Willie J. Mixson
Malcolm G. Moncrief, Jr.
Arthur M. Moran
Frank P. Moran
Robert E. Munkirs
Frederick A. Murchall
John J. Murphy
Anthony R. Nollet
Kirt W. Norton
William H. Nuckols, Jr.
Robert E. O'Hare
Frank J. O'Hara, Jr.
Roy E. Oliver
James R. O'Moore
William T. O'Neal
Mackubin T. Owens
Will S. Patee, Jr.
Harvey M. Patton
James Payette
Edward K. Pedersen
Robert R. Peebles
John S. Perrin
Robert Peskuski
George L. Peters
Paul R. Piana
Clarence E. Plocke
William D. Porter
James A. Pounds 3d
Lawrence H. Pratt
William R. Quinn
James H. Reeder
James H. Reid, Jr.
James H. Rinehart
Eugene S. Roane, Jr.
Eddie L. Robinson
Murray O. Roe
William H. Roley
Robert L. Rose
Robert J. Rossi
Arthur L. Rourke
Roger M. Sanders
Richard J. Schening
Robert F. Scott
Jeremiah D. Shanahan
James F. Shea
Frank J. Sheppard
John C. Shoden
Edward W. Shugert
Jack C. Smith
Joseph Smith
Mercer R. Smith
Nathan R. Smith
Ralph A. Soderberg
Daniel A. Somerville
Melvin D. Sonneborn
Parks J. Stallings
Theodore A. Stawicki
Bernard J. Stender
John Stepanovich
Frank P. Stivers, Jr.
Russel H. Stoneman
Victor Stoyanow
Lesley V. Strandtman
Sedley N. Stuart
Richard H. Tabor
Jack W. Temple
Franklin C. Thomas, Jr.
Richard S. Togerson
Lyle V. Tope
Bernard L. Turner
John A. Wachter
Guy L. Wade
Robert Wade
Robert C. Walker
Emerson A. Walker
Charles M. Wallace, Jr.
William A. Weir
Sheppard Werner
Howard A. Westphall
Leo T. White
James L. Whitaker
Frank E. Wilson
Robert L. Willis
Donald G. Wood, Jr.
Warren R. Young
Elmer J. Zorn

To be a first lieutenant

Everette H. Vaughan

To be second lieutenants

Frederick S. Aldridge
Philip R. Anderson
James Antink
John G. Babasanian
Gene M. Badgley
John E. Barnett
Lyman A. Bates
Louis D. Baughman
John W. Beebe
William C. Benton
Carl L. Billnitzer
Wallace D. Blatt
Thomas E. Bourke, Jr.
James W. Brayshay
George A. Brigham
Edwin B. Bucholz
Clifford W. Buckingham
James M. Burris
William K. Byrd
Earl W. Cassidy
Armon Christopherson
Matthew A. Clary, Jr.
Louis Conti
Clement T. Corcoran
Oliver W. Curtis
Thomas J. Cushman, Jr.
Armand G. Daddazio
Alexander P. Davidson, Jr.
Eldon E. Davidson
Charles F. Dekeyser
Armond H. Delalio
John S. Dewey
Ernest R. Doyle, Jr.
Charles J. Dyer
Kenneth T. Dykes
George M. Faser
Fred J. Fees, Jr.
Daniel G. Felding
Francis E. Finch
Billie L. Fletcher
Harold R. Foltz
David Foos, Jr.
Martin I. Frederick, Jr.
Owen V. Gallentine
James E. Gibbons
Hobson J. Gifford
Jack Glenn
Jerome L. Goebel
William F. Goggin
John L. Greene
Edmund K. Griswold
Raymond F. Hargrove
Carl O. H. Haroldson
Robert G. Harris
William S. Harris
Robert M. Healy
John L. Herndon
Gene M. Hoover
Gerald G. Hoover
Louis T. Iglehart, Jr.
Wayne R. Johnson
Thomas J. Johnston, Jr.
William G. Joslyn
George T. Keys
John M. Kusiak
Charles A. Labbo
John Ladutko
William H. Lanagan, Jr.
Harold V. Larson
John H. Lavoy
James Leffers
Julius O. Lemcke
William E. Lesage
Harry M. Lindberg
Harry L. Lottes
George T. P. Lovelace
Kenneth A. Lund
Jan Mason
Lyle B. Matthews, Jr.
Raymond McArthur
James C. McFerran III
John R. McGuigan
Harold G. McRay
Maxmillian W. Miesse
Harry A. Moore
Edwin G. Nelson
Arthur W. Newendorp
Richard B. Newport
"J" "P" Nixon
Keith D. Nolan
Virgin D. Olson
William R. Ourand, Jr.
Thurman Owens
John Padach, Jr.
Douglas D. Petty, Jr.
Eugene V. Pointer
Ernest E. Poor
William T. Porter
John G. Prestridge
James R. Priddy
Dwain L. Redalen
Alvin R. Rieder
David Riley
John P. Roden
Elmer W. Rothenburger
Robert R. Roy
John W. Ruhsam
Charles C. Samis
James Sanzo
Valdemar Schmidt, Jr.
Charles C. Schwartz
Frank A. Shook, Jr.
Jack R. Sloan
Jerry B. Smith
Richard E. Smith
James B. Soper
Alfred V. Soupios
Alan M. Stewart
John D. Stith
William D. Stone
David G. Swinford
John G. Theros
Frank C. Thomas
Roger B. Thompson
McDonald D. Tweed
Hiel L. Van Campen
Harry Van Hunnik
Carl M. Viner
Stanley B. Voth
Done C. Ware
Stephen G. Warren
James R. Weaver
Paul T. Wiedenkeller
Robert G. Williams
George L. Wineriter
Robert E. Woerner
Ralph C. Wood
Vance L. Yount, Jr.
Clarence F. Zingheim
John W. Zuber

To be commissioned warrant officers

George K. Acker
Jack A. Bingham
Jack R. Bishop
Arthur H. Bourne
Frederick Bove
Arthur E. Buckner
Vincent J. Buettner
Edward E. Burt
James W. Campbell
Jack V. Canzonieri
John A. Clayton
Sidney W. Cooley
Alfred T. Coon
James D. Connolly
Lawrence R. Darner
William A. Davis
Sloan M. Diaz
James P. Drummond
James R. Einum
George F. Elliott
Chester H. Fritts
George M. Garner
Wilbur P. Gorsuch
John E. Halliwill
Rayburn B. Harper
George E. Hynes
Eric E. Isaacson
George D. Johnson
Carl W. King
James L. Knott
Alfred G. Kohler
Frank R. Leech, Jr.
Henry J. Lendo
Burt A. Lewis, Jr.
Albert L. Litka
William H. Meadors
Herbert L. Merwin
Adam A. Metz
Alfred N. Milbert
Robert A. Morehead
Philip A. Murphy
Charles E. Neus
Benjamin F. Osborne
Edd F. Peel
Haakon B. Rasmussen
Robert B. Reynolds
Merle G. Richard
Roy H. Roark
John F. Russell
John L. Seifert
Levi B. Silvernail, Sr.
Richard W. Sinclair
Benjamin S. Singleton
Dorsie R. Smith
Elmer H. Sorley
Elwyn M. Stimson
James G. G. Taylor
Paul N. Taylor
Harry G. Torbett
James W. Tuma
Fred Turner
Charles W. Walker
Hugh L. Wehrly
John F. Wheeler
Peter J. Wilgus
William L. Woodruff

The below-named officer to be a second lieutenant in the United States Marine Corps to correct spelling of his surname, Nenefee, Melville M., as previously nominated and confirmed:

Melville M. Menefee

TO BE SECOND LIEUTENANTS IN THE MARINE CORPS FROM JUNE 5, 1946

Bertram H. Curwen, Jr.
Paul Mazzuca, Jr.
Stewart B. McCarty, Jr.
Grady P. Mitchell, Jr.

HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

The full committee will meet Monday, March 17, at 10 a. m., in room 213, House Office Building, to continue hearings on H. R. 2408.

SENATE

MONDAY, MARCH 17, 1947

(Legislative day of Wednesday, February 19, 1947)

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

The Chaplain, Rev. Peter Marshall, D. D., offered the following prayer:

Lord Jesus, we turn in confidence unto Thee, since Thou wast tempted in all points like as we are, and yet without sin. Help us, that we may obtain victory over our temptations. We feel ashamed that we have so little power in our lives, and so often fall at the same old hurdles. Sometimes we grow discouraged and filled with doubts when we see so little evidence of growth in grace, in faith, and in spiritual perception.

We know that we are not what we ought to be; and we know that we are not yet what we will be; but we thank Thee that we are not what we once were. For whatever progress Thou hast made with us we give Thee thanks, and by Thy grace we are kept from despair. Help us to remember that they that wait upon the Lord shall renew their strength. May we wait and be made strong. Through Jesus Christ our Lord. Amen.

THE JOURNAL

On request of Mr. WHITE, and by unanimous consent, the reading of the Journal of the proceedings of Friday, March 14, 1947, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

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

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the President pro tempore:

S. 220. An act to authorize the Secretary of the Navy to convey to American Telephone & Telegraph Co. an easement for communication purposes in certain lands situated in Virginia and Maryland; and

S. 221. An act to authorize the Secretary of the Navy to grant and convey to the Virginia Electric & Power Co. a perpetual easement in two strips of land comprising portions of the Norfolk Navy Yard, Portsmouth, Va., and for other purposes.

INVITATION FOR REPRESENTATIVES OF SENATE TO VISIT CZECHOSLOVAKIA

The PRESIDENT pro tempore. The Chair desires to make an announcement. On February 11, 1947, the State Department submitted to the Senate a communication from the distinguished Ambassador from Czechoslovakia transmitting a generous invitation to the Senate from the National Constitutional Assembly of the Czechoslovak Republic to send a delegation to visit Czechoslovakia.

The invitation was referred to the Senate Foreign Relations Committee.

The committee has instructed me to express the deep appreciation of the Senate for this gracious expression of good will and to assure the Government of Czechoslovakia of its deep anxiety to embrace every opportunity further to cement our good relations.

I have been further instructed to say that the burden of responsibilities on the Senate is the sole reason why the Senate is unable to accept the invitation at the present time.

The letter addressed to the Ambassador from Czechoslovakia under date of March 17, 1947, will be printed at this point in the RECORD, without objection.

The letter is as follows:

MARCH 17, 1947.

Dr. JURAJ SLAVIK,
Ambassador Extraordinary and Plenipotentiary,
Embassy of Czechoslovakia,
Washington, D. C.

MY DEAR MR. AMBASSADOR: Your gracious letter and invitation of January 30, 1947, addressed to the President pro tempore of the Senate, was presented by me to the full Senate and referred to the Senate Committee on Foreign Relations.

The committee is deeply appreciative of the invitation from the Czechoslovak National Constitutional Assembly suggesting that a delegation from the United States Senate should visit your great country and it instructs me to inform you and your Government of our desires to take advantage of every possible opportunity to strengthen the ties of mutual friendship and understanding between the United States and Czechoslovakia. Your invitation typifies a spirit of good will which we heartily reciprocate. Unfortunately the pressures upon the Senate are such that we cannot anticipate at the present time when it might be possible for a committee of the Senate to accept your invitation. I am sure you will be fully aware of the great responsibilities confronting the Senate for some months to come. Therefore, I have no present alternative except to suggest that we shall hope to be able to give more responsive attention to your invitation at a later date.

We cherish the warmest sentiments of friendly interest in the Czechoslovak National Constitutional Assembly and in the welfare of the Czechoslovak Republic. Whenever and wherever it is possible to cement these ties between us we shall welcome the opportunity and the privilege. I shall be indebted to you if you will inform your government of this response to its deeply appreciated invitation.

With sentiments of great respect and warm personal regards.

Cordially and faithfully,

A. H. VANDENBERG,
President pro tempore and Chairman of the Committee on Foreign Relations.

AUDIT REPORT OF TENNESSEE VALLEY AUTHORITY

The PRESIDENT pro tempore laid before the Senate a letter from the Comptroller General of the United States, transmitting, pursuant to law, an audit report of the Tennessee Valley Authority for the fiscal year ended June 30, 1945, which, with the accompanying report, was referred to the Committee on Expenditures in the Executive Departments.

MEETING OF COMMITTEE TO INVESTIGATE NATIONAL DEFENSE PROGRAM

Mr. BREWSTER. Mr. President, I ask unanimous consent that the Senate Committee To Investigate the National Defense Program may have a brief executive session this afternoon during the session of the Senate.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and permission is granted.

MEETING OF COMMITTEE ON RULES AND ADMINISTRATION

Mr. BROOKS. Mr. President, I ask unanimous consent that the Committee on Rules and Administration may be privileged to meet tomorrow afternoon.

The PRESIDENT pro tempore. Without objection, permission is granted.

MEETING OF COMMITTEE ON BANKING AND CURRENCY

Mr. TOBEY. Mr. President, I ask consent of the Senate that the Committee on Banking and Currency may meet tomorrow while the Senate is in session.

The PRESIDENT pro tempore. Without objection, permission is granted.

CALL OF THE ROLL

Mr. DONNELL obtained the floor.

Mr. WHITE. Mr. President, will the Senator from Missouri yield to me to suggest the absence of a quorum?

Mr. DONNELL. I yield to the Senator from Maine.

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

The PRESIDENT pro tempore. The clerk will call the roll.

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

Aiken	Gurney	Moore
Baldwin	Hatch	Morse
Ball	Hawkes	Murray
Brewster	Hayden	O'Conor
Bricker	Hickenlooper	O'Daniel
Bridges	Hill	Pepper
Brooks	Hoey	Reed
Buck	Holland	Robertson, Va.
Bushfield	Ives	Russell
Byrd	Jenner	Saltonstall
Cain	Johnson, Colo.	Smith
Capehart	Johnston, S. C.	Sparkman
Capper	Kem	Stewart
Chavez	Kilgore	Taft
Connally	Knowland	Thomas, Utah
Cooper	Langer	Thye
Cordon	Lodge	Tobey
Donnell	Lucas	Tydings
Downey	McCarthy	Umstead
Dworshak	McClellan	Vandenberg
Eastland	McFarland	Watkins
Ecton	McKellar	Wherry
Ellender	McMahon	White
Ferguson	Magnuson	Wiley
Flanders	Malone	Williams
Fulbright	Martin	Wilson
George	Millikin	Young

Mr. WHERRY. I announce that the Senator from Nebraska [Mr. BUTLER] and the Senator from Wyoming [Mr. ROBERTSON] are absent because of illness.

The Senator from West Virginia [Mr. REVERCOMB] is necessarily absent.

Mr. LUCAS. I announce that the Senator from Kentucky [Mr. BARKLEY] and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senators from Rhode Island [Mr. GREEN and Mr. MCGRATH], the Senator from South Carolina [Mr. MAYBANK], the Senator from Nevada [Mr. MCCARRAN], the Senator from Pennsylvania [Mr. MYERS], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Idaho [Mr. TAYLOR] are detained on public business.

The Senator from Oklahoma [Mr. THOMAS] is absent because of a death in his family.

The Senator from Louisiana [Mr. OVERTON] is absent because of illness.

The PRESIDING OFFICER (Mr. KEM in the chair). Eighty-one Senators having answered to their names, a quorum is present.

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By Mr. WHITE:

Petitions of sundry citizens of Bangor and Springdale, Maine, praying for the enactment of Senate bill 265, to prohibit the transportation of alcoholic beverage advertising in interstate commerce; to the Committee on Interstate and Foreign Commerce.

By Mr. JOHNSTON of South Carolina:

A concurrent resolution of the Legislature of the State of South Carolina; to the Committee on Labor and Public Welfare:

"Concurrent resolution relating to the school-lunch program

"Whereas the Federal Government has been offering the States assistance to develop and expand school-lunch programs, and after extended hearing the Seventy-ninth Congress passed the National School Lunch Act, which was signed by the President June 4, 1946, and became Public Law 396; and

"Whereas section 2 of this act reads as follows: 'It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch program'; and

"Whereas South Carolina is meeting its share of the costs as required by law, and is complying with other phases of the act; and

"Whereas school officials and the public in general consider the school-lunch program one of the most important Federal aided activities in the State and Nation; and

"Whereas the basis for strengthening our Nation is through better nutrition for our school children and a wider market for the products of our farms; and

"Whereas nothing is more important in our national life than the welfare of our children and proper nourishment comes first in attaining this welfare; and

"Whereas if Congress should fail to make necessary financial provisions, the school-lunch program in South Carolina would come to a close in most of our small and poorer schools: Now, therefore, be it

"*Resolved by the Senate (the House of Representatives concurring)*, That the South Carolina delegation in the National Congress are hereby urged to support deficiency appropriation for carrying the school-lunch program for the current year, and an appropriation for continuing the program for the next year (1947–1948); and be it further

"*Resolved*, That a copy of this resolution be forwarded by the clerk of the senate to Senators and Representatives in Congress from South Carolina, in Washington."

By Mr. YOUNG:

A concurrent resolution of the Legislature of the State of North Dakota; to the Committee on the Judiciary:

"Senate Concurrent Resolution 13

"Concurrent resolution memorializing the Congress of the United States to propose an amendment to the Constitution of the United States of America endorsing equal rights for women

"Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein):

"Whereas the women of America have shared equally with men in the hardships and sacrifices incident to the building of this Nation; and

"Whereas they have shared equally in the pain and distress which have been involved in the maintenance of the American Republic and the ideals of free government against the aggression of tyrants and have participated, and are today participating, in the battles precipitated by the enemies of freedom; and

"Whereas this Nation was conceived in liberty and dedicated to the proposition that all men are created equal and such declaration has no actual or implied limitations on equality before the law by reason of sex; and

"Whereas the rights of women before the law are much abridged in many States, and this legal discrimination on the basis of sex constitutes an intolerable burden upon thousands of women who are solely dependent upon their own efforts for their livelihood, and is a source of irritation to many thousands of others who recognize in this discrimination a flat contradiction of the American principle of equality, wholly out of accord with the status of American women, which they have reached by their achievements in other fields of human endeavor; and

"Whereas there are today 985,000 more women than men in this country and women have served this country in time of war as well as in peace, equally well with men in every field of work: Therefore be it

"Resolved, That the senate and house of representatives pass the following resolution and the amendment as follows:

"'EQUAL RIGHTS AMENDMENT

"'Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have the power within the respective jurisdictions to enforce this article by appropriate legislation.

"'This amendment shall take effect 3 years after the date of ratification'; be it further

"Resolved, That copies of this resolution be transmitted to the President of the United States, the Secretary of the United States Senate, the Clerk of the House of Representatives, and to each Member of Congress elected from the State of North Dakota."

A concurrent resolution of the Legislature of the State of North Dakota; to the Committee on Labor and Public Welfare:

"Senate Concurrent Resolution 23

"Concurrent resolution memorializing Congress to construct a psychopathic hospital for veterans in the State of North Dakota and until such time as such hospital is constructed to pay for the transportation charges for the commitment of psychopathic veterans to governmental institutions in adjoining States

"Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein):

"Whereas the State of North Dakota is one of the many States that does not have a veterans' hospital for psychopathic patients; and

"Whereas due to this factor mental patients have had to be transported to veterans' hospitals in adjoining States for commitment; and

"Whereas the Veterans' Administration, due to existing law, is unable and has therefore refused to pay for the travel expense involved in the commitment of such veteran to a mental institution in an adjoining State; and

"Whereas the counties have been required to assume the transportation costs of such veterans to other States, even though the sheriff has had no authority to collect expenses for out-of-State travel: Now, therefore, be it

"Resolved, That we, the members of the Thirtieth Legislative Assembly of the State of North Dakota, respectfully memorialize and petition Congress and the Veterans' Administration that in the future hospital-building program of the Veterans' Administration that a site for a psychopathic hospital be selected in North Dakota and that such a hospital be constructed and maintained in this State for the benefit of the veterans of this State and their families; be it further

"Resolved, That until such time as such hospital is constructed and in operation in this State, that we petition Congress to amend the laws pertaining to the Veterans' Administration to provide that the Veterans' Administration will assume and be held responsible for the transportation of psychopathic veterans to governmental institutions in adjoining States; be it further

"Resolved, That the secretary of state is hereby directed to send copies of this resolution to North Dakota's Representatives and Senators in Congress, United States Veterans' Bureau, Veterans' Service Commissioner, and to the Greater North Dakota Association."

Two concurrent resolutions of the Legislature of the State of North Dakota; to the Committee on Public Works:

"HOUSE CONCURRENT RESOLUTION P

"Concurrent resolution expressing the support of the people of North Dakota for the development of the Missouri River and its tributaries, and petitioning Congress to continue its support

"Whereas the several departments of the United States Government have prepared and adopted a plan for the development of the physical resources of the Missouri River Basin; and

"Whereas that plan was approved and authorized for construction by the Congress of the United States in the Flood Control Act of 1944; and

"Whereas appropriations for such development have already been made by the Congress of the United States and such works are now under way; and

"Whereas successful completion of said plan will bring untold benefits to the people of the Missouri Basin and to the people of the United States as a whole by increasing industrial, agricultural, and economic opportunity, and by stabilizing the business, industry, and agriculture now existent in the Missouri Basin: Now, therefore, be it

"Resolved by the House of Represeniatives of the State of North Dakota (the Senate concurring), That we hereby express the support of the people of North Dakota for this development of the Missouri River and its tributaries and that we respectfully petition the Congress of the United States to continue its support of this development and to make the necessary appropriation to carry on this work without delay, and that the secretary of state be authorized and directed to transmit a certified copy of this resolution to Senators YOUNG and LANGER and to Congressmen ROBERTSON and LEMKE at Washington, D. C."

"House Concurrent Resolution V

"Concurrent resolution memorializing the Congress of the United States to extend the time for availability of funds under the Federal Aid Act of 1944

"Be it resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein):

"Whereas, the Federal Aid Highway Act of 1944 authorized the apportionment of certain funds for each of the first three successive postwar fiscal years for Federal aid highways, the Federal aid secondary roads, and for projects on the Federal aid highway system in urban areas; and

"Whereas section 4 (d) of said act provides that any sums so apportioned to any State shall be available for expenditure in such State for only 1 year after the close of the fiscal year for which it is apportioned and that any sum so apportioned that remains unexpended at the end of such period shall lapse and revert to the Treasury of the United States; and

"Whereas the aforesaid provisions of section 4 (d) of said act will operate to cause each State to lose any portion of such funds apportioned to it for the first postwar fiscal year that may not be expended by June 30, 1947; and for the second postwar fiscal year not be expended by June 30, 1948; and for the third postwar fiscal year not expended by June 30, 1949; and

"Whereas the highway departments of many of the States are certain that the elements of inflation and the acute shortages of labor and engineering personnel, materials, and equipment that are known to exist will make it impossible to have these funds expended within the time now prescribed by said act, and said highway departments and the public generally realize that the need for the expenditure of such funds on highway work is, and will be, more intensified by reason of obsolescence, deterioration, increased unit costs, and ever-mounting traffic volumes: Now, therefore, be it

"Resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That the Congress of the United States be and hereby is memorialized and petitioned to enact suitable legislation to extend the periods of availability of such funds for 12 months after June 30 of each of the years 1947, 1948, and 1949; and be it further

"Resolved, That copies of this resolution be sent to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States, to the Federal Works Administrator, and the Commissioner of Public Roads of the United States, and to North Dakota's delegation in Congress."

Three concurrent resolutions of the Legislature of the State of North Dakota; to the Committee on Interstate and Foreign Commerce:

"House Concurrent Resolution K

"Concurrent resolution memorializing the Congress of the United States to enact legislation barring all forms of liquor advertising from interstate mails, from radio and motion picture programs

"Be it resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That the Legislative Assembly of the State of North Dakota does hereby memorialize and petition the Congress of the United States to enact legislation now introduced in the Senate of the United States to bar all forms of liquor advertising from interstate mails and from radio and motion picture programs. It is the sense of the house of representatives and the senate that such liquor advertisements coming through the interstate mails and over the radio and in motion picture programs are detrimental to the morals, health, and safety of the people, and particularly to the youth of our country, and, therefore, should be banned and barred from all interstate mails, radio, and motion picture programs; be it further

"Resolved, That the secretary of state be instructed to send copies of this resolution properly authenticated to the presiding officer of each House of the National Congress and to each of the United States Senators and Representatives from the State of North Dakota."

"House Concurrent Resolution M

"Concurrent resolution memorializing the Civil Aeronautics Board for early consideration in providing a northern area of the United States as the crow flies from Duluth, Minn., to Seattle, Wash., with regular air transportation serving Chicago via the Twin Cities and Duluth and the intermediate points of Grand Forks, Devils Lake, Minot, Williston, Glasgow, Havre, Great Falls, Kalispell, and Spokane

"Whereas there is no transcontinental air service between Lake Superior and Seattle along the Northern part of the United States; and

"Whereas said territory can well support such service and is in fact operating one of the most successful railroad operations in the Nation; and

"Whereas applications are pending on the part of air transport companies for such authority, and

"Whereas all of the cities and trade areas affected are desirous of having such service; and

"Whereas said service appears to be both economical and feasible and necessary in the best interests of the country; and

"Whereas no through service is available from the intermediate territory to important commercial and industrial centers of the country East or West: Now, therefore, be it

"Resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That the Members of Congress from this State be requested to lend every effort towards the establishment of such service by presenting this resolution to the Civil Aeronautics Board and in person reporting to said Board the lack of transportation by air above set forth. Let copies of this resolution be sent by the secretary of state to the Honorable WILLIAM LANGER and the Honorable MILTON R. YOUNG, Members of the United States Senate, and to the Honorable WILLIAM LEMKE and the Honorable CHARLES R. ROBERTSON, Members of Congress from North Dakota."

"Senate Concurrent Resolution 20

"Concurrent resolution demanding the removal of all controls over boxcar supply and distribution and allowing railroads to govern and allocate such equipment according to the needs of its patrons

"Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein):

"Whereas the supply of grain boxcars has been short of actual needs for this territory and as a result thereof there has been a great financial loss to producers and country elevators; and

"Whereas our railroads serving this territory have been forced to operate on approximately 50 percent of their own equipment while many eastern roads have been given 150 percent and more of car supply for l. c. l. freight; and

"Whereas impractical direction of transportation by the Office of Defense Transportation has resulted in discrimination against producers of this section in favor of eastern manufacturers and processors; and

"Whereas the evidence clearly indicates that arbitrary Office of Defense Transportation orders have been the cause of maldistribution of available boxcar supply and consequent backing up of food supplies in the country: Now, therefore, be it

"Resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein), That all controls over the supply and distribution of boxcars be removed and that the authority be given the various railroad units to govern and allocate their equipment according to the needs of their own patrons in keeping with a normal connecting line arrangement necessary to the operation of all American railroads; be it further

"Resolved, That copies of this resolution be sent by the secretary of state to the President of the United States, the Association of American Railroads, the Interstate Commerce Commission, and to North Dakota's delegation in Congress."

Three concurrent resolutions of the Legislature of the State of North Dakota; to the Committee on Public Lands:

"House Concurrent Resolution N

"Concurrent resolution memorializing the Congress of the United States to open for homestead entry the submarginal lands in the State of North Dakota for the benefit and rehabilitation of veterans of World War II

"Be it resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That the Legislative Assembly of the State of North Dakota does hereby memorialize and petition the Congress of the United States to enact legislation opening for homestead entry for the purpose of rehabilitation of veterans of World War II, all submarginal lands in the State of North Dakota. That certified copies of this resolution properly authenticated be sent by the secretary of state to the Presiding Officer of each House of the National Congress and to each of the United States Senators and Representatives from North Dakota."

"House Concurrent Resolution Y

"Concurrent resolution urging the enactment of H. R. 1113 of the Eightieth Congress authorizing the removal of restrictions by the United States Government on land and land interests of Indian veterans

"Be it resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein):

"Whereas the House of Representatives of the Eightieth Congress of the United States has before it H. R. 11133 providing that the Secretary of the Interior, upon an application by any Indian who shall have served honorably in the armed forces of the United States in time of war, may remove all restrictions upon the lands, interests in lands, funds, or other property of such Indian, and if such lands or interests are held by the United States in trust for such Indian, to issue an unrestricted patent in fee therefor: Now, therefore, be it

"Resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That we recommend the passage of H. R. 1113 of the Eightieth Congress of the United States as soon as possible and substantially in the form introduced; be it further

"Resolved, That the secretary of state is directed to transmit copies of this resolution to the President of the Senate and Speaker of the House of Representatives of the United States Congress, to the chairman of the Indian Affairs Committee of the House of Representatives of the United States Congress, and to North Dakota's delegation in the House of Representatives and Senate of the United States."

"Senate Concurrent Resolution 26

"Concurrent resolution memorializing the Congress of the United States to create a Roosevelt Memorial Park in the Bad Lands area of the State of North Dakota

"Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein):

"Whereas the Honorable WILLIAM LEMKE of the Eightieth Congress of the United States has introduced in the Congress of the United States H. R. 731, for the purpose of creating and establishing a Theodore Roosevelt National Park and to reconstruct the log cabin and other buildings used by Theodore Roosevelt during his residence in the State of North Dakota on the original ranch owned and operated by him and to erect a suitable memorial to the said Theodore Roosevelt in the village of Medora, Billings County, State of North Dakota; and

"Whereas the said land under the bill which is to be used as a park is now owned by the Federal Government or its subdivisions and will not take additional land out of production; and

"Whereas the natural beauty of the North Dakota Bad Lands is recognized throughout all of the United States as well as in the State of North Dakota: Now, therefore, be it

"Resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein), That the Legislative Assembly of the State of North Dakota does hereby memorialize and petition the Congress of the United States to enact legislation favorable to H. R. 731, establishing and creating the said Roosevelt Memorial Park in the Bad Lands of North Dakota; be it further

"Resolved, That certified copies of this resolution, properly authenticated, be sent forthwith by the secretary of state to the presiding officer of each House of Congress and to each of the United States Representatives and Senators from the State of North Dakota and to the chairman of the House Committee on Public Lands and to the President of these United States of America."

Four concurrent resolutions of the Legislature of the State of North Dakota; to the Committee on Agriculture and Forestry:

"House Concurrent Resolution C

"Concurrent resolution memorializing Congress of the United States to continue and expand the development of rural electrification throughout the United States

"Whereas electricity has become an absolute necessity, not only for urban centers, but for the farm population of the United States; and

"Whereas the use of electricity on a farm, for its effective and efficient management, is now and has been for some time a necessary source of power as well as convenience; and

"Whereas the rural population is entitled to the same conveniences and necessities as the urban population of the United States; and

"Whereas rural electrification has been made possible largely through the Rural Electrification Administration, which has proven itself and which has electrified thousands of farms throughout the United States that otherwise would not have been able to procure electrical power; and

"Whereas there seems to be widespread publicity indicating some misunderstanding and perhaps hostility toward the Rural Electrification Administration; and

"Whereas the farmers of the United States deem rural electrification and its continued expansion one of the essential requirements of the modern age: Now, therefore, be it

"Resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That the Congress of the United States continue the expansion and development of rural electrification in the United States, and that all necessary funds for use of rural electrification, and the building of rural electric lines and the organization of rural electrification cooperatives be amply provided, to the end that eventually all farm families be enabled to procure the service of electric power for the efficient management of their farms as well as their convenience; and be it further

"Resolved, That the House of Representatives of the State of North Dakota, the Senate concurring therein, respectfully urge and request the Congress of the United States to continue to give its wholehearted support to rural electrification through helpful legislation and continued adequate appropriations; and that the Congress of the United States carefully study the needs of rural electrification, and that no attempt be made

to stifle, stymie, or prevent the extension and expansion of rural electrification in the United States."

