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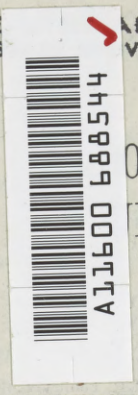
NOMINATIONS



HEARING

BEFORE THE

COMMITTEE ON
OR AND PUBLIC WELFARE
NITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

LAURENCE H. SILBERMAN, OF HAWAII, TO BE UNDER SECRETARY OF LABOR

PETER G. NASH, OF NEW YORK, TO BE SOLICITOR OF THE DEPARTMENT OF LABOR

JULY 29, 1970

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NOMINATIONS

WEDNESDAY, JULY 29, 1970

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met at 2:40 p.m., pursuant to call, in room 4232, New Senate Office Building, Senator Ralph W. Yarborough (chairman of the committee) presiding.

Present: Senators Yarborough, Randolph, Williams, Javits, and Schweiker.

Committee staff present: Robert O. Harris, staff director; John S. Forsythe, general counsel; Roy H. Millenson, minority staff director; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The Committee on Labor and Public Welfare will come to order. The first order of business is the nomination of Mr. Laurence H. Silberman of Hawaii to be Under Secretary of Labor.

We have here a biographical sketch of Mr. Silberman that we will order printed at this point in the record.

(The biographical sketch of Mr. Silberman follows:)

BIOGRAPHY OF LAURENCE H. SILBERMAN, UNDER SECRETARY OF LABOR–DESIGNATE

Laurence H. Silberman was nominated by President Nixon as Under Secretary of Labor on June 18, 1970.

At the time of his nomination, he was serving as Solicitor of Labor. He had been nominated to this post by President Nixon in February 1969 and confirmed by the Senate on May 1, 1969.

Prior to his appointment as the top legal officer in the U.S. Department of Labor, Mr. Silberman was a lawyer in the Appellate Division, General Counsel's Office, National Labor Relations Board. He assumed that position in 1967.

From 1964 to 1967, Mr. Silberman was a partner in the law firm of Moore, Silberman and Shultze in Honolulu.

He was an associate in the Honolulu law firms of Moore, Torkildson and Rice, and Quinn and Moore from 1961 to 1964.

In 1961 and 1962, Mr. Silberman was also a lecturer in labor law and legislation at the University of Hawaii.

In private practice, he specialized in labor-management law.

Born October 12, 1935, in York, Pennsylvania, Mr. Silberman received a B.A. degree in history (with distinction) from Dartmouth College in 1957. He received an LL.B. from Harvard Law School in 1961.

Mr. Silberman was a member of the U.S. Army Reserves, serving on active duty as a private from July 1957 to January 1958.

He was admitted to the bar by the Supreme Court of Hawaii in 1962, and served as a member of the Hawaii bar Association Ethics Committee from 1965 to 1967.

Mr. Silberman is married to the former Rosalie Gaull of Boston, Massachusetts. They live with their three children, Robert, Katherine, and Anne, in Potomac, Maryland.

The CHAIRMAN. We also have the statute explaining the duties of the position to be printed in the record at this point.

(The statute referred to follows:)

EXCERPT FROM TITLE 29, U.S. CODE

§ 552. Under Secretary; appointment; duties.

There is established in the Department of Labor the office of Under Secretary of Labor, which shall be filled by appointment by the President, by and with the advice and consent of the Senate. The Under Secretary shall perform such duties as may be prescribed by the Secretary of Labor or required by law. The Under Secretary shall (1) in case of the death, resignation, or removal from office of the Secretary, perform the duties of the Secretary until a successor is appointed, and (2) in case of the absence or sickness of the Secretary, perform the duties of the Secretary until such absence or sickness shall terminate. (Apr. 17, 1946, ch. 140, § 1, 60 Stat. 91; Oct. 15, 1949, ch. 695, § 3, 63 Stat. 880.)

The CHAIRMAN. We also order printed at this point an excerpt from the U.S. Government Organization Manual of 1969–70, paragraph 299, the Under Secretary of Labor, delineation of the duties.

(The material referred to follows:)

EXCERPT FROM THE U.S. GOVERNMENT ORGANIZATION MANUAL OF 1969–70

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UNDER SECRETARY OF LABOR

The Under Secretary of Labor is the alternate of the Secretary in the discharge of all the Secretary's responsibilities. He serves as Acting Secretary in the Secretary's absence.

* * * * * * *

The CHAIRMAN. Mr. Silberman, before commenting any further we welcome you to this committee. Since you are from Hawaii and you have the distinguished Senator from Hawaii here to introduce you we will call on Senator Fong first.

STATEMENT OF HON. HIRAM L. FONG, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator FONG. Thank you Mr. Chairman, and members of the committee.

I appreciate this opportunity to present to you Mr. Laurence H. Silberman, who has been nominated to be the Under Secretary of Labor.

Hawaii is proud to claim Mr. Silberman because it was there that he began his successful legal career. After receiving his law degree from Harvard Law School in 1961, he jointed a law firm in Honolulu and was admitted to practice there.

He rapidly earned a reputation as a specialist in labor management law. He represented diverse industries such as pineapple, longshore, and trucking, and won the high respect of both management and labor groups for his ability, integrity and fairness.

He was also a lecturer in labor law and legislation at the University of Hawaii.

In 1967 Mr. Silberman became an attorney in the Appellate Division of the General Counsel's office, National Labor Relations Board. He was in this position here until last year when he was nominated to be Solicitor of the Department of Labor.

It was my pleasure to present him to this committee at that time for the top legal office of the Labor Department.

Now Mr. Silberman has been promoted to be the Under Secretary of Labor from his position as Solicitor. He comes to his new post with

a solid background and experience in the labor management field as a result of his private practice of law and service with the Federal Government.

He has served with fidelity and competence. The fact that he has been selected to be the No. 2 officer in the Labor Department attests to the full confidence which the administration places in him. I feel his is a very worthy appointment by the administration. And I believe he will capably fulfill the responsibility of Under Secretary of Labor.

Therefore, I welcome this opportunity to present Mr. Silberman and to recommend him to your committee for favorable action on his nomination.

The CHAIRMAN. Thank you, Senator Fong.

I will forgo questions at this time and call on the distinguished member of the Senate Labor and Public Welfare Committee who is chairman of the Labor Subcommittee, Senator Williams of New Jersey, for any comments or questions he has.

Senator WILLIAMS. Thank you very much, Mr. Chairman. I was supplied with some information that I did not have until Senator Fong introduced you, Mr. Silberman. You parted from New Jersey to go to Hawaii, is that right?

STATEMENT OF LAURENCE H. SILBERMAN OF HAWAII, NOMINEE TO BE UNDER SECRETARY OF LABOR

Mr. SILBERMAN. Yes.

Senator WILLIAMS. Did you live in New Jersey?

Mr. SILBERMAN. Yes, I suppose that could be considered correct. Actually I was born in Pennsylvania and lived in New Jersey and went to school in New England and went from there to Hawaii.

Senator WILLIAMS. We miss you there but we see a lot of you here.

As you know I have had what could be described, I guess, as substantial disagreement with the Labor Department particularly in the Department's handling of the United Mine Workers questions and as they have arisen over better than a year now.

During this period you were in the Department and you know of the disagreements that I have had and expressed in the memorandum letter to members of the Labor Subcommittee dealing with various phases of the Mine Workers Union situation including the election period, the continuing question of union democracy and the handling of union funds; also questions of failure to keep required records. You are familiar with all of these matters and other questions I have had, sincere questions about the Department's policy and practices.

We have not come to the end of this in terms of conclusions, as an opinion out of the committee. I have not personally reached final conclusions on everything and we will continue, of course, our oversight responsibility in these areas.

What I want to deal with briefly here for a moment with you as you are considered for this high post is the basic problem of people losing confidence in the Government to protect their interests.

The Nation is aware of the unrest in the coal mines and I think it has been made fairly clear what some of these basic feelings are that have generated this unrest.

The coal mine health and safety bill became law and with it came great hopes on the part of the miners that they were going to

get a new measure of security in the mines in terms of physical safety and in terms of a better environment from the standpoint of health.

Now they have not seen a vigorous enforcement. Which is the responsibility of the Department of Interior. Work stoppages have developed out of this unrest.

There are also problems, as you well know, with the activities of the Labor Department respecting its responsibility concerning union democracy. Also workers are greatly concerned with the adequacy of the union pension and welfare funds.

As a result of all of this unrest and its a very complicated and quite profound situation, we have seen many work stoppages and the threat of a serious coal shortage. In response to this unrest among miners, the Labor Subcommittee did journey to Pennsylvania.

We were concerned and we wanted to know first hand what the miners concerns were. I think that there was a fallout of benefits immediately from that visit. Our presence indicated that this committee was concerned with the administration of the health and safety law. We made findings that we were not pleased with the inadequacies reported to us.

As you will recall this was expressed in terms of a nomination which was presented to the Senate, and which was subsequently withdrawn.

It was our disagreement not with the man personally but we felt that he was not the most vigorous person to deal with the substantially new health and safety law and its administration.

We feel the same need now in another area in West Virginia where the unrest settles down to the pension and welfare fund and its inadequacy. Reports get to us second hand here in the committee, which dictate that we ought to know more about it first hand. As a matter of fact that is exactly what we are going to do after this meeting. The labor subcommittee is going to West Virginia to be there on the scene and hear the statements of concern by the miners themselves.

It occurred to me that with all the complexity of these issues and its national impact of the work stoppages which have resulted, this might be a rare situation where the Department and the committee might work together.

I would like to invite you down with us this evening, although this might be short notice. However, it is anticipated that our field work will not be concluded this evening and we will be going back next week. So perhaps informally we could discuss that possibility for later.

All I am saying is that it seems to me in this particular industry fraught with all of its unique situations of great hazard, of all the trauma connected with the election, with all of the heartache of the inadequacies of a pension plan that is billed as so much and is producing in some areas so little, we want the folks in Pennsylvania or West Virginia, or wherever the miners are, to know that we want to do what we can.

We can't do everything. I think we would like to know your Department feels the same need to restore the confidence of the miners. That is a long, long speech, Mr. Chairman, but I just spread it out rather than go through the points one by one with questions because it is going to be a long development here before we see truly better days, in my judgment.

Senator YARBOROUGH. Senator Williams, that is not a long speech but it is a long speech for you. Do you want a comment from Mr. Silberman in response to that?

Senator WILLIAMS. I am sure he would like to and I appreciated the affirmative expressions I received during my remarks.

Mr. SILBERMAN. You have pointed out we have had some differences with respect to several interpretations of the Landrum-Griffin Act.

I think, by and large, the points of agreement between your committee and the Department of Labor far outweigh the differences. I think your particular effort that you are focusing on now, particularly the hearing which you are planning in West Virginia, may well have a salutary impact.

We are terribly worried about that pension situation. As you know that, among the other things, prompted the administration to come forth with a new fiduciary bill which we think will go a long way to cure some of the problems which bedevil that pension fund and others.

That I suppose is a leading example. Insofar as your efforts in holding a hearing in that area, it would serve to communicate to the people there that the Federal Government, and I suppose to them the Federal Government is both the executive branch and congressional branch, that the Federal Government is concerned about that pension fund, about their legitimate expectations and to insure that those legitimate expectations are realized.

I could not be more supportive. I think it might be very helpful. I certainly offer the Department's aid to your committee in these efforts.

