The Appalachia Program

EXTENSION OF REMARKS OF
HON. JOE L. EVINS
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. EVINS. Mr. Speaker, the Appalachian program, proposed by President Johnson, is the highest priority for speedy approval.

In this connection, I ask unanimous consent that my newsletter, dated May 4, last, be reprinted in the Record.

The newsletter, concerning the Appalachian program, follows:

CAPITOL COMMENTS

(By Joe L. Evins, Member of Congress, Fourth District of Tennessee)

THE APPALACHIA PROGRAM

The House is giving legislation for Appalachian development a high mark recommended by President Lyndon B. Johnson the highest priority. The President this week sent a letter to Speaker John W. McCormack of the House urging speedy action.

Congress is now fully engaged in consideration of this great development undertaking—one of the highlights of the President's program. Rejection of the proposed Economic Opportunity Act of 1964—the program designed to eliminate pockets of poverty throughout the country—already is well advanced. The overall attack on depressed areas and the Appalachian development program together set a new high mark for American internal improvement efforts involving cooperative Federal-State-local action.

A NEW START FOR 10-STATE REGION THAT INCLUDES ALL OF TENNESSEE

The Appalachian program is a broad-scale long-range, comprehensive plan for economic growth and development of a mountain area that straddles 10 States, embraces 340 counties, and includes more than 165,000 square miles, with more than 18 million American citizens in residence. Included in the program area under this program are 49 of Tennessee's 95 counties containing nearly 1,600,000 of the State's more than 3.5 million inhabitants. Some 16 of these counties are in our great Fourth Congressional District of Tennessee.

There are many aspects of this regional program attacking problems of the area, and these include the following:

Highways: A developmental highway system of 2,550 miles to provide access to isolated areas and encourage the growth of new industry and other economic activity.

Water resources: Accelerated water facilities development, with emphasis on flood control, industrial and recreational impoundments, and sewage treatment and construction.

Agriculture: Pasture improvement program to convert marginal farmlands to pasture for increased livestock production; also, an expanded Farmers Home Administration program for grazing farmers.

Mineral resources: Expanded programs to promote new use of coal, improve mining practices, and stimulate land restoration following mining operations.

Forest resources: Assistance programs for improved timber production, management, manufacturing, and marketing.

Aid to small business: An expanded Small Business Administration loan and local development program.

Community development: Expanded area redevelopment programs and stepped-up human resources programs, with emphasis on education and training, as provided in the Economic Opportunity Act legislation.

For a continuing and sustained attack on the complex problems of the region, this legislation provides for creation of a Federal-State regional commission to guide all levels of Government and private agencies in this work. Achievement of these legislative goals would make it appropriate to call the 88th Congress the development Congress.

In sum, this program will make possible “an active beginning to end an old problem in Appalachia” as President Johnson said in his letter to Speaker McCormack. The cost of the entire program for the first year—$262 million—is included in the President's 1965 budget which was submitted in January to the Congress. Work continues until these goals are achieved.

Rumanian Independence Day

EXTENSION OF REMARKS OF
HON. ABRAHAM J. MULTER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. MULTER. Mr. Speaker, another of the important independence days of those many oppressed nations behind the Iron Curtain is being celebrated this Sunday, May 10. This is Rumanian Independence Day, the most important national holiday for all free Rumanians. It is sad indeed that the Rumanian people themselves cannot celebrate their national independence day. That is one of the penalties of living under communism. While we here freely express our admiration for Rumania’s independence, Rumanians themselves must not celebrate. Their recognition is limited to a silent word in their own hearts and clandestine listening to the celebrations in free countries over the radio.

Rumania enjoyed many centuries of independent growth, it was for two centuries a Roman province. From this came the modern name of Rumania, and the romance language which Rumanians speak.

In the middle of the last century the forces began shaping which led to the pronouncement of Rumanian Independence on May 10, 1877. The people were sick of many years of cruel invasion and oppressions, first from one side then from the other. During the years when our Nation was engaged in a great civil war, Rumanian leaders were fighting to free their country from Russian-Turkish domination and an archaic feudal land system.

Much progress was made by autonomous Rumania under King Alexandru Cuza between 1859 and 1866. On that memorable day in 1877, the Rumanian people demanded and got their rightful independence. It was duly recognized by all the great powers in 1888 in reward for Rumania’s gallant fight against the Ottoman empire.

This is the event which rightly holds an important place in Rumanian loyalties. It inaugurated the greatest period of progress in Rumanian history, which was drastically altered in World War II, and shattered completely when the Communists came to power in 1947. Today the very event which founded Rumania as a nation, and the great courage of Rumania's leaders of 1877, are denied to the people by the Communists. It is well to remember Rumanian Independence Day here, to add our voices to the great outcry demanding Rumania's freedom.

In this way we can encourage Rumanian-Americans as well as the Rumanian people to carry on the struggle against tyranny with a view to making it over again an independent nation.

Ed Ball: Angel of Mercy for Crippled Children

EXTENSION OF REMARKS OF
HON. L. MENDEL RIVERS
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 5, 1964

Mr. RIVERS of South Carolina. Mr. Speaker, an angel of mercy for thousands of crippled children in America is an energetic, hard-driving executive with the Nemours Foundation.

The Honorable Edward Ball, secretary-treasurer of the foundation, is considered a moving force behind the humanitarian work this charitable foundation performs for crippled children. His deep interest in the unfortunate, his unflagging energy, and his tremendous executive skills have meant in so many cases that a child may walk again; may even be cured.

His work is arduous; his schedule imposes demands a lesser man would succumb under. However, his faithful efforts have paid off handsomely for the crippled child.

Mr. Speaker, since the Nemours Foundation opened in 1940, it has provided more than half a million days for crippled children. These unfortunate children, whose parents may be poor or wealthy, but for some reason or another could not obtain the medical skill needed, are treated at the Nemours Foundation crippled children's hospital—known as the Alfred I. du Pont Institute—at Wilmington, Del. Here extensive facilities are provided for treating crippled children.

Though a close personal friend of the late Mr. Du Pont and considered his right-hand man, Ed Ball has achieved no small success in business in his own right. The holder of many titles in the Du Pont
The Greatest Asset We Have in This Country Is Our People

EXTENSION OF REMARKS OF HON. ROBERT DOLE OF KANSAS IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 5, 1964

Mr. DOLE. Mr. Speaker, on April 16, in Lima, Peru, an outstanding Kansan and a great American was fatally injured when he accidentally fell from his ninth-floor apartment. Harlan S. Parkinson, formerly of Scott City, Kans., age 30, was not an ordinary man but an exceptionally bright, resourceful, and capable man. His humanity was reflected in everything he did. As reported in the Hutchinson News, "Harlan Parkinson was a young man who began carving his niche in life early. An honor student in economics and philosophy during his 4 years at Kansas University, Parkinson graduated in 1955, having been president of his senior class, a member of Omicron Delta Kappa, national honorary scholastic society, and a member of Sigma Chi, the senior men's honorary society. From 1955 to 1957 his outstanding service in the Army was recognized by his having been chosen "Trainee of the Month" and selected for duty in the Army Intelligence Corps at Heidelberg, Germany. On release from the Army in 1957, he entered Michigan Law School where he was a Campbell fellowship finalist and fifth in his class in moot court argument." In 1958, a year before he died, when he was living in Denver, Colo., he was employed by Great Plains Wheat, Inc., in charge of the association's market expansion program in South America with headquarters in Lima, Peru. It was here Parkinson's leadership reached full expression. The Scott City News Chronicle wrote:

Known as El Orgino Bueno throughout Peru and Chile for his monumental work in establishing food cooperatives for the poverty-stricken areas of these countries, Harlan had been decorated in 1962 by the Peruvian Government with "the Knight of Honor and Merit"—the highest award Peru can confer on a foreign citizen—and last year was awarded the Bernardo O'Higgins Grand Order of Merit by the Chilean Government for his service to the people of Chile.