"House Concurrent Resolution W

"Concurrent resolution to the Congress of the United States petitioning Congress to strengthen present sanitary requirements governing the importation of livestock and livestock products and to appropriate additional funds to the Bureau of Animal Industry, United States Department of Agriculture, in order that border inspection may be improved and a system of patrol established along the northern boundary of Mexico to guard against the importation of people, animals, and materials carrying the infection of foot and mouth disease, and also petitioning Congress to offer to the Government of the Republic of Mexico such facilities as may be available from the Bureau of Animal Industry, United States Department of Agriculture, and appropriating money to provide for such facilities and to extend aid to the Government of the Republic of Mexico in order that foot-and-mouth disease may be eradicated

"To the President of the United States and to the Honorable Senate and House of Representatives of the United States in Congress Assembled:

"Whereas foot-and-mouth disease now exists in livestock in the Republic of Mexico; and

"Whereas the disease has spread rapidly into a number of States in the vicinity of Mexico City and has now reached as far west and north as the state of Zacatecas; and

"Whereas it is extremely doubtful if the Government of the Republic of Mexico can eradicate this disease from their livestock without additional assistance; and

"Whereas the presence of foot-and-mouth disease in the Republic of Mexico presents a very definite threat to the prosperity of the livestock industry and the entire economic welfare of the United States: Now, therefore, be it

"Resolved by the Thirtieth Legislative Assembly of the State of North Dakota (the Senate and House of Representatives concurring), That we earnestly petition the Congress of the United States to strengthen the present sanitary requirements governing the importation of livestock and livestock products from Mexico and from other countries in which foot-and-mouth disease exists; be it further

"Resolved, That we earnestly petition Congress to appropriate additional funds to the Bureau of Animal Industry, United States Department of Agriculture, in order that border inspection may be improved and a system of patrol be established along the northern boundary of Mexico to guard against the importation of people, animals, and materials carrying the infection of foot-and-mouth disease; be it further

"Resolved, That we petition and urge the Congress of the United States to offer to the Government of the Republic of Mexico such facilities and assistance as may be available from the Bureau of Animal Industry, United States Department of Agriculture, and to appropriate funds to provide for this assistance and to provide direct financial aid to the Government of the Republic of Mexico in order that foot-and-mouth disease be eradicated from their livestock; be it further

"Resolved, That a copy of this concurrent resolution be forwarded by the secretary of state to the President of the United States and to the President pro tempore of the United States Senate, the Speaker of the House of Representatives, the Honorable Secretary of State, the Honorable Secretary of the United States Department of Agriculture, and to the Senators and Representatives in Congress from the State of North Dakota with the request that they bring this matter forcibly to the attention of the Members of the Congress of the United States."

VERNON M. JOHNSON,
Speaker of the House.
KENNETH L. MORGAN,
Chief Clerk of the House.
C. P. DAHL,
President of the Senate.
W. J. TROUT,
Secretary of the Senate.

Attest:

THOMAS HALL,
Secretary of State.

"House Concurrent Resolution Z

"Concurrent resolution petitioning Congress to enact permanent legislation to maintain a floor of not less than 90 percent of parity on all basic farm crops

"Be it resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein):

"Whereas the gross debt of the Government of the United States has increased from about forty billion to about $260,000,000,000 during the period of World War II from 1939 to 1946; and

"Whereas interest must be paid annually and the debt gradually liquidated if the Government is to be saved from insolvency or bankruptcy; and

"Whereas it must be self-evident that if we are to avoid lower living standards and if this debt is to be serviced and paid, it must be through the production of new wealth from the natural resources of the United States; and

"Whereas the national income of the United States and the gross income of agriculture of this country have each only slightly more than doubled during the same time and these must bear the chief burden of taxes in maintaining the national solvency; and

"Whereas our gross farm income represents about 65 percent in dollar value of our annual production of new wealth, and in turn our national income regularly averages approximately seven times the dollar amount of gross farm income; and

"Whereas a return to the 1939 price and income levels for farm products would reduce our national income about 50 percent or from about one hundred sixty billion to less than $8,000,000,000: Now, therefore, be it

"Resolved by the House of Representatives of the State of North Dakota (the Senate concurring therein), That we hereby petition Congress to pass permanent legislation to maintain a floor of not less than 90 percent of parity on all basic farm crops, to protect such floor prices with commodity loans of like amount and to prescribe such import duties, excise taxes, or quotas on competitive imports as may be needed to maintain these price levels and our national income and to equalize the differential between the dollar value of our production and that of foreign counties; be it further

"Resolved, That copies of this resolution properly authenticated be forwarded by the secretary of state to the presiding officer of each House of the National Congress and to each of the United States Senators and Representatives from North Dakota."

"Senate Concurrent Resolution 21

"Concurrent resolution memorializing the Congress of the United States to provide funds for the payment of the difference between the ceiling price on flax and the price obtainable after the ceiling had been lifted

"Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein):

"Whereas the Federal Government during the summer of 1946 imposed a ceiling on flax of $4 per bushel; and

"Whereas such ceiling was given wide publicity in Government news releases and reports and stated that the farmer would receive no benefit by holding his flax for sale at a later date; and

"Whereas the public was warned that the stocks of oils would be the smallest in 30 years and the farmers were repeatedly urged by the Federal Government, its agencies, and representatives to market their flax; and

"Whereas many farmers of this State relying on such news releases and information cooperated with the Federal Government by marketing such flax to alleviate economic conditions and keep oil crushers in operation; and

"Whereas after the farmers had sold their flax, the Federal Government lifted the ceiling on flax on October 17, 1946, so that by October 25, 1946, the price of flax had zoomed 80 percent or to $7.25 per bushel; and

"Whereas the Federal Government at the time of imposing the ceiling on flax knew and had knowledge that the ceiling would be lifted as it had agreed to purchase from Argentina flax or its derivative, oil, the agreed price of which was the equivalent of $6 per bushel for Argentine flax; and

"Whereas the farmers have suffered a gross injustice due to their reliance upon the representations made by the Federal Government, its agencies and representatives: Now, therefore, be it

"Resolved, That we, the members of the Thirtieth Legislative Assembly of the State of North Dakota, respectfully memorialize Congress to provide to farmers who marketed their 1946 flax, sufficient Federal funds for the payment of the difference between the ceiling price on flax of $4 per bushel and the sum of $7.25 per bushel, which the farmers would have secured had they held their flax until the ceiling had been lifted; be it further

"Resolved, That a copy of this resolution be forwarded to the Secretary of Agriculture of the United States, to the United States Senate, the United States House of Representatives and each of the Senators and Representatives of the State of North Dakota in the Congress of the United States."

PATRIOTS DAY

Mr. LODGE. Mr. President, I ask unanimous consent to present for appropriate reference and printing in the RECORD a resolution adopted by the Board of Aldermen of the City of Medford, Mass., relating to the national recognition of April 19 as Patriots Day.

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

CITY OF MEDFORD,
March 4, 1947.

Be it resolved, That this board of aldermen does hereby recommend the favorable passage of a resolution entered in Congress by Representative E. N. ROGERS calling for the national recognition of April 19 as Patriots Day.

The resolution as introduced in Congress reads as follows: "Authorizing the President of the United States to proclaim April 19 of each year Patriots Day for the commemoration of the events that took place on April 19, 1775."

In board of aldermen, March 4, 1947, passed.

A true copy.

Attest:

GEORGE P. HASSETT,
City Clerk.

RECLAMATION PROJECTS AFFECTING NORTH DAKOTA

Mr. LANGER. Mr. President, I ask unanimous consent to present for appropriate reference and printing in the RECORD several resolutions adopted by the directors of the North Dakota Reclamation

Association, Bismarck; the Board of County Commissioners of the County of Morton; the Board of County Commissioners of the County of Richland; the County Commissioners of Burke County; and the Carl Oftedahl Post, No. 127, of the American Legion, Bowbells, all in the State of North Dakota, dealing with the development of reclamation projects of interest to the State of North Dakota.

There being no objection, the resolutions were received, ordered to be printed in the RECORD, and referred, as follows:

To the Committee on Public Lands:

"The following resolution was adopted by the directors of the North Dakota Reclamation Association at a meeting held on this 4th day of March 1947 at Bismarck, N. Dak.:

" 'Whereas we believe the cause of reclamation would be enhanced throughout the West by having the power of authorization of projects rest solely in the hands of the Congress of the United States; and

" 'Whereas the views of the Solicitor of the Interior Department are at variance with what we believe was the intent of Congress in the writing of the 1939 Reclamation Act in respect to the application of power revenues from multiple-purpose Federal reclamation projects; and

" 'Whereas due especially to present-day costs of reclamation projects, added to the fact that the less expensive reclamation development in the West has already been made, some revised formula should be adopted, based on principles fair to all sections of the Nation, and setting up tests of feasibility more workable than those in the 1939 act; and

" 'Whereas the National Reclamation Association, with which this association is affiliated, has at its last two annual conventions approved resolutions favoring the clarification of these matters; and

" 'Whereas remedial legislation has been submitted to the Eightieth Congress, through S. 539 and H. R. 1886, which we believe will accomplish these ends: Therefore be it

" '*Resolved*, That the North Dakota Reclamation Association go on record as giving its unqualified endorsement to the provisions of these two measures; and that through its board of directors every effort be extended to bring about favorable consideration and final approval of one or both of these proposals; be it further

" '*Resolved*, That copies of this resolution be forwarded to members of the North Dakota congressional delegation at Washington, to the chairman of the Public Lands Committee and Appropriations Committee of both the United States Senate and House of Representatives, to the Governor of North Dakota, and to the secretary of the National Reclamation Association.'

"Attest:

"J. I. ROVIG,
"Secretary."

To the Committee on Appropriations:

"The following resolution was adopted by the directors of the North Dakota Reclamation Association at a meeting held on this 4th day of March 1947 at Bismarck, N. Dak.:

" 'Whereas surveys and investigations have been carried on for a number of years on the projects in the Red River watershed by the Corps of Army Engineers; and

" 'Whereas immediate development of such projects is desperately needed to provide municipal and domestic water supply to the cities of Fargo, Grand Forks, Valley City, Lisbon, Grafton, Park River, and other cities of the Red River Valley: Therefore be it

" '*Resolved*, That the directors of the North Dakota Reclamation Association urge Congress to provide funds to augment funds already made available for construction of Bald Hill Dam and that further appropriations be requested on projects recommended by the Corps of Army Engineers to alleviate the critical domestic water supply of cities adversely affected; be it further

" '*Resolved*, That a copy of this resolution be sent to the Governor of North Dakota, to the North Dakota congressional delegation at Washington, the Chief of Army Engineers, Washington, D. C.'

"Attest:

"J. I. ROVIG,
"Secretary."

"The following resolution was adopted by the directors of the North Dakota Reclamation Association at a meeting held on this 4th day of March 1947 in Bismarck, N. Dak.:

" 'Whereas surveys and investigations have advanced to a stage on the Heart River project, the Sheyenne Dam of the Missouri Souris project where construction could be started in 1947; and

" 'Whereas construction of these units are vital to the economic welfare and domestic water needs of North Dakota and the furtherance of the Missouri Basin water-development program; and

" 'Whereas the Bureau of Reclamation is charged with the responsibility of the construction of these projects: Therefore be it

" '*Resolved by the directors of the North Dakota Reclamation Association*, That we urge Congress to provide the necessary funds to start actual construction of these units during the fiscal year 1948 so that these various units may proceed in an orderly manner to bring about the over-all development as authorized by Congress; be it further

" '*Resolved*, That a copy of this resolution be sent to the Governor of North Dakota, the North Dakota congressional delegation at Washington.'

"Attest:

"J. I. ROVIG,
"Secretary."

"The following resolution was adopted by the Board of County Commissioners of the County of Morton at a meeting held on this 5th day of March, 1947:

" 'Whereas surveys and investigations have advanced to a stage on the Heart River project, the Sheyenne Dam of the Missouri-Souris project, where construction could be started in 1947; and

" 'Whereas construction of these units are vital to the economic welfare and domestic water needs of North Dakota and the furtherance of the Missouri Basin Water Development program; and

" 'Whereas the Bureau of Reclamation is charged with the responsibility of the construction of these projects: Therefore be it

" '*Resolved by the Board of County Commissioners of the County of Morton*, That we urge Congress to provide the necessary funds to start actual construction of these units during the fiscal year 1948, so that these various units may proceed in an orderly manner to bring about the over-all development, as authorized by Congress; be it further

" '*Resolved*, That a copy of this resolution be sent to the Governor of the State of North Dakota, the Honorable Fred G. Aandahl, and to the North Dakota delegation in Washington, Hon. William Langer, Hon. Milton R. Young, Hon. William Lemke, Hon. Charles R. Robertson.' "

" 'Whereas surveys and investigations have advanced to a stage on the Heart River project, the Sheyenne Dam of the Missouri-Souris project where construction could be started in 1947; and

" 'Whereas construction of these units are vital to the economic welfare and domestic water needs of North Dakota and the furtherance of the Missouri Basin water development program; and

" 'Whereas the Bureau of Reclamation is charged with the responsibility of the construction of these projects: Therefore be it

" '*Resolved by the Carl Oftedahl Post, No. 127, of the American Legion, of the city of Bowbells, N. Dak.*, That we urge Congress to provide the necessary funds to start actual construction of these units during the fiscal year 1948, so that these various units may proceed in an orderly manner to bring about the over-all-development, as authorized; be it further

" '*Resolved*, That a copy of this resolution be sent to the North Dakota delegation in Washington, Hon. William Langer, Hon. Milton R. Young, Hon. William Lemke, Hon. Charles R. Robertson, and to the Governor of the State of North Dakota, the Honorable Fred G. Aandahl.'

"The foregoing resolution was adopted by the Carl Oftedahl Post, No. 127, of the American Legion, of Bowbells, N. Dak., at a meeting held on the 3d of March, 1947.

"CARL OFTEDAHL POST, No. 127,
"R. CURFU, *Post Commander*,

"Attest:

"C. H. RASMUSSEN, *Adjutant*."

"The following resolution was adopted by the Board of County Commissioners of Richland County at a meeting held on this 6th day of March 1947:

" 'Whereas surveys and investigations have advanced to a stage on the Heart River project, the Sheyenne Dam of the Missouri Souris project where construction could be started in 1947; and

" 'Whereas construction of these units are vital to the economic welfare and domestic water needs of North Dakota and the furtherance of the Missouri Basin water development program; and

" 'Whereas the Bureau of Reclamation is charged with the responsibility of the construction of these projects: Therefore be it

" '*Resolved by the Board of County Commissioners of Richland County*, That we urge Congress to provide the necessary funds to start actual construction of these units during the fiscal year 1948, so that these various units may proceed in an orderly manner to bring about the over-all development, as authorized by Congress; be it further

" '*Resolved*, That a copy of this resolution be sent to the Governor of the State of North Dakota, the Honorable Fred G. Aandahl, and to the North Dakota delegation in Washington, Hon. William Langer, Hon. Milton R. Young, Hon. William Lemke, Hon. Charles R. Robertson.'

"On roll call all members present voted in favor of said resolution, and same was declared duly carried and adopted."

"The following resolution was adopted by the County Commissioners of the County of Burke at a meeting held on this 4th day of March 1947:

" 'Whereas surveys and investigations have advanced to a stage on the Heart River project, the Sheyenne Dam of the Missouri Souris project where construction could be started in 1947; and

" 'Whereas construction of these units are vital to the economic welfare and domestic water needs of North Dakota and the furtherance of the Missouri Basin water development program; and

" 'Whereas the Bureau of Reclamation is charged with the responsibility of the construction of these projects: Therefore be it

" '*Resolved by the Commissioners of Burke County*, That we urge Congress to provide the necessary funds to start actual construction of these units during the fiscal year 1948, so that these various units may proceed in an orderly manner to bring about the over-all

development, as authorized by Congress; be it further

"'*Resolved, that a copy of this resolution* be sent to the Governor of the State of North Dakota, the Honorable Fred G. Aandahl, and to the North Dakota delegation in Washington, Hon. William Langer, Hon. Milton R. Young, Hon. William Lemke, Hon. Charles R. Robertson.'

"OSCAR A. KALLBERG,
"Chairman, Burke County Commissioners.
"Attest:
"WM. JOHNSON,
"County Auditor."

"The following resolution was adopted by the directors of the North Dakota Reclamation Association at a meeting held this 4th day of March 1947, at Bismarck, N. Dak.:

"'Whereas preliminary construction of highways, railroad connections and other facilities for the construction of the Garrison Dam and Reservoir have been well advanced; and

"'Whereas it is imperative that construction be commenced on the damsite, said reservoir being one of the key projects of the Missouri Basin development provided for in the Flood Control Act of 1944; and

"'Whereas the Corps of Army Engineers have already begun construction at the damsite with partial completion of the construction city of Riverdale and preparatory river testing to the starting of construction of the dam proper: Therefore be it

"'*Resolved by the Directors of the North Dakota Reclamation Association,* That we urge Congress to provide funds to permit actual construction on the dam to be advanced during the fiscal year 1948, with existing noncontingent limitations placed upon appropriations for such construction by the Congress, so that the various projects making up the whole may proceed uninterruptedly in realization of the coordinated Pick-Sloan Missouri Basin development plan; be it further

"'*Resolved,* That a copy of this resolution be forwarded to members of the North Dakota congressional delegation at Washington, D. C., to the Governor of North Dakota, the Chief of Army Engineers, Washington.'

"Attest:
"J. I. ROVIG,
"Secretary."

REPORTS OF COMMITTEE ON PUBLIC LANDS

The following reports of a committee were submitted:

By Mr. CORDON, from the Committee on Public Lands:

H. R. 731. A bill to establish the Theodore Roosevelt National Park; to erect a monument in memory of Theodore Roosevelt in the village of Medora, N. Dak.; and for other purposes; with amendments (Rept. No. 54); and

S. J. Res. 45. Joint resolution to change the name of Boulder Dam to Hoover Dam; with amendments (Rept. No. 55).

By Mr. HATCH, from the Committee on Public Lands:

S. 214. A bill to change the name of the Lugert-Altus irrigation project in the State of Oklahoma to the W. C. Austin project; without amendment (Rept. No. 56).

OFFICE OF SELECTIVE SERVICE RECORDS—REPORT OF COMMITTEE ON ARMED SERVICES

Mr. SALTONSTALL. Mr. President, from the Committee on Armed Services, I ask unanimous consent to report an original bill to establish an office of selective service records to liquidate the Selective Service System following the termination of its functions on March 31, 1947, and to preserve and service the selective service records, and for other purposes, and I submit a report (No. 53) thereon.

The PRESIDING OFFICER. Without objection, the report will be received, and the bill will be placed on the calendar.

The bill (S. 918) to establish an office of selective service records to liquidate the Selective Service System following the termination of its functions on March 31, 1947, and to preserve and service the selective service records, and for other purposes, was read twice by its title, and ordered to be placed on the calendar.

EXEMPTION OF EMPLOYERS FROM LIABILITY FOR PORTAL-TO-PORTAL WAGES IN CERTAIN CASES—MINORITY VIEWS (PT. I OF S. REPT. 48)

Mr. KILGORE. Mr. President, I ask unanimous consent to submit the minority views of the Committee on the Judiciary on the bill (H. R. 2157) to define and limit the jurisdiction of the courts to regulate actions arising under certain laws of the United States, and for other purposes.

The PRESIDING OFFICER. Without objection, the minority views will be received and printed.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, March 17, 1947, he presented to the President of the United States the following enrolled bills:

S. 220. An act to authorize the Secretary of the Navy to convey to American Telephone & Telegraph Co. an easement for communication purposes in certain lands situated in Virginia and Maryland; and

S. 221. An act to authorize the Secretary of the Navy to grant and convey to the Virginia Electric & Power Co. a perpetual easement in two strips of land comprising portions of the Norfolk Navy Yard, Portsmouth, Va., and for other purposes.

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. AIKEN:

S. 907. A bill to provide for the orderly transaction of the public business in the event of the death, resignation, or separation from office of regional disbursing officers of the Treasury Department; to the Committee on Expenditures in the Executive Departments.

By Mr. CAIN:

S. 908. A bill relating to maximum rents on housing accommodations; to the Committee on Banking and Currency.

By Mr. DOWNEY:

S. 909. A bill to authorize the Postmaster General to provide clerical assistance at post offices of the fourth class during the periods of annual or sick leave of the postmasters at such offices;

S. 910. A bill to amend the act entitled "An act granting allowances for rent, fuel, light, and equipment to postmasters of the fourth class, and for other purposes," enacted May 24, 1928, for the purpose of increasing the amount of such allowances from 15 percent of the compensation earned by the postmasters in each quarter to 25 percent; and

S. 911. A bill to provide for the payment by the United States of premiums on bonds given to the United States by persons employed in the field or departmental service of the Post Office Department; to the Committee on Civil Service.

By Mr. DOWNEY (for himself, Mr. KNOWLAND, Mr. JOHNSON of Colorado, Mr. MILLIKIN, Mr. CONNALLY, and Mr. O'DANIEL):

S. 912. A bill exempting certain projects from the land-limitation provisions of the Federal reclamation laws and repealing all inconsistent provisions of prior acts; to the Committee on Public Lands.

By Mr. TOBEY (for himself and Mr. MCGRATH):

S. 913. A bill to amend Section 5 of the Home Owners' Loan Act of 1933, and for other purposes; to the Committee on Banking and Currency.

By Mr. STEWART:

S. 914. A bill to increase the subsistence allowances payable to veterans pursuing courses of education or training under the Servicemen's Readjustment Act of 1944, as amended, from $90 to $150 in the case of veterans with dependents and from $65 to $80 in the case of veterans having no dependents; and to provide for corresponding increases in the ceilings on combinations of subsistence allowances and income from productive labor; to the Committee on Labor and Public Welfare.

By Mr. MCCARTHY (for himself and Mr. TAFT):

S. 915. A bill providing for the temporary continuation of rent control, establishing a rent adjustment and decontrol board, and for other purposes; to the Committee on Banking and Currency.

By Mr. SMITH:

S. 916. A bill for the relief of Mrs. Frederick Faber Wesche; to the Committee on the Judiciary.

By Mr. SALTONSTALL (for himself and Mr. LODGE):

S. 917. A bill to encourage the production of sheep, to protect the domestic price for wool, to provide for the national defense, and for other purposes; to the Committee on Agriculture and Forestry.

(Mr. SALTONSTALL, from the Committee on Armed Services reported an original bill (S. 918) to establish an Office of Selective Service Records to liquidate the Selective Service System following the termination of its functions on March 31, 1947, and to preserve and service the Selective Service records, and for other purposes, which was ordered to be placed on the calendar and appears under a separate heading.)

By Mr. YOUNG:

S. 919. A bill to authorize the reconstruction of a highway bridge across the Bois de Sioux River in North Dakota; to the Committee on Public Works.

By Mr. TAFT:

S. 920. A bill for the relief of Stefan Christoff Malinoff; to the Committee on the Judiciary.

By Mr. HATCH:

S. 921. A bill to authorize a project for the rehabilitation of certain works of the Fort Sumner irrigation district in New Mexico, and for other purposes; to the Committee on Public Lands.

By Mr. PEPPER:

S. 922. A bill for the relief of Ruth Grossman; to the Committee on the Judiciary.

By Mr. PEPPER (for himself and Mr. HOLLAND):

S. 923. A bill for the relief of the United Daughters of the Confederacy; to the Committee on the Judiciary.

By Mr. JENNER:

S. J. Res. 89. Joint resolution to provide for the printing and distribution of certain matter relating to congressional activities authorized by section 221 of the Legislative Reorganization Act of 1946 to be included in the CONGRESSIONAL RECORD; to the Committee on Rules and Administration.

EXEMPTION OF EMPLOYERS FROM LIABILITY FOR PORTAL-TO-PORTAL WAGES IN CERTAIN CASES—AMENDMENTS

Mr. WHERRY submitted an amendment and Mr. HOLLAND submitted two amendments intended to be proposed by them, respectively, to the bill (H. R. 2157) to define and limit the jurisdiction of the courts, to regulate actions arising under certain laws of the United States, and for other purposes, which were ordered to lie on the table and to be printed.

REDUCTION OF INDIVIDUAL INCOME-TAX PAYMENTS—AMENDMENT

Mr. PEPPER submitted an amendment intended to be proposed by him to the bill (H. R. 1) to reduce individual income-tax payments, which was referred to the Committee on Finance, and ordered to be printed.

RESCISSION OF ORDER FOR PRINTING OF ANALYSIS OF HEARINGS ON GENERAL HOUSING BILL OF 1945

Mr. TOBEY. Mr. President, I ask unanimous consent that the order of the Senate of March 14, 1947, providing for the printing as a Senate document, with illustrations, an analysis of the hearings on the so-called Wagner-Ellender-Taft general housing bill, S. 1592, Seventy-ninth Congress, prepared by the Legislative Reference Service, Library of Congress, and on the new bill recently introduced in the present Congress, be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRINTING OF SENATE REPORT 610, SEVENTY-SIXTH CONGRESS, ENTITLED "SURVEY OF EXPERIENCES IN PROFIT SHARING AND POSSIBILITIES OF INCENTIVE TAXATION"

Mr. VANDENBERG. Mr. President, in the Seventy-sixth Congress a subcommittee of the Committee on Finance consisting of the late Senator from Iowa, Mr. Herring, and myself, conducted a Nation-wide survey of profit sharing. As a result a report was printed in the Seventy-sixth Congress entitled "Survey of Experiences in Profit Sharing and Possibilities of Incentive Taxation," which is probably the best available encyclopedia on the subject. There have been very many demands for the report, and the copies made available have been exhausted. The Government Printing Office has sold 6,000 copies of the document, which would indicate its popularity.

At the urgent request of many who are interested in the availability of this report, on a subject which is coming to be of renewed, current interest, I am asking for an order to reprint the document. The order necessarily has to be in the form of a concurrent resolution. Therefore I ask unanimous consent to submit a concurrent resolution which I should like to have considered and acted upon at this time.

The PRESIDING OFFICER. The clerk will read the concurrent resolution.

The concurrent resolution (S. Con. Res. 9) was read, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed 1,000 additional copies of Senate Report No. 610, Seventy-sixth Congress, first session, being the report entitled "Survey of Experience in Profit Sharing and Possibilities of Incentive Taxation" which was printed as a report from a subcommittee of the Senate Committee on Finance acting pursuant to Senate Resolution 215, Seventy-fifth Congress, agreed to May 18, 1938. Such addditional copies shall be for the use of the Senate Committee on Finance.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Michigan?

There being no objection, the concurrent resolution was considered and agreed to.

THE FOREIGN POLICY OF THE UNITED STATES—ADDRESS BY SENATOR LODGE

Mr. LODGE. Mr. President, I ask unanimous consent to have inserted in the RECORD at this point an address on the subject of foreign policy delivered by me before the Clover Club, Boston, on March 15.

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

It is no exaggeration to say that we are standing at a turning point in history, a turning point of the kind which happens only once in several centuries. We see all around us chaos, hatred and turmoil; we see old empires going down and new power combinations arising; we see the saturation of populations, coupled with the exhaustion of natural resources; we hear the talk of new wars and we see that the contest between democracy and totalitarianism which some thought had been settled on VE-day and VJ-day has not yet been laid to rest. More and more, people will realize in the next few months, if they do not realize it now, that the erstwhile great nations of western Europe can no longer be world powers and may not be able to stand up to Communist doctrines without outside help.

That there will, therefore, be demands on our generosity is almost a foregone conclusion. And that in the name of religion and humanitarianism we will respond to those demands is equally certain, because we, the descendants of immigrants, who sought to escape the curse of Europe, are a generous people.

We are now, however, asked by the President of the United States on his solemn responsibility to go further than that. He has courageously faced the challenge of Communist aggression and we must support him in principle, while we, your servants in Congress, decide what methods should be used. If the people and their Congress were to repudiate the President, the last hope of ever organizing peace would vanish. We can be sure of one thing; weakness will not avoid trouble. There is a much better chance that strength, guided by virtuous motives, will do so. Nor can I escape the thought that if this challenge had been faced much earlier we would not be needing to take these steps today. You can bargain better before the other fellow gets the stuff than you can afterward.

We now have the right and the duty to make conditions as to what we give or what we lend abroad without having our motives impugned. For example, these stricken nations should be stimulated to produce all that they can produce, and not to remain prostrate in the belief that we will go on forever feeding them a minimum ration. We must insist that American agents supervise the distribution of our American goods so that our money and goods go where they are intended and not to fatten any private pocket, foreign or domestic. We must demand that no American goods be used—as they have been in the recent past—to promote political ideologies that are hateful to us; that no government waste its substance on competitive armaments while receiving aid from us; and that our friends and former enemies return whatever is given them when they are able to do, either to us or to some international fund for future famine relief.

None can deny our right to make such conditions. Our people are heavily taxed. Even in our land, millions are close to the poverty line. Our resources are not inexhaustible; in fact, in many respects we are a have-not Nation. We cannot simply buy our way out.

What we may do in the immediate future must be made to square with the long range future and with our policy in other parts of the world. We must not resist communism in one place and appear to support it in others. We must by all means use our own American methods and not follow the outworn and unsuccessful methods of older nations. We must modernize and make effective our diplomacy. The old striped pants approach is as out of date as horse cavalry and is still all too often used because so many of our people don't know any better.

Gentlemen, we are in an unhappy and rather sickening moment. We don't like any part of it. At best we face a choice of the lesser of evils. But the one thing we cannot do is to avoid a decision, for refusing to make a decision in an affair of this kind is itself a decision. We are—and I am profoundly sorry to say it—deeply involved from a material, a spiritual, and an ideological standpoint. To give a clear warning that we refuse to be shut out of the Near East is not imperialism; it is not war mongering; it is not pulling chestnuts out of fires; it is not bailing out the oil companies. It is simple self-preservation.

I close with the suggestion that any policy we may follow in the future be an American policy; that, of course, we support the United Nations; that by our attitude and by our example we show the world what a success we can make of democracy; and that the one form of government which believes in the dignity of man and in his worthwhileness and importance has the vitality to survive and prosper, even while we are passing through the valley of the shadow.

ASSISTANCE TO GREECE

Mr. MCMAHON. Mr. President, during the past few days I have deliberated and reflected, as seriously as I ever have done in my life about anything, upon the message concerning the Greek situation which was read by the President of the United States on Wednesday last at a joint session of the Congress. A choice between two pleasant courses of action was not afforded. I have decided to support the President's request. It occurs to me that it might be well if the titular leader of the Republican Party were to make his views known on this all-important question, since it goes without saying that he is a candidate for the nomination of his party for the Presidency of the United States; and since the step we are about to take is as important as any affecting our foreign policy we have ever taken in the Nation's history, I think it would be well if we could hear what the gentleman in Albany thinks about this matter. I know it would be of considerable interest to the Members of the Senate, to the Members of the House of Representatives, and to the people of the country.

PRIVATE BUSINESS PROFITS

Mr. KNOWLAND. Mr. President, I ask unanimous consent to have printed in the body of the RECORD a table showing

the incomes of corporations in the United States for various years, and a statement explaining the table. I merely wish to point out that about a year ago some misinformation was issued by the Department of Commerce, which indicated that a 30-percent increase in wages was possible without the need for a price increase. Of course, this was not possible. I think the Senate will find these factual figures on corporate profits very interesting.

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

TABLE I.—*Percent of profit earned by private business corporations in the United States on sales, total assets, and risk capital, 1931–46*

[Money figures in millions of dollars]

Year	Number of corporations	Sales (compiled receipts)	Total assets	Shareholders capital (net worth)	Profit (net income after taxes)	Dividends paid	Percent of profit on—			Percent dividends paid on shareholders' capital
							Sales	Total assets	Shareholders' capital	
5-year average, 1939–43	396,786	184,318	343,454	140,627	9,163	5,871	4.97	2.67	6.52	4.17
10-year average, 1934–43	405,426	151,556	322,829	139,619	6,935	6,059	4.58	2.15	4.97	4.35
13-year average, 1931–43	401,226	137,123	313,313	138,515	4,894	5,566	3.57	1.56	3.53	4.02
1946				[1] 154,000	[1] 12,800				[1] 8.31	
1943	366,870	245,886	389,524	145,665	12,181	5,626	4.95	3.13	8.36	3.86
1942	383,524	213,777	360,018	139,629	11,141	5,512	5.21	3.09	7.98	3.95
1941	407,053	186,137	340,452	142,590	9,528	6,556	5.12	2.80	6.68	4.60
1940	413,716	145,427	320,478	138,387	6,947	6,019	4.78	2.17	5.02	4.35
1939	412,759	130,365	306,801	136,865	6,019	5,639	4.62	1.96	4.40	4.12
1938	411,941	117,596	300,022	137,437	3,300	4,834	2.81	1.10	2.40	3.52
1937	416,562	138,107	303,357	141,633	6,531	7,281	4.70	2.15	4.61	5.14
1936	415,654	126,269	303,180	133,468	6,473	7,163	5.13	2.14	4.85	5.37
1935	415,205	112,098	303,150	138,931	4,778	5,896	4.26	1.58	3.44	4.24
1934	410,626	99,095	301,307	141,585	2,456	4,788	2.48	.82	1.73	3.38
1933	388,564	82,148	288,206	127,578	−1,056	3,091	−1.19	−.39	−.83	2.42
1932	392,021	79,701	280,083	133,569	−3,753	3,854	−4.76	−1.35	−2.84	2.89
1931	381,088	105,238	296,497	143,363	−880	6,092	−.84	−.30	−.61	4.25

[1] Estimate.