Senator YARBOROUGH. Are there any further questions?

Senator Javits?

Senator JAVITS. Mr. Silberman, I am very glad to have approved your being named for this post and I congratulate Hiram Fong on having such a fine constituent. I ask unanimous consent that your biography may be made part of the record in respect to these proceedings.

Senator YARBOROUGH. That has been ordered.

Senator JAVITS. Now, Mr. Silberman, I agree with Senator Williams. I think it is an act of fine statemanship on his part to have made the statement he has giving you the benefit of every doubt in respect of the legal proceedings with respect to the United Mine Workers.

On that pension fund I might say I go a lot further in the need for the pension fund reform than the administration and have a bill, as you know, of a very comprehensive character on that score.

With Senator Williams partnership and cooperation we have now put out a questionnaire to 1,500 pension funds and I believe we are going to learn a lot about what is really happening in the field which will be of enormous benefit to the 25 million Americans who are the beneficiaries of these pension and welfare funds.

We shall press very hard based upon our findings for legislation. I think it is splendid that you will lend yourself, as you say, to this very great effort.

In following the policy of the Department I would like you, as this is a kind of historic occasion to you to be named Under Secretary, to make any statement as to your view as to what should be the broad

overall policy of the Department of Labor of which you will now be the second in command?

Mr. SILBERMAN. I had not come with a prepared statement, Senator, because in my past experience I have found that the questioning from this committee was such that they usually brought out everything that was relevant and cut off that which was irrelevant.

The broad problems of the Department of Labor, I suppose, could fall into 3 general categories and the listing would not be in order of priority, just a categorization.

First would be maintaining a labor relations climate in this country which will serve to enhance the prospects of free collective bargaining.

The Secretary and myself are committed to this.

Secondly, the Department of Labor has large, very large enforcement responsibilities in various areas. Landrum-Griffin is one of those, perhaps one of the most important. It has responsibilities in the wage and hour field and it has a burgeoning new responsibility in the area of achieving equal rights for minorities and working women through the use of the Federal Government's contracting power.

We must not lag in any of those enforcement activities. They are all important and we must devote our efforts to them.

Finally, there is the area where the great proportion of our budget is, the manpower programs. These are designed by the Congress primarily to serve the disadvantaged and enable our Government to do what it can to minimize the unemployment problem, particularly in the areas of what is so-called hard core unemployment. They are also designed to develop techniques whereby unemployed people can be given the training, skills and indeed, sometimes the help and the motivation to put them in the labor market in such fashion that they can achieve that measure of human dignity to which they are entitled.

Senator JAVITS. Do you have any illogical convictions respecting training for or employment in public service jobs?

Mr. SILBERMAN. I would like to say I have no illogical convictions but I am not sure. I suspect I would subscribe to the general departmental policy with respect to manpower which recognizes that public service employment has some purpose but which, by the same token, emphasizes that the key to the manpower strategy has to be a method which in the long run puts people into private employment.

Senator JAVITS. I thank you very much, Mr. Silberman, I think that is what I expected you would say. I think you have handled your job superbly well.

I think we have a fine team at the Department of Labor. I certainly favor your confirmation and I hope the committee will act affirmatively.

Mr. SILBERMAN. Thank you very much, Senator.

The CHAIRMAN. Mr. Silberman, before going to the Labor Department you were in the appellate division of the General Counsel's office of the National Labor Relations Board?

Mr. SILBERMAN. That is correct.

The CHAIRMAN. And you were experienced as one of their top lawyers before you became Solicitor of the Labor Department, which in popular parlance would be called the Attorney General of the Labor Department?

Mr. SILBERMAN. Well, the Justice Department would not accept that definiton.

The CHAIRMAN. You in Labor and Agriculture have to accept the title Solicitor.

Now you, in these capacities, doubtless know of the pendency of a vast number of bills here to substitute a labor court in labor disputes for the NLRB. To emasculate the NLRB and substitute a labor court.

Have you ever taken any position on that?

Mr. SILBERMAN. Yes; I recall the distinguished Senator from Texas asked me that question when I went around for nomination as Solicitor. My response now would be no different than it was then. I think there is a lot of heat and fire about the labor court idea which belies the substance.

I do not see it as a panacea for real or alleged difficulties with respect to the administration of our labor laws.

The CHAIRMAN. I take it then you would not advocate the creation of labor courts and the taking away of the jurisdiction of the NLRB and vesting it in a labor court and destroying, weakening to that extent the free enterprise portion of labor in free collective bargaining that has been a hallmark of labor-management relations for so many years in America?

Mr. SILBERMAN. That is correct, sir.

The CHAIRMAN. Also in this, of course, you have been Solicitor for the Department. Now you move over as Under Secretary and under the law the Under Secretary, reading from the manual, is alternate to the Secretary in the discharge of all the Secretary's responsibilities.

He serves as Acting Secretary in the Secretary's absence. You move over from the lawyer's department to one of the two main management executives of the Department.

In the absence of the Secretary, the executive manager of the Department, you become a policymaker. Of course, the lawyers advise people but you move more into the policy end and will be determining the Labor Department policy.

Now under recent directives all manpower development and training have been moved over from the Office of Economic Opportunity and these will be administered by the Labor Department. As to the new enrollees under this training, actually there were 764,000 in 1969, and estimated 775,000 in 1970, and estimated 745,000 turned down in 1971.

They estimate that turndown will take place. Our committee now has under consideration a great new manpower training bill. Hearings have been completed by the subcommittee and the bill ordered reported to full committee.

We start consideration of that legislation at 10 o'clock tomorrow morning in executive session of the full Labor and Public Welfare Committee. That will be under your jurisdiction. I take it as Solicitor you have been familiarizing yourself with this division of jobs, Job Opportunities in the Business Sector (JOBS), the concentrated employment program, the public service careers, et cetera.

You have been asked about that briefly here although the number in it is miniscule compared to the number being trained where we had 4,300 being trained in that out of 744,000 in 1968 and only 3,800 being taken trained in 1969 out of 764,000.

The testimony before us shows the great opportunities here for a need for people in hospitals, the need for help in city work, county

work, State work out of school enrollees, and the Job Corps and the mainstream.

You are familiar with those different programs under which people are trained to hold other jobs, to hold new jobs or to hold some kinds of job, are you not, to put them back in the mainstream of productive people in this society?

Mr. SILBERMAN. I am familiar with these programs generally, Mr. Chairman. I will confess that as the lawyer for the Department, as the Solicitor, I was involved in only certain problems that would come out of the manpower area and this experience was not such as to give me the full picture of the range and strategy that I will have to grasp as Under Secretary.

Normally the problems that come out of manpower that require legal attention are the enforcement problems, and thus I would say that it is the manpower area in which I have the most learning to do.

The CHAIRMAN. I think your training stands you in good stead, Mr. Silberman.

All of us, if we quit studying and learning, would become useless in Government pretty quick, to my observation. But I think your background, with your degrees from Dartmouth and from Harvard, your history degree with distinction from Dartmouth and your LL.B. from Harvard plus your experience since as a law teacher in the University of Hawaii and with the Government and the private firms, will enable you to do the studying and adjustment necessary to administer this with three-quarters of a million men in this manpower training.

You will be running in effect an educational system as well as a labor department. Of course, with the pilots that have been projected here, that there will be a downturn in this enrollment in this budget for the fiscal 1971 budget, with the increasing unemployment in the country, it seems to me that you would not be able to get the job done with a downturn in enrollment in the manpower training programs.

The bills that we are hoping to pass here will not envision a down turn in this because as you know in the increasing unemployment the burden falls first on the Labor Department.

It will be the primary duty of the Labor Department not only to hunt jobs but to train people to hold the jobs.

I assume that you as Solicitor of the Department have familiarized yourself with this responsibility as well as with the actual programs being run.

Mr. SILBERMAN. Yes; I have.

The CHAIRMAN. We have in this new bill that has come out of the subcommittee, from the distinguished Senator from Wisconsin, Mr. Nelson, a provision not in the bills before, a bilingual manpower training program, sadly lacking in our society before for the people from non-English speaking homes.

In my own State we have the experience of 1,600,000 people with Spanish surnames: they are admirable workers. If they can understand the manuals in industry they make, as all the testimony shows, very fine adjuncts and improvements in our economic system in holding their share of jobs.

I am hopeful we—the Congress—will be able to pass this bill providing for in depth bilingual manpower training and I hope you will take a personal look at that and see that it is implemented.

Sometimes we have a little objection from some people to implement a new program. It is difficult to find people to train bilingual workers. I realize you can't do this but you can assign someone to see if we are able to pass that bill with the bilingual part in it that this is fully implemented.

Now it seems to me in my 13 years on this Labor and Public Welfare Committee that we have two great fields of needed improvement in the labor laws of this country.

One of the two greatest is real safety laws. The predecessor of Mr. Shultz, Secretary Wirtz, very strongly supported one. Of course, it takes time for a new Secretary to get the Department in grip and Secretary Wirtz was there for sometime before he got it in hand, here, enough to push that in the last 2 years.

There was great opposition to it in this country. I think that part of industry—not all industry—opposed some parts, but the parts they opposed would save money if they would help us pass such a law instead of blocking it.

I assume that you are familiar with the fact that in the last year for which we have statistics available that 10 times more man-days of work were list in American industry due to injuries than were lost by all the strikes and lockouts and walkouts whether they were authorized strikes or not.

You are familiar with that; are you not?

Mr. SILBERMAN. Yes, I am, Mr. Chairman, indeed I have had an active part in the drafting of and discussions with Congress on a safety bill which the administration sent up last year.

I can assure you that both the Secretary and I are whole-heartedly committed to the need for passage of such a bill this year. Now I candidly confess that we have some major differences with certain bills which differ in structure, if not in intent, from the bill that we are supporting.

But as to the underlying problem the Secretary and myself are whole-heartedly committed to a legislative solution of this.

The CHAIRMAN. In the last year and a half we have had two beginnings, we have the Federal Coal Mine Health and Safety Act and we have the Federal Construction Safety Act which has become law in the last year and a half but it applies only to Federal projects or federally financed projects.

With the rate of people being injured in American industry it seems to me that it should not be tolerated. These people need to have more intelligent direction in that industrial activity. It is going to take the force of law because if we don't have a law the man who puts in rigid safety standards himself will be at some economic disadvantage, perhaps, maybe not.

Many think that. In order that all competitors have a fair break in our economy it seems to me we must have a forceful law, have impartial enforcement among all segments and all people in the economy. I am glad that you recognize that is a badly needed improvement in the industrial machine of America.

Now another badly needed improvement is the handling of the private pension funds. I have introduced a very stiff bill on that in the previous Congress as I did on the Occupational Health and Safety bill. There was much opposition to improving the handling of the pension funds by most segments of the economy.

But the fact is now that about three-fourths of the workers in private industry never participate now in the pension funds even though the private pension funds is set up.

Isn't that about correct, about the right percent? In the company's having pension funds only about 1 out of 4 workers ever participate in that private pension funds?

Mr. SILBERMAN. I believe those figures sound familiar to me, Senator. I could not vouch for them.

The CHAIRMAN. Due to the failure of portability in these funds the average workman thinks he has a good pension fund for his family and he counts on it and it is bigger than his social security but when his work terminates he has no pension protection, some clause somewhere having cut him out.

