H. Lutz, Princeton University; Fritz Machlup, Johns Hopkins University; Edward S. Mason, Harvard University; John W. May, Washington and Jefferson College; John W. McBride, Washington, D. C.; S. Sterling McMillan, Western Reserve University; John Perry Miller, Yale University; Carey P. Modlin, Jr., Princeton University; Julius L. Okum, Arlington, Va.; Alfred L. Oxenfeldt, Hofstra College; Shorey Peterson, University of Michigan; Roy A. Prewitt, Washington, D. C.; Lloyd G. Reynolds, Yale University; I. Lyman Singer, S. J. Tilden High School; Caleb A. Smith, Wilmington College; Richard E. Speagle, New York State Banking Department; Joseph J. Spengler, Duke University; George A. Steiner, University of Illinois; George J. Stigler, Columbia University; George W. Stocking, Vanderbilt University; Herbert E. Striner, Syracuse University; Myrick H. Sublette, University of Virginia; Carl F. Taeusch, St. Louis University; Richard B. Tennant, Yale University; Daniel C. Vandermeulen, Claremont Men's College; Myron W. Watkins, New York University; Clair Wilcox, Swarthmore College; Edward R. Willett, Northeastern University; John W. Wright, Washington, D. C.; Floyd A. Bond, Pomona College; Miriam K. Chamberlain, Connecticut College; A. G. Papandreou, University of Minnesota; Floyd L. Vaughan, University of Oklahoma; Jacob Viner, Princeton University.

Mr. O'MAHONEY. Mr. President, will the Senator from Louisiana be good enough to yield to me?

Mr. LONG. I shall be glad to yield to the Senator from Wyoming, but I ask unanimous consent that the interruption appear at the close of my remarks.

Mr. O'MAHONEY. Well, Mr. President, the Senator can dispose of that as he pleases. I am very sorry that matters affecting other committee work have prevented my being on the floor during the Senator's discussion. I am told that in the course of his earlier remarks he made the statement that the bill which now is designated as S. 1008 was rushed through the Senate by the Steel Trust, the Cement Trust, and the Oil Trust.

Mr. LONG. If I made such a statement, it was inadvertent. I assure the Senator I do not feel that the Steel Trust, the Oil Trust, or the Cement Trust, or any other trust rushed the bill through the United States Senate. I do feel that the bill was rushed.

Mr. O'MAHONEY. I am very happy indeed to have the Senator make that statement, because, as the author of the bill which was substituted upon the floor, I feel that I can assure the Senator and all who may be interested that neither the Steel Trust, nor the Cement Trust, nor, indeed, the Oil Trust, had anything in the world to do with that bill or with the Senator's point of view with respect to it.

Neither, in my judgment, was the bill rushed through. The bill which was on the floor, for which it was offered as a substitute, had been the result of weeks and months, I may say, of discussion. That bill was a moratorium measure. It was a bill which undertook to suspend for a time the operation of the law with respect to certain practices which the Federal Trade Commission—all the members of the Federal Trade Commission with whom I had personally talked—had assured me over and over again, and had assured the committees of Congress, were not in violation of law. All in the world the Senator from Wyoming sought to do was to state in a congressional enactment the interpretation of the law which was placed upon that law by the Federal Trade Commission and, I may say also, by the Department of Justice.

I did not introduce the bill as a substitute until after I had consulted everybody in the Federal Trade Commission who could be expected to have any views to contribute toward an understanding of the problem, and the representatives of the Antitrust Division of the Department of Justice; and when I presented it, Mr. President, I was confident that it represented the views of all the persons who, though utterly devoted to the enforcement of the antitrust laws, wanted to make a clear declaration to the business of the United States that misinterpretations which were being placed upon the law actually were misinterpretations.

Mr. President, the Senator from Louisiana has been very kind to allow this interruption. I thank him for it. Later, next week, when we go into this matter in greater detail, I shall endeavor to the best of my poor ability to persuade the Senator that he can support this bill in full confidence that when it becomes the law—as it undoubtedly will, in my opinion—it will not do injustice to any competitive enterprise, and it will release for development many projects which now are, I must say, unhappily being held back by reason of doubt and confusion over one of the most complex and technical measures which has ever been presented upon this floor.

Only the other day, Mr. President, an amendment which I offered to another bill—an amendment designed only to prevent price fixing—was rejected upon this floor by Senators who said it was technical. If my memory serves me correctly, the Senator from Louisiana was one of those who objected to that amendment of mine, which, in regard to the Natural Gas Act, would have closed the door to price fixing, one of the fundamental antitrust violations.

Mr. LONG. Mr. President, in answer to the Senator from Wyoming, who has covered several points in his interrogatory and in his statement, I should like to point out, in the first place, in regard to the Natural Gas Act, that I feel that the antitrust laws against price fixing and conspiracy, as they affect interstate commerce, should be enforced just as strictly against those in the gas business as against the steel manufacturers or the cement trust or any other trust in the United States.

However, it sems to me something of a hiatus that the great, distinguished Senator from Wyoming, who so long has been a leader in advocacy of antitrust legislation, and who opposed so vigorously the little gas bill which affected the sales of $100,000,000 worth of gas a year, today would be supporting proposed legislation which would make it more simple and easier for the true monopolies of America to go back to a price-fixing system which the Senator from Wyoming himself has long recommended be outlawed. In this connection I am not talking about little concerns which, when all of them are put together, may have annual sales of $100,000,000, but I am talking about the billion-dollar concerns, those who declare dividends of hundreds of millions of dollars at one time, the real monopolies of America.

The Senator from Wyoming had the impression that I stated that this bill was rushed through by the Steel Trust and the Cement Trust. I do not believe I made such a statement; and if the Senator from Wyoming will check the RECORD tomorrow, I believe he will find that I did not make such a statement.

I believe I did state that this bill had the approval of the Steel Trust and that it meets with the approval of the Cement Trust. If that is not true, I should like to know why steel manufacturers, cement manufacturers, and paper manufacturers come to the junior Senator from Louisiana and ask him to support this bill or at least not to oppose it.

So far as concerns the question of whether the bill was rushed through the Senate, I made no objection to it at the time; but when the substitute was offered by the distinguished senior Senator from Wyoming, although he may have discussed it with many outstanding Members of the United States Senate, it

had not been studied by the junior Senator from Louisiana; and the junior Senator from Louisiana was on the floor seeking recognition at the time of the confusion which occurred when this bill was passed by the Senate by a voice vote. At that time the junior Senator from Louisiana had grave doubts about this proposed legislation. If I correctly recall, I believe that the distinguished junior Senator from Ohio [Mr. BRICKER] was in the chair at that time. In the confusion which existed at that time, with so many Senators clamoring "Vote! Vote!" and with the junior Senator from Louisiana addressing the Chair, seeking recognition, I can well understand how the distinguished junior Senator from Ohio probably did not hear or did not see the junior Senator from Louisiana seeking recognition.

However, certainly at the time when that bill was passed—and every Senator who was present at that time probably will recall that situation—there was complete confusion on the floor of the Senate.

I may further say that another United States Senator had told me he wished to make a speech in opposition to this proposed legislation, and I had assured him that he would be given notice before final action on the bill. That Senator was in his office at the time when the bill was rushed through, with the Senator from Louisiana seeking recognition in order to be able to assure that particular Senator that he would have a chance to voice his objections to the proposed legislation.

Mr. O'MAHONEY. Mr. President, will the Senator permit me to make a remark at this point?

Mr. LONG. I ask the distinguished senior Senator from Wyoming to wait long enough to enable me to answer his statement and interrogatory.

Mr. President, the senior Senator from Wyoming stated that this bill was approved by the Federal Trade Commission. I have been told by certain persons connected with the Federal Trade Commission that they did go along with this proposed legislation and did more or less give it their tacit approval; but the same persons, with whom I have discussed this matter, told me that they said they agreed to this bill—I am not speaking of the Commissioners at this time, but of certain attorneys connected with the Commission—because they felt it would be better to go along with the substitute which presently is before us, rather than to have to take something a great deal worse, which they felt would be the case under the 2-year moratorium bill to which the substitute was offered.

However, so far as the bill is concerned, I should like to read at this point a copy of a letter which the distinguished junior Senator from Tennessee [Mr. KEFAUVER] received from the Federal Trade Commission, expressing the opinion of all the Commissioners as of January 18, 1950, with the exception of Mr. Lowell Mason. Here is the letter setting forth the position of the Commission at this time—although, of course, I may state that this letter also relates to the bill at the time when section 4–D was a part of it. Nevertheless the Commission said——

Mr. O'MAHONEY. Mr. President, will the Senator permit me to interrupt him at this point?

Mr. LONG. I should like to read the letter first.

Mr. O'MAHONEY. I simply wish to compliment the Senator on his statement of clarification just now, namely, that the letter was written before section 4–D was corrected.

The Senator will recall that during the last session of the Congress, I personally spoke against the conference report because of my disagreement with the definition contained in section 4–D, as it was reported by the conference committee. However, that defect has been corrected. The bill satisfied me when that defect was corrected; and I hope the bill will satisfy even the members of the Commission who signed the letter to which the Senator from Louisiana has been referring.

I merely wish to thank the Senator for permitting me to interrupt him; and I should like to make this additional remark: He has spoken of the confusion which he says existed upon the floor of the Senate at the time when the bill was passed. Mr. President, it did not sound like confusion to me, because Senator after Senator was rising on this floor to tell the Senator from Wyoming what an excellent bill was being passed.

The Senator from Louisiana did come on the floor later and did say that if there had been a yea-and-nay vote, a vote permitting him to register his vote, he would have voted against the bill.

Mr. LONG. Mr. President, I believe many Senators at that time were in favor of this proposed legislation without fully understanding it, and who will oppose it when they find out fully what the bill will do.

I should like to read a paragraph of the letter stating the position of the Federal Trade Commission on this bill. The letter shows that even as of January 18, 1950, the Federal Trade Commission was against more than merely section 4–D of the bill; and that the Commission was against this bill—period. The Commission have found other objections to it, as well.

I read now from the second paragraph of that letter:

> The Federal Trade Commission believes that S. 1008 in the form in which it was reported from the conference will greatly weaken, if not destroy, the effectiveness of section 2 of the Clayton Act as amended, as well as jeopardize and probably similarly affect other sections of that act. Two features of the bill are of paramount importance in this conclusion: (1) the definition of "the effect may be" contained in section 4–D of the bill and (2) the conflict between sections 2–B and 3 of the bill upon the issue of whether or not meeting the equally low price of a competitor in good faith shall constitute a complete defense to charges of price discrimination.

Mr. President, it is reasonably clear that the objections to section 4–D have now been removed by the conference committee, but the objections to section 3, on the ground that it would create the defense of meeting competition in good faith, when made to a charge of price discrimination, are still present.

In order that Senators may judge whether or not the Commission was against the entire bill or only against section 4–D at this time I ask unanimous consent that the letter of the Federal Trade Commission, addressed to the Senator from Tennessee [Mr. KEFAUVER], be inserted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 18, 1950.

HON. ESTES KEFAUVER,
United States Senate,
Washington, D. C.

DEAR SENATOR KEFAUVER: This is in further response to your letter of January 11, 1950, and the request therein for an analysis of S. 1008 as reported by the conference committee, and a statement of the Commission's position with respect to the bill in its present form.

The Federal Trade Commission believes that S. 1008 in the form in which it was reported from conference will greatly weaken, if not destroy, the effectiveness of section 2 of the Clayton Act, as amended, as well as jeopardize and probably similarly affect other sections of that act. Two features of the bill are of a paramount importance in this conclusion: (1) The definition of "the effect may be" contained in section 4–D of the bill; and (2) the conflict between sections 2–B and 3 of the bill upon the issue of whether or not meeting the equally low price of a competitor in good faith shall constitute a complete defense to charges of price discrimination.

As introduced by Senator O'MAHONEY, section 4–D of the bill defined "the effect may be" as meaning a showing of reasonable probability of the specified effect. For more than 20 years the courts consistently interpreted "may be," as used in the Clayton Act, as meaning reasonable probability. This interpretation expressed a declared intent of the Congress to use the Clayton Act to curb monopolistic practices in their incipiency. This definition was changed during debate in the Senate, but the original version was restored by the Committee on the Judiciary of the House. It is believed that this definition was intended to make sure that the meaning of "reasonable probability" should continue and to settle any doubts raised by the use of the term "reasonable possibility" in the decision of the Supreme Court in *Federal Trade Commission* v. *Morton Salt Company.*

The bill as reported by the conference committee provides, however, that the term "the effect may be" shall mean that there is reliable, probative, and substantial evidence of the specified effect. This definition requires evidence of an effect which cannot be obtained until after the effect has appeared. It therefore amounts to a provision that the words "may be" shall be read as "is." The definition would therefore no longer rest upon the standard of reasonable probability, and the Commission would not be able to proceed against a price discrimination because of its probable effects, or even its certain future effects, but could only proceed after the effects had actually occurred.

It has been said that the conference committee definition of "may be" was intended to affirm the standards of proof set forth in the Administrative Procedure Act. This purpose could have been accomplished by defining the term as a reasonable probability determined from reliable, probative, and substantial evidence, though this would have been repetitious of the standard presently applicable.

The conference committee's definition of "the effect may be" applies directly to the

language of section 2 of the Clayton Act. The defined term also appears, however, in section 3 of the Clayton Act, prohibiting exclusive-dealing and tying contracts, and also in section 7, prohibiting corporations from acquiring the stock of other corporations when the effect may be substantially to lessen competition. Similarly, the defined term appears in the bill to amend section 7 of the Clayton Act which has been passed by the House, and which the President has just recommended that the Congress enact. Since it is unlikely that the courts would give one meaning to the term in one section of the statute and a quite different meaning in other sections of the same statute, the enactment of section 4–D of the bill would destroy the test of reasonable probability in section 2 of the Clayton Act and would seriously jeopardize, if not destroy, it in other sections of that act.

The principal question raised by the bill in its original form was whether or not meeting an equally low price of a competitor in good faith shall be a substantive defense to charges of illegal price discrimination. As introduced, the bill answered this question in the affirmative; as passed by the Senate this question was answered in the negative; as reported by the Committee on the Judiciary of the House it was answered in the affirmative; as passed by the House it was answered in the negative; as reported by the conference committee, the bill does not meet, but only confuses, the issue.

Section 2–B of the bill provides that it shall not be an unlawful price discrimination "to absorb freight to meet the equally low price of a competitor in good faith (except where such absorption of freight would be such that its effect upon competition will be to substantially lessen competition), * * * ." Section 3 of the bill, which relates to any form of discrimination in price, provides:

"That a seller may justify a discrimination by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

Thus, section 2–B of the bill invites the institution of proceedings when injury to competition results from freight absorption, while section 3 provides that the establishment of "good faith" in meeting an equally low price of a competitor shall be a complete defense to the charge of illegal price discrimination. The two sections point in opposite directions, and, taken together, can only create confusion as to the legality of freight absorption.

Turning to the sections of the bill other than those just discussed, they do not accomplish any presently important public purpose. Section 1 of the bill is apparently intended to be declaratory of existing law and to write into statutory form what the Commission has repeatedly said is the meaning of the present statute. Section 2–A of the bill declares that postage-stamp pricing is not to be regarded as unlawful price discrimination. There has never been a case in which this Commission or the courts have found the use of this type of pricing to constitute illegal discrimination in price. Section 4–A defines the word "price"; section 4–B defines the term "delivered price"; and section 4–C defines the term "absorb freight." None of these definitions is seriously controversial or represents any departure from existing law.

It seems clear that any new statutory language, however innocent or intended to be simply declaratory of existing law, will nevertheless entail long delays and much litigation, with all the attendant uncertainties, before it is interpreted by the courts with finality. These inevitable costs appear warranted only when they are outweighed by countervailing public advantages. Whether or not there was need for clarification of these matters at the time the bill was introduced, the Commission believes that the passage of time and the march of events has greatly reduced any public uncertainty as to the meaning of the law thus sought to be defined. A substantial contribution was made by the decision of the United States Court of Appeals for the Fourth Circuit on August 22, 1949, in *Bond Crown & Cork Co. v. Federal Trade Commission*. To the results of new legislation must be added the destructive effects of section 4–D upon the effectiveness of the Clayton Act as amended. There must also be added the fact that the only important substantive issue raised by the bill in its original form had to do with the status to be given a defense based upon good faith in meeting an equally low price of a competitor in a proceeding charging unlawful discrimination in price, and the fact that the bill as reported from conference confuses without solving this question. It is therefore believed that the over-all effect of the bill will be seriously destructive.

For the reasons stated, the Commission is of the opinion that S. 1008 as reported by the conference committee will seriously weaken the Clayton Act.

The above does not reflect the views of Mr. Mason.

By direction of the Commission, and with personal regards, I am

Sincerely yours,

LOWELL B. MASON,
Acting Chairman.

(Carbon copies to Senator PAT MCCARRAN, Senator RUSSELL B. LONG.)

JANUARY 18, 1950.

N. B.—The Commission has not yet had an opportunity of ascertaining from the Bureau of the Budget whether its position in this matter is in accord with the legislative program of the President.

LOWELL B. MASON,
Acting Chairman.

Mr. LONG. Mr. President, in fairness and in order to complete this picture, I ask unanimous consent that the independent views of Commissioner Mason, who has steadily advocated such legislation as Senate bill 1008, also be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 19, 1950.

Re S. 1008.

Hon. ESTES KEFAUVER,
United States Senate,
Washington, D. C.

DEAR SENATOR: As I noted in the letter to you transmitting the Commission's report that my own views were not in accord with the majority, I beg leave to present herewith my own evaluation of the conference report version of S. 1008.

Assuming as I do, that it is the legislative intent to make clear that the law shall not be construed so as to prohibit a concern from selling its products at delivered prices, nor for such a company to absorb freight to meet equally low prices of a competitor in good faith, and that it is desired to preserve the right of an individual seller to meet at the buyer's place of business competitive prices in good faith, it is my judgment that S. 1008, read in the light of its legislative history, will accomplish those purposes, and I am prepared to endorse the bill's objectives and to recommend its passage with an amendment of section 4–D as hereinafter suggested.

Those who would avoid the strong guiding hand of Congress upon our shoulders claim that there is no need for Congress to concern itself with our actions because the Court in the Bond Crown & Cork Co. case upheld the right of an individual seller to absorb freight, and that therefore such a practice was not unlawful; hence no present legislation was required.

As far as the Crown & Cork Co. case is concerned, a close examination of the Court's opinion will disclose that the Court said that the practice of freight equalization individually followed was not in issue, and the decision of the Court was limited to passing upon the question as to whether or not there had been conspiracy among the respondents to use the basing-point system. In considering the practice of freight equalization, the Court said:

"It should be noted in this connection, however, that the question in this case is, not whether such practice may be enjoined as constituting of itself an unfair trade practice, but whether it may be considered along with the other facts and circumstances to which we have adverted as tending to establish the conspiracy and combination in restraint of trade, which is the only charge in the complaint."

The Court further held:

"We need not decide, however, whether the freight equalization practice here involved constitutes of itself an unfair trade practice or whether it may be condemned as systematic price discrimination in violation of section 2 of the Clayton Act as amended by the Robinson-Patman Act, * * * as was held of the multiple basing-point system in the Cement Institute case, as those questions are not before us. The practice unquestionably constitutes evidence to be considered, along with other facts and circumstances, as tending to establish the conspiracy charge; and that was the only purpose for which it was considered by the Commission."

It is apparent from the above that the Court in the Bond Crown & Cork Co. case did not pass upon the question of individual freight absorption or delivered prices independently arrived at, which are the subject matter of S. 1008. For this reason, in my judgment this case does not clarify the existing confusion. The Court left open the question as to what its holding would have been had the Commission attempted to prohibit the individual use of a freight equalization system by each particular respondent.