NOTE.—Figures were taken, without change or adjustment, from the annual volumes of Statistics of Income published by the Bureau of Internal Revenue, U. S. Government.

"Sales (compiled receipts)" comprise (1) taxable income consisting of gross sales (less returns and allowances), gross receipts from operations (where inventories are not an income-determining factor), taxable interest received, rents and royalties received, net capital gain, net gain from sale of property other than capital assets, dividends received from stock of domestic corporations, and other receipts required to be included in gross income, and (2) partially and wholly tax-exempt interest received on Government obligations. They exclude nontaxable income other than wholly tax-exempt interest received on certain Government obligations. The net effect of the broadening of the concept of "sales" to include the above-listed items, some of which are "net" items, is to show the percent of profit on sales in the attached tables to be slightly higher than was actually realized.

Net profit or loss comprises the amount remaining after all expenses of operation and all taxes have been deducted from "Sales (compiled receipts)."

"Shareholders capital" (synonymous with net worth and risk capital) consists of capital stock, common and preferred, surplus reserves, surplus and undivided profits less deficits.

"Dividends paid" comprise cash and all other types of dividends except corporation's own stock.

The corporations covered in these tables include all active private business corporations in the United States filing balance sheets in connection with their Federal income-tax returns. Of a total net profit of $12,200,869,000 reported for 1943 by all corporations filing Federal income-tax returns for that year, those submitting balance sheets with their income tax returns accounted for $12,181,000,000, or 99.84 percent.

The statistics in these tables, in going back to the year 1931, cover all the years for which complete data for each of the categories are available. Less complete records are available for a number of years prior to 1931.

ADDRESS BY SENATOR WILEY ON LABOR IN THE ATOMIC AGE

[Mr. WILEY asked and obtained leave to have printed in the RECORD a radio address recently delivered by him on the subject Labor in the Atomic Age, which appears in the Appendix.]

CONGRESS PUTS AN END TO "SPEED" OF RUBBER-STAMP ERA — ADDRESS BY SENATOR CAPPER

[Mr. CAPPER asked and obtained leave to have printed in the RECORD a radio address entitled "Congress Puts an End to 'Speed' of Rubber-Stamp Era," delivered by him on March 9, 1947, which appears in the Appendix.]

FEDERAL AID TO EDUCATION—ADDRESS BY SENATOR TAFT

[Mr. TAFT asked and obtained leave to have printed in the RECORD an address entitled "The Sound Basis for Federal Aid to Education," delivered by him to the American Association of School Administrators at Atlantic City, March 6, 1947, which appears in the Appendix.]

AID TO GREECE AND TURKEY—INTERVIEW WITH SENATOR FLANDERS

[Mr. BALDWIN asked and obtained leave to have printed in the RECORD a radio interview with Senator FLANDERS over the Yankee Network, by Francis W. Tully, Jr., which appears in the Appendix.]

COMMUNISM

[Mr. McKELLAR asked and obtained leave to have printed in the RECORD three editorials relating to communism, one from the Washington Times-Herald of March 16, 1947, entitled "Start at Home," by Frank C. Waldrop; one entitled "Fails To Meet Test," from the Standard-Times of New Bedford, Mass., of March 14, 1947; and one entitled "America's New World Role," from the St. Louis Post-Dispatch of March 14, 1947, which appear in the Appendix.]

INTERNATIONAL VOICE BROADCASTING—STATEMENT ON BEHALF OF BROADCASTING MAGAZINE

[Mr. BROOKS asked and obtained leave to have printed in the RECORD a statement by William Benton for the Broadcasting magazine in relation to a letter by Commander McDonald regarding international voice broadcasting, which appears in the Appendix.]

AID TO GREECE—EDITORIALS FROM THE CHICAGO DAILY NEWS

[Mr. BROOKS asked and obtained leave to have printed in the RECORD two editorials from the Chicago Daily News, the first entitled "United States Must Ration Charity Lest We Join the Bread Line," from the issue of March 8, 1947, and the second entitled "Truman Policy for Greece Risks Bankruptcy and War," from the issue of March 15, which appear in the Appendix.]

AID TO GREECE AND TURKEY—EDITORIAL BY DON C. MATCHAN

[Mr. PEPPER asked and obtained leave to have printed in the RECORD an article on the proposed extension of aid to Greece and Turkey, written by Don C. Matchan, and published in the Valley City (N. Dak.) Times-Record of March 13, 1947, which appears in the Appendix.]

"FOR GREEK FREEDOM FIRST"—EDITORIAL FROM THE CHICAGO SUN

[Mr. PEPPER asked and obtained leave to have printed in the RECORD an editorial entitled "For Greek Freedom First," published in the Chicago Sun of March 13, 1947, which appears in the Appendix.]

APPRECIATION OF WORK OF PERSONNEL OF ESSEX COUNTY AND NEWARK, N. J., ADVISORY BOARDS FOR REGISTRANTS

[Mr. HAWKES asked and obtained leave to have printed in the RECORD the letter of appreciation accompanying the certificate of commemoration issued to the personnel of the Essex County, N. J., and Newark Advisory Boards for Registrants, under the Selective Service System, which appears in the Appendix.]

"ECONOMIC PEACE"—ARTICLE BY JAMES RESTON

[Mr. KILGORE asked and obtained leave to have printed in the RECORD an article entitled "The Real Test Is the Economic Peace," by James Reston, published in the New York Times magazine of February 9, 1947, which appears in the Appendix.]

THE SUGAR SUPPLY—EDITORIAL FROM THE WHEELING NEWS-REGISTER

[Mr. KILGORE asked and obtained leave to have printed in the RECORD an editorial entitled "Our Sugar Supply," published in the Wheeling News-Register of February 7, 1947, which appears in the Appendix.]

ITALIAN PEACE TREATY—EDITORIAL FROM PROGRESSO ITALO-AMERICANO

[Mr. IVES asked and obtained leave to have printed in the RECORD an editorial entitled "No Ratification Without Revision," published in the Progresso Italo-Americano of March 5, which appears in the Appendix.]

EXEMPTION OF EMPLOYERS FROM LIABILITY FOR PORTAL-TO-PORTAL WAGES IN CERTAIN CASES

The Senate resumed the consideration of the bill (H. R. 2157) to define and limit the jurisdiction of the courts to regulate

actions arising under certain laws of the United States, and for other purposes.

Mr. DONNELL. Mr. President, the Members of the Senate were extremely courteous to me on Friday last in refraining from asking me to yield except when the circumstances were appropriate that they should so ask. I shall greatly appreciate, in the interest of continuity, their very kind cooperation again today. I shall not lay down any ironclad rule, as indicated on Friday, and shall yield in reasonable degree, but I think I can present the case much more clearly and better if I may be permitted to proceed with reasonable continuity.

At the time of the recess of the Senate on Friday last, following the synopsis of certain relevant portions of the Fair Labor Standards Act, of the Walsh-Healey Act, and of the Bacon-Davis Act, there had been presented, among other matters—

First. Information showing the great number of suits commonly called portal-to-portal cases which had within the 7 months ending January 31, 1947, been filed in the Federal courts; the fact that in 1,515 of the 1,913 such suits filed in those months, definite amounts aggregating $5,785,204,000 were claimed; that in the remaining 398 of the 1,913 suits a definite amount was not named, but the court was requested to give judgment for the amount found due; the fact that nearly 62 percent of the 1,913 suits were commenced during the month of January 1947; the fact that 1 or more of said 1,913 suits had been filed in 44 of the 48 States; the fact that the number, 1,913, is less than seven-twentieths of 1 percent of 557,030, which last-mentioned number is the estimated number of establishments covered by the Fair Labor Standards Act; that, according to a report of the subcommittee of the Business Advisory Council, Department of Commerce, dated January 20, 1947, the pending suits involved only 10 percent of the total number of employees subject to the Fair Labor Standards Act, and that the total number of employees subject to sections 6 and 7 of that act is roughly approximated at 20,150,000.

Second. The fact that the immediate cause of this vast and widespread litigation was the decision of the Supreme Court of the United States in the case of Anderson against Mount Clemens Pottery Co.

Third. The facts claimed demonstrate, in my opinion, that the activities which the Court held compensable in the Mount Clemens case were such as neither management nor labor had previously treated as or considered to be separately compensable.

Fourth. Facts, particularly those embraced in certain activities of CIO affiliates, showing how the influx of litigation occurred.

Fifth. Facts demonstrating certain of the effects of the mere institution and maintenance of these suits upon the companies sued, in some cases the working capital or net worth of the companies being less than the amounts for which they are sued, and the effects including impairment of financial position of defendants, retardation of industry, and burden of expense in preparation of defense of suits.

It had been pointed out that according to the subcommittee of the Business Advisory Council for the Department of Commerce:

> Whatever the final amounts which might be awarded by the courts if the present judicial interpretation stands, it is clear that the extent of litigation, the cost of defense, and the potential liabilities constitute such a burden on industry as to force many companies into bankruptcy and to disrupt seriously the whole economy.

Mr. President, today at the outset the attention of the Senate is directed not to the effect of the mere institution and maintenance of the suits, but to the further effect upon the companies sued in the event the suits shall be successful.

I refer first to the very important testimony of Mr. Wilson, who was mentioned on Friday last, the chairman of the board of governors of Aircraft Industries Association. Mr. Wilson testified, in substance, that pending suits against the 12 largest aircraft companies now total $461,000,000; that these amounts exceed the net current assets of these companies, which net current assets are $366,365,000, and that the amounts of the pending suits exceed the net worth of these companies, which net worth is $423,000,000. Thus it is, Mr. President, that in this great industry, the aircraft industry, the 12 largest companies are faced by suits in which the plaintiffs ask judgment for $38,000,000 more than the total net worth of the 12 largest aircraft companies.

I need not emphasize, save only to state the proposition, that the aircraft industry in our Nation bears a most important relationship to our national security and to our national defense.

Mr. Wilson also brought out a very interesting fact, almost an ironic fact, when he pointed to the unfairness of the pending suits in that the greater the production by the companies, which production was necessitated and occasioned by the war, the greater is their potential liability under the suits to which reference has been made.

Attention is also called not only to the tremendously precarious situation in which the aircraft industry now finds itself as a result of the maintenance of these portal-to-portal suits, but also to a similarly precarious situation in which the great lumber industry of the Pacific Northwest finds itself confronted at this time. In the testimony before the subcommittee it was asserted by Mr. James P. Rogers, executive secretary of the Western Woods Employers, that with a potential liability of $175,000,000 involving more than 1,000 companies it would be, as Mr. Rogers indicated, and substantially quoting him, "a bankrupting proceeding." His organization represents substantially all the Douglas-fir and western-pine industry of the Pacific Northwest, and that production comprises about one-third of the national lumber production. I quote a sentence from the testimony of Mr. Rogers:

> In addition, if we had to go on an 8-hour day—

I interpolate to say that with the double liability for overtime it is obvious that the whole tendency in this and other industries would be to restrict the time of the employment of laborers so as to bring their combined operations within the 40-hour week, thus escaping the time and a half.

> Mr. ROGERS. In addition, if we had to go on an 8-hour day, and assuming that we could survive these suits, the loss to the lumber production in the Pacific Northwest would be approximately 2,000,000,000 feet less logs each year if he had to go on an 8-hour day camp to camp, as we call it, and that would be a loss of about 95,000 houses that would not be built in the United States that will be built under the present system.

That is the tremendous impact of the litigation which materially threatens the production of lumber, and thereby materially interferes with the construction of houses for our population. I say to the general population and to the veterans of World War II that we had better stop, look, and listen before we pass by this extremely serious threat which now impends over us.

Not alone in the aircraft industry, not alone in the lumber industry, can striking illustrations be found, and were presented to our committee with respect to the terrific impact of this portal-to-poral litigation upon the industry of our country.

I refer next to the mining industries of our country. Mr. Julian D. Conover, secretary of the American Mining Congress, testified before the committee. I quote two sentences from his testimony:

> Pending and prospective claims for back pay for nonproductive activities, based on the Mt. Clemens decision, would not only wreck large segments of our industry, but in doing so would have grave consequences to the future economy and even the military security of our country. We believe it the duty of Congress, in the national interest, to take prompt and decisive action to end this threat.

A few moments ago I referred to the almost ironic situation which confronts the aircraft industries, in that the greater their production in response to the requirements of the Nation during the war, the greater their potential liability under this mass of litigation now pending against them. I call attention to another fact of equal interest, if not as of great financial importance. That is the fact that the Government itself, in carrying out a wise policy of internal security requirements, placed into effect regulations binding—if it was legally possible to bind them, and I have no doubt it was under the exigencies of war—the plants which were producing war materials, the effect of which regulations, in part, was to increase the amount of the so-called portal-to-portal liability. I call attention to one such regulation. It is found in pamphlet No. 32–2, dated September 1, 1943, entitled "Internal Security Inspection." It deals with the prevention of unauthorized entry to facilities. I quote this language from the regulation:

> Facilities engaged in war work of highest importance should be completely enclosed by a man-proof fence. The number of gates should be kept at a minimum.

Obviously, the requirement that the number of gates should be kept at a minimum would, if it had any effect whatever, result in increasing the

amount of necessary walking time of some employees, for, of course, the smaller the number of gates the greater the probability of an increased distance between the gate and the actual place at which the employee was engaged in productive work. One gentleman who testified before the committee, Forrest J. Sanborn, was engaged in plant protection for the War Department during a portion of the war. He testified with respect to approximately 100 examinations which he made of plants in Wisconsin, Illinois, and Michigan, between April 1942 and January 1943, as follows:

Senator DONNELL. Of these 100 plants, what proportion, if you are able to recall, during April 1942 to 1943, were reduced by reason of this fencing, the number of entrances to the plant from what it had been prior to the installation of the fences to which you refer?

Mr. SANBORN. That is a hard one.

Senator DONNELL. Of course, you could not remember exactly, but could you tell us whether it was reduced to half, two-thirds, or one-fourth, or what?

Mr. SANBORN. I would say that one out of three plants probably reduced at least one to two exits, depending on the size of the plant, of course.

Subsequently in his testimony there occurred the following:

Senator DONNELL. Here is a plant which, prior to the putting in of the fencing around it, had, we will say, half a dozen entrances to which employees could come in and go to start their work at their machinery. After the installation of the fencing, what proportion of the plants, as nearly as you can recall, reduced the number of entrances from the half dozen, we will say, which they had into the plant originally to a smaller number of entrances into the fence?

Mr. SANBORN. I change my ratio to say at least half of them.

Senator DONNELL. In other words, you think that in at least half of the plants the number of entrances through the fence that was thrown around the plant was less than the number of entrances which the employees had been previously permitted to enter into the plant itself?

Mr. SANBORN. Yes, sir.

So, Mr. President, we find that these very security requirements, which were cheerfully complied with by the manufacturing interests of our country, in themselves have an obvious tendency toward very largely increasing the amount of the portal-to-portal liabilities for which effort is now being made to charge them.

Mention was made the other day of the fact that the effects of this litigation are not confined by any means to the large cities of our Nation. Among the witnesses to whom reference was made on Friday was Brig. Gen. Maurice Hirsch, of the War Contracts Price Adjustment Board. He pointed out with utmost clarity the fact that manufacturing for the war effort was not confined to the large cities. I have no doubt that my distinguished colleague from Missouri [Mr. KEM], who now presides over these deliberations, knows of the fact that in his and my State, in some of the smaller towns, such as Versailles, Jefferson City, and California, there were manufacturers of tents, leggings, and other materials. I had the pleasure of going through a part of one plant in a little town and seeing overcoat material being manufactured to be sent to far-off Russia. So throughout the Nation, Mr. President, in small towns and large towns, there was a distribution of the war effort. Manufacturers were not confined to the large cities. General Hirsch in his testimony points out that he knows of one instance in which a contractor had more than 25,000 subcontractors widely scattered. He mentioned also that one small contractor had 2,200 subcontractors, and to quote the general:

The prime contract did not amount to more than $3,000,000, I think.

Indeed, he very graphically uses this language in the course of his testimony, at page 749 of the hearings:

Our thumbtacks of concerns engaged in the war effort literally covered the country. It just absolutely flecked the entire map.

Senator DONNELL. Do you have any idea how many cities and towns there were in which there were Government contracts or subcontracts carried on?

General HIRSCH. I would say every city and town of any consequence and a tremendous number of villages.

Senator DONNELL. It would run into many thousands in which these contractors and subcontractors were located?

General HIRSCH. I know very few that were not engaged in war work.

Senator DONNELL. Your observation is that it would go back into the little town, the little city, where there is a grave uncertainty on the part of a subcontractor as to whether he is going to have to pay this portal to portal that would affect his plans for expansion and the labor he would employ, which would in turn affect the merchants, which would in turn affect the farmers and producers of all types and kinds?

General HIRSCH. That is true. We have already had occasions where they have closed up.

Senator DONNELL. It would affect the railroad carriers and so on?

General HIRSCH. Yes, sir.

Senator DONNELL. Including the carriers of interstate commerce?

General HIRSCH. That is the way I feel about it.

Obviously, Mr. President, with these suits being maintained, if any material portion of the 1,913 suits shall be successful, it is not at all unreasonable to expect that from one end of the country to the other, all over the Nation, in Federal courts and State courts, yes, even down to the smallest courts where the amounts involved are small, there will be a vast influx of litigation. We may expect also that employers and manufacturers who have now returned to a peacetime basis will find themselves confronted with claims involving vast sums which it will be impossible for them to pay. They will thereby, of course, be discouraged from, and in many instances prevented from, engaging in the expansion of their business which would normally occur. This would obviously affect workers in the respective communities who would not receive the employment which they would otherwise receive. It would affect the merchants who would otherwise have sold more merchandise because of the additional number of persons employed by the expanded industries. It would affect the farmers who would be producing commodities with which to feed a greater number of employees, including employees who would have had their wages advanced because of economic conditions incident to the expansion in the industries.

So, Mr. President, it is not at all an exaggeration to say that this ominous threat to our national economy goes clear down to the grass roots in the towns, villages, little cities, and even into the rural districts, in all branches of industry, and, to a greater or less degree it involves the prosperity of every individual in the United States.

I have in my hand a photostat copy of the New York Times of December 29, 1946, and I quote one paragraph from an article contained therein, which is headed "Billions involved."

In Michigan alone it is estimated that between 600,000 and 700,000 employees would be entitled to an average of $1,000 each, or about $600,000,000 to $700,000,000 of the estimated six to seven billions that may be eventually involved in the suits.

I have also in my hand a photostatic copy of an editorial from the New York Times of December 24, 1946, a portion of which I should like to read. It appears to be the first editorial of that date in the New York Times, and it reads as follows:

THE PORTAL-TO-PORTAL ISSUE

In 1941 the United Pottery Workers Industrial Union (CIO) instituted a suit for back pay on behalf of 1,100 employees against the Mount Clemens (Mich.) Pottery Co. The original basis of the suit was the claim that the company had failed to include certain bonus payments in the computation of the hourly rate for overtime; that it had failed to pay for a 15-minute lunch period; and that it had failed to pay for that part of the first quarter hour worked by employees arriving 2 or 3 minutes late. Federal Judge Frank A. Picard found in favor of the union, the following year only to be reversed by the circuit court of appeals. However, the union's claims were upheld by the Supreme Court in a decision handed down last June 10, since, declared the Court, "the statutory workweek includes all the time during which an employee is necessarily required to be on the employer's premises on duty or in a prescribed work place, the time spent in these activities must be properly compensated."

Says the editorial:

This decision has been seized upon by labor leaders as full recognition of the principle of portal-to-portal pay invoked by John L. Lewis during the war as a means of circumventing the Little Steel wage ceiling. It is now apparently to be used as a lever for one of the largest mass wage demands in the Nation's history. A fortnight ago representatives of the 800,000 members of the United Steelworkers of America—

I interpolate, Mr. President, that that is the CIO affiliate referred to on Friday last—

filed suit against two subsidiaries of the United States Steel Corp. for $120,000,000 in back portal-to-portal pay (or, more accurately, in the case of a nonmining industry, gate-to-gate pay). But that was only the beginning of the movement, which is rapidly attaining the proportions of an avalanche. Predictions as to the ultimate amount of such claims are futile beyond the obvious conclusion that they seem destined to run into several billions.

Not millions, Mr. President, but billions.

The editorial continues:

These actions constitute a peculiarly disturbing and harassing type of wage demand, for a number of reasons. In the first place,

wage contracts are ordinarily entered into with prevailing practices and working conditions in mind. To reopen such contracts, as this would in effect do, and to insert in them drastically retroactive provisions—

I pause at that point in the reading, Mr. President, to comment upon the corroboration by this editorial of my statement of last Friday as to the tremendous surprise which the rendition of this decision in the Mount Clemens case brought to the public at large.

Reverting again to the editorial:

which they were never intended to include, would be to impose severe and, in some cases, crippling penalties for acts which were, in many cases at least, entirely innocent. In the second place, the incidence of such penalties would be extremely capricious, being related not to the intent of the company concerned, but to the nature of the industry, on the one hand, and its geographical location on the other. In some instances "walking time" is a small item; in others a very considerable one. Moreover, the basis of claims depends upon the statute of limitations for such claims in the State of domicile of the corporation, and these range all the way from 6 months or a year to as long as 8 years.

All that remained to make this incredible picture complete was a touch of comedy relief, and the necessary bit of grim humor was supplied over the week end by Judge Picard, who rendered the original decision in the case. The issue of portal-to-portal pay, Judge Picard now declares, never entered into his findings. "That," says he, "was injected into the case by the Supreme Court." He had simply ruled that the union had just claims for back pay for overtime.

Mr. President, I now read the final short paragraph of this editorial:

This issue presents an urgent problem for the new Congress, and one that may not prove to be as simple as would appear on its face. The Wage and Hour Division apparently favors a uniform Federal statute which would at least determine the liabilities of industry and put them on more or less the same basis. But that might run into constitutional objections on the ground that it would apply retroactively to claims recognized by existing law. On one aspect of the problem, however, there can be no excuse for unnecessary delay. That is the clarification beyond any question of what constitutes working time.

Mr. LODGE. Mr. President, will the Senator yield at this point?

Mr. DONNELL. I yield.

Mr. LODGE. In my reading of the bill I have come to section 9, paragraph (c) (1), on page 19; and I wish to ask the Senator whether that paragraph runs to things in addition to portal-to-portal matters.

Mr. DONNELL. Does the Senator from Massachusetts refer to the provision in regard to limitations?

Mr. LODGE. Yes.

Mr. DONNELL. It does.

Mr. LODGE. It also seems to me that in section 8, paragraph (a) runs to things other than portal-to-portal matters.

Mr. DONNELL. That is correct.

Mr. LODGE. Then I should like to ask the Senator why the bill departs from the portal-to-portal field and goes into other subjects.

Mr. DONNELL. If the Senator from Massachusetts will be so kind, I should very much prefer to answer those questions when I reach the bill. They will be answered, and I hope they will be fully and satisfactorily answered; but I think it would disturb quite materially the presentation of this factual statement for me to discuss those matters at this time. So I am sure the Senator from Massachusetts will cooperate by not pressing his question at this moment.

Mr. LODGE. Certainly.

Mr. DONNELL. I thank the Senator.

Mr. President, this country fortunately is not composed solely of large businesses. We have a vast number of small enterprises. Some of us now sitting in this body have been clerks in stores of small size, in small communities. It is somewhat refreshing and reassuring to observe from his testimony in behalf of the National Small Businessmen's Association that Mr. Arthur W. Kimball placed in the record a statement made by Mr. H. B. McCoy, of the Department of Commerce, before the Senate Small Business Committee, in 1942, 5 years or so ago. Mr. McCoy stated that in 1939, enterprises accounting for 97 percent of the total number of manufacturing establishments employing not more than 250 workers each, furnished jobs to 48 percent of all workers in the United States and accounted for 47 percent of the value of all production in manufacturing.

Mr. President, the reason for calling attention to the importance of small business in connection with this presentation is to make especial mention again of the fact that the impact of this portal-to-portal litigation is not confined to large companies, but goes down to the many small businesses, particularly the manufacturers, in the first instance, and thereafter the merchants and others to whom I have referred.

In addition to the testimony of General Hirsch that "thumbtacks of concerns engaged in the war effort literally covered the country," Mr. Wilson, of the Aircraft Industries, stated that the Army Air Forces estimated that more than 12,000 subcontractors worked on AAF contracts alone. Mr. President, the effect of this litigation upon small business, as well as upon large business, is clear and conclusive from the evidence of various witnesses before our committee.

Let me mention not only that great numbers of small enterprises participated in war production, but also that in so doing they expanded their operations far in excess of those in which they engaged in peacetime. Mr. President, you know, undoubtedly, as do I, of instances of small companies which in the course of the war became large companies producing vastly more than their wildest dreams or imagination would have caused them to expect in prior years. Likewise, with the conclusion of the war there came a resumption of the former peacetime activities, and in some cases doubtless less than ordinary previous peacetime volume. Inasmuch as the portal-to-portal liability asserted against such small companies would be based in part upon abnormally large operations engaged in during the war, the resultant claims against such companies would be out of all proportion to their probable peacetime capacity to pay. What then will be the effect? Suppose that judgments in such suits are rendered in the small towns of various sections of the country, perhaps in Connecticut. I observe that on my right sits a former Governor of the great State of Connecticut, and now a Member of this Body, the Senator from Connecticut [Mr. BALDWIN]. Suppose in his State a large number of such judgments were rendered not only against the larger companies, but also against the smaller companies, based upon their wartime activities when they were producing more, and therefore increasing their portal-to-portal liabilities far in excess of what they would have been in peacetime. What then would be the effect on the economy of the towns and cities in which such companies were operating of the rendition of such judgments against those companies. The Senator from Connecticut was kind enough to tell of two companies which already had been forced to close their doors because of a provision in a Connecticut statute under which the institution of a suit gives the right to take attachment.

I venture to say that he would agree that with the rendition of judgment after judgment against subcontractors all over the United States, in the towns and cities and villages to which General Hirsch referred, the conditions of economic insecurity might mount to such a point and such proportions as to bring about in the United States vast financial panic as a result of this portal-to-portal litigation.

Mr. President, I have referred to a reported dated January 20, 1947, of a subcommittee of the Business Advisory Council for the Department of Commerce. Let me read a few observations from that report:

The problems faced by industrial concerns, of course, vary widely. Some small companies extended their employment vastly to engage in war work. Shrunk to prewar size, pay rolls, and resources, it is utterly impossible for these small concerns to meet the retroactive wage claims made against them. It is even impossible for them to hire enough clerical workers to examine the old-time cards and determine their potential liability. It is said on good authority that in the Northwest lumber industry only three concerns would remain solvent if presently filed claims became payable.

Mr. President, I pointed out that in the testimony given to us from the Northwest by Mr. James P. Rogers, of the Western Woods Employers, it was set forth that the potential liability asserted in these suits involves in excess of a thousand companies. Something of the magnitude of this tremendous and dangerous problem is indicated by the report of the Business Advisory Council, which states that it is said on good authority that in the Northwest lumber industry only three concerns out of at least a thousand, to quote again from Mr. Rogers, would remain solvent if presently filed claims become payable.

It may be asked, "Why cannot all the parties get together and settle these claims, and get them off the books?" Mr. President, there is a very good and very wholesome reason which has caused the Supreme Court of the United States to rule that it is impossible to compromise and settle these claims. I say that

normally it is a good reason, and Senators will see later as the argument progresses our views with respect to that.

But what is the effect of the observation of the Supreme Court on the cases now at hand? It means that with $5,875,000,000 of liabilities asserted it is impossible for the employers and the employees to compromise and adjust the claims and get them off the books, with one possible exception. I say it is a possible exception because I am unable to determine from the case of *Brooklyn Savings Bank* v. *O'Neal* (324 U. S. 697), cited at page 182 of the record, whether there may be some cases where it is impossible for the persons to agree upon the facts, as to whether they might be able to enter into an agreement as to what are the facts. Nevertheless, it remains true that in the case of Brooklyn Savings Bank against O'Neal the Supreme Court held, in effect, that when the facts are once agreed upon, when it is found that so many hours have been put in by an employee, it is beyond the legal power of the employer and the employee to compromise or settle or adjust such a claim other than by the payment of 100 cents on the dollar. What is the reason for that? The reason is that the Supreme Court recognized that in passing the Fair Labor Standards Act the Congress had a very wholesome and salutary purpose, namely, the protection of interstate commerce from the burdens which would result to it were employees not to have the protections extended to them by the act. This is what the Court says:

> Neither petitioner nor respondent suggests that the right to the basic statutory minimum wage could be waived by any employee subject to the act. No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the act. We are of the opinion that the same policy considerations which forbid waiver of basic minimum and overtime wages under the act also prohibit waiver of the employee's right to liquidate damages.

So, Mr. President, when an employee comes into court and says that he has worked 1 hour of overtime, for which he is normally paid 90 cents, a rate which is one and a half times his pay of 60 cents an hour, and files his claim for the 90 cents, and 90 cents more, an aggregate of $1.80, for that hour's work, under the Fair Labor Standards Act, when the facts are admitted as to how many hours he worked, under the decision of the Supreme Court he and the employer cannot validly compromise, settle, or adjust his claim.

The situation is such that unless Congress steps in and takes appropriate action, we will have this litigation pending until it shall have gone the gamut of the courts, the United States district courts, circuit courts of appeals, United States Supreme Court, and I have no doubt that as time shall progress, many suits will likewise be filed, from the standpoint of public convenience, in the State courts as well.

Mr. President, I have endeavored to suggest some of the facts—by no means all of them—which have been brought out in the testimony before and in the observations by the Committee on the Judiciary of the Senate, as to the effect of this litigation on the defendants who are sued, and as to the effect on the total economy of the people of the United States. There is another effect which is perhaps of even greater consequence than many of the effects to which I have already referred. I allude now to the effect of the pending suits on the Federal Government itself.

Someone may ask, How is the Federal Government affected by this mass of litigation? It is affected in many ways. I shall mention the economic respects, at least the predominant economic respects, in which the Government is affected. I dare say, Mr. President, that just as when a pebble is thrown into a lake there follow waves and motions of the water extending over a wide area, so there may well be further effects upon the Government which will develop in addition to the economic effects to which I shall refer.

In the first place, suppose these suits are successfully maintained against any particular employers? If they are compelled to pay the judgments rendered against them in such suits, of course the very first thing they will think about, and properly so, is about coming back to the Federal Government and saying, "We have paid our income tax," and in some instances as excess-profits tax, "on the theory that our expenses were only so many dollars, but now we find that our liability is vastly greater than what we expected." Therefore they come to the Government with petitions for refunds of taxes which they have already paid. That is one obvious immediate effect which would occur from the rendition and payment of judgments against employers.

There is another result, Mr. President. Many of these employers, during the period from the time of the beginning of our participation in World War II, and doubtless even before that, in many instances, were war contractors. Suppose one of these war contractors is compelled to pay out in wages now, and in liquidated damages, and in expenses for the preparation of the suits, and in attorneys' fees to the plaintiffs, large sums of money which were not previously anticipated. Suppose the contractor held a cost-plus-a-fixed-fee contract from the Government, in other words, he was entitled to receive, first, his costs, plus a fixed fee for the rendition of the services performed. If a judgment should be rendered against such an employer and he were compelled to pay the judgment, what would he do? Obviously, the first thing he would do, in addition to thinking of his tax situation, would be to go to the Government and say, "My costs, under the contract which I carried out for the Government, were greater than I had anticipated, and under this contract I was entitled to my cost plus a fixed fee." Therefore he would file his claim against the Government for the increased cost over and above what he had anticipated previously.

A third effect may reasonably be expected. I shall mention all these somewhat more in detail in a few moments, but the third is that, even though in many cases there may be no legal liability on the part of the Government, in the case of contracts of a type different from the cost-plus-a-fixed-fee variety, or even a somewhat analogous type, a contract with an escalation clause, high Government officials appearing before our committee recognized in unmistakable terms the existence in their minds of at least moral claims, or at least they recognized that some might think they had moral claims for the settlement of which they would ask Congress to make provision.

So, on the one hand, we have the matter of the tax refunds, and, second, the case of employers who were war contractors, who had contracts with provision for cost plus fixed fees, or escalation clauses, who would be entitled as a matter of law to reimbursement to the full amount of the claims they might legally pay. In the third place, there are those situations—many of them, as we shall see in a few moments—in which liability may be asserted against the Government.

Then there is a fourth class of cases, those in which a man has performed contracts for the Government, but has not yet completed his renegotiation with the Government. There are only about 518 such cases still unrenegotiated, but the amounts involved in those cases aggregate, as I recall, approximately $6,000,000,000 in gross amounts of the contracts.

