AGRICULTURAL PRODUCERS MARKETING ACT

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
AGRICULTURE AND FORESTRY
UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 109

A BILL TO CONTROL UNFAIR TRADE PRACTICES AFFECTING PRODUCERS OF AGRICULTURAL PRODUCTS AND ASSOCIATIONS OF SUCH PRODUCERS, AND FOR OTHER PURPOSES

MAY 2, 4, AND 11, 1967

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AGRICULTURAL PRODUCERS MARKETING ACT

TUESDAY, MAY 2, 1967

UNITED STATES SENATE, SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION OF THE COMMITTEE ON AGRICULTURE AND FORESTRY,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan (chairman of the subcommittee), presiding.

Present: Senators Jordan of North Carolina, Byrd of Virginia, and Hollings.

Also present: Senator Aiken.

Senator JORDAN. The subcommittee will please come to order.

The subcommittee begins hearings today on S. 109 which prohibits certain acts injurious to producer cooperatives.

The subcommittee held hearings on a similar proposal on January 6, 1965. As a result of those hearings an amendment in the nature of a substitute was developed; and the subcommittee held hearings on the substitute June 14, 15, and 16, 1966. The version before the subcommittee today incorporates amendments recommended at that hearing.

The Department of Agriculture has recommended enactment of the bill with amendments providing for the use of a cease-and-desist procedure in its enforcement.

There is inserted in the record at this point a copy of the bill, the report from the Department of Agriculture, and a staff explanation of the bill as introduced.

(S. 109, a report from the Department of Agriculture, and the committee staff's explanation of S. 109 follow:)

[S. 109, 90th Cong., first sess.]

A BILL To control unfair trade practices affecting producers of agricultural products and associations of such producers, and for other purposes

Be enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the Agricultural Producers Marketing Act of 1967.

LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

SEC. 2. Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form move in large part in the channels of interstate and foreign commerce, and such products which do not move in these channels directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation. Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely af-

fected unless they are free to band together in cooperative organizations as authorized by law. Interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

It is, therefore, declared to be the policy of Congress and the purpose of this Act to establish standards of fair practices required of handlers in their dealings with producers of agricultural products and their cooperative associations.

SEC. 3. When used in this Act—

(a) The term "handler" means any person engaged in the business or practice of (1) acquiring agricultural products from producers or associations of producers for processing or sale; (2) grading, packaging, handling, storing, or processing agricultural products received from producers or associations of producers; (3) contracting or negotiating contacts or other arrangements, written or oral, with producers or associations of producers with respect to the production or marketing of any agricultural product; or (4) acting as an agent or broker for a handler in the performance of any function or act specified in clause (1), (2), or (3) of this paragraph.

(b) The term "producer" means a person engaged in the production of agricultural products as a farmer, planter, rancher, dairyman, fruit, vegetable, or nut grower.

(c) The term "association of producers" means any marketing, bargaining, shipping or processing organization as defined in section 15(a) of the Agricultural Marketing Act of 1929, as amended (49 Stat. 317; 12 U.S.C. 1141j(a)), or in section 1 of the Act, entitled "an Act to authorize association of producers of agricultural products," approved February 18, 1922 (42 Stat. 388; 7 U.S.C. 291).

(d) The term "person" includes individuals, partnerships, corporations, and associations.

SEC. 4. It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

(a) To interfere with or restrain, or threaten to interfere with or restrain, by boycott, coercion, or any unfair or deceptive act or pactice, any poducer in the exercise of his right to join and belong to an association of producers; or

(b) T discriminate or threaten to discriminate against any producer with respect to price, quantity, quality, or other terms of purchase or acquisition of agricultural commodities because of his membership in or contract with an association of producers; or

(c) To coerce or intimidate any producer or other person to breach, cancel, or otherwies terminate a membership agreement or marketing contract with an association of producers; or

(d) To pay or loan money, give any thing of value in excess of the true market value of any agricultural commodity which is being purchased, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

(e) To make false reports about the finances, management, or activities of associations of producers or interfere by any unfair or deceptive act or practice with the efforts of such associations in carrying out the legitimate objects thereof; or

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act.

SEC. 5. (a) Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited by section 4, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

(b) Whenever the Secretary of Agriculture has reasonable cause to believe that any handler or group of handlers has engaged in any act or practice prohibited by section 4, he may bring civil action in the appropriate district court of the United States by filing with it a complaint (1) setting forth facts pertaining to such pattern or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the handler, or handlers, responsible for such acts or practices.

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any provision of section 4 of this

Act may sue therefor in the district court of the United States for the district in which defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

(d) Any person who violates, or combines or conspires with any other person to violate, any provision of section 4 of this Act is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $1,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

(e) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(f) The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.

SEC. 6. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., May 1, 1967.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of January 16, 1967, for a report on S. 109, a bill "To control unfair practices affecting producers of agricultural products and associations of such producers, and for other purposes."

This Department recommends that the bill be passed with the suggested changes set forth in the enclosed statement.

The proposed bill is intended to establish standards of fair practices required of handlers in their dealings with producers of agricultural products and their cooperative associations. Section 4 of the proposed bill would make it unlawful for any handler or agent for a handler who acquires, grades, packs, handles, stores, processes, negotiates or contracts for agricultural products from producers or associations of producers:

"(a) To interfere with or restrain, or threaten to interfere with or restrain, by boycott, coercion, or any unfair or deceptive act or practice any producer in the exercise of his rights to join and belong to an association of producers; or

"(b) To discriminate or threaten to discriminate against any producer with respect to price, quantity, quality, or other terms of purchase or acquisition of agricultural commodities because of his membership in or contract with an association of producers; or

"(c) To coerce or intimidate any producer or other person to breach, cancel, or otherwise terminate a membership agreement or marketing contract with an association of producers; or

"(d) To pay or loan money, give any thing of value in excess of the true market value of any agricultural commodity, which is being purchased, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers; or

"(e) To make false reports about the finances, management, or activities of associations of producers or interfere by any unfair or deceptive act or practice with the efforts of such associations in carrying out the legitimate objects thereof; or

"(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act."

Section 5 of the bill provides for enforcement through injunctive relief upon application of the aggrieved person or the Secretary of Agriculture. It provides for criminal penalties in the event any person violates its provisions.

Cooperative action in agricultural production and marketing is increasing. It is growing in response to the need (1) to achieve more orderliness and efficiency in production and marketing and (2) to protect and improve bargaining relationships between producers and marketing firms in the face of major changes taking place in the marketing system.

These changes include the growing integration of production and marketing of agricultural products, the increased control of these functions by large, di-

versified corporations, and the expanded use of contracting by such corporations to meet their needs. Developments such as these weaken the marketing and bargaining position of individual producers.

It is essential to protect the rights of producers to join together in cooperatives to perform necessary marketing operations, including bargaining with processors and other buyers over the terms of sale of the producers' farm products. Cooperative bargaining has come into prominence as the old market system is being displaced by contractual arrangements in the production and marketing of agricultural products. We believe these trends will continue.

The proposed bill would materially strengthen farmers' ability to bargain and market effectively. It will reaffirm the right of producers to join together and operate cooperatives without interference. It will remove some of the impediments confronting producers in organizing and operating their cooperative associations.

Producers have suffered harassment and reprisal by some processors because of activity in organizing and joining a cooperative. Grower contracts have been canceled or reduced in volume. Processors have offered inducements to growers not to join a cooperative. Attempts have been made to buy off the cooperative's leaders to create dissention in the organization.

Processors operating in several production areas have coerced growers desiring to form a bargaining cooperative by threatening to leave the cooperative's territory and expand operations elsewhere. Growers have failed to get redress after such questionable processor actions.

If this bill were enacted, many producers who fear harassment or discrimination would feel free to join a cooperative association. It would help producers use cooperatives as a more effective tool in marketing their products.

In order to facilitate enforcement and to clarify certain provisions of the bill this Department suggests the amendments set forth in the enclosed statement. They are summarized as follows:

It is suggested that Section 5 be amended to provide for enforcement of the prohibited practices through an administrative procedure under the jurisdiction of the Secretary of Agriculture. The procedure suggested is one similar to that under Section 203 of the Packers and Stockyards Act (7 U.S.C. 193) and provides for cease and desist orders after full administrative hearings. Such orders may be enforced by means of actions for civil contempt brought by the United States, and private treble-damage actions are authorized for violations of such orders. Criminal penalties are also provided for where such an order is violated.

In order to prevent irreparable harm to producers during the pendency of administrative proceedings, provision is made for the Secretary of Agriculture to petition the United States district court where the alleged violation occurred or where the alleged offender does business, for appropriate temporary relief or restraining order.

We suggest three minor changes in Section 4 of the bill. In subsection (a) the term "boycott" seems inappropriate and should be deleted. A "refusal to deal" with a producer because of his membership in or contract with an association of producers is substituted for "boycott." The new language, however, is added to subsection (b). To avoid confusion because of the use of the term "true market value," in subsection (d), which is not defined, we suggest new wording for this subsection that will better achieve the purpose of the subsection.

Since some forms of conduct declared unlawful by Section 4 of the bill would also violate existing statutes, we are suggesting the addition of a new section to make it clear that the bill is not intended to place exclusive jurisdiction in the Department of Agriculture.

The cost of administering the act for the first year will approximate $200,000. Costs in future years will depend upon the number of investigations and proceedings necessary to enforce the act.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN.

PROPOSED AMENDMENTS TO S. 109

1. Page 3, line 21, strike out the word "boycott,".
2. Page 4, strike out lines 1 through 3 and insert the following:
   "other terms of purchase or acquisition of agricultural commodities, or refuse to deal with a producer, because of his membership in or contract with an association of producers; or"

3. Page 4, after line 7, strike out lines 8 through 12 and insert the following:

"(d) To give or offer to give any preference in price in the purchase of any agricultural commodity, or to give or offer to give any valuable consideration or other inducement or reward to a producer for refusing to belong or ceasing to belong to an association of producers; or"

4. Page 4, after line 20, strike out all of Sections 5 and 6, extending through line 16 on page 6 and insert the following:

"SEC. 5. (a) Whenever the Secretary of Agriculture has reason to believe that any handler has violated or is violating any provision of this Act, he shall cause a complaint in writing to be served upon the handler, stating his charges in that respect, and requiring the handler to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the handler a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing the Secretary may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the handler, be adjourned for a period not exceeding fifteen days.

"(b) If, after such hearing, the Secretary finds that the handler has violated or is violating any provisions of this Act covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the handler an order requiring such handler to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture.

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 7, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the handler to be heard, may amend or set aside the report or order, in whole or in part.

"(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914 (38 Stat. 719, as amended; 15 U.S.C. 45).

"SEC. 6. The Secretary of Agriculture shall have power, upon issuance of a complaint as provided for in section 5 of this Act charging that any person has engaged in or is engaging in a practice in violation of this Act, to petition the United States district court within any district wherein the practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

"SEC. 7. (a) An order made under section 5 shall be final and conclusive unless within thirty days after the service the handler appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such handler will pay the costs of the proceedings if the court so directs.

"(b) The clerk of the court shall immediately, cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record of such proceedings, as provided in section 212 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary restraining order and injunctions, restraining, to the extent it deems proper, the handler and his officers,

directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

"(e) The court may affirm, modify, or set aside the order of the Secretary.

"(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

"(g) If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the handler, and his officers, directors, agents and employees from violating the provisions of such order or such order as modified.

"(h) The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court.

"SEC. 8. Any handler, at any officer, director, agent, or employee of a handler, who fails to obey any order of the Secretary issued under the provisions of section 5, or such order as modified—

"(1) After the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time; or

"(2) After the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

"(3) After such order, or such order as modified, has been sustained by the courts as provided in section 7;

shall on conviction be punished by a fine of not less than $500 nor more than $10,000, or imprisonment not less than six months nor more than five years, or both. Each day during which such failure continues shall be deemed a separate offense.

"SEC. 9. Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any order of the Secretary issued under section 5 of this Act may sue therefor in the district court of the United States for the district in which defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

"SEC. 10. For the efficient administration and enforcement of this Act, the provisions (including penalties) of sections 6, 8, 9 and 10 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914 (38 Stat. 721–723, as amended; 15 U.S.C. 46, 48, 49 and 50) (except the last paragraph of section 9), and the provisions of subsection 409(1) of the Communications Act of 1934 (48 Stat. 1096, as amended; 47 U.S.C. 409(1)), are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this Act and to any person, firm, or corporation with respect to whom such authority is exercised.

"SEC. 11. The provisions of this Act shall not be construed to deprive the proper State courts of jurisdiction in actions for damages.

"SEC. 12. Nothing contained in this Act shall be construed to supersede, displace, or in any way interfere with the jurisdiction of any Federal court or Federal agency.

"SEC. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

"SEC. 14. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act."

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

(Staff Explanation of S. 109, 90th Cong.)

I—SHORT EXPLANATION

This bill would prohibit handlers of agricultural products from performing specified acts injurious to producer cooperatives (i.e. interference with producers joining or continuing as members, discrimination against members, and false reports about the cooperatives or interference with their operations). Violations would constitute misdemeanors punishable by fine and imprisonment, and subject violators to civil suits for treble damages. Injunctive relief on petition of the aggrieved party or the Secretary of Agriculture is also provided for.

II—SECTION BY SECTION EXPLANATION

The first section provides a short title, the "Agricultural Producers Marketing Act of 1967".

Section 2 contains a legislative finding that interference with the rights of farmers to organize in cooperatives adversely affects interstate and foreign commerce.

Section 3 defines "handler", "producer", "association of producers", and "person". The term "handler" is designed to cover all persons engaged in receiving agricultural commodities from farmers or associations of farmers as principals, agents, or brokers. The term "association of producers" means any farmer cooperative covered by the Capper-Volstead Act or the Agricultural Marketing Act of 1929.

Section 4 prohibits any handler from—

(a) interfering, or threatening to interfere, with a producer joining a cooperative,

(b) discriminating, or threatening to discriminate, against a producer because of his membership in a cooperative,

(c) coercing a producer to terminate such membership,

(d) inducing a producer not to become or remain a member of a cooperative,

(e) making false reports about, or interfering with, cooperatives,

(f) conspiring with any other person to do, or aid the doing of, any such act.

Section 4 further prohibits a handler from permitting his agent or employees to do any of the foregoing.

Section 5 provides for enforcement through—

(a) injunction upon application of the aggrieved person,

(b) injunction upon application of the Secretary of Agriculture,

(c) suit for treble damages by any injured person,

(d) fine not exceeding $1,000 or imprisonment not exceeding one year, or both.

The district courts are given jurisdiction and directed to exercise it without regard to whether all administrative remedies have been exhausted.

Section 6 provides that the holding of any provision to be invalid shall not affect the validity of the remaining provisions.

III—COMMITTEE CONSIDERATION

A similar bill by the same number, S. 109, was introduced in the 89th Congress on January 6, 1965. Hearings were held by the Subcommittee on Agricultural Research and General Legislation on June 14, 15, and 16, 1966. Subsequent to those hearings Senator Aiken, working with a number of the proponents of the bill, prepared and offered an amendment in the nature of a substitute designed to meet some of the objections which had been raised at the hearings. The substitute differed from the original text of S. 109, 89th Congress in that—

1. It stood on its own base, rather than amending the Capper-Volstead Act.

2. Its prohibitions were directed against "handlers" as defined in section 3(a), rather than against "processors", "handlers", "distributors", "dealers", or "agents", which are not defined. The principal difference was that cooperative associations of producers were not included in the definition of "handler" as used in the substitute, while they would have been subject to the prohibitions of the original text. In all other respects the definition of "handler" in the substitute included all persons subject to the prohibitions of the original text, and was broader in that it included, in addition, persons doing only intrastate business, persons purchasing only from cooperative associations, brokers as well as agents, and persons who did not purchase agricultural commodities but who performed certain other operations with respect to their processing, production, or marketing.

3. The substitute provided additional means of enforcement through injunction proceedings instituted by the aggrieved party or the Secretary of Agriculture, and provided that the district courts should have jurisdiction without regard to whether the aggrieved party had exhausted administrative remedies.

4. The substitute included legislative findings with respect to interstate commerce, defined terms, clarified the offenses covered by it, included threatened as well as actual interference or discrimination, and omitted section 5 of the original text (which disclaimed any prohibition against affiliation of cooperative associations).

Hearings were held by the Subcommittee on Agricultural Research and General Legislation on Senator Aiken's substitute amendment on September 28, 1966. Both sets of hearings have been printed.

IV—DIFFERENCES BETWEEN S. 109, 90TH CONGRESS, AND SENATOR AIKEN'S SUBSTITUTE AMENDMENT TO S. 109, 89TH CONGRESS

S. 109, as introduced in the 90th Congress on January 11, 1967 differs from Senator Aiken's substitute amendment to S. 109 of the 89th Congress in the following respects:

(1) The short title has been changed to Agricultural Producers Marketing Act of 1967;

(2) Producer associations would be subject to the prohibitions of the new bill;

(3) The definition of "producer" has been clarified; and

(4) The words "or acquisition" have been inserted in the phrase "purchase or acquisition" in section 4(b) to make it clear that contract production is covered.

Senator JORDAN. Before we start, I want to make this announcement for the benefit of some of the witnesses who probably have come a good long way. We are going to try to hear everybody who wants to be heard this morning, but whether we get through today and Thursday, we will keep on until we get through. We will have to terminate this hearing today at 1 o'clock. We will be back at 10 o'clock on Thursday. It may be that some of you would like to check your position on the agenda this morning. As to when we will get to you, it will depend on how long the statements are that are presented.

I want to say to you that, as always, we are including anything that you want to say in its entirety in the record and you can abbreviate your statement if you wish to do so. That will be up to you. That will determine how many people can be heard today and on Thursday and the other days that we will meet.

We are very glad to have with us this morning Senator Williams of Delaware and Senator Lausche of Ohio. We will be glad to hear from them, but first we will hear from Senator Aiken.

Usually, we take the visiting Senators first, but Mr. Aiken is one of the hornblowers.

Senator Aiken of Vermont.

STATEMENT OF HON. GEORGE D. AIKEN, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator AIKEN. They can hear me anytime, is what he meant by that statement. I just want to say that the bill that is under consideration today is somewhat different from the version Senator Lausche and I introduced in 1964, and reintroduced in 1965 with the cosponsorship of Senator Young of North Dakota, an able member of this subcommittee.

Senator Burdick of North Dakota, Senator Hart of Michigan, Senator Church of Idaho, Senator Hickenlooper of Iowa, and Senator Bayh of Indiana have also indicated a wish to be included as cosponsors of S. 109.

You will recall that we held hearings last June on the original bill and, as a result of the testimony presented at that time, the bill was redrafted in order to be the "fairplay bill" that we envisioned from the outset.

Additional hearings were held last September on this revised version.

Further changes were made as a consequence of the second hearing in the continuing effort to be fair to all concerned.

Mr. Chairman, if we are to maintain a strong economy in this country, we must maintain a strong agriculture.

Nearlyone-third of all the gainfully employed persons in America depend on the farm for their income.

To maintain that income at a satisfactory level, the farmer himself must get reasonable prices for his production.

The fact is, however, that net farm income has been dropping lower and lower until we have seen a drop of 10 percent from a year ago.

From 80 percent of parity a year ago prices dropped to 72 percent of parity for last month.

And the prices for farm production have dropped at a time when international traders, distributors, and processors of farm commodities have been reaping record profits.

Unless steps are taken at once to protect American agriculture, our economy will continue to decline.

We will become a nation of have-nots in many respects— watching our production of both raw material and manufactured goods migrate to other countries as is now being done with cotton and cotton textiles and processed foods.

As this occurs, the international suppliers will more and more control the market prices for the American producer.

Only Government payments are keeping a large percentage of our farmers in production today.

As you know, the question of Government payments is always controversial, but that is why so many farmers are still operating on the farms.

When farmers attempt to organize to protect their own income, they find themselves under attack by organized opposition.

For many years, there have been complaints from producers that they have been threatened directly or indirectly with loss of their markets should they attempt to bargain collectively for the selling price of their products.

This situation cannot be tolerated.

Price fixing cannot safely be delegated to a favored few.

It may be and probably will be said that the farmer is already protected against monopoly practices.

But, what good is a law which prohibits such practices but provides no penalty?

S. 109 would put teeth in existing law and those who presently make and control market prices will vigorously oppose it.

They do not want the farmer to have a bargaining position.

They want to make the price and conditions of sale.

I hope that the bill before us will be promptly reviewed and reported favorably to the Senate.

Mr. Chairman, I have received, I suppose, a good many hundreds of letters supporting this bill, but one which struck me as particularly pertinent and explanatory is one which is written under date of April 18, 1967, by Harold Gindler, president of the Madison County Farm Bureau of Edwardsville, Ill., and I would like to have this typical letter put into the record at this point.

Senator JORDAN. It will be included at this point in the record.

(The letter referred to, dated April 18, 1967, follows:)

EDWARDSVILLE, ILL., *April 18, 1967.*

HON. GEORGE D. AIKEN,
Senate Office Building,
Washintgon, D.C.

DEAR SENATOR: The possibility that S. 109 may meet with serious opposition is cause enough for an Illinois farmer to write a Vermont Senator.

Madison County has considerable acres devoted to the growing of vegetables. Vegetable farmers are more exposed to discrimination by processors. We have seen such discrimination in Madison County on some occasions.

The latest case of discrimination resulted in considerable financial loss of several Farm Bureau members. The reason given for failure to renew production contracts was—removal of acres (not facilities) to another geographic area. The previous fall, contracting farmers had been encouraged to buy additional equipment, used in the production of the vegetable crop, from the processing firm. Expanded need for the vegetable was used as the bait.

During the winter months, most growers joined the Quality Vegetable Growers Association, a bargaining group affiliated with Farm Bureau. Contracts were not offered any growers the following spring. We firmly believe these growers were discriminated against because of membership in a producers organization. For this reason, we are very interested in S. 109 and the companion House bill to become law.

Sincerely,

HAROLD GINDLER,
President. Madison County Farm Bureau.

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

Senator JORDAN. We will be glad to hear from you now, Senator Williams.

STATEMENT OF HON. JOHN J. WILLIAMS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator WILLIAMS. Mr. Chairman and members of the committee, I appreciate this opportunity to appear before your committee in support of the principles of S. 109.

This bill is designed to protect the rights of any American farmer to join an organization of farmers without fear of retaliation or threats of reprisals from any source.

This freedom of choice of any farmer to join or not to join an organization of his choice is a basic American right, and it must be protected.

The penalty provisions of the bill are designed to protect the rights of the farmer to join an organization.

To protect the farmer against retaliation or reprisals because he joins or takes part in organizing an association, the bill provides certain penalties in that the farmer who suffers damage as the result of such retaliation can file a civil suit, and if he can prove his charge he can collect triple damages from the responsible party.

These civil penalty provisions are important, but I would recommend the elimination of the criminal provisions as are now embraced in this bill. I do not consider them necessary, and their elimination would greatly enhance the merits of the bill.

The existing law already provides criminal penalties against any group of individuals or dealers who conspire to rig markets or to fix prices or in any other manner to exercise control over marketing conditions.

Many feed dealers who would otherwise be supporters of this bill are afraid that a disgruntled customer could use the criminal provisions proposed under this bill as a semi-blackmail threat.

It is true that if the dealer is not guilty of having discriminated against this farmer because of his connection with an organization of farmers he need have no fear of conviction. But many people in America consider the mere threat of a criminal prosecution as a stigma on their reputations and would actually pay an unjustified claim rather than face the adverse publicity of a court trial.

I recognize that for enforcement the law must have penalties, but in my opinion the civil penalties, which provide for triple damages, are adequate and the criminal provisions are not necessary.

For this reason I recommend the removal of the criminal provisions of this bill.

In conclusion, I point out that this bill has a most worthy objective. It gives added protection to the farmers while at the same time providing proper safeguards for the rights of the dealers.

Under this bill both the farmers and the dealers are free to continue to operate under broiler-growing or egg-producing contracts which provide a guaranteed minimum payment plus added incentive payments based upon feed conversion, quality, and market price.

Likewise, this bill does not interfere with buying and selling any type of farm produce on the basis of grade and quality.

Both the farmers and the dealers are in complete agreement upon the necessity of protecting these incentive payment contracts.

The right of the dealer to choose his customer and the right of the customer to choose his dealer are fully protected so long as this is a free choice and not a decision based upon an effort to discriminate or retaliate against the farmer for his connection with an association.

Much of the controversy following the introduction of this bill developed as the result of misunderstanding as to its intended interpretation. Therefore, I recommend that in the committee report the intent of the legislation be made very clear; and if it is necessary to change the language of the bill in order to accomplish this objective, that too should be done.

With this understanding and with the elimination of the criminal provisions as suggested I urge the enactment of this bill.

Senator JORDAN. Thank you very much, Senator Williams.

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Senator WILLIAMS. I ask that there be printed as a part of my remarks an editorial appearing in a recent issue of the broiler industry publication, commenting on this same subject.

Senator JORDAN. It is so ordered, and it will be included in the record at this point.

(The article is as follows:)

[From Broiler Industry, April 1967]

S. 109 AND "FREE ENTERPRISE"

Feelings are running high about the agricultural producer's first formal collective bargaining proposal, with employer groups opposing Senate bill 109 and most farmer organizations supporting it.

Employer or processor opposition is natural. It will increase the cost of doing business. It presents all of the irritations associated with collective bargaining in an industrial society. If nothing else, it represents change, and most of us resist even that.

However, the arguments raised against S. 109 (publicly, at least) appear to speculate more about application of its provisions than to analyze its purpose. Some of the statements made by National Broiler Council and the American Feed Manufacturers Association appear to be calculated to provoke emotional response more than thoughtful appraisal.

If NBC, AFMA and the U.S. Chamber of Commerce want the shackles of agricultural regulations removed or modified, and if they want feed grain controls abandoned, then they should accept the bitter with the sweet in a "free" society—the right for farmers to bargain voluntarily for a better position, and to seek in Congress legislation strong enough to make their efforts effective.

Since the farmer will have to fight harder than ever for survival in the economic jungle of a free market, Farm Bureau suggests that S. 109 is an important way to give him countervailing power. It even invites modification of the proposed bill by its opponents.

Something terribly important is involved here . . . and it goes far beyond the broiler industry. After receiving $60 billion or so in direct and indirect subsidies over the past 35 years, an important segment of our farmers is asking for freedom to run its own affairs.

The Farm Bureau takes the position that if marketing of farm products is not organized by farmers themselves, this function will be taken over by labor unions, the business community or the federal government.

More to the point, Farm Bureau sees in the power struggle efforts to copy undesirable labor union methods to corner supply and force unrealistic prices. The recent NFO milk strike is an example. Unorganized farmer bargaining effort, as Farm Bureau sees it, merely will result in increased pressure on USDA to get involved in the control of production and the regulation of marketing.

These are two actions that the business community, for certain, does not want to encourage. But processor objections center on two other interpretations of S. 109 that have no real basis in fact.

Broiler integrators are told, for example, that they will be forced to deal with an association of contract growers regardless of individual grower efficiency. This is nonsense. The *only* limitation is that producers must not be discriminated against *solely* because they belong to a marketing association.

NBC and AFMA argue, too, that the unfair acts covered by this bill already are prohibited by existing law. They're right, *if* a producer of perishables (like broilers or tomatoes or milk) is willing to wait five to seven years for the courts to make a final determination on this month's particular transaction.

S. 109 does seek swift, injunctive relief to meet the pace of the fast-moving perishables market, but it still makes the *producer* bear the burden of proof. Processors can even refuse to deal with a particular marketing association (membership in which, incidentally, would be voluntary).

If S. 109 is as "one-sided" as NBC and AFMA charge, they would do industry an infinitely better service to address time and effort in proposing to Congress modifications of the bill. Perhaps they should seek a rider which concurrently would give the processor the same bargaining power as he faces the first buyer, with no more, or no less, immunity from antitrust than the grower would receive under S. 109!

There's a power vacuum here . . . and it's going to be filled. Criticism of S. 109, without even accepting the principle that such legislation is justifiable, is tantamount to inviting—tomorrow or the day after—a full-scale Wagner Act for agriculture. What a Pandora's box *that* would open!

Senator JORDAN. Do you have any questions?

Senator AIKEN. I think Senator Williams made an excellent statement and his suggestion relative to eliminating that particular criminal provision of the bill is a subject that will be taken under consideration, I know, by the committee.

Senator JORDAN. I might ask all of you: Is it your thinking that this bill is designed to protect the producer, that is, the farmer, that that is the object of the bill?

Senator WILLIAMS. That is the object of the bill, yes, sir; that is my understanding.

Senator JORDAN. And this is about what the bill will do?

I just wanted to know about that.

Senator WILLIAMS. It is my understanding that the bill is designed to protect the rights of the farmer to join cooperative farmer organizations without fear of discrimination or retaliation on the part of any dealer because he has done so. I feel that the bill is necessary from that standpoint. I think it does carry out this objective.

Senator AIKEN. Mr. Chairman, I would like to point out the historical significance of this hearing this morning. To the best of my knowledge, this is the first time since 1947 that all major farm organizations in this country have been in agreement on a piece of pending legislation.

Senator JORDAN. That is unusual, a rarity.

Senator AIKEN. Twenty-three years ago. This is a proper statement to make now.

Secretary FREEMAN. May it happen often.

Senator AIKEN. Yes.

Senator JORDAN. Thank you very much.

Senator AIKEN. This may be the beginning of a new era.

Senator JORDAN. Did you have any questions of the witness?

Senator BYRD. No questions.

Senator JORDAN. We will be glad to hear from you at this time, Senator Lausche.

STATEMENT OF HON. FRANK J. LAUSCHE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator LAUSCHE. Mr. Chairman and members of the committee, I am pleased to appear before you this morning as a sponsor and a supporter of S. 109. And I ask that my prepared statement be included in the record as if read; but I will at this time read excerpts from it which I believe deal with the important aspects of the bill.

Senator JORDAN. It is so ordered, and it will be made a part of the record at the conclusion of your oral statement.

Senator LAUSCHE. This bill does not create marketing associations; farmers do that on their own volition. This bill does not force farmers to belong to associations. That decision is completely up to them, being permitted to either join or not to join.

The bill does not force purchasers of farm products to deal with bargaining associations. That decision is the decision of the purchas-

ers, to decide for themselves whether they will deal with the individual farmer or deal with the marketing association.

The bill, in my opinion, merely attempts to create rules of the road and to prevent improper conduct, and I want to emphasize the words "improper conduct," and I will demonstrate later what I have in mind by those words.

Farmers should be free to join marketing associations without fear of retaliation, economic or otherwise. This bill simply attempts to protect the freedom of the farmer and to protect him against retaliation from handlers and purchasers from the farmer or the marketing association.

The committee will recall that when the original version of S. 109 was introduced during the last session of Congress hearings were held in June. On the basis of those hearings, the bill was revised to meet legitimate objections in a sincere attempt to insure equitable treatment to purchasers as well as producers.

Additional hearings were held on the revised bill in September of last year.

Before S. 109 was introduced this year by Senator Aiken and myself, further revisions were made to perfect this legislation and to eliminate from it the objections that were raised last year.

It is my belief that we have now arrived at a moderate carefully drawn bill which deserves the support of this committee of the Congress.

I have heard the argument that this bill would deprive purchasers of the right to choose their suppliers. I will demonstrate later that this bill does not at all deprive the purchasers or what are called handlers in the bill, of the right to choose from whomever they wish to buy. That is their constitutional right. The bill does not impair their freedom, whatsoever.

Now, Mr. Chairman, I want to go to the bill and discuss it.

In the declaration of policy, in section 2, page 2, it is declared:

> The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the nation.

I do not think that there can be any quarrel with that statement.

I read further:

> Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to band together in cooperative organizations as authorized by law.

I would suggest the elimination of the word "band" and to put in "join" or something similar.

I read further:

> Interference with this right is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

Now, that is the significant part of the preamble:

> Interference with this right of freedom is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

So much for the declaration of policy.

Now, Section 3 gets into definitions and it defines "handler," that is, the purchaser of the goods from the producer or the producer's

association. The second definition under (b) is of "producer" which means, I take it, the farmer, the planter, the rancher, the dairyman, the fruit and vegetable and nut grower.

And (c) defines the term "association of producers" or "association of farmers" which mean the cooperative.

Now, I get to the very important part of the bill which is in dispute, and I suggest that we take a careful look at the language to see whether it at all impairs the ability of the handler, that is, the purchaser, to deal with whomever he wishes.

Section 4 reads:

It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices:

Now, the practices are:

(a) To interfere with or restrain, or threaten to interfere with or restrain, by boycott, coercion, or any unfair or deceptive act or practice, any producer in the exercise of his right to join and belong to an association of producers;

And I challenge the ability of anyone to point out that that does what has been claimed by the opponents of the bill.

(b) To discriminate or threaten to discriminate against any producer with respect to price, quantity, quality, or other terms of purchase or acquisition of agricultural commodities because of his membership in or contract with an association of producers;

Now, all that says in that is if a man belongs to an association, you shall not threaten him, you shall not discriminate against him with respect to price, quantity, or quality, or other terms of purchase.

To read further:

(c) To coerce or intimidate any producer or other person to breach, cancel, or otherwise terminate a membership agreement or marketing contract with an association of producers;

Again, all that says is "leave the farmer alone." If he wants to join an association, he may do so. If he does join it, you cannot begin to discriminate against him, and you cannot intimidate him to withdraw, or to breach, or to cancel his understanding with the marketing association.

To read further:

(d) To pay or loan money, give any thing of value in excess of the true market value of any agricultural commodity which is being purchased, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers;

What is wrong with that?

The bill says:

You shall not give money or anything of value, or anything of benefit to induce a farmer to separate himself from an association or not to join it.

Senator AIKEN. That means: "Thou shall not bribe."

Senator LAUSCHE. This is among the farmers; we are talking about farmers. This is what it means; that is right.

Now, reading further:

(e) To make false reports about the finances, management, or activities of associations of producers or interfere by any unfair or deceptive act or practice with the efforts of such associations in carrying out the legitimate objects thereof;

That says that you cannot commit libel; you shall not commit slander by making false statements about what the association is

doing. If you are speaking the truth, do it. Nobody is interfering with you, but if you are lying about the association, you will have to stop.

And, finally:

(f) To conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act.

You shall be prohibited from conspiring, combining, agreeing, or arranging with any other person to do or to aid or abet the doing of any act made unlaw by this act.

Now, those are the substantive prohibitions, and I submit all they attempt to do is to prevent the handler, the purchaser, from resorting to any means of fraud, intimidation, coercion, payment of bribes, or otherwise to an individual not to belong to a marketing association or to induce him to withdraw.

Now, the next section deals with remedies. What shall be the remedy? And it says that an aggrieved individual can go into a court of equity and get injunctive relief. That is in paragraph (a), and, then (b) gives the Secretary of Agriculture the power to go into court and obtain injunctive relief; (c) says that a farmer who has been subject to these prohibitive acts may sue for damages.

On the margin of my copy of the bill, Mr. Chairman, I have written that I think that the triple damages is harsh. I did not catch this when I read the bill. I will ask the committee, in the event that you finally approve the bill, that you take a look at this paragraph (c) on the matter of damages, because it says "shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee."

Of course, you, also, raise this in this section, that if the farmer loses, should he pay the attorney's fees of the man that he sued?

I would suggest that you give study to this question.

Senator AIKEN. I think the committee will give full consideration to your recommendation, but I have the impression that this is copied from other existing laws. I am not sure about that.

Senator LAUSCHE. I think it is. That is why I make the suggestion that I do, because I believe that the triple damages is a blood-letting operation.

Now, the next section, section (d), deals with criminal penalties, and I concur with what Senator Williams said about that.

Now, those are my views, and I believe it cannot be argued that this is attempting to create a monopoly in the farmer. It is not that at all. The farmer, all he asks is to permit him to join a marketing association if he wants to do so, to protect him against intimidation, fraud, bribes, and other wrongs that might be practiced upon him to stop him from joining.

Senator JORDAN. Thank you.

We will include your prepared statement in the record at this point.

(The prepared statement of Senator Lausche is as follows:)

I appreciate the opportunity of appearing before this Committee in support of S. 109, a bill which I have co-sponsored with Senator Aiken and other Members of the Senate.

The purpose of this bill is to protect the rights of agricultural producers to join and belong to associations which are designed to facilitate the marketing of their products and to increase their bargaining power. Agricultural products are produced in the United States by many individual farmers and ranchers

scattered throughout the various states of the nation. These farm producers have achieved a remarkable record, and I believe their efforts should be properly rewarded in the market.

The family farm operation of today is an efficient and modern unit of production. It is essential that we protect the rights of these individual producers to organize for the purpose of marketing their products. This is a matter of vital concern not only to the welfare and future of American agriculture but also to the nation as a whole.

This bill does not create marketing associations. Farmers do that. This bill does not force farmers to belong to associations. That decision is up to them. This bill does not force purchasers of farm products to deal with bargaining associations. That decision is theirs.

This bill merely attempts to create "rules of the road" and prevent improper conduct. Farmers should be free to join marketing associations without fear of retaliation, economic or otherwise. This bill simply attempts to protect that freedom.

As the Committee will recall, when the original version of S. 109 was introduced during the previous Congress, hearings were held in June. On the basis of these hearings, the bill was revised to meet legitimate objections in a sincere attempt to assure equitable treatment to purchasers as well as producers. Additional hearings were held on the revised bill in September of last year.

Before S. 109 was introduced this year, further revisions were made to perfect this legislation. I believe we have now arrived at a moderate, carefully drawn bill which deserves the support of this Committee and of this Congress.

S. 109 would make unlawful discriminatory treatment designed to prevent farmers from exercising their right "to join and belong to an association of producers of agricultural products." Farmers could not be coerced or intimidated into canceling their membership, nor could false reports be issued in regard to their association's activities. Certainly farmers have a right to such protection.

I have heard the argument that the bill would deprive purchasers of their right to choose their suppliers. This bill does not have that effect. On the contrary, this bill merely would prevent purchasers from knowingly penalizing producers because of their membership or dealing with associations of producers or from interfering with such associations in carrying out their legitimate objectives. In every other respect, purchasers would remain free to choose their suppliers without hindrance.

I sincerely recommend that prompt action be taken to report S. 109. I believe that the adoption of this legislation could be one of the proudest actions of this Congress.

Senator JORDAN. Senator Aiken, do you have any questions?

Senator AIKEN. No; I realize that there has been quite a lot of language submitted, not only by the attorneys in the Department of Agriculture but also by our own attorneys here, that they thought might make the bill clearer and more definite. That is something we will have to take up when we get into executive session.

Senator LAUSCHE. I would like to add one thing, while Secretary Freeman is here, about penalties against the farmer.

In the *Donaldson* case of Findlay, a man's farm was threatened to be sold because he supposedly overplanted his quota. The Government got a judgment of $400 against him and costs. And the interest has accumulated. And the Government, finally, filed an action to sell his farm. Donaldson paid the judgment, but he wrote me a letter. I have it in my files today. I resented it. And I think that the Government is wrong in going the limit on that judgment. He paid it, but just as I wanted to protect the farmer and the others in this Donaldson instance, I want to protect the handler or the purchaser in this bill. You are familiar with that, Mr. Freeman?

Secretary FREEMAN. Yes, yes.

Senator LAUSCHE. And you do not agree? [Laughter.]

Senator JORDAN. Senator Byrd, do you have any questions?

Senator BYRD. No questions.

Senator JORDAN. Senator Hollings, any questions?

Senator HOLLINGS. No questions.

Senator JORDAN. Thank you very much, Senator Lausche, for your being here.

Mr. Secretary, we are always glad to have you before us.

We will be glad to hear from you today, sir.

STATEMENT OF HON. ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE

Secretary FREEMAN. Thank you, Mr. Chairman, and members of the subcommittee. This is an unusual and delightful experience that I can come here today in support of legislation in which not only all of the farm organizations join, the cooperatives join, but these estimable Senators, also, who have joined me at this table, Senator Williams and Senator Lausche. I appreciate their support, too.

And I might add parenthetically that it is not unusual to be joined by Senator Aiken in support of this legislation, or any legislation.

Senator AIKEN. This is perhaps the first time that you have been photographed with the leadership of all of the major farm organizations.

Secretary FREEMAN. I believe that is possible. I am sure it is the first time that we have been here.

Senator AIKEN. And we hope that it is a precedent.

Secretary FREEMAN. I join in that, in expressing that desire.

Mr. Chairman and members, I come here today to recommend the enactment of S. 109, the Agricultural Producers Marketing Act of 1967.

This legislation can be another benchmark for farmers and ranchers in their fight for fairer prices for their products. It can aid the weak against the strong. In an economy where marketing is playing an increasingly dominant role, it is vital that the farmer be able to organize and participate as an equal in the bargaining that is an integral part of the marketing process.

More than 40 years ago, the Congress passed the historic Capper-Volstead Act (1922). This is the "Magna Carta" of farmers' cooperatives. The act gave the farmers certain limited legal rights to organize cooperatives without being in violation of the antitrust laws. The co-op action that followed enabled farmers through the years to increase their net incomes many billions of dollars.

The Capper-Volstead Act raised agriculture to greater equality with industry. It grants no special privilege. Cooperatives are subject to investigation and prosecution for unfair competition and other illegal actions restraining trade.

Experience has shown, however, that the provisions of the Capper-Volstead Act, as it now stands, fall short of giving the farmer equal opportunity with other segments of our economy.

In too many cases, farmers today come hat-in-hand to those who buy their products. All too often they have no alternative but to take what processors, packers, handlers, canners, and others are willing to pay for their crops and livestock products. They are unable to bargain effectively.

The widespread use of marketing contracts by buyers dramatizes the need for farmers and ranchers to strengthen their bargaining position in many commodities. It has created a need for more complete marketing data and stronger and more effective bargaining associations of producers.

Moreover, farmers' bargaining position will continue to erode as those who buy their products decline in number and increase in size and economic strength. As this process continues, the farmers' side of the marketing system will become weaker and weaker if nothing is done to strengthen it.

It is consistent with the American free enterprise system that farmers join together to build their strength to bargain in the marketing process.

One way to do this is a bargaining association. Through cooperation, many farmers can act and speak as if they were a single producer. Such unity is the basis of bargaining power. Through group effort, farmers can hope to survive in today's increasingly large-volume market where many products are produced under contract arrangements between the processor and the producer.

A bargaining cooperative is a voluntary, nonprofit local agricultural association mostly of small and medium size producers. Its main purpose is to negotiate price and other terms of sale with processors and other buyers.

Market negotiations are nothing new. Milk bargaining associations, for example, have been effective in certain areas for more than 50 years. In the sugar beet industry, which is governed by the Sugar Act, price and other market contract provisions are negotiated with processors by regional sugar beet associations.

Some farmers producing specialty crops such as asparagus, tomatoes, cherries, apples, peaches and pears, have organized bargaining cooperatives. They recognize that only through group effort can they hope to survive.

Yet farmers who organize cooperatives or bargaining associations or who join such cooperatives all-too-often become the target of processors' discrimination and intimidation. They have been harassed. Production schedules have been disrupted. Their contracts have not been renewed. They have been denied assistance and the same treatment accorded other producers. Farmers who joined bargaining associations have been blacklisted.

Buyers frequently operate in several States. If growers become active in organizing bargaining associations in one area, the processor can go to another area for his products or finance the development of a new growing area. Or a buyer may contract for the coming season only with farmers who are not members of the bargaining cooperative.

In other cases processors have given favors to nonmembers or other inducements to motivate members to withdraw from the cooperative. This provides a strong inducement for the farmer either not to join the association or to terminate his membership.

Some bargaining associations have had difficulty because of the economic power that processors have been able to bring to bear against them.

One of the questions asked farmers in a recent study of the Great Lakes tart cherry industry made by the department of agricultural

economics at Michigan State University was: "Why are you hesitant about being a member of the Great Lakes Cherry Producers Marketing Cooperative?" A number of producers replied: "Processor indicated he might not buy growers' cherries if a member;" others simply said: "The processor said not to join."

These farmers are reflecting a fear prompted by processors who want to continue to buy direct and dictate the terms. These farmers reacted like the gentleman in the rear pew who remained seated when the minister asked those who wanted to go to Heaven to stand. "John," the minister asked, "don't you want to go to Heaven?" "Yes," John replied, "but I thought you were making up a load right now."

Bargaining cooperatives have found it impossible to get effective legal relief for discriminatory actions against members because present legislation is inadequate, nonspecific, and cumbersome.

The producers of farm products, especially perishable farm products, need prompt legal action if it is to be of any value to them.

Gentlemen, you have heard or will hear that the Sherman Anti-Trust Act, the Federal Trade Commission Act, and others are sufficient regulatory devices.

Neither the Sherman Act nor the Federal Trade Commission Act was deemed by Congress to be completely adequate to suppress such competitive restraints as those arising out of price discrimination.

To treat adequately with this type of anti-competitive activity the Congress enacted the Robinson-Patman Act. Section 2(a) of the act prohibits a seller from discriminating in price between purchasers of goods of like grade and quality where the effect of that discrimination is to create competitive injury.

It also prohibits the buyer from knowingly receiving a preferential price. But, the buyer is not required to purchase from all sellers on the same basis. Thus, the act does not apply to situations where a buyer pays a discriminatory price to one grower as compared to another, regardless of the reason.

The Robinson-Patman Act, therefore, does not afford any protection to cooperative associations or their members against price discrimination by a buyer because of organization activities. Furthermore, the act does not reflect the greater concentration of buying power that has taken place in the agricultural marketing system.

The deficiencies in existing laws will be mitigated to implement the many acts of Congress which accord recognition and encouragement to farmer-owned and farmer-controlled cooperative associations by the legislation currently before you.

S. 109 specifically prohibits any handler from:

—interfering, or threatening to interfere, with a producer joining a cooperative;

—discriminating, or threatening to discriminate, against a producer because of his membership in a cooperative;

—coercing a producer to terminate such membership;

—making false reports about, or interfering with, cooperatives; and

—conspiring with any other person to do, or aid the doing of, any such act.

Mr. Chairman, I believe S. 109 could be strengthened by several amendments—and I refer these recommendations to the committee for the committee's attention.

(1) by deleting the word "boycott" in section 4(a) and substituting more precise language for this purpose; (2) by providing for enforcement of this act through the same administrative procedures under the jurisdiction of the Secretary of Agriculture as are embodied in the Packers and Stockyards Act; and (3) by giving the Secretary authority to request restraining orders so as to prevent irreparable harm to producers during the pendency of such administrative proceedings.

Mr. Chairman, so as not to burden the discussion now with the suggested statutory language, I would like to leave the proposed amendments with the committee for its consideration and make them a part of this statement.

I want to emphasize that many responsible handlers see the advantages of bargaining with responsible groups of organized producers. Contracts with bargaining associations assure the buyers an orderly plant processing schedule of designated volume, quality, and specific delivery dates.

Spokesmen for many producers have for years urged Congress to enact legislation that would prohibit processors of agricultural commodities from discriminating in any way against farmers who join or organize bargaining cooperatives and from discriminating against such cooperatives.

The National Commission on Food Marketing, and among its 15 members were 10 Members of Congress, also found a vital need for legislative protection of the right of farmers to organize. Its study reported in the June 1966 publication, "Food From Farmer to Consumer," included this statement:

> We believe that specific legislation should be enacted providing that all processors, shippers, and buyers of farm products, engaging in or affecting interstate trade, are prohibited from obstructing the formation or operation of a producers' bargaining association or cooperative . . .

S. 109 will not, by itself, raise farmers' incomes or solve all their difficulties. Existing programs for the basic commodities are essential if we are to continue to lift farmers' income toward the goal of parity with other segments of the economy.

S. 109 simply assures that farmers can organize a cooperative without fear of discrimination or reprisals. It will not infringe on the freedom of processors to choose producers, so long as the choice is not on the basis of membership or nonmembership in a cooperative. It will not force buyers to deal with producers of inferior products, nor will it force farmers to join a cooperative. It will not reduce freedom of competition. In fact, it will stimulate competition by eliminating the unfair advantages some processors gain by practicing discrimination.

Gentlemen, today bargaining is an important part of our maturing free enterprise system. Under the "New Era" farm programs established by the Congress in 1965 with the passage of the Food and Agriculture Act, the market operates more freely and the farmers' decisionmaking is freer of Government than it has been for 30 years. However, if the expanded play of the market and private decisionmaking is to work fairly and produce the best results for the entire Nation, the bargaining partners must be somewhat comparable in strength. That is not true today. Because he usually acts individually, the farmer has almost no strength at the bargaining table. It is only when the farmers

act in concert that the bargaining process can function as intended in our free enterprise system. It is simply too much to expect a result fair to both parties and in the national interest when one party at the bargaining table is so much stronger than the other. Congress recognized this when it enacted laws governing bargaining between labor and management.

Farmers and their cooperatives are simply asking in S. 109 that they have the same right to organize and to bargain in the marketplace that is accorded other groups. The act before you will be an important step in that direction.

The Department of Agriculture recommends the early enactment of S. 109 with the amendments I have submitted.

Thank you very much.

Senator JORDAN. Thank you very much, Mr. Secretary.

Any questions, Senator Aiken?

Senator AIKEN. No. I would just like to commend the Secretary for his statement. It could not have been written better if I had written it myself.

Secretary FREEMAN. That is high praise.

Senator AIKEN. Thank you.

Senator JORDAN. Any questions, Senator Byrd?

Senator BYRD. No questions.

Senator JORDAN. Any questions, Senator Hollings?

Senator HOLLINGS. No questions.

Senator JORDAN. I have some questions that the tobacco people have proposed to me to get answered. As you well know, Senator Byrd is from Virginia where they grow tobacco, and I am from North Carolina, and there is also South Carolina and Georgia where tobacco is the major crop.

I have noticed in this bill that no commodities, as such, are named, such as tobacco, wheat, and so forth.

Tobacco, as I am sure you know, is sold at public auction. That is correct, is it not?

Secretary FREEMAN. Yes, sir.

Senator JORDAN. And tobacco is price supported and is under acreage and poundage controls, but they want to know: Does tobacco come under this legislation, any controlled crop on the farm which is under support prices and acreage and poundage controls? Is it included in this bill?

Secretary FREEMAN. Yes, any crop, any commodity, no matter what it is involved, would come under this bill if the circumstances outlined constituted coercion and intimidation thought to prevent the farmers who produce the crop from joining together. But as a practical matter I cannot see this applying in any auction process unless, for example, the auctioneer or the auction company or the warehouseman would refuse to allow an association or farmers to bring their commodities into the auction area. If they did that, they would be in violation of this law, but that would be, as a practical matter, I think, a pretty far-out kind of action. I know of no instances where it has happened. So that the law, probably as a practical matter, would not have any practical effect in the tobacco auction situation.

Senator JORDAN. You know that the State of Maryland growers have declined to join in. They are not under the Acreage-Poundage

Control Act as it was written. They do not come under that, and they want to know this—their situation is slightly different from that in the Flue-cured tobacco areas. Would they come under this, and if so, why?

I think that needs to be spelled out better in this legislation than it is, because tobacco is one of the major farm crops of the country, and they do not want it to be: "Well, you come under it," or, "You do not come under it," and have to go to court to find out. That is what they would like to know. I think that can be easily set out by proper language in the bill.

Secretary FREEMAN. Again, I would answer the same way, that the processor, or handler of any commodity who engaged in intimidation and persecution and pressure to prevent farmers from coming together for bargaining purposes would be subject to the act, regardless of whether it is tobacco or cotton or vegetables, or whether it is staples or perishables.

But, again, where tobacco is concerned in the auction process itself, that marketing is a different kind of system than this act is specifically directed towards; and, as such, I do not see any practical application unless a situation existed that I have never heard of, where it would be declared that someone would refuse to allow an association that might own a commodity to engage in the auction. It seems to me that is rather inconceivable. So, I really do not see any problem.

Senator JORDAN. It ought to be spelled out, all of these things, because nobody wants to be faced with a court decision on anything, when it can be spelled out so easily before it is done.

Senator BYRD. May I ask one question of the Secretary?

Senator JORDAN. Yes, please do.

Senator BYRD. Senator Lausche has recommended a change in section 5(c), a lightening of the penalties provided in the proposal. Would you have a comment on Senator Lausche's statement?

Senator JORDAN. That is on page 5.

Secretary FREEMAN. I think the purposes of this law could be accomplished, and as a practical matter its passage would be strengthened by eliminating the criminal penalties. I would have no objection to their elimination.

Furthermore, with the triple damage provision, so far as that is concerned, the recommendations that I have filed with the committee would be to follow the procedures which we currently have in the Packers and Stockyards Act by way of enforcement, which would involve the issurance of a complaint and a hearing and potentially a desist-and-cease order. And, in this fashion, I think that some of the fears that have been evidenced by the handlers that they might be subject to action of a preemptory nature would be alleviated.

So, I would have no objection to the general recommendations as to law enforcement.

Senator BYRD. Thank you.

Senator JORDAN. Any questions, Senator Hollings?

Senator HOLLINGS. No questions.

Senator JORDAN. Thank you very much, Mr. Secretary. We are delighted to have had you with us. We appreciate your testimony.

Secretary FREEMAN. Thank you.

Senator JORDAN. Mr. Shuman, of the American Farm Bureau Federation, is our next witness.

We are glad to have you and your associates here. We will be glad to hear from you. You may proceed as you like, and if there is anything you want to put into the record, it will be included.

STATEMENT OF CHARLES B. SHUMAN, PRESIDENT, AND HERBERT E. HARRIS II, LEGISLATIVE COUNSEL, AMERICAN FARM BUREAU FEDERATION

Mr. SHUMAN. Mr. Chairman and members of the subcommitte, on behalf of the American Farm Bureau Federation, which represents 1,703,908 member families in 49 States and Puerto Rico, we want to express our appreciation for the opportunity to again appear before this committee in support of S. 109, the Agricultural Producers Marketing Act of 1967. As we indicated on previous occasions, we believe this is one of the most important legislative matters to come before this committee in recent years.

On June 14, 1966, we appeared before this committee and presented a statement indicating Farm Bureau's support for legislation that would assist in the development of voluntary agricultural marketing programs by prohibiting unfair practices against producers solely because of their membership in a marketing association.

The hearing held by the committee last June was on the original version of S. 109, which proposed to amend the Capper-Volstead Act. At that hearing, we presented a detailed statement in support of the need for this type of legislation. Our presentation included individual statements of six producers who cited specific instances which indicated the reasons this legislation is important if farmers are to improve their marketing power. Of course, as a part of the hearing record, those statements are available to members of the committee.

As a result of the June hearings and the presentations made at that time, a revised version of S. 109 was introduced on September 21, 1966 by Senator Aiken. This proposal provided for a separate Act to be known as the Agricultural Producers Marketing Act of 1966. On September 28 this committe held a hearing on the amended bill which was supported by the principal agricultural organizations. The Farm Bureau reiterated its support for legislation which would give assurance to producers that they could obtain prompt legal relief if handlers carried on unfair practices against them because they exercised their right to join or belong to an agricultural marketing association.

To further improve the bill and, where possible, eliminate objections to it, the present version of S. 109—introduced on January 11, 1967, by Senator Aiken and other Members of the Senate—contains amendments recommended by the U.S. Department of Agriculture. For example, both cooperative and noncooperative business enterprises are now covered by the legislation.

We cite this rather brief history of the legislation in order that the committee will recognize that its proponents have made a sincere attempt to meet legitimate objections that have been raised.

In our previous statements we pointed out that American farmers and ranchers have a need for greater marketing power. We believe that this need is even greater today. Widespread use of marketing contracts has intensified the need for producers to strengthen their marketing position. If farmers and ranchers are to have the oppor-

tunity to develop these sound marketing programs in order to improve their net farm income, their marketing rights must be protected.

The Agricultural Producers Marketing Act of 1967, S. 109, would assure the marketing rights of farmers by prohibiting unfair practices against producers because of their membership in a marketing association. We particularly want to stress the latter part of that statement and emphasize that we are only talking about unfair practices committed by the purchasers of agricultural products against producers because of their membership in a marketing association. This is the basic criterion for determining violations of the proposed legislaton.

We would like to point out briefly that the Agricultural Producers Marketing Act of 1967 does do and, equally important, what it does not do.

The legislation does:

(1) Declare it to be congressional policy that interference with certain basic marketing rights of farmers and ranchers is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

(2) Establish a separate act to prohibit specified unfair practices by purchasers of agricultural products when such practices are directed against producers because of their membership in a marketing association.

(3) Authorize civil action for preventive relief by an individual whose marketing rights have been, or are threatened to be, violated by a handler of agricultural products.

(4) Authorize, in addition, the Secretary of Agriculture to bring a civil action for preventive relief whenever he has reasonable cause to believe that a handler has engaged in an unfair practice as defined in the legislation.

(5) Place on the producer the responsibility to initiate action and bear the burden of proof with the final authority for determining whether the act has been violated resting with the U.S. courts, the impartial forum designed to settle disputes under our system of government. At the same time the State courts would not be deprived of jurisdiction.

(6) Establish penalties and sanctions to attain compliance with the act.

(7) Recognize the rights of purchasers of agricultural products in two principal ways: (1) purchasers would continue to be free to deal with whomever they choose; they would contiue to have the right to refuse to deal with a marketing association; and (2) producer membership in a marketing association would remain voluntary.

The legislation does not:

(1) Force purchasers of agricultural products to deal with a marketing association of producers. Contrary to the contention of some, there is no such requirement in the legislation.

(2) Prevent a purchaser from choosing the producers with whom he wants to deal. The bill only probihits a purchaser from refusing to deal with a producer because of a producer's decision to join a marketing association.

(3) Limit or interfere with fair competition by preventing purchasers from offering a producer a better price or contract than is available through a marketing association. This legislation would ap-

ply only if the purchaser, whether it is a proprietary firm or a cooperative, used coercion, discrimination, intimidation, or bribery.

(4) Force purchasers to deal with "inferior producers."

In order to establish a violation a producer would be required to prove not only discrimination, but also that the discrimination was intended to discourage his membership in a marketing association.

The question has been raised as to whether the unfair acts covered by this legislation are already prohibited by existing law. Experience has indicated a need for a clearer definition of these unfair practices as well as a more rapid procedure to obtain relief. In addition, most antitrust laws and other similar legislation are designed to protect the rights of buyers. This legislation is designed to protect the rights of the seller, who in this case is the producer of the agricultural products.

The farm bureau does not seek legislation to force purchasers to negotiate with marketing associations. I want to emphasize this very strongly. We do not seek the legislation to force purchasers to negotiate with marketing organizations. We seek only legislation which sets forth "rules of fair play" on the part of purchasers and others in their business relationships with farmers and ranchers.

In summary, we believe that producers' marketing power must be strengthened through their organized but voluntary efforts to improve the efficiency of our marketing system. This is the basic philosophy that is involved in the farm bureau marketing activities. To be successful, such activities must be directed toward realistic goals. Producers want to work together to earn—I want to emphasize that—a higher net income in a market-directed economy. To do so, they must be protected from unfair practices by purchasers as specified in this act.

We believe that the issue before the committee is simply this: "Are you in favor of protecting the marketing rights of farmers and ranchers?"

We believe the enactment of S. 109, the Agricultural Producers Marketing Act of 1967, will help farmers and ranchers achieve these objectives. Farm Bureau vigorously supports its immediate enactment into law.

I would like to add emphasis to two points:

First, we think that it is important to retain the penalties as provided in the bill. We do not believe they are excessive. They are similar to the penalties provided in other legislation of this type. If we are to avoid wholesale disobedience, violation of the law, the penalties must be significant.

The second point I would like to emphasize is that we believe it is very important to retain the provision which authorizes the individual farmer to seek injunctive relief without being subjected to the delay and the redtape that would be encountered if he had to go through the Secretary of Agriculture.

Senator JORDAN. May I ask you a question at that point?

How would you achieve that?

Mr. SHUMAN. The bill provides that the individual has the opportunity to go in for injunctive relief. There are, at least, two provisions on that. Mr. Harris could point those out.

Senator JORDAN. That is contrary to what the Secretary just testified to a few minutes ago. He said it should come through the Secretary.

Mr. HARRIS. The amendments that the Secretary suggests, would retain the Secretary's authority to obtain the injunctive relief. Currently, the bill has the authority for the producer also to go to court and ask for injunctive relief on his own behalf. Mr. Shuman wants to retain the authority for the producer to act on his own behalf.

Senator JORDAN. Would you retain both of them, with the recommendation of the Secretary and the other recommendation?

Mr. HARRIS. Those provisions are now in the bill, sir, section 5(a) gives the producer the permission to seek injunctive relief, and 5(b), in the alternative, gives the Secretary the right to seek it for him, and we feel that it should be kept in the alternative.

Mr. SHUMAN. With both of them in there. Individual action would be expensive but it would minimize delay. That is one of the main reasons that we want this legislation, to eliminate the costly delays in getting relief.

Senator AIKEN. You mean that the crop might spoil while the legal redtape was being unwound?

Mr. SHUMAN. Yes, we have had experience with cases being in the courts for 5 to 7 years, under the existing legislation. The purpose of this bill to facilitate action. We believe if it had to go through the Secretary of Agriculture in all case it could go right back into the same problems of delay and lengthy procedure.

Senator AIKEN. Suppose that the right to get the injunctive relief on the part of the producer was conditioned? That would be some improvement, probably, from the Secretary's viewpoint—that is, on a perishable crop it would help. On tobacco, which could be sold the next year, I believe it might not be so true.

Senator JORDAN. I have never heard of any farmer wanting to carry his tobacco over a year. He wants to sell it today.

Senator AIKEN. But it does not spoil before the next year comes around. I think that we have got to think about this.

Senator JORDAN. We will take that up.

Mr. SHUMAN. I think that we recognize there are opportunities to improve the language, but, in principle, we believe very strongly that the criminal penalty should be retained, and, also, that the opportunity for the farmer to go into court to seek relief without having to go through the bureaucratic channels should be retained.

Senator JORDAN. Are there any further questions?

Senator AIKEN. We have some good lawyers here, too. We have our work cut out for us.

Senator JORDAN. Any questions, Senator Byrd?

Senator BYRD. I have no questions.

Senator JORDAN. Any questions, Senator Hollings?

Senator HOLLINGS. No questions.

Senator JORDAN. Thank you very much, Mr. Shuman, and your associates. We have been glad to hear from you. We will next hear from Mr. Ralph B. Bunje, general manager, California Canning Peach Association, San Francisco, Calif.

You will notice that I am taking these witnesses out of order, because these witneses are from long distances and they cannot come back here without some inconvenience.

We will be glad to hear from you now, Mr. Bunje.

STATEMENT OF RALPH B. BUNJE, GENERAL MANAGER, CALIFORNIA CANNING PEACH ASSOCIATION, SAN FRANCISCO, CALIF.

Mr. BUNJE. Mr. Chairman and members of the subcommittee.

We appreciate the opportunity to testify before you on this very important legislation.

The California Canning Peach Association is one of the oldest cooperative bargaining associations in the United States. It has been engaged in pricing and marketing cling peaches for canning in the State of California continuously since 1936 and prior to that time its predecessor organization, the California Peach Growers Association, had been bargaining since a period following World War I.

I have been the general manager of the California Canning Peach Association since 1950 and feel uniquely qualified to discuss the need for the type of legislation that the committee has before it. Bargaining associations on the Pacific coast believe that it is important to discuss the need for this kind of legislation in today's marketing and bargaining environment, particularly with respect to canning fruits and vegetables.

To understand the great need for this type of legislation, it is necessary to first develop the background or the environment within which the sale of canning fruits and vegetables is carried on in the United States today. Our industry is somewhat typical of the changes that have taken place over the past 20 or 25 years. In 1950 there were over 45 canning companies processing cling peaches in California, and today the number is less than half that which it was in 1950. I might point out that we have only five independent companies, that is, proprietary independent companies, left. It was only a few years ago that many individual growers enjoyed a personal acquaintance with the chief executive officer or owner of the canning company with whom they did business. As I said, today there are but five proprietary companies owned by independent operators. Two companies are large cooperative canning associations and the rest are nationally owned companies or subsidiaries. Parent companies are engaged in other activities not even related to the business of processing fruits and vegetables. Some companies operate canneries all over the world. The impact of these changes upon the average grower is that he no longer believes that he has the contact with or the ability to discuss his problems with his customer.

Today the people with whom he does business, for the most part, are fieldmen and country buyers who are substantially down the ladder from the policymaking principals who make up the executives of the company with whom he does business. This situation is not strange to modern business, but it is relatively new to agriculture. It exists in Government. It exists wherever organizations have grown so large that the individual relationship that used to characterize relations between employees and suppliers and American business and Government is no longer the same. This is not to say that this is not more efficient, but certainly it has served to make it difficult for a farmer to discuss his problems with his customer. Today he finds that decisions with respect to the quality and quantity of the product that a company is going to buy is made by executives or management committees frequently located in cities far distant from the farms and by the people

who often know very little about the real problems of modern day farming out in the country. Computers analyze supply demand and market factors and arm the buyers with information that individual growers cannot match. This has led to unrest. This has led to abuses that the farmer finds it difficult to overcome.

I can tell the committee that to my own personal knowledge no processor with whom we have done business has a policy of conducting his business affairs in the manner described in section 4. On the contrary, it is my belief that the chief executive officers of the companies with whom we do business would advise you that they have a policy of not interfering with or restraining or coercing or boycotting any producer in exercising his rights. It is not the policy of any company to my knowledge to discriminate against growers because of membership in associations, or to intimidate them or to try to get them to breach their contracts or to give inducements for them to cease to belong to associations, or for that matter, to make false reports about an association or its management. However, we know from personal experience that while the top management of a company may very well establish policies that do not contemplate unfair practices, it is very difficult to make sure that the individual employee out in the field does not engage in such practices. We have many instances in which unfair practices have been engaged in by employees of companies whose official policies would certainly not permit such an activity to be carried on.

A typical example occurred last season when one of the largest and most respected and best managed companies in California was charged under California law with discrimination to members of the California Canning Pear Association, an organization similar to ours. Settlement was reached before the matter went to court. But the case was a typical one. Management was evidently not aware of the discriminatory practices that were alleged. Many people were aware of the alleged practices which had been going on for years. Management denied that it was going on so it took a lawsuit to bring the practices to a halt. Had a Federal law with adequate penalties been in effect, we believe the unfair practices would not have been carried on.

It has been our experience that often processing company management, by default, does not supervise the activities and actions of its employees down the line in connection with their buying activities. This is one of the reasons why we feel that this type of legislation is necessary. We believe that S. 109 will cause cannery management to make sure, under the penalties called for—and we would like to emphasize the importance of having severe penalties—that the employees engaged in purchasing commodities for their plants will adhere to the policies of the company and the law. This is one of our problems.

We believe it is important to realize the relationship that exists between the average producer of canning crops and his buyer. A grower generally has a large investment in orchard or crops and facilities. A peach grower has operating and production costs of $700 to $800 per acre even before the crop is harvested. Faced with the usual problems of weather and availability of harvest labor, the grower is in a very precarious position. He must find a home for his product and he is more frequently than not at a substantial disadvantage with

respect to bargaining for the price and conditions of sale of his commodity to the buyer. Under these circumstances there are times when the buyer has an enormous advantage over the seller. The producer has his whole year's income at stake. A discussion about the advantages and disadvantages of membership in a climate that could result in intimidation of the seller under the circumstances at hand. For example, a buyer's unwillingness to deal with the member of a bargaining association at such a time, while perfectly valid when buying nuts and bolts; is hardly comparable in the case where a producer has a perishable crop that he is trying to bargain for just prior to harvest or planting deadlines. Under these conditions, for a cannery buyer to express great interest in carrying on individual contracting with a producer instead of contracting through or with his association would, in effect, place the buyer at a substantial advantage.

During periods of low prices an offer to contract for other crops of the producer, if he were not a member of a bargaining association, could be intimidation—and often is. None of such actions carried out in the normal course of business in buying drygoods or hardgoods could reasonable be interpreted as being invalid. However, selling agricultural crops in a market made up for the most part of a few large buyers and many sellers and where the seller has a large investment in trees, crops, equipment, labor costs, and land, and where a buyer is often the employee of a large, well-managed, and well-advised company, does create an inequality of bargaining strength. The grower should have the opportunity to find protection through a bargaining association without restraints. This is why we feel this type of legislation is desirable. I am sure the committee is aware of the fact that we have similar legislation in effect in California.

The State legislature some years ago passed a bill that is not unlike S. 109. We have found that the bill has not been too effective for a number of reasons, the principal one being that the penalty provisions of the bill are not adequate to actually arrest some of the activities that we know are going on. This was passed a few years ago. Only a few cases were brought under this act. One was a case brought through a procedure by the Secretary of Agriculture, and the other was a court case. Both were settled outside of their final result. They never went to court. In one case, after the hearing, the matter of the differences was settled without action by the director of agriculture, and we believe that had there been severe penalties involved, these cases would not have been brought up.

I should like to again stress the fact that, to the best of my knowledge, no canning company has policies which would support unfair practices on the part of the buyers. On the other hand, it is well known in the industry that there are certain buyers who, notwithstanding the policies of the company, will undertake to intimidate growers under the circumstances that I have described. These people create problems for the entire industry. S. 109 would be of great benefit to producers because it would tend to stop the unfair practices of those people who chronically tend to take advantage of their size, knowledge of the market or their relationship with the producer.