There are $126 billion accumulated in pension funds because the workers did not draw the pensions, they could not carry it from one company to another and they were cut out of these vast pension funds.

Not very many people are interested in cutting the workers in for protection and the workers end up on social security alone. I think it is a bad imbalance in the economy and I think that we need some remedial laws, better handling of the pension funds.

That is one of the great needs in the field of labor legislation, that and the protection of safety. I charge you to use your great talents to help the Congress do our job here in the legislative branch.

I will ask no further questions. We have just had the ranking majority member of this committee join us, the distinguished Senator from West Virginia, who has served a good many years in the House and is himself chairman now of the very powerful committee that has much to do with labor in this country, the Public Works Committee.

Of course their projects help you determine how many people will be employed and unemployed in the year to come.

Senator Randolph.

Senator RANDOLPH. Mr. Chairman, I notice that you say you have been here 13 years in the Senate.

The CHAIRMAN. On this committee.

Senator RANDOLPH. I have been here 12 years and a little longer but I did have the privilege of being a member of the Labor Committee in the House of Representatives for a period of 14 years.

So we have some familiarity, as many who sit at this table, with the recurring problems that are to be solved at least in part by you and your associates.

You are a young man, 34 years of age, is that right?

Mr. SILBERMAN. About 35.

Senator RANDOLPH. Not until October.

I have checked your biography.

Mr. SILBERMAN. You have me nailed, Senator.

Senator RANDOLPH. I want to say you will get older very quickly in the job.

Mr. SILBERMAN. I have already noticed that.

Senator RANDOLPH. I think, Mr. Chairman, that I personally as well as officially am gratified that you come under the auspices of the Senator from Hawaii, Mr. Fong.

I have great confidence in his recommendations in matters of this kind. You are a personal friend, Senator Fong, of the nominee, is that correct?

Senator FONG. Yes, that is correct.

Senator RANDOLPH. I am sure that all members of the Labor and Public Welfare Committee have at least in degree studied your background and experience and training and I see no reason, Mr, Chairman, and I would like to place it in the record at this point, why I cannot eagerly support with my vote the nominee who comes before us this afternoon.

I wish you of course a certain amount of good luck because you will have to have that as well as acumen.

Mr. SILBERMAN. I appreciate both your expression of confidence and your proffer of luck, Senator, I will need both,

Senator RANDOLPH. Are you in favor of wage and price controls?

Mr. SILBERMAN. No, Senator, I am not.

Senator RANDOLPH. I usually get that reply, I am for them. Perhaps the members of your administration, and others in both parties will believe that they may be necessary because I think this is the only way we will meet many of the problems that our able chairman had discussed this afternoon.

Thank you, sir.

The CHAIRMAN. I have had a special request here that you not leave. Our special request is since Senator Javits has to leave that we begin the next hearing before we finish yours since he wants to have the privilege that we all cherish of introducing someone from our home State who has attained a high position.

Mr. Peter Nash of New York has been nominated to be Solicitor of the Department of Labor if, as, and when you vacate that office. We will ask him to come down and to hear Senator Javits and then Mr. Nash, you will please move back until Mr. Silberman finishes.

We welcome you, Mr. Nash, and we will put your biographical sketch and other material in the record later.

At this time we yield to the distinguished Senator from New York.

STATEMENT OF PETER G. NASH OF NEW YORK, NOMINEE TO BE SOLICITOR OF THE DEPARTMENT OF LABOR

Mr. NASH. Thank you, Mr. Chairman.

Senator JAVITS. Mr. Nash, I am delighted to welcome you to the committee and to introduce you to the committee as a very distinguished New Yorker, a member of a fine firm in Rochester, a former instructor in labor law at the Rochester New York Institute of Technology and generally a distinguished lawyer of whom we are very proud.

The only thing I hope you will respond to, when your time comes, there is no need for it now, is the idea which you have with the policies of the Department, your complete ability to carry them out with sincerity and conviction as forecast by the Secretary and what we hope will be the new Under Secretary, Mr. Silberman.

Thank you very much, thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

You will step aside for a moment, Mr. Nash, and we will proceed with the hearing of Mr. Silberman.

Well, are there any further questions of Mr. Silberman?

Mr. Silberman, you may step aside and we will call the next witness. The next witness is Mr. E. Theodore Arndt, of Arndt & Day, Washington, D.C., appearing as private attorney general.

Senator Fong, I thank you for coming over and presenting your constituent here. We are always honored to have another Senator visit our committee and I particularly appreciate your being here because we have worked together on the Post Office and Civil Service Committees for a good many years.

You are the ranking member from your party on that committee. It has been a pleasure to have you here. We note you for your diligence and service, you are always there on the other committee.

Senator FONG. Thank you, Mr. Chairman.

STATEMENT OF E. THEODORE ARNDT, PATENT ATTORNEY, ARNDT & DAY, WASHINGTON, D.C.

Mr. ARNDT. Mr. Chairman, the Office of Under Secretary of Labor, among others, has cognizance of the uniform enforcement of orders promulgated by the Office of Federal Contract Compliance under Executive Order 11246.

When the General Services Administration awarded in February of this year, on a competitive bid basis, the three annual Federal supply contracts for floor tile to Armstrong Cork Co., for $600,000 and Kentile Floors, Inc. for $250,000, Apache Flooring Co. was directed prior to its award for $480,000 to sign a commitment for furnishing within 30 days equal employment opportunity affirmative action plans for each of its facilities, regardless of whether these facilities had any connection with its contract, in accordance with OFCC Order No. 4.

Armstrong was not compelled to comment and commit itself to furnish the rather costly and time-consuming affirmative action compliance programs for each of its facilities and to our knowledge has not furnished same to this date.

The unfair and unequal enforcement of OFCC Order No. 4, according Armstrong an unfair competitive advantage was brought to the attention of the Secretary of Labor by letter of March 9, 1970, and his Solicitor's office was furnished a copy of an action brought on March 11, 1970, by Apache against GSA's Administrator Robert L. Kunzig, seeking relief in the district court for the District of Columbia.

Due to conflicting information supplied by GSA Judge William B. Bryant upon hearing on May 13, 1970, denied a motion for preliminary injunction and because of lack of funds Apache dismissed its suit without prejudice on July 23, 1970,

The Solicitor, Laurence A. Silberman, when personally familiarized in a meeting on June 19, 1970, expressed his abhorrence of the unfair and unequal enforcement of Executive Order 11236 and OFCC Order No. 4.

In the meantime deferring to continuous appeals for remedial action Mr. John L. Wilks, Director, OFCC, approved on June 22, 1970, certain action steps, among them:

To direct each agency or agencies (having compliance jurisdiction) to immediately proceed to obtain from Armstrong appropriate affirmative action compliance programs for each of Armstrong's establishments.

Mr. Kunzig was also advised by Mr. Wilks by letters of June 29 and July 7, 1970, of his compliance responsibility for a substantial portion of Armstrong's facilities, particularly over the 16 to 18 Armstrong's Thomasville Furniture Industries plants, which duty GSA had failed to carry out from the outset.

Secretary of Labor Hodgson, advised by letter of July 9, 1970, that the respective compliance agencies had been asked to conduct a compliance review of Armstrong's establishments but as we understand within another 60 days.

Presuming Mr. Silberman to be a man of skill, fortitude and action, I am wondering how much longer it would take to right the wrong done to Apache, when giving Armstrong preferential treatment, and whether in his new capacity as Under Secretary of Labor, he is prepared to see to it that Department of Labor orders are enforced uniformly without bias.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Williams, you have heard the statement of Mr. Arndt. Do you have any questions? Are there any questions from the minority?

You have mailed us a statement before, Mr. Arndt. I want to thank you and we will recall Mr. Silberman.

Mr. ARNDT. If I may ask the privilege, Mr. Chairman, to submit for the record an appendage to the statement including substantiating material.

The CHAIRMAN. Yes; we will receive it in the record file with the record inaugurated by reference. How many pages are there of it?

Mr. ARNDT. There are 31 pages.

The CHAIRMAN. We will incorporate it by reference rather than by filing it as part of the record as such because we have a printing bill, you know, to print this up, so we will print this short statement.

(The document referred to follows:)

ARNDT & DAY,
Washington, D.C.

Re Appendix to statement by E. Theodore Arndt on July 29, 1970, 3 p.m., before Senate Labor and Public Welfare Committee.

The enclosed documents show in chronological sequence the persistent efforts made by Apache since early February 1970 in an endeavor to impel GSA to amend the administrative "error" of the wrongful award to Armstrong.

When the recent epochal decisions by the U.S. Circuit Court of Appeals for the District of Columbia in the Maritime Union, Scanwell and Ballerina Pen cases* abolished the doctrine of the sovereign's immunity from suit, permitted per se the judicial reviewability of Acts of Congress and recognized standing to sue for an aggrieved and injured party whose right is violated by an erroneous admir istrative act and having a "zone of interest" within the meaning of recent Supreme Court decisions, ** Apache felt confident to obtain expeditious relief in court.

This course of action was seemingly frustrated by prevaricating and misleading information supplied by GSA in court and, in order to obviate further obfuscating tactics, the undersigned—on his own—appealed by his letter of July 4, substantiated by an Aide Memoire of July 16, 1970, to the Attorney General, as an Officer of the Court and Chief Law Enforcement Officer, for corrective action.

E. THEODORE ARNDT.

Enclosures.[1]

*Joseph Curran (Natl. Maritime Union of Amer.) v. Melvin R. Laird et al., No. 21,040 of Nov. 12, '69; Scanwell Laboratories, Inc. v. Thomas, No. 22863 of Feb. 13, '70; and Ballerina Pen Co. vs. Kunzig, No. 22,799 of Apr. 24, '70.

**Association of Data Processing Serv. Organizations v. Camp, 38 U.S.L.W. 4193 (Mar. 3, '70) and Barlow v. Collins, 38 U.S.L.W. 4195 (Mar. 3, '70).

[1] May be found in committee files.

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The CHAIRMAN. We have a statement submitted by Mr. Mike Trbovich, Chairman of the Mines for Democracy. It is a group of miners formed to carry on the job to clean up the fight of the United Mine Workers.

He opposes the confirmation of Mr. Laurence Silberman as Under Secretary of Labor. Mr. Trbovich, I understand, could not be present, is that correct, but he desires that his statement be placed in the record?

I direct that the statement of Mr. Trbovich be printed in full in the record.

(The prepared statement of Mr. Trbovich follows:)

PREPARED STATEMENT OF MIKE TRBOVICH, CHAIRMAN OF MINERS FOR DEMOCRACY

Miners for Democracy, a group of miners formed to carry on the late Jock Yablonski's fight to clean up the United Mine Workers of America, opposes confirmation of Laurence H. Silberman as Under Secretary of Labor. As Solicitor of Labor during the 1969 UMWA election, Mr. Silberman held a position of real responsibility for the interpretation and enforcement of LMRDA. He failed and

continued to fail to carry out his responsibilities to enforce that law; to confirm his nomination as Under Secretary would be to reward him for incompetence and inadequancy in his present position.

The sad role played by the Department of Labor in the 1969 UMWA election is now a matter of public record. Mr. Silberman's role in this shameful story was substantial; and his brazen efforts before the Senate Subcommittee to cover up the Department's midsdeeds further implicate him as a major force in the Department's inexplicable failure to carry out its duties under federal law.