Suppose that these men, when they come before the renegotiation authorities, say "You are now trying to find out whether we made too much money in performing our contracts. We call to your attention the fact that our costs were vastly more than we thought they were going to be, because portal-to-portal judgments have been secured against us. We therefore request the Government not to require us to pay back to the Government amounts of renegotiated recoveries, which would have been properly chargeable against us, had not these additional costs developed." I shall have something to say with respect to that situation in a moment.

We had before our committee Under Secretary of War Royall. He gave most interesting and valuable testimony. In the first place, he pointed out that the cost-plus-a-fixed-fee contracts entered into with the War Department totaled between forty and forty-five billion dollars. He estimated that about $11,000,000,000, or 25 percent of the total amount, represented the cost of direct labor in those contracts. He agreed in his testimony that the maximum liability on the part of the Government, based on such contracts, would be between approximately $1,210,000,000 and $1,430,000,000. I mean, Mr. President, the maximum liability on the part of the Government for reimbursement on account of portal-to-portal activities could run between approximately $1,210,000,000 and $1,430,000,000, according to the testimony of Under Secretary Royall.

The Under Secretary, however, testified in substance that while it is entirely possible that the amounts might aggregate these figures, in the first place, he did not think the amounts would be in excess of between four hundred and five hundred million dollars on the cost-plus-a-fixed-fee contracts. But the seriousness of the situation is strikingly evidenced by the fact that within a few days after the Under Secretary of War had appeared before our committee, he revised his estimate as to a possible liability of between four hundred to five hundred million dollars and increased it to a sum in excess of $600,000,000. In other words, within a very few days, conditions had changed to such an extent that the Under Secretary of War became convinced that there was a potential liability of the War Department, on cost-plus-a-fixed-fee contracts, of over $600,000,000. I shall read a very few words of the Under Secretary. He wrote me to this effect:

When I testified before your subcommittee, I stated that claims had been asserted against War Department cost-plus-a-fixed-fee contractors in this class of case in the approximate amount of $200,000,000. When I subsequently testified before a subcommittee of the House Committee on the Judiciary I stated that that figure of reported claims had increased to approximately $280,000,000, further indicating the practical impossibility of attempting to give actual figures. Evaluating the situation as best we can, however, I stated that it seems reasonable to conclude that the amount of these claims asserted against cost type contractors might reach four hundred to five hundred million dollars.

The concluding sentence of this quotation from the Under Secretary reads:

In the past few days, and as of February 12, 30 newly reported cases of the type considered herein have increased the amounts claimed in this type of case to an amount now in excess of $600,000,000.

I might digress for a moment to call attention to the fact that on February 8, 1947, Judge Picard had dismissed the Mount Clemens case. And yet "In the past few days," says General Royall, "and as of February 12"—which was 4 days after the dismissal—"30 newly reported cases of the type considered herein have increased the amounts claimed in this type of case to an amount now in excess of $600,000,000."

Mr. President, I do not know whether those 30 new claims were some that had come in after Judge Picard's decision; I am not informed as to that fact. I shall demonstrate in a few moments, I think, the fact that Judge Picard's decision by no means makes unnecessary or inadvisable the enactment of legislation on this grave problem at this time.

The very fact that, writing under date of February 14, 6 days after Judge Picard's decision, Mr. Royall did not indicate that, in his judgment, the amounts involved in the claims would decline; but on the other hand, pointed out that they had risen to a point where they might reach in excess of six hundred million dollars, as compared to an estimate of between four hundred and five hundred millions, on the cost-plus-a-fixed-fee contracts, as mentioned in his earlier testimony, certainly indicates that the Under Secretary does not regard the decision of Judge Picard as by any means decisive of the liability of the War Department in this class of cases.

We thus find the figure of $600,000,000 estimated by Under Secretary Royall, with a possible maximum liability of from $1,210,000,000 to $1,430,000,000 against the War Department, on the cost-plus-a-fixed-fee contracts.

We had before us, also, Mr. W. John Kenney, Assistant Secretary of the Navy. Without going into the details of his testimony, he pointed out that the potential liability of the Navy Department on the cost-plus-a-fixed-fee contracts would be approximately $720,000,000; on the escalation contracts, approximately $180,000,000; and there is an indeterminate amount on the 518 nonrenegotiated cases, to which I referred a few moments ago, the aggregate amount to which the 518 cases extend the entire gross contract figur s being $6,821,843,000.

Mr. President, we thus have in the Navy Department two figures of $720,000,000 and $180,000,000, making $900,000,000 of potential liability, in addition to an indeterminate amount on nonrenegotiated cases, which are not small cases, obviously, because of the fact that they involve in excess of $6,800,000,000 of gross contract figures.

The Maritime Commission is also confronted with a similar situation. Mr. W. W. Smith, chairman of the United States Maritime Commission, under date of February 5, 1947, wrote the committee a letter from which I read a few words:

Liability would doubtless arise to the greatest extent under the Commission's ship construction contracts. To a lesser degree liability would be involved under ship repair contracts, stevedoring contracts, terminal contracts, and miscellaneous other contracts of a cost-plus-a-fixed-fee nature. As a rough estimate, potential liability under these contracts might fall somewhere between 50 million and 150 million dollars. These high and low figures represent, however, merely an informative guess and are exclusive of any administrative expense that would undoubtedly be imposed on the Commission in connection with determining liability to employees and making reimbursements in the event of liability.

These figures are also exclusive of attorney's fees both for the plaintiffs, as provided by the Fair Labor Standards Act, and for defense of the suits.

He concludes this paragraph with this significant sentence:

These expenses would be tremendous.

Then he says, in the next paragraph, just one sentence:

Generally speaking, the same problems will confront the Commission as a result of the portal-to-portal pay claims as those concerning which the subcommittee has already received testimony from other Government departments.

Mr. President, there was one very significant thing which our committee overlooked. That was the situation in which the Reconstruction Finance Corporation finds itself in view of portal-to-portal litigation. I have in my hand a letter, together with a tabulation. I am going to read the letter and to ask leave to incorporate it and the tabulation in the RECORD in a moment. The letter is on the letterhead of the Reconstruction Finance Corporation, Washington 25, D. C. Up in the corner is the name James L. Dougherty, general counsel. The letter is signed by him. It is dated March 11, 1947, and addressed to myself. It says:

In response to the telephone inquiry made in your behalf by Mr. Kammerman, I am enclosing a summary statement of the estimated contingent liability of the Reconstruction Finance Corporation to contractors and agents for portal-to-portal payments pursuant to the Fair Labor Standards Act, as interpreted by the Supreme Court. The statement includes the assumptions and computations which form the basis for our estimates. I am sure you will appreciate that these estimates can be little more than an informed guess because of the vast number of uncertainties and unknowns surrounding the possibilities and extent of portal-to-portal recovery.

No claims have been asserted against the Reconstruction Finance Corporation for portal-to-portal payments under the Walsh-Healey Act or the Davis-Bacon Act, and we do not anticipate any liability under either of those acts.

If you wish any additional information, please do not hesitate to let us know.

Sincerely,

JAMES L. DOUGHERTY,
General Counsel.

Mr. President, the summary statement to which Mr. Dougherty refers is rather extensive, and I shall not read it all here, but I should like to read a little of it. It starts in this way:

RECONSTRUCTION FINANCE CORPORATION

Estimated contingent liability for additional wages to employees of contractors and agents for portal-to-portal time under recent Supreme Court interpretation of the Fair Labor Standards Act of 1938. All amounts are stated in millions of dollars.

The first item is under the heading of Office of Defense Supplies. The tabulation shows that purchases under cost-plus-fixed-fee contracts aggregate $9,900,000; plant operations, $1,900,000; subsidies, $300,000; total $12,100,000.

Office of Metals Reserve, the total carried out in the far column is $16,000,000.

Office of Rubber Reserve, $62,100,000.

Office of Defense Plants, $141,700,000.

Making a total, Mr. President, as I understand, of the estimated contingent liability for additional wages to employees of contractors and agents for portal-to-portal time under recent Supreme Court interpretation of the Fair Labor Standards Act of 1938, as found by the Reconstruction Finance Corporation in its own words, of $231,900,000.

Then, Mr. President, I call attention to this further language in a note marked "Important."

The figures shown in this statement represent only the compensation payable at the rate of time and a half for the uncompensated overtime. The Fair Labor Standards Act requires that an amount equal to the amount of unpaid compensation shall be added to the recovery as liquidated damages and, if it is determined that under its contracts this Corporation is required to reimburse its contractors not only for the unpaid compensation but also for the liquidated damages, each figure should be doubled.

In other words, instead of the liability of $231,900,000 there would be a liability of $463,800,000 by the RFC.

Mr. President, we have already seen that the recapitulation of potential legal liability—and I am talking now of legal liability as distinguished from moral liability—is in the case of the Army $600,000,000; the Navy $900,000,000; the Maritime Commission, we will say, $100,000,000, as an average between $50,000,000 and $150,000,000, and the Reconstruction Finance Corporation $463,800,000, making a total of $2,063,800,000, plus in the case of the Army sufficient to bring its liability up to $1,420,000,000 as an outside figure, making an aggregate possible potential legal liability, according to the best judgment of the men who testified before us, and including the Reconstruction Finance Corporation letter, an estimated total liability of the Government of $2,893,800,000.

Mr. President, I do not want to be unfair in this matter. I want to recall the fact that Secretary Royall does not expect the liability of the War Department to go to either $1,210,000,000 or $1,430,000,000. He expects it to be only in the neighborhood, as I understand, of an amount in excess of $600,000,000, but if the larger amount be not taken, there is still a potential liability from the portal-to-portal suits upon these four departments of the Government, the Army, the Navy, the Maritime Commission, and the Reconstruction Finance Corporation, in the sum of $2,063,800,000.

Mr. President, I now request that there be incorporated in the RECORD as a part of my remarks on this point the letter of March 11, 1947, from Mr. James L. Dougherty, General Counsel of the Reconstruction Finance Corporation, and the summary statement to which he refers, and from which I have read.

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

The letter and summary statement are as follows:

RECONSTRUCTION FINANCE CORPORATION,
Washington, D. C., March 11, 1947.

Hon. FORREST C. DONNELL,
Senate Office Building,
Washington, D. C.

DEAR SENATOR DONNELL: In response to the telephone inquiry made in your behalf by Mr. Camerman, I am enclosing a summary statement of the estimated contingent liability of the Reconstruction Finance Corporation to contractors and agents for "portal-to-portal" payments pursuant to the Fair Labor Standards Act, as interpreted by the Supreme Court. The statement includes the assumptions and computations which form the basis for our estimates. I am sure you will appreciate that these estimates can be little more than an informal guess because of the vast number of uncertainties and unknowns surrounding the possibilities and extent of portal-to-portal recovery.

No claims have been asserted against the RFC for portal-to-portal payments under the Walsh-Healy Act or the Davis-Bacon Act, and we do not anticipate any liability under either of those acts.

If you wish any additional information please do not hesitate to let us know.

Sincerely,

JAMES L. DOUGHERTY,
General Counsel.

Reconstruction Finance Corporation.—Estimated contingent liability for additional wages to employees of contractors and agents for portal-to-portal time under recent Supreme Court interpretation of the Fair Labor Standards Act of 1938. All amounts are stated in millions of dollars

Office of—	Construction, cost plus fixed-fee contracts	Purchases, cost plus fixed-fee contracts	Plant operations	Service contracts containing wage escalator clauses	Subsidies	Total
Defense Supplies	-------	[1] $9.9	[2] $1.9	------	[3] $0.3	*$12.1
Metals Reserve	-------	-------	[4] 1.9	[5] $2.7	[6] 11.4	*16.0
Rubber Reserve	[7] $41.7	-------	[8] 20.0	[9] .4	------	*62.1
Defense Plants	[10] 128.2	-------	[11] 13.5	------	------	*141.7
Total	169.9	9.9	37.3	3.1	11.7	*231.9

NOTES—(1) The figures shown in this estimate cover the entire period of operation, construction, purchases, etc., and, consequently, where such period is in excess of the time prescribed by the applicable State statute of limitations, the amount shown in this estimate will be to that extent reduced.

*Important: (2) The figures shown in this estimate represent only the compensation payable at the rate of time and a half for the uncompensated overtime. The Fair Labor Standards Act requires that an amount equal to the amount of unpaid compensation shall be added to the recovery as liquidated damages and, if it is determined that under its contracts this Corporation is required to reimburse its contractors not only for the unpaid compensation but also for the liquidated damages, each figure should be doubled.

(3) A 10-percent factor was applied to estimated labor costs in computing the foregoing amounts. The 10-percent factor was arrived at on the assumption that 30 additional minutes per day would be claimed (15 minutes in the morning and 15 minutes at night) plus 15 minutes per day to compensate for time and one-half and double time. (45 minutes portal-to-portal pay equals about 10-percent of an 8-hour day.)

[1] Labor costs estimated to be: 4 percent of $10,700,000 expended for carbon black; 10 percent of $919,000,000 expended for alcohol (including high wines, dehydrated potatoes and molasses); $11,900,000 for hydrogenation of raw feed stocks, and $3,519,000 for rubber thread and elastic web and braid; 70 percent of $5,800,000 on the jewel-bearings program; 75 percent of $3,500,000 expended on petroleum coke.

[2] Labor costs estimated to be: 35 percent of $12,700,000 pipe-line operating costs; 5/10 percent of $98,900,000 expended in connection with the operation of aviation gasoline plants.

[3] Labor costs estimated to be 1/3 of $8,300,000 expended on the aluminum program.

[4] Where actual labor costs were not available, estimates were based on 40 to 60 percent of total contract costs, varying with circumstances of each particular case.

[5] Labor costs with respect to metals treatment contracts estimated to be 40 percent of $62,177,000 expended whereas labor costs were estimated to be 80 percent of about $2,400,000 expended for stevedoring and warehousing.

[6] It is believed we have no contingent liability under the premium price plan on copper, lead, and zinc although it has been the policy to compensate operators, through increased quotas, for retroactive wage increases.

[7] Based on 60 percent of $695,000,000 expended for construction of synthetic rubber plants.

[8] Labor costs estimated to be: 100 percent of direct labor costs, $64,100,000; 80 percent of plant overhead ($122,700,000), $98,200,000; 60 percent of repairs ($62,800,000), $37,700,000.

[9] Direct labor costs on contracts with: (*a*) Latex agents determined to be $700,000; (*b*) scrap-rubber agents determined to be $2,500,000.

[10] The labor involved in this question is divided into 2 categories: (*a*) The labor authorized by the plancor leases, such as cost-plus-fixed-fee lump sum, labor supply contracts, etc., and designated as plancor labor; and (*b*) labor authorized by plant clearance contracts, close down and other related work and known as reconversion labor.

Category (a): From Factual Appendices A where they were complete and from the monthly status report DP-4 where the factuals were incomplete; data were assembled by schedules I, Land improvements; schedule II, Construction; and schedule III, Machinery and equipment, portable tools and automotive equipment. By applying the total of the schedules to the total costs, definite percentages were arrived at which indicate that schedule I represents 2 percent of the total cost of all plancors; schedule II, 37 percent; and schedule III, 61 percent. Total disbursements as of Oct. 31, 1946, amount to $7,200,000,000. To this figure was added $41,000,000 representing commitments to complete the work to Dec. 31, 1946. From the sum of these 2 figures the cost of the plancors transferred to the Office of Rubber Reserve was deducted leaving a net cost of the plancors as of Dec. 31, 1946, of $6,583,700,000. By using the percentages above referred to, we arrive at a cost of all the plancors by schedule as of Dec. 31, 1946. These costs are schedule I, $131,700,000; schedule II, $2,436,000,000; schedule III, $4,016,000,000.

Under schedule I we made the assumption that 25 percent of the total costs would represent average labor costs. Likewise under schedule II, Construction, 50 percent is assumed to represent average labor costs in that schedule and 10 percent is again assumed to represent the average labor costs in schedule III.

The labor as represented by applying the percentagr to the total of schedule II includes cost-plus-fixed-fee, lump sum, labor supply, and lessee's labor supply undee service costs and at this time we are unable to separate the several types of labor; however, in our opinion, if portal-to-portal pay is a liability for cost-plus-fixed-fee contracts, it would apply equally well to lump-sum contracts in that the majority of lump-sum contracts contain the conditions on which the price was based, e. g., the 40-hour week, etc. However, a deduction has been made for lump-sum contracts which is considered further on. It is well to bring out the fact that the labor represented by schedule II is predominantly A. F. of L., estimated at 95 percent or even higher. Inasmuch as the construction contracts were based on the rules and regulations of the unions representing the A. F. of L. which included many concessions, such as, expenses to and from the work, etc., it is debatable whether portal-to-portal pay could be granted under such union contracts.

Conversely the labor represented by schedule III as 10 percent of the total cost of such schedule is predominantly CIO and represents installations by the lessee's employees of the machinery and equipment and it is presumed that this labor would have the best chance of securing the portal-to-portal pay.

Combining the amounts of labor which have been discussed above, we arrive at the following:

	Schedule costs	Estimated average percent of labor	Total labor costs by schedule
Schedule I	$131,700,000	25	$32,900,000
Schedule II	2,436,000,000	50	1,216,100,000
Schedule III	4,016,000,000	10	401,600,000
Total	6,583,700,000	-------	1,650,600,000

From our knowledge of construction contracts made in different sections of the country, we have determined that 75 percent of all construction work was performed under cost-plus-fixed-fee contracts. Accordingly, we have reduced the figure above representing total labor costs by 25 percent resulting in an amount of $1,238,000,000 for plancor labor mentioned in category (*a*) in the second paragraph.

Category (b): The labor costs on plant clearance amounts to about $46,700,000 and for close down $11,900,000. From this total we again deduct an amount of 25 percent representing lump-sum contracts, resulting in a total labor cost for category (*b*) in the amount of $43,950,000.

Consideration was given to the standard escalator clause which was incorporated in purchase orders to provide for increases permissible under OPA regulations. Such escalator clause provides that an approval of a 15 percent increase could be given by our field representatives prior to delivery of the equipment, and, where the increase is over 15 percent, such approval requires consideration by the Board. Presumably all such increases have been made. Therefore, it is our opinion that the proposed portal-to-portal increases in pay would have no effect on the escalator clause and therefore no attempt was made to separate such purchase orders. It is believed that at least 98 percent of our purchase orders contained a firm price and would not be affected by the portal-to-portal claim.

The sum of categories (*a*) and (*b*) amounting to $1,281,950,000 represents the sum on which any portal-to-portal pay case may be based.

SUMMARY

Total cost all plancors less rubber projects	Estimated percent labor	Total labor cost
Schedule I. $131,700,000	25	$33,000,000
Schedule II. $2,436,000,000	50	1,216,000,000
Schedule III. $4,016,000,000	10	401,000,000
Total	-------	1,650,000,000
Deduct 25% for lump-sum contracts	-------	412,000,000
Total, less lump.sum contracts (*a*)	-------	1,238,000,000
Plant clearance, $55,100,000	85	46,700,000
Close-down, $14,000,000	85	11,900,000
Total	-------	58,600,000
Deduct 25% for lump-sum contracts	-------	14,650,000
Total, less lump sum contracts (*b*)	-------	43,950,000
Grand total labor costs, less lump sum	-------	1,281,950,000

[11] Labor costs, after a study of what appeared to be a representative group of cases, were estimated to be 31 percent of $405,000,000 made available to operators.

Mr. DONNELL. Mr. President, I referred a little while ago to the fact that there is something more than even this legal liability. I have been talking thus far about legal liability on the part of the Government. I want to read in this connection statements which I think are far more persuasive than any argument I might make about it. I refer to statements made by Under Secretary Royall, certain statements made by Mr. Kenney, of the Navy Department, and by General Hirsch. I quote from page 413 of the hearings from the testimony of Secretary Royall. He said:

There would be very many situations where there was no legal right to reimbursement by the Government but where in fairness there ought to be an adjustment.

Mr. President, obviously the Under Secretary had in mind the case in which a man has carried out his Government contract in good faith, patriotically and loyally, and did not, however, have a cost-plus-a-fixed-fee contract. Therefore, legally speaking, he would have no claim upon the Government for reimbursement of the excess amount which he had been required to pay under the portal-to-portal case against him. Yet he would have been required to pay it. He might go into bankruptcy if he did have to pay it.

Secretary Royall obviously recognized the fact that a very strong point, a very convincing contention could be made by this class of contractors of a moral liability on the part of the Government to pay this additional expense which was in good faith, honestly incurred by the contractor. So, Mr. Royall testified to the extent that I read a moment ago. Then he further said:

But I feel very strongly that there is a great equity—

This is from page 427 of the committee hearings—

in favor of a contractor who made a settlement or adjusted his price or entered into a renegotiation without taking into account the portal-to-portal pay, because he did not know about it. I think there is great equity in his favor.

I digress to comment not merely upon the language of the Under Secretary, but also upon the significent corroboration which his language gives to the argument I made on Friday, to the effect that our Nation—both employees and employers—was confronted by surprise in the Mt. Clemens decision and the doctrine therein enunciated. Here the Under Secretary has pointed out the case of a contractor who had made settlements with the Government "without taking into account the portal-to-portal pay, because he did not know about it." He says, as I have indicated, "I think there is great equity in his favor."

Under Secretary Royall made further comments along these lines at page 421 of the record:

Senator DONNELL. It is at least entirely possible, is it not, Mr. Secretary, that advocates of the respective contractors asserting moral liability might, in the first place, assert that they are entitled to a legal liability, and in the second place fall back upon the moral liability and assert such liability in a much larger sum, indeed, than would be characterized by a legal liability?

Mr. ROYALL. Oh, yes, sir; I think that is true.

Senator DONNELL. Yes, sir. And you are not able, and I do not want to ask you to express an opinion if you are not, to state even approximately how many dollars of alleged moral liability would be asserted by contractors?

Mr. ROYALL. It would depend entirely on the standard of moral liability we fixed. If we took the renegotiation cases, the escalator-clause cases, the periodic price adjustment cases, it would be considerably less than that on portal-to-portal payments of $140,000,000,000 worth of contracts, but how much less I do not know because we have not made that analysis.

It would be foolish to make it until we knew what sort of a moral liability was to be permitted.

Senator DONNELL. And, Mr. Secretary, can you tell us approximately the entire amount of the first amount of contracts? Not the possible liability, but the first amount of the contracts comparable with the $40,000,000,000 to $45,000,000,000 figure of the total amount of contracts upon which the contracts might be asserted, in your judgment, to have either moral or legal liability which would exist on the part of the Government?

Mr. ROYALL. The total amount of supply contracts of the Government from 1941 to 1946, inclusive.

I digress to state that obviously what Mr. Royall was saying was that these claims or moral liability would apply not only to the $40,000,000,000 to $45,000,000,000 of cost-plus-fixed-fee contracts to which I referred a little while ago, with respect to which the figure of $600,000,000, or possibly even as much as $1,400,000,000 of potential liability might apply. He is pointing out that when we get into the question of moral liability, there can be asserted a liability upon contracts involving approximately three times the amount of contractual liability involved in these vast figures, on which potential legal liability is predicated.

Continuing with the quotation, Mr. Royall had just said:

The total amount of supply contracts of the Government from 1941 to 1946, inclusive.

That is to say, he meant the total amount of supply contracts with respect to which the claim of moral liability could be asserted.

Senator DONNELL. This is just the War Department?

Mr. ROYALL. I mean the War Department. I am sorry.

Senator DONNELL. Yes, sir.

Mr. ROYALL. That is $132,000,000,000.

Senator DONNELL. $132,000,000,000?

Mr. ROYALL. And the total amount of the construction contracts of the War Department during that same period is something in excess of $11,000,000,000, making a total of between $143,000,000,000 and $144,000,000,000.

Senator DONNELL. Yes, sir.

Now, are there any contractors in any other category than those you have mentioned; namely, the cases aggregating $143,000,000,000 to $144,000,000,000 as to which, in your judgment, either a legal or moral liability might be reasonably asserted?

Mr. ROYALL. I think that would include them all, and, of course, as to some of those, there might be no portal-to-portal pay at all.

Senator CAPEHART. That is, plus the $40,000,000,000 to $45,000,000,000?

Mr. ROYALL. No. The $40,000,000,000 to $45,000,000,000 is included in the $144,000,000,000.

Senator DONNELL. Yes, sir.

It may be somewhat difficult, hearing this excerpt from the testimony without the benefit of the continuity of the testimony, to understand it adequately. However, as I interpret it—and I think my interpretation is correct—the gist of it is that Secretary Royall was giving figures with respect to legal liability in connection with portal-to-portal cases, based upon contracts aggregating between $40,000,000,000 and $45,000,000,000 gross amounts, but he points out that the moral liability would exist with respect to approximately $145,000,000,000 more of contracts, namely, the $40,000,000,000 to $45,000,000,000 to which I have referred, plus an additional $100,000,000,000. Obviously, when we come to figures of that kind and confront the moral liability question, we arrive at sums which are beyond comprehension and beyond adequate estimation. Yet they must be reckoned with, because if contractors all over the country are required to pay thousands upon thousands of small subcontractors in the little town in which this man lives or that man lives, we shall find them coming before Congress with equities in their favor, requesting not merely the total of the legally claimable sums, but the morally claimable sums.

Under Secretary Royall was not the only individual testifying before us who indicated that a moral liability might exist. He recognized the validity of the moral liability argument. It may have no validity, but obviously the Under Secretary thought it ought to be taken into consideration. We shall find in a moment that the Under Secretary of the Navy and the former chairman of the Renegotiation Board, General Hirsch, likewise thought these alleged moral liabilities should be taken into consideration in determining the impact of this vast amount of portal-to-portal legislation upon our Nation.

This is an excerpt from the testimony of the Under Secretary of the Navy, Mr. Kenney:

Senator DONNELL. Yes, sir. Taking a case, however, of a contractor who has settled his contract and thus is legally without further remedy, but that it now develops that in fact his labor costs were 10 percent greater because of the portal-to-portal item, greater than he had anticipated, or the Government had anticipated, you and I would readily concede, at least from the standpoint of the contractor, that he has made a poor bargain in settling his contract and might have some moral claim?

Mr. KENNEY. I do not think there is any doubt of that, Mr. Chairman.

Senator DONNELL. That is to say, Congress would be easily justified in considering that even though the man be barred as a matter of law, that he might have some right to an equitable cause on the part of Congress in making an endeavor to give relief to him. You would agree with that, would you not?

Mr. KENNEY. I would agree with that view, Mr. Chairman, because there is no doubt that the contracts were settled on that basis, without regard to possible portal-to-portal pay liability.

There sits this afternoon in the chair of the majority leader the distinguished senior Senator from Indiana [Mr. CAPEHART] who was present at a number of the hearings before the subcommittee. He made a very great contribution in the questions which he asked of General Hirsch which I shall read in a moment.

It will be remembered that General Hirsch was the man who presided as chairman over the board which renegotiated vast numbers of contracts.

He stated that—

Now, the gross renegotiation recoveries of all Departments conducting renegotiation have amounted to up to and inclusive of 31 December 1946, $10,086,058,000. And, incidentally, all of my figures are as of that date.

Then follows this colloquy between him and the Senator from Indiana [Mr. CAPEHART]:

General HIRSCH. * * * Now, we have no means of knowing to what extent that will apply across the board, but until we determine that, there is certainly a possibility that the portal-to-portal claims will completely eliminate, if you allow it to eliminate, the total amount of excessive profits that our activity has achieved during the whole course of the war.

Senator CAPEHART. In other words, this $3,000,000,000 that you have already saved for the taxpayers may be wiped out?

General HIRSCH. There is a possibility that that may be eliminated completely.

Senator CAPEHART. It may be completely eliminated?

General HIRSCH. Right.

So, Mr. President, we can see something of the vastness of the possible liability of the Government under these portal-to-portal claims, both with respect to legal liability and to the possible moral liability which may be asserted.

On Friday I read from a statement of a law firm in St. Louis with respect to the burden of making the accountings necessary to be made in order to ascertain, in the case of a given company, the amount owing by it under the portal-to-portal theory to its employees. It might be thought that inasmuch as this firm of lawyers is counsel for the firm to which it referred, there may be some partiality on its part, and that there should be, therefore, some discount as to the correctness of the statement. Let me quote, however, from the observations of Mr. Kenney, Assistant Secretary of the Navy, in a letter dated February 11, 1947, in referring to what he terms the tremendous expense and administrative burden which would be entailed in reassembling and reviewing pay-roll records and supporting data in order to compute the amount of recovery to be paid under the portal-to-portal doctrine. Said Mr. Kenney, at page 633 of the testimony:

This expense, which would generally be reimbursable—

That is to say, Mr. President, reimbursable by the Government to the contractor—

to the same extent as the actual recoveries made by employees, could well equal in many cases the aggregate of the portal-to-portal claims themselves.

I referred, Mr. President, earlier this afternoon, not alone to the recoveries that may be made from the Government under the cost-plus-fixed-fee contracts, escalator contracts, and so forth, but also to the subject of potential tax losses which the Treasury of the United States may suffer from the payment of portal-to-portal claims asserted by employees.

I do not wish to leave the impression that any given employer could recover both the extra amount of wages which he has to pay under the portal-to-portal doctrine and also recover on account of the same additional expenditure a refund on taxes. But, Mr. President, there are many cases, undoubtedly, in which corporations would not be able to make any recoveries at all from the Government as reimbursement on cost-plus-fixed-fee contracts, for the reason that in many cases the portal-to-portal activities would have occurred other than under war contracts—in other words, in situations in which the employer had no contract for reimbursement by the Government.

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

The PRESIDING OFFICER (Mr. JENNER in the chair). Does the Senator from Missouri yield to the Senator from West Virginia?

Mr. DONNELL. I yield.

Mr. KILGORE. I am trying to straighten out in my own mind one matter as to which I probably agree with the Senator. In connection with portal-to-portal pay, the Senator discussed the question of how much work was done for the benefit of the contract, or how much time was consumed in performing it. The portal-to-portal question involves both of those elements. Sometimes an employer requires an employee to do certain work preliminary to starting his day's work. In defining the portal-to-portal question, is the Senator including the portal-to-portal preliminary work required by an employer to be done before the day's work starts, such as sharpening tools or cleaning up around the work bench, or things of that kind?

Mr. DONNELL. I presume that the Senator was not in the Chamber at the moment when I began my discussion. With his permission, I should like to defer the discussion of that matter until I come to the actual discussion of the bill. At that time I shall certainly take his question into account. If I do not do so adequately, I trust that the Senator will renew his question.

Mr. President, on the subject of potential tax losses which the Treasury of the United States may suffer from the payment of portal-to-portal claims asserted by employees, the committee had the benefit of the testimony of Mr. John P. Wenchel, chief counsel of the Bureau of Internal Revenue, and of others in his office. At the commencement of his testimony Mr. Wenchel stated:

Mr. Chairman and members of the committee, my appearance before you is on behalf of the Bureau of Internal Revenue. My statement and remarks in relation to the matter of portal-to-portal wages you have under consideration will have to do briefly with the allowances, which must be made by way of deduction from the taxable incomes of taxpayers in respect of the amounts that are paid by them on account of retroactive wages and liquidated damages under the decision in the case of the Mount Clemens Pottery Co. in computing their Federal income- and excess-profits-tax liabilities, and with a rough estimate of the impact this may have on the Federal revenues collected by the Bureau of Internal Revenue.

The employers of the country have made many inquiries of us as to the taxable year or years for which the payments they make will be allowable by the Bureau as deductions in determining their tax liabilities.

With respect to the year or years to which deductions for portal-to-portal claims paid by employers may be attributed in determining the tax liabilities of such employers, Mr. Wenchel stated that in January 1947 the Bureau had made the following ruling:

Taxpayers may be permitted to allocate the amounts of overtime pay and liquidated damages for prior taxable years necessitated by the decision in *Anderson* v. *Mt. Clemens Pottery Co.*, supra, to the year or years in which the services to which such payments relate were rendered.

In selecting the manufacturing industries as those primarily concerned with the taxes under discussion, Mr. Wenchel gave estimates of taxes on portal-to-portal payments in respect to three groups in industry. First, he selected employers having no tax liability; second, employers with income-tax liability only; third, employers having both income-tax liability and excess-profits-tax liability. He stated that in the first case, namely, the class of employers having no tax liability, the employers—

will not benefit tax wise from the added pay roll, nor will the Government suffer any tax loss, except insofar as any adjustments which may possibly be effective as carry-overs against possible profit in future years.