Senator AIKEN. Are all of the canneries opposed to this bill?

Mr. BUNJE. No. I know personally that several of the large companies in California are not opposed to the legislation. In fact, they are in favor of it. There are, also, some small ones.

Senator AIKEN. Those are the companies that do not want to be unfair, anyway.

Mr. BUNJE. I do not think that any of the companies want to be unfair. We have never found that is the case.

Senator AIKEN. Sometimes difficulties come up.

Mr. BUNJE. Yes; they do. Of course, the people out in the field, the commission buyers or somebody of that character, generally, will violate both company policy and the law. We have had instances in which we brought this to the attention of management and they have corrected it where that has happened. All of these things are not always possible to be corrected. We believe that with a bill of this nature, with strong penalties, it will actually result in cleaning up the situation and will not bring about a lot of lawsuits, which would otherwise be the case.

Senator AIKEN. But you do not believe that the canning industry, generally, is overwhelmingly opposed to this legislation?

Mr. BUNJE. That is my understanding.

Senator AIKEN. All right. Thank you.

Mr. BUNJE. Legislation such as this will not affect those companies who carry on a conscientious job of maintaining good grower relationships or who bargain fairly with their producers or who take care not to take unfair advantage of their size and of their strength. There are a number of companies whom I could describe which would fall within this category. But, just as there are in any industry, we have some bad actors, too.

It is a lot like the policeman: he does not look for law violators among those people who conform to the laws of the community. He has to take care of the exception, the persons who are breaking the law, who constitute and make up but a small percentage of the whole.

I am sure that canning industry spokesmen will point out that unfair practices are not condoned by their principles, nor is it carried out by most of the industry, but let me assure you that there are always some irresponsible people whose conduct reflects on all. The industry cannot correct the abuses because it does not have the machinery to do so. These few are the people that need to be regulated.

There are some who will argue that many of the prohibitions provided for in section 4 are already prohibited by other legislation. There undoubtedly are many cases in which a processor could be hailed into court for having violated some law or another. They have been. We believe the proposed legislation will stop unfair practices without the necessity of court action. Knowledge of the penalties involved will, we believe, cause processors and handlers to stop unfair practices. Lawsuits against a customer, if a producer wins a cast against a buyer, can be costly in more ways than one.

Let me emphasize the fact that the processor is a customer of the grower, and it is pretty difficult sometimes to bring a lawsuit against him.

Today, what is to prevent the processor or other processors in the district from refusing to do business with such a grower who might be regarded as a troublemaker just because he stood up for his rights? Buyer retaliation and the fear of it is a major problem today.

There is a need, as provided for in section 5(b), to enable the Secretary of Agriculture to make an investigation and bring a complaint

whenever he has reasonable cause to believe the law has been violated, to proceed to press for preventive relief. There are times when such a burden upon the producer in today's environment creates an almost impossible situation because he may be subject to retaliation which can be extremely serious when you consider the fact that he is often dealing with his total income for the year.

The farmer frequently finds himself in a position where he is concerned about the potential strength, for example, of organized labor to deal with him at the time of his harvest. He has at stake his entire year's income versus only a few weeks of work on the part of the striker or the union worker. This is why growers would like to see a no-strike provision of some kind, or some guarantee against strike during the harvest.

The same situation is true with respect to the buyer of his goods. The buyer of the goods has tremendous economic strength at the time of harvest or planting. He is the one that can call the shots, and if he is out from under any kind of regulation concerning his conduct, he frequently takes advantage of his position.

Gentlemen, that is another reason why S. 109 is so important and so necessary. It will tend to equalize the bargaining strength of growers versus their processor customers.

Cooperative bargaining associations are voluntary organizations. The closed shop and union shop concepts available to organized labor are not being sought by farmers. If a bargaining association fails its membership, it goes out of existence. From personal experience, I can assure the committee there are many hazards. An opportunity for growth and fair play is all we are asking. If processors and handlers did not indulge in unfair practices, we would not be here today.

Many people have addressed themselves to the need for enhancing producer bargaining power, of the need for cooperative action to find solutions to declining farm income, of the need for self-help. It seems that nearly everyone is for the farmer helping himself. The needs seem to be pretty well established. It is the "how" that seems to be a problem. The National Food Commission in one of its recommendations said:

> Special efforts appear necessary to protect the right of farmers to organize bargaining associations, to approve marketing orders, and to engage in other group efforts.

It is significant that a minority report by several members of the Commission came to a similar conclusion.

Passage of S. 109, we believe, will:

First, Enhance the bargaining power of farmers. Evidence of this may be the very character of the opposition witnesses that will appear before your committee.

Second. Arrest and otherwise discourage unfair buying practices by a few buyers.

Third. Encourage the growth and development of voluntary cooperative bargaining associations.

Fourth. Enable farmers to begin to achieve reasonable returns without the need of Government subsidies and programs.

Fifth. Encourage and maintain in business the independent commercial farmer.

Our experience is that the processors will, as a matter of good business, resist and undertake to destroy the opportunities for growers to create organizations that may come between them and their grower suppliers with respect to their purchase of fruits and vegetables. Some of the same arguments and the same objections that prevail here are the same that prevailed in opposition to the development of organized labor unions. Nevertheless, if farmers are to take their rightful place in today's economic community, they must be given protection with respect to the opportunity to organize voluntary associations in order to bargain for the sale of their production. With larger buyers and fewer of them, there is great advantage to the buyer, particularly at a time close to harvest or planting time. A legal climate needs to be created that will enable the producer to develop and join and continue to market his produce through, or with the help of, his own association, created for his protection, which he owns and controls.

There are a number of things which we believe S. 109 does not do:

First. The bill is not intended to and does not deny a processor the right to choose a grower supplier.

Second. The bill does not favor but one side, it merely rectifies and adjusts what is now a one-sided arrangement. The buyer now has the balance of power. The seller does not. We want to balance the power.

Third. The bill does not give cooperative bargaining associations the rights to be unfair or act in a predatory manner, and we know of no complaints by anyone in this area.

I wish to express to Senator Jordan and the members of the committee our pleasure at being invited to testify. We hope and trust that you will be able to bring about adoption of this legislation. I can assure you that it is absolutely essential and important for the welfare of farmers that they be afforded this protection.

I would like to point out that under the Capper-Volstead Act, the Secretary of Agriculture may bring suit against any cooperative that unduly enhances the price of its products.

Thank you.

Senator JORDAN. Thank you, very much.

Can I ask you a question here?

You canners, or whoever purchases peaches—they are not all canners by any means, because you speak of commission merchants——

Mr. BUNJE. The commission buyers. These are buyers who buy. They get a commission, so much per ton for making the purchase.

Senator JORDAN. But they do not always sell them to the canners?

Mr. BUNJE. Yes, sir; they are what we call broker-buyers. They represent the canning companies. They work for themselves. They contract, acting as the broker-buyers for the companies; and they are all aware of their economic importance at the time of harvest, and those are many of the people that will operate in any manner against the policies of the companies with which they have contracts.

Senator JORDAN. What about these large food stores that buy enormous quantitites of peaches and vegetables?

You are leaving them out?

Or are you talking about these canneries entirely?

Mr. BUNJE. Mr. Chairman, in the case of canning peaches with which I am involved, the only people who buy canning peaches are the processors. None of the food chains, or the retailers, or the distributors

are involved in this buying. We sell our produce to the canneries, and the canneries, then, in turn, sells his product to the food chain and the food buyer.

Senator JORDAN. I understand that, but in Georgia, in North Carolina, in South Carolina and, as well, in Virginia, and the State of Delaware, and Maryland, too, they grow a great many peaches that are sold on the market that are not canning peaches.

Mr. BUNJE. Right.

Senator JORDAN. What about those people?

Mr. BUNJE. Well, I would imagine that if a broker-buyer or other purchaser undertook to use unfair trade practices, he would come under the provisions of this act if it were in effect. Of course, this is what the growers object to, is the fact that the buyer frequently, due to his particular position at that point in time has a very substantial economic advantage. I would put the buyer's position in precisely the same position that I would if you had a union organizer come to your ranch and say:

If you do not pay what we demand, then you are going to have a strike pulled on you. We will picket you.

Senator JORDAN. That has happened.

Mr. BUNJE. The same situation could apply with respect to a buyer, because he could say: "Well, unless you conform to the conditions of the sales that we are willing to make, we are not going to contract with you, or we are not going to supply you with boxes," or whatever it might be in the case. There are very few cases in which that takes place, but we feel that whenever that takes place in an effort to discourage membership in an association, that that is unfair.

If this takes place, and it has nothing to do with membership in an association, then I think that this is a part of the American way of doing business.

Senator JORDAN. It would be a little hard to tell, would it not?

Mr. BUNJE. Well, it may be difficult to prove this, but this is one of the responsibilities that you have.

We cannot ask for a cinch here, either.

Senator JORDAN. Do the canneries contract for the producers' crops in advance, like they do in certain vegetable crops?

Mr. BUNJE. Yes, sir; they do. We have many instances in which crop contracts have been executed for the life of the orchard.

Senator JORDAN. That is a long time.

Mr. BUNJE. Fifteen years. Frequently, it is associated with substantial loans that the processors make to the producers; frequently, in an effort to assure themselves of adequate supplies of the quantities and quality that they want, but at the same time the producer has yielded and given up his right to bargain for price.

Senator JORDAN. Is there anything wrong about that?

Mr. BUNJE. The only thing that we see wrong in it is where a processor has contracted for a long period of time under what we call an open-price contract, where the price is made subject to the decision of the buyer at the time that the harvest takes place, as to what the price should be. We do not think this provides for bargaining but is an arbitrary, unilateral decision.

Senator JORDAN. It does not seem to me that a man is forced to go into those kinds of contracts unless he wants to do so. He goes into it,

as you have pointed out, on his own volition. I know of cases where different crops are concerned, where the buyer finances whole business.

Mr. BUNJE. That is right.

Senator JORDAN. Otherwise, he would not be in the business. I have never seen anything particularly wrong with that. If it did not work out, they soon would not have anybody coming into an agreement like that.

Mr. BUNJE. I think you have pointed out a very important part of it.

I think there is another association that has to be related to this. It is not unusual to find—in fact, it has happened in many crops in California—where the unilateral decision with respect to the price to be paid for the long-term contract is made, it is then the same price that is applied to the seasonal grower by virtue of the processor's ability to fix the price of the long-term contract, and he then fixes the market price for all of the other producers. This is one of the reasons that they have organized bargaining associations, because years ago, he said: "I have my own resources; I am going to do my own farming", but he finds that his market is fixed by the captive grower who has a contract with the processor. In this instance, we feel that there is a need for a bargaining association. That is one of the reasons that growers have supported it, but so far as the man who entered into the long-term contract, that is perfectly legitimate, but by virtue of that long-term contract you then create a market, and this is why, we think, you need a bargaining association.

Senator JORDAN. You mean by that, that the man who has a long-term contract, that the purchase who puts up the money fixes his price at the harvest time—he has got to quit doing that; somebody else says "You are setting your price too high" or "too low"?

Mr. BUNJE. No, sir. We are not saying that he should do anything other than not use the captive grower to establish a market price.

Senator JORDAN. Is there anything wrong with him saying what he will pay for it?

Mr. BUNJE. So long as it does not affect the other suppliers.

This is the device that is used to fix the market price for the other growers. Here is an independent grower who has no term contract, no financing, and he says: "I want to bargain for a price." And the processor says: "Wait a minute. The going price is so much, because I have now fixed the price under our term contracts."

We are not asking that this bill do anything about that other than to provide the climate within which the independent, the non-financed grower, can bargain for a price, to do so through his own association. We think that this kind of a bill will help in developing that kind of bargaining strength.

Senator JORDAN. You lost me a little bit right there; I did not quite follow you on that. That is all right. We will go into that later.

Senator Byrd, any questions?

Senator BYRD. No questions.

Senator JORDAN. Senator Byrd is a big apple grower down in Virginia.

Mr. BUNJE. I know, sir.

Senator JORDAN. He grows a few apples. I thought that he might have a thought or two on that.

Senator BYRD. At the appropriate time I want to make a statement for the record. I do not know when that appropriate time will be.

Senator JORDAN. Anytime that you wish.
Senator Byrd is a member of the committee.
Did you have anything further to add?
Mr. BUNJE. No, sir.
Senator JORDAN. Any questions, Senator Aiken?
Senator AIKEN. No questions.
Senator JORDAN. You may proceed, Senator Byrd.

STATEMENT OF HON. HARRY FLOOD BYRD, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator BYRD. Mr. Chairman, I think that the record should show that I have an interest in a processing plant. I own one-third of it with my two brothers who have equal shares. I am also a producer.

The processing plant which we own is used to process our own fruit. We do not buy from outside sources. Some years ago we did so, but within the last 10 or 12 years, we have not bought outside.

As a producer, in the last 15 to 20 years, I have sold only to the processing company, of which I am at the present time a one-third stockholder.

So that, I think that both sides who are interested in this legislation should know that I have an interest in a processing plant and that I am also a producer. Whether that involves me in a conflict of interest is something that I will need to determine before I finally vote on this legislation. At the moment I do not think that it would constitute a conflict of interest, because our canning operations are not buying from other growers, and as a producer I do not sell to other operations. I think that information should be in the record.

Senator JORDAN. I appreciate your statement on that.

Any questions, Senator Aiken?

Senator AIKEN. I am rather doubtful that Harry Byrd as a processor would discriminate very harshly against Harry Byrd the producer. [Laughter.]

But I assume that if he purchased from some of his neighbors and discriminated against them because they happened to be members of an association, the law would apply, just like it applies to everybody else.

Senator BYRD. The law certainly would apply.

Senator AIKEN. On the other hand, you might have an occasion sometime to deal with bigger bugs, if there are any—and I think there are.

Senator BYRD. I wanted the record to be clear as to my position, because I am in both the processing business and the producing business.

Senator JORDAN. I would think, Senator Byrd, that you are in a peculiarly good position, and that you would know a lot about production and marketing, because I presume you have to compete when you sell your product to the canneries.

Senator BYRD. We have tough competition.

Senator JORDAN. You have some competing with you.

Senator BYRD. It is the toughest competition that I know of.

Senator JORDAN. Are there any further questions?

Senator AIKEN. No.

Senator JORDAN. I appreciate your making that statement.

Senator AIKEN. I think the Senator from Virginia will want to sit in on these hearings as much as possible.

Senator JORDAN. Our next on the witness is Mr. Alioto and Mr. Clements.

Senator Church desires to introduce these gentlemen.

We are glad to have you here to introduce your colleagues from your State.

We would be glad to hear any statement you would like to make.

STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Mr. Chairman, and members of the subcommittee.

I would like to ask the permission of the subcommittee, first of all, to submit a written statement as soon as it has been completed in support of this legislation.

Senator JORDAN. You do not have it ready now?

Senator CHURCH. It will be ready tomorrow for submission.

Senator JORDAN. That will be in ample time, because this hearing will go over until Thursday, and we may even go beyond that if there are further witnesses. It will be ample time to get your statement in. It will be made a part of the record at this point.

(The prepared statement submitted by Senator Church follows:)

Mr. Chairman: I support S. 109. I have co-sponsored it, and wish briefly to restate my support.

Representatives of Idaho potato growers have set forth their detailed case in these hearings. They explored the effect of the bill's proposals on existing law, and the need for this legislation in my state. Their excellent presentations deserve careful study by everyone concerned.

One aspect that was not developed in detail by the Idaho group is the place of S. 109, and the activities it strengthens, in the overall agricultural picture. I would like to add a few thoughts about that.

As most of us realize, our farm programs are now at a parting of the path, a great watershed of decision. In the past, the steady accumulation of surpluses forced rigid controls over production. But now the problem is very different. The surpluses are gone. All over the world, hungry people demand food from American farms.

What course do we now take, after this dramatic reversal of the surplus dilemma? No easy solution is in sight. But the debate has shown that the farmers are well aware of their situation, and want a larger voice. They are ready to work toward solutions of their own problems. They are getting organized; they feel that for too long the consumer has been favored at the expense of the farmer.

I applaud this attitude. It has long been my opinion that the farmer can best better himself through his own organized efforts, as many workers have done. I think this is the direction farmers must move, away from controls and subsidies. If there has ever been in recent times an auspicious moment to redirect attacks on agricultural problems, that time has arrived.

S. 109 is a step in the right direction. It recognizes that farmers are banding together in marketing associations to sell their products. It specifies some of the problems that have faced these associations in the past, and anticipates some of those to come. It moves to strengthen the power of the farmer to better his own bargaining position.

Of course, associations of farmers have historically been weak and splintered. Our present farm organizations show a wide divergence in programs and philosophies. No one suggests the job will be easy. Yet, if some of the difficulties can be overcome, farmers can take advantage of the present opportunity. S. 109 will strengthen the power of the farmer to solve as many of his problems as he can through his organizations. This could enable a corresponding withdrawal by the government.

So, I strongly underscore the statements presented by the Idaho group at these hearings. I speak on behalf of many farmers from my state who have written me, and from my own personal conviction, when I request prompt favorable action on the Agricultural Producers Marketing Act. S. 109.

(The attachments to Senator Church's statement are as follows:)

STATEMENT OF TED ROTH, VICE PRESIDENT, UTAH-IDAHO FARMERS UNION, AMERICAN FALLS, IDAHO

Mr. Chairman, my name is Ted Roth, of American Falls, Idaho. I am vice president of the Utah-Idaho Farmers Union.

As members of the Committee know, officers of the National Farmers Union have already given testimony here in favor of the general objectives of the Agricultural Producers Marketing Act. I want to support their testimony with my own, and add a few words about the need for S. 109 in my part of the country.

Mr. Chairman, we know that several laws supposed to protect the bargaining rights of farmers are already on the books. However, it appears that they do not go far enough in protecting farmers against blacklists and various discriminations which have been used against them for years.

The situation now in Idaho is that economic concentration among processors has made the need for protection of cooperatives by Federal law more imperative than ever. Strictly in theory, farmers could pool their farms into one big corporation. But my organization insists, as do I, that we must do all we can to bolster the family-type farm. Only this action can support and build rural communities. The entire program of the National Farmers Union is based on this concept.

Congress has repeatedly acted to strengthen the cooperative movement in American agriculture. I think we now need—in addition to such protection as is offered under the Capper-Volstead Act, the Clayton Act and other antitrust legislation—the prompt enactment of S. 109. Officers of my national association have given examples of violations of these laws, and the need to strengthen them.

In Idaho, over the past ten years or so, the potato marketing situation has changed dramatically. Where ten years ago, only about 30 percent of the potatoes grown in Idaho went to processors, the figure now is near 60 per cent. This fact forces our farmers to deal with a very few large processors out of necessity, and has led to the formation of potato bargaining groups.

This fact, coupled with the additional fact that several of the processing companies are now growing their own potatoes, has created hardships for the individual farmers attempting to sell their crops. Many cases are on record where a processor, before writing a contract with a farmer, first insures that the farmer will buy seed, fertilizer and other items from him. This sort of pressure is often very hard to pin down in a lawsuit, but it happens nearly every day.

It seems to me, Mr. Chairman, that if American farmers are ever to have a voice in their own marketing, the position of bargaining groups must be protected. S. 109 will be a big step in this direction, and I support it.

NAMPA, IDAHO, *April 26, 1967.*

Senator FRANK CHURCH,
Old Senate Office Building,
Washington, D.C.

To the Honorable SENATOR FRANK CHURCH: The Idaho Contract Growers Association, with membership in the Nampa area do respectfully wish to call your attention to a matter of importance to us.

Whereas, unfair trade practices are being committed against producers of agricultural products and associations of such producers in Idaho and the Pacific Northwest; and

Whereas, such unfair practices are at the present time a subject of court action; and

Whereas, it is essential for producers and their associations to market their products in an efficient process without organized and discriminatory action impeding such marketing.

Now, therefore, Be It Resolved, by the Idaho Contract Growers Association that you lend your support to the enactment of the Agricultural Producers Marketing Act of 1967, which shall prevent such unfair practices against the agricultural producers of the United States.

Respectfully submitted.

IDAHO CONTRACT GROWERS ASSOCIATION,
RONALD BLICKENSTAFF,
President.

WILLARD SHROLL,
Secretary.

SALT LAKE CITY, UTAH, *May 3, 1967.*

The Honorable FRANK CHURCH,
United States Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CHURCH: Utah-South Idaho Farmers Union would like to definitely go on record as favoring enactment of Senate Bill 109, which would control unfair trade practices affecting producers of agricultural products.

Perhaps one of the most discouraging aspects of farming is the fact that far too often, the farmer fights hail, drouth, insects, disease, floods, only to raise a crop and then be forced to sell at a loss in the market place.

Deeply individualistic, lacking unity in a complex industry, the farmer fails to achieve his rightful place in the American economy composed of power structures of both labor and industry.

Someway, somehow, perhaps through marketing cooperatives, processing cooperatives or some other means, the farmer must achieve bargaining power. He must find an outlet for his agricultural produce which will gain for him some of the profits which are now being taken by the middleman in the transition of food from producer to consumer.

This effort to achieve bargaining power must not be allowed to die under the influence of the blacklists or other unfair trade practices. It should be nourished and strengthened, designed to retain our family type farm system which has served our nation so well for nearly two hundred years.

I believe that S. 109 is a start in the right direction and should be enacted into law.

Yours very truly,

UTAH-SOUTH IDAHO FARMERS UNION,
KARL SHISLER, *President.*

MERIDIAN, IDAHO, *April 26, 1967.*

Senator FRANK CHURCH,
Senate Office Building, Washington, D.C.

DEAR SENATOR CHURCH: I received your letter regarding our stand on S. 109 known as the Agricultural Producers Marketing Act of 1967.

I am not sending a formal testimony. However, I do want you to know that we favor this bill.

I have talked to Harry Graham, Legislative Representative of the National Grange, and he feels that this is good legislation, as it is now written. It contains the provisions that the Grange has worked for in the beginning.

I want you to feel at liberty to include the Idaho State Grange as supporting this bill in your testimony.

I am pleased to know that you plan to make a strong statement in favor of establishing more realistic import quotas on dairy products. The increase of dairy imports including junex, colby cheese and frozen cream has surely depressed the market for our own dairy industry. I surely hope that these import regulations can and will be strengthened.

Sincerely,

Idaho State Grange,
ERMIL JEROME, *Master.*

MAY 1, 1967.

Hon. FRANK CHURCH,
U.S. Senator, Senate Building,
Washington, D.C.

SENATOR CHURCH: The National Farmers Organization from the State of Idaho wishes to support S. 109. The purposes of the bill as stated in the declaration of policy are in agreement with the aims and goals of our organization.

The bill, as written, is a step in the right direction. Many acts of coercion, boycott, discrimination, etc., do take place but are hard to pinpoint and gain conclusive proof.

We would like to call attention to one practice that could possibly be included in Section 4, paragraph "d" of the bill.

It is a common practice for handlers of farm products to purchase a small portion of their supply outside of their normal operating area for the purpose of depressing prices by creating an artificial surplus. This surplus is created at an

added exense to the handler, often in acquisition costs, and always in added freight costs. The handler is willing to stand these extra costs on a small portion of his volume to depress the costs on the bulk of his purchases. Examples:

1. Milk purchased in the Cache Valley area of Utah at higher prices than paid in Idaho and then hauled into Rupert, Idaho and Blackfoot, Idaho. Additional cost in both acquisition and freight for 160 mile haul.

2. Potatoes and sugar beets hauled from Mountain Home, Idaho to Rupert, Idaho and Aberdeen, Idaho.

The right of the handler to purchase as cheaply as possible is recognized by our organization. He should be prohibited, however, from paying higher prices and shipping long distance for the purpose of bypassing local bargaining efforts and depressing prices.

It is our proposal therefore that a paragraph be included to prevent a handler from purchasing outside his normal operating area, unless such purchases, including freight, could be made at a price equal to or below what he is paying in his immediate area.

Sincerely,

DANIEL C. WALTON,
President, Minidoka County, N.F.O.

Senator CHURCH. I thank you very much.

I want the committee to know that I strongly support this bill. Many times I have been reminded in Idaho by farmers of the need of legislation of this kind, not only by the potato growers who are very ably represented here today, but by the sugarbeet growers and others that deal with the larger processors.

I think it is a common feeling in Idaho, Mr. Chairman, among the farmers, generally, that we ought to find some way to get the Government out of farming, and I am very sympathetic with that objective as a long-term proposition, but I do not know how we can accomplish that objective unless the farmer is able to effectively represent his own interests. The individual farmer cannot do this against the large processor unless he forms bargaining associations and seeks to establish a price with the large processor in such a manner.

This legislation would permit him to do this without fear of recrimination or reprisal on the part of the processor, and I can personally testify that many, many Idaho farmers have come to me indicating their feeling that this kind of legislation is critically needed.

So, I simply wanted to say this, to put my own position on the record.

A constituent of mine is here, Mr. Chairman, Mr. Maurice Clements from Nampa, Idaho, a well known and well respected citizen of my State. He is presently the president of the Treasure Valley Potato Bargaining Association. I spoke recently to Mr. Parr of the potato growers of Idaho, and he wanted me to advise you that Mr. Clements speaks for all of the organized potato growers of my State, some 2,200 independent potato farmers who altogether are planting some 160,000 acres of potatoes. So, he has a large constituency to speak for.

And from the adjoining Malheur County in Oregon is Mr. Abe Saito, and their attorney, Mr. Alioto from San Francisco who is representing them in a lawsuit.

I want to commend all three to the attention of the committee. I appreciate the opportunity to appear here this morning.

Senator JORDAN. We appreciate your introduction of your very fine citizens. I know that some of the States that raise potatoes say they are discriminating against the other States because they claim their potatoes are better than the other potatoes. They do not admit that. But they claim that they are.

Senator CHURCH. We leave that judgment to the housewives, Mr. Chairman.

Senator JORDAN. They are mighty good food, I would say.

Senator AIKEN. I would like to ask: Does the big potato grower of Idaho plant 100 pounds of Green Mountain potatoes for his own family use, as they do in some potato growing areas?

Senator JORDAN. You had better not answer that.

Senator CHURCH. I have never heard of it.

Senator AIKEN. You can take the fifth amendment.

Senator JORDAN. You had better let that one alone. [Laughter.]

You may proceed, Mr. Alioto.

STATEMENT OF LAWRENCE ALIOTO, ON BEHALF OF THE MALHEUR COUNTY (OREG.) POTATO BARGAINING ASSOCIATION AND THE TREASURE VALLEY (IDAHO) BARGAINING ASSOCIATION

Mr. ALIOTO. Mr. Chairman and members of the subcommittee, my name is Lawrence Alioto. I reside in San Francisco, Calif. I am associated with the firm of Joseph L. Alioto which is presently prosecuting an antitrust case in the Federal District Court for the District of Idaho on behalf of the potato growers of Oregon and Idaho and their association against the H. J. Heinz Co. and the Simplto Co. We think that this antitrust case will benefit the potato growers of Oregon and Idaho inasmuch as it will put an end to the blatant price fixing which these two companies have engaged in for the purpose of minimizing the price paid to the potato grower for his crop. But while the antitrust laws are adequate to combat price fixing, they are not adequate to combat the practices which S. 109 will outlaw, and this is the theme of my statement.

S. 109 does not duplicate the antitrust laws:

It has been stated by opponents of S. 109 that it does not give the farmer and his association any more protection than he already had under the Federal antitrust laws (Newsletter, National Association of Frozen Food Packers, Feb. 14, 1967). This is very definitely not true. S. 109 greatly expands the protection of farmers and farmer associations, and it provides them with rights and remedies which they have not had under the antitrust laws or any other preexisting Federal legislation or case law.

Let us look at the provisions of the proposed legislation and examine them one by one to discover wherein S. 109 affords protection that the antitrust laws do not afford and to see how this legislation will succeed in preventing the undermining of farmer asssociations where the antitrust laws have failed.

Section 4 of S. 109 is an interdiction going to "any handler." This means that the statute may apply to the conduct of a single firm acting unilaterally and without contact with another person or firm. As the committee knows, section 1 of the Sherman Act, the principal antitrust act, applies only to contracts, combinations, and conspiracies. That is, a violation of the Sherman Act requires the action of two or more parties contracting, combining, or conspiring with each other. S. 109 on the other hand reaches single firm conduct, and single firm conduct is and has been sufficient to undermine the effectiveness of a farmers association.

Although section 2 of the Sherman Act purports to restrict "any person," and hence in some measure provides protection against a single firm acting alone, still the plaintiff in a Sherman 2 case must prove actual or attempted monopolization of a part of interstate trade or commerce. This means proof of relevant market and an extended analysis. (See *U.S.* v. *E. I. DuPont de Nemours and Co.*, 351 U.S. 377, 76 S. Ct. 994; *U.S.* v. *Aluminum Company of America*, 148 F. 2d 416.) This is an enormous trial burden of proof involving all the complexities, statistical data, and relevant economic evidence which have made monopolization antitrust cases synonymous with protracted and expensive litigation. Even the Government with all its resources has failed in such cases. See the *Du Pont* case, supra. Thus the practical obstacles of a proceeding under section 2 of the Sherman Act mean that that section is in effect no remedy at all for the individual farmer.

But even aside from these practical problems, it is by no means certain that the acts which will be outlawed by S. 109 constitute monopolization or attempted monopolization of interstate trade or commerce. As more fully appears hereinafter, one can commit the acts which will be outlawed by S. 109 and still not have violated section 2 of the Sherman Act. Hence section 2 of the Sherman Act and S. 109 cover completely different areas of behavior. They do not even overlap. Much less are they coextensive. (This is not to say that the acts outlawed by S. 109 would not contribute some probative value toward proof of an attempt to monopolize.)

Although standing alone those acts do not violate existing law.

No private cause of action exists for violations of section 5 of the Federal Trade Commission Act. Hence the suggestion that S. 109 gives farmers and farm associations something they already had under section 5 of the FTC Act is completely without merit.

Sections (a) and (c) of S. 109 prohibit conduct which does not, standing alone, violate the antitrust laws. It is well known that a single firm may boycott whomever it pleases and for whatever reasons and still be within its rights under the antitrust laws. This is the *Colgate* doctrine. (*U.S.* v. *Colgate and Co.*, 250 U.S. 300.) This doctrine, which some have thought to be moribund, received new life less than a month ago in the case of *Quinn* v. *Mobil Oil Company* (1st Circuit—April 1967), upholding the right of a single firm to refuse to deal for whatever reason it chooses. Thus while single firm boycotts or refusals to deal are not illegal under the antitrust laws, such conduct would be illegal under S. 109 (a) and (c). And this is a very vital difference, for it cannot be doubted that the strongest predatory weapon of any handler or processor is to refuse to purchase the crop and thereby boycott the individual leader or leaders of a farmers association. Such a boycott standing alone would be perfectly legal under the present antitrust laws.

Section 4(b) of S. 109 outlaws discrimination by handlers on the basis of membership in a farmer association. Such discrimination by a single handler is not forbidden by the present antitrust laws. The Robinson-Patman Act (sec. 2) of the Clayton Act does not forbid such discrimination since it refers by its terms to discriminations "between different purchasers." I think Secretary Freeman pointed out that the Robinson-Patman Act governs the acts of the seller, whereas, S. 109 deals with acts of the discriminating buyer. Robinson-

Patman seeks to outlaw discriminations by sellers of commodities; S. 109(b) on the other hand would outlaw discrimination by a buyer. Also, a case under the Robinson-Patman Act requires proof of injury to competition. This is an onerous requirement and a great obstacle in the way of the private antitrust plaintiff. It is doubtful that discrimination against a handful of growers, even if they were the leaders of an association, would in itself fulfill the economic condition of injury to competition. Economically the identity of the party discriminated against may be irrelevant. Yet it is just this economic injury, or potential injury, to competition which the Robinson-Patman Act requires. S. 109(b) makes discrimination unlawful even without the extraneous element of proof of injury to competition. Thus the burden on a complaining party will be considerably lighter than the burden on an antitrust plaintiff proceeding under the Robinson-Patman Act.

Section 4(d) prohibiting inducements to stay out of farmer associations has absolutely no counterpart in existing antitrust law. Although, once again, such conduct may be probative of an attempt to monopolize, standing alone it does not create antitrust liability. Hence this subsection cannot be argued to be duplicative of any Federal legislation. It does not outlaw Federal law. Exactly the same must be said for section 4(e) outlawing whispering campaigns against associations. Such conduct does not in itself violate the antitrust laws.

It has been suggested that if 4 (d) and (e) do not duplicate antitrust rights, they are at least available at common law as trade libels or other business torts. It is first of all not entirely clear that this is true. But assuming it is, there is precedent for creating from the common law a Federal right of action to implement a congressional policy. Thus the SEC Act of 1934 gives a private right of action in the Federal courts for conduct with regard to securities which amounts to no more than common law fraud.

I might also say, Mr. Chairman, that the Sherman Act itself is the statutory right of action which codifies common law and has created a Federal right of action. This is the history of the Sherman Act itself.

This federalization of State court rights where the requisite interstate effect appears gives direction and unity to the purposes behind S. 109 and is clearly a more effective regulatory measure than private enforcement in the various State courts with divergent views on the changing and undeveloped law of business torts. This is not to mention the standing to sue problems of unincorporated associations.

Section 5 (a), (c), and (d) are necessary and proper measures to implement and enforce the innovations created by subsections (a) through (e) of section 4. There is no reason to believe that these sanctions will prove any less effective under this Act than under the antitrust acts.

Subsection (b) of section 5 is particularly desirable in view of the Department of Agriculture's expertise and understanding in matters relating to farmers. This expertise and understanding are not shared by the Department of Justice, which is entrusted with enforcement of the general antitrust laws.

Subsection (e) of section 5 is beneficial and suited to the purposes of this legislation in that it removes unnecessary and costly obstacles to the vindication of the rights created by this legislation.

79-412—67——4

Thank you very much.

But in conclusion, let me state, to make it absolutely clear that the proposed legislation before the subcommittee does not in any way duplicate the rights of a private party under existing antitrust laws.

Senator JORDAN. Thank you very much.

Any questions, Senator Aiken?

Senator AIKEN. No questions.

Senator JORDAN. Any questions, Senator Byrd?

Senator BYRD. No questions.

Senator JORDAN. Thank you, again, very much.

Mr. ALIOTO. I would like to introduce next Mr. Maurice Clements who will provide the committee with the factual background on this subject, and Mr. Abe Saito who has a statement which he will submit to the committee.

Senator JORDAN. You may proceed, Mr. Clements. We will be glad to hear from you now.

STATEMENT OF MAURICE CLEMENTS, PRESIDENT, TREASURE VALLEY POTATO BARGAINING ASSOCIATION, NAMPA, IDAHO; ALSO REPRESENTING THE POTATO GROWERS OF IDAHO

Mr. CLEMENTS. Mr. Chairman and members of the subcommittee, I am Maurice Clements, a potato grower from Nampa, Idaho, presently serving as president of Treasure Valley Potato Bargaining Association. This association is a subdistrict of the Potato Growers of Idaho, a statewide association representing more than 2,200 potato farmers and 160,000 acres of potatoes.

I am representing my district and am also authorized to submit this report on behalf of the State association of which I was vice president in 1965–66.

In the past decade the potato industry of Idaho has undergone a dramatic transformation. In 1956, 29 percent of the potatoes grown in Idaho were marketed in the form of processed potatoes such as French fried, shoestringers, instant mashed, hash browns, and a multitude of dehydrated products, with the balance of our crop marketed as fresh potatoes. In 1967, it is estimated that 60 percent of our crop will be marketed as processed potatoes. This has caused a definite change in our local market structure. Instead of having many small shippers, our present market is made of a few very large processors with ample opportunities to arbitrarily regulate prices.

In 1959, the potato growers in our area realized they must join together as a large bargaining organization to guarantee a more equitable share of the potato dollar. The Treasure Valley Potato Bargaining Association was formed to accomplish this purpose. After a difficult period of infancy this association was recognized by the local buyers as a legitimate spokesman for the potato growers. Through the association's efforts considerable gains were realized by the growers in the form of reasonable prices, and more favorable grade and delivery conditions with a resulting improvement in the quality of products delivered.

In 1964 the Nation suffered a major shortage of potatoes and prices escalated to unheard of levels. Subsequently, our efforts to raise the contract price for 1965 were quite successful. As a result, many farmers

who had not been in the potato business began producing potatoes with a resulting condition of overproduction. This enabled the buyers to be very selective in their source of supply.

It has been a generally accepted policy by the buyers and the farmers that the growers who supply the raw product should represent themselves when contracts are negotiated. It is common knowledge that farmers suffer from a lack of information as to the factors affecting and influencing the market. He also has difficulties organizing to the point that he can financially afford to hire competent personnel to accomplish the difficult job of marketing his crop. Therefore, he attempts this formidable task himself.

In the negotiation period of the crop-year 1965, the bargaining committee met with the processors early in the spring. After many meetings the committee accepted the original offer made by the processors and then notified the members of the bargaining association that a contract had been agreed upon. When the members of the association and members of the bargaining committee in particular applied for their contracts, many were informed there was no acreage left. During the negotiation period the processors had informed our committee they should be prepared for a cut in acreage from the previous year, a figure suggested at about 50 percent. The 100-percent cut that many of us suffered did not seem consistent with the statements made during negotiations, particularly when many growers who were not members of our bargaining association received contracts in excess of what they had ever grown before. Also many new growers who had never raised potatoes before received contracts. Some contracts were awarded growers after the members were informed that acreage was all gone.

Several members subsequently resigned in fear they would lose their contracts in 1967 because of their affiliation with the bargaining association. One of the members of the board of directors resigned because he felt he would not be able to sell his crop if he continued with his membership.

These past events have rendered our bargaining association completely helpless to resist any efforts of the buyers to pay less for their raw product. Growers who still have contracts hesitate to do anything that will give the buyer cause to cut off his market. This has resulted in less money to the grower but has not necessarily reflected in lower prices to the consumer. Our association feels there is definite legislation needed to protect the right of individual farmers to organize and bargain with the buyers without fear of reprisals, boycotts, or discrimination. It is our hope that this bill would give us the protection.

I respectfully submit this testimony hoping this subcommittee will see fit to encourage the passage of this legislation.

Senator JORDAN. Thank you very much.

Who buys most of your potatoes?

You say that they are being bought now by the larger companies rather than the small companies.

Mr. CLEMENTS. In my personal area there are two major buyers, the H. J. Heinz and Simplot.

Senator AIKEN. They are all over the world today.

Mr. CLEMENTS. Pardon?

Senator AIKEN. Those people are in world affairs.

Mr. CLEMENTS. They are large processors, I know that.

Senator AIKEN. They have production in other countries that is being used to hold down prices in the United States. I have plenty of evidence if anybody wants to see it.

Senator JORDAN. I know what the H. J. Heinz Co. is. I am not familiar with the other one.

Senator AIKEN. They are operating in different countries. I do not have the data with me here at present, but I do have it in my office.

All of our processors have gone into foreign countries and are exporting to the United States, and their exports to the United States are kept secret by the Commerce Department.

Mr. CLEMENTS. Is that right?

Senator AIKEN. Yes, that is right. You try and find out who is in that export business from foreign countries, and you will not get anywhere.

Mr. ALIOTO. They are also going into the business of farming potatoes. They are buying land and growing their own potatoes. They are integrating in that direction. And this poses a very serious threat to the potato growers. I know that this is not a matter which is before the committee at present.

Senator AIKEN. One food processing company has control of about 200,000 acres. The thing that bothers me is that they are importing more and more and are undercutting the American producer. The imports are kept secret by our Government.

Senator JORDAN. I know that they are bringing in a lot of textiles. I am worried about that.

Senator AIKEN. And the textile industry is going down the drain, just as fast as it can.

Senator JORDAN. Potatoes will join textiles.

Thank you very much.

Did you have a statement to make, Mr. Saito?

Senator BYRD. Let me ask this question, please.

Senator JORDAN. I did not mean to pass you over.

Senator BYRD. I notice that in the last several years, your percentage of processed potatoes has grown from 29 to 60 percent.

Do the growers normally do better with processing their potatoes or selling them otherwise?

Mr. CLEMENTS. Generally, the processing market is better because you can utilize the total crop; whereas, in shipping fresh potatoes, you are obligated by Federal and State laws to ship only the top quality products.

Senator AIKEN. What about the starch business?

They used to use the outside potatoes for starch, I believe, did they not?

Mr. CLEMENTS. Yes, they still do.

Senator AIKEN. And the starch business has held up pretty well?

Mr. CLEMENTS. Yes. In fact, this year it has increased tremendously because of several production factors.

Senator JORDAN. May I ask another question?

Are these processors located in Idaho, or are the potatoes shipped to other States where they are processed?

Mr. CLEMENTS. The two processors that we deal with, Simplot and H. J. Heinz Co.—that we deal with directly—which purchase the po-

tatoes, have plants in various areas. A division of the H. J. Heinz Co. has a plant in Ontario, in Oregon near my territory, in Idaho; one in the southern part of the State, and they also have a facility, I understand, in Michigan.

Simplot has three plants in Idaho. I understand has one in Canada, and one in the State of Maine. I do not know whether this is complete.

Senator JORDAN. Do they make french fries?

Mr. CLEMENTS. Frozen and dehydrated and other products of that kind.

Senator AIKEN. They do process chips there?

Mr. CLEMENTS. There are some chips processed for the local market, but they ship the potatoes in bulk for making chips elsewhere.

Senator AIKEN. Thank you.

Senator JORDAN. Getting back to popcorn and Crackerjacks now.

Senator AIKEN. That is true.

Senator JORDAN. We will put into the record the statement by Mr. Abe Saito at this point.

(The statement is as follows:)

STATEMENT OF ABE SAITO, SECRETARY-TREASURER, MALHEUR POTATO BARGAINING ASSOCIATION, ONTARIO, OREG.

My name is Abe Saito. I reside near Ontario, Oregon. I am a farmer and the secretary-treasurer of the Malheur Potato Bargaining Association, a non-profit Oregon cooperative corporation, whose membership consists of 360 farmers, most of whom reside in Malheur County, Oregon, which borders the State of Idaho.

My purpose in appearing before this committee is to present the experiences of our Association and some of its members during the negotiation of processing potato contracts for the 1966 and 1967 farming seasons.

In our area there are two major processing companies which control about 95% of the potatoes intended for processing. One of these companies is in Oregon, while the other is in Idaho. Each company contracts potatoes on both sides of the Snake River, which divides the two states.

On January 5, 1966, our Association received a letter from the Oregon processor proposing a 1966 contract with a base price of $1.30 per cwt. This contrasts with the 1965 contract from the same company which provided for a $1.48 base price. While the basis for the 1965 contract price was due in part to an unusually high price of seed in that year, nevertheless, the processor is the principal supplier of seed and it reaped the benefits of the high seed price.

Our Association met with the company for contract negotiations six times between January 8th and March 8th during which times the Association proposed a base price of $1.40 and later offered to compromise on price. The processor refused to consider any compromise and advised the Association that during negotiations, it was accepting commitments from growers who desired to contract with the company, both from the factory area and outside said area, including the State of Washington.

On February 18, 1966, the company sent a letter to the Association and to all its member-growers, individually, urging the Association to call a meeting for the purpose of having the growers decide whether they wished to accept or reject the company's proposed contract. This occurred despite the fact that the processor had previously been furnished with a sworn list of all potato growers who were members of the Association and who had designated the Association as their exclusive representative to negotiate a potato contract under a joint marketing agreement, a copy of the marketing agreement and the Oregon Statute relating thereto. Incidentally, the proposed contract was presented to a grower-membership meeting on February 24, 1966, and was rejected by a vote of 135 against and 8 for the contract.

Then on February 24, 1966, the processor sent another letter to all of its growers who were members of our Association calling to their attention that: "we are not free to contract with you nor are you at liberty to contract with us until the Association * * * approves our contract." That at the same time it stressed the urgency of early contracting and planning and indicated that each grower's contract acreage had preferred status. With this subtle pressure the

company then stated, "Since we are now contracting, we want to give you the opportunity to say whether or not you wish to contract with us this year."

During the period of negotiations between the processor and our Association, the former was advertising in the area newspapers as follows: "* * * is now contracting potatoes. Call Field Department * * * ."

Our Association agreed to accept the processor's proposed contract on March 8, 1966, and the Association and the processor thereupon issued a joint press release to such effect with the Company assuring contract priority to old growers. On March 9th when Association members called at the office of the company to contract, they were advised that no acreage was available for contracting, although on March 10th a Company spokesman was quoted by the Argus Observer newspaper of Ontario, Oregon, to the effect that 40% of the potatoes to be processed this year had not as yet been contracted.

It is noteworthy that during the entire period of negotiations with this processor the remaining major processor on the Idaho side refused to enter into negotiations with our Association and stated its price was the same as that offered by the Oregon processor.

Growers who expressed opposition to acceptance of the processor's contract at the membership meeting held by the Association at the request of the Company were refused contracts after the Association approved the processing contract and in one known instance a grower was reminded of his comments at the meeting.

Eight of the ten directors of our Association who had previous potato contracts with the processor received reduced contracts while the remaining two who were active in soliciting membership in the Association were refused any contracts. One of the directors who offered to share his contract with several members of the Association who could not obtain contracts was not permitted to do so.

While the directors were favored with contracts, other members were refused contracts. One member who had expressed himself against the contract terms was informed he could solicit acreage from contract growers with excess acreage. By this method he was able to obtain a 10 acre contract whereas in previous years he had a 50 acre production acreage.

After the Association approved the processor's contract and the company, on March 8, 1966, issued a press release stating "that previous * * * growers will have priority to fill (processor's) needs for the 1966 crop", the company in one instance asked a tenant farmer applying for a contract whether he was a member of the Association and when answered in the negative gave him a contract. This occurred at a time when members were being refused contracts.

Some growers who had already purchased their seed for 1966 were informed by company representatives that they would not get contracts unless they purchased their seed from the company.

Prior to commencement of bargaining in 1966, 90% of the growers who produced potatoes in 1965 were members of the Association. During the prolonged 1966 negotiation, many farmers who had not produced potatoes in 1965, signed contracts with the company as non-members. At the conclusion of the negotiations and contracting we determined that the Oregon processor contracted for the production of approximately 3800 acres of potatoes with Association members and 4200 acres with non-members. As a result of the company pressures and practices referred to, many Association members questioned the value of the Association since the non-members obtained the same price, had less difficulty obtaining a contract, and did not have to pay any Association dues.

Even so the Association continued to function and has the support of a nucleus of loyal farmers who believe their very survival depends upon being able to join together for bargaining purposes. Such a bargaining group can only survive if adequately protected by the law.

In an apparent attempt to further by-pass the Association, the Idaho processor developed, for potato production, approximately 2400 acres of virgin land near Payette, Idaho, under a sprinkler irrigation project. The Oregon processor purchased 9500 acres of rolling land, which had never been farmed before, near Ontario, Oregon, and plans to place it in potato production during the 1967 crop year. This also is a sprinkler irrigation project. The Oregon processor publicly stated that the project will increase potato production in Oregon from 15 to 20 per cent and the project was undertaken to provide adequate potato supplies for its plants. The area served by the Association can easily produce an ample supply of quality potatoes for the both processors if growers were offered contracts approved by the Association.

During the 1967 bargaining the Oregon processor again stated what it would offer in the way of a contract and further that it would not change its offer. Thus,

there was no bargaining to it. The Association had no choice but to accept the contract which is on less favorable terms to the farmer than the 1966 contract. However, to date in 1967, the Oregon processor has entered into very few contracts. The processor stated it would limit contracting to 800 acres but might contract for more at harvest time.

Some farmers are planting potatoes without a contract evidently in the hopes that a contract will be offered at a later date, or perhaps that they can sell them on the open market later in the year either as fresh produce or for processing. However, since very few of them have storage facilities, they will again be at the mercy of the processors at harvest time.

In conclusion I offer for your consideration the need of protecting our Association farmers so that they can receive fair and equitable returns on their farming efforts. In our area, as in other areas, farmers are faced constantly with rising costs of operation. The crops which most farmers in our area can produce are limited in diversification. They must receive a fair return on the crop if they are to survive.

Since 1961 our Association has acted in the same capacity for its potato growing members. The role of the bargaining Association, whether for other crops or potatoes, is essential to the welfare of all farmers. Individually, farmers are at the mercy of the large processing companies. Their only strength lies in the unity that flows from a common plight and membership in a contract bargaining organization. Yet during these two years, we have had a good example of how a processor can direct its efforts toward elimination of a bargaining association as an effective negotiating agency in its representation of hundreds of farmers, so that each farmer will be left in a position of having to compete against his neighbor for survival.

Unless the positions of associations such as ours are strengthened to the point where a processor cannot undermine the bargaining agency, farmers will suffer immeasurably. We believe S. 109 will give us that protection.

Thank you for this opportunity to appear before this committee.

Senator JORDAN. Our next witness is Mr. Robert N. Hampton, director of marketing services of the National Council of Farmer Cooperatives.

I would like to ask at this point if there are any other out-of-town witnesses to be heard whom I have overlooked. I would like very much to get them in, if I can.

Are you from out of town?

Mr. HAMPTON. I am local, from Washington.

Senator JORDAN. Thank you very much for being with us. We will be glad to hear from you now.

STATEMENT OF ROBERT N. HAMPTON, DIRECTOR, MARKETING SERVICES, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HAMPTON. Mr. Chairman and members of the subcommittee, I am Robert N. Hampton, director of marketing services of the National Council of Farmer Cooperatives.

Representing farmer business interests which motivate all efforts of our members, the major federated and regional farmer cooperatives of the United States, the national council appeared before this subcommittee last year in support of the principles of S. 109. These principles remain the same. We wish to reaffirm our position in support of this bill.

The need for improvement in farmers' ability to deal in the marketplace from a position of strength comparable to that of other buyers and sellers is dramatically highlighted by continued low farm incomes in the face of rising food prices. Secretary of Agriculture Freeman has rightly pointed out, in recent public statements, that farmers must exercise more control over their marketing activities, including

supply, and that this can be done through only one of two approaches: First, stronger programs of mandatory Government restrictions, regulations, or supports; or second, strengthened programs of cooperative activity for farmers' self-help.

This position reflects the findings of the National Commission on Food Marketing, as stated in these words from its report of June 1966:

> Unorganized farmers have no positive power at all. . . . Increasing concentration of purchases restricts the alternatives open to suppliers, stimulates compensating concentration on their part, and weakens the effectiveness of competition as a self-regulating device throughout the industry.

The Food Marketing Commission's support for legislation such as S. 109 is made very specific as follows:

> Special efforts appear necessary to protect the right of farmers to organize bargaining associations, to approve marketing orders, and to engage in other group efforts. We believe that specific legislation should be enacted providing that all processors, shippers, and buyers of farm products, engaging in or affecting interstate trade, are prohibited from obstructing the formation or operation of a producers' bargaining association or cooperative, and from influencing producers' understanding of or voting on marketing orders or similar programs, by disseminating false or misleading information, discriminating among producers in any manner, boycotts, or other deceptive or coercive methods.

There seems to be little controversy over the need for farmers to be rewarded adequately if we are to maintain a reliable, efficient food industry in the national interest. Unless farmers have the opportunity, and will themselves take the initiative toward more aggressive long-range steps to improve their market position, some kind of mandatory programs are almost inevitable.

The need for S. 109 has already been documented before this subcommittee. Undue pressures which retard farmers' abilities to build strong cooperative organizations cannot be tolerated.

S. 109 is a moderate bill toward restraining such discriminatory pressures. It provides no legal means by which farmers can pose unreasonable threats to processors or handlers, since three specific and difficult-to-prove elements must be present for violations of the act: First, discriminatory or coercive actions; second, which are done knowingly; third, and which are done because of, or in the effort to obstruct, legitimate cooperative activities of producers. The requirements are so stringent that it is clearly illogical to argue, as some opponents have, that S. 109 would preclude handlers providing producers with "ordinary business services"—unless such "ordinary" services or trade practices are of a nature which are already prohibited under other price discrimination or antitrust law.

The language of S. 109 makes it clear that handlers would not be deprived of their appropriate rights to choose their suppliers, based on economic realities. Neither would "independent" handlers be at any disadvantage in dealings with producers, unless their dealings were unfair and intended to bring undue pressures against farmers because of their coperative activities.

In summary, there is an important and well-established need for such legislation to further protect farmers in the exercise of their rights to organize as recognized in the Capper-Volstead Act of 1922 and the Cooperative Marketing Act of 1926. Substantial amendments have been made to meet reasonable objections to earlier versions of this bill; the bill as it now stands is moderate and follows well-estab-

lished antitrust legislative precedents in both substantive and procedural matters. It will benefit farmers, and it will not threaten or damage the ability of handlers to continue to do business through the most rational and sound choice of suppliers and purchasing practices. It is not in the interest of producers to do that, for to lower the efficiency of the handler or processing function will not accomplish that strengthening which farmers seek.

Finally, S. 109 will be a constructive step toward balancing the buying-selling relationship at a key level of the food industry—a step which will sharpen competition, with consequent benefits toward a more efficient, serviceable, and progressive food industry which is in the broadest public interest.

We appreciate the opportunity to appear before this subcommittee, and urge your support for S. 109 as a measure which would benefit farmers, the food industry, and the public alike.

If I may, Mr. Bunje's organization is a member of our group. Mr. Bunje has testified before this subcommittee, and other members of our group, I believe, have written and sent in messages to the subcommittee. I have in my hand another message which is directed to the subcommittee from Mr. Cameron Girton, manager, California Canning Pear Association, and with your permission, I would like to have that inserted in the record at this point.

Senator JORDAN. That will be made a part of the record at this point.

(The letter is as follows:)

SAN FRANCISCO, CALIF., *April 27, 1967.*

Senator B. EVERETT JORDAN,
Senate Committee on Agriculture and Forestry,
Washington, D.C.

DEAR SENATOR: I am writing in behalf of the California Canning Pear Association to urge your favorable action with respect to S. B. 109. Our Association is a bargaining cooperative which represents over 1300 California pear growers as their bargaining representative for the sale of pears to canners and processors.

The importance of strong and effective bargaining cooperatives, such as ours, has been demonstrated to the growers in California who have joined our Association in ever-increasing numbers during the fifteen years of its existence. The importance of bargaining cooperatives to agriculture as a whole has been singled out for special reference by the recently completed Federal Food Commission Study.

It is essential for the continued existence of Associations, such as ours, as strong and effective bargaining representatives that farmers feel free to join our ranks without fear of discriminatory action by canners. Here in California the State Legislature a few years back enacted legislation similar to that proposed in S. B. 109 to ensure basic protection to farmers who exercise their right to join a bargaining cooperative and to afford reasonable protection to the cooperative from unfair trade practices by canners. This legislation has been of invaluable assistance in the securing and protection of these rights.

We believe that enactment of a Federal statute will be of even greater importance since it will affect farmers and bargaining cooperatives throughout the country.

Very truly yours,

CALIFORNIA CANNING PEAR ASSOCIATION,
CAMERON GIRTON, *Manager.*

Senator JORDAN. Thank you very much.
Are there any questions, Senator Aiken?
Senator AIKEN. No questions.

(Supplemental statement filed by the National Council of Farmer Cooperatives is as follows:)

SUPPLEMENTAL STATEMENT FILED BY THE NATIONAL COUNCIL OF FARMER COOPERATIVES

During the current hearings on S. 109, statements have been made which imply that farmer cooperatives are motivated and act just as non-cooperative business firms in their dealings with farmers.

For the record, we wish to point out that there is an important distinction between cooperatives and other private enterprise firms. The non-cooperative firm's primary objective is to *maximize its profit for its owners*, as investors rather than patrons, and consideration for those with whom it deals is subordinate to that goal. The cooperative also tries to maximize its margins of returns above costs, through the most efficient possible business methods, but such *margins are returned as savings or patronage dividends to the farmers which it serves.*

This difference refutes the argument that increasing strength in commodity marketing by cooperatives results in less competition to the detriment of the farmers' welfare. The cooperative's primary goal, in fact its reason for being, is to maximize returns to the farmer, and it does not require the goad of outside competition, as non-cooperative firms do, to force it to return to the farmer all that the supply-demand situation permits.

Successful cooperatives must deal fairly and equitably with all farmers. Any advances made on commodities must be uniform to all members served. Other handlers may take advantage of any lack of information or lack of vigilance on the part of individual farmers to drive a sharp bargain on the commodity purchased.

Bona fide cooperatives are operated for the benefit of the farm unit and not the marketing unit. At times cooperatives that own storage facilities would be better off financially to hold commodities for storage than to sell promptly. However, the farmers who own the cooperatives insist that commodities be sold at the earliest time possible without an outright loss. Farmers do not want to earn a few dollars from storage revenue at the risk of a much greater loss in merchandising revenue. Indeed, cooperatives often follow practices which do not produce maximum dollar earnings to the organization because of the adverse effect on farmers. Merchants operate under no such restrictions.

Statements made during these hearings, to the effect that S. 109 would foreclose opportunity for non-cooperative marketing firms, are based on the faulty premise that courts or administrative agencies would construe legitimate, widely accepted "ordinary business procedures" as discriminatory actions.

A further charge that Section 4(b) of S. 109 would prohibit a handler from not making an offer for a commodity on the market is obviously far beyond either the intent or the language of this section.

In summary, farmer cooperatives by their very nature provide automatically the maximizing of farm returns which should result from any highly competitive market structure. As public policy has long recognized through the Capper-Volstead Act and other legislation, strong cooperatives do not displace the benefits of competitiveness. This Act specifically provides that any monopolization or restraint of trade causing undue price enhancement because of cooperative action shall be subject to injunctive action by the Secretary of Agriculture. The fact that in all the years this Act has been in force no such actions have been initiated is a clear indication that farmer cooperative efforts have not been against the public interest.

We urge again that this Subcommittee report favorably on S. 109 as a further evidence of support for farmer cooperative growth on behalf of American farmer and public welfare.

Senator JORDAN. Has Mr. Clements left yet?

Will you come back for a minute?

I want to ask you a question, please, sir.

Did I understand you to say that one of the potato purchasers had purchased a lot of land and is now growing potatoes itself?

Mr. CLEMENTS. Yes, that is right. Both of the outlets that we use in that area are in production right now.

Senator JORDAN. Of potatoes?

Mr. CLEMENTS. Right.

Senator JORDAN. To supply their own consumption needs?

Mr. CLEMENTS. To supply their processing plants there.

Senator JORDAN. Do you have any objection to that?

Mr. CLEMENTS. Well, certainly, because it is going to replace our acreage. We will have to terminate our production of potatoes, if they attempt to supply their whole supply of raw products. This would not be good for myself or any of the other individual producers, sir.

Senator JORDAN. They would have to buy somebody's farm to get the acreage, would they not?

Mr. CLEMENTS. Idaho is in a unique situation. We have a lot of sagebrush land that is not in production, and if you have adequate financing and technology to go along with it, you can put the new land into production that has not been in production in the past, but it requires a tremendous amount of money to do this.

Senator JORDAN. I presume you know that is not an uncommon practice in a great many industries in this country. You take the paper people, for instance, they have as high as 1 million acres of forest land where they grow their pulp timber.

Mr. CLEMENTS. Yes, sir.

Senator JORDAN. There are other big producers of different types of things also who produce for themselves. There is nothing illegal about that, or at least it has not been determined that it is. I am a little bit at a loss to understand how you feel that could be prohibited by law.

Mr. CLEMENTS. The reason why we feel like this is illegal is that we feel that the use of these practices will eventually restrict the free market action in the pricing of the potatoes, because if they can eventually control the larger segment of the source of raw supply, then it probably is easier to establish the prices, wherever they might fall.

Mr. ALIOTO. We can furnish the committee with a copy of our complaint against Simplot and Heinz, supporting our legal theory, claiming that this integration is an attempt to monopolize.

Senator JORDAN. I was just interested in that particular thing. I was not sure that I had heard you correctly, though that is not an uncommon practice in a great many fields of industry today in this country. And you are going pretty far afield, I think, when you want to bring it into this situation here. I may be wrong about that.

Mr. ALIOTO. I do not think that comes within S. 109.

Mr. CLEMENTS. We do not think that this particular area applies.

Senator JORDAN. Do you have anything to add to that?

Senator AIKEN. No.

Senator JORDAN. Thank you very much. We appreciate that information.

Do you have anything to say that you would like to say to Mr. Graham before you leave?

Senator AIKEN. No. I am glad that he is testifying. I have an idea about what his testimony will be.

Senator JORDAN. I think that I am correct, Mr. Graham, in saying that your testimony last year had something to do with the revision of this bill; is that correct?

Mr. GRAHAM. Well, I think that it did.

Senator AIKEN. I think that we revised it as a result of that.

Senator JORDAN. We are very glad to have you with us again. We are always glad to see you, sir, and you may proceed as you wish.

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE, NATIONAL GRANGE

Mr. GRAHAM. Mr. Chairman and members of the subcommittee, my name is Harry L. Graham, and I am legislative representative of the National Grange.

The position of the Grange in support of legislation to insure the right of free colective bargaining has been made clear in the past in our testimony before National Commission on Food Marketing and in two separate appearances before this distinguished committee.

During the second appearance last year, we were critical of the form which the legislation had taken, but we were never critical, nor are we now, of the objectives of this legislation. Our basic criticism of the bill proposed last fall was that it left the courts as the only recourse to those who had suffered injury by handlers who engaged in any of the practices described by the bill. We suggested that we needed a quasi-judicial authority to hear complaints, issue rulings, and enforce decisions.

We were particularly interested in these decisions being made rapidly, so that willful and illegal acts, substantial damage to individuals or to bargaining associations, could not be allowed to continue while the relatively slow and tedious processes of the courts were employed.

We suggested the creation of a board, similar to the National Labor Relations Board, but even at that time we had some reservations about this method, since to set up such a board would obviously be a rather expensive procedure. The number of complaints would not be substantial enough to justify it because of the relatively small number of bargaining associations. We even considered removing the agricultural exemption from the Wagner Labor Relations Act because of the similarity of the basic ideals of the two bills and letting the intent of this act be administered by this group which has accumulated a substantial amount of experience in this field.

We did, however, suggest to our friends in the Farm Bureau that we would not be opposed to letting the authority to administer this act rest with the Secretary of Agriculture provided he were given sufficient authority to be able to accomplish the purposes and objectives of the legislation. Therefore, we are pleased that paragraph (b) of section 5 of the proposed legislation does make this provision.

The changing of the language which specifically excluded associations of farmers from the provisions of the bill into the present language meets our previous objection to that part of last year's bill.

We would confess to you that we are still troubled by the failure to include in the legislation language protecting collective bargaining related to Federal farm programs and marketing orders. This troubles us especially in the light of the continued attack of the Farm Bureau on this kind of program. We recognize that properly and effectively operated Federal programs do not make it any easier to organize a national bargaining association under the leadership of any farm organization, but we hope that our Farm Bureau friends will recognize

that this is a function which should be permitted without quite so much vigorous opposition until it can be proven that they can organize and effectively bargain for smaller segments of the agricultural economy not covered by farm programs and market order legislation.

We have all noticed the number of people who are here in support of this bill. And I would point out that out of the nine who are in support of this bill, eight of them have been regularly before this committee in support of farm legislation.

It seems to us to be quite unreasonable to oppose farm programs in areas where there is no real bargaining power otherwise in the hopes that the agricultural economy will deteriorate to the point that farmers will join a bargaining association out of desperation. There should be better reasons for joining associations like these, and the alternatives offered by bargaining associations should be an improvement on the best that Government programs can do, rather than an improvement on the worse that can happen as a result of the lack of Government programs.

Senator AIKEN. I raised the question with the previous witness, that where the individual might have the right of injunctive relief in the case of a perishable crop, there would not be time to go through the Department. Do you have anything to say on that before I go?

Mr. GRAHAM. Yes, sir. I think that the record of the Packers and Stockyards Act is that they move faster than the individual can.

Senator AIKEN. You think they can move faster?

Mr. GRAHAM. Yes, sir, they have moved pretty fast sometimes, but we are supporting the individual's right to the courts, because we think that this is a basic constitutional right, the American practice, that the individual has access to the courts. We think that this section of the bill should be maintained, but in perishable crops this presents particularly a difficult problem, since either way you go in some of these instances, it will be a long process.

In the case of *Hale* v. *Tyson, Arkansas Industries, and Ralston Purina*, the preliminary hearings took 8 weeks just to conduct the preliminary hearings. So that, you see, when you go into court on a perishable products that 8 weeks is too long. It is extremely important that we find some way of getting relatively quick action, and I think that the injunctive authority of the Secretary in asking for a temporary injunction in the Packers and Stockyards Act is probably the quickest way of doing this. Getting the final decision may take more time, but it would take the same time in any court that you go into.

We would say, in this instance—the section that deals with the Secretary's powers, it says that he may go into court. We would prefer to substitute the word "shall." We would like to make this not too discretionary. If he has reason to believe that the purpose of this law is being violated, he shall go into court. He shall carry out the purposes of the law. And this would be mandatory.

I think if the individual has to go into court, that would obviate the action by the Secretary.

Senator AIKEN. I note that Mr. Magdanz is going to testify for the National Livestock Feeders Association, and he may be able to give us some information for the record on that, that is, a little information on how the Packers and Stockyards Act has worked.

Mr. GRAHAM. I would suggest, also, that as a part of this problem, as suggested a while ago, that it might more properly come under the legislation that has been already passed.

The other one, I would remind the Senator from Vermont before he leaves, in terms of the testimony of the witnesses who were called back a second ago, something that relates to New England:

You will remember the corner on the market by the "shorts" of some 10 or 12 years ago. Mr. Simplot walked into the market about 3 years ago and began buying long. And they offer 1950 cars, according to the newspapers at that time. He bought all of them, and he literally cornered the market on potatoes for chipping purposes and freezing purposes at that point.

So, these fellows who have just been testifying were not testfying about illusionary individuals who entered into the market, because he certainly entered into it with a vengeance at that time.

Incidentally, potatoes went up from 90 cents a hundredweight to about $5.20 a hundredweight, as I remember the market. This was all in futures, and the farmers did not get any of this, nor did the consumer get any benefit from it.

I was staying in a hotel in Idaho, and somebody reminded me that Mr. Simplot had bought that hotel, among other things, off of the money that he made in that particular transaction.

Senator AIKEN. I do not know anything about that or about him. I do know that the Heinz Co. has plants virtually all over the world today, along with many other food processors.

Mr. GRAHAM. They are moving into Mexico now.

Senator AIKEN. And these imports from foreign fields can be brought in to hold down the price to producers in the United States and can be used as a club over the producer if necessary.

Mr. GRAHAM. We created a good deal of flack about a year ago when in Mexico City we reminded some Mexicans in Mexico City that one of the reasons that their bracero problem was not a problem was because a number of these parties were going to move down south of the border.

Senator AIKEN. And they did.

Mr. GRAHAM. And in the resulting newspaper investigations, such as in the Business Week, Heinz was found to be one of those moving south of the border and freezing strawberries and bringing them into the United States.

Senator AIKEN. That is right, and Mexico was the ultimate gainer.

Senator JORDAN. I sometimes thought that this administration thought that they were going to hold the next election in Mexico and in Brazil and in different countries, that is, the way that they favored those foreign markets. [Laughter.]

Senator AIKEN. I might add also that the food processors now have gone into other lines of business, maybe into something to wear or something to put on your face. That way they can produce and sell their farm products for cost, or less than cost, and deduct the loss from the rather large profits which they make on other enterprises. That is another way they have been holding producer prices down.

Mr. GRAHAM. We have done a lot of work in this area and will have to do a lot more before we solve some of these problems.

Senator AIKEN. What I have tried to point out is that our economy depends on agriculture here.

Senator JORDAN. We want to point out, too, in that connection, that I do not know of any company that buys something to lose money on it. They usually want to make money on their products.

You may go ahead.

Mr. GRAHAM. Well, we have digressed long enough, to talk about a part of this testimony that I knew that Senator Aiken would be interested in. I shall now go ahead.

Having said this, we would inform the committee that we will not insist on this provision being placed in this bill at this time. We are prepared to wait and see if there will be any improvement in the attitude of our Farm Bureau friends toward the programs they obviously could not supplant by their own organization at this time, and hope that there is some change in their attitude. However, we are not prepared to announce that we will not pursue this in the future, and, if necessary, pursue it with considerable vigor.

We are, therefore, pleased to join the other farm organizations in the approval of this bill, reserving the right to make some suggestions as to perfecting the language of the bill in order that the intent of the legislation would be properly carried out.

Our first suggestion is that under section 3, paragraph (b), listing those producers covered in this bill. We would suggest that the language be modified to include producers of any agricultural product, and we would prefer to omit the further definition "as a farmer, planter, rancher, dairyman, fruit, vegetable, or nut grower." Definitions have a way of limiting themselves and this one, for instance, does not mention eggs or poultry.

Senator JORDAN. And it does not mention tobacco, either, as I mentioned before.

Mr. GRAHAM. That is right, or textiles.

Senator JORDAN. That is right.

Mr. GRAHAM. If the defintion is to be continued in the bill as it is at the present time, then we believe that it should be expanded to be sure all producers are protected so that some "legal eagle" searching for fly specks on the bill may not find a convenient loophole for avoiding the intent and purposes of the bill.

Under section 4, paragraph (a), we suggest that there be added after the word "practice" in line 22, "or refusal to deal or to bargain with" and striking out the word "or" in line 21. After the word "producers" in line 23, we would add a comma and the words "and exercise the rights and privileges of membership therein;".