An initial project in Peru soon after his arrival was the establishment of the community of La Morada, which was started by the moving of the ruins of an 800-year-old monastery to the slopes of the Andes. When aid from the Peruvian Government was denied, Harlan Parkinson went to the local Jibaros (Indians of Peru), in Scott City, to help the destitute Peruvians. They responded by "adopting" La Morada, and the local Jibaros sent workers and supplies to a people-to-people project to furnish them necessary supplies.

The needs of these people were met soon when the men of Peru decided that they didn't need full or clothing, tools, and medical supplies arrived in Lima, and the goods were distributed by Harlan and his two American friends, former Secretary of Agriculture in Hungary.

The High Plains Journal, Dodge City, Kans., said this of Parkinson's work in South America:

Haran Parkinson, in charge of the wheat organizations' program for U.S. wheat in South America, was one of the most effective workers the American wheat producers had. It is not often that a person on a job of this kind gains public recognition in the countries in which he is working. Harlan Parkinson did just that, however, because of his humanitarianism of the wheat farmers for whom he was working, and combined his job of wheat promotion with that humanitarian outlook.

In a eulogy prepared by a Catholic priest, a friend of Harlan's, it was said: Harlan: you strode in and out of our lives with those great giant steps of yours, never staying long enough for us to see anything but pieces of you; a piece of your impulsive nature, your infectious humor, your love for people and charm over children, your inscrutable moods, your restless search for something beyond conformity.

And the pieces were beautiful: temporarily held together in pain, loneliness, in longings that reached far beyond your own happiness to that of your fellow man lost in a rough world.

Your keen mind and rare sensitivity brought complexities in you we could never fully comprehend, but will never cease to love.

Perhaps the meaning of Harlan Parkinson was best expressed when his friend and mentor, Clifford R. Hope, Garden City, former U.S. Congressman and immediate past president of Great Plains Wheat, Inc., stated:

It is not hard to realize Harlan Parkinson is gone. There are few men of his age who have done as much or whose lives held more promise for the future. His brilliant mind and engaging personality was matched by an intense interest in people.

As a representative of Great Plains Wheat in South America he worked hard at marketing wheat in South America, more, perhaps, for the people than for customers for wheat. He saw them as human beings in need of both help and understanding.

He projected an image of our country which will be long remembered, not only by presidents and premiers but by thousands of poor and weak. To them he was the good American who helped them to help themselves.

Harlan Parkinson was a living example of how international good will can be established without spending of hoards of money but by dedication and genuine appreciation of human work. In a spirit of unselfish concern for others. It is sadly ironic when an accident must take this
by exaggerating economic conditions.

New Myths and Old Realities in Poverty

EXTENSION OF REMARKS

OF HON. PAUL FINDLEY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 5, 1964

Mr. FINDLEY. Mr. Speaker, a few weeks ago the chairman of the Senate Foreign Relations Committee made a speech on foreign policy in which he referred to what he chose to call old myths and new realities. I refer to that speech not with any intent of analyzing it, but only for the purpose of pointing out that what he referred to are by no means confined to foreign policy. These same factors of myth and jingoism as contrasted to reality and fact occupy an inordinate portion of the stage in our domestic national affairs.

During the past several years, there has been a great deal of official and unofficial declaring that the United States is falling its economic and social obligations—that it has not provided full employment, that it has not sustained economic growth, and indeed that it is in imminent danger of falling into the class of a second-rate power. All of this is pure mythology. Yet, even after the Soviet Union for its own inherent inability to provide the basic need of any society has ever achieved in the history of the world. And it has reached this pinnacle in a society which accords to the individual the maximum in freedom—economically, politically, and socially. It is an accomplishment of which all Americans should be proud. It is an accomplishment which we should not jeopardize with dubious and ill-conceived experimentations based on precepts foreign to our own.

At this moment there are 70 million Americans gainfully employed in the United States. These Americans earn more, possess more, and live better than any other people on earth, and we should not forget to shout the myth of economic failure in America.

THE POVERTY PROGRAM

Probably the outstanding recent example of the confusion of myth with reality is the war on poverty recently declared by the President. Every American citizen should read this proposal for himself.

He should not accept the limited descriptions of this package which have appeared in the press, most of which were personal declarations of virtue on the part of those who advocate this program.

This war on poverty began with the shouting of cymbals and the blaring of horns. The proclamation, however, was somewhat delayed by the "blowing of topes" as, in the infighting, departmental topics and corruption of their established domains by the war's commander in chief.

No sooner had the battle within the administration been stayed than this hastily contrived administration with an inability to provide the basic need of bread for its own people—and looked to the United States to fill the gap—the oft-repeated myth of American failure and retrogression keeps emanating from the White House and echoing across the countryside.

The echoes do not stop at the shoreline. When the President speaks, the world listens. When he declares over and over again that one-fifth of America is poverty stricken he is blackening America in the eyes of the world. To people in underdeveloped countries, poverty has a far different meaning than the definition President Johnson gives it. To most of the world's population, an annual income of $3,000 would be regarded as kingy.

How can we hope to motivate the underdeveloped countries to follow our own free enterprise system when our President says that one-fifth of the population of free enterprise America lives in poverty?

In reaching eagerly for November votes by exaggerating economic conditions in the United States, the President is unjustly and unwise damaging the word "America."

With respect to unemployment, we are plagued and confused by the same tendency toward sloganism and mythology, one that has too often lost sight of; too often minimized.

That simple fact is this: The American system has created and sustained the highest level of attainment in the highest level of product the world has ever achieved in the history of the world. And it has reached this pinnacle in a society which accords to the individual the maximum in freedom—economically, politically, and socially. It is an accomplishment of which all Americans should be proud. It is an accomplishment which we should not jeopardize with dubious and ill-conceived experimentations based on precepts foreign to our own.

It is failing its economic and social welfare programs. The administration with pointed and public hearings announced a program for its own poverty package. Rarely has a political program been so rapidly created; seldom has a political program been so poorly designed; seldom has a political program been so rapidly messaged to Congress and unveiled to the public—all 7 titles and 47 pages of it. It was introduced as H.R. 10440 and labeled the Landrum-Powell poverty package. Rarely has a political affinity been so rapidly created; seldom was a package so sectionally enveloped. Some people have even gone so far as to suggest there might be something political in this poverty pact which binds together with the hallowed stars of the Democratic galaxy.

Almost before the ink was dry on H.R. 10440, an ad hoc subcommittee was appointed and public hearings announced. Hearing the administration with much fanfare and even more ado brought forth poverty's commander in chief, the Cabinet officers, and the lesser lights, all to declaim against poverty, all to endorse this noble cause, all to make it happen. No, they were not too familiar with the contents of the bill. Yes, they felt their administrative efforts against poverty needed to be coordinated. No, the present programs against poverty were not being badly administered. No, the existing programs should not be placed under the poverty czar. And yes, oh yes, politics was the thing furthest from their minds.