It is to be noted that there are cases pending in the Commission in which the independent use of freight absorption is challenged as being unlawful. It would be impossible, as well as improper, for me to forecast what our decision will be in these pending cases. However, you should be advised that the Commission some time ago authorized the filing and is presently prosecuting before it the following complaints which, if sustained, will condemn the independent, nonconspiratorial use of freight absorption: Docket No. 4878, Chain Institute, Inc., et al.; Docket No. 5253, National Lead Co. et al.; Docket No. 5483, Clay Products Association, Inc., et al.; Docket No. 5502, Corn Products Refining Co. et al.

The complaints in the above cases each contain a second count charging the individual respondents with unlawful price discrimination because of differences in net prices received after deductions of actual freight costs. These differences in net prices accruing to each individual seller, thus attacked as being unlawful, are inherent in any independent system of freight absorption, freight equalization, uniform delivered prices or basing-point quotations. You will recall that count II of the Conduit case (affirmed by an equally divided Supreme Court) held nonconspiratorial freight absorption to be an illegal unfair method of competition.

Last June we advised the House Committee on the Judiciary that all of the Commissioners believe that on balance it is preferable to make the good faith meeting of a competitor's equally low price a full defense. No action has been taken by the Commission to change this view. The letter sent you yesterday over my signature indicates that the majority of the Commission take exception to the results of the amendments offered to sections 2 and 3. (These are the Kefauver amendments in the Senate, the Carroll amendments in the House, and the conference committee's compromise thereof.) While I agree it would have been preferable if these amendments had not been offered, I do not believe that they move in opposite directions.

The amendment to section 2 refers to good faith competition which will not substantially lessen competition. The amendment in section 3 refers to good faith competition that is not monopolistic or oppressive. These are relatively similar terms. In any event, however, it is not necessary that these restrictions be identical because section 2 refers to what is required for the Commission to prove its case, while section 3 relates to what is required for a respondent to affirmatively prove his defense if the Commission has made out a case. These amendments in sections 2 and 3 of the act appear to be adequate safeguards.

In section 4–D I would prefer the House version which defines the words "effect may be" as meaning reasonable probability.

In my judgment, it can hardly be denied that there is at the present time widespread confusion as to the legality of the use of delivered prices by one seller, independent of conspiracy, the absorption of part or all of the transportation costs and the meeting of lower competitive prices, and that this confusion should be dispelled by legislative action. With the above amendment, S. 1008 seems to be adequate to accomplish this purpose.

Sincerely yours,

LOWELL B. MASON.

(Copies to Senator PAT MCCARRAN and Senator RUSSELL B. LONG.)

JANUARY 19, 1950.

N. B.—I have not yet had an opportunity of ascertaining from the Bureau of the Budget whether my position in this matter is in accord with the legislative program of the President.

LOWELL B. MASON, *Acting Chairman.*

Mr. LONG. Mr. President, it will be seen from a study of the conference report on the Robinson-Patman Act that that report was expressly designed to outlaw the basing-price system. It will be noted that at that time the word "price" was defined to be what we consider to be the mill net return of a seller; and that if freight were allowed, it was contemplated by that act that the price would be the price of the commodity at the mill, less any amount of freight the seller might himself pay or allow to a purchaser. It was the purpose completely to outlaw the basing-point system. There were many objections to the system, one being that it prevented the economic distribution of industries throughout the country in that it permitted the concentration of industries at disadvantageous locations. Another objection to it was that it caused a great amount of uneconomic and unnecesary cross hauling. Another objection was that it denied the consumer the benefit of price competition, because in essence this was a pricing system of a monopolistic nature, which involved all sellers arriving at the same price.

The Senator from Wyoming [Mr. O'MAHONEY] a few minutes ago spoke of the amendment which he had proposed to the gas bill, designed to prevent the small gas producers from coming to an agreement of any kind whereby they would all fix the price and agree to uphold and maintain a monopolistic price-fixing system. He wanted to prevent collusion on the part of the small gas producers in the United States. But, Mr. President, he evidences no such solicitude for the public interest today, when he supports a bill which legalizes the very tools by which monopolistic price fixing had been accomplished under the basing-point system.

As I say, one of the suspicious things about this bill is that the steel people and the cement people have been willing to support it. The Senator from Wyoming did not think as well of the basing-point pricing system, or of the idea of freight absorption, 10 years ago, as he does today. At that time he conducted very thorough and very fair hearings as chairman of the Temporary National Economic Committee. That group, after hearings, recommended that the basing-point system be completely outlawed. At that time they recognized that certain kinds of delivered prices and the system worked out by the basing-point industries eliminated price competition among themselves, and made it so difficult to ascertain exactly how prices were being fixed, or to prove the monopolistic nature of the price fixing, that the system was contrary to the national interest. They therefore reached the conclusion and recommendation found on page 33 of the final hearings, as follows:

THE BASING-POINT SYSTEM

Extensive hearings on basing-point systems showed that they are used in many industries as an effective device for eliminating price competition.

During the last 20 years basing-point systems and variations of such systems, known technically as "zone pricing systems" and "freight equalization systems," have spread widely in American industry. Many of the products of important industries are priced by basing point or analogous systems, such as iron and steel, pig iron, cement, lime, lumber and lumber products, brick, asphalt shingles and roofing, window glass, white lead, metal lath, building tile, floor tile, gypsum plaster, bolts, nuts and rivets, cast-iron soil pipe, range boilers, valves and fittings, sewer pipe, power cable, paper, salt, sugar, corn derivatives, industrial alcohol, linseed oil, fertilizer, and others.

The elimination of such systems under existing law would involve a costly process of prosecuting separately and individually many industries, and place a heavy burden upon antitrust enforcement appropriations.

We therefore recommend that the Congress enact legislation declaring such pricing systems to be illegal.

I digress there for a moment, Mr. President, to point out that the systems were illegal already. They have been illegal since 1936. Here is a recommendation that was made in 1940. What was the effect of the recommendation? It was that we should not merely outlaw the basing-point price system, but that we should make industry go to straight f. o. b. pricing. I quote further from the report:

Because such systems have resulted in uneconomic and often wasteful location of plant equipment—

I might say there that one of the results was that the South, the West, and New England did not get the industries they should have had, by reason of their economic situation—

Because such systems have resulted in uneconomic and often wasteful location of plant equipment, it is recognized by this committee that the abolition of basing-point systems should provide for a brief period of time for industries to divest themselves of this monopolistic practice.

The committee is not impressed with the argument that a legislative outlawing of basing point systems will cause disturbances in the rearrangement of business through a restoration of competitive conditions in industries now employing basing-point systems. Such disturbances may be costly to those who have been practicing monopoly. But the long-run gain to the public interest by a restoration of competition in many important industries is clearly more advantageous.

It is noted there, in brackets, that this recommendation was approved without objection. It will be noted, Mr. President, that this recommendation was for the elimination of all such pricing systems, whether they be called basing-point systems, zone-pricing systems, or a trade-equalization system.

It is also interesting to note the statement of the senior Senator from Wyoming at the time of the Cement Institute case, in which, contrary to his recommendation of legislatively outlawing freight absorption and freight equalization and zone pricing, and because of the failure of Congress to act, the Federal Trade Commission, after 14 years, had finally succeeded in bringing the cement group to the bar of justice. The Senator from Wyoming released a statement saying that it was a good thing for the national economy, to see that the steel companies had finally agreed to f. o. b. pricing. The Senator from Wyoming, as reported on page 11343 of the CONGRESSIONAL RECORD OF August 12, 1949, where the junior Senator from Louisiana quoted his statement of July 8, 1948:

I fear that United States Steel is merely trying to lay the basis for a demand that Congress change the antitrust law under which the Supreme Court found that a multiple-basing-point delivered-price system for the purpose of suppressing competition is prohibited.

Then, a few days later, on July 11, 1948, the Senator from Wyoming made the following statement in a press release concerning the declaration by United States Steel that that group would go to an f. o. b. pricing system, which, of course, is clearly legal under the law. The Senator said:

It is not inconceivable that at the very same time they abandon the basing-point system they will actually raise their mill prices in order to reap the fullest possible advantage of the present seller's market.

The Senator further said:

It would be a characteristic monopolistic move to endeavor to create the impression

that such price increases were caused by the abandonment of an innocent system, whereas the fact is the Supreme Court has ruled against the system only so far as it is used collusively to suppress competition.

So I know that at heart the senior Senator from Wyoming and the junior Senator from Louisiana desires the same thing. We desire to assure free competition in the United States. We desire that this monopolistic basing-point system shall not be pursued any further. It was the opinion of the senior Senator from Wyoming 10 years ago that about the only way it could be done would be by strengthening the antitrust laws. But we found the antitrust laws strong enough at that time, and the costly, tedious process of prosecution and proving under the law, which the Senator said would be too great a burden on the antitrust enforcement agencies, was pursued because Congress had failed to act. Now that the courts have acted, as the Senator from Wyoming himself anticipated, could happen, the Steel Trust and the Cement Trust and the others come before Congress asking us to give them certain latitude, to permit them to go back to the same illegal pricing system that they had used before. Unfortunately, if those interests get the kind of law they want today, permitting freight absorption and certain types of independent action, although it may appear to be independent and may appear to be in good faith, we might have to go through another 14 years of litigation in order finally to stop the kind of practices which were outlawed by the decision in the Cement Institute case.

Mr. President, I heard the Senator from Wyoming make the statement today that industry was being retarded and its development being held back, because of the uncertainty as to the law. I do not have the letter with me at the moment, but I am informed that 37 of the 55 major cement companies of America have stated already to the Federal Trade Commisison that they are absorbing freight, and that they will absorb freight whenever they see fit, in meeting competition. They understand the law exactly as we understand it, that they can absorb freight, they can make discriminations in their prices, in order to meet competition and in order to get business, but they are forbidden by law and the decision of the Supreme Court to absorb freight in such a way that the effect will be to eliminate competition in the cement industry. That is what the basing-point system amounts to.

Furthermore, contrary to what has been stated, that such alleged confusion has held back development, I can, I believe, prove to the satisfaction of anyone who would like to study it, that the basing-point decision in the Cement Institute case has actually promoted development within the United States, and I now propose to dwell on that subject for a few moments.

PLANT DISPERSAL SINCE THE CEMENT DECISION

An excellent illustration of the tendency of industry in our heavy, basic commodities to disperse throughout the country is well documented by what has happened in the cement industry. Following the Cement decision on April 26, 1948, the productive capacity of the cement industry has greatly increased. It has not reduced, it has increased. The new plants which have been built, are building, or are in the planning stages are situated at points removed from the concentrated productive areas in existence prior to the Cement decision. The cement industry has also increased the capacity of many existing plants, and by far the greater part of these additions and improvements have been made on plants in what may be aptly described as deficient areas. In other words, the productive capacity of the cement industry is now, without dislocation or hardship, being widely dispersed in areas close to the points of consumption.

The saving in freight by having ample supplies of this heavy, basic commodity close to the point of consumption will materially aid in reducing prices and thereby increasing consumption. The pattern of cement consumption is a very definite one. In areas in which there are plentiful supplies close to the point of consumption, the use of cement has materially increased. In the deficit areas, the use of cement has lagged because of the expense involved in transporting this commodity long distances on the basis of high all-rail freight charges.

This dispersal through construction of cement plants at the outlying points of demand for cement has come about because of one controlling factor. That factor has been the elimination in the industry of the multiple-basing-point system. While that system was in force, there was no incentive for cement companies to build additional facilities anywhere else than at the old plant locations. The outlawing of the basing-point system by the Supreme Court, which required that the industry go on a competitive basis, has had a salutary effect upon the whole industry and has benefited the consumer and taxpayer beyond calculation.

The Bureau of Mines' Minerals Yearbook of 1948, reprint, page 22, sets forth the estimated surplus or deficiency of local supply of portland cement in cement-producing States, 1947–48, in barrels. In most of the States listed in this table as surplus-producing States, the supply and demand is fairly well in balance. However, only 8 of the States listed individually indicate a surplus production. Five of the Rocky Mountain States listed in the group have a surplus so small that it is hardly worthy of mention. This is likewise true of Oregon and Washington, which are lisited together. All other States of our Union either have a deficit in production or no production at all. The outstanding surplus-producing State was the State of Pennsylvania, which in the year 1948 had shipments from mills of 38,255,543 barrels and an estimated consumption of 12,480,244 barrels, or a surplus production of 25,775,299 barrels, which undoubtedly is caused by the high productive capacity in the Lehigh Valley area of this State. Significantly, there has been no recorded expansion of facilities in this concentrated producing area since the Cement decision outlawing the basing-point system.

The cement industry has not been hurt by plant dispersal since existing plants, even in the concentrated areas, have had ample business and will continue to have ample business for a long time to come. This country is growing both in population and in improvements and additions to our public works program. The Joint Committee on the Economic Report has recently issued a report on Highways and the Nation's Economy. No one can deny that the increased use of motor transportation whets the demand of our people for better and safer highways. Every State in the Union has recognized this need, and programs inaugurated by the States and supported by the Federal Government are beyond the dreams any of us would have had with respect to our whole system of highways 20 or 25 years ago. The cost of cement is one of the most important factors in our expanding good-roads movement. The cost of cement must be reasonable; the supplies must be plentiful, and these supplies must be close to the points of consumption.

The cry of local monopoly is without foundation. There is no commodity manufactured in these United States that by any stretch of the imagination can have a local market to itself unless the manufacturer of such product is willing to keep his prices at reasonable levels. The minute the price of any commodity in any locality is artificially increased, the manufacturer of this commodity finds his market drying up. The process of drying up a market for any particular manufacturer can happen in two ways: First, through resistance of the buyer, who utilizes some other product or material, and second, through invasion of the territory by outside manufacturers at a lower price level.

It is important to have competition in our basic industries as well as competition in all segments of our trade and commerce. We cannot afford, in this country, to go down the road of artificial prices such as will be permitted under the terms of Senate bill 1008. It makes little difference to the consumer that prices which are artificially constructed are so constructed independently by one concern controlling the market or that such artificial prices are the result of conspiracy and collusion. The result is the same: The consumer pays too much for the article, and the manufacturer or manufacturers effectively control a market, tend to create a monopoly, and restrain trade, which automatically lessens competition.

In Senate Report No. 597, Sixty-third Congress, it is apparent that one of the objectives sought by the passage of the Federal Trade Commission Act was to retard at least the price fixers in industry, because the report, in retrospect, says: "Such a commission would have at least kept within limited bounds the activities of a multitude of price-fixing

associations in different branches of business, which, together with the great trusts, have been potent causes of the present high cost of living." That will be found at page 44, Congress and the Monopoly Problem, 50 Years of Antitrust Development, 1900–1950. House Small Business Committee. But, as we know, it has required a long and difficult proceeding to eliminate price fixing in a single industry. The Cement case, from the time of its institution by the Federal Trade Commission until the decision of the Supreme Court, covered a period of approximately 12 years. One of the great questions posed by the legislation presently under consideration is how many years would be involved in litigation attempting to construe the provisions of this bill should it become law.

Senate bill 1008 will permit the cement industry to return to the basing-point system. It is a pious assertion that Senate bill 1008 has certain language which requires members of an industry to act independently, because artificial pricing systems may be utilized in many ways by independent action of each member of an industry. As has often been pointed out in hearings before the Congress, the United States Steel Corp. and the Standard Oil Co. of New Jersey effectively control the price in the steel and oil industries. Various members of the steel industry have testified before congressional committees, as is pointed out in the report of the Joint Committee on the Economic Report, under the title "1949 Steel Price Increases," that they dare not depart from United States Steel prices. Significantly, the strongest member of the cement industry, Universal Atlas Cement Co., is a subsidiary of the United States Steel Corp. I do not feel that any member of the cement industry, large or small, particularly under the permission granted by Senate bill 1008, would dare act, pricewise, in a manner to offend the Universal Atlas Co., and thereby offend the United States Steel Corp.

If it is our intention to travel the road of monopoly, of artificial pricing, of restraint of trade, of price discrimination, and of the elimination of competition in trade and commerce, then of course we should support Senate bill 1008. If, on the other hand, it is our purpose to strengthen our antitrust laws, to aid in the enforcement of such laws, to keep competition alive in this country, to promote the development of areas removed from the presently congested and concentrated industrial areas, to help the small-business interests of this country, to strengthen the consumer's dollar, and to aid in the maintenance of our free-enterprise system, then we should vote to kill the conference report on Senate bill 1008.

There is an old saying that one cannot carry water on both shoulders. In my opinion, this applies to our present situation. We cannot, on the one hand, preach of aid to small business and strengthening of our antitrust laws, and on the other hand, enact legislation which will weaken the antitrust laws and effectively scuttle the small-business interests of this country. We have not tried to lay stress upon the consumer aspect and the consumer's interests, in our consideration of Senate bill 1008, but the consumer and the taxpayer in the final analysis are the ones most concerned with this legislation. It is purely and simply a question of whether the Congress of the United States intends to foster the monopoly interests of this country or whether, in truth, we are antimonopolists and intend to act in a manner which will assure maintenance of our free-enterprise system and bring to our trade and industry a full measure of competition.

The question of plant dispersal has received a lot of consideration by the Congress. The Congress has passed the National Security Act of 1947, which set up the National Security Resources Board, with an injunction to make our national defense secure. Our national defense can be secure only to the extent that every arm of our industry is strong and prepared to meet any emergency. One of the major problems before the NSRB in carrying out the direction of Congress is to see that our plants, both large and small, are properly located and properly equipped to produce rapidly and efficiently in an emergency the things that are necessary to our country in a defense which must be as total as the total war in which we may some day be engaged. The elimination of artificial pricing systems and the bringing of the competitive forces of our country into full play in our basic industries will lend great impetus to the defense program in a natural and orderly manner.

As we have seen by one illustration, the cement industry is building new plants and increasing facilities in sections of our country where they are most needed. If we do not here bless the use of artificial pricing systems by the passage of S. 1008, I am sure that this movement will continue not only in the cement industry but in a great many other industries. All industry may well follow a natural path of preparation by way of dispersal, particularly in new plant development in preparation for any eventuality. Our industry, which is a part and parcel of our American life, should heed the warning signs of an atomic age even without prompting by the Government.

According to my best information, there were only two new cement plants built in the 25 years prior to the Supreme Court decision, as I shall demonstrate on a map later. Of course, there were improvements and enlargements of existing facilities, but as long as the multiple-basing-point system could be utilized to force consumers to pay additional transportation costs, there was no necessity for the building of new plants in new areas closer to the points of consumption. Since the Supreme Court decision, as the map will show, there have been a great many new plants built and many more planned or under construction. It is well to point out that not only do artificial pricing systems tend to restrict the supply of important basic commodities, but such systems also tend to freeze a good part of the production in areas of high concentration of productive capacity.

Mr. President, at this point I should like to place in the RECORD a list of new plant facilities and plant expansions which have occurred since the decision in the Cement Institute case in 1948. This analysis shows that there have been either new plants built or expanded facilities provided in the following States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Missouri, Montana, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington. It is interesting to note that some States are receiving two cement plants, whereas, according to my best information, for 25 years prior to the decision of the Supreme Court in the Cement Institute case, only two new cement plants were built in the entire United States.

Mr. President, I ask unanimous consent to insert in the RECORD a list of new plant facilities and plant expansions which have been built or proposed in the United States since the decision in the Cement Institute case.