I think that we are deluding ourselves with the idea that once an association or a bargaining association is formed that per se that they bargain with the processors or that the processors will bargain with them. This is not necessarily so. The experience in labor legislation history proved that in the earlier years. And one of the reasons for this provision being included in the Wagner labor relations bill was that they found out that labor unions could be organized, but that they still did not necessarily have any bargaining rights. And so into the Wagner labor bill came the provision requiring that employers bargain in good faith. And when an organization, an association of farmers or cooperatives represents the majority, if not all of the production of the commodity in an area, and one processor upon whom they are dependent does not bargain with them, the association is

emptyhanded, that is all. So then we get the kind of relationship that was pointed out by the gentleman from Idaho where they begin to scare the wits out of the people who are left in the association, so that they say that they be out of the picture. And when you hear Mr. Dal Ferry, you will probably question him a little farther on this, because here is a man who probably has had more experience in exactly the thing that we are talking about than anybody I know of in this country.

What we envisage is the possibility that a handler would not interfere in any of the ways mentioned in paragraph (a), as the language now reads, with anyone's right to join such an association, but the handler might then refuse to do business with him, or he might exercise these illegal acts when the member began to use the privilege of his membership to accomplish the economic objectives of the bargaining association.

If it is true as has been reported, that the agencies of Government, including the Department of Justice, are going to insist that paragraph (a) of section 5 be withdrawn, we would oppose this, primarily on the basis that any individual should have the right to go into court and seek through civil action preventive relief from injury sustained by the illegal acts of someone or some organization. The withholding of this privilege by striking paragraph (a), seems to strike at some fundamental liberties inherent in our constitutional government.

We would wonder why anyone would want to go this route if the powers this bill invests in the Secretary are used to accomplish the purposes of the act. However, we also recognize that the administration of this act will depend upon the attitude of the incumbent Secretary at any time, and he might choose not to bring some action which appears to be not only justified, but essential for the economic survival of an individual or a bargaining association.

Therefore, we would insist that if paragraph (a) is stricken from section 5, that the word "may", the second word in line 8 of page 5, be stricken and the word "shall" be substituted for it.

The reason for our insistence that some agency of Government have some authority here is borne out of the experience of some of the little people who have been involved in these controversies. We are not organizing a bargaining association. The Grange is not in this in any way whatsoever. We are interested in the people who become a part of it. And in the case of Hale against the three companies in Arkansas which we were talking about, unless this is something like this language provided, the little man and the beginning bargaining association do not have a chance.

The estimated cost of Hale taking his case into the Federal court in Arkansas was $25,000. Obviously, the public has to be served by public agencies when this kind of situation exists. And, therefore, we are very much pleased that this authority has been given to the Secretary, because he is the only one who can do this. I am not worried about the Farm Bureau. They can fight their legal battles. They have enough lawyers and finances to do it. It is the little man that concerns me.

The Grange is of the opinion that although subpena powers may be implied in the language of this section, the committee would be well advised to specifically grant through the Secretary the right to

subpena the necessary documents to establish the "reasonable cause to believe that any handler or group of handlers has engaged in any act or practice prohibited by section 4." Perhaps it would be well to add after the last word on line 14 of page 5, the words to the effect that "the Secretary shall have at his disposal the necessary subpena power for carrying out the purposes of this act."

Interpolating again, the reason for this is that in the packers and stockyards case against the three Arkansas integrators, it took 8 months of court litigation to establish whether they had the power of subpena. If we put into this bill the power of subpena, it would be clarified, so that when we are talking about quick action in perishable products, and 8 months is needed to decide whether the power of subpena is available, it means that the crop is gone or two or three crops are gone.

Following is the language of the Clayton Act which we think is applicable. And if it were put in it would clarify the proceeding here.

Senator JORDAN. This is this section here?

Mr. GRAHAM. Yes. I will read it.

We would suggest another paragraph under section 5, reading as follows:

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceedings brought by or on behalf of the United States under the Agricultural Producers Marketing Act of 1967 to the effect that a defendant has violated said law shall be prima facie evidence against such defendant in any action or proceedings brought by any other party against such defendant under said laws or by the United States as to all matters respecting which said judgment or decree would be estoppel as between the parties hereof: *Providing,* That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or the judgment or decree entered in actions under Section 4 of this Act.

The obvious reason for this is that it would save going to the Federal courts, proving exactly the same thing two different times.

We would point out that such language is in the Clayton Act which, of course, is a part of the antitrust laws. Under this legislation, the penalties for the failure to observe provisions of this act, in which one would take the form of the recovery of damages, could more easily be applied and the separate action of recovery of damages would not require a complete review of the history of the case which would already have been accomplished before the granting of the final decree or judgment. It would save litigation on the part of the complainant, and it would certainly serve to keep from overcrowding the already overburdened courts in our Federal judicial system. We see no reason why this same evidence need be presented over again once a determination of guilt has been made by a properly constituted court. This would make the provisions of this bill consistent with other legislation in this field.

We also note that there is no reference in this bill to the statute of limitations. This could obviously create a great deal of litigation and might in many instances result in no action being possible. We would suggest language similar to the following as an additional paragraph. The language is also lifted from the Clayton Act.

Whenever any civil or criminal proceedings is instituted by the United States to prevent, restrain, or punish violation of any of the laws in Section 4 of this Act, the running of the statute of limitation in respect of every private right of action arising under said laws based in whole or in part on any matter com-

plained of in said proceedings, shall be suspended during the pendency thereof, and for one year thereafter: Provided, however, that whenever the running of the statute of limitation in respect to the cause of the action arising under Section 4 is suspended thereunder, any objection to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

This language is consistent with the language contained in section 5 of the Clayton Act. We have heard reports that the Department of Justice insists that paragraph (d) of section 5 be eliminated from this bill. This section provides for criminal penalties, the fine which is exceedingly modest in terms of the possibility of the size of the offenses involved, and the imprisonment which would not exceed 1 year. None of these penalties seems excessive, in our judgment.

I would not consider these as blood-letting, contrary to the opinions of the distinguished Senator from Ohio.

We are convinced that large corporations pay their fines with relative ease since the courts have ruled that these fines are deductible expenses. We believe that the inclusion of paragraph (d), threatening imprisonment for noncompliance, is in the best interest of the proper enforcement of this legislation.

Finally, we would suggest an additional section reading somewhat as follows: Your legal talent over here—I notice that you borrowed one from the House——

Senator JORDAN. We just got him back.

Mr. GRAHAM. That is right. You have been swapping back and forth, have you not? He is perfectly capable of handling this language, but there should be something that says:

"Nothing in this act should be construed as invalidating any of the existing statutes dealing with the various subjects covered by this act."

The very fine legal brief that was filed by the gentleman from San Francisco, I think, made a contribution to this point. Perhaps we should have some language to this effect here.

The point of this addition is that in some instances there might also be violations of certain sections of the Sherman Antitrust Act, the Clayton Act or the Robinson-Patman Act concerning conspiracy, combination, agreement, "sweetheart contracts"—all of which are prohibited by other statutes.

The time is long passed when the individual farmer or small association of farmers can effectively bargain with nationwide firms. The possibility and the probability of large firms continuing to play both ends against the middle simply precludes any kind of action which might improve the farmer's position in the marketplace.

We believe there are substantial questions remaining to be answered which are not covered in this document. One of them concerns jurisdictional disputes. We believe that there are going to be increasing problems arising from the development of bargaining associations, dual membership in some of these organizations, and disputes as to who has the jurisdiction in bargaining.

It is not an answer to say that each of them can bargain for their own members. The time will come, in our judgment, when farmers who wish to belong to bargaining associations will be given the opportunity to make a binding choice between opposing organizations in order that their bargaining position not be completely de-

stroyed by the proliferation of bargaining groups and the division of the groups into smaller and smaller units.

We believe the bill is lacking also in providing any protection to existing organizations against raiding of their membership. Perhaps it is inevitable in the development of these bargaining associations that a contract to bargain will be offered to cover all the products produced on the farm. However, we believe that answers must be found in the immediate future, either within the bargaining structures or legislatively, permitting a man engaged in diverse farming operations to select the bargaining agent of his choice for each of the commodities he produces. For instance, if I was selling milk through a bargaining cooperative at substantially above the minimum market price, and if I was selling broilers at substantially below the cost of production, I would not want to endanger a successful operation in milk in order to develop a bargaining association in a commodity that heretofore had not been properly represented, such as broilers or poultry.

We should look forward to the time when we can develop some guidelines to prevent the kind of disastrous jurisdictional disputes which were fostered by industry and in which labor was involved, making labor impotent in the days prior to the passage of the Wagner Labor Relations Act.

The Grange is not engaged in the development of a bargaining association. We believe that there is a legal kind of bargaining, and certainly a proper kind when the individual assigns his bargaining rights to an agency of the Government through the referendum process. We are also convinced that not all commodities lend themselves to the kind of bargaining which either the American Agricultural Marketing Association or the National Farmers Organization proposes. This is especially true of commodities widely dispersed and generally grown and constituting the majority of our foreign agricultural trade. Some of these commodities will need to be handled through the legislative processes of Government. At this point, the Grange seems committed to this course of action for some commodities, although not at all opposed to the development of bargaining associations—especially in those areas of our economic life and concerning those commodities not under any kind of market order provision or Government program at the present time.

However, our members do have a concern in what kind of bargaining associations there will be in the future, and in what their relationship will be to existing cooperative and farm organizations. Our approval of S. 109, developed in friendly consultations among the supporting organizations, does not indicate that we are going to abdicate our interest in this field, but rather that the general welfare of American agriculture might have not only the benefits of improved bargaining associations, but also the protection from any aggressive tendencies of the associations, limiting their effectiveness and desirability as far as the individual producer is concerned.

We earnestly urge this committee to give its favorable consideration to this legislation with the suggestions we have made. We hope that it will be supported by the full committee and adopted by the Senate. This, as we have said, is not the only answer to the problems of agriculture. It is, however, an extremely important answer to some of the

problems, and an answer that is long overdue. We hope this committee will correct this oversight during this session of Congress.

Thank you.

Senator JORDAN. Thank you very much, Mr. Graham. We are always glad to have you with us, and to hear your testimony.

Mr. GRAHAM. Thank you, sir.

Senator JORDAN. Our next witness is Mr. Angus McDonald, of the National Farmers Union.

We will be glad to hear from you now.

STATEMENT OF ANGUS McDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. McDONALD. Mr. Chairman and members of the committee, you may recall we were here last year and I presented a statement of our national president. I have copies of that available, if anyone wishes to look at our last year's statement. However, this year's statement is somewhat similar. We have come here in complete support of this legislation.

The Farmers Union has followed the principle of cooperation, I think, since 1902 when it was founded in Texas. We have resolutions on cooperation, and have supported the principle enacted into any number of congressional laws which encourage and protect farm cooperatives. So we would say that this legislation is consistent with the position that this committee and this Congress has taken over the years, that it is just one more step to protect the free enterprise system, to provide the farmers with some bargaining power, some measure of protective bargaining power which was so graphically pointed out by the National Commission on Food Marketing in their recent report, I believe of a year or so ago.

I wish to call the attention of the committee to one or two examples. I realize the hour is late. Instead of reading my statement, I shall present it for the record.

Senator JORDAN. It will be inserted in the record.

(The prepared statement of Mr. McDonald follows:)

Mr. Chairman and Members of the Committee: As a National Farmers' Union representative, I appeared before this Committee on June 15, 1966 in support of S. 109, a bill introduced by the Senator from Vermont, which purported to accomplish the same objectives as the bill which is now before the Committee. At that hearing the statement of our National President, Tony T. Dechant was presented and was in complete support of the measure. We have copies of this testimony available for the Members of the Committee. However, we do not ask that this previous testimony be included in the record since today's statement is somewhat of a repetition of the statement made last year.

The position of the National Farmers Union in support of legislation which would implement bargaining power of farm cooperatives has been well-known over a period of years. We have supported legislation and investigations which shed some light on the deplorable situation pertaining to bargaining power of farm producers. We have protested to various agencies that cooperatives were discriminated against, that members of cooperatives were blacklisted and coerced and deprived of their fundamental rights as American citizens. I call attention to the letter presented to the Attorney General of the United States on November 10, 1964 in which our then National President, James G. Patton, called attention to a situation in the State of Arkansas which he felt merited the prompt attention of the Justice Department.

According to information set forth in this document, and information in the files of the Farmers Union, both the Sherman and Clayton Acts were violated by various persons engaged in contracting with broiler producers in Arkansas.

Farmers in that state, feeling that they were at the complete mercy of those who purchased their broilers, organized the Northwest Poultry Growers' Association, formed to represent growers in Arkansas, Oklahoma, Missouri and Kansas.

Petitions were circulated in the areas, principally in Arkansas, to determine whether or not growers favored the formation of a cooperative which would protect the broiler growers and create a healthy economic climate in the poultry industry. We have in our files a number of the original signed petitions with names and addresses of those producers who indicated they wished to affiliate with the cooperative. According to our information, more than 1,000 growers signed the petition. We are willing to suppy these documents on a confidential basis if any Member of the Committee wishes to inspect them.

We will mention only a few of the incidents which led to the disruption of the newly-formed cooperative. At a meeting in Decatur, Arkansas in 1961, those who sought to discourage the idea of the broiler cooperative made such a noise outside the window of the building in which the meeting was held that it constituted an obvious interference with the meeting. At another meeting at Walden, Arkansas, those opposing the formation of the cooperative circled the court house where the meeting was held, gunning the motors of their trucks and making such a noise that those attending the meeting found it difficult to conduct an orderly meeting.

Later, growers who attended these meetings were told by representatives of feed companies that those affiliating with the cooperative would be unable to obtain contracts. Growers were told that if they were not satisfied with the contracts that the integrators would grow their own birds.

Growers were threatened and warned that they would be cut off if they continued their relationship with the cooperative. These growers included Roy D. Hale, Waldron, Arkansas; Ellis Hale and Junior Hale, Waltreak, Arkansas, and J. E. Peters, Belleville, Arkansas. We have affidavits in our files to the effect that a blacklist was not only threatened, but was put into effect by the poultry integrators in the State of Arkansas. One of these documents was supplied by Al Hollingsworth, manager of the Farmers Cooperative at Cave Springs, Arkansas who was called on the telephone by a feed company representative and told to blacklist certain growers.

This and other information was supplied to the Justice Department as well as to the Packers and Stockyards Division of the U. S. Department of Agriculture. To date we have never received a reply from the Attorney General to the letter mailed to him 2½ years ago. Oral complaints were made to the officials of the Department of Agriculture and we are glad to report that they thoroughly investigated the situation in regard to blacklisting of the cooperative in Arkansas and on April 2, 1965 issued a complaint charging three poultry processing firms with violating the Packers and Stockyards Act.

The complaint alleges that the three firms combined and arranged with each other to boycott, blacklist and engage in other activities designed to stamp out and destroy the newly formed cooperative organized by broiler growers in Arkansas. We do not feel that the Packers and Stockyards officials have been negligent or remiss in their duties. However, we call attention to the fact that the activities designed to destroy the cooperative were engaged in as early as 1960 and that the cooperative, for all practical purposes, was destroyed by 1962 and that members of the cooperative have not, as far as we know, obtained relief.

It is apparent that present laws are not adequate to penalize those who seek to destroy, harass or coerce members of farm cooperatives. Members of the Committee are, of course, aware that many laws on the books are more or less inoperative unless they are implemented by so-called "teeth" which may include heavy fines and prison sentences. The bill under consideration here would provide that requirement.

It is reported in the press that certain groups opposing this legislation feel that the bill would deprive them of the right to select their own customers. We are not in accord with the these views. As long as the purchaser of farm commodities did not penalize and discriminate against the members of the cooperative and attempt to destroy farmer bargaining power, they could purchase from any individual or group without regard to cooperative organizations. The provisions in the bill in this respect are consistent with language in the Clayton Act which attempts to protect businessmen from the monopoly power of great corporations. We see no reason why farmers should not receive the same consideration that small business receives in regard to competition.

Congress, from the beginning of our Nation, enacted laws and Executive Agencies issued regulations which attempted to protect free enterprise and free

competition. Many examples could be given of the efforts of the Congress and the regulatory agencies to close up loopholes in laws and insure an economic climate conducive to free competition.

The Congress, on the other hand, had attempted by an amendment of the anti-trust laws, commonly referred to as the Capper-Volstead Act, to protect the farmers in their cooperative activities. This law, enacted on February 18, 1922, sets forth certain economic rights of members of the cooperative provided the association follows strict rules such as equality in voting, democratic control and restriction of membership to those primarily engaged in farm production.

Despite the clear language set forth in this statute, as well as the language in the Clayton Act, the Department of Justice, in a case several years ago, moved to enjoin the activity of the Mayland-Virginia Dairy Association in regard to the purchase of a facility. This case, we feel, while agreeing in part with the decision of the court, has had unfortunate effects on the potential expansion of farm cooperatives.

In these days of giant enterprise, the cooperative in order to compete in the market place, must in many instances operate on a large scale and take advantage of technological progress. Although the problem of the acquisition of facilities by a farm cooperative is a step removed from the problem which this legislation seeks to solve, we feel that it has a bearing on it. We feel strongly that this Committee and this Congress should once more set forth the policy of the Congress in regard to the encouragement and protection of farm cooperatives.

During the last year there has been a great deal of resentment in the farm community because of low prices and the inability of the farmer to protect himself in the market place. This situation stems from the fact that the farmer does not have equality of bargaining power. This bill would, in the long run, implement and protect farmer bargaining power.

If producers are to be discriminated against, black-listed and otherwise coerced by gigantic corporations the economic climate will be such that free enterprise will be stifled and destroyed. The alternative to protecting farm cooperatives as well as small business and free enterprise generally, is domination of the whole economy by gigantic corporations who will not only dictate the price that producers receive, but the prices that consumers must pay.

Such a situation would inevitably lead, we feel, to a fundamental change in our democratic institutions. The Government itself might be dominated by great corporations, or if economic trends continued along the lines indicated we might reach a point where the Government would feel that it was necessary to take over production and distribution on a socialistic basis in order that goods and services might be more equitably distributed.

It seems to us that the alternative to a regimented, Government-controlled economy, is an economy wherein the different economic groups attain some measure of equality of bargaining power. Cooperatives may be the one hope for the free functioning of an economic society in regard to agricultural production and distribution.

During the past few years the Farmers Union has persented testimony to various Committees on this point, particularly in regard to the necessity for the thoroughgoing investigation carried on by the National Food Marketing Commission. This Commission proved, beyond a shadow of a doubt, that the farmer suffers from a lack of bargaining power and that in contrast to the economic bargaining power of great corporations he was, in many instances at the complete mercy of those who purchased his products.

Reference is made to the example of the Farmers Union Grain Terminal Association which was founded many years ago and is at the present time one of the largest, if not the largest grain cooperative in the world. Formation of this cooperative, as stated in our previous testimony, was made possible by action of the Federal Trade Commission which castigated the Minneapolis Chamber of Commerce for carrying on various illegal activities. We commend the Federal Trade Commission for its activities many years ago, but deplore the fact that Government agencies, during the last few years at least, have not acted to protect cooperatives and apparently at the present time are in opposition to this legislation. We are at a loss to understand why the Department of Justice did not act in regard to the situation in Arkansas. Our tentative conclusion is that the Departmen of Justice is not in accord with the principles set forth in the Capper-Volstead Act and seeks to prevent implementation of that Act which this bill would accomplish.

Mr. McDONALD. I will just attempt to summarize it and hit a few high points.

I call attention to this letter that was written by the then national president, James Patton, to the Acting Attorney General of the U.S. Department of Justice. This letter is dated November 10, 1964. We have not yet received an answer to this letter. In this letter we called attention to a very deplorable situation in Arkansas. I believe the committee heard a witness from that area last year describing how his little broiler cooperative had been discriminated against and how the members had been blacklisted and how various activities have been carried on until the cooperative was completely destroyed.

We were furnished several years ago with affidavits which we have. I imagine that the committee has had access to these petitions and affidavits and materials in connection with the harassing and destruction of this cooperative. If any member of the committee or anyone wishes to see copies of these affidavits, some of them in their original form, signed by some of these member farmers, we will be glad to show them to you.

Just one example. This one example leads us to believe that this legislation is overdue, that it is quite necessary.

I mentioned previously the Department of Justice. I do not wish to cast any reflections on the Department of Justice, but it has seemed to us over the years that this agency has not been sympathetic to cooperatives. It will be recalled that action was brought against the Maryland-Virginia cooperative in regard to the acquisition of a facility here in the District of Columbia. And while we were in accord with the views expressed in this opinion I believe it reached the Supreme Court, in regard to the coercive and illegal activities of the Maryland-Virginia cooperative, we did not feel that the law should be interpreted in such a way as to prevent the cooperative from acquiring this facility, thus constituting a violation of section 7 of the Clayton Act. I call attention to the historic example of the persecution and harassment of a cooperative.

The Farmers Equity Association was a predecessor of the Farmers Union Grain Terminal Association, which is one of the largest, if not the largest cooperative in the world. Prior to the period of the Farmers Union Grain Terminal Association the Equity Association, its predecessor, was persecuted, was harassed—a lot of activities were carried on by the Minneapolis Chamber of Commerce, to the point where the Federal Trade Commission, under section 5 intervened under the Federal Trade Commission Act and issued an order to stop these activities. Of course, the Federal Trade Commission Act, as has been pointed out this morning, or the Sherman Act, or the Robinson-Patman Act would not reach certain things which are outlined in this bill.

Congress has always been sympathetic to the farmer cooperatives. As I said before, the Capper-Volsted Act was enacted to protect the rights of farmers to organize into cooperatives and to get together on prices that they should receive. And this bill would implement their rights and make it a reality.

In regard to the Arkansas Broiler Cooperative I have mentioned a moment ago, I must in fairness say that the Department of Agriculture did move in on that situation. Some of these affidavits are dated 1962, and I believe by April of 1965, an action, a complaint was issued by the Packers and Stockyards Division of the U.S. Department of Agriculture. And we commend the Packers and Stockyards Division for this action.

However, some of these acts, these illegal acts, allegedly illegal acts, were carried on in 1961. This is now 1967. And while the Department has moved against them after a long investigation and study, it seems obvious to us that a farmer, the poor farmers in the area, and in other areas of the United States, cannot wait 5 or 6 years to obtain relief. We endorse this bill. We are not inclined, as the previous witness stated, to cross all of the "t's" and to dot all of the "i's"—it may be that some improvement can be made in the bill. What we would like to see is for this bill as generally written to pass. We are not opposed to small changes to come out of this committee, and to be approved by the Congress this year. That is what we would like to see.

In regard to the Secretary of Agriculture's suggestions we do dissent from that suggestion that all of the authority be put to bring action over with the Secretary. We think that an individual who is injured, who alleges injury, or a cooperative association that is injured should be allowed to go to the courts, and if they win their case, to get triple damages.

In regard to the prison sentences, the penalties set forth in the bill, I would rather see, Mr. Chairman, that section taken out, rather than see the bill fail. However, we would prefer that the bill be reported by this committee as written.

And, finally, it seems to me that the way that America has been growing in my lifetime that we can go down one of three roads: We can increase the economic concentration to the point where a few large corporations will determine and control the economic life of our country—will determine what prices farmers will get—will determine what prices consumers will pay—and they will eventually undermine our democratic institutions. That route no one want to go down, so far as I know.

Or, we can go down another route and have the Government step in and completely control agricultural production and distribution. We do not prefer that route, either.

The third route which I think is the route that we should follow is to allow the farmers complete freedom in attaining an equality of bargaining power, so that our economic democracy may in effect be an economic democracy, so that these matters will not have to be determined here in the Congress down to the *n*th degree. And the farmer should be encouraged to build his own institution, so that he can deal and attain some equality of bargaining power with the great corporations with whom he deals.

I thank you.

Senator JORDAN. Thank you very much. We appreciate your being with us today and we appreciate your testimony.

Mr. MCDONALD. We thank you, Mr. Chairman.

Senator JORDAN. Our next witness is Mr. Patrick B. Healy, assistant secretary of the National Milk Producers Federation.

We will be glad to hear from you now.

STATEMENT OF PATRICK B. HEALY, ASSISTANT SECRETARY, NATIONAL MILK PRODUCERS FEDERATION

Mr. HEALY. Mr. Chairman and members of the subcommittee, my name is Patrick B. Healy and I am the assistant secretary of the Na-

tional Milk Producers Federation, with offices at 30 F Street, Washington, D.C.

There is very little, Mr. Chairman, in my statement today that can add to the record and to the testimony of last year, and which has been so ably presented by virtually all of the previous witnesses. Therefore, I ask that it be printed in full as if read in the record.

Senator JORDAN. It will be put in the record in its entirety, following your oral remarks.

Mr. HEALY. I can speak though from a unique position, my organization is an organization comprised wholly of dairy farmer cooperative associations. It is representative of the segment of agriculture which is the most highly organized. Great quantities of milk on which the market depends are provided through the cooperative associations. In our 50 years of history we have learned that the cooperative is the most effective tool through which the farmer can operate in the marketplace. Therefore, the farmer's right to the use of this tool must be protected.

S. 109 provides this protection in what we consider to be the very possible way. Therefore, we would, on behalf of virtually all of the dairy farmers in the country endorse S. 109 and recommend its forthwith enactment.

The National Milk Producers Federation is a national farm organization representing dairy farmers and the dairy cooperative associations which they own and operate. Through these associations, dairy farmers act together to market the milk and butterfat produced on their farms.

Some milk is sold by farmers cooperatives as raw milk to dairy processing plants, and some of it is processed by the farmers themselves, at cost, in their cooperative plants, and marketed in the form of finished dairy products.

The Federation was organized in 1916, and we celebrated our 50th anniversary last year.

Dairy farmers were one of the first, and for many years have been one of the principal users of the cooperative form of marketing. They have been through all of the growing pains associated with the development of agricultural cooperatives, including the unfair practices on the part of processors which the bill under consideration is designed to curb.

Congress, in numerous legislative enactments, has recognized the important contribution to American agriculture made by farmers' cooperatives and has established a national policy of encouraging their development and growth.

Basically, cooperatives enable individual farmers by acting together as an organized group to improve their economic lot by bargaining more effectively for the sale of their commodities.

It is, therefore, to be expected that proprietary processors, who would stand to benefit from cheap prices for raw commodities, would oppose any effort to organize farmers into an effective bargaining unit.

In some cases, this opposition has taken the form of unfair practices, such as coercion, threats, and discrimination. The problem has been particularly bad when new cooperatives were being formed and when they were least able to resist this type of pressure.

The Department of Agriculture is the agency charged by Congress with encouraging and promoting agricultural cooperatives. It is, therefore, appropriate that the Secretary of Agriculture should have both the authority and the responsibility to enjoin unfair and coercive practices. This would be especially important where the individual farmers may not be in position to seek relief directly for financial or other reasons.

Congress has provided extensive safeguards to prevent management from interfering with the right of labor to organize and to belong to unions. All that farmers and their cooperatives are asking in this legislation is a modest and reasonable version of the same type of protection for farmers who wish to avail themselves of the right accorded them by Congress to organize and to belong to agricultural cooperatives.

S. 109 is a fair approach to this problem. It poses no difficulties whatever to business corporations operating under accepted principles of business ethics. It will be opposed by those who wish to have no limits placed on the use of corporate power in an arbitrary and high-handed manner to beat farmers down and thus keep the price of raw materials unreasonably depressed.

We support S. 109 and recommend its early enactment.

Thank you.

Senator JORDAN. Thank you.

We appreciate having you with us and we appreciate your statement.

Mr. HEALY. Thank you.

Senator JORDAN. We will next hear from Mr. Edward Brown Williams on behalf of the National Association of Frozen Food Packers. This will complete our list of witnesses for today.

We will be glad to hear from you now, Mr. Williams.

STATEMENT OF EDWARD BROWN WILLIAMS, ON BEHALF OF THE NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS

Mr. WILLIAMS. Mr. Chairman and members of the committee, I appear on behalf of the National Association of Frozen Food Packers. The membership of the association packs more than 85 percent of the national production of frozen vegetables, fruits, and juices and a large volume of other frozen foods. We are opposed to S. 109.

Some processors of frozen food purchase commodities through bargaining associations as well as from individual growers who are not cooperative members. We intend no criticism of such practices so long as the processor may freely choose whether to bargain with the association or with nonmembers on the basis of his business judgment. We do, however, oppose the creation of conditions under which processors would be forced to bargain with such cooperatives by statute or face a civil or criminal proceeding for boycotting them, with the end result that membership in the cooperatives would, as a practical matter, cease to be voluntary.

This in our view would be the effect of S. 109.

Senator JORDAN. You mean by that that you go to the producer—I am speaking of the producer now, of the farmer——

Mr. WILLIAMS. Yes, sir.

Senator JORDAN. And you contract for his acreage for the next season?

Mr. WILLIAMS. That is correct. We are opposed to S. 109.

Technical Study No. 4 of the National Commission on Food Marketing (the study is entitled "Organization and Competition in the Fruit and Vegetable Industry") points to the real problem underlying the difficulties of bargaining associations which S. 109 seeks to solve. The study states that:

> In summary, it appears that the major limitations of bargaining associations have their origin in the individualistic nature of farmers and their reluctance to forego the necessary decision-making freedom required to gain the full measure of bargaining power possible through cooperative action. The voluntary nature of bargaining cooperatives appears to be the major impediment to their widespread use by fruit and vegetable producer groups. (P. 283.)

I want to emphasize the statement in the study that their voluntary nature—at present, is the "major impediment" to the widespread use of bargaining cooperatives. This finding was not made by people who were antagonistic to such cooperatives.

It might be added that another difficulty some bargaining associations have is their inability to furnish the advantages which accrue to individual growers who negotiate with processors as individuals.

S. 109 would, as a practical matter, eliminate what Technical Study No. 4 described as the "major impediment" to the widespread use of bargaining associations—the voluntary character of membership.

It is not difficult to spell out the reason for this conclusion by a few examples from the provisions of the bill.

Where a cooperative includes inefficient growers as well as those who efficiently produce high-quality commodities, processor resistance to contracting with all members on the same terms would be only natural. Yet, it seems difficult to avoid the conclusion that under section 4(a) of the bill a refusal by a processor to deal with a cooperative which insisted upon prorating acreage among its members would constitute an unlawful act under the bill as a boycott or coercion of efficient member-growers because of their membership in the bargaining cooperative.

Mr. Graham has made it official, so far as the National Grange is concerned, that a refusal to sell would make it violative of this bill. We have always believed this, anyway.

Likewise, if a processor should offer more favorable terms to nonmembers producers than he offered to members because, in his best judgment, the overall quality of the produce of cooperative members would be inferior, it can hardly be doubted that he has discriminated against the efficient members of the cooperative because of their membership, contrary to the provisions of section (b) of the bill.

Even if it were reasonably predictable that the courts, because of its unfairness, would refuse to construe S. 109 to apply to the situations supposed, we must ask how many processors would want to subject themselves to a trial of the issue in a criminal proceeding with the possibility, upon conviction, of a year's imprisonment on each of one or more charges of violation?

It may be anticipated, therefore, that processors, to avoid such prosecution, or a civil action by the Secretary of Agriculture, or a suit for triple damages by a complaining grower, would be forced to follow a policy of dealing with bargaining associations. The result, of course, will be that producers generally must join such associa-

tions and the "major impediment" to their widespread use—voluntary membership—will have been largely removed.

The effect of the bill is to subject processors to criminal penalties for presuming to choose their suppliers. The Department of Justice has noted that a cooperative or its members already have a remedy against the activities which could legitimately be proscribed under section 4 of S. 109, such as defamation and inducing breach of contract. But for the Congress to determine by legislation who shall be parties to the commercial transactions which would be affected by this bill is indeed a strange phenomena in this country.

In discussing the subject of "Antitrust Issues in Cooperative Bargaining" at the 10th National Conference of Fruit & Vegetable Bargaining Cooperatives (January 1966) the Chief of the Antitrust Division, Donald F. Turner, pointed out that the statutes exempting agricultural cooperatives from certain antitrust restrictions have led to the formulation of the general rule that membership in such cooperatives must remain voluntary.

For the reasons which I have stated this bill would, we submit, repeal that longstanding rule.

Statements have been made by supporters of S. 109 that farmers have been discouraged from exercising their right to act cooperatively because of reprisals and fear of reprisals from some processors. The term "reprisal" is not defined. We have examined the testimony before this subcommittee in the last Congress as well as other available evidence. We are convinced that refusal by a processor to deal with a bargaining association for legitimate business reasons, such as, for example, an asking price which the processor considers too high, would be considered a reprisal against members of the cooperative who had formerly dealt with the processor independently. This is the kind of thing we believe S. 109 would be used to attack and we think its language justified our belief.

The vagueness of some of the terms used in this legislation to define criminal offenses is shocking. For example, section 4(a) declares that it shall be unlawful for any handler "to interfere with * * * any producer in the exercise of his right to join and belong to an associatilon of producers." I do not know what "to interfere with" means, but it certainly is too vague a term for use in creating a criminal prohibition.

Basically it seems clear that the fundamental purpose of the bill is to eliminate or drastically curtail competition for grower contracts between processors and bargaining cooperatives by imposing the restrictions of section 4 only upon the processor. This is unfair, entirely aside from the other objections which we have stated. If such rules are going to be made, they quite clearly ought to apply to both parties to the transaction, not just to the processor.

Thank you.

Senator JORDAN. Thank you very much, Mr. Williams. I do think that your timing was pretty close. It was 9 o'clock and it is now 5 minutes after 1.

Mr. WILLIAMS. That is correct.

Senator JORDAN. I want to thank each one of you for coming and for your patience and your time and your statements. They will all be considered very carefully.

Thank you very much again.

This subcommittee is recessed until 10 o'clock Thursday morning, May 4, 1967.

Thank you again.

(Whereupon, at 1:06 p.m., the hearing was in recess, to reconvene on Thursday, May 4, 1967, at 10 a.m.).

AGRICULTURAL PRODUCERS MARKETING ACT

THURSDAY, MAY 4, 1967

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan (chairman of the subcommittee) presiding.

Present: Senators Jordan of North Carolina, McGovern, Young of North Dakota, and Boggs.

Also present: Senator Aiken.

Senator JORDAN. The subcommittee will come to order, please.

I would announce at this time that we will go until 1 o'clock today, as I indicated on Tuesday. We will probably finish, but if we cannot we will hear the witnesses at a later date, as early as possible.

I am going to try to take the witnesses in the order of the out-of-town witnesses first, because I know that some of the witnesses live here or represent organizations domiciled here and there is no big problem as to them having to come back if they should have to come back.

At this time I should like to file a statement in the record from Senator Burdick. He cannot be with us at this time, and his statement will appear in the record in its entirety.

(The statement is as follows:)

STATEMENT OF QUENTIN N. BURDICK, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Mr. Chairman, Members of the Committee, I want to thank you gentlemen for the privilege of appearing here this morning in support of S. 109. This is an important bill, but one that is simple in purpose. It will give farmers a clear field to organize in their own self-interest. The important issue, I feel, is not one of the constitutionality or interpretation of words, it is a question of legislative policy. There is a need, and this bill is a good answer to that need.

S. 109 extends help to farmers in the marketing of the food and fiber which they produce. The economic organization of agriculture in the United States requires us to recognize at the beginning that there are a large number of small farm units that must sell what they have produced to a small number of handlers, processors or retailers. It is, as you gentlemen well know, quite true that there are hundreds of instances where many farmers have but one outlet. They must sell to this one outlet, or be in the disadvantageous position of having to haul their products unprofitable distances or pile them up on the farm where they may rot.

All that the farmer is asking in S. 109 is a guarantee that the farmers in one marketing community can form one organization to deal with one marketing outlet. You may ask, as I did, why this bill is necessary to accomplish this purpose, and the answer requires a brief look at the problem.

Farmers, and all others, are guaranteed the right to peaceable assembly, but the framers of the Constitution had political meetings more than farm cooperatives in mind when they drew this up. Congress, in its wisdom, has more recently granted antitrust protection to farmers who may wish to join together in the kind of marketing cooperatives that we are talking about today. Because of this large number of compartively small farm units, it is fair to let groups of farmers work together.

But to give the right to organize some teeth in the marketplace, it is necessary to assure farmers that coercion and intimidation, either physical or economic, will be outlawed. This is all that S. 109 does.

There are adequate safeguards to protect the processors, handlers and retailers, because a heavy burden of proof is on the farmer and his cooperative marketing organization. The farmer has to prove that any discrimination was based on his membership in an association of producers. The consumer will ultimately benefit from this legislation through the assured flow of wholesome food to the supermarket shelves.

This bill, S. 109, offers a reasonable solution to one of the problems on the farm. It will not revolutionize agriculture, but it will help farmers.

Senator JORDAN. I will ask Mr. Dunkelberger and Mr. Davidson to please come up.

Give your name, please, sir, each of you, address and whom you are representing, for the record.

We will be glad to hear from you at this time.

STATEMENT OF GEORGE S. DAVIDSON, NATIONAL CANNERS ASSOCIATION, TOLEDO, OHIO

Mr. DAVIDSON. My name is George S. Davidson. I live at 3128 Goddard Road, Toledo, Ohio.

I am the executive vice president and general manager of Silver Fleece, Inc., of Port Clinton, Ohio, and the president of Foster Canning, Inc., of Napoleon, Ohio. These privately owned and operated companies are engaged in the processing of vegetables and fruits. I am appearing here today on behalf of the National Canners Association along with Mr. H. E. Dunkelberger, counsel for the association. Following my remarks, Mr. Dunkelberger will discuss technical and legal aspects of the bill and will identify the representation of the association. I wish to thank the committe for affording me the time to testify in opposition to S. 109.

At the outset I would like to make it clear that membership in a cooperative bargaining association is not an issue in my appearance here. We purchase produce from many growers who belong to a bargaining association and many who do not. We negotiate contracts with a bargaining association as well as many individual producers. My sole purpose is to solicit your consideration for the preservation of the right of the equal protection of the law.

The advance contract mechanism afford the grower a secure market for his crop at a pre-agreed price, usually many months prior to the planting of the crop. It affords the processor the opportunity to plan far in advance for the procurement of a quantity of produce that he can process efficiently and market profitably. These negotiations take place long before there is any question of perishability and in most cases long before the ground is plowed or the first seed is planted. Because of the vagaries of nature and the uncertainties of the weather, the growing and processing of seasonal crops is acknowledged to be fraught with high risk and uncertainty.

We contract with the grower for our crop about 6 months before it is harvested. We spend substantial sums on plant and equipment in order to be ready to process a year's supply in a very short period, sometimes as short as 3 or 4 weeks for a single crop. We borrow heavily to finance and warehouse our packs which have to be marketed then on a year-round basis in order to supply the requirements of the buyers. Under these circumstances, I believe that it is essential that we be permitted to use our very best judgment and experience with regard to this critical aspect of our business, namely, the procurement of the raw product. We must be free to judge the relevant facts that we know about a grower such as his reputation, his skill, his reliability, the qualities suitability of his crop for our particular purpose as opposed to the processing objective of any other processor.

Under proposed S. 109, every decision and every negotiation which we would make in the area of raw product procurement would expose us to a lawsuit in which we would be required to prove that our purpose was something other than to discriminate against members of an association. Every aspect of our dealings with our growers would be subject to intense scrutiny and any one of a hundred decisions made for sound commercial reasons, some of which I would have outlined above, could give rise to a criminal prosecution in which we would have to defend our actions.

Contrary to testimony given here on Tuesday, I am reasonably certain that there are no growers of processing crops in the Midwest who rely on one crop for their total annual income. I know a number of canners on the other hand who do rely on a single crop for their annual product. I categorically reject the assertion that any appreciable or significant number of producers are afraid to make a decision to join a cooperative bargaining association because they fear the retributive wrath of the processor.

Our American farmers are highly competent, skilled agriculturalists working some of the finest and costliest land in the world with a heavy investment in tools and equipment. They have any number of alternative crops and if the food processor does not offer them a fair price and conditions that will permit a return commensurate with their work and their risks, they just will not grow the processing crops, but will divert their land to any of many other uses to which this land can be put. In my opinion, there is hardly any substantial section of our country that is in a one-crop condition any longer. The development of highways and transportation, the new agricultural tools, fertilizers, herbicides, fungicides, insecticides, and the assistance which growers receive from Federal, State and local agencies and from some of our great universities, all have made the farmer a much more secure and independent operator.

These developments have permitted the farmer to grow any number of alternative crops in areas that were formerly thought only to be suitable for one single crop.

Senator YOUNG. Do you have an understanding that we will ask any questions we have following a witness' presentation, or can questions be asked at any time?

Senator JORDAN. Any time that you wish.

Senator YOUNG. I would like to ask you some questions about modern agricultural operations.

You realize that once a farmer adapts and equips himself for some specialized type of agriculture, he has difficulty if he wants to make a

change. He has a tremendous investment in this particular type of farming. It is not easy for him to convert to some other type of agriculture.

Mr. DAVIDSON. That is correct, sir. In our area, the sugar beet growers are almost all multicrop growers. I cannot recall any single situation in the Midwest where sugar beet growers grow sugar beets exclusively. They grow a number of crops, in addition to sugar beets.

Senator YOUNG. If a farmer were a large egg producer, he would have a tremendous investment that could hardly be switched to some other type of farming if he could not get along with his processor.

Mr. DAVIDSON. I would say that might be true of eggs more so than it would be true of sugar beets or any field crop.

Senator YOUNG. Do you realize how much of an investment a farmer must make to raise sugar beets?

Mr. DAVIDSON. Yes, indeed, I do.

Senator YOUNG. About how much?

Mr. DAVIDSON. Well, depending on the size of the operation it would vary. Offhand, I would say that the specialized equipment might run to $10,000.

Senator YOUNG. You could not buy the planters, diggers, and all of the extra equipment required for that.

Mr. DAVIDSON. I know in our area equipment of that nature is either owned cooperatively by a group of growers or it is furnished by the sugar beet company on some sort of a rental or contract basis.

Senator YOUNG. I know of no sugar beet company that furnishes equipment any place in the Middle West or in the West. That is all. Thank you.

Senator JORDAN. Are there any other questions at this point?

Senator AIKEN. Not on this part. I will have some later.

Mr. DAVIDSON. I would like now to draw the attention of the committee to my letter to Senator Jordan of June 22, 1966, because this goes to the very heart of the reason why I am here today. I wrote this letter in response to a report in the press of testimony offered to this committee by a producer who grew raw produce for the Silver Fleece Co. In his testimony, he alleged that he was discriminated against by our company because he was a vice chairman of the tomato division of OAMA. In my letter I pointed out that his charge was completely without substance and submitted documentary evidence that proved that his charge was unfounded, and I am prepared to review this in greater detail if you so desire. I would like to add here that the charges made before this committee by this producer were fully reported in the press. Since that date, however, there has been no report that his allegations were not proved and in fact, were proved to be incorrect and unfounded.

Senator AIKEN. When was this testimony given?

Mr. DAVIDSON. I believe in June of 1966.

Senator AIKEN. We have gone to a different bill. That is not on this bill.

Senator JORDAN. That is the original bill.

Senator AIKEN. You have read about the bill on which a hearing was held in June a year ago.

Mr. DAVIDSON. I am referring specifically to the testimony offered by this witness with regard to our alleged discrimination.

Senator AIKEN. We are now holding hearings on S. 109 of this Congress which is a very different bill than the one referred to. Just be fair; that is all we ask of you. Do not try that monkey business, because you are not going to get away with it.

Mr. DAVIDSON. Well, Senator, I do not believe that it is monkey business. I believe I am being fair.

Senator AIKEN. All right.

What is your membership?

Mr. DAVIDSON. What is the membership of our organization?

Senator AIKEN. Of your association.

Mr. DAVIDSON. Mr. Dunkelberger, will you answer that?

STATEMENT OF EDWARD DUNKELBERGER, ON BEHALF OF THE NATIONAL CANNERS ASSOCIATION

Mr. DUNKELBERGER. I am Edward Dunkelberger, counsel for the organization. I will be testifying in a moment.

As Mr. Davidson indicated at the beginning, I will describe the membership in my statement. There are approximately 600 members in the Canners Association. They can products in 44 States. The membership includes independent canning operations of all sizes; it also includes processing cooperatives. These members pack fruits, vegetables, specialities, meat, and fruit.

Senator AIKEN. Are the votes they cast in the association based on the amount of business done?

Mr. DUNKELBERGER. Their dues are based on half a cent a case for seasonal products and a quarter of a cent a case for nonseasonal products.

Senator AIKEN. Are the votes they cast in the assiciation based on the amount of business done?

Mr. DUNKELBERGER. No, sir.

Senator AIKEN. One vote, one man?

Mr. DUNKELBERGER. You are right.

Senator AIKEN. But the dues are based on the amount of business done?

Mr. DUNKELBERGER. Yes, sir.

Senator AIKEN. You say that they do business in 44 States of the Union?

Mr. DUNKLEBERGER. They pack products in 44 States of the Union. That figure may change plus or minus one.

Senator AIKEN. Do they not also do business in about 44 countries of the world?

Mr. DUNKELBERGER. They sell——

Senator AIKEN. And process in those countries goods which are shipped or reshipped into the United States in competition with the goods which are produced in their plants here?

Mr. DUNKELBERGER. Well, Senator, when I said that they have canning operations in 44 of the States, I should have added that they sell in 50 of the States, and they sell throughout the world, too. No dues are paid to the association for goods packed overseas. Those goods are outside of the jurisdiction of the Canners Association. We represent the domestic packing industry. We do not seek to represent the interests of companies so far as their selling foreign packed goods into this country.

Senator AIKEN. How can you represent the interest of a company that belongs to your association without considering their overseas business which they process to hold down the prices in the United States?

Mr. DUNKELBERGER. We are not aware——

Senator AIKEN. How can you consider, for instance, what percentage of the dues paid by, say, the H. J. Heinz Co., Campbell Soup, Libby-McNeill, General Foods, Consolidated Foods—they are all members?

Mr. DUNKELBERGER. General Foods may not be. I do not know about that. The dues, obviously, are in proportion to the pack of the companies. Those companies pay a substantial portion, but many, many small companies pay dues. The largest canning cooperative in the United States pays those dues. Many other processing cooperatives pay those dues and each votes as a single company in the association.

Senator AIKEN. That is correct.

Mr. DUNKELBERGER. Each has representation on the board of directors. Each has the right to attend the meetings and to vote. We do not believe that we are taking positions contrary to the interests of the domestic industry.

Senator AIKEN. Do you recall any time when your association has taken a position contrary to the position of H. J. Heinz, Campbell, Libby, McNeill & Libby, and Consolidated Foods?

Mr. DUNKELBERGER. Senator, the position of the association is, essentially, to try to reach a consensus, if I may use that word, of the membership. If there is outspoken opposition to any position that is proposed for consideration by the association, we will not take it. There are many issues that are of great importance to Libby, Campbell, Heinz—the companies which you have mentioned on which the association does not seek to represent their interests in Washington.

Senator AIKEN. It does not take a position opposed by Libby and Heinz?

Mr. DUNKELBERGER. As I said, if those companies have a position we will not support that position if it is opposed by a significant percentage of the remaining membership.

Senator AIKEN. But it is not opposed, because the small companies do not market enough to overcome the vote of the big companies.

Mr. DUNKELBERGER. No, sir. These small companies market private-label goods through distributors, wholesalers, and retailers.

They market under their own labels, either regionally or nationally.

It is rare, indeed, that they market goods that they pack through the large companies. They may, on occasion, sell some of their production to them for use in such products as soup or baby foods. If it was your suggestion that there is any intimidation of the smaller members, because their livelihood depends on the larger members, I do not believe you understand the canning industry. I do not believe that most of the small canners are to be——

Senator AIKEN. The so-called small canners today process their products under the labels of somebody else.

Mr. DUNKELBERGER. I indicated that they pack private labels for the distributors, but it would not be generally the label of any——

Senator AIKEN. I am not offering this for criticism. What I am trying to say is that they are moving this processing industry and farm production out of the United States just as fast as they can.

Mr. DUNKELBERGER. Well, Senator——

Senator AIKEN. That is bad for this country.

Mr. DUNKELBERGER. I would question that conclusion. I do not believe that is the case. Much of the goods packed overseas are packed for distribution overseas. Indeed, if there has been a movement of packing operations out of this country in recent years, I am sure that you will agree with me that much of that is related to the foreign labor problem.

Senator AIKEN. Yes. They do get away from the minimum labor wage here in the United States.

Mr. DUNKELBERGER. From the lack of availability of it.

Senator AIKEN. I agree that they have some grounds for disliking our regulations here, but I do not like to see this business leaving the United States.

Mr. DUNKELBERGER. Well, Senator, we agree with you 100 percent on that. At any rate, we do not see how this is related. As you said earlier when you corrected Mr. Davidson on an issue, this is not an issue of this bill. I think that this is a discriminatory approach.

Senator AIKEN. I will not take any more time, because we can spend a long time setting forth the operations of these people overseas. You are right. Let us go ahead.

Senator JORDAN. Let me ask you a question at that point.

Do you have any idea wha percentage of the goods that are packed, for instance, in Mexico, when one of the big producers of tomatoes goes to Mexico from California—and strawberries, et cetera—what percentage of that is coming back into this country? Do you have any idea on that?

Mr. DUNKELBERGER. Very frankly, I do not have any idea. Do you, Mr. Davidson?

Mr. DAVIDSON. No, I do not.

Senator AIKEN. I would say that the labor situation has much to do with it.

Mr. DUNKELBERGER. Certainly, that is true with strawberries.

Senator AIKEN. I do not say that is all.

Senator JORDAN. The bracero program had a great deal to do with that, I am sure. I am wondering—you made this statement, and I would like a little more information on it. How much canned goods—and I am not talking about fresh vegetables which are entirely a different proposition because they have to move quickly in the crop season—how much is processed outside of the country, canned, and brought back here?

Mr. DUNKELBERGER. I do not have the figure on that. We might be able to speak to our statistical division and our foreign trade division and come up with some estimate on that, if you would like it.

Senator JORDAN. Because there has been discussion about that problem. I know that meat is not being included in this.

Mr. DUNKELBERGER. Yes, sir.

Senator JORDAN. The beef that is being imported, they do not use canned beef as a triggering point.

Are there any further questions?

If not, proceed, then.

Mr. DAVIDSON. It was this incident which made me realize how pernicious sections 4 and 5 of S. 109 could be and how we could be harassed

interminably by charges of discrimination because of membership in a bargaining group which were entirely without foundation, and, here again, I am prepared to explore this with you in greater depth at your request. Unless the right to seek relief in the local courts by the producer is removed from this bill and the provisions for criminal penalties and triple damages removed as well, we could be forced to spend so much of our time and substance in defending ourselves that we would in effect be coerced into dealing with the bargaining association on any terms they might dictate in order to attempt to survive.

I might add, parenthetically, that the triple-damage penalty which also provides for the payment of legal fees could make this type of action attractive to that very small percentage of all groups, including producers, who have a little larceny in their souls and here is where the small processor would be the weakest adversary.

Several proponents in testimony here on Tuesday equated this legislation with labor legislation. In fact one gentleman in talking about redressing the imbalance between the parties in bargaining between producer and processor spoke his mind (unintentionally I am sure) when he said "We want the balance."

Now, if it is valid to equate this legislation with legislation governing the bargaining rights of labor, then the same protection should be offered to, and penalties suffered by both sides. S. 109 should then also specifically prohibit the boycott, coercion, threat, and/or intimidation of a producer who does not want to join a bargaining association and it should prohibit the use of these tactics by a bargaining association to force a processor to deal with them.

Senator AIKEN. Do you think that the boycott should be legalized for both sides?

Mr. DAVIDSON. I do not believe that.

Senator AIKEN. You disagree with the National Association of Frozen Food Packers who testified Tuesday in this respect?

Mr. DAVIDSON. I was not present then.

Senator AIKEN. Mr. Williams said:

> We do, however, oppose the creation of conditions under which processors would be forced to bargain with such cooperatives by statute or face a civil or criminal proceeding for boycotting them.

Mr. DAVIDSON. That is correct.

Senator AIKEN. Do you think processors should have the right to boycott?

Mr. DAVIDSON. I agree that the right to boycott is granted to the bargaining association, and, if so, it should also be granted to the processor.

Senator AIKEN. And you believe that Libby should also have the right to boycott?

Mr. DAVIDSON. Well, I am not prepared to discuss the validity of that with regard to Libby.

Senator AIKEN. You want the same law to apply to everybody, do you not?

Mr. DAVIDSON. I would say that if the manufacturer is legally able to boycott, then they should have the same right; that is, that labor should have the same right.

Senator AIKEN. If you agree with Mr. Williams, then you would say the manufacturer or the processor should have the right to boycott.

Mr. DAVIDSON. If the association has the right to boycott, then the manufacturer should have the right to boycott. Any right granted to any party in any bargaining operation should be equally granted to all.

Senator AIKEN. I do not believe that a processor should have a right to boycott a producer in any event. That is why I wanted to determine if you agreed with Mr. Williams. Thank you.

Senator JORDAN. Whose testimony? Senator Williams?

Senator AIKEN. Not exactly. [Laughter.]

Senator JORDAN. I thought that you were reading his statement.

Senator AIKEN. This is from Edward Brown Williams' statement on boycott, of the National Association of Frozen Food Packers.

Senator JORDAN. I beg your pardon. Senator Williams did testify earlier. I thought you were reading his testimony. I thought you were talking about his testimony he presented.

Mr. DAVIDSON. What I tried to say, Senator, is that S. 109 specfically prohibits certain acts such as boycotts, coercion, threatening, intimidation, and so forth, and what I am trying to say is that the same prohibition should apply to the bargaining association with respect to their dealings, either with an independent producers or with a processor.

Senator AIKEN. Do you figure that if an association member raises 2 acres of tomatoes, he should be prohibited from intimidating the H. J. Heinz Co.?

Mr. DAVIDSON. I am speaking about the bargaining association, which is what we are referring to here.

Senator AIKEN. All right. But that is an association of farmers. The association gives farmers a way of working together.

Mr. DAVIDSON. I believe that under the bill it would.

Senator AIKEN. Sure, it would.

Mr. DAVIDSON. Yes.

Senator JORDAN. Proceed, sir.

Mr. DAVIDSON. I submit that S. 109 in its present form would have the ultimate effect of forcing the processor to deal with a bargaining association even though a number of proponents have specifically testified that this is not the intent of the legislation nor is it their desire to have this legislation be so regarded. If this committee, after weighing all the testimony, still feels that a bill of this type is necessary then I urge you to remove section 5(a) and to remove the criminal and triple damage provisions of section 4. I urge you to narrow the language as to coercion, intimidation, threat, and so forth, to prevent the harassment of the processor by reckless and insubstantial charges and finally, I urge you to apply the penalyties of this bill whatever they may be, equally to any party to the bargaining process who shall violate the injunctions of the law as to threat, intimidation, coercion, boycott and the spreading of false rumors.

Senator JORDAN. Thank you.

Are there any questions?

Senator AIKEN. Where, in this bill, S. 109, do you find its penalties not applied to cooperatives? You are speaking of a bill which you referred to a while back on which hearings were held in June of last year——

Mr. DAVIDSON. No, sir, I am speaking to this bill.

Senator AIKEN. ——which did unfairly exempt cooperatives from the provisions of the law?

Mr. DAVIDSON. No, sir, I am not referring to that. I am referring to the request that I am making of the subcommittee to consider, in the proposal presenting this bill to the Senate, establishing language in the bill that would make it equally illegal for the bargaining association to do the things which the bill now says is illegal for the others to do.

Senator AIKEN. You have not read this bill. Bargaining associations are subject to the bill as fully as other handlers. You are testifying on the one that we introduced a couple of years ago in which I agreed there were unfair provisions, and I refused to offer that bill this year until they were taken out and the bill written in such a way as to be fair to everybody concerned.

Mr. DUNKELBERGER. If I may interpose?

Senator AIKEN. Libel, for instance, under this, would be the same for cooperatives as it would be for other handlers.

Mr. DUNKELBERGER. The definition of "handler" may well include—and probably does include—a bargaining association. We understand that is the intent. On the other hand, if the Senator will address himself to the prohibitions, it is clear that the provisions are all in terms of protecting the right of the producer to join an association and protecting the association itself. There is nothing in this bill, which speaks about the right of a producer not to join an association. There is nothing in here about protecting the rights of the processor. Section 5(e)——

Senator AIKEN. You mean the right of a person to join a processing association?

Mr. DUNKELBERGER. No, sir, the rights of the processors.

For example, 5(e) says that it is unlawful to make false reports about the finances, management or activities of associations of producers. And it is your suggestion that the term includes processors. We do not believe it does.

Senator AIKEN. It should apply to everybody.

Mr. DUNKELBERGER. Yes, sir.

Senator AIKEN. And if that is your suggestion, I am sure that the committee will consider it. I am inclined to think that the processor has recourse under law now.

Mr. DUNKELBERGER. We believe, Senator, that there is recourse under the law to cover most if not all of these provisions. We do say that if the committee believes that additional legislation is justified so as to overlap or to add to those existing provisions to protect certain rights of bargaining associations and producers who are members, then we believe that if the legislation should be passed it should at the same time be amended to protect the rights of the independent to remain, indeed, independent. And the rights of a processor should be protected in the same way as the rights of an association of producers would be protected by this bill.

Senator AIKEN. Let me say it was intended by the authors that the bill should apply equally to everybody. That is the intention.

Senator JORDAN. I might add that if you have any amendments to offer, you might give them to the committee and they will be considered. All of these things will be considered in the committee's executive session.

Mr. DUNKELBERGER. I will comment on that in a minute.

Senator JORDAN. I do not want it now.

Mr. DUNKELBERGER. I will, then, when I get to my statement.

Senator JORDAN. If there is anything that will make this bill better, we would like to have it.

Mr. DUNKELBERGER. You will see in my statement that we agree.

Mr. DAVIDSON. Thank you very much.

I have finished my presentation.

Senator JORDAN. You have a brief statement to add, and you may proceed with it.

Mr. DUNKELBERGER. Mr. Chairman and members of the subcommittee, my name is Edward Dunkelberger; I am a partner in the firm of Covington & Burling, which is counsel for the National Canners Association, a nonprofit trade association of almost 600 members who have canning operations in 44 States and the territories. Members of the association pack approximately 85 percent of the entire national production of canned fruits, vegetables, specialties, meat and fish.

I would like to introduce into the record a telegram that was addressed to the canners association, having reference to some testimony that was in the record on Tuesday. It is from the Canners League of California. It is very brief, and I would like to read it, if I may.

Senator JORDAN. You may.

Mr. DUNKELBERGER (reading):

Reference is made to the May 2 testimony of Mr. Ralph Bunje to your Senate Committee on Agriculture and Forestry regarding S. 109. Replying to Senator Aiken's question: "Are all of the canners opposed to this bill?" Mr. Bunje replied: "No. I know personally that several of the large companies in California are not opposed to the legislation. In fact, they are in favor of it. There are, also, some small ones." As Executive Vice President of the Canners League of California, which association represents ninety-six per cent of the total California canned fruit and vegteable production, including independents and cooperatives, it is my duty to inform you that this statement is not correct and is in contradiction to action taken by our membership at our annual meeting on March 13, 1967 at Santa Barbara, California. At that time, S. 109 was considered and the membership without a dissenting vote voted to oppose this legislation. Please make this communication a matter of record for your Committee.

(Signed) M. A. CLEVENGER,
Canners League of California.

(NOTE.—A telegram identical to the one above was also sent to Senator Jordan, chairman of the subcommittee.)

Senator AIKEN. You have cooperative canners that are members of the canners league?

Mr. DUNKELBERGER. Cooperative members are members of the canners league as well as of the National Canners Association.

Senator AIKEN. I am not impressed with that argument, because I know too many organizations with such situations.

Mr. DUNKELBERGER. We submit that this is more persuasive testimony than the unsupported statement made on Tuesday.

Senator AIKEN. I am not questioning the telegram, the one that you presented.

Mr. DUNKLEBERGER. As this committee may recall, the National Canners Association has been an outspoken opponent of S. 109 and its predecessor versions since their first introduction several years ago. In June of last year we testified in opposition to the bill as introduced, and last September against a somewhat revised substitute.

The basis for our opposition to S. 109 was that the bill—

(1) Is unnecessary in the light of wholly adequate existing State and Federal laws;

(2) Provides unduly harsh penalties for vaguely defined prohibited activities;

(3) Restricts the right of the processor to choose his suppliers; and

(4) Is one sided in that it seeks to regulate only the handler, and not the bargaining association, in his dealings with the producers.

I would like to emphasize that the National Canners Association and the canning industry it represents continue to believe that these objections are valid and that they apply equally as well to S. 109 as introduced in the 90th Congress. But this opposition should not be misunderstood.

The National Canners Association does not question the right of producers to establish and join bargaining associations. A great many of our members have dealt for many years with members of bargaining associations, to the mutual benefit of grower and canner. Any number of canning company contracts have been approved by bargaining associations. We recognize, as we must, the rights granted to agriculture under the Capper-Volstead Act, and we do not countenance the use of coercive or predatory practices to interfere with those rights.

Our opposition to this legislation has been based on precisely the grounds that we have so frequently stated—the bill is unnecssary and, as drafted, raises a number of questions as to its scope and application to canners of fruits and vegetables. Let me briefly spell out the points of major concern in the present version of S. 109.

First of all, the bill is fundamentally discriminatory legislation, for it would apply only to processors or other handlers, and not to bargaining associations in their dealings with producers. The expansion of the definition of handler to include agricultural associations is obviously quite inadequate to cure this defect, for the basic prohibitions in section 4 are addressed to a producer's right to join and belong to a bargaining association—not to his right to be free from coercion by bargaining associations.

In this connection, I would like to comment briefly on a memorandum prepared by the Office of the Legislative Counsel for the counsel of this committee. On page 9, it is stated that the "differentiation of treatment has been eliminated in the present bill" by the change in the definition of "handler," to which Senator Aiken has referred. It admits, however, that this change has little effect because the prohibitions have not been altered to apply to association activities. The memorandum seeks to deal with this point by stating that "differentiation in treatment does not necessarily render invalid a regulatory statute of the Congress."

We have not questioned the constitutionality of S. 109 insofar as it applies unequally to handlers and bargaining associations. We have stated only that as a matter of legislative policy and fairness, legislation directed to merely one party to a transaction should not be countenanced. If responsible handlers are urged by the proponents to support this legislation on the ground that it will adversely affect only the irresponsible few, then it should be just as reasonable for handlers to

urge that bargaining associations support amendments that will protect producers against coercive practices by such associations.

We are delighted to have heard from the chairman that the sponsors would favorably consider amendments that would go in this direction.

Much of the testimony in support of S. 109 has stated as a fact that processors have discriminated against, refused to deal with, and harassed members of bargaining associations. These charges have either been stated in general, unsupported terms or have been refuted when stated in more particular terms. We are not aware that any canner refuses to deal with or otherwise discriminates against producers because of their membership in bargaining associations. If legislation directed against handlers is to be enacted on the basis of these unsubstantiated claims, then that legislation should also prohibit coercive and predatory practices by bargaining associations.

A second major difficulty with S. 109 is that, wholly apart from the vague prohibitions contained in the bill, canners are extremely concerned about the harsh penalties that would be imposed. Prison sentences would be imposed against handlers who were found to have engaged in poorly defined practices. Treble damages—plus attorney's fees—would be awarded a producer who could show some injury from what may have been a good faith commercial decision. These treble damages were appropriately described as "bloodletting" by Senator Lausche, a sponsor of the bill. In addition, disgruntled producers could harass processors by seeking injunctive relief at the height of the packing season, when the small processor can ill afford to space time away from his plant.

Probably the most important point at issue in prior years has been the question of whether the bill restricts in any way the right of a handler to refuse to deal with a bargaining association. We have maintained that the language in sections 4(a) and (b) is sufficiently ambiguous to raise a substantial question in this regard. Undoubtedly, this aspect of the bill has been the major concern of the canning industry. We therefore welcome the interpretation on behalf of the proponents of the legislation that the bill in no way infringes upon this right. Senator Lausche in his testimony stated that the bill will not force handlers to deal with bargaining associations, and that the buyers will retain the right to choose to deal with bargaining associations, individual producers, or both.

Secretary Freeman stated that the bill "will not infringe on the freedom of processors to choose producers, so long as the choice is not on the basis of membership or nonmembership in a cooperative." And President Charles B. Shuman of the American Farm Bureau Federation stated:

> The legislation does not—

And he underscores, placing emphasis on "does not"—

> force purchasers of agricultural products to deal with a marketing association of producers.

He emphasized this point by stating:

> The Farm Bureau does not seek legislation to force purchasers to negotiate with marketing associations.

We accept these statements of intent on behalf of the proponents, and agree wholeheartedly that the bill should not in any way infringe

on this important right—fundamental to our free enterprise system—that buyers and sellers must be free to decide with whom they will deal. To force canners to purchase from bargaining associations would so cripple the canner in his negotiating position as to eliminate competition in the purchase and sale of canning crops.

In the same vein as these statements by the proponents, we wish to emphasize that the National Canners Association's objection to this legislation has not been based on a desire to enable handlers to refuse to deal with or discriminate against producers solely by reason of their membership in a bargaining association. We have seen no evidence that anyone in the canning industry has in fact engaged in such practices, and we would not try to defend the practice if he did.

In the light of the testimony of the proponents, the difference between the position of the National Canners Association and that of the leading proponents and its sponsors of this legislation apparently has been narrowed. We are more than willing to give serious consideration to additonal revisions in the bill that would be responsive to all of the objections we have outlined above. The only major objection of this association which has apparently not been commented upon by the proponents is the fact that the bill applies unequally to handlers and bargaining associations.

I will add here that we welcome the statements by Senator Aiken and Senator Jordan which indicate that they would be willing to give sympathetic consideration to such changes in the bill.

Although the detailed wording of a revised version can be discussed at a later time, I would like to summarize the fundamental points that we believe should be included in any revised bill.

1. The prohibitions in section 4 should be revised to protect the right of a producer to be free from coercive and discriminatory actions by bargaining associations, as well as by handlers.

2. The harsh penalties should be revised, so as to eliminate criminal penalties and treble damages. The administrative enforcement procedure proposed by Secretary Freeman may, with some important modifications, be most suitable for this type of legislation. On this point, we remain flexible, other than on the penalties and triple damages which certainly should be eliminated. In accordance with the statements of Senators Lauche and Williams, the Secretary's proposal should at the very least be modified to eliminate criminal penalties and treble damages, and the interst of all concerned would best be served if administration and enforcement were in the hands of the Federal Trade Commission rather than the Department of Agriculture.

3. The handler's rights to refuse to deal with a bargaining association and to select the producers from whom he will purchase should be made explicit by means of provisos in the act guaranteeing these rights.

I might add that the distinction here is an important one. We believe that this point is not only recognized, but is supported by the American Farm Bureau Federation. That is, the processor would not be able to discriminate against or refuse to deal with a producer solely by reason of his membership in an association. The only right we wish to protect is the right of the processor to decide whether he will deal with the bargaining association, not with the individual producer.

4. Additional revisions should be made in some of the language in section 4 to clarify the intent and define the prohibitions more clearly.

Senator AIKEN (presiding). I noticed that you said that we should give sympathetic consideration to your suggestion. I am sure that the committee will give full consideration to your suggestion, and the degree of sympathy will depend upon as to the facts as we find them to be.

I want to add to something that I said earlier. We are facing a situation of losing a great deal of our food processing trade to places outside the United States. I have just one example here: In 1960, there were 320,000 pounds of tomato paste imported into the United States from Mexico; in 1965, that ran up to 1,900,000 pounds; and in 1966, there were 7,100,000 pounds imported.

As far as fresh strawberries go, there was a jump from 387,000 pounds in 1960 to 9,600,000 in 1965. It went up to 20,600,000 in 1966, and the indications are that it will go much above that in 1967.

In frozen form, strawberry imports went up about 400 percent in the same period. It went up over 50 percent in 1 year, and it has gone up about 400 percent over the past 5 or 6 years.

So, I think we should be greatly concerned about saving this production and the processing industry for our country. Our balance-of-trade problem is nothing to write home about.

Mr. DUNKELBERGER. I think we agree with you 100 percent on that.

Senator AIKEN. I know that your members, undoubtedly, are using a good deal of these imports, but it is coming from all over the world, not just Mexico.

Mr. DUNKELBERGER. It is coming from Italy and other countries as well, yes.

Mr. DAVIDSON. May I have the indulgence of the Senator to add that the companies in which I work are independent companies that have no interests outside of the United States, and your concern is equally our own concern, if not more.

Senator AIKEN. They are up against it.

Mr. DAVIDSON. And my concern in being here is hopefully to suggest that restrictive legislation that would make it most difficult for independent processors like ourselves to survive should not be put on the record. This, I think, would go to the heart of the matter that the Senator speaks about, if independent producers like ourselves are able to continue to function in a healthy atmosphere in the United States. I am sure that this would help offset the situation which the Senator mentions.

I would also like to add, although I am not conversant with it personally, that some of the tremendous rise in the importation of tomato paste into the United States in the last few years is due substantially to reduced crops in the United States where supplies are not sufficient to answer the domestic requirements. But I am quite certain, Senator, that a portion of this increase is not due to that factor alone.

