

ADDENDUM A



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April 29, 2010

**To: Office of Labor-Management Standards,
U.S. Department of Labor**

Re: Draft Strategic Plan FY 2010-2016

In reply to your invitation for comments on the OLMS draft strategic plan for 2010/2016, please consider the following:

The draft seems to propose, as its main objective, a more effective processing of the reports submitted by unions in compliance with LMRDA requirements. While this is a necessary and praiseworthy aim, as a strategic, long term guide for the OLMS it falls far short of what is necessary. The purpose of requiring financial disclosure is not simply to elicit information in the abstract. It is to enable union members to inform themselves about what is going on so that they can take appropriate action, including by "throwing the bums out" when they believe their union is being corruptly or improperly run. Union members must have a meaningful opportunity to act on the information provided. Therefore, the fundamental strategic objective of OLMS should be to strengthen enforcement of the basic, substantive objective of the LMRDA, namely, to promote democratic practices in the American labor movement.

In this connection, AUD believes it is essential for the Department of Labor to review experiences under the LMRDA for the past 40 years. Among other things, this should include reconsideration of trusteeship complaint handling and of the "may have affected the outcome" standard for overturning an election.

With regard to this we note:

Trusteeships: The LMRDA was intended to eliminate improper and repressive trusteeships. Enforcement, however, has been a failure. The law provides two alternative means to challenge a trusteeship: private suit in federal court or complaint to the DOL

Private suit has proven to be so burdensome that, in reality, it is almost never a practical means of recourse. Once an international union imposes a trusteeship over a subordinate body the trustee takes control of all its resources, making a legal challenge using the local's funds financially impossible except under the most extraordinary circumstances. A challenge financed by individual union members is almost never possible.

Consequently, absent DOL action, international unions are able to impose repressive trusteeships at will for improper purposes and immediately use their authoritarian control over the trusted body to undercut critics and entrench their own political supporters.

However, despite the Department of Labor's right to challenge a trusteeship upon complaint from a member, it has never in the 50 years of LMRDA, not once as far as we know, challenged a trusteeship in the first 18 months of its imposition. Although there is a presumption of validity for the first 18 months, that is not synonymous with actual validity. DOL procedures should ensure appropriate investigation of complaints, as well as legal remediation, even within the first 18 months.

Union elections: Title IV provides that a union election may be invalidated if violations of the law may have affected the outcome. In making that judgment, the DOL essentially has been acting as a bean counter to mathematically determine how many votes any given violation could change. But not all violations that may have affected the outcome are susceptible to objective numerical tabulation. For example, the Act guarantees observer rights. When observer rights are denied, it is not possible to assess the effect in numerical terms, although it is undeniable that the outcome may have been affected. In its strategic plan, the DOL should reconsider its standard and make a policy commitment to challenge any election where the violations were so egregious that they undermined elementary democratic processes.

Summary: These are some important examples of what should be included in any strategic plan. However, they are only examples. Any long range strategic plan should not skirt around the edges, but should consider how the DOL can improve enforcement of the basic aim of the LMRDA to protect democracy in unions.

ADDENDUM B

Introduction

The overriding objective of the LMRDA was to rid the union movement of corruption and tyranny. Congress chose to achieve this objective by giving union members the means to clean up their unions from within by bestowing on members a host of democratic rights. Of course, and as many LMRDA courts have noted, the cornerstone of any democracy is *information* without which the right to vote is meaningless – a “naked right.” Accordingly, when enacting Title II, Congress charged the DOL with responsibility for promulgating rules requiring unions to become financially transparent entities such that their members would be able to detect conflicts of interest and financial abuse by their elected officials whom they could then vote to remove from office, and perhaps even sue for breach of fiduciary duty under Title V. Title II was intended to insure “that union members [would] have all the vital information necessary for them to take effective action . . . [such] that union members armed with adequate information and having the benefit of secret elections . . . would rid themselves of untrustworthy or corrupt officers.” S. Rep. No. 187 on S. 1555 at 9, Vol. 1, NLRB Legis. Hist. of the LMRDA 405

In recent years, the DOL took steps to improve union financial reporting requirements. Clearly, some of the proposed changes to the LM-2 and T-1 reporting requirements would have been unduly burdensome for unions and of little value to members. Others would, however, have been of great value to members, enabling them more accurately to understand how their dues are being spent and union assets utilized, and to detect conflicts of interest by their elected officers that could lead to, or already had resulted in, political, contractual, or financial abuse. Rather than fine-tune these new reporting requirements, it is troubling that the DOL has recently elected instead to abandon them wholesale.

Background

As the DOL notes in its proposal to rescind its 2008 Rule, “Section 208 authorizes the Secretary... to issue, amend and rescind rules and regulations to implement the LMRDA’s reporting provisions, including ‘prescribing reports concerning trusts in which a labor organization is interested’ as she may ‘find necessary to prevent the circumvention or evasion of ... the reporting requirements.’”

The DOL concludes, therefore, that there is a two (2) part test for any proposed rule to be within the law: 1) the labor organization must have an “interest” and the trust be considered “significant,” and 2) the trust reporting requirement is needed in order to prevent circumvention or evasion of the financial reporting on the labor organization itself.

The 2008 rule that the DOL now claims should be rescinded was enacted after several failed efforts to satisfy those requirements.

A 2003 attempt was rejected by a federal court in an action brought by the AFL-CIO. The court concluded that the reporting requirements were too stringent because reporting was mandated even in circumstances where there was neither interest nor significance shown. In 2006, the DOL proposed a revised T-1 rule but that was rejected on the procedural grounds of lack of adequate notice and comment period. In 2008 the rule that the DOL now seeks to rescind was adopted to address prior court concerns.

The DOL is not claiming now that its 2008 rule failed to meet interest and significance standards. Rather, it argues that “the final [2008] rule is not necessary to prevent circumvention or evasion of existing reporting requirements [of the LMRDA]”. The Department points to the inclusion of one type of trust in the mandate and to language in the rule suggesting a rationale for the rule inconsistent with the law. It proposes to rescind the rule - and eliminate reporting for trusts - but add a provision to the LM-2 requiring reporting of the finances of organizations “wholly owned, controlled, and financed by a single union” (deemed “subsidiary organizations”).

The result is that there will be **no** reporting on trusts even when a majority of the trust’s board is union appointees and over half the funds are contributed by the labor organization.

AUD Comment on the Proposed Rule

AUD favors providing union members with full information on any income of their officers that could indicate a conflict of interest or grossly excessive compensation.

Where there are multiple salaries, some of them are often for jobs that are supposedly full time. In evaluating the performance of their elected officials, members should have some idea of how thinly spread they are trying to do multiple jobs when there are only so many hours in the day. Union members’ right to vote on officers, whether directly or through elected delegates, and their ability to cast informed votes (among the basic reasons for Title I free speech, and for Title II reporting requirements) will be affected by how complete, or incomplete, information about multiple salaries will be depending on the final version of the rule.

The press has reported on substantial extra income earned by labor organization officers, some of whom have been forced to return the funds because of conflicts of interest. For example, an IBT officer received \$160,000 from a union vendor and was forced to return the money. The vendor was not a wholly owned subsidiary of the union.

Any new reporting should be not unduly burdensome.

However, AUD believes that the definition of “significant” and “interested” should not require a demonstration of one hundred percent ownership and control, as proposed by the DOL. If reporting pursuant to the 2008 T-1 rule on one type of trust oversteps the intent of the LMRDA reporting requirements- as argued by the DOL – this problem could be addressed by a separate DOL regulation. Rather than drop all trust reporting

(including presumably reporting on trusts that are 99 percent funded by labor organizations and staffed by labor organization appointees) the Department should fine tune the rule.

While we approve DOL's current proposal to require reporting on wholly owned subsidiaries, AUD believes that reporting on "non-wholly owned trusts" is just as important to union rank and file and to satisfy the intent of the LMRDA to provide "protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations ... and their officers and representatives." Very few union members are aware of the extra income that union officials receive from such trusts. So also are members unable to detect any conflicts of interest involving the administration of trusts and/or the expenditure of trust funds. The Department's proposal would not address this in any meaningful way.

ADDENDUM C

These observations are offered in reply to your request of August 10 for comments on proposed changes on the requirements of Form LM-30.

The intent of the proposed changes, namely to make it easier and less complicated for unions and union representatives to comply, is certainly proper, and most of the related changes seem well suited to achieve that end. However, in two respects we would like to suggest modifications:

1. The second proposed change would exclude "union stewards and similar representatives" from any reporting requirements. It is certainly proper to exempt them from payments made by the employer to allow them to spend time fulfilling their responsibilities to the union and its members. But to exempt them from any and all reporting goes too far. They should report any income received directly or indirectly from an employer that is not related to union business, e.g. mowing the lawn of a management representative, painting his/her house, etc.
2. The fourth change would require reporting only "where an official is involved with organizing, collective bargaining....." But that limitation would weaken the very purpose for which the LM-30 is intended, namely, to reveal possible conflicts of interest. It ignores the reality of life and politics in unions, as in many other social institutions. The ruling administration in most unions, as elsewhere, constitutes one cooperating and mutually benefitting official family. To make substantial payments to one of the administration can easily be to influence all the others, regardless of what the formal definition of any one's role might be. Any representative in any capacity should be required to report relevant payments from any employer.

Respectfully submitted,

ADDENDUM D



Association for Union Democracy, Inc.

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October 25, 1994

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Hon. William D. Ford
House Committee on Education and Labor
2181 Rayburn House Office Building
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Dear Representative Ford:

Enclosed please find our submission to the Commission on the Future of Worker-Management Relations which addresses the rights of workers in unions and "employee involvement committees", and also proposes reforms to strengthen the protections of the Labor Management Reporting and Disclosure Act ("LMRDA").

As the Commission is considering whether to recommend amending the National Labor Relations Act to permit employers to initiate "employee involvement committees", it is essential for the Commission to consider the rights of workers to govern such committees. We propose that the responsibilities imposed on unions by the LMRDA be applied to "employee involvement committees" which carry out the functions of unions -- grievance handling and collective bargaining. Such committees should be subject to the same reporting and officer election requirements as apply to unions; their members should have the same rights to free speech and assembly, to equally participate in the affairs of the committee, to vote on increases in dues and assessments, to sue the committee, and to due process in internal disciplinary proceedings. Without the protections of the LMRDA, workers represented by "employee involvement committees" are denied the democratic rights enjoyed by union members and are subject to control by management.

We also submit proposals to strengthen the LMRDA and correct deficiencies in its provisions which have become apparent in the 35 years since its enactment. We ask for your support of our proposals.

Very truly yours,

Susan Jennik, Esq.
Executive Director

PROPOSALS OF THE ASSOCIATION FOR UNION DEMOCRACY FOR STRENGTHENING THE RIGHTS OF UNION MEMBERS

Top priority proposals

1. Direct election of national and international officers -

National and international officers may now be elected "either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot." LMRDA, § 401(a) (emphasis added). The overwhelming majority of unions have chosen the second alternative; their national officers are elected by convention delegates.¹ This system has been increasingly recognized as a means of sheltering incumbents from serious challenges to their re-election, especially corrupt regimes.

In 1989, the U.S. Justice Department settled a RICO suit against the Teamsters, long seen as the union most dominated by organized crime. An essential element of the settlement was a direct election of the union's officers by the members of the union. The election, conducted by a court-appointed officer, resulted in the victory of a slate of non-incumbents promoting reform of the union.

On the heels of this victory, rank and file groups in other unions have been advocating for direct elections of national officers. However, such a change requires amending the union's constitution, a decision made by the same convention delegates who now have the power to choose the national officers. Not surprisingly, no group has been successful in convincing those delegates to give up their power.²

Professor William Gould, now Chairman of the NLRB, supports changing the law to require direct election of national officers. As he stated:

The direct election of new leadership in the International Brotherhood of Teamsters in 1991 is a welcome development for labor. The direct vote and the results obtained through this method inside the Teamsters and other unions suggest that union democracy is more effective under such circumstances. The labor movement should promote this internal process. Indeed the Landrum-Griffin Act should be amended to mandate direct, secret ballot-box procedures at both national and local levels in all unions-

¹Exceptions include: American Postal Workers Union; Graphic Communications International Union; International Association of Machinists; International Organization of Masters, Mates & Pilots; International Typographical Union; Marine Engineers Beneficial Association; National Association of Letter Carriers; National Maritime Union; Newspaper Guild; United Mine Workers of America; and United Steelworkers of America.

²Unsuccessful attempts were recently made at conventions of the Communication Workers of America, Service Employees International Union, Transport Workers Union, United Auto Workers, United Brotherhood of Carpenters, and United Food and Commercial Workers.

-just as strike ballots are appropriate as part of strike law reforms. Some unions, noted for their democratic procedures, like the United Auto Workers, will oppose such reforms because they depart from their own tried and trusted mechanisms. But labor should not oppose this change in the law--it is in the leadership's interest as well as in the interests of the rank and file.

Agenda for Reform: The Future of Employment Relationships and the Law at 263 (1993) (emphasis added).

In 1986 the President's Commission on Organized Crime³ identified four unions as dominated by organized crime: Teamsters, Laborers, Hotel Employees, and Longshoremens. At the time all of those unions elected national officers by convention delegates. Now, through government intervention, Teamster members have had the chance to directly elect their officers. That election demonstrated the difference between direct membership elections and convention elections: at the 1991 Teamsters convention, only 15% of the delegates supported Ron Carey; yet, in the membership election, Carey won a three-way race with 48% of the vote.

It is virtually inconceivable that those opposing organized crime influence in the Laborers, Hotel Employees or Longshoremens unions could mount a successful campaign to elect new leaders at a convention. Amending the law to require membership elections of all union officers will give opposition candidates a chance to appeal directly to their fellow members. Without such an amendment, only massive government intervention, as in the Teamsters union, will produce any meaningful change in corrupt unions.

The adoption of the right to vote for union officers will only be meaningful if such elections are fair and honest. The proposals made below, at pages 13-17, to ensure that union officer elections are run democratically are even more urgent if such elections are required of all unions.

2. LMRDA coverage of public sector unions - Public employee union members comprised only 5% of the labor movement when the LMRDA was passed.⁴ Many states explicitly prohibited unionization of government workers; few protected the rights of public employees to unionize.⁵ Thus, unions representing employees of "the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof" were excluded from the definition of

³President's Commission on Organized Crime, *The Edge: Organized Crime, Business, and Labor Unions* (1986).

⁴Bureau of Labor Statistics, U.S. Department of Labor, Bulletin No. 1267, *Directory of National and International Labor Unions in the United States, 1959*, Table 7, at 12 (1959).

⁵Before 1959, only Michigan, New Jersey, and Rhode Island explicitly permitted public employee unionization.

"labor organizations" that must comply with the LMRDA.⁶

In the 1960's public employees unionized at a rapid rate and in 1962 President Kennedy authorized collective bargaining for federal government employees.⁷ In 1970 the Postal Reorganization Act brought postal workers under the umbrella of the LMRDA.⁸ In 1978 the Civil Service Reform Act extended the substantive protections of the LMRDA to federal government employee union members but provided for enforcement through the Department of Labor rather than private suit.⁹

Many workers for states, counties, municipalities, and school boards continue to be excluded from the protection of the LMRDA. Today those government employees comprise about 35% of all union members and are the fastest growing sector of the labor movement.¹⁰ While 30 states have enacted laws regulating collective bargaining in the public sector,¹¹ no state has a statute comparable to the LMRDA to protect democratic rights for public employee union members. There is no current justification to continue the exclusion of such a large part of the labor movement from the protection of the law.

3. Membership right to ratify contracts - The most important function of a labor organization is to negotiate the collective bargaining agreement that determines the members' wages, hours and working conditions. Yet, the law does not require a membership vote on contract terms; union officers are free to negotiate any provisions they wish and amend the contract at will. While many union constitutions require membership votes on contract proposals, the law allows a union to delete that protection from its constitution. Even if membership ratification is allowed, few unions require that members receive actual notice of the terms of the contract on which they are voting.

⁶29 U.S.C. §3(e) and (i).

⁷E.O. 10988.

⁸39 U.S.C. §1209(b).

⁹5 U.S.C. §7120.

¹⁰All government workers make up 7 million of the 16.6 million union members. Bureau of National Affairs, *Labor Relations Reporter*, 145 LRR 207-08 (February 21, 1994). Members of federal government and postal worker unions totaled approximately 1,000,000 in 1992. Courtney D. Gifford, *Directory of U.S. Labor Organizations, 1992-93 Edition*, 57-59 (1992).

¹¹Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin.

In a number of cases applying the right to a "meaningful" or "informed" vote that has been seen as contained in the equal rights and free speech provisions of Title I, courts required unions to permit members to communicate with fellow members about matters on which a referendum is impending,¹² or have set aside ratification votes based on the unfairness of the way in which the referendum was conducted.¹³ Some recent decisions are less friendly to this analysis.¹⁴ The Ninth Circuit, in Ackley v. Western Conference of Teamsters, 958 F.2d 1463 (9th Cir. 1992), and to a lesser extent the D.C. Circuit in Carothers v. McCarthy, 705 F. Supp. 687 (D.D.C. 1989), rejected claims with opinions casting doubt on the availability of such relief in those circuits, although they leave open the prospect of relief when the union's behavior is egregious. The Seventh Circuit recently denied standing in a similar case with an opinion that might make it difficult to secure such relief in that circuit as well. Tisza v. CWA, 973 F.2d 1050 (7th Cir. 1992), cert. denied, 113 S.Ct. 1415 (1993). The right to ratify contract proposals should be established in federal law.

4. **Hiring hall protections** - The National Labor Relations Act (NLRA), not the LMRDA, regulates hiring halls. Since discrimination in job referrals is so often used to retaliate against union dissidents, we include the subject in our proposals. The unique degree of union control over access to employment in the construction industry was explained by the New York State Organized Crime Task Force:

Unlike workers in other industries, the construction worker's employment is in the hands of his union, not his employer. In most industries a worker's attachment is principally to an employer who has the power to hire and fire, to determine qualifications and eligibility for promotion, and with whom the worker may have a long-term employment relationship. By contrast, in the construction industry most workers owe little fealty to the contractor/ employer who signs their paychecks. In a real sense, construction workers are "employed" by their unions.

Corruption and Racketeering in the New York City Construction Industry at 48 (1990).

Reform of unions in the construction industry, and other industries, such as longshoring, in which union officers control hiring, is not possible without reforming job referral systems.

¹²Rural Letter Carriers, Knox County Local v. Rural Letter Carriers, 720 F.2d 936 (6th Cir. 1984); Bauman v. Presser, 117 LRRM 2393 (D.D.C. 1984), app. dis'd, 119 LRRM 2247 (D.C. Cir. 1985).

¹³Christopher v. Safeway Stores, Inc., 644 F.2d 467 (5th Cir. 1981) (union failed to notify voters of significant contract change); Aguirre v. Teamsters, 633 F.2d 168 (9th Cir. 1980) (ballot tampering).

¹⁴But see Colson v. Allied Systems, Ltd., 146 LRRM 2620 (M.D. TN 1994); Farkas v. Rumore, 145 LRRM 2051 (S.D.N.Y. 1993).

The NLRA makes an unrealistic distinction between "exclusive" and "non-exclusive" hiring halls, granting rights to information about job referrals only to workers using exclusive hiring halls.¹⁵ Union referral systems can easily avoid designation as an exclusive system and thus avoid any meaningful regulation. The distinction should be abolished.

All union job referral systems should be required to post written rules at the dispatch location.¹⁶ Listings of which workers are referred to which jobs should remain posted for at least one month. A requirement that all union referral systems adopt and post rules and referral information would minimize the opportunity for "back-dooring" and encourage self-enforcement; this, in turn would inhibit use of hiring halls to reward political supporters and punish dissidents.

5. **Protection from all forms of retaliation** - A growing number of courts have denied LMRDA protection on the ground that an action taken against a particular union member did not impinge his rights as a member of the union. For example, in Phelan v. Plumbers, 973 F.2d 1050 (2d Cir. 1992), cert. denied, 142 LRRM 2704 (1993), a member of one local was blacklisted by an official of another local. In Franza v. Teamsters, 680 F. Supp. 496 (D. Conn. 1988), aff'd, 869 F.2d 41 (2d Cir. 1989), a union official was allowed to use his influence over a trust fund to punish an intra-union rival. This problem could be remedied by making clear that any use of union power or authority to retaliate against, or to punish, a member for exercising rights under the LMRDA is subject to suit.

6. **Access to union records** - The law now allows access to union financial records only if "just cause" is shown that review of records is necessary to verify reports filed with the government.¹⁷ To enforce this right if the union refuses to comply with a request, members must hire a lawyer and obtain a court order. Since such a lawsuit does not result in any money damages for the plaintiffs, the potential cost of litigation will often stand in the way of filing a lawsuit. Moreover, unnecessary litigation has been engendered over whether it was "necessary" to see the underlying documents in order to "verify" particular entries on the LM-2 report. It should be enough that a member has "just cause", which the courts have construed to mean the

¹⁵See Development Consultants, Inc., 300 NLRB No. 44 (1990); Carpenters Local 608, 279 NLRB 747, 748, 754 (1986), enf'd, sub nom. NLRB v. Carpenters Local 608, 811 F.2d 149 (2d Cir. 1987), cert. denied, 487 U.S. 817 (1987); and Teamsters Local 5, 272 NLRB 1375 (1984), enf'd, sub nom. NLRB v. Teamsters Local 5, 778 F.2d 207 (5th Cir. 1985).

¹⁶Such requirements have been included in Consent Decrees to correct racial discrimination in hiring halls, Daniels v. Plumbers & Pipe Fitters Local 597, Docket No. 84 C 5224, Alesia, J., (N.D. IL October 14, 1993); and to correct corrupt manipulation of a job referral system, U.S. v. New York City District Council of Carpenters, Docket No. 90 Civ. 5722, Haight, J., (S.D.N.Y., March 4, 1994).

¹⁷29 U.S.C. §431(c).

absence of a bad purpose (such as to obtain information to share with the employer or to hurt the union in bargaining). Finally, courts have often permitted access only to financial records and not to minutes of meetings, although meeting records are often important to members seeking to hold their representatives accountable.¹⁸ This will be especially true for members of employee involvement committees, which may have little in the way of funds, and whose records may consist primarily of documents concerning its decision-making process.

AUD proposes three changes: the right of access should be expanded to include minutes of meetings and all financial reports and records; the requirement of a showing that the information is necessary to verify the LM-2 report should be eliminated; and enforcement should be permitted either by private suit or by the Department of Labor.

7. Regulation of vacancies in officer positions - It is standard practice in many unions for officers to retire or resign shortly after election, long before their term of office expires. The executive board chooses the replacement, who enjoys all the advantages of incumbency when he is forced to face an election.

The Labor Department holds that Title IV regulates only the regular, periodic election of officers, and neither requires elections to fill vacancies, nor prescribes the manner in which such elections must be held.¹⁹ The law should require an election to fill a vacancy, subject to the same requirements as regular officer elections, unless the constitution provides for automatic succession by some other officer who has been elected.

A comparable problem arises with respect to the creation of new local unions. Internationals will often create a new local union and appoint their buddies as officers to govern until the first election, which, according to the Labor Department, may be as long as three years away. During the intervening period, the appointees have ample opportunity to use the powers of incumbency to entrench themselves. This problem would be ameliorated if, as we suggest below at page 11, the LMRDA protected the right of all affected members to a fair vote on a merger proposal; members could use their franchise to prevent mergers if they disapprove of those who have been selected to be the new officers. But for those locals created by some other mechanism

¹⁸Fernandez-Montes v. Allied Pilots Assn., 987 F.2d 278 (5th Cir. 1993) (seeking audiotapes of union meetings); Flaherty v. Warehousemen, Garage and Service Station Employees' Local Union No. 334, 574 F.2d 484 (9th Cir 1978) (seeking records related to dues increase and assessment); Thompson v. Flight Attendants, 109 LRRM 2870 (C.D. CA 1982) (seeking records related to assessment vote); McGraw v. Plumbers & Pipe Fitters, 216 F. Supp. 655 (E.D. TN 1963), aff'd on other grounds, 341 F.2d 705 (6th Cir. 1965) (general request for access to union records). But see Mallick v. IBEW, 749 F.2d 771 (D.C. Cir. 1984) (granted access to records of costs of LMRDA litigation).

¹⁹See 29 C.F.R. §452.25. Talley v. Reich, 145 LRRM 2637 (E.D. PA 1994).

than a merger, there is no reason why a new election cannot be held within six months of the creation of the local.

8. Measures to level the election playing field - While it is impossible to eliminate all the advantages enjoyed by incumbents in internal union officer elections, two changes in the law would help level the playing field for opposition candidates: unions should be required to provide space in the official union publication equally for all candidates for office; and all candidates should have access to campaign on employer property.

The law allows, but does not require, unions to provide "battle pages" in their newspapers for bona fide candidates.²⁰ The Teamster election showed how important battle pages can be as a resource for a challenger, and such a requirement would help remedy the disparity in resources. Unions without newspapers should be required to include leaflets from candidates in their mailed notice of election (which are already required by the LMRDA), and/or in mailed ballot packages, thus minimizing the cost to the union.

The NLRB, in Tri-County Medical 222 NLRB 1089 (1976), now gives limited rights to off-duty workers to campaign in non-work areas only of their own employer's premises; after Lechmere v. NLRB, 112 S.Ct. 841 (1992), non-employees have essentially no such rights absent a showing of discrimination. But affording such access, enforceable by pre-election action, would be another inexpensive way to remedy disparity. This rule, and the prospect of election officer enforcement, made a big difference in the recent Teamster election. There is no need to rely on NLRB law, either; the requirement of access, by any members of a union that represents employees at the premises, could simply be written into the law, in effect extending the Board's Tri-County Medical standard to all union members.

9. Protecting leaves of absence for union business - Many contracts have no provision for a leave of absence for union business. Workers who take union positions lose their job seniority rights; if they lose the next election they are out of work. Those who hold union office should have the same right to return to their jobs that is now guaranteed to those who serve in the military.²¹

The prospect of losing seniority on good jobs, in case they are voted out of office, discourages many union members from running for office in the first place, and the threat of unemployment is a major incentive for incumbents to steal elections. The ability of defeated incumbents to return to the workplace, where they can organize dissent, helps keep the newly elected on their toes. Only a few unions have negotiated clauses permitting officers to keep their seniority (once they are elected, incumbents lose their own seniority, and don't want to encourage others to run against them).

²⁰See U.S. v. Teamsters, 931 F.2d 177 (2d Cir. 1991); but see Yablonski v. Mine Workers, 305 F. Supp. 868 (D.D.C. 1969).

²¹38 U.S.C. §4301.

A 1985 decision (Mead Packaging 273 NLRB No. 181 (1985)) even called into question the legality of contract clauses that protect members who go on leaves of absence while in union office, but does not penalize members on leave for other reasons. Although Mead was largely overruled three years later in IBEW Local 1212, 288 NLRB No. 49 (1988), the right to leave, not just lawfulness of leave when negotiated, should be written into law. After all, the drive to enable employee involvement committees is based in large part on the proposition that they are needed to boost productivity and thus enable American companies to be more competitive in the global economy; the literature similarly shows that union workplaces have higher productivity than unorganized companies do. Because of the public importance played by elected representatives in employee involvement committees and unions, there is no reason why workers who leave their regular employment in order to hold such positions cannot be given protection of the right to return to their old jobs, comparable to those who leave to serve in the military or, in some states, in public office.

It is true that special seniority protections can give members who hold union (or employee involvement committee) office an advantage over those within the workplace who disagree with their views, and who might wish to steer the organization in a different direction. For this reason, the law should also provide that special seniority protections, including the superseniority protections that are authorized by the NLRB's Dairylea doctrine,²² should be allowed only to persons who were elected to their offices by the rank-and-file membership not to appointees.

10. **Providing for attorneys' fees to prevailing plaintiffs** - The Supreme Court decision, Hall v. Cole, 412 U.S. 1 (1973), which allowed attorneys' fees in Title I cases is being eroded bit by bit. Some courts have denied attorneys' fees if a member is awarded financial damages on the assumption that attorneys' fees will be paid out of the award,²³ or if plaintiffs receive only partial relief.²⁴ Title I cannot be enforced unless attorney fees are readily available. In addition, attorneys' fees are not explicitly allowed to private plaintiffs enforcing rights under the other titles of the LMRDA.²⁵ The entitlement to an award of attorneys' fees should be made as explicit in the LMRDA as it is in the Civil Rights Acts.²⁶

²²Dairylea Cooperative, 219 NLRB 656 (1975), enf'd sub nom. NLRB v. Teamsters Local 338, 531 F.2d 1162 (2d Cir. 1976).

²³See Black v. Ryder/PIE Nationwide, Inc., 970 F.2d 1461 (6th Cir. 1992); Shimman v. Operating Engineers, Local 18, 744 F.2d 1226 (6th Cir. 1984) (en banc), cert. denied, 469 U.S. 1215 (1985).

²⁴Stomper v. Transit Union Local 241, 146 LRRM 2663 (7th Cir. 1994) (Title II case).

²⁵Markham v. Iron Workers, 901 F.2d 1022 (11th Cir. 1990) (denial of attorneys' fees in a Title III case).

²⁶42 U.S.C. §2000e-5(k) and 42 U.S.C. §1985.

Other changes needed

I. Title I Issues

A. Admission to unions

In 1959, §101(a)(1) was deliberately revised to allow unions to discriminate in admission of members, on the cynical argument that otherwise they would have to admit black applicants.²⁷ Title VII now forbids exclusion of minorities and women, of course.²⁸ But Title I still allows unions to deny membership for any reason, even disapproval of free speech, views or associations of would-be members, so long as the union retains discretion over admissions.²⁹ The law should prohibit unions from discriminating against applicants for membership for engaging in any activity protected by Title I.

B. Procedures for informing members of LMRDA rights

Section 105 of the LMRDA states in its entirety: "Every labor organization shall inform its members concerning the provisions of this Act." When the Act was passed in 1959 most unions complied with this requirement by printing information about the Act in their publications. Most members who were provided with this information in 1959 are now out of the workforce. Few unions have complied with this requirement on a continuing basis and the Labor Department has no regulations requiring continuous compliance. The few cases brought under this provision have been dismissed for failure to exhaust internal remedies.³⁰ The law should be clarified to require labor organizations to continue to inform its members of the provisions of the Act along with the election notices which, under §401(e), must be sent to each member at the end of the officers' terms.

C. Right of members to vote on mergers

The LMRDA does not address mergers of locals ordered by the parent organization, affiliation of a previously independent union with an existing national union, or mergers between

²⁷McAdams, *Power and Politics in Labor Legislation*, 97, 102, 103-04, 204 (1964).