Over and over again, throughout the entire election period, Mr. Yablonski's attorneys sent the Department of Labor hundreds of detailed charges of violations of the Labor-Management Reporting and Disclosure Act of 1959 and requested the Department's intervention. These requests fell on deaf ears. Three times in meetings with Department officials, including Mr. Silberman, the Yablonski forces begged for intervention, warning from the very first meeting in July of 1969 that the failure of the Department of Labor to enter the case would mean violence and more violence. Repeatedly, the Department refused our desperate requests that they make manifest their determination to enforce the law by investigating our charges.

As the forces of eveil in the UMWA thrived and grew on the Labor Department's policy of nonintervention, Mr. Silberman privately prattled on and on about "volunteerism" in the labor movement. Only on January 8, after the brutally murdered bodies of Jock, his wife and his daughter were discovered did Mr. Silberman concede that it might be difficult to expect a union to properly investigate itself, and the Department of Labor finally granted Jock's request that they investigate.

The failure of the Department of Labor to act prior to Jock's death must be laid at Mr. Silberman's doorstep. Secretary Shultz, a Washington novice dependent largely upon legal advice, floundered under pressures from the two sides and ended up doing nothing. As the chief legal advisor, the responsibility for inaction with its tragic consequences of violence and even murder was Mr. Silberman's. Promotion of Mr. Silberman now is *advancement for failure.*

At long last, on March 5, 1970 with much fanfare, the Department of Labor vindicated Jock by filing a suit to upset the December 1969 corrupt election. The charges in that suit echoed what Jock had been saying day in and day out. Although the Labor Department reported it had devoted 40,000 man hours to this investigation, little is contained in the papers filed with the Court that Jock and his supporters did not spoon feed to the Department—most of it well in advance of the election.

The progress of that suit is not only disheartening, but confirms the open secret in Washington that the Department of Labor did an inadequate investigative job, is slow in turning over its investigative reports to the Justice Department, and in other ways is not cooperating with the Justice Department in the prosecution of this suit. Thus, on March 5 the Justice Department moved for a preliminary injunction to compel the UMWA to maintain adequate records as required by LMRDA. Although this is an open and shut case, the Government still does not have that injunction. To determine what, if any, records the UMWA's districts have maintained, the Justice Department was finally compelled to file a motion to produce these documents. We had supposed that in its much advertised "extensive investigation" of UMWA, the Labor Department would at least have checked and copied any such records.

While the election case gathers moss in the courts, the shameless pilfering of UMWA funds continued under the Labor Department's nose and with its acquiesence. Thus, on May 4, 1970, Mr. Silberman suggested before the Senate Labor Subcommittee that the Labor Department did not believe the UMWA's late filing of LMRDA-required reports was actionable, that only "willful" failure to file was unlawful. Mr. Silberman apparently doesn't consider anything "willful". Thus, the Labor Department has looked the other way when the UMWA officers repeatedly failed to file such reports. Both Mr. Boyle and Mr. Carey, the UMWA's general counsel, were delinquent in filing LM–30 reports with the Department. These reports reveal payments to union officers due to "insider" transactions. Yet Mr. Boyle did not file his LM–30 reports for the years 1964, 1965, 1966, 1967 and 1968 until August 15, 1969, and Mr. Carey did not file his 1967 and 1968 LM–30 reports until August 15, 1969. These late-filed reports reveal that substantial payments were made to Messrs. Boyle and Carey from the National Bank of Washington. Don't you think that the UMWA members were entitled to know earlier such information as the fact that in 1968 Mr. Boyle received over $6,000 from the Bank for his services? Wasn't this willful refusal to file? Why hasn't the Labor Department taken action?

Dubious expenditures on the face of the UMWA's 1969 reports have apparently been accepted by the Department of Labor. District 5's LM report for that period lists under the category of "other disbursements" an expenditure of over $6,000 for that vague item, District 31 lists an expenditure of over $3,000 for "Occupational disease", and District 19 reveals that it spent over $19,900 for a "Research Committee"—now heavily under FBI investigation in the murder case.

That the union's officers audaciously continue to make and report such expenditures suggests to me that the officers of the UMWA regard the Labor Department as an ineffective "paper tiger". Obviously, anything goes.

The Labor Department knows and earlier reported that the UMWA was paying substantial sums year after year to the Sheraton-Carlton Hotel for a two-room suite for International Secretary-Treasurer Owens. That practice has continued, unabated.

Similarly, a leader of Miners for Democracy, Lou Antal, stated before the Senate Labor Subcommittee that excessive sums were taken from the UMWA treasury to provide Tony Boyle souvenirs at the 1968 convention, and that we believed such gifts were also being distributed during last year's election campaign. Still, the UMWA lists in the John Ownes audit report an expenditure during the July 1, 1969–December 31, 1969 period for the following item: "Convention Expenses: Burt Advertising, Inc., souvenirs, $9,085.59." We submit that this money was spent for pens with Boyle, Titler and Owens' names on them and that these were purchased not for the September 1968 Convention but for the December 1969 election.

In fact, so long as it appears likely that the 1969 election will be upset and the present officers booted out in a fair election, there is noting to stop them from increasing their looting of our treasury. The law clearly permits the Department to request a court-imposed monitorship on the UMWA during what promises to be a protracted court fight on the election suit. Why does Mr. Silberman refuse to take this step?

Throughout all of this, the Department of Labor's legal interpretations of LMRDA have been questionable. As Solicitor, Mr. Silberman bears responsibility for this. Thus former Secretary Shultz testified before the Senate Labor Subcommittee that, except for allegations of violence, Section 601(a) of the Act forecloses the Department from investigating possible violations of law during the election period. This interpretation is contrary to the express words of that Section. The Department took the position that Boyle's engineering of the pension increase did not represent a substantial and improper interference with the electoral process within the meaning of Section 401(e) of the Act, an interpretation criticized by Chairman Harrison Williams. Despite the fact that the Department has long been aware of the UMWA's deliberate refusal to keep adequate financial records, it still fails to invoke criminal proceedings under Section 209 of the Act. Although the Department is aware of that the UMWA *Journal* was and is still being used as a propaganda instrument, it has and continues to look the other way and has not requested appropriate court action to stop this misappropriation of union funds. The Department's position that Section 610 of the Act does not authorize the Department to prosecute the man who attacked Mr. Yablonski in Springfield, Illinois, conflicts squarely with at lesat one federal court of appeals decision and might well encourage similar actions by others in the future. Finally, the Department's tortured reading of the UMWA Constitution to allow the continued existence of hundreds of "bogus locals", reveals Mr. Silberman's coziness with the UMWA officials: rather than interpret the Constitution in line with its clear language, he has placed total reliance on the interpretation given by the incumbents who are themselves charged with failure to enforce that Constitution.

To confirm Mr. Silberman is to say to honest trade unionists that they must accept inept, corrupt and undemocratic leadership, that the Government—no matter how compelling the case is for intervention under LMRDA—is justified in its hands off attitude. And, worse yet, to confirm Mr. Silberman and to endorse this policy will have implications far beyond the coalfields and the trade union movement. You can force Tony Boyle upon us—you can make us dependent upon the present UMWA leaders who neglect our health and welfare, who join forces with the coal operators against us, who line their pockets at our expense—but you cannot make us work under this system. If our mines are unsafe and the UMWA continues to order men to work in such mines, we have and will continue to ignore their orders. If the UMWA ignores the pleas of disabled and widowed miners to improve the administration of our pension funds, we have and will walk off the job to support our brothers. If our mine safety men are fired for doing their jobs

and the UMWA refuses to push vigorously for their reinstatement, we have and will walk off to protect them. The cost of a crooked union will be borne by everyone. We will not bear it alone.

Your action on this matter will go a long way towards determining the future of the American coal fields.

Mr. ARNDT. Mr. Chairman, could I direct a couple of questions? Could Mr. Silberman perhaps answer the last question which I directed to him in my statement?

The CHAIRMAN. Mr. Silberman is recalled but only the members of the Senate are, under our rules, permitted to cross-examine the witnesses.

Come around, Mr. Silberman.

Mr. Silberman, have you read Mr. Arndt's statement before the Labor and Public Welfare Committee?

Has a copy been furnished of the statement? I regret it if it has not because it was distributed to members of the committee.

This is dated the 29th of July. Perhaps it has been changed some. Take your time and read it over if you wish.

Mr. SILBERMAN. I believe I saw an earlier version of this, if I could just take a second to read it, Mr. Chairman.

The CHAIRMAN. Do you have any comment to make? If you wish take time to read it over.

Mr. SILBERMAN. Turning my attention, Mr. Chairman, to the last paragraph, there are two points made, the second of which raises the question of whether I am prepared to see to it that the Department of Labor orders are enforced uniformly without bias.

The answer to that question is yes, I am.

The first question relates to the alleged wrongdoing done to Apache Flooring Co. vis-a-vis Armstrong Cork. With respect to that issue, Mr. Chairman, the Justice Department which is representing the Government in a suit brought by Apache Flooring, has asked me not to discuss that matter if I can avoid it.

It is not a Department of Labor issue, it is a GSA issue.

I cannot go into the specific merits of the claim Apache Flooring has vis-a-vis Armstrong Cork. That case is in court now I understand.

The CHAIRMAN. The case is in court, this dispute between Apache and GSA?

Apache has sued GSA?

Mr. SILBERMAN. That is correct, Mr. Chairman.

The CHAIRMAN. And that case is pending in court?

Mr. SILBERMAN. That is my understanding.

The CHAIRMAN. Apache was dismissed without prejudice on July 23?

Mr. SILBERMAN. I understood from the Justice Department that there was some pending litigation. I may be wrong.

The CHAIRMAN. There was until according to this statement again Apache voluntarily dismissed it 6 days ago.

Mr. SILBERMAN. I see. I must say, I am just advised Mr. Chairman, from someone in the audience, that it still is pending in litigation. I really don't know.

The CHAIRMAN. As a lawyer myself I would not ask a question pending on a case with this short opportunity, noting the change in statements.

Mr. SILBERMAN. Mr. Chairman, if you would wish I would be delighted to furnish a written response to the committee.

The CHAIRMAN. If you can take that revised statement with a notice of dismissal you can file a written response.

(The document referred to follows:)

RESPONSE OF THE U.S. DEPARTMENT OF LABOR TO STATEMENT BY E. THEODORE ARNDT BEFORE THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON JULY 29, 1970

To insure uniform administration of the requirements of Executive Order 11246 with respect to the Apache Flooring Company and the Armstrong Cork Company, the Department of Labor has taken these actions: (1) In response to Mr. Arndt's letter of March 9 and notice of action brought on March 11, Mr. John L. Wilks, Director of the Office of Federal Contract Compliance, asked the General Services Administration to look into the allegations that the requirements of Executive Order 11246 were not being equally enforced on the competitors of the Apache Flooring Company. (2) The GSA responded on May 8, 1970, that it had insisted upon the submission of an affirmative action plan by the Apache Flooring Company, but that the compliance responsibility for the Apache's competitor, the Armstrong Cork Company, was assigned to the Interior Department. (3) Since that time, the Federal agencies that have compliance responsibility for the Armstrong Cork Company (Interior and A.E.C.), have been asked to conduct compliance reviews of the Armstrong Cork Company to insure equal compliance with the affirmative action plan requirements of Order No. 4.

We now understand that the suit by Apache Flooring Company against GSA regarding this matter has been dismissed.