But dawned the next day—into the office of every Democratic Congressman was delivered a "pocket kit," complete with prewritten speeches, prepackaged press releases—with appropriate blanks for inserting the Congressman's name—and digests of various sorts, all proclaiming the merits of the poverty package. And the source of these poverty kits, delivered before many Congressmen had read the bill? Why the Democratic National Committee, of course. But alas, a misdelivery. One of these packages was directed to, of all things, a Republican Congressman. Thus, the pragmatic basis of this brave new political project was revealed to the world.

THE ELEMENTS OF THE POVERTY PACKAGE

Like most packages which are politically wrapped, the poverty bill contains a lot of other things thrown in from Harlem to Georgia, from farmer to factory hand, from 17 to 70. Like most gimmicks of this type, it is based on that time-honored political premise, "something for nothing."

TITLE I

Title I of this well publicized tabloid deals with so-called youth programs. Young males age 16 to 22 who are unemployed and who are found unfit for the draft, will be sent to distant work camps. According to the sponsors of this bill, they will be employed on conservation projects and vocational training.

There are so many obvious questions relating to this proposal, that its predecessor proposal under the late President Kennedy has long lain dormant in the House Rules Committee.

TITLE II

Title II of this proposal authorizes the establishment of so-called community action programs. These programs, for which the Federal Government could defray the full costs, are to be carried out either by public or nonprofit private agencies in such fields as health, education, job training, and vocational rehabilitation. These programs carry no provision for participation of established State and local governments, and leave the way clear for the Federal Government, by direct intervention, to support, direct, and finance various types of activities which neither the State nor the community may be able to.

In almost every respect they duplicate or overlap programs already in operation at the Federal and/or State level.

TITLE III

Title III of this bill is concerned with poverty in the rural areas where it is proposed first, to make gifts of up to $1,250 to poor farm families; second, to make loans of up to $2,500 to the same group to enable them to buy seed, livestock, machinery, or to start a farm business; third, and get banks to support cooperatives to buy up rural property, develop it, and sell it back at a discount to selected farmers in family size plots.

Bureaucrats would call the signals, and taxpayers would cover the losses in this.
L.B.J.-style land reform. One guess where the idea originated.

The remaining titles of the bill provide loans for the establishment of new businesses designed to employ the unemployed and members of low-income families; provide funds for experimental projects to help unemployed fathers obtain employment.

Finally, the bill authorizes the commander in chief to set up the volunteers for America—a Domestic Peace Corps to embark on community action programs to combat the wills of Indians, migrant workers, and similar groups.

Mr. Speaker, the press agents and the tub thumpers who are pushing this political poverty cart would have the world believe that poverty is their own private discovery; that the U.S. Congress, the State governments, the local governments, and all past American Presidents have gone through life blissfully unaware that the problem of poverty ever existed and have not turned a hand to meet its challenge.

Nowhere is mention made of the fact that existing Federal programs which deal with poverty carry appropriations in the amount of $9 billion a year. And this $9 billion does not, lest we become confused, include any expenditures for social security benefits or for unemployment compensation. If these were included, the total would be about $40 billion per year.

Now when one is exposed to the description of all the things this poverty package is designed to accomplish, one quite naturally regards it as a big project—akin to the making of a continent. A Texan undertaking would also expect a Texas budget. But no, it is all going to be done on a Rhode Island budget—less than $1 billion. Now there is some real mythology.

This Landrum-Powell poverty package proceeds on the theory that every American family which does not have a cash income of more than $3,000 per year is poverty stricken. This works out to about 50 million Americans so numbered. Now if you take the $965 million that the poverty plotters say will do the job, that divides out to $27.37 for each poverty stricken person per year. Who is kidding whom?

This proposal speaks solely about the first year only. During the parade of administration witnesses, various questions were asked about the probable costs of this program for the second year, or the third year, or any year beyond: ‘Does this program make any sense at all?’

We have always alder and nurtured the oppressed and the downtrodden. But we have never, and we should never, deprive any man of need—indeed the obligation—to achieve by his own efforts. A program which makes idleness attractive will beget idleness.

A program which preempts local responsibility will destroy local responsibility. A program which undermines community efforts will supplant community and State governments.

The concept of the all-pervading, all-powerful Central Government must be discarded. I would like to see Federal programs designed to achieve by its own efforts. A program which makes idleness attractive will beget idleness.

If President Johnson really wants to do something new and effective in the area of combating poverty, he might well turn on the White House lights and look carefully and critically at the $40 billion now being spent to combat poverty.

If these programs are actually as poverty stricken as the President is telling the world, the $40 billion antipoverty effort now underway is missing its target, but good.

Instead of establishing a new layer of the same old programs, past and present, let us find out what is wrong with the expensive programs already in motion and redirect them.

If the President can do better than to offer a war on poverty so thin it will not even pay a respectable sales tax on the programs already in being, so transparent politically that it was promoted directly by the Democratic National Committee, and so harmful internationally that it projects to the world a false image of America as a place of economic squalor.

The clear political motivation was clearly reflected in the May 1 issue of the Wall Street Journal, which quoted an administrative official in the Education and Labor Committee as saying:

We want a Lyndon Johnson bill. Let us be realistic. This is presidential election year, and the President wants a poverty program he can call his own. There is a way to satisfy the President's political appetite and still be merciful to America's long-suffering taxpayers. It is easy.

All we need to do is pass a bill imprinting the "L.B.J. brand" on all existing Federal programs which are aimed at meeting some aspect of poverty.

Here are the major items:

The public works acceleration program would become the Johnson public works acceleration program to combat poverty. It is already budgeted at $214.2 million.

The cooperative extension—Smith-Lever Act—would become the Johnson cooperative extension program to combat poverty. It is already budgeted at $39.8 million.

The agricultural research—Hatch Act—program would become the Johnson agricultural research program to combat poverty. It is already budgeted at $38.3 million.

The Farmer Cooperative Service would become the Johnson Farmer Cooperative Service to Combat Poverty. It is already budgeted at $1.1 million.

The Economic Research Service would become the Johnson Economic Research Service To Combat Poverty. It is already budgeted at $6.3 million.

The special milk program would become the Johnson special milk program to combat poverty. It is already budgeted at $99.8 million.

The school lunch program would become the Johnson school lunch program to combat poverty. It is already budgeted at $51.1 million.

The direct distribution program—surplus foods—would become the Johnson direct distribution program to combat poverty. It is already budgeted at $204.4 million.

The Farmers Home Administration rural housing grants and loans program would become the Johnson rural housing grants and loans programs to combat poverty. It is already budgeted at $23.1 million.

The rural renewal loan program would become the Johnson rural renewal loans program to combat poverty. It is already budgeted at $20.4 million.

The Housing and Home Finance Administration direct loan program would become the Johnson Housing and Home Finance Administration direct loan program to combat poverty. It is already budgeted at $100 million.

So the President should redirect and not redirect the various Federal programs that are already operating to combat poverty.
Johnson direct loan program to combat poverty. It is already budgeted at $327.5 million.

The rental housing for elderly program would become the Johnson rental housing for elderly program to combat poverty. It is already budgeted at $5 million.

The Area Redevelopment Administration program would become the Johnson Area Redevelopment Administration program to combat poverty. It is already budgeted at $206.5 million.

The vocational education program would become the Johnson vocational education program to combat poverty. It is already budgeted at $17.7 million.

The National Defense Education Act student loan program would become the Johnson National Defense Education Act student loan program to combat poverty. It is already budgeted at $13.5 million.