Senator AIKEN. A part of it is due to increased demands, of course.

Mr. DAVIDSON. Yes, sir.

Senator AIKEN. And much of this trouble was due to the rather precipitate action of the Department of Labor which, perhaps, acted too hastily.

Mr. DUNKELBERGER. I have just one other point on the production going overseas. Perhaps, another factor that we might mention, because it is so timely, that has led some processors to invest in plants and processing facilities overseas, is that the Common Market and

other foreign countries place barriers on the importation of canned goods into those countries. This has made it necessary for us either to give up those markets or to invest in production facilities over there. If the State Department and other negotiators of the Kennedy round would give sympathetic attention to the difficulties of agriculture, that might arrest it, the trend you speak of.

Senator AIKEN. We are not going to disagree on that. [Laughter.]

Senator Young, do you have any questions?

Senator YOUNG. I would just like to comment, briefly on the problem of imports. This is a most serious one. The inability of the American producer to get the kind of labor necessary to produce fruits and vegetables contributes to increased imports which are plaguing many industries in the United States such as the fuel industry and others. Almost every segment of agriculture is being hurt by imports. Dairy imports are about 300 percent up and imports of other farm commodities are up tremendously. Worst is the effect on prices. This has been carried to the extent that most farm commodity prices are lower than they were 20 years ago. Farm prices are 8 percent lower today than a year ago, even though the cost of operation has been going up by leaps and bounds every year. This is a most serious problem that we are facing. I hope and I think that the Congress will deal more sympathetically in this area, at least, with the peril point provision in regard to tariff legislation. We must do something to protect American producers—both agricultural and industrial.

Senator AIKEN. Actually, farm prices have gone down 10 percent in 1 year. They have gone down 8 parity points, from 80 to 72, which makes a 10-percent reduction, and it is discouraging when we consider the number of people in this country dependent upon agriculture, including those who are in the processing plants.

Any questions, Senator Boggs?

Senator BOGGS. I have been very much interested in the discussion, Senator. I am hoping that this committee, when it considers this legislation, will find something which will go to these problems which have been discussed. I find it hard to find specific provisions which will go to all of these problems. I do think that the bill is clear on the proposition that there should be no discrimnation against the producer belonging to an association.

I am glad to have heard your testimony on that, that you recognize that, and I think that is a major point, as I understand the legislation before us. And if it can be properly drafted, all right.

I think you have made your position, Mr. Dunkelberger, very clear, and I think that if you would help the committee, in providing your suggestions for meeting the points you have raised, why, the committee would appreciate it. I know that Senator Aiken has said that we will give sympathetic consideration to that.

I thank you for your testimony, too.

Mr. DUNKELBERGER. I would like to point out that in prior years on this bill there have been largely misunderstandings but we did not feel, in view of the wording of the bill and the position, at least, of some of the proponents that there was a common ground that could be reached; but in view of the testimony that we have heard on Tuesday and the statements made today, I think that we will be more optimistic in this respect, that we may be able to resolve some of these controversies.

Senator AIKEN. I am sure we will try to make the intent of the bill absolutely clear before it is acted upon, and it is intended to be fair to everybody.

Thank you.

Mr. DAVIDSON. Thank you.

Mr. DUNKELBERGER. Thank you.

Senator AIKEN. The next witness this morning is Mr. G. Ted Cameron, president, National Broiler Council, North Little Rock, Ark.

STATEMENT OF G. TED CAMERON, PRESIDENT, NATIONAL BROILER COUNCIL, NORTH LITTLE ROCK, ARK.

Mr. CAMERON. Mr. Chairman and members of the subcommittee, my name is G. Ted Cameron, and I am president of Mountaire Poultry Co., North Little Rock, Ark., and current president of the National Broiler Council, 1155 Fifteenth Street NW., Washington, D.C. I appreciate this opportunity to present the views of the National Broiler Council regarding S. 109. Accompanying me today are R. Frank Frazier, executive vice president of NBC, and James F. Rill, legal counsel to the association.

I will depart from the prepared brief for a moment, with your permission. The broiler industry today is experiencing the longest depression in its history; however, we do not come here today seeking legislative remedies to our marketing difficulties. Instead, we believe that the industry holds in its own hands the tools needed to make the adjustment that will result in better days ahead. It is gratifying to report to you that there is some evidence that the adjustment is already underway. Chick placements have dipped from earlier levels, and a substantial increase in the slaughter of breeder flocks would indicate that this adjustment should be reflected in lower production volume through the summer and fall months. We hope that this will correct the imbalance that has resulted in the situation that we have found ourselves in for a good many months.

The National Broiler Council is a nonprofit trade association representing all segments of the vertically integrated U.S. broiler industry. Its membership is comprised of firms producing and marketing approximately 65 percent of the broilers sold in the Nation.

At the outset, it is necessary to make two preliminary observations. First, it is the policy of the broiler council that broiler growers, like all other farmers, have a right to join any association or organization of their choice. We do not condone any unfair or coercive interference with this right.

Second, the council has no position on whether integrators should or should not deal with associations of producers, directly with individual growers, or both. In our opinion, these are commercial questions which are appropriately matters of individual choice guided by the exigencies of the marketplace. Thus, we do not believe that analysis of the economic merits of bargaining associations is warranted in this hearing.

Associations of farm producers are already accorded significant exemptions from various Federal statutes, most notably from certain aspects of the antitrust laws under the Capper-Volstead Act. The

chief proponents of this bill evidently believe that further special legislative considerations are necessary to the attainment of their objectives; they profess the belief that unless the provisions of this measure are enacted, coercion and undue interference by outsiders will frustrate the organizing and bargaining efforts of these associations. We believe that should such improper activity take place, there are adequate remedies under existing Federal and State law. We would not, however, oppose S. 109 for that reason alone. We do oppose S. 109 because we are concerned that the prohibitory provisions as presently drafted could well be interpreted to undermine competition based on merit and to inhibit the realization of the efficiencies which have characterized the broiler industry in recent years.

THE BROILER INDUSTRY TODAY

This statement evokes a brief description of commercial relationships of the broiler industry as they exist today. The industry is almost entirely vertically integrated in that there is common ownership of a number of facilities, including the breeder flock, feed mill, hatchery, and, most often, the processing plant. Under this system, day-old chicks are placed with independent farmers who supply the land, buildings, and equipment and skilled services to grow the chicks until they are ready for slaughter, a period of normally from 8 to 9 weeks. The grow-out operation is performed on contract between the integrator and grower, and contract price is normally based in part on a formula which rewards better-than-average performance.

Senator AIKEN. Does the integrator have any control over the amount of the production?

Mr. CAMERON. The number of birds produced, Senator?

Senator AIKEN. Yes.

Mr. CAMERON. Yes, sir, I would think so; yes, sir.

Senator AIKEN. Then the supply-and-demand situation would be more or less controlled by the integrator?

Mr. CAMERON. Yes, in part. Of course, this is not true throughout the industry. This is a general pattern, sir. It would hold true for all situations, however.

Senator AIKEN. I know that. Thank you.

Mr. CAMERON. Since broiler growing is a specialized function, there is intense competition among integrators for competent growers. Much has been said by proponents of S. 109 about high concentration in various food processing industries, but the National Commission on Food Marketing found that concentration in the broiler industry is relatively low.

Although the system of vertical integration has been criticized from time to time, we believe that it has been a principal contributor to the industry's productivity and the well-being of all its segments. In fact, development of the system received a large measure of its impetus from the expressed desires of broiler growers, and has been made possible by generally excellent relationships between integrator and grower. Moreover, not only has vertical integration been conducive to efficiency in the broiler industry, and consequent lower prices to the consumer, it has to a great degree insulated growers from market risk and the resultant loss which periodically beset integrators. This fact

was recognized in the report of the National Commission on Food Marketing as was the opportunity for economic returns which the system has afforded a number of previously underemployed farmers. It is noteworthy that several witnesses appearing before this subcommittee last year, including one of the principal advocates of this legislation, recognized both the efficacy and propriety of vertical integration as it exists in the broiler industry.

THE FREEDOM TO SELECT BUSINESS PARTNERS

The freedom of each segment of the industry to select those with whom they will do business is at the core of the industry's nature. Not only do contracts reward efficiency, but there are a number of growers with whom, because of their performance, certain integrators will not do business, and, for that matter, a number of integrators with whom because of their performance, a number of growers will likewise not do business. We believe that preservation of the right to select customers and suppliers based on merit is vital to the industry. This individual right has been legally established and repeatedly reasserted since its first expression by the U.S. Supreme Court in the 1919 *Colgate* case. This does not imply support for any practice of collective refusals to deal, and such practices have been condemned under both the Sherman and Federal Trade Commission Acts.

The council is fearful that section 4(a), dealing with interference with the right to organize, section 4(b), dealing with a broad spectrum of discriminations, and section 4(d), dealing with the improper granting of consideration in interference with bargaining associations, could very easily be interpreted to limit or destroy the concept of selection based on merit. The vagueness of the language and lack of legal certainty of many of the expressions used in these provisions are the basis for our concern. Suppose, for example, an integrator deals with grower A rather than grower B for legitimate commercial reasons. Is this enough to constitute a "boycott" if grower B happens to be a member of an association of producers?

Suppose that the integrator was wrong in his judgment, and, on a given flock, grower B, working with another integrator, turned out to be more productive. Would this then establish the existence of a "boycott"?

We have been informed that under some contracts, bargaining associations seek the right to assign growers to processors. If an integrator refuses to deal on this basis, desiring to preserve his right to select his own suppliers, is he guilty of a boycott, improper interference, or both?

Under the efficiency contracts typical in the industry, suppose grower A, not a bargaining association member, receives a greater return than grower B who is a member. Has an unlawful discrimination occurred?

Informally, we are assured that such a result is not intended by S. 109. Yet, nothing in the language of the bill so assures us, and at the very least this language would place an integrator in jeopardy anytime he pays different returns to association members and nonmembers. The Government and the courts would be continuously reviewing the economic meaning and consequences of every broiler contract to determine the foundation of each term.

Finally, suppose that an integrator transacts business with a member of a bargaining association directly on an individual basis and not through with the association. Could the amounts paid on contract with this farmer be construed as a discrimination in violation of section 4(b) or a payment in the nature of an improper inducement in violation of section 4(d)? These illustrations are merely a few samples of the difficulties which might arise under S. 109.

It may be that the proponents of this measure do not intend any interference with the growers' and integrators' rights to select and deal with their business partners on the basis of merit or judgment thereon. Nevertheless, as presently drafted, the legislation would severely limit or destroy that right. It is not unprecedented for courts under certain circumstances to apply interpretations to statutes which were not intended by the draftsmen. And his statement should not be taken as criticism of the judiciary. Normally, in such circumstances, the language of the statute does not clearly and plainly establish intent as to all eventualities.

If it is not the purpose of S. 109 to inhibit the right of integrators and farmers to select their customers and suppliers on the basis of merit or to prevent their transacting business with one another on an individual basis, the legislation should be amended to reflect this intent.

On May 2, Mr. Charles Shuman, president of American Farm Bureau Federation, a principal supporter of S. 109, testified before this subcommittee that the bill would not produce the consequences to which we object. He stated that S. 109 would not—

> (1) Force purchasers of agricultural products to deal with a marketing association of producers; and would not (2) prevent a purchaser from choosing the producers with whom he wants to deal based on merit.

One of the sponsors of the legislation, Senator Lausche, expressed a similar interpretation of the bill in his testimony earlier that day. If the legislation is not intended to so restrict freedom of selection and individual dealing, what possible objection would there be to plainly establishing this intention through appropriate clarifying amendments to S. 109, in view of the interpretations that the broiler council and others have derived from its present form?

We fully agree with the statement made by the Chairman on Tuesday which, if we understand it correctly, indicates that, if a bill is to be passed, all provisions should be clearly spelled out to avoid the risk of costly and needless court action.

WHO HAS THE BURDEN OF PROOF?

Some of the difficulties which we anticipate as to the present draft may stem, in part, from uncertainty as to whom the burden of proof will be imposed and how much of what character of evidence will be necessary to establish a prima facie case.

At least one sponsor of identical legislation in the House of Representatives has asserted that the burden will be on the complaining party to demonstrate that the act or practice complained of was attributable entirely to the issue of membership or exercise of membership rights in a bargaining association, and Mr. Shuman concurred in this interpretation in his testimony on Tuesday.

On the other hand, as the bill is now written, it is conceivable that a plaintiff could merely show, for example, a simple refusal to deal or

difference in price or other conditions of trade and stop right there, shifting to the defendant the burden of proving that the conduct involved was attributable to commercial rather than discriminatory motives. If the bill were clarified to establish that a party seeking relief must prove that any practice complained of derived solely from a producer's membership in an association of producers, some of our concern would be alleviated.

CRIMINAL PENALTIES AND TREBLE DAMAGES ARE INAPPROPRIATE

It is generally recognized that there has been disagreement as to the interpretation to be applied to various provisions in section 4 of the bill. Since there is such uncertainty, the council submits that the imposition of criminal penalties for violations are entirely inappropriate. It may not always be possible in drafting legislation, such as S. 109 which regulates often complex and changing trade practices, to use such precise expression as will foreclose every question of interpretation, although we respectfully submit, as noted, that the present bill falls far short of even a liberal standard. Nevertheless, where some imprecision is necessary, criminal penalties are wholly unjustified, except perhaps where the national health and safety are involved; which is not the case with S. 109. It is a familiar canon of criminal law that the crimes involved must be clearly defined. Here, not only are the purported crimes not clearly defined, but the acts could be committed without any underlying moral turpitude whatever.

The council also submits that provision for private treble-damage actions described by Senator Lausche on Tuesday as a bloodletting operation is not appropriate to the legislation. This bill parallels the antitrust laws covering some practices presently prohibited by these laws and apparently proscribing other acts and practices not presently so covered.

Where a course of conduct is sufficiently grave to constitute a violation of antitrust statutes, treble-damage relief is presently available under the Sherman or Clayton Acts.

We urge that this system, this present system, describes the appropriate outer boundaries for such suits and, if S. 109 were to be enacted, that actions for preventive relief in the form of temporary restraining orders, preliminary or permanent injunctions, would be adequate for its enforcement. It is particularly appropriate in view of what we consider to be a total lack of demonstration of need for this legislation, at least insofar as it relates to the broiler industry.

The proponents of this measure have criticized the long duration of litigation under existing law presented inherent in the procedures of the Federal Trade Commission and the Packers and Stockyard Division of the Department of Agriculture. Recent developments indicate that expeditious, temporary relief may be secured by these agencies. In the *Dean Foods* case last year, the U.S. Supreme Court ruled that the Federal Trade Commission could obtain a temporary injunction against corporate mergers pending litigation by requesting the courts of appeals to invoke the Federal all-writs statute. If this relief is available in the case of mergers, there is no reason why it cannot be sought as to any other statute administered by FTC. By the same token, there is no reason why similar relief might not be sought under the Packers and Stockyards Act which also provides for review by the appropriate U.S. courts of appeals.

THERE IS A NEED FOR RECIPROCITY

Another major objection which the council has regarding S. 109 is its lack of mutuality in prohibitions and remedies.

One of the first standards expressed last year by a principal supporter of the legislation is that membership in associations of producers should be strictly voluntary. If this is the case, and we have no reason to believe that it is not, producers should be protected from any unfair practices, discrimination, coercion, intimidation, or disparagement by associations of producers which interferes with the producer's right to refrain from joining such an association or to sever his relationship with it. Similarly, the bill is one-sided in that it does not protect integrators and other handlers from the conduct described in section 4 if such action is brought to bear on them by associations of producers.

Although we do not accuse the proponents of this legislation of contemplating such action, its employment by producer associations against both producers and processors in the past is not unknown. Inasmuch as S. 109 does, inappropriately in our opinion, appear to proscribe certain practices not covered by existing law, we submit that, if it were to be enacted, its prohibitions should be applied to acts and practices of a similar nature when engaged in by associations of producers. Such an establishment of the principle of equal treatment would be a basic step in the direction of "fair play," a term which its proponents have used to characterize the bill.

The principle of "fair play" is one with which no one can disagree, and the broiler council certainly believes that any improper interference with the right of a farmer to join any commercial organization is not fair. Yet, this legislation transcends that principle and by its uncertain terminology threatens the legitimate competitive freedoms of both integrators and growers and hence the mutually profitable relationships in the broiler industry. It is for this reason and because of the application of unwarrantedly severe penalties and the lack of equal treatment that we oppose enactment of this bill. We emphasize that we do so without any rancor and without questioning the motives of any of the organizations supporting it. The National Broiler Council appreciates the opportunity to present these views.

Mr. Chairman, there are two or three gentlemen in the room I would like to introduce, but before I do so, I would like to add a statement relative to the bill itself.

On Tuesday, the Department of Agriculture submitted certain suggested amendments to this bill—amendments which we have not had an opportunity to study—and others, also, offered changes.

We believe it may be desirable to consider affording all interested groups time to analyze the suggestions and to comment thereon, perhaps in further hearings. I suggest that to you.

Senator JORDAN (presiding). I might add that the hearings will be held open for further statements—any statements may be filed and will be considered, of course.

Mr. CAMERON. Of course, this was made in view of the suggestions on Tuesday.

Senator JORDAN. Do you have copies of the amendments, the suggested amendments by the Department? Do you have those?

Mr. CAMERON. Yes.

May I introduce two or three of these men who are in the room?

Senator JORDAN. You certainly may.

Mr. CAMERON. This is Mr. James Fleming. He is with the Alabama Poultry Industries Association of Cullman, Ala.

Would you stand, please, Mr. Fleming?

I have here Mr. Fleming's prepared statement for the record, for the Alabama Poultry Industries, which they would like to submit.

Senator JORDAN. Without objection, that may be done.

(The statement is as follows:)

STATEMENT OF JAMES F. FLEMING, EXECUTIVE SECRETARY, ALABAMA POULTRY INDUSTRY ASSOCIATION, CULLMAN, ALA.

Gentlemen, my name is James F. Fleming. I am Executive Secretary of the Alabama Poultry Industry Association, whose headquarters are located at Cullman, Alabama. I am appearing today in behalf of the membership of the Alabama Poultry Industry Association which is composed of poultry producers processors, hatcherymen, feedmen, and persons who make up all allied segments of the poultry industry.

The Alabama Poultry Industry Association is a non-profit, non-governmental organization which was formed some sixteen years ago for the purpose of representing the expanding poultry industry of our fine state in the various fields of public life wherein the interests of the poultry industry are concerned. Our membership are free to choose whether or not they will belong to our Association each time they are asked to pay their membership dues.

The poultry industry in the State of Alabama is the largest agricultural interest in the state. In 1966, farm income from the sale of poultry products by producers exceeded $256 million, according to the latest figures reported by the Statistical Reporting Service, U.S. Department of Agriculture. This industry has grown rapidly during the past 27 years and continues to grow even today. As an illustration of this progressive expansion, I would like to point out that in the year 1940 Alabama's poultry industry represented only $5.5 million in farm income. This figure jumped to $25.5 million in 1950 and as vertical integration became a major part of the poultry industry, the figure climbed to $135 million in 1960. During the past six years alone, Alabama's farm income from the sale of poultry products by producers skyrocketed to an amazing $256 million—coming close to doubling the income in 1960.

Gentlemen, this outstanding growth in Alabama surely could not have been accomplished if one segment of the industry was being ridden-over roughshod by any other segment of the industry. We believe the fantastic growth is attributable to mutual trust, unified action, and continuous cooperation between parties which make up the great poultry industry we know today.

Because this undisputable record has been accomplished by an industry working together, the Alabama Poultry Industry Association cannot see any need for legislation such as that proposed in S. 109. We believe the adverse effects of the proposed Bill would seriously divide one of the most important segments of the poultry industry, the producer himself, from all the other segments of the poultry industry. Such an effect would seriously impare the production of poultry products in our state and throughout the nation.

For these, and other reasons, the Alabama Poultry Industry Association wishes to be recorded as being opposed to S. 109. We wish also to be on record as supporting the positions of Southeastern Poultry and Egg Association and the National Broiler Council.

We urge you to take immediate action to prevent this Bill from being enacted into law.

Mr. CAMERON. In the room also is Mr. Lex Killebrew, executive secretary of the Arkansas Poultry Federation of Little Rock, Ark., and also Mr. E. S. Kendrick, of the North Carolina Poultry Council and executive vice president of Holly Farms of Wilkesboro, N.C. We are also authorized to say the Mississippi Poultry Improvement Association is opposed to S. 109.

These four organizations support the position of the council and have asked us to present their views.

Senator AIKEN. Has the drop in the price of the broilers been substantial the last year or two?

Mr. CAMERON. Since last fall, it has been very substantial.

Senator AIKEN. The integrators, you say, control about 96 percent of the production?

Did you not say that at the first?

Mr. CAMERON. No; I said that our council represents 65 percent. Not the production.

Senator AIKEN. I was just wondering how the prices of the broilers dropped so sharply when the income of the integrators has risen so sharply.

Mr. CAMERON. It has not risen since last September.

Senator AIKEN. You mean it has not risen for the broiler business itself?

Mr. CAMERON. It has not; to the contrary, sir, there have been 8 months of back-to-back losses. That is the point that I wanted to make.

Senator AIKEN. There has been a very substantial increase in the earnings and the dividends of what I think are some of the principal integrators—in our part of the country, at least. One of them does have plants, however, in about 20 foreign countries. It is conceivable that we have here another example of business leaving the country.

STATEMENT OF R. FRANK FRAZIER, EXECUTIVE VICE PRESIDENT, NATIONAL BROILER COUNCIL

Mr. FRAZIER. The early part of the year was a profitable period; but the latter of the year was one in which we had heavy losses, and during this period of heavy losses which has gone on, roughly, up to the present time, for the most part, grower contracts have remained the same. So, the financial loss has been suffered by the integrator rather than by the grower.

Senator AIKEN. But the integrator had an elaborate increase in profits, the reports show.

Mr. FRAZIER. The most recent reports on the broiler phase of the operation have shown otherwise.

Senator AIKEN. I did not say that they lost money on the broilers, but when they compete with the farmers who have no income except from their broilers, they are making the situation very difficult for them.

Senator Boggs probably knows more about that than I do.

Senator BOGGS. I am sure that I do not; but I do want to comment on Mr. Cameron's testimony.

I certainly think that he has made a fine presentation.

The questions he raised are, in my judgment, proper and legitimate questions. Some of them I had in my own mind to ask. And I think that your testimony would be of help to the committee in considering this legislation, in endeavoring to make its intent clear on this subject. We certainly do not want to aggravate lengthy court action. We want to be of help to the industry as well as to the producer, because they are related. There is no question about that. One cannot get along without the other.

As to the criminal provisions as they stand at the present time, that has been of great concern to me also. And I am glad to have your views on that.

I thank you, since your testimony has been very helpful.

Senator JORDAN. Thank you very much.

STATEMENT OF JAMES F. RILL, LEGAL COUNSEL, NATIONAL BROILER COUNCIL

Mr. RILL. I think there may be some need for clarification as to one of the comments.

Senator Aiken indicated the possibility of competition between the diversified company and the farmer.

Of course, the buyer-customer relationship as to all segments of the integrated broiler industry and the farmer, in that there is active competition among all broiler integrators, whether they are a diversified company engaged exclusively in the broiler business or a part of a cooperative, all of which are members of the National Broiler Council.

Senator AIKEN. It all goes back in my mind to the Standard Oil Co., which was forcing all the independent people out of business. They were very successful in doing so, before they got through with that operation.

Mr. RILL. My only comment to that would be— Excuse me.

Senator AIKEN. That is all right. Proceed.

Mr. RILL. Would be, of course, that the National Commission of Food Marketing revealed that the broiler industry is relatively protected by relatively low concentration.

Senator AIKEN. I realize, too, that broilers are competitive with other food.

Mr. RILL. Yes.

Senator AIKEN. And are at least holding their own.

Senator JORDAN. It is the cheapest food on the market in the way of meat.

Senator AIKEN. Yes, sir.

Senator JORDAN. And I want to say for the broiler industry that it is too cheap. I know that they are losing money. I happen to know that. I know one or two who went out of business, because they could not afford to lose any more. In fact, the bank caused one of them to go out. He did not go out by himself, by his own volition.

Thank you very much.

Senator Hart is here, and we are very glad to have you here to present your statement at this time.

We will be very glad to hear from you now.

Senator HART. Thank you, Mr. Chairman and members of the subcommittee. If I may ask that my prepared statement be printed in full in the record, I will make some very brief comments.

Senator JORDAN. It is so ordered, and it will be made a part of the record at the conclusion of your oral presentation.

STATEMENT OF HON. PHILIP A. HART, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. It is always a pleasure to come back to this committee on which I spent, to me, 4 interesting years. I left it before developing a complete understanding of what grain sorghum was——

[Laughter.]

Senator HART. The subject matter of Senator Aiken's bill I feel more comfortable with. It is a concept that created extraordinary controversy in Michigan about 30 years ago. We are all conscious that the whole society is better for the right of the man who works with his hands or on a machine freely to organize.

Maybe it increases automobile prices. But I think that America is infinitely stronger because of the freedom that created an effective organization. I am not conscious of anybody now who wants to tear up the National Labor Relations law.

I was struck, as I read the hearings of your committee of last year, with the fact that some of the criticisms that are directed at Senator Aiken's proposal here are echoes of that debate 30 years ago. For example, take the telegram from the president of the Campbell Soup Co., which I find on your printed report on page 16, and change just a couple of words; it sounds like a playback of 30 years ago. The only words you have to change are: "workers" instead of "farmers", and "work" instead of "grow", and "automobiles" for "tomatoes", and it would read this way—this is the telegram to Mr. Shuman, and it reads:

> We are always ready to meet with workers and especially those who wish to work for us, but we do not consider it desirable for anyone to stand between the workers and us. For this reason, we do not consider it practical for us to carry on negotiations with your organization on the matter of the contract terms that we would expect to offer workers with whom we would hope to contract for automobiles.

We are talking about "farmers" and "tomatoes."

I think that we will all be better farmers and workers, if we can insure that the farmers, the producers, will be able, without intimidation, to organize and market their products.

And, as I read Senator Aiken's bill, that is all that is intended, that is all that is sought.

In reading your hearings of last year, I was reminded of the adverse consequences of intimidation as described by the president of the Great Lakes Cherry Producers Marketing Cooperative, Mr. John Handy, who represented that organization, and Berkley Freeman, manager of that Great Lakes Cherry Producers Marketing Cooperative, and I cite pages 96 to 99 of your record, where the processors pretty effectively dismantled that one.

Senator AIKEN. May I ask you a question, sir?

Senator HART. Certainly.

Senator AIKEN. In your statement, you say:

> We in Michigan certainly know that collective bargaining produces a more adequate income for the man who produces goods.

May I ask: Was this collective bargaining disastrous to the Ford Motor Co. or the General Motors Co.? It did not put them out of business, did it?

Senator HART. It hasn't had the effect of giving them an annual guaranteed profit in excess of $1 billion, but it has not dismantled them. They are all growing stronger and in part because of it.

Senator AIKEN. And being required to deal collectively with the men who did the production work did not turn out to be disastrous for the employer or the processor, did it?

Senator HART. I am not authorized to speak for them——

Senator AIKEN. I do not think so.

Senator HART. But I believe the automobile manufacturers would say today that it would be disastrous for them if they had to negotiate with each individual at the hiring gate as the production line fluctuates. Processor and producer are both better for it.

And, lastly, Mr. Chairman, I was permitted to serve on the National Food Marketing Commission. We had some disagreements, but one of the elements on which we were in unanimous agreement was the necessity for legislation protecting the right of producers to organize, precisely as introduced by Senator Aiken.

Thank you.

Senator JORDAN. Thank you very much, Senator Hart.

Do you have any questions, Senator Boggs?

Senator BOGGS. No questions, thank you.

Senator JORDAN. Thank you very much.

(The prepared statement of Senator Hart is as follows:)

Mr. Chairman, I asked to be added as a cosponsor of S. 109 because I wanted to give Senator Aiken any support I could in seeing that this long overdue legislation is enacted by the Congress.

S. 109 would make it unlawful to interfere with, discriminate against, or coerce or intimidate any agricultural producer in his right to belong to an association of producers.

The right to bargain collectively is now so taken for granted in business and industry that many of us tend to forget that there are thousands and even millions of United States working people who do not enjoy this basic right.

Quite frankly, I was shocked to read the record of the hearings held in the last Congress on S. 109 and to find that the *same* deplorable coercion and intimidation which we outlawed with respect to industry with passage of the National Labor Relations Act is now being visited on the agricultural producers of this nation.

Well do I remember the days when industrial workers were trying to win the right to be represented by organizations of their own choosing in dealing with management. The reply of the corporation to a request that a union bargain on behalf of the employees was pretty standard. And it was the exact same attitude and almost the same words as were used by the President of the Campbell Soup Company to Mr. Shuman who wrote on behalf of the American Agricultural Marketing Association:

"We are always ready to meet with farmers and especially with those who wish to grow for us but we do not consider it desirable for anyone to stand between the growers and us. . . . For this reason we do not consider it practical for us to carry on formal negotiations with your organization on the matter of the contract terms that we would expect to offer farmers with whom we would hope to contract for tomatoes."

Substitute the words "workers" for "farmers," "work" for "grow," and "autos" for "tomatoes" and you have the identical picture.

We in Michigan certainly know that collective bargaining produces a more adequate income for the man who produces the goods.

In my book, the cherry grower and others in his situation should have the right to join together in cooperative or marketing associations without coercion from processors.

The farmers of this country are in trouble. In spite of long hours and hard work, they are not sharing equitably in the general economic well-being. S. 109 is a concrete, specific measure which will help them to help themselves. It gives them the ability to organize for a fair return on their investment and their labor.

Mr. Chairman, I hope that your Committee will report favorably on S. 109.

Senator JORDAN. Our next witness is Mr. A. C. Smith, president of the Southeastern Poultry & Egg Association, and with him he has Mr. Robert H. Martin, executive secretary of the Southeastern Poultry & Egg Association of Decatur, Ga., and Mr. Don Grubbs, chairman of the Producers Committee of Greenbrier, Tenn.

We will be glad to hear from you now, Mr. Smith.

STATEMENT OF A. C. SMITH, PRESIDENT, SOUTHEASTERN POULTRY & EGG ASSOCIATION, CUMMING, GA.

Mr. SMITH. Mr. Chairman and members of the subcommittee, in view of the time limitation and since our statement is similar to the one made by the National Broiler Council, I would just like to point out two or three things and not read by complete statement, as I understand it will be included in the record in its entirety.

Senator JORDAN. We will put your complete statement, following your oral remarks, sir.

Mr. SMITH. Our association is composed of 12 Southeastern States. We have a membership which includes producers, breeders, hatcherymen, feed manufacturers, processors, distributors, and other allied interests.

We have approximately 5,700 producer members.

Two weeks ago, our producers committee met in Atlanta, Ga., and they studied this bill, and they are very much opposed to it. Our board of directors voted in February in opposition to the bill.

We feel that it gives—not that we oppose the growers joining the marketing associations; we are certainly for that, but we think that under this bill it gives them certain rights that it does not give the integrator, the processor. We are very much opposed to this bill, therefore.

Senator AIKEN. May I ask you what your going rate now is for producing broilers?

Mr. SMITH. Well, most all companies have an incentive contract. I would say that the floor is 2 cents a pound.

Senator AIKEN. Two cents a pound?

Mr. SMITH. Yes.

Senator AIKEN. And over how many weeks?

Mr. SMITH. Approximately 8 or 8½ weeks.

Senator AIKEN. They have brought that down from 15 weeks, which it used to be?

Mr. SMITH. Years ago, it used to be that.

Senator AIKEN. That is right.

Mr. SMITH. Years ago, when a grower had 1,000 or 1,200.

Senator AIKEN. Have the rates been reduced in the last 2 or 3 years?

Mr. SMITH. The contract rate, no, sir. I would say it has been increased in the last 2 or 3 years.

Senator AIKEN. It is now up to what?

Mr. SMITH. Up to what?

Senator AIKEN. Two cents a pound, you said.

Mr. SMITH. Yes, sir.

Senator AIKEN. What is the going rate?

Mr. SMITH. That is about $75 per thousand, plus the incentive if their performance warrants it. That would be about 7½ cents a bird.

Senator AIKEN. They raised them——

Mr. SMITH. From 3½ to 3.75.

Senator AIKEN. To get some meat on them.

Mr. SMITH. To get some meat on them, right.

Senator JORDAN. How many birds do you say that a man can handle now?

Mr. SMITH. 40,000 or 50,000.

Senator JORDAN. One man?

Mr. SMITH. Yes, sir.

Senator JORDAN. That beats the old barnyard method that I was raised under.

Mr. SMITH. There has been a lot of improvement in the last few years.

Senator AIKEN. Ten years ago, they used to figure that it took a man 2 hours a day to raise 10,000 birds, and now he can raise 40,000 in the same length of time.

Mr. SMITH. It takes about 8 weeks.

Senator AIKEN. You push a button?

Mr. SMITH. Yes, push a button.

Senator AIKEN. Thank you.

Mr. SMITH. They seem to be very happy.

In the Southeastern States, Mr. Chairman, I would like to point out that we produce in that area approximately two-thirds of the broilers grown in the United States.

Senator JORDAN. I was wondering if you had our man in North Carolina out, because if you did, you would be in real trouble.

Mr. SMITH. We are very glad to have him. He is included.

Senator JORDAN. We produce a lot of broilers.

Senator BOGGS. May I ask Mr. Smith a question?

Senator JORDAN. Yes.

Senator BOGGS. On your incentive payments, is that based on quality or on a period of time?

Mr. SMITH. It is based on performance, yes. It is usually with the speed conversion clause tie-in.

Senator BOGGS. Does the quality of the broiler enter into that?

Mr. SMITH. Yes, sir.

Senator BOGGS. There is quite a variation in the quality of the birds, is there not?

Mr. SMITH. Maybe not when they are a day old, but by the time that they get to the plant, yes.

Senator BOGGS. That is what I mean.

Mr. SMITH. That is right, because you have your problems of feeding.

Senator BOGGS. Feeding, regularity of feed, to produce quality.

Senator JORDAN. You mean by "incentive," and correct me if I am wrong: How well the producer performs with the food given to him; how many pounds that bird will increase?

Mr. SMITH. That is right.

Senator JORDAN. With a certain amount of food?

Mr. SMITH. That is right.

Senator JORDAN. With feeding and proper handling, and water, and all of the things that go into keeping the broiler house clean?

Mr. SMITH. That is right. There are a lot of differences in the performance of growers.

Senator BOGGS. That enter into the quality of the bird.

Mr. SMITH. That is true.

Senator BOGGS. Which is important.

Mr. SMITH. We feel under this bill that it would tend to help the inefficient and hurt the efficient.

(The prepared statement of Mr. Smith is as follows:)

Mr. Chairman, I am A. C. Smith of Cumming, Georgia, President of the Southeastern Poultry and Egg Association. I am presenting this statement on behalf of the Association which is a regional organization composed of members in twelve southeastern states. Our membership includes producers, breeders, hatcherymen, feed manufacturers, processors, distributors and other allied interests.

The Association would like to express our appreciation for the opportunity to appear and present our views and recommendations on Senate Bill 109 to this important committee.

Production within the region covered by this Association includes over two-thirds of the broilers, approximately one-third of the table eggs, and one-fifth of the turkeys produced in the United States. We have the largest concentration of poultry production of any area of the nation. Poultry is the number one cash farm income crop in many of our states, and in most of the others it ranks number two and number three. Statistics show that our growth is continuing in total production of all poultry products, and all predictions indicate that this increase will continue for a number of years. We realize that the members of this Committee recognize the reasons for our concern over this Bill which could drive a wedge between the time-honored relationship existing between most of the integrators and growers.

The Association's fifteen man Board of Directors at its February 24 meeting voted unanimously in opposition to this Bill. We believe that there are several phases of the Bill which will be detrimental to processors, growers, and contractors in the poultry industry in the region covered by Southeastern. The vague language of S. 109 could in effect prevent contractors from offering incentive contracts to efficient growers. The effect of this Bill might be to take trading out of the market place and put it into the courts. This may also be so far reaching that a contractor not contracting with an Association member for a perfectly good business reason would be found in violation of S. 109 which requires the contractor to prove justification for his decision under threat of criminal penalties.

We believe that many of the prohibitive practices set forth in the Bill are already covered by Federal and State laws. We wish to point out that Southeastern has never opposed the right of anyone to voluntarily join with any worthwhile organization.

At the fourth annual meeting of the Association's Producer Committee on April 18, the Committee voted unanimously in opposition to S. 109 as it is presently written. Their main objections were contained in certain paragraphs of Sections 4 and 5 of the Bill. The vague language and/or interpretation of such paragraphs as "It shall be unlawful for any handler knowingly to engage or permit any employee or agent to engage in the following practices: (a) To interfere with or restrain, or threaten to interfere with or restrain, by boycott, coercion, or any unfair or deceptive act or practice, any producer in the exercise of his right to join and belong to an association of producers; or (b) To discriminate or threaten to discriminate against any producer with respect to price, quantity, quality, or other terms of purchase or acquisition of agricultural commodities because of his membership in or contract with an association of producers; or (e) To make false reports about the finances, management, or activities of associations of producers or interfere by any unfair or deceptive act or practice with the efforts of such associations in carrying out the legitimate objects thereof. Section 5, Paragraph (a) Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited by section 4, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. (b) Whenever the Secretary of Agriculture has reasonable cause to believe that any handler or group of handlers has engaged in any act or practice prohibited by section 4, he may bring civil action in the appropriate district court of the United States by

filing with it a complaint (1) setting forth facts pertaining to such pattern or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the handler, or handlers, responsible for such acts or practices."

Under Section 3(a), the definition of term "handler" could include many of our small egg producers who sell a few eggs along with their production for neighboring farmers that do not have a way to dispose of their small amount of production.

Terms such as we have already mentioned, including "Whenever any handler has engaged or there are reasonable grounds to believe that any handler is about to engage in any act or practice prohibited in Section 4, a civil action may be instituted by the person aggrieved" is a bad law. This again is not clear and is too vague.

The Association's fifteen man Producer Committeemen were selected by the various State poultry associations as a representative on Southeastern's committee for the growers who belong to the State federations and associations back home. Therefore, Southeastern has about 5,000 producer members in the various states and their opinions pertaining to the Bill and as expressed at the meeting on April 18 in Atlanta has far reaching effect.

The representatives from nine states at the Committee meeting represented a great volume of production of broilers, commercial eggs and turkeys. To give you a brief summary of this total production—it includes annual production of approximately one and a half billion broilers, sixteen billion commercial eggs, and twenty-one and three quarter million turkeys.

I am happy to have with me the Chairman of the Southeastern Poultry and Egg Association's Producer Committee, Don Grubbs of Greenbrier, Tennessee. He is a commercial egg producer and presided at the April 18 meeting.

We hope this Committee will give an unfavorable report on S. 109.

Thank you, Mr. Chairman, and members of the Committee for your attention and consideration of our views.

Senator JORDAN. Do you have any further questions?

Senator BOGGS. No.

Senator AIKEN. No.

Senator JORDAN. Do these other gentlemen plan to testify?

Mr. SMITH. No. We thank you very much.

Senator AIKEN. In regard to the submission of statements, there is one suggestion I have, that following the hearing there should be a time limit for such submissions such as 2 weeks.

Senator JORDAN. I think that would be ample time in which to get them in.

Our next witness is Mr. W. W. Holding III, president of W. W. Holding & Co., of Wake Forest, N.C., on behalf of the American Cotton Shippers Association, who is accompanied by John C. White and Neal Gillen.

Before you start, I would like to say that this young man, Mr. Holding, is from Wake Forest, N.C., and that is a little bit of my hometown—just a little bit.

Senator AIKEN. They used to have a good football team there.

Senator JORDAN. They turned the football team into preachers down there, and they are doing a good job of it.

Senator BOGGS. They turned the football team into preachers or the preachers into a football team?

Senator JORDAN. They just took the football team away and left the preachers, and they have some very good preachers. It is a Baptist institution, a very fine one.

Now, Mr. Holding, you and Mr. Gillen and Mr. White, you may proceed as you desire.

Give your names, please, and whom you represent, for the record.

STATEMENT OF W. W. HOLDING III, AMERICAN COTTON SHIPPERS ASSOCIATION, WAKE FOREST, N.C.

Mr. HOLDING. Mr. Chairman, I am W. W. Holding III, coowner of W. W. Holding & Co. of Wake Forest, N.C. Our firm has been engaged in the business of merchandising, shipping, and warehousing cotton in Wake Forest since early 1900.

I am accompanied by Mr. John C. White, counsel for the American Cotton Shipping Association, and Mr. Neal P. Gillen, director of the Washington office of the American Cotton Shippers Association. Today I appear on behalf of the ACSA as a member of its board of directors, and also as immediate past president of the Atlantic Cotton Association.

The American Cotton Shippers Association was founded in 1924 and is basically comprised of merchants, shippers, and exporters of raw cotton who are members of six affiliated associations located throughout the Cotton Belt:

Arkansas-Missouri Cotton Trade Association,
Atlantic Cotton Association,
Oklahoma State Cotton Exchange,
Southern Cotton Association,
Texas Cotton Association, and
Western Cotton Shippers Association.

At the outset, Mr. Chairman, we wish to reiterate the position taken by the association last year when we vigorously opposed the enactment of S. 109. (See attached resolutions of affiliated associations.)

It would appear from listening to proponents of this legislation, that anyone opposed to this bill is opposed to farmer cooperatives. It should be emphasized that our organization is not opposed to the right of farmers to form agricultural cooperatives. Public policy has long recognized the desirability of safeguarding the freedom of farmers and other individuals or groups to form together in cooperative organizations or unions, and we believe it is equally important to safeguard the freedom of the farmer or the working man not to join a cooperative or union, and to deal with noncooperative organizations whenever he believes his interest is better served thereby.

Cooperatives today, including those in the cotton industry, enjoy a favored position with respect to various Government programs, particularly benefiting from preferential income tax treatment on a substantial scale. With respect to cotton specifically, the cotton loan regulations of the Department of Agriculture have, for many years, conferred an overwhelming competitive advantage upon cooperative organizations.

Despite these and other advantages, the vast majority of cotton grown in the United States is produced, marketed, and processed through noncooperative ginners, and hundreds of millions of dollars have been invested by private enterprise in facilities to serve this major segment of the cotton industry.

Witnesses testifying in support of S. 109 have emphasized the desirability of protecting the farmer against such unfair practices as coercion, intimidation, discrimination, boycotts, and the like, which are aimed at preventing or discouraging membership and participation in cooperatives. This is the thrust of section 4 of the bill, and with respect to this section we have three general observations to make:

First. Although the types of actions which the proponents seek to make illegal are not applicable to the raw cotton industry, they are indefensible and cannot be condoned.

Second. We presume that it is the interest of the farmer with which the bill is concerned, and in our view the farmer's interest can only be served by protecting him against the prohibited business practices, whether engaged in by a cooperative or a noncooperative in its dealings with him. The recent action by the NFO in the milk strikes, and their activities involving livestock in 1964, was so blatant and violent a disregard of the law that the U.S. Department of Justice had to step in and protect individual farmers and processors from the type of conduct committed by co-ops from which they seek today to insulate themselves. (See attached Justice Department exhibits.)

Third. There is a serious danger that, in attempting to outlaw unfair competitive practices, the language of the bill will invite misinterpretation which would most likely curb vigorous but healthy competition between cooperative and noncooperative organizations.

In the 89th Congress, the U.S. Department of Justice and the Federal Trade Commission presented their views on an identical House version of S. 109 to the House Judiciary Committee. The major reason for their recommendations against enactment centered upon the language of section 3 of the original draft. S. 109, as redrafted, carriers with it, essentially, the same language in section 4 that Justice and FTC opposed in the original section 3.

In view of the uncertainty of the language of section 4, we respectfully recommend to the chairman that the views of the U.S. Department of Justice and the Federal Trade Commission be solicited. In addition, because of the antitrust implications of this legislation, and the new enforcement powers vested in the U.S. Department of Agriculture, we recommend the bill be referred to the Senate Judiciary Committee for further study.

Some of the ambiguities which we feel must be clarified vitally affect our very rights to earn a livelihood in a free competitive atmosphere. Applying S. 109 to the cotton industry, we feel that many sound and defensible competitive practices would be considered Federal crimes. It must be remembered that it is normal and desirable for cooperative and noncooperative to compete vigorously for the farmer's patronage; in the cotton industry, with such competition the farmer always stands to benefit with a better price for his cotton.

As you probably know, cotton cooperatives have expanded at a rapid pace in recent years, particularly in the State of Texas. Through their strength and the employment of efficient co-op managers, and through a generous and abused loan program administered in their behalf by the U.S. Department of Agriculture, they have made great gains in the marketplace.

Many of our association members have been forced out of business because of the preferred treatment afforded the cotton co-ops. To be specific, the Plains Cotton Cooperative Association, in the Lubbock area of Texas, has grown to such proportions that they now have complete control of 42.2 percent of the crop in the 20-county Lubbock area in west Texas. (See attachement 1.) To give cause for even greater alarm among private cotton merchants is the fact that plans are well on the way toward completing the consolidation of the Growers Mar-

keting Association of Harlingen, Tex., South Texas Cotton Marketing Association of Corpus Christi, Tex., and Plains Cotton Cooperative Association of Lubbock, Tex. (See attachment 2.)

This merger will give the Plains Cotton Cooperative Association a potential market of an additional 450,000 bales of cotton, or one-third of the total production they now control on the Great Plains area of Lubbock. We respectfully submit that such growth and engulfment of markets was not contemplated by the Capper-Volstead Act. The growth of co-op mergers has progressed to such an extent that private industry is being literally driven out of the marketplace. Public policy should afford equal opportunity for both farmer cooperatives and independent farmers and merchants to have equal advantages in the marketplace, but when conditions reach the proportions prevalent in Texas, the Justice Department should take a close look at future mergers before private industry is completely extinct.

Such an investigation might be stimulated by the statement which appeared in the Plains Cotton Cooperative Association Annual Report for 1963–64 (see attachment 3) which reads as follows:

> The fact that Plains Cotton Cooperative has progressed steadily each year while many competitors have lost their capital and their customers is a tribute to the practical judgment and sound business policies developed by the Board of Directors.

In 1962 there were 70 independent cotton merchants doing business in Lubbock, Tex. Today the number has been diminished by 22 firms, and only 48 independent firms are presently in existence. Therefore, S. 109, in our view, is adding additional unfair advantages to the co-ops to go along with the windfall of storage fees they receive from the Commodity Credit Corporation under the form G loan and the tax advantages that are denied private enterprise.

Relative to the interest of preservation of the independent cotton shippers and merchants, the Honorable Bernard L. Boutin, Administrator of the Small Business Administration, in referring to section 3 of the original bill, forewarned of the dangers inherent to the independent business interests in his letter of June 17, 1966, to Senator Jordan:

> Our review of this bill indicates that the attempt to protect agricultural producers from undue pressures against joining marketing and bargaining associations has placed noncooperative agricultural processors, which are mainly small businesses, in a disadvantaged position. Certain provisions of the bill, in its present form, would operate to the detriment of noncooperative processors and place them at a distinct and unwarranted competitive disadvantage * * *.
>
> The language of section 3 of the bill, particularly subsections (a), (d), and (e), is so imprecise as to proscribe the use of many ordinary and usual business practices. For example, section 3(a) makes it unlawful for a noncooperative processor to "interfere with" an agricultural producer in the exercise of his rights to join a cooperative. Section 3(e) uses the words "*interfere in any way*". [Language italicized changed in present version of S. 109.] With no further refinement of terms, it is entirely conceivable that an advertising or promotional program by noncooperative processors could be construed as "interference", as would an educational program intended to inform producers of the benefits of dealing with independent rather than cooperative processors. Similarly, a decision by noncooperative processors to offer to all customers better prices than the cooperative offers might be construed as "interference."
>
> Section 3(d) of the bill, which would make it unlawful for a noncooperative processor to pay or loan money or give anything of value to an agricultural producer as an inducement or reward for refusing to or ceasing to belong to a cooperative, could, in some instances, destroy a trade practice of long standing.

I am informed that many types of agricultural processors, both cooperative and noncooperative, particularly in the field crop area, have long offered their customers certain ancillary services at little or no cost to the agricultural producer. These services, which are generally conceived of as goodwill or promotional services, include such things as advancing credit to agricultural producers, lending equipment to agricultural producers for hauling the commodity to the processor, performing machinery repairs for agricultural producers, and disseminating information and giving advice to agricultural producers on agricultural techniques and procedures.

The effect of section 3(d) would be to prohibit the continuance of these customary trade practices by noncooperative processors. The incentive for such services, gaining customer goodwill and retaining or acquiring customers, would render the use of such service unlawful. The prohibition would not, however, prevent the cooperative processor from performing such services, thereby placing the noncooperative processors in an extremely disadvantageous competitive position. For an agricultural producer who has become accustomed to such services, their lack could have a substantial effect on the profitability of his farming operation and cause him to switch his allegiance to those processors who could lawfully continue to offer them. It would be an unusual processor who would continue his usual trade practices in the face of statute subjecting him to both criminal and extraordinary civil sanctions.

Observations by the Small Business Administration, in our opinion, are fair illustrations of what will happen to the cotton merchants if S. 109 is enacted.

To further indicate the ambiguities and inconsistencies in this legislation, section 4(d) might prevent me as a cotton merchant from attempting to buy cotton from a grower who is a member of a co-op, while section 4(b) may provide the legal means to fine me, put me in jail, or subject me to treble damages for not bidding on his cotton. Some cotton marketing co-ops drop from membership any grower who markets his lint and seeds elsewhere; hence, my act of bidding on cotton, the grower of which happened to belong to such a co-op, could be interpreted as inducing him to cease be member. It should be noted at this point that the farmers subject to such limitations in the marketing of their crops are locked into the restrictive domination of an unconscionable contract forbidding them to act freely in the marketing of their crops. Such a contract seems to run against the very grain of our free enterprise system and actually is a restraint of the members' free trade. Similarly, if I refuse to bid for his cotton, I might be charged with discriminating against him because of his membership. The fact of the matter is I may never know, except by coincidence, whether the farmers whose cotton I buy are co-op members or not.

Other and equally important observations were pointed out by the Honorable Ramsey Clark (then Deputy Attorney General), now Attorney General of the United States, in a letter to the Honorable Emanuel Celler, chairman of the House Judiciary Committee on July 25, 1966, when he responded to Chairman Celler's request for the Department of Justice's views on this legislation:

Under existing law, there is, of course, no compulsion upon purchasers of agricultural commodities to do business with agricultural cooperatives or members thereof. A purchaser can generally choose to deal with whomever he wishes. Further, like other legal persons, a cooperative can recover civilly if defamed, or if a third party (e.g., a purchaser) induces a cooperative member to break a contract with it. Thus, since a cooperative or its members would have a remedy against the activities which would be proscribed under section 3 of the bill, the purpose of the section is not clear. However, the section might be interpreted as having the effect of forcing purchasers to buy from cooperatives and their members. A decision by a purchaser not to buy from a cooperative member because the prices set by the cooperative are too high might be construed as a boycott or an

interference in violation of section 3(a). A statement by a purchaser that he wishes to buy only from independent producers, followed by a termination of cooperative membership by a member producer, might also be construed as a violation of section 3(a). Since there is no apparent need for the protection which would be accorded to cooperatives and their members under section 3, and since the section might be interpreted in a manner to subject a purchaser to criminal penalties for seeking to choose his suppliers, the Department of Justice is opposed to the section.

Following these observations I feel the following questions are in order after carefully analyzing subparagraphs (a) to (e) of section 4:

(1) If a merchant bids on cotton owned by a producer-cooperative member, the same price he offers the others, as subsection (b) requires, will he be violating subsection (d) by offering the producer "to pay or loan money, give anything of value in excess of the true market value or any agricultural commodity * * *" for ceasing to belong to such an association, or would he be violating subsection (e) by "interfering by any unfair or deceptive act or practice with the efforts of such association in carrying out the legitimate objects thereof"?

(2) If he advances crop-production money to a producer who is technically a cooperative member on the same terms that he does other producers, will he be violating subsection (d) or (e)?

(3) If the American Cotton Shippers Association vehemently protests the discriminatory provisions of form G loans which confer cooperative producers benefits which form A does not permit to them or the customers they serve, will that be a "conspiracy" to interfere with the efforts of an association in carrying out its legitimate objects as proscribed in subsection 4 (e)?

(4) If the staple cotton growers offer to sell cotton to a cotton mill at a price of 23 cents, and a cotton merchant knew about it and he bids to the mill 22.95 cents, or offers the cotton at that price of 23 cents, will he be violating section 4 by interfering with a sale that a cooperative might otherwise have made?

I do not know the answers to these questions and I doubt that anyone else reading S. 109 could give an authoritative answer. This would be disturbing in any context, but it is extremely disturbing in the case of S. 109 because it is a criminal statute which provides criminal sanctions.

It is all very well to talk about such nice legal problems as burden of proof, and to assert that proof that a handler has knowingly paid or loaned money to a producer, or offered some other inducement for refusing or ceasing to belong to a cooperative is not easy. Maybe so, but we have learned that the mere cost of litigation—even of countering a palpably false accusation is costly, so costly as to destroy a whole year's profit for a small concern.

Let's look at section 4(d) again. Our merchant members are engaged in buying cotton from producers and reselling it to domestic mills and to foreign importers. Cooperatives such as the Plains Cotton Growers are in direct competition with them. If the cooperative gets the cotton, stores it in its warehouse, it will likely resell to mills any cotton it does not turn over to the Government loan. A merchant who wishes to stay in the business of merchandising cotton must utilize every possible legitimate method to acquire cotton. The most important method is to pay the producer enough for the cotton to obtain it, and obviously it may take more to get one producer's cotton than another's. Certainly

in the case of a producer, who acquires membership in a cooperative simply by selling his cotton to them, the consideration will have to be in excess of that offered by the cooperative.

Intentionally or not, this bill will prevent the competition of cotton merchants with cooperatives for the producer's cotton, and this is plainly opposed to the producer's interest. Quite possibly the merchant will pay a producer who is technically a member of the cooperative or to anyone else more than he has paid some other producer, or possibly for some particular type of cotton of which he is short considerably more—more even than its true market value, whatever that is, to anyone else. Here, then, is a perfect set of facts for lawsuits—both criminal and civil—under sections 4 (d) and (e) if it happens that the producer ever sold a bale of cotton to a cooperative—which is all that it takes to make him a member.

In some areas, merchants finance the production of cotton. They compete vigorously with cooperatives for the business of every producer and who gets the business may well be determined by who makes the best financing offer in terms of amount, rate of interest, or in the case of cooperatives, an offer of membership on its board of directors. There are hundreds of competitive expedients that may win the business for one or another. Here again, section 4 would require merchants to write off the possibility of getting the patronage of any producer with any cooperative tie, or face arrest, imprisonment and treble damages.

Every competitive trade for the cotton of a producer who is also a cooperative patron is the result of some inducement—(the dictionary defines "inducement" as "an incentive or something that persuades") and apparently a merchant will have to stop offering to buy cotton from any such producer, or to finance his crop, if he suspects the producer has any cooperative contact.

Ginners face the same problem—and more precariously since their capital is tied up in fixed assets. Do you want to make it illegal for a ginner to render the producer any kind of additional service that he is able to furnish in order to stay in business in competition with a cooperative gin? If so, why not simply make it mandatory that every grower within reach of a cooperative gin must have his cotton ginned there.

Warehouses and compresses operate on published tariffs, but as the stock of Government-owned cotton diminishes, competition in every possible form of service is necessary to get the farmer's cotton, particularly where a cooperative warehouse financed by a low cost Government loan offers the extra "inducement" of a share in possible profits.

Thus the application of S. 109 to cotton could be hobbling the ability of non-cooperatives to compete fairly and effectively, and providing the means by which a cooperative compress might establish a monopoly in the industry. As mentioned earlier in this statement, the cooperatives in Texas are well on their way to establishing a monopoly. Today, when approximately 70 percent of the cotton farmers have demonstrated their preference not to function through a co-op, why should Congress enact legislation which would inevitably force them to turn to cooperatives, due to the elimination of their private business competitors? The Honorable Donald F. Turner, As-

sistant Attorney General in charge of the Antitrust Division has come to the heart of the problem in a public statement to the National Council of Fruit and Bargaining Cooperatives when he addressed them in 1966 with the following words:

> The ability to form cooperatives allow the farmers to overcome the power of the larger buyer in two ways. First, to the extent the cooperative gains some control over the supply of a product, it can bargain with the buyer in order to achieve a somewhat higher price than the buyer would have to pay individual farmers selling separately. Second, the farmers may form their own cooperative marketing agencies, thus bypassing the powerful marketer who would otherwise be able to achieve an unduly high profit at the expense of the farmer.
>
> It is important to note that this justification for the agricultural cooperative exemption is to allow the farmers to overcome exploitation and earn a reasonably competitive profit. Its purpose is not to allow a monopoly profit.
>
> This also explains why it is important that membership in cooperatives be voluntary, that cooperatives not be permitted to coerce outsiders by shutting off their access to markets. This requirement not only protects the farmers' basic interest in freedom of association, but it also increases the likelihood that cooperatives will be able to earn competitive profits but unable to achieve monopoly profits.
>
> There is no reason I know of to depart from our long-standing policy of encouraging cooperative growth. It is clear, however, that agricultural cooperatives are no longer a negligible factor in our Nation's economic life. And as cooperatives grow in size and importance, as they assume more and more of the characteristics of large corporate businesses, it becomes even more important that the essentials of our competitive policy be applied to private businesses and to cooperative businesses without discrimination.

To summarize, cooperative operations already enjoy great competitive advantages over noncooperatives as a result of preferential Government policy. While the unfair practices which the bill seeks to correct do not exist in the cotton industry, such abuses as a matter of principle are not condoned.

If the farmer requires protection from such abuses, the prohibitions should apply equally to the business practices of cooperatives and noncooperatives alike. Our further opposition to the bill is addressed to the danger that, through loose draftsmanship, it will create a monopoly advantage for cooperatives to the detriment of the cotton industry generally and particularly to the cotton farmer who stands to lose most by the elimination of his freedom of choice.

It may be that there are specific evils which justify some legislation but S. 109 is a blunderbuss measure which might well be summed up in one sentence: "On and after the passage of this act competition with cooperatives is illegal."

If this bill becomes law, corporate entities would have to stop doing business.

(The appendix to Mr. Holding's statement follows:)

RESOLUTIONS IN OPPOSITION TO S. 109 ADOPTED BY AFFILIATED ASSOCIATIONS OF THE AMERICAN COTTON SHIPPERS ASSOCIATION AT THEIR ANNUAL MEETINGS IN 1967

ARKANSAS-MISSOURI COTTON TRADE ASSOCIATION

"The Arkansas-Missouri Cotton Trade Association is unalterably opposed to Senate Bill 109, introduced by Senator George B. Aiken and others, and its companion bill H.B. 6262, introduced by Representative H.C. (Took) Gathings. These bills are identical, and in the opinion of this Committee seem to compound inequities already prevalent in trade of agricultural products. This proposed legislation is in favor of one group only (the cooperatives) and at the expense of all other groups. It violates the principles of free endeavor which made this country great, and would establish conditions intolerable to normal

business competition. While it is claimed by proponents that these bills would elminate discriminatory practices, they would actually legalize discrimination in favor of cooperatives, and in our opinion S.B. 109 and H.B. 6262 are probably unconstitutional as well as unfair and unnecessary."

ATLANTIC COTTON ASSOCIATION

"Concerning Senate Bill 109, we are definitely opposed to this act because (1) it impedes the farmer's competitive position to bargain for himself in the sale of his product. (2) Under this legislation, it deters the position of an independent buyer to pay a higher price than a cooperative. (3) The language of Section 4 of this act, which was written with the purpose in mind of protecting farmers from a monopolistic group, would in essence create a greater monopoly in favor of cooperatives without affording the farmers protection which normally the legislation purports to protect. (4) Abuses and restrictions which may exist in marketing of perishable commodities certainly do not exist in cotton marketing.

SOUTHERN COTTON ASSOCIATION

"S. 109, introduced by Senator George Aiken, and others, is a bill allegedly designed to control unfair trade practices affecting producers of agricultural products and associations of such producers. It would restrict free trade in agricultural commodities.

"Further, we agree with the Department of Justice that its enactment would be a significant departure from the national policy of relying upon competition, as enforced by the antitrust laws, to check abuses and concentrations in our economy.

"We therefore oppose enactment of this legislation."

TEXAS COTTON ASSOCIATION

"We are opposed to Senate Bill 109, for the following reasons:

(1) It is too broad in that it is not limited to the marketing and bargaining areas where unfair practices are claimed.

(2) It is unfair and discriminatory in only protecting the farmers' right to belong, but not his right not to belong.

(3) It outlaws normal business practices, which now are supervised by the Federal Trade Commission, the Justice Department, and State Agencies.

(4) It provides for extremely harsh penalties in the form of fines up to $1,000.00 and/or imprisonment up to one year, triple court damages and injunctive acts.

(5) It prohibits threatened as well as actual acts.

(6) The special interest feature provides a means to harass, intimidate, and cause arrest of private business competition.

(7) Restraint of Trade."

WESTERN COTTON SHIPPERS ASSOCIATION

"The Western Cotton Shippers Association is strongly opposed to Senate Bill S. 109. This legislation is basically unsound because the rights of individual farmers are adequately protected by existing laws as enunciated by the United States Department of Justice and the Federal Trade Commission in testimony on S. 109 before the Senate Committee on Agriculture in the 89th Congress.

"S. 109 precludes the individual from his cherished right to sell his products to whom he chooses. The cotton merchant and the cotton farmer will lose their right to bargain in the arena of a free market if such legislation is enacted."

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE NATIONAL FARMERS' ORGANIZATION, INCORPORATED, DEFENDANT.

(Civil Action No. 7–1982–C–1; Filed: March 30, 1967)

AFFIDAVIT OF HUGH P. MORRISON, JR., IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

CITY OF WASHINGTON,
District of Columbia.

Hugh P. Morrison, Jr., being first duly sworn, states as follows:

I am an attorney employed by the United States Department of Justice and am currently engaged in preparing the above-mentioned case for trial. This affidavit is submitted in support of plaintiff's application for a temporary restraining order enjoining defendant and its officers, directors, agents, members or any other person acting on its behalf, from taking any action in furtherance of the attempt to monopolize interstate trade and commerce in milk referred to in paragraph 10 of the Complaint filed herein. The issuance of this order is authorized by Section 15 of the Clayton Act. (38 Stat. 736).

Issuance of a temporary restraining order is necessary at this time to temporarily stay the activities by which the National Farmers' Organization is attempting to monopolize interstate trade and commerce in milk.

On March 29, 1967, plaintiff filed, a verified Complaint against the defendant National Farmers' Organization allleging that the effect of the aforesaid attempt to monopolize interstate trade and commerce in milk has been to restrain competition between the members of the National Farmers' Organization and non-member farmers and a curtailment of the flow of milk in interstate trade and commerce in violation of Section 2 of the Sherman Act (15 U.S.C. Section 2). In its Complaint, plaintiff also seeks issuance of a preliminary injunction pending a determination on the merits of the Complaint.

On Sunday, March 19, 1967 I traveled to the State of Wisconsin to investigate the conduct of the National Farmers' Organization during the present milk withholding action. During the period March 19, 1967 and March 22, 1967 I conducted interviews with dairy farmers, milk haulers and dairy cooperative personnel, located throughout southern Wisconsin. In addition, I have interviewed, and obtained information from state and local law enforcement agencies.

On the basis of the information obtained as a result of this investigation it is my belief that the National Farmers' Organization has, through threats and intimidation, and through acts of violence to property and threats of such acts of violence, induced non-member farmers to withhold milk from the market, and to induce carriers not to transport milk to collection points and processing plants. It is my further belief that the National Farmers' Organization has actively solicited agreements from non-member farmers, the terms of such agreements being that the non-member farmers would withhold milk from market during the National Farmers' Organization withholding action.

Unless said attempt to monoplize is temporarily enjoined pending a hearing on plaintiff's motion for preliminary injunction, enforcement of Section 2 of the Sherman Act will be thwarted. Defendant will continue through threats, intimidation, harassment and acts of violence to inflict irreparable damage on non-member farmers, interstate carriers of milk and processors of milk.

HUGH P. MORRISON, JR.,
Attorney, Department of Justice.

Subscribed and sworn to before me this 24th day of March, 1967.

ADAILA OLSON,
Notary Public.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE NATIONAL FARMERS' ORGANIZATION, INCORPORATED, DEFENDANT

(Civil Action No. 7–1982–C–1—Filed: March 29, 1967)

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant and complains and alleges as follows:

I. Jurisdiction and venue

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July, 1890, as amended, commonly known as the Sherman Act (15 U.S.C. Sec. 4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 2 of that Act (15 U.S.C. Sec. 2),

2. The defendant maintains offices, transacts business and is found within the Southern District of Iowa.

II. Definitions

3. As used in this complaint:

(a) "agricultural products" means those products produced and sold by farmers including, but not limited to, livestock and milk;

(b) "nonmember farmer" means a person engaged in the production and sale of agricultural products who is not an officer, agent, employee or member of The National Farmers' Organization, Incorporated;

(c) "processor" means a person engaged in the processing and distribution of agricultural products;

(d) "carrier" means a person engaged in the business of transporting agricultural products.

III. The defendant

4. The National Farmers' Organization, Incorporated, hereinafter referred to as "NFO", is hereby made the defendant herein. NFO is a nonprofit membership corporation organized and existing under the laws of the State of Iowa with its principal place of business at Corning, Iowa. NFO's membership is composed largely of farmers.

5. NFO seeks to bargain on behalf of its membership with processors of agricultural products and to obtain "master contracts" with said processors. Said "master contracts" provide for the sale of particular agricultural products by NFO members to processors at fixed prices substantially in excess of current market prices.

IV. Nature of trade and commerce

6. A substantial portion of the production and sale of milk in the United States occurs in the States of Colorado, Illinois, Iowa, Indiana, Kanssa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, West Virginia and Wisconsin (hereinafter referred to as "the marketing area States"). In 1965 the marketing area States produced over 82.9 billion lbs., or approximately 66%, of the nation's milk.

7. A substantial portion of the milk which is produced and sold in the marketing area States is delivered and sold by or on behalf of the producer, or processed, distributed or consumed, a state or states other than the state in which this milk is produced. The production, sale and distribution of milk in the marketing area States constitutes interstate trade and commerce.

8. One method used by NFO in its efforts to increase the price for agricultural products received by its members has been the withholding of a product from the market. The success of a withholding action is dependent on the withholding from the market of a substantial percentage of the agricultural product involved. In 1964 defendant conducted a withholding action on livestock. During this withholding action defendant threatened, intimidated, harassed and committed acts of personal injury and property damage to non-member farmers in order to

restrain non-member farmers from selling livestock and from delivering livestock to processors. Defendant further threatened, harassed and committed acts of violence to carriers and to processors, in order to restrain carriers from transporting livestock and to restrain processors from receiving livestock.

9. During the livestock withholding action referred to above, defendant entered into agreements and understandings with non-member farmers. The substantial terms of these agreements and understandings were that non-member farmers would withhold livestock from processors when NFO members were withholding livestock. During this period defendant also entered into agreements and understandings with carriers. The substantial terms of these agreements and understandings were that carriers would refuse to transport livestock to processors when NFO members were withholding livestock.

V. Offense

10. Beginning on or about March 15, 1967 and continuing thereafter up to and including the date of the filing of this complaint, defendant has attempted to monopolize the hereinbefore described trade and commerce in milk in violation of Section 2 of the Sherman Act. Said unlawful attempt to monopolize is continuing and will continue unless the relief hereinafter prayed for is granted.

11. In effectuating the offense above, defendant has, among other things:

(a) through threats, intimidation, harassment and acts of violence, attempted to induce and induced non-member farmers not to sell milk and not to deliver milk to processors;

(b) through threats, intimidation, harassment and acts of violence, attempted to induce and induced carriers not to transport milk;

(c) through threats, intimidation, harassment and acts of violence, attempted to induce and induced processors to cease operations and not to receive milk.

VI. Effects

12. The aforesaid attempt to monopolize has had the following effects, among others:

(a) competition in the sale of milk between members of NFO and non-member farmers has been substantially restrained; and

(b) the flow of milk in interstate trade and commerce has been curtailed.

VII. Prayer

Wherefore, plaintiff prays:

(1) That the Court adjudge and decree that defendant has attempted to monopolize interstate trade and commerce, as herein alleged, in violation of Section 2 of the Sherman Act.

(2) That defendant, its officers, directors, agents, employees, and members, its successors and assigns, and all persons acting on its behalf, be enjoined during the pendency of this action and permanently from:

(a) threatening, intimidating, harassing and committing acts of violence against non-member farmers;

(b) threatening, intimidating, harassing and committing acts of violence against carriers;

(c) threatening, intimidating, harassing, and committing acts of violence against processors;

(d) engaging and participating in all other activities, agreements and understandings having the purpose or effect of continuing or renewing the violation alleged in this complaint.

(3) That plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem necessary and appropriate; and

(4) That plaintiff recover the costs of this action.