Ther being no objection, the statement was ordered to be printed in the RECORD, as follows:

Item No.	State	Company	Data on new plants and improvements on existing installations, 1949 and 1950 to date
1	Alabama	The Ideal Cement Co	To increase capacity of Mobile plant.
2	Alaska	Alaska Portland Cement Co	New $2,500,000 plant proposed—1,500 barrels daily.
3	Arizona	Arizona Portland Cement Co	New $3,976,000 plant at Rillito—2,000 barrels daily.
4	Arkansas	Ideal Cement Co	Plans to double capacity at Okay plant.
5	California	Riverside Portland Cement Co	Increase in capacity at Oro Grande plant to 3,500,000 barrels completed.
6	do	California Portland Cement Co	Improvements and general rehabilitation of the Colton plant.
7	do	Whitewater Portland Cement Co., Samuel A. Guiberson, Jr., of Dallas, president.	Has let contracts for construction of a $15,000,000 plant near Palm Springs.
8	do	Southwest Portland Cement Co	Increasing capacity at its Victorville plant.
9	do	Calaveras Cement Co	Continued program of plant expansion and improvement at San Andreas. New 360-foot kiln has brought plant capacity up to 7,500 barrels per day—80 percent increase.
10	do	The Santa Cruz Portland Cement Co	At Davenport, has completed installation of a third Lepol combined rotary- and grate type kiln.
11	Colorado	Ideal Cement Co	Has built new 4,000-barrel-a-day plant adjacent to old plant at Portland.

Item No.	State	Company	Data on new plants and improvements on existing installations, 1949 and 1950 to date
12	Florida [1]	Florida Portland Cement (now General Cement Co.).	Nearly completed expansion program. New kiln at Tampa in operation. Production increased about 1,250,000 barrels annually.
13	do	Lehigh Portland Cement Co	Has purchased 9,500 acres of coquina shell property near Flagler Beach; plans to build a new plant there.
14	Idaho	Lewiston Area Development Association, Inc	Announced a $4,000,000 plant will be constructed in that area; capacity 3,000 barrels daily.
15	Illinois	General Portland Cement Co	$4,000,000 new plant in Chicago.
16	Indiana	Medusa Portland Cement Co	Improvement program for Dixon plant; new crushing and raw grinding. Expanded facilities at Oglesby in 1948. In 1948, completed 3-year $1,500,000 improvement program at Speed. No comment on increase in capacity.
16a	do	Lehigh Portland Cement Co	
16b	do	Marquette Portland Cement Co	
17	do	Louisville Cement Co	
18	Iowa	Dewey Portland Cement Co	Improvements at Davenport plant to increase production 40 percent. New kiln.
19	do	Northwestern States Portland Cement Co	Spending $1,000,000 for improvements at Mason City plant, but does not plan expansion because of basing-point uncertainty. This plant, of course, is the one which has so zealously tried to put the State-owned South Dakota cement plant out of business. Presumably, if we reject the bill, Northwestern will assume that its chances of success in this venture are reduced.
20	Kansas	Monarch Cement Co	Has almost completed a $1,500,000 modernization program at Humboldt plant. New equipment includes 700,000-barrel-a-year kiln.
21	do	Universal-Atlas Cement Co	Plans modernization of Independence plant.
22	Louisiana	Lone Star Cement Corp	Completed $1,000,000 improvements which boosted capacity 50 percent to 6,400 barrels per day, 2,200,000 a year.
23	Michigan	Huron Portland Cement Co	Expansion of Alpena plant to make it world's largest. Completed late in 1948. Finish-grinding capacity increased to 24,000 barrels a day.
24	Missouri	Missouri Portland Cement Co	Modernization plan has progressed. New facilities in operation at Fort Bellefontaine (St. Louis) quarry, and new 6,000-barrel wet-process plant at Prospect Hill (St. Louis) nearing completion.
25	do	Alpha Portland Cement Co	Reported to have completed $500,000 modernization program at plant near St. Louis.
26	Montana	Ideal Cement Co	Has installed new kiln at Trident plant in Bozeman as part of $750,000 expansion program there. New facilities will add 1,000 barrels a day to present 3,000-barrel capacity.
27	do	Permanente Cement Co	Has purchased 498 acres of cement-bearing materials as site for new cement plant near Helena.
28	North Carolina		Representative Ed R. Hanford, Alamance County, chairman of State Portland Cement Study Commission, authorized by 1949 general assembly, recently conferred with Governor Scott, of North Carolina, on plans for constructing State cement plant. Hanford believes State highway commission could utilize its own funds to build plant, a report states (Rock Products, September 1949, p. 51). Local businessmen and industrialists backing the project "to help curb local shortages."
29	North Dakota		State legislature grants $25,000 for survey to establish cement plant.
30	Ohio	Diamond Portland Cement Co	Completed improvements increasing capacity Middle Branch plant 50 percent.
31	do	Universal-Atlas Cement Co	Plans modernization of Osborn plant.
32	Oklahoma	Dewey Cement Co	$1,445,000 expansion program at Bartlesville plant under way. Highways committee of Oklahoma State Legislative Council recommended to the council that a report be prepared "on the possibility of the State making its own cement for highway construction to beat the shortage" (Pit and Quarry, January 1949, p. 84).
33	do	Ideal Cement Co	To increase capacity at Ada plant.
34	Oregon	Permanente Cement Co	Has purchased 5-acre tract in Portland, only for distributive purposes, adjacent to leased property.
35	Pennsylvania	Penn-Dixie Cement Corp	Plans improvements at West Winfield plant.
36	do	Medusa Portland Cement Co	Improvements at York and Wampum plants—part of multi-million-dollar program.
37	Puerto Rico	Ponce Cement Corp	Plans to increase capacity to 10,000,000 sacks annually (2,500,000 barrels).
38	do	Puerto Rico Cement Corp	Plans to increase capacity.
39	South Carolina	Carolina Giant Cement Co	At Harleyville, began operation in December 1948, with capacity of 800,000 barrels. First cement plant in Carolinas, "and is expected to help alleviate shortages in that area." (Pit and Quarry, January 1949, p. 90.)
40	South Dakota		The legislature has authorized sale of $1,500,000 in bonds for doubling capacity of State-owned cement plant. Present capacity is 2,000 barrels a day. Program calls for new 11-foot kiln, 375 feet long, new storage silos and others.
41	Tennessee	Signal Mountain Portland Cement Co	Plans to increase capacity at Chattanooga plant.
42	Texas	Tex-Mex Cement Co	Resumed construction on new $6,000,000 plant at Corpus Christi, a 4,000-barrel wet-process plant.
43	do	Trinity Portland Cement Co. (now General Cement Co.).	New kiln installed at Fort Worth plant. Production increased about 1,250,000 barrels a year. Also plans expansion of Waco plant.
44	do	Southwestern Portland Cement Co	Has near completion its improvement program at El Paso. Major changes in rock transportation and raw-grinding departments.
45	do	Lone Star Cement Co	Plans to increase capacity 20 to 25 percent at New Orleans.
46	do	do	New plant near Sweetwater.
47	do	Ideal Cement Co	Plans to double capacity at Houston plant.
48	Utah	do	At Devils Slide, new 4,000-barrel-a-day plant. Completed late in 1948, cost about $7,000,000. (Pit and Quarry, January 1949, p. 89.)
49	Virginia	Lone Star Cement Co	1,700 barrels daily. Plans to build new plant near Roanoke.
50	do	Universal-Atlas Cement Corp	Capacity unknown (near Roanoke).
51	Washington	Olympic Portland Cement Co	Completed improvement program, but no increase in 3,000-barrel capacity at Bellingham.
52	do	Spokane Portland Cement Co	Improvement at Irvin plant, 8 miles east of Spokane. No increase in capacity (Pit and Quarry, September 1949, p. 97).
53	do	Lehigh Portland Cement Co	Has $1,000,000 expansion program under way at Metaline Falls, which will double present capacity of 2,000 barrels daily. New kiln and expansion on quarry, grinding, coal preparation, storage, and other departments have been added. Annual capacity will be 1,200,000 barrels.

[1] Florida last year had to import cement from Belgium, which was priced substantially above domestic prices. Quoting from Pit and Quarry, January 1949, p. 77:
"In Florida, destination of some of the Belgium cement, supplies of domestic brands have been sharply reduced because of the recent change-over to f. o. b. pricing, which has resulted in price increases on shipments from out-of-State mills. Florida now has only 1 cement plant operating—that of the Tampa Portland Cement Co., a General Portland Cement subsidiary."

Mr. LONG. Mr. President, in order that Senators may have a clearer understanding of the industries which are most strongly supporting the enactment of S. 1008, and in order that they may have some background of the issues involved in the bill, I ask unanimous consent to have printed in the RECORD at this point chapter 3, entitled "Three Case Histories: Steel, Cement, Corn Products," from a book entitled "The Basing-Point System," written by Dr. Fritz Machlup, of the Johns Hopkins University. I believe that if Senators would read the history provided in chapter 3, which briefly sets forth the history of the basing-point pricing system to eliminate price competition in these three major industries, they would be much better able to understand the issues involved and the reasons why the steel, cement, and corn-products industries are so strongly supporting S. 1008.

There being no objection, the chapter referred to was ordered to be printed in the RECORD, as follows:

THREE CASE HISTORIES: STEEL, CEMENT, CORN PRODUCTS

Basing-point cartels have existed probably in more than 20 industries in the United

States. Detailed information has become available only on those which became court cases. Short narratives of a few case histories may provide a plastic background for the economic analysis of the basing-point system. For such a historical review we select three basing-point cartels: steel, cement, and corn products.

BASING-POINT PRICING IN STEEL

The steel industry is no doubt the most important of the industries which have used the basing-point system of pricing, and it was probably the first to introduce it. Some of the high lights of the history of the basing-point system in the steel industry deserve to be recounted here.

The pioneers and the promoters

It is not possible to state with certainty when the basing-point system of pricing was first used. Significant inferences were drawn from the fact that 1901 was the year of the formation of the United States Steel Corp.—a merger of some 200 establishments in the steel industry—and was also the year in which geographic pricing schemes resulting in identical delivered price quotations were introduced for several steel products. These inferences were obviously resented by officials of the company, and testimony was offered to the effect that there had been much earlier uses of the basing-point system. According to this testimony, steel beams were sold on a Pittsburgh-plus basis as early as 1880, when the first steel beam association was formed by the producers.[1] The practice was extended, in the late 1890's to steel plates, shapes, bars, sheets, tin plates, and wire. For a short time during 1895, as a part of a price-fixing scheme, steel rails were quoted on a Pittsburgh basis.[2] The Bessemer billet pools of 1896 and 1900 based their prices on Pittsburgh.[3] Wire nails were quoted on the same basis under the guidance of the Wire Nail Association in 1895.[4] Thus there is little doubt that the basing-point system of pricing had grown out of cooperative or collusive activities of pools and trade associations before it received its almost universal application under the leadership of the merger-born United States Steel Corp.

Twelve major combinations were formed between 1898 and 1900, culminating in 1901 with the "combination of combinations."[5] But just what role these mergers played in the general application of the basing-point system is somewhat controversial. One writer, for example, states with great emphasis that the "evolution of the economic forces impinging upon competitive practices seems more important than the birth of a dominating corporation."[6] But even that writer concedes that the trend was reinforced by the formation of the giant corporation "with its own pecuniary interest in the perfection of such a pricing method," and that "the power of the United States Steel Corp. was behind these [price] agreements, and under its influence the Pittsburgh-plus method of quoting prices was rapidly extended."[7] In the opinion of the Supreme Court it was one of the purposes of the formation of the "combination of combinations" to "accomplish permanently what those [constituent] combinations had demonstrated could be accomplished temporarily, and thereby monopolize and restrain trade."[8]

"Pittsburgh plus" under formal agreements

Although the single basing-point method had been used successfully for several steel products—for wire and wire products since 1899, for sheet and light plate since 1900, and for boiler and tank plates since the beginning of 1901—a trial was given to the zone-pricing system. From 1901 to 1903 most of the steel products were sold under a zone-price system, dividing the country into 17 zones; in each zone uniform delivered prices were quoted "based upon the Pittsburgh price plus the average freight to all points in the zone."[9] After 1903, however, when certain disadvantages of this system had become apparent, the exact railroad-freight charge from Pittsburgh to each particular destination point was added to the Pittsburgh price. That is to say, the single basing-point system of pricing was made general practice. The delivered price was computed as the sum of (1) the base price of the particular product, (2) the extras for particular specifications,[10] and (3) the railroad freight from Pittsburgh to the destination.

In the first years of its general application, the basing-point system was used in conjunction with well-publicized pools, price agreements, and understandings. The institution of the "Gary Dinners" from 1906 to 1911 was not kept secret; indeed, the speeches were often reprinted in the Iron Age, the organ of the iron and steel industry; and it was common knowledge that a special committee dealt with the problems of the determination and maintenance of prices.[11] After 1911, more discretion was exercised in these matters—probably because antitrust proceedings against the United States Steel Corp. were started in 1911—and the appearance was given of a system working automatically with no collusive activities.

Products covered and products exempted

More than 50 products or groups of products were included in the scheme.[12] There were two noteworthy exceptions. Steel rails for railroads were exempted from the basing-point practice after the railroad companies reached an understanding with the steel producers in 1908. The resistance of the railroads to the application of the system to their own purchases is easily comprehensible. They refused to pay for more than the necessary transportation costs incurred for shipping the rails. They understood the implications of the pricing scheme and as the chief customers of the product, buying about 90 percent of the total output of rails, they were in a position to prevail.

The other product that was excluded from the basing-point system—for a third of a century—was pig iron. Pig iron for sale, so-called merchant pig iron, is a heavy and cheap product which cannot stand high freight charges and thus is not shipped over long distances. The merchant furnaces have only a small percentage of the total pig-iron capacity of the industry,[13] but since they produce all of the pig iron that is sold in the market, the fully integrated companies were not able to dictate the price. With more than 40 independent producers of merchant pig iron and no large firm among them to dominate the market, the introduction of the basing-point system could not be accomplished by voluntary agreement. Large steel producers attempted but failed to bring pig

[1] Frank A. Fetter, the Masquerade of Monopoly (New York: Harcourt, Brace, and Co., 1931), p. 147.

[2] United States before the Federal Trade Commission in the matter of the United States Steel Corp., docket No. 760, brief in support of the complaint (1924), p. 19.

[3] Ibid, p. 50.

[4] C. E. Edgerton, the Wire Nail Association of 1895–96, Political Science Quarterly, vol. 12 (1897), p. 246.

[5] *United States* v. *U. S. Steel Corporation* (251 U. S. 417, 438, 439 (1920)).

[6] Melvin G. De Chazeau in Carroll R. Daugherty, Melvin G. De Chazeau, and Samuel B. Stratton, The Economics of the Iron and Steel Industry (New York: McGraw-Hill Book Co., 1937), p. 534.

[7] Ibid., pp. 537 and 539. The company in 1901 produced 65.7 percent of all steel ingots produced in the United States.

[8] *United States* v. *U. S. Steel Corporation* (251 U. S. 438, 439 (1920)). The quoted statement had appeared first in the minority opinion of the circuit court in 1915 and was approvingly reproduced by the Supreme Court. The Court nevertheless denied the Government's plea for dissolution of the company. The chief reason for the denial was that the "combination of combinations" had not achieved a monopoly "in and of itself," as was proved by the fact that the company had still to resort to price-fixing agreements with the remaining competitors in order to accomplish effective restraints. The Court did nothing about these agreements in restraint of trade, because the prosecution had not alleged conspiracy but had confined its charges to monopoly and restraint attempted through corporate mergers.

[9] Burns, op. cit., p. 283; also Fetter, op. cit., p. 149.

[10] The extra is "a special addition (or sometimes a deduction) for quantities or specifications (i. e., size, gage, chemical composition, physical characteristics, inspection, etc.) other than the standard quantities and specifications to which the base price applies." Daugherty, De Chazeau, and Stratton, op cit., p. 208.

[11] Daugherty, De Chazeau, and Stratton, op. cit., p. 540.

[12] According to the NRA Code there are 54 products of the industry, which are grouped by classes (based on the United States Census of Manufactures) as follows:

	Products
Pig iron and ferro alloys	9
Unrolled steel	2
Semifinished rolled products	3
Finished rolled products	21
Manufactures from rolling mill products	19

Professor De Chazeau (op. cit., pp. 45–46) distinguishes, for purposes of analysis of the industry's distribution system, four major classes of steel products (apart from merchant pig iron): Semifinished steel (e. g., ingots, blooms, billets, slabs, sheet, and tinplate bars); finished rolled steel (e. g., wire rods, skelp, certain sheets, especially galvanized sheets); finished rolled products (e. g., plates, shapes, bars, sheets, strip); further-finished steel (e. g., tubes and pipe, wire and wire products, tin plate).

[13] In 1929, the fully integrated companies (from pig iron to the finished steel product) had 86 percent of the pig-iron capacity, 91 percent of the steel-making capacity, and 82 percent of the finished hot-rolled product capacity in the United States. This left 14 percent of the pig-iron capacity to the merchant furnaces, which sold their product chiefly to the semiintegrated companies. For detailed data see Daugherty, De Chazeau, and Stratton, op. cit., p. 21, from where the following tabulation of the distribution of capacity is taken:

	Number of companies	Number of establishments	Capacity for—		
			Pig iron	Steel	Finished hot-rolled products
			Per cent	*Per cent*	*Per cent*
Fully integrated	22	69	86	91	82
Semi-integrated	56	168	------	9	8
Nonintegrated	94	97	------	------	10
Merchant furnace	41	55	14	------	------
Total	213	389	100	100	100

iron into the basing-point system practiced by the entire industry. They succeeded at last with Government help. The regulations of the Code of Fair Competition under the NRA in 1933 forced the application of the pricing practice to pig iron. For several years after the NRA, pig iron continued to be sold under the basing-point system.

Exceptions not of particular groups of products but rather of particular destinations seem to have been permitted, at certain times at least. One of the destinations was Detroit, the location of the Ford Co. and other automobile producers, who were consumers of vast quantities of steel. It appears that "arbitrary delivered prices to Detroit, Mich.," were accepted by the industry as legitimate deviations from the basing-point practice of pricing.[14] Another exception refers to a part of the output in plates, shapes, and bars produced in the Alabama mills of the United States Steel Corp., which, from 1908 on, was sold on a Birmingham-plus basis. This made it possible to claim that the actual pricing plan "was not a single but a dual * * * basing-point system."[15] The bulk of steel sales, however, were on the Pittsburgh basis.