The cooperative research and demonstration program would become the Johnson cooperative research and demonstration program to combat poverty. It is already budgeted at $6.2 million.

The National Defense Education Act area vocational-technical program would become the Johnson National Defense Education Act area vocational-technical program to combat poverty. It is already budgeted at $1.8 million.

The cooperative research and demonstration program would become the Johnson cooperative research and demonstration program to combat poverty. It is already budgeted at $17.7 million.

The education of handicapped children program would become the Johnson education of handicapped children program to combat poverty. It is already budgeted at $117 million.

The National Defense Education Act area vocational-technical program would become the Johnson National Defense Education Act area vocational-technical program to combat poverty. It is already budgeted at $1.8 million.

The cooperative research and demonstration program would become the Johnson cooperative research and demonstration program to combat poverty. It is already budgeted at $6.2 million.

The urban renewal grants program would become the Johnson urban renewal grants program to combat poverty. It is already budgeted at $130.3 million.

The housing for elderly loan fund program would become the Johnson housing for elderly loan fund program to combat poverty. It is already budgeted at $100 million.

The low-rent public housing grants program would become the Johnson low-rent public housing grants program to combat poverty. It is already budgeted at $230.6 million.

The low-rent public housing development loans program would become the Johnson low-rent public housing development loans program to combat poverty. It is already budgeted at $399 million.

The business loans program would become the Johnson business loans program to combat poverty. It is already budgeted at $197.1 million.

The investment and development company assistance; debenture purchase and loans program would become the Johnson investment and development company assistance; debenture purchase and loans program to combat poverty. It is already budgeted at $105.3 million.

All this comes to the grand total of $8,738,600,000 already budgeted for fiscal 1965.

Simply by changing the names the President could proudly refer to his $8.7 billion program to combat poverty. If the dollar total is an accurate measure of the political sex appeal of a program, then this name-change approach should yield the President more than eight times the votes next November, compared with the vote-pulling power of his billion-dollar package now before the Education and Labor Committee.

If $8.7 billion does not sound fancy enough, we could rename the social security, unemployment compensation, and other similar programs that would bring the new total to $40 billion.

This indeed would be a Texas-size program to combat poverty, and the beauty of it is the only extra burden of all this—beyond the amounts already budgeted—would be the cost of amending the name-change bill through Congress.
House Committee on the Judiciary these many years merely to preside at the liquidation of our valuable antitrust laws.

On reading the article by Professors Bork and Bowman in the December 1963 issue of the Antitrust Bulletin, I was struck by the fact that the Yale School of the Thurman era had gone downhill rapidly. Out of their compound of errors of fact and logic Fortune has found that they have demonstrated that "antitrust has been perverted from preserving competition to preserving competitors from their more efficient rivals." Fortune suggests, therefore, that businessmen urge legislative redress.

Last year Fortune published an article mounting an extreme attack upon the antitrust laws and antitrust policy. In a complementary editorial of much more moderation, Fortune invited debate. The debate in Fortune thus far appears to have been on one side. One wonders whether the editors of Fortune realize that the authors of the article they so warmly espose appear to endorse an expanding area of per se violations. Is this what Fortune and business desire?

I can certainly agree with the authors' appreciation of the value of per se rules in price-fixing cases. Their general support for competition is also welcome. From there on the area of my disagreement with the writers far exceeds the area of agreement.

Professors Bork and Bowman say that "practices conventionally labeled 'exclusive'-notably, price discrimination, vertical mergers, exclusive dealing contracts, and the like—appear to be either competitive tactics equally available to all firms or means of maximizing the returns from a market position already had." This is like saying that the rich man and the poor man are equally free to go to the Riviera or to sleep on a park bench.

The example of firm X, which already has 10 percent of a market, signing up on full requirements contracts an additional 10 percent. They suggest that this is meaningless because of the economies of scale available to all firms. The problem, they say, is that a more concentrated condition at a very early stage is that the existence of the trend is prima facie evidence that greater concentration is socially desirable. Under this theory, the probability of large size more efficient, the imposition of higher prices, the necessity of line exclusionary practices, the professors are silent.

From this prefatory rationale we are led to the myth theory of exclusionary practices. The authors aver that "a moment's thought indicates moreover, that the notion of exclusionary practices is not merely theoretically weak but is, for such a widely accepted idea, remarkably lacking in factual support. Has anybody, for instance, ever shown a monopoly or anything like one through the use of requirements contracts? Or through price discrimination? One may begin to suspect that antitrust is less a science than the antitrust lawyers have said, that it has operated for years on headway and leg­ ends rather than on reality."

The myth theory of antitrust has, in recent years, been advanced on a number of fronts. Thus, under the myth theory of antitrust, the existence of the trend is prima facie evidence that greater concentration in the market of a firm is socially desirable. As one may judge whether it has become the influence of Bullfinch's "Mythology" that has shaped antitrust.

Bork and Bowman made a direct attack upon the incipience theory of attacking the poison before it has taken effect. They say that "the difficulty with stopping a trend toward a more concentrated condition at a very early stage is that the existence of the trend is prima facie evidence that greater concentration is socially desirable." Under this theory, the probability of large size more efficient, is socially desirable, and toward juvenile delinquency is desirable.

One might agree that at the incipience stage one may be uncertain as to what may happen in the future, but prima facie evidence of a trend is, in the final result, because there is a trend toward it, is not supported by experience.

But, say the professors, such trend indicates there are economies of scale which make larger size more efficient. I suppose, even, that this is an arrant non sequitur:

First. It is just as likely that a merger trend may be to eliminate competitors or price cutters, to stabilize an industry, to finance improvements, or to obtain capital gains benefits.

Second. As I have noted in an article, in the December 1963 issue of the Anti­trust Bulletin, large size is not an assurance of efficiency. Some of our large companies have been notoriously inefficient.

Third. Even if there is, indeed, a trend toward juvenile delinquency is desirable. As to becomes a conspiracy to monopolize, it would ordinarily take more than an isolated instance of a merger to a competitor to come within that test, but once a number of mergers, the likelihood of a substantial lessening of competition becomes more real.

The professors argue, seemingly, that it should make no difference how the inefficient businessman is eliminated, whether because of natural forces, merg­

or, because of unfair tactics. As to the latter, they would use the myth theory. As to a merger, they would say that mergers are part of the natural business process—Adam Smith said it was also true of price fixing. The presence of even an inefficient competitor as a brake on monopolistic pricing is not thought worthy of mention. And since inefficiency may be a reflection of the inefficient competitor of today may be the efficient competitor of tomorrow—not so if it has been merged.

Seemingly, moreover, a merged company tactics considered to be less efficient than the merging company. To the writers to be of small size or un­

integrated is to be inefficient. Actually often the contrary is true. A reason
not infrequently given for acquiring a smaller company is to acquire its know-how, but the larger company was unable to match.

As to the attitude of Congress, I would call the attention of the authors to the legislative history of the Celler-Ke.

fauver Act. When the first decision of the Court was rendered, Congress was concerned over the growth of oligopoly through the merger route. I ought to know; I was coauthor of that act.

The writers turn to their inefficiency theme by asserting that the antitrust laws are being used to subsidize the inefficient. Except for the alleged case of the Brown Shoe merger—which I shall come to later—there is no example of such subsidization. I might point out that law enforcement generally "subsidizes" those protected by its enforcement. It does so on the theory that there are recognized wrongs and recognized rights. The fact that the law may protect the embezzler, as well as the saint, from the thug may disturb the professors. I do not want a system of law under which a man's right to the protection of the law may depend upon someone's estimation of whether he is good or bad.