²⁸42 U.S.C. §2000e-2(c).

²⁹See, for example *Wallace v. IOMMP*, 547 F. Supp. 155 (S.D.N.Y. 1982).

³⁰*Case v. IBEW Local Union No. 1547*, 438 F. Supp. 856 (D. Alaska 1977), *aff'd*, *sub nom. Stelling v. IBEW Local 1547*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, *sub nom. Darby v. IBEW Local 1547*, 442 U.S. 944 (1978); *Broomer v. Schultz*, 239 F. Supp. 699 (E.D. Pa. 1965), *aff'd per curiam*, 356 F.2d 984 (3d Cir. 1966).

existing national unions. Such mergers and affiliations have become quite common in the last 15 years.³¹ Some locals have challenged an ordered merger as retaliation for the protected activity of the officers in opposition to the national officers. Because union constitutions usually give the national officers authority to make such decisions, courts rarely intervene.³²

This problem will become particularly significant if the NLRA is amended to authorize new employee involvement committees. In many instances, workers who were persuaded by their employers that they would not need a traditional union, if only they had the more modest form of representation provided by involvement committees, may become disillusioned and may want to convert their committees into unions, often by affiliating with an existing union. The right of employees to make this decision in a fair referendum should be protected by the law.

The NLRB requires that members be allowed to vote on union merger or affiliation, with some fair decision-making requirement, before an employer's duty to bargain may be transferred to a new union entity through an affiliation vote or merger.³³ But this requirement applies only if the merged entity happens to hold the original certification or recognition (in the case of mergers of locals). It does not apply at all if, as in the construction area, relationships with employers are governed by pre-hire agreements under NLRA section 8(f).³⁴ It is also unclear whether individual members can bring such an unfair labor practice charge, and in any event the remedy-- releasing an employer from its duty to bargain with the new union entity--is scarcely the desirable one from a member's perspective. This requirement, for a vote on mergers, and its enforcement, should be moved from the NLRA to LMRDA Title I.

II. Title III Issues

A. Burden of proof

Under Title III, a trusteeship is presumed valid during the first eighteen months after it is imposed, unless it is shown by clear and convincing evidence that it was based on an

³¹See Gifford, *Directory of U.S. Labor Organizations, 1992-93 Edition*, 59-63 (1992).

³²Carpenters Local 1052 v. Carpenters Los Angeles District Council, 944 F.2d 610 (9th Cir. 1991); Carpenters Local 48 v. Carpenters, 920 F.2d 1047 (1st Cir. 1990); Local 1 v. Bricklayers, 143 LRRM 2107 (D. Minn. 1992). But see Carpenters v. Raymond, 145 LRRM 2331 (D. Conn. 1993) (merger disallowed because it was imposed in bad faith).

³³NLRB v. Newspapers, Inc., 515 F.2d 334 (5th Cir. 1975).

³⁴29 U.S.C. §158(f)(1). See Authorized Air Conditioning Co., Inc. v. NLRB, 606 F.2d 899 (9th Cir. 1979), cert. denied, 445 U.S. 950 (1979).

impermissible purpose.³⁵ The burden should be changed to require plaintiffs to show improper purpose by only the normal civil law burden of proof, a preponderance of the evidence. The need to show improper purpose by clear and convincing evidence especially when coupled with the rule on mixed motives has made it almost impossible to win a trusteeship challenge. The justification for the high burden was that trusteeships are a necessary tool to stop corruption and other local wrongdoing.

A trusteeship having a proper purpose will easily withstand challenge under the preponderance of evidence standard of proof. On the other hand, members should be permitted to challenge improper trusteeships under an attainable standard of proof: the usual preponderance standard. Trusteeships that continue for over 18 months, however, are very unlikely to be proper, and so the shifting burden of proof under the current law requiring clear and convincing evidence to justify a continuation of the trusteeship beyond 18 months should continue to be defensible only by clear and convincing evidence.

B. Mixed motive

Courts generally uphold a trusteeship even if it would not have been imposed absent a retaliatory or other bad motive, so long as one of the reasons for imposing it was proper. In other areas (employment discrimination, free speech retaliation) some good motives do not suffice: if a bad motive was the "but for" cause of adverse action (such as discharge), the claim succeeds.³⁶ This model which applies to free speech and similar cases under Title I) should be applied to challenges to trusteeships under Title III as well.

C. Election of officers

There is no requirement in the law that an election of officers must be held when a trusteeship is lifted. A parent organization could appoint new officers who would then remain in office for up to three years.³⁷ The law should require elections of officers upon lifting of a trusteeship unless the formerly elected officers are returned to their positions.

³⁵29 U.S.C. §464(c). See Hanson v. Guyette, 814 F.2d 547 (8th Cir. 1987); Boilermakers v. Local Lodge D238, 678 F. Supp. 1575 (M.D. Ga. 1988), aff'd, 865 F.2d 1228 (11th Cir. 1989); Belue v. Auto Workers, 669 F. Supp. 944 (E.D. Mo. 1987).

³⁶See Mt. Healthy School District Board of Education v. Doyle, 429 U.S. 274 (1977); Wright Line, 251 NLRB No. 105 (1980), enf'd, sub nom. NLRB v. Wright Line, 662 F.2d 899 (1st Cir. 1981), cert. denied, sub nom. Wright Line v. NLRB, 455 U.S. 989 (1982).

³⁷See Hotel & Restaurant Employees v. DelValle, 328 F.2d 885 (1st Cir. 1964).

III. Title IV Issues

A. Definition of officers covered

The Labor Department has refused to treat officers who are in charge of collective bargaining as "executive" officers who must therefore be elected.³⁸ Many unions hire "business managers" who actually run the union but if they do not have a vote on the executive board, the DOL will not require them to be elected. The law should provide that union representatives who have major responsibility for collective bargaining are officers who must be elected by the members.

B. Campaign contribution issues

1. Broad definition of employer

The Labor Department takes the position (first endorsed by the courts in Marshall v. Teamsters Local 20, 101 LRRM 2195 (N.D. Ohio 1979)), that anybody who employs anybody, including your cousin Sally who runs the corner store, is forbidden to contribute to an election campaign.³⁹ Section 101(a)(4)⁴⁰ prohibits "interested" employers from financing Title I lawsuits against unions. The prohibition on employer contributions to union officer campaigns should be similarly limited to "interested" employers.

2. Right to receive contributions from non-members

In Steelworkers v. Sadlowski, 457 U.S. 102 (1982), the Supreme Court permitted unions to prohibit candidates from receiving contributions from non-members. Although control of a union by outsiders is undesirable, this holding imposes an additional financial hardship on non-incumbent candidates, particularly in national elections. Officers of national unions have a greater ability than their members to finance a campaign because they generally receive much higher salaries than the members and have the ability to collect "voluntary" contributions from employees of the union. In addition, members of corrupt unions will be reluctant to contribute to the campaign of challengers, especially if those contributions must be reported to the incumbents. The law should not allow unions to prohibit campaign contributions from non-members.

3. Mandatory disclosure of member contributors

Similarly, courts have allowed unions to require public disclosure of campaign contributors.⁴¹ In unions where members fear retaliation, the threat of disclosure can be a

³⁸Perrault v. Local 509 Electronic Workers, 823 F.2d 35 (2d Cir. 1987).

³⁹29 C.F.R. §452.78(b).

⁴⁰29 U.S.C. §411(a)(4).

⁴¹Izykowski v. IBEW, 139 LRRM 2395 (D.D.C. 1991).

potent barrier to obtaining campaign support. Since member contributions are always legal, there is no justification for a union to require such disclosure. The law should prohibit unions from requiring disclosure of member contributors.

C. Balloting issues - denial of observers

The Labor Department will not take action based on a denial of the right to have observers, or denial of observer access to key aspects of the election, unless there is evidence of wrong-doing, even though the reason for having observers is to check for, and deter, fraud in the first place. The law should provide that denial of the right to have observers creates a rebuttable presumption of a violation that, per se, affects the outcome of an election.

D. Litigation issues

1. Right to sue to enforce Title I and other rights before or during election

The Supreme Court limited the right of members to sue to correct violations committed during the election.⁴² In the 1991 Teamster election, the court-appointed Election Officer developed a procedure to hear and decide pre-election protests. Hundreds of protests were filed and the relief granted during the election process protected the integrity of the election. Litigation by the Secretary of Labor is available only after exhaustion of internal remedies for up to three months and the investigation by the Labor Department for another 60 days. Unless the union agrees to settle, a lawsuit will take years and the winner of the election holds office during that time.⁴³ By the time a remedy is available, the challengers may be too weak to mount an effective campaign. The law should permit suits to enforce Title I rights arising during an officer election.

2. Allow Secretary to sue on issues discovered during investigation

The Supreme Court has held that the Secretary's power to sue is limited to those issues that were included in the intra-union exhaustion (or that should have been apparent in reviewing it).⁴⁴ The Secretary could call additional issues to the union's attention (notification of possible violations is part of the current administrative process, anyway). Such a rule would lessen the impact of unions having extremely short deadlines for filing the protest (72 hours in the Teamsters) which makes it difficult for candidates to include all possible violations in their initial protest. The law should permit the Secretary to notify

⁴²Calhoon v. Harvey, 379 U.S. 134 (1964); Teamsters Local 82 v. Crowley, 467 U.S. 526 (1984).

⁴³See, for example Dole v. Drywall Tapers Local Union 1976, 733 F. Supp 864 (D.N.J. 1990) (member's complaint filed with DOL June, 1988, judgment ordering new election March, 1990).

⁴⁴Hodgson v. Local Union 6799 Steelworkers, 403 U.S. 333 (1971).

the union of any possible violations found in the Labor Department's investigation after the union is given 30 days to consider the violations.

3. Simplify the mandatory exhaustion requirements

In many unions, exhaustion procedures are a real morass. Missing a deadline, or failing to guess correctly when deadlines are arising, or filing a protest with the wrong official invalidates many a protest that is otherwise sound.⁴⁵ The law should provide that election complaints will not be dismissed for failure to exhaust internal remedies if the union's appeal procedures are not reasonable and clear.

4. Provide remedy for substantial violations that undermine the democratic process

The Labor Department and courts have interpreted the requirement that a violation "may have affected the outcome of the election" very stringently. Potentially tainted votes are counted and compared to the election results and no action is taken unless the potentially tainted votes are greater than the difference in the votes received by candidates.

However, some violations are not so susceptible to such bean-counting: intimidation of candidates and their supporters; denial of the right to have observers; use of union or employer resources; denial of access to employer or union property for campaign purposes. It is often impossible to determine how many voters may have been affected by such violations. Any voter who hears of intimidation of candidates or their supporters will be reluctant to become the object of such intimidation himself.

The only remedy now available to the Department of Labor is to sue to overturn the election and supervise a rerun election. If the union contests the suit, litigation can drag on for years while the winners of the challenged election hold office. Often the result is that the next regularly scheduled election is supervised. The law should permit an alternative to the "all or nothing" remedy now available by providing when the Department of Labor finds substantial violations undermined the democratic process but did not clearly affect the outcome of the election, the Secretary of Labor has jurisdiction to supervise the next regularly scheduled election of officers rather than seek to overturn the challenged election. Such a remedy would give some protection to voters and candidates and would reduce the incentive for the winners of the election to litigate the challenge.

5. Allow members to go to the Department or to court themselves

A member can sue to compel the Secretary of Labor to bring suit on her election protest only if she can show that the Secretary's decision to dismiss her complaint was

⁴⁵See, for example Donovan v. Communications Workers, Local 3122, 111 LRRM 2740 (S.D. Fla. 1982) (court refused to grant union's motion to dismiss for failure to exhaust internal remedies when union constitution made no exception in time limits for weekends and holidays).

arbitrary and capricious.⁴⁶ Decisions by other government agencies are subject to a much less stringent standard of review. This high standard of review is particularly unfair since the Secretary has exclusive jurisdiction to file suit in election cases. The law should provide for dual jurisdiction in election cases as it does in trusteeship cases, §304;⁴⁷ members should be allowed to file suit on their own or to file a complaint with the Secretary.

6. Create a special enforcement agency for union democracy laws

The Labor Department's role as the exclusive enforcement agency of Title IV is compromised by its quest for labor-management stability and its traditional role as the liaison for organized labor with a given administration.⁴⁸ Investigation of corruption cases involving unions has been hampered by the unclear roles of the Justice and Labor Departments.⁴⁹ Since the Secretary of Labor is the Cabinet member responsible for maintaining working relationships with union officials, the enforcement of the LMRDA should be transferred to a newly-created division in the Department of Justice, similar to the anti-trust and civil rights divisions.

IV. Title V Issues

A. Attorneys' fees in Section 501 cases

Attorneys' fees in corruption cases, where an officer is required to repay ill-gotten gains to the union, must be taken out of the recovery obtained on behalf of the union. Such suits provide a common benefit to the union which should receive the full benefits of the suit, while payment of enforcement costs is borne by the miscreant official.

⁴⁶Dunlop v. Bachowski, 421 U.S. 560 (1975).

⁴⁷29 U.S.C. §464.

⁴⁸See for example Summers, "Some Historical Reflections on Landrum-Griffin" 4 *Hofstra Lab. L.J.* 217, 222 (1987); James, "Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections" 13 *Harv. C.R.-C.L. L. Rev.* 247, 314-15 (1978).

⁴⁹Perhaps the most embarrassing example of the lack of coordination between the Justice and Labor Departments was the case of Jackie Presser, former Teamsters President, who was indicted, along with an FBI agent, for approving payments to union employees for "no-show" jobs. See Jackson and Ostrow, "OKD 'Ghosts' to Protect Presser, FBI Men Swore", *Los Angeles Times*, Feb. 13, 1987, Part 1, at 19, col. 1.

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ADDENDUM E

**IMPEDIMENTS TO UNION DEMOCRACY PART II:
RIGHT TO VOTE IN THE CARPENTER'S UNION?**

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND

THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC JUNE 25, 1998

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Employer-employee relations, COMMITTEE ON EDUCATION AND THE**

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The subcommittee met, pursuant to notice, at 1:07 p.m., in Room 2141, Rayburn House Office Building, Hon. Harris W. Fawell [chairman of the subcommittee] presiding.

Present: Representatives Fawell, Petri, Ballenger, Payne, McCarthy, and Tierney.

Staff present: Mark Rodgers, Workplace Policy Coordinator; Lauren Fuller, Chief Investigator; Peter Gunas, Professional Staff Member; Rob Green, Professional Staff Member; David Frank, Professional Staff Member; Rob Borden, Professional Staff Member; Bill McCarthy, Press Secretary; Marjorie Wasson, Staff Assistant; Britt Rife, Intern; Peter Rutledge, Senior Legislative Associate; Brian Kennedy, Labor Coordinator/Counsel; Patricia Crawford, Legislative Associate; and Shannon McNulty, Staff Assistant.

Chairman Fawell. [presiding] The Employer-Employee Relations Subcommittee will come to order and good morning, or I should say good afternoon. Welcome all of you witnesses who are taking time from your schedule to be with us.

OPENING STATEMENT, CHAIRMAN Harris Fawell, SUBCOMMITTEE ON Employer-employee relations, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Today, the subcommittee undertakes the second in an ongoing series of bipartisan hearings looking at impediments to union democracy. Our first hearing last month began the process of taking testimony from officials and members of local unions from across the Nation, including those from the United Brotherhood of Carpenters, regarding the problems they're having in retaining a full and equal and democratic voice in their union affairs.

As I explained at our first hearing, the term "union democracy" embodies all of the rights granted to rank-and-file union members by the Labor Management Reporting and Disclosure Act of 1959, the LMRDA, or as it is commonly called after its sponsors, the Landrum-Griffin Act.

The subcommittee was privileged to receive an overview of the Landrum-Griffin Act last month from Professor Clyde Summers who helped draft the act at the encouragement of then Senator John Kennedy, and for those who missed the first hearing, let me briefly mention the five basic rights the act protects. They are, loosely stated, the right to financial information of the union; the right of free speech and assembly, including broad protection to speak out against union policies and officers; the right to participate in decision-making, including the right to nominate candidates and vote in union elections; the right to fair and honest elections; and the right to impose fiduciary obligations upon union officers, particularly in regard to the use of union funds. X

I think we'd all agree that authoritarian control of unions is contrary to the spirit, the traditions and the principles that should guide the labor movement. The Landrum-Griffin Act recognizes that unions derive their strength from the democratic rights of rank-and-file membership. The subcommittee continues to hear stories alleging violations of these rights, and it is my intention that this series of hearings will identify, if necessary, areas in which the act could be improved or, perhaps, better enforced.

The subcommittee's focus today is upon the membership's right to vote upon union affairs, and

[The statement of Mr. Fawell follows:]

WRITTEN OPENING STATEMENT, CHAIRMAN Harris Fawell, SUBCOMMITTEE ON Employer-Employee Relations, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX A

Chairman Fawell. Before I briefly introduce the witnesses, I'd like to have the distinguished ranking member from New Jersey, Mr. Payne, to give his opening statement. Again, we have a couple of votes taking place here also: one 15-minute vote and three 5-minute votes. Mr. Payne, would you like to give your opening statement at this time, and then we will have to declare a recess while we go to do our job of voting? Mr. Payne.

OPENING STATEMENT, Ranking member Donald Payne, SUBCOMMITTEE ON Employer-employee relations, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Payne. Thank you, Mr. Chairman. I'll be brief since we are going to run and vote, and, as the chairman said, he's here to listen. I'm here to listen and learn also, and I'll prove it by having a much shorter statement.

I certainly look forward to your testimony. Of course, it probably would be better to have this hearing in the middle of winter with snowstorms and rain, so you could be out there hammering nails. Although, you know, I've been passing a number of housing developments, and I haven't seen a nail or a hammer. I mean, they bring these houses out of a box, and they look—I'm still looking for a nail. I want to see a guy with a hammer. I used to hammer and nail when we built a house. I've looked at these houses, and where are the hammers? Where are the nails? But that's another personal opinion problem I have.

But anyway, this hearing is not about carpenters nailing nails or the lack of it in the new housing, but it is a hearing to clearly frame the inherent intention phase by any democratic organization between the need to operate effectively while still being accountable to its constituents. I used to—in one of the many jobs I had, one was a teacher, and I always felt that downtown, the administrators, the superintendents, they just didn't understand what was going on in the classroom, and we find that out in many kinds of jobs that the maitre d' doesn't understand what the dishwasher's going through in the back in the heat in the kitchen, and, sometimes, evidently, there is a difference of opinion here between the workers and what the guys in headquarters think. But I'm here to listen to try to learn from you.

The formation of any group involves the surrender of individual prerogatives in return for strength afforded by collective action, whether it's a military; whether it's a team, if you're not working collectively together, that's the strength. It's not how good the line is without a good backfield. It's not how good the general is. It's got to be a whole team effort, and sometimes the PFCs have to give up some of their individuality, because they've got to follow behind the sergeants or the second lieutenants, and so we want to see just how this operates here in your union.

In my view, the extent to which individual prerogatives are given up in return for the collective strength is best determined by the parties directly involved, and for outside parties, including the Congress, to try to second-guess those decisions is not simply a mistake, but it could jeopardize the right of free association. However, the Congress also has both a duty and a

for union officers in the United Brotherhood of Carpenters. We're privileged to have, today, as a joint witness of the majority and the minority, Mr. Douglas McCarron, general president of the Carpenters. Mr. McCarron is undertaking a nationwide restructuring of the Carpenters' Union, a plan that, according to one Business Week article, other union leaders are watching closely. That could be good or bad; I'm not quite sure. To quote the general president from that article, "We have a product to deliver, and we have to do it more efficiently."

The restructuring, however, is not without its critics. It has led to the dissolving and merging of certain carpenters' local unions which has not sat well with many rank-and-file members. Also testifying today will be members of the local unions from Michigan and New York who object to the restructuring and feel that a democratic right to vote on the changes has been violated. They also object to the laws of local autonomy resulting from Mr. McCarron's, quote, "streamlining" end of quote and feel he is consolidating his power at the expense of the will of the rank-and-file. We also will hear, today, allegations of physical assault in retaliation against Carpenters' members for opposing the reorganization plans.

The subcommittee is not here to take sides. We're here to listen, which is somewhat unique in Washington, and to consider what role, if any, the Landrum-Griffin Act should play in protecting the rank-and-file membership of the Carpenters' Union, and at the conclusion of this series in the labor movement in general.

So, I look forward to today's testimony. Let me say at the outset that I do have some concerns. It appears that so long as a union's constitution is not violated, most any action by union leadership is protected activities. However, regardless of whether the merging and dissolution of local unions violates Landrum-Griffin, I believe we'll hear, today, testimony that raises the questions of whether such action should violate the act.

I'm also particularly interested in the specifics of how the Carpenters' constitution allows this sort of reorganization to occur. Did the constitution have to be amended? If so, was it amended in a democratic fashion? Have any of the rights of the rank-and-file been sacrificed to the reorganization? This is an area, as I've read all the testimony, that is of interest to me. You have roundly being condemned by Professional Summers of any corruption. Obviously, we all condemn that, and then most everybody takes the view that we don't want authoritarianism either. And, then, the question, I guess is, in the restructuring, do we end up with so much authority being exercised that we, again, are trading over the rights, the democratic rights, of the rank-and-file members? I think that appears to be a very key question. I'll be very, very interested in how Mr. Benson analyzes that particular question and just where the Landrum-Griffin law comes or doesn't come into play. Also, how the law doesn't cover the instances where you have the transferring of the authority in power from local unions to the district council, then the rearranging or dissolving of the district council and things of this sort. I find it kind of fascinating that we have this dichotomy between corruption and then trying to change the corruption, do we corrupt when we're trying to take care of the corruption?

Well, it seems to me that a union is not a private, profit-making enterprise, not completely, at any rate. Rather, unions exist to express the will of the membership, and should not necessarily be run as a business enterprise. Unions belong to the members, and the bottom line is the desire of the rank-and-file. On the other hand, truly democratic moves to strengthen and render a voluntary organization more efficient would appear to be positive. The Landrum-Griffin Act is on the books for a reason, and I look forward to what I anticipate will be a healthy give and take as we consider whether the act is doing the job it was intended to accomplish, giving the rank-and-file the tools they need to govern themselves.

responsibility to ensure that the manner by which those determinations are made are democratic. That is my view, and that's the principal purpose of this hearing today, and I look forward to hearing from our witnesses.

[The statement of Mr. Payne follows:]

WRITTEN OPENING STATEMENT, Ranking member Donald Payne, SUBCOMMITTEE ON Employer-Employee Relations, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX B

Chairman Fawell, And I thank the gentleman. The Chair will declare a recess for approximately, 20 minutes, if not, a bit longer. We have four votes to cast, so the meeting is adjourned for that period of time.

[Recess.]

Chairman Fawell. If the witnesses would come forward? I apologize for that lengthy period of time while we were attending to our votes, but such is the life of a Member of Congress. The bell rings, and like Pavlov's dog, we salivate and go out to vote.

Our first witness today will be Mr. Herman Benson, and, certainly, Mr. Benson is one of the country's foremost experts in the field of union democracy. We were honored to have Professor Clyde Summers with us at the last hearing. Mr. Benson, I know you think a great deal of Professor Summers. In fact, I had the opportunity over the weekend to read an article written by you that lauds Joel Roth - is that the way it is pronounced?

Mr. Benson. Roth.

Chairman Fawell. It also mentions Clyde Summers in the Association for Union Democracy article that talks about the early history of union democracy, which I found to be tremendously interesting. I much appreciate your writing in that regard.

Mr. Benson is founder and former executive director of the Association for Union Democracy in Brooklyn, New York, a foundation formed in 1969 to promote the principles of internal union democracy. He currently serves as the Association's Secretary Treasurer.

Our next witness will be Mr. John Liguori - is that the right pronunciation - of Plainfield, New Jersey. Mr. Liguori has been involved in the organized labor movement for more than 26 years and has been a member of the United Brotherhood of Carpenters since 1984. He is a former instructor at the Carpenters' Labor Technical College and is currently a member of Local 20 in Staten Island, New York.

Our third witness is Mr. William Lebo of Baldwin, New York. Mr. Lebo joined the Carpenters' Union in 1985 and is a former vice president of the Carpenters' local unit 348. He is now a member of Local 45 and currently is vice president of the New York branch of the Carpenters for Democracy.

Our next witness will be Mr. Clemens Wittkind of Royal Oak, Michigan. Mr. Wittkind has been a Carpenters' Union in the Detroit area for the last 11 years. He was instrumental in starting that area's, "Carpenters for Democracy and Unions," following the dissolution and merger of locals and three district councils in Michigan and the creation of a new Michigan regional council.

Our next witness will be Mr. John Durcan of Wappinger Falls, New York. Mr. Durcan has been a Carpenters' Union member for 18 years and is currently a member of the Local 608 in New York City. He is also a dues paying member of the Carpenters for Union Democracy.

Our next witness will be Mr. Salvester Zarzana of Brooklyn, New York. Mr. Zarzana has been a member of the New York City District Council of Carpenters for 16 years. He was elected business manager and then president of Local 902 in Brooklyn. He was appointed business manager and president of Local 926 when that new local was created out of the dissolved locals of 902 and 296. This month, on June 3rd, the International Union terminated Mr. Zarzana as business manager and local president for, Mr. Zarzana contends, his outspoken opposition to Carpenter's restructuring plan.

We also are pleased to have as our final witness Mr. Douglas McCarron, General President of the United Brotherhood of Carpenters. Mr. McCarron was elected president at the Union's general convention in September of 1995. He took office in November of 1995. He is appearing today as a joint majority, minority witness and will be testifying last at the request of the minority. We thank him for coming before this subcommittee to respond to many of the concerns which have been and will be raised today.

Witnesses appearing before the Committee on Education and the Workforce and its subcommittees are asked to take an oath and promise to tell the truth. Witnesses should be aware that under title 18, section 1620 of the United States Code, lying to Congress while under oath may be prosecuted under the law. In light of this, I would ask that each of you please rise and raise your right hand.

[Witnesses sworn.]

Thank you, and please be seated. Mr. Benson, we'll be pleased now to hear your testimony.

***STATEMENT OF HERMAN BENSON, FOUNDER AND FORMER EXECUTIVE DIRECTOR,
ASSOCIATION FOR UNION DEMOCRACY, BROOKLYN, NEW YORK***

Mr. Benson. What makes our country strong and secure is its democracy. What makes the union movement strong is the involvement of its membership and union democracy, and whatever undermines union democracy undermines and weakens the labor movement. I guess that's my basic thesis.

I'm a retired machinist and toolmaker by trade, and I'm still a member of a fine union, the United Automobile Workers. I began in 1940, and, over the years, I've worked as a member of the United Rebel Workers, the IUEW, the International Union of Electrical Workers, and for at least 40 years, I have been actively concerned with issues of union democracy. During this time, I've been in touch with tens of thousands of unionists; that's individual rank-and-filers, organized caucuses, and elected officials in most major unions in the United States. These are

unionists who have faced union democracy problems or have been engaged in battles against organized corruption or authoritarianism and even organized crime in their unions. It's on the basis of this experience that I tried to assess the label of democracy in unions today and some notion of how to strengthen it.

I help found the Association for Union Democracy in 1969. I served as its executive director for many years. I'm still its secretary treasurer, and our AUD is independent, non-partisan, non-political. We serve as a kind of civil liberties organization for the rights of members inside their unions. We don't advocate any special platform or program for the labor movement except for democracy. We're available to support the rights of any union member regardless of its ideology from right, left, or center against abuse from any official, center, left, or right. Our board of directors includes people who are eminent in the field of union democracy law, including Clyde Summers, who was one of your opening witnesses.

We believe that strong labor unions are an essential element in American democracy. They protect workers against abuse by employers; they defend an American standard of living; they defend seniority rights for workers, for pensions, for unemployment insurance, but to fulfill its role in the most effective manner, the labor movement has to guarantee to its own members the same rights that it advocates in society at large. We believe that union democracy will strengthen the labor movement as a force for democracy in the Nation.

In this connection, we help to enforce the rights written into the Labor Management Reporting and Disclosure Act of 1959, like the rights of free speech, free press, free assembly, and the LMRDA has been absolutely indispensable in strengthening union democracy since 1959. Before LMRDA, union members were expelled for criticizing their officers, usually on trumped up charges of slander. They could be expelled from the union merely for suing in court or going before authorized Government administrative agencies. They could even be expelled from their unions for circulating petitions within inside their own unions.

Now, all of that is illegal because of the basic rights that are written into Federal law under the LMRDA. When the rights of miners were protected under the LMRDA, they were able to get rid of, for the first time, a literally murderous official, one who was guilty of murdering Jock Yablonski. When the rights of teamsters were protected by the LMRDA, they were able to break the grip of organized crime over their national office. And there are many other illustrations of that same tendency in the Marine Engineers Beneficial Association, the Masters and Nation's Pilots and others that I could mention.

However, there is still a long way to go. The law itself has certain weaknesses that have to be corrected, and I would like to enter into the record, if I may, a statement that the AUD had prepared for the Dunlop Commission in which it goes into great detail on how the law for union democracy could be strengthened, and if the chairman permits, I would like to have that entered into the record. Your counsel, Lauren Fuller, has a copy of that statement.

Chairman Fawell. Fine, and, without objection, it shall be a part of the record.

Mr. Benson. The U.S. Labor Department has been erratic and weak and undependable as an enforcement agency, and the law has hardly even touched the basic problem in the construction trades where it is safer in many unions. It's safer to criticize the President of the United States than it is to criticize your own business agent. In some unions, workers are still black-listed and

deprived of work or threatened or beaten for criticizing their union officials. Local police look on violence in the union hall in the same way they used to look upon, and maybe still do, violence in the home, as a family affair.

The Labor Department fails to enforce section 610 of the Labor Management and Reporting Disclosure Act which is supposed to protect union members from violence and the threat of violence for exercising their rights under the law. Section 105 of the Landrum-Griffin Act which provides, very simply, that unions are supposed to inform their members of the provisions of this act. That section is completely, totally, and permanently violated and never enforced. It remains ignored, violated, and unenforced. Not one single union is in compliance with section 105 of the LMRDA.

Many unions still enforce dependence provisions which bar over 90 percent of their members from running for office despite court decisions which would render those provisions void. Public employees' unions which organize workers in State and local governments and represent an increasing section of the labor movement are totally unprotected by the provisions of LMRDA.