Observance without formal agreements

Apart from the few exceptions, the observance of the Pittsburgh-plus system in the pricing of tonnage steel was amazingly strict. Only two serious breaks were reported for the first 20 years of its operation, one in 1909, the other in 1911–12, when underutilized Chicago steel mills tried to establish Chicago as a separate basing point. Energetic action by the United States Steel Corp. succeeded in restoring the rule of Pittsburgh plus within 60 days in the one case, within 6 months in the other.[16] During the First World War, in 1917, the War Industries Board ordered a Chicago base for pricing steel, but after 10 months this order was rescinded by the Board upon suggestion of one of its members, Mr. Gary, president of the United States Steel Corp.[17] With this exception, the single or dual basing-point system operated perfectly and without any break or challenge from 1912 to 1920. The mutual understanding among the competitors was perfect—no evidence that any formal price agreements existed during this period was detected. During this entire period the antitrust suit of the Government against the United States Steel Corp. was pending, ending in 1920 with the dismissal of the suit. The suit had charged monopolization through merger, but had not included any charges of conspiracy or price fixing. In any event, the circuit court had found in 1915 "that the iron and steel trade in the various products of the steel corporation is and has been open, competitive, and uncontrolled, and that all engaged therein have free will control in selling at their own prices."[18] Likewise, proving again that even the keenest legal minds may be singularly ill-adapted for understanding economic relationships, the Supreme Court in 1920 found that "since 1911 no act in violation of law can be established" against the corporation.[19]

The end of the single basing-point system

In 1920 Chicago mills, suffering from underutilized capacity, again broke away from the Pittsburgh-plus and established Chicago base prices for plates, shapes, and bars. In the same year the Federal Trade Commission, having received protests of western steel consumers, began investigations and, in 1921, issued a complaint against the United States Steel Corp. Hearings were held before the Federal Trade Commission and testimony from several protesting consumer organizations and, regarding the price theory involved, testimony from three economists was received.[20] In July 1924 the Federal Trade Commission issued an order to the corporation and its subsidiaries to cease and desist from the Pittsburgh-plus practice. In the language of the Commission, the firms were ordered to cease and desist "from quoting for sale or selling * * * their said rolled-steel products upon any other basing point than that where the products are manufactured or from which they are shipped."[21]

Although the United States Steel Corp. did not admit the validity of the order, it filed a statement of compliance promising to obey the order "insofar as it is practicable to do so." The effect was an increase in the number of basing points, transforming the pricing practice from a single basing-point system definitely into a multiple basing-point system. Always anxious to stress the "natural evolution" of the basing-point system, the corporation stated that the order of the Federal Trade Commission merely "accelerated" the establishment of additional basing points.[22] In any case, immediate results upon delivered prices of steel—sharp reductions, especially in points west and south of Pittsburgh—were remarkable, even where the newly announced base prices substantially exceeded the Pittsburgh base prices. The "overnight effects" were strongly felt and welcomed by midwestern and northern fabricators, but particularly in the Birmingham and Duluth districts.[23]

The multiple-basing-point system: Under the multiple-basing-point system of pricing, delivered prices for any consuming point are calculated by ascertaining the cheapest combination of base price plus railroad freight charge. If all basing points had the same base prices, the "applicable basing point" would be always the one closest to the destination. Where differentials exist between prices at different basing points, the "applicable basing point" is the one for which the sum of base price and freight charge is the smallest. As a rule, although not always, the announcement of additional basing points reduces delivered prices to some consumers, but the main features of the pricing scheme are the same under the multiple-basing-point system as under the single basing-point system: Prices continue to be based in many instances upon an "other basing point than that where the products are manufactured"—which is in violation of the Commission's order; there continue to be non-basing-point mills computing delivered prices which include freight charges that no one incurred; competition continues to take the form of incurring unnecessary freight costs rather than reducing prices to consumers; and, last but not least, it continues to be true that any competitor knows in advance the delivered price which all others will charge to any particular consumer in the country.

Nevertheless, the Federal Trade Commission made no attempts to enforce its order. Even the announcement of new basing points proceeded only slowly. The Commission's order did not apply to steel producers other than the subsidiaries of the United States Steel Corp. and, apart from the Bethlehem Steel Co., which in 1927 announced a few additional basing points in the East,[24] there was hardly any competitive increase in basing points.[25]

Enforcement of the system by NRA

The great depression brought some defection from the industry's pricing system. Secret price concessions disturbed the scheme of identical delivered prices. This outbreak of price competition was stopped through the use of governmental power in 1932, delegated to the large steel producers on the theory of industrial self-government under the National Industrial Recovery Act.

The regulations of the NRA code of fair competition restored the rule of the basing-point system of pricing and probably made it more absolute than it had ever been. The officers of the Iron and Steel Institute became officers of the Code Authority, empowered to administer, adjudicate, and enforce the provisions of the code.[26] All the hitherto secret and quasi-voluntary rules of price making in the industry became now public and compulsory. Compliance was ensured because the code authority could enforce its regulations and determinations by means of prohibitive fines. Price concessions, such as the failure to collect the higher railroad freight where cheaper water transportation was actually used, were punishable. Producers were to be fined at the rate of $10 per ton for selling at prices which were at variance with those calculated on the basis of the

[14] The phrase "arbitrary delivered prices to Detroit, Mich.," is quoted from an announcement of the Republic Steel Corp. listing the "basing points announced to August 1 1938."

[15] *U. S. Steel Corporation et al.* v. *Federal Trade Commission*, in the U. S. Circuit Court of Appeals, brief for the respondent (Federal Trade Commission, July 10, 1948), pp. 6, 7.

[16] Daugherty, De Chazeau, and Stratton (op. cit., p. 540).

[17] Fetter, (op. cit., p. 15).

[18] *United States* v. *U. S. Steel Corporation* (223 Fed. 82 (1915)).

[19] *United States* v. *U. S. Steel Corporation* (251 U. S. 417, 451 (1920)).

[20] Fetter, op. cit., p. 158. The three economists were Profs. Frank A. Fetter, of Princeton; John R. Commons, of Wisconsin; and William Z. Ripley, of Harvard. All three strongly criticized the economic theories which counsel for the United States Steel Corp. had presented.

[21] United States before the Federal Trade Commission in the matter of United States Steel Corp. Docket No. 760, Order to cease and desist.

[22] United States Steel Corp., TNEC Papers, vol. III, The Basing-Point Method of Quoting Delivered Prices in the Steel Industry (New York, 1940), p. 18. Published also as exhibit No. 1418 in Hearings before the Temporary National Economic Committee, pt. 27 (Washington, 1940), p. 14631. The corporation stressed the previous existence of the Birmingham and Chicago bases and other temporary deviations from the Pittsburgh-plus.

[23] Fetter, op. cit., pp. 158–160.

[24] Fetter (op. cit., p. 162).

[25] When a new basing point was established it usually did not apply to all steel products but only to those specifically named. By 1934, under the NRA code, the maximum number of basing points for any one steel product was 11; there were still steel products sold on the basis of a single basing point; the average number of basing points for 32 different steel products was 4.6. See Federal Trade Commission, the Practices of the Steel Industry under the code (Washington, 1934), p. 17.

For a significant evaluation the number of basing points for particular products should be compared with the number of points of actual production, or the percentage of total capacity located at basing points (i. e., within the switching limits of the railroad terminal from which freight is calculated) should be stated. For example, in 1934, located at basing points were mills representing the following percentages of the total capacity of the country: for sheets, 6.3 percent; plates, 24.7 percent; hot-rolled strip, 11.8 percent; cold-rolled strip, 21.8 percent; tin plate, 10.6 percent; of any steel product the highest was for sheet and tin-plate bars, 33.5 percent (which means that 63.5 percent of the productive capacity in these bars was not located at basing points). See Daugherty, De Chazeau, and Stratton (op. cit., p. 710).

[26] Daugherty, De Chazeau, and Stratton (op. cit., p. 1080). See also Hearings before the TNEC, pt. 27, p. 14232 ff.

correct base price, the correct extras, and the correct freight charges from the applicable basing point to the point of destination. Correct freight charges in this context does not mean actually incurred charges or even charges that would be incurred if the product were actually shipped from the basing point; instead, it means the freight charges approved and published by the Iron and Steel Institute. A special committee of traffic managers had been set up to aid in the calculation and compilation of the freight rates to be used. This official freight tariff together with the book of extras was a safeguard against errors in the computation of the identical prices for all specifications and all destinations.[27]

Continued observance of the rules

When the NRA was declared unconstitutional in 1935, and the period of official self-government of industry was thus ended, the pricing practice of the steel industry continued in undisturbed and effective operation. The formal rules for the determination and maintenance of steel prices had to be abandoned or, more correctly, to be made informal, just as they had been before the NRA. The apparatus of combination, no longer legalized, had to go underground again. But the codification of the industry's pricing rules under the NRA was undoubtedly a most valuable aid to their general observance in the years after NRA's passing.[28]

During 1938 there was another slight increase in the number of basing points in the eastern United States. The new basing points were announced by Bethlehem Steel Corp., and the new base prices reduced the prices of some products in the territories concerned. I have learned from reliable quarters that this action was related to an expectation of an antitrust prosecution and a congressional investigation.[29]

All through the years—before and after the NRA days—the steel industry maintained the fiction that the basing-point system was perfectly legal as long as its observance was not based on agreement. The United States Steel Corp. had complied only with the first paragraph of the 1924 order of the Federal Trade Commission, forbidding Pittsburgh-plus pricing. It continually ignored the rest of the order, particularly the prohibition from pricing upon any other basing point than that where the products are manufactured or from which they are shipped. Yet, for 14 years after the issuance of the order, no action was taken either by the corporation to appeal the order or by the Commission to enforce it.

Court action and inaction

In March 1938, an amendment to the Federal Trade Commission Act provided that every order of the Commission should become final, and its violations punishable, unless a petition for review was filed in the circuit court of appeals. This new provision of the law forced the United States Steel Corp. to file, in May 1938, a petition for review, asking the court to set aside the 1924 order of the Federal Trade Commission.

Neither the corporation nor the Commission was anxious to press the decision of the case. The Commission had started its case against the cement industry and it appeared possible that a decision of this case would provide a basis for settlement of the steel case.[30] The case was therefore delayed by agreement of the parties. The beginning of World War II was another reason for agreeing to repeated extensions. Minor moves were made between 1943 and 1945. In 1946, apparently as a result of Supreme Court decisions in the basing-point cases of the glucose (corn derivatives) industry,[31] the United States Steel Corp. filed a petition for a clarification of the order under review, by which the issues in question were substantially narrowed.

The United States Steel Corp. had interpreted the decisions in the glucose cases as condemning as an unlawful discrimination any methods of pricing under which, as under the single basing-point system, "delivered prices are artificially * * * increased" by the inclusion of phantom freight charges.[32] According to this narrow interpretation, it would remain lawful to use a system under which delivered prices are reduced through freight absorption, such reductions being "made in good faith to meet competition." The corporation asked the court to modify the order of the Federal Trade Commission in such manner as to eliminate any prohibitions of the practice of freight absorption, that is, in the words of the corporation, the practice "of reducing delivered prices in good faith to meet competition."[33]

The answer to this came indirectly through the Supreme Court decision of the second Cement case in April 1948. The Court condemned systematic freight absorption along with systematic phantom freight charges under a collusive scheme as unlawful discrimination in violation of the Clayton Act and as unfair competition in violation of the Federal Trade Commission Act.

Discontinuance of the system, temporary or permanent

It was only the United States Steel Corp. and its steel-producing subsidiaries which were ordered by the Federal Trade Commission in 1924 to cease and desist from using the basing-point system of pricing. In 1947 the Commission issued a complaint against the American Iron and Steel Institute and 101 firms in the steel industry. The complaint charged the firms with having followed "a planned common and cooperative course of action in their * * * use of basing-point practices" and having engaged in "combination, agreements, and understandings" which have restrained competition and "constitute unfair methods of competition" in violation of the Federal Trade Commission Act.

In the middle of 1948, after the Supreme Court decision of the Cement case and a circuit court decision of the so-called Rigid Steel Conduit case,[34] both condemning the basing-point system as unlawful, the steel industry was expecting another cease-and-desist order of the Federal Trade Commission as well as a circuit court decision confirming the 1924 order.

The industry did not give up its legal battle against the Federal Trade Commission and continued to insist before the Commission as well as before the court that its basing-point system was lawful.[35] At the same time, however, it discontinued using the basing-point system and started selling steel on an f. o. b. mill basis, explaining this action by pointing to the fact that the system had been declared unlawful.

This decision of the steel industry apparently was part of a grand strategy for taking the case to Congress to obtain special legislation. The chief plan was to make the f. o. b. mill pricing system highly unpopular and influence press and public opinion against it. "It is * * * likely that steel customers after they see such a system will try to get legislation to make the multiple-basing-point system in steel legal," stated an editorial writer in the trade journal of the steel industry.[36] The steel customers were to be mobilized, first of all, by an increase in delivered prices which the steel producers blamed on the f. o. b. mill price system—alleged to be compulsory—while, in reality, most of it was due to a concealed price increase by the industry. A very simple trick was used for this purpose. Under the basing-point system, with freights absorbed on shipments to distant destinations, the average mill net price realized from all sales is always below the base price announced by a basing-point mill. If the transition from the basing-point to the uniform f. o. b. mill system of pricing were to be made without increasing the average mill net price, this average mill net price would have to become the uniform f. o. b. mill price. To set the f. o. b. mill price, instead, at the level of the former base price was to raise prices quite deliberately and was by no means a necessary consequence of the transition to the uniform f. o. b. mill price system. It was an attempt to deceive the consumers by telling them that freight absorption was unlawful and that delivered prices were therefore necessarily higher than before. No wonder that irate consumers wrote letters to editors, Congressmen, and Senators, complaining about the new system which made them pay prices higher than before and higher than competitors served by nearby mills were paying.

Price increases, price differences between competitors buying their steel from mills of different distance, threats to move plants to another location more favored by the new system, stories of a costly and wasteful relocation of entire industries, and similar news items are preparing public opinion for the campaign. If Congress is willing, the steel industry will return to the pricing system which, thanks to the slowness with which the mills of the courts are grinding, it had been using for almost half a century.

BASING-POINT PRICING IN CEMENT

As a case history in basing-point pricing, the cement industry is second only to the steel industry—second certainly in chronological sequence and also in its importance in the American economy. The influence of economic theorizing upon juridical judgment was probably more significant in the cement case than it was in steel.

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[27] Daugherty, De Chazeau, and Stratton, in the summary of their findings on the operations under the code, say: "In all its actions, it appears that the code authority directed its efforts solely to the perfection of its price controls" (op. cit., p. 1095), and "price stabilization, insofar as it may be attained through price control, was probably more adequately provided for in the code than at any other time in the history of steel industry" (op. cit., pp. 1079–80).

[28] Certain commercial resolutions of the board of directors of the Iron and Steel Institute were submitted by the Federal Trade Commission to the Temporary National Economic Committee as evidence that the rules of the NRA Code had been continued in effect and from time to time even supplemented and amended. Hearings before the TNEC, part 27 (Washington, 1941), pp. 14232 ff. and 14434–36.

[29] It will be understood that this statement cannot be documented.

[30] *U. S. Steel Corporation* v. *Federal Trade Commission*, in the U. S. Circuit Court of Appeals, brief for the respondent (Federal Trade Commission, July 1948), pp. 3–4.

[31] See below, p. 88.

[32] *U. S. Steel Corporation* v. *Federal Trade Commission*, in the Circuit Court of Appeals, Brief for Petitioners, pp. 32–33.

[33] Ibid., p. 86.

[34] *Triangle Conduit & Cable Co.* v. *Federal Trade Commission* (168 F. 2d 175 (1948)).

[35] In October 1948, United States Steel Corp. consented to the entry by the circuit court of appeals of a "decree of affirmance and enforcement" of the cease-and-desist order issued by the Federal Trade Commission in July 1924. The Corporation consented to the termination of this case, which was begun in April 1921, partly in view of the other proceedings still pending before the Federal Trade Commission.

[36] The Iron Age, July 1, 1948, p. 119.

Introduction of the system

There is testimony in the case to the effect that "up until the end of 1902" cement producers sold at f. o. b. mill prices.[37] It is a matter of record that the Association of American Portland Cement Manufacturers was formed in the latter part of 1902. It is known that in 1901 the United States Steel Corp. had acquired with the Illinois Steel Co. two cement plants.[38] And it is established that the cement department of this subsidiary of the United States Steel Corp. participated in the association meetings, discussing plans to "give stability to the market" and "where necessary to stop competition." [39] This combination of facts suggests a very simple explanation of the ways and means by which the basing-point system of pricing was introduced in the cement industry. It also reflects upon the credulity of learned men who later wrote scholarly discourses about the possibility of the system having emerged from the "natural evolution" of competitive forces.

Cartelization aided by concentration

There is nothing "natural" in developments of this type, unless one chooses to call cartelization—that is, combination in restraint of trade—a natural evolution, something that "just happens" or "grows" under the compulsion of impersonal forces.

As in other industries, cartelization in the cement industry was effectively aided by concentration. Agreements, understandings, and especially observance of understandings, are difficult to achieve in an industry which consists of a large number of independent small firms. Occasional or periodic disaffection of members can hardly be avoided in such industries. Mergers are the most reliable cure in these situations; the cure was applied to the cement industry until the degree of concentration was high enough to secure "leadership" and safe followership. The merger-born Universal Atlas Cement Co.—a subsidiary of the United States Steel Corp.—became the largest firm in the industry, and in 1937 the five largest firms controlled over 39 percent of the total capacity of the industry.[40] Some of the mergers had come about when larger companies acquired small firms that had been too independent in their price quotations and undercut the basing-point prices of the leaders.[41]

Besides mergers, a considerable degree of community of interest—common ownership—and interlocking directorates increased the "potential power of coordination" among the members of the industry, which "would substantially facilitate any common purpose or effort." [42]

Bogus patent license agreements

Although cement producers cannot claim the credit of having invented the basing-point system of pricing, they exhibited much originality in couching some of the early agreements in the form of license contracts under fictitious patent claims. The Association of Licensed Cement Manufacturers, active from 1907 to 1911, had articles of agreement which bound the members to observe certain agreed prices calculated by use of the basing-point system.[43]

These bogus patent claims were disallowed by the district court in 1910, and by the circuit court in 1912, and the Association was dissolved. Other trade associations of the cement industry, however, continued to promote effectively the cooperative and concerted actions on prices. The Association of American Portland Cement Manufacturers, whose name was shortened (about 1915) to Portland Cement Association, was always busily concerned with the establishment of uniform and noncompetitive sales and marketing policies.[44] Its work was paralleled by regional trade associations, of which the Cement Manufacturers' Protective Association, representing the cement producers in the northeastern United States from 1916 to 1924, was most prominent as the principal defendant in the first cement case, one of the earlier court cases concerned with the basing-point system of pricing.

The first cement case

In 1921 and 1923, the Justice Department obtained judgments against two price-fixing trade associations in other industries. The Supreme Court found that the activities of the Hardwood Lumber Association [45] and of the Linseed Oil Association [46] constituted unlawful restraints of trade. The former was a basing-point price cartel, the latter a zone-price cartel. Both were so-called open-price associations, in which members cooperated by announcing the prices they would quote and maintain until after further notice; by reporting sales, sales prices, and the way they were calculated; and by calculating them consistently through adding fixed freight rates or fixed zone differentials, respectively, to the fixed base prices.[47] The Supreme Court stated that the "open competition plan" was "essentially, simply an expansion of the gentlemen's agreement of former days, skillfully devised to evade the law." [48] On the basis of these opinions a District Court in 1923 decided that the Cement Manufacturers' Protective Association was also an unlawful combination in restraint of trade.

In its appeal to the Supreme Court, the Cement Association attempted to prove that the uniformity of delivered prices was merely the result of perfect competition, that the method of calculating delivered prices had been an established trade practice before the organization of the trade association, and that all freight rates furnished by the association to its members were the actual rates between actual points of shipment and delivery.[49] The Government failed to correct this garbled presentation of facts, did not use any economists to testify on the economic issues of the case, and did not submit either any direct evidence of collusive actions of the members of the association or any arguments to show that the observance of the basing-point system indicated the presence of concerted action.

The Supreme Court was persuaded by the garbled facts and by the weight of the economic argument presented by the defense. One economist, appearing as witness for the trade association,[50] had testified about the classical theory of the uniform market price and extended the theory (without opposition) to the basing-point system of identical delivered prices. The opinion of the Supreme Court then stated that "a great volume of testimony was also given by distinguished economists in support of the thesis that in the case of a standardized product sold wholesale to fully informed professional buyers, as were the dealers in cement, uniformity of price will inevitably result from active, free, and unrestrained competition." [51] The Court concluded that the use of basing-point systems was "the natural result of the development of the business without certain defined geographical areas. * * * The basing point is an essential element in making a delivered price, since selling by any particular manufacturer at the lowest of the delivered prices computed from several basing points is a necessary procedure in competing in the sale of cement." [52] The Court held that the activities of the Cement Association had been legal, inasmuch as the Government had not charged that there had been an agreement to utilize the basing-point system as a means of fixing prices. The Court said: "But here the Government does not rely upon agreement or understanding, and this record wholly fails to establish, either directly or by inference, any concerted action other than that involved in the gathering and dissemination of pertinent information with respect to the sale and distribution of cement." [53]

Thus, in 1925, the multiple-basing-point system in the cement industry was in effect sanctioned by the Supreme Court. That the decision rested largely on unrefuted misrepresentations did not change the fact that it had far-reaching, perhaps irreparable consequences upon industrial price making in the American economy.[54]

Code of ethics in cement

In 1929 the Cement Institute, another collective instrument of the cement industry, became active. Its members agreed on a code of ethics "for the government of the members." One of the articles stated that it was among the code's principles "to approve and encourage sound and fair trade practices in business and to condemn and prevent bad and unfair practices. To that end competition should be open and constructive, not secret and destructive." [55] Price competition

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[37] United States before the Federal Trade Commission in the matter of the Cement Institute et al., Docket No. 3167; brief in support of the complaint, 1941, pt. II, p. 82.