A final word on this question of efficiency. One might well shudder at the legal system, which might ensue over an issue as to comparative efficiency.

Professors Bork and Bowman charge that the Government's attack on conglomerate mergers is merely an attack unreasonably advancing the creation of efficiency. They say, "any law that makes the creation of efficiency the touchstone of illegality can only tend to impoverish us as a nation." This argument assumes many things. It assumes that the greater advertising power arising from greater capital resources is a mark of efficiency which will inure to the benefit of the consumer in better product and cheaper product. It assumes that the economy as a whole as an integrated complex, will be operated more efficiently. It assumes that such merger will encourage other independent companies to become more efficient rather than the reverse. That is not the advantage I depend on when I look to mergers for their value, and it was not the advantage I depended on when I looked to the Government's attack on conglomerate mergers as the trend toward vertical integration.

The authors say that the Supreme Court "has with increasing frequency taken the position of opponents. To those of us who have had antitrust policy and antitrust enforcement at heart, this is an incredible statement. It will, I wager, create equal amazement in some quarters. The decision in the Brown case, which I have reviewed, is one of those cases where the authors have faltered in their logic.

Congress and such antitrust stalwarts as the late Senator Kefauver are taken to task as foes of the free market and as proponents of less competition. Since I am not mentioned by name I shall merely note a few facts. The Civil Investigative Demand Act of 1962 is not referred to by the authors, nor is a pending bill introduced by this writer, to strengthen section 5 of the Clayton Act. Congress, in that act, was attempting to regulate mergers, not to abolish them. If the authors think all mergers under section 5 are antitrust violations, that is a matter they can discuss with the authors. The authors correctly point out that the Supreme Court, which, time and time again, has upheld the promotion of antitrust policy and antitrust enforcement when others have faltered in their logic.

I consider the authors' generalized remarks about the new channel of the Antitrust Division and the Federal Trade Commission grossly inaccurate and grossly unfair. I have known many of them, some have been members of my staff. In most instances their balance of perspective is in sharp contrast to the absence of such balance evidenced in the authors' article.

Professors Bork and Bowman reserve their heaviest artillery for the Brown Shoe Co. case. To hear them tell it, the Department of Justice was wrong in bringing the case, the district court was wrong in its adjudication of violation, and the nine justices of the Supreme Court, who also found the law violated, were woefully in error. On reading what the professors have to say about that case, I find it hard to believe that they were familiar with the Brown Shoe record.

In that merger case, Brown Shoe Co. acquired the Kinney Shoe Co. Let us see what Professors Bork and Bowman say the facts were and compare what they say with the actual facts.

BORK AND BOWMAN:
Brown was first primarily, a shoe manufacturer and Kinney was primarily a retailer; second, Brown had 4 percent and Kinney had 0.5 percent of the Nation's shoe output; third, Kinney had 1.2 percent of total national retail shoe sales by dollar volume and together they had 50 percent of the Nation's total retail sales had been foreclosed by the merger. The Court reached an incredible result on the vertical aspect of the case.

Tenth. The holding of the Court in the horizontal aspect was based on similar reasoning. The Court found creation of market shares as low as 5 percent in any city illegal because of fear of monopoly. Twenty firms in an industry is not oligopoly.

Eleventh. In view of ease of entry into shoe retailing, Supreme Court's fear of oligopoly is simply incomprehensible.

Twelfth. The Court was clearly wrong in suggesting that the merger was bad because Kinney's ability to get shoes cheaper from Brown would give it an advantage over other retailers.

Thirteenth. The Court's statement that the merger was bad because it was designed to protect competition but not competitors is utterly inconsistent with its further statement that Congress desired to promote competition through the protection of "inviolable, small, locally owned businesses."

Fourteenth. The Brown Shoe-Kinney merger did not even remotely threaten competition.

THE FACTS:
First. Although primarily a manufacturer, Brown was one of the largest shoe retailers in the country. It controlled over 3,320 retail outlets. Kinney was the
The 12th largest shoe manufacturer in terms of sales. It was the eighth largest in terms of assets.

Second, Brown was the third largest shoe manufacturer by dollar volume, and the fourth largest by volume of production. It produced over 25 million pairs of shoes.

Third and ninth, Kinney operated the largest family-style shoe store chain in the United States. It was a rapidly growing chain, reaching a half million people by the time of the merger, over 400 in 270 cities at the time of the trial, and over 500 when the case reached the Supreme Court. Its retail stores had sales of over $42 million annually. Among shoe sellers, either retailers or manufacturers, or both, it was the eighth largest.

Kinney sold 6.4 million pairs of shoes in 1956, which is purchased from outside sources. This exceeded the production of any of over 95 percent of the shoe manufacturers. A market of such size is one of great desirability for many shoe manufacturers. The record showed that in 1956, 10 of the 11 companies, each of which was over $50,000, and only 3 of which were large companies. At least each of five of Kinney’s suppliers relied upon Kinney to purchase more than 70 percent of the company’s total production in 1956.

Since Kinney did not sell high-priced shoes, it is obvious that even on a nation-wide scale its market percentage of the type of shoe sold was well above 1.2 percent, and as Justice Harlan noted:

In terms of available markets for independent shoe manufacturers, the percentage of Kinney’s purchases must have been substantially larger.

What the professors omitted was also the fact that in 27 cities, Kinney accounted for over 20 percent of all shoe sales; in 58 cities, over 15 percent; in 74 cities, over 15 percent.

In my judgment, even 5 percent of a market might mean the difference between a small manufacturer being able to sell in a particular city or having no outlet there.

It is a matter of common knowledge that at the retail level the most significant economic fact in recent years has been the growth of shopping centers. In such centers chain shoestores are common; independent stores, rare. Kinney had stores in 115 shopping centers in 1958. Kinney has been going into shopping centers, often as the sole store there, a situation not infrequently brought about by Kinney.

If a manufacturer, the particular shopping center in Washington, you referred to; your information is correct, that we have a shoe-exclusively there.

We have a number of these exclusives, and try our darndest to get them in every shopping center we are interested in. (Letter of vice-president that Kinney)

One can hardly ignore, as the writers have, the significance of such markets and effect of a Brown-Kinney merger upon their availability to other manufacturers.

Fourth, of the 800 plus shoe manufacturers in this country, the top four produced approximately 23 percent of the Nation’s shoes. The five companies which were 45th to 50th in size, produced 1.4 percent of the industry’s production. The fifth largest company produced substantially less than one-half the production of the smallest of the top four.

In terms of value of shipments, the top four had about 30 percent, the next four, 6 percent, and the largest 20 companies 45 percent. In 1957 Brown’s production of shoes was over 20 times as much as any company among 97 percent of the industry.

The four largest companies had total assets of over one-third of the total assets of all the other companies in the industry. In 1955 the total assets of 916 shoe companies were roughly equivalent to the total assets of the 11 largest companies. The top 4 companies had 171 plants between them, the next 6 a combined total of only 41, more than half of which were operated by 2 companies.

Now, what about the trend? There has been a constant decrease in the number of shoe manufacturers despite an increase in total production. In 1947, there were 1,077 manufacturers; in 1954, 957 in 1956, 872. During this same period there was a concomitant decrease in the number of operating shoe plants, but the number operated by the largest four increased by 35 percent—largely through acquisition. In companies, the position of the smaller manufacturers was deteriorating, the top four from 1947 to 1954 increased their percentage of the value of the total shipments by 2 percent.