Trusteeships are still imposed on various pretexts to suppress critics. The U.S. Labor Department has never challenged a trusteeship until 18 months has elapsed. The law provides that a trusteeship is presumed valid for 18 months. The Labor Department has never challenged a trusteeship until that 18 months has expired and in one instance, the Painters' Union, even when a Federal judge found that a trusteeship had been imposed for the specific purpose of defending a criminal and corrupt official in that union, the Labor Department recommended to the judge that that trusteeship be continued and its validity be presumed for 18 months. The judge overruled the Labor Department; looked at the trusteeship, and ordered a federally supervised election. That was many years ago, but that policy of the Labor Department remains unchanged. I think I'm wondering if it's any clearer here. I don't think the Labor Department has ever in a single instance in its whole history challenged any trusteeship until 18 months have expired.

In conclusion, and I see the red light is on here, I would just like to add one quintessential consideration for your committee: union democracy does mean a strong labor movement, but, conversely, you will never have robust union democracy unless unions are secure and members are aware of that fact. We know that if our country is secure, the Nation's democracy prospers, but when the Nation is under attack, democracy suffers, and, similarly, when union members fear that their unions are under attack and in danger, they will rally around their officers, good or bad, and they are not likely to permit even justified criticism of even the worst officials. In that sense, impediments to strong unionism will surely become impediments to union democracy. Thank you.

[The statement of Mr. Benson follows:]

STATEMENT OF HERMAN BENSON, Founder and Former Executive Director Association for Union Democracy, BRROKLYN, NEW YORK - SEE APPENDIX C

[The information follows:]

ASSOCIATION FOR UNION DEMOCRACY DOCUMENT PREPARED FOR THE DUNLOP COMMISSION - SEE APPENDIX D

Chairman Fawell. And I, again, thank you very much, and thank you for your long history of support for the labor movement. I think you certainly have to be commended for all you have

done for the labor movement over the years. Mr. Liguori.

STATEMENT OF JOHN F. LIGUORI, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 20, Plainfield, New Jersey

Mr. Liguori. Good afternoon.

Chairman Fawell. I do want to remind folks we apologize to a degree that we have these time constraints. You can look at those three little lights there, the green and then the yellow shows caution, and then the red. We never have anybody come out with a shepherds crook, though, and pull you out, so do proceed.

Mr. Liguori. On June 25th in 1996, the International Carpenters and Joiners of America, otherwise known as the International, under the direction of Douglas McCarron ordered the emergency takeover of the New York District Council. The takeover happened in the middle of the night with no warning or due process. Armed guards along with representatives of the International took possession of our building, and then the International removed our duly elected officers of which I was privileged to vote for in the first referendum election held for district council officers in my union's history. The election was also certified and supervised by a federally appointed investigating review officer, Kenneth Conboy. On July 18th, I, along with 22 other instructors of the Labor Technical School, were fired one week after the hearings on July 10th and 11th of 1996 held by the International concerning the emergency removal of our elected officers. On the 24th, by the order of the U.S. southern district court of New York, special hearings were set up. However, unlike the International's orchestrated hearings, they were not open to the membership. These hearings were closed, and I, along with the other 22 members, were escorted out by these armed guards.

The takeover of the New York District Council was met with verbal opposition both at union and public hearings. The supervisor responded by firing those employees of the district council who testified in opposition of this trusteeship. Dismissed members filed numerous charges with the National Labor Relations Board only to be met with stonewalling tactics and what appeared to be a prejudice bureaucracy.

In August of 1996, angry members gathered to protest in front of the offices of the district council. The supervisor responded by sending a message to all the business agents to tell their shop stewards that if they participated in this demonstration they would be replaced as shop stewards. To seal this chilling effect placed upon the members of free expression on the day of the demonstration, the supervisor videotaped the demonstration in plain view of the participants. Those who dared speak out were identified. As the 1996 labor day approached, the pressure to silence this opposition was again done. The Attorney General ordered the district council to send a message down to the business agents that if they didn't stop their rank-and-file members from demonstration at this labor day thing, they would find out who the boss was.

Horrified at these unprecedented stop attacks, the International and several members, including myself, met with the idea of creating the organization of rank-and-file members in the effort to

inform the membership of our union that the International along with the investigating review officer, Kenneth Conboy, were acting in a manner that we believe that was detrimental and irreparable harm to the New York District Council of Carpenters.

The name of the group was to become known as the Carpenters for Democracy. In the first weeks of 1997, the Carpenters for Democracy filed complaints with the Secretary of Labor alleging the International had violated the perfunctory standard, and the treatment standard, by disbanding the negotiating committee of the district council and by renegotiating contracts bylaws of the district council in violation of our constitution which requires delicate approval. In addition, the complaint charges the International violated the provisions of the Labor Management Disclosure Act, which forbids the transfer of funds of a subordinate body under trusteeship by the trustee with the exception of the per capita tax by renegotiating contracts that impose the 6 cents per hour reduction for a supplemental fund held by the International. Efforts of the Department of Labor to interview union members were stymied when union employees were threatened with termination if they spoke to the Department of Labor investigators.

The New York District Council, the only district council which because of the consent decree had elected its leaders under the democratic principles of "one man, one vote" has met the same fate as its sister unions in California, Michigan, Nevada, New England, Pennsylvania, and New Jersey. These new bylaws shift the power of governance and self-determination from the local union and from the members and centralize authority in regional councils whose members are hand-picked McCarron appointees.

As an example, all representatives, business agents, and organizers working in the jurisdiction of the council should be employed by and placed under the supervision and direction of the executive secretary treasurer of the council. The locals shall not be allowed to employ anyone other than clerical workers. All dues collected by the local unions shall be forwarded to the executive secretary treasurer of the regional council.

The reorganization of the New York District Council, as in other district councils throughout the country, bears a disturbing resemblance to what the government in Beijing had planned for Hong Kong after it took control. As reported in the New York Times, China has already chosen a provisional legislation to replace the current elected one. The provisional legislator is already passing laws including a decision to scrap parts of 2992, ordinances incorporate a Hong Kong bill of rights drafted after the 1989 crackdown on democracy in Beijing. Thus, the appearance that democracy is created is controlled by the appointment from above rather than elections from below. This is precisely the type of Beijing democracy that McCarron has imposed on our union throughout this country and that he is in the process of imposing on the New York District Council.

In closing, it's ironic that I would leave you with these two quotes: "Members of the Carpenters' Union have a fundamental right to a democratic governance. One of the stated purposes of the consent decree is to ensure that local unions are maintained and run democratically. There can be no democracy without fair, open elections." This was written by Kenneth Conboy, the IRO, in a 1994 advisory message to the New York District Council. The second quote is "No man is good enough to govern another man without the other's consent. When a man governs himself, this is self governing. When he governs himself and also governs another man, then this is more than self governing; that is step position. Our reliance in love of liberty which God has planted in us are defenses in spirit which prizes liberty as a heritage of all men in all lands everywhere. Those who do not heed unto others deserve not for themselves under a just God cannot relent long retaining." This was written by what Abraham Lincoln and printed in our most recent

edition of our International Carpenter newspaper. Thank you.

[The statement of Mr. Liguori follows:]

Written Statement of Mr. John Liguori, United Brotherhood of Carpenters & Joiners of America, Local 20, Plainfield, New Jersey - see appendix e

Chairman Fawell. And I thank you very much, Mr. Liguori. Mr. Lebo.

*STATEMENT OF WILLIAM S. LEBO, CARPENTERS FOR UNION DEMOCRACY, baldwin
new york*

Mr. Liguori. Good afternoon, Mr. Chairman, Congressmen, Congresswoman. I started in construction in 1977 with a house frame on Long Island. In 1985, I joined the Carpenters' Union. Since then, I've worked in many phases of carpentry. I've been a worker, a foreman, a super, and a shop steward. I've been the Vice President of a local union, and I'm now the Vice President of Carpenters for Democracy of New York City.

I want you to understand I'm not here today to hurt my union but to help it regain or gain its democratic governance by its rank-and-file membership. In June of 1996, our International President placed our district council into trusteeship. I believed at the time the UBC had come to help our district council rid itself of mob influence but have since learned there was much more to Douglas McCarron's motives than helping the working carpenter.

I also would like to mention before I go any further that our Council is under a consent decree with the U.S. Government, and the UBC was assisted by the IRO, Kenneth Conboy to obtain the trusteeship. I also would like to note the IRO's tenure under the consent decree was about to expire at the time UBC took over the Council. The UBC extended its tenure at the time of the takeover at a cost of \$65,000 a month. Ever since, the IRO has been writing shining reports to the court regarding Mr. McCarron's actions, and it seems every time he writes a report he get another extension of his tenure. Just recently, in June, his tenure again expired in time for a court battle we are having with the UBC regarding elections the trusteeship. Again, he wrote a shining report and again he got an extension; this time for one year on a bill as necessary basis plus expenses. In my opinion, this shows collusion and corruption between the IRO and the UBC.

Douglas McCarron has been taking over district councils throughout the United States as well as Canada and merging them and the local unions without a vote or the membership's consent and forming what he and the UBC Constitution call Regional Councils. I believe the New York City District Council's takeover had less to do with fighting corruption and more to do with Douglas McCarron's methodical creation of his personal and publicized goal of restructuring our union which is no more than a building of his own private empire.

In New York, it seems corruption in the form of members being intimidated into submission is at its worse. Men and women are in fear of losing their jobs or of being brought up bogus union charges as I was. In April of 1997, at my local union meeting, I seconded a motion to hold

elections for our local union officers regardless of the fact that the UBC's position was opposed to this. The elections were never to take place, and charges were filed against me on May 12, 1997 for seconding that motion. I have submitted copies of these charges to your committee.

These charges were causing dissention; advocating separation; improper harassment of any member of the United Brotherhood violating the obligation and violating section 34 which are the duties of the Vice President. This is not even a charge in our Constitution. A trial on these charges were held on March 19, 1998, nearly a year later, and after the UBC had won a court battle against the New York local unions that are opposed to Mr. McCarron's restructuring plan. The trial committee which was appointed by the UBC and consisted of members who were appointed by the UBC, the paying jobs in the district council and local unions as business agents, organizers, officers, and shop stewards. This court found me guilty of all the charges, of course, and fined me a maximum of each, totalling \$1,500. These charges and the fines were no more than one of the many intimidation tactics the UBC has been inflicting on our membership. I have become a major target because of my letter writing and my outspokenness, as well as that I am one of the leaders of the New York City Carpenters for Democracy.

Our dissident group, the UBC cronies and the Federal court-appointed IRO, the honorable Kenneth Conboy, holds meetings monthly and sometimes bi-monthly. The UBC's people have taken steps to intimidate our members so they would be afraid to come to our meetings. A business agent has been told by the UBC's daily supervisor of the New York City District Council that if said agent's local union officers were seen at our meeting again, they would be removed, and that if he couldn't keep his people, quote, "in line," unquote, he would lose his job as well. Another member from a different local was told by his business manager that if he went to our meetings he would never be a shop steward again. Another member who got involved and became an officer of our organization and who is a wounded Vietnam War veteran was removed as a shop steward from his job by the UBC's cronies for bogus reasons. He has since filed suit against the council with the National Labor's Relations Board and filed union charges against the UBC's appointee who removed him.

All the affirmation parties have contacted the Department of Labor as well as the court-appointed IRO about these violations but, to date, have received no relief. I and my attorney have written complaints to the United States Attorney, Mary Jo White about this, as well as the Honorable Judge Charles Essay, Jr. who rules on the consent decree our council is under, and, to date, we have received no answer or any form of relief.

The United States Constitution guarantees every America citizen the right to freedom of speech and assembly. The Landrum-Griffin Act and the Bill of Rights for members of labor organizations within also guarantees us these rights and is supposed to protect us from this intimidation that is no less than labor racketeering, yet it goes on, and it goes unchecked.

Many members are afraid to come forward, not just in New York but all around the United States of America for fear of being blackballed by the UBC's appointed army. This is well demonstrated by a letter of complaint of the UBC's actions in an issue of Hard Hat News from a member from Ohio who signs anonymous for fear of reprisals. I have submitted a copy of this to your committee.

I have been brought on charges. I've had my life threatened, and I was physically attacked during a local union meeting by beneficiaries of the UBC's dictatorship in front of the IRO's agent, Jack Mitchell. I cannot and will not give in to this intimidation, but I and others like me are the exception not the rule. Rank-and-file members have no internal remedies to fight this. It seems as if the Department of Labor has turned its back on our membership in favor of the

leadership who controls our money and political assets. It even seems as if Lady Justice is not only blind, but deaf as well.

Mr. McCarron and his cohorts who include construction bigs Ronald Tutor, Bob Georgine, and investment magnet, Richard C. Blum, who is Senator Diane Feinstein's husband, are doing very well for themselves by investing our pension and annuity money in real estate and construction investments. McCarron, Tutor, and Blum are all on the board of directors of PRE Corporation, one of the largest construction funds in the United States of America. For Mr. McCarron to be on that board of a contract seems to be a direct conflict of interest. How can he represent the worker to the boss if he is the boss? Also, I would like you to know within the last election year in California the inordinate amount of money that was paid to Richard C. Blum for his work investing their money was a way of steering union funds to his wife's campaign. I believe the amount was in the area of \$4 million.

I ask Congress to close the gaps in the LMRDA that allows a union's constitution to overwrite. I ask that the Congress do away with delegate bodies in the LMRDA in favor of the "one man, one vote" referendums. We have no say in our union affairs and governance. Lastly, I ask the Democrats to start thinking about the workers instead of the union boss. It is after all the workers' money that the union bosses have been giving you for your campaign funds.

The Landrum-Griffin bill passed on the floor of the Senate 90 to 1 on April 25th, 1959. The House adopted the bill on August 6, 1959. Today, we stand before you in 1998, some 39 years later, asking you to help us get those same rights back. Our country prides itself on its democracy. We send our children to war to fight and die protecting the democracy of people worldwide. Our President will appraise their governments for their newfound democracy and yet allows his fellow Americans to suffer under a dictatorship such as the one we face.

I find it hard to believe our Government has led its own people in our county's labor organizations like ours fall prey to this corruption and autocratic rule, yet our union's democracy is gone. One man has complete autocratic rule even though Congress passed the Illinois VA and the Bill of Rights for members of labor organizations within in 1959. Thank you.

[The statement of Mr. Lebo follows:]

written STATEMENT OF WILLIAM S. LEBO, CARPENTERS FOR UNION DEMOCRACY,
baldwin new york - see appendix f

Chairman Fawell. And I thank you very much, Mr. Lebo. Mr. Wittekind.

*STATEMENT OF CLEMENS WITTEKIND, CARPENTERS FOR DEMOCRACY IN UNIONS,
Royal Oak, Michigan*

Mr. Wittekind. Good afternoon, Mr. Chairman, Congressmen, Congresswoman. My name is Clemens Wittekind. I've been a union carpenter for about 11 years. Since the restructuring of the Carpenters' Union in 1996, I've become more and more active and involved in my union. I've called for the formation of a group, called Carpenters for Democracy and Unions. Many groups

like this, obviously, exist within the carpenters as well as other unions throughout the country.

Two of the most dominant reasons I found why there's some protest in the Carpenters' Union has been the method that the International uses to dictate and execute the restructuring and the new structures themselves. To clarify, I must state here, I'm not opposed to, and most brothers and sisters of mine, are not opposed to, in general, restructuring our union. We need to change with the times as well as businesses do.

To summarize what happened in Michigan - in the middle of a highly contested election campaign our International leadership closed almost all locals in Michigan and the three district councils. Then one of the candidates in the race, Mr. Walter Mayberry, was appointed executive secretary treasurer of the new Michigan Regional Council. After several months, we had elections, but the new bylaws now nearly put all the powers in the Executive Treasurer's hands. For an example, the working dues structure which could be adjusted every year that the delegates also need to vote on, but all of the collective bargaining and the appointments for those committees is done by the Executive Treasurer; also, the appointment of trustees for all employer union trust funds, organizers and business agents, are all appointed by the Executive Secretary Treasurer.

Of course, I want to recognize some of the improvements in services that have been made by the reorganization. Operations have been streamlined; benefits have been improved, and organizing members is a major priority. Nobody disputes those needed changes.

In summary, I want to just stress some of the important issues that are most important to rank-and-file members. Our right to vote - any kind of involvement in elections by the upper level of unions is, in my opinion, questionable. Restructuring needs desperately the support of local members. Most power is now removed from the local level, therefore, it is imperative to have elections for officers for those intermediate bodies, because the Landrum-Griffin Act specifically states that those elections should be held on the local level. The locals were at that time having their own power to negotiate contracts as well as hire and supervise their officials. Any changes in dues or special assessments should require a membership vote, not only the monthly dues that the local is setting. Most of the working dues and special assessments are dictated down from the intermediate bodies or from the delegates.

I want to stress, as Professor Clyde Summers stated in the previous hearing, that the corporate visions of the Landrum-Griffith Act are essential for democracy, but the movement in the United States, the union movement, is changing, and many Americans see the importance for a strong and vital union as a healthy balance against the infinite, more powerful business community. Major reforms are taking place, and the restructuring of unions is needed, but it must come from the members themselves. Real democracy cannot be bottled up and administered; it must grow in the midst of people's hearts and minds. Injustice or the fight for more rights brings solidarity and empowerment which is essential for a vibrant democracy. Even the most democratic structure would become meaningless after the involvement of the people is missing.

Regardless of the outcome of these meetings, the reforms in the labor movement will continue to build stronger unions which I believe everybody at this table is supporting. It is my hope that if any, the improvements in the Landrum-Griffith Act would better enable union members to put more democracy in unions.

In times of less and less Government regulations, I would, of course, oppose any unnecessary restrictions on unions. To work effectively, independent unions are just as important as the democratic procedures within them. Business structures are not democratic and strategic plans

to fight unions are not being made public. My point is the following: if changes in the LMRDA would result in weakening the unions instead of strengthening rank-and-file involvement, we would miss a great opportunity, and I don't know what the real agenda about these hearings would be.

One example is the issue of non-collective bargaining funds. The labor movement in its history and now more recently, has never seen its sole purpose being collective bargaining. Unions are the only formidable force to speak for every worker whether union member or not, and most union members support the union's need for political involvement issues that affect living standards in our society.

It's my hope that this is the beginning of your leadership in strengthening union democracy. I want to thank you for this opportunity to speak in front of you.

[The statement of Mr. Wittekind follows:]

written-STATEMENT OF CLEMENS WITTEKIND, CARPENTERS FOR DEMOCRACY IN UNIONS, Royal Oak, Michigan - see appendix g

Chairman Fawell. And I thank you for your fine remarks. Mr. Durcan.

STATEMENT OF JOHN DURCAN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 608, Wappinger Falls, New York

Mr. Durcan. Good afternoon, Mr. Chairman, representatives. My name is Jack Durcan. I am a member of Carpenters Local Union 608 in New York City. I have been a member continuously for 18 years. Previously, I was a member of Carpenters Local Union 2163 for approximately 8 years.

As a member of Local Union 608, Mr. Chairman, we work under the watchful eyes of the Statue of Liberty. As an immigrant to this great and blessed land, I came to realize that few of the ideals associated with this great symbol of democracy accrued to me as a member of the United Brotherhood of Carpenters. All or most of my experiences in the Brotherhood conspired to lead me to a single conclusion: that I was working within a system more akin to Eastern Europe of the 1960's than the United States of America. I felt trapped.

And, so, Mr. Chairman, for reasons that I still do not fully understand, I became what is known as a dissident. Dissidents abroad often pay for their ideals with their lives. Dissidents in Local 608 pay for their ideals with their livelihood. To be a dissident in Local Union 608 means that over a 7-year period you will receive only one job referral that lasts longer than 4 weeks before going back to work on the job referral list. Being dissident in Local Union 608 has meant that you are confronted with a complex network of shop stewards, business representatives, and company owners. All conspire together to curry favor with union officials. Being dissident means traveling across the country on two separate occasions to attend general conventions at my own expense and on my own time. Being dissident means publishing an occasional newsletter and distributing it to the members. Being a dissident means examining the financial records of

my local union and forcing the officers to forego their luxury automobiles, each of which often costs more than I could earn in a year. Being a dissident means being forced to work for non-union companies because I was denied a fair opportunity to earn a living within the union community and years later being castigated for these same honest efforts to make a living.

But that has changed. Under the proposed reforms, I feel that a system of job allocation will be in place which will insulate me from the vagaries of elected officers. They will not be able to trade my approval for a decent job or punish me for exercising my right to speak freely. I feel that I may have access to an inalienable right—the right to work.

And, so, Mr. Chairman, as a dissident, I am happy to see and hear of the current restructuring proposals from our general president, Douglas J. McCarron. I see the restructuring as a normal regeneration of a democratic institution; an institution which has lost its vitality and its ability to serve the membership. Not least among our difficulties in New York, though not specifically in Local Union 608, is the fact that our District Council was mob-infested to say the least. I would not be here today if I suspected that there exists even a molecule of mob influence associated with any officer or employee of the District Council, which is to say that 40 years of degradation has been undone in one stroke by our general president.

I see this restructuring as a regeneration in terms of efficiency and accountability. A union should service members efficiently to yield the greatest benefits for their dues dollar. Under the restructuring, we have experienced something unheard of in all my previous time in the Brotherhood: a reduction in dues, in some instances by as much as \$200 a year per member. Salaries are no longer decided by the executive board of each local union in what amounted to flagrant self-dealing. Salaries are now linked to the wages for journeymen, carpenters, and foremen.

The restructuring program, as I understand it, has a vertically integrated system of accountability as, indeed, any efficient business organization must have. Each local union is no longer a separate fiefdom, within which the business representative is El Supremo, unassailable, and unaccountable to no one. Appointed business representatives can be given assignments on an as-needed basis, and they're held accountable for job performance.

"One man, one vote" is a cry we hear from those who have lost their privileged positions within the old order. The truth is, "one man, one vote" was a form of retail democracy. At the time of our last "one man, one vote" election, the presiding president of our District Council, Fred Devine, used the assets of the Pension Fund as his own personal pork barrel to raise benefits and buy votes. At the time of our last "one man, one vote" we asked, is this the price that we must pay for democracy if Fred Devine would bankrupt the Pension Fund to get elected? Mr. Devine has since been convicted in six of nine felony charges.

But the real solutions to the long-term problems have been internal not legislative. I'm a dues paying member of the Association for Union Democracy and a great admirer of their ideals, but it is also important to acknowledge the delicate balance between the democratic rights of the membership on one hand and the provision of an efficient service which will improve the quality of our lives. Give us as members a fair and reasonable share of the wealth of this great country as well as a just reward for our labors.

I think our general president has offered a pragmatic, workable solution to the chaos that we have lived with in New York. The model he has presented for the new council corresponds to a large degree on the very model of Congress itself; a 150-member, informed, deliberative body in whom power is vested. Of this body, 30 percent will have to seek reelection each year. This, to

my mind, is far more representative of the membership than the old system of 17 delegates which was in effect a labor cartel. It also provides a reasonable process for decision-making and real checks and balances vis a vis the Executive Committee.

Mr. Chairman, we don't leave our homes, often in the dark hours of early morning, and commune with the gods about democratic rights and such. We build bridges and skyscrapers, houses and homes to provide for our children and to improve their lot by our labors. It is my firm conviction that the present restructuring program will, over the long-term, help us attain these goals.

Mr. Chairman, I'm obviously not a lawyer, but based upon my own personal experience, it was my union which failed to accommodate itself to the changing world, not the law.

We see in this restructuring an effort to modify ourselves; to anticipate changes that are inevitable; to be in a position to properly service our membership over the coming years. To my knowledge, this is the first system-wide reevaluation of our Brotherhood, our goals, and the very reason for our existence.

Mr. Chairman, I have seen the future, or some of it, and I am not alarmed. I feel empowered as an individual. If I feel compelled to speak out, I am confident that under the restructuring program, I will not be victimized again, ever again. Thank you.

[The statement of Mr. Durcan follows:]

written STATEMENT OF JOHN DURCAN, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 608, Wappinger Falls, New York - see appendix h

Chairman Fawell. And I thank you, Mr. Durcan. Mr. Zarzana.

STATEMENT OF SALVESTER ZARZANA, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS IN AMERICA, Brooklyn, New York

Mr. Zarzana. Good afternoon, ladies and gentlemen of the panel. My name is Salvester Zarzana, and I've been a member of the District Council of Carpenters for approximately 16 years. Since I've only been allotted 5 minutes to address this committee, I will restrict my comments to a prepared statement and will be happy to answer any questions that the committee may have on my statement.

By way of background, in 1991, I was elected as a trustee of the Executive Board of Local 902. In 1994, I was elected as vice president of the Building Trades Council of the Brooklyn Board of Business Agents. The Brooklyn Board Trades Council is a local umbrella organization which covers most of the building trades, local unions in Brooklyn. As vice president, I was responsible for coordinating and organizing labor activities throughout the borough of Brooklyn.

In November of 1992, I was elected to serve as business manager of Local 902 and reelected as business manager in 1995. In all, I have served approximately 5.5 years as business manager and 2.5 years as president of my local. My responsibilities, among other things, were to run the business affairs of the local union; to collect benefits on behalf of the rank-and-file members; to enforce various provisions of the collective bargaining agreement; to organize the non-union contractors; to handle grievances, jurisdiction disputes, file reports with the District Council. I have devoted between 40 and 70 hours per week to such efforts including weekends.

In the 5.5 years that I served as business manager, I organized approximately 200 contractors. Upon information and belief based upon sole efforts, I have organized more union carpenters than any single business agent in New York City District Council. In 1997, I was named plaintiff in a lawsuit which challenged the validity of the restructuring plan of the UBC, Locals 20 v. the United Brotherhood of Carpenters and Joiners of America. During this pendency of the lawsuit, I was threatened by innuendo and disciplinary actions as a result of my opposition to the restructuring plan. In December of 1997, a motion to preliminarily enjoin the restructuring plan was denied, and the restructuring plan was implemented.

In January of 1998, as a result of the UBC plan, local 902 and 926 were dissolved and a new local, called Local 926 was chartered for the borough of Brooklyn. I was appointed by the general president of the UBC as the business manager and president. On June 3rd, 1998, my position of business manager and president of the local was terminated by Acting Supervisor of the UBC, James Slebiska and Douglas J. McCarron, President of the UBC, allegedly for a suspended driver's license and gross insubordination. I was terminated despite the fact that I had previously signed the Progressive Disciplinary Charge and Discharge Procedure which provided that I would not be terminated before receiving one oral warning, two written warnings, and one suspension before discharge. I received no warnings, either written or oral, before my discharge.

As this committee is probably aware, the New York City District Council of Carpenters is under a Consent Decree. Under this Consent Decree is mandated that a strict referral list be adhered to in referring carpenters to new job sites. Sometime in May of 1998, I became aware of a blatant violation of these referral rules by an organizer supervised at the direction of the UBC, District Council who circumvented the referral rules, therefore, violated the Consent Decree. I immediately called the matters to the attention of both the District Council and the independent review officer by the court. Soon, thereafter, I was discharged for gross insubordination for not cooperating with the District Council's organizing efforts. This is obviously a lie and total distortion to the truth. Unfortunately, this is but one incident of the pattern of misinformation and abuse of members' rights engaged by the UBC supervision of the District Council.

Since the Council was placed on the international trusteeship on or about June, 1996, the rank-and-files members have been confronted with a number of LMRDA violations including but not limiting to the following: suppression of members' rights, free speech, expression, discharge or disciplinary action without the due process form of a fair hearing and fair trial; selected District Council prosecution of charges initiated by the IRO; and existing supervision or control of the District Council through intimidation, innuendo, threats and immediate termination if one didn't go along with the UBC's program.

To make matters worse, the District Council and the court-appointed IRO appears to be playing ball with General President McCarron, suppressing certain grievances filed by members of the District Council. Specifically, the one instance when Mr. Lebo and a rank-and-file member of Carpenter's Local 45 were threatened for his life at a local meeting attended by assistant, Jack Mitchell only to be requested to withdraw his charges against the member. Of course, Mr. Lebo

refused, and the IRO expressed displeasure with Mr. Lebo's rights to be heard, and he charged on.

Further, Mr. McCarron has just offered the IRO, Mr. Conboy, an opportunity to include the fringe benefit funds as part of his duties under the Consent Decree. It is the rank-and-file's belief that this offer to potentially expand Mr. Conboy's responsibility is a pro quo for the IRO looking the other way in respect to blatant violation of membership's rights.

Also, the court has deferred to the discretion of the international unions and the international affairs despite the fact that the protection of the LMRDA has been obliterated by the International. Specifically, constitutional amendments have been passed by delegates at conventions that empower the international unions to exercise virtually a dictatorship and towers over all local unions with judiciary taking a hands-off position. Initially, since the democratic safeguards do not exist now, the local union's autonomy has been eliminated. As a result, there is no system of checks and balance. What I mean by this is in 1992, when I was first elected, if a business representative was grossly mistreated, the member had a right to go to the District Council President, and he had approximately 30 days to have a remedy. If not, he went to the First District President. If not, he then went to the General President, and after all remedies were exhausted, he then went to the Department of Labor and hired a lawyer. Right now, as in my case, I have none of these remedies for the simple fact that Mr. McCarron, Mr. Michelowski, and Mr. James Slibiska are all one, because they were all appointed by Doug McCarron, so if I hadn't been a fortunate enough person to have the money for a lawyer to take my case to court, then the union, therefore, has no remedies for me to resolve my situation and my unfair and prejudice firing.

In summary, members' rights have been suppressed and politically, aspirations have been denied. The UBC wants to extend supervision over the District Council to permit and to stifle any political opposition to its agenda to obtain total control of New York City and control of approximately \$1.4 billion of our benefit funds. My discharge is a direct result of my outspoken efforts to keep the spirit of democracy and its principles alive in the District Council and not to succumb to threats and intimidation by the UBC.

One example of threats is the refusal of the District Council to process medical bills for my son who is about 2 years of age based on their claiming they do not have a copy of my son's birth certificate. I have personally brought this birth certificate to the District Council three times in the last 2 years. My wife was pregnant for 9 months. Who did they think they were paying the bills for?

I urge this committee to strengthen the provisions in the LMRDA by limiting the ability of the internationals to exercise their strength by virtue of international constitutions that have provisions previously adopted by delegates who were empathetic to the interest of the rank-and-file. Specifically, the LMRDA should amend and require the constitutional amendments to govern the rules by "one man, one vote," and to allow the majority to rule the rank-and-file, to initiate constitutional change, and to propose marriages of local unions rather than a delegate body. The rule of the "one man, one vote" should also be extended to the General President elections and officers to replace the present system of the delegate voting system.

Ironically, under the UBC constitution, I can be accused of disloyalty by virtue of this testimony here today, and the General President can actually expel me as a member of the union as a result. However, I am willing to take this risk due to my belief that union democracy should be brought back to the rank-and-file at any cost. I thank you, the members of the panel.