Then, testifying further—in this case, as to the tax adjustments necessitated by portal-to-portal payments—Mr. Wenchel said:

By giving effect to the various tax rates and the distribution of employers among the three classes distinguished above, it is estimated that for each dollar of wage adjustment spread evenly over the open statute period, 1943–47, the over-all tax consequence is 60 cents. Under the same circumstances, the estimated tax consequence of each dollar of wage adjustment spread over the entire period to which the adjustments are applicable, 1938–47, is 48 cents. If the entire wage adjustment is concentrated in 1947, the effect would be approximately 37 cents on each dollar.

This estimate does not take into account prior effects of the present relief provisions relating to tax adjustments which have already been made or which will be made prior to the wage adjustments in respect to carry-backs, respread of amortization, and relief claims under section 722. Downward adjustments in tax resulting from these provisions will necessarily lower the effective rates of 60, 48, and 37 cents, respectively. It is not possible at this time to make an estimate in respect to this feature of the problem.

The tax consequences relating to the employees due to the additional income received by them are, in general, 17 cents for each $1 of wage adjustment.

Mr. President, the committee's conclusion in respect to the preceding is as follows:

From the estimates of Mr. Wenchel we think it reasonable to conclude that (a) the aggregate of employers who are permitted to spread over the years 1943–47 portal-to-portal claims paid by them will recover from the Treasury, by way of adjustment on their tax liability, an over-all sum of 60 cents on each $1 of portal-to-portal claims paid by them, and (b) the aggregate of employees receiving such payments, if the entire payments should be made in the year 1947, will be required to pay, as income tax to the Treasury, 17 cents of each $1 received by them in portal-to-portal payments. In such a case, the net loss in tax adjustments to the Treasury would be 43 cents on each $1 of portal-to-portal payments.

I have frequently referred to the Business Advisory Council for the Department of Commerce. I wish to close this discussion of the tax situation and of expenditures by the Federal Government which would be necessitated by the portal-to-portal claims, if permitted to be maintained, with this succinct statement by the Business Advisory Council of the Department of Commerce, dated January 20, 1947, as follows:

While the plight of the armed services and the Treasury is not a direct responsibility of industry, it is a matter of high concern to any citizen. The economic stability of the Nation is closely woven into fiscal policy, Government expenditures, and taxation. Even if a moderate percentage of potential portal-to-portal claims become payable, the tax revenues of the Federal Government would decline very sharply and appropriations would rise. This would occasion another substantial Federal deficit with its inflationary consequences. At a time when goods are still scarce and spending power is high, this could have disastrous results.

Mr. President, I have undertaken to state in some detail the effects of the portal-to-portal litigation upon the Federal Government itself. I refer to the effects which necessarily will result from the successful maintenance of these portal-to-portal suits. As I look over this Chamber and notice the comparatively small number of Members of the Senate who are present at the moment, I observe among them several Senators who have served as governors of their States. Those Senators will immediately realize, as does the Presiding Officer, and as I do, the necessary impact upon State and local governments which comes from portal-to-portal claims asserting vast liabilities which will reduce the income of industries and, in some cases, doubtless will be followed by requests for refunds of State taxes, and will prevent the expansion and even the normal development of industry, with its consequent ordinary increase in tax revenues to the States. The committee's report states:

That the injurious impact of portal-to-portal claims on Government will not be confined to the Federal Government, but will also be felt by State and local governments throughout the Nation is clear.

Mr. President, I have just been reading a statement contained in the report of the Committee on the Judiciary. I should perhaps ask the pardon of the Senate for having in a number of other instances done so without mentioning the fact that in many instances, my remarks were being based on statements set forth in the committee report, and that in other instances my remarks have either been based upon the report or have included the exact language of the report, to which careful attention has been given by the subcommittee; and, as I have indicated, the report has been approved by the Committee on the Judiciary.

On page 39 of the report it is further stated that—

Successful prosecution of these suits by employees against employers can reasonably be expected to result in efforts by employers to secure, from some of the State and local governments, rebates of taxes previously paid on the basis of business expenses smaller than those actually incurred, in view of the additional liability adjudicated by these suits against the employers.

Mr. President, at this time I digress to say a word also with respect to some of the staff of the Judiciary Committee who have rendered notable service to our subcommittee. For instance, there sits at my left Mr. David Kammerman, who was in the audience during much of the argument on Friday; and I also desire to refer to Mr. Rice, of the Office of the Legislative Counsel, and Mr. Boots of that office and also Mr. Arens. They have rendered invaluable service to the committee, not only in the performance of assigned duties, but also in making suggestions and research and in rendering help along all lines. Although, as I have said, the report has received the careful attention of the subcommittee and has been worked over with care by the subcommittee, it contains much of the very fine work of those gentlemen, particularly Mr. Kammerman; and in the bill itself appears much of the fine work of Mr. Boots and Mr. Rice, of the Office of the Legislative Counsel, and also certain of the work, very valuable indeed, of Mr. Arens, of the office of the Committee on the Judiciary. No doubt I have overlooked some of those who have assisted; and, indeed, the entire clerical force have given us the utmost of cooperation in respect to their respective tasks.

I proceed with the reading with respect to the pending suits, and their effect upon local and State governments. The report says:

Moreover, with the injury to various industries which would result from successful prosecution of portal-to-portal suits, might come the closing of business establishments with resulting decreases in taxes for the benefit of State and local governmental units. These governmental results are, of course, in addition to the general harmful economic results to the respective communities consequent upon financial stringency or the closing down of local industries.

So, Mr. President, we find that the impact of this litigation, surprising as it was to the Nation, is not only upon the employers, large and small, in our Nation, not only upon the merchants, not only upon the employees in the retardation of expansion and the lessened opportunity for employment, not only upon the farmers, not only upon the Federal Government, but upon the cities and the towns and the villages and the States, from the standpoint of the revenues of the respective governmental subdivisions. But this is not the only effect this vast mass of litigation is having and will have. I come now to the effect upon the relations between labor and management.

In the first place, delay in the conclusion of collective bargaining agreements will be likely to occur if the portal-to-portal principle is allowed to become established, because if the portal-to-portal problem is not settled in the reasonably near future—and it can be settled only by Congress—it is probable that large segments of industry will be operating on the basis of temporary extensions of labor contracts, because the employer will be in poor position to negotiate specific matters with respect to wages and working conditions over the coming year so long as there impends the threat of heavy portal-to-portal liabilities.

Mr. President, put yourself in the position of an employer who has to meet with his employees to make a labor contract for the next year, and you have no knowledge as to whether the existing suits against your company will wipe out your company or not. They are pending, they are interfering with your bank credit, they are interfering not only with your expansion, but the maintenance of your normal operations. They are piling up heavy costs, and the cost of the mere preparation for trial of the law suits amounts to thousands and thousands of dollars in your particular establishment. In what position are you, with possible bankruptcy confronting you, to make contracts by collective bargaining agreements with your employees in the period of uncertainty created by this portal-to-portal litigation?

Mr. President, what is the effect which is apt to result from delay in collective bargaining? It has been my privilege to serve in the Seventy-ninth Congress on the Committee on Education and Labor, and in this Congress upon the Committee on Labor and Public Welfare. We had before us in the Seventy-ninth Congress—I am not certain whether they have been before the present committee—repeated criticisms made by responsible leaders of labor, doubtless sincere criticisms, of certain great employers, on the ground of their delay in concluding collective bargaining agreements. It built up a vast ill will between the employees, it was asserted to our committee, and I think demonstrated.

Now, Mr. President, along comes the delay occasioned by the uncertainty on the part of industry as to how it stands, and what it can afford to pay; and what is this delay likely to create? Certainly, in the language of our report, delay thus occasioned may reasonably be expected to create dissatisfaction among employees, culminating possibly in strikes and labor disturbances, in addition to ill will engendered on the part of employees against employers, because of the fact that collective-bargaining agreements will not have been effected.

Mr. President, not only is there a strong tendency toward the creation of ill will on the part of employees against employers, but the correlative, namely, the creation of ill will on the part of employers against employees is likely to develop because of the insistence of employees upon the recognition of claims which the employers deem to be ill-founded. The ill will on both sides may well impede negotiations for friendly and harmonious settlement by collective bargaining of matters which normally could be agreed upon without difficulty.

Mr. President, there is a third party in interest. There is management and there is labor, but after all there is the public, 140,000,000 people of our country, to whom the distinguished Senator from Wisconsin [Mr. WILEY] referred clearly and convincingly on Friday last. The consequent effect upon this great public arising from increased lack of harmony between employer and employee is obvious.

Mr. President, the portal-to-portal litigation, while it is brought on behalf of employees for their alleged benefit—yes, for their actual benefit, in dollars and cents, if they shall prevail—opens up vast possibilities for dissatisfaction between those very employees themselves. It must be remembered that these suits do not cover specific benefits for labor groups as a whole, such as a general wage increase, but rather they go to the amounts claimed by each individual worker for his own walking time, make-ready time, cleanup time, and so forth. Hence the disposition of these suits could involve countless individual judgments for amounts which would vary as between worker and worker. Obviously the possibilities for dissastisfaction between employees in such a situation are very great. Those who receive amounts smaller than are received by their fellow workers in the same plant—because the amount of time consumed by one group in walking to the work bench is less than that consumed by their fellow workers—are likely to be disgruntled in many instances, and the net effect could very well be unsettling to labor peace and productivity.

In such cases, if any portal-to-portal claims as may be legally susceptible of settlement through collective bargaining—and I have this afternoon indicated the effect of the Brooklyn Savings Bank case, so far as the impossibility of settling, in the very large majority of cases, I take it, is concerned—it is difficult to conceive of the labor union itself being able to compute, with reasonable satisfaction to all employees, the respective participation of the several employees in the recoveries which shall be effected by such collective bargaining.

In such cases, therefore, Mr. President, dissatisfation among some employees whose claims shall have been adjusted by such bargaining is not at all unlikely, and may reasonably be expected to foment unrest within the labor union itself.

A further very practical and distressing result is very apt to follow from the maintenance of these suits, particularly in view of the fact that in large portions of them the employer sees the possibility, as do the employees, of the employer's recovering promptly from the Government all that he has paid out, thereby being able to give to the employees substantial amounts at no cost to the employer. In other words, there is a temptation both to the employees and to their employer, to negotiate, without litigation if practicable, or if necessary, through litigation, settlement with respect to such claims, on the theory that the employer may, in view of his ability to recover either a tax refund or complete reimbursement from the Federal Government, on account of any sums he may pay in settlement of such claims, be able to effect the settlement with his employees at little or no expense to himself.

If the United States Treasury is required to reimburse the employer, the bill will be paid either in great part or in whole by the Government, that is to say, by the taxpayers. If the employer has it within his power to ingratiate himself with his employees by making a substantial settlement with them, and if he knows that the next day or the next week he will get his money back from the Government, obviously, in some instances, at any rate it is not at all unlikely or unreasonable to assume that an employer will be very liberal in making the settlements, because he knows he can get the money back, Mr. President, from you and from me and from all the other taxpayers of the United States.

In response to questions the other day by the distinguished junior Senator from Iowa [Mr. HICKENLOOPER], I discussed very briefly the tendency of this type of liability to create champertous activity; that is to say, activity encouraging and stirring up litigation. The claim of employees to ownership rights of the portal-to-portal variety is a likely and fruitful source of champertous activity among those who, for expectation of financial profit to themselves, may desire to stir up litigation between employer and employee.

Not only is there a strong likelihood of the creation of renewed and more and more vigorous efforts toward the bringing of such lawsuits, if the present 1913, or any material portion thereof, shall be sucessful; but, in addition, the labor unions are going to be confronted with the very practical problem as to what to do with respect to assisting their own members in bringing further suits. The testimony was that the American Federation of Labor up to this time has taken very little affirmative action in the assertion of portal-to-portal claims. True it is that Mr. Pressman referred to the Dow Chemical Co. decision as being one in which the American Federation of Labor had acted, and, as indicated in his testimony, the fact that the American Federation of Labor did act placed a responsibility on the CIO of determining whether it should acquaint its members with the opportunity to make settlements through the medium of such suits.

But, Mr. President, suppose that the suits which have been filed should be successfully maintained, what will there be left for the American Federation of Labor to do? The CIO membership will have collected in a great multitude of these suits, and the A. F. of L. membership will have sat idly by without filing its suits. Obviously the American Federation of Labor, in self-defense and as a means of holding its own membership, may be forced to enter into activities in connection with future portal-to-portal suits and may be compelled to send to their own members substantially the same type of literature as that which the CIO affiliates sent to theirs. In other words, the A. F. of L., in order to preserve itself and keep from losing its own membership, may find it necessary at least to become active in or perhaps assist in the bringing of suits by its membership; and when it gets down to the point of labor unions, in self-preservation, finding it necessary to run a race, one with another, as to which can benefit its own members the most, we shall have arrived at a point where, I undertake to say, the stirring up of litigation will have become a vast ethical and economic evil, as well as leading to congestion in the courts of the United States and of its various subdivisions.

I referred to the possibility of settlements being made by corporations. There was one made that I know of, to which I have referred, the settlement made by the Dow Chemical Co. I have in my hand a photostatic copy of the issue of Business Week, of November 23, 1946, in the course of which occurs this paragraph:

> Bargaining issue?—Some factors in the steel industry are inclined to regard union threats of suits covering 800,000 members in basic steel and fabricating plants as a bargaining issue for contract negotiations which will open in mid-January. At that time, lump-sum retroactive portal-to-portal payments might be asked by the union in return for foregoing a substantial wage boost, as in the recent Dow Chemical settlement.

Is it not interesting, to say the least, that in the Dow Chemical settlement the payment was made by that company, and the employees waived, as I understand, a substantial wage boost? In other words, the Dow Chemical Co., which according to my information, has either received or will receive back from the Government a very large proportion of the $4,665,000 which it paid, secured a consideration, obviously, from the employees for making the settlement, in that the employees forewent their claim for additional wage boosts for the coming year, in substantial amounts.

Is it not clear, Mr. President, that in the face of such a situation as this, there is a strong tendency on the part of corporations to enter into negotiations with labor unions, to accept judgments against themselves in large amounts, in consideration of the union itself waiving some of its rights to additional compensation, and then the corporation, after having thus given to the union what the union would otherwise have acquired, perhaps from the company by collective bargaining agreements, the company itself goes down to the Treasury of the United States and gets its money back.

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

Mr. DONNELL. I yield.

Mr. COOPER. I should like to ask the Senator, if in the Dow Chemical case which he has just cited, it is not a possibility that the corporation already has or may have the power to shift the burden of that settlement to the taxpayers of the country?

Mr. DONNELL. Precisely; the Senator is exactly correct. He has made it so clear that the record on that point cannot be escaped.

Mr. President, the New York Times, in its issue of December 22, 1946, has this to say with respect to the Dow Chemical Co.'s settlement:

> An out-of-court settlement amounting to $4,665,000 for back travel pay was reached recently by the Dow Chemical Co. and District 50 of the United Mine Workers, A. F. of L. This indicated a possible course which the lawsuits may take in connection with wage bargainng.
>
> It is questionable whether an outright waiver of the lawsuits in return for wage increases would wipe out an employer's liability, if it exists, but the suits could be settled through a peaceful, legal procedure whereby the unions simultaneously could agree to modify their wage demands.

In the Dow Chemical case, the union withdrew its demand for a flat increase of 20 cents an hour and advised its members they would receive the equivalent of an 11-cent increase through travel-time pay.

Claims for travel-time pay in the past were settled on the basis of about 21 minutes a day, but the new wage agreement significantly provides for compensation on the basis of about 27 minutes a day.

In other words, Mr. President, the Dow Chemical Co. found it advisable to make this settlement and, as I have indicated and as the distinguished Senator from Kentucky [Mr. COOPER] has observed, it is entirely possible that corporations can well afford to be very liberal in these settlements, or if they cannot make settlements, can afford to be very lax in their defense of litigation, knowing, as they well know, that they may secure reimbursement from the Government, and at the same time may make settlements with the unions ingratiating themselves with the unions without increasing wages to the point to which they would have been compelled to increase them had they not been able to turn over to the employees these vast amounts of portal-to-portal wages.

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

Mr. DONNELL. I yield.

Mr. HOLLAND. At the appropriate time I should like to ask the distinguished Senator a question or two with reference to the statute of limitations. I do not want to disturb his speech. Is this the appropriate time, or will the Senator reach the stage later when such question would be more appropriate?

Mr. DONNELL. I should prefer that the Senator from Florida defer the question until later. I shall take up the statute of limitations and shall certainly welcome questions from the Senator on that subject.

Mr. HOLLAND. I thank the Senator.

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

Mr. DONNELL. I yield.

Mr. COOPER. The Senator pointed out that contractors having war contracts with the Government may settle their claims for portal-to-portal activities with employees, and then ask the Government for reimbursement in the amount of the settlement. Does the Senator know whether the Government is prepared to audit and supervise such settlements to determine whether in fact valid claims are asserted against the war contractor for which reimbursement may be asked of the Government?

Mr. DONNELL. Perhaps before I complete my answer I may be able to put my hand on the exact language, but if I cannot I am sure that I am giving substantially the testimony which was presented to us, namely, that, in the first place, the Department of Justice does not have sufficient members in its legal staff to handle the legal work. In the second place, that the district attorneys over the United States do not have sufficient forces in their offices to handle the legal work. Thus making it true that in the case of the defenses which are being handled throughout the country, the attorneys for the companies themselves are being called in to assist in the defense, and are being permitted to assist, with certain limitations to which I shall refer. In the third place, according to the very graphic language of one of the witnesses—and if I do not find it at the moment I shall put it in the RECORD a little later—there are not enough accountants—and I think he said lawyers, but certainly accountants—in the United States to handle the work involved in making the computations and clerical work which would be necessitated in handling these claims.

Does that answer the Senator's question?

Mr. COOPER. Yes.

Mr. DONNELL. May I ask the Senator, who is a distinguished member of our subcommittee, whether or not his recollection substantially agrees with mine in regard to that testimony?

Mr. COOPER. It does.

Mr. DONNELL. I thank the Senator.

Mr. President, as a result of these various facts, the impacts of these suits upon the individuals, upon the companies, upon the Government itself, upon the local divisions of government, upon labor and management themselves, I take it to be manifest that in the public interest action—prompt action—should be taken by the Congress.

To summarize certain of the probable future consequences which would arise from inaction by Congress as to future accruing liabilities, I should like to make mention of a few facts. I do so, Mr. President, because someone may say "Perhaps it is all well enough to dispose of the pending portal-to-portal claims, get them out of the way, extinguish them in some manner by law, but why should we legislate as to the future?"

I undertake to say that, so far as is legislatively possible, Congress should see to it that the opportunity for the recurrence of such a condition of surprise and disaster to American industry should not be permitted to arise. Thus, it is that it becomes of great importance to legislate not only as to existing claims, but as to future claims, defining as best it is possible in legislation the measures of liability, the type of activities which are not compensable except by custom or by contract.

Mr. President, if Congress should not act as to future accruing liabilities numerous results would occur. In the first place, both employers and employees would be unable to determine without extensive, expensive, and prolonged litigation to final judgment in a court of last resort the amounts owing to employees for activities of the portal-to-portal type which shall hereafter be engaged in by employees. I may point out in that connection that there is a tendency undoubtedly existent to extend the doctrine of portal-to-portal liability to a point which has never been dreamed of. I give merely one illustration of that tendency.

There appeared before the committee as witnesses a Mr. Conover, of the American Mining Congress, and a gentleman from the State of our distinguished colleague, the Senator from New Mexico [Mr. HATCH] who accompanied his constituent to the committee hearing. Both men testified to the fact that in the case of the potash miners near Carlsbad, N. Mex., some 12 miles from Carlsbad, the employees have already filed suits aggregating millions of dollars, not solely for liability upon the premises of the employers, but for the time consumed in traveling from Carlsbad to the place of employment 12 miles away. The testimony of the gentleman from the Carlsbad plant was to the effect that the employees do what most of us do in traveling on long bus rides, either read or sleep. Obviously they were not performing activities for the employer. Yet the theory of the employee is that in order for the employee to get to his work he had to ride; in order to ride he had to put in the time to ride; and therefore the employer must pay him for the time involved in going from his home or from the place where he got on the bus, perhaps in the city of Carlsbad, all the way to the mine. That is a vast extension of the doctrine set forth in the Mount Clemens case, for the Mount Clemens case defines itself solely to activities upon the premises of the employer. But in the case of the Carlsbad illustration, even the busses in which the employees travel are not owned directly or indirectly by the company, but are the property of some third party.

We may well expect further extensions. I can well see how an employee may say, "In order to be fit to work on my days of employment, not only must I travel by bus, but I must get up and wash myself and dress. That is all time that is put in for the benefit of the employer, and I shall hold the employer liable."

So, Mr. President, unless we draw a line and say, "Before this line items shall not be compensable unless by contract or custom," we are in constant danger of an ever-expanding application of the doctrine of portal-to-portal pay so as to run not merely from the portal of the employer's premises to the place of work, but from the portal of the employee's home, or perhaps from his dining table. Who knows what extension will be made, in the light of the case now pending in New Mexico for millions of dollars based upon riding in busses not owned by the employer, while the employee sleeps or reads in transit?

Unless we have action by Congress as to future accruing liabilities, employers and employees will in many instances be unable in the future to make voluntary settlement, compromise, release, or adjustment of claims arising out of such activities. At this point let me say that we have recognized in our bill, by not making the provision for compromise and settlement applicable to the future, that there is a grave danger of placing a provision of that kind in the bill as to future activities, because such a provision might well result, as in the case of the Brooklyn National Savings Bank, in the utter demolition of the Fair Labor Practices Act.

Mr. President, if Congress shall not act as to the future, I have indicated that among the results of such inaction is likely to be the prospect of increasing demands for payments to employees for engaging in other activities, no compensation for which was contemplated by either the employer or the employee at

the time when the employee was engaged. If Congress shall not act now as to future accruing liabilities, there will still exist as to such future liabilities the likelihood of stirring up champertous practices and congestion of the courts. If Congress shall not act now as to future claims, there will be the probability of extended and continuous uncertainty to be experienced by industry—both employer and employee—as to the financial condition of productive establishments, with consequent halting of expansion or development, and retardation of employment.

If Congress shall not act now as to future activities, there may well be expected the infliction of hampering restraints and restrictions on commerce and on the development thereof, nationwide industrial conflict, unrest, and disputes between employers and employees, as well as between employee and employee. If Congress shall not act now as to the future, there is grave likelihood of continued inequality of competitive conditions as between employers, and between industries, due to the fact, as between employers, that one employer may have a plant physically so located that his portal-to-portal time is greater than that of an employer across the street who, because of his physical location, does not find the same necessity for long walking spaces for employees.

If Congress does not act now as to future accruing liabilities, serious and diverse effects upon the revenues of Federal, State, and local governments may well be expected in the future, just as they are manifesting themselves under present conditions, with respect to past activities.

A little while ago the Senator from Florida [Mr. HOLLAND] asked about the statute of limitations. With his indulgence, I still ask that his questions be deferred until I take up the bill, in a very few minutes.

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

Mr. DONNELL. I yield.

Mr. LUCAS. Can the able Senator give the Senate any notion as to when he will get down to the point where he is to discuss the bill, and will have finished discussing the facts leading up to it?

Mr. DONNELL. I should say in the course of three-quarters of an hour.

Mr. LUCAS. At that time we will get to the meat of the situation.

Mr. DONNELL. I should say that we have been at the meat of the situation throughout this entire discussion. I shall take up the details of the bill; but I think it is of highest importance that the Senate have before it, and that the public know, the facts which make it imperative that Congress act. I regard that as just as much the meat of the situation as the physical formation of the bill which is upon the desks of Senators.

Mr. LUCAS. I do not disagree with the Senator. The only thing I was attempting to ascertain was when the Senator would finally, after discussing the facts, reach the legal points which are involved in the bill. I appreciate that before discussing the legal points it is necessary to build a foundation of facts so that the RECORD may be clear. However, Senators have asked me to interrogate the able Senator in an effort to determine when he will reach that point, because Senators are interested.

Mr. DONNELL. I thank the Senator. I should say that in my judgment certainly within three-quarters of an hour I shall take up the details of the bill. Before that time I shall address myself to the question of the constitutionality of setting aside and overcoming the existing litigation; and in that connection I shall discuss certain decisions of the Supreme Court bearing upon that question.

Referring to the statute of limitations, I invite attention to the fact that the Fair Labor Standards Act of 1938 does not contain any limitation provision, and that the State statutory periods of limitation, as of 1938, vary from 1 year to 12 years. As of 1945, which is the last year with respect to which I have information, they vary from 6 months to 8 years.

The committee believes that these varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to grave difficulties in the sound and orderly conduct of business and industry. I might illustrate the effect of the varying statutes of limitations in this way: For example, Iowa has a 2-year statute of limitations; Illinois, 5 years; Minnesota, 2 years; Wisconsin, 6 years. Other illustrations are: Massachusetts, 6 years; North Carolina, 3 years; and South Carolina, 1 year.

Take, for example, a concern in Iowa, which cannot be sued for portal-to-portal pay, under the State statute, for more than 2 years back. Certainly an employer in that State is in a more advantageous position competitively than is an employer in the State of the distinguished Senator from Illinois [Mr. LUCAS], where the limit of the period for which an employee may go back is 5 years. In Minnesota the limit is 2 years. In Minnesota an employer is certainly in a much more advantageous position than his competitor in Wisconsin, where the employee may go back for 6 years. In Massachusetts, in which State there are many textile mills, an employee may go back for 6 years. An employer in Massachusetts is in a much less advantageous position than an employer in North Carolina, where the employee can go back only 3 years. In South Carolina the limit is 1 year.

So, Mr. President, the importance of having an applicable uniform statute of limitations, I think, is obvious. I will say in this connection that Mr. Walling who, at the time of his testimony, was the Wage and Hour Administrator, had this to say on page 558 of the testimony:

> It is not necessary any longer to justify a uniform Federal Statute of Limitations. Events have proven ample justification. The only question at issue is the period which should be provided.

I call attention also to the fact that Mr. John Abt, who is counsel for the Amalgamated Clothing Workers of America, New York, N. Y., said this in his testimony, at page 162:

> We favor writing into the acts a reasonable time limitation on the filing of suits. We believe that such a limitation is necessary in order to secure uniformity throughout the 48 States and to place this Federal question beyond the control of diverse State laws.

So, Mr. President, considering the nature of these circumstances, it is obvious that the Congress should take action in the public interest.

It may be said that all this trouble was occasioned by the Mount Clemens case. On February 8, 1947, Judge Picard, the United States district judge to whom the Mount Clemens case had been sent for retrial, dismissed the case. It will be recalled, Mr. President, that the judge found to be de minimis all the walking time and preliminary-activities time consumed by employees for which overtime compensation was sought under the act. Judge Picard was, however, careful to point out that his dismissal of the Mount Clemens case "should not be understood as holding that all portal-to-portal suits should be dismissed."

He further said:

> There may be and perhaps are many instances where walking time and preliminary-activities time consumed is of such an amount as to call for compensation that he normally is not now receiving, but this is not one.

Judge Picard's decision is, first, limited to the facts of the case only, and, second, is not a final decision and doubtless will not be accepted as such, but, in our judgment, will be taken to the Supreme Court. Moreover, the decision of Judge Picard dismissing the Mount Clemens case was handed down on February 8, 1947, which was after the case had been recommitted to the district court by the Supreme Court for the matter of computation. However, that decision is not at all indicative of the conclusion that the portal-to-portal issue is settled, as is clearly indicated from an Associated Press report in the Washington Sunday Star for February 9, 1947, the day after Judge Picard's decision, stating that the United Automobile Workers' attorney, Maurice Sugar, said the auto union would not withdraw any of its suits. Suits by this union alone reportedly total nearly $1,000,000,000. Mr. Sugar also was reported by the Associated Press as having stated that Judge Picard's decision "would not necessarily apply to other cases."

Furthermore, Mr. President, attention is directed to a news item from the New York Times of Tuesday, February 11, 1947, 3 days after Judge Picard's dismissal of the Mount Clemens case, which news item reads as follows:

> UAW SUES AGAIN DESPITE PORTAL BAN
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> DETROIT, February 10.—Despite the dismissal on Saturday by Judge Frank A. Picard in the Federal District Court of the portal-to-portal and make-ready pay claims of employees of the Mount Clemens Pottery Workers Union, the United Automobile Workers, CIO, charged back into the legal fray today with a suit demanding more than $200,000 on behalf of 148 members of local 155 against the Vincent Steel Process Co., an automotive parts manufacturer.
>
> In connection with the filing of the suit, Ernest Goodman, counsel for the UAW, said that the union took the position that the organization disagreed with the opinion of the judge who held that the time claims in the Mount Clemens were too trivial to recognize.

Union leaders still were silent, although Mr. Goodman said that the last of the suits had not yet been filed and that there would be a fresh wave as a result of the judge's decision.

Mr. Goodman said that "we disagree with some of the important aspects of the decision, particularly with reference to retroactivity."

"Judge Picard's decision," he added, "is inconsistent with the decision of the Supreme Court."

So, Mr. President, in view of these facts, and in view of the decision of Judge Picard, I take it that it is clear that Congress is not released from the very solemn obligation under which it finds itself to enact adequate legislation to cover the portal-to-portal situation.

It has been contended by some that any attempt to wipe out existing portal-to-portal claims would violate the Constitution of the United States, and particularly would violate the fifth amendment, which reads as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor—

This is the portion of the fifth amendment to which the argument opposed to the constitutionality of the proposed legislation is directed—

be deprived of life, liberty, or property, without due process of law—

Continuing, the amendment provides—

nor shall private property be taken for public use, without just compensation.

Some have taken the view that, inasmuch as employees have worked for employers and have accumulated under the decision of Mr. Justice Murphy moneys owing to them for portal-to-portal activities, if Congress now steps in and undertakes to wipe out these claims, there will be a violation of the prohibition in the fifth amendment against the deprivation of one's property without due process of law.

The Supreme Court of the United States has in several decisions indicated views which appear to me amply to justify the conclusion that the proposed legislation can be constitutionally effected to prevent the maintenance or institution of these suits, and can do so even as to existing claims.

The first of the cases to which attention is respectfully directed is that of *Norman* v. *The Baltimore & Ohio Railroad Company* (294 U. S. 240), decided on February 18, 1935, the decision having been handed down by Mr. Chief Justice Hughes, beginning at page 291. This was known as the gold-clause case. It presents the question of the validity of the joint resolution of Congress of June 5, 1933, with respect to the gold clauses in private contracts for the payment of money. The resolution declared that—

Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular amount of coin or currency or in an amount of money of the United States measured thereby, is against public policy. Such provisions or obligations thereafter incurred are prohibited.

The resolution further provides that—

Every obligation heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.

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

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from Illinois?

Mr. DONNELL. I yield.

Mr. LUCAS. Is the Senator from Missouri now discussing the constitutionality of the bill as it has been reported by the committee?

Mr. DONNELL. Yes; I am discussing the general proposition as to the right of Congress to wipe out these suits; and of course this bill is framed upon the theory that the Congress has a right to wipe them out.

Mr. LUCAS. I agree with the Senator from Missouri that Congress has a right to pass legislation which would destroy the validity of the portal-to-portal pay suits.

Mr. DONNELL. Yes.

Mr. LUCAS. I wish to ask the Senator a question, and I think it is important in view of the fact that now he is discussing the constitutionality of the measure which has been reported by the Judiciary Committee. Under section 2 (a), part II of the bill, is it the Senator's contention that every conceivable claim based on any activity not compensable by contract or custom or practice, is wiped out?

Mr. DONNELL. Will the Senator please repeat the question?

Mr. LUCAS. I wish to ask the Senator about the bill as it has been reported by the committee, and I have specific reference to section 2 (a) of part II. I ask him whether he believes that every conceivable claim based on any activity not compensable by contract or custom or practice, is wiped out by the bill. I am now talking about all claims over and beyond those which are set forth in the portal-to-portal suits, and I wish to know whether the bill includes such claims.

Mr. DONNELL. The answer, Mr. President, is that the section to which the Senator from Illinois has referred destroys every claim under either the Fair Labor Standards Act of 1938—or perhaps I should say it provides that no employer is subject to any liability or punishment under the Fair Labor Standards Act of 1938 as amended, the Walsh-Healey Act, or the Bacon-Davis Act on account of the failure of the employer to pay to an employee minimum wages or to pay an employee overtime compensation for or on account of any activities that an employee engaged in prior to the date of the enactment of the act, except those that were compensable by either contract, custom, or practice, as described in that section.

Mr. LUCAS. Then the Senator from Missouri and I are in agreement as to what this section means. In other words, any and all claims, over and above and beyond anything that has happened in these portal-to-portal suits, are also wiped out or outlawed, so to speak.