[38] In 1906 the Universal Portland Cement Co. was incorporated as a separate subsidiary of the United States Steel Corp. The latter expanded its holdings in the cement industry substantially in 1929, when it acquired also the Atlas Portland Cement Co., and merged it, in 1930, with Universal. (See Fetter, op. cit., p. 239.)

[39] United States before the Federal Trade Commission in the matter of the Cement Institute et al., Docket No. 3167; brief in support of the complaint, pt. II, p. 14.

[40] Ibid., p. 2.

[41] Burns, op. cit., p. 356.

[42] United States before the Federal Trade Commission in the matter of the Cement Institute et al.; brief in support of the complaint, pt. II, p. 3.

[43] Ibid., p. 8. It was only many years later that the conclusion of cartel arrangements in the form of patent license agreements became fashionable.

[44] Ibid., p. 7.

[45] *Hardwood Lumber Association* v. *United States* (257 U. S. 377 (1921)).

[46] *United States* v. *American Linseed Oil Co. et al.* (262 U. S. 371 (1923)).

[47] Fetter, op. cit., pp. 221–30.

[48] *Hardwood Lumber Association* v. *United States* (257 U. S. 377, 411 (1921)).

[49] Fetter, op. cit., pp. 237–38.

[50] Prof. Thomas S. Adams of Yale University.

[51] *Cement Manufacturers' Protective Association* v. *United States* (268 U. S. 588, 605, 606 (1925)). The plural number in the reference to the distinguished economists was one of the obvious errors of fact that appeared in the Court opinion. I suspect that Justice Stone, who delivered the Court's opinion, mistook the quotation from 17 economic authorities on price theory which Adams gave in support of his thesis for testimony of these distinguished economists.

[52] 268 U. S. 588, 598.

[53] 268 U. S. 588, 606.

[54] Trade Associations mushroomed in the country. The Federal Trade Commission published in 1929 a report on Open Price Associations, covering over 1,100 associations. As Professor Fetter points out, the "dissemination of information" by trade associations in conjunction with a pricing scheme such as the basing-point system engenders concerted action of competitors. Op. cit., p. 242.

[55] The Cement Institute Code of Ethics. Federal Trade Commission Ex. 138–N–V. Docket No. 3167. Reproduced as appendix B of the brief on behalf of the Cement Institute.

was obviously condemned as "bad and unfair," while the basing-point system of quoting identical delivered prices was the "sound and fair" trade practices "approved and encouraged" by the members of the institute. Practically all producers of cement in the United States belonged to the institute; to be exact, the members possessed 98 percent of the total productive capacity in the country.

Among the significant provisions of the code of ethics were condemnations of any practices by which sellers might enable customers to circumvent the pricing scheme of the basing-point system. No seller must permit truck deliveries, since this might reduce the destination cost to the buyer. No seller must permit diversion of carload shipments of cement to destinations for which the delivered price should be higher than at the destination first ordered.

The Cement Institute maintained a freight rate service, publishing and distributing freight rate books for the use of its members. Officially, in the defense of the second cement case, it was contended that the books were merely designed to give members accurate information about freight costs. But, first of all, the members could rarely learn from the books their actual freight costs inasmuch as the listed freight charges were not from the points of shipment but from the established basing points to the destination points for which the particular basing point was to be applied. And secondly, the listed freight charges were not always accurate even between basing points and destinations, but had to be used by members even if they knew that certain freight rates had been changed. The real objective of the books was to enable all competitors to use the identical rates in calculating the delivered prices which they were supposed to quote. This was especially conspicuous in instances where cheaper means of transportation, such as water transportation, were available, but nevertheless only the railroad rates listed in the book were to be used for making price quotations. For sales to the Government, which paid to the railroads reduced land-grant rates that could not be reliably figured out in advance, the rules of the institute provided for the use of arbitrary (though approximate) rates in the calculation of the so-called destination cost of cement. These rates were not only not accurate but often had the result that parts of the savings due to the cheaper land-grant rates were transferred from the Government to the cement producers.[56] This refined treatment of the freight factor to be used in bidding for Government contracts was developed only in the latter part of the NRA period.

The NRA code

When the NRA was established in 1933, the trustees of the Cement Institute became the Code Authority of the cement industry. In the 2 preceding years there had been occasional breaches of the pricing rules and of the Code of Ethics by order-hungry producers under the pressure of the depression. The Code of Fair Competition now took over where the Code of Ethics had left off, but the enforcement power of the Government was obviously stronger than that of an informal cartel that had to rely on ethics and moral suasion (i. e., intimidation) backed by the financial strength of the leaders.

Many of the earlier practices of the industry were perfected under the NRA code. For example, an obligatory waiting period of 5 days before any announced changes in base prices would become effective was now reinforced by sanctions. And an elaborate system of filing and exchanging the delivered price quotations of the firms was developed. During the code period, cement producers "filed and exchanged among themselves information as to the correct delivered price quotations for some 60,000 destinations. The basing-point system works efficiently enough without this refinement of cooperative exchange of the final figure in the basing-point formula." [57] But this practice of mutually checking the results of the "independent" price calculations was obviously designed to safeguard against mistakes and make sure that there could be no exceptions to the identity of the prices quoted by the competing firms.

Other significant NRA code provisions were designed to prevent the making of price quotations if the point of delivery was not definitely specified, to prevent diversion of shipments from one destination to another, and to prevent any portion of cement delivered for any particular construction job from being switched to another. When too much cement had been ordered for a certain job, the excess order had to be canceled; and buyers had to agree in advance that they would pay any difference in price if they were to use any unused portions of a shipment at a different place.[58]

The compendium

The NRA passed away in May 1935 but the Code of Fair Competition was continued on a voluntary basis. In December 1935 the Cement Institute published a so-called Compendium of Established Terms and Marketing Methods, codifying the established rules and trade practices of the industry. They were largely the same as they had been in the Code of Ethics and in the Code of Fair Competition. In other words, the multiple basing-point system continued in force, all delivered prices to be calculated from the base price set for the governing basing point and the freight factor set for the destination point. Thus, price competition continued to be absent in the calculation of delivered prices. And that price competition was absent also in the determination of base prices is well illustrated by the fact that base prices remained rigid from January 1933 to June 1938.[59]

As in the previous codes, the cement producers were also barred from competing through different ways of wrapping and shipping their product or through making different charges or allowances for cement bags. (It was against the rules of the Compendium, for example, to grant allowances for cloth sacks when they were not returned in good order.) And as before—indeed, since 1904—quality competition was excluded through the adoption of standardized minimum specifications and the practice of not accepting specifications calling for better qualities.[60]

The number of basing points remained fairly stable. During 1921–31 there were 69 basing points in the United States; at some of the basing points several mills were located. In 1930, of 166 mills in operation 80 were non-basing-point mills.[61] In 1937, there were 79 basing-point mills and 86 non-basing-point mills; there were eight additional basing points, at which no mills were located.[62]

It will be noted that the number of basing points for cement was much greater than for steel. This did not indicate a higher degree of competition in cement, but was merely the consequence of the fact that cement weighs so much more than steel in relation to its value. The high weight per dollar, or the low value per ton, makes it impossible to ship cement over as long distances as steel. This necessitates a larger number of basing points. Incidentally, while the multiple-basing-point system was used for cement shipments in most of the United States, a zone-price system was practiced in certain parts of California.

The second cement case

In 1937, the Federal Trade Commission issued a complaint against the Cement Institute and 74 cement companies. After years of proceedings, which included much testimony as to the facts as well as to the economic issues involved—this time a number of academic economists were called as expert witnesses [63]—the Commission in July 1943, issued a cease-and-desist order.

The Cement Institute and the companies appealed (i. e., "petitioned for review") to the circuit court of appeals, which in 1946 decreed to "set aside" the cease-and-desist order of the Federal Trade Commission.[64] The Commission appealed to the Supreme Court, which in April 1948, reversed the judgment of the circuit court and sustained the Commission's order.[65]

There had been two counts in the complaint of the Commission. The first charged unfair competition in violation of the Federal Trade Commission Act; the other, systematic price discrimination injurious to competition in violation of the Clayton Act. The unfair competition in this case consisted in conduct which restrained competition in the sale of cement through combinations, understandings, and agreements to employ a muliple basing-point system of pricing. In the words of the Supreme Court, "conduct tending to restrain trade is an unfair method of competition even though the selfsame conduct may also violate the Sherman Act." [66] The price discrimination charged in the second count consisted in the varying mill net prices received from different sales through the collection of freight differentials bearing "no relation to the actual cost of delivery," with the general effect that competition was substantially lessened. On both counts the Commission was sustained.

The Court contrasted the old cement case, decided in 1925, with the present one. Although the trade practices in question may have been the same, the issues were different. In the former case the Government had neither charged nor proved agreements or collusion; now the Commission charged and proved "the existence of a combination among respondents to employ the basing-point system for the purpose of selling at identical prices." [67] Moreover, under the Federal Trade Commission Act a practice may constitute unfair competition either because it "restrains free competition or is an incipient menace to it." Apart from the

[56] United States before Federal Trade Commission in the Matter of the Cement Institute et al. Brief in support of the complaint, pt. II, pp. 140–156.

[57] *Aetna Portland Cement Company* v. *Federal Trade Commission*, in the circuit court of appeals, brief for the respondent (Federal Trade Commission, 1946), p. 219.

[58] United States before the Federal Trade Commission, in the Matter of the Cement Institute, Docket No. 3167, findings as to the facts, order of July 17, 1943, p. 80.

[59] Ibid., p. 98.

[60] United States before the Federal Trade Commission, in the Matter of the Cement Institute et al. Docket No. 3167. Brief in support of the complaint, pt. II, pp. 414–22.

[61] Burns, op. cit., 319.

[62] United States before the Federal Trade Commission, in the Matter of the Cement Institute et al. Docket No. 3167. Brief in support of the complaint, pt. II, p. 36.

[63] See below.

[64] *Aetna Portland Cement Company* v. *Federal Trade Commission* (157 F. 2d 533 (1946)).

[65] *Federal Trade Commission* v. *The Cement Institute* (333 U. S. 683 (1948), 68 S. Ct. 793).

[66] 333 U. S. 683 (1948), 68 S. Ct. 793, 800. In other words, the conduct may at the some time violate the Federal Trade Commission Act and the Sherman Act.

[67] 333 U. S. 683 (1948), 68 S. Ct. 793, 807.

sufficiency of the evidence of the existence of understandings to reduce competition, "it is enough to warrant a finding of a 'combination' within the meaning of the Sherman Act if there is evidence that persons, with knowledge that concerted action was contemplated and invited, give adherence to and then participate in a scheme." [68]

The Court rejected the contention that price discrimination inherent in systematic freight absorptions is lawful as a price reduction "made in good faith to meet an equally low price of a competitor." This provision of section 2 (b) of the Clayton Act, as amended, bears, according to the Court, only on "individual competitive situations, rather than upon a general system of competition." The discriminations under the pricing system of the cement industry "substantially lessened competition" and "were not made in good faith to meet a competitor's price." [69]

Strategic retreat

On July 1, 1948, the Universal Atlas Cement Co. made the following announcement:

"Universal Atlas Cement Co. is abandoning on July 7 next the method of selling cement which it has used continuously for more than 40 years; namely, sales in the markets served by it at delivered prices as low as those quoted by any competitor. This step is made necessary by the recent decision of the United States Supreme Court sustaining a cease-and-desist order of the Federal Trade Commission against Universal Atlas and 73 other members of the cement industry. The order becomes effective on July 9, 1948. Accordingly, on July 7, Universal Atlas will adopt the method of selling cement at prices f. o. b. the shipping point, or, if the customer so desires, at delivered prices which reflect full transportation charges from shipping point to destination." [70]

Cement producers used the transition from basing-point pricing to f. o. b. mill pricing as an excuse for raising prices. This was possible because at the existing prices demand had been in excess of the existing producing capacity of the industry. Producers had, largely for political reasons, failed to raise prices to a competitive level, preferring to allocate their output arbitrarily through longer delivery terms. The forced abandonment of the basing-point system was then a welcome pretext for an increase in prices by making the previous base prices, instead of the average mill nets, into f. o. b. mill prices, thus suddenly shifting the previously absorbed freight charges to the consumers. In this respect, as in many others, the cement industry followed the example of the steel industry. This strategic way of complying with the Court decision was apparently designed not only to improve the sales receipts of the industry during the boom period, but also to incite customers to exert pressure upon Congress in favor of special legislation legalizing the basing-point system—so that it could be reintroduced in time to keep prices from receding when demand should shrink in a future period of stagnation.

BASING-POINT PRICING IN CORN PRODUCTS

Many of the industries in the United States which have used the basing-point system of pricing are more important than the corn products industry; more important in their contribution to the national product as well as in their strategic position in the economy. Nevertheless, this industry deserves a place in an historical account of the basing-point system. Its chief claim to fame is the valor and determination with which it has kept up its brave fight against the law of the land. It fought one bout after another against the United States; no sooner had it lost one than it renewed its persistent efforts to beat the antitrust laws. As some members of the industry put it, they "have been investigated and harassed by the Government" for many years, and they exclaim angrily: "There should be some end to litigation." [71]

Products of the industry

While few people know what corn products or corn derivatives really are, we may venture the guess that at least one of the products, in processed form, means more to every child than any other commodity sold under the basing-point system: There is hardly any sort of candy made in the United States that does not contain corn sirup as the chief sweetening ingredient. In addition, corn sirup is an important ingredient in jellies and jams.

The products of the industry are generally divided in the following categories: Corn sirups (or glucose), corn sugars, dextrines, starches, and corn oils.[72] How numerous and varied the uses of these products are is told by some of their producers in a legal document in a form more suitable for the information of a wider public than the tribunal of the Government to which it was addressed. They state in a document filed with the Federal Trade Commission [73] that—

"We find:

"Corn sirup in your baby's formula, in your canned fruit, and on your waffles.

"Dextrose in your bread, in your canned peaches, in your ice cream.

"Corn starch in your laundry, in your desserts, in your books.

"Corn oil on your salads, in your soap, in your shortbread.

"Corn feeds for dairy and poultry farms.

"Steepwater in the manufacture of penicillin and bakers' yeast.

"Dextrine in adhesives and plastics."

In the beginning was merger

Back in 1890 there was price competition in the industry. There were 23 different producers of starch and 7 of glucose. The merger movement then started and the number of independent competitors declined rapidly. The National Starch Manufacturing Co., a holding company, acquired control of almost 80 percent of the starch business, and the Glucose Sugar Refining Co. achieved a similar combination in the glucose industry. Both these companies as well as several still independent producers in the two industries were combined in 1902 in the Corn Products Co. Its successor, the Corn Products Refining Co., continued the mergers and succeeded in doing a perfect job in the glucose business; in 1906 it controlled 100 percent of it.[74]

New firms, however, entered the industry. When the Corn Products Refining Co. acquired one of the new companies, the Government in 1913 brought a suit under the Sherman Act. It obtained, in 1915, an interlocutory decree effecting a dissolution of the newest combination. In the final decree, in 1919, the Corn Products Refining Co. was declared to be a combination in restraint of trade and directed to dispose of certain of its properties.[75] The control it had achieved was nevertheless sufficient to allow it to dominate the markets for most of its products.[76]

Then came trade associations

When further combination through merger had been stopped by the Government, combination through agreements and trade associations was resorted to. The first trade association which the corn products producers organized was the Corn Derivatives Institute. After many years of fruitful activity in promoting the members' mutual interests in the sale of corn products, the institute and its members found themselves prosecuted for conspiracy to restrain trade and fix prices. In 1932, a consent decree dissolved the Corn Derivatives Institute and enjoined the members from continuing the combination and conspiracy.

Four new trade associations took the place of the dissolved one: the Corn Refiners Statistical Bureau, the Starch Manufacturers' Association, the Corn Oil Producers' Association, and the Syrup Mixers' Society. These associations maintained common headquarters and a common secretariat, and the membership lists were largely the same.

The role of the trade associations in the cooperative activities of the industry was probably not very different from that of other trade associations in industries producing standardized products. In this instance the Federal Trade Commission charged that the members met together at frequent intervals to discuss market conditions and prices; distributed daily sales reports and frequent reports on production, shipments, inventories, and current and future price quotations; agreed on credit terms, trade discounts, extra charges, allowances, and rules for booking advance orders; and maintained the common freight-rate service so useful in the calculation of identical delivered prices under the basing-point system.[77]

Single basing-point pricing

The basing-point system was employed only for the pricing of bulk goods, while packaged corn derivatives were sold largely under a zone-price system. It appears that for each of the bulk goods only a single basing point was in use, mostly Chicago. For example, refined corn oil (in bulk, not packaged) was quoted uniformly by all producers at delivered prices which were calculated by adding to a fixed quotation f. o. b. Chicago the rail freight from Chicago to the destination. Thus a producer not located at Chicago either absorbed some freight or collected "phantom freight," according as the freight from the actual point of shipment to the destination was higher or lower, respectively, than the freight from Chicago.

In order to prevent deviations from the correct delivered prices, producers, and distributors refused to quote or sell corn products at f. o. b. mill prices. They also refused to permit deliveries to buyers' trucks or to calculate delivered prices by adding truck or

[68] 333 U. S. 683 (1948), 68 S. Ct. 793, 811.

[69] 333 U. S. 683 (1948), 68 S. Ct. 793, 815.

[70] The United States Steel Quarterly (U. S. Steel Corp.), August 1948, p. 7.

[71] Motion to dismiss complaint, in the matter of Corn Products Refining Co. et al., before the Federal Trade Commission, Docket No. 5502, September 1948, pp. 4 and 6.

[72] From an enumeration by the Federal Trade Commission, contained in Docket No. 5502, we may take the following list of corn derivatives: Glucose, corn sirup unrefined, pearl starch, gloss starch, powdered starch, thin boiling starch, thick boiling starch, molding starch, cube starch, grits, refined grits, dextrine, dextrose, corn sugar, refined corn oil, unrefined corn oil, soapstock, refined corn sirup, mixed corn sirup, maple-flavored corn sirup. The following byproducts are listed by the Commission in Docket No. 3800: Gluten feed, corn oil, corn oil cake, and corn oil meal.

[73] Motion to dismiss complaint, In the Matter of Corn Products Refining Co. et al., before the Federal Trade Commission, Docket No. 5502, September 1948, p. 9.

[74] United States before Federal Trade Commission, in the matter of Corn Products Refining Co. et al., Docket No. 5502. Complaint, June 20, 1947.

[75] Ibid.

[76] In November 1922 the Federal Trade Commission issued a complaint, charging that Corn Products Refining Co. was unduly hindering competition in the table-sirup industry by dominating the market for glucose and table sirup, arbitrarily fixing prices, and pursuing practices having potentially the effect of ruining and eliminating its competitors. See Federal Trade Commission, Docket No. 927. This complaint was ordered dismissed on May 9, 1925.

[77] Federal Trade Commission, complaint, Docket No. 5502.

water-carrier rates that would result in lower quotations.[78]

Combined basing point and zone pricing

For the distribution of packaged corn products—a business of which Corn Products Refining Co., reportedly did 90 percent or more of the total—the country was divided into eight territories. For seven of these territories uniform zone prices, with slight differentials between them, were fixed. In one zone the single basing-point system was applied even to packaged products.