[The statement of Mr. Zarzana follows:]

written statement of Mr. Salvester Zarzana, United Brotherhood of Carpenters & Joiners of America, Local 926, Brooklyn, New York - see appendix i

Chairman Fawell. I thank you very much for your testimony. Mr. McCarron.

STATEMENT OF DOUGLAS MCCARRON, GENERAL PRESIDENT, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, washington, DC

Mr. McCarron. Thank you, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to appear before this subcommittee on employer-employee relations and address the issue before this committee. As president of the Carpenters' Union, I take my members' democratic rights and their participation in the governments of our union seriously.

As a union, we must establish a structure that protects and encourages that participation. We also have a responsibility to provide a structure that operates effectively on their behalf and in the construction market; one that can safeguard our members' economic interests and provide job opportunities.

For more than 30 years, we have witnessed a steady decline in membership and market share. As a union, it's our obligation to address both of these concerns fairly and effectively. To do that, we have undertaken a general restructuring of our International union. Let me be clear, this was initiated in response to a specific region, local, or individual. It was initiated nationwide in response to problems which were hurting our entire membership. Throughout the U.S. and Canada, we have established 65 regional councils that operate on a uniform structure that provides for participation of the effective day-to-day operations.

Over the past 30 years, our industry has become regional, but while the industry changed, we did not. While contractors expanded their range, pursuing work in an area that might encompass several cities or even several States, we were restricted by boundaries and procedures set 50, 75, or even 100 years ago. Without a regional structure to match the industry, the power of the membership became splintered and ineffective.

To safeguard our members' economic interests, we have been compelled to establish a regional structure that looks at the entire construction markets; negotiates on a regional basis, and uses members' dues more effectively. At the same time, our council structure recognizes the democratic rights of our members and encourages meaningful participation in the policy and governments of our union. Members attend meetings; elect officers, and conduct the affairs of their local on a "one man, one vote" basis, much as they have always done, but, in addition, they now elect rank-and-file delegates to their regional council. Those delegates elect council officers; assist in negotiations and ratify contracts, and oversee council operations. The elected delegate body provides active members a meaningful role in the policy decisions of their union.

To ensure an expanded opportunity for rank-and-file participation, the number of delegates is proportional to the local's membership. In New York City, for example, this will now provide

representation by more than 150 elected rank-and-file members. Previously, the entire council operated with only 16 delegates, 1 from each local.

Our locals are representative, our councils are a representative democracy, not unlike the system that brings each of you to the House of Representatives. Within the council, delegates debate and decide policy. Their decisions are then implemented by administrative structure that's accountable. Under our previous structure, inattention, comfort and status quo, and personal interest resulted in ineffectiveness at best, and too often squelch debate.

While the direct democracy of the local union hall, which some of our critics insist on is a democratic ideal, in practice, the system too frequently resembles ward healing at its worst. Let me explain. It is a business agent's job to represent the interests of every member, but in a local of 1,500 members, only a few hundred vote regularly. It's easy to see how the needs of a few men who can assure your election, your job, could take priority. Members too busy raising a family to take an active role could be largely ignored, and in the worst cases, members who spoke about, again, the system, like Jack Durcan, were punished. They found themselves at the bottom of the work list again and again.

The ward healing system failed American democracy, and it's failed union democracy. It's wrong. Our union has a responsibility to represent every member. As part of the restructuring, we've computerized hiring procedures to ensure that every member has equal to work that they're qualified for.

Members like Jack shouldn't be punished for taking an active role. Under this system, they won't be. Instead, they'll be encouraged to bring their day-to-day concerns to their local's discussions and the council through their elected delegates. As employees of the council, business agents are free to do their job representing the interests of every member without concern about reelection. They get clear policy direction from council delegates and are accountable for doing their jobs. This structure is in place throughout our brotherhood. Wherever possible, we have worked closely with local leaders to ensure a smooth transition. We have encouraged prompt local union and council delegate elections. Most have been completed within a year of restructuring including those in northern California and Michigan where, by the way, far more members voted than before supporting the restructuring. In place like New York, widespread corruption and mob influence left us no choice but to implement the policy.

With most of the legal challenges finally resolved, we've set delegate elections for the fall of next year. That allows us to complete restructuring and ensures safeguards that prevent the return of corruption. In northern California, only 1 of 35 locals opposed restructuring. That restructuring is completed, and delegate elections have been held.

The restructuring of the United Brotherhood of Carpenters was done to protect the interest of the members. It was done entirely within the framework of the union's constitution and Federal law. As different industries vary in character and structure, so must the unions that represent their members in those industries. The representative democracy of elected delegates we've established is well-suited to represent our members and today's construction industry. And in a rough, competitive economy, the union the bargains effectively offers its members the best protection, and any just labor law much allow unions to change themselves with the changing world, and that is what the carpenters have been doing. Thank you.

[The statement of Mr. McCarron follows:]

written statement of Mr. Douglas McCarron, General President, United Brotherhood of Carpenters & Joiners of America, Washington, D.C. - see appendix j

Chairman Fawell. I thank you very much. We've had the bells go off again. It's not at an appropriate time, because we'd like to go right into the questioning, but we'll have to set that back, and I'll have to estimate that we'd be back here in 20 minutes. So, we'll be adjourned, and this time we might be closer to the 20 minutes, but that's the way it has to be.

[recess.]

Chairman Fawell. I trust we shall have Mr. Payne here, I understand he is on his way, and I don't want to time to get away from us here.

As I've listened to the testimony, it seems to me that workers have a lot of problems having their democratic rights protected under both circumstances where there may be an instance of corruption. Certainly there was in so far as I think the New York City Council is concerned that the Rico statute dictated a case, and, obviously, there was mob influence, and there were problems, but that doesn't mean that, obviously, all the workers were involved. That certainly wasn't true.

I note that, Mr. Benson, you make the statement that we advocate no special platform or program for labor movement apart from democracy, and no one can argue that. And then you say "but to fulfill our role effectively, the labor movement must guarantee its own members in their unions the same democratic rights that it advocates on the outside in society. In short, we believe the union democracy will strengthen the labor movement as it was for democracy in the Nation," and then you refer to unionists who battle against corruption or authoritarianism in their unions. So, it is of interest to me that when you have corruption, you have a lack of democratic rights for the workers, or if there's authoritarianism and the complaints that we've heard today are about authoritarianism, then it's a good cause.

I'm not going to judge on that point, but I notice that Professor Summers, when he testified at the last hearing, had made statements, and I quote, "that intermediate bodies such as joint councils are treated as equivalent. The national unions are left unregulated under Landrum-Griffin. They, in fact perform functions normally performed by local unions. National unions, by restructuring to move functions from the local union to intermediate bodies, can significantly decrease the union member's effective voice in those functions" which I think is what we're hearing from most of the testimony today. And he lamented, too, that direct elections are required only in local unions, I gather, under the Landrum-Griffin, adding, that there was little question that direct elections make union officers more responsive to the members and strengthen the democratic process, and then also lamented in regard to trusteeships under title III are often but, obviously, not always imposed to repress opposition to the national officers and commented that the statute does not reach the device of abolishing local unions or merging them with other local unions without the members' consent.

Would you basically agree with that, and do you agree that we do have a problem in restructuring and in merging and doing away with local unions and elections under the Landrum-Griffin law now as it stands?

Mr. Benson. I think I agree with that most strongly, and I think that testimony here about the Carpenters' Union points it out admirably. I mean, one thing you can say about the testimony here is that's it been very confusing, and there's been a lot to say on both sides, but I think, and there's a lot that shouldn't be said on both sides, but I think the basic fact is this: the Landrum-Griffin Act provides for the direct election of officers of local unions, and the intent of it was that if members have their democratic rights and they're able to control their union, they will be able to do something about abuses including corruption. The members will be able, given their rights to elect their officers, to control abuses within their unions. That is the purpose of the law, and that's why they adopted the direct election of local officers.

Now, what's been happening in the course of this restructuring, and the restructuring that we've been talking about in the Carpenters' Union, is an excellent example of what's happening. What's happening is this: this restructuring system becomes a way of evading that provision of the law. The locals, even when they still remain and they still can elect their officers, are deprived of all their rights to the point where they become mere shells. Whereas, yesterday, they had the right to collective bargaining; they had the right to vote on contracts, they supervised their own grievance procedure, and they elected their own businessmen as business representatives, so that a union leadership had to be in one way or another accountable to this membership which has this direct power. Now that the locals are reduced to a shell and you have a district council set up, an international official now only has to learn how to manipulate a small group of delegates in a small number of district councils. These district councils take over what the powers of the local unions used to be, but they are no longer directly accountable to their membership.

So, what's happened, we're talking not only about the legal aspect of this, there's much more to it in terms of democracy versus efficiency, which I think is a totally false dichotomy, but from a legal point of view, the restructurings being proposed in the construction industry, not only in the carpenters, is a means of evading the provisions of the Landrum-Griffin Act which gives power to their membership in their locals like their officers.

Chairman Fawell. All right. Well, that_

[Applause.]

I realize people are deeply interested one way or the other, but if you could just all hold back in your enthusiasm, it would enable us to move along a bit better.

Now, Mr. McCarron, would you care to respond to that statement? It does seem to the Chair that there is some real credence to this observation by a man who certainly is objective and has a long history of respect in the labor movement and union democracy especially. Would you care to comment?

Mr. McCarron. Sure. The International Brotherhood of Carpenters have had district councils prior to the enactment of the Landrum-Griffin Act. I mean, we go way back to the turn of the century with district councils. The form that we're putting in place is representative of democracy. I disagree with making the local_saying that the local unions are just a shell of what they used to be. It really is representative democracy. They elect their officers of the local union, and they elect their delegates to the district council_the rank-and-file do that. And the regionalization of the industry, I think that the district councils have always handled the

) grievances of the members; they've always handled the collective bargaining of their members going way back prior to Landrum-Griffin.

Chairman Fawell. The District Councils do that?

Mr. McCarron. The District Councils have always done that, yes.

Chairman Fawell. Handled grievances?

Mr. McCarron. Yes.

Chairman Fawell. _and direct collective bargaining?

Mr. McCarron. Yes.

) Chairman Fawell. _and determination of dues, is that correct?

Mr. Zarzana. No, that's incorrect, because the District Councils always had a panel, and on that panel with the elected business representatives or delegates of the local would be collective bargaining, contracts would be collectively bargained, and these business representatives would bring it back to their membership, their local membership, for ratification. Okay? On the grievance procedures, the business agents were the ones that the members went to for grievances, and that grievance then would be held at the District Council after the business agent brought it to the attention of the District Council.

Mr. McCarron. Absolutely. The business agent brings it to the District Council, but the grievance procedures is at the District Council, and I'd like to ask when was the last time the rank and file ratified a contract in New York City?

) Mr. Zarzana. We ratified it for them, Doug. As a matter of fact, the last time we ratified the contract let me see, the new contract was in 1996; the one previous to that was 3 years before that in 1993. I sit on the contract negotiating committee with Mr. Devine and about 30 other business representatives, and we went back to our members in our local membership meetings and explained to them what their contract would be, and their guys agreed to the contract. And I believe New York City has the best contract throughout the United States. We've got five across the board.

Chairman Fawell. Mr. Benson, when you say that the local council is reduced to a mere shell, what do you mean by that?

Mr. Benson. Well, for example, if you can elect your officers but you don't have the right to vote on your contracts anymore, and you're not electing your own business agents, you're no longer really in control of your own collective bargaining procedure. That's been given to this body up there which is controlled by a few delegates up there, and whenever you have a few delegates, the International can very comfortably deal with a few delegates, and they no longer have to worry about the membership. So, the local no longer has the basic rights of collective bargaining anymore in our administrative agencies of some kind.

Chairman Fawell. And I gather there are also less District Councils than before, too. Is that correct?

Mr. Benson. Yes, many District Councils, sure. I think in Michigan, as I remember various District Councils have been merged, so it's even easier now. You have a statewide District Council in Michigan so that the member is sitting in Detroit, and somewhere that he doesn't even know, he comes down to his local union hall and it's locked. He thought he had a union yesterday, and he comes down to the hall, his local has now disappeared. The local has disappeared, and he finds locks on the door, and he can't get in anymore, so the union becomes some body far removed from the membership, and the membership is losing its power; that's the whole problem.

Chairman Fawell. And the Landrum-Griffin, basically, at the time it was created, it was zeroing in on the local union as being_

Mr. Benson. Because that was the source of local power. The whole purpose of the Landrum-Griffin Act, even in the rationale, is to give the power to the membership so that they can end abuses in the labor movement. That was the whole purpose of the Landrum-Griffin Act, and in so far as powers taken out of the hands of the membership, the abuses will return. That's another question.

The question is that this restructuring is often put forward as democracy versus efficiency. That is a totally false dichotomy. It's true. I mean, just to give the opposite side of it, the New York District Council was long overdue for something, because the whole construction industry in New York City is one cesspool of corruption. That's one part of our story, but it is not necessary to end the rights of the members in order to end the corruption that exists in a particular, you can restructure, but you can still have the right of members to elect their officers directly. You can restructure and still have the rights of the members to vote on their contracts.

The point is that the restructuring is necessary, and I should say I think Mr. McCarron probably wants to do the right thing, but in addressing himself to real problems, he is eliminating democratic rights and there is no necessity for that in order to establish a more

efficient organization.

Mr. McCarron. Mr. Chairman, Mr. Chairman, I'd like to pick up what Mr. Benson said. I think we're increasing the democracy in New York City.

[Laughter.]

And let me say this: The district council was run before by one delegate from every local, 16 locals; that's how it was run. It went under a consent decree; Judge Conboy ran that consent decree. The election for officer, for the head officer of the district council, was by rank-and-file vote. As I said in my opening statement, the business agents would give out those jobs. They would tell--they didn't want any changes—they would tell their guys, look, these are the guys we want to vote for; this is what we want to happen.

Fred Devine, single guy there, took the pension fund and he upped the unfunded liability of pension fund by over \$0.5 billion trying to get elected, took the health and welfare and broke the health and welfare, broke the labor management fund. The apprenticeship fund I believe only had \$27,000 in it when we came in, gave patronage jobs to everybody in the apprenticeship program. The health and welfare pension _

Chairman Fawell. I don't think there's any question that there was a very, very, strong opposition in New York District Council.

Mr. McCarron. Okay, my point is the abuse was from one man, that he put all his friends and supporters on the health and welfare and pension plan, over 330 employees where we run life pension benefit funds around the country were 60 to 80. And my point is, if our system was in place in New York City, Fred Devine would not be able to do that. We would have 150 rank-and-file elected district council representatives, delegates to that district council. On the floor of that district council the financial statements every months would have to be read, the delegates would have to approve everybody that was hired on the district council payroll.

Chairman Fawell. All right, my time is long since past here, but I guess the point I wanted to stress is that no matter what process we're talking about _

Mr. Zarzana. Point of privilege, Mr. Chairman.

Chairman Fawell. _we would not want to eliminate basic democratic rights and I think what Mr. Benson said, if I got it correctly, is it's not necessary that the rights of the members have to be lost in a restructuring. At the least before you eliminate those rights that there should be membership participation, that's what would bother me a bit. But at this point _

Mr. Zarzana. Point of privilege, Mr. Chairman.

Chairman Fawell. Just one more and then I'm going to have to turn the podium over to my good friend from New Jersey.

Mr. Zarzana. Okay, I want to bring up two facts on what Mr. McCarron said. Mr. McCarron said that one man, Fred Devine, was able to corrupt the whole election. Mr. McCarron is one man that has appointed everybody around this country. Now if he is the great white horse and the great white knight on that horse, well, that's fine. But if he isn't, if he's Fred Devine in a taller suit, then we're in for a hell of a time. And that's why this membership does need "one man, one vote" elections at the general presidency and at the district councils.

Chairman Fawell. The Chair would recognize the gentleman from New Jersey. We can continue this give-and-take here, but we do want to move the podium around.

Mr. Payne. Okay, Jack, continue.

Mr. Durcan. Mr. Chairman, if "one man, one vote" were the savior of democracy in the New York City District Council, how can we account for the fact that Ted Maris has disappeared down the river; Pastor McGinnis was thrown out of New York; Fred Devine was convicted on six of nine counts of fraud? We've had approximately 30 officers of our District Council on constituents' local unions ejected from our organizations or various acts. If "one man, one vote" was the savior of democracy how can we account for these conditions, Mr. Chairman? How can we account for them?

We certainly have in exercise the "one man, one vote" in our own best interest though, for the last 15, 20 or 30 years.

Mr. Zarzana. Point of order, Mr. Chairman.

Mr. Payne. It's my time. I know you guys in New York, but, you know, we're the "little apple," let's say, okay? I grew up in the north. So we get along, okay? I don't know if you've been over there but, but, anyway, let you just continue your point and then we'll hear the go right ahead.

Mr. Durcan. So what the Reverend Mr. Herman Benson advocates democratic life as being an absolute end in themselves. I see democratic rights as secondary to, within the context of the labor organization, as maybe not secondary, but at least equal to the obligation of a labor organization to provide collective bargaining agreement for its membership, in other words, provide service to the membership. And I would say that many a member would yield some minor points with regard to its democratic rights in exchange for a fair chance to earn a living.

We're not seeking a perfect theoretical model for the New York City District Council of Carpenters. We're seeking an efficient organization which will negotiate on our behalf, which will render a service, and at the same time not forego our basic democratic rights.

Mr. Payne. I see Mr. Benson is more gentlemanly, but, yes, go ahead, Mr. Benson. You want to respond?

Mr. Benson. Well, can I answer that as well? One of the greatest labor leaders in the United States, a great labor leader in the United States was John L. Lewis. John L. Lewis built, hoped to build, a strong United Mine Workers Union and the basis for his philosophy by maintaining a completely and total authoritarian control over that union, where one man ran that entire union and was in a position to appoint the entire international executive board. And every meeting, every convention of the United Mine Workers Union, the same kind of discussion would take place where John Lewis would say, "Everybody talks about democracy; we're interested in eating, money, efficiency."

While John L. Lewis, with the best of motives, was building this authoritarian efficient structure, beneath him the ones who were really taking power were murderers and crooks. I say this not in a literal fashion because the one who succeeded him was a murderer who killed John Yablonski. And as soon as John L. Lewis retired, the actuality of what was going on behind this efficient authoritarian structure became clear. The union, protected by this authority and structure, was in the control of crooks and murderers.

Now democracy is an essential element in maintaining the working class character of labor unions, to ensure that they represent members and not officials of any kind. That's why democracy, yes, in and of itself, is an important thing. It doesn't mean you have to vote for every postage stamp that is collected. When you come in and you build this efficient structure by undermining the life of the membership, that union leadership is going to be loose from control of the membership and you're on the way to another debased structure.

Let's take a specific, just to take this concretely. Mr. McCarron says that business agents in District Council 9 had control of the jobs and they were blacklisting members. That is absolutely true, in my opinion. This is very widespread in the building trades, which we have not even begun to address here. The solution that Mr. McCarron has is that he or the people that he will control shall appoint these organizations. I fail to see how that corrects the problem. If you give the control of all the jobs in the union, to a business agent over here, you take it from him and you give it to someone that's appointed by Mr. McCarron. I don't see what we have gained by that. The problem is to give the membership the rights in the union so that they can control their business agent and they can run an honest and decent democratic union.

Chairman Fawell. [presiding] Mr. McCarron, would you want to respond to that? You know these allegations that these local unions are giving up the power to new regional councils and that you, the one person, therefore, control these business agents, and so forth. Could you, perhaps_

Mr. McCarron. Yes, first of all, I appoint on an interim basis the officers of the district council.

Then they're elected by the rank-and-file delegates that are elected from the local unions to serve in the district council; then they will elect their officers, and that's happened across the country. I want to reiterate that. I appoint those officers for a limited period of time, and across the country, with the exception of New York, most of them have elections within one year after the restructuring.

As far as the job referral system, it will be done under the auspices of the district council. You can take New York City as an example. It will be a computerized dispatch list. If Mr. Durcan's on the list and he thinks that somebody was put out to work before him, he can go down to the district council and the computer can tell him what time the council called the man above him, what time the man called the dispatcher called the person below him. So it stops the cheating in the job referral instance.

And what's happened in the past, and I think Mr. Benson alluded to it, was that the business agents controlled that job, and if you got crossed with a business agent in New York City like Jack, which Mr. Durcan alluded to in his testimony, you didn't work or you were blacklisted. Under this system, it's cut and dry and you cannot cheat on the out-to-work list.

Mr. Payne. Go ahead, I'll give you the last opportunity because my time has expired.

Mr. Zarzana. Okay, first of all, what Mr. Durcan said about Teddy Maris and Pascal, they were not elected by "one man, one vote." They were elected by a delegate vote. That's just to reiterate that. Also, this delegate vote system creates the same problem Congress had with Jimmy Hoffa. One man controlled a whole union. One man was corrupted by organized crime, which, therefore, all the people that he appointed for this interim period then regained power.

Mr. McCarron appoints these people like in New York, he has not had an election now for two years. Okay. He doesn't plan on having an election for these delegates until the fall. That's past the LMRDA's requirement time of three years. He is negotiating this time to go past this LMRDA's time period of three years. By that time, he will have all these people in place and he will have silenced the voices that are set against him.

I am one of the people, and to show you about the referral list being on the computer, my son's and I say this in my statement my son's birth certificate, my driver's license, and my wife and my marriage certificate, was deleted off the computer. I just went recently and filed to take my annuity money out to pay my mortgage, okay. Now what happened? There was a computer error there? Are we going to say that same computer error cannot happen during the time when this referral list is placed on a computer? Remember a man punches the buttons into that computer. That's what I'd like to say.

Mr. Chairman, as far as his son's that is the trust fund; it's got nothing to do with the labor management trust fund; it's got nothing to do with the district council. I just want to set that for the record.

Mr. Payne. Okay, thank you very much. I think my time's expired, so I'm going to have to yield back, and I'm sure that the next person will be able to allow you the time but I'm not sure we're

going to have another round, but this whole question about, you know, being punitive to those who don't go along with the program and it's very interesting that we are having this hearing because evidently the leadership of this committee is very concerned about the working members and we're concerned about organized labor, want to see labor stronger. I suppose that's why this hearing is being held.

I just have an interesting today in the House they're going to deal with the labor but in an article on the first page of our little local paper Speaker Gingrich is saying anybody who is a Republican who votes with the Democrats should be penalized, knocked off the committees, taken out of committee chairmanship right here. So I just want you to know that you know you don't stand alone. These things happen in unions, happen in politics, happen in school districts. I'll yield back the balance of my time.

Mr. McCarron. Congressman Payne, it's in the testimony but I just want to point it out real quick. You know, Sal stated that in 1997 he went on the lawsuit to stop the international's restructuring in New York City, as the business manager of his local in Brooklyn. And we went through the district court and we won that. After that happened, I appointed Sal as the president of this newly-formed local and he was also a business agent for the district council, appointed business agent. I just want to make it plain to everybody on the panel that there's been no punitive action from the district council as far as the business agents in New York City or the dissidents that were against it to file these lawsuits. Sal was on it. I appointed him as the president of the brand-new structured local and he was also appointed business representative for the district council. So I think that's very important for the panel to understand that.

Mr. Lebo. Can I just address that, Mr. Chairman?

Chairman Fawell. I'd be glad to yield to you in just a second. The Chair will recognize the gentleman from North Carolina if he can.

Mr. Ballenger. Mr. Lebo, let me just make one quick statement and then I'll turn it over to you. Since the gentleman from New Jersey mentioned how Mr. Gingrich said, if you don't vote with us we'll punish you, I've been on this Committee now for 12 years and once upon a time we had a guy named Tim Penny on the Democrat side who had a tendency to vote with us and he didn't stay on the Committee very long. And then we had a gentleman from Arkansas who happened to be a Democrat and voted with us on a regular basis and he didn't stay on the Committee. So this great and wonderful criticism of Newt fits very well in your pocket too.

[Laughter.]

Now let me turn it over to Mr. Lebo.

Mr. Payne. That was before my time.

Mr. Benson. Now I want to ask Mr. Lebo, he's been holding his hand up for I don't know how long.

Mr. Lebo. Thank you very much. I'd just like to say one quick thing about what Mr. McCarron just said about Sal and hiring him as he did. Sal has become a very good friend of mine for a reason; I respect him. I believe, in my personal opinion, that Sal was fired because they knew he was helping us to get a bus down here for our membership to come down here, so some of these guys could come down here with us. He also donated the money to come down here. He donated the money and they knew it. They knew he was doing this and they also knew that he helped us get the lawyer that's fighting for us. Again, we have another court case contesting our constitution.

Now as far as Mr. McCarron's representative democracy, it's just that, it's representative. It is not democracy in any form. He appoints the officers of the council and the delegates. Now that's directly against the constitution. He's supposed to allow elections as soon as possible or as soon as notices can be sent out. This is not what he's talking about here. He's creating an incumbent administration and that's exactly what he's doing. That administration's going to be very hard to defeat.

Now as far as his delegates go, okay, you take 150 delegates_

Mr. Ballenger. Don't take too long; I've got a couple more questions.

Mr. Lebo. I'm going to do this very quick. As far as 150 delegates are concerned, it sounds highly impressive, 150 delegates. You're talking 15,000 to 20,000 members. Those 150 delegates, what he doesn't tell you is the Executive Secretary/Treasurer under his plan holds the position at the Council in place of what used to be the president. Now he does all the hiring/firing in the District Council, watches over the shop steward reports, sends out the shop stewards. He's in control of who's going to be a shop steward, who's going to be working for the Council from jobs from \$150,000 down to \$65,000, et cetera. Now, he can very easily appoint these 150 delegates. There's more jobs than that at the Council. He could easily appoint each one of those delegates to a job. Now he's talking about 75 percent, 30 percent is going to be elected every other year or every year. Now certainly 70 percent can be bought for a long amount of time.

Mr. Ballenger. Now, I think we all understand what you're saying. I can understand it, too, but_

Mr. Lebo. That's not_ that's not_

Mr. Ballenger. I can understand it, too, but_

Mr. Lebo. And it's very easily corruptible.

Mr. Ballenger. Okay, but let me if I may go into some further things? Mr. Durcan, before testifying here, have you discussed with Mr. McCarron all his representatives' appointed positions with the union?

Mr. Durcan. No, sir, I have not discussed an appointed position with anybody. I have not been offered the position or offered anything whatsoever in exchange for this testimony today.

Mr. Ballenger. And that's under oath. So tomorrow when you get a new job, we won't question you?

[Laughter.]

Mr. Durcan. But I have not been offered or, to my knowledge, been considered for any position.

Mr. Ballenger. Okay. I'll have to accept that, but, anyhow, let me ask you another question. First of all, it appears like the Labor Department does absolutely nothing to defend you guys when you need some help.

Mr. Durcan. That's correct.

Mr. Ballenger. And somewhere along the line it appears that we ought to put somebody, maybe the Justice Department or somebody that can really give you some kind of support. But the one that really blows my mind - you all probably don't know that I'm on another subcommittee here and we're investigating the Teamsters' election and the same name keeps popping up: Conboy, Conboy, Conboy. I don't know who this guy is but my understanding is he was making \$65,000 a month from you all and they reduced his pay. What I can't understand, he's telling you all what you're going to do and you're paying him, but I understand they shrunk his pay to \$45,000 a month. Now what's really terrible is the same fellow's calling the shots at the Teamsters right now that we're investigating and I think he's getting \$100,000 a month. I mean, you know the way, somebody has buddies somewhere, and evidently he was a Federal judge and he's appointed by a Federal judge. To my way of thinking, I wonder who - I hasten to say I don't live in New York, so I don't have to worry about the Federal judges up there, but you all do - but somebody somewhere is wired-in to somebody up there that keeps getting Conboy appointed to make the decisions that back up the leadership. I don't know how you get to this particular position, but somewhere. I'd like to ask Mr. Wittkind.

This whole reorganization thing is based on the idea that crime or criminals have taken over the governing in New York, but that's not true in Michigan.

Mr. Wittkind. No, sir, and I'm glad we're refocusing again on other parts of the country

because in New York is only one part of the problem. We had the need for restructuring and a mission as well. As Mr. McCarron was saying, the industry's changing and a lot of union carpenters see the need also to change.

Mr. Ballenger. Does this testimony, though, put a little question in your mind as to whether you're doing the right thing or not?

Mr. Wittekind. No, not at all. What I'm trying to focus on here is not to be against restructuring. There are some problems that came with the restructuring, obviously, especially in New York, where we have a climate that's not very favorable for democracy. But the big issue is for a lot of people, do we, with this new structure, do we still have control of our destiny? And as Mr. Benson was reiterating, it's the control that's more and more shifted away from the members. And if the members now have only control by electing delegates, that means the delegates are far more important now than they used to be, that the delegates themselves we should make sure that they are responsible towards their members. But what happens, in fact, is their bylaws specifically state that members, delegates, can be employed by the Regional Council, and in Michigan the great majority of them are directly employed by the Secretary/Treasurer of the Regional Council, which I don't have to reiterate on possible conflict of interests.

And that is the main issue: A delegate system might work even more democratically than having a very, very expensive election, where there's a lot of money possibly involved and other problems can arise, if you know what the Teamsters are. But the delegates have to be independent and that is what's far more important to me and to a lot of members, to my estimation.

Mr. Ballenger. I can appreciate that. Mr. Benson, if you had somebody that labor could actually, I mean individual members could appeal to, that used to be that, I understand, even though maybe they didn't listen because the leadership was corrupt, but it appears now that - is there any construction or any arrangement, as far as you can understand, at the union at the present time where they have an appeal? Nobody where you are, somebody above you should be, if they are efficient in a well-run operation, as business is supposed to do - and if business doesn't pay any attention to their employees, they're going to go down the tubes, and that's what should happen to a union that won't pay any attention to its members.

Mr. Benson. You mean is there some appeals process? Is that the point?

Mr. Ballenger. Yes, sir.

Mr. Benson. Well, one of the problems in the labor - see, in our system of government, we have divided authority. We have the legislative, the executive, and the judiciary. The problem in the union movement is that all three of the powers are concentrated in one hand: the international officials generally are the appeals court, the executive authority, and really the legislative authority. So, no, there is no really adequate appeals structure within the labor movement for

abuses inside the labor movement.

Now, I had a quick one. In the Auto Workers' Union, that's why the Landrum-Griffin is such an important thing. The Landrum-Griffin gave recourse to the members in the Federal courts and through the administrative agencies against abuses by their officialdom, and without that, there would be really no adequate appeals procedure of any kind. That's why it's so important that it be strengthened.

Mr. Ballenger. Thank you, Mr. Chairman, I'll turn it back.