Nevertheless, the Department of Labor will continue to take the action necessary to insure uniform and fair enforcement of the requirements of the Executive Order 11246, and will see to the expeditious completion of the Armstrong compliance reviews.

The CHAIRMAN. Have you had an opportunity to read the statement of Mr. Mike Trbovich which has just been filed?

He is representing Miners of Democracy.

Mr. SILBERMAN. I saw it, Mr. Chairman.

The CHAIRMAN. I personally had not seen it until just now and have not had an opportunity to read all of it. Do you have any comment on that statement?

Mr. SILBERMAN. Well, Mr. Chairman, I suppose there are a number of issues which are raised in the statement. I can assure you as I have assured Senator Williams' staff, on other occasions, the Department of Labor feels very strongly the need to vigorously prosecute the litigation pending against the United Mine Workers.

We have some disputes as to the law and certain factual aspects, but no dispute on the issue that a law suit should have been brought to overturn that election.

With respect to our disputes with Mr. Trbovich and others with respect to the law on certain issues all I can say is these are matters in which I took an honest view as a lawyer.

I suppose reasonable men can differ and have. All I can do as Solicitor and all I can do as Under Secretary is read the law as I see it and apply it as I see it.

Basically the key of this statement is the contention that the Department of Labor should have intervened in the United Mine Workers election prior to the election being completed.

The Department of Labor under four Secretaries—Secretary Mitchell, Secretary Goldberg, Secretary Wirtz, Secretary Shultz, has never done that.

I do believe that it is a good policy and it is a policy that is derived from the law. I don't believe there should be the kind of intervention there that Mr. Trbovich thinks there should be.

All I can say to you, Mr. Chairman, is an honest conviction of mine.

I suppose in the last analysis the executive branch must be guided by what Congress does.

We do our best to try, as you suggested earlier, to interpret the laws of Congress. The Congress has it within its power to make that real clear at any time. I for one from the executive branch must follow the rule of Congress without deviation.

The CHAIRMAN. Senator Williams, do you have any questions?

Senator WILLIAMS. I just saw a copy of this statement. I did not know what witnesses were going to be here. I don't have any questions.

The CHAIRMAN. You have not seen that statement before either, Senator?

Senator WILLIAMS. No.

I have nothing further.

The CHAIRMAN. Are there any questions by the minority?

Are there any questions by counsel?

Senator Schweiker, Mr. Silberman is testifying, he is a nominee for Under Secretary of Labor. Do you have any questions or care to make a statement?

Senator SCHWEIKER. No; I have no questions.

The CHAIRMAN. Are there any further questions?

I had not had an opportunity to read this statement just handed to me. If I have any further questions I will write or send them to you, on this statement, Mr. Silberman.

Mr. SILBERMAN. Thank you.

Senator WILLIAMS. I would like to be able to do the same.

The CHAIRMAN. All right, if you desire to submit any questions in writing that permission is granted and for any other Senator.

(The documents referred to appear on p. 23.)

The CHAIRMAN. Do any other witnesses desire to be heard on this nomination?

That is all we have on the list. In fact there is one we did not have on the list. Did anyone else desire to be heard? If not, thank you, Mr. Silberman.

If you will stand aside we would like to recall the nominee for Solicitor of the Labor Department.

Mr. Nash, you have been serving as Associate Solicitor for Labor Relations and Civil Rights, U.S. Department of Labor since 1969.

Mr. NASH. Yes, sir.

The CHAIRMAN. Before that time, you were for a time instructor in Labor Law at the Rochester New York Institute of Technology?

Mr. NASH. Yes; that was on a part-time basis while I was practicing law.

The CHAIRMAN. And you have practiced labor law in the fields of collective bargaining, arbitration, Fair Labor Standards Act, equal employment opportunity, union organizing and recognition, national and New York State labor relations boards and representation in Unfair Labor cases, injunction proceedings, and I won't take time to read all of the matters,

But you feel that those experiences plus your experience since September of last year as Associate Solicitor give you a knowledge of the duties of Solicitor of the Department and that will enable you to carry out the duties of that office further?

Mr. NASH. Yes; I certainly do.

The CHAIRMAN. How many lawyers are in that Office of the Department of Labor?

Mr. NASH. There is a total staff of 376; approximately 220 of those are attorneys. About 120 of them are located in Washington and an additional 100 in various regions throughout the country.

The CHAIRMAN. And you have as Solicitor with that size of staff 200 and some attorneys?

Mr. NASH. I think it is approximately 220.

The CHAIRMAN. You will have 220 under your jurisdiction, under your supervision.

I notice you are a graduate of Colgate, a Phi Beta Kappa degree and also you were a graduate of the New York University School of Law?

Mr. NASH. Yes, sir.

The CHAIRMAN. I don't mean to embarrass you by reading all of your intellectual attainments but they are great and I commend you highly for them.

You will need all of these qualifications to direct 225 lawyers. I assume that in your position as Associate Solicitor you are familiar with the statutes of creating the office, not subject to executive order of creation or abolition, and that you are familiar with the duties of the Solicitor as set out in U.S. Government Organizational Manual?

Mr. NASH. Yes, sir.

The CHAIRMAN. I assume in addition to this narration of duties there is probably a great volume of precedents and custom built up in the Department as to the administration and functions and distribution of work between the Washington office and the lawyers in the regional offices over the country.

Do you exercise supervision over the regional offices?

Mr. NASH. Yes, sir; I do.

The CHAIRMAN. To see that the policies and the laws are carried out and the policies of the Department are uniformly administered over the country?

Mr. NASH. That is correct, Senator; yes, sir.

The CHAIRMAN. I direct that there be printed in the record this biographical sketch of Mr. Peter Nash in full, the statute creating the Office of Solicitor of Labor and the description of the office with the duties from the U.S. Government Organizational Manual, pages 327 and 328 with the listing of the regions and the States engaged in them.

(The documents referred to follow:)

BIOGRAPHY OF PETER G. NASH, SOLICITOR DESIGNATE, DEPARTMENT OF LABOR

Peter G. Nash was nominated as Solicitor of Labor by President Nixon on June 24, 1970.

At the time of his nomination, he had served as Associate Solicitor for Labor Relations and Civil Rights, U.S. Department of Labor, since September 1969.

Mr. Nash served as confidential legal assistant to the Appellate Division of the New York State Supreme Court in 1962 and 1963. He was admitted to practice before the Supreme Court of the United States in 1968.

Mr. Nash for a time was an instructor in labor law at the Rochester (N.Y.) Institute of Technology. In 1963, he became associated with the Rochester firm of Wiser, Shaw, et al., as a labor-management relations attorney and in 1967 became the firm's youngest partner.

His labor law experience has included activity in the following areas: Collective bargaining, arbitration, Fair Labor Standards Act, equal employment opportunity, union organizing and recognition, National and New York State Labor Relations Boards (representation and unfair labor practice cases), injunction proceedings, public employment relations and representation matters involving universities, colleges, hospitals and nursing homes.

Born on January 4, 1937, in Newark, New York, Mr. Nash is a 1959 Phi Beta

Kappa graduate of Colgate University and a Root-Tilden Scholar and Order of the Coif graduate of New York University Law School, Class of 1962. He was fifth in his class at Colgate and sixth at NYU. He is a member of the New York Bar Association, the American Bar Association and the Federal Bar Association.

Mr. Nash is a former president of the Rochester Junior Chamber of Commerce, which is the second largest Jaycee local in the world. He also served as its legal counsel and executive vice president and on its board of directors.

He has served in numerous public and professional capacities since completing school, including membership on the Labor Law Committee of the New York State Bar Association, the Labor Law Section of the American Bar Association, the Colgate Alumni Club of Rochester (Chairman, Student Selection Committee; and Chairman, Alumni Fund Drive), National Colgate Alumni Council, National Colgate Alumni Corp. (Director); and National Panel of Arbitrators of the American Arbitration Association.

He and his wife, the former Diane Engleson of Williamson, N.Y., were married in 1961. They have two daughters, Kimberly, 5, and Tamara, 1, and live in Potomac, Maryland.

EXCERPT FROM TITLE 29, U.S. CODE

§ 555. Solicitor.

There shall be a solicitor for the Department of Labor. (Mar. 18, 1904, ch. 716, § 1, 33 Stat. 135; Mar. 4, 1913, ch. 141, § 7, 37 Stat. 738; Ex. Ord. No. 6166, § 7, June 10, 1933.)

EXCERPT FROM THE U.S. GOVERNMENT ORGANIZATION MANUAL OF 1969–70

THE SOLICITOR OF LABOR

The Solicitor has responsibility for all the legal activities of the Department and the coordination and preparation of the Department's legislative proposals, reports, and testimony on proposed legislation, including executive branch clearances. He serves as legal adviser to the Secretary and other officials of the Department.

Responsible to him is an immediate staff of assistants and attorneys in Washington and in the field offices of the Department throughout the United States and Puerto Rico.

The Solicitor is in charge of the litigation of the Department. He represents the Secretary of Labor in the institution and prosecution of all civil court actions involving the Fair Labor Standards Act, as amended in 1966, including preparation of briefs and argument of appellate cases and interpreting, instituting, and conducting proceedings involving the Equal Pay Act and the Age Discrimination in Employment Act of 1967 to the extent that it incorporates the enforcement provisions of the Fair Labor Standards Act. His Office assists in the preparation, trial, and briefing of criminal cases under the Fair Labor Standards Act, and civil actions to recover damages under the Public Contracts Act, the McNamara-O'Hara Service Contract Act, and the Immigration Act; represents the Department officials in administrative hearings; and performs legal services in the preparation, institution, and trial of enforcement cases in the Federal courts under the Labor-Management Reporting and Disclosure Act and Welfare and Pension Plans Disclosure Act; assists in litigation arising under the Longshoremen's and Harbor Workers' Compensation Act and its several extensions, and the Civil Rights Act of 1964 and Executive Order 11246; and represents the Bureau of Employees' Compensation before the Employees' Compensation Appeals Board in appeals under the Federal Employees' Compensation Act. He has delegated, to the Associate Solicitor in charge of litigation, the function of prosecuting complaints of violations of the Public Contracts Act and Service Contract Act in administrative proceedings.

The Solicitor provides legal assistance to Department officials in connection with provisions of the Civil Rights Act of 1964 (especially title VI) and Executive Orders 10988, 11246, and 11375.

The Solicitor advises the Secretary on legislative matters and his staff prepares reports on proposed legislation to the Bureau of the Budget and congressional committees and gives technical assistance in the preparation and development of legislation. His staff prepares or reviews contracts and bonds entered into by or with the Department. It also provides for the Department, through the Bureau of International Labor Affairs, all legal services, research, advice, and interpretations relative to the Department's participation in international labor affairs.

The Solicitor's Office interprets statutes administered or coordinated in the Department, drafts rules and regulations implementing such statutes, and furnishes legal services in connection with hearings and other administrative proceedings. He exercises authority over disclosure of departntal files records, and documents, over tort claims arising out of the Department's activities and in determining the necessity of publishing documents in the *Federal Register*.

The Solicitor's chief assistants in the field are the regional solitictors who, together with the members of their respective staffs, act as legal advisers to the regional offices of the Department and as trial attorneys before the U.S. District Courts and at administrative hearings. Their principal activity relates to the administration and enforcement of the Fair Labor Standards Act, the Public Contracts Act, the Service Contract Act, and certain other laws under the field jurisdiction of the Department.