No official reason was given for the use of different pricing methods for bulk and packaged goods. But the explanation seems to be fairly simple. Packaged goods are destined largely for retail distribution through stores, and producers usually find it to their advantage to avoid competition among retailers and to insist on resale-price maintenance (which is legal for branded articles). Resale-price maintenance can be practiced only where prices are uniform throughout a larger territory, instead of varying from place to place according to their distance from an arbitrary basing point. Thus the use of zone prices seems preferable for the packaged business.

That a basing-point system was used for bulk deliveries and a zone-price system for most of the business in packaged goods is not of much relevance to the main points at issue: that the pricing systems involve a "identical delivered prices" regardless of the location of the mill from common and cooperative course of action enabling all competitors to which the products are shipped; and that these price identities in the face of freight differences involve price discrimination in favor of customers who are far away, and against customers who are nearby the producing mill, a discrimination inherent in this scheme to reduce competition.

Other forms of discrimination

The belief of the corn products industry in the advantages of discriminatory pricing seems to be strong. For not only geographic discrimination was commonly practiced in this industry but also discrimination in favor of large buyers. The latter type of discrimination was carried out by two methods. For deliveries in large containers, practicable only for large users of the products, price differentials were applied which were far in excess of the cost differentials. That is to say, buyers who took delivery in smaller containers had to pay prices which exceeded those for delivery in larger containers by amounts not commensurate with any cost differentials attributable to the differences in the size of the shipment. Another way of favoring large customers was through a discriminatory booking of advance orders in anticipation of price increases. Under this practice large firms went on paying lower prices long after small firms had to pay increased prices for corn derivatives.

All these forms of price discrimination were systematically practiced by all sellers in the industry. They were not due to occasional concessions made under pressure or under unusual circumstances; they were customary trade practices regularly observed by the industry.[79]

[78] Ibid.

[79] In addition to the discrimination through "container differentials" and "order entry differentials," the Corn Products Refining Co. practiced a third form of discrimination in favor of large customers: service discrimination. It spent substantial sums of money advertising the products of its biggest customers. See United States before the Federal Trade Commission in the matter of Corn Products Refining Co., brief of counsel for the Federal Trade Commission, July 30, 1941, Docket No. 3633.

Government action against the cartel

After preliminary investigations of their selling practices, the Federal Trade Commission in October 1938, issued a complaint against Corn Products Refining Co. and its sales subsidiary. This was followed in June 1939, by complaints against several other firms in the corn products industry. Hearings were held and, beginning in September 1940, a series of cease-and-desist orders was issued, ordering the firms to cease and desist from practicing price discrimination in the forms described.[80]

Two of the firms took the case to the circuit court of appeals. In a decision handed down in July 1944, the petition of Corn Product Refining Co. was denied, its pricing practices condemned as unlawful, and the order of the Federal Trade Commission confirmed.[81] The other petitioner, however, fared better. The A. E. Staley Manufacturing Co. had presented a defense not considered in the other case. Impressed by the fact that Staley "merely followed the system and practices which had been established by their competitors," the court held that the discrimination practiced by Staley was a case permitted by the excepting provisions of Section 2 (b) of the Clayton Act, as amended, of a "lower price * * * made in good faith to meet an equally low price of a competitor." The Commission's cease-and-desist order was therefore set aside.[82]

Supreme Court decisions condemn the system

Both cases were taken to the Supreme Court; Corn Products Refining Co. appealed the one case, the Federal Trade Commission the other. In April 1945, the Supreme Court decided both cases in favor of the Federal Trade Commission.

In the Corn Products case the Supreme Court sided with the circuit court in condemning all discriminatory practices: those inherent in the basing-point system as well as those involved in the advance booking of orders, volume discounts, and advertising allowances. The Court held that the price differentials under the basing-point system bear no relation to the differences in the actual cost of delivery and, therefore, are "systematic discriminations" prohibited by paragraph 2 (a) of the Clayton Act whenever they have the effect of reducing competition substantially.[83] In the Staley case the Court held that the excepting provision in paragraph 2 (b) "does not concern itself with pricing systems," but only with "individual competitive situations." Thus, the judgment of the circuit court was reversed and the Commission's order sustained.[84]

[80] The following orders were issued: Anheuser-Busch, Inc., September 25, 1940, Docket No. 3798; Penick and Ford, Ltd., November 29, 1940, Docket No. 3802; Union Starch & Refining Co., December 11, 1940, Docket No. 3804; American Maize-Products Co., March 15, 1941, Docket No. 3805; The Hubinger Co., April 3, 1941, Docket No. 3801; Clinton Co. and Clinton Sales Co., March 17, 1942, Docket No. 3800; Corn Products Refining Co. and Corn Products Sales Co., Inc., March 16, 1942, Docket No. 3633; A. E. Staley Manufacturing Co. and The Staley Sales Corp., June 10, 1942, Docket No. 3803.

[81] *Corn Products Refining Co.* v. *Federal Trade Commission* (144 F. 2d 211, 215 (1941)). On the price discrimination inherent in the basing-point system the judgment had this to say: "Systematic price discrimination is irreconcilable with free, active competition. It is not the kind of price competition found in a truly competitive market."

[82] *A. E. Staley Manufacturing Co.* v. *Federal Trade Commission* (144 F. 2d 221 (1944)).

[83] *Corn Products Refining Co.* v. *Federal Trade Commission* (324 U. S. 726 (1945)).

[84] *Federal Trade Commission* v. *A. E. Staley Manufacturing Co.* (324 U. S. 746 (1945)).

Another round

Even this did not finish the resistance of the dauntless industry. It is true, the four trade associations which had performed services helpful in insuring observance of the basing-point rules were dissolved in September 1946. But a basing-point system, once it is well established in industry, can do without an administrative cartel organ and continue indefinitely in effective operation. It is true, the individual firms had filed reports of compliance with the cease-and-desist orders of the Federal Trade Commission, promising to abandon the system of basing their delivered prices upon a designated basing point. But they continued to quote delivered prices designed (as they put it) to meet the price of a competitor, which probably meant in practice that they changed to a multiple or plenary basing-point system of quoting identical delivered prices. The chief difference in the operation of the basing-point system by the members of the industry before and after the Supreme Court decisions appears to lie in the way in which they later explained their pricing method. Instead of following the pricing system of their competitors—which had been declared unlawful—they now quoted a lower price to meet an equally low price of a competitor.[85]

The Federal Trade Commission found it necessary in June 1947, to proceed with a new complaint against 19 firms, producers, and distributors in the corn products industry, including the two which had lost their fight before the Supreme Court. The Commission's complaint charged, among other things, that the industry was still quoting identical delivered prices computed under the basing-point system. The respondents denied the charges, admitting only the discriminatory price reductions to meet competition. In a motion to dismiss the complaint, eight of the respondent firms argued that the Commission was trying to impose a policy being questioned by Congress.[86] Thus, the effort of the Commission to enforce the law, as enacted by Congress in 1914 and explicitly confirmed by the Supreme Court in a series of decisions, was called an imposition of a policy questioned by Congress. The reference was to the inquiry by the Senate Subcommittee on Trade Policies, which was preparing for hearings on a possible need for changing the law.

Mr. LONG. Mr. President, I should like to refer briefly to one other factor. The basing-point pricing system has always used rail transportation. There have been several reasons for that. One reason is found in the interlocking directorships and connections between the steel industry, cement industry, and the railroads. Another reason has been that in order to get together on a monopolistic pricing program, which involves delivered prices, the major industries of steel and cement needed to be able to determine at all times exactly what the freight rate would be, so that they could arrive at identical delivered prices. Because published rates were not at all times available on water transportation, in order to be able to arrive at the same delivered price these industries chose to use rail transportation. When an industry found that an order had been accepted in which rail freight was involved, but

[85] Answer of Respondents Corn Product Refining Co. and Corn Product Sales Co. to the complaint of the Federal Trade Commission, Docket No. 5502, September 1947.

[86] Motion to Dismiss complaint, Docket No. 5502, September 20, 1948.

where, fortunately, it was possible to ship by water, the industry obtained substantial saving by shipping by water. However, it did not give the consumer the advantage of the saving. Rather the seller pocketed a substantial additional profit. As long as the basing-point pricing system has been used in major industries it held back development of our waterways and water-borne commerce. I should like briefly to refer to what has been happening in the inland navigation business since the basing-point decision.

Mr. President, I have here a copy of Iron Age, the national metal-working weekly. I turn to page 91 in the issue of August 25, 1949, and on that page, under the heading "Uses barges 50 percent more," speaking of the producers of steel, the article reads:

> One producer is reported to have increased his river shipments 50 percent over 1947. The largest single shipment of steel products ever moved over the Tennessee River—4,000 tons of 22-inch pipe from Pittsburgh—passed through the port of Chattanooga last July 29 en route to Harriman, Tenn., for use on a natural-gas pipe-line job. The 7-barge shipment was the first of some 40 to 50 barge loads scheduled to make the 1,497-mile trip.
>
> At a recent Chattanooga Chamber of Commerce dinner, W. J. Sheehan, TVA transportation economist, stated that over 8,000 tons of iron and steel products had moved over the Tennessee River in the last several months, as compared to 1,000 tons for all of 1948.

Think of that, Mr. President, eight times as much steel moving by water in that area in a few months as had moved in the whole previous year. I continue to quote:

> He added that such shipments this year are expected to reach about 50,000 tons—

In other words, about 50 times as much water transportation—

> and result in transportation-cost savings of about $500,000 over rail-freight rates.

Mr. President, there is a brief table here comparing the rail rate with the barge rate between Pittsburgh, Chicago, and various other ports on the waterways, and I ask unanimous consent that the table may be included in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Comparative freight rate

[Per net ton]

From—	To—	Rail	Barge
Pittsburgh	Memphis	$18.26	$3.29
Do	New Orleans	20.68	5.51
Do	Houston	20.92	7.42
Do	Chattanooga	17.82	5.30
Chicago	Memphis	13.86	2.65
Do	New Orleans	17.82	4.45
Do	Houston	17.66	6.04
Do	Chattanooga	17.60	5.30

Mr. LONG. Mr. President, defeat of S. 1008 will help the consumer to have the benefit of all the great savings of water transportation which he has been so long denied.

Mr. President, I yield the floor.

GOING ON THE OFFENSIVE IN THE COLD WAR

Mr. FLANDERS. Mr. President, it is my purpose on this floor approximately once a week to give a series of observations and suggestions for going on the offensive in the cold war and winning it. I realize that we are at this moment very much disturbed by serious charges which have been made against our State Department. There is danger that the necessary consideration of these charges may divert us from our main task of defending western civilization. We may be sure that it will not divert the Kremlin from attacking it. Realizing this, I am continuing today the program which I have laid out for myself, which program will be kept completely free of personal or political attacks on the Secretary of State.

I recognize, however, that our State Department itself, and our President, must cooperate if unjustified, personal, and purely political attacks are to be fended off. Self-help is as important here as it is in the Marshall plan. In this respect I join myself wholeheartedly with the senior Senator from New Jersey [Mr. SMITH] in the address which he gave on this floor last Monday afternoon. It is in the interest of the country, it is in the interest of the administration, and it is in the interest of public relations between the State Department and the citizens of this country, that there be no grounds given for the suspicion that the State Department is being protected against a thorough examination of the charges being made against it. That suspicion can be removed only if the committee itself, in strict confidence and secrecy, is given access to all the available information on anyone against whom serious charges are made. If the committee then is not satisfied that the charges are worthy of investigation, no harm is done to the individual, and the important confidences of the FBI are not violated. If the information is such that public investigation seems to be necessary, it can be carried on in such ways that the confidential information is used as a lead but not publicly divulged. Only thus can the good name of the State Department be clearly maintained. If the committee does not feel it has the power to proceed in this manner, it should come back to the Senate and ask for it.

I strongly hope that the President and his advisers will see the danger that lies in hiding behind this curtain of secrecy when it is possible to lift that curtain enough and in such ways as to effect a thorough investigation while removing all danger of abuse of confidence. The history of the Hiss case is clear in the public memory, and will not be forgotten. The administration will be well advised not to forget it either. Otherwise it will be very difficult to take the State Department out of politics.

Mr. President, let us now return to the discussion of our foreign policy on the Senate floor to which this address is a contribution. The letter of the Senator from Michigan [Mr. VANDENBERG] to Paul Hoffman contained the proposal that an unpartisan body should be formed to examine and develop our foreign policy. That proposal has met with general approval. It is not to be expected that it would be put into operation in the few days that have elapsed since it was proposed. Meanwhile the purposes of such a group can be furthered by general discussion of our foreign policy on the floor of the Senate and it is for that purpose that I am pursuing this afternoon certain lines of thought which have, I believe, great practical value.

Let us first take a global view of this problem of the cold war. We find the world divided into three groups of approximately the same population. On the outside there are about 700,000,000 people who are free, for the present at least, of danger from Communist infiltration and capture. The backbone of this group consists of North and South America and of western Europe.

There is another 700,000,000 who are the immediate objective of the Politburo's program of propaganda, infiltration, and political overthrow. While this continuously has to be guarded against in cases of certain nations of western Europe, the heavy assault on human freedom is being made in Asia. The freedoms of Indochina, Siam, Burma, India, Pakistan, and Malaysia are being assaulted. The attack moves on day and night, week in and week out, month in and month out, year after year. There is no let-up. There is no truce.

The third 700,000,000 is to be found within the iron curtain stretching all the way from Czechoslovakia to China. This group again can be divided into three parts composed in the exterior zone of the captured and enslaved satellites. Then within that circle comes the Russian people themselves and as a center of these concentric circles there is the Politburo, entrenched within the Kremlin and drawing its power and its support from its countrymen and from the enslaved nations which surround it.

Each of these sectors presents problems of its own which we must analyze, face, and meet. Today I wish to make a few suggestions, not entirely my own, looking toward taking the offensive in that part of the world's population which is at the moment the objective of the Kremlin's campaign of subversion and subjection. The suggestions therefore relate to Indochina, Siam, Burma, India, Pakistan, and Malaysia.

I said, Mr. President, that the suggestions were not entirely my own. The general problem and the general lines of meeting it should be clear to anyone who has given thought to the conditions which we face. No unusual intelligence is required. No experience outside the range of what a United States Senator can be expected to possess needs to be applied to the problem. What does need to be applied is a determination to analyze and to act. The analysis is short and simple. The Kremlin, using the camouflage of Marxism, is successfully appealing to the minds and hearts of men in this vast area. We can and will and must make counter appeals which will be the stronger and the more effective in that they will confine themselves to the truth. Now all this is what any Senator can know and can believe. For the details of positive action, it is worth while to listen to some who have witnessed our losing battle by visiting the field of battle itself. I wish therefore, Mr. President, to read to this body letters which I have received

from one of America's greatest citizens, Dr. Arthur E. Morgan, a great engineer and a great educator.

In telephone conversation with him after his return from India I was disturbed to learn from him that the college libraries and the reading rooms of India and Pakistan are loaded with Communist literature. It is read with interest but with some skepticism. One might say, it is read almost reluctantly, owing to the fact that there is no corresponding material available to present the cause and the advantages of freedom and democracy. The young people of India are being slowly pulled into the Soviet orbit. They would readily subject themselves to influences on our side but none are offered them.

Being disturbed by the situation reported by Dr. Morgan, I asked him to write me some definite suggestions. He replied as follows in a letter dated March 4:

DEAR SENATOR FLANDERS: You ask for suggestions as to what can be done to overcome the intensive Communist propaganda in the libraries of Indian universities. The bulletin you send, Low Income Families and Economic Stability, seems to me to be excellent. Of course, no single publication can serve to counteract a year-in and year-out barrage of propaganda. I think that subscriptions to a number of representative American magazines which students could browse in would be very helpful. Because of the dollar shortage there are few American magazines in the university libraries, and I was told repeatedly that these were eagerly read.

Enclosed is a suggested list of magazines which might be used for that purpose. Concerning some of them I feel fairly certain. Where I have put a question mark after the name, it should be looked up and checked. I think that a couple of labor-union papers would be desirable, but I am not well enough acquainted with that field to suggest a choice.

I should think that from 50 to 500 subscriptions to each would be desirable. (Technical magazines would need fewer.)

If I can be of any further service, please let me know. I had mentioned this subject at the State Department shortly after my return.

He suggested a list of magazines for university and college libraries to give the students a representative picture of American life. This included general magazines, women's magazines, educational magazines, publications relating to nature and out-of-doors, engineering and technical, youth, agriculture, and health. I will not read this list to the Senate, but ask unanimous consent that it be inserted in the RECORD at this point in my remarks.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Suggested list of magazines for Indian university and college libraries, to give Indian students a representative picture of American life. Where there is a question mark after the name, I am not well enough acquainted with the periodical to have a good judgment, and it should be looked up.

General reading: Saturday Evening Post, Harper's, Better Homes and Gardens, National Geographic magazine, Scientific American, Science News Letter, The Rotarian, The Kiwanian, Common Ground (New York), Survey magazine (New York).

Women's magazines: Ladies Home Journal, Women's Day (New York), Woman's National magazine (Negro) (Chicago) (?).

Educational: Parent's magazine (New York) (?), National Parent-Teacher (Chicago) (?), Progressive Education (New York), School and Society (New York).

Nature and out-of-doors: American Forests (Washington, D. C.), the Living Wilderness (Washington, D. C.), Nature magazine (Washington, D. C.).

Engineering and technology: Popular Science Monthly (?), American Machinist, Journal of Engineering Education (Pittsburgh), Engineering News Record, Engineering and Mining Journal.

For youth: Open Road magazine (Boston) (?), American Girl (New York) (?).

Miscellaneous: Asia and the Americas (New York).

Agriculture: National 4-H Club News (Chicago) (?), Electricity on the Farm (New York) (?), Farm Journal (Philadelphia), Prairie Farmer (Chicago) (?), Ohio Farm Bureau News (Columbus), Cooperative Digest (Ithaca, N. Y.) (?), Progressive Farmer (Birmingham), Capper's Farmer (Topeka).

Rural life: Community Service News (Yellow Springs, Ohio).

Health: Hygeia (Chicago).

These are suggestive of periodicals that probably would be of interest, and which would give students a fairly good cross section of American life. Perhaps two labor papers should be included, but I am not sufficiently acquainted with them to know which to choose.

To accompany letter to Senator FLANDERS of March 4, 1950.

ARTHUR E. MORGAN.
YELLOW SPRINGS, OHIO.

Mr. FLANDERS. Mr. President, in a later communication dated March 12 he wrote as follows:

Following my letter about literature for India, I believe that one of the most effective and persuasive pieces of literature, which would be recognized as not being political propaganda, would be the Sears, Roebuck or Montgomery Ward catalog. These tell a phase of the American story that political arguments do not. A thousand of these catalogs distributed in school, college, and university libraries would have very wide reading. It might take 2,000 copies to go around. Perhaps the companies may have left-overs from older editions which would do just as well.

Along with these, which I did not mention specifically last time, should be evidences of ethical and spiritual quality in America. In talking with some well-educated Indians, as well as with students, one would repeatedly get the comment, as much matter of fact as though he were saying that the sun rises in the morning, "Of course, America is a materialist country." As a matter of fact, I think there is much more spiritual life in America than in India. The annual reports of some of our foundations, some magazines like the Christian Century, reports like "The Causes of Industrial Peace," and a variety of pamphlets on efforts to better the conditions of life over the world, would help. It might be well to have a few hundred identical scrap books made up, each one including the literature and appeals of undertakings to increase human well-being over the world. Such undertakings are extremely varied, as you know from appeals which come to your desk. For Indians to realize how much of this goes on in America would be an eye-opener to them. Of course, they might try to get into the procession.

These are additional ideas that have come to me on thinking the matter over further.