Chairman Fawell. Yes, the Chair would recognize Mr. Tierney.

Mr. Tierney. Thank you. Mr. Wittekind, I want to congratulate you on what I think is some level-headed approach to this. I think you recognize the problem on the one hand and you're trying to find a measured way to address it. I see a little bit of conflict between - if I'm making a similarity here - between the open-town-meeting type of governance where you take every issue to town meetings; every citizen comes and shows up; everybody gets the vote - I mean, that's the most basic form of democracy - and the representative town meeting. Now you have your representative town meeting where the town gets together by districts, elects somebody, and then those representatives go to the town meetings and vote. Both of those are a form of democracy.

Mr. Wittekind. Correct.

Mr. Tierney. And you don't necessarily have the personal problem with going from the more based to the more representative on that, but you see some issues that arise that have to be dealt with in that context. Is that right?

Mr. Wittekind. Correct. Just like Mr. Benson was saying, we don't have a democracy likely to set up how you were elected; we have a one-party system, and the people that Mr. McCarron, or whoever, is going to be appointing are having even more of an advantage as an incumbent than incumbents in Congress have. We have elections, like Mr. McCarron said, and basically, except for one delegate, all incumbents, people supported by the Regional Council, were elected. And they have a tremendous, tremendous advantage over anybody.

Mr. Tierney. What would you have seen as an alternative to that?

Mr. Wittekind. Well, I think one big issue to me is that delegates should not be having any kind of employment under the Regional Council. They should be separate positions and they should be just responsible to the membership. And I'm not sure why they were specifically put in the

bylaws that they can be employed.

Mr. Tierney. So is there some way that you're saying that the fact that they were employed by the council enabled them to be elected when it came time to go from appointed to elected?

Mr. Wittekind. It made it certainly a lot easier. They have a lot more contact automatically with the membership when they're out on the job sites, when they're business agents. They have close contacts with the Regional Councils. I'm not saying they're using the offices to campaign, but it's certainly a lot easier for them.

Mr. Tierney. Are there other things that come readily to mind that you would address? Or is that the principal_

Mr. Wittekind. Well, one important issue I just wanted to state in relating to that is we're trying to create a better union and the structure of the union should not be dictated by a law, as it is very important that unions stay independent. But unions at the moment go through a change where they're trying to adjust through the changes in society and in industry, and there's a big movement within the union that does not support this kind of service-type-unionism. The result of this business-type unionism is they're providing more services; we are maybe cutting costs, but we're servicing members. We're creating an insurance company trying to get new members in trying to sell cars and people get even more passive. That's what I'm seeing with a lot of members now. They're saying, well, we're improving services and we're taking those not quite so democratic bylaws because we're getting served well.

But this is not a union movement. This is a nice, comfortable service agency, and that works completely against the spirit of unionism, in my opinion, and then that is a little bit in the background, but that should be considered.

Mr. Tierney. Thank you. Mr. McCarron, do you recognize or do you feel that there's any issue that might be addressed with regard to delegates also being able to hold positions?

Mr. McCarron. Well, that is a concern, that is a concern that, you know_ and I agree with the last speaker on the issue.

Mr. Tierney. Mr. Wittekind?

Mr. McCarron. Yes, but, you know, you've got a situation_ what we've tried to do around the country is make the delegate body as big as possible, so the majority_ or that doesn't affect the outcome of deliberations on the district council floor. But at the same time, if you've got a good business agent or a good delegate, he shouldn't be stopped from becoming a business agent or an

organizer. I don't think we should take the rights of an organizer or a business agent away from him to run in his local union as a delegate for the district council.

Mr. Tierney. You don't think that you could make it, so that you got to choose one or the other?

Mr. McCarron. Well, you could do that. You know, I think the whole we're trying to put together a structure here that safeguards the member's democratic rights and also lets the union deal with the regionalization and the problems in the construction industry. Because I think everybody in this room here has got the same goal: We want to represent more carpenters and more contractors, so when we sit at the bargaining table we can get a better deal for the people out there swinging a hammer. That's the name of the game.

Mr. Tierney. My impression, sitting up here, is that you all do have the same goals putting the people behind you.

Mr. McCarron. We do. Exactly right.

Mr. Tierney. I think some people personally agree those were situations that they'll have to address, but I would like to think that, first of all, what you're doing is well-intended and seems to be for some it's not working in some cases. At least it seemed like New York needed some work and got it. What it seems to be is that now that you've gotten to that point there are some people who have some suggestions, like Mr. Wittkind or whatever, that it might be worthwhile reviewing.

Mr. McCarron. Exactly, and we_

Mr. Tierney. And see if you can't get it to the point where if you're going to have a representative democratic situation, that you might see if you can't try to make some adjustments as to what you had planned, seeing how things are shaking out and move in that direction. I don't know if you can get back to a situation where you had your city open town meetings situation, if that's wise. You may all decide that's not what's necessary. What's necessary is take a look at some of the issues like dual jobs and being a member or things like that and work on it. Do you have a mechanism within your international set up who review that?

Mr. McCarron. Yes, we do. We'll have a convention in two years in Chicago and I'm sure that this and a lot of other issues will be debated very strongly on the floor. And I just want to reiterate, this is, to my knowledge, this is the first time any union has taken these steps on a nationwide basis to improve the working conditions of their members. So I mean there's going to be barnacles and things out there; we'll try to improve definitely, and I think that's the goal of every carpenter in the brotherhood, is to make it the best union possible.

Mr. Tierney. Thank you. And Mr. Chairman, just as I lined up here, I'm sorry that Mr. Ballenger left. He was going to make comments about the former Federal judge. I would have hoped that he would have had some plan in mind as to how that individual might get to respond. I found it a little bit disconcerting, what I thought were pretty broad-ranging allegations against an individual who wasn't here. But other than that, I appreciate and thank all the members of the panel for participating and those that came on this, and I think it's instructive. I thank you, Mr. Chairman.

Chairman Fawell. And I thank you for your contribution. Yes, Mr. Zarzana?

Mr. Zarzana. Yes, Mr. Chairman, on that note that Mr. McCarron says there's going to be a constitutional convention in the year 2000, that's two years from now; what kind of debate are they going to have bringing everybody employed in that convention was hand picked around the country by Mr. McCarron?

Mr. McCarron. If I can respond to that, Mr. Chairman? Everybody, every local union in the United States and Canada will have an election, a secret ballot election. All the members will have the right to vote for the delegates that come to that convention in Chicago. So it will be the rank-and-file members that vote for those delegates that come to Chicago.

Mr. Lebo. Mr. Chairman, you already have an established incumbent.

Chairman Fawell. Pardon?

Mr. Lebo. You already have an established incumbent administration and that will be our_

Chairman Fawell. It does, I can understand that. The delegates were selected by Mr. McCarron, and apparently, a good deal amount of time goes by before there is an election, and then many of them, I gather, if it's correct, become employed by the union, by the national union.

If we made the comparison to Congress, as Mr. Benson has, the Executive branch does not, you know, employ members of Congress to work for it, and the union is likened, the administration of the union is likened to the Executive branch. I think that's it's highly questionable, and you, obviously, have, when you switch to the representative forum, and the gentleman from Massachusetts_

Mr. Tierney. If I may, Mr. Chairman, they don't have forms of government where they do you take a parliamentary system; they do hire members of parliament to be in the ministry and to

take on positions like that. You can have a debate about that, but the fact of the matter is _

Mr. McCarron. Mr. Chairman, Mr. Chairman, I'll have _

Chairman Fawell. Just one moment please. Let me express myself. I think that when you have, as I understand it, just about every delegate being employed, that it does put an unsavory cast, I think, on the matter--and I don't know.

For instance, Mr. Wittekind, taking your situation in Michigan, and now we're away from New York, how many delegates would be representing you that would be at your particular district council? Where is your district council?

Mr. Wittekind. Our regional council now is in Detroit, representing the whole State of Michigan.

Chairman Fawell. The entire State?

Mr. Wittekind. The entire State.

Chairman Fawell. And from your local, how many members are there in the district council?

Mr. Wittekind. The district council has governance, 10 locals in Michigan, and they're of several sizes, different sizes. Brushing on the representation, the delegates from each local differs depending on the number of members in there. It's not totally representative because, if you had more than 700 members, the bylaws state you cannot have more than seven delegates. So over 8,000 members local and Detroit has a lot less representation than _

Chairman Fawell. How many delegates are there in Detroit that are at the council _

Mr. Wittekind. I'm not aware exactly that number.

Chairman Fawell. How many delegates represent your particular local?

Mr. Wittekind. Our local is seven. The number for the whole State of Michigan is somewhere around 50, I believe.

Chairman Fawell. Now, Mr. Benson, it was your view that what we've done here, though, is create this entity far removed out there and there's a loss of direct power to local unions. Is that correct?

Mr. Benson. Absolutely. I mean, let's look at the reality of this thing here. If you have 10,000 members and you have 100 delegates like that, okay, now it's impossible to buy off 10,000 members. All you need, if you have 100 delegates, all you need is, let's say, 55, and all the international has to do is to make sure that it keeps 51 percent of those delegates happy with any kind of prerequisites, and this is ordinary politics, and they're going to control it. So that the basic problem that we have here, the really basic problem to cut through all the details that we've been into is this: what you have in the labor movement is you have all of constitutional authority, the basic constitutional authority, executive, legislative, and judicial, are concentrated at the hands of the top officialdom of the international union. That's number one.

Number two, there is no offsetting political party system that would offset this kind of concentration of power. Unlike in the United States where not only do you have a diffusion of power but you will also have different sections of government, you have in the union movement the authority in the hands of one power and there is no political way to offset it. What they call themselves in some unions as the official family is an organized, concentrated, disciplined, political institution within the union. Against that, you have a rank-and-file which is disparate; they're never in contact with one another; they have no political system. So that the answer to this problem which is you're not going to change that situation overnight. The answer to this problem is that the authority of a democratic society using its democratic laws has to strengthen the rights of the members inside their union. That is the answer to many of these problems. And the answer that the Federal Government has already given and it's been somewhat effective in making a change is the Landrum-Griffin. In order to overcome many of these abuses, what we have to do is strengthen all the provisions of the Landrum-Griffin in every respect to make sure that it's even more effective than it's been in the past. That's the story.

Mr. McCarron, who obviously wants to do a good job, his philosophy, it seems to me that the answer to the problems of the labor movement is to have a beneficent international officialdom up there who is going to make a present of a good, efficient union to its grateful members. That is never going to take place. In order to have an efficient and strong labor movement, the members must be involved; they must know that it's their institution, and they must have democratic rights, and those rights must be protected by the Federal Government.

Chairman Fawell. I appreciate those comments. I did extend an offer to Professor Summers, who helped Senator Kennedy a number of years back in drafting legislation, if he would do so and present his ideas to this subcommittee, so that we could look at it from a bipartisan viewpoint.

I tend to agree with your feeling that we're all for efficiency. Some of the greatest despots in history were very efficient people and very good speakers, but they did a lot of harm in the long run or when they're gone. Perhaps Mr. McCarron will run a system here that is benign and very efficient. But there's nothing wrong with "one man, one vote" because it doesn't work sometimes and there's nothing wrong with democracy; it can be strengthened.

And I would extend the same offer to you, Mr. Benson. I know that if you and Professor Summers would draft suggestions, I think it would have a respect in an objectivity view_

Mr. Benson. I submitted to the committee_

Chairman Fawell. _that both sides would give respect to.

Mr. Benson. I submitted to the committee the proposals of AUD to the Dunlop Commission, which by the way Clive Summers helped formulate. So even awaiting what might come up with many of his suggestions already incorporated in that proposal to the Dunlop Commission_

Chairman Fawell. These deal with the Landrum-Griffin law?

Mr. Benson. Yes, yes, a whole series of proposals which was discussed at length by our board of directors and Clive Summers was a participant in formulating those suggestions.

Chairman Fawell. All right, I do plan to sit down with the other side of the aisle here and look at those suggestions. It seems to me clearly that Landrum-Griffin was created when local unions were the real strength. And Mr. McCarron may well be right. Times are changing; maybe there are changes that have to be made, but I know that the requirement for elections applies only in the circumstances of what it was like back in the late 1960's and that the right to a vote insofar as the election of a regional council, I gather, is not there. And so that there are areas where we can, I think, be of help to strengthen democracy and then you're so right when you say that it's a one-party system. It's an oligarchy that also is what we don't have in Congress. We have a two-party system, let me tell you, so that people are always listening to both sides of the question.

The rank-and-file I don't think have a political party that can represent them very well when they do try to question the leadership. They can be seriously hurt by so doing. I hope we can make a contribution to strengthening the Landrum-Griffin Law, and it would help us very much if people sets their view and Professor Summers and others, and indeed the Association for Democracy, which has the respect, I think, that the labor movement would help us in that regard.

And I do thank all of you for taking your time to be here. Mr. Zarzana, yes?

Mr. Zarzana. I would just like to reiterate on what Mr. McCarron said. He said that he appointed me as a business manager and the president of my local, of Local 926. Before he appointed me, I was already elected to those two positions. After the appointment that Mr. McCarron made of me being there, I was very supportive in my efforts to organize for the local union; I brought in 150 new members; I organized nine companies; I was at 120 grievances; I've

entered 26 different rallies.

I also ran all the organizational pickets for the building trades in Brooklyn. They came to me to decide what the organizing strategy is going to be. Now these are trades that are not affiliated with the carpenters. These are the plumbers, the electricians, the roofists, the tin knockers. They voted for me, men that are older than I am, to be their Vice President to lead them in an organizing effort. But yet, I was still under this appointed system. I was fired for insubordination of organizing efforts and for an invalid driver's license.

Now how could this be that democracy, when Mr. McCarron asked me to be every Wednesday at the District Council for organizing meetings. Every Wednesday at 2 o'clock I participated in these meetings. And my view is different from the views of some of these so-called hand-picked organizers. I was chastised every Wednesday. It was the worst day of my life. I dreaded Wednesdays because I knew I would go in front of 11 or 12 guys that were totally against me because I have a different political view than Doug McCarron and the guys there. He has a guy that he wants to be the guy, and I feel that if anybody can run New York fairly, I should be the guy.

Because this referral system that he speaks about, I've run that referral system, since 1994 the dissent decree has been in order, and Mr. Conboy's office has no judgments against me. So that means I am a fair and equitable person and I do treat my membership right.

Okay, I also was awarded a plaque from CORE, Congress on Racial Equality, for the good community work that I do in the community. This is one of McCarron's criterias. I also was awarded a plaque from Coney Island Hospital. All the blood banks in New York are dry. I donated 230 pints of blood with my membership. I also helped in getting a \$330 million job passed through Community Board 13 and I received an award for that. These are all my accomplishments in the last six months.

Yet, I sit before this court, a man with no job and no health insurance for my family. The average carpenter works 900 hours in the year and he is credited with health insurance for the full year. I've worked as a business representative for Mr. McCarron; I've put in between 40 and 70 hours a week for the last 20 weeks; that constitutes more than 900 hours. Yet, due to my termination at the end of the month, I have no medical coverage for my family. I mean, how could this system that he's imposing, that he says is so good and so democratic for everybody, how could this work?

I'm just one example. Go around the country and I'm sure that you'll find stories just like mine. Thank you. That's all I have to say.

Chairman Fawell. Thank you.

Mr. McCarron. Mr. Chairman, just one thing, Sal was let go because, in order to be a business agent for the New York City District Council, you have to have a valid driver's license. He was asked on numerous occasions; he said he did; the insurance broker told us he didn't, and Sal lied to us, and he didn't have a driver's license. That's why he was fired.

As far as the health insurance for the business agents of New York City, that was the policy that's been in effect there for years. When you're terminated, you lose your health insurance.

There's also COBRA available that's out he can purchase from the trust fund.

So thank you.

Chairman Fawell. Mr. Tierney, you indicated that you want to_

Mr. Tierney. I don't want to delay, Mr. Chairman, but I have a question and maybe you can help me with this. I see a lot of folks here from New York not particularly pleased with the way the consent order went or what's happened since the consent order. Is there some reason we don't have more witnesses from a greater variety of the regions throughout the country and why we concentrated on New York or did the chairman have something in mind with that? I should say, did the staff apparently have something in mind?

Chairman Fawell. Those in attendance are primarily from Pennsylvania, is that correct? I can't really answer staff that made their selections, but_

Mr. Payne. We have some good carpenters in New Jersey now. You know, I've got Newark, Jersey calling; they support me. Hey, I'd like to see a couple of them up there, you know.

Mr. McCarron. You've got a lot in California, too.

Chairman Fawell. Well, we expect, for the hearing we'll be glad to take names of those you_

Mr. Tierney. Well, I would only_ because I have no way of sensing whether this is an endemic feeling that everybody across the country is railing about, you know, the fact that Mr. McCarron has apparently been a dictator in their views and they're just worried about what he may become and the next successor may become. From what I've heard in my area is that there's not any dissatisfaction with this plan and in fact a great of acceptance on it. I'm hearing something different here. Again, I had some sympathies with the comments of Mr. Wittekind and would encourage those be followed up, but I sort of get a slanted view here that there's one very unhappy group of people in New York and other people who may not entirely accept us here, but they understand that there might be a reason to move in that direction, and I think I'd like to hear more about that.

Chairman Fawell. Well, I'm told we've had people who are complaining from California, New York, Pennsylvania, New Jersey_

Mr. Zarzana. Oregon.

Chairman Fawell, and Michigan. And these, everybody who's here is from relatively far distant points, but I really can't say anything definite except the ones that we have heard at the last meeting, a number of carpenters also are very much concerned. And it does seem to me that there are things that we can do to make sure that these democratic rights are protected. It seems to me that, no matter, you have instances of, anybody who's in power, you have these instances in the labor movement where the rights of workers are not well respected, and that's unfortunate.

I happen to believe that it's absolutely true, if you have a sound democratic representation of the rank-and-file, you're going to have an efficient and good union. It may not be as easy to just have somebody at the top making all the decisions and making it efficient, but that won't last because a man whose breath is in his nostrils doesn't last. And then who's going to take McCarron's place or who took Lewis' place? Those things we have to be concerned about.

Well, all right, just one more statement and I think we_

Mr. Lebo. I'd just like to submit a copy of our constitution to your committee. I'd like you to, if you would, read what Mr. McCarron's powers are. I can give you a list of the specific amendments that were made to this in section 6(a), I believe 6(b); I have them written down. Mr. McCarron has absolute control of everything in this union, and I'd like you to see it, how it's written. To me, I read the LMRDA_

Mr. Tierney. Are you saying that that document has been accepted or it hasn't been accepted?

Mr. Lebo. This has been accepted.

Mr. Tierney. By whom?

Mr. Lebo. This is the constitution_ by delegates at a constitutional convention.

Mr. Tierney. Around the country?

Mr. Lebo. From around the country, yes. Specifically, I believe it's from 1978 up.

Mr. Tierney. Okay, and when was the vote on the most recent version that you've done?

Mr. Lebo. The most recent vote was 1995 I believe; 1993, I'm sorry, 1993.

) Mr. Tierney. So this is the constitution in its_

Mr. McCarron. That's not an updated one. The updated one is January 1 of 1996.

Mr. Lebo. This is January 1 of 1996, okay?

Mr. Tierney. And so continually it's been voted upon by delegates that are elected by the rank-and-file?

Mr. Lebo. It's not_no, it hasn't been elected. The delegates that have been elected by the rank-and-file, a lot of them go by what is it called, by virtue of their office.

Mr. Tierney. The process in the constitution, I assume, right?

) Mr. Lebo. And they were elected to offices such as business manager at the time. The problem being, the problem of these amendments to me was that a lot of the amendments that gave Mr. McCarron the power_we have this in court right now.

Mr. Tierney. I'm just trying to understand it here without reading all the court documents.

Mr. Lebo. A lot of the problems that gave Mr. McCarron, the members who gave Mr. McCarron the power, were never actually brought to the membership so we could tell our delegates how to vote for it. Before the constitutional conventions, before they were passed, at which they were passed, a local union wants a change in their constitution, they have to submit the amendments to a constitutional committee which the Executive Board appoints and then notes those suggestions have to be prepared for that committee and sent out to local unions in form letters and in the "Carpenter Magazine" across country before the convention. This isn't the case in a lot of these and_

Mr. McCarron. It's in the case in every specific issue, and that was amended; it was sent to the locals, and it was also published in "The Carpenter" magazine prior to the convention. Each and every time it has been done.

) Mr. Lebo. That's not true. In any case, I'd like you to see these. I don't believe that the LMRDA should allow a union's constitution to override it. I believe, which is pretty much that it gives

him autocratic rule over our union.

Mr. Tierney. Just in reply to that, I assume that the Chair is going to accept that without objection. Then I would ask if you would also allow Mr. McCarron to just put in evidence of his contention that, in fact, they were adopted, and we can take a look at it.

Chairman Fawell. It shall be so ordered. Mr. Liguori, you were patiently indicating you had a point.

Mr. Liguori. A couple of things. The constitution - somebody could correct me - but one of our past general presidents, Bill Sidell, was given in the mid-1960's I believe, these sweeping powers as a general president. What we have today is now a result of something being labeled "restructuring, reorganization, progress, improving," whatever you want to call it. But I don't see the relevance or the improvement of going into a State, Michigan, and virtually locking, padlocking every local in the State two weeks prior to a major election.

You can jump up and down and see organized crime in New York. Mr. Conboy, who's been there since 1994, he could have disallowed a great deal of things. He chose to go to the General President, instead of going to Judge Haight. Many, many processes could have been done differently, but it wasn't. It was done with strong armed, private, secured forces, no negotiations, no due process. That is not democracy. You don't come into a country, and take it over forcibly, set up a new government, and say, hey, guys, we're here to make your life better - it just doesn't work that way - and then say I can't vote or I'm not intelligent enough to vote for my General President on a one-on-one basis like the Teamsters.

Chairman Fawell. All right, okay, well, thank you folks. I think we have to adjourn, but I do have to thank all of you for being here. Any of you that may feel that you want to supplement the record and give some more comments, please feel free to send me the letters. Because what we're going to try to wrestle with this question and see if we can do something about the circumstances which all of you face. The union, whoever is operating the union, it is an oligarchy; there's no question. There's not a two-party system out there. The workers aren't represented by a political party themselves, and they have an awful tough time breaking and ever getting into leadership once the leadership is formed.

So thank you very much. I appreciate your taking your time to being here, and to all of you here in the teams, I realize that you have a deep and abiding interest and we appreciate your being here, too. Thank you very much.

[Whereupon, at 4:50 p.m., the subcommittee adjourned subject to the call of the Chair.]

ADDENDUM F

**Statement of Herman Benson
before the
Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce**

June 25, 1998

My name is Herman Benson. I am Secretary Treasurer of the Association for Union Democracy a small foundation established in 1969 to promote the principles and practices of internal union democracy in the American labor movement. It can probably be best described as a kind of civil liberties organization for union members to help protect their right to free speech, fair elections, fair trial procedures, and fair hiring hall procedures, precisely the kind of rights written into federal law in the Labor-Management Reporting and Disclosure Act of 1959. Over the years we have been particularly concerned with unionists who come to us with reports of racketeers and organized crime in their unions.

Our AUD is non-political. We advocate no special platform or program for the labor movement apart from democracy. We are available to defend the rights of any union member, left, right or center against abuse from any officialdom center, right, or left. Our Board of Directors includes persons who are eminent in the field of union democracy law and related issues. Clyde Summers, who has already testified here and helped formulate the provisions of the LMRDA Bill of Rights. Paul Alan Levy, who is and Arthur Fox, who was attorney to the Public Citizen Litigation Group. Alan Hyde, law professor at Rutgers; Barbara Harvey, a prominent union democracy attorney in Detroit; and James McNamara, former consultant on labor racketeering to the Manhattan district attorney's office.

We do believe that a strong labor movement is an essential element in American democracy. They protect workers against abuse by employers. They defend an American standard of living. They have fought for seniority rights, for pensions, for unemployment insurance. But to fulfill its role effectively, the labor movement must guarantee to its own members in their unions the same democratic rights that it advocates on the outside in society. In short, we believe that union democracy will strengthen the labor movement as a force for democracy in the nation.

I have been a toolmaker and machinist by trade and a member at various times of the Rubber Workers, United Electrical Workers, and International Union of Electrical and Machine Workers. I was, and still am, a member of a fine union, the United Auto Workers. In 1969 I helped found AUD. For ten years before, beginning in 1959, I published Union Democracy in Action, a newsletter, to record the efforts of reformers in many unions. My wife, Revella, worked on the staffs of the National Maritime Union and of the United Federation of Teachers. For six years, I edited the newspaper of the Painters union in New York when it was under the leadership of the courageous reform leader, Frank Schonfeld.

In all this time, more than 50 years, I have been in touch with tens of thousands of unionists, individual rank and filers, organized caucuses, and elected officers in most major unions in the United States, unionists who have faced union democracy problems or who have been engaged in a battle against corruption or authoritarianism in their unions.

It is on the basis of this experience that I assess the level of democracy in unions and formulate some notions of how to strengthen it.

I am strongly convinced that the state of union democracy in the United States today is far superior to its condition 50 years ago before the adoption of the LMRDA in 1959. Before LMRDA, members were expelled for criticizing their officers, usually on charges of slander they could be expelled for suing in court or complaining to authorized administrative agencies; in some unions they could be expelled for organized campaigning for elected office or for circulating petitions within their own union. Now all that is illegal because the basic rights and civil liberties in a union are written into federal law.

The Wagner Act established the right of workers to form unions of their own choosing. The LMRDA established the right of workers to pick union leaders of their own choosing.

The LMRDA, new in 1959, was not self-enforcing. In fact, the U.S. Department of Labor, the agency chiefly responsible for administering decisive sections of the law, has been undependable, feeble, and erratic in its enforcement duties. For some years, it published annual reports on its LMRDA activities. But no more. It is now almost impossible to hold it accountable because its actions are not easily available on the public record. But, despite the weakness of the DOL, the law was instrumental in making changes possible because its very existence on the books encouraged rank and file unionists to come forward in the cause of union democracy and decency; and, over the years, the federal courts have, in the main, applied the law with vigor.

Stimulated and protected by law, union reformers have come forward and have persisted and survived where once they would have been easily suppressed. The list is long, involving many unions. Most notably in the United Mine Workers where a democratic insurgent movement ousted a murderous officialdom headed by Tony Boyle, the man who ordered the murder of reform leader Jock Yablonski. And the Teamsters union, where a reform movement broke the hold of organized crime over the top union officialdom.

There has been a seachange in atmosphere. Advocacy of union democracy, once considered irrelevant, illicit, disruptive in the labor movement, is now legitimized. Even union officials who distrust or fear the workings of democracy are forced to tolerate it. This change has been effected by a combination of three forces: 1) the activities of union rank and filers and some leaders who have come forward in the cause of union reform, 2) the federal law which encourages them and provides a legal base and protection for their efforts, and 3) moral and practical support for their efforts from the public, from workers rights' attorneys, civil libertarians, labor writers and educators, and an organization like the Association for Union Democracy.

The workings of the law have revealed the potential for improving and strengthening unions as workers organizations when the rights of rank and file members are protected. But there is still a long way to go. It is still safer to criticize the president of the United States than your own business agent. In some unions, workers are still blacklisted and deprived of work, or threatened, or beaten for criticizing their union officials. Local police still look on violence against rank and filers in the union hall as a family affair to be ignored just as they once ignored domestic violence in the home. Many unions still enforce attendance provisions which bar over 90% of their members from running for office. Public employee unions which organize workers in state and local government are not covered by the provisions of the LMRDA so that the rights of members in an important segment of the labor movement remain unprotected. Trusteeships are still imposed on various pretexts to suppress critics and are presumed valid for 18 months. The U.S. Labor Department has never challenged a trusteehip until that 18 months has elapsed. In one instance, in the Painters union in 1967, even when a federal judge found that a trusteehip had been imposed to protect a racketeering officialdom, the Department

recommended that he sustain its validity for 18 months. Judge Marvin Frankel rejected that recommendation and ordered the trusteeship lifted to be followed by a federally supervised election. That was many years ago, but the DOL policy remains unchanged.

In time some union leaders learn to live with the law, and evade it, much like bacteria sometimes learn to live with antibiotics. If they cannot suppress their critics by disciplining them on contrived charges of slander inside the union, they use union resources to impoverish them by suing them in state court. If they cannot trustee locals and seize their resources, they dissolve them, merge them out of existence, or bury them in undemocratically constituted district councils. It is true that sometimes mergers and reorganizations are justifiable and legitimate to strengthen the union's bargaining position. In that I would agree with Congressman's Payne's comments. What is not justifiable is to utilize such mergers as a pretext for eliminating membership rights: like the right to elect business agents, to vote on contracts or the level and distribution of their dues.

A special situation exists in the construction trades, especially in big cities where the industry is plagued by corruption. The main victims of corruption are the majority of construction workers. Because they have built strong unions, when they work, they are able to maintain a good American standard of living. But where they face collusion between crooked union officials and suspect employers, they are often forced to ignore safety rules, their pension and welfare funds and their union treasuries are pilfered, the provisions of their contracts are violated, their grievances are ignored.

The chief problem is that construction workers have no job security. Their work is temporary, they go from job to job, from employer to employer. When they are working at one site, they are already wondering where the next job will come from. Every construction union contract that I know of gives the employer the unqualified right to reject any application for a job, even when they are referred from the union hiring hall. There is no recourse against unfair treatment. Some contracts even give the employer the right to hire and fire without qualification. Favoritism toward cronies and discrimination against critics is the prevailing norm---not universal, but prevailing. Employers and union officials are both content with this setup. For the employer, if he keeps the business agent happy, he is free to hire and fire whom he pleases and to create not simply a satisfactory workforce, but a docile one which will not complain. For the crooked or authoritarian union official the system permits him to build a political machine, to reward friends and punish critics, to discipline or starve out those who would oppose him. This system makes a mockery of any grievance procedure. A worker who files even justified complaints will soon find that all doors are closed.

In November 1986, testifying in Department of Labor hearings, Laurence Cohen, Chief Counsel of the International Brotherhood of Electrical Workers, oddly enough trying to demonstrate that "mismanagement" in union hiring halls should not be considered a "serious offense" because it was too widespread to control. He said:

"It is, I would go so far as to say, an unfortunate condition of the building and construction industry, which is always a chaotic one, with jobs of short duration and transient employment of people trying to find work and so on, there are hundreds of allegations of hiring hall misuse brought to the Board every year. Frequently, dozens of findings of hiring hall mismanagement by the Board each year. If that alone constituted serious misconduct, the Department of Labor, and ultimately the court, would be doing nothing else other than running around the country trying to remove construction industry business managers in all crafts from office. I guess my basic

point is that it is a common occurrence."