RAMSEY CLARK,
Attorney General.
DONALD F. TURNER,
Assistant Attorney General.
GORDON B. SPIVACK,
Attorney, Department of Justice.
CHARLES D. MAHAFFIE, JR.,
Attorney, Department of Justice.
EDWARD R. KENNEY,
HUGH P. MORRISON, JR.,
Attorneys, Department of Justice.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, *v* THE NATIONAL FARMERS' ORGANIZATION, INCORPORATED, DEFENDANT

(Civil Action No. — Filed —)

MOTION FOR TEMPORARY RESTRAINING ORDER

United States of America, plaintiff, pursuant to Section 15 of the Clayton Act (38 Stat. 736), hereby moves the Court for the entry of an order temporarily enjoining and restraining the defendant, its officers, directors, agents, members or any other person acting on its behalf from taking any action in furtherance of the attempt to monopolize interstate trade and commerce in milk referred to in paragraph 10 of the Complaint filed herein, or any similar action on the ground that:

(1) the verified Complaint filed in this action, a copy of which is attached hereto, alleges that the attempt of the National Farmers' Organization to monopolize interstate trade and commerce in milk violates Section 2 of the Sherman Act (15 U.S.C. Section 2);

(2) Section 15 of the Clayton Act authorizes the Court, in its discretion, to make such temporary restraining order or prohibition as shall be deemed just in the premises;

(3) the alleged attempt to monopolize interstate trade and commerce in milk will continue to the detriment of the public interest unless a temporary restraining order is issued; and

(4) the plaintiff plans to file a motion requesting the Court upon notice and appropriate hearing, to issue a preliminary injunction restraining the defendant from proceeding with the alleged illegal attempt to monopolize interstate trade and commerce in milk.

EDWARD R. KENNEY,
HUGH P. MORRISON, Jr.,
Attorneys, Department of Justice.

Dated: March 29, 1967.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE NATIONAL FARMERS' ORGANIZATION, INCORPORATED, DEFENDANT.

(Civil Action No. 7–1982–C–1)

TEMPORARY RESTRAINING ORDER

This cause come on to be heard on the verified complaint and affidavit together with plaintiff's motion for a temporary restraining order and preliminary injunction. It appears to the Court from the facts shown in the complaint and affidavit that defendant may have attempted to monopolize interstate trade and commerce in milk.

It further appears that, unless restrained by order of this Court, the defendant will continue the alleged attempt to monopolize interstate trade and commerce in milk before a hearing can be had on plaintiff's motion for preliminary injunction. The complaint alleges that said attempt to monopolize is in violation of Section 2 of the Sherman Act (15 U.S.C. Section 2). This Court has the authority under Section 15 of the Clayton Act (15 U. S. C. Section 25) to issue such appropriate temporary restraining order as may be just in the premises to enjoin and otherwise prohibit the alleged violation until a hearing can be had and a determination made. It is therefore now.

Ordered that the defendant, its officers, directors, agents, members, and all other persons acting on its behalf are hereby restrained from:

1. Threatening, intimidating, harassing and committing acts of violence against nonmember farmers;

2. Threatening, intimidating, harassing and committing acts of violence against carriers of milk;

3. Threatening, intimidating, harassing and committing acts of violence against processors of milk;

4. Defendant shall notify immediately all of its members regarding the provisions of this Order and instruct them to comply therewith.

It is further ordered that the issuance of this temporary restraining order shall not be interpreted to prohibit the lawful withholding of milk by defendant's members.

It is further ordered that this temporary restraining order shall not be interpreted to prohibit peaceful picketing by not more than four (4) persons at each location.

It is further ordered that the order shall expire ten days after entry unless within such time the order for good cause shown is extended for a like period, or unless the defendant consents that it may be extended for a longer period.

Issued at Des Moines, Iowa this 30th day of March, 1967, at 4:20 P.M.

ROY STEPHENSON,
Chief Judge.

ATTACHMENT 1

Plains Cotton Cooperative (Texas plains area)

Percent of crop handled	Years	Bales purchased		Bales sold		Bales to loan		Total production, plains area of Lubbock
42.4	1966	[1] 510,000	(760,000)	[1] 255,000	[1] (380,000)	[1] 225,000	(380,000)	1,202,986
41.0	1965	[1] 880,000	(1,180,437)	[1] 264,000	(386,037)	616,000	(794,400)	2,146,800
40.2	1964	[1] 750,000	[1] (1,000,000)	[1] 300,000	(399,604)	450,000	(600,396)	1,863,800
34.2	1963	685,000	(960,000)	[1] 226,000	(354,642)	459,000	(605,358)	2,000,973
35.5	1962	800,000		412,005		387,995		2,254,258
37.2	1961	830,000		486,551		343,449		2,230,925

[1] Estimated.

NOTE.—Figures in parentheses include Altus and Sweetwater (built in 1963). Other figures on receipts and number of bales sold were obtained from the Plains Cotton Cooperative Association annual reports (financial statements).

[From the Commentator, January–February 1967]

CONSOLIDATED COTTON MARKETING PROGRAM

Three Texas cotton marketing associations have agreed to unify their marketing operations. Plans are well on the way toward completing the consolidation of Growers Marketing Association of Harlingen, South Texas Cotton Marketing Association of Corpus Christi and Plains Cotton Cooperative Association of Lubbock.

Executive Committees of the three cooperatives met several times to explore thoroughly the possibilities of a strong, unified market. Stockholders of both GMA and STCMA voted decisively for the consolidation. PCCA's board approved the joint marketing effort at its January meeting.

MUTUAL BENEFITS SEEN

Leaders of the three cooperatives forsee substantial benefits to each organization. Access to cotton from the coastal area will lengthen PCCA's active marketing season and should lower costs per bale. Some Lower Valley cotton is harvested 90 days before Plains cotton is available. Lateness of the Plains crop has been a handicap in giving all-season sales service to the mills.

Farmers in the coastal counties will benefit through ICCA's far-flung marketing outlets. Organizations with limited volume find it increasingly difficult to build and maintain a strong marketing system. The severe cut in cotton acreage in 1966 made problems more acute. PCCA's laboratory will make instrument evaluation of fiber quality available to coastal farmers for the first time.

Another very valuable by-product of closer contact between the Plains and the gins along the coast could be a more orderly exchange of gin crews. South Texas usually has its crop wrapped up before harvest in the West gets under way. There has been some exchange of gin labor between the areas for many years.

GULF COMPRESS SERVES GINS

Gulf Compress at Corpus Christi is well established and effectively serves the cooperative gins of the area. It has storage for 220,000 bales and has easy access to port facilities. Some 55 cooperative gins are affiliated with the compress and each has a director on its board. Frank Stubbs has been manager of Gulf Compress since it was organized 16 years ago.

Cottonseed from the cooperative gins in the coastal area is divided between the Valley Co-op Oil Mill at Harlingen and Cen-Tex Cottonoil Mill at Thorndale. Both of these mills have been very helpful in bringing about the merging of marketing effort by the three associations.

STCMA is one of the older cotton marketing organizations in the state, dating back to the early 30's. GMA was organized 10 years ago. More than 60 cooperative gins process more than two hundred thousand bales of cotton annually in the area.

PCCA's three year experience in the Rolling Plains and in Southwestern Oklahoma has been good. Committeemen representing the cooperative gins in each of these areas decide on many matters of concern to the respective groups. They make recommendations to PCCA's Board for final action. Nominations are now being made for a committee that will function in the Coastal area.

BOARD OF DIRECTORS

ACTIVE BOARD OF DIRECTORS—SOUND POLICIES SHAPE PROGRAMS

The Association Board of Directors is composed of the 148 men listed here. These men are recognized within their home communities for their leadership ability, their interest in cotton farmers and for their willingness to devote personal time to projects for the common good. Success of any cooperative is dependent upon the sound business policies which are the responsibility of the Board of Directors.

One board member is nominated by each cooperative gin board of directors, and from these nominees, plus any names placed into consideration from the floor, the membership elects the board of directors at the Annual Stockholders Meeting. The Association has an average of one board member for each 150 active members.

Board members receive no salary but carry heavy responsibilities. They meet monthly to analyze operations and to review the financial statement. From time to time, they adjust the policies of the Association to improve service and to follow changing patterns of business.

The fact that Plains Cotton Cooperative has progressed steadily each year while many competitors have lost their capital and their customers is a tribute to the practical judgment and sound business policies developed by the Board of Directors.

Association board meetings, held the first Wednesday of each month in the Board Room of the Farmers Cooperative Compress at Lubbock, are always open to any member. Complete audit reports prepared by certified public accountants are available to every member in the cooperative gin offices.

Plains Cotton Cooperative is truly owned and controlled by the farmers it serves.

Senator AIKEN. Do you mean that if this bill is passed, corporate entities will have to stop doing business?

Mr. HOLDING. I feel that if this bill is passed in its present form, that I would be forced to go out of business.

Senator AIKEN. To go out of business?

Mr. HOLDING. Yes, sir.

Senator AIKEN. All of the members of your association are strictly American companies, are they not?

Mr. HOLDING. All of the members of our association are American companies? Not necessarily, sir.

Senator AIKEN. You have quite a lot of those out of this country who are also interested?

Mr. HOLDING. Quite a lot of what? I do not understand.

Senator AIKEN. You have members of your organization who are not strictly American concerns?

STATEMENT OF NEAL P. GILLEN, DIRECTOR, WASHINGTON OFFICE, AMERICAN COTTON SHIPPERS ASSOCIATION

Mr. GILLEN. We do have members who have their operations based in foreign countries, but they are here to buy American cotton to be milled abroad.

Senator AIKEN. You mean they are the users, not the producers?

Mr. GILLEN. They buy it from the American farmers and export to a foreign country.

Senator AIKEN. They are not producers at all. To what extent do co-operatives export cotton?

Mr. HOLDING. I do not know the answer to that question.

Senator AIKEN. Do you know of any?

Mr. GILLEN. Yes, sir; the cotton grown in the State of Texas could be considered generally as an export crop, and the cotton co-ops in Texas do export quite a bit of cotton to Japan, Korea, and Hong Kong.

Senator AIKEN. There has been a continued decline in cotton production, and a continued dependency on foreign countries for textile products.

Mr. GILLEN. Depending on the results.

Mr. HOLDING. Of the pending legislation, this present bill.

Senator AIKEN. You mean this bill will promote that?

Mr. HOLDING. We are operating this year under a new cotton law, which went into effect for 4 years; it is of 4 years' duration. Depending upon the effectiveness of this bill, plus what comes thereafter, will be the determining points.

Senator AIKEN. I have the lists obtained under the 1964 act, if you would like to have them put into the record. I did not want to do it, because it might embarrass you.

Mr. GILLEN. What is that, Senator?

Senator AIKEN. These are the individual payments to every mill in the United States.

Mr. GILLEN. We do not represent the mills.

Senator AIKEN. You are just the exporters?

Mr. GILLEN. No, sir.

Mr. HOLDING. We are not; no, sir. We are representing the American cotton merchants who buy and sell American cotton to American domestic mills and to foreign mills.

Senator AIKEN. Is Anderson-Clayton one of your members?

Mr. HOLDING. Yes, sir; we are happy to say that they are, sir.

Senator AIKEN. They have a very good business at present.

Mr. HOLDING. That I would not be able to say, since I do not have that figure.

Senator AIKEN. I have that available for the record, but I am not putting it in.

Mr. GILLEN. Senator, the position of the cotton industry today is such that through the regulation of prices by the Department of Agriculture, the price of U.S. cotton right now is not competitive with cotton produced by foreign countries, and as such American cotton is right now in a state of being a residual supplier in the world market when, say, 15 years ago it was the predominantly largest supplier in the world.

Senator AIKEN. Both producer and exporter are subsidized, are they not—both of them?

Senator JORDAN. Yes, that is true.

STATEMENT OF JOHN C. WHITE, COUNSEL, AMERICAN COTTON SHIPPERS ASSOCIATION

Mr. WHITE. It is subsidized by payments to the producers.

Senator AIKEN. I think I mentioned Anderson-Clayton. I knew Mr. Clayton, and I have a great admiration for him.

Mr. WHITE. I can tell you, without revealing secrets, that very few merchants have made money in merchandising cotton in the last few years, because of the relationship between the loan and the other features.

Senator JORDAN. I would like to add at this point that the payment on cotton now is to the producer, not to the mills.

Mr. HOLDING. Under the new bill that was alluded to a few moments ago, any subsidy payment is made directly to the producer.

Senator AIKEN. It was paid to the mill before.

Mr. HOLDING. In the past; yes, sir.

Senator AIKEN. Only the producer gets a payment now, without other payments made somewhere along the line.

Mr. HOLDING. It is made directly to the producer.

Senator JORDAN. That is correct.

Senator AIKEN. That is correct.

Senator JORDAN. The law was changed.

Senator AIKEN. I was a little startled when he said if this bill was passed they might have to go out of business. I have more confidence in Anderson-Clayton than that.

Mr. WHITE. They are not solely in the merchandising business. They are, obviously, concerned, no doubt about it.

Senator AIKEN. They do quite a lot of their business in other countries, I believe.

Mr. WHITE. Relatively a small proportion.

Mr. HOLDING. As an example——

Senator AIKEN. In a lot of places.

Mr. WHITE. There are a lot of places in the world.

Senator AIKEN. I guess that maybe we have to cover them.

Mr. WHITE. They furnish cotton to foreign buyers.

Senator AIKEN. There is a decline in American agriculture, about which I am disturbed, and I am afraid the American textile business is going to go the same way, by following the line of least resistance to the Department of Labor, and so on.

Mr. GILLEN. This is something that this committee on other legislation, at a further date, can help to improve upon.

Senator AIKEN. I can assure you of this, that this bill's purpose is not to put Anderson-Clayton out of business.

Senator JORDAN. I think that you will find that Anderson-Clayton is a very small part of the cotton business, totalwise. They are big as an individual, but they are not a dominating factor in the cotton industry.

Mr. WHITE. They have become less so under the present system.

Senator AIKEN. With the importation of textiles going up 25 percent from 1965 to 1966, I think that is something to think about.

Senator JORDAN. It is. It will ultimately destroy the American market. It will affect the mills.

Senator AIKEN. And the dollar value of raw cotton exports did not keep pace, so far as I know, with that. I do not have the latest figures, but there was a great drop in raw cotton exports from 1964 to 1965. I suppose that may have picked up some in 1966. Can you tell us?

Mr. GILLEN. It picked up close to 5 million bales.

Mr. WHITE. Yes; something like that.

Senator AIKEN. Five million?

Mr. WHITE. I did.

Mr. HOLDING. May I say, that due to the operation of the new cotton law which we are operating under at the present time, it is anticipated that exports will approximately double what they were last year.

The U.S. Department of Agriculture is forecasting about 5 million bales export, against some 2-million-odd bales last year.

Senator AIKEN. I hope so. The first committee hearing I ever attended was a cotton hearing under John Bankhead, and I learned a lot about it in a few days, too.

Senator JORDAN. Let me interject this: The cotton bill we are operating under right now is one whereby the Agriculture Department is making American cotton competitive in the world market. This is the first time that it has been competitive in it for, well, many years. We held the umbrella up, and everybody sold cotton so long as they had any to sell. They bought what they could. Is that not about correct?

Mr. HOLDING. Yes.

Mr. WHITE. There is one feature in it, due to the effect of the loan, prices are pegged slightly above some competitors' prices. With that situation, and until the loan quite pegging the price, we are still really not competitive.

Senator JORDAN. We are more in line than we were before.

Senator AIKEN. I have no complaint on that at all.

Mr. HOLDING. You seemed to be a little disturbed over my last statement. I would like to explain it for just a moment. I do not think that it is equitable and not proper for me not to stay in business unless my competitor can tell my competitors and throw all of the rights that he wants at me and I have to sit back, because that puts me in somewhat the position of General MacArthur when he was at the Yalu River.

Senator AIKEN. Do you have some competitors now?

Mr. HOLDING. We have competitors.

Senator AIKEN. Do you get along so well that you never disagree?

Mr. HOLDING. We disagree at the present time, but at the present time he can say things about me and I can do the same to him; but as it stands now under this, at the present time he could continue to say what he cared to say about me, but I would have to keep my mouth shut.

Senator AIKEN. I do not think so. I think you could tell him that he was something or the other.

Mr. HOLDING. I appreciate sincerely your interpretation of this bill, and your interpretation and my interpretation would likely be the same. The only problem is that when they take me in to court,

there is a third man up there that I do not know, and you do not know, who will pass on what his interpretation of this bill is.

Senator AIKEN. You cannot tell what the courts will do these days.

Mr. HOLDING. That is exactly right.

Senator AIKEN. It is intended to be equally fair to all of them.

Mr. HOLDING. Thank you, sir.

Senator JORDAN. Do you have anything further, Senator Boggs?

Senator BOGGS. No, sir.

Senator JORDAN. Thank you very much.

Thank you, Mr. Holding, and those with you.

We are very glad to have had you with us.

Our next witness is Mr. Herman Eubank, president of the Texas Independent Ginners Association of Lubbock, Tex.; accompanied by Donald G. Smith, executive vice president, Texas Independent Ginners Association.

We will be glad to hear from you now.

STATEMENT OF HERMAN EUBANK, PRESIDENT, AND DONALD G. SMITH, EXECUTIVE VICE PRESIDENT, TEXAS INDEPENDENT GINNERS ASSOCIATION, LUBBOCK, TEX.

Mr. EUBANK. Mr. Chairman and members of the committee, in behalf of the Texas Independent Ginners Association, I wish to express once again the sincere appreciation of the members of the association for being given this opportunity to express to you the views of the members of the association of the proposed legislation embodied in S. 109.

Our executive vice president, Donald G. Smith, appeared before you twice in 1966, representing the Texas Independent Ginners Association and in opposition to S. 109 of the 89th Congress, first session. The association which I represent is composed of approximately 400 independent ginners, operating privately owned, full taxpaying cotton gins within the State of Texas. In the State of Texas, as elsewhere, independent cotton ginners process raw cotton for individual farmers and compete with one another as well as competing with gins operated by associations of agricultural producers or "co-op" gins. Independent and "co-op" gins compete with one another for the business of processing the raw agricultural product of the individual farmer. The Texas Independent Ginners Association is committed to the belief that the American free enterprise system has made our Nation great, and we are pledged to the defense of this system in the cotton ginning industry. The association is dedicated to the proposition that a man has a right to operate a business of his choice in an atmosphere of fair competition with others, and has continually opposed Government policies which would bestow privileges on a particular segment of an industry. We believe that this policy is the same policy as that declared by the Congress of the United States, that Government should assist and protect, insofar as possible, interests of small business concerns in order to preserve the competitive free enterprise system. It is the belief of the association that the proposed legislation, S. 109, would endanger the free enterprise system as presently existing in the cotton ginning industry in the State of Texas, and would endanger fair competition between independent gins and "co-op" gins.

I have read and studied S. 109, 90th Congress, first session, and compared it with S. 109, 89th Congress, first session. In my opinion, both bills are similar in their effect on the competitive ginning situation in the State of Texas and would adversely affect the independent ginner in the same manner. In order to save your valuable time, I will not repeat the objections which our association made to S. 109 in 1966. Our association still holds the same objections to the new proposed legislation, and these objections are a part of the records of the previous hearings.

I do, however, wish to cover the following two specific objections to S. 109:

First. S. 109 restricts competition between independent ginners and "co-op" ginners, and contains extremely severe and harsh penalties for threatened as well as actual acts.

Second. S. 109 hurts the individual farmer by eliminating competition for the processing of his agricultural products.

Now, as to (1), S. 109 restricts competition between independent ginners and "co-op" ginners and contains extremely severe and harsh penalties for threatened as well as actual acts. Texas cotton ginners, independent and "co-op," have traditionally rendered service of value to their customers and prospective customers in many ways such as lending money, lending cotton trailers, performing machinery repairs, extending credit for planting seed and supplies, and many such related services. Farmers in the State of Texas have become accustomed to such services rendered by gins and a true spirit of competition exists. In the cotton farming communities, in most cases, a farmer has a choice between an independent gin and a "co-op" gin within reasonable traveling distance of his farm. In many cases, independent and "co-op" gins operate across the road from on another. A farmer may gin his season's crop at several gins which may include independent or "co-op" gins. When a farmer chooses to gin his cotton at a "co-op" gin he becomes a member of the association of producers by ginning his cotton at the gin and becomes entitled to all of the benefits of the association of producers. The individual farmer may decide to join the association of producers by ginning at a "co-op" gin or he may decide to gin his cotton at an independent gin. At the present time he has a free choice because of the availability in the majority of cases of both types of gins.

Let us suppose then that S. 109, in its present form, is passed and becomes law. Let us further suppose that farmer A, in the State of Texas, has for several years chosen to gin his cotton at a "co-op" gin and thereby has become a member of an association of producers. An aggressive gin manager at an independent gin in the area, in the pursuit of legitimate competitive practices, would do what he could to entice farmer A to gin at his independent gin. The traditional practices which are listed above would undoubtedly be used and it could be expected that farmer A would be offered by the manager of the independent gin cotton trailers, machinery repairs, an extension of credit for planting seed and supplies, and many other such related services. These same services could be offered by the "co-op" gin of which farmer A is a member.

If farmer A should decide that the services offered by the independent ginner look better to him, perhaps the trailers are in better

condition or the credit terms are a little easier on the seed for planting, and farmer A decides that this crop year he will gin his crop at the independent gin, then the question would arise, has the independent ginner violated section 4(d) of S. 109 which reads:

> To pay or loan money, give anything of value in excess of the true market value of any agricultural commodity which is being purchased, or offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers. . . .

This question could be brought before the courts by the "co-op" gin association involved or by the Secretary of Agriculture or his representative. In accordance with the provisions of S. 109, a restraining order might be issued restraining the independent ginner from any of the listed services until a hearing could be held and upon such hearing, the independent ginner could be enjoined from offering such services in the future and in addition might be required to pay threefold damages to the "co-op" gin. Of most serious concern, however, is the fact that the manager of the independent gin might well be subjected to criminal action for his otherwise legitimate competitive attempt to obtain the business of the independent farmer. In this situation described, the "co-op" gin has no corresponding liability should it offer any of the services mentioned to farmer A or, for that matter, to any individual farmer and the actions of a manager of a "co-op" gin although being exactly the same as the actions of the manager of the independent gin would not be "criminal" as provided in this legislation.

It seems to the Texas Independent Ginners Association that the passage of this legislation would eliminate competition in the cotton ginning industry in the State of Texas and would eliminate the independent ginner.

Now, as to (2), that S. 109 hurts the individual farmer by eliminating competition for the processing of his agricultural products, our second objection, which concerns the effect of this legislation on the individual farmer. At the present time the farmer has a choice between gins who compete with one another and a choice between gins whose theories of operation are different but which quite strongly compete with one another. Texas Independent Ginners Association feels that competition is important to the individual farmer. It believes in the right of free choice and in the spirit of free competition.

It is for these specific reasons that Texas Independent Ginners Association is opposed to the passage of S. 109. While these reasons may have nothing to do with the practices sought to be remedied by those supporting S. 109, the results stated here can be expected to occur in the Texas cotton ginning industry. The bill as proposed here would strike at the very heart of a healthy competitive situation which exists between independent and "co-op" gins. In the opinion of the association, the passage of this legislation would eliminate the independent cotton ginner in the State of Texas and would be detrimental to the interests of the individual farmer.

Senator AIKEN. May I just say that under this bill, S. 109, as introduced this year, the cooperative gin would be subject to exactly the same penalties as the independent gin for wrongdoing. Your testimony was seemingly based more on the original bill of 2 years ago which had many defects in it. Your cooperatives are subject to the same rules and penalties in this bill as any other handler.

Mr. SMITH. The prohibitive parts are not against the associations of producers. We stated in our testimony that a cooperative gin manager could do these practices, and we could not. A cooperative gin cannot do it against another cooperative gin, but it could do it against the independents.

Senator AIKEN. There you are talking about the old bill.

Mr. SMITH. No, sir.

Mr. EUBANK. We do not interpret the bill as being that way.

Mr. SMITH. There is no protection for the independent ginner.

Mr. EUBANK. Nothing, whatsoever.

Mr. SMITH. Against coercion, and the like.

Senator AIKEN. I drew the bill. The cooperative gin will be subject to the same penalties, as I view it for the same violations.

Senator JORDAN. May I ask you a question at this point, Mr. Eubank?

I think this fits in here. I presume that there are literally hundreds of gins in Texas?

Mr. EUBANK. Yes.

Senator JORDAN. Hundreds of them, not just a few?

Mr. EUBANK. I think there are approximately 1,500 gins in Texas.

Senator JORDAN. And some of them are cooperative gins and some of them are independent gins?

Mr. EUBANK. Yes, sir.

Senator JORDAN. Are you saying that if you have a cooperative gin and he has an independent gin and you are both trying to gin a farmer's cotton, that any way you can make any money with a gin is to run it?

Mr. EUBANK. That is right.

Senator JORDAN. And you are after that cotton, and under your belief about this bill if you offer more than the cooperative gin, you think that would be violating the bill?

Mr. EUBANK. Yes, sir.

Senator JORDAN. Who would profit by that?

Mr. EUBANK. They would—the restraining order would be for them.

Senator JORDAN. Would not the farmer benefit? Only the farmer would benefit, he would get more? What you would offer to do it for, you would do it for less than the other man?

Mr. EUBANK. That is correct.

Senator JORDAN. And so you would gin it per bale for less, would you not?

Mr. EUBANK. Yes, sir.

Senator JORDAN. And you buy the seed?

Mr. EUBANK. Not necessarily buy the lint, however.

Senator JORDAN. You do not have to. You do not buy the lint, but you can.

Mr. EUBANK. If we are asked to, we will buy it.

Senator JORDAN. I see what your problem is, what you are afraid of.

Mr. EUBANK. We do not understand that in loaning the money to the farmer that it comes under this bill. It does not state whether that is normal practice or not. It is, with me, and it has been.

Senator BOGGS. You mean in your area?

Mr. EUBANK. Yes, sir.

Senator JORDAN. That has to be spelled out, and it will be worked out.

Senator AIKEN. We have the person, individual corporation, and association covered in the bill, and then we have that definition of "handler," all to be treated alike. If an individual or a cooperative gin violates the bill's provisions, they would be subject to exactly the same penalties. That is the intent of the bill.

Mr. EUBANK. Yes, sir.

Mr. SMITH. Yes.

Senator BOGGS. If I may ask one question: Right now, as an independent operator, you can go after anybody whether he is a member of an association, a cooperative association, or not?

Mr. EUBANK. Yes.

Senator BOGGS. And right now you will gin probably for farmers who have gone to cooperative associations last year to have their cotton ginned?

Mr. EUBANK. Yes, sir.

Senator BOGGS. But now the fact that a man takes a bale of cotton and, as you say, he automatically becomes a member of the association, does that tend forever to stop him from changing his mind and coming over to an independent gin?

Mr. EUBANK. No, sir, he could come anytime he wants to do so.

Senator BOGGS. And they do?

Mr. EUBANK. Yes, sir.

Senator BOGGS. But you are fearful if this is not cleared up here for example, in 4(d), to pay or loan money or to give anything value, that he is forever stopped from having a free choice as to what he can do?

Mr. EUBANK. We think that needs to be spelled out, yes, sir.

Senator BOGGS. Is that right?

Mr. SMITH. We would like to solicit the cooperative farmer, too, as well as any other farmer.

Senator BOGGS. So that the farmer has a choice, too?

Mr. SMITH. Yes, to solicit his business.

Senator JORDAN. Does it not come right down to this: I am not imagining that every farmer in the area is in the cooperative. The farmer is going to gin his cotton where he will get the best proposition, will he not?

Mr. EUBANK. I have customers, Mr. Chairman, who gin one-half of their crop with me and one-half with the cooperative gin. I have several who gin with a few bales with me and a lot of bales with the cooperative gin, and vice versa. The cotton-ginning industry is really competitive. Cotton ginning in Texas is very competitive.

Senator BOGGS. But the point of it is that you have no objection if a farmer wants to be a member of an association?

Mr. EUBANK. No, sir, we have no objection.

Senator BOGGS. But you want to fix it so that if he, for any reason in the world, wants to come to an independent ginner, he can do so?

Mr. EUBANK. That is correct.

Senator BOGGS. Without getting you in jail?

Mr. EUBANK. Yes, sir, or having one of his members turn me in.

Senator JORDAN. Are there any further questions?

Senator AIKEN. No.

Senator BOGGS. No.

Senator JORDAN. Thank you very much.

Our next witness is Mr. Oren Lee Staley, president of the National Farmers Organization, who is accompanied by Harvey L. Sickels, national secretary and legislative representative of the National Farmers Organization.

We will be glad to hear from you now.

STATEMENT OF OREN LEE STALEY, PRESIDENT, NATIONAL FARMERS ORGANIZATION, CORNING, IOWA

Mr. STALEY. Mr. Chairman and members of the committee. My name is Oren Lee Staley, and I am president of the National Farmers Organization, and I have with me Harvey L. Sickels, national secretary and legislative representative of the National Farmers Organization. I have a rather short statement to pinpoint what we feel are the important issues in S. 109.

The problems of the American farmers must be met through collective bargaining. In today's economy the large processor and in turn the large volume of buyers at the chainstore level have tremendous economic power. The individual cannot compete with this power. Fair prices for farmers can only be attained when farmers have established equal strength in comparison with the buyer's strength at the marketplace.

This law of supply will not give farmers fair prices because the law of supply and demand will not work unless there is equal strength between buyers and sellers.

The Capper-Volstead Act gives farmers broad bargaining rights and gives farmers sufficient basic legal rights, but additional tools to carry out bargaining can be very helpful. S. 109 can be one of these tools if enacted.

Farmers, to be successful in bargaining, must bargain on an industrywide basis and this means bargaining with large companies. Many of the provisions in S. 109 are already available through the courts, but S. 109 is important in that rights of farmers in their bargaining efforts would be spelled out more clearly. A thought should also be given to a Wagner Labor Relations type act for farmers so that they will have equal protection and rights as already enjoyed by others in the economy.

The principal benefit of S. 109 would be to help stop harassment, intimidation, and threats against farmers and their organization. It would also help stop false statements made about organizations and their leaders.

In order for S. 109 to be helpful, the penalties for violation of the law must be stiff enough to be meaningful. The present provisions meet that requirement particularly if subpena powers would also be given the Secretary of Agriculture.

We believe that the rights of the individual that he takes in action should be incorporated in the bill as it is now proposed in the bill. Also that in some instances, the individual may not have the desire—may not be aware of the law, that he also should have the opportunity—that is, the Secretary of Agriculture should have an opportunity to use this for not depriving the individual of his rghts.

For the above reasons, we support S. 109, and are gratified by the growing interest in collective bargaining for farmers.

It is our belief that those that oppose the provisions of S. 109 have not even made one single valid point in opposition. We believe this because of the fact that really S. 109 is only a clarification of the existing procedures that could be applied in court, undertaken and carried out in court; that those who oppose the bill have nothing to be fearful of if they are innocent, and they would have to be proven guilty in court anyway. So, this is our statement.

Senator JORDAN. Are there any questions?

Senator AIKEN. It was right to the point.

Senator JORDAN. Thank you.

Any questions, Senator Boggs?

Senator BOGGS. No questions.

Senator JORDAN. Do you have any statements?

Mr. SICKELS. No, sir. Thank you.

Senator JORDAN. Thank you very much for your testimony.

We appreciate your being here.

Our next witness is Mr. Spencer Brown, president, Exporters & Traders Compress & Warehouse Co. of Waco, Tex.

We will be glad to hear from you now, Mr. Brown.

We are glad to have you with us.

STATEMENT OF SPENCER BROWN, PRESIDENT, EXPORTERS & TRADERS COMPRESS & WAREHOUSE CO., WACO, TEX.

Mr. BROWN. Mr Chairman and members of the subcommittee, my name is Spencer Brown, and I am president of Exporters & Traders Compress & Warehouse Co., which, along with its affiliated plants, operates 24 plants in Texas with an approved capacity of 769,000 bales.

Mr. Chairman, we would like to point out that in a good portion of the territory in which we operate, approximately two-thirds of the cotton is ginned at cooperative gins and of the cotton we receive, two-thirds comes from cooperative gins and one-third from independent gins.

We would also like to state that at six of our plants a large percentage of our common stock in our corporation is owned by cooperative gins and we are therefor vitally interested in their welfare. We also have stockholders who are independent gins. This bill is not in the best interest of farmers, the independent gins, nor the cooperative gins.

The competition between gins is very tense. This is true between cooperative gins as well as independent gins. Likewise, the competition between warehousemen is also very keen between both cooperative and independent warehousemen. It has, therefore, been a common practice for a number of years for both cooperative and independent gins to make various kinds of special inducements to farmers who ginned their cotton with them. This varies from patronage dividends to rent-free trailers. A warehouseman who looks primarily to the gin for his receipts also offers special inducements to the gins and in many cases directly to the farmer as well. Of course, any drayage allowance or patronage dividend or other inducement that the warehouseman

makes to a gin, naturally works to the benefit of the customers of that gin; that is, the farmers. It, of course, can and does affect the ability of a gin, whether independent or cooperative, to pull a customer away from another gin because of the special inducements. All of this is a normal competitive practice that has been in existence for many years between competing gins and between competing warehousemen. This, of course, results in a direct benefit to the farmer himself, and in our opinion the farmer would be the last one to want to stop the competition that is going on today for it cannot help but result in a lower cost to him plus better service.

We do not make any special inducement at any particular warehouse that is not applicable to all customers of that warehouse, whether he be cooperative or indepedent.

I might say that we do not buy cotton ourselves. We are simply in the warehouse business.

Senator JORDAN. Storage?

Mr. BROWN. Storage.

Senator JORDAN. And compress?

Mr. BROWN. Compress; yes, sir.

Under section 4 (c) and (d), our lawyers tell us that this would mean a jail sentence if we continued our normal inducements to the farmer and/or gins. As we understand these provisions as they are set out in S. 109, we would be in violation of this bill if we had a "double green stamp day," for example. It is really difficult for us to believe that such a bill could be under serious consideration.

Also, we can see great danger in the injunctive powers as set out in section 5. As this bill has been explained to us, this would mean that a cooperative, who has reason to believe either justly or unjustly that an independent competitor has violated the provisions of this bill, could get either a temporary or permanent injunction against such an operator. This would mean that a cooperative gin or warehouse could get an injunction which would have the effect of closing down its competitor until such time as civil action could be handled by the court. The cotton gathering season has now been shortened by mechanical stripping and high-speed gins so that it takes only approximately 4 to 6 weeks to completely gather and gin a crop, whereas only a few years back it took 4 to 6 months. It is obvious that an injunction for let's say 2 or 3 weeks would completely eliminate the bulk of the season as far as a gin or a warehouse is concerned. This could result in such a loss that it could break a gin or a warehouseman. We cannot see in this bill any provision whereby such a gin or warehouseman could recover damages from a cooperative in the event of a false accusation and thereby "error" in asking the court for an injunction. We do not believe that this discretion should be left to a local judge for his actions could be affected by the community in which he lives and/or his own personal interest.

Any violation of a law should be handled through normal court procedures and in such a way that it is completely fair and equitable to both parties. For example, if an injunction is obtained and, therefore, one party is damaged by the fact that they cannot receive any cotton and later the court decides that the injunction was in error, then the person who obtained the injunction should be liable for damages to the party that he had enjoined in the first place. In other words, it should work for both sides equally.

Mr. Chairman, if this bill is to be seriously considered as a piece of legislation that is worthy of congressional consideration, we feel that it is essential that two amendments should be made to it. As we all want to be able to continue normal competitive practices that are now widely spread throughout the trade, we suggest the following addition to the bill:

Section 7. Nothing in this bill shall be construed to mean a restriction of normal competitive practices.

If treble damages and a jail sentence is to be the penalty for a violation, then the same penalties be used for the "false user" of an injunction whether it was done maliciously, only by poor judgment, or by error. In other words each citizen of this country should have equal treatment before the civil and criminal courts. This is all we ask for.

Mr. Chairman, we therefore suggest two amendments to section 5 as follows:

Section 5(h). In the event of an arrest or jail sentence in which the person so arrested is subsequently proved to be innocent, such person shall have the right of recovery for mental anguish from the party who, and the institution he or she represented, was the cause of the false arrest in the first place.

Section 5(g). Any person injured in his business or property by reason of any false injunction, whether maliciously or in error, under this act may sue therefor in the District Court of the United States for the District in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

Senator JORDAN. Thank you, sir.

Any questions, Senator Aiken?

Senator AIKEN. No questions.

Senator JORDAN. Any questions, Senator Boggs?

Senator BOGGS. No questions.

Senator JORDAN. I want to ask you a question, I believe, sir.

You store cotton for so much a bale per month?

Mr. BROWN. Yes, sir.

Senator JORDAN. Do you have an in-charge?

Mr. BROWN. Yes, sir.

Senator JORDAN. For the weighing and the storing, and so forth?

Mr. BROWN. Yes, sir.

Senator JORDAN That is in the law?

Mr. BROWN. We publish the tariffs and stick to them.

Senator JORDAN. You own your warehouse presumably and you are soliciting business from farmers, and you are competing with cooperative warehouses—I am assuming that—and if he wants 50 cents a bale for storing the cotton—that was the price when I knew about it; I do not know what it is now—and you agreed to take it for 40 cents a bale, under this law, you think you would be guilty of violating this act?

Mr. BROWN. That is our interpretation of it.

Senator JORDAN. Who would profit by that?

Mr. BROWN. Well, I do not see how anybody would profit by it, because you eliminate competition, and whenever you eliminate competition, then the price goes up.

Senator JORDAN. What I mean is: If you take one man's cotton and store it for 40 cents a bale, it is the farmer who is storing the cotton, and another charges 50 cents a bale for storing it. In your case, the farmer is 10 cents ahead.

Mr. BROWN. Yes, sir.

Senator JORDAN. And that is $6 a year for one bale of cotton.

Mr. BROWN. Yes.

Senator JORDAN. So, you are not hurting the farmer if you give more inducement to him than does the other.

Mr. BROWN. Yes, sir.

Senator JORDAN. You say he has the right to do that if he wanted to do it?

Mr. BROWN. Yes, that is correct.

Senator JORDAN. He does not break any law if he does that?

Mr. BROWN. No. Once we have an inducement, it is for everybody who wants to take it. We do not have anything special for Joe and not for this man over here.

Senator JORDAN. And there is not any secret about it.

Mr. BROWN. No secret.

Senator JORDAN. Any questions, Senator Boggs?

Senator BOGGS. No questions.

Senator JORDAN. Thank you very much. I wanted to clear up that point in my own mind.

Our next witnesses are Mr. R. Bowen Quillin, of Berlin, Md., and James A. Steele, of Easton, Md.

I know that you are from closeby here in Maryland, you are not far from home.

Senator BOGGS. I am not far from Delaware, either.

Senator JORDAN. Yes, that is true.

You may proceed as you wish.

STATEMENT OF E. BOWEN QUILLIN, PRESIDENT, BERLIN MILLING CO., BERLIN, MD.

Mr. QUILLIN. My name is E. Bowen Quillin. I am president of Berlin Milling Co., Inc., Berlin, Md. Ours is a completely integrated broiler growing company with hatching egg supply flocks, a hatchery, feed mill, and a poultry processing plant. In addition, I personally own several farms, producing broilers. We have been a part of the broiler-growing business for over 30 years.

I am a member of the Delmarva Poultry Industry, Inc., the National Broiler Council and the American Farm Bureau, but I want to make it plain that I am not speaking for these organizations, but only for myself and my company.

At the outset of my very brief statement, I want to make it clear that I personally (and the policy of my company is completely in agreement) am strongly opposed to any form or practice of discrimination.

From the early history of our company, we have given employment to and enjoyed the business of people regardless of their race, color, or religious beliefs and without any thought as to what organizations they may belong. This we plan to continue.

I would like to say in the beginning that we do not oppose the right of anyone to join an association of their own choosing or of their own free will, and not subject to any compulsion or arbitrary methods to force him to join.

My opposition to S. 109, as presently written, is as follows:

1. It is written in such general language that it will involve interpretation by the courts of a great many provisions, such as "therat to interfere," "threat to discriminate," and "true market value."

2. It affords certain protections to producers but does not provide similar safeguards for those who deal with the producer organizations. This is patently unfair.

3. The broiler integrator, who is a handler, is prohibited from choosing his supplies and producers, a right long considered inviolate. The contractor's efficiency has been built partly on the incentive contracts offered his producer. It is feared that under this act he would be charged with discrimination if he paid the good grower more than the poor grower. There are also other reasons why a contractor might want to drop a grower, such as difficulty to get along with, bad personal habits, laziness, improper sanitation, and generally poor management. These might lead to charges of discrimination. These are things we fear might drive a wedge between the grower and the contractor and we both need each other.

4. The burden of proof would be on the handler to prove economic justification and not discrimination. We feel the burden of proof should be on the producer to prove his complaint.

5. The criminal penalties of fines, jail sentences, or both, are vaguely defined and certainly would be a great threat to the broiler contractor who would be ever fearful of being hauled into court. This threat could very seriously handicap a contractor.

Thank you very much, gentlemen, for affording me this opportunity to be heard.

Senator JORDAN. Are there any questions?

Senator AIKEN. No questions.

Senator BOGGS. I want to express my own appreciation to Mr. Quillin for being here. We are all from the Eastern Shore, the Delmarva Peninsula. I know that he was very briefly and very ably given a view of grave concern about some of the interpretations that might be put on the language. I know we are glad to have your views, Mr. Quillin. It is my hope that your views will be considered, and I know that they will be considered, and where improvement can be made, it will be made.

Senator JORDAN. May I ask you a question, Mr. Quillin?

I believe you said that you were completely integrated.

Mr. QUILLIN. Yes, sir.

Senator JORDAN. Do you contract with any bird producers that you do not furnish the feed to, or anything else?

Mr. QUILLIN. No, sir. We sell some feed. In our contracts with the growers, he furnishes the house, the labor—that sort of thing—and we furnish the feed, the chicks and the services.

Senator JORDAN. But you do not necessarily own all of the farms where these birds are produced?

Mr. QUILLIN. No, sir.

Senator JORDAN. But you do contract with him?

Mr. QUILLIN. We contract with the farmer who owns it.

Senator JORDAN. And for the things that go with it—you buy the chicks back?

Mr. QUILLIN. We do not buy them back. The title is in our name all of the time.

Senator JORDAN. In your name all of the time?

Mr. QUILLIN. Yes, sir.

Senator JORDAN. You just pay him so much a bird?

Mr. QUILLIN. That is right. He goes on an incentive contract, and some of those contracts have been drawn up, without any change, and we have gone through very serious economic problems in the meantime.

Senator JORDAN. It is about time to eat some good old-fashioned chicken right now. [Laughter.]

Senator AIKEN. I do not think that there is anything in this bill which would prevent Mr. Quillin from making contracts with whomever he wanted to or offering different prices for different grades. I do not believe you would come under the bill in that case; that is, if you said to one fellow, "I will give you 2 cents a pound," and then you would tell the next fellow, "I will give you 1½ cents a pound." But if your supplier belonged to a cooperative and you said, "If you get out I will give you 2 cents a pound," then you would come under the law. Otherwise, not.

Mr. QUILLIN. I think what we are a little fearful of, which will be explained a little more by Mr. Steele who is a grower, on this incentive contract, that if one got $90 and the other got only $60, he might come back and say "You gave me bad chicks," and he could find some reason to feel that you had discriminated against him, rather than the other one.

Senator AIKEN. The fellow who got $60 is a poor trader.

Mr. QUILLIN. A poor grower.

Senator AIKEN. But if he raised a different grade——

Mr. QUILLIN. He would get the same chicks, the same feed, and the same service.

Senator AIKEN. You could make a deal for $90 and with another for $60, so long as you did not tell the $60 one "You belong to a cooperative; I will cut you down."

Mr. QUILLIN. That would be pretty hard to do. You could not do that.

Senator AIKEN. It would probably not work very well.

Senator JORDAN. Did you have any other questions?

Senator BOGGS. No; I think that, Senator Aiken, for my own clarification, if he paid one $90 per thousand and the other $60 per thousand due to poor management and a poor job and a poor bird, he is fearful—under what he considers this language to be—that he would be in trouble, and that there would be a complaint against him and that he would have to defend himself in court; but I think what your intention is, that would not be the case, that there would have to be a whole pattern to show the complainant, who would have to prove his intentions to do this or to do that; he would have to have a whole pattern of experience.

Senator AIKEN. I do not think he would be affected at all, except as he carried on these practices for the express purpose of forcing somebody to keep out of the cooperative.

Mr. STEELE. Being a grower, I would say that the man who got the $60 and the man who got the $90——

Senator AIKEN. Per thousand birds?

Mr. STEELE. I think that the integrator would have to have all $90 growers, because of their efficiency they produce so much more.

Mr. QUILLIN. You would get the cheaper cost out of that bird from the fellow who got the higher price.

Senator AIKEN. If you had to furnish feed for 2 more weeks, naturally you would not like that.

Senator JORDAN. It depends on how much he takes care of them in order for them to grow.

I used to raise some hogs, but I learned mighty fast that was not a business that I should be in. Some of them looked like accordions. Care has a great deal to do with broilers and also in capons. I was in that and went out of that.

Mr. STEELE. So far as pay is concerned, you can pay a farmer what you want. By paying him a whole lot, it does not make him a better poultryman. There are some who go to the chickenhouse at 4 o'clock, and I am sure that there are some who come back at 9 and 10 in the morning.

Gentlemen, if I read at night, and I am up until 1 or 2 o'clock before I go to bed to sleep, I have gone through every house and done everything to secure my future, and that is the way that it is set up. It is strictly on your own. I cannot see how it can be any other way, to be efficient.

Senator JORDAN. You are an independent producer?

Mr. STEELE. No, sir; I am under contract.

Senator JORDAN. I mean—but you are a grower?

Mr. STEELE. Yes, sir.

Senator JORDAN. And you do not want to be taken out from that provision?

Mr. STEELE. No, sir.

Senator BOGGS. He has not testified yet.

Senator JORDAN. I beg your pardon. I did not mean to cut you off. You may present your statement.

STATEMENT OF JAMES A. STEELE, EASTON, MD.

Mr. STEELE. Mr. Chairman and distinguished members of the committee; my name is James A. Steele. I reside in Talbot County, on Maryland's Eastern Shore, the birthplace of the commercial broiler industry. I am a farmer and a broiler producer. I am also a member of the American Farm Bureau and the Delmarva Poultry Industry; however, I testify today as an individual.

In 1951 I built a broiler house to produce 10,000 chickens. I have expanded this operation until at the present time I am producing 116,500 birds at a given time. During this time I have cut back on my acres tilled from 800 acres to 170 acres, because producing broiler chickens returns me a guaranteed investment and labor income. I have done this under the contract system working closely with my contractor to improve my efficiency, thus enabling me to receive higher growing payments on an incentive contract. I have never had a problem at any time I wished to expand my operation to get adequately financed through local banks. This is an indication to me that the banks in my area have faith in the contract system of farming.

I am opposed to the Agricultural Producers Marketing Act of 1967 because, in my experience as a producer, I feel it is an unnecessary piece of legislation. I am confused, as are many other producers in my

area, as to why national farm organizations feel a need for this bill. First, it would seem to me that good producers working on an incentive contract would lose by the passage of such legislation, for the bargaining would be done by those producers who are inefficient and could not receive higher payments unless they banded together and bargained collectively. This, to me and other producers who try to achieve the highest payments under the incentive system, would only tend to lower our payment because the contractor can only afford to pay whatever the average is between his better and poorer producers. I do not want to take a chance on having this happen to me since I have set up the amortization plan on my new poultry house based on above-average performance and want to feel free to deal with whichever contractor I feel will give me the greatest return.

Another thing that concerns me deeply about this bill is the fact it mentions: "To interfere with or restrain, or threaten to interfere with or restrain, by boycott, coercion, or any unfair or deceptive act or practice, any producer in the exercise of his right to join and belong to an association of producers," but it does not protect me if I choose not to belong to an association, from this same type of harassment on the part of a bargaining association which may use these same tactics to force me to join. I have always been able to walk in and talk to my contractor about my problems. He has worked closely with me and my banker, and as an individual I want no part of any act which could prevent this in the future.

It is also my feeling that the contractor should have the right to select his growers, because only by working with financially strong and progressive contractors am I assured of someone to feed my chickens in the future. If he is forced to feed growers who are inefficient, it will only lead to the downfall of the broiler industry, which, as you gentlemen know, is a shining example of efficiency in American agriculture today.

I am only one grower out of many thousands of broiler producers in America, but I believe the people who are the most interested in this bill—if you will carefully analyze them—are the below-the-average producers of agricultural products looking for the easy way out.

Thank you, gentlemen, for your attention.

I apologize for taking your time to express my views on such an unnecessary piece of legislation.

Senator JORDAN. Are there any questions?

Senator BOGGS. Thank you, Mr. Steele.

Senator JORDAN. Do you have any questions?

Senator AIKEN. No.

Senator JORDAN. Thank you very much, Mr. Steele and Mr. Quillin.

That is the quorum call. We are going to have to leave.

I announced earlier that we would have to adjourn at 1 o'clock. We beat it by 10 minutes. There are three or four witnesses left, I believe. You can either put your statements in the record, or I will set a new date at a very early time to hear your testimony, whichever you would like. That is the best I can do under the circumstances. We will be glad to have your statements included in the record in their entirety, or I will set a new date, just as quickly as I can find out when I can be here to hear your testimony in person.

Mr. KINTNER. My name is Earl W. Kintner, and I am here on behalf of the National Tax Equality Association.

We ask the Chair to fix a new date when our testimony may be taken.

Senator JORDAN. All right. I will do that. I will do that as quickly as I can.

We will now stand in recess.

(Whereupon, at 12:50 p.m., a recess was taken, sine die.)

AGRICULTURAL PRODUCERS MARKETING ACT

THURSDAY, MAY 11, 1967

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL RESEARCH
AND GENERAL LEGISLATION OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 324, Old Senate Office Building, Senator B. Everett Jordan (chairman of the subcommittee) presiding.

Present: Senators Jordan of North Carolina, Byrd of Virginia, and Boggs.

Also present: Senator Talmadge.

Senator JORDAN (presiding). The subcommittee will please come to order.

And may I say in the very beginning that I am glad to have this meeting this morning to hear anybody we did not hear the other day, and to receive any further information that you wish to present to the subcommittee to be considered by the subcommittee.

I believe our first witness this morning is Mr. H. Wesley McAden, executive vice president, American Cotton Compress & Warehouse Association.

You may proceed as you wish, sir.

STATEMENT OF H. WESLEY McADEN, EXECUTIVE VICE PRESIDENT, AMERICAN COTTON COMPRESS & WAREHOUSE ASSOCIATION

Mr. MCADEN. Mr. Chairman and members of the subcommittee, let me, on behalf of my organization, thank you for extending these hearings to allow us time to present our views.

My name is H. Wesley McAden. I am executive vice president of the American Cotton Compress & Warehouse Association. Our members are opposed to S. 109.

In view of the Government's policy regarding farmer cooperatives, and particularly the preferential treatment accorded cotton cooperatives by the U.S. Department of Agriculture, the members of this association are deeply concerned with the effects (whether intended or not) the proposed legislation might have.

We certainly do not argue with the original purpose of the proposed legislation which, as we understand it, was to prohibit any action which tends to threaten or intimidate any person for associating with a group of agricultural producers designed to improve the bargaining power of that group or of its individual farmer members. But, as this

committee well knows, the activities of the modern cotton cooperatives have expanded far beyond the concept of bargining to include the ginning, warehousing, and compression of raw cotton. Further, the provisions of the bill are so general and so vague and so one-sided that the traditional competitive practices of independent cotton warehousemen would be in question, and, consequently, their activities greatly restricted.

As owners and operators of cotton compresses and warehouses, our members do not purchase cotton. Ours is a business that involves certain services essential in the marketing and distribution of raw cotton, primarily storage and compression.

There are several traditional competitive practices employed throughout our industry that would be prohibited if S. 109 is enacted in its present form. In particular, I would like to call the committee's attention to that practice of independent warehousemen who pay cash refunds to farmers to attract cotton to their respective warehouses.

Since cotton storage charges are usually paid by the purchaser of the cotton, or by the Commodity Credit Corporation in the case of loan cotton that is acquired by the Government, the payment of refunds to producers is the natural outgrowth of the competition between independent warehouses and cooperative warehouses. Such a refund is a direct benefit to the farmer, and has been recognized and approved as such by the USDA.

In January, 1964, the USDA held extensive public hearings on its cotton storage policies and this matter of cash refunds to farmers received considerable attention. In its report on those hearings to the Chairmen of both the House and Senate Agriculture Committees, the USDA concluded that, and I quote from the report:

> The purpose of all farm price-support programs is to assure a fair income to farmers. Should farmers be able to increase their monetary income for the commodities they produce through negotiations with warehousemen, we feel that it is not appropriate to interfere with or regulate such negotiations.
>
> After giving full study to this problem, CCC has determined that producers should not be denied the benefits of free and open competition; that producers should be able to obtain services at the lowest possible cost to them; and the Department should not take any action which would be detrimental to the producer's interest.

That this conclusion was reached by the Department with the full knowledge that such refunds were paid solely in an effort to compete with cooperative warehouses was established in the following excerpt from the main body of that same report, and I quote again, Mr. Chairman:

> In an environment of ample storage space the competitive aspects are additionally stimulated by the very substantial expansion of farmer cooperatives which operate warehouses and offer rebates to producer-members in the form of patronage dividends. In order to compete with these warehouse cooperatives, private warehousemen have found it necessary to offer commissions, refunds, and similar inducements to retain their customers.

Mr. Chairman, in this case, an inducement to retain a producer-customer is, in effect, an inducement to that producer for refusing to or ceasing to belong to an assoication of producers, and would be prohibited under the proposed legislation.

To deny cotton producers the benefits of this competition between independent warehouses and cooperative warehouses, will destroy the very foundation on which the entire cooperative movement is based.

In the absence of free and open competition, the cooperative will be of no value whatsoever to its members, who will inevitably become the captives of a Government-sponsored monopoly.

Should cooperatives gain such special privileges through the force and largesse of Government, the fact that a farmer may not belong to a cooperative will be strictly academic, and certainly temporary. The essential principle of no freedom of choice will have been established and written into the laws of the land. It will be enforced against those who are still naive enough to imagine that the independent farmers and the independent handlers of farm products would still be free and responsible people.

As we see it, Mr. Chairman, consideration of the proposed legislation presents this committee with a choice between the coercive power of government, and the economic power of free and open competition in the market. S. 109 may assist and even force the farmer to join a cooperative, but that membership alone will not necessarily bring higher prices or expanded markets. Individual farmers must respond to the demands of the market as established by price, and associations must do likewise if they are to serve the best interest of their members.

In conclusion, I want to make it absolutely clear that we are keenly aware of the myriad of problems that beset the farmer. We do not question the need to strengthen the farmers' position in the marketplace, nor do we take issue with the premise that group action through marketing associations is desirable to give the farmer the so-called "muscle in the market." We are, however, deeply concerned with what appears to be the total commitment of the Department of Agriculture to farmer cooperatives. A commitment that has been made and is being pursued with little or no regard for the effect it must have on the hundreds of thousands of individual farmers who do not choose to join cooperatives or the independent businessmen that are engaged in similar or related enterprise.

Finally, since cooperatives are a form of business organization, admittedly designed to achieve certain economic advantages in the marketplace, we strongly suggest that the full force of Government policy should not be used to give them preference over all other forms of agricultural enterprise. To do so can only result in rank discrimination against all non-cooperatives.

Mr. Chairman, after listening to the testimony that has been offered during these hearings, particularly that of the proponents of the bill, I have gained the impression that we are somewhat in the position of "innocent bystanders" who are most likely to be clobbered by the bill's unnecessary wide provisions. As the statement of the Secretary of Agriculture shows, practically all complaints are concerned with marketing contracts and the difficulties encountered by bargaining associations. None of this is applicable to the cotton warehouse industry for which I speak.

Throughout the hearing, the proponents of the bill have steadfastly maintained that the sole objective of this legislation is to protect the farmers' right to bargain collectively through associations of producers. The opponents of the legislation have been just as consistent in their testimony that they too believe that the farmer should have this right, and that right should be protected.

In view of this, we are offering a very simple amendment to S. 109 that would protect the farmer's right to bargain collectively through

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such associations. It would however limit the scope of the bill to the concept of bargaining, and would not interfere with the vigorous competition that has developed between independent warehouses and cooperative warehouses.

The proposed amendment will read as follows:

Amend section 3, subsection (c), striking lines 8 through 14 on page 3 and inserting the following:

"(c) The term 'association of producers' means an association which acts solely as the representative of producers in bargaining collectively with handlers as to price and other sales or service costs and terms, and is not itself otherwise engaged in handling agricultural products in competition with such handlers."

Mr. Chairman, we have made this suggestion merely to confine the scope of S. 109 to the activities of bargaining for price between farmers and handlers of agricultural products.

We think, according to the testimony that has been presented by both the proponents and the opponents of the bill, that so far as we know, the main theme on which both are in agreement is that the farmer's ability to bargain collectively, individually, or however he might wish to do so, is the point. It is not our intent to do anything, so far as bargaining is concerned, other than to protect his right to do it as an individual or collectively.

I thank you.

Senator JORDAN. Thank you very much, Mr. McAden.

That amendment will be considered, with any others that are offered, I can assure you.

Senator Boggs, do you have any questions?

Senator BOGGS. No. I am glad to have this proposed amendment.

Mr. MCADEN. Sir, I hope that the subcommittee will give it some consideration.

Senator JORDAN. You are not interested in ginning at all, you just warehouse and compress?

Mr. MCADEN. We are just compress and warehouse. Of course our problems are very similar to those that do the ginning, Mr. Chairman.

Senator JORDAN. It is very closely akin, dealing with the same product.

Mr. MCADEN. Yes. They are not normally the purchasers—that is, the ginners.

Senator BOGGS. Is that the only amendment?

Mr. MCADEN. That is the only one.

Senator BOGGS. You would protect the farmer.

Mr. MCADEN. It would protect his right to bargain collectively and independently, but would remove the implications of S. 109 from processing and handling of the commodity on down the line.

Senator JORDAN. Is not your association having an increasingly hard time to rent its space? That is what it amounts to?

Mr. MCADEN. Well, that is what it amounts to. For example, a small country town, in areas of cotton production where you have an independent warehouseman maybe right across the street from a cooperative warehouse, if we are not allowed to compete with that warehouse, we are just not going to be there very long. And that is why I incorporated this freedom of choice. If he does not have two alternatives to go to, he has no choice. That is hurting the farmer and not helping him.

Senator JORDAN. Senator Boggs and Senator Byrd, I just returned this morning from a meeting with the Secretary of Agriculture at the

Department of Agriculture. We talked about peanuts, in general, but other farm legislation was discussed as well, and other farm products. And it was mentioned that there were some 4 or 5 million bales less of cotton left in the Commodity Credit Corporation hands than there was a year ago. That means that much storage is going to be empty.

Mr. McADEN. That means that much storage will be empty, yes; and when you figure on the stocks, your peak demands come in December, and we will probably industrywide have a capacity of 5 or 6 million bales in excess of what is needed even at the peak demand season, and if you work on a year-round average, storage capacity will be probably 10 million bales greater than demand.

Senator JORDAN. So that the competition is going to be keen for all of the cotton.

Mr. McADEN. Extremely so. And the only benificiary of this competition is the farmer, and if we eliminate that competition you hurt the farmer.

Senator JORDAN. That is quite true. And if you charge 25 cents per bale per month and the other man charges 50 cents per bale per month, the farmer gets the advantage of that.

Mr. McADEN. Yes, sir.

Senator JORDAN. He is the only one who can profit from it.

Mr. McADEN. Yes, that is right.

There is one thing I would like to emphasize under the cotton program: Traditionally, in the cotton trade, the buyer of the cotton or the CCC in the case of loan cotton it acquires normally assumes the storage charges, so that we are in the position where a reduction in the rate for storing the cotton is not really of any significance to the farmer, because he does not directly benefit from that reduction in the rate. Whoever buys the cotton does. And so to entice or to solicit the farmer's business we offer something more, through an offer of a refund or some other service, to encourage him to bring his cotton to us. These other competitive practices, are what S. 109 will eliminate.

Senator BOGGS. Do the farmers think that is coercion when you offer them more?

Mr. McADEN. I do not think that any individual farmer thinks anything that brings him more income is coercion. If I offer a farmer x number of dollars a year, or 50 cents per bale, to store his cotton; no.

Senator BOGGS. Do they complain about it?

Mr. McADEN. No complaint has ever come to us from individual farmers. It is more money in his pocket.

Senator BOGGS. Do you threaten them?

Mr. McADEN. No, sir.

Senator BOGGS. Do you make them take it?

Mr. McADEN. No more than to offer them an inducement to do it. We are not interested, actually, in buying the cotton. All we want to do is to store the cotton and to press it for him.

Senator BOGGS. Do any members of the cooperatives come to you to inquire if they can see what your offer is?

Mr. McADEN. I do not think that they have to come to us. I think it is a matter of aggressive selling. The operator of the warehouse will go to see the farmer, and he will say to him:

You can go downtown and put it into my warehouse or you can put it in the cooperative warehouse. I will do this, that, and the other.

The farmer will weigh the advantage of the two choices and make his decision, but under S. 109, as we understand it now we cannot offer that alternative. So, we are concerned.

Senator JORDAN. If I am not mistaken, the farmer usually looks around to see where he can get the best bargain before he puts it in a warehouse. He is not in that big a hurry.

Mr. MCADEN. That is right.

Senator JORDAN. It means money to him, so that he does do that looking around first.

Mr. MCADEN. Yes.

Senator JORDAN. And he gets various offers.

Mr. MCADEN. Yes.

Senator JORDAN. Do you have any further questions?

Do you have any questions, Senator Byrd?

Senator BYRD. I have no questions.

Senator JORDAN. Thank you.

Mr. MCADEN. I appreciate being here.

Senator JORDAN. Mr. Earl W. Kintner is our next witness. He is with the National Tax Equality Association. Do you have somebody with you, Mr. Kintner?

Mr. KINTNER. I have Mr. Jack L. Lahr, of my office, with me.

Senator JORDAN. Please state your names and your titles and whom you represent, for the record.

You may proceed as you wish.

STATEMENT OF EARL W. KINTNER, ON BEHALF OF THE NATIONAL TAX EQUALITY ASSOCIATION

Mr. KINTNER. Mr. Chairman, my name is Earl W. Kintner. I am a partner in the law firm of Arent, Fox, Kintner, Plotkin & Kahn and appear here today on behalf of the National Tax Equality Association. I am accompanied by my associate Jack L. Lahr.

The National Tax Equality Association is a membership association of business organizations and individuals dedicated to the purpose of fostering fair and equal taxation of competing business entities. Ancillary to this purpose is one of promoting fair, vigorous competition and even-handed operation of our Federal trade regulation laws to all business sectors of the American economy.

One two occasions in the course of the 1966 hearings, National Tax Equality Association registered its ground for opposing the earlier counterparts of S. 109.[1] Here is footnote 1. I would ask, sir, that the footnotes be made a part of my statement.

Senator JORDAN. That is so ordered and it will be done.

Mr. KINTNER. The bulk of these objections exist today with respect to S. 109.

There still remains the question whether, as a policy matter, S. 109 type of legislation is necessary and in the public interest. The National Tax Equality Association answers this question in the negative, for reasons which we shall now discuss.

The intent of S. 109 is to grant relief to certain agricultural organizations for individual trade conduct involving cooperative mem-

[1] Hearings in S. 109 before a subcommittee of the Senate Committee on Agriculture and Forestry, 89th Cong., 2d sess., June 14, 15, 16, 1966, pp. 45–56; pt. 2, Sept. 28, 1966, pp. 198–203, herein "1966 hearings."

bership activity which very generally constitutes a violation of section 5 of the Federal Trade Commission Act. To the extent combinations or conspiracies to commit the proscribed acts exist, they are presently reached as unlawful restraints of trade in violation of section 1 of the Sherman Antitrust Act, in the appropriate context of the market position of the offender.

We believe there exists today in the Federal arsenal of trade regulation laws the substantive power to stop the general class of acts which is the intent of S. 109 to proscribe.

I developed these remarks and suggest later on amendments based upon 20 years of experience in the antitrust field, 13 at the Federal Trade Commission as a trial lawyer, and six as General Counsel, and two as Chairman of that agency, and since that time, 1961, in the private practice of law.

At the State level, common law tort actions for interference with business relations, trade disparagement, trade libel, and inducing breach of contract are valuable tools for combating business conduct generally proscribed by S. 109.[1]

Mr. KINTNER. It seems to us that the proponents of S. 109 do not appear to raise serious issue with the substantive Federal power to stop the proscribed practices. Rather, they reason that Federal procedural enforcement machinery is too slow. Here, of course, the charge must be confined to administrative action by the Federal Trade Commission against single-company conduct involving unfair methods of competition, because sections 4(a) to (e) of S. 109 deal with single "person" conduct without regard to competitive effects. In this connection the Attorney General is in a position under the Sherman Act to take swift action to stop monopolization activity, or combinations and conspiracies in restraint of trade,[2] the latter being restated in section 4(f) of S. 109. For example the recent milk boycott allegedly started by the National Farmer's Organization on March 15, 1967, resulted in a civil complaint filed by the Attorney General on March 29, 1967, with a temporary restraining order issued immediately thereafter.[3] There is no basis in the 1966 record for concluding that such Sherman Act restraints of trade against farmer cooperatives or independent producers, either would not or could not be met with equally swift action by the Attorney General in the public interest, as the specific situation warrants.

The 6-year Tomato Cooperative litigation[4] before the Federal Trade Commission is cited as the example of cumbersome FTC administrative enforcement machinery.[5]

But a close reading of this case reveals that the food processors' concerted refusals to deal with the cooperative took place during the 1951 tomato harvesting season and were terminated early in 1952 at about the time the Federal Trade Commission began to investigate these unfair trade practices. Thus, the practical relief in that proceeding was

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[1] 1966 hearings, p. 50; see also *Akron Milk Producers* v. *Lawson Milk Company*, 147 N.E. 2d 512 (Ohio Com. Pl. 1958), in which State court enjoined a milk company from inducing members of a cooperative to breach their marketing agreements with the cooperative.

[2] U.S.C. § 1 et seq.

[3] *United States* v. *National Farmer's Organization, Inc.*, Civ. No. 1–273–5 (S.D. Iowa, filed Mar. 29, 1967). See 299 ATRR, p. A–2, Apr. 4, 1967; 301 ATRR, p. A–9, Apr. 18, 1967.

[4] H. J. Heinz Co., 52 FTC 1607 (1956), set aside on other grounds, sub. nom. *Stokely-Van Camp, Inc.* v. *Federal Trade Commission*, 246 F. 2d 458 (7th Cir. 1957).

[5] See, e.g., Congressional Record H3431, Apr. 3, 1967 (calling this litigation "completely ineffective * * * a classic example of the kind of problem we hope to end * * *").

quite swift indeed. Parenthetically, I might mention that the Commission, in reviewing this case, entered a cease and desist order against the processor-respondents even though the latters' unlawful trade activities had not been practiced for over 4 years. It, therefore, seems that the Federal Trade Commission's record of concern for the welfare of cooperatives and independent producers is dramatically underscored by this case.[1]

The point is, however, that if the present FTC administrative enforcement machinery is too slow, is it not in the greater public interest to see how it can be speeded up? Under the present circumstances, the plight of the farm producer or cooperative is no greater or lesser than the plight of any businessman in any line of commerce who is faced with unfair methods of competition which injure his opportunity to survive in the marketplace. There is no basis in the record for concluding that the farm producers are deserving of some special measure of relief against unfair methods of competition as contrasted to the other sectors of American businessmen who turn to the Federal Trade Commission for relief against trade abuses, equally serious. Unanswered, therefore, is the question as to why it is in the public interest to legislate piecemeal relief for a sector of American business, without even exploring the question whether comparable considerations are involved with other sectors of American business which deserve a comparable measure of relief against trade abuses.

Closely related to these trade-regulation enforcement policy questions is the power vested in the Department of Agriculture to bring civil actions under S. 109, section 5(b). The National Tax Equality Association opposes legislation which empowers the Secretary of Agriculture to sue as a party plaintiff, as being inconsistent with the time-proven congressional pattern of Federal regulation of general trade and business conduct, shared today by the Federal Trade Commission and the Department of Justice. We see no rational basis for allowing a third executive agency to become an enforcer of unfair trade practice laws, especially where concurrent jurisdiction in the FTC and the Justice Department will continue to exist.

The 1966 hearings made abundantly clear that it is not just the farm cooperatives which regard themselves oppressed by the food processors and handlers. There are many independent producers who consider themselves oppressed by the farm cooperatives.[2]

S. 109, however, ignores this problem. The legislative intent, and the substantive prohibitions do not even take into account the producer's right not to join a cooperative, and interference with this right by the cooperatives. In effect, S. 109 sanctions a double standard of conduct, because the very acts which would subject handlers to severe penalties can be carried out by cooperatives against the independents with impunity. In view of the 1966 record, we do not see how, in fairness and equity to independent producers, this very serious problem can be

[1] In another FTC case, *Gold Meadow Farms, Inc.*, 29 FTC 356 (1939), the unfair methods of competition by a milk processor directed against a milk cooperative commenced in July. The complaint was issued the following March and a final FTC cease-and-desist order was issued 2 years after the offenses started.