In 1945 the difference between the volume of sales for the largest shoe firm and the 18th largest was about $139 million. In 1956 the disparity between the volume of the largest and the 11th was over $245 million.

The fact of the matter is that the business is very unevenly distributed. As the trial court commented:

A few large firms control 50 percent of the market.

Fifth, the authors omit to say that in 1956 six large firms operated 18 percent of the Nation’s shoe stores.

There was a definite vertical merger trend in the shoe industry. In 1945 the largest company had no retail outlets; by 1956 it had acquired 130. The second largest had 80 retail outlets in 1948, and 526 by 1956. Only a merger suit halted expansion. In 1953 Brown had no retail outlets of its own in 1961, but had acquired 845 by 1956. Two of the top six manufacturers had gone from 301 to 842, and 538 to 947 respectively, from 1945 to 1956. Between 1950 and 1956, 9 independent shoe store chains, operating about 1,300 retail stores, became subsidiaries—dealing—large shoe companies. The record shows other attempts at vertical mergers by the shoe companies. Brown, in the 4 years prior to its merger with Kinney, had been acquiring retail stores on a large scale.

In addition, the large shoe manufacturers have been expanding their franchise system by which they control many more shoe stores.

Moreover, between 1950 and 1956, 7 companies, with 25 shoe plants, were acquired by the 10 companies which operated 20 percent of all shoe manufacturing plants.

The president of Brown noted that “General, Brown, and International acquired the larger companies.” It may be noted that when an integrated manufacturer acquires an independent manufacturer, to testify in the Brown Shoe Company case, an independent retailer may find his sources of supply drying up, since small manufacturers vary widely in the type and quality of shoe they make.

To talk of room for 60 integrated shoe companies of equal size in the context of an industry, marked by inequality of size, hardly measures up to responsible argument.

Sixth, there was no evidence that clothing stores represent an important shoe market. As to department stores, the evidence showed that, commonly, shoe selling in department stores was on a leasing arrangement. And the big manufacturers were very prominent lessors. Thus, Brown, in 1951, acquired Wohl & Company, of Leominster, the operator of leased shoe departments. Wohl had 250 outlets in department stores.

Seventh, and the Seventh, that even this same industry might be wholly integrated “any new manufacturers could create or find new outlets anytime he chose,” is poppycock. The case is replete with proof that affiliated stores favored their manufacturer affiliate, and that the independent manufacturer found it hard to put on any business from the captive stores. There was evidence, moreover, that since large shoe chains have many of their own brand names, they concentrate on manufacturers who will manufacture makeup shoes for them rather than shoe manufacturers who would promote their identity and independence through their own brand names.

If it were so easy to create new outlets, it is surprising that the major manufacturers were so eager to use mergers as a means to secure such outlets. One wonders also why so many shoe manufacturers have depended upon them.

I have already mentioned the situation of the shopping-center shoe market. A manufacturer cannot live on the business of one store. He has to have access to a number of them. Moreover, the manufacturer and the integrated outlet of shoes do not involve the same skills and know-how. The able manufacturer may be a poor retailer, and the cost and risk for a small manufacturer to go into retailing in competition with the existing giants is a real one.

Eighth, Even if Brown’s alleged forcing policy rested upon its president’s letter and upon the portion of Kinney’s letter which Brown cited, the effect of these would seem to be sample proof of the existence of such policy. But there was other evidence omitted by the professors.

For example, in another memorandum, the same president, in another memorandum, stated:

One of our primary objectives in acquiring retail stores is to protect and guarantee distribution of our products in areas where
independent retailers could not give our brands adequate distribution because of their affiliations with other branded manufacturers.

Justice Harlan noted that—

The result of Brown's earlier acquisition of two shoe chains, was in each instance a substantial increase in their Brown shoe purchases.

For instance, Wohl's purchases from Brown jumped from 12.8 percent before merger to over 33 percent after merger.

There was evidence that when other manufacturers acquired retail stores, such outlets curtailed their purchases from other manufacturers and took more from their parent. Thus, an independent manufacturer testified:

Question. Have you ever suffered any loss of business as a result of acquisition from any other corporation?

Answer. Yes, sir.

Question. Can you state an example of this?

Answer. Well, Bon Marche in Pensacola, Florida, had an order of 300 pairs on hand when that was acquired by International Shoe Co. and the order was canceled, and we since have sold them nothing.

Brown entered into contracts with a number of its franchised dealers which provided:

I will (1) concentrate my business within the grades and price lines of shoes covered by Brown franchises, and we have no lines conflicting with the Brown Shoe Co. brands.

There was considerable other proof of forcing by Brown.

Tenth. There was proof that Brown and Kinney were in active competition with one another.

On the retail level the acquisition of Kinney moved Brown into second place in the number of owned and operated stores, and, including other stores controlled by Brown, the latter about 7.2 percent of the total. By May 1958, Brown with Kenney controlled about 1,840 retail shoe outlets.

The combination of Brown and Kinney gave Brown control of over 40 percent of shoes sold in two cities, in five over 30 percent, and in seven from 25 to 30 percent. In 32 cities the combined share of Brown and Kinney sales exceeded 20 percent, and this was true of children's shoes in 31 cities. These figures, moreover, did not include sales of Brown shoes in these cities by retailers not controlled by Brown. Such sales significantly enlarged the extent of the local control exercised by Brown and Kinney shoe sales.

Twelfth. The proof shows that in some instances integrated companies charged less to their retailing subsidiaries than to their nonaffiliated retail customers.

The possible ability of Kinney to get shoes cheaper from Brown might not come from increased efficiency at all. It might be a matter of bookkeeping. In that case, we might have not the benefit of the services of a number of competitive manufacturers bidding for its trade. It might lose other retailing advantages which would offset lower prices from Brown.

Thirteenth and fourteenth. These points I have already answered. I find it utterly incomprehensible for anyone to say of the Brown Shoe merger that it did not even remotely threaten competition.

CONCLUSION

To me the basic flaw in the professors' thinking is apparent in the complete absence in their article of an awareness of an important aspect of our antitrust laws. On the basis of experience, these laws assume that all too often monopoly or oligopoly power will not be exercised to promote efficiency and low prices, but will be used either inefficiently or to maximize profits by other services. I have noted some such examples in the appendix to this article. Moreover, such power has consequences in terms of choice of employment, deterrent to new entrees in the field, and political power that involves grave social and economic considerations.

I certainly would not want to eliminate big business from the American scene. A large-scale landscape without some monopoly power would be difficult, and I believe that the latter have survived, and have been of great benefit to our competitive system, largely through the policy and enforcement of our antitrust laws.

To the professors I would say: When you use a shotgun, make sure the target is there.

APPENDIX

A. ILLUSTRATIONS OF EXCLUSIONARY PRACTICES

First. Glass Containers—Hartford-Empire Co. (322 U.S. 366): A footnote to the Fortune article advises that Professor Bowman was with the Antitrust Division during most of the years 1938 to 1946. It was during that period that the Hartford-Empire Antitrust case, known as the Hartford-Empire case. That case involved glass container and glassmaking machinery industries. There was a far-reaching conspiracy between leading glass makers and Hartford-Empire, an independent holding company, to restrict production, restrict entry, and competition. The case abounded in exclusionary practices. But, perhaps the best way to combat a myth is with actual documentation.