The health of democracy in unions, as in society, depends upon encouraging and sustaining those who will speak out and act against injustice, for decency, for fair play. In construction, precisely that kind of individual is silenced and suppressed. Union democracy will never flourish in the construction trades until unions and government defend their right to work in dignity without fear or favor. This is not to say that employers should be forced to hire any drunkard or incompetent. Of course not. It does mean that the job security and right to work of construction workers should be protected under a reasonable system of due process which affords recourse against unfair treatment. A fair hiring system is indispensable to union democracy in the construction trades, and union democracy is the indispensable weapon against racketeering. This idea was emphasized by the Subcommittee on Labor Unions of the City Club of New York when it wrote back in 1937 words that are no less apt today:

"Experience has shown that eradication of racketeering from a union can come only from an aroused and determined membership. Sporadic prosecution is of little avail; one or two dishonest leaders are removed and others come to take their place. The elimination of racketeering within a union must be primarily the concern of the membership which is most directly affected by the racket. The problem is fundamentally one of promoting democratic control" (emphasis in original).

The LMRDA has demonstrated its worth by proving that union democracy can be protected by federal law and that unions are not weakened but are strengthened by it. But many of the problems it was intended to address are still with us. The law and its enforcement should be reinforced. Toward that end I would like to enter into the record a series of suggestions that AUD presented to the Dunlop Commission in October 1984.

I would like to give special emphasis to some of these proposals and add one or two of my own suggestions:

Title I, the Bill of Rights section of the LMRDA is enforceable exclusively by private suit. Title IV, the election provision, is enforceable almost exclusively by the Department of Labor. Both these sections should be enforceable either by private suit or by the DOL as is the case with Title III the Trusteeship section.

In any event, enforcement should be taken out of the hands of the Labor Department as assigned to a special LMRDA agency. In fulfilling all its other responsibilities, the Labor Department properly seeks the cooperation of union officers. But by its very nature, LMRDA enforcement leads to an adversarial relation with these same officers. This inevitable conflict of responsibilities explains why the Labor Department vacillates in fulfilling its LMRDA role.

National and international union leaders should be elected by direct membership vote, a system which provides the membership an opportunity to break through any rigid bureaucratic structure.

The standard for voiding a challenged election should be clarified. At present the Labor Department will challenge an election only if there were violations which "could have affected the election outcome," a standard which it applies by bean counting. The complainant must demonstrate, in most instances, that the violations could have changed the arithmetic balance of victory. Instead the election should be subjected to two kinds of test. An election should be voided if technical violations could have affected the outcome or if the violations were so egregious that they undermined the very process of democracy.

Section 105, which requires unions to inform their members of the provisions of the LMRDA should be enforceable by private suit or by the Labor Department or other administrative agency.

Unions now require candidates for office to have been in continuous good standing for two years before an election in order to run for office. This provision often acts to disqualify long-standing members who fall behind a single month because of a technical error or oversight. It becomes a convenient means of eliminating opponents when a sly administration simply fails to inform a potential rival of his recorded dues status. Any union which enforces such a provision should be required to allow a member a two-month grace period for paying dues and to inform each member in timely fashion that he or she is in danger of losing good standing. Legislation should be formulated to provide for due process in hiring and firing in the construction trades. In conclusion, I would add one quintessential consideration for your committee. You can't have a robust union democracy without strong unions. If you are to be effective in strengthening the rights of members inside their unions, you must protect their right to have unions in society. Workers who feel that their unions are under attack and in jeopardy are not likely to exercise their right to criticize their union officials, good or bad, much like citizens are not likely to tolerate even justified criticism of their government if it is at war.

You can address the needs of workers inside their unions by improving the effectiveness of the LMRDA. But at the same time, to give them a sense of security, you would have to improve the effectiveness of the National Labor Relations Act, which is another story.

ADDENDUM G

UNIVERSITY of PENNSYLVANIA

The Law School
3400 Chestnut Street
Philadelphia, PA 19104-6204

July 4, 1998

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Honorable Harris W. Fawell
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Representative Fawell:

In May I testified before your subcommittee on Employer-Employee Relations concerning the history, purpose and principles of the Landrum Griffin Act. You indicated an interest in how the statute might be amended to deal with some of the specific problems raised by the witnesses at the hearing.

The major problems discussed by the witnesses, who were mainly from unions in the construction industry, were: (1) the moving of governing power and membership control from local unions to district councils with the lack of direct membership vote for the officers of those councils; and (2) the use of trusteeships to deprive union members of democratic rights in their local unions. I will try to make concrete suggestions for rewording the statute to meet these two problems, and also to suggest some other specific areas where the Act needs to be strengthened.

(1) Election of officers of district councils.

176-80

The source of the problem is the moving of control over collective bargaining and other functions which have traditionally been performed by local unions to district councils. This is a trend most marked in construction industry unions and has been justified by the unions as necessary to increase the efficiency and effectiveness of the union.

Under the statute, officers of local unions must be elected by a direct vote of the members but officers of district councils and other intermediate bodies could be elected by delegates. Election of local officers by direct elections enabled members to have direct and more effective democratic control over those officers who dealt with matters of most immediate concern to the members. With district councils performing the functions of local unions, it is important that the officers be elected by direct vote if the vitality of democratic control is to be preserved.

This problem can be easily solved statutorily by a minor amendment to Section 401 (d) so it reads as follows: (underline to be added, parenthesis deleted)

"Officers of intermediate bodies, such as general committee, system boards, joint boards or joint councils which engage in negotiation, administration or enforcement of collective

circumvent the rules by "back door" hiring.

(2) Contract ratification

Many unions presently require ratification of collective agreements by a referendum vote of the members covered by the agreement. Membership ratification puts pressure on those negotiating the agreement to consult the members in formulating demands, informing the members of the negotiation and explaining what is agreed upon. Negotiating agreement is perhaps the most important function of unions, and is generally viewed by the members as the most important. A higher proportion of union members vote in contract ratifications referendum than any other membership vote. It provides the most important exercise of the democratic process.

But some unions give the union officers the power to make collective agreements without the consent of those covered. This is an open invitation to corruption and to collusion with employers. Denying members the right to vote on the terms which govern their working lives carries the implied message that they are not full participants but the passive objects of the employer's and union's agreement. It significantly reduces membership participation and reduces the vitality of the democratic process.

(3) Remedies for election violations.

Under present court decisions it is nearly impossible, prior to an election, to obtain correction of conduct which violates the requirements for a fair and democratic election. This includes rights guaranteed by Title I, the Bill of Rights. Courts have refused to act on the grounds that any remedy related to an election must wait until after the election, and then the sole remedy is with the Secretary of Labor to investigate, bring suit and to set aside the election and order a new election.

This refusal to grant pre-election remedies is obviously inefficient. The statute requires a fair election. It makes more sense to insure that the first election is properly conducted than to insist that an election which will be invalid be held, elongated proceedings to upset the election be followed, and then a new election be held at government expense. Courts should be specifically authorized to grant pre-election remedies.

Requiring that only the Secretary of Labor can bring suit to set aside an invalid election raises serious problems. The Secretary may not always be the most enthusiastic advocate of a losing candidate's rights, for the Department of Labor must deal daily with the existing officers of unions. Challenging an election upheld by the officers places the Secretary in conflict of interest. In addition, budget cuts limit the Secretary's resources and force the Secretary to give priority to those cases the Secretary considers most serious or the surest winners.

The solution to this problem is quite simple: follow the same pattern of enforcement in Title IV as in Title III. In Title III, suits to set aside trusteeships may be brought either by the Secretary of Labor or by a union member or subordinate body, but under Section 306, when a

complaint is filed by the Secretary, that suit becomes exclusive and the final judgement is res adjudicata.

There are other less important changes which are worth considering. Some of them have been included in the testimony of Herman Benson and in the proposals which the Association for Union Democracy presented to the Dunlop Committee. I will not try to identify or discuss those changes now.

As I have indicated, I am greatly concerned with protecting and promoting democratic processes in unions. The Landrum-Griffin Act was a great contribution to that end. However, the forty years since its passage has disclosed some of its defects and demonstrated that more needs to be done if the democratic rights of union member are to be adequately protected. I am prepared to be of whatever help I can to your Committee in developing proposals which will strengthen the statute.

Sincerely,

Clyde W. Summers

Summer address:
Route 1, Box 199
Castleton, VT 05735

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ADDENDUM H

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**IMPEDIMENTS TO UNION DEMOCRACY: PUBLIC
AND PRIVATE SECTOR WORKERS UNDER THE
LABOR MANAGEMENT REPORTING AND
DISCLOSURE ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND

THE WORKFORCE

HOUSE OF REPRESENTATIVES

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HEARING ON IMPEDIMENTS TO UNION DEMOCRACY:

PUBLIC AND PRIVATE SECTOR WORKERS UNDER

THE LABOR MANAGEMENT REPORTING AND

DISCLOSURE ACT

Wednesday, March 17, 1999

The committee met, pursuant to notice, at 11:25 a.m., in Room 2175, Rayburn House Office Building, Hon. John A. Boehner [chairman of the committee] presiding.

Present: Representatives Boehner, Petri, Ballenger, McKeon, DeMint, Andrews, Kildee, Romero-Barcelo, Wu, and Owens.

Staff Present: Lauren Fuller, Professional Staff Member; Peter Gunas, Professional Staff Member; Jason Ayeroff, Staff Assistant; Mark Rodgers, Workforce Policy Coordinator; Robert Borden, Professional Staff Member; Michael Reynard, Media Assistant; Deborah Samantar, Office Manager; Peter Rutledge, Senior Legislative Associate, Labor; Brian Kennedy, Minority Labor Counsel; and Shannon McNulty, Minority Staff Assistant, Labor.

Chairman Boehner. [presiding] Good morning, ladies and gentlemen. A quorum being present, the subcommittee will come to order.

I welcome our witnesses and those who have come today to show their interest in this issue. Under Rule 12(b) of the committee rules, any oral opening statements are limited to the chairman and the ranking minority member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if any members have opening statement that they wish to submit, they can include those in the hearing record. Without objection, all members' statements will be inserted into the record.

OPENING STATEMENT, CHAIRMAN JOHN A. BOEHNER, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Today's hearing begins a bipartisan look during this Congress at the issue of union democracy. I plan on conducting a series of hearings to lay the groundwork for strengthening the rights of rank-and-file union workers. By the term "union democracy," I mean all of the rights granted to union members by the Labor Management Reporting and Disclosure Act of 1959, and this will be the only time you will hear me give the entire title of that statute, or commonly referred to after its sponsors, the Landrum-Griffin Act.

We will hear today from three of the country's foremost experts in this area. They will educate the Subcommittee about the LMRDA, what the intent of the law is, how it has been working, where it has fallen short, and, hopefully, point us in the right direction to make sure Congress is doing all it can to protect the rights of American workers.

The LMRDA is all about making sure union rank and file have a full, equal and democratic voice in their unions' affairs. The Act was drafted to ensure that individual union members have enough information about, and say in, their union affairs that they can completely regulate themselves. Through democratic participation and the public disclosure of union financial

matters to their members, the drafters of the LMRDA sought to ensure union officials would be accountable to their members, and thereby protect members from corrupt or otherwise unwanted or undemocratic leadership. In addition to giving a right to financial information, the LMRDA protects, among other rights, free speech and assembly, the right to nominate candidates and vote in union elections, and the right to impose fiduciary obligations upon union officers, particularly in the use of union funds.

This subcommittee held four hearings in the last Congress on the issue of union democracy. Two of today's witnesses, Professor Clyde Summers of the University of

Pennsylvania Law School and Mr. Herman Benson of the Association for Union Democracy, testified last year and assisted in the drafting of the "Democratic Rights for Union Members Act," introduced last October. During this Congress, I trust we can continue to work together on both sides of the subcommittee to improve the LMRDA.

The subcommittee has seen, and as we will hear in testimony today, the goals of LMRDA are not always reached. Some union members, those who belong to purely public sector unions, are not even covered by the LMRDA. I want to discuss that gap in the law and what should be done about it. We are pleased to have Professor Stanley Aronowitz of the City University of New York here today to speak specifically to the public sector issue.

But some general thoughts before I introduce the witnesses. It seems to me that a union is not a private, profit making enterprise. Rather, unions exist to express the will of their members. Unions belong to the members, and the bottom line for any labor organization should be the will of the membership. It seems to me that most of the time, the media carries a story about organized labor and some injustice involving a RICO suit, or some other action by the Department of Justice. But there already exists on the books a law, the LMRDA, which is supposed to protect members. Unfortunately, it seems that too many are unaware of the law, and it also appears that the Department of Labor, which has jurisdiction over this Act, is not aggressively enforcing the law.

As the Subcommittee moves forward with this series of hearings, my intent is to look in a bipartisan manner at a vital piece of legislation passed four decades ago, and to examine whether we need to dust off the LMRDA and make some improvements.

Our first witness today will be Professor Clyde Summers of the University of Pennsylvania Law School. It was Professor Summers, who, at then Senator John F. Kennedy's request in 1957, served on a committee of experts to draft a "Bill of Rights" for union members which ultimately became Title I of the LMRDA. We are pleased that he is back before the subcommittee again to help us as we launch this series of hearings.

Our next witness will be Mr. Herman Benson. Mr. Benson is founder and former director of the Association for Union Democracy in Brooklyn, New York, a foundation formed in 1969 to promote the principles of internal union democracy. He currently serves as the Association's Secretary Treasurer and we are happy that he has returned as well.

Our next witness will be Professor Stanley Aronowitz of the City University of New York. Mr.

Aronowitz will enlighten us regarding the applicability of the LMRDA to public sector unions. He was recently interviewed in a 60 Minutes segment on the American Federation of State, County and Municipal Employees, which we will play momentarily as background for the kinds of issues we talk about when we say "union democracy" and for our discussion on public unions.

Let me say that our fourth scheduled witness, Dr. Seymour Martin Lipset, of George Mason University, is unable to attend today, but we will leave the record open for his written statement. At this time, I would like to ask my friend and the distinguished ranking member from New Jersey, Mr. Andrews, if he has an opening statement.

[The statement of Chairman Boehner follows:]

WRITTEN OPENING STATEMENT, CHAIRMAN JOHN A. BOEHNER, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES -- SEE APPENDIX A

OPENING STATEMENT, MINORITY RANKING MEMBER ROBERT E. ANDREWS, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Andrews. Good morning, Mr. Chairman. I want to begin by apologizing to you and the fellow members and the staff and to the panel for my tardiness today. I had blood work done at home. I was back in New Jersey this morning at a lab for a 7:00 a.m. appointment and they got to me about 8:15 a.m., so I do want to announce we will be having a new section of the Patient's Bill of Rights the next time we look at that.

[Laughter.]

Thank you for this opportunity. I am delighted we have such a distinguished panel today. I share your intent and the spirit of your remarks that we want to take a bipartisan look at the operation of this statute and its improvement.

I do want to say that I come at this from a perspective that may be somewhat different than yours, and I want to be clear that it is on the record. I believe that collective bargaining works. It is not perfect. Unions are not perfect. The collective bargaining process does not always work flawlessly. But I believe that collective bargaining, under the body of statutes and case law we have established and administrative decisions we have established in the country in the last five or six decades, has served the economic growth and the causes of economic justice very well.

I come at these hearings by asking a couple of basic questions. How might we consider fine tuning or improving the basic underlying statutes to make collective bargaining work better, to make unions work more responsibly for their members? No institution is without its flaws.

And the second question, which I think we should ask is what kinds of other changes might we consider in labor management practice? For example although it is outside the scope of this immediate statute, one of the areas which I think is flawed is the relatively light sanctions that

are imposed on an employer who fails to bargain in good faith. We have had in my area several instances where unions have won organizing elections. There has been a failure to bargain in good faith, as found by the National Labor Relations Board, in a matter of competent jurisdiction. And the penalties that are imposed for that failure in good faith are minimal to non-existent. It seems to me that if we are going to have a serious sanction or rather a serious right, the right to collective bargaining after a duly constituted election, then there needs to be a serious remedy as well. And that is one area that I would like to see us get into.

Finally, let me say with respect to the initial part of today's hearing and the airing of the 60 Minutes segment. It is worth seeing. It is indisputable that something terribly wrong happened to the rights of union members in New York City. It is indisputable.

But I do think the record should be balanced by some statements of some good things that occurred in the aftermath of this scandal occurring in New York City. The International Union of the American Federation of State, County, and Municipal Employees stepped in very forcefully and took what I believe are significant actions to clean up the mess that we are about to see.

Second, that international union has stayed on top of the situation and has introduced tough, stringent, effective new accounting, auditing, and election procedures, which I believe will benefit the members of that union very significantly.

And third, and I think the record would bear this out, there has been exemplary cooperation with law enforcement authorities, both in New York State and at the Federal level, by the members and leaders of the international union because they clearly understood the gravity of the problem that we are about to see.

It is very important that we look at this anecdotal and significant piece of evidence of a problem, and I concur that we need to look at it. But I also think it is important that the record show that where something egregiously wrong has happened, it be balanced by the finding that something significantly right has happened. And what has happened right here is that the international union has taken an aggressive, proactive posture in response to the problem; it has enacted remedial procedures in both the financial and election areas, and it has actively cooperated with the law enforcement activities that are ongoing.

So, I, again, want to thank the panelists for giving us their time this morning. I, again, apologize for my tardiness. It is the fault of the unregulated health care insurance industry here in America, and with that, I would yield back to the chairman.

Chairman Boehner. Well, thank you. We will now view the segment from 60 Minutes.

[The transcript of the videotape follows:]

"THE STATE OF THE UNION: DISTRICT COUNCIL 37." TRANSCRIPT OF 60 MINUTES VIDEOTAPE, PRODUCED BY JOHNATHAN WELLS. JANUARY 10, 1999 -- SEE APPENDIX B

Chairman Boehner. Before we begin, we are going to remove this TV that separates the witnesses from the members. Given that we have just one panel today and with just three witnesses, I think we will waive the customary five-minute rule as long as you do not get carried away.

[Laughter.]

And with that said, Professor Summers, you may begin.

STATEMENT OF CLYDE SUMMERS, JEFFERSON B. FORDHAM PROFESSOR OF LAW EMERITUS, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL, BOARD OF DIRECTORS, ASSOCIATION FOR UNION DEMOCRACY, PHILADELPHIA, PENNSYLVANIA

Mr. Summers. My name is Clyde Summers. I am Professor of Law at the University of Pennsylvania. I have studied, written, and been involved in these problems of internal union affairs and union democracy for a little over 50 years, and it is from that experience that I want to speak. My limited purpose here today is to give some background concerning the Landrum-Griffin Act, I will not use the long name, and to explore its premises and purposes because it seems to me that only if we understand fully what the purpose and premises of that statute were that we can make any sense out of what might be done to improve the statute.

To do that, we have to start with the roots. And those roots go back to the passage of the Wagner Act in 1935. The essential premise is that the statute declared it to be the national policy to encourage the practice and procedures of collective bargaining. And the premise of that statute, one which is, for the most part, lost sight of today was that it was to provide a system in which workers would have some effective voice in determining the terms and conditions of their employment. It was, in the words of those days, "to establish industrial democracy."

And Senator Wagner, who was the architect of that statute, explained its purposes in this way. And I will read the quote.

"The principles of my proposal were surprisingly simple. They were founded upon the accepted facts that we must have democracy in industry as well as government; that democracy in industry means fair participation for (sic) those who work in the decisions vitally affecting their lives and livelihood; and that workers in our great mass production industries can enjoy this participation only if allowed to organize and bargain collectively through representatives of their own choosing."

Collective bargaining, however, could not serve this purpose if the unions were themselves not democratic, because industrial democracy could be meaningful only if those who represented the workers in the process of bargaining reflected the wishes of their members. So, the industrial democracy in unions is really an essential element for collective bargaining and the purposes of collective bargaining.

So I might put it this way: the basic premise of the Landrum-Griffin Act was that the ultimate goals of collective bargaining can be achieved only if union members are guaranteed their democratic rights with the union. And let me say that at the time of the passage of Landrum-Griffin, among the strongest supporters for that statute were those who believed the most in collective bargaining.

The focus of Landrum-Griffin, therefore, was to protect the democratic rights of union members and the democratic process in union decision making. Senator McClellan, whose investigation stirred the demand for legislation and lasted two or three years, in introducing his Bill of Rights for Union Members as an amendment to the committee proposal stated this:

"I do not believe that racketeering, corruption, abuse of power or other improper practices on the part of some labor organizations can be or ever will be prevented until and unless the Congress of the United States has the wisdom and courage to enact laws prescribing minimum standards of democratic process and conduct for the administration of union affairs. The Congress should prescribe and define by law what the rights of union members are, place in them by democratic process and (sic) power to secure those rights, and protect them in their efforts to do so. If this bill is enacted into law, it would bring the conduct of union affairs and to union members the reality of some of the freedoms from oppression we enjoy as citizens by virtue of the Constitution."

And so the whole focus of the Landrum-Griffin Act was to protect the democratic rights of members as an instrument in collective bargaining. There was a guiding principle to limit governmental intervention to the minimum, to limit intervention in terms of union decision making, to leave unions free to make their own decision. But this was to be accomplished by guaranteeing the democratic process inside the union on the logic, the philosophy that if the union members made these decisions on their own, that these were democratically made, this gave a legitimacy to those decisions. And society generally should give wide deference to those substantive decisions.

So although the statute intervened in union affairs, it was for the purpose of guaranteeing a process which would enable government to stay out of union decision making. The statute is aimed at the procedures, not at the union decision, to guarantee the procedures and then accept the decisions made through the democratic process. The statute protects and enhances the democratic process by guaranteeing what I could classify as five basic rights.

First is the right to know. The union members can have an effective voice in the union only if they know what their officers are doing. And what you have just seen, I think, is a good example of that; that the members did not know what their officers were doing. And so in the statute, Title I, there is a provision that union members should be provided copies of the collective agreements that govern them. A simple matter.

Title II requires financial reporting of unions with the Department of Labor. But more important, it requires that financial reports be given to the union members so they will know. But of more crucial nature is the provision in the statute that a union member, on showing probable cause, has a right to examine the books; to see, in more detail, how the union finances are being managed. In what you have just seen, if we had that provision, all of this could have been uncovered by a member's suit to examine the records behind whatever reports were given.

The second basic right is the right of free speech and assembly. This is the right of the union members to speak their voice and to organize within themselves as caucuses so that they may criticize the union officers. They may charge the union officers with corruption. They may have the right to distribute the literature. And so free speech becomes, in a sense, the key element in terms of providing the democratic process. And so you can see from what you have just seen from the videotape, one man with the freedom of speech can ultimately work a very substantial change in union policy, and particularly in eliminating corruption.

The third basic right is the right to participate in decision making, so there in the Bill of Rights,

is the provision that every member shall have equal rights to participate. Many courts, most of the courts, have said equal rights does not mean just formal equal rights. It means a meaningful vote, and so where union officers put something to a referendum, in a loaded proposition, or refuse to give full information about it and try to keep members from publicizing what the meaning of it is, this is considered a denial of equal rights. And it is a denial of equal rights because what it means is the union officers, the incumbents, by the control of the process can control the outcome. It is to prevent animal farm, which is, all pigs are equal but some are more equal than others. This right ensures that the members will have equal rights with the officers.

And the fourth basic right is the right to fair elections. Title IV has elaborate provisions concerning protection of the campaigning process and limiting the use of union funds for the campaign. So it has a rather comprehensive regulation, not just of the voting, because by the time of the voting, it is all taken care of. The problem comes in the right of equal participation on the campaigning that candidates have some kind of an equal choice.

And the fifth basic right is the right that union officers have a fiduciary relationship. So the statutes provides Article 5 for that fiduciary relationship. These are the basic rights.

Now, I would like to make one point that is frequently not recognized, and it is recognized only if you really become familiar with the way unions function. Unions are political institutions. And whether they are corrupt or whether they are dictatorial, or whether they are fully democratic, they are political institutions. But there is a character about unions which is different from our civic political structure, and that is that in unions there are no two party systems. The unions are a one-party system, because the incumbents in power have control over most lines of communication. They have the patronage of paid employees. They have favors to give out and there is no organized opposition party. You get democracy in unions only if you find some way of adequately protecting those who raise protests and give them some chance to organize and call the officers to be accountable. Freedom of speech in the union needs to be broader than freedom of speech in the civic society for the simple reason that, in terms of political speech, in the civic society, we have two parties and they provide a basis for debate. But without two parties, you have to protect the individual, like Mr. Rosenthal, to come out and speak as lonely individuals who then can bring attention to it.

So it seems to me that what is important is thinking about what to do in the statute. You have to think in terms of how to preserve democracy in a one-party system. How do you make it meaningful in a one-party system? That seems to me to be the great challenge of trying to manage this situation.

Well, I want to close where I began. The demand that unions be democratic derives from their role as collective bargaining representatives. It rests ultimately on the function of collective bargaining to give employees a voice in the decisions that affect their working lives. It has meaning as an adjunct, an element of collective bargaining. The commitment to union democracy must rest ultimately on our commitment to collective bargaining as an instrument of industrial democracy. For the ultimate goal is industrial democracy, and it can come only where workers can speak through representatives of their own choosing.

In my view, those who are not fully committed to promoting and encouraging the practices and procedures of collective bargaining have no standing to discuss, much less demand, union democracy. Thank you.

[The statement of Mr. Summers follows:]

**WRITTEN STATEMENT OF CLYDE SUMMERS, JEFFERSON B. FORDHAM
PROFESSOR OF LAW EMERITUS, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL,
BOARD OF DIRECTORS, ASSOCIATION FOR UNION DEMOCRACY, PHILADELPHIA,
PENNSYLVANIA -- SEE APPENDIX C**

Chairman Boehner. Well, thank you, Professor Summers. Certainly, after 50 years of working in this area, I think you qualify as an expert.

Mr. Benson, you may begin.

**STATEMENT OF HERMAN BENSON, SECRETARY-TREASURER, FOUNDER AND
FORMER EXECUTIVE DIRECTOR, ASSOCIATION FOR UNION DEMOCRACY, BROOKLYN,
NEW YORK**

Mr. Benson. My name is Herman Benson. My background is a toolmaker and machinist, and I have been a member of several unions in that connection such as the United Automobile Workers, the Rubber Workers, International Union of Electrical Workers, the United Electrical Workers; and for six years I served as an aide to a great reformer, Frank Schoenfeld, when he was secretary-treasurer of District Council Nine of the Painters Union in New York City.

I have been active in this field since just before the Landrum-Griffin Act was passed, and I was a founder with Clyde Summers of the Association for Union Democracy back in 1969. The Association for Union Democracy I would describe essentially as a civil liberties organization for the rights of members inside their unions. And I would emphasize in this connection that we support the rights of unionists regardless of their ideological, social, or political leanings. We would support the rights of unionists from left, right, and center against abuse from anybody center, left, or right.

Now, in earlier sessions, the committee has already heard voluminous testimony, and Clyde Summers now has even amplified it further, about how important the Landrum-Griffin Act has been in strengthening the rights of members inside their unions. I am sure Professor Aronowitz will speak about how important it is to extend those rights to members of public employees' unions who are excluded from the Act.

At this point, private employees are covered by the Landrum-Griffin Act. Federal employees are covered, by extension, by the Civil Service Reform Act and, by analogy, have the rights written in Landrum-Griffin Act, with slightly different enforcement procedures.

But public employees are completely excluded, and this has been a real gap in the protection of workers rights because this is the largest growing sector of American unionism, which already encompasses close to 17% to 20% of membership of the American labor movement, and it is growing. So that if they are not included, you are excluding a vast proportion of the union membership from the rights that we take for granted.

Last Congress, the committee itself after hearing testimony came up with what I think is an excellent bill, H.R. 4770, which has two excellent proposals for remedying defects in the Landrum-Griffin Act. At previous sessions, we have heard from many members of various unions, including, at one point, some 200 carpenters who expressed their feelings about weakness in the Landrum-Griffin Act and the necessity for strengthening those provisions. And I

I think the committee has responded to those concerns in two of the major provisions that are included in H.R. 4770, which I think is an excellent proposal.

For at least the last 30 years, the Association for Union Democracy has functioned as kind of a private LMRDA enforcement agency. We have been in contact with literally thousands and thousands of union members in the course of these years, covering virtually every major union in the United States, helping them to understand what their rights are and actually assisting them in enjoying these rights.

And so, I wish you would bear with me when I cite some of our experiences in this connection and hopefully that the committee members will consider this experience as they continue their deliberations.

At first glance, this might seem to be a very simple area of work. We are dealing with motherhood issues of fair play, fair elections, free press, free speech, and who could possibly be against it. And yet, despite that appearance of simplicity, this has been a very difficult area to work in. I must emphasize that. This is one of our key lessons that we have learned in this 40 years of experience in trying to enforce workers rights.

And the reason why this is a difficult area, despite its apparent simplicity, is that we, the Association for Union Democracy and those that have been working with us, have been caught in a cross fire between two major contending partisan camps of the national, social, and political arena. I cannot think of any better code word to define them, despite its inadequacy. Let us call them conservatives and liberals.

Liberal political representatives are convinced that the public interest requires a strong labor movement, but that the labor movement today is too weak, and it has to be defended from any measure or attack that would undermine that strength. They are, therefore, so suspicious of any thing that smacks of criticism of unions that their knee-jerk reaction has been to reject any effort to strengthen workers' rights inside their unions as an attack on the labor movement. I am trying to describe here, and not evaluate.

Conservatives on the other hand, feel that unions represent a special interest group that already wields too much power and influence in America, and that the public interest requires that its powers should be curbed or controlled. In that connection, they emphasize the goal of strengthening the rights of workers or even the rights of society as against unions. I must emphasize that.

And in this confrontation, between these two main wings of discussion on labor and collective bargaining problems, in an odd way they sort of buttress one another, because each side strengthens and stiffens the back of the other. The more union officials and their political allies resist fair play inside unions, the more they give ammunition to those who would curb unionism.

On the other hand, the more the other side demands restrictions on unions, demands rights as against unions, the more they strengthen the hand of those or give ammunition to those who resist the defense of workers' rights inside their union; that is, union democracy.

Those 200 construction workers who were down here at these hearings were cheering our proposals for LMRDA enforcement and strengthening. They were good union members who want stronger unions and stronger union democracy.

In any event, what I call a sort of symbiotic relationship between these two main contending

champs, makes it very difficult to sound a clear call for improved union democracy. And what I would like you to really think about is the following: that if we get bogged down in the familiar old debates, we are off to the races. We can have the same old arguments for the same old sides in the same old way resolving nothing and accomplishing nothing.