[2] 1966 hearings, pp. 34, 104, 139, 143, 144, 151, 162, 167, 205, 209. See also *United States* v. *Borden*, 308 U.S. 188 (1939); *April* v. *National Cranberry Assn.*, 16 F. Supp. 919 (D. Mass. 1958); *Akron Milk Producers* v. *Lawson Milk Company*, 147 N.E. 2d 512 (Ohio Com. Pl. 1958); *Cape Code Food Products* v. *National Cranberry Assn.*, 119 F. Supp. 900 (D. Mass. 1954); *United States* v. *King*, 229 F. 275 (D. Mass. 1915), 250 F. 908 (D. Mass. 1916).

overlooked. Generally, the Congress, in legislating against certain acts, takes pains to prohibit these acts by any party, not just selected parties. This lesson comes to us from the history of the National Labor Relations Act where certain acts of "unfair labor practices" are "unfair" whether committed by employers or union organizations.[1]

In the area of trade legislation, it is significant that the Robinson-Patman Price Discrimination Act, which was fostered because of the coercive purchasing power of large grocery chains, ended up as a series of prohibitions against sellers and brokers, as well as buyers, rather than just grocery chains.[2] Indeed, the amendments to the earlier version of S. 109 to include cooperative "handlers" as well as non-cooperative "handlers," constitutes a tacit acknowledgement of this need for equal treatment and the avoidance of a double standard of conduct which S. 109 implicitly sanctions.

We have previously pointed out to this committee how the statutory prohibition against "discrimination" embodied in section 4(b) of S. 109 presents very serious problems for good-faith "handlers" endeavoring to comply with the law on one hand, and at the same time competing vigorously in the marketplace for the customer of farm producers. The vice of a flat prohibition against discrimination is that it is not confined to unreasonable restraints against competition, because such discrimination is prohibited in section 4(b) without regard to its competitive effects. This is in direct contrast to the price discrimination prohibitions under the Robinson-Patman Act, where proof of adverse competitive effects is required. From an economic standpoint not all price discrimination is anticompetitive; at times it is an indicia of keen price competition.[3] We regard it a significant inroad on established competitive policies formulated by the Congress to legislate against all trade discrimination regardless of its competitive effects.

In general, a serious vice of section 4 of S. 109 is that it endeavors to legislate against alleged trade abuses in excessive detail instead of approaching the legislative drafting from the standpoint of recognizing that the purpose of this legislation is to secure private remedies against "unfair methods of competition" or "deceptive acts or practices" presently reached by the Federal Trade Commission.

In our earlier appearances on behalf of the National Tax Equality Association before this subcommittee, we have reviewed in considerable detail the substantive provisions of S. 109, as contained in section 4 of the bill. We therefore refer you to our testimony at the 1966 hearings [4] which focuses on redundant or otherwise objectionable language in section 4.

However, since the proscribed acts enumerated in this section once again appear in unaltered form in the present bill, it might be well to summarize some of the substantive difficulties thereby presented:

First. The overall thrust of the unfair trade practices proscribed by section 4 is to codify well-established common law tort doctrine or restate in microcosm presently existing and operative Federal trade regulation laws.

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[1] See, for example, secs. 8(a)(1), 8(a)(2), and 8(a)(5) of the NLRA and their direct analogs, Secs. 8(b)(1)(A), 8(b)(1)(B), and 8(b)(3). See also NLRA sec. 8(b)(4) covering prohibitions against secondary boycotts directed against "any person" rather than an "employee of any employer" as existed prior to the 1959 Landrum-Griffin amendments.

[2] See, generally, H. Rept. 2287, 74th Cong., second sess. (1936); S. Rept. 1502, 74th Cong., second sess. (1936).

[3] See, e.g., Kaysen and Turner, "Antitrust Policy," pp. 179–187 (1959).

[4] Supra, footnote 1.

Second. The one-sided approach of these provisions does not fully take into account the economic realities of the agricultural marketplace—it is clear from the record that the trade abuses condemned here are mutually visited on independent producers by cooperatives as well as on cooperatives and their members by handlers, and consequently these abuses must be examined in that broader legislative context.

(3) Several sweeping terms such as those relating to "interference" with rights to belong to cooperatives, "threats," "boycotts" and "coercion" could, in a narrow fact situation contemplated by this bill, precipitately engender blanket prohibitions, anticompetitive in their result, which were never intended nor have ever been read into our antitrust and trade regulation laws. Specifically, what is to prevent merely competitive action by handlers from being labeled as an "interference" with the cooperatives? Why should unilateral refusals to deal suddenly be proscribed in this special area? Is mere persuasion not to renew a cooperative contract tantamount to "coercion" or "interference" for the purposes of this bill?

(4) The dangerous germs of meaning carried by such general terminology are compounded by the fact that S. 109 is criminal legislation. In this connection, we join others who have testified in reference to S. 109 in disapproving the criminal sanctions of section 5(d). We regard the criminal sanctions as being wholly inconsistent with the settled procedure for enforcing single-company trade conduct presently dealt with through civil actions under the Federal Trade Commission Act, and the body of State common law granting civil relief, which this bill generally endeavors to restate. It should be noted that the Attorney General already has wide latitude under the Sherman Act to bring any criminal action, for example, against "handlers" for combinations and conspiracies in restraint of trade.

(5) The problem of unconstitutional vagueness in such a generally worded criminal statute is a related difficulty which should not be ignored.

In conclusion, National Tax Equality Association feels that a continuing review of our Federal trade regulation machinery is a necessary congressional policy. We are pleased to offer our views in furtherance of that objective. There are problems here, and there have been trade abuses in the marketing of agricultural products, from many quarters, which deserve the public attention they have received from this distinguished subcommittee. However, the strides which have been made here will only be forward looking if the broad public interest in preserving uniformly applicable trade regulation laws is closely observed.

Mr. Chairman, I listened carefully to the hearings on the last day, May 4, and I noted the subcommittee's interest in securing definite help on matters to firm up the bill, to present a better bill, to meet the objectives of the hearings, and I could not forbear, in view of having lived with legislative matters at the Trade Commission, working on this. So, therefore, I have submitted this supplemental statement with some concrete suggestions for the subcommittee's consideration in that light.

The hearings on May 2 and May 4, 1967, served the salutary purpose of sharpening the issues and specific areas of controversy raised with S. 109. In this connection, we particularly endorse the statement of the National Canners Association and others which took issue with

many provisions of S. 109, which were also raised by National Tax Equity Association. In this connection, we have given serious study to S. 109 with a view to offering constructive and worthwhile suggestions which, while deserving further study and consideration, may be of assistance to this subcommittee in formulating legislation to remedy the responsible objections advanced by opponents of S. 109, should the subcommittee determine that the proposed bill should be favorably reported to the Senate.

Our suggestions are appended to this supplemental statement as Appendix A.

I would ask that this appendix be made a part of my statement in the record.

Senator JORDAN. It is so ordered.

(Appendix A follows:)

APPENDIX A

PROPOSED REVISIONS TO S. 109

SEC. 2

Agricultural products are produced in the United States by many individual farmers and ranchers scattered throughout the various States of the Nation. Such products in fresh or processed form move in large part in the channels of interstate and foreign commerce, and such products which do not move in these channels directly burden or affect interstate commerce. The efficient production and marketing of agricultural products by farmers and ranchers is of vital concern to their welfare and to the general economy of the Nation. Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to band together *or not to band together* in cooperative organizations as authorized by law. Interference with *these rights* is contrary to the public interest and adversely affects the free and orderly flow of goods in interstate and foreign commerce.

It is, therefore, declared to be the policy of Congress and the purpose of this Act to establish standards of fair practices *in* dealings with producers of agricultural products and their cooperative associations.

SEC. 3

(a)–(c) [Definitions of "Handler," "Producer," "Association of Producers" unchanged.]

(d) The term "person" includes individuals, partnerships, corporations, and associations, *including, as applicable, any association of producers.*

SEC. 4 [rewritten]

A. It shall be unlawful for any *person* knowingly to engage in, or permit any employee or agent to engage in, *acts of coercion, bribery, boycott, or any unfair method of competition or deceptive act or practice with the purpose and effect thereof being:*

(1) *to restrain any producer in the exercise of his right to join or not to join an association of producers; or*

(2) *to cause a producer to breach, cancel, enter into, or otherwise terminate a membership agreement or marketing contract with an association of producers; and*

B. It shall be unlawful for any *person*, or for any *person* to permit any employee or agent, knowingly to conspire, combine, agree, or to arrange with any other person to do, or aid or abet the doing of, any act made unlawful by this Act;

Provided, however, that nothing herein contained shall prevent handlers and associations of producers, respectively, from selecting their own suppliers or members in bona fide transactions and not otherwise in unlawful restraint of trade.

SEC. 5

(a) Whenever any *person* has engaged or there are reasonable grounds that any person is about to engage in any act or practice prohibited by section 4, a

civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

(b) Whenever the *Attorney General* has reasonable cause to believe that any *person* has engaged in any act or practice prohibited by section 4, he may bring civil action in the appropriate district court of the United States by filing with it a complaint (1) setting forth facts pertaining to such act or practice, and (2) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the *person* responsible for such acts or practices.

(c) Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, any provision of section 4 of this Act may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover the *actual* damages sustained, and the cost of the suit, *with the district court having discretion to award* a reasonable attorney's fee.

(d) [Delete criminal sanctions.]

(e) [U.S. district court jurisdiction unchanged.]

(f) [Concurrent State court jurisdiction unchanged.]

(g) [Constitutional saving clause unchanged.]

Mr. KINTNER. We believe that our suggested revisions to S. 109 go a long way toward curing substantive defects in the present text of legislation, discussed in our prepared statement.

We remain of the opinion that the practices covered by the proposed legislation are covered adequately by existing law. However, if the subcommittee and the Congress believe that more definitive legislation is necessary in this area, we think that our suggestions will be productive of a more fair, more precise, and more effective law within the accepted and long developed pattern of the Federal antitrust laws.

I now would like to point out exactly what we seek to accomplish with our suggestions for amendments to S. 109.

Senator JORDAN. What page are you on?

Mr. KINTNER. I am on page 2 of my prepared statement.

I am referring to a redraft of the portions of the bill that we think ought to be changed if the subcommittee desires to propose this type of legislation to the Congress.

Senator JORDAN. You may proceed.

Mr. KINTNER. Section 2: This section has been revised to clarify the legislative intent so as to provide congressional acknowldgement of the right of individual farmers to band together or not to band together in cooperative organizations, together with explicit recognition that interference with these rights is contrary to the public interest.

Section 3(d) has been revised to include any association of producers within the definition of "person."

Section 4 has been revised to incorporate subsection B to deal primarily with multiperson conduct. Subsection 4(B) corresponds in substance to section 4(f) of S. 109.

Turning now to section 4(A) of our proposal, the prefatory language corresponds to section 4 of S. 109 but substitutes "person" for "handler." Our proposed section 4(A), generally like section 4 of S. 109 contemplates that it shall be unlawful for such "person" to engage in certain acts. These acts are coercion, bribery, boycott, or any unfair method of competition or deceptive act or practice with the purpose and effect thereof being:

(1) To restrain any producer in the exercise of his right to join or not to join an association of producers; or

(2) To cause a producer to breach, cancel, enter into, or otherwise terminate a membership agreement or marketing contract with an association of producers;

In formulating this language, subsections 4(a) (1) and (2) correspond generally with S. 109 sections 4 (a) and (c) but deal with the right not to join and the right to join an association of producers. Section 4(b) of S. 109, relating to discrimination has been deleted for the reasons discussed in my prepared statement. However, under our proposal it is reasonable to assume that bad faith, anticompetitive discrimination would be reached as "coercion" or an "unfair method of competition." This omission simply reflects our belief that an effort should not be made to legislate against all discrimination regardless of its competitive effects, only what has been regarded in the law as unlawful discrimination.

Section 4(d) of S. 109 dealing with the payment of loans of money or things of value in excess of true market value for the purchase of agricultural commodities deals with "bribery," as Senator Lausche observed in his statement of May 2, 1967. We believe the substance of this prohibition is preserved in more acceptable legislative language by the prefatory prohibition against acts of "bribery."

Section 4(e) of S. 109, which deals with making false reports about financing, management, or activities of associations of producers has been deleted along with the broad language relating to interference with the efforts of such associations in carrying out "the legitimate objects thereof." However, any substantive trade libel, or interference with contractual relationships is embraced by the prefatory language of our proposed section 4(A) which broadly prohibits unfair methods of competition or deceptive acts or practices. In this connection the FTC has successfully reached trade libel of competitors under the language of section 5 of the FTC Act. Section 4(e) of S. 109 is further complicated by failure to take into account the settled law of privileged communications.

The prefatory language of our proposed section 4(A) incorporates the substantive language of the Federal Trade Commission Act in prohibiting "unfair methods of competition or deceptive acts or practices." Our reasoning is that such an incorporation of settled statutory language governing trade conduct with its wealth of existing body of case law affords everyone a clearer set of guidelines, and forecloses legal arguments that somehow the statutory language of S. 109 embraces different standards than proscribed by the Federal Trade Commission Act.

If I wanted to enforce a bill like this, I would love to have a great body of 50 years of case decisions spelling out the practices that I could use, and this, I think, makes very good sense from a legislative drafting standpoint and from the standpoint of really securing antitrust law enforcement, which I must assume is the object of this law, not to drive independent farmers into cooperatives against their will.

In this connection, we must bear in mind that the Federal Trade Commission will continue to have concurrent enforcement jurisdiction. In effect, our proposal for S. 109 is one which grants a private cause of action for violation of the Federal Trade Commission Act in connection with cooperative membership activities.

It should also be noted that we have eliminated threats as a specific offense, relying instead on the general prohibitions against acts of coercion and unfair methods of competition. Threats to commit the special offense implicitly remain an evidentiary basis for preliminary injunctive relief under our proposal, as under S. 109 section 5(a).

The proviso at the end of our proposed section 4 is taken from comparable language in section 2(a) of the Robinson-Patman Act, and has the effect of restating settled legislative and judicial principles of sanctioning bona fide general trade relationships not involving cooperative membership activities and not otherwise unlawful. We believe this language will insure that peaceful persuasion sanctioned under existing law will not be construed as "coercion."

In summary, we have endeavored to point how section 4 in S. 109 can be improved, tightened, and clarified, in accordance with settled principles developed in the light of Federal labor legislation and Federal trade legislation enforced by the National Labor Relations Board and the Federal Trade Commission, respectively.

Section 5(a) incorporates remedial changes to allow a cause of action for any "person."

Section 5(b) of our proposal places Federal enforcement authority in the hands of the Attorney General rather than the Secretary of Agriculture. This is regarded as an altogether reasonable recommendation, taking into account the executive authority vested in the Attorney General to enforce the Federal laws, and remedies our opposition to enforcement powers vested in the Secretary of Agriculture. Indeed, this proposed approach is probably quicker and more effective in any event, because the Attorney General would become involved in litigation if the Secretary of Agriculture were a party plaintiff. The Attorney General has the investigative authority of its field offices and the FBI and great litigation expertise in the field of trade regulation through the machinery of the Antitrust Division.

I would like to say that when antitrust laws are assigned by the Congress to an agency they, generally, lapse and are not very well enforced. These agencies cannot be experts in antitrust enforcement and cannot take effective action—they become uncertain as to what the law provides—generally, they are preoccupied with their other major assignments. I think, if you want an antitrust statute to be effective, you ought to place it either in the Federal Trade Commission or in the hands of the Attorney General for enforcement.

Section 5(c) of S. 109 has been modified in our proposal to provide for recovery of actual damages together with an award of reasonable attorney's fees in the discretion of the court, rather than treble damages and mandatory attorney's fees. Again, we endorse Senator Lausche's position that treble damages constitutes unduly harsh relief.

The criminal sanctions of section 5(d) of S. 109 have been eliminated in our proposal for the reasons mentioned in our prepared statement.

We note that additional procedural features should be incorporated into any such revisions to S. 109, including a statute of limitations, and other matters discussed on May 2 before this Committee. Ample precedent for these provisions may be found in the Sherman and Clayton Antitrust Acts.

In conclusion, we submit that our proposals for revision of S. 109 constitute significant improvements over the present language. It

is significant to observe that our proposals preserve for the farm cooperatives the causes of action and the speedy civil remedies they claim are necessary, but we avoid, on the other hand, a double standard of conduct which would allow farm cooperatives to escape the same liability for unfair trade practices against nonmembers to coerce such independents to become members of the farm cooperatives.

We hope that these changes will be of value to the committee in formulating fair and reasonable legislation in the public interest, in the event the committee should, contrary to our basic position, decide that any such legislation is in the public interest.

Senator JORDAN. Thank you.

Mr. KINTNER. Mr. Chairman and members of the subcommittee, I appreciate very much your extending these hearings and your extending to my client and myself the opportunity of making what we think are constructive suggestions in aid of your labors in connection with this proposed legislation.

Thank you, sir.

Senator JORDAN. Thank you, again, Mr. Kintner.

Do you have any statement to make, anything to add?

Mr. LAHR. No, sir.

Senator JORDAN. Any questions, Senator Boggs?

Senator BOGGS. I want to thank Mr. Kintner, too, for his excellent presentation. His suggestions will be helpful to the committee, I am sure.

There is one thing that I do not understand. Maybe, if I get an answer to it, it will help me clear up my mind.

As I understand it, if a producer goes into a cooperative to have his cotton ginned or stored, by taking his cotton there he automatically becomes a member of the cooperative; is that correct?

Senator JORDAN. I believe somebody testified to that effect the other day. That is something that I really do not know about.

Senator BOGGS. Well, assuming that that is correct, as I think it is, from the testimony. Now, he is a member of the cooperative by virtue of his taking his cotton in to be ginned or to be stored. Suppose later on in the season, or the next year, he thinks that he can get a better deal from his own personal point of view by going to the independent ginner or warehouseman. Under S. 109, would he have a right to do it without losing his membership in the cooperative or would his membership be taken away from him if he went to the independent ginner or warehouseman?

Mr. KINTNER. I am unfamiliar with the marketing contracts in the cotton industry.

Senator BOGGS. I will review that testimony.

Mr. KINTNER. What we fear, Senator Boggs, is that this kind of legislation, unless it is made consistent with the antitrust laws and is so prepared, so that it will carry out antitrust objectives, it will be used as a bludgeon, to coerce independent producers, farmers, either to come into a cooperative or once they are in to keep them in under bondage.

I do not understand that the proponents of this legislation intend that objective, and if they do not intend that objective—and I cannot believe that they do—then, we see no reason why language cannot be developed here which will protect the freedom of action of the inde-

pendent farmer-producer so that he will be protected from acts of coercion, bribery, intimidation, unlawful acts—no matter from whatever source.

Senator Boggs. Let me ask you this: Under the Sherman Act and the Clayton Act, and the other antitrust acts, as you indicated in your testimony, do they not all provide benefits and remedies for the producers?

Mr. Kintner. Yes, they do, sir.

Senator Boggs. Assuming that S. 109 is enacted, it would be the latest enactment in this complicated field and by virtue of being the latest enactment would, unless we write in something to clearly indicate otherwise, in effect wipe out all the other benefits in the case laws and the statutory laws and the trade regulations so far as farmers are concerned. That is the practical effect of it, is it not?

Mr. Kintner. There would be a tendency in that direction for the reason that you would have a new law spelling out practices, and if an action were brought under that new law, then there would have to be interpretations of that law—a new body, generally, of antitrust decisions developed to meet or to be tailored to that particular law. This, in my opinion, would frustrate the rights of these people who feel they are coerced.

Senator Boggs. I have not researched this enough. I do not know too much about it, but I do have a concern about it. I am an old farmer, myself, and farmers have rights, benefits, and remedies. They are pretty complex because of the body of case laws, but they are generally settled nevertheless. I want to help him, but I do not want to take anything from him in the guise of trying to help him. That is what concerns me.

Mr. Kintner. This is why we have spent a great deal of time trying to submit some amendments here.

If you feel that you must report out a bill, that it is in the public interest to do so, which is certainly a mission of any congressional committee having a legislative assignment, it has to decide what to do, to decide that a bill is needed, and if you decide that a bill is needed here, then I think that you ought to borrow from the other antitrust language that has been construed by the courts so that you have an effective bill.

We have tried to borrow well-known language and concepts from the antitrust laws, so that if this bill passes and there are actions brought under it, then the cases construing those well-known legislative concepts can be carried over wholesale into this area of new enforcement.

Senator Boggs. That is a very important consideration.

Our little State is known as the "Corporation State" because we have so many corporations chartered. Many times the question has been asked: "Why companies continue to incorporate in Delaware, in view of the fact that many other States have copied our incorporation laws and claim to have made improvements in them. But our law has been interpreted by the highest courts in the State and in the land—they have been studied—people know what they mean. There is no question about their rights under those laws. Every legislature we have had has come in with proposals to change them, that is, they have proposed bills to change them, but after careful consideration by the bar and everybody making their presentations, they have stuck

to the principle of trying to keep the benefits of the settled law and not by new enactments take away the benefits that the shareholders and the stockholders and the corporate officers have under them. So, it is a matter of important consideration. I do not want to be in the position of waking up some day realizing that I have taken away a lot of benefits from the producers.

Mr. KINTNER. This is altogether possible under the existing bill.

Senator BOGGS. It is pretty far reaching, I realize, when you get into that phase of it, but I am sure that the committee, with the help of the testimony that we have had, will be able to resolve this.

Mr. KINTNER. I think that your observation Senator Boggs, about the value of the laws of your State with respect to corporations is unusually astute. Businessmen desire a certain amount of certainty. In fact, all laymen do with respect to the law. It is very difficult for laymen to keep up with the law, as it becomes more complex. And the more that you can do to build on the foundations of the past that are understood by the general public, in developing new legislation, the better off you are in insuring a public understanding of the law. And if the objective here is to develop a sound antitrust law dealing with special problems, then I think that you ought to proceed in a slightly different direction and along the lines that have been suggested.

But if the object is something else, again that is for this committee and others of the Congress to ferret out.

Frankly, I think it makes better sense to have an antitrust authority enforcing this law than it is to have the Secretary of Agriculture, whose mission is to foster these cooperatives, enforcing laws of this nature. It is sort of putting a fox in a henhouse, if I may say so.

Senator BOGGS. That is one of the very points, it seems to me, that might lead the courts to construe that you were taking the producers out from the protection and remedies of the antitrust laws and putting them in a new field, and that it was the legislative intent to do that. And if you do that you are going to lose a lot of benefits and remedies that you have, unless we make that clear in the statute somehow or other.

Mr. KINTNER. That is right. You do not repeal under the proposal that we have developed as possible amendments, any of these existing laws, but you build on those laws, and you make the cheese more binding, so to speak, with respect to the illegal practices that historically have been recognized as existing, and you give the Attorney General another tool, if he thinks he needs that tool. We do not think that he does.

That is a problem of the committee and not of ours.

Senator BOGGS. Thank you.

Senator JORDAN. Thank you, Mr. Kintner.

Any question, Senator Talmadge?

Senator TALMADGE. I have no questions, Mr. Chairman.

Unfortunately, I was late in getting here.

Senator JORDAN. Mr. McAden has testified and his full statement is in the record.

Senator TALMADGE. I am just reading it.

Senator JORDAN. Mr. Kintner has just completed testifying.

Thank you very much for your appearance here, Mr. Kintner, and the help that you have presented to us.

Mr. KINTNER. Thank you, sir. It is particularly a privilege to appear before you, sir.

Senator JORDAN. Thank you, again.

Our next witness is Mr. Dallas K. Ferry.

Senator BOGGS. If I may interrupt, Mr. Chairman. Has the Department of Justice submitted a report on this bill?

Senator JORDAN. They have not—no, they have not.

Senator BOGGS. We are going to ask for that?

We are getting it?

Senator JORDAN. We have not asked for it. The Secretary of Agriculture, I understand, has checked it out with the Department of Justice and through the Bureau of the Budget.

Senator BOGGS. That is a general clearance by the Bureau of the Budget, but we have not had anybody from the Department of Justice—or we have not had any analysis or study or recommendations from the Department of Justice on this?

Senator JORDAN. We have not.

Senator BOGGS. Have we had anything from the Federal Trade Commission?

Senator JORDAN. The only thing that we have had is what the Secretary of Agriculture, Mr. Freeman, sent up.

Senator BOGGS. That is from him.

Senator JORDAN. Yes.

Senator BOGGS. We might consider that. I will leave it up to you to ask them for that.

Senator JORDAN. We will consider that.

If you will give your full name, please, sir, Mr. Ferry, for the record?

STATEMENT OF DALLAS K. FERRY, ALEXANDRIA, VA.

Mr. FERRY. Mr. Chairman and members of the subcommittee. My name is Dallas K. Ferry. I reside at 4908 Condit Court, Alexandria, Va.

In 1960, Governor Hatfield, now a member of this distinguished committee, appointed me to serve for a second 3-year term on the Oregon Fryer Commission where I served as chairman and also chaired the subcommittee on promotion and merchandising. Because of my activities in the broiler and egg industry in Oregon, I was asked to assume the position of executive director of the U.S. Poultry and Egg Producers Association in January of 1962.

Mr. Chairman, Bob Scott used to be the president of this association before he was the master of the Grange in North Carolina.

Senator JORDAN. I believe that is correct. He is Lieutenant Governor now.

Mr. FERRY. That is right.

Since December 31, 1966, I have not held this position. Our organization was the victim of activities that this proposed legislation, attempts to prohibit. This statement I am presenting to you today is from firsthand knowledge. It is in fact a kind of an "I was there" story rendered from firsthand experience in attempting to develop an organization of growers in the poultry and egg industry. In every example I will use, I was either there at the moment, was told about the

incident immediately afterward, or have talked generally with every individual involved.

This might be a story of how to put a growers organization out of business, but this would be too long and too detailed and would cover a period of five years. It was quite apparent even before I started my duties as executive director of this organization that there would be an organized concerted effort on behalf of industry to destroy any attempt by growers to organize in any common objective.

This was true in Oregon, too, and I well remember a meeting I attended in Salem one day in 1956. This meeting had been billed as a growers' meeting. During the course of the debate it was quite obvious that growers were out-numbered and not holding their own. A division of the house was called for. The growers went to one side of the room and the industry people to the other. Out of about 100 people in attendance approximately 15 were growers. It was at this point that we organized the Oregon Broiler Growers Association with voting membership limited to broiler growers.

The above-described meeting was not typical of most poultry meetings throughout the Nation, because there was a bigger percentage of growers in attendance than most poultry meetings where decisions are made that purportedly become the position for the whole industry in any given area.

From the first day, I came in contact with industry people from other areas, it was obvious to me that I was in for a battle if I were to successfully weld together a national organization of broiler growers. Misrepresentation, innuendoes, personal threats, interference with meetings, blacklisting, boycotting, intimidation, and coercion were all a part of the effort to block and destroy grower efforts to organize.

In the summer of 1962, we were notified that a group of broiler growers were being blacklisted and boycotted in Arkansas. This happend as a result of their active participation in developing a growers organization in that State. As the executive director of the national organization with which this group of growers was affiliated, I had to make a decision. We had two choices: first, we could actively lead these growers in a militant organizational effort, similar to what the NFO has attempted to do in recent years, or second, we could make a complaint to the proper regulatory agency. We chose the latter route, which in my opinion was better because for the first time we have established the fact that there is an agency to whom oppressed farmers can appeal for help. Further, as a result of the complaint filed against three major poultry producing companies by the Packers and Stockyards Division of the USDA, a number of things have been accomplished for the benefit of agriculture as a whole. This landmark case is now known as the Arkansas Poultry Case, P. & S. Docket No. 3497.

I would like to comment that we appealed to the Department of Justice, and to my knowledge we have not received a single letter. We sent several letters.

We also appealed to the Federal Trade Commission at the time, and we never got any answer from the Federal Trade Commission, but the Packers and Stockyards Division was the one that came to our aid.

It has been nearly 5 years since we first filed our complaints and the first subpenas were served on the respondents in the case. A period of 8 months was required before the Packers and Stockyards Division

was able through the courts to get their subpenas honored. The jurisdiction of the P. & S. Division has been challenged every step of the way. The hearings are all complete and after the respondents have used all the possible delaying tactics the final briefs have been filed and the case is in the hands of the judicial officer waiting his final decision.

In the meantime, some of those who were blacklisted and boycotted have been unable to obtain other places to market the products which they have the facilities and ability to produce. Some of the individuals have had to sell their farms. One man has been unable to produce broilers for his own account, neither has he been successful in leasing his production facilities to anyone else since August of 1962. He is of the opinion that if he attempts to sell his farm that a sale to be based on the reestablishment of his broiler production facilities would probably be terminated by the inability to obtain a market for the broilers that could be produced.

Another grower, Robert Tryon, of Noel, Mo., testified at a hearing conducted by a special subcommittee of the House Small Business Committee at Neosho, Mo., in 1961. He told the committee, and it is a matter of record, that he had been told by one of the large processors that he would never raise another broiler if he testified before the committee as he planned to do. Mr. Tryon passed away in 1965, but it is important to know that he was never able to use any of his broiler-producing facilities again because he could not obtain a market.

I want to point out to the committee that all this grower activity in 1961 and 1962 was in support of the proposed legislation to stabilize the broiler industry which was then being promoted by the Agricultural Stabilization and Conservation Service of the USDA.

Whether or not a person is in agreement with Government stabilization efforts and market orders or not is beside the point. It has been the policy of the Government to help farmers through these programs if the farmers so desired. But, here was a group of people who were exercising their constitutional rights of freedom of speech, to assemble and to petition their Government through organized collective action. Their rights were violated by a concerted industrywide plan to destroy their organization by a government within a government, and a government composed of industrial oligarchs.

As one individual who had been intimidated stated: "If they can tell me I can't belong to this organization, that I can't attend meetings, that I have to be careful what I say, then this means to me that they will soon be telling me what church I can belong to and how I must vote."

Many of us who have watched the growth of corporations in agriculture and the development of vertical integration with the consequent loss of our free markets, where any man could sell that which he produced, have been apprehensive about what form it will eventually take. Individuals and farm organizations alike have called this new system collective farming corporate collectivism, feudalism, and militaristic.

Leroy Robinson testified at a Packers and Stockyards hearing—P. & S. Docket No. 3497—in Fort Smith, Ark., and I quote:

> You've got to figure this thing just like you was in the Army.
>
> His company field man told him.
>
> He left the impression that he was the sergeant and I was a private and I'd do it just like he wanted it done—

Robinson stated. Is it any wonder the growers want and need to organize?

A man has property in his civil liberties and while Congress cannot abridge these liberties, it is the duty of Congress to protect these rights and determine that they are not abridged by sanctions and reprisals by economic consortiums controlled by industrial oligarchs.

While protests are made that legislation provided for in S. 109 is not needed, one has only to determine from what source these protests come. These protests, in most cases, are really a camouflage. The simple fact is the record speaks loudly and clearly.

From the record we can come to one other conclusion: In spite of the fine laws and the attempts by the agencies involved to administer them properly, the procedure is too slow and there is not enough protection for either individual or organization.

The Agricultural Producers Marketing Act of 1967, known in the Senate as S. 109, if enacted, will be as important in protecting the marketing rights of agricultural producers as the Bill of Rights is in the protection of civil liberties of the individual from Government.

That there is, and will be, controversy in respect to the proposed legislation is understandable.

I do not think that anybody wants unilateral legislation. I think both sides in the controversy should be considered, the proponents and the opponents, and we hope that the committee will take this into consideration. At issue in the bill is whether producers of any agricultural product in an economic production and marketing system are to be subjects of that system, and the system sovereign, or whether individuals are to be sovereign, and equity developed in the system.

At stake is whether the existing inherent right of the individual guaranteed by the Constitution and the Bill of Rights, to freely assemble, express opinions, petition legislators and Government, and pursue an economic course is to be inviolate.

To be determined here is whether the individual producer can organize with his fellow producer in a common effort to collectively bargain for the sale of his products as the Capper-Volstead Act gives him the legal right to do or whether these rights are to be subjugated to the whims and dictates of a government or governments within a government. A government not of the people and by the people, but one of and by industry oligarchs whose primary economic interests precede all others.

To expect any company, corporation, individual or trade group to voluntarily admit that the actions this proposed legislation defines and prohibits, have taken place in their operations would be expecting the impossible. But, why they deny categorically, as they do, that there is nothing wrong within any industry, when previous statements before this committee, the record in the courts, and regulatory agencies refute their claims so dramatically is beyond comprehension.

When powerful companies and trade groups oppose this legislation as they are doing, and attempt to divert the scrutiny of the legislative body from the infections within an industry, there is a reason. They are, in my opinion, publicly admitting that in order to operate they must be able to interfere with, restrain or discriminate against; that they need to be able to boycott, coerce, intimidate or buy individuals and make false reports and combines and conspire in order to control and govern within an industry.

We can deduce from their action that these tactics are needed to replace, in some cases, the arts of persuasion, selling and the providing of a better and more efficient service or a more profitable market.

I think, by and large, the big majority of the people that farmers have to do business with in selling their agricultural products are fine people to do business with, but you have the occasional individual or company that makes it tough for everybody.

The use of repressive tactics prevents and precludes the possibility of open debate and prevents the public airing of objectionable features of a market system. Inevitably, this leads to inequities in the marketplace for those repressed. Monopolies are created by repressive tactics and in time not only are producers exploited, but consumers suffer as well. Self-serving are the attempts to appeal to the public to help protect what is described as the most efficient system in agriculture yet devised. The truth of the matter is that some who protest loudest about this legislation built their business by climbing up the backs of, and exploiting, helpless producers.

I think that is the essence of what I have to say here today.

Unless one were against motherhood, 50 States in the flag, and all the moral concepts and ethics taught in our homes, schools and churches, and civic clubs, it would be difficult not to agree with the principles embodied in this proposed legislation. Any reservations we might have are not about principles, but whether in its present form this legislation will accomplish what is needed. We would not want give the patient a laxative when he is in dire need of an appendectomy.

We will admit to being biased, and we feel we have some justification in our position; for the last 5 years we have had to live on a day-to-day basis with the repressive tactics this bill would specifically prohibit. Not only were these tactics used to destroy the organization I represented, but the economic lives of individuals and families as well.

Our experience over the past 5 years shows that the present legal processes are very cumbersome and long delays can be expected when subpenas are served and challenged; while attorneys use delaying tactics when preparing cases and filing briefs; while economists delve into records and marshal facts and prepare needed information; and while time is exhausted fighting jurisdictional battles in the courts. In the meantime, the individuals or organizations on whose behalf the action was brought either have been bankrupt, forced out of business, required to retrench and their associations destroyed because of forced inactivity and loss of momentum.

We have some reservations about this proposed legislation, but nothing is ever perfect, and we believe it to be a step in the right direction. To give the farmer the countervailing power he needs and deserves in the marketplace, a more positive approach is needed than that which now exists.

This legislation would do that by making it crystal clear that the individual or his organization can legally move against any handler of agricultural products who does any of the things this legislation seeks to prohibit. In addition, the Secretary of Agriculture can move on behalf of the public and the individual when he has reasonable cause.

There are three words used in this act that we think should be defined for the record and discussed briefly. They are: "boycott," "intimidation," and "coercion."

Webster defines "boycott" thus: "to combine against (a person, employer, a group of persons, or a nation) in a policy of nonintercourse for economic and political reasons."

When one or a group of people are boycotted, it is usually rather obvious, and creates quite a bit of news within an area or industry. While economic boycotting is an overt act, it takes adequate discovery work by properly qualified persons interviewing, taking depositions and statements, as well as pursuing and developing relevant economic information to develop a case that will stand up in court.

However, the time factor involved in proving boycott cases makes it disastrous for anyone to run the risks of being boycotted to prove a point. No one can afford to be a martyr regardless of how altruistic he may be. Some who have had the courage to stand on our principles have involuntarily become martyrs.

The following quotation from Mr. Ellis Hale, of Aaldron, Ark., who testified before this committee last year in respect to the fact that he had been boycotted since 1962 illustrates our point. In a letter to me dated January 16, 1967, he stated:

> My attorney warned me recently that we had a bear by the tail and that it would be dangerous if we did not let go. It may be dangerous, but as long as we have got one dollar of resources left, it will be used in an effort to get justice in this matter. Of course, you could say that the Government did take a stand and spent considerable time and money to protect our right. That is true to a degree, but when their part is completed, the individual poultryman is in just as bad a condition as he was in 1961.

Those people who have been boycotted in any industry stand out as shining examples. Consequently, very little more needs to be done to intimidate others in the industry.

Intimidation is defined as "to make timid or inspire with fear; to force into or defer from some action by inducing fear." Strong men are cowered and submit to intimidation, even though they know that it is in their best interest in the long run to resist. Today the cost of living and operation require that men protect the immediate security of the family. No longer can a man pack his belongings into a wagon, call the dog, and move to a new area. To protect his worldy goods and family, he submits to intimidation.

Coercion, the dictionary says, is the "forcible constraint or government by force", and is a dangerous thing. Certainly there is no stronger force in the average person's life than economic force which jeopardizes the livelihood of a man, his family, and all his worldly possessions.

The successful boycotting of one or two persons provides the leverage to intimidate and coerce a whole area or industry. Intimidation and coercion are subtle, devious and effective methods to govern by oligarch within an industry. They are old and time-honored methods of controlling individuals. Both are extremely difficult to prove.

Below, we have briefly illustrated the methods that were used to destroy our organizational effort. The few examples listed are a small sample of the many we could discuss. Each of the examples is taken from newspaper accounts, court records, Packers and Stockyards Docket No. 3497, and the writer's personal experience. I am personally acquainted with the people involved in each case.

I would like to call your attention to the cases that I have included. I have included some examples of places where meetings were interfered with, false reports about association finances and support were made, meetings interfered with, and so forth.

I would call your attention to one example I have here where the rights of the egg producers to produce and organize were denied by a county agent in Texas:

An egg producers' meeting was set for the night of April 17, 1962, at the courthourse in Houston, Tex. When the formal part of the program was concluded, a motion was made to organize the Texas Poultry & Egg Producers Association. There were 75 egg producers present. Acting Chairman Herb Hodges called for a vote. The assistant county agent refused to let the group vote on either forming an organization or voting on whether or not the group was in favor of a stabilization program for eggs. The assistant agent said, "I'm acting on orders from the county agent."

Senator JORDAN. Maybe we ought to enact some legislation to take care of county agents.

Mr. FERRY. These cases have been relatively few. It seems to me, however, that some of the people that I have come in contact with, if they were allowed to continue on the course they were pursuing at the moment, would eventually do away with the U.S. Senate, because they would be opposed to any dissent.

I would like to say that we concur with the statement made by the National Grange. I think the suggestions that they made would probably, Senator Boggs, take care of the objections the gentleman made just previously.

Statements have been made before this subcommittee that the people who most enthusiastically back the bill are looking for a way out.

As I have said, and the chairman will remember, Mr. Hale, from Arkansas, testified last spring that he had been boycotted since 1962. The Packers and Stockyards Division in going into and analyzing the records proved that he was above the average grower. This was one of the defenses that the respondent in the case had in boycotting this man, but the Packers and Stockyards Division said that after analyzing all of the records it showed that he was above the average of the growers in this organization. I forget how many grower records were involved.

Bruce Akers of North Carolina, who won a Ford Foundation grant for being the most efficient broiler grower in the United States in 1961, and which he gave to the University of North Carolina, so that they could do a study on grower costs in producing broilers, is, I know, above the average grower, and he is, certainly, in favor of this legislation. I could name numerous others.

Senator JORDAN. I would think that you would not have to give a Ford Foundation grant to a university to find out what it costs to produce broilers. You can find that out from people who produce broilers.

Mr. FERRY. That is right, but some people would not agree with you. As an ex-broiler man, they will not believe you, unless you can have a study of some kind, and put it down in black and white.

I think one of the purposes of this act, Mr. Chairman, is to bring together legislation that would pertain to the things that this legisla-

tion seeks to prohibit; putting it in altogether in one act, and eliminating some of the possibilities that you were concerned about, Senator Boggs; then, when we have this legislation all in one place, seeing to it that there is an adequate educational program back of it, so that the processor and the handler, and the individual, the producer, know what their rights are. And, if we had this kind of legislation—that is, if we had had it in 1962—I am sure that we would not have had this case in Arkansas. So, we think that this is constructive legislation. We hope that it becomes law in this session of Congress. It is long overdue.

There is one comment I would like to make, as of the moment: I am of the opinion that, if you wear overalls, the Department of Justice is not too concerned about your problems. Thank you.

Senator BOGGS. What was that last statement?

Mr. FERRY. At the moment, I am of the opinion that, if you wear overalls, the Department of Justice is not too concerned about your problems.

Senator BOGGS. I get it now. Thank you.

Senator JORDAN. You mean the kind with bibs?

Mr. FERRY. The kind with bibs; yes.

Senator JORDAN. I was an overall boy. I know the difference. Thank you very much. We appreciate your testimony. Your entire statement will be made a part of the record.

(The statement submitted by Mr. Ferry reads in full as follows:)

Mr. Chairman and members of the subcommittee, my name is Dallas K. Ferry. In 1960 Governor Hatfield, now a member of this distinguished Committee, appointed me to serve for a second three year term on the Oregon Fryer Commission where I served as chairman and also chaired the subcommittee on promotion and merchandising. Because of my activities in the broiler and egg industry in Oregon, I was asked to assume the position of Executive Director of the U.S. Poultry and Egg Producers Association in January of 1962.

Since December 31, 1966, I have not held this position. Our organization was the victim of activities that this proposed legislation, attempts to prohibit. This statement I am presenting to you today is from firsthand knowledge. It is in fact a kind of a "I was there story" rendered from firsthand experiences in attempting to develop an organization of growers in the poultry and egg industry. In every example I will use, I was either there at the moment, was told about the incident immediately afterwards, or have talked personally with every individual involved.

This might be a story of "how to put a growers organization out of business" but this would be too long and too detailed and would cover a period of 5 years. It was quite apparent even before I started my duties as Executive Director of this organization that there would be an organized concerted effort on behalf of industry to destroy any attempt by growers to organize in any common objective.

This was true in Oregon, too, and I well remember a meeting I attended in Salem one day in 1956. This meeting had been billed as a growers' meeting. During the course of the debate it was quite obvious that growers were outnumbered and not holding their own. A division of the house was called for. The growers went to one side of the room and the industry people to the other. Out of about 100 people in attendance approximately 15 were growers. It was at this point that we organized the Oregon Broiler Growers Association with voting membership limited to broiler growers.

The above described meeting was not typical of most poultry meetings throughout the nation because there was a bigger percentage of growers in attendance than most poultry meetings where decisions are made that purportedly become the position for the whole industry in any given area.

From the first day I came in contact with industry people from other areas, it was obvious to me that I was in for a battle if I were successfully to weld together a national organization of broiler growers. Misrepresentation, innuen-

dos, personal threats, interference with meetings, blacklisting, boycotting, intimidation and coercion were all a part of the effort to block and destroy grower efforts to organize.

In the summer of 1962, we were notified that a group of broiler growers were being blacklisted and boycotted in Arkansas. This happened as a result of their active participation in developing a growers organization in that state. As the executive officer of the national organization with which this group of growers was affiliated, I had to make a decision. We had two choices; first, we could actively lead these growers in a militant organizational effort, or second, we could make a complaint to the proper regulatory agency. We chose the latter route, which in my opinion was better because for the first time we have established the fact that there is an agency to whom oppressed farmers can appeal for help. Further, as a result of the complaint filed against three major poultry producing companies by the Packers and Stockyards Division of the USDA, a number of things have been accomplished for the benefit of agriculture as a whole. This landmark case is now known as the Arkansas Poultry Case, P & S Docket #3497.

It has been nearly five years since we first filed our complaints and the first subpoenas were served in the respondents in the case. A period of eight months were required before the Packers and Stockyards Division were able through the courts to get their subpoenas honored. The jurisdiction of the P & S Division has been challenged every step of the way. The hearings are all complete and after the respondents have used all the possible delaying tactics the final briefs have been filed and the case is in the hands of the judicial officer waiting his final decision.

In the meantime, some of those who were blacklisted and boycotted have been unable to obtain other places to market the products which they have the facilities and ability to produce. Some of the individuals have had to sell their farm. One man has been unable to produce broilers for his own account, neither has he been successful in leasing his production facilities to anyone else since August of 1962. He is of the opinion that if he attempts to sell his farm that a sale to be based on the re-establishment of his broiler production facilities would probably be terminated by the inability to obtain a market for the broilers that could be produced.

Another grower, Robert Tryon of Noel, Missouri, testified at a hearing conducted by a special subcommittee of the House Small Business Committee at Neosho, Missouri, in 1961. He told the Committee, and it is a matter of record, that he had been told by one of the large processors that he would never raise another broiler if he testified before the Committee as he planned to do. Mr. Tryon passed away in 1965, but it is important to know that he was never able to use any of his broiler producing facilities again because he could not obtain a market.

I want to point out to the Committee that all this grower activity in 1961 and 1962 was in support of the proposed legislation to stabilize the broiler industry which was then being promoted by the Agricultural Stabilization and Conservation Service of the USDA.

Whether or not a person is in agreement with government stabilization efforts and market orders or not is beside the point. It has been the policy of the government to help farmers through these programs if the farmers so desired. Here was a group of people who were exercising their constitutional rights of freedom of speech, to assemble and to petition their government through organized collective action. Their rights were violated by a concerted industrywide plan to destroy their organization by a government within a government. And a government composed of industrial oligarchs.

As one individual who had been intimidated stated, "If they can tell me I can't belong to this organization, that I can't attend meetings, that I have to be careful what I say, then this means to me that they will soon be telling me what church I can belong to and how I must vote."

Many of us who have watched the growth of corporations in agriculture and the development of vertical integration with the consequent loss of our free markets, where any man could sell that which he produced, are apprehensive about what form it will eventually take. Individuals and farm organizations alike have called this new system collective farming, corporate collectivism, feudalism and militaristic.

Leroy Robinson testified at a Packers and Stockyards Hearing (P & S Docket #3497) in Fort Smith, Arkansas, and I quote. "You've got to figure this thing just like you was in the Army," his company field man told him. "He left the

impression that he was the sargent and I was a private and I'd do it just like he wanted it done," Robinson stated. Is it any wonder the growers want and need to organize?

A man has property in his civil liberties and while Congress cannot abridge these liberties, it is the duty of Congress to protect these rights and determine that they are not abridged by sanctions and reprisals by economic consortiums controlled by industrial oligarchs.

While protests are made that legislation provided for in S. 109 is not needed, one has only to determine from what source these protests come. These protests, in most cases, are really a camouflage. The simple fact is the record speaks loudly and clearly.

From the record we can come to one other conclusion: In spite of the fine laws and the attempts by the agencies involved to administer them properly, the procedure is too slow and there is not enough protection for either individual or organization.

The Agricultural Producers Marketing Act of 1967, known in the Senate as S. 109, if enacted, will be as important in protecting the marketing rights of agricultural producers as the Bill of Rights is in the protection of Civil Liberties of the individual from government.

That there is, and will be, controversy in respect to the proposed legislation is understandable. At issue in the bill is whether producers of any agricultural product in an economic production and marketing system are to be subjects of that system, and the system sovereign, or whether individuals are to be sovereign, and equity developed in the system.

At stake is whether the existing inherent right of the individual, guaranteed by the Constitution and the Bill of Rights, to freely assemble, express opinions, petition legislators and government, and pursue an economic course is to be inviolate.

To be determined here is whether the individual producer can organize with his fellow producer in a common effort to collectively bargain for the sale of his products as the Capper Volstead Act gives him the legal right to do or whether these rights are to be subjugated to the whims and dictates of a government or governments within a government. A government not of the people and by the people, but one of and by industry oligarchs whose primary economic interests precede all others.

To expect any company, corporation, individual or trade group to voluntarily admit that the actions this proposed legislation defines and prohibits, have taken place in their operations would be expecting the impossible. But, why they deny categorically, as they do, that there is nothing wrong within any industry, when previous statements before this committee, the record in the courts, and regulatory agencies refute their claims so dramatically is beyond comprehension.

When powerful companies and trade groups oppose this legislation, as they are doing, and attempts to divert the scrutiny of the legislative body from the infections within an industry, there is a reason. They are, in my opinion, publicly admitting that in order to operate they must be able to interfere with, restrain or discriminate against; that they need to be able to boycott, coerce, intimidate or buy individuals and make false reports and combines and conspire in order to control and govern within an industry.

We can deduce from their action that these tactics are needed to replace, in some cases, the arts of persuasion, selling and the providing of a better and more efficient service or a more profitable market.

The use of repressive tactics prevents and precludes the possibility of open debate and prevents the public airing of objectionable features of a market system. Inevitably, this leads to inequities in the marketplace for those repressed. Monopolies are created by repressive tactics and in time not only are producers exploited, but consumers suffer as well. Self-serving are the attempts to appeal to the public to help protect what is described as the most efficient system in agriculture yet devised. The truth of the matter is that some who protest loudest about this legislation built their business by climbing up the backs of, and exploiting, helpless producers.

Unless one were against motherhood, fifty stars in the flag and all the moral concepts and ethics taught in our homes, schools and churches and civic clubs, it would be difficult not to agree with the principles embodied in this proposed legislation. Any reservations we might have are not about principles, but whether in its present form this legislation will accomplish what is needed. We would not want to give the patient a laxative when he is in dire need of an appendectomy.

We will admit to being biased, and we feel we have some justification in our position; for the last five years we have had to live on a day to day basis with the repressive tactics this bill would specifically prohibit. Not only were these tactics used to destroy the organization I represented, but the economic lives of individuals and families as well.

Our experience over the past five years shows that the present legal processes are very cumbersome and long delays can be expected when subpoenas are served and challenged; while attorneys use delaying tactics when preparing cases and filing briefs: while economists delve into records and marshal facts and prepare needed information; and while time is exhausted fighting jurisdictional battles in the courts. In the meantime, the individuals or organizations on whose behalf the action was brought either have been bankrupt, forced out of business, required to retrench and their associations destroyed because of forced inactivity and loss of momentum.

We have some reservations about this proposed legislation, but nothing is ever perfect, and we believe it to be a step in the right direction. To give the farmer the countervailing power he needs and deserves in the marketplace, a more positive approach is needed than that which now exists.

This legislation would do that by making it crystal clear that the individual or his organization can legally move against any handler of agricultural products who does any of the things this legislation seeks to prohibit. In addition the Secretary of Agriculture can move on behalf of the public and the individual when he has reasonable cause.

There are three words used in this act that we think should be defined for the record and discussed briefly. They are boycott, intimidation and coercion.

Webster defines boycott thus: "to combine against (a person employer, a group of persons, or a nation) in a policy of nonintercourse for economic and political reasons."

When one or a group of people are boycotted, it is usually rather obvious, and creates quite a bit of new within an area or industry. While economic boycotting is an overt act, it takes adequate discovery work by properly qualified persons interviewing, taking depositions and statements, as well as pursuing and developing relevant economic information to develop a case that will stand up in court.

However, the time factor involved in proving boycott cases makes it disastrous for anyone to run the risks of being boycotted to prove a point. No one can afford to be a martyr regardless of how altruistic he may be. Some who have had the courage to stand up on our principles have involuntarily become a martyr.

The following quotation from Mr. Ellis Hale of Waldron, Arkansas, who testified before this Committee last year in respect to the fact that he had been boycotted since 1962 illustrates our point. In a letter to me date January 16, 1967 he stated, "My attorney warned me recently that we had a bear by the tail and that it would be dangerous if we did not let go. It may be dangerous, but as long as we have one dollar of resources left, it will be used in an effort to get justice in this matter. Of course you could say that the government did take a stand and spent considerable time and money to protect our rights. This is true to a degree, but when their part is completed, the individual poultryman is in just as bad a condition as he was in 1961."

Those people who have been boycotted in any industry stand out as shining examples. Consequently, very little more needs to be done to intimidate others in the industry.

Intimidation is defined as "to make timid or inspire with fear; to force into or defer from some action by inducing fear." Strong men are cowered and submit to intimidation, even though they know that it is in their best interest in the long run to resist. Today the high cost of living and operation require that men protect the immediate security of the family. No longer can a man pack his belongings into a wagon, call the dog, and move to a new area. To protect his worldly goods and family, he submits to intimidation.

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Below, we have briefly illustrated the methods that were used to destroy our organizational effort. The few examples listed are a small sample of the many we could discuss. Each of the examples is taken from newspaper accounts, court records, Packers and Stockyards Docket #3497, and the writer's personal experience. I am personally acquainted with the people involved in every case.

GEORGIA GROWERS INTIMIDATED, MEETING INTERFERED WITH

Broiler growers in Southern Georgia were intimidated by field service men representing a national concern strong in that area. As a result growers refrained from attending a Producers Poultry meeting in Douglas, Georgia. The growers were told they had better not attend. National speakers including USDA representatives were on hand to discuss stabilization and poultry marketing problems.

FALSE REPORTS ABOUT ASSOCIATION FINANCES AND SUPPORT

In depositions taken at Fort Smith, Arkansas during January 1967, Joe Ray, an Arkansas poultry integrator, admitted that he had said that Jimmy Hoffa was backing the U.S. Poultry and Egg Producers Association. It is common practice to associate anyone who works to organize growers with Jimmy Hoffa or the communists to destroy and intimidate.

ALABAMA POULTRY MEETING INTERFERRED WITH BY COMBINATION OF POULTRY COMPANY MANAGERS

Broiler growers in North Alabama were attempting to encourage growers to attend and join their association in 1962. They made arrangements with the assistant county agent to hold a meeting in the community hall at Double Springs, Alabama. The assistant agent thought it was a good idea, agreed to prepare a mimeograph letter and circularize all the growers in the area. Later he consulted with the county agent who in turn consulted with the local poultry integrators. They told him not to send out any letter.

When the growers arranging the meeting arrived at the meeting place they were confronted with eight poultry integrators. The growers were informed there was no need for a growers organization. The growers disagreed, but their organizational efforts were successfully subverted.

Several of the broiler producing firms represented at the meeting belong to the National Broiler Council. Some of the persons taking part in the meeting were participants in the recent Broilercade sponsored by the National Broiler Council, the purpose of which was to convince legislators that there was no need for S. 109.

POULTRY COMPANY EXECUTIVE URGES BLACKLIST

On June 28, 1965, Al Hollingsworth, manager of Farmers Cooperative Association in Arkansas, testified at a Packers and Stockyards hearing in Fort Smith, Arkansas that "he received a blacklist by telephone on May 1, 1962 from a Mr. Roy Grimsley" who was an executive of Tysons Food, Inc.

Hollingsworth said Grimsley warned him over the phone that the Northwest Poultry Growers Association was being controlled by unions. "He told me the only way to stop the association was to blacklist the growers," Hollingsworth said.

ARKANSAS BROILER GROWER INTIMIDATED BECAUSE OF SUSPECTED ORGANIZATION ACTIVITY

Leroy Robinson of Arkansas was not a member of any group or association. However, he testified at the Packers and Stockyards hearing, recorded in P & S Docket No. 3497, about two meetings he had with Arkansas Valley Industries Company personnel in 1961 who suspected he was an association organizer. Robinson testified, "At first in the conversation they called me a trouble maker over in this end of the county and said they couldn't do business with a man like me who was trying to organize growers."

NORTH CAROLINA BROILER GROWERS INTIMIDATED

In Southeastern North Carolina directors of the local broiler growers association attempted to discuss their difficulties with an integrator who was paying

them one cent per pound. They were kept waiting in the reception room. After a considerable time, the integrator walked in, read a prepared statement and walked out. Subsequently, it became a well known fact in the area that broiler growers were not to be members of a growers organization.

CALIFORNIA BROILER GROWER BOYCOTTED BECAUSE OF SUPPORT OF STABILIZATION PROGRAM

John Mitchell, a broiler grower in Central California, was boycotted because he took the lead in discussing and bringing information to growers about the proposed national broiler stabilization program. He has been unable to obtain a market for broilers since 1962.

MEMBERSHIP IN GROWERS ASSOCIATION CAUSES POULTRYMAN TO BE BOYCOTTED

During a Packers and Stockyard hearing in Fort Smith, Arkansas, Roy Hale of Waldron, Arkansas testified that after joining the Northwest Poultry Growers Association in late 1961 and attempting to get other area farmers to join his own verbal-grow-out contract with Arkansas Valley Industries, a local integrated poultry firm, was terminated.

When he asked Sonny Clements, area manager for Arkansas Valley Industries, why he could no longer supply birds and was it because he belonged to the growers association, Clements replied "that was the dominating reason."

Hale also quoted Clements as saying, "This was not my doing. It came from higher up."

24-YEAR VETERAN GROWER THREATENED WITH LOSS OF CONTRACT

Howard Williamson, a 24-year broiler growing veteran of Lowell, Arkansas, said he was subjected to several question sessions by his local firm after he became known as an organizer for the poultry growers association. A company field man told him, "Howard, I am very disappointed in you. I understand you are a member of that association. I don't know whether you will get any more chickens or not."

ARKANSAS GROWERS ORGANIZATION DESTROYED

The Southwest Arkansas Poultry Growers Association had 200 members in 1962. After boycotting of growers in North Arkansas, membership dwindled to a few individuals who occasionally met secretly. One large grower stated, "If the integrators knew we were meeting here tonight our growing contracts would be cancelled tomorrow."

RIGHT OF EGG PRODUCERS TO ORGANIZE AND EXERCISE VOTING RIGHTS DENIED BY COUNTY AGENT IN TEXAS

An egg producers' meeting was set for the night of April 27, 1962, at the courthouse in Houston, Texas. When the formal part of the program was concluded, a motion was made to organize the Texas Poultry and Egg Producers Association. There were 75 egg producers present. Acting chairman, Herb Hodges called for a vote. The assistant county agent refused to let the group vote on either forming an organization or voting on whether or not the group was in favor of a stabilization program for eggs. The assistant agent said, "I'm acting on orders from the county agent."

NATIONAL FEED MANUFACTURER REACTS TO POULTRY ORGANIZATION

Dennis Mason, former Bentonville, Arkansas hatchery and feed dealer, testified that a Ralston Purina field man had told him the firm was discouraging further business dealings with members of the Northwest Poultry Growers Association. Mason attributed the statement to Tom Hagen, field man for Gold Bond, a Purina subsidiary at a monthly meeting of feed dealers in Rogers, Arkansas. Mason stated that Hagen said, "The Purina company knowingly won't continue furnishing feed to any of these growers."

The above story was printed in the Poultry and Egg Weekly, June 26, 1965. John Berry was the reporter.

The incidents reported above speak for themselves. A strong Act on the books prohibiting action of the kind outlined would first of all be a great deterrent to

any company or its representatives in the future. If it did occur, S. 109 would provide needed remedies.

Senator JORDAN. Are there any questions, Senator Boggs?

Senator BOGGS. Let me thank you for your statement. It was very impressive.

I do not know whether you were here when the independent cotton ginners were testifying, as well as some of the other people, but, as you have talked about cotton, let me ask you: You are not a member of a cooperative association; you are an independent producer. Anyway, you have looked over the situation, and you take your cotton into the oocperative association to be ginned. Automatically, in doing that, it makes you a member of the association.

That is the way I understand or construe the testimony.

Now, suppose next year, or even later on in the same year, if you harvest more cotton—I am using cotton, because it is in connection with this testimony, but it would apply to any producer of any product—you decide that you have a bigger benefit coming to you by going to the independent ginner. Can you do that under S. 109? Once you go to the cooperative, and become a member of the cooperative, do you have a further choice?

A lot of the testimony here concerns the producer's right of choice about this, for his own benefit. Once he is a member of the cooperative, can he, later on—next year or this year—go to an independent?

Mr. FERRY. I think that this would vary the kind of association that he was a member of, and what kind of contract he had with that association.

Senator BOGGS. He just automatically becomes a member of it once he takes it in to them?

Mr. FERRY. I think in some cases that is probably true.

Senator BOGGS. That is one of the requirements of his going in there?

Mr. FERRY. His membership fee would be taken out of the proceeds, out of the sale of his products.

In the case of our ourganization, we were a voluntary group. You could belong or you could not belong, as you desired. It was not our purpose to market, or anything. We were sort of a semi-political group, I would think.

Senator BOGGS. This would help in your organization?

Mr. FERRY. That is right. As a former member of the Western Farmers Association, in Seattle, Wash. They were active in three States. I signed a contract that said that I was going to market all of my products through them for 1 year and, at the end of that period of time, I had to sign a new contract.

I think that there are a number of probably different arrangements, but I do believe if you are members of some of these cooperatives, if you desire, you could take your product somewhere else to market it.

Senator BOGGS. Some of the testimony has indicated, on this matter of price, that they call that discrimination; if one producer does not get the same price as the other producer, for example.

My background is in the tomato field, Mr. Chairman. My grandfather, after whom I was named, started in that after the War Between the States, and taught school on the side. So, I have kind of grown up, all of these years, in the tomato field.

Senator JORDAN. He was an early moonlighter.

Senator BOGGS. Yes, sir. In growing and marketing, and in processing tomatoes, the question of quality is important. It is more pronounced today than it ever was before, because you have the Food and Drug inspectors inspecting the tomatoes, and you have the Department of Agriculture's inspectors checking. The kind of ground has a big effect on the quality of the tomatoes, whether the tomato will be red or whether it has some green in it. The type of fertilizer also enters into it. All of this has a big effect on the tomato. Every farmer does not grow the same quality tomato. The matter of size, for example, is another consideration. So, there really is ground for paying this producer a better price for his 10 acres of tomatoes, based upon his production record and the type of ground that he has, and not paying my friend over here the same price, because he has small tomatoes, which are part green. And if there is green in them, the cannery throws them out, because they are not the quality they desire. You cannot get a pack that is acceptable. So, there should not be anything in this law, or in any law, that would interfere with the price judgment on the quality of a product.

With reference to broilers, as you know, broilers are of al kinds of quality.

Mr. FERRY. That is right.

Senator BOGGS. We claim, on the Delmarva Peninsula, that we have the best quality, but even among the best quality there is quite a variation. That testimony impressed me, considering my own little background of experience.

I do not think that we want to write in something that will interfere with the pricing of a product on the basis of its quality. And that is what these people are afraid of, on some of this language, Mr. Chairman.

Senator JORDAN. You seem to be familiar with the broiler business and eggs. We have had testimony here—and I think that is the general situation in all of the major producing broiler States such as North Carolina and Georgia and your State, and so forth, where you have the vertical contract—now, let me see if I am correct: A processor furnishes the chicks, furnishes the food, and furnishes everything. He contracts with the producer, to buy those chickens at a certain price per pound, or in some cases so much per bird. Do you see anything wrong with that situation?

Mr. FERRY. Well, no, I think it is all right. First, I want to say that I think we are going to have to get some of the efficiencies derived from integrated agriculture to produce needed food supplies. I cannot see anything wrong with contracting ahead 90 days for what you are going to deliver. It is done in every other phase of industry. I cannot see anything wrong with that.

I think that the thing that we need to have here is a balance of power, so that the individual farmer will have a balance with that of the buyer. In other words, if the buyer is dealing with all of these different people, unless they can collectively get together in some way, in the present structure there is not anything for the farmer or producer to have countervailing market power.

Maybe this will answer your question, Senator Boggs, about this price differential: For example, this is not a typical contract but it is

one that is in existence. The top price was 1.9 cents per pound. For example, there were 100 growers in this whole integrated complex.

Senator JORDAN. Of what?

Mr. FERRY. Of broilers. There were 100 growers of broilers. It was one processor, an integrated complex; that is, the hatchery and the feed mill and the processing plant and the marketing service.

The top grower would get 1.9 cents per pound. You would have 100 growers here. At one time, the bottom grower got 0.9-cent per pound. This means that the integrator in this program knows that his average cost was going to be 1.45 cents per pound.

This kind of contract takes care of the differential that you were talking about. I see nothing wrong with that except that I do not like the price structure, because you simply cannot do it for that price.

I think that the University of Arkansas and the Farm Bureau have proven that the average cost out-of-pocket costs, for growing a pound of broiler is a minimum of about 1.61 cents per pound, and then it goes up to about 1.71 cents per pound.

Here was a contract that was providing only 1.45 cents per pound for the average grower, so the average out-of-pocket cost was 16 hundredth of a cent per pound. This is the thing that I am concerned about. This is why I say that we need to be able to get together to bargain collectively for this average price. And I cannot see any reason why the farmers cannot do this, as well as have an individual bargain for differences in the price of production.

Senator BOGGS. And recognizing the quality factor.

Mr. FERRY. That is right.

Senator JORDAN. I believe that you are getting to price fixing. You are saying that this law, as I understand it, this bill, S. 109, is not designed to guarantee anybody any certain price per pound or per bushel or per peck or per bale, or per anything else. That is an economic problem that I recognize very easily.

I know that the broiler people are having a tough time. It is not altogether any one person's fault; there are just too many people raising broilers. That is just all there is to it. I will tell you that. The more broilers there are sold, with no more people there to buy them, forces the price down. I get those prices from the Delmarva market every day, and that price sort of sets it for North Carolina, Virginia, and Georgia, all the way down the line.

Senator BOGGS. Getting back to tomatoes again, some farmers take a great pride in the tomatoes they grow. They have a good piece of land—land that is good for growing tomatoes, in the first place. They put in the fertilizer; they put in the seed. They will buy $25 seed to use for their plants. They go to all of that trouble. They will grow a crop of tomatoes that the processor will give his right arm for.

He may go down the road apiece and the crop of tomatoes down there is very poor. He will have a hard job sorting them and making a pack out of them or making juice out of them. So, we have a big problem on that score.

Senator JORDAN. One of the problems that we are attempting to get an answer to, which you are aiming at—with which I am thoroughly in agreement—is that the broiler industry, or any producer, needs more money for a great many things that he sells. There is no question about that. But every time we have tried to bring the price up to that

which would be a support, if they can get together and support it, then there are more producers who get into the business, and we have more chickens, and pretty soon you have worsened the situation.

Mr. FERRY. That is correct.

You asked before if this is not price fixing. I suspect that we have got some other examples in other industries. In the steel industry—for example, in the automobile industry, it is not called price fixing, it is called price leadership—but I think that it is a pretty good example of what does occur in other industries. Farmers are going to have to get together to do this, too, in some way.

I am of the opinion that we have to get some money back into these rural communities to stop the exodus of people from the rural communities that we now have and creating these problems in the cities.

One of the best ways to get an adequate price for the production of the farmer is to have a fair price.

Senator JORDAN. There is no argument on that.

Senator BOGGS. There certainly is not.

Senator JORDAN. Certainly, I thoroughly agree with you. Any legislation that I have any part in enacting and in perfecting is going to be to take care of the farmer himself. That is what we are trying to do in this piece of legislation right now, and that is the producer, the farmer. I see nothing wrong in that. I think the law intends that he can bargain collectively in cooperatives or in associations, and he should not be intimidated in his right to belong, but he should not be made to join unless he wants to join. He ought to be able to sell anywhere he wants to sell.

Mr. FERRY. That is right. We should be able to persuade him by debate. I do not think that we should force him into it. Certainly by conversation and debate and in selling we should be able to get him in as a member. If we cannot, that is something else.

An outstanding thing, Senator, was that in 1962 we had 25 percent of the broiler growers in the State of Arkansas lined up in about 2 weeks, on a petition. The members of our association down there were out working. They wanted a stabilization program. The industry saw that they could not handle the situation, so this was the way that they stopped us, by boycotting. All you have to do is to boycott two or three people. There were, incidentally, about 12 people who were boycotted throughout the State in this case. Most of these people have had to make arrangements to do something else. As I say, all you have to do is to boycott one, two, or three, and they stand out as a beacon light for everybody else to see. And then you have the process of intimidation and coercion that takes place. These things are difficult to prove. In boycotting, you stand right out—they can really see you when you are boycotted. Intimidation is something else, and so is coercion.

Senator JORDAN. Thank you very much.

Do you have any further questions?

Senator BOGGS. On the question of quality—I do not mean to be pressing it too hard, but I think that you have the right to give a man credit for his equality. I feel that. If you want to see the difference in quality, you just go to the Delaware State Fair and see what these 4–H'ers bring in their products, the quality in tomatoes, corn, cantaloups, strawberries—you name most any product. There is a big variation.

Mr. FERRY. And, in Oregon, raspberries and strawberries.

Senator BOGGS. There is a tremendous variation in the quality. I think the man who buys high-priced seed, certified seed for his special crop, and has the type of land that produces well, I think you have to protect him, too.

Mr. FERRY. Yes, sir. This contract that I outlined to you was based on efficiency. The lower your feed conversion, the higher in the price bracket you would fall. So, this takes care of the thing that you are complaining about in the broiler industry. I am sure that the people that are attempting to bargain for the broiler growers now are well aware of the need for efficiency and for keeping costs under control. I do not know of anybody who wants anybody out of business. They are aware of the fact that the integrator and the supplier in that community is an integral part of their business. They want to see him profit, too.

Senator BOGGS. There is a fear that the man who makes a special effort and gets seed of high quality is somehow going to be cut down to what the average is of the poor grower and would have no incentive to do any more than this low man. That is what concerns me about this.