* * * * * * *

Region	Regional solicitor	Address
No. 1. Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Connecticut.	Albert H. Ross	John F. Kennedy Federal Bldg., Boston Mass. 02203.
No. 2. New York, New Jersey	John A. Hughes	341 9th Ave., New York, N.Y. 10001.
No. 3. Pennsylvania. Delaware, Maryland, District of Columbia.	Louis Weiner	1015 Chestnut St., Philadelphia, Pa. 19107.
No. 4. Georgia, Florida, South Carolina, North Carolina, Alabama, Mississippi, Arkansas, Louisiana.	Beverley R. Worrell	1371 Peach tree St. NE., Atlanta, Ga. 30309.
Branch Office	Norman H. Winston, Associate Regional Solicitor.	1929 9th Ave. S., Birmingham, Ala. 35205.
No. 5. Michigan, Ohio	Aaron A. Caghan, Regional Attorney.	Federal Office Bldg., Cleveland, Ohio 44199.
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No. 8. Texas, Oklahoma, New Mexico	Major J. Parmenter	411 N. Akard St., Dallas, Tex. 75201.
No. 9. California, Washington, Oregon, Idaho, Nevada, Arizona, Alaska, Hawaii.	Altero D'Agostini	450 Golden Gate Ave., San Francisco, Calif. 94102.
Branch Office	John M. Orban, Associate Regional Solicitor.	Federal Bldg., Los Angeles, Calif. 90012.
No. 10. Virginia, West Virginia, Tennessee, Kentucky.	Jeter S. Ray, Regional Attorney.	U.S. Courthouse Bldg., Nashville, Tenn. 37203.
No. 11. Puerto Rico, Virgin Islands	Morton J. Marks, Regional Attorney.	P.O. Box 9092, Santurce, P.R. 00908.

The CHAIRMAN. I have studied your financial statement and I find no conflict of interest in that as to the duties of the Office of Solicitor. That statement is available to any other member of the committee,

. Generally the minority member and I have looked at it and if we find no conflict of interest it is filed under lock and key.

Senator Williams.

Senator WILLIAMS. I have no questions.

The CHAIRMAN. Senator Schweiker?

Senator SCHWEIKER. No questions, Mr. Chairman.

The CHAIRMAN. There are no further questions.

Thank you very much.

Do you have any further statements you wish to make?

Mr. NASH. I am delighted to be here, sir.

The CHAIRMAN. I wish you would tell me how to run 225 lawyers.

Mr. NASH. I will come to you for advice, sir.

(The information subsequently supplied for the record follows:)

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE UNDER SECRETARY,
Washington, D.C., August 13, 1970

Hon. CLAIBORNE PELL,
Hon. THOMAS F. EAGLETON,
Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR SENATORS PELL AND EAGLETON: This is in reply to your letter of August 6, 1970 raising a series of questions concerning the Department's investigation of the United Mine Workers election and our interpretation of the Labor-Management Reporting and Disclosure Act. Certain of your questions relate to matters in which the present state of the case development does not yet permit a final answer. I am therefore submitting answers based on the material which is presently available.

Yours sincerely,

L. H. SILBERMAN,
Under Secretary of Labor-Designate.

Enclosures.

Q. 1. Does the Department conside that receipt of the revised reports as satisfactory with proper reporting requirements?

A. 1. The United Mine Workers submitted revised financial reports to the Department of Labor on May 6, 1970. The Department is currently investigating the adequacy and accuracy of these reports. Until this investigation is concluded, it is not possible to answer the question whether the reports meet the requirements the law.

Q. 2. If satisfactory corrections have not been filed, are you contemplating recommending criminal prosecution under Section 209 of the Landrum-Griffin Act, especially in view of the apparent "wilfulness" as evidence by the flagrant shallowness of the revised reports.

A. 2. In view of our answer to Question (1), it is not possible to give an answer to this question at this time.

Q. 3. What progress has been made on the suits initiated in March of this year to compel the UMWA to maintain adequate records and to upset the December 1969 UMWA election?

A. 3. Suit was filed against the United Mine Workers on March 5, 1970 to set aside its December 1969 election of International officers and for ordering the Mine Workers to maintain records as required by section 206 of the Act. In addition a motion for a preliminary injunction was filed to enjoin the defendant, during the pendency of this suit, from continuing to violate the provisions of section 206 by failing to adequately maintain records.

Since the filing of the suit we have answered 315 interrogatories propounded by the defendant, and have prepared 423 Requests for Admissions and 7 Interrogaories. We also objected to certain interrogatories propounded by the defendant. We were overruled by the pre-trial hearing examiner with regard to some of these objections and have appealed to the judge. This matter is still pending.

There is also still pending before the court our objection to the defendant's motion to extend the time to file an answer.

During June 1970 we filed a Motion for the Production of Documents requesting the court to allow the Department to enter all District and International offices to audit all the books and records for the years 1967, 1968 and 1969. On July 23, 1970, the court, after two hearings on the matter, granted our motion and at the present time we have auditors in each of the Districts and the International. These audits should be completed within the next two or three weeks at which time we shall present the complete evidence found to the court.

These audits are vital to both the injunction request and the election suit. Evidence found during the initial Department investigation showed that many entries made in the records of the various Districts and the International for expenditures made during calendar year 1969 could not be verified because there was no back-up documentation such as bills or receipts to support that the expenditures were actually made for the purposes specified in the records. As a result of these initial findings the Department believes it imperative to audit the books and records of the various Districts and the International for three years in order clearly to show the court that the Mine Workers had failed to properly maintain the books and records required by the LMRDA and to further substantiate the request for a preliminary injunction.

Further, the audit may reveal that certain of the expenditures not properly documented may have been made for other than a proper union purpose such as campaigning during 1969. This of course would further substantiate the Department's allegation that union funds were improperly expended to support the candidacy of certain candidates during the 1969 election.

The defendant moved to depose three Department investigators and in conjunction therewith attempted to subpoena Department investigative reports for use in questioning the investigators. The Department filed a motion for a protective order requesting that the court deny the defendant the right to inspect the Department's records.

Both in the brief submitted to court and in the oral argument before the court the Department opposed the defendant's attempt to look at the records principally on the grounds that any such inspection would reveal to the defendants the names of many informers who had provided information to the Department. It is especially essential to the administration of the LMRDA that the names of informers giving information to the Department regarding activities of their own unions not be revealed.

The court denied the defendant's request to look at the Department's records. The deposition of the three Department investigators is still pending.

On July 10, 1970 we deposed Justin McCarthy, the editor of the Mine Workers Journal, with regard to the alleged use of the Mine Workers Journal to support the Boyle slate in the 1969 election.

Q. 4. It has been alleged that the Department exempts from its reporting requirements local unions which contain pensioner members but no working men? It is consistent for the Labor Department to treat such locals as bona fide labor organizations for the purpose of labor union elections, but to exempt them from reporting on the ground that they are not labor organizations?

A. 4. There is no inconsistency in this position. The reporting requirements are applicable to "labor organizations" while voting eligibility is based on "membership". The definition for the former requires that it contain "employees" while the definition of the latter is not so limited.

The case of persons voting in international elections who are not members of local labor organizations is not unique to the UMW. Thus, for example, there are many international unions having employees both in Government and private industry. Local unions consisting of all Government employees are not labor organizations within the meaning of the Act and yet such Government employees regularly vote in the election of international unions which are subject to the election provisions of the Act.

Q. 5. Has the Department undertaken any investigation into whether or not the UMWA's officers and employees are bonded as required by Section 502 of LMRDA? Have they been bonded continuously since 1959 when the law first imposed this requirement?

A. 5. I am informed that the officers and employees of the United Mine Workers are, and have since 1959, been covered by bond in compliance with the statutory requirement. The UMWA is insured under National Surety Corp. Bond #3105200 which has coverage of $500,000.00 for John Owens and Howard W. Channell. It also covers the International Executive Officers for $100,000.00 and all employees under blanket position bond.

Q. 6. I understand that in conversations between our staffs, Question (6) was rephrased to read—"Can the Department of Labor impose a monitorship during an election campaign to protect the funds of the union, and specifically what could the Department do if it discovered that a union officer had expended large sums in union funds on the campaign?" Your staff also asks under what conditions the Department would "consider imposing a monitorship at any time other than during an election campaign."

A. 6. The Department of Labor does not have authority to protect the union against improper expenditures by union officers during an election campaign. Section 402 limits the Secretary's powers to obtaining post-election relief.

There are, of course, private remedies available in this situation. Thus, Section 401(c) specifically provides for private suits by candidates for office to secure equal treatment in the distribution of campaign literature and Section 501(a) declares the duty of union officers "to hold its money or property solely for the benefit of the organization and its members." This duty is enforceable under Section 501(b) by an action by any member of the labor organization.

In a post-election situation, if the Secretary has determined to bring suit to set aside the election, the court is authorized "to take such action as it deems

proper to preserve the assets of the labor organization." This would permit the appropriate equitable remedies and, if the Department concludes on the basis of the information developed from the audits now going on, that the UMW's assets are being dissipated it will have no hesitation in requesting appropriate equitable relief. It must be emphasized, however, that the statute also provides that "the challenged election shall be presumed valid . . . [during the pendency of the suit] . . . and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its Constitution and bylaws may provide." Therefore any equitable relief could not extend to the removal of the officers elected in the challenged election.

To the extent that the "monitorship" referred to in your question implies a removal of the elected officers and the conduct of union affairs by others it would not appear to be authorized by the statute. The question whether any equitable relief should be sought concerning the alleged continued use of the UMW Journal in support of Mr. Boyle's candidacy raises especially difficult questions. Control over the contents of a newspaper—even pursuant to a court's equitable jurisdiction—is difficult to justify under the first amendment. We have delayed any conclusion on the merits of the allegation as well as on the form of relief that would be proper until discovery procedures are completed. You will be interested that these first amendment problems were very troublesome to the court in a private action brought by Mr. Yablonski prior to the election.

In situations other than those in which the Secretary is suing to set aside an election, the Department has no statutory authority to preserve the assets of the organization against improper expenditures. As mentioned before, Section 501 provides a private right of action against such expenditures and the embezzlement of union funds is made a criminal offense.

Q. 7. Is it your position that, except for allegations of violence, the Department of Labor has no authority to investigate charges of LMRDA election violations prior to the conclusion of the election? If so, what authority in the legislative history of the Act or in the case law can you cite in support of this position, a position which contravenes the clear words of the Statute and 2 Courts of Appeals decisions? If not, under what circumstances do you believe a pre-election investigation is permitted and warranted? What distinguishes the UMWA election from the situation you have described?

A. 7. That is not a correct statement of our position. It is our position that we must limit the use of our investigatory power under section 601 in election cases to circumstances which will not influence the outcome of the election. The outcome of the election cannot be influenced by an action taken after the balloting. The Department has, I believe properly, used its investigatory power in circumstances where the ballots have been cast but the election not been completed, i.e., the ballots have not been counted or the results not cretified. In most circumstances, an investigation during the campaign and before the members have cast their ballots would interject the Government into the campaign and would be inconsistent with the statutory purpose of insulating union elections from Government interferences which may influence the outcome of the election.