I just want to recall to your memory that the Dunlop Commission, which came and went, to which we presented a whole series of proposals for reforming Landrum-Griffin, accomplished nothing. And the sharp divisions between these two camps, however you want to define them, are not likely to go away. If we are to make any legislative progress on union democracy after 40 years of Landrum-Griffin, we have to find some way of transcending that division and not get mired in it.

And the outstanding achievement of these subcommittee meetings, which I have followed very closely with optimism, has been its success so far in finding that line which remains strictly on the grounds of fair play in unions. H.R. 4770 does this very well. I think extending it, these same principles, to public employee unions would make the greatest advance in the field of union democracy since the adoption of the Landrum-Griffin Act in 1959. Thank you.

[The statement of Mr. Benson follows:]

WRITTEN STATEMENT OF HERMAN BENSON, SECRETARY-TREASURER, FOUNDER AND FORMER EXECUTIVE DIRECTOR, ASSOCIATION FOR UNION DEMOCRACY, BROOKLYN, NEW YORK -- SEE APPENDIX D

Chairman Boehner. Mr. Benson, thank you. Professor Aronowitz.

STATEMENT OF STANLEY ARONOWITZ, PROFESSOR, CITY UNIVERSITY OF NEW YORK

Mr. Aronowitz. My name is Stanley Aronowitz. I am distinguished professor of sociology at the Graduate School of City University of New York. I am the author of four books on labor and many books on other things; and about 125 articles. I was myself a union representative for the Oil, Chemical, and Atomic Workers International Union and for the Amalgamated Clothing Workers Union, which is now part of UNITE. I was an officer of Local 1724 of the United Steel Workers. I worked in a plant for about eight years. And I have followed with my most recent research, the situation in public employees not only in New York, but also around the country.

When Landrum-Griffin was passed in 1959, unions in public employment represented a handful of employees. There were no contracts at the State and local level or at the Federal level for public employees. Teachers were not organized. Municipal administrative employees were not organized. Many other categories. State employees were not organized. My friend Herman Benson uses a figure for 1999 of 17 percent to 20 percent. The figure is more like a third of the labor movement today is in public employment. This is an enormous growth in the last 40 years. There are now more than 5,000,000 state, county and municipal employees in public employment and Federal employees in public employment who are in unions.

And since then, the burden of labor relations law for public employees has been carried by the States and by local communities. Nearly none of those laws provides for the reporting and disclosure procedures of Landrum-Griffin. None of those laws provides a full Workers Bill of Rights that is contained in Landrum-Griffin. And what you saw this morning in the segment on

60 Minutes about D.C. 37 is in some respects the fruit of the exemptions that were made in 1959.

I would propose to you the following proposition. While those exemptions in 1959 may have had validity in terms of the representation that unions had of public employees, and also with respect to the longstanding American tradition of States rights, in 1999, they have no validity. Today, we are de facto in the labor relations we have a two-tier discriminatory system between private and public employees with respect to basic civil liberties and civil rights. And that is really what needs to be remedied and remedied very seriously.

I have followed D.C. 37 very closely, and one of the reasons that D.C. 37 is so startling as an example is that it is unlike the McClellan hearings of 1957, which largely addressed corruption in unions that had been known for long-term corruption, like the Teamsters, the Longshoremen, many other unions like the current crisis in D.C. 37. D.C. 37, by the way, is a union of 120,000 municipal employees of New York, the largest single district council in the American Federation of State, County, and Municipal Employees, was led by people, as I said in the tape, by people who surrounded themselves with the mantle of civil rights, civil liberties, and what we be called by Herman Benson in his previous testimony, the liberal wing of the labor movement. These were not people who had had long-term, well-known mob ties or anything like that.

And I think that what is really at the bottom of this problem is the arrogance of power, that is to say knowing that workers do not have the kind of rights that private sector workers enjoy under Landrum-Griffin, knowing that there are really no strong oversight procedures from levels of State or local government on union finances, and knowing that all they had to do, which they did, was to get the approval of the executive board of the local for these almost a million dollars worth of expenditures for one local union president; \$50,000 of turkey profiteering and so. They felt that they were well within the existing law.

When Mark Rosenthal, whom I have interviewed on these issues, asked for information and could not get it, he knew that he had to run for president because as a president in Local 983 of the State, County, and Municipal Employees, he would be entitled, at the very least, to his own local's financial information. And, of course, when he received his own local's financial information, he discovered terrible violations of members' rights.

I have known Stanley Hill, the executive director of D.C. 37, for many years. We are on first name basis, and I do not believe Stanley Hill or any of those individuals are bad people. That was not at what was at issue. It was the arbitrariness and the arrogance of power.

Now, in my written testimony, I have posed the one option that I thought was the most realistic today to remedy some of this situation. I suggested that there might be a mandate or a standard established by legislation that would require state and local law to have a Workers' Bill of Rights and adequate reporting and disclosure procedures and that they set up adequate agencies, investigation and auditing procedures to be able to do this.

Since then, I have thought about it with some help from my colleagues, and I think the simplest thing to do would be to remove the exclusions from the Federal Act for state, county, and municipal employees. If the Federal employees have a parallel Act it perhaps would not require that the Federal employees be included. That would have to be examined in terms of the relative merits of both of the laws. But, the local laws that govern state, county, and municipal employees do not, I promise you, contain in the vast majority these kinds of protections. So if the protections were extended, that would be the most expeditious way of proceeding.

Now, having said that, I must say that it would also require, and I think this is probably what is

one of the most important reforms, that enforcement be improved. And improved enforcement really means that the Department of Labor needs staff to be able to make the investigations and to be able to make the audits for perhaps one-third more employees than they were covering in the past.

I think one of the great problems and dangers in the D.C. 37 case was brought to the attention of this subcommittee by Mr. Andrews. I think he is perfectly correct, not every union conforms to the mess that is D.C. 37. Many public employees' unions are actually very well run, very clean, and, relatively speaking, democratic. I use the word relatively speaking democratic because many of the provisions of the Workers' Bill of Rights are being observed.

However, that is not the point. If one group of workers, a single group of workers in this country, is deprived of their rights, then Congress has an opportunity and I believe an obligation to address it. But the fact is that it is not one group of workers. The arbitrariness that has been evidenced in other unions that have large numbers of public employees, and I would cite to you an example which the union itself had to take care of: the Service Employees International Union, Local 32B, 32J in New York, which is a union of 55,000 workers, in which the president of the union recently stepped down under a similar cloud. And, of course, you know that SEIU is under the leadership of today's president of the AFL-CIO, John Sweeney, who came out of that union.

This shows that no union is perfect and that members' rights are not being protected in other places. I am sure that if we actually did a significant national survey, and I intend to do one, we might discover problems exist in other public employees venues. It would be inevitable for the reasons that I have cited.

So, in summary, what I would like to propose is that the most desirable way of approaching this inequity is to, and I am reiterating what I said before, remove the exemption of public employees from the Landrum-Griffin Act for State, county and municipal employees.

I want to say finally one word of explanation, perhaps. Why was local and State law permitted to not conform to the Federal law in State labor relations and labor relations of public employees? I have ventured in my testimony two explanations.

The first explanation was that the greatest concern in the 1950's and the 1960's of the fledgling public employees was to gain representation and collective bargaining. And they were terribly interested in getting laws at the state and local level that would give them representation and the ability to represent unions of their own choosing. I may point out to you that in the State of Texas and the State of Virginia and many other States, they still do not have the right to collective bargaining in public employment. So there is another reason in terms of the NLRA to extend the NLRA to public employment, because we do have cases of blatant discrimination.

But the second reason was rather different. It was a political reason. In the period from the 1960's and 1970's until today, as public employees grew stronger, their unions and their union leadership had the capacity to restrain legislatures from making such provisions of Workers' Bill of Rights. As Herman Benson has said, it does not follow that because you are a civic democrat that you are union democrat. We have, as Clyde Summers has said, virtual one-party rule in most unions, and public employees are no exception.

So I think that we have no option at this point, unless we are going to maintain the inequities and a patchwork situation at the State and local level, we must make public employees' unions subject to the Federal law and move quickly and expeditiously. Thank you very much, Mr.

Chairman.

[The statement of Mr. Aronowitz follows:]

WRITTEN STATEMENT OF STANLEY ARONOWITZ, PROFESSOR, CITY UNIVERSITY OF NEW YORK -- SEE APPENDIX E

Chairman Boehner. Well, Professor Aronowitz, we thank you for your testimony and thank all of the witnesses for coming in today and sharing with us their background and their experience with this Act.

Let me begin with Professor Summers. You have watched LMRDA over the years, can you briefly point out some of the successes and some of the failures that you have seen?

Mr. Summers. Well, let me point out one major success, and that is the United Mine Workers. The United Mine Workers had a contest for an election. And it was because of Landrum-Griffin that the government had the ability to move in and order a new election. In the new election, the opposition to the incumbent officers won the election, because it was a supervised election. And there have been other cases. You have situations of local unions. In local unions where some member begins to criticize, for example, in District Council Number Nine of the Painters' Union, a group criticized the courts, and then a member was expelled because of that. The court said, under Landrum-Griffin, you cannot do that. And the end result was that they were in opposition to what turned out to be a corrupt union leadership. They ultimately won the election and got control of the union. So there are a lot of these examples.

But let me say I think the greatest impact of the Landrum-Griffin Act comes in two points. First, the Landrum-Griffin Act said to union members, you have a right to a democratic union. You have democratic rights. And that symbolic statement of the statute gave union members a feeling that yes, we do have democratic rights. And so the operation of the political system in many unions changed. Because there are the protections, union members feel more free to criticize, more free to run for union office, so that we can see cases where it has this effect. But we cannot measure the effect it has when it does not come to the crisis that gets into litigation.

I think that it has had a major impact. I think there are points of weakness in the statute. The two that are in the bill that was proposed here earlier by the committee last spring. I think there are other points of weakness in the situation. I think that in the election article, there needs to be more protection of the opposition to get a more balanced approach. I think personally that there should be votes on union contracts, because that is the most important thing that unions do. And so the members should be able to vote on the union contracts. In my written statement I indicate a number of points at which I think the statute could be increased.

Mr. Benson. Could I add something to that?

Chairman Boehner. Certainly.

Mr. Benson. All right. The question is, to what extent has the LMRDA been effective? It has been ineffective in various other ways, but to what extent has it been effective.

In the most general way, I would say there has not been a single advance of any significance in the field of union democracy since the adoption of the Landrum-Griffin Act that has occurred without the support and intervention of government, either under the LMRDA or of courts, or law enforcement authorities.

The support of power of a democratic government is absolutely essential to any advances in the field of union democracy. Specific examples: the Marine Engineers Beneficial Association, recently. The top officers took millions of dollars out of that union treasury. They went to jail, by the way. That union was transformed and is now a democratic and decent union because members utilized their rights under the Landrum-Griffin Act. They had a reform movement, which used those rights and threw out the old officials even before they went to jail.

The Master, Mates and Pilots Union. The union, which was guilty of corrupt and illegal elections, using its rights under Landrum-Griffin, threw them out and established a democratic new administration.

International Brotherhood of Electrical Workers. For 40 years they had clauses in their contract, in their constitution, that were illegal under LMRDA, which expelled, disciplined, and fined hundreds, probably thousands, of members. Using their rights under the Landrum-Griffin Act, members went into court and succeeded in throwing out all those provisions so that members of the International Brotherhood of Electrical Workers can now exercise their rights to form groups and run organized campaigns for office without being intimidated and expelled.

Iron Workers Union. The Iron Workers had a clause in their constitution which forbid any local union from communicating with any other local union about union business without permission of the international executive board. Sounds fantastic? It was there. Using their rights under the Landrum-Griffin Act, members went to court and expunged that clause from their constitution.

These are only some of the most outstanding examples. The greatest achievement, of course, was in the teamsters' union, where members exercising their rights were able to break the hold of organized crime over their international union office. So that the record is clear, the Landrum-Griffin Act has been effective in making a change in the internal atmosphere in the American labor movement. But there have been many serious defects. The Act is not enforced aggressively enough, and there are many extreme areas in which union officials were able to evade provisions of the law, and they should be changed. But the record is clear.

Chairman Boehner. Well, first, let me ask this question: Do most union members understand their rights under LMRDA, and is there some process for informing them of their rights under the law?

Mr. Aronowitz. May I answer that?

Chairman Boehner. Professor.

Mr. Aronowitz. The answer to your first question is no. I think most union members only become aware of their rights when they are violated or because the union member has decided to challenge the leadership of the union. And they do not normally understand what their rights are. Many unions still operate under conditions of extreme intimidation and ignorance.

One of the ways of dealing with that would be to have an extensive educational campaign among rank-and-file members; that is, a handbook, some kind of public affairs programming on the media that would allow members to understand what their rights were. To my knowledge, no such campaign has been conducted, at least not in recent years.

The problem is that there is no two-party system, because there is no institutionalized opposition in almost any union. You had professor Lipset scheduled today. He wrote a famous book, with James S. Coleman, called *Union Democracy*, about a union called the International Typographical Union, now merged with others, which had an institutionalized two-party system. No other union, to my knowledge, has an institutionalized two-party. It would always be in the interest of the opposition, the out party, to make members aware of their rights, because the out-party would be naturally interested in getting that kind of information out.

But at this moment, my guess is that when a union or Mark Rosenthal, for example, who you saw today, wanted to challenge his leadership, he had to find a lawyer to tell him his rights. And the number of lawyers available who would talk to a Mark Rosenthal, who is an outsider, in New York, or for that matter in other places around the country, are very small. And it is organizations like the Association for Union Democracy that makes the few lawyers who really will talk and tell people their rights available, to which we should be grateful.

Chairman Boehner. Mr. Benson.

Mr. Summers. Let me only say_

Chairman Boehner. Professor, go ahead.

Mr. Summers. A word about the particular question and that is that there is a provision in the Bill of Rights, Section 105, that is supposed to require this kind of information be distributed. But there is no enforcement provision. And AUD has been trying to litigate to get some court ruling to require unions to regularly provide union members with information concerning the provisions of the statute.

So we have the odd thing that an employer must post in the plant workmen's compensation law, EEOC, all of these, but there is no requirement or distribution concerning union members' rights and no effective device.

Chairman Boehner. Let me ask one more question, and then I will turn to Mr. Andrews. I will have other questions later and we will do a second round.

Mr. Benson, the examples you pointed to, of success with LMRDA over the years, all of the examples you used came about as a result of clear corruption, abuse of power, that became known in some way shape or form.

It appears to me that if LMRDA were going to work as it was intended, these abuses would not have occurred originally. If, in fact, there had been more information given to union members in a more timely way, in a more complete way, those abuses would not have occurred to begin with. And what I am trying to root out here is, as we look at how do we improve this Act, how do we dust it off and bring it up to the 21st century? How can we make changes that will prevent the abuse from occurring in the first place?

Mr. Benson. There is no way to prevent abuses.

Chairman Boehner. To minimize abuses then.

Mr. Benson. Yes, right. I mean, the only thing you can do is to afford recourse to those who want to get rid of abuses. You know, we are not only talking about these abuses in the labor movement, we are talking about humanity and society and civilization.

If we are talking about how can we strengthen the Landrum-Griffin Act, I can start talking about this at quite some length. Clyde Summers could double my time on it. And we have entered into the record our presentation to the Dunlop Commission, if you remember it, in which we, the Association for Union Democracy, have presented a long dossier on how to improve provisions of the law.

I will just cite a few, and I am not proposing that you do something about it at the moment. I will get to that in a second. But I will just cite. Well, let us take Section 105, which Clyde Summers mentioned. It is a simple provision that says, labor unions shall inform their members of the provisions of this act. Some of them did that once in 1959. Since then, no union has ever conformed with that Act. The provision for enforcement is by private suit so that members have to get a lawyer, pay a lawyer, and they have to risk retaliation from within their union in order to enforce it. Simple thing. Section 105 should be enforceable not only by private suit, but by the enforcement agency, which happens to be the Department of Labor.

Let us take the Department of Labor. The Department of Labor is not an ideal agency for enforcing the Act, because for 99 percent of their activity they have to maintain close relations, and they should. I am not saying that they should not. Just like the Department of Commerce is supposed to help business, the Department of Labor should help unions. Fine, I agree with that.

But if 99 percent of their work requires cooperation with unions, it is impossible for them to do an effective job with that one percent, which means antagonizing union officials. So you have got a problem with the very agency of enforcement. That is one of the problems. Tell me when you get tired?

Chairman Boehner. It is not that I am tired of listening, but I want to respect the time of my colleagues.

Let me ask you this very short additional question. If the Department of Labor should not be the enforcing agency, which department should be?

Mr. Benson. Well, there are different opinions. Some people say the Department of Justice should do it directly. Others say there should be a special agency, but the reason why I am mentioning this is to ask you to exclude that from your thinking at the moment, because if you try to get into, at this point, some of these very complex and difficult issues of Landrum-Griffin, you are not going to get anywhere.

To accomplish something at this point, and I am getting back to my original statement, we have to get something that is clear, simple, and almost incontestable. Something that really stands out as an easy, simple concentrated thing. The three areas that we have now are, first, removing the presumption of validity for 18 months on the trusteeships; second, the right of workers for the direct election of all union bodies which are take-over collective bargaining, like district councils; and third, which would be a tremendous advance, is removing the exemption of public employees from Landrum-Griffin. If you did that, you would be making a tremendous contribution.

To try to get into all the other complicated areas of Landrum-Griffin at this point I think would be self-defeating.

Chairman Boehner. Well, thank you, and the Chair recognizes the gentleman from New Jersey.

Mr. Andrews. Thank you, Mr. Chairman. Thank you to the panelists for very thought-provoking and well-reasoned testimony.

Professor Aronowitz, I think I read one of your books when I was in college.

Mr. Aronowitz. Many people do. False Promises, I bet.

Mr. Andrews. I think it was False Promises, and I enjoyed it very much, and it is a pleasure to have you here today along with your colleagues.

I want to begin with Professor Summers. On page four of your testimony, you make a statement that there is little question that direct elections make union officers more responsive to their members or strengthen the democratic process. And this is in the context of international or national or intermediate bodies.

What criteria did you use to measure effectiveness? Is it a quantitative set of criteria? Is it qualitative? How do you measure union officers who are more responsive versus those who are less responsive?

Mr. Summers. Well, you have to examine the political process. If you have officers that are

subject to direct election, they are inevitably more responsive to the members who vote.

Mr. Andrews. Yes.

Mr. Summers. If you have a delegate structure, they are one step removed, and as a consequence, they are concerned with pleasing the delegates. They are not concerned with pleasing_

Mr. Andrews. But what do we mean by the word responsive? Would we measure it by raises that were gained in a collective bargaining agreement or by increases in pension benefits? What is the measurement of responsiveness that we are looking for?

Mr. Summers. The measure of responsiveness is the extent to which the union officers reflect the desires and demands of the members, and whatever those demands are. Of course, they cannot get everything the members want, but at least the members should make the decision and should have the voice. And what I mean by responsiveness is that the officers listen to and give weight and consideration to the voice.

Mr. Andrews. I guess my only question, and it is really a rhetorical question is that it seems self-evident that if you have to depend on someone for their vote, you are going to be more responsive to them in an anecdotal sense. You are going to return their goals. You are going to return their letters. You are going to attend their meetings. But is not a more forceful measurement of effectiveness for a union leader the benefits and economic advantages he or she accrues for their members?

Mr. Summers. No.

Mr. Andrews. You do not think so.

Mr. Summers. Because the root of the whole problem is that collective bargaining was to give voice to the members. It was not just to get them raises and benefits. It was to give them a democracy within the plant. And so if you simply measure a union by whether they deliver to the members, then it seems that you have excluded one of the fundamental purposes of the collective bargaining.

Mr. Andrews. Of course, I am not suggesting that that be the only measurement, but I am just wondering what the measurements ought to be.

Mr. Benson, I want to ask you a question.

Mr. Benson. Oh, could I add to the question you just asked?

Mr. Andrews. As we have limited time, I would prefer to just ask you a question.

Mr. Benson. Yes, okay.

Mr. Andrews. I assume that if a higher unit of a union, be it an intermediate or a national, does not have a presumption of validity on the first 18 months of a trusteeship, that they would be less likely to impose that trusteeship because it may visit some liability or some litigation or some other negative things. Is that a fair statement? Do you think they would be less likely to impose trusteeships?

Mr. Benson. It is a fair, but incomplete statement.

Mr. Andrews. Okay. Can I just follow up? Okay, finish.

Mr. Benson. If the 18-month trusteeship was the pride of the validity_

Mr. Andrews. Right.

Mr. Benson. Union leaders who wanted to impose a legitimate trusteeship_

Mr. Andrews. Right.

Mr. Benson. To end corruption or to improve democracy would not hesitate to establish such trusteeships. Union leaders, however, who use trusteeships in order to cover up for corruption and to prevent reformers from throwing out corrupt officials, or use trusteeships in order to silence dissidents in their unions would have to think twice and three times before they impose such improper trusteeships.

Mr. Andrews. But if the validity of the trusteeship were challenged, who would determine whether the trusteeship was valid?

Mr. Benson. Under current law, there would be two avenues to challenge the trusteeship, which already exists. One would be through the Department of Labor.

Mr. Andrews. Which is administrative litigation, correct?

Mr. Benson. Yes.

Mr. Andrews. You have to hire lawyers and do discovery and have hearings.

Mr. Benson. No, presumably you do not have to hire a lawyer. If I bring a complaint to the Department of Labor.

Mr. Andrews. Right.

Mr. Benson. Presumably, I do not need a lawyer. The only reason I need a lawyer is that it has not been an effective enforcement agency.

Mr. Andrews. No, but would not the officers of the international or the intermediate unit have to be represented by counsel in that kind of proceeding? Would not the people imposing the trusteeship have to hire counsel?

Mr. Benson. Not before the Department of Labor, no. They would probably need one in court. They could go pro se, of course.

Mr. Andrews. I would be very surprised if they did not retain counsel in a situation like that because of the complexity. I am just making the point that there is a risk and an expense involved with this that might deter the imposition of legitimate trusteeships. We just saw in this 60 Minutes segment the imposition of a legitimate trusteeship that I think deserves the presumption of validity because there is a clean up process going on. Do you think there is any risk that that would be deferred?

Mr. Benson. No, and the case of D.C. 37 trusteeship is a very poor example, because they acted in that case belatedly and reluctantly, and it was only under the pressure of the Manhattan District Attorney, who was pressing criminal charges. And it was under the pressure of the formation of a committee for responsible unionism that the union moved.

Mr. Andrews. In your experience.

Mr. Benson. But that trusteeship would be so obviously justified.

Mr. Andrews. In your experience, could you estimate what percentage of trusteeships you think are justified and what percentage are not?

Mr. Benson. I cannot answer that because the Labor Department has ceased giving information. I could at one point, it would be possible to answer that. But the Labor Department used to issue annual reports on its functioning under the Landrum-Griffin Act. Some years ago, they stopped making those reports, so it is now impossible in the ordinary course of events for any ordinary citizen to give you an informed answer to that question.

Mr. Andrews. That sounds like something we ought to correct. Professor Aronowitz, I want to ask you a question. You advocate the extension of the protections of this statute to public employees, and you note that it is presently limited to activities that related to interstate commerce.

Mr. Aronowitz. That is correct.

Mr. Andrews. On what constitutional basis could we extend the protections of this Act to public employees?

Mr. Aronowitz. Well, there are two possibilities. In my testimony I said one way of extending them would be to set a Federal standard and require States to meet the Federal standard.

Mr. Andrews. But what would be the constitutional basis for that?

Mr. Aronowitz. Well, I think the constitutional basis would be, among other things, the First Amendment of the Constitution, free speech. There are no free speech rights. Therefore, if we have one of the ten amendments, the free speech and assembly amendment, then you might as well lift the exclusion because you then are simply extending those provisions.

Mr. Andrews. The First Amendment requires the regulation of State action. I am not sure there is any State action here to provide the basis. Let me ask you one other question, and I know

Professor Summers, being a law professor wants to answer this, but let me ask you one more. Do you favor the extension of OSHA protections to public employees?

Mr. Aronowitz. Absolutely. But I think what you have to deal with, Mr. Andrews, and I think this is a problem for the Congress politically more than it is legally, frankly.

Mr. Andrews. Right.

Mr. Aronowitz. And I think it is the States' right doctrines, which were invoked at the time of the Civil Rights Act in the 1960's. They have been invoked in terms of labor relations all the time and health and welfare enforcement and so on. These are serious problems, and I think this is part of that long-term march away from a narrow definition of State rights when it comes to the regulation of labor relations.

Mr. Andrews. Of course, one of our problems is we have a Supreme Court opinion that says the imposition of a minimum wage increase on public employees is unconstitutional, is protected by the Tenth Amendment. Professor Summers, on what constitutional basis_

Mr. Summers. That decision has been overruled.

Mr. Andrews. Has it been overruled in totality?

Mr. Summers. So that now the Supreme Court has held and is, indeed, the fact that State employees_

Mr. Andrews. In totality?

Mr. Summers. That is clear.

Mr. Andrews. Yes. Could you tell me the constitutional basis for us imposing this statute on public employees?

Mr. Summers. It would be the same basis as the minimum wage.

Mr. Andrews. Which is what?

Mr. Summers. Apparently, the Commerce Department.

Mr. Andrews. Because States are _

Mr. Summers. All have to have is an impact on commerce.

Mr. Andrews. Because States touch and concern interstate commerce? Okay. Thank you very much, Mr. Chairman.

Chairman Boehner. Thank you, Mr. Andrews. The Chair recognizes the gentleman from North Carolina, Mr. Ballenger.

Mr. Ballenger. Thank you, Mr. Chairman. Mr. Benson, you mentioned H.R. 4770, and I had not read it last year when Harris Fawell finally introduced it, but you mentioned that it was, in your consideration, a comparatively good bill. So luckily for me our intelligent young lady here had a copy of it. And so I started reading, and it is the simplest bill I ever saw. Five pages. I cannot see where anything is very difficult in it. The point that the Congressman mentioned about trusteeships says that 18 months after the authorization of the trusteeship that the labor organization should show clear and convincing proof that a continuation of the trusteeship is necessary. This is so simple, but do you have any idea why it did not go anywhere last time?

Mr. Benson. Why what?

Mr. Ballenger. Why H.R. 4770, the bill itself that you said was comparatively speaking a good bill, did not go anywhere last time? I just wondered if you have any idea why?

Mr. Benson. Why the bill did not go anywhere?

Mr. Ballenger. Yes.

Mr. Benson. Well, I think in my opening statement, I was trying to indicate why that kind of bill has difficulty getting anywhere, and that is it does not have any great enthusiastic constituency. Without being specific, I mean, you would normally think that the pro-labor liberal civil

libertarian would flock to this kind of thing. But there is something about union democracy that makes people reluctant, who normally you might think would be in favor of civil liberties and extension of workers rights and their unions, free speech, fair elections, fair play would flock to that kind of thing, but somehow, we have not been able to get a mass constituency on behalf of such a provision, which is the whole problem that I have tried to address in my opening remarks.

Mr. Ballenger. Right. Well, the point I was trying to bring up, and I am glad you said it, was this difficulty. You have to realize that I do not come from the liberal side. I come from the conservative side. And the basic point is that if we have difficulty getting something this simple through this committee, we are not trying. There is no working together as a group, shall we say. The first thing we do is introduce a bill and have it attacked, maybe from both sides, who knows. But it appears to me that this subcommittee ought to be able to sit down and find out what is wrong with this bill. Mr. Aronowitz, maybe you can give me some suggestion.

Mr. Aronowitz. No, I have a _

Mr. Benson. Well, I will tell you what I think the problem is.

Mr. Aronowitz. I defer to Herman.

Mr. Benson. The problem is as follows.

Mr. Ballenger. Okay.

Mr. Benson. You present this bill on the floor. It will be attacked from two sides. One side's attack is that this is a grave attack upon the rights of workers somehow. Do not ask me how they are going to get to this, but somehow this is going to mean an attack on the rights of unions and an attempt to, et cetera, et cetera. That would be one problem.

On the other side, you are going to have conservatives who are going to say, at last we have this bill before us. We are going to put onto this all the things we have been dreaming about to cut down the political influence of unions and so on and so on. Instead of this bill being considered in and of itself as a measure to strengthen workers' rights and their unions, everybody from every side is going to try to attach their favorite argument onto it. That is the problem. And the problem is how do you avoid that?

Mr. Aronowitz. I just have a suggestion, and this would be for the pro-labor people, and they

might, or you might appreciate this, Mr. Andrews.

[Laughter.]

No, I say you might. I am not suggesting whether you did or not. I think there is union leadership and pro-labor people generally are making a bad mistake. Because I think the D.C. 37 scandal is a terrible, terrible blot on the reputation of unions. And it brings up the recidivism of anti-labor sentiment. And unless both conservatives and liberals, or conservatives and pro-labor people get together and say, we are at a point where we are going to besmirch American democracy, much less union democracy, then I think we are not going to get anywhere. And I think that was the virtue. Herman has said what had to be said about the lack of a constituency. But I think as we reach the election of 2000, it seems to me that both sides have it in their interest to deal decisively, at a legislative level, with the problems that were raised by the D.C. 37 scandal.

Mr. Ballenger. Let me ask any of you that would like to answer. It appeared to me from the very beginning that Landrum-Griffin, with proper enforcement, would have been a much better bill. Was it a problem back then that people did not want to have the enforcement procedures in there, or was it a problem that, as you said, the Labor Department is the wrong department to enforce it. I was just curious, Professor Summers.

Mr. Summers. What was involved at that time was that organized labor vigorously opposed any legislation, and the legislation was a product of conservatives and liberals who believed that union democracy was important. They believed that collective bargaining and union democracy is important. So you had, shall we say, a conservative wing and you had a liberal wing, which never spoke to each other. But they combined to provide the votes. And partly it was because there was enough sense, there was enough, shall we say, potential for generating support by saying that they were going to make unions democratic. That is not an unappealing argument to the general populace. And so it was done in that fashion. The unions opposed it to the end. Of course, the interesting thing is after it was passed, the Auto Workers hired Joe Rauh to go out and explain the statute to their locals. And what I heard him say in a meeting in New Haven was that the statute does not require anything that a good union would not do anyway. And in a sense, I think that one has to focus on the question of providing democratic rights to union members and put it in terms of democratic rights.