I have been very much encouraged by conversations with our colleague, the junior Senator from North Carolina [Mr. GRAHAM], who, it will be remembered, spent many months in Malaysia in his successful attempt to compose the differences between the Government of Holland and the natives of that rich and teeming region. I am sure from what he has told me that the Senator from North Carolina would corroborate the lavishness with which the Kremlin pours out its literature in an area like this, and the paucity of the literature of freedom and democracy. The Kremlin is winning this war in this area by our default. We are letting it win.

Going on the offensive in this area, in accordance with this proposal, will take some money. All the operations necessary or advisable in connection with such proposals will take a great deal of money. In the final analysis, however, such appropriations will be small, as compared with those required for prosecuting a hot war or even for preparing for one.

The cold war can be fought judiciously from the fiscal standpoint, but it cannot be fought parsimoniously. A few millions applied to the particular undertaking which I am describing this afternoon can have far-reaching results.

I feel that I have reason to believe that such an undertaking as this will find sympathetic response in the Department of State. From the discourse to which we listened the other day from the junior Senator from Connecticut, I know it would have been so regarded while he held the position which Assistant Secretary Barrett now holds.

Nevertheless, there is no harm if the initiative comes from this body. Much good might come if the initiative is supplied by us, since it would indicate a determination on our part to undertake one of the steps needed for winning the cold war. It would be an evidence of a solidifying of the resources and might of this country, whether in the administrative or in the legislative branch of the Government or among the people themselves, in support of a positive campaign. It would be an evidence of unity, rather than of division.

Mr. President, without offering any floor resolutions, I commend this particular undertaking to the careful consideration of our Committee on Foreign Relations.

WHO SABOTAGES THE STATE DEPARTMENT?—THE SO-CALLED BIPARTISAN POLICY AND MR. TRUMAN

Mr. MALONE. Mr. President, press reports indicate that President Harry Truman, down in Florida, having the fun to which he is entitled, took time out to give the impression that he was hysterical for a few minutes about the "sabotaging of our bipartisan foreign policy." That seems strange, coming from Mr. Truman.

There is no bipartisan foreign policy, Mr. President. There never has been a bipartisan foreign policy. There has been a Truman-Acheson policy, decided upon and settled in every instance before the Republicans of the Senate were informed as to what was under consideration.

The Truman-Acheson State Department policy has been an utter failure from beginning to end. Now, after all the damage is done, after our State Department has sunk to the depths, Mr. Truman is looking around for a Republican to blame. He is not going to get away with it. The American people are not going to be fooled.

In one breath the administration speaks of a so-called bipartisan foreign policy; and in the next breath they attempt to give some substance to the idea by giving an appointment to our good friend, John Sherman Cooper. Their timing is a little off. The appointment is a sop that fools no one. Is there anyone who believes that Mr. Cooper will have any authority whatsoever?

The President has good cause, I suppose, to get hysterical. I hope he will realize that it is time to clean house.

Mr. President, just what is this so-called bipartisan foreign policy as practiced by the President and the Secretary of State? It is a mythical thing, a will-o'-the-wisp.

Let us see what the State Department itself said it was. Willard L. Thorp, Assistant Secretary of State, in his testimony before the Ways and Means Committee on extension of the Trade Agreements Act, on January 24, 1949, said:

> The trade-agreements program is an integral part of our over-all program for world economic recovery.

Mr. President, in case anyone has forgotten what is meant by the 1934 Trade Agreements Act, let me say that it transfers to the State Department, to the executive branch of the Government the constitutional responsibility of the Congress of the United States to lower tariffs and import fees—providing for their lowering by as much as 75 percent, at will, after perfunctory hearings—and to regulate the economy of the United States of America. Not only the constitutional authority of the Congress, but the constitutional responsibility of Congress have been transferred by act of Congress to the State Department.

I read further from the testimony of Mr. Thorp before the House Ways and Means Committee:

> The European recovery program—

In other words, Mr. President, the ECA, formerly known as the Marshall plan—

> extends immediate assistance on a short-term basis to put the European countries back on their feet. As a part of this program we have asked them, and they have agreed, to follow certain fundamental policies. The basic principle of the European-recovery program as stated in the OEEC programs and as reaffirmed in the bilateral agreements between the participating countries and ourselves, they will increase production, put their financial houses in order, and expand their trade with each other and with the rest of the world.
>
> So far as the United States has it in its power to do so, it must support and encourage these three objectives. They are fundamentals of economic recovery.
>
> Obviously we cannot urge countries to adopt policies directed toward economic health if we do not pursue the same objectives ourselves.
>
> The International Trade Organization, upon which Congress will soon be asked to take favorable action, provides a long-term mechanism by which all countries' commercial policies, in the broadest sense of the term, may be tested and guided into conformity with a pattern which will maximize trade and minimize political friction arising out of national-trade measures which may be harmful to other countries' legitimate expectations.

Now, Mr. President, comes the tip-off on the bipartisan foreign policy:

> Each part of this program is important. Each contributes to an effective and consistent whole.

There we have the three-part "free trade" program. I have just quoted verbatim from the testimony of Mr. Thorp, and he there listed the separate parts of the three-part program: The 1934 Trade Agreements Act, which put into the hands of an industrially inexperienced State Department the right to determine and to say what industries and workingmen in this country will survive and what industries and workingmen in this country will be sacrificed on the altar of one economic world; second, the ECA, or the Marshall plan, which makes up the trade-balance deficits of the 16 Marshall-plan countries, until such a division of our markets can be consummated through the 1934 Trade Agreements Act; and third, the International Trade Organization, which is designed to make such a division permanent.

There we have the picture from the State Department itself. I say it is not a bipartisan foreign policy, Mr. President; it could not in any case possibly be a bipartisan foreign policy until the foreign policy stops at the water's edge. It cannot possibly be a bipartisan policy until the regulation of the national economy is completely separated from it.

Those who support this dangerous policy turn their backs on American industry, which means the American workingmen and investors, Mr. President. Those who support this policy are lining up with those who would eliminate the floor under wages and investments in this country. The policy has already resulted in closing many mines, mills, and processing plants, and reducing the production of many others.

All of this in the face of more than 6,000,000 unemployed and more than 12,000,000 partially unemployed.

Mr. President, only recently the testimony of Mr. Acheson and Mr. Hoffman was that we must seek for further products to import into this country; we must reduce our exports and inrease our imports; and then we shall have tutors, they say, to teach the unemployed workers—while the number of unemployed is growing larger every day—new jobs, and tutors to teach the industrialists who have just lost the investors' money how to create new industries. However, they have not said what industries will be sacrificed on the altar of the "one economic world" and what industries will be allowed, through the good graces of a State Department, to be continued.

Mr. President, the difference between the two major parties is plain and clear.

The Democratic Party is in favor of the three-part free-trade program as outlined by Mr. Thorp, of the State Department—and it is just as I have outlined it; namely, the 1934 Trade Agreements Act, as extended; the ECA; and the International Trade Organization. That is the policy of the Democratic Party, so often reaffirmed. The first two parts are in operation, and the third part, the ITO, is on the President's "must" list for immediate legislation.

On the other hand, the Republican Party believes in a definite "floor under wages and investments," as specifically set forth in the 1950 Republican platform. The Republican Party now has in its platform a plank which says, in effect, that world trade shall be developed on a basis of "fair and reasonable" competition and that products of underpaid foreign labor shall not be admitted to this country on terms which endanger the living standards of the American workingman or the American farmer or threaten serious injury to a domestic industry.

Mr. President, I submit that the two parties are diametrically opposed in principle and cannot be reconciled through a bipartisan policy or any other subterfuge.

DANGER OF COMMUNISM IN HAWAII IF STATEHOOD IS GRANTED

Mr. BUTLER. Mr. President, I am placing in the RECORD the text of a short letter which I received recently from a very distinguished citizen of Hawaii. This letter points out very clearly the danger of communism in the islands if Hawaii should be granted statehood.

The letter reads as follows:

HONOLULU, HAWAII, *March 27, 1950.*

DEAR SENATOR BUTLER: Front page of Star-Bulletin of 25th you will note our friend, Jack Hall, wants statehood. He is Harry Bridges' stooge here. Harry claims credit for electing FARRINGTON. Every Commie here is for statehood. Hall is the man who wrote a scurrilous letter about Judge Rice after the judge had enjoined Hall's mob from violence here. Hall is the leading Communist here. * * * He says, "We yearn for statehood" in his harangues to ILWU. Hall recently swore he was not a Communist. This was to beat the Taft-Hartley law. Would not say he had not been. "The leopard can't change his spots." What the Commies want here is to elect our judges.

Truly.

Mr. President, that is the end of the letter, which is signed by a very prominent citizen of Hawaii who has lived there for at least 40 or 50 years.

Mr. President, I also want to quote a very short clipping from the Honolulu Star-Bulletin of March 25, 1950, which states that the Hawaii Statehood Commission has solicited the assistance of Jack Hall, the Communist leader of the International Longshoreman's Warehouse Union in Hawaii, in presenting their case for statehood. It reads:,

ILWU MAY APPEAL TO SENATE COMMITTEE FOR HAWAII STATEHOOD

> The ILWU may make direct representations for Hawaii statehood to the Senate Interior and Insular Affairs Committee, Regional Director Jack W. Hall said this morning.
>
> In answer to a letter from Samuel Wilder King, chairman of the Hawaii Statehood Commission, Mr. Hall said "We probably will be represented directly if the Senate committee permits direct testimony."

Mr. King asked the ILWU to make its position on statehood known to the Senate committee.

"The result will be a great lift to our statehood struggle," Mr. King wrote.

Mr. President, I am making these insertions for the purpose of informing Members of the Senate with respect to a situation which I think is of great interest to Members of this body.

BIPARTISAN FOREIGN POLICY

Mr. BRIDGES. Mr. President, today, several distinguished Senators have had something to say in the Senate about our bipartisan foreign policy. I want to say just a personal word. Yesterday I was surprised, amazed, and shocked to find that the President of the United States, vacationing at the naval base in Key West, Fla., had attacked me as a saboteur of the bipartisan foreign policy This is a strong, intemperate charge, as President Truman well knows. It is a confused attack. It is interesting to note that continually over the years, I have been viciously abused by Soviet officials and the Communist press and radio throughout the world. I have been attacked as an enemy of Soviet Russia and of Russian communism.

For example, only 6 months ago the Associated Press reported from Paris that Andrei Vishinsky, Deputy Soviet Foreign Minister, had denounced me as an enemy of Russia. Vishinsky singled out the Secretary of Defense, the Secretary of the Army, an Air Force general, and the senior Senator from New Hampshire, and branded us enemies of Russia. Vishinsky did not attack President Truman on this occasion nor did Vishinsky attack the administration. He attacked the individuals whom I have listed.

This is a rather confused situation, Mr. President. President Truman charges I am a saboteur of American foreign policy which presumably is aimed at Russia. Vishinsky, on the other hand, charges I am one of the top leaders in this country who is an enemy of Russia and all the Communist program.

Mr. President, let me ask what is a bipartisan foreign policy? I have heard various words abused in years past. One of the most abused and misunderstood words is the word "liberal." I should like sometime to talk to the Senate about all these "do gooders" and self-seekers—these fellow travelers—in this country who have adopted the cloak of liberalism. Today I desire to speak briefly about the bipartisan foreign policy. Mr. President, what is a bipartisan foreign policy? I will tell you what it is. It is a policy which is discussed by both political parties; it is a policy developed by both political parties; it is a policy agreed to by both political parties; it is a policy for which both parties accept responsibility.

Mr. President, we have not had such a policy in the United States of America—certainly not in the recent past.

Mr. Truman wants me, as a Republican United States Senator, to share the responsibility for the loss of China. President Truman wants the Republican Party to share the responsibility of turning 450,000,000 Chinese and half of Asia over to Stalin. I do not propose to accept that responsibility. Mr. Truman charges that I sabotaged a bipartisan foreign policy. I am convinced that no Republican who can call himself a Republican helped frame the China foreign policy—the policy which has lost us China and has given Stalin and the Communists a grip on China. If any Republican is responsible for it and had a part in framing it, I hope he will stand up and admit it. I should like to know about the Republicans who had a part in it.

The President of the United States knows that the only thing I want to sabotage is the enemies of the United States. Who are they? They are the appeasers; they are the subversives; they are the incompetents; they are the homosexuals, who threaten the security of this country and the peace of the world.

President Truman was in the United States Senate, and he has a pretty good memory. He remembers when I was one of the two or three Republican Senators who recognized the Axis powers as a threat to the peace of the world. I wanted to stop Hitler because he planned to enslave the world. I want to stop Stalin because he plans to enslave the world. President Truman knows, because he was a Member of the United States Senate, that I was right about Hitler, and President Truman knows today that I am right about Stalin.

Mr. President, back in those days there was but a small group in the United States Senate, only a small group within my party, and only a small group within the Democratic Party, who took a forthright, nonpartisan stand on some of those great issues. I can go back to 1937, when I proposed in the Senate and before committees of the Senate the passage of a resolution prohibiting shipments to Japan of scrap iron, steel, and other war materials. I was opposed by the Administration, whose position was "We cannot offend a great friendly power."

Mr. MALONE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from Nevada for a question?

Mr. BRIDGES. I yield.

Mr. MALONE. I should like to ask the distinguished Senator from New Hampshire whether he recalls that the junior Senator from Nevada, on January 24, on the floor of the Senate, listed 95 trade treaties made by the 16 Marshall plan countries, treaties wherein they had agreed to ship to Russia and its satellite nations everything from tool steel to ball bearings, electrical equipment, heavy machinery of all kinds, construction and farm machinery, locomotives—practically everything that they need to make war upon the United States of America and to consolidate their gains in eastern Europe and in China.

Does the distinguished Senator recall that at that time the junior Senator from Nevada expressed the opinion that we had improved upon the technique that we had when we furnished Japan the material for war, material such as oil and scrap iron, that we had arranged to pay for the manufacture of the stuff sent to Russia, thus saving them the trouble? Does the distinguished Senator remember that statement?

Mr. BRIDGES. I remember it very well.

Mr. MALONE. Then I should like to ask the distinguished Senator from New Hampshire whether he agrees with the junior Senator from Nevada that we should make up our minds as to which side of the so-called cold war we are on.

Mr. BRIDGES. I certainly do.

President Truman knows my record. He was a friend of mine and a colleague of mine for many years in the Senate. He knows I have been consistent. He knows I have always placed the welfare of my country above partisan political advantage, and he knows I do it today.

The President of the United States also knows he can count on me to support a sound, genuine bipartisan policy having for its purpose the security of the United States and the peace of the world. I mean a genuine, sound policy. He knows that I have always supported efforts of this kind. But I want that policy to be truly bipartisan. I want my party to be considered in its development, not left to learn about it through the press and radio after it is being put into effect.

Mr. MALONE. Mr. President, will the Senator further yield?

Mr. BRIDGES. I will certainly yield.

Mr. MALONE. I should like to ask the distinguished Senator from New Hampshire if he believes there can be a bipartisan foreign policy unless that policy stops at the water's edge. In other words, is it possible to have a bipartisan foreign policy which includes the regulation of the national economy by the State Department, bound to the foreign policy through the regulation of imports by the State Department? The Senator will remember that the Congress of the United States transferred to the executive department their constitutional responsibility to regulate the national economy through the regulation of imports.

Mr. BRIDGES. No. I have before me some excerpts from a speech made by a high-grade, outstanding Democrat of this country, Bernard Baruch. Let me read what he said; it is very enlightening:

> The United States is staggering from crisis to crisis with the initiative left to the enemy. To end the cold war we must have a general staff for peace headed by a man of the stature of Gen. George C. Marshall.
>
> What is needed is a nonpartisan group which will stay on the job until the cold war is won—a group which would sit in continuous deliberation on the whole of the peace-waging, serving as a central point of decision, weighing all the many commitments pressed upon us, guiding the best disposition of our strained resources, determining where in the world we are to fight a mere holding action, and where we can achieve a decisive break-through, and at what effort.
>
> The United States today is spreading itself too thin and is unable to achieve decision anywhere. The serious defeat suffered by the United States in China has stirred a good deal of public discussion of whether

we are losing the cold war. Certainly there is sufficient reason to feel that what has been done so far is inadequate.

Mr. President, there is a man whose life has been wrapped up in this question, and he is a member of the President's own party. He is tremendously disturbed, as the Senator will see.

Mr. MALONE. Mr. President, will the Senator yield further?

Mr. BRIDGES. Certainly.

Mr. MALONE. I should like to ask the distinguished Senator from New Hampshire if he believes such a policy can be arranged, so long as the Secretary of State says, through his Assistant Secretary of State, Mr. Thorpe, that the three things must be bound together—the regulation of the national economy through the 1934 Trade Agreements Act, through the indiscriminate lowering of tariff and import fees; the ECA or the Marshall plan that makes up the trade balance deficits in cash and industrial goods each year, and then the ITO, that great organization of 58 nations, to which we turn over the authority to regulate tariffs and import fees of its member nations and to fix quotas of production. So long as it is said that all those things are dependent upon each other, and that is our foreign policy, how can we have a bipartisan policy?

Mr. BRIDGES. I should think it would be very doubtful. To begin with, this country must remain strong at home. It must be strong not only militarily, economically, and morally, but our economy and our future must be directed toward maintaining the national security. The Senator has hit a very vital point. There is no good in having a policy to save the world unless our first consideration is to conserve the strength of America.

Mr. MALONE. Mr. President, will the Senator further yield?

Mr. BRIDGES. Certainly.

Mr. MALONE. I believe the distinguished Senator from New Hampshire has again emphasized the most vital point, because, whatever our policy may be, we are unable to enforce it unless we are economically strong. As everyone knows, our productive capacity and our endurance in a violent upheaval such as warfare are the things that win wars. With this policy advocated by the State Department, that we level our standing of living through the 3-part free-trade program, it is impossible to have such an economy. I want to invite the Senator's attention, as I invited the Senate's attention a few moments ago, to the fact that the two political parties are absolutely diametrically opposed in that particular matter. The Democratic Party is on record as approving the three part free-trade program just as the Secretary of State outlined in such plain words; and the Republican Party is on record in its 1950 platform that we believe in the promotion of foreign trade the basis of a fair and reasonable competitive basis, meaning the imposition of an import fee to make up the differential in cost between this country and competitive nations, which is due mostly to the difference in the standards of living. This would be flexible in accordance with this bill introduced by the junior Senator from Nevada, so that it can be successfully administered. The last sentence in that particular paragraph of the platform says that we believe we must remain economically strong, just as the distinguished Senator has stated. We believe that, do we not?

Mr. BRIDGES. Certainly.

Mr. MALONE. How can it be reconciled in a bipartisan manner with a party which believes exactly the opposite?

Mr. BRIDGES. I think the Republican Party, when it made a fight for the peril-point amendment this year, in which the distinguished Senator from Nevada played an active part, made a very great contribution to the economic life of the United States, and I believe the day will come when labor and the general population will begin to appreciate the fact that if the peril-point amendment had been accepted this Nation would be better off.

Mr. MALONE. Mr. President, will the Senator yield further?

Mr. BRIDGES. I yield.

Mr. MALONE. Labor now recognizes it. For example, in my own State of Nevada, not only did the Republican Party of the State of Nevada pass such a resolution as I have just outlined, asking for the substitution of the flexible import fee for the 1934 Trade Agreements Act as extended, in the same manner as the junior Senator from Nevada offered in an amendment as a substitute for the Trade Agreements Act on September 13, 1949, but it went further and asked for the defeat of the international trade organization which would make free trade permanent and would average the standard of living of the world. It was followed by the Farm Bureau of the State of Nevada in a similar resolution. Then the labor unions in the State of Nevada followed, saying, in so many words, that the policy of free trade in the 1934 Trade Agreements Act is "removing the floor under wages and investments."