Thus the secretary of Hartford-Empire wrote in 1928:

"(3) We began our commercial expansion in 1917 when our first feeders were put in production and at once apparent that if we put out these machines broadcast, without restriction, we would disorganize the whole industry; in fact, our first group of licensees said so expressly and urged us to take measures to prevent such a result."

"(4) Consequently, we adopted the policy which we have followed ever since of restricted licensing. That is to say:

(a) We insist the machines only to licensed manufacturers of the better type, retuning many licensees whom we thought would be price cutters, and

(b) We restricted their fields of manufacture, in each case, to certain specific articles, with the idea of preventing too much competition."

Second. Glass Bulbs—Hitchcock case, exhibit 1852

(a) Because of the probable value to us of the Hitchcock rights in suppressing other competing brands, we expected to do, there would be a purely competitive field "**"*

"In 1921 an officer of Hartford warned his board of directors—exhibit 1889—"

That—

"The Howard feeder was sufficiently good to upset the competitive field. That is, as much as this feeder when operated by the small glass concerns would permit the small concerns to continue to exist and at the same time qualify their prices which would be detrimental to the general trade."

Hartford met this threat by acquiring control of Howard.

The general manager of Owens-Illinois, the largest glass container manufacturer, in a conversation with one of the Antitrust professors, stated that as much as this feeder when operated by the small glass concerns would permit the small concerns to continue to exist and at the same time qualify their prices which would be detrimental to the general trade.

There should be in the glass industry some concern between leading glass makers and Hartford-Empire, to restrict production, restrict entry, and competition. The case abounded in exclusionary practices. But, perhaps the best way to combat a myth is with actual documentation.

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(b) We restricted their fields of manufacture, in each case, to certain specific articles, with the idea of preventing too much competition.

(c) In order to retain more complete control of the situation, we retained title to the machines, and simply leased them for a definite period of years, usually 8 or 10 years, with the privilege of renewal of a smaller additional term.

Some 7 years after the Standard Oil case Hartford purchased the Hitchcock patent—exhibit 1852:

(a) Because of the probable value to us of the Hitchcock rights in suppressing other competing brands, we expected to do, there would be a purely competitive field "**"*

Cornings Trent counsel, W. A. Doren, reported to Corning in October 1920 (Ex. 677): "the whole bulb situation would be strengthened if a monopoly could be gotten into the on hand, with right to take bulb licenses from the owner of such monopoly, and that unless the Hartford-Fairmont Co. succeeded in doing this, as they expected to do, there would be a purely competitive field "**"*"

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(a) Because of the probable value to us of the Hitchcock rights in suppressing other competing brands, we expected to do, there would be a purely competitive field "**"*"
The Lynch Corp. was an important factor in the forming field. In 1933 negotiations for a deal between Hartford and Lynch were had in which it was noted that:

1. All parties agree that it is desirable to prevent extra capacity being put into the glass industry.

2. Lynch in order to furnish formers will take away from them (non-licensees) the incentive to build feeders.

3. It will also have the effect of taking from other persons the incentive to build feeders that might be used with Lynch machines.

4. The former patent situation will be considerably stabilized.

Reasons against the plan:

1. It is very definitely an extension of our形成 machinery and it would be against the purpose of affording patent protection to its own competing machines.

2. Lynch's plan to sell to those machines that they would have to pay for the feeder and forming machines. They, in common with other Hartford feeder licensees who signed Former Licenses, could not thereafter use any but Hartford feeders with the Lynch forming machines without subjecting themselves to the payment of the same royalties to Hartford for the use of forming machines that they would have to pay for the feeder and forming machines. They would have been a very simple thing for us to decentralize the production of milks throughout the country (exhibit 246).

In 1932 Hartford informed Ball, of fruit-jar fame, that:

Hartford was continually declining new business to the benefit of its customers in consideration with your company would be more beneficial to us than to take our fruit-jar rights and license other manufacturers to produce milk bottles anyway we saw fit, but during all these years we have protected Thatcher and Berney Bond and Buck by refusing to grant additional licenses for milks. This action on our part has stabilized the price situation and has been worth hundreds of thousands of dollars to Thatcher.

The former patent situation would have been very beneficial to us for his equipment (exhibit 295).

We are trying to bolster up a feeder situation, not as strong as we would like, with a spurious forming machine situation (exhibit 390).

Several nonlicensees felt compelled to accept Hartford feeder licenses, in part because they desired to secure Lynch forming machines. They, in common with other Hartford feeder licensees who signed Former Licenses, couldn't thereafter use any but Hartford feeders with the Lynch forming machines without subjecting themselves to the payment of the same royalties to Hartford for the use of forming machines that they would have to pay for the feeder and forming machines. They would have been a very simple thing for us to decentralize the production of milks throughout the country (exhibit 246).

In 1933, Bluebrook asked Hartford for the right to manufacture fruit jars, but "Hartford was absolutely obdurate, the explanation being made that fruit jars were an exceedingly restricted market." Thereafter, in 1933, Bluebrook sold out to Ball. Ball was not anxious to have Owens as an active competitor in the fruit jar field, so a side agreement was entered into between Owens and Hartford restricting the former's production of fruit jars.

In 1930 H. K. Smith wrote of "Hartford's present and long established policy of endeavoring to limit competition between its licensees within reasonable bounds." (Ex. 522).

Exclusory tactics included fraud upon the Patent Office. Thus, in 1924, patent counsel for Owens in a letter to patent counsel for Hartford stated:

That in my opinion, if we should prove by court testimony what happened at the Hitchcock demonstration at Fairmont, there would be no chance whatever of making an ironclad monopoly on feeders, and that personally, by itself, that under such conditions, the Owens Co. could work the feeder, and get away with it, without being held as infringers. He stated, on the other hand, that if we did not disclose the secrets of the Chartzel house, he thought we might close up everybody between us (Exhibit H-5847).

The "secrets of the Chartzel house" were kept secret until the Government instituted its antitrust suit.
Second. Motion pictures: The Schine Theatres case is a classic example of exclusionary practices. Schine was the largest theater circuit, not affiliated with a major producer, in the United States. In 1942 it had approximately 148 motion picture theaters in 76 towns. The fall of such towns Schine had all the theaters. The late thirties and forties were the heyday of the motion-picture industry. There were eight major distributors of motion pictures in the United States. Large numbers of pictures were produced and distributed by them. It was customary for exhibitors to negotiate with the various distributors for a season's product.

The Schine case had many witnesses and many documents. For the most part the witnesses were former or current exhibitor competitors of Schine who, because of the conspiracy between Schine and the distributors, had either taken it on the chin or were taking it on the chin. The two professors would have us believe that this was because of the exhibitors' inefficiency and that the Government was attempting to subsidize competitors by bringing the suit.

Let us see what the case disclosed:

Schine used the buying power of its theaters in the towns where it had a monopoly as a lever to have the distributors deny pictures to its competitors in competitive towns, whether the competitor had better theaters or not, to impose unreasonable clearances upon them, and to subject them to other substantial disadvantages.

Schine obtained franchises from the distributors on their product, covering a number of years. Thus, in 1936, Schine made a 3-year agreement with Fox and, as a result, the Fox product was committed in all the towns in which Schine then operated. Later this agreement was amended to include subsequently acquired theaters by Schine. In 1938 another 3-year agreement was made with Schine.

Schine obtained selective contracts with distributors whereby it could tie up a year's product and play only those pictures it desired to play. It leased contracts, having a lease on a closed theater, paying substantial sums therefor to keep competitors out of towns in which Schine operated. In some instances, where competition started, it would keep such theaters open until a competitor was driven out and then close them again.