And I would like to emphasize that I think it is fundamental that nothing that relates to union-management conflict infiltrate the proposal. If you do, then as Herman says, all is lost. But it is more difficult for unions to make a point of opposing legislation which says, unions should be more democratic. And they will oppose, openly or not. But I think it is difficult for unions. I think it is more difficult for unions to do that now than it was in 1959, because now we have the acceptance of union democracy. I mean, in principle, that is in the statute. All you are doing is saying that we have this fundamental principle. Now let us fix it up.

Mr. Ballenger. I still go back to the point that it appeared that the whole idea of the bill was great, but that there was no enforcement of the bill or of the rights of the unions. Who was going to make them enforce it if they were not doing it. There is something lacking there, and maybe it

was that they could not get that much into the bill.

Mr. Summers. Well, at the time of the consideration of the enforcement, there was this certain uneasiness about the Department of Labor being involved. But the better question is that nobody wanted the NLRB to do it, so it was put in the Department of Labor as the lesser evil.

In terms of other provisions of the statute, most of them are provided by private suits, and so violation of the Bill of Rights are enforced by private suits. Now those private suits create cost obligations. I mean, the question of getting a lawyer and so on, but the Supreme Court helped that by deciding that in those suits, the winning lawyer, if the union member won, the union had to pay the lawyers fees. So that is not in the statute, but that got read in by the Supreme Court. So that it is not perfect. There are obstacles. But I would say the enforcement procedures generally are all right.

Mr. Ballenger. Let me just throw the same question to Mr. Benson, because I know he had some thoughts that may be_

Mr. Benson. Well there has been enforcement. I cited various advances that had been made, every one of them was part of the enforcement of Landrum-Griffin.

The point is that the enforcement is there, but it is not strong enough. There have been many areas in which it is weak and where it could be better and where we would have many more improvements. And, as I say, I could bore you to death by talking about all the weaknesses in the Landrum-Griffin Act, but that would not obliterate the fact that there has been enforcement, weak as it has been, and there have been many improvements.

Mr. Ballenger. Right. Thank you, Mr. Chairman.

Chairman Boehner. Professor Summers, as you know, Title II of the Landrum-Griffin Act requires reporting of unions, not only to the Department of Labor, but to their members. In what form does the reporting to members take place?

Mr. Summers. Well, they give an annual report that shows expenditures and income. The question is whether those are adequately broken down for a member to really understand what is going on. And from that standpoint, the provision that members can get access to see the past records becomes crucially important.

There is another, which showed up in a story in the New York Times on Sunday, which all of us were aware. It is that you will have a report from local union so and so, and the president is getting salary of \$125,000. But then he is also chairman of the pension fund, for which he gets \$50,000. He is on the executive board where he gets another \$75,000, so that these reports do not consolidate the information.

Now, I understand the Department of Labor is trying to put these reports on the Internet, and in that circumstance, it may be easier for people to try and find out what is going on. It will improve. But there is this, and I do not really know how to solve that part of the problem. I think that_

Mr. Aronowitz. The union newspaper publishes the financial report, if the union has a newspaper. Or it will have an annual newspaper of some kind. And the report will be basically one that somebody has to have x-ray vision to be able to see in many cases. The details of the breakdown are virtually impossible, in many cases, to discern. So that is a kind of formal obligation that is being met. But actual information, actual details, that is not done. And most people in 32B and 32J who saw that, who see their union reports, would not know that Gus Bevona, who is the president, taking these kind of double and triple dippings, and nice strawberry cones that he was actually making, you know, \$300,000, \$400,000 a year. They would see the \$125,000 or maybe not even that as his base salary and say, well, that is not very much.

So, these are really not in the true sense being made available. That is, I think, incontrovertible.

Chairman Boehner. I ask unanimous consent that we include in the record the New York Times article that was referred to by both of you entitled "Finding Out How Much the Boss Really Makes," by Steven Greenhouse, which was in the New York Times on March 14.

Without objection, it will be included. I guess nobody really can object since I am the only one here. That is pretty good.

[Laughter.]

[The information follows:]

GREENHOUSE, STEVEN. "FINDING OUT HOW MUCH THE BOSS REALLY MAKES," NEW YORK TIMES. MARCH 14, 1999 -- SEE APPENDIX F

Chairman Boehner. Well, gentleman, when it comes to this reporting, I am one who believes that the best disinfectant is sunlight. And having reviewed some LM2s and their filings over at the Department of Labor, I would agree that they are almost useless.

Let me ask you this question that we have touched on a little. As I get into this issue and listen to your testimony, the first question that comes to my mind is, where in the world is the Department of Labor?

Mr. Benson. Well, it is a problem. Let me give you an example. The Department of Labor enforces the law insofar as it has to show a certain minimum result. But whenever it comes to any difficult question, they back away. That is the most general example I can give you.

Let me give you just one example of a problem. Let us take Section 610 of the Landrum-Griffin Act, which says that it is a criminal offense to deprive a member of his rights by violence or

threats of violence. Simple. And it established criminal penalties and a fine or jail or so on.

Now the Landrum-Griffin Act has been in effect now for 40 years. How many times has this section been enforced? I tried to find out. I wrote to the Department of Labor under the Freedom of Information Act, because, you know, we get a lot of complaints about people who were beaten or threatened through their unions. And I said, well, how many times have you enforced this? What is your record? How many complaints? And the answer was that they do not keep any records of this, because they referred this to the Department of Justice. They made a deal with the Department of Justice that they will enforce this section of the Act, so ask the Department of Justice.

So I have a Freedom of Information Act before the Department of Justice to try to find out how many times they have ever tried to enforce this Act. So far, they have replied to me that they cannot give it to me right away because they have referred it to three different divisions of the Department of Justice, and I am waiting for answer. I suspect that nobody will be able to answer this question.

So here you have a clear section of the law, which is supposed to protect members from violence, and there is really nobody enforcing it.

Chairman Boehner. It kind of reminds me of this issue we have on the floor in the House today where we set out anti-dumping quotas on steel and try to pass a new law. Many of us believe that there are sufficient laws already on the books in this and many other cases that just are not enforced. And it goes back to the point that you made earlier, and that is, who really should be the watchdog agency? Who really should enforce it? And as we get into this further, we are certainly going to take a closer look at that.

At this point, I think we are about to wrap it up. Let me express my gratitude to each of the three of you for taking time to come down and work with this committee once again on what really is a very important issue. And I think we are going to have some additional hearings this year, and I would expect that I will work with Mr. Andrews to see if we can begin to make some changes that will help working men and women of this country. Thank you very much.

[Whereupon, at 1:07 p.m., the committee was adjourned.]

ADDENDUM I

Statement of Herman Benson

March 17, 1999

The Subcommittee has already received testimony on the positive effect of the Labor-Management Reporting and Disclosure Act, but the subject bears repeating. Since the adoption of the act in 1959 and as a direct result of its enactment, there has been a qualitative improvement in the state of democracy inside the American labor movement. Before the LMRDA, members who criticized their union officials could be fined and expelled on spurious charges of slander. If they sought recourse in court or before administrative agencies "prematurely" they could be instantaneously expelled. Union elections could be arrantly stolen. Trusteeships could be easily imposed on locals and their assets stripped. Now there is recourse under federal law. In these respects and many others, the LMRDA now affords protections for members rights in their unions under federal law that did not exist before.

For the last 40 years, I have been preoccupied with helping union members exercise and enforce their rights under the LMRDA, and the same is true of the Association for Union Democracy since its formation in 1969. In that time, we have advised and assisted thousands of union members who faced problems of union democracy in almost every major union in the United States.

On the whole, the LMRDA has been a major success story. In some unions the law made it possible for members to effect dramatic change. Just to cite a few major examples: In the United Mine Workers, with the help of the law, they got rid of a murderous officialdom. In the Marine Engineers Beneficial Association, they eliminated union officials who later went to jail. In the Masters, Mates and Pilots, they eliminated union officials who presided over suspect elections. In the Teamsters union, they broke the hold of organized crime over the union's national office. In the International Brotherhood of Electrical Workers, they eliminated constitutional provisions under which hundreds of members, if not thousands, were improperly disciplined with fines and expulsion.

In this same period, however, experience has demonstrated that the law needs to be clarified and strengthened. For one thing, enforcement has been weak and, in some areas, even absent and needs to be strengthened. In other respects, some union officials have found loopholes in the law which enable them to evade its clear intent. Last year, I entered into your record a detailed statement submitted by the Association for Union Democracy to the Dunlop Commission outlining a series of proposals to strengthen the LMRDA.

I note that both sponsors of the LMRDA, Robert Griffin and Phillip Landrum, expressed their own opinion that the law, or its interpretation, needed strengthening. I append to this statement, extracts from Union Democracy Review and Union Democracy in Action, which reported this fact.

Your subcommittee has already prepared legislation that would deal effectively with two important areas of LMRDA enforcement: on trusteeships and on the direct election of officers of certain "intermediary" labor bodies, like district councils.

On Trusteeships:

Title III LMRDA is intended to prevent the imposition by national and international unions of

improper and oppressive trusteeships over local unions. However, the law establishes a presumption of validity for the first 18 months of any trusteeship. Consequently, the U.S. Labor Department has never challenged the validity of any trusteeship until the first 18 months have elapsed. The courts, too, have been similarly reluctant to intervene during that period. Taking advantage of the presumption of validity, some union officials, on one pretext or another, impose trusteeships over locals whose leaders are critical of their policies. and, under cover of that 18 months presumption, they use that time to demoralize and undermine their critics.

The bill prepared by your subcommittee would provide more effective recourse against improper trusteeships. By removing the presumption of validity, it would make trusteeships subject to early review by the Labor Department and in federal court.

On District Councils

The LMRDA established the right of members to elect local union officers and to decide on dues increases by direct secret ballot vote of the membership. Control over the purse strings and over officer elections would afford the membership some means of resisting corruption and dictatorship. At a time when locals were usually the fundamental building blocks of the labor movement and on the frontier of collective bargaining, these assurances may have seemed adequate. But no longer.

The law has been interpreted to permit "intermediary": bodies to raise local dues, not by vote of the membership, but by delegates. In important sectors of the labor movement, especially in the construction trades, this provision has been misused to evade the law. Local are combined into district councils which then take over the normal collective bargaining functions formerly performed by the locals: negotiating contracts, processing grievances, appointing business agents, administering hiring halls. Locals are reduced to mere administrative shells deprived of meaningful authority. Dues payable by local members are increased and district officers are elected---not by the members-- but by vote of council delegates. These delegates, in turn, are fairly easily controlled and manipulated by a national union officialdom with all the powers of patronage at its disposal.

Hundreds of unionists have attended subcommittee hearings to express their desire for a remedy for this kind of abuse. The subcommittee has responded effectively: HR 4770 would require that where such district councils have taken over the collective bargaining functions normally performed by locals, these councils be required to fulfill obligations imposed on locals by the LMRDA, in particular that the officers be elected by direct secret ballot vote of the membership.

These two proposals, on trusteeships and on the direct election of some council officers, provide a clear, simple, and effective answer to frequent abuses.

There are many other issues of labor-management relations and of internal union affairs that have been the subject of extended national debate. Many are complex and controversial and so are not likely to be readily resolved at this juncture. The Dunlop Commission, for example, has come and gone without leaving any impact.

One virtue of HR 4770 is that its proposals transcend the big divisive national labor issues so often debated and deal with issues of simple fair play. And yet, it could have a major impact in strengthening the rights of members in their unions. Precisely because it does offer a defense of such basic rights, the bill could serve an even more necessary function. For the first time in the 40 years since the adoption of the LMRDA it would, at last, alert the nation to the need to

strengthen the act.

ADDENDUM J

Statement of Lary F. Yud
Deputy Director, Office of Labor-Management Standards
Employment Standards Administration
U.S. Department of Labor
Before the Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
United States House of Representatives

June 24, 2003

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before the Committee today to provide a general overview of the Labor-Management Reporting and Disclosure Act (LMRDA), which is centered on two fundamental goals - promoting union democracy and ensuring union financial integrity.

The Office of Labor-Management Standards (OLMS) administers and enforces the provisions of the LMRDA that are within the jurisdiction of the Department of Labor. These include civil and criminal provisions that provide standards for union democracy and protect the financial integrity of labor organizations that represent private sector employees. OLMS also administers and enforces provisions of the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980, which apply similar standards to federal sector unions.

The rights of union members and important union responsibilities are set forth in five Titles of the LMRDA.

Title I of the LMRDA creates a "bill of rights" for union members. Every union member has an equal right to nominate candidates for union office, to vote in union elections, and to attend and participate in union meetings. Title I provides that unions may impose assessments and raise dues only by democratic procedures, and contains safeguards against improper disciplinary action by unions. Title I also requires that every labor organization inform its members about the provisions of the LMRDA and establishes the right of members and employees to copies of collective bargaining agreements.

Title II of the LMRDA requires reports from unions, union officers and employees, employers, labor relations consultants, and surety companies. The Department of Labor has authority to enforce these reporting requirements and the LMRDA provides for the public disclosure of the reports. In addition, members have the right to examine union financial records, but only by demonstrating just cause. Although the statute gives a union member the right to sue in federal court to enforce that right, neither records nor attorneys fees are available if the court does not agree that just cause has been demonstrated.

Title III of the LMRDA governs trusteeships imposed by a parent union over a subordinate body. Under Title III, a parent union may impose a trusteeship only for certain, legitimate purposes, for example, to correct financial malpractice or to assure the performance of a collective bargaining agreement.

Title III is enforceable by the Department of Labor, on the written complaint of a union member.

Title IV of the LMRDA governs the election of union officers. It requires that elections be held periodically --at least every three years for local unions, at least every four years for intermediate bodies, and at least every five years for national and international unions. It also creates election-related rights and safeguards. For example, all members in good standing have the right to vote and be candidates, subject only to reasonable rules uniformly imposed. Further, subject to certain time limits and a requirement to pursue internal remedies first, union members may file complaints with the Department protesting violations of any provision of Title IV. The Department must investigate such complaints, and take action to remedy material violations, within 60 days.

Finally, Title V of the LMRDA establishes financial safeguards for unions. It imposes fiduciary responsibilities on labor union officials. A union officer or employee who embezzles or otherwise misappropriates union funds or assets commits a federal crime that is punishable by fine or imprisonment. Title V establishes bonding requirements for union officers and employees, and prohibits persons convicted of certain crimes from holding union office or employment for up to 13 years after conviction or the end of imprisonment.

In the last five fiscal years (FY 1998 to FY 2002), OLMS has: conducted 752 election investigations and supervised 173 elections; completed 75 trusteeship

) cases; and conducted 1,994 criminal investigations, primarily involving the embezzlement of union assets and related reporting violations. During this period, the Department's investigative efforts resulted in 726 criminal indictments and 639 convictions, or approximately 11 convictions per month.

) In addition to these enforcement activities, OLMS carries out an extensive program of compliance assistance, beginning with offers of assistance in understanding and complying with the law to all officers of newly formed unions. OLMS publishes a wide variety of compliance assistance materials, and every OLMS field office has an active program of compliance assistance seminars. Much of the focus of this assistance is on the statutory reporting requirements.

) Many observers believe that OLMS does not have sufficient enforcement tools to protect and inform union members. For example, a significant number of unions consistently fail to comply with the statutory requirements that they timely file annual reports with DOL detailing their finances. These unions are either delinquent in providing mandated financial information, or even worse, they fail to file altogether. In report year 2000, 41 percent of required union filers were either untimely in filing their submissions or have not filed a report to date. Report year 2001 saw a noncompliance rate over 61 percent, due in part to mail delays related to the anthrax screening. In report year 2002, over 43 percent either were late or have failed to file to date for that year.

I am sorry to say that past strategies have done little to improve the timeliness of unions' financial reporting. In an effort to get unions to timely file their reports, OLMS routinely takes a number of actions including sending out letters to unions that were delinquent filers the prior year and asking that they timely submit for the current year; sending out reminder letters to all unions about 30 days before their annual financial reports are due; and sending out delinquency notice letters to those unions that have not timely filed their current report. However, very little of these efforts have worked.

If a union does not file the required report after receiving a delinquency notice, OLMS may ask the Department of Justice to seek a mandatory injunction requiring the union to file. Of course, OLMS notifies the union that it intends to take this action. Time spent by lawyers within the Department of Labor and the Department of Justice reviewing the file and preparing the necessary papers is wasted, however, if the union finally files the report before a complaint requesting injunctive relief is filed in district court. Even though the report may be filed months beyond the date it is due, the union will suffer no penalty for the delay. Obviously, there are no significant disincentives inherent in this system that might deter a union that is inclined to delay filing until the last possible moment. Because the resources required to seek injunctive relief may be expended for nothing, such action is generally taken only if a union has a history of serious delinquencies. Even then, the additional time provided while OLMS warns the union of its intent to seek injunctive relief and lawyers prepare the

necessary papers may be enough to allow the union to act without even incurring the cost of litigation. The end result is that unions may ignore the statutorily-imposed deadline, filing the report months after it is due, without consequences.

To improve compliance the President's 2004 Budget includes a proposal to authorize OLMS to impose civil money penalties on unions and others that fail to file their required reports on a timely basis. The intent is to increase compliance, not penalize inadvertent lapses in filing reports. On this issue the Administration supports the concepts embodied in H.R. 993, the Labor Management Accountability Act. The Department is also closely reviewing the Act to determine whether additional authorities would help facilitate compliance and protect union members.

The Department of Labor appreciates the interest of the Subcommittee in the Landrum-Griffin Act and looks forward to working with you on this issue that is critical to ensuring union democracy and fiscal integrity. Thank you again for giving me the opportunity to address this important law and I would be pleased to answer your questions.

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ADDENDUM K

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HR 4054 IH

107th CONGRESS

2d Session

H. R. 4054

To provide for civil monetary penalties in certain cases.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. SAM JOHNSON of Texas (for himself, Mr. BOEHNER, Mr. BALLENGER, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To provide for civil monetary penalties in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CIVIL MONETARY PENALTIES.

Title VI of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 521) is amended--

(1) by redesignating section 611 as section 612; and

(2) by inserting after section 610 the following:

SEC. 611. CIVIL MONEY PENALTIES.

(a) IN GENERAL- The Secretary, upon finding a violation of either section 201(a), 201(b), 202, 203, or 301 of this Act, may require the person, labor organization, or employer responsible for such violation to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Secretary and which takes into account the nature of the violation involved, the revenues of, and the existence of previous violations of the Act by, the person, labor organization, or employer involved, and such other factors as the Secretary considers appropriate.

(b) NOTICE- The Secretary may not make any determination adverse to a person, labor organization, or employer under subsection (a) until such person or entity has been given written notice and an opportunity to be heard before the Secretary or designee. Procedures for such notice,

) opportunity to be heard, decision and review shall be as set forth in sections 208 and 606.
Requests for review shall be filed in Federal district court not later than 30 days of the receipt of an adverse determination.

END

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ADDENDUM L

Arthur Fox

From: "Settle, Steve" <Steve.Settle@mail.house.gov>
To: "Arthur Fox" <alfii@lnllaw.com>
Sent: Wednesday, September 18, 2002 3:14 PM
Subject: FW: Subcommittee Passes Johnson Bills to Promote Union Democracy, Hold Union Leaders Accountable

FYI

-----Original Message-----

From: Smith, Kevin
Sent: Wednesday, September 18, 2002 2:22 PM
To: Smith, Kevin
Subject: Subcommittee Passes Johnson Bills to Promote Union Democracy, Hold Union Leaders Accountable

<<...OLE_Obj...>>

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

FOR IMMEDIATE RELEASE
September 18, 2002

CONTACT: Kevin Smith
or Dave Schnittger
(202) 225-4527

Subcommittee Passes Johnson Bills to Promote Union Democracy, Hold Union Leaders Accountable

WASHINGTON, D.C. -- The House Employer-Employee Relations Subcommittee today passed two bills (H.R. 5373 and H.R. 5374) -- authored by Subcommittee Chairman Sam Johnson (R-TX) -- designed to ensure that rank-and-file workers receive information from their unions on the rights and remedies guaranteed them under the Labor-Management Reporting and Disclosure Act (LMRDA).

The LMRDA requires union leaders to make certain disclosure to union members about their democratic rights. However, many union leaders have refused to disclose this information or argued that a one-time notice in years past is sufficient for every future generation of union members. These actions undermine accountability and leaving rank-and-file union members in the dark about their rights under the law.

"While unions might have complied with this legal obligation 43 years ago, there is compelling evidence from our hearings that unions have exploited a 'legal loophole.' That is, after a one-time notification of their rights, few unions inform their members of these rights ever again," said Johnson. "That means that the last time many unions complied was before some of their members were ever born. We have listened to union members tell us they want, need, and deserve this information."

9/19/2002

"Promoting union democracy means giving rank-and-file union members the opportunity to have a full, equal, and democratic voice in union affairs," said Education & the Workforce Committee Chairman John Boehner. "We must ensure that union members are aware of their most basic rights to ensure they elect leaders who work in their best interest -- and to hold accountable union officials who serve their own interests."

The *Union Members' Right to Know Act* (H.R. 5374), passed by a vote of 8-6, clarifies that unions must disclose to union members certain information about their rights, such as member union dues, membership rights, member disciplinary procedures, the election and removal of union officers, the calling of regular and special meetings, and other democratic rights. The bill requires unions to make these disclosures to members within 90 days of joining a union, essentially codifying the recent *Thomas v. IAM* Federal Circuit Court of Appeals decision.

The *Union Member Information Enforcement Act* (H.R. 5373), passed by a vote of 8-6, authorizes the Labor Secretary to investigate union member complaints of a union's failure to meet these disclosure requirements and bring suit on their behalf those union members to enforce the law. Under current law, the Labor Department cannot enforce the law on behalf of union members, thus forcing them to hire their own attorney and face the legal expertise available to their union to enforce the right to receive basic information. The high cost of litigation is the main reason why unions have been able to ignore this legal obligation for more than four decades.

The two bills highlight the Committee's continued commitment to holding corporate and union leaders accountable for their actions. In July, the Subcommittee approved the *Labor Management Accountability Act* (H.R. 4054), which for the first time allows the Labor Secretary to assess civil penalties on unions and employers that either file late, or fail to file altogether, financial disclosure reports, which give rank-and-file union members vital information about how their own union leaders spend union dues.

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HR 5373 IH

107th CONGRESS

2d Session

H. R. 5373

To enhance notification to union members of their rights under the Labor-Management Reporting and Disclosure Act of 1959.

IN THE HOUSE OF REPRESENTATIVES**SEPTEMBER 12, 2002**

Mr. SAM JOHNSON of Texas (for himself, Mr. BOEHNER, Mr. BALLENGER, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To enhance notification to union members of their rights under the Labor-Management Reporting and Disclosure Act of 1959.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Informed Union Member Enforcement Act'.

SEC. 2. ENFORCEMENT.

Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 412) is amended--

(1) by striking 'Any person' and inserting '(a) Unless the Secretary has brought a civil action under subsection (b), any person'; and

(2) by adding at the end the following:

'(b) Upon the written complaint of any member of a labor organization alleging that such organization has violated section 105, the Secretary shall investigate the complaint and if the Secretary determines that such violation has occurred and has not been remedied, the Secretary shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.'

SEC. 3. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Labor shall review and revise all regulations promulgated before such date to implement the amendments made in this Act to the Labor-Management Reporting and Disclosure Act of 1959.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

END

HR 5374 IH

107th CONGRESS

2d Session

H. R. 5374

To amend the Labor-Management Reporting and Disclosure Act of 1959 to inform union members of their rights.

IN THE HOUSE OF REPRESENTATIVES**SEPTEMBER 12, 2002**

Mr. SAM JOHNSON of Texas (for himself, Mr. BOEHNER, Mr. BALLENGER, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Labor-Management Reporting and Disclosure Act of 1959 to inform union members of their rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Informed Union Member Act'.

SEC. 2. INFORMATION.

Section 105 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 415) is amended by adding at the end the following: 'A labor organization shall provide such information--

(1) to each new member within 90 days after the member has joined the labor organization; and

(2) periodically to all members in a manner which the Secretary of Labor determines will promote a fuller understanding of the member's rights and judicial remedies under this Act.'

SEC. 3. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Labor shall review and revise all regulations promulgated before such date to implement the amendments

made in this Act to the Labor-Management Reporting and Disclosure Act of 1959.

) **SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

END

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ADDENDUM M

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Association for Union Democracy, Inc.

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www.unlondemocracy.org info@unlondemocracy.org

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Cheryl Smyler-George

March 27, 2011

The Honorable John A. Boehner
Speaker of the House
Office of the Speaker
H-232 The Capitol
Washington, DC 20515

Dear Speaker Boehner:

Some years ago, it may have been in 1998, at a time when you chaired a subcommittee of the House Education and Labor Committee, I and my close friend and colleague, Clyde Summers (sadly, now deceased) testified in favor of HR 4770, the bill introduced at the 2nd session of the 105th Congress. It was not adopted. One feature of the bill is now more appropriate and even urgent than before. It would have required so-called intermediate labor organizations which had taken over major collective bargaining functions to elect officers by direct secret ballot vote of the membership.

A manipulation of regional councils as intermediate bodies has permitted the Carpenters Union, for example, to turn local unions into impotent administrative shells by merging locals all over the country into councils. Except in New York City where a Federal judge, in accordance with a consent decree that settled a Federal RICO suit, has imposed a requirement for direct elections. However, the issue will soon get back before the court because the union is asking the judge to end direct elections and to force the New York District Council into the same autocratic mold as the rest of the country. Meanwhile, we hear reports that at least one other major construction union is hoping to duplicate the Carpenter model.

I fully realize that you are now preoccupied with weighty concerns of national and international import. Nevertheless, this may be an appropriate moment to remind your former committee that the terms of HR 4770 are still quite relevant.

Sincerely yours,

Herman Benson, Secretary Treasurer
Association for Union Democracy

ADDENDUM N

Reform bill introduced in Congress

Direct elections of council officers; right to know rights strengthened; and more

In July, the Committee on Education and the Workforce in the U.S. House of Representatives introduced the "Democratic Rights for Union Members Act of 2000." The bill (HR 4963), which would strengthen provisions of the LMRDA, comes after two years of hearings on union democracy and adopts several of AUD's proposals. After the bill was introduced, AUD and a group of union members met with an aide to Senator Edward Kennedy to seek support for the bill in the Senate. At the meeting, AUD submitted a copy of our comprehensive proposals for LMRDA reform. Below is the text of the DRUM Act as followed by excerpts of AUD's proposals. The full list of proposals is available upon request.

SEC. 2. FINDINGS.

(a) FINDINGS— The Congress finds the following:

(1) The labor movement derives its strength from democracy and unions lacking true democracy at the intermediate and local level cannot serve in full measure their economic, social, and political function in a democratic society.

(2) Union officers should recognize that unions belong to rank-and-file members and strive to respond to their wishes on issues of policymaking and decision making.

(3) Authoritarian control of unions is contrary to the spirit, traditions, and principles that should guide the labor movement.

(b) PURPOSES--The purposes of the amendments made by this Act are--

(1) to strengthen the Labor-Management Reporting and Disclosure Act of 1959 to protect and promote democratic processes and democratic rights of union members.

(2) to ensure that labor organizations exist to express the will of the members;

(3) and to further empower union members and make labor organizations tools by which workers truly govern themselves.

SEC. 3. INFORMATION.

(a) IN GENERAL — Section (105 (29 U.S.C. 415)) is amended by adding at the end the following: "A labor organization shall provide such information —

"(1) to each new member within 90 days after the member has joined the labor organization; and

"(2) periodically to all members in a manner which the Secretary of labor determines will promote a fuller understanding of the members' rights and judicial remedies under this Act."

(b) ENFORCEMENT.— Section 102 (29 U.S.C 412) is amended—

(1) by striking "Any person" and inserting "(2) Except as provided in subsection (b), any person"; and

(2) by adding at the end the following:

"(b) Upon written complaint of any member of a labor organization alleging that such organization has violated section 105, the Secretary shall investigate the complaint and

if the Secretary find probable cause to believe that such violation has occurred and has not been remedied, the Secretary shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.”

SEC. 4. TRUSTEESHIPS.

(a) **PURPOSES OF ESTABLISHMENT OF TRUSTEESHIP**— Section 302 (29 U.S.C. 462) is amended—

(1) by inserting “(a)” before “Trusteeships”; and

(2) by adding at the end the following:

(b)(1) Except as provided in paragraph (2), a trusteeship may be authorized only after a fair hearing either before the executive board or such other body as may be provided by the constitution and bylaws of the labor organization if, in such hearing, the labor organization establishes by the preponderance of evidence that the trusteeship is necessary for a purpose allowable under this section.

“(2) Where immediate action is necessary to fulfill the purposes of this section, a temporary trusteeship may be established, for not more than 30 days, pending a hearing under paragraph (1).”

(b) **ENFORCEMENT**— Section 304(c) (29 U.S.C. 464(c)) is amended to read as follows: “Eighteen months after the authorization of a trusteeship, such trusteeship shall be presumed invalid in any proceeding pursuant to this section and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.”

(c) **DISSOLUTION OF TRUSTEESHIP**— Section 304 (29 U.S.C. 464) is amended by adding at the end the following:

“(d) Upon dissolution of a trusteeship, the previously elected officers of the local union shall be reinstated or a new election promptly held in conformity with Title IV. If the trusteeship is dissolved by order of a court pursuant to this title, and the court orders an election, such election shall be conducted under the supervision of the court.”

SEC. 5. ELECTIONS.

(a) **MEMBERSHIP LISTS**.— Section 401 (c) (29 U.S.C. 481(c)) is amended by striking “to inspect a list” and inserting “to inspect and, upon request, to be provided with a copy of a list”

(b) **DISTRICT COUNCIL OFFICERS** -- Section 401(d) (29 U.S.C. 481(d)) is amended to read as follows: “(d) Officers of intermediate bodies, such as general committees, system boards, joint boards or joint councils who engage in negotiation, administration or enforcement of collective agreements, or exercise control over the finances or other major functions of local unions, shall be elected not less often than once every 4 years by secret ballot among members in good standing. Officers of other intermediate bodies may be elected by representatives of such members who have been elected by secret ballot.”

(c) **Qualifications**.— Section 401(e) (29 U.S.C. 481(e)) is amended by striking “and to reasonable qualifications uniformly imposed” and by inserting after “eligible to be a candidate” the following: “(subject to reasonable qualifications which do not exclude a

majority of the members and which are uniformly imposed)".

(d) OVERTURNING.— Section 402 (2) (29 U.S.C. 482(c) (2)) is amended by striking "affected the outcome of an election" and inserting "substantially understated or overstated the support of one of the candidates for office to the point that the democratic purposes of the election were undermined".

SEC. 6. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary of Labor shall review and revise all regulations promulgated before such date to implement the amendments made in this Act to the Labor-Management Reporting and Disclosure Act of 1959.