I say further to the distinguished Senator from New Hampshire that the national organization of the Republican Party followed with a resolution meaning exactly the same thing, and then asked that the United States of America remain economically strong as a safeguard to our safety and welfare.

I should like to ask the distinguished Senator, if he agrees to that—and I know he does agree—how can we have a bipartisan policy without a change in direction and definite right-about-face on the part of the Democratic Party?

Mr. BRIDGES. We shall have to have a definite right-about-face all along the line.

Mr. MALONE. On the part of the Democratic Party?

Mr. BRIDGES. Absolutely.

Mr. President, as I have stated, the President of the United States knows my record. I served with him in the Senate. He is a friend and a colleague of many years' standing. He knows that on any genuine, sound bipartisan effort, absolutely sound and bipartisan, which has for its purpose the security of the United States and the peace of the world, I shall support such bipartisan effort.

Since 1937, Mr. President, my record clearly shows that I voted for sound administration policies in foreign affairs. Just as consistently, I have voted against unsound policies and have denounced them.

Apparently, from Mr. Truman's statement of yesterday, he wants the Republican Party to share the responsibility for losing the cold war and the peace. That is only one of the conclusions which can be drawn from his statement. I shall continue to denounce unsound policies, I shall continue to denounce lack of policy, and I shall continue to denounce incompetence in the planning of a policy. I cannot live with my conscience otherwise, no matter what the President of the United States may say. I believe the President will recognize that.

Mr. President, I am ready for a showdown on the bipartisan foreign policy. I think that if we study the history of bipartisanship in the Senate, it will be seen that a group of us have been cooperating on sound American policy. I believe the cooperation of the group on this side of the aisle through the years will compare very favorably with the record on the other side of the aisle.

I recall, for instance, that when we voted for the Neutrality Act of 1937, which outstanding men and world leaders now say gave the green light to Hitler, there were only six men in the United States Senate, of whom only two are in the Senate today, and the Senator from New Hampshire happens to be one of them, who had the courage and foresight to stand up and vote against the act. When we passed the Neutrality Act we gave the green light to Hitler, so that he could move forward with his legions.

Mr. MALONE. Mr. President, will the Senator yield further?

Mr. BRIDGES. I yield.

Mr. MALONE. I should like to ask the Senator another question. First I should like to read a paragraph and ask the Senator if he recognizes it. This is from President Truman's acceptance speech at Philadelphia on July 15, 1948, which was published in the Washington Post on July 16. I read from the President's acceptance speech, as follows:

> I have said time and time again foreign policy should be a policy of the whole Nation, and not the policy of one party or the other. Partisanship should stop at the water's edge, and I shall continue to preach that throughout this whole campaign.

Does the Senator remember that quotation?

Mr. BRIDGES. I remember it.

Mr. MALONE. I should like to ask the distinguished Senator from New Hampshire one other question. Does he remember what happened immediately after Mr. Truman assumed the Presidency of the United States in his own right? Does he remember the distinguished Senator from Michigan [Mr. VANDENBERG] lamenting for a half hour on the floor of the Senate that the Democrats had blown the bipartisan policy out of the water?

Mr. BRIDGES. I certainly do. I remember in the Eightieth Congress, after cooperation by the Republican Party for many years, and certainly on the Committee on Foreign Relations, which was

headed by the distinguished Senator from Michigan [Mr. VANDENBERG], the first act of this Democratic Congress was to change the ratio in the Committee on Foreign Relations from 7 to 6, to 8 to 5, thereby throwing the committee under complete partisan control.

Mr. MALONE. Mr. President, will the Senator yield further?

Mr. BRIDGES. I do.

Mr. MALONE. I should like to have the opportunity to say that in 1947, and certainly early in 1948, after the junior Senator from Nevada had had an opportunity to analyze the so-called bipartisan foreign policy, and to realize that it included the program already outlined in some detail by the Senator from Nevada, and in detail by Mr. Thorpe, as quoted today in my earlier statement, that the three parts of the program were dependent upon each other, and that it was impossible consistently to be in favor of one without being in favor of all three, the junior Senator from Nevada parted company completely and forever with any such bipartisan policy, and still stands in the same position. I agree with the distinguished Senator from New Hampshire that if we had an administration which would call in a selected group, not one or two Senators, but representative Republicans on this side of the aisle, and let them report back to our organization what was suggested, so that we could agree on a bipartisan policy before being made public, if it could be agreed upon first, I believe, as the distinguished Senator from New Hampshire has said, there would be no trouble about it. However, I see no likelihood of that coming about. If a temporary success in any particular part of our foreign policy is bad, it is regarded as a great victory for the Democratic Party. If disaster results, such as the distinguished Senator has already outlined, as in the case of our losing half of Asia and now being in a fair way of losing the rest of it, a few Republicans are selected to take the blame. Does the Senator from New Hampshire agree with that outline?

Mr. BRIDGES. I certainly do. The point I wish to make is that I consider the statement which the President of the United States made yesterday, while vacationing in Key West, absolutely in bad taste. I do not believe, knowing him as I do, that he was aware of all the implications of some of the remarks he was reported to have made.

I served with the President on several committees when he was in the Senate, and I believe that if he will reflect on what he said, in fairness to what we are considering, which is the over-all security of the United States and the peace of the world, he will realize that the way to reach these objectives is not by way of the approach which he made, but by genuine cooperative effort to obtain a bipartisan foreign policy. This may be achieved only when the minority is consulted in the making of it, when the minority is consulted in its development, and when the minority is consulted in putting it into effect. In turn, the minority must share the responsibility of its effect.

Mr. President, I hope that rather than proceed as he has seemed to proceed in the past, the President will reconsider some of his statements, and make a genuine attempt to secure an over-all bipartisan foreign policy.

I merely desired to tell the President, the Senate, and the American public, that we have not had such a policy in the past, because the consideration it should have had has not been given the minority. Nor do I as one Republican, and I believe a great majority of my party agree, want to share in the responsibility of a policy which has resulted in Russia obtaining one-third of the area of the earth, the last great disaster being the fiasco in China. Let us be fair in our approach to this great problem. I am ready to cooperate. What about the President of the United States?

EXECUTIVE SESSION

Mr. SPARKMAN. Mr. President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to consider executive business.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. LONG in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(For nominations this day received, see the end of Senate proceedings.)

The PRESIDING OFFICER. Reports of committees are in order. If there be no reports of committees, the clerk will state the nomination on the Executive Calendar.

ATOMIC ENERGY COMMISSION

The legislative clerk read the nomination of Thomas E. Murray, of New York, to be a member of the Atomic Energy Commission.

The PRESIDING OFFICER. Without objection, the nomination is confirmed, and the President will be immediately notified.

RECESS TO MONDAY

Mr. SPARKMAN. I move that the Senate stand in recess until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 6 o'clock and 8 minutes p. m.) the Senate took a recess until Monday, April 3, 1950, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 31 (legislative day of March 29), 1950:

IN THE ARMY

Maj. Gen. Walter Duncan Love, O11506, Dental Corps, United States Army, for appointment as Assistant to the Surgeon General, United States Army, under the provisions of section 10, National Defense Act, as amended, and title V, Officer Personnel Act of 1947.

The following-named officers for temporary appointment in the Army of the United States to the grades indicated under the provisions of subsection 515 (c) of the Officer Personnel Act of 1947:

To be major generals

Brig. Gen. Arthur Raymond Gaines, O6261, Medical Corps, United States Army.

Brig. Gen. Leonard Dudley Heaton, O16960, Army of the United States (colonel, Medical Corps, United States Army).

To be brigadier generals

Col. Maxwell Gordon Keeler, O6620, Medical Corps, United States Army.

Col. James Patrick Cooney, O17338, Medical Corps, United States Army.

IN THE ARMY

APPOINTMENTS, BY TRANSFER, IN THE REGULAR ARMY OF THE UNITED STATES

The following-named officers for appointment, by transfer, in the Judge Advocate General's Corps, Regular Army of the United States:

Maj. Richard Walsh Fitch, Jr., O52064, Medical Service Corps, United States Army.

Maj. Anthony Jackson Race, O52163, United States Army.

PROMOTION IN THE REGULAR ARMY OF THE UNITED STATES

The following-named officers for promotion in the Regular Army of the United States, under the provisions of sections 502 and 509 of the Officer Personnel Act of 1947. Those officers whose names are preceded by the symbol (×) have been examined for physical fitness and found physically qualified for promotion. All others are subject to physical examination required by law:

To be majors

×Charles Edwards Branson, O30805.
×Wilson Harold Kayko, O38841.
×Aaron Peter Ross, O51794.
×Allen Templeton Samuel, Jr., O40049.
Hilwert Schuyler Streeter, O20300.
×William Barret Sullivan, O20352.

To be majors, Veterinary Corps

×Charles Wilbur Gollehon, O30918.
×David Samuel Hasson, O22884.
×Herbert Franklin Sibert, O30922.

To be majors, Medical Service Corps

×Louis Emery Mudgett, O31069.
×Barj Aaron Rustigian, O31068.

To be captains, Medical Service Corps

Theodore Edwin Blakeslee, O56970.
×Douglas Charles Chitwood, O56248.
×Paul Ambrose DuMond, O37607.
James Lee Fink, O37604.
×Edward James Hanna, O37610.
×Dan George Kadrovach, O37613.
×Edward James Keating, O37611.
×John Eugene Mathis, O56251.
×Clarence Horace Piercy, Jr., O37603.
×Joseph Peter Salvo, O56246.
×Charles Robert Smith, O37608.
×John Franklin Waters 2d, O37605.
×Norman Ernest Wood, Jr., O37596.
×John Henry Wrigley, O41161.

To be lieutenant colonels, chaplains

×Robert Joseph Hearn, O51131.
×Charles Wesley Lovin, O51132.
×Robert Leland Schock, O22757.

To be major, chaplains

×Wilber Kenneth Anderson, O43126.

The following-named officers for promotion in the Regular Army of the United States, under the provisions of sections 502 and 508 of the Officer Personnel Act of 1947. All officers are subject to physical examination required by law.

To be first lieutenants

Bernard William Abrams, O50736.
Joseph John Addison, O50704.
Richard Herman Allen, O50603.
Merlin Willard Anderson, O50584.
Robert Jacob Baer, O50684.
Harry Polk Ball, O50672.
Hugh James Bartley, O50521.
Calvin Leland Bass, O50761.

Roger Redmond Bate, O50583.
Earle LeRoy Bathurst, Jr., O50776.
Arthur Andrew Becker, O50591.
Thomas Edward Benson, O50691.
Ralph Harold Beuhler, O50729.
Theodore Chester Bielicki, O50625.
Shelton Brant Biles, Jr., O50598.
George Earl Bland, O50821.
Junius Jay Bleiman, O50581.
Frank Coulter Boerger, O50579.
Philip Thomas Boerger, O50618.
Otis Evan Brannon, Jr., O50783.
William Donald Brown, O50828.
Jean Prosper Burner, O50722.
Donovan Finley Burton, O50622.
James Lee Bushnell, O50697.
Paul Charles Callan, O50833.
William Albert Carpenter, Jr., O50813.
Jerome Boris Christine, O50597.
Willis Howell Clark, O50686.
William Fortune Coghill, O50753.
Robert Bernard Coleman, O50852.
William Edmond Conger, Jr., O50858.
William Lamble Cooper, O50866.
James Christopher Cosgrove, O50763.
William Bernard Cronin, O50787.
Stanley Warfield Crosby, Jr., O50845.
John Edward Culin, O50654.
Paul J. Curry, O50629.
Robert Thornton Curtis, O50634.
Glenn Woodward Davis, O50873.
Bernard Figueredo de Gil, Jr., O50794.
John Delistraty, O50706.
Donald Marvin Dexter, Jr., O50834.
Robert Francis Draper, O50857.
Jack Van Dunham, O50668.
Richard Earl Dunlap, O50715.
Gordon James Duquemin, O50784.
James Eugene Edington, O50734.
James Betts Egger, O50595.
Henry Everett Emerson, O50868.
Robert Bruce Fahs, O50824.
John Carter Faith, O50590.
Thomas Long Flattery, O50811.
Stuart Gregory Force, O50769.
James Franklin Fraser, O50589.
Herschel Everett Fuson, O50719.
John Griffin Gaddie, O50710.
Bernard Jay Gardner, O50679.
Robert Miller Garvin, O50712.
Albert John Geraci, O50786.
John Love Gerrity, O50648.
David Welty Gibson, O50830.
Warren Robert Gossett, O50676.
William Douglas Grant, O50716.
Bernard Michael Greenberg, O50602.
Edwin Borchard Greene, O50623.
Harold Walter Grossman, O50677.
Alexander Meigs Haig, Jr., O50790.
Raymond Richard Hails, Jr., O50641.
Robert Haldane, O50742.
Milton Leland Haskin, O50637.
Kenneth Martin Hatch, O50640.
Wayne Otis Hauck, Jr., O50807.
George LeRoy Haugen, O50643.
Thomas Francis Hayes, O50800.
Rolland Valentine Heiser, O50738.
George Duane Heisser, O50805.
William Sylvester Henry, Jr., O50814.
Dandridge Featherston Hering, O50696.
Henry Wiliam Hill, O50755.
Bennet Norman Hollander, O50693.
John Elwood Hoover, O50620.
Richard Motley Hutchinson, Jr., O50822.
Julius Frederick Ickler, O50667.
Carroll Christian Jacobson, Jr., O50612.
Leon Joseph Jacques, Jr., O50861.
James Allen Johnson, O50638.
Wilber Glenn Jones, Jr., O50863.
Peter Karter, O50592.
James Byron Kennedy, O50607.
Robert James Kennedy, O50610.
Graham Gunther Kent, O50859.
Robert Adair King, O50797.
Willis Hickam Knipe, O50829.
Robert Joshua Koch, O50874.
Donald Warren Krause, O50872.
Robert Peter Lane, O50705.
Wells Brendel Lange, O50767.
John William Lauterbach, Jr., O50727.
Melvin Vernon LeBlanc, O50690.
Alexander Lemberes, O50754.
George Levenback, O50689.
Selby Francis Little, Jr., O50860.
Richard Alan Littlestone, O50653.
Walter Patrick Lukens, O50801.
George Anthony Lynn, O50593.
Henry Tomlinson MacGill, O50808.
Arnold William Mahlum, O50751.
Robert Anthony Mahowald, O50796.
LeRoy Emil Majeske, O50733.
Charles Stuart Todd Mallett, O50819.
George Aloysius Maloney, O50862.
Martin Michael Maloney, O50758.
John Wayne Mastin, O50582.
James Philip Mattern, O50713.
Richard Freeman McAdoo, O50609.
Robert Ewing McCord, O50803.
John Warwick McCullough, Jr., O50867.
Oliver Louis McDougell, O50812.
William Gabriel McGee, O50855.
Robert James McNeil, O50756.
Harrison Franklyn Meadows 3d, O50839.
John More Miller, O50692.
Robert Miller Montague, Jr., O50578.
Charles Augustus Munford, Jr., O50838.
John DuBose Naill, Jr., O50818.
William Wallace Nairn 3d, O50720.
Wallace Eugene Nickel, O50695.
Robert Lynn Ozier, O50768.
Henry Cantzon Paul, O50725.
John Guilford Paules, O50681.
Robert DeWayne Peckham, O50740.
Tom Judson Perkins, O50781.
Milum Davis Perry, Jr., O50594.
Louis Rachmeler, O50666.
John Richard Rantz, O50826.
Kermit Dean Reel, O50682.
John Brooks Reese, O50596.
Hal Clyde Richardson, Jr., O50662.
James Russell Robinson, Jr., O50588.
Thomas Edmund Rogers, O50785.
Melvin Alfred Rosen, O50580.
Norman Robert Rosen, O50600.
Carl Kamp Russell, O50777.
Norman Junior Salisbury, O50802.
Howard Leroy Sargent, Jr., O50586.
Donald Verner Schnepf, O50698.
William Jackson Schuder, O50611.
Richard Henry Sforzini, O50624.
Robert Warren Short, O50871.
James Emerson Smith, Jr., O50798.
William Smith, O50717.
Ira Warren Snyder, Jr., O50759.
Theodore Solomon Spiker, O50774.
Sam David Starobin, O50601.
Richard Joseph Steinborn, O50616.
Donald Harry Steininger, O50599.
Marvin Henry Stock, O50633.
Gordon Malin Strong, O50835.
John Joseph Sullivan, O50627.
William Michael Sullivan, O50750.
James Bernard Tatum, O50846.
Harold Stan Tavzel, O50780.
Frank Leonard Taylor, O50730.
Jack Mathew Thompson, O50608.
Gerald Ross Toomer, O50707.
Albert Archer Van Petten, O50674.
Wallace Francis Veaudry, O50820.
William Loyd Webb, Jr., O50652.
Carlton Juan Wellborn, Jr., O50665.
William Irvine West, O50732.
Meade David Wildrick, Jr., O50827.
VanCourt Wilkins, O56768.
Joseph John Williams, O50810.
William Dawes Williams, Jr., O50877.

The following-named officers for promotion in the Regular Army of the United States under the provisions of section 107 of the Army-Navy Nurses Act of 1947. All officers are subject to physical examination required by law.

To be captains, Army Nurse Corps

Anna Marie Bisignano, N763.
Mary Jean Carsey, N1429.
Dorothy Ellen Crist, N935.
Irene Irma Desrosiers, N1593.
Mary Norma Donato, N767.
Maxine Helen Fell, N1425.
Barbara Mae Hogan, N1433.
Johanna Helen Jakubaitis, A1431.
Nancy Crary Kermott, N1685.
Carolyn Bergeron Rahm, N1684.
Lucile Standley, N1679.
Sylvia Mildred Stivlen, N1432.

To be first lieutenants, Army Nurse Corps

Margaret Burk Beavers, N1629.
Therese Evelyn Daley, N1527.
Alma Elizabeth Guinn, N1628.
Zita Josephine Ierino, N1190.
Pearl Idell Jank, N1631.
Ruth Margaret Leahy, N1528.
Roberta Whitehouse Smith, N1526.

To be captains, Women's Medical Specialist Corps

Marcel Binning, M10011.
Betty Jane Snyder, M10085.

CONFIRMATION

Executive nomination confirmed by the Senate March 31 (legislative day of March 29), 1950:

ATOMIC ENERGY COMMISSION

Thomas E. Murray to be a member of the Atomic Energy Commission for the term expiring June 30, 1950.

HOUSE OF REPRESENTATIVES

FRIDAY, MARCH 31, 1950

The House met at 11 o'clock a. m.

The Chaplain, Rev. Bernard Braskamp, D. D., offered the following prayer:

Let us pray. O Thou God of all majesty and mercy before whom the angels bow and the archangels veil their faces, Thou art high and holy, and yet hast Thou respect unto the lowly and the humble. Thou art great in Thy goodness and good in Thy greatness. We know that to turn away from Thee is to fail, but that to abide in Thee is to stand fast forever.

Grant that in the assurance of Thy greatness and Thy goodness we may find our joy and peace. Make us equal to every task, and may it be the goal of all our aspirations to fashion our life into the likeness of our blessed Lord and to serve our generation in accordance with Thy holy will.

In Christ's name we pray. Amen.

The Journal of the proceedings of yesterday was read and approved.

BIRTHDAY GREETINGS TO HON. JAMES M. COX

Mr. BROWN of Ohio. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BROWN of Ohio. Mr. Speaker, today marks the eightieth anniversary of the birth of one of America's elder statesmen, the Honorable James M. Cox, of Ohio.

Three times he was elected by the people of Ohio to serve them as Governor. Previously he represented the Third Congressional District in this House of Representatives. In 1920 he was the nominee of the Democratic Party for the Presidency.

I had the honor and pleasure of serving as Lieutenant Governor when James M. Cox was Governor of Ohio. While