In a number of instances it was able to price-cut admission prices, in order to eliminate competition, by obtaining license contracts with distributors from which minimum admission-price limitations had been deleted, while its competitors' contracts contained such limitations. Schine used a hatchetman to threaten theater owners in at least one instance tried to get his competitor's landlord to break his lease or to lease to Schine effective after the expiration of the competitor's lease.

I would appreciate it if you would take the matter up with me first before selling.

Ninth. In Corbin, Ky., Schine had two theaters. When a new, superior theater was built in Corbin, its operator was unable to get either first-run or second-run pictures from the distributors. Between 1932 and 1940 when Schine was threatened with competition in Corbin, Schine had tied up all the first- and second-run product of all major distributors except Columbia second run. Schine's product was more than the operation of their two theaters in Corbin could use.

After the new theater opened Schine reduced its balcony admission prices at one of its theaters. Fox assisted Schine in this thing to full, indistinguishable from its license to Schine any minimum admission prices. After the operator of the new theater sold out to Schine, the latter raised its admission prices and closed one of the theaters.


The evidence discloses that the relationship between Corning and General Electric generated a condition whereby Corning preferred Westinghouse and General Electric's B medium. Some of the other and independent customers were required to pay prices in excess of those with which Westinghouse and other glass-producing interests always reserved the rights within Corning's field.

Fourth. Medicine: In the early days of prepaid medical care, the American Medical Association and local medical societies tried to stop such plans. Their tactics included expelling doctors from medical societies or refusing to admit them to such societies, if they worked for such plans or if they were willing to be reimbursed for their bills.
such insurance plans. Consultation was denied to such doctors as were hospital privileges needed to take care of their patients. A case of this sort involving the Group Health Association in the District of Columbia reached the Supreme Court (317 U.S. 519).

Pifth. Not until an antitrust suit was brought were the bylaws of the Associated Press, which prevented competitors of existing members of AP service, altered (226 U.S. 1 (1914)).

Sixth. Titanium: Letter of president of one of the companies in titanium cartel:

May I call the proposed combination, for simplicity, a cartel? The whole purpose of the cartel is to obtain a monopoly of patents, so that no one can manufacture it excepting the members of the cartel, and so can raise the prices by reason of such monopoly to a point that would give us much more profit on our present tonnage, but also prevent a growth in tonnage that would interfere with their greater profits in lithopene. United States v. National Lead Co., 69 U.S. (66 N.Y.) 150 (6 S.D.N.Y., 1945).

SENATE

Wednesday, May 6, 1964

(Legislative day of Monday, March 30, 1964)

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. MANSFIELD).

The Reverend J. Bruce Weaver, pastor, Lutheran Church of the Reformation, Washington, D.C., offered the following prayer:

Almighty God, sovereign Lord of the nations, Redeemer of time, of history and of humanity. Thy holy presence to be felt today in this Chamber of the Senate of the United States of America. We heartily thank Thee that Thou hast given us many reasons to believe that our beloved country has a place of favor and of grace within the mighty scope of Thy sovereignty will for mankind. Thou hast not abandoned us to the consequences of our persistent follies and instead hast raised us to a place of privilege and responsibility unprecedented in the memory of man. Even as we thank Thee for these evidences of Thy favor we hasten to pray that we have read them correctly and that we may appreciate them fully.

Mindful of the rich heritage Thou hast bestowed upon us, the standards of moral and ethical leadership Thou dost require of us, and of the many frightening opportunities we have for losing the one and betraying the other, we beseech Thy special guidance for these Thy servants, the Senators of the United States. Guide their deliberations to prompt and wise decisions. In their endeavors to discharge the vast and complex burden of the public trust vested in them by reason of their election by the people, may they never lose sight of the higher sovereignty by which they are called and to which they are ultimately answerable. May every word spoken here this day and every action contemplated or taken be informed by the very highest understanding of Thy will for us that can be brought to bear upon the present troublesome and troubling questions.

Above all else, we pray that Thou wilt renew the vision of our Nation, multiply its witness to the abiding value of freedom held in trust to Thee. May our usefulness to Thee remain undiminished by anything we do, or fail to do, this day. In our Redeemer's name we pray. Amen.

THE JOURNAL

On request by Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, May 5, 1964, was dispensed with.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that the President had approved and signed the following acts:

On April 29, 1964:
S. 2394. An act to facilitate compliance with the requirements of the United States and the United Mexican States, signed August 29, 1963, and for other purposes.

On April 30, 1964:
S. 1855. An act to amend the act of June 25, 1910 (36 Stat. 857; 25 U.S.C. 405, 407), with respect to the sale of Indian timber; S. 1931. An act to provide that the United States shall hold certain land in trust for the members of the Acoma Band of Pueblos.

S. 2111. An act to fix the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California; and
S. 2279. An act to authorize the transfer of the Plegan unit of the Blackfeet Indian Irrigation project, Montana, to the landowners within the unit.

EXECUTIVE MESSAGES REFERRED

As in executive session.

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, and withdrawing the nomination of Stewart J. Hyland, to be postmaster at Lakehurst, N.J., which nominating message were referred to the appropriate committees.

(F or nominations this day received, see the end of Senate proceedings.)

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

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

S. 1005. An act to amend paragraph (2) of subsection 309(e) of the Communications Act of 1934, as amended, by granting the Federal Communications Commission additional authority to grant special temporary authorizations for 30 days for certain nonbroadcast operations.

S. 1193. An act to amend section 309(e) of the Communications Act of 1934, as amended, to require that petitions for intervention be filed not more than 30 days after publication of the hearing issues in the Federal Register;
H.R. 3539. An act for the relief of Bozena Gwizdowska;
H.R. 1296. An act for the relief of John Kinch (alias John Mihal);
H.R. 1433. An act for the relief of Leon Llanos;
H.R. 1439. An act for the relief of Joanna Dramios;
H.R. 3854. An act for the relief of Paolo Armano;
H.R. 5023. An act for the relief of John Stewart Murphy;
H.R. 6133. An act for the relief of Miss Carmen Rioja and child, Paloma Menchaca Rioja; H.R. 6567. An act for the relief of Frances Sperilli;
H.R. 737. An act for the relief of Mrs. Eleonora Vespasian (nee Trentanove); H.R. 8469. An act for the relief of Dr. Saltn Akyol; and
H.R. 9875. An act for the relief of Wolfgang Stresemann.

ORDER FOR RECESS UNTIL TOMORROW AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business today, the Senate stand in recess until 10 a.m. tomorrow morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of a quorum call, there be a 45-minute hour, under the usual circumstances, with statements therein limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

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

The legislative clerk called the roll; and the following Senators answered to their names:

[No. 196 Leg.]

Aiken
Alioto
Anderson
Anderson
Barrett
Bayh
Bayne
Benjamin
Bennett
Biddle
Boggs
Burdick
Burke
Case
Church
Clark
Coffin
Collins
Conlan
Cook
Curtis
Davis
Dodge
Eldridge
Elder
Enid
Fong
Graham
Gravel
Gravel
Hart
Hartke
Hathaway
Hayes
Hilliard
Humphrey
Inouye
Jackson
James
Johnson
Jordan, Idaho
Keyes
Kennedy
Kuchel
Lausche
Long, Mo.
Hart
Mansfield
McCarthy
Moody

10124
CONGRESSIONAL RECORD—SENATE
May 6