If my position is correct in that respect, I wish to make this further statement for the record; namely, that the section we are discussing contains no definition of portal-to-portal claims, and makes no distinction between suits based upon out-and-out violations of the Fair Labor Standards Act, the Walsh-Healey Act, or the Davis-Bacon Act, and the portal-to-portal suits. I think we can agree upon that.

Mr. DONNELL. Mr. President, I think the Senator from Illinois has overlooked the fact that in section 5 of part II there is a definition of portal-to-portal activities. It reads as follows:

SEC. 5. Definition: As used in this part, the term "portal-to-portal activities" means those activities which section 2 hereof provides shall not be a basis of liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act.

I also call attention to the fact that in subdivision (b) of section 2 appears the following language:

(b) Each claim based on any portal-to-portal activities is hereby declared to be and is null and void and unenforceable.

Mr. LUCAS. I understand that. The point I make is that, as suggested by the able Senator, the definition of portal-to-portal claims is not confined to the portal-to-portal suits which brought on this legislation, but it goes beyond them and takes in the Walsh-Healey Act, the Bacon-Davis Act, and all other bases of actions of any kind or character which might be maintained by any person at the time. As to that point, the Senator from Missouri and I may differ with respect to the power which Congress has to go that far. I am afraid we are going off the deep end so far as that phase of the measure is concerned, when we consider the due process section of the Constitution.

Mr. DONNELL. Mr. President, I thank the Senator from Illinois for his observation, and I shall discuss his point as I proceed. I may say at this time, however, that the same constitutional point to which I shall refer in a moment in the Norman case, as I see it, applies in the case of every activity, and gives the Congress the power, in its judgment, if it deems the public interest to require it, to legislate out of existence any claim within the field of interstate commerce, over which Congress has power.

Let me also say, so that the RECORD may be perfectly clear, that the definition of portal-to-portal activities which is set forth in section 5 is—

Those activities which section 2 hereof provides shall not be a basis of liability or punishment—

And those acts are only the ones which are not compensable either by contract or custom or practice.

Mr. LUCAS. Mr. President, will the Senator further yield?

Mr. DONNELL. I yield.

Mr. LUCAS. Am I correct in my understanding that before the committee there is no evidence or any kind or character which involves the Walsh-Healey Act or the Bacon-Davis Act; and also

that the amendments which are proposed to be made by the bill, insofar as actions brought under either of those acts are concerned, are purely gratuitous upon the part of the committee, and are not based upon any facts?

Mr. DONNELL. Mr. President, I do not think the interpretation of the Walsh-Healey Act or the Bacon-Davis Act is gratuitous upon the part of the committee. I am very happy to answer the Senator from Illinois, and I think he is entitled to know what the sentiment is.

In the first place, when the subcommittee started its hearings, I am frank to say that I had never heard of the Bacon-Davis Act, at least by name. I may have heard of the Walsh-Healey Act; it is possible that I had. But certainly neither of those acts was submitted to either our subcommittee or the full Committee on the Judiciary for consideration. However, as our hearings progressed, and somewhat, as I recall, near the conclusion of the hearings, a letter was received by the chairman of the Judiciary Committee from the distinguished Senator from Oklahoma [Mr. MOORE], calling his attention to the Walsh-Healey Act and raising the question whether some provision should be made with respect to it. Moreover, as I remember, at least one letter, and possibly more, came to my office from some one or more gentlemen, calling my attention to the Walsh-Healey Act, although I do not recall that the Bacon-Davis Act was so called to my attention.

Mr. President, as the so-called Gwynne bill, House bill 2157, was passed by the House of Representatives, it will be observed that the House of Representatives considered that the proposed legislation should apply not only to the Fair Labor Standards Act but also to the Walsh-Healey Act and the Bacon-Davis Act. Bearing that in mind, our subcommittee, after consultation with the main committee—and in referring to the subcommittee, I refer to both the Senator from Kentucky [Mr. COOPER], and myself; I do not recall whether the Senator from Mississippi [Mr. EASTLAND], was there or not—and in conjunction with the chairman of the Judiciary Committee, the Senator from Wisconsin [Mr. WILEY], and the Senator from Michigan [Mr. FERGUSON], had a conference, one day, with Mr. WALTER, a member of the House of Representatives Committee on the Judiciary, who if I am not mistaken, was the author of one of those acts, although his name does not appear on it. Certainly, however, he is well informed with respect to it. He gave us his views concerning the acts. He informed us, as I recall, that there had never been any suit filed under either of those acts. He indicated to us, however, the facts, and as a result of interrogation of him we were able to get what we thought was a pretty complete analysis of the facts which would give an employee under each of the two acts rights similar to those under the Fair Labor Standards Act.

I recall that in the case of the Bacon-Davis Act, which has to do with the construction of Federal buildings, I mentioned a certain situation. I am always thinking of my home State, and I said to him, "For instance, suppose a post office was to be built in Unionville, Mo." I may digress to say that it was my privilege to be present at the dedication of a post office in that city some years ago, and that was the reason why I happened to think of that one. I said, "Suppose a post office was to be built in Unionville, Mo., and the Westlake Co. was to build the post office, would the employees of that Westlake Construction Co. come under the Bacon-Davis Act?" Or words to that effect. He developed, of course, that they would. I think on reconsideration, I did not ask him if they would come under the act. I see obviously that they would.

I then put to him this series of facts: "Suppose that subsequently, in the case of the Westlake Construction Co., the employees of that company should hear of the doctrine of the Mount Clemens case, and should decide they also had walking time, while going from the entrance of the enclosure up to the place on the post office where they worked, and should assert a claim against the Westlake Construction Co., and should call upon the government representative by whom suits were brought under the Bacon-Davis Act, to bring suits in their behalf." I put that situation before Mr. Walters, and as the result of our conversation it was clear that in that case, should there be a recovery by the employees under the Bacon-Davis Act, it could be based on the same theory on which the suit would be based under the Fair Labor Standards Act. A similar illustration was put to him with relation to the Walsh-Healey Act, relating to the manufacture of caps for seamen in the Navy, and of course obviously the same answer applies.

So, Mr. President, after this conference with Mr. Walters, and after very careful consideration on the part of those of us who were on the committee, we determined to rewrite the bill, and we asked Mr. Rice, of the office of the legislative counsel, to perform what we thought was almost a superhuman task, rewriting the bill in one afternoon to get it ready for our committee the next morning, and have it printed so that we could have it before us with the new provisions in it.

In my judgment the Senator from Illinois is not correct in his assumption that the interpretation of the Walsh-Healey and Bacon-Davis Acts were gratuitous. It is true there was no evidence before the committee, in the printed hearings, but the committee made thorough and careful study of the matter, as I see it, and while not so extensive as our study of the Fair Labor Standards Act, I think our action in including those acts was based upon our study, and therefore was not gratuitous.

Mr. LUCAS. Mr. President, will the Senator from Missouri yield?

Mr. DONNELL. I yield to the Senator from Illinois.

Mr. LUCAS. I desire to make my position perfectly clear with respect to the proposed legislation. The Senator from Illinois, as I think most other Senators are, is definitely in favor of legislation which will outlaw portal-to-portal suits, which are now giving the Senate and the country so much trouble. All I am attempting to ascertain from the able Senator is his view with respect to the constitutionality of the proposed act. I sincerely hope that when Congress finally passes a bill it will stand the test of the courts, and will not be a law which will invite all kinds of litigation in the future.

I know that as the result of the cumulation of hundreds of these suits throughout the country here and there in the different States, as the Senator has so ably explained, Congress undoubtedly has the power to arrest and deny any action in connection with such suits in the future, and probably outlaw the suits which have been started in the past.

What I am fearful of in connection with the pending bill is that we are delving into new fields, where there are no suits, where there is no evidence, where there are no charges of any violation, and if we are not careful we are going to take away from the individual citizen the inherent right of property he has under the due process clause of the Constitution. Rather than go too far in the legislation, I will say to the able Senator, I should prefer to confine the bill strictly to the portal-to-portal suits, where we know definitely we are on safe ground when we pass the measure.

I merely throw this into the argument for whatever it may be worth. I may be wrong. There are some able lawyers who will argue that we have no power and no authority, as legislators, to take away retroactively even the right to institute the pending suits. I do not agree with that contention in any way whatsoever, but I do say that when we step out and go further than what we have definitely and directly in front of us with respect to portal-to-portal suits, and attempt in a measure banning portal-to-portal suits to include suits under other legislative enactments about which no question whatsoever has ever been raised, either in the lower courts or the upper courts, under which no suits are now pending, and which acts are not before the Congress—when we outlaw all claims of any kind, and deny individuals an inherent right which they are entitled to exercise if they want to bring a suit of some kind, in my humble judgment, we are taking a chance. That, briefly, is my position.

Mr. BALDWIN. Mr. President, will the Senator from Missouri yield?

Mr. DONNELL. I yield to the Senator from Connecticut.

Mr. BALDWIN. I do not know that my question is along the line of what the Senator from Illinois has just discussed, but there is oftentimes much contention over the interpretation of administrative orders which are issued pursuant to the acts referred to. For example, taking any provision of the Fair Labor Standards Act or the Wages and Hours Act, an employer may inquire whether a certain course of action constitutes a compliance with the act or some regulation issued pursuant to it, and he is advised, honestly and fairly, that it does. Later a new administrative order may be issued, or a court may render a decision which entirely reverses the ruling under which the employer has been operating. Is there anything in the bill which would protect an employer, and also an em-

ployee, since the employee is also entitled to know what his rights and privileges are, in a situation of that kind? It seems to me that has some bearing upon the very point the learned Senator from Illinois raised.

Mr. DONNELL. Mr. President, I am very glad to have the two Senators ask the questions that have propounded, and I am very grateful for the very clear exposition of his position by the Senator from Illinois, and for the very clear inquiry which has been made by the Senator from Connecticut.

In the first place, addressing myself to the proposition of the Senator from Illinois, I agree with him that it is of great importance that we attempt to make the bill unassailable, in other words, to make it clearly constitutional, if we can. Our committee has devoted a very great deal of thought, I will say to the able Senator, along those lines.

We have been confronted by the fact that there is a difference of opinion among lawyers, and I think it is only fair to say that we have tried to include the arguments on both sides, pro and con. We have had great numbers of briefs which we could not very well print because of considerations of expense, but I wish to say to the Senator from Illinois that included in the briefs we had printed is one on page 814 of the testimony and following by Mr. George Eric Rosden, of the District of Columbia Bar, which expresses the view, in substance, that legislation of the type which undertakes to wipe out existing claims is invalid.

Mr. LUCAS. Mr. President, does that include all existing claims, or is he discussing the portal-to-portal claims?

Mr. DONNELL. He is talking about any existing claims, as I recall his brief. He says this:

> Several bills have been introduced in Congress designed to deal with portal-to-portal pay suits. Other legislative efforts are in preparation.
>
> * * * * *
>
> Under these circumstances, we fail to see how Congress could constitutionally legislate away the rights which have already accrued under the statute, for it is a well-established doctrine that retroactive statutes are against due process, and therefore unconstitutional if they affect vested rights.

I think I should say, and I do say at this time, that included in our report we have set out not only Mr. Rosden's brief, but we thought it fair to set out the fact that he sent this brief to me as the result of a telegram from the president of the American Bar Association, Mr. Carl B. Rix, which reads as follows:

> Please take your excellent brief to Senator DONNELL with this telegram. He may desire to secure publication in CONGRESSIONAL RECORD as matter of general interest.

That is from page 814 of the general transcript.

I should add, however, that I do not think there is anything in the record, and certainly nothing within my knowledge, that would indicate that the American Bar Association has passed upon this matter. But Mr. Rix of course is a very eminent lawyer. I am not acquainted with Mr. Rosden, so far as I recall, but the fact that Mr. Rix had requested him to take the brief to me indicates to me that Mr. Rosden is a gentleman of standing and his word should receive consideration.

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

Mr. DONNELL. If the Senator from Maryland will indulge me for a moment, let me say that we also have set out in full in the record, the particular portions to which I am referring being pages 185 and following, a very interesting brief by Mr. Lee Pressman, in which, in substance, he takes the position likewise that legislation wiping out existing claims is unconstitutional. I now yield to the Senator from Maryland.

Mr. TYDINGS. I do not want to interrupt the argument of the distinguished Senator from Missouri, but he may be able to give me a brief answer to the question I am about to ask. Does the bill as reported by the committee attempt to make the law as originally passed conform to what many people conceived to be its limitations or does the pending bill purport to take away certain legal rights which were perhaps expressly set forth in the original wage-and-hour bill? Do I make clear to the Senator from Missouri what I am trying to elicit from him? I am afraid I do not.

Mr. DONNELL. I am not quite sure I get the Senator's question.

Mr. TYDINGS. Let me put it this way: Does the bill now pending before the Senate take away from either employer or employee any rights which were given to him originally, but which we did not mean to give him, to the extent of the portal-to-portal suits as we have come to know them?

Mr. DONNELL. Mr. President, I do not think I can answer that question yes or no. I think the answer would require somewhat of an expansion. I shall certainly try to answer it to the best of my ability.

Mr. TYDINGS. I do not want to divert the Senator from his argument. He has probably covered it before in his remarks, while I was out of the Chamber.

Mr. DONNELL. No; it has not been covered, I should say to the Senator. It should be covered, and it will be.

Let me say that in this bill we have not undertaken to say what was the intent of Congress in 1938. I should say that some persons thought we should expressly take the position that the Supreme Court of the United States had legislated by its action in the Mount Clemens case. I was one of those, a year or so ago, who took the position on this floor that Congress has no right to go back years ago and say what was the intent of Congress at that time. I think perhaps that statement should be modified to this extent, that if the reports or other legislative history enable us to judge of it, we might be able to do so.

The distinguished Senator will perhaps recall some years ago the resolution bearing upon the oil industry and the internal-revenue practices, under which Congress was besought to enact legislation saying that Congress meant something different than the law provided. The Senate, however, took the view that it could pass such a resolution, although I was in the minority. I remember the distinguished Senator from Michigan [Mr. FERGUSON] was likewise in the minority. I do not recall the position of the Senator from Maryland on that particular matter, but I want to say, in the pending legislation we have not undertaken to say what was the intent of Congress in 1938.

We take the act as it exists. We take the decision of the Supreme Court as it has been made. Realizing the pendency of the tremendous economic problem presented by the portal-to-portal situation, we attempt to strike at those claims and wipe them out. In order to do so we find it necessary to cover the entire 24 hours of the day, and perhaps to wipe out some claims, as to which there is strong argument that they should not be wiped out. I am coming to that, and I shall argue it fully before we finish.

But the real purpose of this proposed legislation is to dispose of the existing portal-to-portal cases, and we do not see any way to do except to take the entire activities of the entire 24-hour day, and provide by law that none of them shall be compensable unless by contract or custom.

Mr. TYDINGS. Mr. President will the Senator yield?

Mr. DONNELL. I am speaking, as the Senator from Kentucky [Mr. COOPER] appropriately suggests, solely as to existing claims, past claims. We approach the question as to future claims in quite a different manner. I yield to the Senator from Maryland.

Mr. TYDINGS. I thank the Senator for his explanation. As I understand the general philosophy of the committee's approach to this problem, if payment has been made by practice for portal-to-portal, work or activities, the committee measure does not interfere with that?

Mr. DONNELL. The committee does not make noncompensable such activities. In other words, it leaves them compensable.

Mr. TYDINGS. And if by custom?

Mr. DONNELL. I dislike to interrupt the Senator, but, in the interest of accuracy, we say that if there is a custom or practice, not inconsistent with the contract of the individual, under which custom or practice payment was made for certain activities, the employees shall be entitled to compensation for them, whereas we provide conversely that in the absence of such custom or practice, they shall not be so entitled.

Mr. TYDINGS. Particularly, I think the committee makes this broad approach—and I ask the Senator to correct me if I am wrong—that if payment has been made in the past as a matter of custom, or if payment for portal-to-portal activities is provided for in the contract, the committee bill makes no change, and does not prescribe payment for work in either of those two categories.

Mr. DONNELL. That is correct.

Mr. TYDINGS. It is in the "twilight zone," so to speak where payment has not been made in prior practice, and where payment is not provided for in the contract, and therefore the question arises as to whether or not in good faith the employer and the employee assume that payment could be made under the Wages and Hours Act, in that twilight zone? That is primarily I believe the

place from which most of these suits have sprung, from the twilight zone, rather than practice or contractual obligation; and it is particularly in that twilight zone that the committee is attempting now to legislate to clear up that matter. Is that a broad statement of the sitution?

Mr. DONNELL. I appreciate that one man may use an expression differently from the way another man uses it. I do not regard it as a "twilight zone." I should say that recognizing the grave economic problem, what we do is to undertake to wipe out all pending portal-to-portal cases, so far as it is humanly possible to do so. In order to do that, we find it necessary to provide that any activity which is not compensable, either by contract, or by custom or practice not inconsistent with the contract, shall not be compensable. Does that answer the Senator's question?

Mr. TYDINGS. That pretty well answers it, because, although I take it the committee might like to have considered each case all over the country on its merits, in the nature of things it had to take action, and the fairest way it could act in the interest of employer and employee was to take the cases that came in the real category of right, and put them to one side, and in all the questionable cases, as to who was right and wrong, which were not covered by contract or were not covered by prior practice, the committee said, "We will knock all these out, because it is impossible to run a line through all of them with exact justice."

MR. DONNELL. I think the Senator has very clearly stated the situation. Mr. President, I do not want to make myself unduly apologetic to the Senate, but I can well appreciate that the Senate may feel somewhat wearied by detailed presentation of some of these matters, yet I think it is well to let the Senate know something of what the mental processes of the subcommittee and of the committee were.

The Senator from Connecticut [Mr. BALDWIN] has asked whether or not there is any provision in the bill bearing upon the acts done or omitted in good faith in accordance with or in reliance upon any regulation, order, interpretation, ruling or practice of the Administrator. I call to his attention pages 20 and 21 of the bill wherein it is provided, in paragraph (1) of section 10:

> The Fair Labor Standards Act of 1938, as amended, is further amended by adding at the end of section 16 the following new subsection:
>
> "(d) Neither liability nor punishment under section 15 or 16 (a) of this act, nor liability for an additional amount as liquidated damages under section 16 (b) of this act, shall be predicated on any act done or omitted in good faith, on or after the date of enactment of the Portal-to-Portal Act of 1947, in accordance with or in reliance on any regulation, order, interpretation, ruling, or practice of the Administrator, notwithstanding the fact that such regulation, order, interpretation, ruling, or practice, after such act or omission, is amended or rescinded or is determined by judicial authority to be invalid or without legal effect."

There is a similar provision in the next subsection of section 10 with reference to the Walsh-Healey Act. The reason why there is no corresponding subsection dealing with the Bacon-Davis Act is that there is no provision in the Bacon-Davis Act with respect to liquidated damages.

In the absence of the Senator from Rhode Island [Mr. MCGRATH] I had not intended today to make mention of his comment to the effect that there is no liquidated damage provision in either the Walsh-Healey Act or the Bacon-Davis Act. I think the Senator is in error in regard to the Walsh-Healey Act, and I shall call it to his attention at the next session of the Senate when he is present. I think there is a provision for liquidated damages therein.

Mr. President, I shall discuss the section which I have read in response to the question of the Senator from Connecticut when I reach it in the bill. I may say to the Senator from Nebraska [Mr. WHERRY] that I was stating briefly—and I shall go into it a little more fully later—the provision in regard to acts done or omitted in good faith in accordance with or in reliance on any regulation, order, interpretation, ruling, or practice of the administrator. The reason I call this to the attention of the Senator from Nebraska is that he has been very courteous in consultation with our subcommittee with regard to some thoughts he has on the matter. I do not know whether he has come to a final conclusion, and I suggest that at the moment we defer any action on it, but I wanted the Senator from Nebraska to know at the moment that we were discussing that matter.

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

Mr. DONNELL. I yield.

Mr. WHERRY. Those of us who are members of the Small Business Committee are interested in seeing that in the Senate committee's substitute bill provision is made to protect the employer in connection with what we call good faith and reliance upon orders issued, and so forth.

The question was raised by the distinguished Senator from Illinois [Mr. LUCAS] as to whether or not facts had been presented to the committee upon which the constitutionality of the act might rest. I should like to say that we have called that matter to the attention of the committee many times. Committee members have talked to many business organizations. There are thousands of portal-to-portal suits on file. There have been decisions in the circuit courts relative to who is a retailer and who is not, who is a laundryman, for example, and who is this, that, and the other. A great deal of litigation has arisen dealing with such questions. I think the Congress has the right and the power to clarify the statute and give the relief our committee expects to ask.

I wish to thank the distinguished Senator from Missouri for having been so generous to us in permitting us to present our arguments. I expect to offer an amendment which will take care of the situation suggested by the distinguished Senator from Connecticut relative to the various orders which have been made, and supplemental orders which have been issued changing the original orders on which the businessmen relied in good faith, yet in the final analysis the businessmen become liable because some change in an original order has later been made. I think that particular subject is a very important part of the proposed legislation. It is taken care of in the House bill, and I think it should be taken care of in the Senate bill.

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

Mr. DONNELL. I yield.

Mr. BALDWIN. The reason I raised the question Mr. President, was because I was in some doubt in my own mind as to whether this particular language contained in the bill is sufficiently broad to cover the whole general situation, because if it is then, of course, we get into the constitutional question which was raised by the able Senator from Illinois. Since the able Senator from Missouri, who has so eloquently and fully discussed the bill, says he is going to discuss that point later, I shall be happy to sit here and listen to the discussion, as I have done until now.

Mr. DONNELL. I appreciate the Senator's comment.

Mr. President, I was discussing the case of *Norman* v. *Baltimore & Ohio R. R. Co.* (294 U. S. 240). I had set forth a portion of the contents of the joint resolution of Congress of June 5, 1933, with respect to the gold clause of private contracts as to the payment of money. In this case suit was brought upon a coupon of a bond issued by the Baltimore & Ohio Railroad Co., in the sum of $22.50. The bond provided that the payment of principal and interest would be made in gold coin of the United States of or equivalent to the standard of weight and fineness existing on February 1, 1930.

I shall leave out much of the detail of the argument. The contention was made by the plaintiff in the suit that the resolution of Congress which declared that every provision which purports to give the obligee the right to require payment in gold or a particular kind of coin or currency is against public policy. The plaintiff claimed that that provision of the Federal act was unconstitutional. He did so upon the theory that Congress has no right to invalidate the provision of existing contract inasmuch as such violation would in the contention of the plaintiff be opposed to constitutional provisions to which reference has been made.

The Court discussed on pages 306 and following the power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority.

We had here, as will be seen, the case of a plaintiff who owned a bond which provided for payment in gold coin. He had advanced his money for the bond. He owned the bond. It was his property. The contract was his property. He chose to ask that the condition of the bond be complied with by either payment in gold or the equivalent in currency. Then he was confronted by the joint resolution of Congress which held that that provision was in effect against public policy and void.

The Court, after heading its third proposition on the matter in this language:

The power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority—

Said this, among other things:

The contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

Then the Court says this:

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

This principle has familiar illustration in the exercise of the power to regulate commerce. If shippers and carriers stipulate for specified rates, although the rates may be lawful when the contracts are made, if Congress, through the Interstate Commerce Commission, exercises its authority and prescribes different rates, the latter control and override inconsistent stipulations in contracts previously made. This is so even if the contract be a charter granted by a State and limiting rates, or a contract between municipalities and carriers.

The Court discusses the case of *Louisville & Nashville Railroad Co.* v. *Mottley* (219 U. S. 467) in which case the Court had held that a contract, valid when made for the giving of a free pass by an interstate carrier in consideration of a release of a claim for damages, could not be enforced after the Congress had passed a certain subsequent act. The Court in the Norman case said:

Quoting the statement of the general principle in the legal tender cases, the Court decided that the agreement must necessarily be regarded as having been made subject to the possibility that at some future time the Congress "might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value." The court considered it inconceivable that the exercise of such power "may be hampered or restricted to any extent by contracts previously made between individuals or corporations." "The framers of the Constitution never intended any such state of things to exist." * * * Accordingly, it has been authoritatively settled by decisions of this Court that no previous contracts or combinations can prevent the application of the antitrust acts to compel the discontinuance of combinations declared to be illegal. * * * The principle is not limited to the incidental effect of the exercise of the Congress by its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.

Then the Court gives various illustrations, among them the case of *Philadelphia Railroad Co.* v. *Schubert* (224 M. S. 603). The Court continued:

In that case, the employee, suing under the act, was a member of the relief fund of the railroad company under a contract of membership made in 1905, for the purpose of securing certain benefits. The contract provided that an acceptance of those benefits should operate as a release of claims, and the company pleaded that acceptance as a bar to the action. The Court held that the Employers' Liability Act applied the governing rule and that the defense could not be sustained. The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. The reason is manifest. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. The Constitution recognizes no such limitation.

After citing authorities—

The same reasoning applies to the constitutional authority of the Congress to regulate the currency and to establish the monetary system of the country. If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority they cannot stand.

That was the decision of the Supreme Court of the United States in the case decided, as I have indicated, in 1935. As I see it, as I have indicated, the key sentence in Chief Justice Hughes' decision is that "contracts may create rights of property; but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity."

In other words, the Chief Justice recognized the facts as indicated in something else which I read from his opinion, that when people contract within the range of a field over which Congress has jurisdiction they do so subject to the right of Congress to wipe out their rights under the contract. And I undertake to say that the right to wipe out such rights under a contract exists whether the rights under the contract are so-called vested rights, or are not vested rights.

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

Mr. DONNELL. I yield.

Mr. TYDINGS. I think the argument of the Senator from Missouri is very sound, and I do not believe it can be assailed as a sound proposition of law. Congress has the right to abrogate contracts which are against public policy. In the case of the portal-to-portal suits, however, most of those are not founded on contracts at all. They are founded upon the laws of Congress. So unless the right of the claimant in a particular suit is well defined in the law, it seems to me that Congress would be taking nothing away from him by outlawing portal-to-portal suits. If we can outlaw a contract, we certainly ought to be able to outlaw a practice which has not even been reduced to the formality of a contract, unless the act of the Congress itself prohibiting certain unfair labor practices gave the employee the right to bring the suit against his employer.

Mr. DONNELL. I thank the Senator for his observations. Let me say in that connection that the very fact that these rights of the employee to which reference is made have been created by statute is another ground upon which some lawyers argue that this type of legislation wiping out the claims would be constitutional, namely, that a right created by statute can always be wiped out by the enacting power prior to the translation of such right into the judgment of a court. So I think the Senator has done a real service in calling attention to the fact that the rights of these employees arise under the Fair Labor Standards Act.

Mr. FERGUSON. Mr. President will the Senator yield?

Mr. DONNELL. I yield.

Mr. FERGUSON. The proposed legislation would not abolish any contract right; would it?

Mr. DONNELL. It would abolish no contract right. It provides that no employee may have his activities compensated for unless they are compensable under a contract or under a custom or practice not inconsistent with the contract. In other words, if he has a contract, his right continues to exist.

Mr. FERGUSON. This is a pure statutory right under the Fair Labor Standards Act.

Mr. DONNELL. That is correct.

Mr. President, this is an exceedingly interesting legal point, and it is of great importance in connection with the proposed legislation. A number of cases have been cited, and doubtless other cases will be cited on the floor of the Senate. I shall not anticipate any of them at this moment, with one exception. I refer to the case of *Lynch* v. *United States* (292 U. S., page 571), decided in 1934. That was a year before the gold-clause case. It will be recalled that in the Lynch case the Court had before it certain policies of yearly renewable term insurance. The Court held, in substance, that those contracts are property, and that rights of private individuals arising under them are protected by the fifth amendment. The Court points out that the Congress has a right to withdraw the consent of the United States to be sued on a contract and leave people to their rights before the administrative branches of the Government, but that Congress has no right—in the case before it—to withdraw the rights of the holder under the renewable term insurance policy. I think that case will undoubtedly be cited by some Senator who has raised a question as to the constitutionality of the proposed legislation. I shall not discuss the case to any great extent. The Court said:

As Congress had the power to authorize the Bureau of War Risk Insurance to issue them—

That is to say, the contracts of war-risk insurance—

the due-process clause prohibits the United States from annulling them, unless, indeed—

And it is the word "unless" to which I invite the attention of the Senate—

unless, indeed, the action taken falls within the Federal police power or some other paramount power.

The Court further said:

The Solicitor General does not suggest, either in brief or argument, that there were supervening conditions which authorized

Congress to abrogate these contracts in the exercise of the police or any other power. The title of the act of March 20, 1933, repels any such suggestion. Although popularly known as the Economy Act, it is entitled "An act to maintain the credit of the United States." Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors. No doubt there was in March 1933 great need of economy. In the administration of all Government business economy had becom urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen Government expenditure, would be not the practice of economy, but an act of repudiation.

Mr. President, the reason I call attention to this excerpt is that in the Lynch case there was involved solely the question of the rights of holders of war-risk insurance contracts, and, as stated, the due-process clause prohibits the United States from annulling them, "unless, indeed, the action taken falls within the Federal police power or some other paramount power."

The Court further said:

The Solicitor General does not suggest either in brief or argument, that there were supervening conditions which authorized Congress to abrogate these contracts in the exercise of the police or any other power.

Mr. President, the case which is before us today, the portal-to-portal pay case, obviously presents an entirely different situation from that which was presented in the Lynch case from which I have read, for if there ever was a case in which supervening conditions make it desirable that Congress should wipe out any suits, it certainly has been demonstrated in this instance by the mass of testimony which is before the Senate in the volume from which I have quoted from time to time.

The doctrine of congenital infirmity, that is, the doctrine that when an individual enters into a contract in a field over which Congress has control, he enters into the contract subject to the right of Congress to repeal his rights, is expressed not only in the Norman case, the gold-clause case, but the court has by its action in another recent case similarly expressed itself. I refer to the case of the *National Carloading Corporation* v. *Phoenix-El Paso Express* (176 Southwestern (2d ed.) 564). It is a Texas case. I do not expect to show that the Supreme Court of the United States is sitting in Texas, but the Supreme Court of the United States had presented to it, by a document which I hold in my hand, namely, a petition for a writ of certiorari to the Supreme Court of Texas, the question to which I shall refer, and the Court acted upon this petition for a writ of certiorari, and by virtue of that action I take it the Supreme Court has indicated its views.

In the Texas case, which was decided on December 15, 1943, rehearing denied on January 19, 1944, a situation existed under which a motor carrier had a right to recover undercharges from a freight fowarder, and the motor carrier filed a suit against the freight forwarder, and then the claim was reduced to judgment. A Federal statute which was adopted after the institution of the suit granted immunity to the freight forwarder from liability for past acts and omissions, and thus precluded recovery by the carrier.

So there was a situation in which, when the plaintiff started on its suit, it was entitled to recover undercharges, but before the suit was reduced to judgment a Federal statute under which the rights existed was repealed, and the question arose as to whether or not this violated the fifth amendment to the Constitution. The plaintiff's contention was that the fifth amendment had direct application, inasmuch as the plaintiff had an accrued right, the same as money in the bank, except that it had not been collected, and that therefore when the Government, by congressional act, wiped out his right to the money, it was exactly the same as if property of a physical nature had been taken away from him.

What did the Court have to say about that? The Court said:

The plaintiff asserts that it has a vested right in the recovery herein and urges that to give a retroactive effect to the provision in question is violative of the fifth amendment of the Constitution of the United States, which prohibits deprivation of property without due process of law. With this contention we cannot agree. We are here dealing with the exercise by Congress of a power conferred by the Federal Constitution to regulate interstate commerce. The provisions of the fifth amendment may not be invoked to obstruct a national policy which Congress has the power to adopt. As illustrative of this principle is the case of *Norman* v. *Baltimore & Ohio Ry. Co.* (294 U. S. 240) * * * where Norman brought suit on an interest coupon of a bond providing for payment in gold coin equal to the standard weight and fineness existing on February 1, 1930.

The Court then proceeds to quote quite extensively from the decision of the Court in the Norman case, including the observation of Chief Justice Hughes, that contracts may create rights in property, but that when contracts deal with a subject matter which lies within the control of Congress they have a congenital infirmity, and that the parties cannot remove their transactions from the realm of constitutional power by making contracts about them.