You cite the decisions of two courts of appeals as supporting a different position. In fact, the decision in both cases related to Departmental investigations after the conclusions of the balloting and the 2nd Circuit specifically noted the union's argument that: ". . . if Section 601 is construed to empower the Secretary to investigate Title IV violations prior to the date of an election, the investigation might well unduly influence the outcome of the election" and responded that "Since the investigation in this case was not instituted until after the election had been held, we express no opinion as to the Secretary's power to commence an investigation during an election campaign." [1]

An investigation during an election campaign would raise the very issue which the Second Circuit did not decide and which no court has ever decided. From 1959 until today, the sole use of Section 601 investigatory authority in election cases has been to collect or preserve evidence regarding elections which have already been held and, therefore, in circumstances in which the outcome of the election could not be affected. Investigatory authority under Section 601 has been used only after the balloting was done—but before the procedural requirements for a title IV investigation had been met. Under these circumstances, an investigation cannot affect the outcome of the election.

A limitation of investigative power under Section 601 in election cases to circumstances which will not unduly influence the outcome of the election is a rational harmonizing of these two different provisions of the statute.

[1] 346 F. 2d 552, 555.

While Section 601, taken alone, might justify a pre-balloting investigation, this language—like the language of any other provision of any statute—may not be taken alone. It must be read in context and in light of the drafters' purpose, due consideration being given to the ramifications which flow from any particular reading.

Contextually, the placement of the provision and the usage of similar language in numerous other statutes indicates that its purpose was to ensure availability to the Secretary of the tools which are necessary for carrying out his litigative responsibilities under the substantive sections of the Act.[2] The intention of the drafters supports this contextual analysis, for in both the House and the Senate Committee reports, it is noted that section 601 merely restates the authority to investigate which is given the Secretary elsewhere in the Act.[3]

Q. 8.—How do you reconcile your interpretation of Section 610 of LMRDA with the decision of the Seventh Circuit Court of Appeals in United States v. *Roganovich, 318 F. 2d 167 (1963)? How do you answer the charge that your interpretation is likely to encourage labor violence?*

A. 8. I stated (Transcript p. 661) that under section 610 "it is not the violence that makes it criminal, but only violence that has the purpose and intent to interfere with the rights under the Act." *Roganovich* states no different.

That case concerned an assault at a union meeting which occurred after a member challenged the statement of the local's business representative. The purpose of the assault was to keep the member from expressing his views. To obtain a conviction under section 610, the Government must be able to show not only that the assault took place, but that the purpose of the assault was intimidation. On the basis of the evidence developed concerning the Springfield incident the Department of Justice concluded that prosecution was not warranted. It is within the province of the Department of Justice to determine whether the evidence warrants a criminal prosecution under section 610. As I indicated at the hearing, I am sure that the Department of Justice would be ready to answer any questions you may have concerning the sufficiency of the evidence.

I do not believe that labor violence will be encouraged by an accurate statement of the meaning of the law.

Q. 9. It is alleged that the President and General Counsel of UMWA have been delinquent in filing LM–30 reports with the Department. Mr. W. A. Boyle allegedly did not file his reports for the years 1964, 1965, 1966, 1967, 1968 and 1969 until March 27, 1970, and Mr. Edward L. Carey, similarly, did not file his 1967, 1968 and 1969 LM–30 reports until March 27, 1970. Have you undertaken any investigation of these late filings? What legal action will the Department take?

A. 9. Mr. Boyle and Mr. Carey filed the necessary reports after the Department made a demand upon them to file them. Our demand resulted from our examination of the union's financial record. The Department has never instituted criminal action against a union officer or employee from whom a report was demanded and who filed in response to such a demand even though the report by then was delinquent.

Q. 10. In explaining why you took the position that 401(e) did not make illegal Boyle's election time engineering of the pension fund increase, you stated that the word "interference" has a very broad meaning under the National Labor Relations Act but indicated that you did not want to apply the same interpretation to the term in LMRDA saying "It would be an awesome interpretation and one in which I would not be inclined to accept. If we accept that, we might well be forced to overturn the vast majority of union elections in this country?" (Tr. 692) Why do you believe such an interpretation would lead to such a result?

A. 10. The legislative history of the Labor-Management Reporting and Disclosure Act clearly shows that the term "improper interference" was intended to limit conduct which constituted restraint, reprisal, coercion, intimidation or other illegal conduct (bribery). The original LMRDA bills submitted by members of the Senate and the House did not include the language "improper interference." See S. 505 (Kennedy-Ervin Bill), Legislative History of the LMRDA, Vol. 1, p. 60 ("the members in good standing shall be permitted to vote without coercion and restraint"); S. 748, Legislative History of the LMRDA, Vol. 1, p. 112, Section 302(b); H.R. 4473, Legislative History of the LMRDA, Vol. 1, p. 182, Section 101(a)(9); and S. 1137, Legislative History of the LMRDA, Vol. 1, p. 296. The first bill in which this language appeared was S. 1555, the bill that passed the Senate.

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[2] See Oklahoma Press Publishing Co. v. Walling, 327 US 186 (1946), where similar FLSA language was so interpreted.

[3] The precise word used is "recapitulates." See pp. 2350 and 2449, *U.S. Code, Congressional and Administrative News*, 1959, Vol. 2.

In addition, both the Senate and House Reports concerning the LMRDA indicate that the term "improper interference" is limited to restraint, coercion and intimidation. S. Rep. No. 187 an S. 1555, at p. 20; and H. Rep. No. 741 on H.R. 8342, at p. 16. The language in each of the bills concerning the right to vote is the same as the language in Section 401(e) of the Act.

That the broad meaning given the term "interference" under the NLRA cannot be lifted bodily and applied to union conduct is recognized by the Act itself. That statute makes it an unfair labor practice for an employer to "interfere, restrain or coerce" but for a union to "restrain or coerce" employees in the exercise of the statutory rights. The relationship of the union to the employee is sufficiently different to that of the employer so that a prohibition on "interference" was not considered warranted. Even when unions were prohibited from interfering with member rights in the Landrum-Griffiin Act, Congress modified the term with the adjective "improper" thus making crystal clear that the "interference" by unions was governed by other considerations than that by employers.

There is a more basic question, too: What kinds of actions are permissible in an attempt to convince voters to vote one way or the other? No one would contend that the Act proscribed campaigning and attempts by candidates and their supporters to influence the voters to vote for their candidate. If one of the candidates holds a position which provides him with the power to enhance the economic benefits of the members, is he precluded from doing so during the period of the union's election campaign? If the Labor Department were to decide that a pension raise, such as is involved in the present case, constitutes "improper interference", would not an incumbent candidate's negotiation of a raise in the wage scale during the campaign period also be a violation of the Act? Statutory anguage should not be strained to reach such an extraordinary and undesirable result.

In construing the Wagner Act over 25 years ago, the Supreme Court held that an employer "by inducing its employees to abandon the union by promising them higher wages, violated section 8(1) [now section 8(a)(1)] of the Act, which forbids interference . . . *"Medo Photo Supples* v. *NLRB*, 321 U.S. 678, 684. In union elections candidates regularly promise members better wages or working conditions if they are elected to office. If the meaning of "interference" developed under the Wagner and Taft-Hartley Acts were assimilated to "improper interference" under the Labor-Management Reporting and Disclosure Act, any union election in which such promises were made would have to be set aside. Under the Labor-Management Relations Act, "interferences accomplished by allurements are as much condemned under the Act as coercion." *NLRB* v. *Douglas Lomason*, 333 F. 2d, 510, 514. If the same were true under the Landrum-Griffin Act, it is not too much to say that the vast majority of union elections in this country would be affected.

The *Exchange Parts* doctrine, which gives a broad reading to the term "interference" in the Labor-Management Relations Act, is not applicable to union officers. In *NLRB* v. *Exchange Parts Co.*, 375 U.S. 405 (1964), the Supreme Court held that an employer interfered with the employees' rights by granting a raise to employees during an organizing drive. The Court decision was based on the fact that such a raise demonstrates the employer's power. "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow, and which may dry up if not obliged." (375 U.S. at 409). That reasoning does not apply to an internal union contest because neither faction has that kind of unilateral power.

But is not only the lack of unilateral power which makes the *Exchange Parts* analogy a false one. In a representation election, the contest is between the employer and the union—and the employer will remain powerful regardless of who wins the election. In a union election if one side is defeated, its power ends and, therefore, even a demonstration of power before the election is not necessarily an intimation of what will happen after the election.

Q. 11. Please provide a detailed index of the information collected by the Department in its investigations of the UMW and its pension fund, and a listing of the reports the Department received from other federal agencies in the course of these investigations. Also, please furnish a copy of Internal Revenue Service's report on its investigation of the UMW pension fund and its relationship to the UMW and the National Bank of Washington.

A. 11. The Department does not have a copy of the Internal Revenue Service report on its investigation. As it would be burdensome for us to reporduce the material previously provided to the Labor Subcommittee, I hope it will be satisfactory for you to examine this material in the Labor Subcommittee file rather than require us to furnish additional copies to you.

The following material has been furnished to the Labor Subcommittee:

(1) List of contributors to the Boyle-Owens campaign committee provided by Mrs. Carey, the chairwoman.

(2) Summary of FBI Reports on the Springfield, Illinois, and Shenandoah, Pennsylvania, incidents.

(3) All letters and information regarding National Bank of Washington investigation.

(4) Summary of evidence of acts of violence or threats during the election and our finding regarding them.

(5) A listing of number of new employees added to the District payrolls during the election period and a discussion of their duties.

(6) Copies of the District 5 newsletters of May and October 1969 which were paid for out of District funds.

(7) Legislative History of sections 601 and 401.

(8) Answers to defendant's interrogatories.

(9) All information with regard to Dust Committee and new employees hired in the various Districts during 1969.

(10) All legal papers filed.

(11) Two original copies of the official ballots used in the United Mine Workers December 9, 1969 election.

(12) Two original sample ballots used by the Boyle slate.

(13) Copies of all Boyle slate election literature used during the December 9, 1969 election.

(14) An original of the "Election Bulletin" put out by the President of District 5.

(15) Chart of all invoice numbers and articles printed by the Colonial Press in Pittsburgh, Pennsylvania during 1969.

(16) The bank records of President Budzanoski of District 5 for the year 1969.

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August 20, 1970

Honorable Ralph W. Yarborough
Chairman
Senate Labor and Public
Welfare Committee
United States Senate
Washington, D. C. 20510

Dear Chairman Yarborough:

It is very difficult to urge people to "work through the system" to redress their legitimate grievances when persons charged with the responsibility to enforce our laws ignore those laws and demonstrate such low regard for the legislative branch of the federal government that they fail to provide the facts to a Senate Committee honestly and fully. We believe that, as Solicitor of Labor, Laurence H. Silberman ignored the provisions of the Labor-Management Reporting and Disclosure Act and dissembled in his testimony before the Senate Labor Subcommittee when he was later called upon to explain the Department's role in the 1969 United Mine Workers of America election. We also believe that there can never be enforcement of this Act if Mr. Silberman is rewarded for willful nonfeasance by confirmation to the position of Under Secretary of Labor.

Throughout the UMWA election period, as Mr. Yablonski's attorneys, we brought to the Department of Labor's attention well-detailed charges of hundreds of LMRDA violations. The Department was repeatedly urged to investigate these charges and warned that there would be violence and more violence if the Government did not intervene. These pleas were ignored. During that period of time the Department's spokesmen admitted that they had legal authority to launch such an investigation and stated only that policy considerations and the circumstances of the case did not warrant a pre-election investigation.