Senator JORDAN. As I said a while ago, what we are trying to do in this is to protect the producer—the farmer, the grower, the broiler producer, the producer of eggs—whatever they might be producing in the agriculture field. You would not want to deny him the right to sell his product to anybody that he wants to sell to anytime, would you?

Mr. FERRY. The farmer?

Senator JORDAN. Yes; he is the producer that I am speaking of.

Mr. FERRY. Well, I do not think he should be denied the choice. If he wants to join a bargaining association and become a member and sell his products, that is his way; that is fine. But, at some future date, if he does not want to be a member, he should be able to do otherwise.

One of the things he should have is the opportunity to do it. This is the thing that I am concerned about. In Arkansas, there was no opportunity to do that. They eliminated the opportunity to do that.

You have a different situation in the Delmarva area than we have in some other areas. You have a semiopen market.

Senator BOGGS. Yes.

Senator JORDAN. On the other hand, would you concede that he who buys the poultry has the right to buy from anybody he wants to buy from, that he does not have to buy from the cooperative but that he can buy from an independent producer if he so desires?

Mr. FERRY. Well, I think that he should probably have the same rights that I would have as a producer. I think that he should have the right to buy where and what he wants to buy, but, on the other hand, you were concerned and asked the question the other day about this bigness, this concentration in the industry. I have about concluded that there needs to be something done about the big feed companies entering into competition with me as a small producer. I am sure I cannot compete with Purina and others, for example.

Senator JORDAN. I suspect that you are, at least partially, right on that.

Mr. FERRY. I do not think that they should be eliminated completely.

Senator JORDAN. I do not know that we can remedy that under this bill, though. On the other hand, you come right back to the same point

that Senator Boggs raised when you say that you cannot produce as efficiently as he can and the consumer can buy them for 3.5 cents a pound on the market and it is costing you 3.7 cents a pound. Of course, then, you are losing money. That does happen sometimes. But to say that you cannot do that, there is nothing illegal about it, and I do not see how you can cover it in this bill.

I think that you may have to go back to your question of monopolization, where you have a great many of these big processors where they furnish the feed, as I said awhile ago, and the chicks and the eggs and the whole business, and if all of the others get together and fix prices, then you have something else. I do not know anything under the broiler situation that prohibits a man from buying the chicks that he wants and placing them with anybody who wants to raise them. Sometimes he is a loser in this deal. He contracts for a lot of chickens and the market drops, and that is what is happening to a lot of producers now who get into something that is not strong, and that company goes broke, and, then, he loses, too. He cannot buy chicks—he cannot pay for them if he does.

Mr. FERRY. We might ask the question at this point: Who is getting all of the oversupply in the broiler industry? This seems to happen in cycles. I have not the answer for this, of course. Dr. Henry from North Carolina, who is an eminent economist in the broiler field, said that by 1970, over 50 percent of the total broiler production in the United States would be in the hands of 10 companies. If this will happen between now and 1970, what will happen by 1975?

I think we have to be concerned about this concentration in agricultural business. The production of commodities being in too few hands. Wide dispersal of food production is one of the best safeguards the American consumer has as opposed to the closely held production of agricultural products.

Senator JORDAN. Yes, sir. Those are all problems that we have to look at down the road, but this man may have a better crystal ball than Dr. Henry. He may or may not be right, because by the time the broiler business gets so good—I am living right in the broiler area, and you do, too—I live in the broiler area—every time the market goes up to about 14, 15, 16 cents, where the market is good, you will see another house being built. He goes into the broiler business. When you see one with the window lights out, you know how he went out of business—the market dropped. It was not his fault. The market had too many broilers.

It is the same thing with anything. Unless the Government buys those things, they have difficulty.

We had a peanut meeting this morning. If the Government drops the support price on peanuts, it will be disastrous. They are selling a lot of those peanuts for less than the Government paid for them, simply because there is not a market for the amount of peanuts made. And the reason is very simple: they have jumped from about 1,000 pounds per acre of peanuts to 1,800 to 2,000 pounds of peanuts per acre. There you are. There are too many peanuts per acre, so somebody is going to retract on production.

Senator BOGGS. That happens in a lot of things.

Senator JORDAN. Yes, it does, in a lot of things. It is a tremendously big problem that requires a lot of study. I am 100 percent for anything

that we can do to help the fellow who is in business. I can guarantee you that I know something about these conditions. It is hard work. He does not ever get very rich at it.

Mr. FERRY. He certainly does not.

Senator JORDAN. Thank you very much. We are very glad to have had you with us.

Mr. FERRY. Thank you for this opportunity.

Senator JORDAN. Our next witness is Mr. Paul L. Phillips, who is from Mardela Springs, Md.

And that is might close to your State there, Senator Boggs.

We will be glad to hear from you, as you wish, sir.

STATEMENT OF PAUL L. PHILLIPS, MARDELA SPRINGS, MD.

Mr. PHILLIPS. My name is Paul Phillips. I am a farmer and live in Mardela Springs, Md. I am president of Tri-County Poultry Association; member of Wicomico County Farm Bureau; director of Delmarva Poultry Industry, Inc.; director of the National Broiler Council, chairman of National Broiler Council Grower Advisory Committee. I speak as an individual.

Having gone through the leadership over the last 7 or 8 years, you wonder probably why I have never appeared before you, but I do not think that all of our legislation perhaps has been as important as this. I think this is very, very important, and that is why I am here.

I grow 30,600 broilers per flock. For the last 25 years I have been growing broilers. During this time I have approached growing from many angles, buying feed, mixing my own feed, and contract growing. In 1966 I grew two flocks to "my own account" and two flocks on contract. I grow on contract as of today—I may change later this year.

If things look a litle dull in the next 6 months, I might want to go on contract, and he might say, "How long do you expect to do this?" He may look a little dubious.

I believe that every farmer should continue to have the right to belong or not to belong to any civic, political, religious, or business organization he chooses. He should have the right to choose his business associates, solicit customers for his commodities or his services, and for customers to solicit him as their source of supply.

I want to call your attention to a "model contract," a broiler contract, by a bargaining association, to paragraph 9:

> Expansion: If Contractor shall elect during the term of this Agreement to significantly expand the size of its broiler operations—

He expands by taking on new growers or by the same growers building additional houses. These are the two ways that he would do it—

> Grower shall, if his performance has been average or above as compared with other growers raising chickens for Contractor, for the immediately preceding the batches of chickens raised for Contractor (or for the batch or batches of chickens raised if less than three) be given the first opportunity to expand his operation to absorb a reasonable and economic portion of Contractor's expanded broiler growing operations.

It can easily be seen that the contractor will not be free to solicit me as one of his growers, until after he receives permission from all above average growers—one-half—who presently have a contract with his company.

This would be about one-half above average and about one-half below average. And I might state that the best music that I can hear in my ears is that every time I sit down to eat breakfast, to have the telephone ring—when my wife is putting the bread into the toaster—and have another broiler contractor say "I want you to grow chickens for me." I do not know of anything that is any sweeter. I will eat cold toast every morning all year long if a new company will just call me every morning, but under this multicontract we are being asked to sign, he will not be allowed to do this.

The company I am going with has 600 growers. He would have to go to 300 of these people, and then they would have to go to somebody to see if they could get financing, and this and that, and he would never get to me. So, this means that this restricts competition. This means that one feed company can never go to another grower of another company and say "I want to take him away from you." This is how we have a lot of competition now, in Delmarva. We are closest to the highest concentrated poultry area in the world. There are several people that want me to grow chickens for them, but the prices are very low; but when the prices are good, the broiler grower really wants it.

This restricts competition, new construction by new farmers, and new construction to certain farmers. It restricts our young farmers from entering the broiler growing business. A new person would never get into the business. We do not have a measuring stick. There is none, to measure the work in this field. We can measure a bushel of corn, or a bale of cotton, but you cannot measure contract growing.

Suppose you are below average, which you would be if you had a lot of chickens, and all of these people could build new houses.

It can restrict the sale of a farm to certain individuals; this would lower the selling price of broiler farms.

With reference to the young farmer, it restricts the young farmer. This is a problem. A lot of young people do not want to go into it.

It would restrict a widow from selling the home farm to her son or daughter. As a matter of fact, only the above average broiler growers, "the chosen few," would be the buyers or the builders of any new broiler housing. Death or bankruptcy of a contractor would mean that another contractor would be restricted from doing business with the affected growers.

I do not know anything about the tobacco business. We do not grow any, but it is my understanding that, in tobacco, if you have a tobacco allotment this sort of helps the sale price of the farm, if you have this type of contract. And if you have this type of situation under this, then this would restrict the sale of your farm to certain individuals, just to a selected few, the top half of the broiler growers, not that anybody wants to go into the broiler business, but this would restrict it.

Senator JORDAN. On tobacco, I can explain that to you. Tobacco allotments go with the farm. A farmer cannot sell that to another farmer and move it out of the county or off of that farm, but there is a bill now which would permit him to sell it. He can lease it now, but he cannot sell his allotment off the farm now. They are allotted so many acres.

Mr. PHILLIPS. It helps the sale of the farm, does it not?

Senator JORDAN. Sometimes, it is the sole gage of what a farm will bring, how much allotment the farmer has.

Mr. PHILLIPS. Also, you want to keep in mind that I am not a member of a bargaining association yet, sir; not even a member of a bargaining association. You are restricted because you are not a member.

And as to this matter of the widow selling a farm. This visits on the second generation.

Senator BOGGS. How could it?

Mr. PHILLIPS. They are growing chickens for a certain company. The father dies. She wants to sell that farm. She wants to sell it to her son. Where would he get his contract to grow chickens. The contract does not go with the farm. He may be below the average grower. He could not expand. He may not even be a grower; he may be a new grower. It would restrict that.

Senator BOGGS. You mean that this proposal, S. 109, would?

Mr. PHILLIPS. I am talking about what is going on now, through bargaining associations that want protection. This is a bargaining association. I will put this contract in the record. This is what is going on now in bargaining in poultry. This is a poultry model contract. This is a part of that.

Senator JORDAN. Do you belong to that?

Mr. PHILLIPS. No, sir. I would not sign anything like that. I would fire my lawyer if he told me to sign it.

This would affect our credit, too.

Senator BOGGS. I want to get this clear in my mind. I appreciate your coming here and testifying. These contracts that you are talking about are put out by whom?

Mr. PHILLIPS. This one here is from the Alabama Farm Bureau. This is a section of the contract that restricts. If this broiler contractor were to sign it, then he could not take on any new customers, he could not solicit any new customers until after he had gone to all of the above-the-average customers and asked them if they wanted to buy a chicken farm or to build a new house.

Senator JORDAN. You do not have that in your area now?

Mr. PHILLIPS. No, sir.

Senator JORDAN. That is what is confusing me.

Mr. PHILLIPS. No, sir, we do not. This is in the State of Alabama. I am going to give you one that we have in the area.

I also want to call the committee's attention to a marketing contract, in Maryland; to paragraph C:

> Sell and Delivery: The member agrees to deliver all processing vegetables grown by him, or for him, or in which he has a controlling interest, either as landlord or tenant or the Association or to any person approved by the Association during the term of this contract.

This particular paragraph takes away from me, as a farmer, the precious right of choosing my business associates.

I will put this contract into the record, I will not read it.

Now, let us look at this thing. If this were a broiler contract, I would not be allowed to choose the company that I would like to be associated with. They are all nice businesses, but some I do not want to grow chickens with, and that is it. And I am sure that some do not want to grow chickens with me.

There are a lot of automobiles manufactured, but I prefer certain makes. And this goes down in here, and it states that if you do not

deliver to the person that they say—and this could be tomatoes, too—that you have to pay 25 percent of your sales to another company to the association, if you sell to another company. In other words, you just do not give him 25 percent of your crop—you have got to harvest it; you have got to deliver it.

Senator BOGG. You know, in connection with the growing of tomatoes, there comes a time in the season when the packer cannot pack the tomatoes. Those tomatoes have to lay right out on the ground. The farmer cannot take them.

Senator JORDAN. I had a friend get into the turkey-raising business, and he got out, but not when he should. He had a peculiar thing happen to him. The turkeys got chiggers all over them. You know what a chigger is. I have gotten more chiggers in picking blackberries than I did blackberries, when I picked them. They had little red specks on them—he thought that maybe they had the measles, although turkeys do not have measles, I believe. He asked: "What is that?" They said, "Those are chiggers."

Those turkeys had to be sold for some kind of processing, where they skinned the turkeys. It did not hurt the meat of the turkeys, but you could not sell them as nice turkeys. You would not want something like that.

Senator BOGGS. If a tomato has a little, tiny crack in it, these flies are around and you get gnat eggs in there right at that time, and you cannot pick them and pack them.

Senator JORDAN. Would you proceed, please, sir?

Mr. PHILLIPS. For a few moments let us review the history of legislation that has been passed to protect the farmer. If I consign or sell livestock, I am protected by the Packers and Stockyards Act. If I sell or consign fruits or vegetables, I am protected by the Perishable Agricultural Commodities Act. Congress has passed excellent legislation to protect me—a farmer—in my various transactions of sales or storage, even if it is only 1 bushel of turnips, a day-old calf, or a few bushels of grain.

You have done an excellent job on that, and I am really protected. In the Perishable Agricultural Commodities Act, for example, not only does it protect the farmers but it protects the broker doing business with them. It is very good legislation.

However, I am not protected from undesirable activities of a bargaining association that may sell my entire crop. Bargaining associations could be making their own rules as they go along. It may well be that some have no regard for farmers who feel they have the right not to join a bargaining association.

I think that I have pointed out some of the things how you would be affected if you are not a member of a bargaining association. Also, in one of these, you will find that this bargaining association is restricted to certain people. You have to belong to three other organizations even to be a member of the bargaining association, and there is only 1 month of the year when you can get out. You cannot come in and go out anytime that you want to do so; you have to stay in it.

Both of you know a lot about chickens. Suppose that we have two bargaining associations for a contracting company. One of them is a bargaining association for the broiler grower; the other is a bargaining association for the egg growers. Each one is doing business with

this contractor. The broiler people—the growing association gets a little better deal, and they siphon off the profit into the broiler side of it, and the hatching-egg people are stuck—there is not enough money left in the cooperative. Some of these things, perhaps, should be taken care of.

To continue about S. 109: The 1-year prison term is significant. I am of the opinion that we need more processors, livestock dealers, produce buyers, handlers, and so forth, as customers for our commodities. The prison term will discourage new customers, and new capital, from our present customers. It should be carefully studied.

There was a time on the Delmarva Peninsula that, any time in the summertime, you could hear the whistle blow from the county house. You do not hear that now. They have gone out of business. They were good people. It is a sad thing that this has happened. We cannot get new people in. If we are going to discourage these people by putting a prison term on them, I think that needs to be looked into.

More important, I think, is the next paragraph.

A prison term applies to anyone that acquires our commodities for sale, and so forth. Many of our commodities have only another farmer for a customer. They are breeding stock, feeder cattle, feeder pigs, started pullets, some vegetable plants, and so forth. We should be very careful about putting our farmers in prison.

Let us take chickens, for example. Once the breeder hen is put into a house, this farmer grows this breeder hen up to about 11 or 12 weeks; then, it goes to another farm, and this farmer keeps the breeder hen for producing eggs which go to the incubator; and, then, they go to the third farmer, and so forth, before we finally get the end product.

Now, these particular items do exist with the integrator. But think of feeder cattle. They move directly to another farmer. And so with the feeder pigs. It is also true in vegetable plants. Here is a good example. Florida, for example. They buy strawberry plants which are moved in there from another farmer. In tomatoes, they produce tomato plants and sell them to another farmer.

I do not know whether you do that in tobacco. I am sure it is true with sweetpotatoes, and perhaps all of the other things in the vegetables. Some farmers just have a knack of growing plenty of plants and others do not.

You may have seeds in one part of the State, and they have to do business with each other. This bill covers farmers. Anybody who acquires anything from a farmer. I traded one-half interest in a manure spreader for a boar hog. I think it will cover that particular transaction, too. I strongly oppose any legislation that may prohibit free competitive trade.

That is about the end of my statement, gentlemen.

Senator JORDAN. Thank you very much.

Senator BOGGS. It is a complicated problem, I will say.

Senator JORDAN. Thank you.

Senator BOGGS. That is what bothers me. I would like to have them simple.

Senator JORDAN. Do you have any further questions?

Senator BOGGS. I have no further questions.

Senator JORDAN. Thank you very much, again. We appreciate your being with us.

(The model contracts referred to above are as follows:)

MODEL CONTRACT OF THE ALABAMA BROILER GROWER MARKET SERVICE

This agreement made and entered into this day by and between _____ of _____ County, State of _____ (hereinafter called "Contractor"), and _____ of _____ County, State of _____ (hereinafter called "Grower"), witnesseth:

In consideration of the mutual promises, covenants and obligations herein contained, the parties hereto agree and contract as follows:

1. *Purpose.*—It is the intent and purpose of the parties hereto that this Agreement shall provide the terms and conditions upon which Grower, acting as an Independence Contractor and not as a partner, agent or employee of Contractor, shall house, feed and care for chickens owned and supplied by Contractor for approximately nine (9) weeks, after which Contractor will pick them up and market them as broilers.

2. *Term.*—The term of this Agreement shall be for one (1) year from the date hereof, and it is agreed and understood that during the term hereof Contractor will deliver to and pick up from Grower at least four (4) batches of chickens, each batch delivered to Grower to number not less than _____ nor more than _____ baby chicks.

3. *Contractor's duties.*—Contractor shall:

(a) Furnish and deliver said baby chicks and unload them in Grower's poultry house or houses on his farm in _____ County, State of _____;

(b) Cull, debeak and vaccinate all chicks;

(c) Furnish and deliver sufficient litter for use in growing chickens;

(d) Deliver a new batch of chickens as soon as practicable after a finished batch has been loaded and hauled away, in no event allowing a lapse of time between batches of more than four (4) weeks;

(e) Furnish and deliver such sterilants, sprayers for use in distributing same, drugs, medications and vaccines as may be needed to grow said chickens properly;

(f) Furnish and deliver box lids and brooder guards for chicks when required;

(g) Furnish and deliver to Grower feed of a sufficient quantity and quality as to assure at least a normal growth rate; provide Grower copies of weight tickets on each load of feed delivered; cause said feed from Grower's poultry house or houses to be checked and certified once or twice during the time when any one batch of chickens is being raised if requested by Grower, such test to be made by the State Department of Agriculture or a recognized independent agency qualified to make such examination; and to report findings of such check and certification to Grower;

(h) Provide a competent service man who shall make weekly visits to Grower's poultry house or houses to deliver materials and special equipment needed to administer or apply needed drugs, medications and vaccines, all as herein provided, and to act as liaison for Contractor with Grower;

(i) Be solely responsible for catching, loading and hauling away chickens being removed from Grower's poultry house or houses;

(j) Pay Grower at settlement time, as hereinafter defined, a heating allowance of $10.00 per 1,000 chickens placed in his poultry house or houses during the months of October, November, December, January, February, and March; and

(k) Contractor shall make its research information and service agent available for consultation with Grower.

4. *Grower's duties.*—Grower shall:

(a) Furnish the necessary land, poultry house or houses, equipment and utilities, and other facilities for the proper care and housing of said chickens and for the storage of feed;

(b) Provide such labor and management as is necessary to properly house, water, feed, tend and otherwise care for said chickens;

(c) Keep all records reasonably necessary for the proper and efficient management of the chickens; and

(d) Grower shall adopt and follow principles of sound poultry care and management.

5. *Independent contractor.*—Grower shall perform this Agreement as an independent contractor, free of controls by Contractor over details and manner of performance of the work to be done by him hereunder.

6. *Title.*—All chickens delivered to Grower hereunder shall at all times remain the property of Contractor.

7. *Right of inspection.*—Contractor shall have and is hereby given the right to inspect the poultry houses and other facilities used in caring for his chickens and the work and management program of Grower, and to that end and for the purpose of assuring Contractor of the full enjoyment of its rights under this Agreement, during the life of this Agreement, Contractor and his duly authorized agents are hereby given the right to enter at reasonable times to the property of Grower which is devoted to the growing of chickens hereunder.

8. *Right of repossession.*—In the event Grower shall default in any of his obligations hereunder, Contractor may, at its option, elect to either (a) enter upon the premises of Grower, take possession of its chickens in Grower's poultry house or houses and use Grower's premises to raise said chickens until they have been on Grower's premises for a period not to exceed nine (9) weeks, or (b) remove said chickens from Grower's premises and raise them for said period elsewhere, and in either case, Grower shall be liable for all reasonable expenses incurred by Contractor in raising said chickens for said period, and such expenses shall be deducted from any compensation which may be or become owing to Grower hereunder, not to exceed contract pay.

9. *Expansion.*—If Contractor shall elect during the term of this Agreement to significantly expand the size of its broiler operations, Grower shall, if his performance has been average or above as compared with other growers raising chickens for Contractor, for the immediately preceding three (3) batches of chickens raised for Contractor (or for the batch or batches of chickens raised if less than three) be given the first opportunity to expand his operations to absorb a reasonable and economic portion of Contractor's expanded broiler growing operations.

10. *Yardage.*—It is the intention of the parties hereto that chickens cared for by Grower hereunder shall remain in his poultry house or houses not less than six (6) nor more than nine (9) weeks. If, however, Contractor shall permit chickens to remain beyond said nine-week period, Grower shall receive as yardage payment ½¢ per bird per week.

11. *Time of removal.*—Contractor shall notify Grower of the proposed time of removal of chickens from Grower's poultry house or houses as far in advance of such removal as possible, but in no case less than 24 hours. After removal, the chickens shall be weighed as quickly and conveniently as possible but in no case later than three (3) hours after being picked up at Grower's poultry house or houses and chickens shall be weighed on certified scales and a copy of each scale weight ticket, showing the weight when loaded with chickens and the empty weight of the truck, shall be given by Contractor to Grower. Increases in weight during transportation before weighing shall benefit Grower; decreases shall benefit Contractor, and no adjustments to actual weights shall be made in either event.

12. *Payment.*—

(Basis of payment should be included here. Include among other things: amount per bird or per pound; definition of feed conversion, if payment based on this method; time of payment, defining settlement time; provisions for advancements, if desired; provisions on purchase of feed and supplies, if necessary (may change section 3); incentive bonus provisions; increases resulting from market price increase; minimum guarantee, if desirable.)

NOTE.—Sample payment schedules are attached.

13. *Condemnation.*—Net weights shown on settlement sheets and used as basis of payment shall be actual weights, as hereinbefore provided, minus one-half of condemned weights. Condemned weight shall be weights of chicken parts and whole carcasses condemned by the USDA Federal Inspection Service and due to field causes only, and shall not include any weights due to deaths in transit or losses by other causes in the plant of Contractor. Contractor shall provide Grower copies of all USDA official condemnation reports on chickens raised hereunder by Grower.

14. *Cancellation.*—This Agreement may be cancelled by either party hereto giving written notice thereof, including a statement of the reason or reasons for cancellation, to the opposite party between the start of the third week and the end of the fifth week from the time the batch of chickens of Contractor then being cared for by Grower was delivered to Grower, such cancellation to become effective at the end of the ninth week such batch has been in Grower's possession.

15. *Notice.*—All written notices herein provided for shall be deemed duly given and effective when they have been deposited in the United States mail, postage prepaid and properly addressed to the party to whom the notice is intended, at his (its) last known address.

16. *Arbitration.*—In the event that a controversy arises between the parties hereto that cannot be settled by the parties, each party shall appoint an arbitrator, the two arbitrators shall agree upon and appoint a third, the committee of three shall meet, hear both sides, and decide the dispute, which decision shall be final and binding upon the parties, and the parties shall share equally the costs of arbitration.

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement in duplicate original, this _____ day of _____, 19__.

_____,
Grower.

By: _____,
Contractor.

MEMBERSHIP AND MARKETING AGREEMENT,

PROCESSING VEGETABLE DIVISION,

MARYLAND AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION CORPORATION

THIS AGREEMENT is entered into on the date subscribed hereto by and between the Maryland Agricultural Cooperative Marketing Association Corporation, an agricultural cooperative incorporated under the laws of the State of Maryland, hereinafter called "Association," and the undersigned grower, hereinafter called "Member."

WITNESSETH

In consideration of their mutual promises, covenants and obligations, the undersigned grower and the Association agree as follows:

1. *Application for membership.*—The undersigned grower hereby applies for membership in the Association and, if accepted, he agrees to be bound by and subject to all obligations and conditions as set forth in this Agreement.

2. *Approval of application.*—The Association hereby accepts said application for membership and extends to the undersigned grower, hereinafter referred to as "Member," all rights and privileges of membership in the Association.

3. *Member services.*—The Association agrees to perform the following services for the Member:

(*a*) To furnish a comprehensive market analysis and informational program related to the marketing of processing vegetables in Maryland and nationally;

(*b*) To assist in planning and carrying out organizational activities to increase participation by other processing vegetable growers in the processing vegetable marketing program;

(*c*) To arrange and participate in conferences between the Members and buyers to discuss mutual problems related to marketing of processing vegetables;

(*d*) To participate in analyzing factors relative to the marketing of processing vegetables and in developing a recommended schedule of processing vegetable prices and other terms of sale each season;

(*e*) To advise Members of current prices paid by processors for processing vegetables in Maryland and other states during the harvest season;

(*f*) To plan and conduct an informational and educational meeting for growers each year;

(*g*) To participate in a coordinated processing vegetable marketing program with other states through affiliation with the American Agricultural Marketing Association;

(*h*) To assist Members in finding the best available markets for processing vegetables;

(*i*) To negotiate sales for Members' processing vegetables when Paragraph 9 of this contract is applicable.

4. *Membership dues.*—Unless Paragraph 9 is applicable, the member agrees to pay dues based on a minimum of $15.00 or fifty cents per acre of vegetables listed in Section 12 produced and sold for processing, whichever is the greater. Dues shall be paid at the time of signing this agreement on the basis of the member's acreage of the previous crop year and then on or before September 1 of each succeeding year on the basis of the current crop year acreage. The maximum dues shall not exceed $400.00.

The undersigned grower agrees to pay supplemental fee of $10.00 to be charged to all Members of the Maryland Agricultural Cooperative Marketing Association Corporation: Maryland Farm Bureau members shall be exempt from service fee.

5. *Crop estimate.*—On or before December 1 of each year, member shall indi-

cate his usual or major processor or handler and will furnish an estimate of the total acreage of processing vegetables that he expects to produce the succeeding year. This information shall be furnished on forms supplied by the Association, and returned to the Association on or before the date set by it. If the Member also is a member of a vegetable processing cooperative association, or a mutual processor, this estimate of processing vegetables to Association must delineate not only full quantity but that portion which will be committed to processing cooperative association or mutual processor.

6. *Termination.*—This Agreement shall continue in effect indefinitely unless cancelled as herein provided by one of the parties hereto. Either party hereto shall have the right to cancel this Agreement by giving written notice to that effect by mail to the other party on any given day during the month of October of any year after this Agreement has been in effect for at least one processing vegetable marketing season. Obligations of both parties shall end one year after notice of cancellation is received.

7. *Common stock.*—The Member agrees to purchase and does hereby purchase one (1) share of common stock of the Association having a par value of $1.00 per share, cost of which shall be deducted from membership dues to the first year. The Member authorizes the Association to retain said share of stock on behalf of the Member and authorizes the Association to effect a transfer on the books of the Association of said share of stock from said Member to the Association at any time said Member fails to fulfill all the eligibility requirements of the Articles of Incorporation and By-Laws with respect to holding and owning such stock.

8. *Definitions.*—For the purpose of this Agreement, except when the context clearly indicates a different meaning, the following definitions are agreed upon:

(*a*) *Buyer.*—A commercial vegetable processor in the accepted sense of the term who receives fresh vegetables for use as raw material to be converted from their natural fresh state for resale as a processed product by cooking, freezing, or other treatment altering the natural condition of the vegetable.

(*b*) *Processing vegetables.*—Vegetables in their fresh natural state available for delivery to a processor as defined above which are listed by member in Section 12.

(*c*) *Grower.*—One who produces vegetables.

The below listed provisions of this agreement become effective only when paragraph 9 is applicable—requires vote of membership as specified in paragraph 9.

9. *Sales agent.*—The Association shall be named sales agent for a particular processing vegetable if at a meeting called by the board of directors, an affirmative vote is obtained of two-thirds of the membership who produce the particular vegetable and who vote on the question, providing that those voting in the affirmative repsent not less than 50% of the estimated acreage of that particular crop under membership agreement. Said employment of the association sales agent shall be subject to the following terms and conditions:

(*a*) *Association the sales agent.*—It is expected that the Association will negotiate the sale of vegetables to a processor named by the Member as his normal outlet, but the Association in its sole discretion my market or negotiate sales of processing vegetables in any manner that it may deem best. The Member agrees to deliver his processing vegetables at such place or places as the Association shall direct. The Association accepts the appointment and employment to act as sales agent.

(*b*) *Negotiation of sales.*—The Association agrees to negotiate sales, on behalf of the Member, to the best of its ability under economic and marketing conditions from time to time existing, all processing vegetables covered by this Agreement at such prices and under such other terms as the Association deems to be in the best interest of all the members who have entered into agreement similar to this one, subject, of course, to conditions which may be beyond the control of the Association.

(*c*) *Sale and delivery.*—The Member agrees to deliver all processing vegetables grown by him, or for him, or in which he has a controlling interest, either as landlord or tenant, to the association or to any person approved by the Association during the term of this contract. Official notice of such approval shall be given to the Member by the Association by mail, addressed to the Member as shown on the Association's records.

(*d*) *Processor or handler.*—The Member will be advised by the Association from time to time as may be necessary each season to which processor or processors or handler or handlers, he shall deliver his processing vegetables. The Member shall negotiate with processors or handlers suitable delivery of his vegetables.

(*e*) *Payment.*—The Member agrees that the following amounts may be deducted from amounts due him for the sale of processing vegetables and authorizes the processor or other persons to whom his processing vegetables may be sold to deduct said amount and remit same to the Association upon request of the Association:

Not to exceed two percent of the amount due for establishing legal reserves and paying necessary costs and expenses of the Association as determined by the Board of Directors.

Any balance of the amount so deducted not needed for the purposes set forth shall be returned to the Member on the basis of patronage as soon after harvest as possible.

(*f*) *Liquidated damages.*—If the Member shall sell any processing vegetables covered by this agreement contrary to its provisions it is agreed that such act will damage the Association in an amount that is, and will be impracticable and extremely difficult to determine and fix, and therefore, the Member agrees to pay the Association 25% of gross sale proceeds as liquidated damages for all processing vegetables that are disposed of contrary to this agreement, which damages may be recovered by the Association in any court of competent judisdiction. In the event of a breach or threatened breach of this argeement by the Member, the Association shall be entitled to an injunction and to a decree requiring the Member to specifically perform his obligations under this agreement. In any suit based on this agreement, the Association, if the prevailing party, shall be entitled to reasonable attorney fees and all costs of any such suit.

(*g*) *Exclusions.*—Each party hereto shall be excused from performance hereunder by reason of any cause beyond its reasonable control. Such causes shall include, but not by way of limitation, fire, storm, flood, earthquake, explosion, war, rebellion, insurrection, action of the elements, labor disputes, total or partial failure of transportation or delivery facilities, shortage of labor, raw materials or supplies, acts of God, and any act of government or military authorities.

(*h*) *Authority for information from buyer.*—Member hereby authorizes and directs any processor, handler or other purchaser of processing vegetables from Member to furnish the Association, on its request at any time, complete information regarding processing vegetables received from the Member or in his behalf, including the weight, grade, variety, and quality thereof, amounts paid therefor and any other requested information.

(*i*) *Agreement binding on other parties.*—This agreement shall bind the heirs, legal representatives, successors and assigns of the respective parties hereto. If this agreement is executed by members of a partnership, it shall apply to such individuals jointly and severally in the event of termination of partnership. If the Member in good faith shall sell or lease his farm on which processing vegetables are grown after he has submitted an estimate of the quantity of processing vegetables that he will have for sale by the Association, the member must within 48 hours so advise the Association and shall become liable to Association for payment of any loss Association may sustain because of prior sale of vegetable crop to processors or handlers. Any fictitious sale or lease of a farm on which processing vegetables are grown by the Member, or any other device entered into by him to avoid this agreement, shall be a violation thereof.

(*j*) *Mutual agreement.*—This Agreement is one of many other marketing agreements similar in substance and form executed between other growers and the Association, who are mutually and individually obligated to each other through the Association. Association shall be deemed to be acting in its own name for and on behalf of all such growers in carrying out the provisions of such agreements.

10. *Previous contracts superseded.*—This contract, by mutual consent of both parties, shall supersede any previous contract for processing vegetables listed in section 12 negotiated by the same parties.

11. *Member of AAMA.*—Association shall maintain a membership in the American Agricultural Marketing Association.

12. I wish to participate in a marketing program for the following processing vegetables:

Lima beans:		
Baby limas	(Acres)	(Signature)
Ford hook	(Acres)	(Signature)
Snap beans	(Acres)	(Signature)
Sweet corn	(Acres)	(Signature)
Pickling cucumbers	(Acres)	(Signature)
Carrots	(Acres)	(Signature)
Peas	(Acres)	(Signature
	(Acres)	(Signature)

In witness whereof, this contract has been executed in duplicate by the parties hereto on the _____ day of _____ 19__.

_____ (Witness as to member)

_____ (Name of member)

By _____ (Signature)

State Marketing Association,

By _____ *President.*

Senator JORDAN. I have been asked by one or two people to give them time to put their statements in before the whole hearing is completed. This is Thursday. We will make it 2 weeks from today for that. That is what we agreed to before.

Is there anybody else here who wants to be heard this morning? I appreciate your staying through and listening. We will be glad to have any statements to put into the record, within the next 2 weeks.

Thank you all very much. This will conclude this hearing.

(Whereupon, at 12 noon, the hearing was concluded, and the subcommittee recessed subject to the call of the Chair.)

(Statements filed for the record are as follows:)

MEMPHIS, TENN., *May 4, 1967.*

Hon. B. EVERETT JORDAN,
Senate Office Building,
Washington, D.C.:

We respectfully ask you to make the following a part of the hearing on Senate bill S. 109:

It would be most destructive to the free marketing of cotton that has existed under exchange rules for over 100 years and would definitely make free enterprise a crime. We urge your committee to vigorously oppose Senate bill S. 109.

BOARD OF DIRECTORS, MEMPHIS COTTON EXCHANGE,
R. H. ALLEN, Jr., *President.*

BOISE, IDAHO, *April 26, 1967.*

Hon. ALLEN J. ELLENDER,
Chairman, Agriculture and Forestry Committee.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: My name is Bart A. Brassey. I am the Managing Director of Associated Industries of Idaho. Associated Industries of Idaho is a typical industrial association composed of timber, mining, food processing, utility and general manufacturing concerns.

Our association is opposed to S. 109.

Idaho is a raw material producing state and has in the last several years enjoyed tremendous growth in the processing of potatoes and other food products. S. 109 will not, in our opinion, be of benefit to either the producers or the processors of Idaho products.

S. 109 as written is unclear and will be most difficult, if not impossible, to administer. It is our understanding that the Federal Trade Commission has indicated that S. 109 could be too easily misinterpreted.

There was introduced in the recently completed 39th Idaho Legislative Session House Joint Memorial 6. H.J.M. 6 memorialized the National Congress to favorably consider the "Agricultural Producers Marketing Act of 1967."

The Idaho House of Representatives Agricultural Committee gave serious consideration to H.J.M. 6 and, after intensive study, held H.J.M. 6 in committee. The consensus of committee opinion was that the National Act would not be in Idaho's best interest. It is interesting to note that the House Agriculture Committee membership is composed of twelve men, ten of them farmers.

Mr. Chairman, it is the honest, considered opinion of our association that S. 109 will, if it becomes law, only disrupt the orderly, well-established practices that have created the best food distribution system that has ever been devised.

Thank you for your attention.

ASSOCIATED INDUSTRIES OF IDAHO,
BART A. BRASSEY, *Managing Director.*

STATEMENT OF RALPH D. CARR, VICE-PRESIDENT INDUSTRIAL DIVISION, ANDERSON, CLAYTON & CO., PHOENIX, ARIZ.

My name is Ralph D. Carr. I am Staff Vice President of the Industrial Division of Anderson, Clayton & Co., with headquarters in Phoenix, Arizona.

My company comes under the definition of a "handler" in S. 109 and the prohibitions recited in its Section 4, subparagraphs (a), (b) and (d) would forbid us from competing in normal everyday business practices in acquiring and processing agricultural products, namely cotton, soybeans and safflower from any producer who is a member of an association of producers (co-op) or any producer who might otherwise choose to exercise his right to join and belong to an association of producers. This act is unilateral in design and application. Its alleged purpose is to protect a producer engaged in the production of agricultural crops from commercial abuses. However, its prohibitions are applicable only to a non co-op handler and a co-op handler is free to engage in such unfair practices with impunity. We think commercial abuses must be treated in an identical manner, regardless of the business organizational form of the offender. We think producers must be safeguarded against improper influences and pressures from co-op handlers as well as non co-op handlers.

My company has offered the producer many services and facilities for over 50 years and they have been accepted by members and non-members of producer associations. We solicit business from producers of an association (co-op) in the same manner as we do from producers who are not members of an association. Upon occasion one or more of our services and prices has been good and sufficient reason for a producer to cease to belong to an association (co-op). For such competitive business practices, we would be in violation of this proposed act and fined and imprisoned. Also, our co-op competitor could sue us for treble damages.

Rivalry for business is keen in our industry and the services and facilities of my company are in many forms. Principally they are ginning, oil milling, warehousing, crop production and capital financing, feeds and seeds, and merchandising cotton, soybeans and safflower all of which keep us in constant touch with producers. We employ many field representatives (gin managers, cottonseed buyers, soybean buyers, feed and seed buyers and cotton buyers) who offer our services most every day to co-op as well as non co-op members in competing for business. Frequently we acquire business from co-op producers through one or more of our services and facilities.

From time to time, the prices we offer for cotton, soybeans or safflower are in excess of prices being offered by our competitors, and as such, this might be interpreted as being "in excess of the true market value" as well as an "inducement or reward to a producer for refusing to or ceasing to belong to an association of producers" in violation of Section 4(d) of the proposed act. Furthermore, if such a customary competitive trade practice was undertaken with a

producer who was a co-op member or in the process of becoming a member of a co-op association, we would be in violation of Section 4, (a) and (b) as well as (d).

This proposed legislation would seriously limit the competition among buyers that producers now have available to them to dispose of their crops. The producer should not be deprived of the benefits of legitimate competition, which is the most effective protection of his economic interests.

SALEM, OREG., *April 29, 1967.*

Hon. MARK O. HATFIELD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I was just informed that public hearings will be held on S. 109 by a sub-committee of the Senate Agricultural Committee. As indicated in my last letter to you on the same subject, we are interested in going on record as favoring the passage of this bill. Even though we have been functioning actively for the past six years, we still run into the problem of discrimination against our growers for belonging to our Association.

One of my field men recently included in his report to me that a member of long standing, Ernest Zelinski of the Silverton area, stated that he did not dare to sign a contract with the Association on Bush Beans because a field man or field representative of Birdseye Division of General Foods told him that if he did sign a contract he would not get the acreage he desired.

We have done business with Birdseye Division of General Foods for a period of time on strawberries but when we set up additional commodity groups in sweet corn and bush beans, they were more than a little concerned and it became apparent that we were going to have some difficulty in coming to an agreement. It is interesting to note that Ernest Zelinski did sign a contract with us for bush beans that he grows for California Packing Company, with whom we have a good working relationship, so I am convinced that there is substance in his statement in regard to his conversation with the field representative of Birdseye.

It was only this past year we set up these two new commodity groups in vegetables; and had intended to approach the industry for contracts for '67' production. Birdseye Division of General Foods along with Kelly-Forquar, not involved, as well as Stokely-Van Camp and Albany Frozen Foods started contracting for sweet-corn acreage as early as November, when the normal procedure is to contract in late winter or early spring. They did this to upset our own members and in an effort to by-pass association membership. They did come out with a substantial price increase however, the first one in several years. The reason was apparent . . . it was to impress upon the growers that they did not need the services of a bargaining association. When they discovered they could not get the acreage needed, they were willing to discuss a contract but when we did come to an agreement, they did drop some Association Members and cut membership acreage below that which growers normally grow. Representatives of some of these companies specifically stated that they were cutting association members because they had secured a sizeable acreage outside of association membership.

In late winter, I had a telephone conversation with Russell Nutter of Stokely-Van Camp. He stated that in a conversation with his local representative, he had been informed that they could get all the corn acreage they needed without signing contracts of any Association member. In order that we would not put any of our grower members in jeopardy, it was necessary for us to release these people who grow for Stokley Van-Camp from their contractual obligation to us. We were able to do this legally because Stokley was meeting the price established in our Association contract.

About the same time, six large growers who normally deliver to Albany Frozen Foods came to my office stating that they had been informed that the management of this processing firm had visited with them and intimated that a release from the Association would be necessary if they were going to grow corn for them. These growers were all large growers, some growing as much as 200 acres of sweet corn. I was later able to negotiate a contract with Albany Frozen Foods by suggesting litigation.

You can understand how difficult it is to maintain bargaining power in the face of such discriminatory practices. Necessary price increases do not come voluntarily. Demands by growers must be made.

You will be interested to know that in the last ten years, the production of sweet-corn in the State of Oregon has increased dramatically from 54,000 tons in 1955 to 220,000 in 1966. In spite of this apparent heavy increase in demand, the price paid to producers actually went down in the face of a strong demand, fluctuating between $27.50 high and $24.00 low in 1964. The price paid in 1966 was $25.25. In the meantime, processed corn prices were steadily increasing. Cannery Market Report for April, 1965 quotes sweet-corn prices per case, 303 whole kernel fancy at $3.00. This same quality pack today is being quoted at $3.80. With a normal pack-out of 43 cases per ton, all other factors being the same, the raw product value to processors increased over $30.00 per ton in two years time. Yet price paid growers remained the same.

Processors agree that the corn pack was a profitable one in '64'. Based on this, it was more than profitable in '66'. The cost of producing continually goes up. Most growers agree that production costs today are in the area of $25.00 per ton in our area. It has been my experience that even during periods of high profits, higher raw product prices are not offered growers. The only way to stay in business is to remove the imbalance of power and made demands upon the industry.

I have been in communication with growers in many areas of the United States. We have had calls for help from growers in Idaho, Washington and Utah. A small growers association in Magic Valley, Idaho (Twins Falls Area) called and said that Green Giant was offering $14.00 a ton for sweet corn standing in the field. This is the equivalent of $22.00 delivered to the plant.

What I am saying is simply this; farmers are feeling a cost price squeeze severe enough for them to take action by organization but are fearful of the consequences and need a favorable legal climate in which to organize without fear of discrimination.

We have gained a certain amount of prestige in our own working area and our growth has been phenomenal but the problems have been many and our position is hazardous because of constant pressures of the industry.

The economic well being of the food producers is absolutely essential if we are to maintain a satisfactory agricultural community.

If you believe the information I have given you in this letter would be helpful to the committee, I would appreciate your passing it on to them.

Cordially,

OREGON-WASHINGTON VEGETABLE &
FRUIT GROWERS ASSOCIATION,
WALTER R. COLLETT,
Executive Secretary.

[From the Oregon Statesman, Salem, Oreg., Apr. 17, 1967]

FARM SQUEEZE TIGHTER

(By Sylvia Porter, financial analyst)

NEW YORK.—Democratic Senotor George McGovern of South Dakota, has seriously proposed a new food labeling system under which each package of food we buy would bear a label stating how much of the price is going to the U.S. farmer.

Agriculture Secretary Orville Freeman has called for new restrictions on imports of dairy products, at a time when quotas could have explosive political-economic implications.

Infuriated U.S. dairy farmers have tried milk-dumping campaigns in an attempt to drive up the prices they receive for milk.

Just these three news items dramatize the fact that the American farmer again is in a tightening economic squeeze—for although he made unmistakable strides in catching up to the non-farm worker last year, the leveling off of food prices plus continually skyrocketing costs of operation are hitting him hard in 1967.

Just since 1959, farm machinery prices have risen a full 24 per cent and labor costs are up 35 per cent. Feed grain prices also have been in a sharp upswing.

In addition, he's fighting severe farm labor shortages, intense local competition and growing competition from food imports from abroad. Last year alone, dairy imports jumped 300 per cent.

Despite all the progress the farmer has made during this decade, consider these facts:

Even with last year's overall 15 per cent income boost, the farmer still nets only a per capita average of $1,731 in yearly earnings, a full 60 per cent below average earnings of the non-farmer.

Even though retail food prices last year rose to 35 per cent above the 1947–49 average, prices paid to farmers for the food we bought actually were 2 per cent below those paid in 1947–49. Today, the farmer receives only 5½ per cent of the U.S. consumer's total after-tax income for his products—one-half the share he received in 1947.

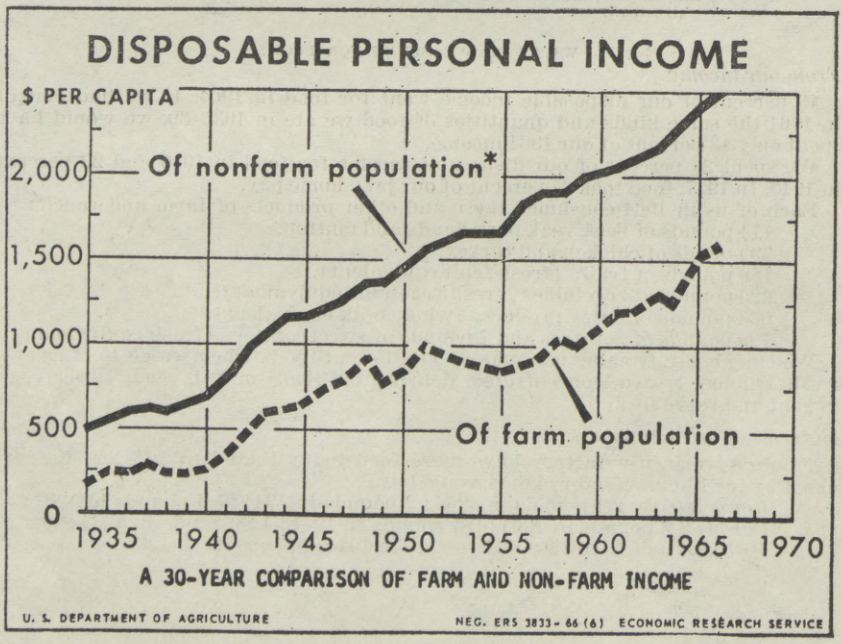
Even though our spending for farm-originated foods has soared $40 billion since 1947–49, less than one-fourth of this increase has gone to the farmer. For every food dollar you spend today, the farmer gets only 40 cents—10 cents less than he received two decades ago.

Even though a significant number of big U.S. farmers are making record profits today, a far more significant number are being pushed over the brink of poverty. Just in the past eight years, the number of U.S. dairy farms has dwindled from 770,000 to 500,000. More than 95 per cent of farms in this country today are family farms and among these, poverty is still a tragically pervasive fact of life.

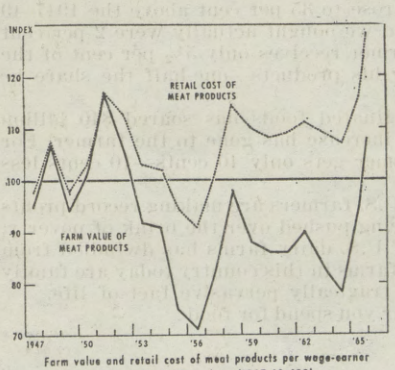
Here's what the farmer gets for each dollar you spend for food:

Item	*Farmer's cents*
Canned beets	6
Corn flakes	9
Canned peaches	16
White bread	17
Spinach	22
Oranges	24
Potatoes	30
Apples	35
Fresh milk	49
Beef, choice	59
Eggs, Grade A large	65

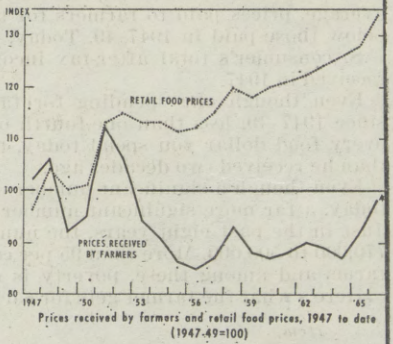
This table explains the background for the farmer's demands more than a treatise could. With his price pressures on top of the generally rising costs of food production, processing, packaging, there's only one direction for the price of your food market basket in the months ahead: UP.



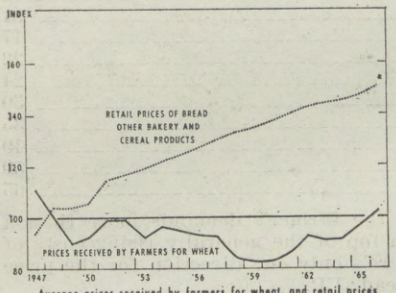
A COMPARISON OF YOUR FOOD COSTS TO FARM PRICES



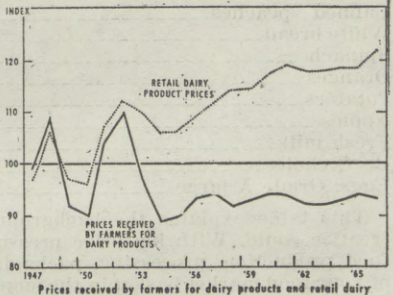
Farm value and retail cost of meat products per wage-earner household, 1947 to date (1947-49=100)



Prices received by farmers and retail food prices, 1947 to date (1947-49=100)



Average prices received by farmers for wheat, and retail prices of bread and other bakery and cereal products, 1947 to date (1947-49=100)



Prices received by farmers for dairy products and retail dairy products prices, 1947 to date (1947-49=100)

WHAT DO WE SPEND FOR FOOD?

From our income

19 percent of our disposable income went for food in 1964. If we had bought in 1964 the same kinds and quantities of food we ate in 1935–39, we would have spent only 13 percent of our 1964 income.

We spent 24 percent of our disposable income for food in 1930 and 22 percent in 1940. In 1947, food took 27 percent of our take-home pay.

Each of us in 1964 consumed these and other products of farm and ranch:

174 pounds of beef, veal, pork, lamb, and mutton.
39 pounds of chicken and turkey.
186 pounds of fruits (fresh fruit equivalent).
225 pounds of vegetables (fresh vegetable equivalent).
623 pounds of dairy products (whole milk equivalent).
109 pounds of potatoes and 7 pounds of sweetpotatoes (fresh equivalent).

We can choose from as many as 6,000 different foods when we go to market—fresh, canned, frozen, concentrated, dehydrated, ready-mixed, ready-to-serve, or in heat-and-serve form.

In terms of an hour's work

1 hour's work in a factory buys more food today than it did 20 or 30 years ago. Pay for 1 hour's factory labor would buy:

Round steak: 2.4 pounds in 1964; 2 pounds in 1944; 1.4 pounds in 1931; *or*
Bacon: 3.8 pounds in 1964; 2.5 pounds in 1944; 1.8 pounds in 1934; *or*
Milk: 9.6 quarts in 1964; 6.5 quarts in 1944; 4.7 quarts in 1934;

As compared with other products

Food costs have risen less since 1947–49 than most other consumer items in the cost-of-living index. For all items on the list, the increase in cost to 1964 was 33 percent. For all food, the increase was 26 percent. For rent, it was 48 percent, and for medical care 72 percent.

The farmer gets none of the increase in cost for the food he produces. In fact, he receives 15 percent less for the farm food "market basket" than he did in 1947–49. This accounts for the fact that the cost of farm-grown food has risen only 14 percent, although processing and marketing costs have risen 43 percent.

WHAT DOES THE FARMER RECEIVE?

For food

37 cents of each $1 spent for food.
2.5 cents for the corn in a 29-cent box of cornflakes.
54 cents of each $1 spent for choice beef.
2.5 cents for the wheat in a 21-cent loaf of white bread.
About 11 cents from a 26-cent quart of milk.

WHAT IS MODERN FARMING?

The Nation's biggest industy

Farming employs 6 million workers—more than the combined employment in transportation, public utilities, the steel industry, and the automobile industry.

A creator of employment

3 out of every 10 jobs in private employment are related to agriculture.

Six million people have jobs providing the supplies farmers use for production and family living.

Eight to ten million people have jobs storing, transporting, processing, and merchandising the products of agriculture.

A good customer

The farmer spends nearly $30 billion a year for goods and services to produce crops and livestock; another $12 billion a year for the same things that city people buy—food, clothing, drugs, furniture, appliances, and other products and services.

A taxpayer

In 1964:

Farm real estate taxes totaled $1.6 billion.

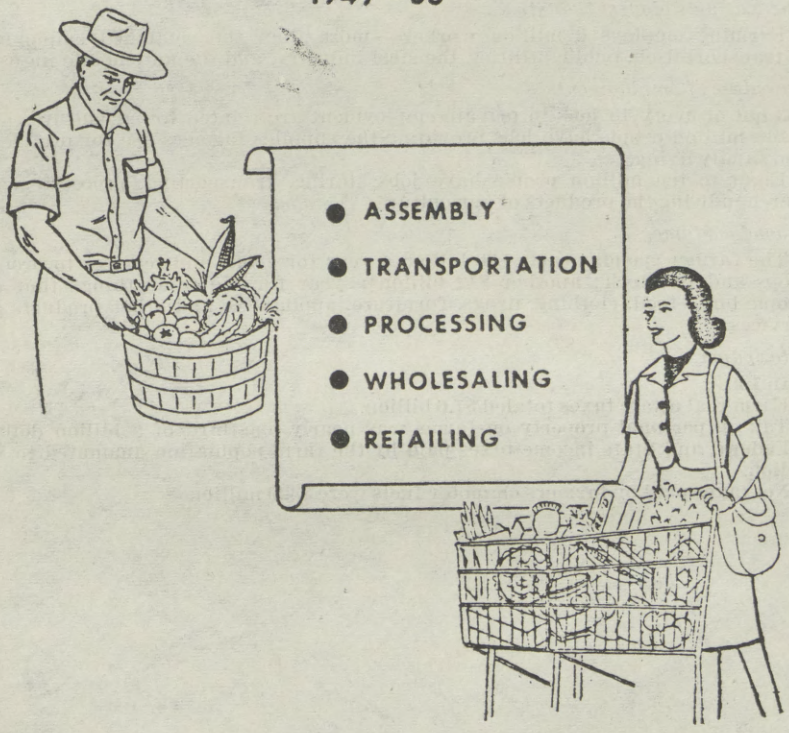
Tax on personal property on farms was nearly one-third of a billion dollars.

Federal and State income taxes paid by the farm population amounted to $1.2 billion.

Net taxes paid by farmers on motor fuels were $320 million.

FARM-RETAIL SPREADS FOR FOOD PRODUCTS

1947–65



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By the
OREGON FARM BUREAU FEDERATION

Per capita income and expenditures for food and other goods and services, United States, 1965–47

Year	Disposable personal income	Personal consumption expenditures			
		Food		Other goods and services	
		Actual	Percentage of disposable income	Actual	Percentage of disposable income
			Percent		*Percent*
1965	$2,391	$436	18.2	$1,766	73.9
1964	2,268	416	18.3	1,660	73.2
1963	2,132	404	18.9	1,569	73.6
1962	2,064	399	19.3	1,503	72.8
1961	1,983	392	19.8	1,432	72.2
1960	1,937	388	20.0	1,412	72.9
1959	1,905	386	20.3	1,372	72.0
1958	1,831	382	20.9	1,284	70.1
1957	1,801	373	20.7	1,270	70.5
1956	1,743	359	20.6	1,226	70.3
1955	1,666	352	21.1	1,187	71.2
1954	1,585	348	22.0	1,108	69.9
1953	1,583	348	22.0	1,093	69.0
1952	1,518	349	23.0	1,032	68.0
1951	1,469	338	23.0	999	68.0
1950	1,364	303	22.2	956	70.1
1949	1,264	300	23.7	885	70.0
1948	1,290	316	24.5	868	67.3
1947	1,178	303	25.7	812	68.9

Compiled from revised estimates published by the National Income Division, U.S. Department of Commerce. Data for Alaska and Hawaii included beginning 1960. Revised data were published in August 1965 and later.

STATEMENT OF CHARLES E. CONNOR, COUNSEL, INDEPENDENT LIVESTOCK MARKETING ASSOCIATION, COLUMBUS, OHIO

Gentlemen, Independent Livestock Marketing Association is a service organization of 100 independently owned and operated livestock markets and branch markets in the States of Ohio, Indiana, Illinois, Iowa, Michigan, Kentucky and West Virginia. These markets do not, emphasize "not," represent or act as agents for packers or other users of meat, but operate solely to provide the farmer-producer with a means of marketing his livestock. They provide yards, pens, feeding and watering facilities, veterinarian services, bonded scales with licensed weighmaster, and many of them also furnish auction services as well.

There are also cooperative livestock markets which furnish the same services and facilities, and our members compete with them for the farmer's marketing business. Both our markets and the co-ops are licensed, bonded and regulated by the Packers and Stockyards Division of the United States Department of Agriculture. The auction markets, whether independently or cooperatively owned, charge a tariff for their services which is subject to approval by the Packers and Stockyards Division.

We appear here to oppose this bill, but we want it distinctly understood that we are not opposed to farmer organizations or their members, per se. Indeed, our markets are producer oriented rather than on the side of buyers or packers, since in many if not most instances, we operate as the agent of the farmer-producer.

The competition which exists between our markets and the co-ops for the farmer's business is intensely competitive. A farmer can become a member of the co-op merely by taking his animals to a cooperative market, and he may share-pro-rata in any profits that market produces, so that the independently owned market, which pays taxes the co-op doesn't pay, must work harder than his co-op competitor to prove to the farmer that he can provide better services and a better market price-wise in order to get his business.

I take the liberty of saying, while this committee has heard from several witnesses who are proponents of this bill, principally the American Farm Bureau Federation, I am certain that not one witness has appeared before this committee representing a livestock cooperative, and claimed that any unfair or unjust discrimination was being practiced on them by any of the competiting independ-

ently owned livestock markets. Whatever may be the situation with respect to canning crops, for example, there is no claim that I have ever heard said or seen written which alleges any discrimination against co-ops, or their members, by other market agencies. This holds true for all the testimony presented on similar bills before previous Congresses.

There is no justification whatever for the passage of this legislation, at least so far as the same would apply to livestock marketing. The situation is very much the same as one in which I operated a shoe store on one side of the street, and one of you operated a similar business on the opposite side, and I came here seeking this legislation to be protected from you, when there are no facts which justify the legislation in the first place, and where I was unwilling to extend the same protection to you, my competitor, and your customers, as I sought for my customers and myself. You would justly accuse me of seeking an unwarranted and unfair competitive advantage.

The American Farm Bureau seeks the passage of this legislation to allegedly correct certain abuses it says exists principally in the canning crop industry, but it has been unwilling to limit the corrective legislation to the claimed abuses, and wants it to apply across the board to every agricultural product including livestock. We believe its leaders have hidden, and more important reasons to want this bill. The members of this committe certainly know of the fact that state Farm Bureaus have begun to move back into the livestock marketing field, and have announced their intentions of getting into the food business at all levels, including the even possible purchase of a large chain store company for retailing farm products. We believe they want this bill as a further legislative shelter within which to operate this colossal food combine. And in the livestock marketing industry, they too have failed to show any discriminatory practices against which this agricultural giant needs protection from the smaller and far less powerless independent market operator.

The members of this committee are reminded, however, that coercion and intimidation has taken place in the livestock marketing industry, and the threat of such continues today, but such activities were not practiced nor are threatened by either the independently owned livestock market agencies or, up to this time, by the regular livestock marketing co-ops. The situations I refer to were called "holding actions", which in recent years were sponsored by the National Farmers Organization, a group whose activities I am sure the members of this committee have been made aware. In the course of these actions, attempts were made to close down livestock markets; farmers who wished to deal there were intimidated, property was destroyed, and other acts of violence were perpetrated on all and any persons who were involved in the marketing process. These actions were directed as often against the regular livestock cooperative markets as well as those independently owned, and out of sheer protection for the buyers and sellers at these markets, both co-ops and our members were on numerous occasions forced to obtained injunctions from the courts against this organization and its people for these illegal acts.

The question arises then as to how this proposed legislation would affect such situations if and when they should come up again. As originally drafted, this bill would not have helped the cooperatives against the mechinations of NFO, but in order to provide this protection, the new S. 109 affords co-ops protection against NFO (another producer organization). But, it does not protect our markets, or farmers using our marketing services, so that if this bill is passed, the independent markets will be the target of future holding actions with the blessings of the Department of Agriculture and the protection of the Attorney General of the United States.

Worse than this, it would seem that S. 109 would offer the NFO shelter for its activities, because recently it has begun marketing operations itself on behalf of its members, therefore probably qualifies as a cooperative under the law. Thus, if this bill was passed, NFO could not only threaten illegal and coercive actions against independent livestock markets, but it could do so without fear of retaliation from those whose rights it violates. No more illogical or unjust situation could be imagined, and it would be a travesty if Congress could be bilked into the passage of such legislation under the guise of "protecting the small farmer".

In short, we oppose this bill because there is utterly no justification for it in the livestock industry; because it is being sought by those who don't need it with motives suspect, to say the least, Farm Bureau; and because it would be a measure of protection for NFO, whose avowed purpose is to destroy the open, competitive marketing system which exists today, and who has engaged in known acts of coercion and discrimination in the livestock marketing industry in recent

years. We suggest that this is simply a bad bill and should be defeated, but at the very least, it should be so worded as not to apply to the livestock industry. This can be readily accomplished by the addition of the words "except livestock" to the words "agricultural commodities" wherever they appear in this bill.

I shall be happy to answer any question which any member of this committee may wish to ask concerning any of the matters about which I have testified.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 1, 1967.

Hon. B. EVERETT JORDAN,
U.S. Senate
Subcommittee on Agriculture,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JORDAN: It has been brought to my attention that you are Chairman of the Agriculture Subcommittee which has been conducting hearings on S109. Some of my constituents have contacted me about this legislation, particularly, Miller & Bushong, Inc., a feed manufacturing plant in Lancaster County which trades in about a 50 mile radius from Lancaster. This firm furnishes feed to farmers in Lancaster and neighboring counties and in some cases contract for the production of poultry and livestock by their accounts.

After careful study of S109, Miller & Bushong, Inc. feel this bill is not needed and would lead to duplication and confusion for the following reasons:

1. The unfair trade practices to which S109 refers are now forbidden by other State and Federal laws, i.e., Section 3 of this bill is already covered by Sections 1–3 of the Sherman Act and Section 5 of the Federal Trade Commission Act.

2. The unfair methods of competition under Section 5 of the Federal Trade Commission Act (1914) are broadly covered under the Commission's jurisdiction. The Commission may stop many unfair competitive practices which stop short of full antitrust violations.

3. The treble damages provided for in S109 seem unnecessary to us. This is already covered in Section 4 of the Clayton Act which provides for treble damage action for persons injured by reason of anything prohibited by the antitrust laws.

4. The same practices which could put a handler in jail could be carried out by a producer with no penalties under the Bill.

S109 could cause real problems for handlers who do not follow unfair practices.

A. A processor might be charged with a violation, for example, if he paid a higher price to a given producer to keep his processing plant in operation during a day of slack supply. The producer who sold the day before at a substantially lower price might well change that he had been discriminated against because he was a member of some farm organization. How would the court decide what the "true market value" of a farm product is under those circumstances? Especially if there was a local jury and the company was sizable?

B. Should a broiler contractor be able to refuse to do business with a given grower if the contractor believed, but did not have absolute proof, that the grower had been using the contractor's broiler feed for other farm animals in violation of their contract? Criminal charges might be filed against the contractor under S109 if he refused to do business with such a grower. At best, the contractor would be faced with expensive and time-consuming legal proceedings.

C. Some farmers might feel discriminated against and bring charges against a feed manufacturer who charged lower prices to farmers who bought in large quantity, in bulk instead of bags, for cash instead of credit, picked up at the mill instead of having delivered, etc.—Or a farmer might feel that he was discriminated against because he was refused credit. In each case the feed manufacturer might be faced with the necessity of proving that the difference in price, credit, etc., had nothing to do with what organizations each farmer belonged to or did not belong to.

I am pleased to pass along to you these comments from my constituents and would appreciate it if this letter might be made a part of the printed record on the hearings on S109.

Sincerely,

EDWIN D. ESHLEMAN.

ATLANTA, GA., *May 1, 1967.*

Senator HARRY F. BYRD, Jr., of Virginia;
Senator SPESSARD L. HOLLAND of Florida;
Senator ERNEST F. HOLLINGS of South Carolina;
Senator B. EVERETT JORDAN of North Carolina;
Senator HERMAN E. TALMADGE of Georiga.

GENTLEMEN: This letter has reference to S–109 now being considered by your Committee, and is written to you as Members of the Senate Committee on Agriculture and Forestry from the Southeast.

We strenuously object to favorable consideration being given by your Committee to S–109 for the following reasons:

1. S–109 is in violation of the right of free speech guaranteed under the Constitution of the United States.

The privilege of "Free Speech" carries with it responsibility of the Citizens of the United States in exercising this privilege. The Libel Laws amply protect anyone against whom "Free Speech" is used to their detriments.

2. S–109 is "Class Legislation". On one hand it seeks to "protect" one segment of our economy, *but* does not, in any way, protect the other segments. S–109 seeks to make it a Federal offense for anyone to say or write anything but "good" regarding cooperatives, but, leaves cooperatives carte blanche to say or write anything they may desire regarding the Cotton Trade, and producers.

3. S–109 gives authority to the Secretary of Agriculture to prosecute (at taxpayers expense) anyone he (the Secretary) may "*believe*" to be in violation of the Act. This is establishing within the U.S.D.A. unlimited power to "prosecute", again, at taxpayers expense.

4. S–109 would prohibit—by Law—anyone offering to pay the cotton producer a price for cotton (agricultural products) above the price a coopreative would be *willing* to pay. Certainly, one does not need the wisdom of a Solomon to know this is against the interest of the producer of agricultural products.

S–109 is not only unconstitutional and restraint of Trade, but proposes to enact into law "Class Legislation".

It is unthinkable that the Senate Committee on Agriculture and Forestry would favorably report S–109.

We request this letter be made part of the hearing by your Committee on S–109.

Respectfully,

ATLANTIC COTTON ASSOCIATION,
J. M. GLOER,
Executive Vice President and Secretary.

ONTARIO, OREG., *April 25, 1967.*

Hon. MARK HATFIELD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HATFIELD: The Malheur County Farm Bureau, representing 389 Farm families, is in favor of S. 109, the Marketing Rights Act.

Some of our members who are potato producers have not been able to get contracts with the processors because of their activity in the field of bargaining. We feel that the producers of agricultural products need protection in order that they will be able to bargain more effectively.

I understand that Mr. George Sadamori, Rt. #2, Nyssa, Oregon, President of the Malheur Potato Bargaining Association, will be coming to Washington, D.C. to present testimony at the hearing on this bill next Tuesday. The Malheur County Farm Bureau supports the Bargaining Association and the testimony they will present.

Please feel free to make this part of the record at the hearing if you are able to do so.

We respectfully request your support of this measure and will appreciate anything you are able to do to secure favorable passage of S. 109.

With best wishes, I remain

Very truly yours,

JOE HOBSON,
Legislative Chairman, Malheur County Farm Bureau.

STATEMENT OF IRVING ISAACSON, COUNSEL, MAINE POULTRY ASSOCIATES, LEWISTON, MAINE, IN RE S. 109

Mr. Chairman, members of the committee, my name is Irving Isaacson, 145 Lisbon Street, Lewiston, Maine. I am an Attorney representing Maine Poultry Associates, Inc., which is a trade association covering all of the integrated broiler producers in the State of Maine. By way of introduction to our position on this legislation, let me give you a brief resume on the status of the Maine broiler industry—which I believe is unique in the country today.

Maine produces approximately 72 million broilers per year—which is about 4 to 5 percent of the national production. All of these broilers are produced by five large integrated operations and there are no independent broiler producers. The entire production is carried out by contract growers, of whom there are approximately 1,000 to 1,200 in the central part of the State. These growers own their farms and equipment and frunish the labor to raise the baby chicks to maturity. The integrator furnishes everything else necessary to raise the birds. There is intense competition between the integrators for good growers, and there is considerable mobility among growers from one integrator to another. So far as I know, there are no empty good broiler houses in the State and there is a big demand for new, modern houses. Growers usually are paid on the basis of a flat price per square foot or bird per week, together with various types of incentives or bonuses.

The poultry industry is the largest agricultural industry in Maine today and has been the source of a good part of our somewhat limited agricultural prosperity. A remarkable steadiness in broiler income to the growers over the years is shown by one simple, dramatic fact:

From 1958 to the middle of 1965, there were approximately 750 loans for broiler house construction made by commercial lenders or the Farm Home Administration—for a total of approximately eight billion dollars. During this entire period there was not one single dollar of loss to any lender from a broiler house loan.

Relationships between the growers and integrators, so far as I know, have been uniformly good throughout the short history of broiler growing in Maine. The simple fact of the matter is that if a grower does not like the treatment he gets from one integrator then at the end of his cycle he goes to another one. As I said before, there are no empty broiler houses in the State of Maine.