The Supreme Court of Texas, after quoting further from the Norman case, says:

We think it therefore becomes evident that the plaintiff does not possess such a vested right as to come within the inhibition of the fifth amendment. Such a right must be something more than a mere expectation based upon an anticipated continuance of the existing law. It must have become a title, legal or equitable, to the present or future enjoyment of property, or to present or future enforcement of a demand, or a legal exemption from the demand of another. If, before rights become vested in particular individuals the convenience of the State induces amendment for repeal of the laws upon which they are based, these individuals are left without any remedy at law to enforce their claims; and if final relief has not been granted before the repeal goes into effect it cannot be granted thereafter, even if a judgment has been entered and the cause is pending upon appeal. The general rule is that when such law is repealed without a saving clause, it is considered, except as to transactions past and closed, as though it had never existed.

That was the decision of the Supreme Court of Texas.

There was filed in the Supreme Court of the United States on April 19, 1944, a petition for writ of certiorari in this case, and a brief in support thereof. In the course of the petition for the writ of certiorari is this language, at pages 10 and 11:

The ultimate question presented for review is whether or not said section 419 of part IV of the Interstate Commerce Act bars petitioner any recovery against respondent and has the effect of granting respondent immunity from liability for all freight charges incurred prior to the passage of said statute. The answer to this ultimate question depends upon the answers to the following three component questions: 1. Did Congress intend that section 419 of part IV of the Interstate Commerce Act apply to civil actions as well as to criminal liability? 2. Did Congress intend said statute to have a retroactive effect as to accrued civil causes of action? 3. If said statute should be applied to petitioner's cause of action, is said statute constitutional and not repugnant to the "due process clause" of the fifth amendment to the Constitution of the United States?

Having received the petition, which as I have indicated bears the filing mark "April 19, 1944," the Supreme Court denied certiorari, the denial being reported at 322 U. S. 747.

I shall not go into much further detail as to the affirmative authorities supporting the right of Congress in this case. I think it has been demonstrated so clearly that it cannot be the subject of contradiction, that in the portal-to-portal cases Congress is dealing with a subject of interstate commerce, and, even more, it is dealing with a subject of national defense, notably in the case of the airplane industry and in the case of the mines, as to both of which the witnesses before our committee commented upon the importance of those particular industries from the standpoint of national defense, and in one case mention was made of the national security involved.

So, Mr. President, it seems to me that the field within which Congress is here proposing to legislate obviously lies within the function and field in which Congress has jurisdiction, namely, interstate commerce and the protection of the Nation by means of military defense and other security.

Therefore, we come to the proposition that when a man comes forward with one of these portal-to-portal claims, which, whether created by contract or by statute, he may say has been virtually resolved into a vested right because he has worked for so many years and because Mr. Justice Murphy said certain activities, for instance, walking from the portal to the lathe, or taping the arms, and so forth, are compensable, and when in court he says, "These are property rights, and if the Congress takes them away from me, the Congress is violating the due process clause of the Constitution," the language of the Supreme Court clearly indicates, I undertake to say, in the cases I have read and in the action taken in the National Carloading case,

that his contention is without adequate foundation.

Congress has adequate power, certainly, to protect the Nation against grave economic, financial, and other national disaster and injury to the public defense. Certainly Congress has power within those fields of action, and individuals who never have expected to collect a dime of the $5,785,000,000 cannot be heard in court to contend that their rights to such money, as windfalls which they never expected to get, are superior to the right of the Congress of the United States within the fields of interstate commerce and the protection of the security of our Nation.

There is one other observation along that line which I wish to make. It happens to be an observation which was made by the same Justice of the Supreme Court who handed down the decision in the Mount Clemens Pottery case. He said this, in the case of *American Power and Light Company* v. *Securities and Exchange Commission*, reported at 67 Supreme Court Reports 133, on November 25, 1946—last year, after the decision of the Supreme Court in the Mount Clemens case—I now read from page 139:

> Congress, of course, has undoubted power under the commerce clause to impose relative conditions and requirements on those who use the channels of Interstate Commerce so that those channels will not be conduits for promoting or perpetuating economic evils. * * * Thus to the extent that corporate business is transacted through such channels, affecting commerce in more States than one, Congress may act directly with respect to that business to protect what it—

In other words, what the Congress—

> conceives to be the national welfare. It may prescribe appropriate regulations and determine the conditions under which that business may be pursued. It may compel changes in the voting rights and other privileges of stockholders. It may order the divestment or rearrangement of properties. It may order the reorganization or dissolution of corporations.

I pause there, Mr. President, because while the action in this portal-to-portal matter is affecting the rights of labor, I call attention to the fact that in that case the Supreme Court, speaking through Mr. Justice Murphy, said that Congress "may order the reorganization or dissolution of corporations."

Thus indicating clearly that the power of Congress is not confined solely to labor, but extends equally to management, under that decision of the Court.

I proceed further to quote the language of Mr. Justice Murphy in that case:

> In short, Congress is completely uninhibited by the commerce clause in selecting the means considered necessary for bringing about the desired conditions in the channels of Interstate Commerce. Any limitations are to be found in other sections of the Constitution—

Citing Gibbons against Ogden.

Then at page 141 we find the following:

> To deny that Congress has power to eliminate evils connected with pyramided holding-company systems, evils which have been found to be promoted and transmitted by means of interstate commerce, is to deny that Congress can effectively deal with problems concerning the welfare of the national economy. We cannot deny that power. Rather we reaffirm once more the constitutional authority resident in Congress by virtue of the commerce clause to undertake to solve national problems directly and realistically, giving due recognition to the scope of State power. That follows from the fact that the Federal commerce power is as broad as the economic needs of the Nation.

Mr. President, the Senator from Kentucky [Mr. COOPER] will, I anticipate, subsequently discuss the fact that the States themselves are not precluded by any provision of the Federal Constitution from asserting their own police power. He has certain authorities which are clear and conclusive.

Is it not true, as indicated in the Lynch case, where there is a showing of some supervening reason for action by Congress, that Congress, either under the Federal police power or under some other paramount power, has authority to act

Someone may say, "The Federal Government has no police power." I agree with the abstract statement that it has no independent police power; but certainly the Court has recognized without question the fact that in carrying out its other powers—as, for illustration, the commerce power—the Federal Government does possess a police power. That, I take it, is what is referred to in the Lynch case by the expression "Federal police power."

Mr. COOPER. Mr. President, will the Senator yield to me

Mr. DONNELL. I yield.

Mr. COOPER. I ask the Senator whether it is a fact that Congress in the very enactment of the Fair Labor Standards Act set aside and made invalid certain contracts of employers, to the temporary financial detriment of employers at that time.

Mr. DONNELL. Mr. President, there can be no question whatever about that. The Senator from Kentucky is precisely correct.

Mr. COOPER. Then, is it not also true, following that precedent, that Congress has just as much power, in the public interest, to set aside certain contracts or certain statutory rights, even though to do so may be of temporary monetary disadvantage to the workers at this time?

Mr. DONNELL. I think the Senator's statement is unanswerable, and is correct.

Mr. LUCAS. Mr. President, will the Senator yield to me?

Mr. DONNELL. I yield.

Mr. LUCAS. I wish to ask the distinguished Senator a question. I agree with him that under the commerce clause of the Constitution, Congress has a right to do what is proposed to be done by the pending bill with respect to portal-to-portal suits. However, the question which I should like to have answered is this: Had these claims not arisen, had all this confusion not existed, had nothing been done, through these portal-to-portal suits, to interfere with commerce, would the Senator still contend that under the commerce clause of the Constitution, the Congress would have a right, without any evidence of any kind or character before it, to enact the kind of legislation now proposed?

Mr. DONNELL. I would say, Mr. President, that I think the court would go a long way toward sustaining the presumption that Congress had some reason for any action it might take toward setting aside these rights. I should say that if it affirmatively should appear to the contrary, that there was no just basis for Congress doing it, if it should appear that it was purely arbitrary, capricious, or malicious, the court would have no hesitancy in setting aside the action of the Congress. But I undertake to say that in the case we have at hand the facts are so heavily upon the scale, without any contradiction whatever, as I see it, to the effect that the supervening conditions, to which the court refers in the Lynch case, do exist, and the recitals in the bill to which I shall have reference so clearly show those facts, that whatever the action of Congress whether it abolishes the rights solely of the portal-to-portal claimants, or whether in doing that we find it necessary to abolish other rights incidentally involved in connection with them, the record is so clear that the court, if it follows the rule in the cases I have cited, must sustain the legislation enacted by Congress.

Mr. LUCAS. Mr. President——

The PRESIDING OFFICER (Mr. BALDWIN in the chair). Does the Senator from Missouri yield to the Senator from Illinois?

Mr. DONNELL. I yield.

Mr. LUCAS. I have no quarrel with the able Senator on the proposition he last submitted. I think what we are attempting to do, and the reason for it is clearly evident, and certainly unambiguous. The question I raised a moment ago was whether the Senator believed the Congress of the United States would have a right to pass legislation of this kind affecting the Fair Labor Standards Act if no portal-to-portal suits existed, if there were no evidence of any kind or character before the committee which would support such legislation, if there were no evidence which in anywise, so far as the facts were concerned, showed any huge economic upheaval or anything affecting the commerce clause. That is the point.

Mr. DONNELL. I welcome the opportunity to answer the question, because it gives me a chance to go even further than I did in my previous answer. In my previous answer I indicated that if Congress were shown to have a malicious reason, no just reason whatsoever, if it were merely arbitrary or capricious, the court might well hold that the action was invalid. But I wish to say two things: In the first place, the strongest presumption would exist in favor of the absence of such malice, the absence of such caprice. In the second place, I think perhaps I even conceded, by inference, more than I should have in my previous answer, for inasmuch as Congress had the right to give under the Fair Labor Standards Act, I know of no reason why it would not have the right to take away.

Mr. LUCAS. But the Senator has made the argument all afternoon, and correctly so, that the only basis for the proposed legislation was that the portal-to-portal suits were interfering with interstate commerce and that Congress could

act under the commerce clause of the Constitution, and under that clause, the Congress has the right to nullify an existing contract.

Certainly if the Senate passed legislation of this character, without any evidence of any kind before it, its action in my humble opinion would be arbitrary and capricious, and by legislative fiat. The very reason why I raise the point is that, as I indicated to the Senator in the colloquy I had with him in the early part of the afternoon, when we step out beyond these portal-to-portal suits, which do definitely affect the commerce clause of the Constitution, then we are legislating arbitrarily and capriciously with respect to the Bacon-Davis Act and the Walsh-Healey Act, and all the other claims which are included which are not within the portal-to-portal claims.

I again in the utmost good faith, raise the question, because I am in serious doubt about the constitutionality of that phase of the Senator's bill as it has been reported, and I am attempting to make an argument that is plain and as it seems to me somewhat unanswerable, in view of the Senator's own statement that if the Congress arbitrarily and capriciously, and through whim, so to speak, passed a law of that kind, it would be unconstitutional. If there were nothing before the Congress upon which to act, the Supreme Court would have to say that its action was arbitrary, it seems to me. I pass on the suggestion for whatever it may be worth.

Mr. DONNELL. I appreciate the very interesting and very ably presented argument of the Senator from Illinois. I am not surprised at his ability to present it, because I have heard him on numerous occasions. I am glad he has contributed this view because we ought to consider it.

In the first place, when he states that I have been arguing that the only basis on which Congress could proceed was interference with interstate commerce, as presented by the portal-to-portal activities, the Senator is in error. I have argued as best I could, and I think the facts fully justify my argument, that the facts are so heavily upon the scale as to show beyond any shadow of doubt that conditions of the supervening act to which the Lynch case refers do exist in this case. So, whether, in the hypothetical case to which the Senator refers, assuming there was no evidence before this body at all, the act would be valid or invalid, I have not argued that this is the only basis. I never made that statement. I have said that the facts in the case are so predominant and overwhelming as to indicate beyond the shadow of a doubt that Congress has the right to legislate in this field.

To answer further the proposition the Senator makes with respect to caprice, I am inclined to think that in my answer to him earlier this afternoon I probably conceded more than I should have conceded, and in my subsequent answer I was quick to attempt to make clear that I thought that I had possibly done so.

As I see the matter, in the first place, the Congress has unfettered power within the domain of interstate commerce. It may well be that my statement about maliciousness or caprice might not at all meet the approval of the Supreme Court. The Supreme Court might very readily take the view that the wisdom of Congress is final, and that what Congress has given by the Fair Labor Standards Act it could very well take away by the repeal of that act. So I say at this moment I am not conceding what I think I went too far in stating a few moments ago.

As I see it, affirmative evidence of the existence of malice or caprice on the part of Congress would have to be shown before the Supreme Court would even consider the proposition that the statute was void on such a ground. Whether the Court would so hold even then, I am not at all certain, but in the absence of any affirmative showing I do not consider that the lack of evidence before a committee would be determining, for a legislative body can take legislative notice, as the court can take judicial notice, of facts of which all are well informed.

So I say, first, there is no affirmative evidence in this case of any malice on the part of Congress. In the second place, the evidence is so overwhelming as to justify the Congress in acting in interstate commerce and national defense that there is no doubt of our right to do so.

The Senator from Illinois suggested there was doubt in his mind whether or not we are entitled, in remedying the portal-to-portal situation, to wipe out any rights other than those of portal-to-portal claimants. In my judgment the Supreme Court of the United States would hold that Congress has a right, in considering the entire problem, and the grave economic situation, to use, as Justice Murphy indicates in this opinion from which I read a few moments ago, its own means toward remedying the injustices and economic conditions. Remember, the Court said, on November 25, 1926, as I read:

> Congress is completely uninhibited by the commerce clause in selecting the means considered necessary for bringing about the desired conditions in the channels of interstate commerce.

True, the next line reads:

> Any limitations are to be found in other sections of the Constitution.

But obviously, from the Norman case and from the other cases to which I have referred, the Court holds that the due-process clause does not interfere with the right of Congress to legislate respecting interstate commerce.

In a little while I shall relate something of the history of this matter in our committee, for I think it may be of some importance when this case goes to the Supreme Court, as, of course, it will eventually do; but in the course of our deliberations we found it to be advisable, in our judgment, if not absolutely necessary, to make this legislation apply, as I have indicated, not merely to the periods at the beginning of the workday and at the end of the workday, but around the clock, for 24 hours. The mere fact that we shall doubtless wipe out some rights here and there—we hope they will not be many, but some of them, here and there—in the course of remedying this problem, does not mean that Congress would have violated its constitutional power in using this means to bring about the result of remedying the great evil which has arisen.

Mr. President, we have been very greatly concerned with how we could accomplish the result of wiping out the vast number of portal-to-portal suits, and I shall tell something of what went through our minds, in a moment, as to how to do it, and the difficulties of it, and why we adopted the particular plan that we did.

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

Mr. DONNELL. I yield to the Senator from Kentucky.

Mr. COOPER. I should like to point out, in answer to the question asked by the Senator from Illinois with respect to the Walsh-Healey Act and the Bacon-Davis Act, that both acts provide for the payment of minimum wages for work. Certainly, if the contracts under those acts affected interstate commerce, the same question of liability for portal-to-portal activities would apply to those contracts as to any other contracts; and certainly, even though as yet no suits have been filed under those acts, the contingent liability exists, and it would seem there is the same power to legislate as to those acts, even though no suits have been filed, as there is with respect to many other contracts, upon which no suits have been filed. The record shows that there have only been 1,902 suits filed. There is a possibility that many more suits will be filed, and it seems to me that contracts entered into under these two acts present a contingent liability. There is the opportunity for employees to sue, and, if legislation is possible in the field of interstate commerce, it is also possible under those two acts to legislate concerning contracts, affecting interstate commerce.

Mr. DONNELL. I thank the Senator.

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

Mr. DONNELL. I yield.

Mr. LUCAS. I have great respect for the opinion of the able Senator from Kentucky, and he may be correct in his conclusions as to the constitutionality of this measure. It includes claims under those two acts, the same as all other claims. It not only takes in the Bacon-Davis Act and the Walsh-Healey Act, but it takes in every conceivable kind of claim or right that an individual may have, anywhere in the United States. That is how broad the bill is. It occurred to me as I read and studied it, in view of the fact that there is absolutely no evidence of any kind that the Walsh-Healey Act or the Bacon-Davis Act has been affected in any way, that we were going outside and beyond the scope of what we started to do.

I distinctly recall that when this bill was introduced in the Senate we argued here as to whether it should go to the Committee on the Judiciary or to the Committee on Labor and Public Welfare, and the President pro tempore, the distinguished Senator from Michigan, ruled that it should go to the Committee on the

Judiciary, because a constitutional question was involved.

The bill goes far beyond portal-to-portal suits, as I see it. It may be perfectly all right; I am not particularly objecting to it, but it has not been confined to that one point. As I understand, the first bill that was considered by the committee was confined to portal-to-portal suits, just as the bill was originally intended. It is now made to cover a large field, going far beyond where I think it ought to go at this particular time.

Mr. COOPER. I do not want to repeat the argument of the Senator from Missouri. I can only say, however, that following the argument, citation, and quotation given from a decision rendered by Mr. Justice Murphy, I believe that it was pointed out, in the reading of that decision, that if the Congress had the dominant constitutional power to act, then the method which it chose in the exercise of that power was a matter within the discretion of Congress, and it would be sustained.

Mr. WHERRY. Mr. President, will the Senator from Missouri yield so that I may ask the Senator from Kentucky a question?

Mr. DONNELL. I yield.

Mr. WHERRY. Is not the title of the act sufficiently broad to deal with any other act, outside the strictly portal-to-portal suits?

Mr. COOPER. I think the chief purpose of the committee in the formulation of this bill was to reach and to nullify for portal-to-portal activities.

Mr. WHERRY. That is correct; but the question is raised to how broad the legislation is. I am asking if the title of the act is not sufficiently broad to include phases of the Walsh-Healey Act or the Bacon-Davis Act. Is not the title broad enough to comprehend the Bacon-Davis Act?

Mr. COOPER. The committee certainly takes that position.

Mr. WHERRY. Let me ask another question. In the event I desired to offer an amendment which I felt was proper and within constitutional provisions, the absence of facts should not deter me from offering that amendment, and should not be determinative of whether or not it was constitutional? I might offer an amendment in good faith; there would be no malice in it; it would not be a matter of caprice, and if the amendment I wanted to offer, according to my view, would afford relief, certainly the Supreme Court would not hold it to be an act of malice or caprice, if I did not have all the facts to substantiate the amendment; is that not true?

Mr. COOPER. I think it could be offered, I think it could be adopted, I think it could be held constitutional.

Mr. DONNELL. I thank the Senator from Nebraska for his interrogation of the Senator from Kentucky. I also thank the latter for his responses.

The bills which were referred to the Committee on the Judiciary were mentioned in my presentation Friday. Before reading the pending bill or going into it in detail, I want to do what I said I was going to do, namely, tell the Senate how we went about the preparation of this bill.

In the first place, I have told about our hearings. I think anyone who reads those hearings or any material part of them, or who even looks over the list of witnesses, will realize that we had before us testimony of the highest order.

In the second place, after we had completed the hearings, the subcommittee then went into executive session, that is, the Senator from Mississippi [Mr. EASTLAND], the Senator from Kentucky [Mr. COOPER], and I, and we started in to consider what should be the approach. We saw three points before us. One was whether or not the best interests of our country required that the portal-to-portal cases should be wiped out. That was question No. 1.

In the second place, if we came to the conclusion that those claims should be wiped out, would the action Congress might take to reach that objective be violative of the Constitution or within the limits of the Constitution?

In the third place, if we should find that the action to be taken by Congress in nullifying those claims would be within the Constitution, what practical steps should be taken in the drafting of a bill to effectuate that purpose?

We had no special difficulty, Mr. President, with the first of the propositions, namely, whether or not the best interests of our country required that portal-to-portal suits be nullified. We quickly came to the conclusion, after hearing the evidence, which was so strong and convincing that, in our judgment, anyone must have arrived at that conclusion—we came to the conclusion, I say, that the best interests of our country required that these suits be nullified.

In the second place, we took up the question of constitutionality. There, Mr. President, we realized the fact that different minds will differ upon that question. We realized that on the one hand the position could be taken by some that a vested right has become created in each employee affected; that even though the right has been created under statute, it is a vested right, and that the employee has a chose in action, just as much property as dollars and cents in his pocket are property. That is the position that could be taken. Therefore, the fifth amendment, prohibiting the deprivation of property without due process of law, would make unconstitutional any action taken to deprive him of the right to collect. We realized that that proposition would be maintained in the Supreme Court of the United States by anyone seeking to overturn this act of Congress. No criticism is to be indulged against anybody who raises that point in the Court. The Court exists for that purpose, and I think it is a wholesome thing that the validity of this proposed legislation will not be accepted without question, because, after all, we want to know whether or not the legislation is good or bad, and the Court is the body to decide that question.

On the other hand, we realized the strength of the Norman case and the National Carloading case. We heard the evidence of eminent lawyers in whose judgment I, speaking for myself, at any rate, came to have great confidence as I heard them testify. We came to the conclusion, as indicated in our report, that the language of the Supreme Court of the United States, particularly the language of Chief Justice Hughes in the Norman case, gives us the clear right to draw the conclusion that the Court will hold this legislation to be constitutional. It does not give us the clear right to hold that the legislation will not be attacked. It does not give us the undisputed power to prophesy with that keen discernment and prophetic discernment of which the Chief Justice himself speaks in the Norman case, what the holding of the Court will be.

Therefore, Mr. President, Senators will find certain alternative provisions in the bill which are inserted for the reason that, in the event the Court should for any reason hold our effort to wipe out these suits to have been invalid, certain other alternatives shall come into effect which so far as possible will minimize the amounts of recoveries in the portal-to-portal suits.

So, Mr. President, having satisfied ourselves on propositions 1 and 2, the two first questions, we started then to consider how to draw the bill.

As I remember—I made no record at the time and may be in error in the chronology, but I think substantially I am correct—as I remember, the first draft of the bill was prepared by the legislative counsel, Mr. Rice, whom I see on the floor at this moment.

At about that time a gentleman from New York, Mr. Arthur Pettit, a member of the law firm with which Henry L. Stimson is connected, Winthrop, Stimson, Putnam & Roberts, had testified before our committee and had so clearly outlined his views that he impressed me, at any rate, as being a man of great and profound judgment and ability.

At about the same time it appears that the Senator from Indiana [Mr. CAPEHART], as I understand, having heard Mr. Pettit testify suggested to him that he write down what he thought should be in the bill and give it to the Senator from Indiana, who had prepared an amendment which was then pending before our committee. Mr. Pettit came to Washington. I do not think he came at my request then, as I recall. He did later, however. He came, and I saw him in my office, as I remember, on the occasion when he came here to present to the Senator from Indiana what he had drawn up. This was after our subcommittee heard all the testimony. I requested Mr. Pettit to sit in with us. He asked me whether or not it would be agreeable to have his associate, Mr. Chanler, of the same law firm, sit in also. Mr. Chanler had testified before the committee. We had received from him an excellent brief. I have not read all of it, but I have read a portion of it. The portion I have read makes me realize that it has been prepared with great ability. Those two gentlemen came down from New York and they sat in my office with the members of the subcommittee. I am not certain whether the Senator from Wisconsin [Mr. WILEY] was present at

that time, but at any rate, although he was only an ex officio member of the subcommittee, he, as I previously indicated, gave us great assistance in the preparation of the bill and sat with us and discussed it and worked on it with us. At any rate, Mr. Pettit and Mr. Chanler came. A subsequent draft of the bill was prepared.

At the time of these preliminary drafts of the bill the general thought, as I remember it, of our subcommittee was that we should in effect provide that as to activities occurring at any time during the day, a 24-hour period, there should be no compensability unless under the terms of a contract or in accordance with a custom or practice.

At or about that time we decided to ask to come before us, if they would come, a representative of the American Federation of Labor, Mr. Walter Mason, who is not a lawyer, but who came very gladly, and also on a different occasion, Mr. Cotton, assistant counsel of the CIO. Mr. Pressman, with whom we had had previous contacts, was out of the city, I think in Pittsburgh, Pa., on important matters for his clients. We therefore secured the presence of Mr. Cotton, who I think is the next man in rank in the CIO legal department.

Mr. Cotton came and brought with him a lady, a Mrs. Peterson, who is associated with the Amalgamated Clothing Organization, to which reference has been made. They conferred with us in my office. I think the Senator from Kentucky and I were present substantially throughout the conference. I am not certain whether the Senator from Mississippi [Mr. EASTLAND] was present at that particular conference. At any rate, the conference occurred with Mr. Cotton and with Mrs. Peterson, and our subcommittee, either all or some of us certainly, including myself.

Mr. Cotton was not in agreement with us on our bill at all, but I want to say that both he and Mrs. Peterson were extremely courteous, and very cooperative in giving us their views and such assistance as they found to be possible. I did not want to bind the CIO or attempt to do so by any bill we might undertake to produce. But, as the Senator from Kentucky has said, they stated they were against the bill. Nevertheless, though they were against it, they showed a fine spirit in giving us their judgment as to different points that arose in the preparation of the bill.

Among other things, one or both of them referred to various illustrations of practices which they thought our bill would make valid by law, which practices they considered improper. I remember that one of them was something along this line: A woman, we will say, is working in a production line where garments are being manufactured. As she sits at her place waiting for the merchandise to come to her to be worked upon—to put on a button or sew on a sleeve, or whatever it may be—there is a break-down for 2 hours in the line ahead of her. The practice for years in that particular plant may have been that the manufacturer would not pay for that time, and that neither by custom nor contract did she have any right to compensation. Mr. Cotton or Mrs. Peterson—or possibly both of them—pointed out that in cases of that type, if we should enact a law such as was proposed, it having been drawn for us, as I have indicated, we would in effect make legal and valid the action of employers who had refused to give compensation to such an employee while waiting for merchandise to come to him.

The conference with these various individuals lasted for 3 or 4 hours. Finally we came to the conclusion—we did not do it at that moment, but very shortly thereafter, although we may have made up our minds during the conference—that instead of making our bill apply to the 24-hour period, around the clock, we would make it apply only to the period preceding the beginning of the normal workday and subsequent to the end of the normal workday—what might be termed the whistle-to-whistle period. So we started to make all activities prior to the beginning of the work day compensable only if so under a contract or custom, and to make all activities after the conclusion of the work day compensable only if so under contract or custom, leaving the broad field of the workday itself, the great bulk of the time, with no new legislation applicable to it. We had the bill drawn in that form. We found great difficulty as we progressed in the definition of the line designating the beginning of the workday. We found equally great difficulty in defining the line at the end of the workday.

If anyone could sit down and draft a bill of this kind, defining those two lines without great difficulty, our committee would have been very glad to have his assistance. At any rate, we finally did so. We drew the bill as to existing claims and as to future claims, applicable only to the period preceding the beginning of the workday and after the conclusion of the workday.

Then we were confronted by these considerations: A gentleman by the name of Finlay, who is associated with the Standard Oil Co. of New Jersey, I believe, came to Washington and left a memorandum with us, followed by a letter, taking the position pretty generally that if we should not legislate with reference to the shift period, that is to say, between whistle and whistle, we would still leave unattained our objective to wipe out the portal-to-portal suits. For illustration, in connection with lunch time, as I remember, it was alleged in the Mount Clemens case by the employees that they were entitled to compensation from the time they left their work places to the time they reached the cafeteria, and for the time spent in returning. This gentleman pointed out to us that in his judgment there would be such cases, which would still be undisposed of, and that if we adopted the plan of merely legislating as to existing claims with respect to activities before the beginning of the workday and after the end of the workday, in all probability, there would still be left pending in the courts a great mass of suits, and thus we would fail to attain our objective.

So Mr. President, we approached the question again. I do not recall whether or not the last change on our part, back to a form in which we decided to legislate with respect to the whole 24 hours in connection with existing claims, occurred before or after we had reported the bill to the Senate. I am inclined to think that we made our decision afterward, and that the bill was later recommitted. I know that it was recommitted at the request of the subcommittee. I think the occasion for the recommittal was the fact that this point had occurred to us subsequently.

The Senator from Kentucky [Mr. COOPER] has a somewhat different recollection. His recollection is that the reason the bill was recommitted was that at a subsequent conference between Mr. Cotton, of the CIO, Mrs. Peterson, and Mr. Abt, counsel for the Amalgamated Clothing Workers, they contended that the language in our bill would permit the period of the work-day to be fixed by the employer. I think the recollection of the Senator from Kentucky is correct. One other gentleman, also a lawyer, suggested that point to us.

So regardless of the chronology of this particular phase, we had the bill recommitted, and we decided that the best way and the only practicable way in our judgment to legislate out of existence these portal-to-portal claims was to make the part of our bill which applies to existing claims applicable to the entire 24 hours of the day.

I have gone into this subject at great length because I think it is exceedingly important as showing that Congress, when it legislates to affect the rights of persons other than those who have engaged in portal-to-portal activities, and to affect rights other than those accruing from the performance of portal-to-portal activities, is not acting capriciously or arbitrarily, but within its sound discretion in using what the Congress deems to be the best practical approach to demolishing the portal-to-portal cases. So, Mr. President, we have reported the bill in the form which I have described.

Some time ago the Senator from Illinois [Mr. LUCAS] made an inquiry as to when the discussion on the bill would occur. I do not now see him in the Chamber.

I inadvertently omitted to mention one other gentleman who was of great assistance to our committee, and I think that his connection with the matter should be known to the Congress. In the course of the testimony before the subcommittee he was a witness. He was Mr. Rufus G. Poole, a lawyer of the city of Washington, who was connected with the preparation of the Fair Labor Standards Act of 1938. My recollection is that he informed us that he had written more of it than had any other one individual. Obviously he was exceedingly well informed with respect to it. During his connection with the Department of Labor, he was an assistant in the enforcement of the Fair Labor Standards Act, and there went out over his signature 103,000 interpretations or rulings of one type or another. He was not only well informed but was exceedingly willing to help us in any way he could.

I should have mentioned also the point which was made against the bill in the form in which it was when it undertook to provide only with respect to the time after the conclusion of the workday and before the beginning of the workday. It is my recollection that it was with respect to this point that Mr. Poole told us that the language in the bill, in his opinion, would permit an employer to move up the beginning of the workday or move it back in the afternoon so as to make greater and greater areas subject to the act, and that there was no "peg," as he put it, provided in the bill to prevent an employer from taking such action.

I have mentioned Mr. Poole. If I think of anyone else who has rendered material assistance and who should be mentioned, I shall try to do so. I believe I mentioned the fact that Mr. Cotton and Mrs. Peterson came back for a subsequent interview. At that time Mr. Abt, of the Amalgamated Clothing Workers, was with them. They were with us about 2 hours. Mr. Mason, of the American Federation of Labor, also came back. He called me later, while we were under great stress in the final preparation of the bill, and when we thought time was of the essence. He asked me if he might come to see me again. I thought the previous conferences indicated that we would not realize any great amount of assistance from a further conference, and therefore I thought it was better if we immediately began to proceed with our work.

I mentioned a moment ago that the Senator from Illinois [Mr. LUCAS] desired to know when we would proceed to discuss the bill. If someone on the minority side will let him know, I shall appreciate it.

The PRESIDING OFFICER. The Chair understands that the senior Senator from Illinois has been sent for.

Mr. DONNELL. I shall proceed with the portion of the bill in which I assume the Senator is not particularly interested. If he is, I can go over it briefly for him when he arrives.

The bill is divided into four parts. The first of these parts, beginning on page 7, is entitled "Findings and Policy." Some one may wonder what has happened to the first six pages. They were contained in the Gwynne bill, H. R. 2157, as enacted by the House of Representatives, and have been stricken out by our committee. The portion beginning in line 5 of page 7 has been substituted in lieu thereof.

Part I, entitled "Findings and Policy," occupies pages 7, 8, 9, and approximately three-fourths of page 10.

Personally I approached the preparation of this part of the bill with somewhat of an antipathy to any such legislative means. Until I arrived in Washington about 2 years ago, as perhaps the Senator from Oregon [Mr. MORSE] will remember, I had had some hostility to the idea of recitals at the beginning of bills.

I am still what I euphemistically term "old-fashioned" enough not to be too enthusiastic about it yet. It seems to me that it is better to lay down the law than to have an essay preceding or succeeding a bill. Nevertheless, we were advised and believe that the Supreme Court—perhaps with great propriety—has given great weight to findings and policies set forth in bills. I am not intimating any criticism of the Court in what I have said. It is merely my own personal view. We thought in this case it was particularly important, in view of the fact that we realized that attacks will be made upon the constitutionality of the bill, that we should not fail to use every safeguard to be sure, if we could, to lay the basis for this legislation.

In this connection, we observed that the Fair Labor Standards Act itself contained a finding and declaration of policy. It is in section 2. It covers about 17 lines of printing in Public Law No. 718. Generally speaking, it constitutes a finding, in the first place, that the existence of certain conditions tends to obstruct and burden commerce and the free flow of goods in commerce. In the second place, it declares the policy of the act, through the exercise by Congress of its power to regulate commerce among the several States, to correct, and as rapidly as practicable, to eliminate, the conditions previously referred to in such industries without substantially curtailing employment or earning power.