Following the murders, the public and the Congress raised some serious questions as to the wisdom of the Department's decision not to intervene and as to whether the Department's failure

to investigate had contributed to the murders. Then, for the first time, the Department shifted its position and denied that it had legal authority to investigate. What had begun under earlier Administrations as a flexible policy and what had been transformed by the Department of Labor in 1969 into a fixed, inflexible policy, now was justified as a pattern of action required by law. This sudden and unwarranted shift in rationale was authored by the then Solicitor Silberman as a "cover up" for the Department's failure to do what the law required. To confirm Mr. Silberman under these circumstances is to further undermine respect for this government and its laws and to serve notice to government officials that it is acceptable for them to neglect their duties if only they will go one step further and brazenly distort the record whenever they are called upon to explain their performance.

Here is the pre-election record as it unfolded before the Senate Labor Subcommittee:

(1) On July 23, 1969, following our first two requests for an immediate investigation, former Secretary of Labor Shultz wrote to us:

> "Although the Secretary of Labor does have the power under Section 601(a) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) to investigate election irregularities at any time, it is the Department of Labor's long-established policy not to undertake investigation" before the election has been completed (emphasis added).

(2) The Department of Labor never, in all of their correspondence with us prior to the murders, ever waivered from this position that they had legal authority to investigate at any time.

(3) Again, on July 25, 1969, Shultz wrote:

> "I pointed out in my earlier letter the reasons why the Department chooses not to conduct investigations before an election is completed. The developing circumstances of this case may, however, lead us to consider this matter further after the nominations are closed on August 9."

(4) On September 3, 1969, W. J. Usery, Jr., Assistant Secretary of Labor, wrote:

"The developing circumstances in this case, referred to in Secretary Shultz' July 25 letter, do not at this time overcome the reasons previously stated for not conducting an investigation of alleged violations of Section 401 of the Labor-Management Reporting and Disclosure Act before the election is completed."

(5) On December 6, 1969, Shultz wrote:

"After careful consideration of your letter of December 1, I have concluded that the Department of Labor should not intervene in the election of officers of the United Mine Workers at this time."

This correspondence clearly reveals that the Department of Labor's position on pre-election investigations of alleged violations was consistent: by their own admissions, the law permitted such investigations "at any time" but they had decided as a matter of policy not to intervene. In good faith we relied to our detriment on these statements and on the Department's continuing promise to investigate should changed circumstances warrant it. Had the Department at any time during the pre-election period stated that the law prevented them from investigating our charges--an interpretation at odds with the clear words of Section 601(a), the legislative history of the Act and relevant case authority--we would have brought a mandamus action to compel them to perform their obligations under the law and investigate. Since they asserted they had legal power to act, but were refusing to exercise it on grounds of policy, our hands were tied.

On May 4, 1970, Shultz, Silberman and Usery appeared before the Senate Labor Subcommittee. In the Department's prepared statement, which Silberman helped prepare, the Department admitted in so many words that the Department had now shifted its position on the question of pre-election investigations in order to save itself from further criticism.

"When requests were first made to us to start an investigation of the UMWA election campaign, we considered and denied the request [sic] on the basis of a long-standing policy of the Department that we will not investigate elections before the balloting takes place. That has been the policy of the Department since the

> enactment of the statute, and it was adopted despite the seemingly broad language of Section 601 of the statute authorizing investigations in general. As the controversy over the Mine Workers election continued, we have reexplored the legal basis of our policy because of a concern whether our policy truly reflected Congressional purpose. * * * That decision [not to investigate] was based on a policy of non-interference--pursued since the enactment of the statute. As I have said, I think it was not only sound policy, but a policy that is required by the statute."

Thus, the Department made clear that what it had previously justified as a policy determination was (when the policy determination proved to be a disastrous one) a position which was required by law. This was bad enough, but Silberman went even further in his testimony before the Subcommittee, suggesting that the Department had never even held out the possibility of a pre-election investigation, a position totally at odds with the statements in the official correspondence set out above and with the Secretary's own admission of a definite shift of position.

At the Subcommittee hearing on May 4, 1970, Silberman denied that the Labor Department had ever held out the promise of the possibility of a pre-election investigation. With respect to the September 3 letter, Silberman testified (Tr. p. 646): "What the Secretary was saying is when he wrote that letter was that before the entire apparatus of the election procedure is completed, it is possible we might get involved, but not before the balloting." Mr. Nagel, a Subcommittee staff member, pointed out that this position was contrary to that taken by Shultz in his August 5 telegram (id.) and asked if Silberman meant that the Department would not investigate under any circumstances before the balloting (Tr. p. 648). Silberman responded:

> "If you mean by investigation, now, you have to qualify your question. The Secretary just indicated allegations of violence are indicated separately. If you mean to say would we have gone into investigating violations of the election process itself prior to the balloting, violations of the election itself prior to the balloting, our position is that the proper construction of the Landrum-Griffin Act precluded us. As the Secretary indicated,

there might be a 601 investigation to determine certain facts if there were such violations, such as members not knowing the proper polling place, or the qualifications for voting, in which case the Department of Labor might be of help to them, but as to other types of violation, no."

On June 24, 1970, Senator Williams was severely critical of the Department's new position:

"In his report to the Subcommittee, the Secretary took the position that, except for allegations of violence, it is legally contrary to the Labor-Management Reporting and Disclosure Act for the Department to investigate possible violations of the law during an election campaign. I believe the Secretary's view is erroneous, and represents a reversal of the legal position held by the Department since the Act's inception in 1959. Section 601(a) of the Act expressly states that the Secretary has power to investigate whenever he believes it necessary to determine whether any person has violated or is about to violate the Act. While I can understand the Department's long-established general policy of not conducting such investigations in advance of an election, it seems to me this policy permitted an investigation when information brought to the Secretary's attention, indicates a pattern of irregularities which, if allowed to continue, will inevitably taint the election. In such cases, even though the Secretary could not actually go to court until after the election, a display of the Department's concern, manifested through investigative activity, may well serve to discourage continued violations of the law, as well as preserve evidence for later use in court, should that be necessary. I do not believe that Congress intended that the Secretary's hands should be tied in the fashion of the Secretary's current interpretation."

Chairman Williams was not to be taken in by this transparent and unwarranted shift in the Department's position nor in its efforts to rewrite the history of this case. No fair interpretation of LMRDA and Shultz' correspondence with us could ever support the conclusions drawn by Messrs. Silberman and Shultz.

On August 6, 1970, Senators Eagleton and Pell raised certain questions with Mr. Silberman asking for a clarification of his and the Department's position on certain aspects of LMRDA. In his response--despite the stand taken by Chairman Williams--Silberman reiterated his position that under Section 601 the Department must limit its use of its investigatory powers to the post-balloting stage of union elections. (As to certain other questions, he was unresponsive or evasive).

This is not the only time that Department officials, under Silberman's advice, have tried to sweep the mess of their own failure to act under the rug in order to protect themselves. On January 7, 1970, before any evidence as to the perpetrators of the grim murders had been amassed, Shultz stated that they were the work of a "demented man", unconnected with the UMWA or its December election (and the Department's role in that election). Months later, after the Cleveland Grand Jury publicly indicted the president of a UMWA local as a co-conspirator with his daughter, his son-in-law and others in the murder and charged that they had conspired to murder Mr. Yablonski in order to violate his rights as a union member and in order to prevent him from testifying before a Grand Jury probing the UMWA, Shultz twice told the Labor Subcommittee that the murders had nothing to do with the UMWA election. Only a guilt-stricken man would challenge the F.B.I., the United States Attorney and the Grand Jury to undercut deliberately the enforcement efforts of his own government.

Mr. Shultz is no longer connected with the Department and his actions are not subject to review; but the architect of the Department's inaction plan--the innovator of the legal theory that pre-balloting investigations are barred by the statute--is. To confirm Mr. Silberman is to ratify publicly the Department's handling of this matter.

Much remains to be done to clean up this corrupt and tyrannical union, and it is clear that nothing can be achieved without the Department of Labor's full dedication to this task. But as we have shown, the Department has so far seen its role in a different light. In order to protect themselves, they have tried to cover up the facts and have thereby protected the incumbent corrupt union leadership. To turn this matter over to such guilt-stricken officials as Mr. Silberman is to render a major assist to Boyle and his crew.

In sum, Silberman's role in the Department's decision not to act prior to the election and the murders, and in his belated attempts to cleanse the public image of those who like himself ignored their responsibilities under the law, make it impossible for him to bring to this task the commitment that it requires. Mr. Silberman has a vested interest in the suppression of the true facts; for they will reinforce the evidence of violence and corruption on which he should have, but did not, act in 1969. Having once tried to cover up for the Department and thus for the UMWA, can he really be expected to change? As Under Secretary of Labor he would undoubtedly play an even <u>greater</u> role in the pending litigation against the UMWA and the decision whether to pursue further legal action against UMWA officers. His actions to date leave no doubt where he will stand. Therefore, we respectfully urge you to vote against confirming Silberman as Under Secretary of Labor. We think that the Senate should insist upon enforcement of federal laws and upon candid testimony by government officials who are called upon by the Senate to explain their actions. Confirmation of Silberman would undercut such a stand.

Sincerely yours,

Joseph L. Rauh, Jr.

Joseph A. ("Chip") Yablonski

Clarice R. Feldman

U.S. Department of Labor
Office of the Under Secretary

Washington, D.C. August 24, 1970

Honorable Ralph W. Yarborough
Chairman
Senate Labor and Public
Welfare Committee
United States Senate
Washington, D. C. 20510

Dear Chairman Yarborough:

I have received a copy of a letter to you dated August 20, 1970 opposing my confirmation from Joseph L. Rauh, Jr., Joseph A. ("Chip") Yablonski and Clarice R. Feldman.

We have already stated the Department's position concerning its interpretation of section 601 of the Landrum-Griffin Act as it pertains to investigation of union elections prior to balloting. I would like to assure you, however, that the legal position that I have taken with respect to that issue is my honest view as a lawyer and a government official. Furthermore, I have tried in every respect to cooperate with Senator Williams' Subcommittee in the exercise of its oversight responsibility concerning this matter.

Although the Department of Labor has never utilized section 601 to justify a pre-balloting investigation, we have been candid in stating that upon careful legal examination our rationale expressed before Senator Williams' Subcommittee differed from that which generated the Department's denial of Mr. Rauh's first requests. When we were asked to appear

before Senator Williams' Subcommittee we recognized that a careful legal analysis was required, not for the purpose of justifying that which we did not do but because a terribly important question of statutory purpose was involved.

I wish to assure you Mr. Chairman and the members of your Committee that I will do everything in my power either as Solicitor of Labor or as Under Secretary of Labor to see that the lawsuits which the Department has brought against the United Mine Workers are vigorously prosecuted and that such equitable remedies authorized by law as will be necessary to fully remedy violations of the Landrum-Griffin Act are sought.

In short, the Department will be responsive to its obligations as Congress set them forth.

Very truly yours,

Laurence H. Silberman
Under Secretary of Labor -
Designate

The CHAIRMAN. The committee stands adjourned until 10 o'clock in the morning when we go into executive session.

(Whereupon, at 3:45 p.m. the committee adjourned, to reconvene in executive session, at 10 a.m., Thursday, July 30, 1970.)

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