I should like to discuss S–109 from two viewpoints—First, its merits as a piece of legislation, and second, its potential consequences on the integrators, the growers, and the poultry industry as a whole.

The heart of the Bill is in Sections 4 and 5. Section 4 defines certain illegal activities and Section 5 contains the remedies or penalties for such allegedly illegal acts.

Section 4 apparently has some antecedent of relationship with Section 8(a)1 of the National Labor Relations Act. This section provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of rights granted under the Act. Narrow and as limited as these conditions are, they have produced an immense amount of litigation—both before the National Labor Relations Board and in the Federal courts. The magnitude of the problem in the labor field can be seen from the fact that during the first quarter of the Fiscal Year 1967 there were approximately 4,200 charges of unfair practices against both employers and unions filed with the National Labor Relations Board.

The language of Section 4, however, goes far beyond that contained in Section 8(a)1 of the National Labor Relations Act. For example, Section 4(a) alone lists five types of illegal activities involved merely with "interference": 1. Interference by boycott. 2. Interference by coercion. 3. Interference by any unfair act. 4. Interference by any deceptive act, and 5. Interference by any deceptive practice. And then you can double that for activities constituting "restraint".

The provisions of Sections 4 (b), (c), (d), (e) and (f) go far beyond any protective provisions given in any other legislation that I know of which has as its purpose the protection of the rights of a given group to organize its members.

For example, take the clause in Section 4 (e) which reads as follows:

"* * * interfere by any unfair or deceptive act or practice with the efforts of such associations in carrying out the legitimate objects thereof;"

Consider the breadth and ambiguity of such language. How do you define "unfair"? What's "deceptive"? What are "legitimate objects thereof"?

It would seem to me that as a District Attorney (which I have been) that I would have the gravest problems in attempting to draft a valid criminal indictment for the offense of "interfering by a deceptive practice" with the effort of a particular bargaining association of growers in carrying out some allegedly legitimate object of such association.

Section 5 of the Act contains the remedial and punitive provisions. The scope and ambiguity of the provisions of Section 5 are such that they appear to be coercive in purpose rather than protective. For example, Section 5(a) affords injunctive relief if any handler is "about to engage in any act or practice prohibited by Section 4". How do you prove that someone is "about to threaten" or "about to coerce", or "about to discriminate"? The provisions of Section 5 would provide an aggressive and unprincipled bargaining association with a whole arsenal of weapons to harass and cut down any handler who might be guilty of one of the alleged "thought-crimes" set out in the Act. This becomes obvious when you compare the protections given to union members under the provisions of the National Labor Relations Act and the weapons afforded a bargaining association of growers under S–109.

I should like to consider briefly the economics of practical application of the potential effects of S–109 on the handlers or integrators, the growers themselves, and on the poultry industry as a whole.

S–109, if enacted, would expose the integrators to possible criminal or injunctive penalties for engaging in his business in his normal and customary manner. For example, if certain of the best growers in an area refused to join the association becasue they felt they could make more money dealing directly with the integrator and the integrator contracts with them—is this unfair interference with the legitimate objects of the association?

If the integrator refuses flatly to deal with the association in any way—is this, in effect, coercion or intimidation of a producer "to breach, cancel or otherwise terminate a membership agreement with an association of producers" under Section 4(c), or a violation of Section 4(a)? Take a specific example. If a particular integrator or handler had some 150 growers or producers growing poultry for him, and ten of those growers got together in a bargaining association, and a producer refused to deal with the association, is not the handler in danger of being in violation of Sections 4 (a) (c) (e) and (f) and therefore subject to all of the punitive provisions of Section 5?

Now look at it from the grower's standpoint. What is there to protect the grower who does not want to belong to a bargaining association? If an association gets an agreement with a handler, will it then not seek to enforce a closed or "union" shop? What about retaliation against a non-assenting grower by the association itself? We have all seen what has taken place in the late milk uprising.

For that matter, what restraints are there at all on any association created or sponsored under this legislation? The Bill goes far beyond any "bargaining rights" theory on the one hand, without any corresponding protection for growers or integrators on the other hand.

The effect of this legislation on the poultry industry and the food supply of the country could very well be disastrous. With the type of potential power that S–109 provides, a national organization of growers controlling the entire broiler supply of the country is easily foreseeable. If this occurs, then such an association could turn off the broiler supply of the country like turning off a faucet—or on the other hand could play one State or one region against another. The effects on the industry can easily be visualized. The problems and effects of any nation-wide group controlling a significant portion of our economy—whether it be railroads or trucking or poultry—have been amply demonstrated. It is for the Congress to decide whether the creation of a group with such power is for the best interests of the country. However, Maine Poultry Associates, Inc., representing the combined broiler products of the State of Maine, wishes to go on record as being opposed to S–109.

WASHINGTON, D.C., *May 17, 1967.*

Hon. B. EVERETT JORDAN,
Chairman, Subcommittee on Agricultural Research and General Legislation, Senate Office Building, Washington, D.C.

DEAR SENATOR JORDAN: On January 11, 1967, Senator Aiken of Vermont introduced a bill to be known as the Agricultural Producers Marketing Act of 1967, designated as S. 109. This measure, now before your Subcommittee, has somewhat different provisions but has the same objective as the bill introduced in June of 1966, as an amendment to the Capper-Volstead Act, and the bill introduced in September of 1966, entitled the Agricultural Producers Marketing Act of 1966. On two previous occasions, this Association has submitted to your Subcommittee statements in opposition to the proposed legislation, and at this time wishes to express its continuing opposition to it.

Even the most cursory examination of S. 109 leads one to the conclusion that the legislation is unnecessary, for the producers of agricultural products and associations of such producers already have numerous remedies under existing federal and state laws which can be used to combat unfair and deceptive trade practices. This is especially true in the case of the meat packing industry which is closely regulated by the Department of Agriculture under the Packers and Stockyards Act.

A closer examination of this bill reveals that it is vague to the point of converting everyday business decisions, based upon the realities of the competitive market place, into alleged acts of "interference," "intimidation," or "coercion." Second-rate producers could use the threat of treble damage actions, based upon these poorly defined prohibitions, as a club to force packers to deal with them rather than with first-rate producers, to the detriment of the entire market structure and the consumer. It is clear that if this bill were enacted, a shroud of uncertainty would envelop the traditional relationship between packers and suppliers of livestock, be they individual producers or associations of producers.

The discriminatory aspects of S. 109 are equally objectionable, since the bill seeks to provide certain protections for producers and producers' associations, but makes no mention of protecting those who deal with such parties. This patent unfairness is further magnified by the severity of the penalties, both civil and criminal, which the bill provides for violations of its substantive provisions.

We are vigorously opposed to S. 109 and respectfully urge this Subcommittee to recommend against its enactment.

Sincerely yours,

JOHN A. KILLICK,
Executive Secretary, National Independent Meat Packers Association.

SALEM, OREG., *April 25, 1967.*

Hon. MARK O. HATFIELD,
U.S. Senator from Oregon,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HATFIELD: The Oregon Farm Bureau Federation respectfully requests that you use your influence with members of the Senate Agriculturel Sub-committee that will be considering S. 109 in the hearings starting May 2.

The basic objective of this legislation is to assist in the development of voluntary agricultural marketing programs by prohibiting unfair practices against producers solely because of their membership in a producers bargaining association.

We have a statute in Oregon similar to S. 109 which was enacted during your term as Governor. However, increasing amounts of Oregon commodities are being contracted for and processed by national canners and packers which use a lever of "this commodity can be grown in another state if Oregon producers do not wish to grow at this price".

Oregon has been long known for its quality products which have commanded premium prices on the US markets. However we are faced with higher freight rates due to distance from our primary markets, higher costs of equipment due to freight rates compared to other production areas, higher labor costs in the northwest compared to other areas, and the ever increasing imports of specialty foods that compete with Oregon products.

We know from statements you made as Governor and since your election to the US Senate, that you recognize the plight of agriculture in that farm income

has not kept pace with the rest of the economy. I am enclosing for your information a copy of a column by Sylvia Porter some charts developed by USDA on disposable personal income of farm and non-farm population and some graphs showing the price spread of agricultural commodities between the farmer and the consumer. The third attachment shows the dollars spent for food compared to the other goods and services as well as their related percentages.

When you reconcile the farm-retail spreads of the various food products to farmers' gross return and increased production expenses to determine net profits you can readily see that farm prices, now at 74% of parity, certainly have not kept pace. Favorable consideration of S. 109 will be an important step toward correcting this condition.

Your assistance on this matter will be greatly appreciated.

Sincerely,

LEONARD E. KUNZMAN,
Executive Secretary, Oregon Farm Bureau Federation.

STATEMENT OF DON F. MAGDANZ, EXECUTIVE SECRETARY-TREASURER, NATIONAL LIVESTOCK FEEDERS ASSOCIATION, OMAHA, NEBR.

The National Livestock Feeders Association is grateful for the opportunity of submitting opinions and arguments relative to S. 109, a measure to be known as the Agricultural Producers Marketing Act of 1967. While the general concept of the Act, "to control unfair trade practices affecting producers of agricultural products and associations of such producers", is not being challenged, this Association feels the Act is seriously deficient in two areas and, therefore, should not become law in its present form.

The particular deficiencies are as follows:

(1) While the Act would protect producers and associations of producers from various practices on the part of handlers, it does not provide for the protection of individual producers who choose *not* to join an association of producers; and

(2) The Act does not sufficiently clarify that inducements or rewards to a producer for refusing to or ceasing to belong to an association are separate and distinct from the effort of an independent agent to represent a producer in bargaining for higher prices.

We urge the Subcommittee to give these two areas their very serious and careful consideration.

PROTECTION OF INDIVIDUAL FREEDOM OF ASSOCIATION

There is no attempt through this statement to reflect on the right and privileges of agricultural producers to associate themselves in organizations for the purpose of what the members feel will be of benefit to them in marketing their products. This is a time-honored privilege which has been embraced by many producers in numerous areas of agricultural production.

However, there are many producers—a vast majority, we believe—who for one reason or another have not chosen and/or do not choose to be members of a marketing association. It is just as important to provide for protection of individual producers in exercising their individual rights to not join, or to not belong, or associate with a given organization, or for not following the dictates and demands of said group or association.

Livestock producers and feeders have experienced various degrees of intimidation and coercion on the part of organized groups as they sought to follow their individual desires in marketing livestock. These experiences certainly justify objection on the part of the National Livestock Feeders Association to strengthening the position of agricultural bargaining or negotiating associations without adequately counter-balancing this position with protection for the individual producers who do not choose to join an association.

It is recommended, therefore, that necessary amendments be made to S. 109 providing comparable legal protection for individual producers or groups of producers who choose not to join or not belong to an association and for the agents of these producers, against any discrimination, coercion, intimidation, or any unfair practice by handlers or by producer groups and associations.

CLARIFICATION OF INDUCEMENTS OR REWARDS

Reference is made to Section 4, paragraph (d), of the Act which makes it unlawful for any handler "To * * * offer any other inducement or reward to a producer for refusing to or ceasing to belong to an association of producers". This language, without clarification, in conjunction with the definition of a "handler" carries very grave implications with respect to the position of individual selling agents for livestock producers and feeders.

Under the various definitions of a handler, as contained in the Act, it would seem as though individual livestock commission agents would be included. These agents consistently represent livestock producers and feeders in the competitive arena for maximum livestock prices, and in so doing may attract the attention and patronage of members of a marketing association of producers. It would seem that the Act should clearly spell out the fact that a successful selling service on the part of any agent thus engaged to obtain a higher price for an agricultural producer than the producer could receive through his association would in no way be construed as an inducement or reward for refusing or ceasing to belong to an association.

The language in the Act would make it unlawful to give anything of value in excess of true market value of any agricultural commodity, but true market value may be subject to different interpretations. Here again, we suggest the merit of clarification so the realization of a higher price by a producer through an individual agent is not construed as being in excess of true market value because it is above what was or could be obtained through a marketing association.

CONCLUSION

It may be that the Act is aimed primarily at circumstances involving agriculutral products other than livestock. However, the Act would cover livestock under the definition of producer as contained in Section 3, paragraph (b). At least some agricultural products are marketed rather exclusively through associations of producers, but such is not the case with livestock, and this Association insists on preserving for the livetock industry the greatest freedom for competition in marketing as can be maintained as well as the privilege of joining an assocation, or not joining an association and using the services of selling agents.

We appreciate the consideration of the Subcommittee of the views expressed herein, and request the inclusion of what are considered very necessary amendments and clarifications.

BRYAN, TEX., *April 28, 1967.*

Senator EVERETT JORDAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JORDAN: The Texas Broiler Council has joined many other agricultural trade associations across the nation to oppose S109.

We object to this proposed legislation for several reasons, but we are primarily opposed to it because it will not provide its stated objective of "controlling unfair trade practices affecting producers of agricultural products and associations of such producers." We believe the bill to be unfair because it provides certain protection to producers, but does not provide similar safeguards for those who deal with producers organizations.

I want to emphasize that we have no objection to a producer joining any organization nor do we condone unfair trade practices. However, we are concerned that S109 could affect those not engaged in unfair practices.

We will not have a representative at the public hearing on May 2 & 4 to oppose this legislation. However, if possible, we request that you enter this letter in your records as opposition to S109.

Sincerely,

TEXAS BROILER COUNCIL,
GENE BIDDLE, *President.*

STATEMENT OF MRS. GRACE MCDONALD, EXECUTIVE SECRETARY, CALIFORNIA FARMER-CONSUMER INFORMATION COMMITTEE, SANTA CLARA, CALIF.

Senator Jordan and members of the subcommittee, we appreciate your early scheduling of hearings on S. 109, introduced by Senator George Aiken and co-

sponsored by Senators Frank Lausche, Milton Young, Frank Church, Philip Hart and Quentin Burdick, and we urge early action by your Subcommittee in favor of this long-delayed legislation so that it may be considered by the full Committee on Agriculture & Forestry, approved by that Committee, and sent to the Senate floor for affirmative action.

On September 19, 1966, writing in support of the then-revised version of S. 109, supporting this version, we said in part:

"We have conferred with representatives of the State Department of Agriculture, which, along with the California State Board of Agriculture, endorsed S. 109 in its original form. We agree that the substitute measures will go a long way to provide essential protection to producers whose commodities move in large volume in interstate and international trade.

"California's experience with a similar statute, but, of course, confined to intrastate commerce, is documented on page 153 of the June 14, 15 and 16, 1966 hearings, by State Senator Robert D. Williams, Hanford, the author of S. 127 signed by Governor Edmund G. Brown on May 27, 1961 * * *."

"Our own testimony appears on page 39 of these hearings; that of Richard Black, manager, Calif. Freestone Peach Ass'n., Modesto and Ralph Bunje, Gen'l Mgr., Calif. Canning Peach Ass'n., San Francisco, on pages 156, 157 and 158 through 160 of the hearing record * * *."

We further quoted Jerry Voorhis, then executive director, Cooperative League of the USA, as expressing our convictions absolutely:

"For many years Congress has been enacting legislation to protect the right of wage earners to collective bargaining. Every element of the food industry except the producer has achieved a high degree of organization. This is true of handlers, processors, retailers and suppliers. Only the farmer, the primary producer, finds himself in a weak bargaining position * * *."

We continued: "The balance of payments of the entire nation is enhanced by the sale of the fruits and vegetables grown and processed in California * * *."

"Consumers, nationwide, require these products for a balanced diet. Under present economic conditions, there is no assurance that production will continue at an adequate volume * * *."

What was true seven months ago regarding the declining number of producers able to survive the squeeze from higher interest rates, higher cost of production essentials, higher land value assessments as urbanization continues to encroach on prime farm land, greater concentration of economic power in the hands of fewer buyers of farm products and continued harassment by producers of members of farmer bargaining associations, is even more true today.

Witness the revolt of midwest dairymen and their loss of income while pressing for firm contracts with processors:

Witness the less spectacular action of the Valley Mutual Producers Association in Modesto, California, where the Borden Company failed to meet with them to redress "unfair practices and discrimination between producers and where producer-by producer contracts heretofore negotiated by Borden gave little relief in dairymen's attempts to correct inequities, Borden refusing to recognize the association as a bargaining voice for shippers * * *." Statement of John E. Thurman Jr., Valley Mutual Association president, Rt. 5, 2125 Dunn Rd., Modesto, Nov. 29th, 1966. As low as 25% Class I usage contracts with individual dairymen result in other than fluid milk processing by this national corporation and aggravate the already serious economic plight of producers shipping into interstate processors.

Witness the nine-month negotiations between the California Canning Pear Association and canneries engaged in interstate commerce where producers had no firm price for their 1966 fruit (already delivered in June) until the breakthrough and final settlement the middle of March, 1967.

During this period charges of boycott and unfair and discriminatory practices against members of the Association were filed August 16, 1966 in the Santa Clara County Superior Court with a "cease and desist" order, * * * in the one case against the California Packing Corporation, enjoining the company from continuing such practices and asking punitive damages of $500,000. Similar complaints were later filed against eight other canners.

Not only did the 800 members of this bargaining association have to wait for nine months for what was finally considered a "fair and reasonable" price ($5 a ton more than the original $75 a ton offered for No. 1 Bartletts); but the cost to the members of the association in legal fees added to the already high cost of producing this crop, half of California's production. The major outlet for

California pears is canning, and canning pears have their market both in other states and in foreign commerce. Had S. 109 been enacted by the 89th Congress, it would undoubtedly have helped California canning pear growers.

S. 109 is not a substitute for producer responsibility, organization and or action. It is a tool, more and more needed as the concentration of economic power in the market place moves into ever fewer hands.

The National Commission on Food Marketing found a need for such federal legislative protection of the right of farmers to organize in their own behalf in its June 1966 report, "Food from Farmer to Consumer".

National Fruit and Vegetable Bargaining Conferences, sponsored by the Bargaining Cooperatives and the Farmer Cooperatives Service of the U.S. Department of Agriculture, have advocated such protection since 1965.

David Angevine, Administrator USDA Farmer Cooperative Service, so testified in support of S. 109 at the September 1966 hearings. Angevine spells out the problem in even more detail in the April issue of "News for Farmer Cooperatives" in his article: "Getting Bargaining Power for Farm People" pages 6, 19 and 20.

Yes, farmers want bargaining power and they have demonstrated that they are willing to make sacrifices to achieve such associations. However, their experience, over the years, and especially during the past year, demonstrates beyond a doubt, that they need something more—they need the protection, in their efforts, of their government through enactment of legislation which establishes the right which they determine to exercise. Such legislation, we maintain, is long overdue.

Let it be to the credit of the 1st session of the 90th Congress to enact Senate Bill 109. You, members of the Senate Subcommittee on Research and General Legislation of the Senate Committee on Agriculture and Forestry have the privilege of starting this vital measure on its way. We urge a "Do Pass".

SAN JOSE, CALIF., *April 28, 1967.*

COTYS M. MOUSER,
Chief Clerk, Senate Committee on Agriculture and Forestry,
Room 324, Old Senate Office Building, Washington, D.C.:
(Attention of Chairman Everett Jordan, of North Carolina, of Subcommittee on Research and General Legislation for Hearing May 2–4.)

Cognizant of organized labor's protection under bargaining rights, Santa Clara County, California, Central Labor Council, AFL–CIO, representing 82 unions and 36,000 union families, reaffirms its 1966 support of S. 109, Agricultural Producers Marketing Act of 1967, assuring bargaining protection for Farmers Associations and Cooperatives. We urge "do pass" out of your committee for S. 109.

JAMES P. MCLOUGHLIN,
Secretary, Santa Clara County (Calif.) Central Labor Council.

STATEMENT OF C. L. MAST, JR., PRESIDENT, MILLERS' NATIONAL FEDERATION

The Millers' National Federation does not condone the types of discrimination and other illegal actions S. 109 seeks to prohibit. Producers should have the right to join bargaining associations without interference and they should have an equal right not to join. We believe existing law is adequate to provide such protection.

We are unaware of any situation involving flour millers which would lead to their conviction under the provisions of S. 109. On the other hand, the bill's prohibitions are so broad and the mechanics for determining a handler's motives so imprecise that a form of legal harassment could result. For example, prices paid for wheat by a miller will vary from day to day depending on quality requirements, supply and demand, and other factors. While such economic decisions are perfectly valid and defensible, the miller may have to face a costly court action to justify them. The mere threat of treble damage actions or criminal prosecution, moreover, could have the unintended effect of coercing processors into dealing with associations. Thus, an undesirable and discriminatory result might stem from a bill intended to establish "rules of fair play".

SAN JOSE, CALIF., *May 1, 1967.*

The SUBCOMMITTEE ON RESEARCH AND GENERAL LEGISLATION,
Senate Committee on Agriculture and Forestry,
Old Senate Office Building, Washington, D.C.:
(Care Cotys M. Mouser, Chief Clerk.)

We appreciate your favorable consideration and passage of S. 109. This year Naturipe Berry Growers Association is celebrating 50th anniversary. We are the oldest and largest strawberry cooperative in the United States. We firmly believe that our producers and cooperatives need legislative protection from unfair practice and discrimination. We urge the passage of S. 109.

NATURIPE.

WASHINGTON, D.C., *May 25, 1967.*

Hon. B. EVERETT JORDAN,
Subcommittee on Agricultural Research and General Legislation,
Committee on Agriculture and Forestry,
U. S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Grain and Feed Dealers National Association has 1700 dues paying members ranging in size from the smallest county elevator to the largest grain and feed complexes and 54 state or regional associations which are affiliated with the National Association which represent some 15,000 firms.

Our Association is comprised of independently opened firms and cooperatives.

We followed with great interest the hearings on May 2, 4, and 11 on S. 109. In our opinion, it became crystal clear that there are several serious defects in the bill; namely,

1. It does not protect the producer from discrimination or coercion on the part of a bargaining group.
2. The language is vague and the penalties unduly severe even if the offenders were clearly defined.
3. The possibility exists that normal competitive practices, such as discounts, financing, providing services and the like, would be jeopardized.

We know of no instance in which a grain producer was discriminated against because he was a member of a bargaining group nor have we received any complaints which indicate that a grain producer was coerced to join or not join a bargaining group. Therefore, we believe that S. 109 is unnecessary from the standpoint of the grain trade.

Furthermore, we believe that in these commodities in which future trading is conducted the price of the commodity is readily available to all producers and the actual prices that the producer receives is a matter for bargaining between the producer and the merchandiser and would have no bearing on whether or not the producer was a member of a producer group.

In conclusion, the Grain and Feed Dealers National Association recommends against the enactment of S. 109; and, in the alternative, if enactment is determined desirable, that the bill be amended to project its intended result and overcome objections above.

Sincerely,

GRAIN AND FEED DEALERS NATIONAL ASSOCIATION,
ALVIN E. OLIVER, *Executive Vice President.*

LUBBOCK, TEX. *May 1, 1967.*

Hon. B. EVERETT JORDAN,
Chairman, Senate Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture and Forestry, Washington, D.C.:

S. 109 could cause a general deterioration of the producers' marketplace which has been built by competitive forces. Farmers throughout the nation could suffer by this loss of competition for his product. This organization, composed mostly of small independent cotton merchants serving West Texas cotton producers, is opposed to S. 109.

LUBBOCK COTTON EXCHANGE,
TOM O'KELLY, *President.*

CHICAGO, ILL., *May 1, 1967.*

THE SENATE COMMITTEE ON AGRICULTURE AND FORESTRY,
Senate Office Building,
Washington, D.C.
(Attention C. M. Mouser, Chief Clerk).

DEAR SIR: We appreciated Senator Aiken's invitation to appear or file statement of the position of the National Live Stock Producers Association on Senate Bill 109. It will be impossible for us to attend hearings during the week of May 2. We, therefore, ask that this statement be filed with the Committee and made a part of the official record.

The National Live Stock Producers Association is owned and controlled by 16 cooperative livestock marketing associations which serve approximately 400,000 livestock producers and feeders in rendering sales service on 145 livestock markets, both large and small. During 1966, our member agencies handled 10,111,470 head of livestock with a value of $982,555,998.

In meeting held March 29, 1967, the Board of Directors of National Live Stock Producers Association, after reviewing in detail Senate Bill 109, voted unanimously in favor of this proposed legislation and recommended its passage by Congress.

In the rapid changes which have been taking place in our market structure and the trend toward decentralization, it becomes more and more necessary that agricultural producers must be united in some corporate structure, either cooperative or other, so that their combined volume can attract and hold competitive bidding from processors. Agricultural producers should be protected from unfair practices which may be used by others to dissuade or prevent them from taking part in organizations to increase their bargaining power.

The National Live Stock Producers Association believes that Senate Bill 109 contains the provisions needed for the agricultural producers' protection.

Sincerely yours,

NATIONAL LIVE STOCK PRODUCERS ASSOCIATION,
MYLAN E. ROSS,
Executive Vice President and General Manager.

STATEMENT OF OAKLEY M. RAY, VICE PRESIDENT, AMERICAN FEED MANUFACTURERS ASSOCIATION

The American Feed Manufacturers Association appreciates the opportunity to comment on S. 109 which is being considered by your Subcommittee.

The American Feed Manufacturers Association is the national association of the feed manufacturing industry. The members of the association produce more than 70% of the formula feed which is sold by feed manufacturers.

We want to make it clear to the Committee that the American Feed Manufacturers Association believes that any person, whether a farmer or any other citizen, should have the right to join, or refrain from joining, any lawful association or organization without fear of being subjected to reprisals by any other person because of his membership in, or contractual arrangement with such an association.

We have serious reservations, however, about the need for or the wisdom of the proposed legislation, because we believe that it may create serious problems, impose impediments to the marketing processes, and increase costs of the handling and distribution of farm products without necessarily doing anything concerning the bargaining position of producers and their organizations which is not adequately covered by existing law.

Our objection to the bill stems largely from its broad, comprehensive, and vague language and the many uncertainties which would be created by it. Most of the prohibitions set forth in section 4 would be dependent to a large degree upon factual situations and a determination of motive and whether the action or activity complained of was because of the producer's participation in or contract with an association of producers. Almost every transaction in connection with the purchase or acquisition of agricultural commodities which involves, or which might involve, any difference in price, quantity, quality, or any other term or condition in connection with a purchase or acquisition by a handler could provide the basis for a claim or lawsuit. The resolution of such a claim or lawsuit would necessarily involve the marshaling of a great number of detailed facts concerning not only the particular transaction involved but the other transactions of the

handler at or about the particular time, and, finally, a decision by a court or jury as to whether the difference complained of was occasioned by the producer's membership in or contract with an organization. Under such circumstances the stage would be set for harrassment and interference with the efficient marketing of agricultural products, which could greatly increase the cost of distributing farm products.

We do not believe that the sponors of S. 109 would want to set up the means which might give rise to harrassment or false claims, but we believe that the bill is capable of this result because of the subjective test which is necessarily involved in determining whether there has been a violation.

We are not aware of any situation in the feed industry in which existing law is inadequate to prevent or curb activities of the type aimed at by the bill. The Federal Government, under the Federal Antitrust Laws, the Federal Trade Commission Act, and the Packers and Stockyards Act, have broad and sweeping powers to prevent unfair acts or practices. If these laws are deficient we believe that is would be better policy to make such amendments thereto as may be necessary and which would be applicable to all persons, rather than to establish a new Federal law which would be one-sided in its application. Furthermore, we believe that any consideration of legislation to protect or improve the marketing of farm products should take cognizance of the recent complaint filed by the United States against an organization of farmers charging that through threats, intimidation, harassment and acts of violence, it attempted to induce and induced (1) nonmember farmers not to sell or deliver milk to processors, (2) carriers not to transport milk, and (3) processors to cease operations and not to receive milk. If the Congress legislates in this field it should provide protection for farmers, handlers, and other citizens against unfair acts of producers and their organizations. We favor adequate laws to protect any person or citizen against unfair practices of others, but we believe that all such prohibitions must be made to apply equally and fairly to all persons.

TULIA, TEX., *May 3, 1967.*

Senator ALLEN J. ELLENDER,
Chairman, Senate Committee on Agriculture,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ELLENDER: The West Texas Grain Elevators Association has been informed by Senator John Tower of Texas that S. 109 has been scheduled for hearings before the agricultural research and general legislation subcommittee on May 2 and May 4. We request that this telegram be made a part of the record of that hearing. The West Texas Grain Elevators Association opposes S. 109 in part and in whole because—

1. There is no need for such a law because marketing associations are protected under present fair trade laws just as all other businesses are protected.
2. The law is unilateral in its intent to extend shelter from competition to marketing associations by exclusion of privately owned and operated businesses.
3. The law would strip private business of its rights to compete for customers by use of economic bargaining.
4. Prohibits free enterprise business from aiding customers by loans money in the form of advances on crops or products and require that the same be delivered to his place of business as a condition for such loan.
5. The bill attempts to prohibit business owner from choosing the customers with whom he does business when making special consideration based on fast patronage.
6. The law would make the Department of Agriculture and gets secretary a police authority over agriculture commerce.

U. The bill is an attempt to circumvent the State courts so they can cross state lines to areas where more sympathetic judges and juries may be obtained.

I. If such a law is enacted agricultural marketing associations will rapidly become monopolized in many fields because private industry cannot compete with associations that are sheltered from competition and public criticism.

Respectfully submitted

WEST TEXAS GRAIN ELEVATORS ASSOCIATION,
L. DEAN REA, *Executive Manager.*

OAKLAND, CALIF.
May 4, 1967.

Hon. EVERETT JORDAN,
Chairman,
Old Senate Office Building,
Washington, D.C.
(Care Cootys M. Mouser, Chief Clerk.) :

The California conference of machinists representing 150,000 workers throughout the State repeats its support for Senate bill 109 which provides protection for farmer cooperative and bargaining association endorsed at our meeting last year. Organized labor has won these rights and we believe that farmers should have equal protection against handler discrimination and disruption of their associations.

CALIFORNIA CONFERENCE OF MACHINISTS,
JOHN T. SCHIAVENZA, *Secretary-Treasurer.*

PHOENIX, ARIZ., *April 3, 1967.*

Senator CARL HAYDEN,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: We are counsel for Western Compress Company, a subsidiary of Anderson, Clayton & Co., who, as you know, operate in Arizona and its Industrial Division headquarters are located in Phoenix, Arizona.

There is now pending in Congress S. 109 introduced by Senator Aiken which, among other thing, restricts processors and other specified purchasers of raw farm products from dealing freely with producers. The effect of this legislation is to insulate cooperative organizations from competition and to punish processors who compete with them. Violations of the proposed prohibitions would constitute criminal misdemeanors and subject processors to triple civil damage suits. Similar legislation is pending in the House.

A great deal of study has been given the bill. I am submitting herewith the conclusions which I believe have been reached fairly after studying the measure (see memorandum attached). Free enterprise (non-cooperative) businesses must unalterably oppose this bill as it would outlaw normal healthy legitimate competition.

We are advised that this legislation has been opposed by the Federal Trade Commission and the United States Department of Justice.

Mr. Jack Wilson of Western Compress Company will be in Washington during the week of April 16th and I have taken the liberty to ask him to call upon you to further explain the effect of this legislation on legitimate processors such as our client.

Sincerely yours,

FRANK L. SNELL,
Counsel, Western Compress Co.

CONCLUSIONS

1. In many respects S. 109 either duplicates existing federal or state trade regulation law, or is inconsistent with judicial principles developed under the Sherman Act and The Robinson Patman Act.

2. Bargaining associations currently enjoy a unique protected status under the antitrust laws.

3. The legislation is basically one-sided. Although the purchase and sale of produce is clearly a two- or three-party transaction between the canner, the grower, and in some instances the bargaining association, S. 109 would apply to only one party—the processor. The processor would essentially be denied the right to choose the growers with whom he would deal. This is contrary to the theory that a businessman has the right—repeatedly reaffirmed by the Supreme Court—to refuse to deal with particular customers or suppliers, insofar as such action is not a collective refusal to deal or boycott, which would be per se violation of the Sherman Act.

4. The language of S. 109 is vague and without precise direction. Such phrases as "interefere with," "inducement," "reward," and "interfere in any way," all beg for clarification. Such clarification would only come after long and expensive legal proceedings and at that could never be taken as final except in a particular instance.

STATEMENT OF JOHN D. SNOW, MANAGER, POTATO PROCESSORS OF IDAHO ASSOCIATION

Honorable Allen J. Ellender, chairman, honorable members and guests, I am John D. Snow, Manager of the Potato Processors of Idaho Association. Most of the potato processing companies in Idaho are members of this Association. I am authorized by the Association Executive Committee to speak for the majority of the members who oppose S. 109. It is the opinion of the members that legislation of this type is impossible to compose, define and administer fairly.

I. While S. 109 is supposed to control unfair trade practices affecting producers of agricultural products and associations of such producers and for other purposes, it is our opinion that while fresh potato shippers and potato processors, who make frozen and dehydrated potato products, are in favor of fair trading practices, yet in actual practice the law could place prohibitive restraints on raw material procurement activities of fresh shippers and processors which in turn could be economically ruinous to practices and reputation.

II. It is our understanding that the U.S. Department of Commerce, the Federal Trade Commission and the Department of Justice have all indicated that this bill could be dangerously misinterpreted and that legislation is now available to curtail processor discrimination against marketing cooperatives.

III. There are well established practices for procuring supplies of potatoes for processors. They purchase potatoes on the open market from many individual growers, they secure supplies by contracting with growers for all or part of their potato crop and a few of the processors grow some of their supplies of raw product. We are informed that as written this bill goes far beyond any anti-trust laws. We believe passage of this bill would do nothing but create confusion and disrupt raw material procurement as now handled by the potato processing companies and the unclear and nebulous way in which the bill would authorize criminal prosecution, court injunctions, damages, etc. would be very apt to ruin the system now in effect both as to economics and reputation of processors.

IV. Although the intent of the bill may be in favor of fair play for all, yet the bill contains too many undefined areas and many processors could easily find themselves engaged in legal proceedings for alleged discrimination against bargaining associations or their members.

V. As written S. 109 is so nebulous and lacks definition of so many practices such as "threats of interference", which is not defined, that the normal action and give and take in the daily market leaves it wide open for someone to construe a threat for which there is no definition, but the processor might end up being charged with discrimination.

VI. The bill would authorize criminal prosecution, treble damages and court injunctions against processors and other handlers for many reasons which are nebulous and are already prohibited by Federal and State laws. The same is true regarding discrimination against any producer in regard to price, quantity, quality or other terms of purchase and a processor could be subject to harsh penalties, or at least by litigation if he purchased different amounts or grades from association members and nonmembers when this is just a common practice in normal trading in the market place.

It is our belief that certain things such as threats and prohibitions are not defined even though criminal penalties can be assessed on these undefined prohibitions.

If passed this bill would jeopardize normal trading procedure of potato processors who certainly have a right to select their own suppliers.

This bill if passed would prohibit certain conduct on the part of processors and fresh potato shippers, however, it does not prohibit identical or similar conduct on the part of bargaining organizations.

We are definitely of the opinion that this proposed legislation, instead of helping secure fair play for producers, does nothing but cast a pall over the entire food marketing system in this country which has been developed over the years and under present laws and restrictions is in general a very smooth operation with fairness to all factors.

The potato processing industry in Idaho has developed rapidly in the last ten years, is one of the leading industries in the state, has given employment to many thousands of people, as well as developing a new outlet for growers in marketing their potatoes. The industry cannot stand the confusion and disruption which could be provided by passage of such a nebulous bill.

STATEMENT OF E. CLINTON STOKES, SECRETARY, AGRICULTURE COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES

The Chamber of Commerce of the United States appreciates the opportunity to express its views in respect to the provisions of S. 109—"to control unfair practices affecting producers of agricultural products and associations of producers, and for other purposes".

It is our understanding that this bill is intended by its proponents to protect the marketing rights of producers, and to increase the bargaining power of producers of farm products. The proponents contend that the further development of associations of producers will result in improved marketing programs and increased producer incomes. They charge that the impediments to these objectives are the growing concentration of power in the hands of fewer and larger buyers and that these buyers are engaging in unfair practices for the purpose of preventing producers from joining such bargaining associations.

It is not our intention here to seek to judge the merits of any such charges. Only the individual handlers can properly, in any specific case, respond to any charges of illegal practice or conduct. Our concern is that, as pointed out hereafter, there are existing laws to reach unfair acts or practices in competition, making the sweeping new authority proposed by S. 109 unnecessary, and, a threat to important basic rights which should not be abridged.

Freedom to organize and seek sound solutions to the problems of production and marketing through democratic processes is the right of all American farmers. By the same token, it is the right of every other segment of our agricultural and industrial production and marketing system. The freedom to compete is basic to our free enterprise economy and is essential to the continuing improvement of living standards for the American people. Competitive freedom among businessmen, farm and non-farm alike, promises the lowest possible costs and maximum variety and freedom of choice for consumers.

Fraudulent, deceptive, coercive and misleading business practices must be eliminated. Accordingly, we support, as the basic objectives of antitrust and trade regulation law, the prohibition of practices that are inconsistent with a competitive business economy.

OBJECTION TO S. 109

The principal reasons why the National Chamber opposes S. 109 are as follows:

1. *Producers already have the right to join bargaining associations.*—This right is protected through the provisions of the Capper-Volstead Act. S. 109 attempts to place an umbrella of protection for producer bargaining associations under the guise that not to do so leaves the producers with no opportunity to participate as members in collective bargaining associations. The facts prove otherwise. There are many effective producer bargaining associations actively engaged in the marketing of farm products.

2. *Existing laws prohibit processor and other handlers from engaging in unfair trade practices.*—Section 5 of the Federal Trade Commission Act states: "Unfair methods of competition in commerce, and unfair or deceptive acts and practices in commerce" are unlawful. Further, Section 6 of the same Act directs the Commission "to prevent persons, partnerships or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce * * *." The broad scope of the powers granted FTC would seem, therefore, to vast in that body authority to cope with the unfair and abusive practices which are alleged to exist. Sections 1–3 of the Sherman Act, as well as Section 5 of the Federal Trade Commission Act, are applicable to the practices listed as unlawful under Section 4 of S. 109. Further, the subsection providing for treble damages is unnecessary in view of Section 4 of the Clayton Act.

3. *Proprietary processors and handlers are placed in a disadvantaged position.*—Although the current bill before the Committee defines the term "handler" to include any processor or handler, whether it be a proprietary firm or cooperative association, it does not, according to our understanding, apply to bargaining associations which serve as marketing agents for the producers. The bill prohibits certain actions by handlers but does not prohibit bargining associations from using unfair methods to gain producer membership. Section 4 of the bill uses imprecise language that could encourage nuisance lawsuits against handlers who (*a*) make loans or give other assistance to producers, (*b*) deal with producers who are not members of associations, or (*c*) refuse to deal with particular producers for legitimate reasons.

4. *S. 109 should alo protect a producer's freedom not to join a bargaining association.*—The bill does not protect an individual producer's right to deal or contract directly with independent processors or handlers without fear of reprisal from the producer bargaining association. The bill deals only with protecting a producer's right to join such an association without fear of reprisal from the handler.

We believe that a producer must be as free to refuse to join as to join a bargaining association. If he chooses to join a bargaining association and markets his products through the association rather than dealing directly with an independent processor, ginner or other handler, he must be free to exercise that right without illegal reprisals from anyone. At the same time it is just as imperative that he be permitted to continue his favorable contract relationship with the processor of his choice.

5. *S. 109 does not recognize the right of an independent processor or handler to decide from which suppliers or producers to buy or not to buy.*—The bill would have the effect of forcing independent handlers to buy from producer bargaining associations. We believe that a proprietary handler, as well as individual producers, must be free to negotiate or refuse to negotiate with persons of their choice. They must be free to compete with any other processor or association for the products of a producer through practices that are consistent with a competitive business economy. Of course, if a processor unilaterally elects to break a contract with a producer during the marketing season just because the producer has elected to join a bargaining association, the act would not only be unfair but illegal. There are laws to prohibit such actions and there are effective legal recourse procedures available to the injured producer.

If a processor has the alternative of paying a higher price or providing other special services to keep his producer-supplier from marketing his product through alternate sources the next year, it should be his prerogative to enter into such agreements with said producers. After, all, the bargaining association representative will claim to provide special advantgates (either by price differential or other services) to these producers in order to influence them to market through the bargaining association.

PRODUCER ASSOCIATIONS AS COMPETITORS

More bargaining power means more competition. If a representative of a producer association calls on a farmer to persuade him to join the association, the representative must convince the producer that monetary advantages will result from joining such association. The purpose is openly stated by the proponents of S. 109—to increase the bargaining power of producers and raise farm income. How can associations accomplish this? They do it by persuading the producers to market their products on terms agreed to between their association and the processor or handler. The only way power is achieved through bargaining is to have sufficient control over the available supply of a commodity to refuse to sell the products of the association members to a prospective buyer unless the buyer will agree to terms that are acceptable to the producers. If this type of bargaining power is what the producer associations seek as agents of the producers, then the bargaining association should be regarded as a competitor of the processor and other buyers. It is competing against the conventional buyer in respect to which can negotiate the better conract with individual producers.

As voluntary organizations under truly competitive marketing practices, the bargaining associations could conceivably contribute better marketing terms and higher incomes for producers. The individual producer should be free to decide which route is better for his pocketbook. It therefore becomes important that the government take no action which would provide special privileges or protections from the antitrust or trade regulation laws which are inconsistent with competitive business practices. No law should prohibit the independent processors or the bargaining associations from offering the most favorable terms of contract to the individual producers, including price and other service incentives (within, of course, the rules of fair-play and honest competition).

There exists an even more competitive alternative for the producer associations. Once they become powerful enough to invest in cooperative processing facilities, they process and distribute their commodities. There are, of course, many fully integrated producer-owned cooperative processing and marketing associations already in existence. Thus if a producer association is accorded special privileges under Federal legislation which enables it to represent virtually

all of the producers of a particular commodity in an area, the independent processor has not only lost its opportunity to deal directly with independent producers, it has lost its source of raw materials.

THE DANGER OF FEDERAL PATERNALISM IN BARGAINING

It is one thing for Federal laws to protect fair cooperation and trading practices, but quite another to enact legislation which could lead to Government favoritism over one type of marketing organization in an otherwise competitive market.

Early in 1961 the Secretary of Agriculture directed the U.S. Department of Agriculture to take steps to encourage greater teamwork between the Department and the nation's farmer-owned cooperatives. He said that the trend toward greater concentration of economic power "makes it more essential than ever that the farmers' bargaining power be strengthened". He asked for exploration of possible ways of "increasing the farmers' muscle in the market place".

Just two weeks ago the same Secretary of Agriculture expressed concern over the lack of muscle in the market place. He noted that Government farm programs alone cannot produce adequate income for farmers. (This is a long-overdue concession.) But he went on to suggest that the remedy might be greater exemption from the antitrust laws for cooperatives and legislation similar to the Wagner Act. This Act requires an employer to bargain with a labor union representing a majority of employees. Under the protection of S. 109 it is not inconceivable that the producers' bargaining associations could develop to such proportions that jurisdictional disputes between competing associations would result in the enactment of a Wagner-type act for resolving such disputes. If this bill is to be the first step toward a Wagner Act for agriculture, which would require producers and other handlers to bargain with an authorized representative of producers, then we are substituting the failure of one Federal control system for another. Federal dominance over collective bargaining for agriculture cannot be implemented without determining and allocating or assigning the rights to each producer.

To the extent that collective bargaining attempts to circumvent competitive pricing and markets it will also fail to achieve the most desired objective—higher incomes for producers. As the income gains from this process become predictable, they will tend to become capitalized into the farming operations through higher land values.

A POSITIVE APPROACH FOR PRODUCER BARGAINING ASSOCIATIONS

There are other approaches to collective bargaining. Some are even less favorable. Recent reports of milk dumping and forced withholding operations of the National Farmers Organization represent a good example of coercive bargaining practices which are probably the least acceptable.

There are opportunities for more acceptable approaches to collective bargaining—where producer associations and their customer-handlers benefit mutually. Some producer associations are moving more in this direction. Bargaining terms which lead to greater efficiency in trading and lower costs of production, processing and handling could result in savings to both sides. The free exchange of information on consumer demand, market supplies, and production capabilities can contribute to greater stability in markets, prices and production.

One approach which would be beneficial to both sides is forward trading; that is, bargaining for what is to be produced as distinguished from trying to bargain for what is already in hand. High priority should be given to stability and dependability of supply and market outlets, to standardization, uniformity and improvement of quality. The producer association could work cooperatively with the processors and handlers in preparing for new market opportunities.

Mutual interest should be the underlying objective of any actions considered for collective bargaining. Whenever the bargaining associations can provide additional services which are mutually beneficial to both sides, additional targets or terms for agreement can be included.

There is room for collective bargaining by and for farmers provided it is within the framework of economic consequences which farmers and the whole society are willing to tolerate. Bargaining techniques by which some advocates would hope to bludgeon their way into new realms of prosperity by copying the pattern of organized labor is not likely to draw much farmer support. The modern-day producer is essentially and increasingly a business manager and capitalist who doesn't think of himself as primarily a laborer.

Thus it seems appropriate to stress before this Committee that careful consideration be given to the provisions of S. 109 to prevent discriminatory protection to producer associations from normal competitive practices in the market place. It seems imperative that this Committee seek the views of every executive agency having an understanding of and interest in the provisions proposed in S. 109 and similar legislation. The Justice Department, the Federal Trade Commission, the Small Business Administration, and the Business and Defense Services Administration of the Department of Commerce, as well as the U.S. Department of Agriculture, should be requested to give their views on this proposal.

WASHINGTON, D.C., *May 8, 1967.*

Hon. B. EVERETT JORDAN,
Subcommittee on Agricultural Research and General Legislation,
Senate Committee on Agriculture and Forestry,
Senate Office Building, Washington, D.C.

DEAR SENATOR: The American Corn Millers Federation represents over 70 milling companies in 25 states. We wish to be on record as associating ourselves with the statement of the U.S. Chamber of Commerce in opposing S109, a bill "to control unfair practices affecting producers of agricultural products and associations of producers, and for other purposes". We believe the bill is unnecessary for the reasons stated by the Chamber and other organizations who testified before you during the two days of hearings which we attended and evaluated.

If the Senate decides to approve legislation on this subject we would agree with the National Canners' Testimony that four fundamental points should be included in any revised bill.

1. Section 4 should be revised to protect the right of a producer to be free from coercive and discriminatory actions by bargaining associations, as well as by handlers.

2. The harsh penalties should be revised, so as to eliminate criminal penalties and treble damages. The administrative enforcement procedure proposed by Secretary Freeman may, with some important modifications, be most suitable for this type of legislation. In accordance with the statements of Senator Lausche and Williams, the Secretary's proposal should at the very least be modified to eliminate criminal penalties and treble damages, and the interest of all concerned would best be served if administration and enforcement were in the hands of the Federal Trade Commission rather than the Department of Agriculture.

3. The handler's rights to refuse to deal with a bargaining association and to select the producers from whom he will purchase should be made explicit by means of provisos in the Act guaranteeing these rights.

4. Additional revisions should be made in some of the language in Section 4 to clarify the intent and define the prohibitions more clearly.

Because of the obvious pressure of time on this Subcommittee we have joined several other organizations in filing a statement rather than making an appearance before your group.

Thanks and best wishes.

Sincerely,

AMERICAN CORN MILLERS FEDERATION,
BERT TOLLEFSON, Jr., *Executive Director.*

KANSAS CITY, MO., *May 2, 1967.*

Hon. B. EVERETT JORDON,
Chairman, Subcommittee on Agricultural Research and General Legislation,
Committee on Agriculture, U.S. Senate, Washington, D.C.

DEAR SENATOR JORDON: This organization, along with virtually all groups in the poultry industry, supports the avowed purpose of the bill, which is to control unfair trade practices affecting producers "of agricultural products and associations of such producers".

However, we feel, first of all, that there is adequate remedy under the statutes whereby alleged unfair trade practices can readily be dealth with.

There is nothing in Section 4 which cannot already be handled in this manner. It concerns unfairness, dishonesty and underhanded practices.

One wonders, however, whether the relationships between various industry segments in Agriculture have degenerated to such a level that a special act of congress is necessary in order to remedy them.

Section 5 goes beyond credibility as legislation which might be recognized as constitutional.

Paragraph (a) of Section 5 states that "whenever any handler has engaged in or *there are reasonable grounds to believe any handler is about to engage in* any act or practice prohibited by Section 4, a civil action or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved. In any action commenced pursuant hereto, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as a part of the cost". [Emphasis ours.]

We believe it highly out of character in the United States to impose "thought control". All the complainant needs is a strong belief that the handler "is about to engage in any act or practice prohibited in Section 4". He can begin action and there seems to be no recourse for the defendant in the event it appears the complainant acted hastily or unfairly. Is this really desirable?

Paragraph (b) of Section 5 states that whenever the Secretary of Agriculture has *reasonable* cause to believe that any handler or group of handlers has engaged in any act or practice prohibited by Section 4, he may bring civil action.

There is no recourse provided for parties found to be unjustly accused, except through the usual courts of redress. There appears to be no concern here for the innocent.

In the poultry industry, would the act by a handler of paying a higher price to one producer in the morning and a lower price in the afternoon as the market weakened provide cause for action, particularly if the afternoon vendor held membership in a producer group or marketing association?

Will the provisions tend to "freeze" producers with respect to their avenues for marketing by forcing the handler to stick with his current sources?

Will the producer, who in his eyes and that of a handler, has produce of a superior quality, find himself unable to obtain a premium price unless he first wins the certification of a bargaining unit with which he is not affiliated?

S. 109, as introduced, provides opportunity for harasssment that can, in the hands of improperly motivated people, create havoc in America's efficient food production, processing and marketing system. It could put a premium on mediocrity.

The producer has a right under the constitution to belong to any bargaining association which will admit him to membership. He also has the right to refuse to join. The same used to be true of a laborer's relationships with a trade union. It isn't always the case now. In like manner, handlers and processors are, we think, given the same freedom under the constitution to purchase from whom they desire. Here one can see a development paralleling the trade union movement. We suspect many in our industry see it coming. How long will one be able to buy his supplies from vendors of his own choosing? Two powerful freedoms are involved here. Much is at stake and we trust that Congress will appreciate the wisdom of acting slowly and with care.

Sincerely,

AMERICAN POULTRY AND HATCHERY FEDERATION,
DON M. TURNBULL, *Executive Secretary.*

[NOTE.—Letters identical to the following were also addressed to Senator Jordan, chairman of the Subcommittee, and Senator Hatfield.]

LINCOLNTON, N.C., *May 4, 1967.*

Hon. GEORGE D. AIKEN,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SIR: We vigorously object to favorable consideration being given by your committee to S–109.

S–109 is in violation of the right of free speech ensured under the Constitution of the United States.

S–109 is Class Legislation. This enactment seeks to make it a Federal offense for anyone to say or write anything against cooperatives, but cooperatives can say or write anything they wish regarding the Cotton Trade and producers.

S–109 would prohibit, by Law, anyone offering to pay the cotton producer a price for cotton (agricultural products) above the price a cooperative would pay, which is against the interest of the producer of agricultural products.

It is unbelievable that the Senate Committee on Agriculture and Forestry would favorably report S–109.

We request that this letter be made part of the hearing by your Committee on S–109.

Very truly yours,

W. M. VAN DRESSER & SON, INC.
W. M. VAN DRESSER, Jr.

U.S. SENATE,
Washington, D.C., May 8, 1967.

Mr. W. M. VAN DRESSER, Jr.,
W. M. Van Dresser & Son, Inc.,
Lincolnton, N.C.

DEAR MR. VAN DRESSER: I have your letter of May 4, expressing your opposition to my bill, S. 109.

The bill does not prohibit saying or writing anything against cooperatives; it only prohibits false statements and provides penalties therefor. The bill does not affect any fair trade practice but specifically prohibits unfair acts, based on a producer's membership or prospective membership in a marketing association. It is interesting to learn who wants to continue engaging in such practices.

Per your request, your letter will be inserted in the record of our hearing and I will also include a copy of my answer to it.

Sincerely yours,

GEORGE D. AIKEN, *U.S. Senator.*

LINCOLNTON, N.C., *May 12, 1967.*

Hon. GEORGE D. AIKEN,
U.S. Senate, Senate Office Building,
Washington D.C.

DEAR SIR: Thank you for your letter of May 8, 1967. I appreciate your cooperation by putting my letter in the records of the hearing on your bill S–109.

I assume by your last line in the second paragraph of your letter you insinuate I engage in such practices. Quite the contrary, I represent mills that buy cotton from Co-ops every day and thereby promote their welfare. I do, however, resent any person or government official that interferes with free enterprise or the God-given right of a man to have freedom of speech.

I think your bill was written with good intentions, but I feel it can be misused as a club against many people, if improperly administered. I, therefore, must be against a bill that would be used to persecute private enterprise.

Free enterprise has had so much interference in the cotton program now, that it is nearly dead from low supply due to decreased acreage allotments, high prices, textile imports and synthetic fibers. We need more people in Congress who understand our problem and the cotton business.

At the present time we have a large supply of unusable cotton in the Government Loan which should not have occurred. If cotton had not been under the Government Loan Program and the farmers produced and ginned it for the loan, this would not have happened. Some incentives for producing good quality cotton should have been put in years ago to insure cotton going to industry rather than to the Government Loan.

Please add this letter to the record of your hearing.

Very truly yours,

W. M. VAN DRESSER & SON, INC.,
W. M. VAN DRESSER, Jr.

U.S. SENATE,
Washington, D.C., May 17, 1967.

Mr. W. M. VAN DRESSER, Jr.
W. M. Van Dresser & Son, Inc.,
South Academy Street, Lincolnton, N.C.

DEAR MR. VAN DRESSER: I have your letter in further reference to my bill, S. 109. I'm sure you do not intend to "make false reports about the finances, management, or activities" of farmer cooperatives and beyond that, the bill would not affect your freedom of speech at all. Thus I am a little surprised at your opposition to it.

I note your belief the bill will be improperly administered and therefore, you must oppose it. Any proposed legislation could be opposed on that basis and

if carried to its logical conclusion, such opposition would preclude the enactment of any bill. I just do not believe the Department of Agriculture would use this proposed law to persecute private enterprise, but if by chance, they did, I know the reaction would be swift and sure. Instead, I think this legislation would promote free enterprise, because our economic system thrives on competition and S. 109 is designed to protect the present right of agricultural producers to bargain collectively through their cooperatives.

I appreciate the opportunity of discussing with you what the bill provides, and will insert your letter in the record of the hearing, along with this reply.

Sincerely yours,

GEORGE D. AIKEN,
U.S. Senator.

CHICAGO, ILL., *May 22, 1967.*

SENATOR GEORGE D. AIKEN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Once again I want to thank you profoundly for your statesmanlike action in introducing S 109, the Agricultural Marketing Act of 1967. A year ago when I was still President and Executive Director of the Cooperative League of the USA, I submitted testimony in support of this measure, and though I am now retired from that position and serve only as a consultant to the Cooperative League, I wish to renew my strong support of this measure.

We have on the statute books of the United States extensive legislation protecting the right of industrial workers to organize, bargain collectively, and join labor unions. We have a whole catalog of legislation helpful to commercial business. S 109 is, it is earnestly to be hoped, only the first of what should be a considerable number of pieces of legislation which will give farmers comparable protection in the right to organize cooperative agencies, market their crops through such agencies without interference or intimidation, and become members thereof.

There is no more important defense, in my judgment, of our American free enterprise system than measures like S 109 which are calculated to protect our American pattern of owner-operated agriculture.

It is well known that all too many cases of discrimination and intimidation against farmers for their attempt to market their crops cooperatively have taken place. Such unfair action should be stopped at source and made punishable at law, just as S 109 would do.

It is my earnest hope that this short statement which I am writing also to the other sponsors of this legislation can be made part of the record in support of your excellent bill. I shall be glad to do anything I can to help forward its passage.

Sincerely yours,

JERRY VOORHIS.

ROHRERSTOWN, PA., *April 25, 1967.*

Subject: Hearings on S–109 before the Senate Agriculture Subcommittee May 2 and May 4, 1967.

Hon. HUGH SCOTT,
U.S. Senate, Washington, D.C.

DEAR SENATOR SCOTT: Our organization, Miller & Bushong, Inc., operates a feed manufacturing plant in Lancaster County with trade in about a fifty-mile radius from Lancaster. We furnish feed to farmers in ours and neighboring counties and in some cases contract for the production of poultry and livestock by our accounts.

We have discussed S. 109 and after carefully studying what it covers, we request that you contact on our behalf the members of the subcommittee and indicate to them that we do not think this bill is needed and would lead to duplication and confusion for the following reasons:

1. The unfair trade practices to which S. 109 refers are now forbidden by other State and Federal laws, i.e., Section 3 of this bill is already covered by Sections 1–3 of the Sherman Act and Section 5 of the Federal Trade Commission Act.

2. The unfair methods of competition under Section 5 of the Federal Trade Commission Act (1914) are broadly covered under the Commission's jurisdiction. The Commission may stop many unfair competitive practices which stop short of full antitrust violations.

3. The treble damages provided for in S. 109 seem unnecessary to us. This is already covered in Section 4 of the Clayton Act which provides for treble damage action for persons injured by reason of anything prohibited by the antitrust laws.

4. The same practices which could put a handler in jail could be carried out by a producer with no penalties under the bill.

S. 109 could cause real problems for handlers who do not follow unfair practices.

A. A processor might be charged with a violation, for example, if he paid a higher price to a given producer to keep his processing plant in operation during a day of slack supply. The producer who sold the day before at a substantially lower price might well charge that he had been discriminated against because he was a member of some farm organization. How would the court decide what the "true market value" of a farm product is under those circumstances?—Especially if there was a local jury and the company was sizable?

B. Should a broiler contractor be able to refuse to do business with a given grower if the contractor believed, but did not have absolute proof, that the grower had been using the contractor's broiler feed for other farm animals in violation of their contract? Criminal charges might be filed against the contractor under S. 109 if he refused to do business with such a grower. At best, the contractor would be faced with expensive and time-consuming legal proceedings.

C. Some farmers might feel discriminated against and bring charges against a feed manufacturer who charged lower prices to farmers who bought in large quantity, in bulk instead of bags, for cash instead of credit, picked up at the mill instead of having delivered, etc.—Or a farmer might feel that he was discriminated against because he was refused credit. In each case the feed manufacturer might be faced with the necessity of proving that the difference in price, credit, etc., had nothing to do with what organizations each farmer belonged to or did not belong to.

We are sure there is no intent to cause problems such as those mentioned in the preceding three paragraphs. However, S. 109 could very well be interpreted so as to cause these and many other similar problems.

Your cooperation in making our point of view known to the members of the committee will be very much appreciated by all of us here at Miller and Bushong.

Respectfully,

MILLER & BUSHONG, INC.,
HENDRIK WENTINK,
Sales Manager.

STATEMENT OF HAROLD M. WILLIAMS, PRESIDENT, INSTITUTE OF AMERICAN POULTRY INDUSTRIES, CHICAGO, ILL.

The Institute of American Poultry Industries appreciates this opportunity to express its views on the proposed Agricultural Producers Marketing Act of 1967.

The Institute of American Poultry Industries is a nonprofit organization established in 1926. Its membership consists of persons and organizations engaged in the breeding, hatching, production, processing, and distribution of chickens, turkeys, and ducks and their products, and eggs and egg products.

In presenting our views in opposition to the provisions of the pending bill, the Institute wishes the record to be clear on the point that it is not opposed to cooperatives and that some of its outstanding members are cooperative organizations. The Institute also recognizes the right and privilege of every producer to join or to refrain from joining an organization of its choice.

Our objections to the proposed bill, therefore, are based first on the fact that insofar as the poultry industry is concerned the measure is unnecessary because the Packers and Stockyards Act which the Department of Agriculture has construed as having applicability to poultry is special legislation which makes it unlawful for any handler to "engage in or use any unfair or unjustly discriminatory or deceptive practice or device" or "make or give, in commerce, any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subject, in commerce, any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever;". That Act also contains other prohibitions and makes it unlawful for any handler to conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by the Act. This special legislation also gives to the Secretary of Agriculture broad investigatory powers and

provides appropriate remedies for violations. In view of the provisions of the Packers and Stockyards Act and the Department's interpretation thereof, the provisions of the anti-trust laws and the Federal Trade Commission Act, and remedies available under general principle of law, w edo not believe that another federal law is necessary insofar as the poultry industry is concerned.

The proposed legislation is also undesirable for other reasons. The bill, in our judgment, will tend to inject an atmosphere of distrust and controversy into daily business transactions which must be entered into between producers and handlers. The principal protection which the proponents of the legislation state they seek to accord producers is the right to be free from interference, discrimination or coercion by reason of the producer's membership in a cooperative marketing association. Most of the prohibitions set forth in section 4 of the bill are presumably aimed at that objective. The bill then sets up an enforcement procedure by authorizing lawsuits for treble damages, injunctions and for criminal sanctions. Because of the vague and general terms used in the bill and the fact that motive or purpose is involved, every transaction in which there may be any difference in treatment, whether in price, or in any other term or condition, or even in negotiations which do not ripen into actual transactions, whether justified or not, could become the basis of a lawsuit for treble damages or perhaps criminal action. The decision of a handler not to do business with a producer for any number of legitimate reasons could well give rise to a charge against the handler that he is interfering with or threatening to interfere with the producer in the exercise of his right to belong to an association. Offers made with respect to price, quantity, quality or other terms or conditions of purchase or acquisition by a handler from a producer which are different from those made to other producers, regardless of the legitimate reasons which might exist, could lead to a charge against the handler that he is discriminating or threatening to discriminate against a producer because of his membership in or contract with an association. The paying by a handler of a premium price for a legitimate reason could be viewed by a disaffected producer as warranting a charge that the premium price was in excess of true market value and was given as a regard because of his not holding membership in a cooperative association. The possibility of false claims, multiplicity of suits and possible harassment which could result under this legislation might create serious impediments to the marketing processes which could bring about increased marketing costs. Any action which would unnecessarily increase marketing costs and thereby either lower returns to growers or increase prices to consumers is certainly undesirable.

Section 4(e) of the Act also appears to us to go considerably beyond the stated objectives of the bill. This section would make it a violation for a handler to "interfere by any unfair or deceptive act or practice with the efforts of such association in carrying out the legitimate objects thereof". This provision is not necessarily related to a producer's right to join an organization of his choice. The language, "interfere * * * with the efforts of such an association in carrying out the legitimate objects thereof", is completely without definition by the Congress. The language is so broad, comprehensive and vague that it is not possible to determine the activity or types of activities which might be used as the basis of action for treble damages or criminal sanctions.

What is an "unfair act or practice," and what are the "legitimate objects" of an association of producers, and what is the meaning of "interfere", within the meaning of section 4(e)? There being no definition in the measure itself, under the enforcement procedures proposed by the bill there could be as many different definitions as there are courts and juries and cases presented. Under Article VI of the Constitution of the United States, every court of general jurisdiction in each of the several States would have jurisdiction and the Act also gives the Federal courts jurisdiction.

It must be recognized that such associations which would be protected by this provision of the bill are also frequently engaged in direct competition with handlers who would be subject to the bill. Certainly, it would seem that this provision should be deleted as it relates to activities of the association rather than to the right of producers to join an association. If it is not deleted, then there should be comparable and correlary prohibitions which would proscribe the right of an association to interfere by any unfair or deceptive act or practice with efforts of any handler in carrying out its legitimate objects.

Under the Packers and Stockyards Act the Secretary of Agriculture must have reasonable grounds to believe that a violation has been committed before invoking action. This accords a reasonable and necessary protection against baseless charges. He also, through the administrative process, determines the unfair acts

which are to be proscribed so that a person can comply with the proscription. The present bill, however, states the prohibition in such general, broad and vague terms that a person might be called upon to defend and to respond in damages or to defend and possibly be subjected to criminal sanctions before ever being made aware of the activity intended to be proscribed.

For the reasons outlined above we urge that the Committee not report favorably on S. 109.

PHOENIX, ARIZ., *April 14, 1967.*

SENATOR CARL HAYDEN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HAYDEN: We are independent cotton warehousemen in the business of storing and handling baled raw cotton for independent grower customers. Many of these growers are financed by a division of our parent company. Without the ability to compete freely (solicit all growers) with our competitors, many divisions of our company—namely: ginning, oil milling and warehousing—will be disastrously affected. Therefore, we are vigorously opposed to Senate Bill S. 109. Subject bill, we feel is—

1. Highly discriminatory.—It discriminates against the free enterprise system, which is the very foundation of this great Nation.

2. Grossly deceptive.—The heading reads, "To control unfair trade practices affecting producers of agricultural products and associations of such producers, and for other purposes". What is the intent of "and for other purposes"?

Further, many terms of this bill are so vague and far-reaching that they defy analysis. We question whether anyone today could visualize the ultimate detrimental impact of S. 109, should same become law.

3. One-sided.—The bill is completely one-sided. No restraints at all on bargaining or marketing associations. They could discriminate against handlers, and there are no requirements that associations deal fairly, even with individual growers. There is nothing to prevent associations from discriminating in favor of members or non-members, or between individual members. Further, if we are correct, most membership agreements contain very harsh penalty clauses. Also, there are extremely severe time penalty provisions, should grower wish to relinquish his membership. And, too, there are situations that would cause a grower substantial monetary loss, should he wish to relinquish his membership.

4. Class legislation.—The bill would provide class legislation of the most unjust, punitive and destructive type, which would deprive our company of freedom to compete for the farmers' raw agricultural products.

This proposed legislation is not needed, is unnecessary and unwarranted in that it does not alleviate the situation upon which same was conceived. Section 2 reads in part, "the marketing and bargaining position of individual farmers will be adversely affected unless they are free to ban together in cooperative associations as authorized by law". More than sufficient laws have already authorized the farmers to form and join cooperative associations. Therefore, this additional overlapping legislation is completely unwarranted.

The Farm Bureau, which admittedly has assisted in the writing of S. 109, has reportedly stated that the purpose of including the Secretary of Agriculture in this bill was to assure the Bureau of the support of the Department of Agriculture. The Secretary of Agriculture should *not* be handed such all-encompassing authority.

Should this proposal be enacted, a "handler" may very well have a representative who would unknowingly violate some section of the bill. In this instance, a "handler" would be subject to severe penalties due to his impossible task of censoring every action and word of his employees.

An interpretation of the bill could mean that handlers must recognize an Association of Producers as the bargaining agent for the producers. The handler could not contact, nor bargain with, an individual producer. Further, the bill could be interpreted to make negotiations with Association of Producers mandatory. The handler would be forced to do business with Association of Producers against his better judgment and wishes. The Supreme Court has repeatedly reaffirmed the right of the individual business to choose his customers and suppliers. Thusly, S. 109 would seek to repeal this rule.

Seemingly, the proponents of S. 109 are asking Congress to pass laws which will give the cooperatives additional monopolistic powers over the growing and delivery of crops to the handlers.

We reiterate our vigorous opposition to S. 109, and kindly solicit your full support.

Sincerely,

WESTERN COMPRESS CO.,
J. A. WILSON, *Vice President.*

SYRACUSE, N.Y., *May 1, 1967.*

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR SENATOR ELLENDER: Please permit me to thank you, first of all, for the opportunity afforded me to submit this letter for inclusion in the record of the hearings on S. 109, introduced in this session of Congress. The hearings will commence on May 2, 1967.

Eastern Milk Producers Cooperative Association, Inc. is a bargaining cooperative of milk producers—10,000 in number. The farms of our member-producers are located in the northeast, primarily in New York State and Pennsylvania. Our milk is sold in the New York-New Jersey market and in other northeastern markets.

S. 109 is a vitally important legislative proposal. It is a further link in the chain of measures designed to—1. protect the rights of producers to organize and join cooperative associations, and, 2. to promote and encourage the growth of cooperatives.

If enacted into law, S. 109 would stop handlers from—

(1) interfering or threatening to interfere with producers in their efforts to join a cooperative;

(2) discriminating against producers because of affiliation with cooperatives;

(3) coercing producers to terminate their affiliation with cooperatives;

(4) offering inducements to producers to boycott cooperatives; and

(5) committing other acts designed to discourage producers from organizing, joining or having dealings with cooperatives.

Almost a year ago, on the occasion of the hearings on S. 109 (89th Congress), which dealt with the same subject matter, I submitted a statement which was published in the record of those hearings (at page 162). What I said there is still true. The need for enactment of the proposed legislation is just as urgent now as it was then.

In my statement of last year, I said as follows:

"* * * S. 109 would amend the Act of February 18, 1922, which is popularly known as the Capper-Volstead Act. That Act gave farmers the legal right to organize into cooperative associations. It was a milestone in the history of the cooperative movement.

"Experience has shown, however, that the right to organize is not enough. It does not of itself assure the healthy growth of cooperative associations. Accordingly, the Congress, in pursuance of its oft-declared policy, should take the next logical step and should, through the enactment of S. 109, protect farmer cooperatives against the disruptive and unfair tactics of some buyers of agricultural commodities."

For these reasons we again urge the Committee on Agriculture and Forestry to approve S. 109, to recommend it to the Senate, and to take all necessary steps to expedite its enactment.

Sincerely yours,

EASTERN MILK PRODUCERS COOPERATIVE ASSOCIATION,
JOHN C. YORK, *General Manager.*

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