We made further investigation to see if we were right in regard to the importance of findings and policy, and we found some decisions which I shall not mention unless it is desired that I do so. I shall have to get them and put them into the RECORD a little later.

On Friday last the Senator from Wisconsin [Mr. WILEY] mentioned the fact that a very recent opinion, in the case of United States of America against United Mine Workers and John L. Lewis, decided on March 6, 1947, in itself indicates the influence which statements of findings and policy have upon the Supreme Court. It will be observed by reference to pages 12 and 13 of that decision that the Court says:

> But we need not place entire reliance in this exclusionary rule. Section 2, which declared the public policy of the United States as a guide to the act's interpretation, carries indications as to the scope of the act.

And so forth. Then the Court sets forth that section 2 provides:

> In the interpretation of this act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Then it recites that under prevailing economic conditions the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor. Quoting further—

> Therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

Mr. President, I ask that the entire section be placed in the RECORD at this point as a part of my remarks.

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

> SEC. 2. In the interpretation of this act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

So, Mr. President, I submit that notwithstanding the normal reluctance of at least one lawyer to such findings, under the holdings of the Court declarations of findings and policy do have weight, and perhaps properly so.

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

Mr. DONNELL. I yield.

Mr. MORSE. May we have an understanding that at a later time the Senator will also include in his remarks the Supreme Court decisions to which he referred, because I think it is rather vital when we come to write a definition of congressional intent for subsequent interpretation of a statute by the Supreme Court.

Mr. DONNELL. I appreciate the suggestion of the Senator from Oregon, and I shall comply with it.

The findings and policy as set forth in the bill begin with the statement that—

> The Congress hereby finds that the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U. S. C., ch. 8), as amended, has been interpreted judicially—

Mr. President, I may say that in the earlier draft and drafts of the bill we had the words "and administratively," but we have determined to strike out the words "and administratively," and now are referring solely to judicial interpretations of the act—

> so as to require employers to pay compensation thereunder for activities which were not commonly understood by employees and employers in accordance with practice, custom, understanding, or agreement to be work, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers throughout the country for compensation for such activities and for an additional equal amount as liquidated damages and attorney's fees—

I may say to the Senator from Oregon that, upon reflection, it may be that there was only one additional decision. I am not quite certain whether there was one or whether there were two. However that may be, we shall put in the RECORD all such material.

I may also say at this point, in interpolation, that I think the Senate will find that in these recitals of fact there

is either evidence or, to my mind, sound judgment by way of inference from the evidence in the case and from the common knowledge of the Members of the Senate, to justify every word in these findings and policy.

I continue to read from them:

with the results that, if the act as so interpreted or claims arising under such interpretations were permitted to stand—

(1) the credit of many employers would be seriously impaired.

Mr. President, certainly a reflection upon the evidence will convince anyone of that fact.

I read further:

(2) Payment of such liabilities would bring about the financial ruin of many employers and seriously impair the capital resources of many other employers and would thereby result in drastically reducing industrial operations, curtailing employment and the earning power of employees, and substantially burdening commerce and substantially obstructing the free flow of goods in commerce contrary to the purposes of said act.

I may say we put in the word "substantially," not as a mere accident, but because we think it important to point out that there would not be any mere trivial interference or obstruction, but that there would be a substantial obstruction to commerce and to the free flow of goods in commerce and a substantial burden upon commerce.

I read further:

(3) Employees, having engaged in such activities with the understanding and belief that they were already fully compensated therefor by their agreed rates of pay, would receive windfall payments for activities performed by them without any expectation of reward, and for liquidated damages and attorney's fees; (4) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury on war contracts and for enormous amounts of refunds of taxes paid in prior years; (5) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased; and (6) employers and employees would be unable to determine, without extensive, expensive, and prolonged litigation to final judgment in a court of last resort, the amounts owing to employees for such activities previously, now, or hereafter engaged in by employees, and would in many cases be unable to make voluntary settlement, compromise, release, or adjustment of claims of employees arising out of such activities, and there would result the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated, by either the employer or employee at the time they were engaged in, to be paid.

I call the attention of the distinguished Senator from New Mexico [Mr. HATCH] to the fact that the point in our minds there in regard to the promotion of increasing demands for payment to employees for engaging in activities no compensation for which was contemplated was the particular illustration which came from the witness whom the Senator from New Mexico was so kind as to bring to us from Carlsbad, N. Mex. That witness testified in regard to the pendency of suits for millions of dollars, part of the liability being for riding, in busses not owned by the company, 12 miles from Carlsbad to the location of the mine, during which trip the employees, as I have indicated, in some instances, at least, either read or slept.

I read further from the statement of findings and policy contained in the bill:

Among the results of such conditions being (a) the stirring up of champertous practices and congestion of courts, (b) extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments with consequent halting of expansion and development, retardation of employment, the infliction of hampering restraints and restrictions on commerce and on the development thereof, (c) Nation-wide industrial conflict, unrest and disputes between employees and employers and between employees and employees, and (d) gross inequality of competitive conditions between employers and between industries, thereby interfering substantially with the free flow of goods in commerce, seriously and adversely affecting the revenues of the Federal, State, and local Governments and injuriously affecting the national prosperity and general welfare of the United States of America.

Mr. McFARLAND. Mr. President, will the Senator yield to me?

Mr. DONNELL. I yield.

Mr. McFARLAND. As I understand the distinguished Senator, these recitals of policy were made to help show that the proposed legislation is constitutional. Is that correct?

Mr. DONNELL. They were designed to show the constitutional basis for legislation of this type; namely, the fact that interference with the flow of commerce and grave burdens upon commerce exist and will continue to exist unless the portal-to-portal suits are eliminated.

Mr. McFARLAND. Does the Senator from Missouri contend as to the first recital, for instance, that because the credit of many employers would be seriously impaired, that is a basis for wiping out a debt, if one exists?

Mr. DONNELL. I should say that the impairment of the credit of many employers all over the United States is certainly a strong incident in the burden on commerce which the pendency of these suits now presents. Yes, sir; I say that.

Mr. McFARLAND. In that case, would the simple fact that a hardship is presented be regarded as a basis for wiping out such an obligation? Could not that be used as the basis for wiping out all obligations which a man might have?

Mr. DONNELL. No, Mr. President; the Senator overlooks the fact that he has picked out merely one of the recitals.

In the first place, even that one recital would be sufficient, because if the credit of many employers throughout the United States were to be seriously impaired, as undoubtedly the evidence in this matter shows will result and is resulting, it might well be that that one impairment, if widespread, such as is the case in this instance, would amount to a serious burden on commerce which would prevent its expansion, bring about retardation of employment, bring about a decrease in employment, and bring about great injury to the national welfare, and consequently would be a burden upon commerce.

But, Mr. President, the Senator has not commented upon the fact that, in addition to that one recital, there are set forth in the other recitals numerous facts as to other cumulative results and matters; and the result is that the clear and unmistakable conclusion must be that flowing from these suits is a burden of a substantially important nature upon commerce.

Mr. McFARLAND. Mr. President——

The PRESIDING OFFICER (Mr. THYE in the chair). Does the Senator from Missouri yield to the Senator from Arizona?

Mr. DONNELL. I yield.

Mr. McFARLAND. I merely mentioned those matters because of the constitutional question involved, the question of the right of Congress to legislate away any existing right an individual may have.

Mr. DONNELL. I do not know whether the Senator was present during the discussion of the Norman case this afternoon. Was he present at that time?

Mr. McFARLAND. I do not believe I heard that discussion.

Mr. DONNELL. That is the gold clause case, and then there was the national carloading case, and the Louisville and Nashville case. In all those cases, as I read them, the court takes the view that when Congress is legislating in a field over which it has jurisdiction, any contract made by any person with relation to that field has within it, as Chief Justice Hughes said, a congenital infirmity, and, as he subsequently explained in the Norman case, a person so contracting does so subject to the right of Congress later to wipe out the existence of the obligation.

Mr. McFARLAND. That would not be because the liability would be a hardship, would it?

Mr. DONNELL. The Senator does not seem to get the point, or I have not made it clear to him.

The point is that all these various facts I have set forth, and which have been set forth by our committee of findings and policy, show beyond peradventure of doubt that the existence and maintenance of these suits creates a substantial burden upon commerce. The Fair Labor Standards Act was passed in order to prevent burden and obstruction of commerce and the free flow of goods in commerce. It seems to me very clear that we have a right to show that the maintenance of these suits imposes a burden upon commerce, thereby showing that within the field of commerce the facts are such as to lead any prudent Congress to enact legislation along the line suggested in the bill before us.

Mr. McFARLAND. I understand the contention of the Senator, but the point I am trying to make is that perhaps what he presents, instead of helping to bolster up the legislation, might be tearing it down.

Mr. DONNELL. I cannot think that the Senator has understood the language. The language is that if the act is permitted to be interpreted in the manner in which it has been interpreted, if the claims arising under it are permitted to stand, one of the results would be the serious impairment of the credit of many employers, of course resulting in the re-

tardation of development, in many instances, and interference in the carrying on of normal activities may readily result in decreasing the number of employees, and obviously putting a burden upon commerce.

Mr. HATCH. Mr. President, will the Senator yield to me to ask a question of the majority leader?

Mr. DONNELL. I yield.

Mr. HATCH. I merely desired to ask how long it was intended that the Senate continued in session this evening.

Mr. WHITE. Mr. President, it was my hope that we might continue in session up to 5:30 o'clock, but the Senator from Missouri has spoken at substantial length, and if he desires to stop at this time, it is perfectly agreeable to me.

Mr. DONNELL. I am perfectly willing to continue until 5:30.

Mr. WHITE subsequently said: Mr. President, since the Senator from New Mexico inquired of me a few moments ago about the purpose as to recess, I have talked with the Senator from Missouri. He advises me that he will not be able to conclude his remarks between now and half-past five, and that he is willing to yield the floor if it may be understood that he will be recognized tomorrow on the resumption of the session, so that he may complete his remarks.

Mr. President, I make that unanimous-consent request.

Mr. LUCAS. Reserving the right to object, may I inquire of the Senator from Missouri how much longer he thinks it will take tomorrow for him to analyze the bill, now that he is into the main part of it?

Mr. DONNELL. Mr. President, of course it is very difficult to anticipate how many questions there will be. I think if I were uninterrupted—which I do not think is the way to proceed with such a bill, however, I think from now on I ought to yield to interruptions—I think if I were uninterrupted I could go through the bill and analyze it in the course of three-quarters of an hour, or about that. With interruptions, explanations, and so forth, it may take considerably more than that. I want to try to explain everything I can.

Mr. LUCAS. I anticipate there will be interruptions, because as I see it, the Senator is now down to the bill itself, and I think many Senators on both sides of the aisle will desire to interrogate him upon the legalistic phases of it.

Mr. DONNELL. I think that is perfectly proper. I think that is quite right. It should be done.

Mr. LUCAS. I rather imagine it may take the Senator most of the afternoon, if he does not proceed any faster than he has proceeded in the last 2 days.

Mr. WHITE. I ask unanimous consent that when the Senate assembles tomorrow, Tuesday, the Senator from Missouri may be recognized to conclude his remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DONNELL. I thank the Senator.

Mr. WHITE. Mr. President, unless the Senator from Missouri desires to proceed further, I shall move an executive session.

Mr. DONNELL. Very well.

QUESTIONNAIRE ON GRECIAN RELIEF PROPOSAL

Mr. VANDENBERG. Mr. President, I should like to make an announcement regarding the work of the Committee on Foreign Relations in connection with the pending Greek relief proposal.

At the recent Republican conference I suggested to all Senators present that I was keenly anxious that in this instance there should be developed, in public, all possible information bearing upon the issue, because I recognize that there is great lack of understanding and lack of adequate information regarding the subject. I suggested to my colleagues on this side of the aisle that I proposed to prepare a questionnaire, to which I invited them all to contribute, which questionnaire I intended to submit to the State Department for categorical answers.

I immediately sent a letter to the able senior Senator from Kentucky [Mr. BARKLEY], the distinguished minority leader, giving him the same information, and inviting Senators on the other side of the aisle to participate in the questionnaire. Unfortunately, for reasons which we all understand, the Senator from Kentucky has been absent, and I find today that my letter has been upon his desk without attention. I should like to say to my colleagues on the other side of the aisle that I am very anxious to pursue this questionnaire idea in the present instance to a total disclosure in response to any questions which may be in any Senator's mind in regard to this gravely important issue which we shortly will confront.

I hope to conclude the questionnaire by Wednesday evening, and I would say to Senators on the other side, as I have said to my colleagues on this side of the aisle, that I shall welcome from any of them any questions which they care to suggest, to be included in the questionnaire which will be submitted to the State Department for public reply.

Mr. LUCAS. Mr. President, will the Senator from Michigan yield?

Mr. VANDENBERG. I yield.

Mr. LUCAS. Did the Senator say that the questionnaire should be in by Wednesday night of this week?

Mr. VANDENBERG. Yes.

Mr. LUCAS. Is it the intention of the Senator, as chairman of the Committee on Foreign Relations, to hold public hearings on this issue after the replies are in?

Mr. VANDENBERG. Most certainly, but it seemed to me that in this instance we should go to somewhat extraordinary lengths to be sure that all the information is developed which is required by any Member of the Senate in connection with his determination of his judgment.

Mr. LUCAS. I presume that some officer of the State Department, or some other agency of the Government will be requested to answer the questions which may be propounded by Senators.

Mr. VANDENBERG. I intend to mobilize the entire questionnaire by the middle of the week, and submit it to the State Department, with request for a written answer to every question. It occurs to me that the publication of these questions and answers will go far toward illuminating the subject for the benefit of both Congress and the country.

Mr. LUCAS. Does the Senator expect to hold hearings before this week shall expire?

Mr. VANDENBERG. No.

Mr. HATCH. Is it the desire to have the questions submitted by Wednesday night?

Mr. VANDENBERG. Yes.

Mr. HATCH. We will have the full day Wednesday?

Mr. VANDENBERG. Yes.

Mr. HATCH. I notice on our desks also the hearings of the committee on the international refugee question. Will the Senator advise me whether he has hope of taking that up?

Mr. VANDENBERG. I had hoped we might perhaps slip that in when there was some happy interlude in the debate on the pending bill. Inasmuch as the committee is unanimous in the report, I had hoped that there would be little controversy about it, and that we could proceed with it rather promptly. There still seems to be some argument over the appropriate language in the amendment dealing with immigration. Until that is straightened out, which I hope will be tomorrow, nothing can be done about the matter, but as soon as possible I shall ask the Senate to give attention to the bill, because this is one of the measures upon which prompt action is very acutely necessary.

Mr. HATCH. I merely wish to express my complete accord with what the Senator has said, and I hope opportunity will later arise when the matter can be taken up. Like the Senator from Michigan, I see no reason for long debate on it.

Mr. VANDENBERG. I thank the Senator.

EXECUTIVE SESSION

Mr. WHITE. Mr. President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. THYE in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, and withdrawing a nomination, which nominations were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORT OF A COMMITTEE

The following favorable report of a nomination was submitted:

By Mr. WHITE, from the Committee on Interstate and Foreign Commerce:

Edward Mount Webster, of the District of Columbia, to be a member of the Federal Communications Commission for the unexpired term of 7 years from July 1, 1942.

The PRESIDING OFFICER. If there be no further reports of committees, the clerk will proceed to state the nominations on the Executive Calendar.

TENNESSEE VALLEY AUTHORITY

The legislative clerk read the nomination of Gordon R. Clapp, of Tennessee, to be a member of the Board of Directors of the Tennessee Valley Authority.

Mr. WHITE. Over.

The PRESIDING OFFICER. The nomination will be passed over.

ATOMIC ENERGY COMMISSION

The legislative clerk proceeded to read sundry nominations to the Atomic Energy Commission.

Mr. WHITE. Mr. President, I ask unanimous consent that all the nominations to the Atomic Energy Commission be passed over.

The PRESIDING OFFICER. Without objection, they will be passed over.

INTERSTATE COMMERCE COMMISSION

The legislative clerk read the nomination of Carroll Miller, of Pennsylvania, to be an Interstate Commerce Commissioner for a term expiring December 31, 1953.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

SECURITIES AND EXCHANGE COMMISSION

The legislative clerk read the nomination of Harry A. McDonald, of Michigan, to be a member for the remainder of the term expiring June 5, 1951.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

FEDERAL DEPOSIT INSURANCE CORPORATION

The legislative clerk read the nomination of Henry Earl Cook, of Ohio, to be a member of the Board of Directors of the Federal Deposit Insurance Corporation for the unexpired term of 6 years from September 6, 1945.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

COLLECTOR OF CUSTOMS

The legislative clerk read the nomination of James R. Wade to be collector of customs for customs collection district No. 45, with headquarters at St. Louis, Mo.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

That completes the executive calendar.

Mr. WHITE. Mr. President, I ask that the President be immediately notified of all nominations this day confirmed.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

RECESS

Mr. WHITE. Mr. President, if there is no further business for the afternoon, I move, as in legislative session, that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 18 minutes p. m.) the Senate took a recess until tomorrow, Tuesday, March 18, 1947, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 17 (legislative day of February 19), 1947:

DIPLOMATIC AND FOREIGN SERVICE

The following-named persons for appointment as Foreign Service officers of class 2 and secretaries in the diplomatic service of the United States of America:

David M. Maynard, of California.

Franklin W. Wolf, of New York.

Claude Courand, of Texas, for appointment as a Foreign Service officer of class 3, a consul and a secretary in the diplomatic service of the United States of America.

The following-named persons for appointment as Foreign Service officers of class 4, consuls, and secretaries in the diplomatic service of the United States of America:

Henry C. Ramsey, of California.

Anthony Clinton Swezey, of New York.

Horace G. Torbert, Jr., of Massachusetts.

The following-named persons for appointment as Foreign Service officers of class 6, vice consuls of career, and secretaries in the diplomatic service of the United States of America:

Taylor G. Belcher, of New York.

John G. Gossett, of Oklahoma.

Roye L. Lowry, of Washington.

Benjamin J. Ruyle, of Texas.

Miss Mary E. Volz, of Maryland.

UNITED STATES PUBLIC HEALTH SERVICE

The following-named candidates for appointments in the Regular Corps of the Public Health Service:

TO BE SENIOR SANITARY ENGINEER (LIEUTENANT COLONEL), EFFECTIVE DATE OF OATH OF OFFICE

Carl E. Schwob

TO BE SURGEONS (MAJOR), EFFECTIVE DATE OF OATH OF OFFICE

John B. Alsever
Harry Heimann

TO BE NURSE OFFICER (MAJOR), EFFECTIVE DATE OF OATH OF OFFICE

Minnie E. Pohe

TEMPORARY APPOINTMENTS IN THE ARMY OF THE UNITED STATES

TO BE GENERAL

Lt. Gen. Lucius DuBignon Clay (brigadier general, United States Army), Army of the United States.

TO BE LIEUTENANT GENERAL

Maj. Gen. Clarence Ralph Huebner (brigadier general, United States Army), Army of the United States.

IN THE NAVY

The following-named officers for appointment in the United States Navy in the corps, grades, and ranks hereinafter stated:

The following-named officers to the ranks indicated in the line of the Navy:

(*Indicates officers to be designated for EDO and SDO subsequent to acceptance of appointment.)

LIEUTENANTS (JUNIOR GRADE)

*Goodwin, Harold B.
*Mindte, Richard W.

ENSIGNS

Ayres, James E.
Bade, Robert B.
Baker, Harold J.
Barrington, Bruce O.
Barry, William
Becker, Henry C.
*Berry, Benjamin H.
Berude, John B.
Beyer, Henry J.
Boger, Clarence E.
Bohlken, John R.
Bowen, Robert W.
Bowman, Donald A.
Brandt, John H.
Britt, Ray H.
Brumbaugh, Jack R.
Bublitz, Robert E.
Bultzo, Charles
Bush, Philip R.
Campbell, Kenneth C.
Carini, Walter P.
Carroll, Charles H.
Cermak, Frank A., Jr.
Chamberlain, Lloyd W.
Chiles, James O.
Clare, James H.
Clark, Robert T.
*Clarke, Thomas H.
Classen, Robert E.
Clement, Robert R.
Coleman, George J.
*Collier, William A.
*Collins, Joseph O.
Cressman, Robert A.
*Crom, James R.
Cunneen, Wallace V., Jr.
Cusumano, Robert D.
Darby, Keith C.
Davis, Richard M.
*Desel, Robert F. P.
Dixon, Alva L.
Drake, John F.
Draz, David I.
Ebersole, Robert "H"
Ellis, Joseph M.
Emig, Alvin F.
Farris, Frederick A.
Filson, Paul L.
Fisher, Robert M.
Fitzgibbons, Edward L.
Fleischli, Robert E.
Flere, Albert J.
Fosdick, Theron D.
Freeman, John T.
Gaiennie, George W.
Garrison, Walter V.
Geer, Jon R.
Geiberger, Charles R.
Gettings, Harold W.
Gieszl, Carl R.
Gilliland, Frank
Gillis, John W.
*Ginn, Wilbur N. Jr.
*Gleeson, John P.
Gorsuch, Reynolds G.
Gower, Harry T., Jr.
Graham, Thomas A.
Grant, Charles D.
Gremer, Charles E.
Hadsell, William V., Jr.
Hafner, Joseph J.
Hahnfeld, Arnold A.
Hale, James R.
Hall, Harold "D"
Halverstadt, Robert K.
Hamilton, Joe
Hansen, Albert E.
Harlow, Harry B.
Harrington, Donald J.
Hasler, Arthur R., Jr.
*Heidt, Webster B., Jr.
Heise, Frederick J.
Hemeyer, Wilbert L.
Hess, John A.
High, Joseph R.
Holden, William P.
Hord, Eldridge, Jr.
Hoskins, Thomas H.
Howard, John N.
Huddle, Norman P.
Hufstedler, Edward F.
Humphrey, Herbert, 3d
Ivans, Joseph D.
Jackson, Maurice B.
Johnson, John T.
Jones, Stanley W.
Junkin, George, Jr.
Karr, Kenneth, R.
Kelso, Quinten A.
Kemp, Glenn E.
*Kenney, Edward T.
Kenny, Joseph M.
*Kiracofe, Warren C.
Kirkwood, Maylon M.
Koenig, William H.
Kowalski, Raymond J.
Lake, Walter T.
Lukens, Reeves A.
Luoma, Walter R.
Lynch, Robert E.
Macaluso, Anthony A.
Macon, Benjamin H.
Mahon, John Q.
Mansfield, James R.
*Manson, Frank A.
*Martin, Guilbert W.
Maruschak, Peter
Mathews, John M.
McCall, Charles R.
McCall, Sherrod G.
McDonald, Robley A., Jr.
McKenzie, William W., Jr.
Miller, Charles P.
*Miller, Hugh B.
Mitchell, Eugene B.
Molony, James
Monahan, John J.
Moon, Donald P.
Moore, William G., Jr.
Moseley, Raymond H.
Nelson, Eugene L.
Nockold, Louis W.
Norment, Roy F.
O'Bryan, George R.
Ohme, Henry F.
Orr, Raymond J.
Outten, Harold R., Jr.
Paquette, Martin W.
Penfold, Norman E.
Peterson, John P.
Phalan, James E.
Poitras, Robert R.
Premo, Kenneth W.
Purcell, James C.
Rahiman, Harry E.
Reider, Richard K.
Richardson, Jewett E., Jr.
Riehl, Julian W., Jr.
Riley, Edward E.
*Robinson, Martin W.
Saldin, Carl N.
Sandidge, Falvey M., Jr.
Scappini, Mimo L.
Shanahan, John J., Jr.
Shaughnessy, John J.
Shaw, Fletcher H.
Shults, Roy G.
Shunny, John R.
Smith, Donald L.
Snyder, Jack L.
Sorenson, Carl E.
*Spainhour, Wayne E.
*Speight, William W.
Stanfill, Joseph F., Jr.
Stecker, John P.
Stewart, Donald R.
Striso, Julius A.
Sullivan, Robert M.
Suppers, Donald L.
Teed, John
Thomas, Cyrus H.
Thomas, Walter J.
Totten, Warren L.
Tuel, Merritt D.
Ulbright, Frederick W.
Urban, Henry, Jr.
Vanstrum, Erwin M.
Wallace, Billy C.
Watkins, Robert W.
Wells, Frank M.
White, Clifford N.
*Whitney, William W.
Williams, Richard C.
Wise, Richard E.
Wismann, Harold F.
Wood, William D., Jr.
Young, Claude E.
Young, George E., Jr.
Herne, Charles G.
Layne, Harold B.
Newcomb, Paul R.

The following-named officers to the grades and ranks indicated in the Medical Corps of the Navy.

SURGEONS WITH THE RANK OF LIEUTENANT COMMANDER

Bunnell, Chester W.
Burkwall, Herman F.
Ferguson, Russell S.
Huth, Peter E.
Johnson, Spencer
Simunich, William A.

PASSED ASSISTANT SURGEONS WITH THE RANK OF LIEUTENANT

Friend, Leroy F.
Lee, Willard J.
McLean, Marvin M.
Schiff, George N.
Toothaker, Bernard L.

ASSISTANT SURGEONS WITH THE RANK OF LIEUTENANT (JUNIOR GRADE)

Bonar, Robert R.
Heinz, Vernet H.
Lipcon, Harry H.
Reed, Karl A.
Saeli, Amadeo B.

The following-named officers to the grades and ranks indicated in the Supply Corps of the Navy.

ASSISTANT PAYMASTERS WITH THE RANK OF ENSIGN

Anderson, John J., Jr.	McComb, Arthur D.
Barensfield, Paul L., Jr.	McCormick, Thomas F.
Bollman, Robert G.	Moss, Robert A.
Borchers, Alyn L.	Owen, LeRoy, Jr.
Brennan, Jack M.	Pavelko, Anthony J.
Charette, Author E.	Podrouzek, William J.
Crawford, Francis E., Jr.	Poulson, William M.
Crouch, Perry B.	Salter, Richard G.
Cummins, Robert C.	Scott, Edward W.
Daniel, James C.	Snoddy, Charles E.
Daniels, Hoyle H., 2d	Verdow, Richard L.
Drzewiecki, Casimir A.	Vollmer, Thomas D.
Flock, Jens B., Jr.	Xefteris, Zafter C.
Gaetz, Edward F., Jr.	Corrick, James A., Jr.
Geisler, Richard A.	Allen, Paul
Growden, Ellwood W.	Barrett, Henry T.
Hay, Patrick M.	Kirchner, Henry C.
Hickok, Richard S.	Leonard, Robert E.
Hicks, William T., Jr.	Lewis, Raymond O.
Hillard, Herbert S., Jr.	Randolph, Karl W.
Johnson, Richard D.	Roberts, Giles H.
Jones, Charles W.	Treece, George H., Jr.
Kukral, Allan C.	Williams, James C.
Leighton, James O.	Burgess, Frederick C.
Long, Samuel M., Jr.	Powell, Albert L., Jr.
Luck, William E.	

The following-named officers to the grades and ranks indicated in the Civil Engineer Corps of the Navy:

ASSISTANT CIVIL ENGINEER WITH THE RANK OF LIEUTENANT (JUNIOR GRADE)

Julian, James B.
Lewis, William C.

ASSISTANT CIVIL ENGINEERS WITH THE RANK OF ENSIGN

Black, Dock F., Jr.	McAllister, Eugene
Flippen, Homer W.	Muss, Edward S.
Heinen, Roger J.	

The following-named officers to the grade and rank indicated in the Dental Corps of the Navy:

ASSISTANT DENTAL SURGEONS WITH THE RANK OF LIEUTENANT (JUNIOR GRADE)

Allen, William M.	Parker, John A.
Blaich, George F.	Phipps, Wilbur N.
Crouch, James H.	Rhen, Louis J.
Faulconer, William T.	Smith, James W.
Graves, Raymond J.	Stewart, Craig A.
Hanley, Walter F.	

The following-named officers to the rank of commissioned warrant officers in the Navy in the grades indicated:

CHIEF GUNNERS

McBrier, James W.
Russell, Otha K.

CHIEF SHIP'S CLERK

Ballard, Edward A.

CHIEF PHARMACIST

Carpenter, Seth J.

CHIEF PAY CLERKS

Allen, Albert F.	Lewis, James H.
Allison, Sidney C.	Nash, Finley A., Jr.
Digonno, Theodore	Stearns, William
Groman, John M.	Tremblay, Philip A.
Jones, Robert L.	Wiggins, George A.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 17 (legislative day of February 19), 1947:

INTERSTATE COMMERCE COMMISSION

Carroll Miller to be an Interstate Commerce Commissioner for a term expiring December 31, 1953.

SECURITIES AND EXCHANGE COMMISSION

Harry A. McDonald to be a member for the remainder of the term expiring June 5, 1951.

FEDERAL DEPOSIT INSURANCE CORPORATION

Henry Earl Cook to be a member of the Board of Directors of the Federal Deposit Insurance Corporation for the unexpired term of 6 years from September 6, 1945.

COLLECTOR OF CUSTOMS

James R. Wade to be collector of customs for customs collection district No. 45, with headquarters at St. Louis, Mo.

WITHDRAWAL

Executive nomination withdrawn from the Senate March 17 (legislative day of February 19), 1947:

POSTMASTER

George S. Leopard to be postmaster at Goodyear, in the State of Arizona.

HOUSE OF REPRESENTATIVES

MONDAY, MARCH 17, 1947

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Our Father's God, we wait on Thee, of whom we are fragments and from whom all virtues flow. Grant unto us the spirit of worship and true godliness. O keep us together in the bonds of sympathetic understanding, that we may see our duty and respond with signal devotion to perform it. As the Golden Rule is in our memories, constrain us to follow it in our deeds. Inspire us to heed its mandate in the Christian conscience of our people, ever loyal to the highest principles of that manhood and womanhood as revealed by Thy witnesses, who, sorrowing yet rejoicing, poor yet making many rich, having nothing yet possessing all things, have lived and died for the love of Christ and for the salvation of man. Their shadow was love and their steps were a benediction. O Saviour of the ages, hear our prayer. Amen.

The Journal of the proceedings of Thursday, March 13, 1947, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 220. An act to authorize the Secretary of the Navy to convey to American Telephone & Telegraph Co. an easement for communication purposes in certain lands situated in Virginia and Maryland; and

S. 221. An act to authorize the Secretary of the Navy to grant and convey to the Virginia Electric & Power Co., a perpetual easement in two strips of land comprising portions of the Norfolk Navy Yard, Portsmouth, Va., and for other purposes.

SPECIAL COMMITTEE ON WILDLIFE CONSERVATION

Mr. ALLEN of Illinois, from the Committee on Rules, submitted the following privileged resolution (H. Res. 21, Rept. No. 151), which was referred to the House Calendar and ordered to be printed:

Resolved, That effective from January 3, 1947, the Special Committee To Investigate All Matters Pertaining to the Replacement and Conservation of Wildlife is authorized to continue the investigation begun under authority of House Resolution 237 of the Seventy-third Congress, continued under authority of House Resolution 44 of the Seventy-fourth Congress, House Resolution 11 of the Seventy-fifth Congress, House Resolution 65 of the Seventy-sixth Congress, House Resolution 49 of the Seventy-seventh Congress, House Resolution 20 of the Seventy-eighth Congress, and House Resolution 75 of the Seventy-ninth Congress, and for such purposes said committee shall have the same power and authority as that conferred upon it by said House Resolution 237 of the Seventy-third Congress, and shall report to the House as soon as practicable, but not later than January 3, 1949, the results of its investigation, together with its recommendations for necessary legislation.

AMENDING THE RECONSTRUCTION FINANCE CORPORATION ACT

Mr. ALLEN of Illinois, from the Committee on Rules, submitted the following privileged resolution (H. Res. 145, Rept. No. 152), which was referred to the House Calendar and ordered to be printed:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of the bill (H. R. 2535) to amend the Reconstruction Finance Corporation Act, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill and shall continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking and Currency, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

PROCUREMENT OF SUPPLIES AND SERVICES BY THE WAR AND NAVY DEPARTMENTS

Mr. ALLEN of Illinois, from the Committee on Rules, submitted the following privileged resolution (H. Res. 146, Rept. No. 153), which was referred to the House Calendar and ordered to be printed:

Resolved, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 1366) to facilitate procurement of supplies and services by the War and Navy Departments, and for other purposes. That after general debate, which shall be confined to the bill and shall not exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment, the Committee shall rise and report the same to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill