that Mexico and Latin American countries be placed upon the quota provisions of that act, and asking for additional deportation legislation; to the Committee on Immigration and Naturalization.

432. By Mr. BOX: Petition circulated and presented by patriotic societies and signed by numerous citizens of the State of New Jersey and other States, praying Congress not to emasculate the immigration act of 1924 by repealing or suspending the national-origins provisions of that act, and asking that Mexico and Latin American countries be placed under the quota provision of that act, and asking for additional deportation legislation; to the Committee on Immigration and Naturalization.

433. By Mr. CONNERY: Petition of Ancient Order of Hibernians of Massachusetts, protesting against national-origins clause of the immigration law; to the Committee on Immigration and Naturalization.

434. Also, petition of city council of Lynn, Mass., petitioning Congress for a tariff on boots and shoes; to the Committee on Ways and Means.

435. By Mr. GARBER of Oklahoma: Petition of the United States Sugar Association, in regard to the tariff rate on sugar, with particular emphasis on Cuba and the American consumer; to the Committee on Ways and Means.

436. Also, petition of Oklahoma Cotton Growers' Association, favoring farm relief and equitable tariff bill on farm products; to the Committee on Agriculture.

437. Also, resolutions of the Oklahoma Cotton Growers' Association, relating to miscellaneous provisions in the tariff bill; to the Committee on Ways and Means.

438. Also, petition of the Farmers' Union, in regard to pending farm legislation; to the Committee on Agriculture.

439. Also, petition of the national board and officers of the Farmers' Union, and executives of the various State Farmers' Union organizations, representing the following States: Washington, Montana, North Dakota, Minnesota, South Dakota, Nebraska, Iowa, Illinois, Missouri, Kansas, Oklahoma, and Colorado, insisting upon the adoption of farm tariff schedules substantially in agreement with those proposed by the farm groups after long conference and final full agreement and opposing any increase in general schedules applicable to manufacturers until farm schedules are equal and effective; to the Committee on Ways and Means.

440. Also, petition of the Northwestern Shoe Retailers Regional Association, St. Paul, Minn., opposing a tariff on hides; to the Committee on Ways and Means.

441. Also, petition of the Creo-Dipt Co. (Inc.), North Tonawanda, N. Y., urging imposition of tariff on shoes and protesting against proposed tariff on shingles; to the Committee on Ways and Means.

442. Also, petition of the National Association Against a Lumber and Shingle Tariff, protesting against proposed tariff on cedar lumber, cedar shingles, and fence posts; to the Committee on Ways and Means.

443. Also, petition of the Florsheim Shoe Co., Chicago, Ill., protesting against tariff on hides; to the Committee on Ways and Means.

444. Also, petition of the Plunkett-Webster Lumber Co. (Inc.), New Rochelle, N. Y., protesting against the proposed tariff of 15 per cent on maple and birch lumber; to the Committee on Ways and Means.

445. Also, petition of the Philippine Society of California, signed by W. H. Taylor, president, regarding tariff on sugar; to the Committee on Ways and Means.

446. Also, petition of the legislative committee of Beaver Valley Grange, Supply, Okla., urging support of the export debenture plan of farm relief; to the Committee on Agriculture.

447. By Mr. JENKINS: Petition signed by 50 citizens of the United States who are members of patriotic organizations, petitioning Congress to retain the national-origins provision of the immigration act of 1924; to the Committee on Immigration and Naturalization.

448. Also, petition signed by 50 citizens of the United States who are members of patriotic organizations, petitioning Congress to retain the national-origins provision of the immigration act of 1924; to the Committee on Immigration and Naturalization.

449. Also, petition signed by 50 citizens of the United States who are members of various patriotic organizations, petitioning Congress to retain the national-origins provision of the immigration act of 1924; to the Committee on Immigration and Naturalization.

450. By Mr. LINDSAY: Petition of John J. Conway, Manufacturers Trust Co., Brooklyn, N. Y., on behalf of rattan industry, praying that an adjustment of tariff rates be made so that this industry can be placed again on a paying basis; to the Committee on Ways and Means.

451. By Mr. McCORMACK of Massachusetts: Petition of the Macallen Co., Thomas Allen president, South Boston, Mass., urging adequate tariff on mica; to the Committee on Ways and Means.

452. By Mr. O'CONNELL of New York: Petition of the Cantilever Corporation, of Brooklyn, N. Y., favoring free hides and skins as recommended by the Ways and Means Committee; to the Committee on Ways and Means.

453. Also, petition of the New York State Association of Manufacturing Retail Bakers, New York City, opposing any tariff legislation that would increase the cost of foodstuffs to the American public by a higher tariff on raw materials entering in the cost of foodstuffs; to the Committee on Ways and Means.

454. By Mr. QUAYLE: Petition of Hanan & Son, of Brooklyn, N. Y., urging tariff on shoes; to the Committee on Ways and Means.

SENATE

MONDAY, *May 20, 1929*

(Legislative day of Thursday, May 16, 1929)

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

Mr. NORRIS obtained the floor.

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

The VICE PRESIDENT. Does the Senator from Nebraska yield for that purpose?

Mr. NORRIS. I yield.

The VICE PRESIDENT. The clerk will call the roll.

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

Allen	Frazier	Keyes	Smith
Ashurst	George	King	Smoot
Barkley	Gillett	McKellar	Steck
Bingham	Glenn	McMaster	Steiwer
Black	Goff	McNary	Stephens
Blaine	Goldsborough	Metcalf	Swanson
Blease	Gould	Moses	Thomas, Idaho
Borah	Greene	Norbeck	Thomas, Okla.
Brookhart	Hale	Norris	Trammell
Broussard	Harris	Nye	Tydings
Burton	Harrison	Oddie	Tyson
Capper	Hastings	Overman	Vandenberg
Caraway	Hatfield	Patterson	Wagner
Connally	Hawes	Phipps	Walcott
Copeland	Hayden	Pine	Walsh, Mass.
Couzens	Hebert	Pittman	Walsh, Mont.
Cutting	Heflin	Ransdell	Waterman
Dale	Howell	Reed	Watson
Dill	Johnson	Robinson, Ind.	Wheeler
Edge	Jones	Sackett	
Fess	Kean	Sheppard	
Fletcher	Kendrick	Simmons	

Mr. FESS. I desire to announce that the Senator from Wisconsin [Mr. LA FOLLETTE] and the Senator from Illinois [Mr. DENEEN] are detained in the Committee on Manufactures.

Mr. HASTINGS. I wish to announce that my colleague the junior Senator from Delaware [Mr. TOWNSEND] is unavoidably absent.

The VICE PRESIDENT. Eighty-five Senators have answered to their names. A quorum is present.

OPERATIONS OF THE ARLINGTON MEMORIAL BRIDGE COMMISSION

The VICE PRESIDENT laid before the Senate a report of the executive and disbursing officer of the Arlington Memorial Bridge Commission relative to the operations of that commission covering the period April 1 to April 30, 1929, which was referred to the Committee on Public Buildings and Grounds.

SUGAR AND OTHER PRODUCTION COSTS

The VICE PRESIDENT laid before the Senate a communication from the chairman of the United States Tariff Commission transmitting, in response to Senate Resolution 60 (submitted by Mr. WALSH of Massachusetts and agreed to May 16, 1929), data relative to the production costs of sugar and other commodities, which, with the accompanying documents, was referred to the Committee on Finance, and the communication was ordered to be printed in the RECORD, as follows:

UNITED STATES TARIFF COMMISSION,
Washington, May 18, 1929.

Hon. CHARLES CURTIS,
President of the Senate,
United States Senate, Washington, D. C.

SIR: In response to Senate Resolution No. 60, of May 16, 1929, I have the honor to transmit, under separate cover, copies of the reports submitted by the Tariff Commission to the President prior to March 4, 1929, upon its investigations under the provisions of section 315 of the tariff act of 1922, together with such additional material on the same subjects as the commission has published.

The several reports sent herewith are grouped as follows:

(1) Reports to the President upon subjects as to which no changes in rates of duty have been proclaimed.

(2) Reports to the President upon subjects as to which changes in duty have been proclaimed. This group includes also a report prepared at the request of the President upon The Relation of the Tariff on Sugar to the Rise in Price of February–April, 1923.

(3) Summary of Tariff Information, 1929, in 15 parts, covering Schedules 1 to 14, and the free list, of the tariff act of 1922. This material was prepared by the Tariff Commission and was printed by the Committee on Ways and Means of the House of Representatives.

In addition to the reports listed herein the commission submitted to the President in 1926 a report of its investigation of the costs of production of cotton hosiery. No change of duty has been proclaimed on that subject. The commission has no copy of that report available to be transmitted at this time, but a copy is now being made and will be sent to the Senate as soon as it is available.

In 1925 the commission made, upon request by the President, an investigation for the Department of State of the costs of production of halibut in the United States and in Canada. That report was desired for use in connection with negotiations pending between the Governments of the United States and of Canada, and has been held in confidence in accordance with the express suggestion of the Secretary of State.

Respectfully,

THOMAS O. MARVIN, *Chairman.*

PRESIDENT HOOVER AND INTERNATIONAL LONGFELLOW SOCIETY

Mr. WATERMAN. Mr. President, I present an original letter from President Hoover to Arthur Charles Jackson, president the International Longfellow Society, accepting his election as honorary president of that society, and I ask that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, and it is as follows:

THE WHITE HOUSE,
Washington, May 15, 1929.

Mr. ARTHUR CHARLES JACKSON,
President the International Longfellow Society,
223 First Street NE., Washington, D. C.

DEAR MR. JACKSON: I thank the International Longfellow Society most cordially for my election as honorary president and accept with pleasure.

Yours faithfully,

HERBERT HOOVER.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following joint resolution of the Legislature of the State of Connecticut, which was referred to the Committee on Naval Affairs:

STATE OF CONNECTICUT,
GENERAL ASSEMBLY,
January session, A. D. 1929.

Resolution concerning the transfer of the U. S. S. *Hartford* to Connecticut waters

Resolved by this assembly, That the governor be instructed to request the Congress of the United States to make an appropriation for the restoration, preservation, and maintenance of the U. S. S. *Hartford*, and for the transfer to Connecticut waters of this historic ship.

The VICE PRESIDENT also laid before the Senate resolutions of Local Union No. 40, Composition Roofers; Local Union No. 401, Water Workers; Local Union No. 59, Hoisting and Portable Engineers; and Golden Gate Branch, No. 214, National Association of Letter Carriers, all of San Francisco, Calif., favoring a reduction of 50 per cent in the Federal tax on earned incomes, which were referred to the Committee on Finance.

He also laid before the Senate a memorial of sundry citizens of Huntington Park and Glendale, Calif., remonstrating against a proposed plan of revising the calendar unless the continuity of the weekly cycle be preserved without the insertion of blank days, which was referred to the Committee on Foreign Relations.

Mr. CAPPER presented a telegram in the nature of a petition from sundry citizens of Lancaster, Pa., praying for the imposition of adequate tariff duties on hides and leather products, which was referred to the Committee on Finance.

Mr. GOLDSBOROUGH presented a telegram in the nature of a petition from the Appalachian Fruit Growers (Inc.), of Cumberland, Md., praying for inclusion in the farm relief bill of a provision for aid in securing packing houses and common storage to lengthen selling season for apples, which was referred to the Committee on Agriculture and Forestry.

He also presented a letter in the nature of a memorial from E. Lee Lecompte, State game warden of Maryland, remonstrating against the imposition of a tariff duty on wild game birds imported for stocking purposes, which was referred to the Committee on Finance.

He also presented a telegram and letter in the nature of memorials from George M. Leiby, of Baltimore, and George L. Connell, national president of the United States Customs Employees, remonstrating against the proposed amendment to section 451 of the tariff act of 1922 as provided in paragraph (b) of that section in the pending tariff revision bill, which were referred to the Committee on Finance.

Mr. VANDENBERG presented the following resolution of the House of Representatives of the State of Michigan, which was referred to the Committee on Finance:

House Resolution 46

Whereas before the World War the office of United States Revenue Department was maintained in the city of Grand Rapids, known as the office of the United States Revenue Department for the Western District of Michigan, through which many foreign goods were imported and appropriate duty collected; and

Whereas the city of Grand Rapids has at present increased in population, business, and industries, and is destined to be the leader in the export of furniture; and

Whereas the city of Grand Rapids' business in export and import has more than doubled in volume during the last 10 years: Therefore be it

Resolved by the House of Representatives of the State of Michigan, That it is the earnest desire of this house to appeal to the Hons. JAMES COUZENS and ARTHUR H. VANDENBERG, our outstanding characters in the highest legislative body of this great Republic, to entreat the President of the United States to reestablish a convenient collection district in the city of Grand Rapids so that the revenue ensign of the United States shall once more be displayed during the working hours of business over all buildings in which customs is collected; and be it further

Resolved, That a copy of this resolution, signed by the speaker of the house and countersigned by the clerk, be forwarded to our distinguished United States Senators, the Hon. JAMES COUZENS and the Hon. ARTHUR H. VANDENBERG.

Mr. VANDENBERG also presented the following concurrent resolution of the Legislature of the State of Michigan, which was referred to the Committee on Agriculture and Forestry:

HOUSE OF REPRESENTATIVES, MICHIGAN, 1929–30.

House Concurrent Resolution 9

A concurrent resolution memorializing Congress to extend Federal aid to all rural township post roads

Whereas rural township post roads are in great need of improvement; and

Whereas these rural township post roads constitute a vast amount of mileage over which transportation and communication must be conducted; and

Whereas these roads are of vital importance to the needs of the rural and agricultural regions of our State; and

Whereas individual townships are not able to finance the entire cost of improvement for such a large number of roads to keep pace with the needs of modern development; and

Whereas it is not possible for the counties nor for the State to lend sufficient aid to adequately accomplish the speedy improvement of these important highways: Therefore be it

Resolved by the House of Representatives of the State of Michigan (the Senate concurring), That the Congress of the United States be urgently requested to pass suitable legislation promptly to extend Federal aid to all rural township post roads; and be it further

Resolved, That suitable copies of this resolution be forwarded to both Houses of Congress and to the Members of Congress from the State of Michigan, duly signed by the speaker and clerk of the house and the president and secretary of the senate.

CONDITIONS IN TEXTILE INDUSTRY IN NORTH CAROLINA

Mr. OVERMAN. Mr. President, I ask unanimous consent to have printed in the RECORD a telegram received from T. A. Wilson, president of the North Carolina State Federation of Labor, together with several other telegrams and letters from local unions, relating to the subject of labor conditions in the textile industry in my State. As I had inserted in the RECORD matter on the other side, I make the same request in this case.

There being no objection, the letters and telegrams were referred to the Committee on Manufactures and ordered to be printed in the RECORD, as follows:

RALEIGH, N. C., *May 5, 1929.*

Hon. LEE S. OVERMAN,
United States Senator, Senate Office Building,
Washington, D. C.:

The wage earners of North Carolina respectfully request you to support the Wheeler resolution, to investigate the conditions of hours, wages, etc., of the southern textile workers.

T. A. WILSON,
President North Carolina State Federation of Labor.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Greensboro, N. C., May 17, 1929.

Hon. LEE S. OVERMAN,
Senate Building, Washington, D. C.

DEAR SIR: With much interest we have followed up the published reports concerning the Wheeler resolution, calling for an investigation of labor conditions, especially in North Carolina and Tennessee.

Now we are respectfully requesting that you use your influence to bring about a complete and impartial investigation of the working conditions in North Carolina, as well as other sections of the South.

Thanking you in anticipation of a favorable reply, we are

Very respectfully yours,

C. O. BROWN,
Secretary Local No. 1460.

(Ordered in regular session with seal of local.)

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Greensboro, N. C., May 17, 1929.

Hon. LEE S. OVERMAN,
Senate Building, Washington, D. C.

DEAR SIR: I have been watching the daily press for some time trying to keep myself posted in regard to the unrest in the South relative to the labor troubles. I note that the laboring people are calling for an investigation by your committee. It seems that you are not very favorably impressed with the idea.

Furthermore, it seems that the mill owners are not in sympathy with the idea of an investigation. It strikes me that if the laboring people are favoring it and the mill owners are opposed to it, that that alone would stand as an indictment against them, and the only way that I can see that the matter can be brought to light is to have a fair and impartial investigation.

Thanking you for past favors and trusting you with our interest, I remain

Yours respectfully,

J. H. ADAMS,
Business Agent Local No. 1460.

GASTONIA, N. C., *May 16, 1929.*

Senator LEE S. OVERMAN,
Washington, D. C.:

We, the undersigned, a commission created by the Methodist Episcopal Church South to study the situation in the State of North Carolina, beg leave to submit our findings, as follows:

First. We believe that the President of the United States should be empowered to appoint a fact-finding commission to study the entire textile industry—cotton, silk, wool, rayon, and all other textiles—in every section of the Nation which may be engaged in the manufacture of textiles.

Second. That this commission should be nonpartisan, nonsectional, and unbiased in its membership.

Third. That its report should cover all phases of the situation, and that the said report should be issued as a whole, covering the entire field of textiles, and that upon issue this report should be made immediately available for public study, to the end that all governmental departments, manufacturers, labor interests, social forces, and the general public may have the salient facts as found by the commission so created.

Fourth. We do not believe that a partisan, sectional, or incomplete survey of the situation will be productive of good or lasting results.

R. M. COURTNEY.
J. F. SHINN.
W. A. NEWELL, *Secretary.*

CENTRAL LABOR UNION,
Greensboro, N. C., May 15, 1929.

Hon. LEE S. OVERMAN,
Senate Building, Washington, D. C.

DEAR SIR: Having followed the many details published concerning the Wheeler resolution to appoint a Senate committee to investigate the many rumors of labor trouble in the South, particularly North Carolina, and it seems that you are opposed to such an investigation, we are writing to give our opinion.

Inasmuch as you have written to a number of manufacturers asking their views on such a project, we feel it would only be fair to all concerned that you write letters to the same number of workers as you did to the business men and try to reach a just decision about the matter from all letters you receive from both parties.

We do not want you to think that we are trying to dictate the duties of your honorable office, but as so much has already been said regarding this matter, we only want that all concerned shall have a chance to give their own version of the matter.

Thanking you for all past favors that you have shown this body, we beg to remain,

Yours very truly,

[SEAL.] GREENSBORO CENTRAL LABOR UNION,
JOHN K. WHITE, *President.*

ASHEVILLE, N. C., *May 9, 1929.*

Senator LEE S. OVERMAN,
Washington, D. C.:

Building Trades Council, Asheville, urges your support of Wheeler resolution.

T. G. EMBLER, *President.*

CHARLOTTE, N. C., *May 13, 1929.*

Senator LEE S. OVERMAN,
Washington, D. C.:

We earnestly request you support Wheeler resolution regarding textile investigation.

W. F. KELLY,
Secretary Plumbers and Steamfitters' Union No. 69, Charlotte, N. C.

CENTRAL LABOR UNION,
Salisbury, N. C., May 3, 1929.

Hon. LEE S. OVERMAN,
United States Senator, Washington, D. C.

DEAR SENATOR OVERMAN: I am inclosing you herewith copy of resolutions passed by the Salisbury Central Labor Union and the Federated Shop Crafts employed by the Southern Railway at Spencer, N. C.

In this connection we would respectfully ask that you lend your support and influence to the end that this resolution is adopted by the Senate of the United States and the investigation ordered held. We feel that much good will be accomplished by this action.

Thanking you in advance for your consideration of this subject, and for your support of this resolution, we are.

Yours very truly,

[SEAL.] THE SALISBURY CENTRAL LABOR UNION,
C. P. MULDER, *Recording Secretary.*

Whereas there has been introduced in the Senate of the United States a resolution by Senator WHEELER of Montana (S. Res. 49) calling for an investigation by the Committee on Manufactures into the working conditions of the employees in the textile industry in the States of North Carolina, South Carolina, and Tennessee; and

Whereas we believe from our own observation and knowledge of existing conditions in the said textile industry that an investigation would reveal that these employees are as a whole underpaid, overworked, and unable to secure the necessities, much less the luxuries, of decent living: Therefore be it

Resolved by the Salisbury Central Labor Union, in meeting assembled, First, that the Salisbury Central Labor Union and the Federated Shop Crafts of the Southern Railway, employed at Spencer and organized labor in the State of North Carolina hereby approves most heartily of the investigation as called for in Senator WHEELER'S resolution, S. Res. 49, and urge our own Senators, the Hon. F. M. SIMMONS and Hon LEE S. OVERMAN, to do all in their power to aid and assist said investigation; and be it further

Resolved, That we feel satisfied that if there is nothing to conceal that no harm will be done, and if there is something that should be exposed great good will be accomplished, and our southern men and women who have to toil long, dreary hours for small wages may be benefited by the investigation; and be it further

Resolved, That a copy of these resolutions be sent to Hon. BURTON K. WHEELER, Hon. ROBERT M. LA FOLLETTE, Jr., Hon. F. M. SIMMONS, Hon. LEE S. OVERMAN, William Green, president of the American Federation of Labor, T. F. Wilson, president North Carolina State Federation of Labor, and the Greensboro Daily News for publication.

BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA,
Greensboro, N. C., May 11, 1929.

Senator LEE S. OVERMAN,
United States Senate, Washington, D. C.

DEAR SIR: The labor condition in the South, especially in North Carolina, has reached a critical stage.

I have been requested by my local craft to write you asking if you will sponsor Senator WHEELER'S effort for a committee to instigate a Senate investigation.

Hoping that you will give this matter your favorable consideration, we are

Yours very truly,

LOCAL NO. 717,
C. S. HUGGINS, *Recording Secretary.*

MUNICIPAL AIRPORTS AS A PUBLIC PURPOSE (S. DOC. NO. 12)

Mr. BINGHAM. Mr. President the question as to whether or not the ownership of a municipal airport is a public purpose within the purview of the general principles of constitutional law is one which is concerning a great many of our States, cities, and towns at the present time. I ask unanimous consent that an article by Harry J. Freeman, research fellow in law, New York University, entitled "Municipal Airports as a Public Purpose," may be printed as a public document.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

BILLS INTRODUCED

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

By Mr. SWANSON:

A bill (S. 1166) appropriating money for improvements upon the Government-owned land at Wakefield, Westmoreland County, Va., the birthplace of George Washington; to the Committee on Appropriations.

By Mr. REED:

A bill (S. 1167) for the relief of the Allegheny Forging Co. (with accompanying papers); to the Committee on Claims.

(By request of the War Department.) A bill (S. 1168) to authorize the Secretary of War or the Secretary of the Navy to withhold the pay of officers, warrant officers, and nurses of the Army, Navy, or Marine Corps to cover indebtedness to the United States under certain conditions; to the Committee on Military Affairs.

By Mr. KING:

A bill (S. 1169) granting a pension to Eliza Beagley; to the Committee on Pensions.

By Mr. ODDIE:

A bill (S. 1170) granting a pension to Ambrose L. Hunting; to the Committee on Pensions.

By Mr. RANSDELL:

A bill (S. 1171) to establish and operate a national institute of health, to create a system of fellowships in said institute, and to authorize the Government to accept donations for use in ascertaining the cause, prevention, and cure of disease, affecting human beings, and for other purposes; to the Committee on Commerce.

By Mr. WAGNER:

A bill (S. 1172) for the relief of John J. Gillick; and

A bill (S. 1173) to provide for refunding certain customs duties to the M. W. Kellogg Co.; to the Committee on Claims.

By Mr. BLAINE:

A bill (S. 1174) to credit the accounts of Charles R. Williams, deceased, former United States property and disbursing officer, Wisconsin National Guard; to the Committee on Claims.

By Mr. NYE:

A bill (S. 1175) for the relief of the distressed and starving people of China and for the disposition of wheat surpluses in the United States; to the Committee on Agriculture and Forestry.

By Mr. ROBINSON of Indiana:

A bill (S. 1176) for the relief of Gustav J. Braun; to the Committee on Claims.

A bill (S. 1177) granting an increase of pension to Margaret Sweet (with accompanying papers); to the Committee on Pensions.

By Mr. HAWES:

A bill (S. 1178) for the relief of St. Ludgers Catholic Church, Germantown, Henry County, Mo. (with an accompanying paper); and

A bill (S. 1179) for the relief of Toberman Grain Co., successors to Toberman, Mackey & Co. of St. Louis, Mo. (with an accompanying paper); to the Committee on Claims.

A bill (S. 1180) granting a pension to Barbra Eakins (with accompanying papers);

A bill (S. 1181) granting an increase of pension to Lavina M. Williams (with accompanying papers); and

A bill (S. 1182) granting an increase of pension to Sarah Jane Harrel (with accompanying papers); to the Committee on Pensions.

By Mr. CARAWAY:

A bill (S. 1183) to authorize the conveyance of certain land in the Hot Springs National Park, Ark., to the P. F. Connelly Paving Co.; to the Committee on Public Lands and Surveys.

By Mr. WHEELER:

A bill (S. 1184) granting a pension to Sadie B. Cameron; to the Committee on Pensions.

By Mr. WATSON:

A bill (S. 1185) granting a pension to Charles M. Wilson; to the Committee on Pensions.

By Mr. TYSON:

A bill (S. 1186) granting the consent of Congress to the Highway Department of the State of Tennessee to construct, maintain, and operate a bridge across the Cumberland River between Gainesboro and Granville in Jackson County, Tenn.;

A bill (S. 1187) granting the consent of Congress to the Highway Department of the State of Tennessee to construct, maintain, and operate a bridge across the Tennessee River on the Dayton-Decatur Road between Rhea and Meigs Counties, Tenn.;

A bill (S. 1188) granting the consent of Congress to the Highway Department of the State of Tennessee to construct, maintain, and operate a bridge across the Cumberland River on the projected Gallatin-Martha Road between Sumner and Wilson Counties, Tenn.; and

A bill (S. 1189) granting the consent of Congress to the Highway Department of the State of Tennessee to construct, maintain, and operate a bridge across the Cumberland River on the projected Charlotte-Ashland City Road, in Cheatham County, Tenn.; to the Committee on Commerce.

By Mr. PHIPPS:

A bill (S. 1190) to promote the development, protection, and utilization of grazing facilities within national forests, and for other purposes; to the Committee on Agriculture and Forestry.

AMENDMENTS TO CENSUS AND APPORTIONMENT BILL

Mr. BLACK, Mr. CAPPER, Mr. GEORGE, and Mr. MOSES each submitted an amendment intended to be proposed by them, respectively, to the bill (S. 312) to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress, which were severally ordered to lie on the table and to be printed.

PUBLIC SAFETY IN THE DISTRICT OF COLUMBIA

Mr. COPELAND. Mr. President, I send forward a brief resolution, which I ask to have read at the desk.

The VICE PRESIDENT. Without objection, the resolution will be read.

The legislative clerk read the resolution (S. Res. 62), as follows:

Resolved, That the Commissioners of the District of Columbia be requested to report to the Senate regarding the rules and regulations in force requiring the opening outward of the doors of all public buildings, the application of fire escapes, the care of explosives and inflammable materials, and other similar matters relating to the public safety; also that they indicate if legislation in these matters is necessary to safeguard the citizens of Washington.

Mr. COPELAND. Mr. President, the purpose of the resolution is perfectly apparent. On account of the dreadful accident in Cleveland, the officials of every city are disturbed. I think the Senate should have information as to whether or not such proper regulations are being maintained in our city of Washington. I ask unanimous consent for the immediate consideration of the resolution.

The resolution was considered by unanimous consent and agreed to.

Mr. NYE. Mr. President, in connection with the resolution just submitted by the Senator from New York [Mr. COPELAND], I ask unanimous consent to have printed in the RECORD an editorial from the Portland (Me.) Evening News of Saturday, May 18, entitled "One Lesson of the Cleveland Clinic Disaster." It is an editorial of considerable interest at the present moment.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Portland (Me.) Evening News, May 18, 1929]

ONE LESSON OF THE CLEVELAND CLINIC DISASTER

The catastrophe which overwhelmed the Cleveland Clinic was both of a magnitude and of a horror sufficiently peculiar to evoke nation-wide emotion in a society jaded with sensation, calloused at calamity, and unusually immersed in its own affairs.

The reaction to the sudden snuffing out of scores of human lives and to the lingering torture of the fatally poisoned, while the death toll passed 125, is reflected in the daily press.

The agonies of the dying, the fortitude of the rescued, and the heroism of the rescuers, some of whom in turn became victims; the intense personal tragedies in the blotting out of fathers, mothers, wives, and husbands, of young girls just engaged, of patients helpless with serious ailments, of others who, casually admitted for examination, found death where they were seeking improved health; the precautions taken in cities throughout the Nation to guard against similar disaster in their own hospitals—these fill the news columns throughout America and even abroad.

The editorial writers, facing the apparent necessity of commenting on an episode so staggering, and the difficulty of making their expression other than a rehearsal of the facts and a piling up of adjectives, merely echo the public reaction at the "unmitigated horror," the "ghastly suffering," the "appalling disaster," invoking even such time-honored journalese favorites as "holocaust" and such verbal artifices as "superhorror."

What else indeed is there but to express horror at the horror, sympathy for the victims, their relatives and the "stricken community," and to utter the hope that precautions will prevent a recurrence of so terrible a disaster?

And yet, without going too far afield from such indicated commentaries, one collateral reflection upon this tragedy, hitherto unmentioned, seems almost as obvious.

The cynosure of all eyes in the Cleveland tragedy was, of course, Dr. George W. Crile. A surgeon of international repute, the foremost of his profession in Cleveland, he is, even among those of his specialty, pre-eminent in his expertness on the surgical problems especially related to the circulatory system. The Cleveland Clinic was his. One of its founders, he was essentially its leader and directing genius. He escaped death, and with a fortitude and endurance that seemed almost superhuman worked uninterruptedly for 48 hours in his effort to save lives—the lives of his colleagues, of the hospital's staff, and of patients. With the loss of many of his dearest friends and associates, with this unprecedented calamity befalling the institution which embodied the energy and ability and consummated the hopes and ambitions of a life-long career, his burden was beyond that of all others.

"He seemed," one newspaper correspondent telegraphed his paper, "to have absorbed the catastrophe by some application of the shock-elimination technique which he perfected during his services as consulting specialist with the Army in France during the World War."

Yes; it was like war: The most warlike calamity within the comparatively short peace-time period since the advent of modern warfare! When else, but in war, have over a hundred people massed together been subject to the lethal ravages of poison gas, unable to escape in time, with the survivors of immediate death gasping their life away as the corroding poison within the blood stream slowly brought on suffocation? The Hamburg fatalities with phosgene gas a few months ago slew but a tenth of the Cleveland number.

Yes; it was like war, this loosing of poison gas, whose destructiveness was its one outstanding quality, but whose character and exact physiologic effects were for days in doubt. A large part of the poison, declared some of the earlier reports which relayed autopsy findings, "was hydrocyanic gas, used by professional rat exterminators because of its unfailing and instantaneous effect." And indeed, like its effect on rats, caught by the fumes before they can escape to the open air, was the gas generated by the explosion in the hospital's X-ray film storage room.

One expert declared that the gas was "nitrogen dioxide," which may be fatal days after inhalation due to its injury to the pulmonary tissue causing œdema of the lungs—their filling with water. Another assigned the lethal effect of the gas to the disintegration of the blood corpuscles, which often continues unabated even by transfusion.

Now this unique peace-time catastrophe, this horror which blighted the city of Cleveland, which has sent a thrill of compassion throughout the land, which from coast to coast has kindled among civic and medical authorities the determination that this unprecedented accident "shall not be again"—why, that is the daily order of things in time of war.

The gas shambles which a fatal combination of unlikely and unexpected circumstances brought to pass, that unspeakable calamity which because of its very horror was undreamt of, that is the very thing which nations deliberately plan to bring about in time of war.

These poisonous gases, a whiff of which fell a strong man; these swift vapors which destroy the living tissues; these noxious fumes, a cloud of which lays low a company; these accidental products of leaky pipe and carelessly stored inflammable material, are the carefully calculated concoctions of the scientific laboratory in time of war.

These falling men and women; these rigid corpses, their faces contorted in death agony, their skin yellowed with the fatal venom; these gasping human beings, choking and writhing in physical and mental anguish as life ebbs; these tragic victims of Cleveland's unique calamity; they are the daily, the routine, the expected—yes; even the hoped-for victims in time of war.

To-day the energies and thoughts of men and their hand-maiden science are mobilized to forestall the repetition of so unutterable a calamity as that in Cleveland. To-morrow the same energies and thoughts will be mobilized to secure its manifold repetition.

What now, in time of peace, the Nation will seek to prevent at all costs, hereafter, in time of war, it will seek to achieve at all costs. What is deplored as an accident to-day will be applauded when deliberately perpetrated to-morrow on an infinitely vaster scale.

If the Cleveland horror, which is irremediable, may turn the thoughts of men to the same greater horror when purposeful and not accidental, then the suffering and loss in our Ohio city may not be absolute, may not be wholly waste. If it might lead to a nation-wide movement for the elimination of the governmental agencies which in time of peace—now—are devoting their energies to the potential use of gas in the event of war; if the peace-time horror might bring about the abolition of the peace-time preparation for the same horror multiplied a thousand times in time of war, then maybe those dead will not have died in vain.

"EDUCATION AS A FOUNDATION FOR CITIZENSHIP"

Mr. REED. Mr. President, a most interesting address was delivered at the new McKinley High School on last Wednesday evening, May 15, by the senior Senator from Connecticut [Mr. BINGHAM] on the subject of Education as a Foundation for Citizenship. I ask unanimous consent that the address, which I send to the desk, may be printed in the CONGRESSIONAL RECORD.

The VICE PRESIDENT. Without objection, it is so ordered.

Senator BINGHAM spoke as follows:

It is well for us sometimes to stop and consider why it is that so large a part of the money contributed to State and city governments by the taxpayers of the United States is devoted to education. What is the justification for the large expenditure of public money on such magnificent establishments as the McKinley High School and on the cost of maintenance of our public schools?

If you answer that it is because education is such a necessary and useful matter it can be replied that there are many other necessary and useful matters for which the money of the taxpayers is not spent. Food and clothing are necessary and useful matters, yet we do not expect the Government to provide them, although undoubtedly under governmental supervision more wholesome and nourishing diet could be provided than is at present the case in many instances. It is also quite probable that under governmental direction citizens might be furnished with clothes more useful and durable, even if less attractive and fashionable than is the case at present.

Nevertheless we take it for granted that it is better for the citizens to provide their own food and raiment and that except in the case of unfortunates and the destitute the money of the taxpayers should not be spent even for such necessary and useful matters as food and clothing. Furthermore, few things are more desirable than travel and perhaps in the long run nothing conduces more to the progress of the race than scientific research. Yet we do not ask the taxpayers to pay for any considerable portion of the scientific research now being done in the United States nor for any but the smallest fraction of the bills for travel spent by the American tourist at home and abroad.

You will have to find some reason better than those already given if you are to justify the enormous expenditure of the public revenue on public schools. As I see it the justification lies in the law of self-preservation. A government composed of citizens, and our Government is essentially made up of its citizens, can not long be preserved if its citizens are not fit for the duties of citizenship.

We recognize that citizens must be clothed and fed, but we believe that the strength and character developed in the citizen through the necessity of providing for his immediate bodily needs and the physical needs of his family strengthens rather than weakens the Republic. The history of republics shows that when you begin to feed the citizens, except in times of great national calamity, you begin to weaken their fiber and strike at the roots of the tree of citizenship.

Similarly with regard to travel and research. The ability to travel is one of the rewards of that strenuous attention to one's business, which in its turn helps to form a strong citizenry. As for research, we are learning that it pays to use scientific research in connection with manufactures and industry. We have learned the satisfaction that can come to an able and successful citizen from providing means whereby brilliant and eager students may conduct those explorations into the fields of discovery which are not limited by geography and topography. When government steps in and takes away from the citizens the satisfaction which comes from the rewards of a well-spent life or the rewards of good judgment, strict attention with unflagging zeal in his chosen field of usefulness, government hurts rather than helps its citizenry.

On the other hand, if a republic neglects the careful training of its citizens for the duties of citizenship, then it disregards the duty of self-preservation.

Furthermore, whenever public education loses sight of the reason for its support by the taxpayers and devotes itself to the promotion of the art of education as distinguished from the development of good citizens, it is in danger of defeating its own ends.

The aim of public education should be the development of a sturdy, self-reliant citizenry. The aim of good public schools should be not the acquisition of knowledge, but the development of character. It is possible that knowledge can be best distributed by something resembling mass production and the use of the latest scientific method with all its apparatus of labor-saving devices. On the other hand, character, and particularly, the character of a sturdy, self-reliant patriotic citizen is not a machine-made product and suffers when it is the result of mass production. It is worthy of note that the present President of the United States and his immediate predecessor, both of whom are particularly admired for their strong character as able citizens, were trained in public schools of the old-fashioned sort and later in the affairs of citizenship both proved more successful than millions of their contemporaries whose public-school education was, from the point of view of the professional pedagogue and educator, far more modern and satisfactory.

The professional educator with his mind fixed on devotion to his profession and an earnest desire to see in use its most modern equipment and its latest labor-saving devices, is inclined to look with aversion and scorn on the 1-room schoolhouse where a single teacher with 15 or 20 children is faced with the necessity of covering a multitude of sub-

jects, or perhaps it would be more accurate to say a multitude of aspects of a limited number of subjects and is in despair because there are only 4 children in the primer class, 3 in the second reader, 3 in the third reader, and 2 in the fifth reader, with similar groupings so far as arithmetic and geography are concerned. The professional pedagogue looks at the 1-room schoolhouse with its single overworked teacher and shakes his head because of the lack of apparatus and the lack of opportunity for a normal-school graduate to put into practice the latest methods of her profession.

As a matter of fact, the 1-room schoolhouse, with its single devoted teacher, comes nearer to being a satisfactory successor to the home school than any device of modern education. For untold centuries the character of our ancestors was developed by the training they received at home from fathers and mothers whose duties did not take them far afield. Fortunate indeed is the child to-day who learns to read at his mother's knee and whose parents choose to take the time to fashion the character of the little citizens under their care. Next best is the small school where during the years between 7 and 14 the child may have the affectionate guidance of a teacher deeply interested in giving young citizens that foundation in character which will make them useful members of the Republic.

Where conditions are such that this is not possible, as in our great cities, it still remains the duty of those charged with the supervision of the public schools to see to it that in their desire to be up to date and modern, they do not overlook the real end and aim of public-school education.

Magnificent buildings like this beautiful high school are a source of pride to the citizen and to the pupils who are so fortunate as to use these halls and this equipment. When the fortunate student reaches this stage in his educational career it is necessary that he be taught by specialists. By the time he reaches high school his character is already well developed, and it becomes more essential for the teacher to train him so that he will acquire skill in the use of his brain and of his hands and may become a useful citizen. If it is fundamentally the duty of the elementary schools to develop the desirable traits of self-reliant, honest, courageous citizens, it is equally the duty of the high school to give these young citizens the knowledge and skill which will enable them to become strong units in the citizenry of the Republic. In a kingdom or monarchy, where all are subjects and look to the sovereign for gracious favors, subserviency is a virtue and willingness to receive favors a natural state of affairs. The more perfect the monarchy, the more benevolent the despotism, the more efficient the bureaucracy, the more supine become the citizens, until at last, having lost their responsibilities, they cease to be citizens and become subjects. A school like this, where the effort is made to develop a strong sense of responsibility and pride in self-reliance, justifies the burdens which it lays on the shoulders of the taxpayer, because it helps to provide a strong body of citizenry to carry the burdens of the Republic.

FUNDAMENTALS OF AMERICAN CIVILIZATION—ADDRESS BY SENATOR GOFF

Mr. FESS. Mr. President, I take great pleasure in asking unanimous consent to have printed in the RECORD the speech of Senator GUY D. GOFF, of West Virginia, delivered at the Trinity Methodist Episcopal Church on Sunday night, May 19, upon the subject of God, the Constitution, the Laws Thereunder, and Religion as Being the Underlying Basis of American Civilization. This is a very admirable compendium of our underlying principles of government. Its plea for tolerance, coupled with the warning that self-righteousness is a distinctly American peril, should commend it to the consideration of all who are interested in these basic questions now attracting the attention of the American people.

There being no objection, the address was ordered to be printed in the RECORD.

Senator GOFF spoke as follows:

It has been truly said that all through the history of this country there has run the golden thread of a deeply religious strain. This was well expressed in the Constitutional Convention that met in 1787 to frame the Constitution of the United States. In that assemblage Benjamin Franklin arose and, addressing George Washingon, its president, said:

"I have lived, sir, a long time. The longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow can not fall to the ground without His notice, is it probable that an empire can arise without His aid? We have been assured, sir, in the sacred writings 'that except the Lord build the house they labor in vain that build it.' I firmly believe this; and I firmly believe that without His concurring aid we shall succeed in this political building no better than the building of Babel. I, therefore, beg leave to move that hereafter prayers imploring the assistance of Heaven and its blessings on our deliberations be held in this assembly every morning before we proceed to business."

Prayer is still the procedure, as you know, in both the Senate and House.

We must realize and practice these teachings, and we must cease quarreling in the world and among ourselves. We must realize our responsibilities. We must keep the people of this Nation active and busy in the discharge of their obligations. We must fight in peace for the real things of life, the things that go to make a great Christian nation and a true democracy.

LIVING FAITH IN GOD

The world needs rest, confidence, and charity, and these will not come, until every morning and every night, those who can pray and those who can only think begin to pray and think that rest and peace may come to the bedside of our sick civilization. We must also appreciate that selfishness, envy, revenge, and fear, as well as the present destructive attitude toward all established institutions, are the cause of world unrest. Bickering and brawling must stop. You know and I know that western civilization must now crack and crumble or go forward to higher levels than it has ever attained. If it is to go forward the world must awaken to a living faith in Jesus Christ and to a more ripened belief in His teachings.

THE VOICE OF WASHINGTON

Patriotism belongs to the men and women who are the conscience of a nation. The strength, the industry, and the civilization of this Republic depend on individual character—that indefinable quality that has made our citizenship freer in body, broader in mind, and cleaner in conscience than any other people in the world.

In the Constitutional Convention, over which George Washington presided, he uttered these immortal words. He had taken no part in the discussion of the convention, but at the crucial crisis in its proceedings he arose from his chair and in tones of suppressed emotion said:

"It is too probable that no plan we propose will be adopted; perhaps another dreadful conflict is to be sustained. If to please the people we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair. The event is in the hands of God."

Here was true statesmanship. Here was individual courage. Here was true manhood. And it is only by this degree of patriotism, real and personal, in our everyday lives that we can discharge our obligations to home and to country and so live that they who have died shall not have died in vain.

It is the moral qualities in man and state that rule the world. The strength, the industry, and the civilization of a people all depend on individual character, and the very foundations of civil security rest upon it. Laws and institutions are but its outgrowth.

The first century of the English occupation of this continent, being the second century after the discovery of the New World, was the period in which the citizenship of our Republic was created. Whether he came to New England or Virginia, the Briton brought all the rights of personal manhood that had been written with strong hands and stout hearts into the very text of the Magna Charta. But while he brought the rights of the commoner, he did not bring the burdens of an inherited and traditional aristocracy.

From the very beginning, all that was freest and best in English custom and English law had here a full course and a fair field, and thus was laid the first, the deepest, and the surest foundations of a free State and a full free citizenship of the free man. Two theories of government largely responsible for the spiritual and the intellectual outlook of our people were, however, then interwoven in the growing colonies. These were the forces of State and Federal authority—the centrifugal and centripetal forces of government. Men had been trained in those days to love the colony, and by inheritance to love the State. The sense of local freedom and the jealousies of central authority alike combined to make the citizens of the State distrustful of a new and unlimited national government. On the other hand, men saw and felt that in union alone was strength, and that no government could endure without the power to enforce its own decrees and compel obedience to its rightful commands. Between these theories there had to be compromise, or there could be no agreement. The Federal Constitution was such a compromise, and out of it grew the largest and the best scheme of popular free government that the world has yet seen tried. And so our fathers began with complete recognition of the absolute and inalienable rights of man as men. On this solid foundation they built their fabric of government. In time there came the spiritual conception of state and nation. Those who loved the Union most insisted that to the nation their highest allegiance belonged, and that when the state and nation came in conflict the nation was supreme. The fact of negro slavery intensified this difference. The debates went on, in Congress, in court, in pulpit, and at last ended upon the field of battle. When the struggle of arms was ended, the debate was ended. Brave and honorable men had submitted this question of human government to the last tribunal known on earth, and when that tribunal had rendered its decree, that this Union of States, born of the people of the United States, is and shall be forever a nation of laws with all that nationality implies, that decision was and shall forever be binding upon us all.

Thus has come, unmatched and unequaled, with all its name implies, the United States of America, and the question arises, must arise in every mind: To what shall it eventually grow to be? Rest is impossible. In all this vast creation, in plant, in earth, in stone, there is no rest, and so there is and can be no rest in man, in social system, or in state. We grow to better or lapse to worse. The manhood of this people just in so far as it obeys the law will grow more manly, and in so far as it rejects the law, will sink backwards through sickening changes of weakness, vice, and degredation to anarchy—to an unmanly loss of liberty, and to an unmanly submission to slavery, first of the mob and then of the despot. Absolute liberty to do as one wishes would mean barbarism, for there would be no limit to the conduct of an individual except his whims. The liberty of one would be the unrestricted liberty of every other, and anarchy and absence of law would result, as the wants and desires of men came into conflict.

And so I emphasize this fact, that we must learn to see in this great Republic of ours the powers of personality, morality, and spirituality struggling for utterance against the greed for gold, power, and falsehood—dangers as real as they are insidious. The clash of policies and the clash of moral forces are but the outer evidence of the deeper and more fateful clash of intellects. The lights that flash upon our vision, and the shadows that fall across our way, are only the faint, far-off reflections of the joys and the tragedies that move the lives of ours friends and our neighbors.

And *all* through this vital, throbbing people the pulse of one great purpose beats and swells—a purpose that reveals its meaning more and more to those who reflect and will understand that personality and character and respect for the law are alone eternal, and that the real issues of the struggle are not intellectual or material, but spiritual and moral, and that character is the constant factor in our governmental stability. The social conscience about which we hear so much is not a mere generalization, nor a vague ghost stalking through our civilization and haunting our dreams, but it is a great national ledger, in which all our mistakes, hopes, and aspirations are registered and which time reveals to us all.

This is a new era. "The old order changeth, yielding place to the new, and God fulfills Himself in many ways." In view of the present discontent and violation of the law, I was asked recently if this were not the hour when we should listen to sermons and be thankful. I replied, no; that it was the hour when we should take stock and find ourselves. We are reaping the harvest of the great disorder that always accompanies and succeeds war. Our situation does not differ in the least from that existing elsewhere. We are not the only people with problems of incompetence, graft, and criminal aggression. We have been tried and searched by grim tests, and we are now struggling back to everyday conditions. The world is distrustful, and too many of our law-abiding people hesitate and delay to do the very things necessary to a speedy recovery. Individual men and women have knowingly sought substitutes for their old maxims and have weakly proclaimed new discoveries in the make-up of society. The present-day idealist judges without psychology and purposely excludes himself. He shuts men off in water-tight compartments only to create a false sense of superiority. He labels one good, the other bad. Christ tried to teach men not to do that. It is such attitudes that make our habitual efforts at reform so dangerous. Men are not good or bad; they are good and bad. Self-righteousness is a real American peril, but no one possesses a monopoly of those virtues which go to make up real manhood and womanhood, and everyone knows that some men and women are crafty, dishonest, and responsive to immoral and criminal influences. We all know that life has been trying to teach humanity this fundamental lesson from the days of the first man and the first woman.

War lifted the nations engaged into a great force of unlimited energy. It lit the imagination, and the result was collective enthusiasm, much of which was at the expense of character and those principles which we have been taught to hold dear. Economic and ethical values became unsettled, and too many of us were responsive to the unrest so prevalent on every side.

The searching of our souls disclosed much that was good and much that was bad—but peril abides in this practice if it be too generally followed. Too many of us have a vivid taste for such tasks. The man who searches other people's souls will have no time to search his own. We must not preach disdain, because it exalts the menace of discontent. We must not take our mistakes too seriously, because that discourages repentance and destroys our sense of humor. Life has its absurd side, and those of us who are not snobs know that there is something in all of us at which we must laugh, and at which we do laugh, and at which the world always laughs. The situation admitted of corruption and invited and encouraged the ruthless pursuit of personal advantage. The manifold emergencies of the war and its complete preoccupation offered a perfect opportunity for the return of that unlovely trait in human nature that ever seeks gain out of the misfortunes and the afflictions which are the common lot. In every vocation and avocation, trade and craft, certain men felt the instinct and were vile enough to take advantage of their friends and crush their competitors. As was to be expected, the large majority refused to yield, but many, too many, surrendered. The profiteer stalked abroad in the land, and inflation became the order of the day. The mass opinion and morality became infected with the selfish psychology of the few. Mankind went a-looting, and whenever law stood in the way it was annihilated. Those who did not profiteer were ground between the millstones, but the majority did not. Of such, thank God, is the Republic of America. However, it must be admitted that the great majority of people do not regard the welfare of the whole as the chief object of their social obligations, but rather the immediate attainment of their own selfish ends. During the war "emergency" was the great word to which the honest rose, and which they made the "slogan" of a splendid Americanism. "Emergency" was the word with which the crooked palliated their dishonesty of getting away with "easy money," while those who played straight were engaged in winning the battles that saved civilization.

There will be no better days, no way out, no escape from these forces more miserably destructive than the forces of war, unless we determine to wash out the small things of life, and put in their places a superb sincerity and fearlessness of censure. There is no panacea, just the imperative duty to face the situation in the light of the actual facts. There must be a candid and fearless judgment, unpleasant though it may be. There must be no hesitation in pronouncing that a large part of our people have not been honest. We must take stock in our minds as individuals, and in every nook and cranny of our social, political, and governmental existence. We must legislate and prosecute, and drastically punish; but principally we must educate, and practice what we preach. No one can deny that things are wrong and that men, in their pursuit of false gods, have forgotten honor and justice. It is education that is needed. We can not save humanity by hanging murderers and sending thieves to prison. We can save it only by teaching mankind not to murder, and that theft is, of all roads to wealth, the most precarious. To-day all mankind is suspicious, doing nothing, playing safe. America must be the positive Nation. She will. And she will, I am sure, be positively good. A negative nation, seeking constantly for evil, even though it seeks that it may punish, if it is not ready to supplant with the positive good, can not and will not triumph in the end. We must inculcate into our people the homely virtues on which civilization rests. We must teach and learn that a virtuous people, possessed of aggressive honesty and patient endeavor, need few laws—and that law forced from without can never take the place of character. Strong as this Government is, it is not strong enough to last unless the American citizen is taught—if needs be made—to respect authority and revere the law. That is, civilization rests upon the law and law upon civilization; and when this fact is appreciated and observed, then no man will be above the law, and the law will reign over all.

MILLENNIUM FAR AWAY

The trouble to-day with this Nation is that we are patriots in war and slackers in peace. American democracy is facing a severe test, and the question arises in every mind, To what shall it eventually grow to be? We must be anxious for the welfare of our country. The war brought many changes. The war did not leave the world as it found it. It will never be the same. It will have no place for idlers or social slackers. Rank will reside not in birth, nor wealth, nor an office-holding class, but in ability and achievement, the twin sisters of tolerance and moderation, without which there can be neither inspiration, progress, nor justice. In the meditations of a great philsopher is this unchanging truth: "We should draw no horoscopes, we should expect little, for what we expect will not come to pass. Revolutions, reformations—these vast movements into which heroes and saints have flung themselves in the belief that they were the dawn of the millenium—have not borne the fruit for which they looked. Millenniums are far away. These great convulsions leave the world changed, perhaps improved, but not as the actors in them hoped." We must not permit ourselves to be on the mountain top of hilarity nor in the valley of depression. It's always difficult to be self-contained, and, in a crisis, it is never easy to stand solidly on the ground and look up to the heavens and have hope.

COMPOSITE RACE

We know the American temperament. We are a composite of many of the great nations of the world, and we have perforce a peculiar mental outlook. We fuss, we become grouchy, we will fill our hearts with fear, and then we hurry and worry and panic comes. We must not do this. We must believe in law and order. We must look with a single eye, we must see straight and far, and we must be just and honest. We must save and so conserve our wealth that capital will do the work of credit. The trouble with Europe to-day is that credit has taken the place of wealth.

NEED DEVOTION TO COUNTRY

The people of these United States must learn to love the Constitution. Every citizen must know it from the beginning to the end. Every citizen must understand what it signifies. It must be imbedded in the hearts of our people. The subconscious, bone-bred thought of

every honest, loyal American must be: Thank God, I am a citizen of the noblest, the finest, and the most sacred country in all creation—the United States of America. In every great crisis the Constitution of the United States has always stood the cruical and supreme test. To-day it is again being analyzed to determine whether world envy, prejudice, hatred, perfidy, and national selfishness can prevent the majority doing their duty each to the other and to all mankind. It will survive the crucible, sublimated and refined, and emerge the great altar stairs that slope through the treasury of eternal right up to God.

JUSTICE ETERNAL

We are guided and governed by the eternal laws of justice, to which we are subject. We are measured in life by what we do more than by what we think. This Nation to-day is what its executed laws are—no better and no worse. No man in this country is above the law, even though he may regard the rule or regulation as a personal affront. No officer of the law set any law at defiance. All the officers of this Government, from the highest to the lowest, are but the creatures of the law, and are oath bound to obey the law. Government is a trust and the officers are the trustees. Both the trust and the trustees are created by the people for the benefit of all the people.

OBEDIENCE TO LAW

Peace has its disease quite as blighting as war. To-day all mankind is suspicious, doing nothing, playing safe. Autocracy having been overthrown anarchy has raised its head. All the exploded fallacies of government are returning to challenge democracy. The socialists and the anarchists have combined in a world-wide conspiracy having for its object the subjugation of the human race and the destruction of the ideals upon which free government rests. We are confronted with the doctrine of the divine right of the crowd. Selfishness and individual appetitie are to be the law of the land. If the laws are ignored there is no government. Where law ends tyranny begins. Disregard for one law breeds contempt for all laws. The public instinctively believes that lawlessness should be met with lawlessness. This leads to corruption and ultimately to the destruction of all order.

ETHICS OF WAR

We are not the only people with problems of incompetency, graft, and criminal aggression. We are reaping the harvest of the great disorder that always accompanies and succeeds war. The ethics of war always react disastrously on private conduct. Morality can not be removed from national and international affairs without affecting private life. What is regarded as right and proper in war will soon come to be regarded as right and proper in peace.

THE MORAL LAW

The maintenance of a double standard of morals is just as impossible as the maintenance of a double standard in money. By a sort of Gresham's law the lower standard will drive out the higher or drag it down to its own level. The hold-up man is the counterpart of the profiteer. The lawlessness of labor is the counterpart of the lawlessness of capital. The lawless employee is always an apt pupil of the lawless employer. We are in a period of disrespect for law and order.

PROMISE UNPERFORMED

Some officials shut their eyes to the fact that a law without execution is like a promise unperformed. They subvert the Nation's cause to their own personal prosperity, and, because of political power or personal friendship, they make waste paper out of our statutes, State and Federal, and allow illegal practices to be perpetrated and the law set at naught. They become pettifoggers in the courts of their own conscience. It is not for an executive to say whether a law is good or bad. There is no greater evil than the nonenforcement by a public officer of the laws he has sworn to uphold. He should enforce the law or confess failure and resign. The law is not made for a certain few, to be enforced against some and vacated against others. It is a beacon for all—for the poor, the rich, the Jew and the Gentile, for the white and the black, the high and the low. It chooses none and it rejects none. It stands proclaiming to the world, "Thou shalt not break," and when that commandment is broken the Nation should bend every effort to see that atonement is made, no matter who may be the offender, no matter how high his rank nor how low his station.

The quickest and surest way of setting any law at naught is to relax its enforcement, while the quickest and surest way of instilling respect for the law in the hearts of the people is vigorously to press its enforcement. Respect for the law is the one essential fact of our civilization. Without it, life, liberty, and property are insecure; without it, civilization falls back to the chaos and the anarchy of primitive times. We must have faith in ourselves and believe in the principles we profess. Strong as this Government is, it is not strong enough to last unless the American citizen is made to respect and revere the law—that is, that civilization rests upon the law and law upon civilization; and when this fact is appreciated and observed, then no man will be above the law and the law will reign over all.

Our present civilization has not come by chance; it is the result of labor and toil and the consecrated service of brains and hands. Wealth is but the surplus which man has produced and saved over what he has consumed—and by the term "wealth" I mean the mental, the moral, and the spiritual, as well as the material, achievements of the past. Every triumph of mind or hand that makes for higher and better living is part of to-day's wealth and constitutes the sole basis for continued progress. It is said that this is the most materialistic age of the world; but is it not true that to-day there has come from such accumulated savings greater opportunities for the enjoyment of physical, spiritual, intellectual, moral, and social upbuilding than ever before in all history?

SELFISHNESS VERSUS SERVICE

There is no reason why we should worry about our material wealth. Language can not picture nor words paint the great wealth that has come to this Nation. There are dangers ahead far greater than abundance or poverty or the denial of certain rights. There is not an adequate love of country, nor sufficient patriotic self-sacrifice, nor an inborn heart's desire on the part of the majority of our citizens to take an active interest in public affairs.

The men and women of this country are proud and honest. They love their Government and they respect its institutions, but in their ease and their comfort they forget that every gift is accompanied by an obligation to do. They are indifferent to the fact that public participation and public service and a personal private duty are absolutely necessary to the security of individual prosperity. They are too much absorbed in their own selfish affairs to love this blessed land of such dear souls and sacred memories, with a passion enduring when all other earthly desires have gone. They do not care enough for the priceless fabric of liberty transmitted to them as the most precious of heritages, and in the pursuit of their selfish aims they have become too envious and jealous even to care to serve the Nation.

THE POETRY OF LIFE

We must substitute for this false, defective selfishness the undeniable truth that there can be no permanent prosperity for one class of our people at the expense of another class. We must teach those who do not know, as well as those who have forgotten, that democracy is no miracle worker, that it guarantees this and nothing more: That men of unequal ability shall be equal in their right to develop their potentialities. We must insist that every avenue be open and every opportunity free. We must make the world a better place in which to live. We must improve the morals, conserve the health, and advance the welfare of every man, woman, and child with whom we come in contact, and whose lives touch ours. We must soften the severity of labor and increase the rewards of those who do the intellectual as well as the manual work of the world. To fail in these things is to take the first long step back to autocracy.

To close our eyes to these eternal and moral voices is to approve a combination of the mediocre and the inferior, to the end that character, ability, and morality shall be punished and restrained. Most men, aside from the lazy, the weak, the criminal, the defective, and the tainted yearn for something that has the mark of personal ownership—something won by struggle, something to love and defend, to use and enjoy. Mankind wants a home and all that clusters around it. This sentiment constitutes the poetry of life, and it dwells in humble surroundings just as much as it does in places of wealth and culture.

MESSAGE OF THE MOMENT

The message of the moment is this: Every citizen is a stockholder in the material present and the spiritual future of this great Nation, and it is his and her duty as such custodians to lay aside all prejudices and unite for the common good, because by approving politically what we condemn socially and commercially, we not only fail civilly and morally, but we become compounders of felonies against God and man. We need fewer critics of men and more willing and unselfish servants of mankind. We need men who are too honest to be corrupted by opportunity, and too brave to be coerced by demagogues. We need to feel as Washington felt, as Lincoln felt, and Cleveland felt—that a public office is a private trust, that public honor is private honor, that public disgrace is private disgrace, and that public failure is a private failure. The time must come again when men will feel that to spend their lives in morality and high endeavor, though it may end in financial ruin, is far preferable to a life spent simply in the accumulation of millions to be squandered in frivolous dissipation and ostentatious display. There must be a return of mercy and pity, accompanied by a resolute sense of justice and a love of home with an intensity that is passionate.

The time must come again, and soon, when American women will prefer the companionship of men of lofty souls and brave hearts striving to attain some useful and serviceable end rather than the companionship of men whose sole attraction consists in their ability to supply the sounding brass and glittering tinsel. An appreciation—yes; a realization—of the greatness of human life must come again into the

common ways of men. I would begin with the school children—boys and girls—and then the time will come when the man of the hour will be the young man whose intellect points to a life of usefulness to home, to country, and to humanity. Thus and thus only can we regain our spiritual ideals and learn anew the secrets of sacrifices, sincerity, and compassion lost in the madness of money making and in the madness of war. My friends, until we are again sustained in our daily lives by a vision of God there will be neither happiness nor tranquillity, inspiration, nor faith in the hearts of men.

CRITICISM VERSUS FLATTERY

We need brave, honest Catos to point out the evils and wrongs, not eloquent and pleasing Ciceros to gloss over vice and corruption. Society to-day is like some of our trappings—too little substance and too much veneer. Each year we get more of the beautiful orchids, fewer of the rugged oaks that protect us alike in sunshine and in storm. The time must come when man is put above the dollar—character above cash. Let us build on the basis of pure womanhood and courageous manhood, and then our institutions will be safe and perpetual. These virtues are of our inheritance. Do you ever reflect what has made the Anglo-Saxon race the greatest in the world? Julius Cæsar mentions it the first time he encountered our ancestors in Germany. He said: "These Saxons have two great virtues—they hold that the brightest jewel that can decorate woman is purity, and the greatest that can ennoble man is courage." These are the essentials of stability and progress, and because we have practiced them this Nation under God has gone on from victory to victory and triumph to triumph, holding the destiny of civilization in its hands.

THE OPPOSING FORCES

There are to-day two forces struggling for supremacy in America. Predatory, profiteering wealth is trying to seize the reins of government to add to its ill-gotten gains. Its triumph means industrial slavery and the rule of a rich oligarchy. Socialism is trying to seize the reins of government and confiscate alike the ill-gotten gains of the plunderers and the honest savings of our people. Its triumph means that the sensual, the lazy, and the improvident shall share and enjoy the toil of the virtuous, the industrious, and the frugal. The great mass of the patriotic people of this country believe in controlling their own lives and their own destinies, and they must unite to save themselves and their blood from these polluting and destroying influences. My countrymen, you realize and you know as well as I that if this great Republic is to achieve its foreordained purposes—if it is to carry on and to go on—it must not be controlled by those who are either saturated with wealth nor poisoned with prejudice and passion. The temple of this Government must be and it shall be kept free alike from the greed of the money changers and the loot of the rabble.

DEMOCRACY NO MIRACLE WORKER

Mankind is thinking too much of its rights and too little of its duties. We are justified in seeking our rights, but not in seeking them blindly. There must be no betterment of class at the expense of humanity; there must be a change in the individual attitude. We must stop thinking in terms of class and begin to think in terms of impartial justice. There are those who would poison the public mind against the very safeguards of free institutions. They appeal to those who have little to strike at those who have a little more. They are planning to sovietize the United States by driving our people into groups and classes, arraying group against group and class against class. They promise, if given power, that they will by some magic make everyone prosperous, and they assert that property is robbery, and that it should be taken from those who have it and given to those who have it not. They tell us this country is not truly democratic, because the condition of all the people is not the same. But when did democracy guarantee similarity of condition to all the people and grade mankind to a dead level?

No two human beings have the same ability or the same physical powers, and of necessity some men progress more rapidly than others, securing larger rewards and gaining greater enjoyment. These inequalities are due to difference in aptitude and ability, and they can be removed only by substituting tyranny for liberty and holding all men to that level of accomplishment which is within the reach of the weakest and the most incompetent. Such a policy in order to gain a false equality, deprives men and women of liberty and the pursuit of happiness. Such a policy overlooks the fundamental truth that the real value of man lies not in what he has but in what he is and what he may become.

TRUE PATRIOTISM

America has a great destiny. A great Republic, built on the Anglo-Saxon traditions, and resting as it does on the sanctity of the home as the corner stone of its existence, is the heritage of our people to-day. It takes just as high a type of courage, just as exalted a patriotism to fight the enemies of orderly government in time of peace as it does to fight the enemies of the Nation in time of actual war. Lawlessness is the greatest menace to prosperity. If this Government is to endure, infractions of the law must cease. Frankly, I can not understand the viewpoint of the men who would destroy this Government by weakening the structure upon which it stands. If a man is a patriot, how can he deliberately violate the law of this country? If he does violate it, it is because he lacks individual courage. You can not in these disturbed days of peace call him a patriot who seeks to promote his selfish interest or seeks by his disloyalty to bring discredit upon that which makes for his country's good. We must have plain, common, every-day justice and a recognition of justice by the people of this country. Every man knows what justice is. He knows it because he demands it. We are not patriots simply because we join a church or become members of some civic club, expressing patriotic motives. We are not patriots if we lack sincerity in dealing with each other. We are not patriots if we pose in public as one kind of man and in private as another. We are not patriots if we are demagogues or hypocrites in public life. We are not patriots if we seek to please rather than to say and to do what is right. We are not patriots if, in our hearts, we would rather lie to gain a temporary end and postpone a lasting victory rather than tell the truth.

CONSTITUTION

The Constitution has not outlived its usefulness. Its protecting care was never more needed than to-day. It is the duty of every citizen to withstand every assault upon it, whether its enemies be predatory interests seeking special privileges to the public injury or whether they be those who are opposed to any government that would safeguard and protect the rights and liberties of every citizen under its flag.

BEACON LIGHT OF CIVILIZATION

In the days of old, the wise men of the east turned with faith and hope to the star that shone over the cradle of the infant Christ—and to-day in the hope that we shall secure the peace and the civilization of the world the liberty-loving people of the old world are prayerfully and pleadingly looking to America where the Bethlehem Star of the west shines above the temple of justice and lights the pathway of the shrine of universal peace.

We love these United States. They are to-night the beacon light of civilization, and the hope of the entreating voice of a war-stricken world. It is a nation built on suffering. It is a nation founded by men who fleeing from persecution sought the then wilderness here, and made it what it is to-day, the hope of mankind—and the pride of civilization. It is the government the barons had in mind when they struggled at Runnymede. It is the kind of government for which John Hampden died. It is the government that the mothers of the Colonies—grand old mothers of Israel—gave all they had to give—the children of their bosoms and their love to help establish. It is the government that Washington, Adams, Jefferson, Madison, Jackson, Lincoln, Grant, Cleveland, and McKinley helped to organize, and as they pass before us in phantom form, we know it is the government that was saved to us by their courage, their loyalty, and their love. We are one people, because in our hearts we reckon men for what they are—and not for what they have. And so, in gratitude and humility we back the Republic of our fathers against the world, and because justice is greater than power, we dedicate ourselves, our wills, and our lives, in this presence, unto God, that this Nation, hallowed with the tears and the hopes of our sacred dead, shall live to scatter the richest of human liberty to races yet unborn, and advance the course of civilization that law and order, freedom and peace, and the needs of humanity may always be preserved.

THE "INJUNCTION OF SECRECY" WITH RESPECT TO AMERICAN TREATIES

Mr. HAWES. Mr. President, I ask unanimous consent to have printed in the RECORD an article by Manley O. Hudson, professor of international law, Harvard Law School.

Professor Hudson is a distinguished scholar, careful, conservative in expression, and one of our greatest authorities upon the subject of international relations. Any expression of opinion by him will demand thoughtful consideration. The subject of his article is The "Injunction of Secrecy" With Respect to American Treaties, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection the article was ordered to be printed in the RECORD, as follows:

The following incident will explain the reason for the suggestions in this paper that treaties signed on behalf of the United States should be published, in some cases, before their ratification.

In 1925 the Government of the United States was represented at an international conference on the protection of industrial property held at The Hague, and on November 6, 1925, the representatives of the United States signed the convention for the protection of industrial property. This new convention effects a revision of the convention signed at Washington on June 2, 1911, to which the United States is a party. (38 Stat. 1645, supplement to this Journal, vol. 6, p. 122.) On February 5, 1927, the President of the United States transmitted the text of the convention of November 6, 1925, to the Senate, with a request for its advice and consent to ratification. The Senate has not yet given its advice and consent, and therefore the convention has not been ratified by the President of the United States. On May 1, 1928, the

ratifications of seven of the signatories were deposited at the Ministry of Foreign Affairs at The Hague, and on June 1, 1928, the convention came into force for those seven states. On June 12, 1928, the convention was registered with the Secretariat of the League of Nations at Geneva.

The text of the convention has been published in various places. In November, 1925, the text (in French) was published in La Propriété Industrielle. (41 La Propriété Industrielle, p. 221.) In 1926 the Actes de la Conference de la Haye were published, setting forth the text (in French). The French text and an English translation of the convention were published by the British Government in 1926 (in Papers and Correspondence relative to the Conference of the International Union for the Protection of Industrial Property held at The Hague, November, 1925, pp. 105, 117), before the convention was ratified by His Brittanic Majesty, and in 1928 the French text and an English translation were published by the British Government in the British Treaty Series (British Treaty Series, No. 16, Cmd. 3167 (1928). The text of the convention published in this Journal for January, 1929 (vol. 23, supplement, p. 21), is taken from the British Treaty Series. Although these publications were available to him, the writer desired a text of this convention for use in the United States as it might have been translated and published by the Government of the United States. On November 9, 1928, he addressed the United States Patent Office, Department of Commerce, Washington, asking for a copy of the text of the convention, and he was informed that the Patent Office had no text for distribution. The writer then addressed the Superintendent of Documents, Government Printing Office, asking for the text of the convention, and he was informed that the French and English texts were "still held confidential," and that his request had been referred to the Department of State. Later, on December 29, 1928, the writer was informed by an official of the Department of State that since "the injunction to secrecy has not been removed" he was unable to send "a copy of the text as printed by the Senate."

The situation then seems to be this. In 1925 representatives of the United States signed a treaty the ratification of which would effect an important change in the law of the United States. Since February, 1927, the treaty has been before the Senate for consent to its ratification. Since 1925 its text has been public, having been first published (in French) by an international bureau which the United States helps to maintain at Berne. The convention has been registered by the Secretariat of the League of Nations. There can be no possible reason for a desire on the part of the Government of the United States that the text of the convention should be kept secret. Yet at the end of 1928, more than three years after the treaty was signed, no American official document is available to an American lawyer who would study the convention, nor can he obtain the text of the convention from any department of the Government of the United States. He is therefore handicapped in his advice to clients whose industrial property rights will be affected by the ratification of the convention.

SENATE RULE XXXVI

Why does such a situation exist? It is due to the "injunction of secrecy" which obtains with respect to treaties signed by representatives of the United States until the Senate has released the texts for publication or has given its advice and consent to their ratification. (When the advice and consent of the Senate is given, the injunction of secrecy is now invariably removed and the text of the treaty is published in the CONGRESSIONAL RECORD. As indicating the practice, see volume 70, CONGRESSIONAL RECORD, p. 2371 (January 26, 1929). When the Senate consented to the ratification of certain of the Bryan treaties on August 13, 1914, the fact did not appear in the CONGRESSIONAL RECORD at the time, but the record of the executive session was later published. (59 CONGRESSIONAL RECORD, page 2304. The standing rules of the Senate provide as follows (Rule XXXVI, par. 3) (Senate Manual (1925), p. 38):

"All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy, or unless the same shall be considered in open executive session."

1. The substance of this became a rule of the Senate on December 22, 1800 (Senate Journal of Executive Proceedings, p. 361; Gilfry, Precedents in the Senate (1914), p. 423; Crandall, Treaties, their Making and Enforcement (2d ed.), p. 84. The provision for removing the injunction of secrecy was added by the amendment of March 6, 1888), and it has not since been materially modified. In 1885 the Senate Committee on Rules, reporting on the operation of this rule, stated "that it extends the injunction of secrecy to each step in the consideration of treaties, including the fact of ratification; that no modification of this clause of the rules ought to be made; that secrecy as to the fact of ratification of a treaty may be of the utmost importance, and ought not to be removed except by order of the Senate or until it has been made public by proclamation of the Executive." (17 CONGRESSIONAL RECORD, p. 77.) While "there is no inflexible rule requiring closed doors," yet "it has been the almost uniform practice of the Senate since the organization of the Congress to consider treaties, presidential nominations, and confidential communications from the President and the heads of the executive departments within closed doors." (Gilfry, Precedents in the Senate (1914), p. 247.)

When the Constitution was being adopted secret treaties and secret negotiations between governments had not been proscribed by public opinion as they are to-day. Throughout the Federalist it was assumed that treaties should be kept secret, at any rate until they were finally brought into force. (See the Federalist (ed. by Lodge, 1888), p. 469.) It was argued that this was possible in the Senate and not possible in the House of Representatives, and for this reason the constitutional provision was defended requiring the "advice and consent" of the former body only. The earlier sessions of the Senate were held behind closed doors, and it was not until 1794 that this practice was abandoned. (Gilfry, Precedents in the Senate, p. 248. By 1797 "it had become the usual custom to order treaties to be printed in confidence for the use of the Senate." Hayden, the Senate and Treaties, 1789–1817 (1920), p. 107. Apparently no treaties were made between 1789 and 1794. Butler, The Treaty-Making Power (1902), p. 420.) In that year a rule was adopted providing that on the motion of any Senator, seconded by another, the doors might be closed for dealing with any matter requiring secrecy. (This is the effect of what is now Rule XXXV of the Standing Rules of the Senate.) Under a special "injunction of secrecy" the Jay treaty was considered by the Senate in 1795 (1 Senate Journal of Executive Proceedings, p. 178); the Senate's action in not publishing the Jay treaty was "because they thought it the affair of the President to do as he thought fit." (Alexander Hamilton, quoted in Hayden, op. cit. p. 90.) When the present rule was adopted in 1800 there was this background of thought and precedent to justify it, and in a Senate composed of but 26 Members it was a relatively simple thing to maintain the secrecy thought to be necessary. (For an account of the violation of the injunction of secrecy with reference to the Jay treaty see Hayden, op. cit. p. 89.)

PRACTICE OF THE EXECUTIVE

A rule of the Senate is not binding on the President. (In an interesting note on Government by Secret Diplomacy, Dean John H. Wigmore has recently stated that the Department of State "is not allowed by the Senate" to print or make public a duly signed treaty until after the Senate removes "the injunction of secrecy." 23 Illinois Law Review (1929), p. 689. But it is submitted that the Senate has not power to forbid such action by the Executive.) Yet it has long been the practice of the Executive to withhold the texts of treaties signed on behalf of the United States from publication pending final action by the Senate. It is therefore the Senate and not the President which usually decides when the time has come, prior to ratification by the President, for a treaty text to be published. This decision may be taken by the Senate's resolution that its own consideration of the treaty shall be in public and not in executive session (such a resolution must be adopted in executive session, according to a precedent followed on January 15, 1912, with reference to the arbitration treaty with Great Britain. See Gilfry, Precedents of the Senate, p. 253); or, as is more often the case, it may be due to the Senate's ordering the "injunction of secrecy" to be removed before or after it has voted to give its advice and consent to ratification. In either event, according to the present practice, the text of the trenty will then be published in the CONGRESSIONAL RECORD. (This is the present practice, but it seems to be recent in origin.) The function this assumed by the Senate and acquiesced in by the President may be defended as a method of orderly procedure, assuring to the Senate the privilege of learning of the text of a treaty from the President and not from the newspapers, and protecting the Senate in the exercise of its constitutional power to give or withhold advice and consent before the treaty text has been published. If these reasons seem convincing on Capitol Hill, they may be less so at the other end of Pennsylvania Avenue. But the President has observed this rule of courtesy without challenge for many years out of "deference to the Senate's procedure."

The practice is not uniform, however. When a great public interest is aroused, the text of a treaty signed on behalf of the United States is often published before it is submitted to the Senate. This is frequently the case in recent years with respect to multipartite instruments. The text of the Paris pact for the renunciation of war was published by the Department of State without objection by the Senate as soon as it was signed, on August 28, 1928. So, also, the texts of the inter-American conciliation and arbitration treaties, signed at Washington on January 5, 1929, were at once released for publication. Even bipartite treaties are sometimes published after signature and before action by the Senate. (Foster refers to "the fisheries treaty of 1888" as having been "acted upon in open Senate." John W. Foster, The Practice of Diplomacy (1906), p. 279. The text of this treaty had previously been published in Canada. 2 Butler, Treaty-Making Power (1902), p. 380.) Under the existing practice it may prove difficult for the Executive to follow either course, and friction with the Senate has sometimes resulted. When the conditions of peace were presented to the German representatives at Paris on May 7, 1919, it was decided by the supreme council, against the insistence of M. Clemenceau, that only a summary should

be published. (Ray Stannard Baker, Woodrow Wilson and World Settlement, I, pp. 157–160.) President Wilson's failure to communicate these conditions of peace to the Senate was severely criticized in that body. (58 CONGRESSIONAL RECORD, pp. 157 ff, 558–561.) By early June, 1919, copies had reached the United States, and on June 9, 1919, Senator BORAH read the conditions of peace into the CONGRESSIONAL RECORD. (Ibid., pp. 802–857.) Objection was made by Senator SWANSON on the basis of Rule XXXVI, paragraph 3, but was overruled by the Presiding Officer (Ibid., p. 799. See 70 CONGRESSIONAL RECORD, pp. 2754 ff); clearly the rule had no application. The treaty of Versailles was signed on June 28, 1919, and the text was made public at the time; when it was submitted to the Senate by the President on July 10, 1919, it seems to have been generally assumed to be unnecessary to remove the "injunction of secrecy" and the debate was held in public session.

SECRECY WITH REFERENCE TO NOMINATIONS

Senate Rule XXXVI, paragraph 3, concerning secrecy of treaties is to be compared with its Senate Rule XXXVIII, paragraph 2, concerning the secrecy of "all information communicated or remarks made by a Senator when acting upon nominations," as well as of "all votes upon any nomination." The latter has frequently been the subject of criticism. In 1886 a determined effort was made to change it. (See 17 CONGRESSIONAL RECORD, pp. 966, 1192, 2610, 6308; 70 id., p. 2607.) Recently Senator NORRIS has vigorously attacked it (GEORGE W. NORRIS, Secrecy in the Senate, The Nation, May 5, 1926, vol. 122, p. 498, sec. also, Dorman B. Eaton, Secret Sessions of the Senate (1886)), and on January 28, 1929, Senator JONES proposed that it be amended by adding to Rule XXXVIII the following new paragraph (No. 7):

"Hereafter nominations shall be considered in open executive session unless the Senate in closed executive session shall by a two-thirds vote determine that any particular nomination shall be considered in closed executive session, and in that case paragraph 2 of this rule shall apply to such nomination and its consideration."

This proposal was debated in the Senate on January 31, 1929 (70 CONGRESSIONAL RECORD, pp. 2603–2613), but no action was taken concerning it.

It seems even more important that Rule XXXVI should be amended, and perhaps in the direction of Senator JONES's proposal as to Rule XXXVIII. Much water has passed over the dam since the Senate rule was adopted 129 years ago. The attitude toward secrecy in public affairs, and especially in treaty relations, has been radically changed. Fifty-five countries have committed themselves to have no secret treaties or engagements. (In article 18 of the covenant of the League of Nations. See Manley O. Hudson, Registration and Publication of Treaties, this journal, vol. 19, p. 273.) For the United States there is no temptation to keep engagements secret after they are finally concluded. (An "additional secret article" was added to the treaty with Mexico of February 2, 1848. Cf., 3 Stat. 472; David Hunter Miller, Secret Statutes of the United States (1918). See also David Hunter Miller, My Diary at the Conference of Paris, vol. 2, p. 337.) Secrecy may therefore be eliminated, or at any rate, reduced, in the process by which our treaties are made. Before a treaty is signed the negotiations may have to be withheld from the public, though recently a good example was set in the negotiation of the Paris pact for renunciation of war, which was conducted in the open. But once a treaty has been signed it would be only very exceptional circumstances which might call for withholding the text from publication. Whether those circumstances exist can better be determined by the executive who is familiar with the preliminary negotiations than by the Senate. (Of course, there might be cases in which the government of the other party to the treaty would desire that the text be withheld from publication pending ratification.) If the President and Secretary of State should find no impelling reasons which call for keeping the text of a signed treaty secret, then its text should be released at once; and it is in line with the duty of the Department of State to educate public opinion on our relations with other states to make the text available to those who are interested. (In rare cases the texts of international conventions are published by other departments of the Government than the Department of State. Thus, the text of the Convention on the Protection of Literary and Artistic Works, signed at Rome June 2, 1928, was published in the 1928 report of the register of copyrights, by the Copyright Office of the Library of Congress.) This is even more important where a multipartite treaty is concerned and where people in other countries are likely to have available texts not available in the United States, as is true of the Convention on Protection of Industrial Property of November 6, 1925. (On February 25, 1929, the injunction of secrecy was removed from the slavery convention signed at Geneva on September 25, 1926, when the Senate consented to accession to that convention. (70 CONGRESSIONAL RECORD, p. 4311.) As the text of the convention has been public since September 25, 1926, having been published by the League of Nations' secretariat and by various other bodies, there is a touch of irony in this removal of the injunction of secrecy.)

SUGGESTIONS FOR THE FUTURE

It may be necessary for the Senate to have provisions in its rules for its own consideration of treaties when it is asked for advice and consent to their ratification. Even with the text made public the Senate might desire to debate a particular treaty in closed executive session. That case will be the exception and not the rule, however, and the rule of 1800 ought to be changed to make it so. (Rule XXXVII, par. 3, of the Senate's Standing Rules now reads: "All treaties concluded with Indian tribes shall be considered and acted upon by the Senate in its open or legislative session, unless the same shall be transmitted by the President to the Senate in confidence, in which case they shall be acted upon with closed doors.") At the present time the Senate will usually consider in public any treaty in which the public manifests much interest, while treaties of no general popular concern, such as those dealing with the protection of industrial property, will be relegated to executive session. The rule ought to be that all treaties will be considered in public unless the President submits a particular treaty in confidence or unless the Senate specially determines that a particular treaty should be considered otherwise.

The writer presents, therefore, two suggestions:

(1) That for the creation of the public opinion upon which our Government's policy depends the President and Secretary of State adopt it as a policy to publish the texts of all treaties as soon as they are signed, unless special circumstances in any case necessitate the maintenance of secrecy until a treaty can be ratified.

(2) That the Senate rules be amended by the Senate to provide that all treaties which may be submitted for the advice and consent of the Senate shall be considered in open executive session unless under Rule XXXV the Senate shall determine that a particular treaty shall be considered in closed executive session.

These suggestions would still leave it possible for the President in a rare case to submit a treaty for the advice and consent of the Senate as a confidential communication, and for the Senate to deal with it in closed executive session.

THE NARCOTIC PROBLEM

Mr. COPELAND. Mr. President, I send to the desk and ask to have printed in the RECORD some conclusions reached by the Eastern Medical Society of the City of New York in regard to the narcotic problem.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

NEW YORK, *May 17, 1929.*

Hon. Dr. ROYAL S. COPELAND,
Senate Office Building, Washington, D. C.

DEAR SIR: A meeting for the purpose of studying the narcotic problem was held at the Hotel Brevoort, New York City, on Friday evening, April 12, 1929, under the auspices of the Eastern Medical Society, one of the oldest and largest medical organizations in New York, consisting of over 1,300 physicians.

The meeting was addressed by the following speakers, each an authority in his branch of the subject: Hon. Charles H. Tuttle, in charge of the criminal division; Mr. George J. Mintzer, assistant United States attorney; Mr. George W. Cunningham, chief of the narcotic division of New York; Col. Arthur Woods, assessor, advisory committee on narcotics, League of Nations; also many prominent physicians of New York.

The conclusions of the meeting were:

1. That the narcotic problem is a very serious menace to the Nation.

2. That there is no means of finding out the exact extent of addiction in the United States; that the estimate of 100,000 is much too small.

3. That there is no cure for the disease.

4. That drug addiction is continually increasing, each addict creating many new ones.

5. That drug addicts form a major part of the criminal element of our country.

6. That the apprehension and conviction of the smugglers and large sellers of narcotics, while most desirable, is impossible.

7. That the apprehension and sentencing to jail of the small "dope peddlers" is useless as a deterrent.

8. That the narcotics are manufactured in eight countries and in less than 50 factories, all known to the authorities.

9. That unless the supply is controlled at the source all internal methods of control and prosecution are useless.

10. That, in the opinion of Col. Arthur Woods, a world authority on this subject, the control of the manufacture of the drug in the countries referred to would immediately solve the narcotic problem.

We therefore urge you to exert your offices to call another World Conference on Narcotics, so that the United States may lead the world in eradicating forever this serious menace to humanity.

Respectfully yours,

HARRY COHEN, M. D.,
President Eastern Medical Society.

SALE OF MORTGAGE BONDS IN DISTRICT OF COLUMBIA

Mr. BROOKHART. Mr. President, a few days ago I offered a resolution proposing an investigation of certain mortgage com-

panies in the District of Columbia. Since that time the situation has developed which I shall state.

It is unfortunate that this endeavor to get the proper facts relative to certain financing in the District of Columbia is being used by questionable and improper men posing as security and bond dealers, in many instances, to further victimize the unfortunate investor.

A letter has been received in Washington from a doctor in Chicago reading:

> This morning I received a telephone call alleged to be long distance from Washington, advising that the F. H. Smith Co. is about to be indicted by the Senate of the United States for pyramiding loans, and requesting that I forward to the informant, Lee & Co., 306 Hill Building, Washington, D. C., immediately, all of the bonds issued by the F. H. Smith Co. which I hold, in order to get as much out of them as possible before the said investigation develops.

The Lee & Co. is a device of one William Lee Moffatt, a notorious promoter of Washington who has been under indictment.

Almost immediately after the breaking of the publicity on the F. H. Smith Co., another company in Washington, the Finance & Trading Co., located at 1108 Sixteenth Street NW., sent out special-delivery circulars.

The Finance & Trading Co. is headed by one Patrick H. Lennon, a notorious peddler of blue-sky securities and a former inmate of the Elmira (N. Y.) Penitentiary because of fraud activities in New York.

These instances indicate that a warning is necessary to the people of the country who have purchased first-mortgage securities, not to permit strangers to frighten them and to be sure that before they sacrifice their present holdings, or trade for some other security, they investigate first.

The old game of switching the investor from one security to an inferior one is well known, and it is not the purpose of the proposed congressional inquiry to add fodder to such schemers. Persons who hold Smith bonds or other securities now being criticized should certainly not be frightened into taking the advice of questionable persons who have selfish purposes, but should make a sound investigation of their holdings. This may be accomplished through their banks, through reputable investment bankers, or through better-business bureaus. The latter organizations exist in forty-odd of the larger cities throughout the country.

I wish, Mr. President, to call the especial attention of the Post Office Department to the situation. I think a fraud order should be issued against these outfits at once. I also think that the Department of Justice should take action.

I should like to ask the Senator from Wisconsin [Mr. BLAINE] how the investigation is proceeding? It seems to me under these circumstances we need quick action.

Mr. BLAINE. Mr. President, with the permission of the Senator from Nebraska [Mr. NORRIS], if he will yield, I desire to answer the question the Senator from Iowa has propounded with a brief statement of what I consider to be the problems involved.

So far as I am concerned, it is not my purpose to undertake to indict anyone, either to convict them or find them not guilty; that rests with the Department of Justice. Some of the other problems to which the Senator has referred rest with the Post Office Department. But I have observed, Mr. President, that the District of Columbia has no adequate legislation either for the protection of the honest business man or of the innocent purchaser. There is no law in the District of Columbia to protect the honest business man against crooked financial operators; there is no law to protect the innocent purchaser of securities; there is no law to prohibit unethical and fraudulent practices in the sale of real estate; there is no law that gives to a debtor in the District of Columbia the right to appear in court to present a defense against a foreclosure. A foreclosure in the District of Columbia of a mortgage or a trust deed or a contract of purchase is done by publication, even without the opportunity for redemption. Moreover, the laws relating to usury in the District of Columbia are so defective that some financial operators may take from a widow as a commission 20 per cent of the loan she obtains upon her little home.

These financial operators have gone so far as to inflate the valuation of properties within the District of Columbia until they have skyrocketed, with the result that honest men engaged in dealing in real-estate securities, in loaning money, in financing legitimate business enterprises, are constantly met by the crooked operations of crooked men and crooked institutions.

So far as I am concerned, I propose to ascertain what are the defects in the system in the District of Columbia and to indict a bad system and mend it if possible. I have called a meeting of the subcommittee for to-morrow at 11 o'clock in executive session to determine the procedure we shall follow.

Mr. BROOKHART. Mr. President, I thank the Senator from Wisconsin. I desire to say that I have here circulars of this Finance & Trading Co. which I have mentioned, together with the envelope in which they sent them through the mails. Those I will hold available for the Post Office Department.

EVASION OF TAXES BY STOCK COMPANIES

Mr. McKELLAR. Mr. President, on April 25 I wrote a letter to Commissioner Blair, of the Internal Revenue Bureau, in reference to article 574 of regulations 74 of the income tax law of 1928. Under date of May 16 I have his reply to the questions asked and I desire to put the two letters into the RECORD.

In this connection I wish to call these letters especially to the attention of the chairman of the Finance Committee, the senior Senator from Utah [Mr. SMOOT], and I hope that something may be done in the next revenue bill to correct the situation that is apparent from them.

It appears from the letters that practically all of the great mergers and consolidations of stock companies in this country are consummated without the payment of any taxes to the Government. I want to call the especial attention of the chairman and members of the Finance Committee to these two letters, and I hope that they may be read.

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

APRIL 25, 1929.

Hon. DAVID H. BLAIR,

Commissioner of Internal Revenue, Washington, D. C.

MY DEAR MR. COMMISSIONER: I desire to call your attention to page 165, article 574, of regulations 74, income tax, of the revenue act of 1928.

"The act provides that no gain or loss shall be recognized if, in pursuance of a plan of reorganization, stock or securities in a corporation a party to a reorganization are exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization, or if, in pursuance of a reorganization plan, a corporation a party to a reorganization exchanges property solely for stock or securities in another corporation a party to the reorganization."

Subsection 4, on page 165, provides:

"The transfer by the X Corporation of a part of its assets to the Y Corporation where immediately after the transfer the X Corporation or its shareholders or both are in control of the Y Corporation."

Page 167, subsection B of section 112 of the revenue act, article 577, of 1928, provides:

"A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred."

Will you kindly advise me whether, in the execution of this law, you are following the law itself or following your regulations? If you are following the regulations, then any corporation may sell its assets for stocks or securities of another corporation and escape taxation entirely. Will you kindly advise me if this is the practice of the department? I will greatly appreciate it if you will give the reason why you have changed the law.

To illustrate it: If you were following the regulations, then a corporation, A, could sell a piece of its real estate, being a part of its assets, to another corporation, B, organized for the purpose of receiving it, for stocks or securities without having to pay any taxes. Immediately, that corporation thus formed can sell all of its assets to another corporation for stocks and bonds, and the sellers in both instances could profit without paying any taxes. I am informed that this is constantly done. Surely, it is in violation of the law whether it is in violation of your regulations or not, and the purpose of this letter is to find out whether or not under your regulations you are allowing these transactions to escape taxation.

Second. It has been claimed in some quarters that by reason of your construction of the exemptions under the head of reorganizations or mergers that stock sales in enormous suits escape taxation entirely. It is claimed that if these transactions were taxed in accordance with the intention of the law and not allowed to escape because of the interpretation of the words "reorganization" and "consolidation," the amount of revenue arising to the Government by reason of such transaction would amount to several hundred millions of dollars a year.

Can your bureau furnish me any estimate of what the revenue to the Government would be annually but for these evasions, apparently allowed by your regulations?

Third. Has this matter ever been considered by your bureau and has your bureau ever made any recommendation to Congress in reference to a change of law, so that sales of stock for profit, thus evasively carried on, should be taxed?

I will greatly appreciate your early attention to this matter.

Very sincerely yours,

KENNETH McKELLAR.

TREASURY DEPARTMENT,
Washington, May 16, 1929.

Hon. KENNETH MCKELLAR,
United States Senate.

MY DEAR SENATOR: I have your letter of April 25, 1929, in which you question the correctness of the following provisions of article 574 of Regulations 74:

"The act provides that no gain or loss shall be recognized if, in pursuance of a plan of reorganization, stock or securities in a corporation a party to a reorganization are exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization, or if, in pursuance of a reorganization plan, a corporation a party to a reorganization exchanges property solely for stock or securities in another corporation a party to the reorganization. If two or more corporations reorganize, for example, by—

* * * * * * *

"(4) The transfer by the X Corporation *of a part of its assets* to the Y Corporation where immediately after the transfer the X Corporation or its shareholders or both are in control of the Y Corporation—then no taxable income is received from the transaction by the X Corporation * * * if the sole consideration received by the corporations is stock or securities of the Y Corporation * * *." [Italics supplied.]

The first sentence of article 574, above quoted, is merely a restatement of the provisions of section 112(b) (3) and (4) of the revenue act of 1928, which read:

"(3) Stock for stock on reorganization: No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

"(4) Same—Gain of corporation. No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization."

Certainly, then, there can be no question as to the correctness of the first sentence of article 574.

The second sentence of article 574, above quoted, to which you refer in your letter is merely an application of section 112 (b) (4), supra, and section 112 (i) of the 1928 act, which latter section provides that, as used in section 112—

"The term 'reorganization' means * * * (B) a transfer by a corporation *of all or a part of its assets* to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred * * *." (Italics supplied.)

It will be noted that the word "or" is used, that the provisions of section 112 (i) are in the disjunctive, and that the section provides in unambiguous language that the term "reorganization" means a transfer by a corporation of all of its assets to another corporation *or* a transfer by a corporation of a part of its assets to another corporation (either alternative coming without any possible question within the terms of the statute), if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred. Therefore the second sentence of article 574 of Regulations 74, in providing that the "transfer by the X Corporation *of a part of its assets* to the Y Corporation where immediately after the transfer the X Corporation or its shareholders or both are in control of the Y Corporation" is a reorganization, and that in such case no taxable income is received from the transaction by the X Corporation if the sole consideration received by the X Corporation is stock or securities of the Y Corporation, can not be open to the slightest doubt or question in respect to its correctness or validity. Since section 112 (i) of the revenue act of 1928 includes within the term "reorganization" a transfer by a corporation *of a part of its assets* to another corporation which is immediately thereafter in the control of the transferor or its stockholders or both, as well as a transfer by a corporation *of all of its assets* to another controlled corporation, that portion of the second sentence of article 574 to which you refer in your letter, in covering the former of the two situations, comes strictly within the express terms of the statute.

In regard to reorganization transactions falling within the provisions of article 574, since the provisions of that article to which you refer do not go in any respect beyond the revenue act itself, you are advised that such transactions are always treated under the practice of the department in accordance with the strict provisions of the act itself. If a corporation transfers a part of its assets to another corporation solely for stock or securities in such other corporation where immediately after the transfer the transferor corporation or its stockholders or both are in control of the corporation to which the assets are transferred, the department holds that no gain or loss is recognized to the transferor corporation, because the transaction falls clearly within the provisions of section 112 (b) (4) and section 112 (i) of the revenue act of 1928.

You state in your letter:

"To illustrate it, if you were following the regulations, then a corporation A could sell a piece of its real estate, being a part of its assets, to another corporation, B, organized for the purpose of receiving it, for stocks or securities without having to pay any taxes. Immediately that corporation thus formed can sell all of its assets to another corporation for stocks and bonds, and the sellers in both instances could profit without paying any taxes. I am informed that this is constantly done. Surely it is in violation of the law whether it is in violation of your regulations or not, and the purpose of this letter is to find out whether or not under your regulations you are allowing these transactions to escape taxation."

If in the cases you give it is assumed, first, that the stocks and bonds received are those of the transferee corporation, and second, that immediately after the transfer the transferor corporation or its stockholders or both are in control of the corporation to which the assets are transferred, you are correct that there would be no recognition of gain or loss to the transferor corporation. These two assumptions bring into the cases the conditions which the revenue act and the regulations following the act require shall be present if the transfers are to be regarded as nontaxable. When these conditions are present, the real reason why the transfers are nontaxable is because section 112 of the revenue act of 1928 expressly makes them so.

Section 112 (b) (4), in providing that no gain or loss shall be recognized in certain instances as the result of transfers of property by a corporation solely for stock or securities, is similar to section 203 (b) (3) of the revenue act of 1924, in respect of which section the Senate Committee on Finance in its report on the revenue bill of 1924 said (p. 14):

"Congress has heretofore adopted the policy of exempting from tax the gain from exchanges made in connection with a reorganization in order that ordinary business transactions will not be prevented on account of the provisions of the tax law. If it is necessary for this reason to exempt from tax the gain realized by the stockholders, it is even more necessary to exempt from tax the gain realized by the corporation."

As to the claim that reorganization transactions have not been taxed by the Treasury but "allowed to escape because of the interpretation of the words 'reorganization' and 'consolidation,'" you are advised that the Treasury has strictly followed the revenue acts in interpreting those terms, but that Congress itself has directed that those terms be given a broad interpretation by providing that:

"The term 'reorganization' means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation); or (b) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders, or both, are in control of the corporation to which the assets are transferred; or (c) a recapitalization; or (d) a mere change in identity, form, or place of organization, however effected." (Sec. 112 (i), revenue act of 1928; sec. 203 (h), revenue acts of 1926 and 1924.)

The Senate Committee on Finance in its report on the revenue bill of 1924, in explanation of the provisions of the reorganization section (sec. 203) of the bill, indicates (p. 17) its purpose to broaden the definition of the term "reorganization" and sets forth (pp. 17 and 18) the general policy and theory which lead to the enactment of those provisions. The report says:

"Subdivision (h) (1)" of the revenue bill of 1924 "contains a definition of reorganization which corresponds to the definition contained in section 202 (c) (2) of the existing law. The only change in the definition is to include within its terms the case of a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders, or both, are in control of the corporation to which the assets are transferred. This is a common type of reorganization and clearly should be included within the reorganization provisions of the statute.

* * * * * * *

"* * * The provisions of section 203 of the bill that no gain or loss is recognized from certain exchanges do not grant an exemption and are not so intended. These provisions are based upon the theory that the types of exchanges specified in section 203 are merely changes in form and not in substance, and consequently should not be considered as effecting a realization of income at the time of the exchange. In other words, these provisions result not in an exemption from tax but in a postponement of tax until the gain is realized by a pure sale or by such an exchange as amounts to a pure sale. It follows, therefore, that in the case of such an exchange the property received should be considered as taking the place of the property exchanged. * * *"

It is impossible to estimate what additional taxes would be collected had Congress not enacted the reorganization provisions in the revenue acts, since the statutes, in providing that the gain on these reorganization transactions shall not be recognized, have made it unnecessary for taxpayers to report these items on their returns. There are, therefore, no available sources of information on that subject. Furthermore, it is quite obvious that many of the transactions would never have taken place had they been taxable.

The Treasury Department has accepted the reorganization provisions of the revenue acts as they now stand as being in accord with sound policy (see extract from Finance Committee report quoted above), and

has made no specific recommendations as to any changes in those provisions since their enactment in the revenue act of 1924.

I regret the necessity of writing a reply of this length, but the provisions in which you are interested are rather complicated, and it seems to me desirable to place before you a rather complete explanation of them.

Very truly yours,

D. H. BLAIR, *Commissioner.*

MESSAGE FROM THE HOUSE—ENROLLED JOINT RESOLUTION SIGNED

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the Speaker had affixed his signature to the enrolled joint resolution (S. J. Res. 36) to amend Public Resolution No. 89, Seventieth Congress, second session, approved February 20, 1929, entitled "Joint resolution to provide for accepting, ratifying, and confirming the cessions of certain islands of the Samoan group to the United States, and for other purposes," and it was signed by the Vice President.

ACQUISITION OF NEWSPAPERS BY POWER TRUST

Mr. NORRIS addressed the Senate. After having spoken for nearly two hours—

Mr. WALSH of Massachusetts. Mr. President——

The PRESIDING OFFICER (Mr. CUTTING in the chair). Does the Senator from Nebraska yield to the Senator from Massachusetts?

Mr. NORRIS. I yield.

Mr. WALSH of Massachusetts. The Senator from Nebraska has been speaking at great length on a very important subject and has been presenting the facts in a very illuminating and able manner. I think, therefore, it is appropriate that he should have an opportunity to catch his breath, and I raise the point of no quorum.

The PRESIDING OFFICER. The absence of a quorum being suggested, the clerk will call the roll.

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

Allen	Fletcher	Kendrick	Sheppard
Ashurst	Frazier	Keyes	Simmons
Barkley	George	King	Smith
Bingham	Gillett	La Follette	Smoot
Black	Glenn	McKellar	Steck
Blaine	Goff	McMaster	Steiwer
Blease	Goldsborough	McNary	Stephens
Borah	Gould	Metcalf	Swanson
Brookhart	Greene	Moses	Thomas, Idaho
Broussard	Hale	Norbeck	Thomas, Okla.
Burton	Harris	Norris	Trammell
Capper	Harrison	Nye	Tydings
Caraway	Hastings	Oddie	Tyson
Connally	Hatfield	Overman	Vandenberg
Copeland	Hawes	Patterson	Wagner
Couzens	Hayden	Phipps	Walcott
Cutting	Hebert	Pine	Walsh, Mass.
Dale	Heflin	Pittman	Walsh, Mont.
Deneen	Howell	Ransdell	Waterman
Dill	Johnson	Reed	Watson
Edge	Jones	Robinson, Ind.	Wheeler
Fess	Kean	Sackett	

The VICE PRESIDENT. Eighty-seven Senators having answered to their names, a quorum is present. The Senator from Nebraska will proceed.

Mr. TYSON. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Tennessee?

Mr. NORRIS. I yield to the Senator from Tennessee.

Mr. TYSON. I ask unanimous consent——

The VICE PRESIDENT. The Chair desires again to call the Senate's attention to the fact that when a Senator has the floor and starts to address the Senate he can not be interrupted for the purpose of introducing bills, and so forth, and it is made the duty of the Chair to call the attention of the Senate to that fact. The Chair has been permitting it to be done until the Senator obtaining the floor began to speak. The Chair thinks the rule ought to be enforced. The Senator from Nebraska will proceed.

Mr. NORRIS resumed his speech. After having spoken in all for three hours and a half—

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

Mr. NORRIS. I yield.

Mr. DILL. I make a point of no quorum.

The PRESIDING OFFICER (Mr. GEORGE in the chair). The Secretary will call the roll.

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

Allen	Brookhart	Cutting	George
Ashurst	Broussard	Dale	Gillett
Barkley	Burton	Deneen	Glenn
Bingham	Capper	Dill	Goff
Black	Caraway	Edge	Goldsborough
Blaine	Connally	Fess	Gould
Blease	Copeland	Fletcher	Greene
Borah	Couzens	Frazier	Hale
Harris	King	Pine	Thomas, Idaho
Harrison	La Follette	Pittman	Thomas, Okla.
Hastings	McKellar	Ransdell	Trammell
Hatfield	McMaster	Reed	Tydings
Hawes	McNary	Robinson, Ind.	Tyson
Hayden	Metcalf	Sackett	Vandenberg
Hebert	Moses	Sheppard	Wagner
Heflin	Norbeck	Simmons	Walcott
Howell	Norris	Smith	Walsh, Mass.
Johnson	Nye	Smoot	Walsh, Mont.
Jones	Oddie	Steck	Waterman
Kean	Overman	Steiwer	Watson
Kendrick	Patterson	Stephens	Wheeler
Keyes	Phipps	Swanson	

The PRESIDING OFFICER. Eighty-seven Senators having answered to their names, a quorum is present.

SUPREME COURT OPINION IN O'FALLON RATE CASE

Mr. DILL. Mr. President, the Supreme Court of the United States to-day decided the O'Fallon railroad case, which is of great interest to the country. I ask unanimous consent to have printed in the RECORD the opinion of the court and the dissenting opinions.

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

Mr. MOSES. Mr. President, was there a minority opinion?

Mr. DILL. I understand there were two dissenting opinions.

Mr. MOSES. Did the Senator ask to have both opinions printed in the RECORD?

Mr. DILL. I did.

Mr. MOSES. I am informed there were two dissenting opinions.

Mr. DILL. I said "dissenting opinions."

The PRESIDING OFFICER. Without objection, all three opinions delivered by the court will be printed in the RECORD.

The opinions are as follows:

SUPREME COURT OF THE UNITED STATES

Nos. 131 and 132—October Term, 1928

The St. Louis & O'Fallon Railway Co. and Manufacturers' Railway Co., appellants *v.* The United States of America and the Interstate Commerce Commission.

The United States of America and The Interstate Commerce Commission, appellants, *v.* The St. Louis & O'Fallon Railway Co. and Manufacturers' Railway Co.

Appeal from the District Court of the United States for the Eastern District of Missouri.

[May 20, 1929]

Mr. Justice McReynolds delivered the opinion of the Court.

These are cross appeals from the final decree of the District Court, Eastern Missouri,—three judges sitting—in a suit to annul an Interstate Commerce Commission order, dated February 15, 1927, which directed St. Louis and O'Fallon Railway Company to place in a reserve fund one-half of its determined excess income for the years 1920 (ten months), 1921, 1922 and 1923 (that is half of the sum by which the net railway operating income for each of those years exceeded six per cent of the ascertained value of property devoted to public service); and to pay to the Commission the remaining one-half with six per cent interest beginning four months after termination of the year, i. e., May 1, 1921, 1922, 1923 and 1924.

Section 15a, added to the Interstate Commerce Act by Transportation Act, 1920, contains nineteen paragraphs. Of those specially important here, 1, 2, 3, 5, 7 and 8 are copied in the margin;[1] 4 and 6 follows:—

[1] "Section 15a. (1) [This defines the terms employed.]

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

"(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum, of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the

After an investigation instituted under Section 15a, May 14, 1924, for the purpose of determining incomes received by St. Louis and O'Fallon Railway Company (The O'Fallon) and Manufacturers' Railway Company (The Manufacturers'), asserted to be parts of one system, for the years 1920–1923, the Commission found:—(1) Although the stock of both corporations was mostly owned by the Adolph Busch Estate and their principal officers were the same, they were not carriers operated under common control and management as a single system within paragraph 6. (2) The Manufacturers' had received no excess operating income. (3) The value of The O'Fallon's property devoted to public service in 1920 (ten months) was $856,065; in 1921, $875,360; in 1922, $978,874; in 1923, $997,236; and during each of those years it received net operative income exceeding six per cent upon the stated valuation.

The above-described recapture order followed.

The cause is properly here under the Judicial Code, as amended by Act of February 13, 1925, (U. S. C., Title 28, Sec. 345)—

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise: . . .

"(4) So much of 'An Act making appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money. . . ."

The Act of October 22, 1913, (38 Stat. 219, 220) transferred to District Courts the jurisdiction granted to the Commerce Court by Act of June 18, 1910, (36 Stat. 539); and provided for review by this Court of causes embraced therein. The jurisdiction of the Commerce Court included—

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. . . ."

Paragraph (4), Section 238, applies to all those causes formerly cognizable by the Commerce Court and reviewable here. The words "other than for the payment of money" were taken from clause First, Act of 1910, above quoted, and, as there, they delimit the trial court's jurisdiction. They do not inhibit review here of any cause formerly cognizable by the Commerce Court. Moreover, the order under consideration was not merely for payment of money; and the proceeding below was to set aside, not to enforce it.

Wisconsin Railroad Commission *v.* Chicago, Burlington & Quincy R. R. Co., 257 U. S. 553, and Dayton-Goose Creek Railway Co. *v.* The United States, 263 U. S. 456, point out the general purpose of the Transportation Act, 1920, and uphold the validity of Section 15a.

The Manufacturers' is a switching road with thirty miles of track within St. Louis, Missouri. The O'Fallon—a coal-carrying road—has nine miles of main line, all in Illinois, and this connects with The Terminal Railroad at East St. Louis. Through the latter deliveries are made to sundry points in St. Louis, some of which are on The Manufacturers' line. "The distance between the railroad of the O'Fallon and the railroad of the Manufacturers' is about 12 miles, and all communication by rail between the two properties is effected over the tracks of the Terminal, including a bridge over the Mississippi River." Both the Commission and the District Court held that the record failed to show these two roads were under common control and management and operated as a single system within the meaning of paragraph 6. We accept their conclusion.

The Commission directed The O'Fallon to pay 6% interest on the recaptured one-half of its ascertained excess net railway operating income beginning four months from the end of the year during which the excess accrued (Sec. 6). The District Court rightly ruled that as the carrier made bona fide denial of any excess under circumstances sufficient to justify a contest, no interest should have been imposed for any time prior to the final order. Not until then could the carrier know what, if anything, it should pay.

Also, we think the District Court rightly rejected the claim that excess earnings were not recapturable unless and until the Commission had fixed a general level of rates intended to yield fair return upon the aggregate value of carrier property either as a whole, or in some prescribed rate or territorial group. Congress, of course, realized that final valuations would require prodigious expenditure of time and effort; but the language concerning recapture indicates that prompt action was expected. Practical application of paragraphs 5 and 6 does not necessarily depend upon prior compliance with paragraphs 2 and 3. The Act should be construed so as to carry out the legislative purpose. The proviso of paragraph 3 prescribing action to be taken during two years beginning March 1, 1920, and the clause of paragraph 6 excepting the income of certain roads prior to September 1, 1920, are hardly compatible with this claim by the carrier.

Paragraph 4, Section 15a, directs that in determining values of railway property for purposes of recapture the Commission "shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes." This is an express command; and the carrier has clear right to demand compliance therewith. United States ex rel. Kansas City Southern Railway Co. *v.* Interstate Commerce Commission, 252 U. S. 178.

"The elements of value recognized by the law of the land for rate-making purposes" have been pointed out many times by this Court. Smyth *v.* Ames, 169 U. S. 466; Wilcox *v.* Consolidated Gas Co., 212 U. S. 19; Minnesota Rate Cases, 230 U. S. 352; Southwestern Bell Telephone Co. *v.* Public Service Commission, 262 U. S. 276; Bluefield Water Works & Improvement Co. *v.* Public Service Commission, 262 U. S. 679; McCardle *v.* Indianapolis Water Co., 272 U. S. 400. Among them is the present cost of construction or reproduction.

Thirty years ago, Smyth *v.* Ames announced (546):

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are

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accounting system prescribed by the Commission, are chargeable to capital account.

"(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

"(7) For the purpose of paying dividends or interest on its stocks, bonds or other securities, or rent for leased roads, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net railway operating income for any year is less than a sum equal to 6 per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6); but such fund shall not be drawn upon for any other purpose.

"(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to 5 per centum of the value of its railway property determined as herein provided, and when such fund is so accumulated and maintained the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose."

"(4) For the purpose of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

"(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

In *Southwestern Bell Telephone Co.* v. *Public Service Commission*, (287) we said: "It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today."

The doctrine above stated has been consistently adhered to by this Court.

The report of the Commission is long and argumentative. Much of it is devoted to general observations relative to the method and purpose of making valuations; many objections are urged to doctrine approved by us; and the superiority of another view is stoutly asserted. It carefully refrains from stating that any consideration whatever was given to present or reproduction costs in estimating the value of the carrier's property. Four dissenting Commissioners declare that reproduction costs were not considered; and the report itself confirms their view. Two of the majority avow a like understanding of the course pursued.

The following from the dissenting opinion of Commissioner Hall, concurred in by three others, accurately describes the action of the Commission:—

"In order to determine the value of the O'Fallon property devoted to carrier service during the recapture periods, 10 months in the year 1920 and the years 1921, 1922, and 1923, we start with a valuation or inventory date of June 30, 1919. The units in existence on that date are known. Original cost of the entire property can not be ascertained. As to the man-made units we estimate the cost of reproducing them in their condition on that date and in so doing apply to the units installed prior to June 30, 1914, the unit prices of 1914, representing a fairly consistent price level for the preceding 5 or 10 years. To like units, installed after June 30, 1914, and prior to June 30, 1919, we apply the same prices, but add a sum representing price increases on those units during that period. For the third period, from June 30, 1919, down to each recapture date, we abandon estimate and turn to recorded net cost of additions less retirements. On this composite, made up of estimated value for two periods and ascertained net cost for the third period, the majority base a conclusion as to value at recapture date of the man-made items. Land goes in at its current value as measured by that of neighboring lands.

"Without summarizing the other processes, all clearly stated in the majority report, it will be observed that the rate-making value arrived at for the successive recapture periods, as for example the year 1923, rests upon 1923 market value of lands; costs of other property installed since June 30, 1919; unit prices of 1914, enhanced by allowance for increased cost of units installed during June 30, 1914–1919; and, for the units installed prior to June 30, 1914, constituting by far the major part of the property, unit prices of 1914 without any enhancement whatever. As to this major part of the carrier's property devoted to carrier purposes in 1923 no consideration is given to costs and prices then obtaining or to increase therein since 1914."

In the exercise of its proper function this Court has declared the law of the land concerning valuations for rate-making purposes. The Commission disregarded the approved rule and has thereby failed to discharge the definite duty imposed by Congress. Unfortunately, proper heed was denied the timely admonition of the minority—"The function of this commission is not to act as an arbiter in economics, but as an agency of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction."

The question on which the Commission divided is this: When seeking to ascertain the value of railroad property for recapture purposes, must it give consideration to current, or reproduction, costs? The weight to be accorded thereto is not the matter before us. No doubt there are some, perhaps many, railroads the ultimate value of which should be placed far below the sum necessary for reproduction. But Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts; and this mandate must be obeyed.

It was deemed unnecessary by the Court below to determine whether the Commission obeyed the statutory mandate touching valuations since the order permitted The O'Fallon to retain an income great enough to negative any suggestion of actual confiscation. With this we cannot agree. Whether the Commission acted as directed by Congress was the fundamental question presented. If it did not, the action taken, being beyond the authority granted, was invalid. The only power to make any recapture order arose from the statute.

The judgment of the court below must be reversed. A decree will be entered here annulling the challenged order.

Reversed.

Mr. Justice Butler took no part in the consideration or determination of this cause.

SUPREME COURT OF THE UNITED STATES

Nos. 131 and 132—October Term, 1928

The St. Louis and O'Fallon Ry. Co., et al., Appellants *vs.* United States et al.

United States et al., *vs.* The St. Louis and O'Fallon Ry. Co., et al.

Appeal from the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

[May 20, 1929]

Mr. Justice Brandeis, dissenting.

The main question for consideration is that of statutory construction. By Transportation Act, 1920, February 28, 1920, c. 91, § 15a, 41 Stat. 456, 488, Congress delegated to the Interstate Commerce Commission the duty to establish and maintain rates which will yield "a fair return upon the aggregate value of the railway property" of the United States. By paragraph 4 thereof, it directs that in ascertaining value the Commission shall "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes;" and shall "give to the property investment account only that consideration which under such law it is entitled to in establishing values for rate-making purposes." The report of the Commission, which accompanies the order challenged, declares: "In the methods of valuation which we have followed in this proceeding we have endeavored to give heed to this direction [that contained in paragraph 4] . . ." Excess Income of St. Louis and O'Fallon Ry. Co., 124 I. C. C. 3, 19. Speaking for the dissenting members, Mr. Commissioner Hall said: "If the law needs change, let those who made it change it. Our duty is to apply the law as it stands." (pp. 63, 64.) And Mr. Commissioner Atchison added: "If we anticipate grave results will follow, our responsibility will be fully met if we suggest to the Congress, under our statutory powers to recommend new legislation to that body, the enactment of a rule for rate making under the commerce clause which will have no such unfavorable effects." (p. 64.)

Section 15a makes no specific reference either to the original cost of the property, or to prudent investment, or to current reproduction cost, or to the then existing price level. Section 19 (a) (the valuation provisions of the Act of 1913), to which § 15a refers, directs the Commission to report, among other things, "in detail as to each piece of property, . . the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation"; and also "other values, and elements of value." After the enactment of § 15a and before entry of the order challenged, it was held in Southwestern Bell Telephone Co. *v.* Public Service Commission, 262 U. S. 276, a case arising under a state law, that the rate-base on which a public utility is constitutionally entitled to earn a fair return is the then actual value of the property used and useful in the business, not the original cost or the amount prudently invested in the enterprise. The Government concedes that current reproduction cost is admissible as evidence to show present value under § 15a. The carrier concedes now that neither Congress, nor the common law, made current reproduction cost the measure of value. The question on which the Commission divided is this: Did Congress require the Commission when acting under § 15a to give, in all cases and in respect to all property, some, if not controlling, effect to evidence establishing the estimated current cost of reproduction? Or did Congress intend to leave to the Commission the authority to determine, as in passing upon other controverted issues of fact, what weight, if any, it should give to that evidence?

The O'Fallon contends, among other things, that the order is confiscatory. The claim is that the order left to the company a return of only 4.35 per cent upon the value ascertained in accordance with the rule declared in the Southwestern Bell case and McCardle *v.* Indianapolis Water Co., 272 U. S. 400. If this were true, it would be immaterial whether Congress purported to authorize the course pursued by the Commission. But the fact is that, in each of the recapture periods, the earnings were so large as to leave, after making the required payments to the Commission, about 8 per cent on what the carrier alleged was the fair value of the property. The O'Fallon argues that, since the statute and the order required it to hold as a reserve one-half of the excess over 6 per cent, it is deprived of that property. This is not true. The requirement that one-half of the earnings in excess of 6 per cent shall be retained by the carrier until the reserve equals 5 per cent of the value of the railroad does not deprive the carrier of any property. it merely regulates the use thereof. Compare Kansas City Southern Ry. Co. *v.* United States, 231 U. S. 423, 453. The provision is one designated to secure financial stability; and is similar to those prescribing sinking

funds, depreciation, and other appropriate accounts.[1] Congress may regulate the use of railroad property so as to ensure financial as well as physical stability. Both are essential to the safety and the service of the public. In Dayton-Goose Creek Ry. Co. *v.* United States, 263 U. S. 456, 486, where the facts were in this respect identical with those in the case at bar, the constitutional validity of the order was sustained. If the failure to give to the evidence of current reproduction costs the effect claimed for it by the O'Fallon was error, it is not because the carrier's constitutional rights have been invaded, but because the Commission failed to observe a rule prescribed by Congress for determining the amounts to be recaptured and reserved.

The claim of the O'Fallon is in substance that, since construction costs were higher during the recapture periods than in 1914, the order should be set aside, because the Commission failed to find that the existing structural property and equipment which had been acquired before June 30, 1914, was worth more than it had been then.[2] The Commission undertook, as will be shown, to find present actual value and, in so doing, both to follow the direction of Congress and to apply the rule declared in the Southwestern Bell case. It is true that this Court there declared that current reconstruction cost is an element of actual value; and that Congress directed the Commission "to give due consideration to all the elements of value recognized by the law of the land for rate making purposes". But, while the Act required the Commission to consider all such evidence, neither Congress nor this Court required it to give to evidence of reconstruction cost a mechanical effect or artificial weight. They left untrammeled its duty to give to all relevant evidence such probative force as, in its judgment, the evidence inherently possesses. The Commission concluded that in respect to the evidence of reproduction costs the differences between the Southwestern Bell case and that at bar were such as to lead to different results in the two cases. It did so mainly because "in the administration of the valuation and recapture provisions," ascertainment of value "is affected by a vast variety of considerations that either do not enter into, or are less easily perceived in, problems incident to the regulation of local public utilities." (p. 27.) In my opinion the conclusion of the Commission are well founded. To make clear the reasons, requires consideration of the function of the Commission in applying § 15a and of the problems with which it is confronted.

First. The Commission is a fact-finding body. The question whether it must give to confessedly relevant facts evidential effect is solely one of adjective law. Statutes have sometimes limited the weight or effect of evidence. They have often created rebuttable presumptions and have shifted the burden of proof. But no instance has been found where under our law a fact-finding body has been required to give to evidence an effect which it does not inherently possess. Proof implies persuasion. To compel the human mind to infer in any respect that which observation and logic tells us is not true interferes with the process of reasoning of the fact-finding body. It would be a departure from the unbroken practice to require an artificial legal conviction where no real conviction exists.[3]

An arbitrary disregard by the Commission of the probative effect of evidence would, of course, be ground for setting aside an order, as this would be an abuse of discretion. Orders have been set aside because entered without evidence;[4] or because matters of fact had been considered which were not in the record;[5] or because the Commission excluded from consideration facts and circumstances which ought to have been considered;[6] or because it took into consideration facts which could not legally influence its judgment.[7] But no case has been found in which this Court has set aside an order on the ground that the Commission failed to give effect to evidence which seemed to the Court to be of probative force, or on the ground that the Commission had drawn from the evidence an inference or conclusion deemed by the Court to be erroneous.[8] On the contrary, findings of the Commission involving the appreciation or effect of evidence have been treated with the deference due to those of a tribunal "informed by experience" and "appointed by law" to deal with an intricate subject. Illinois Central R. R. Co. *v.* Interstate Commerce Commission, 206 U. S. 441, 454. Unless, therefore, Congress required the Commission, not only to consider evidence of reconstruction cost in ascertaining values for rate making purposes under § 15a, but also to give, in all cases and in respect to all property, some weight to evidence of enhanced reconstruction cost, even if that evidence was not inherently persuasive, the Commission was clearly authorized to determine for itself to what extent, if any, weight should be given to the evidence; and its findings should not be disturbed by the Court, unless it appears that there was an abuse of discretion.

Second. While current reproduction cost may be said to be an element in the present value of property, in the sense that it is "evidence properly to be considered in the ascertainment of value," Standard Oil Co. *v.* Southern Pacific Co., 268 U. S. 146, 156, it is clear that current cost of reproduction higher than the original cost does not necessarily tend to prove a present higher value. Often the fact of higher reconstruction cost is without any influence on present values. It is common knowledge that the current market value of many office buildings and residences constructed prior to the World War have failed to reflect the greatly increased building costs of recent years, although the need of new buildings of like character was being demonstrated by the large volume of construction at the higher price level. Many railroads built before the World War have never been worth as much as their original cost, because high construction cost combined with adverse operating conditions and limited traffic have at all times prevented their earning, despite reasonable rates, a fair return on the original cost. The Puget Sound extension of the Chicago, Milwaukee and St. Paul is a notable example.[9] Many branches, and indeed whole lines of railroad, have been scrapped since 1920. Abandonment of 2,439 miles of railroad was authorized under paragraph 18 of § 1 of the Interstate Commerce Act between 1920 and 1925; and in the three following years 2,010 miles more.[10] These properties had, in the main, become valueless for transportation, either because traffic ceased to be available or because competitive means of transportation precluded the establish-

[1] See Report of Senate Committee reporting S. 3288, Report No. 307, p. 19, 66th Congress, 1st Session: "The Company reserve fund may be drawn upon by the carrier whenever its annual railway operating income falls below 6 per cent of the value of the property. The reserve fund is, of course, the absolute property of the carrier; and the purpose in requiring it to be established and maintained is to give stability to the credit of the carrier and enable it to render more efficiently the public service in which it is engaged."

[2] The complaint concerns all the structural property and equipment acquired before June 30, 1919. But, as nearly all of this had been installed before July 1, 1914, the discussion is limited to the property acquired before June 30, 1914—the valuation being made on the basis of construction costs as of that date.

[3] Compare Best on Evidence (seventh English edition) §§ 69, 70; Manley *v.* Georgia, 278 U. S. —.

[4] See Interstate Commerce Commission *v.* Union Pacific R. R., 222 U. S. 541, 547; Interstate Commerce Commission *v.* Louisville & Nashville R. R., 227 U. S. 88, 92; Florida East Coast Ry. *v.* United States, 234 U. S. 167; New England Divisions Case, 261 U. S. 184, 203.

[5] See Interstate Commerce Commission *v.* Louisville & Nashville R. R., 227 U. S. 88, 93; Chicago Junction Case, 264 U. S. 258, 263.

[6] See Texas & Pac. Ry. *v.* Interstate Commerce Commission, 162 U. S. 197; Interstate Commerce Commission *v.* Alabama Midland Ry., 168 U. S. 144; Interstate Commerce Commission *v.* Northern Pacific Ry., 216 U. S. 538.

[7] See Florida East Coast Line *v.* United States, 234 U. S. 167, 187; Central R. R. Co. *v.* United States, 257 U. S. 247.

[8] Alleged errors of the Interstate Commerce Commission in weighing evidence or drawing inferences therefrom have been urged as grounds for reversal in many cases. This Court has consistently held that the Commission's decisions as to such matters are not the proper subject for judicial review. See e. g., Cincinnati, &c. Ry. *v.* Interstate Commerce Commission, 206 U. S. 142, 154; Illinois Central R. R. *v.* Interstate Commerce Commission, 206 U. S. 441; Interstate Commerce Commission *v.* Illinois Central R. R., 215 U. S. 452, 470; Los Angeles Switching Case, 234 U. S. 294; United States *v.* New River Co., 265 U. S. 533; Western Chemical Co. *v.* United States, 271 U. S. 268; Virginian Ry. *v.* United States, 272 U. S. 658; Chi., R. I. & Pac. Ry. *v.* United States, 274 U. S. 29; Assigned Car Cases, 274 U. S. 564. The following excerpts from recent opinions succinctly express the Court's position in the matter:—"The courts will not review determinations of the Commission made within the scope of its powers or substitute their judgment for its findings and conclusions." United States *v.* New River Co., 265 U. S. 533, 542. "To consider the weight of the evidence is beyond our province." Western Chemical Co. *v.* United States, 271 U. S. 268, 271. "This Court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it." Virginian Ry. *v.* United States, 272 U. S. 658, 565–666. "But if the determination of the commission finds substantial support in the evidence, the courts will not weigh the evidence nor consider the wisdom of the commission's action." Chicago, R. I. & Pac. Ry. *v.* United States, 274 U. S. 29, 33–34.

[9] The Puget Sound Extension of the Chicago, Milwaukee & St. Paul Railway was completed in 1909 at a cost of about $257,000,000. It earned, during fifteen years, little more than operating expenses. As late as 1925, its net operating income was "only about one-half of 1 per cent on this investment." Investigation of Chicago, Milwaukee & St. Paul Ry. Co., 131 I. C. C. 615, 617, 619, 621. The upset cash price fixed by the court in the foreclosure proceeding was $42,500,000. Guaranty Trust Co. v. Chicago, M. & St. P. Ry., 15 F. (2d) 434, 443.

Another striking example of the discrepancy often existing between market price or actual value, and reproduction cost is to be found in the case of the Detroit, Teledo & Ironton Railroad, which Mr. Ford purchased in 1920 for $6,800,000. It was said to have a physical value of between $16,000,000 and $20,000,000. Railway Age, Vol. 69.1, p. 132.

In an order granting, on March 8, 1929, the application of the Nashville, Chattanooga & St. Louis Ry. to abandon its Middle Tennessee & Alabama branch, which had been in operation more than thirty years, the Interstate Commerce Commission said: "The applicant contends that the project was poorly conceived and doomed to failure from the outset." 150 I. C. C. 539, 540.

"But cost of reproduction obviously does not measure value in the sense of what a purchaser would pay for a property. Let the owners of the old Wabash Pittsburgh Terminal put their road upon the market to prove the Reports of the Interstate Commerce Commission, 1921, p. 19; 1922, p. 219; 1923, p. 237; 1924, p. 253; 1925, p. 263; 1926, p. 286; 1927, p. 294; 1928, p. 298.

[10] Motor Bus and Motor Truck Operation, 140 I. C. C. 685, 727. See Annual Reports of the Commission, 1921, p. 19; 1922, p. 219; 1923, p. 237; 1924, p. 253; 1925, p. 263; 1926, p. 286; 1927, p. 294; 1928, p. 298.

ment of remunerative rail rates.[11] Obviously, no one would contend that their actual value just before abandonment was what it originally cost to construct them or what it would then have cost to reconstruct them.

Third. The terms of § 15a and its legislative history preclude the assumption that Congress intended by paragraph 4 to deny to the Commission in respect to evidence of reconstruction cost the discretion commonly exercised in determining what weight, if any, shall be given to an evidential fact. In 1920, no fact was more prominent in the mind of the public and of Congress than that the cost of living was far greater than that prevailing when the existing railroads were built.[12] But, neither in Transportation Act, 1920, nor in any Committee report, is there even a suggestion that the Commission would be required to give to that fact any effect in ascertaining values for rate making purposes under § 15a. If it had been the intention of Congress to compel the Commission to increase values for rate making purposes because the price level had risen, it would naturally have incorporated such a direction in the paragraph. On the other hand, the Committee reports and the debates show that the opinion was quite commonly held that the actual values were less than the property investment account appearing on the books of the carriers;[13] and the proposal made by the railroads that the investment account be accepted as the measure of value was resisted as being excessive.[14] The property investment account in 1920 was about 19 billions of dollars.[15] The then reproduction cost of the railroads, applying index figures to estimated actual cost, was over 40 billions.[16] It is inconceivable that Congress, after rejecting property investment account as excessive, intended by § 15a to make mandatory on the Commission the consideration of elements which would give a valuation double that which had been rejected. The insertion in § 15a of the provision that the Commission "shall give to the property investment account of the carriers only that consideration which under the law it is entitled to in establishing values for rate making purposes" and the rejection of other proposed measures of value show that Congress intended not to impose restrictions upon the discretion of the Commission.[17]

Congress did intend to provide a return on the existing railroad property which should be only slightly more than that which had been enjoyed during the six preceding years. To have required that the then price level be reflected in the values to be fixed under § 15a would have resulted in a rate-base of double the property investment account of the carriers. For the cost of living was then about double prewar prices. The prescribed fair return applied to such a rate base would have produced more than double the average net earnings from operation of the several properties during the three years preceding federal control; more than double the amount which the carriers agreed to accept under the Federal Contral Act, March 21, 1918, c. 25, § 1, 40 Stat. 451, as fair compensation for the use of their property; more than double the guarantee provided by Transportation Act, 1920, § 209, for the six months' period after the surrender of control. The sum which the railroads had thus earned net in those six years equalled 5.2 per cent on the property investment account, as carried on their books.

In making provisions for a fair return, the main purpose was not to increase the earnings of capital already invested in railroads, but to attract the new capital needed for improvement or extension of facilities.[18] This was to be accomplished by raising the rate of return from 5.2 per cent to 5.5 per cent (Senate Reports, Vol. 1, No. 304, 66th Cong., 1st Sess.):

"The basis adopted by the Committee is three tenth of 1 per cent higher than the basis of the test period [the three years preceding June 30, 1917]; and assuming, though not conceding that the value of the property is equal to the property investment accounts, it will yield for all the railways a net operating income of $54,000,000 in excess of the income of the test period. There were two considerations which led the majority of the committee to believe that this increase is not only warranted but necessary:

"First. The railways are being returned to their owners when everything is unsettled and abnormal; when there is suspicion and distrust everywhere. Just what rate of return will enable the carriers to finance themselves under such conditions can not, with certainty be determined. It was felt, therefore, that some increase over the prewar period was justifiable.

"Second. As compared with all kinds of commodities, money is much less valuable than it was a few years ago, and it would seem to be only fair that the returns from railway investments should be reasonably advanced."

The means by which the bill was to accomplish the desired end are thus stated in the report:

"First: By prescribing a basis of return upon the value of the railway property, to give such assurance to investors as will incline them to look with favor upon railway securities; that is to say, by making a moderate return reasonably certain to establish credit for the carriers.

"Second: In making the return fairly certain to secure for the public a lower capital charge than would otherwise be necessary.

"Third. In requiring some carriers, which under any given body of rates will earn more than a fair return, to pay the excess to the Government and in so using this excess that transportation facilities or credit can be furnished to the weaker carriers, and thus help to maintain the general system of transportation."

Either increase in the rate of return or increase of the base on which that return is measured would have served to adjust compensation to higher price levels. The adoption by Congress of the increase in the return, as the means of compenasting for the decreased purchasing power of the dollar, precludes the assumption that it intended that the valuation should reflect that lessened purchasing power. By explicitly choosing the former Congress implicitly rejected the latter.[19] For to have allowed an increase in both would have gone beyond adjusting earnings to increased costs and have made this increase a mere pretext for allowing unwarranted profits to the railroads. The proceedings which led to the passage of the Act make it clear that Congress intended no such result.

Fourth. The declared purpose of Congress in enacting § 15a was the maintenance of an adequate national system of railway transportation, capable of providing the best possible service to the public at the lowest cost consistent with full justice to the private owners. Following the course consistently pursued by this Court in applying other provisions of the Interstate Commerce Act, Texas & Pacific Ry. Co. *v.* Interstate Commerce Commission, 162 U. S. 197, 211,

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[11] Motor competition has to some extent been a factor in such abandonments. For instances arising since October 31, 1927, see Abandonment of Potato Creek R. R. Co., 131 I. C. C. 481, 482; Pennsylvania R. R. Co., 131 I. C. C. 547, 548; Grand Rapids and Indiana Ry. Co., 138 I. C. C. 345; Spokane, Coeur d'Alene & Palouse Ry. Co., 138 I. C. C. 722, 723; Illinois Traction, Inc., 145 I. C. C. 20; Western Maryland Ry. Co., 145 I. C. C. 232; Southern Ry. Co., 145 I. C. C. 355; St. Louis-San Francisco Ry. Co., 145 I. C. C. 379, 383; Pere Marquette Ry. Co., 145 I. C. C. 560, 561; Chicago, Rock Island & Pacific Ry. Co., 145 I. C. C. 698, 699; Southern Pacific Co., 145 I. C. C. 705, 707. Compare Hill City Ry. Co., 150 I. C. C. 159.

[12] Senator Cummins stated that the cost of living was then from 80 to 100 per cent above prewar prices. 59 Cong. Rec., Part I, p. 129. See, also, Senate Committee Hearings, Vol. 148, Part II, p. 277; House Committee Hearings, Vol. 232, Part I, pp. 376–377.

[13] Senator Cummins said "I think there are a great many instances in which the investment accounts are larger than any possible value that could be attributed to the property." 59 Cong. Rec., Part 1, p. 126. "My own judgment is, however, that the value of the properties is less than the aggregate investment accounts . . ." pp. 135–136. For other expressions of opinion to the same effect see pp. 224, 228, 905. Senator Cummins stated that the aggregate of the investment accounts was about $19,000,000,000. (p. 127.) See also p. 130. Compare Mr. Esch, 50 CONGRESSIONAL RECORD, Part 4, p. 3269.

[14] The Commission says (124 I. C. C. 39): "In this connection it is significant that when the legislation of 1920, of which § 15a is a part, was under congressional consideration there was offered in behalf of the carriers a proposed bill in which their recorded investment in road and equipment was made the sole element in the determination of the rate base. It is also worthy of note that when the legislation of 1920 was under such consideration a representative of this commission on September 26, 1919, in response to a question, publicly informed the congressional committee that he knew of no warrant for an assumption 'that the commission will base the value of the property wholly or in part on present prices.'"

The investment in road and equipment as stated on the books of the Kansas City, Mexico and Orient R. R. Co. (of Kansas) as of June 30, 1919, was $22.190,935. The final valuation by the Commission as of that date was $6,453,528. After that date $1,064,782 was expended for additions and betterments, making a total value of $7,518,310. The Kansas City, Mexico & Orient of Texas (with expenditures for additions) was valued at $6,854,522. Kansas City, Mexico & Orient R. R. Co., 135 I. C. C. 217; Kansas City, Mexico & Orient Reorganization, 145 I. C. C. 339, 344. These properties, with an aggregate book value of $29,045.457 were valued by the Commission at $14,372,832 and, with 320 miles of road in Mexico added, were purchased by the Atchison, Topeka and Santa Fe R. R. for $14,507,500. See Control of Kansas City, Mexico & Orient Ry. Co., 145 I. C. C. 350.

[15] See note 13.

[16] Excess Income of St. Louis and O'Fallon Ry. Co., 124 I. C. C. 3, 32.

[17] Contemporary opinion of the railroads to this effect was expressed in their behalf in the hearings held before the Interstate Commerce Commission on March 22–24, 1920 (Hearings, In re: § 422 of the Transportation Act, Ex parte 71, p. 134).

[18] "The writer of this report is firmly convinced that when the Government assumed the operation of the railways they were, taken as a whole, earning all that they should be permitted to earn; but, in the inevitable distribution of these earnings among the various railway companies, the railways which carried 30 per cent of the traffic were earning so little that they could not, by any economy or good management, sustain themselves." Senate Reports, No. 304, Vol. 1, 66th Cong., 1st Sess. A rate base which reflected the then increase in price levels over 1914 would have yielded about $700,000,000 more than the income of the test period.

[19] Senator Kellogg, in the debate on the bill, justified the 5½ per cent return by the same argument as used by the Committee in reporting the bill: "Again it must be remembered that 5½% today is not equal to 5½% five years ago. The great inflation of currency and the general rise in all commodities have made a dollar very much less in purchasing power." (59 Cong. Rec., Part 1, p. 224). The same recognition of increased costs had been given as a justification for the liberal return authorized by the Federal Control Act, 1916 and 1917, two of the three years taken as a basis for measuring the return, were the most prosperous in the history of the railroads. (See 56 Cong. Rec., Part II, p. 2021.)

219; New England Divisions Case, 261 U. S. 184, 189–190; Dayton-Goose Creek Ry. Co. *v.* United States, 263 U. S. 456, 478, the Commission construed § 15a in the light of the declared purpose of Congress and of the economic factors involved. From its wide knowledge of actual condition and its practical experience in rate making, it concluded that to give effect to enhanced reproduction costs would defeat that purpose. (p. 27.)

It knew that the value for rate making purposes could not be more than that sum on which a fair return could be earned by legal rates; and that the earnings were limited both by the commercial prohibition of rates higher than the traffic would bear and the legal prohibition of rates higher than are just and reasonable. It knew that a rate-base fluctuating with changes in the level of general prices would imperil industry and commerce. It knew that the adoption of a fluctuating rate-base would not, as is claimed, do justice to those prewar investors in railroad securities who were suffering from the lessened value of the dollar, since the great majority of the railroad securities are represented by long term bonds or the guaranteed stocks of leased lines which bear a fixed return; and that only the stockholders could gain through the greater earnings required to satisfy the higher rate base. It recognized that an adequate national system of railways, so long as it is privately owned, cannot be provided and maintained without a continuous inflow of capital; that "obviously, also, such an inflow of capital can only be assured by treatment of capital already invested which will invite and encourage *further* investment," (p. 30); and that as was said in Dayton-Goose Creek Ry. Co. *v.* United States, 263 U. S. 456, 481; "By investment in a business dedicated to the public service the owner must recognize that as compared with investment in private business, he cannot expect either high or speculative dividends but that his obligation limits him to only fair or reasonable profit." [20]

The conviction that there would in time be a fall in the price level was generally held. As a fluctuating rate-base would thus directly imperil industry and commerce and investments made at relatively high price levels during and since the world war; [21] would tend to increase the cost of new money required to supply adequate service to the public; and would discourage such investment, the Commission concluded that Congress could not have intended to require it to measure the value or rate-base by reproduction cost, since this would produce a result contrary to its declared purpose. And as confirming its construction of § 15a the Commission showed that, with the stable rate-base which it had accepted as the basis for administering the Act, the aim of Congress to establish an adequate national system had been attained. It pointed out that: "During the period 1920–1926, inclusive, the investment in railroad property increased by 4 billions of dollars. A substantial part of this money was derived from income, but much of it was obtained by the sale of new securities. The market for railroad securities since the passage of the transportation act, 1920, has steadily improved and the general trend of interest rates has been downward. The credit of the railroads in general is now excellent. . . ." (p. 33.)

Fifth. Other considerations confirm the construction given by the Commission to the phrase "value for rate making purposes," as used in § 15a. In condemnation proceedings, the owner recovers what he has lost by the taking of the property, Boston Chamber of Commerce *v.* Boston, 217 U. S. 189, 195; and such loss must be determined "not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted." Boom Co. *v.* Patterson, 98 U. S. 403, 408. Compare Louisville & Nashville R. R. Co. *v.* Barber Asphalt Co., 197 U. S. 430, 435. But the actual value of a railroad—its value for rate making purposes under § 15a—may be less than its condemnation value. As was said in Southern Ry. Co. *v.* Kentucky, 274 U. S. 76, 81–82, a case involving state taxation: "The value of the physical elements of a railroad—whether that value be deemed actual cost, cost of reproduction less depreciation or some other figure—is not the sole measure of or guide to its value in operation. Smyth *v.* Ames, 169 U. S. 466, 557. Much weight is to be given to present and prospective earning capacity at rates that are reasonable, having regard to traffic available and competitive and other conditions prevailing in the territory served."

Value has been defined as the ability to command the price.[22] Railroad property is valuable as such only if, and so far as, used. If rates are too high, the traffic will not move. Hence, the value or rate-base is necessarily dependent, in the first place, upon the commercial ability of the property to command the rates which will yield a return in excess of operating expenses and taxes; and such value cannot be higher than the sum on which, with the available traffic, the fair return fixed under § 15a can be earned. Persistent depression of rates or lessening volume of traffic, from whatever cause arising, ordinarily tends to lower actual values of railroad properties. It follows, that since the Commission is required by the rule of Smyth *v.* Ames, re-affirmed in the Southwestern Bell case, to determine the rate-base under § 15a by actual value as distinguished from prudent investment, it must in making the finding consider the effect upon value of both the commercial and the legal limitations upon rates and, among other things, the effect of competition upon the volume of traffic.

Recent experience affords striking examples of commercial limitations upon rates. In ex parte 74, Increased Rates, 1920, 58 I. C. C. 220, the Commission sought to establish rates which would yield 6 per cent upon the aggregate values of the railroads in the several groups. The carriers claimed as the aggregate value $20,040,572,611—that amount being carried on their books as the cost of road and equipment. The Commission fixed the value about 5 per cent lower—at $18,900,000,000. In order to produce on that sum net earnings equal to 6 per cent, it increased freight rates, in the eastern group, 40 per cent over the then existing rates; in the southern group 25 per cent; in the western group 35 per cent; and in the mountain-Pacific group 25 per cent.[23] As a result of these increases, the average gross revenue per ton mile in 1921 was in the eastern district 96.1 per cent greater than for the fiscal year ended June 30, 1914; in the southern, 61.4; in the western, 59.3; and in the United States as a whole, 76.2. Reduced Rates, 1922, 68 I. C. C. 676, 702. Passenger rates were subjected by the order in Ex parte 74, to a flat increase of 20 per cent and surcharges were added (p. 242).[24]

On a large number of basic commodities, which were among the most important articles of commerce, the rates proved to be higher than the traffic would bear. Reductions became imperative. Within a year after the entry of that order, many applications for reductions were made to the Commission, not only by shippers but also by the carriers themselves. It was estimated that the reductions in freight rates made by the carriers prior to March 15, 1922, would aggregate for that year $186,700,000; and would lower the general rate level nearly 5 per cent. On some important articles of traffic the entire increase made by Ex parte 74 was canceled.[25] Further reductions were then ordered by Reduced Rates, 1922, 68 I. C. C. 676, the Commission saying (pp. 732–3): "High rates do not necessarily mean high revenues, for, if the public cannot or will not ship in normal volume, less revenue may result than from lower rates. Shippers almost unanimously contend, and many representatives of the carriers agree, that 'freight rates are too high and must come down.' This indicates that transportation charges have mounted to a point where they are impeding the free flow of commerce and thus tending to defeat the purpose for which they were established, that of producing revenues which would enable the carriers 'to provide the people of the United States with adequate transportation.'" Further reductions made in the year 1923 are said to have again lowered freight rates 5 per cent.[26] The effect of the several reductions made in the rates authorized by Ex parte 74 is said to have lowered by $800,000,000 the freight charges otherwise payable on the traffic carried during the eighteen months ending December 31, 1923.[27] Each year

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[20] Mr. Esch, in submitting the conference report to the House, said: "Investors want something definite and fixed upon which they can reckon. The provisions of section 422 give that stability, that standard which I trust, will encourage investment . . ." 59 Cong. Rec., Part 4, p. 3269. The Commission points out (p. 32): "In other words, assuming a static property [valued at $18,000,000,000] there would have been a gain of 23.4 billions in 1920, a loss of 6.3 billions in 1921, a further loss of 6.8 billions in 1922, and a gain again of 3 billions in 1923. These huge 'profits' and 'losses' would have occurred without change in the railroad property used in the public service other than the theoretical and speculative change derived from a shifting of general price levels."

[21] "During the seven years 1920 to 1926, inclusive, there was an approximate net investment in additions and betterments and new construction of 4 billions. These were paid for at then current prices, all above, in many cases far above, present prices. Assuming that there has since been an average decline in unit price level of 25 per cent, a valuation under the current reproduction cost doctrine would wipe out one billion of that additional investment. The effect upon any railroad entirely or largely constructed during the period 1920 to 1926 may be imagined." (p. 32.)

[22] The value of the plant is "a result of the rates rather than a basis for rates. . . . If rates are established upon a basis of reproduction cost, value will tend to approximate such cost, but this will be through the operation of economic law and not because a certain figure has been decreed as value." F. G. Dorety, "The Function of Reproduction Cost," 37 Harvard Law Rev. 173, 189. Compare Monongahela Navigation Co. *v.* United States, 148 U. S. 312, 328; C. C. C. & St. L. Ry. Co. *v.* Backus, 154 U. S. 439, 445; 1 Taussig, Principles of Economics, 115; Laughlin, Elements of Political Economy, pp. 75–77.

[23] Large increases had been made theretofore. A general rate increase of 5 per cent in 1914, Five Per Cent Case, 31 I. C. C. 351; 32 I. C. C. 325; 15 per cent in 1917, Fifteen Per Cent Case, 45 I. C. C. 303; and 25 per cent in 1918, General Order of Director General, No. 28.

[24] They had been raised 40 per cent before.

[25] See Rate Reductions, House Doc. No. 115, 67th Congress, 1st Session, e. g., p. 7: "Reductions in all rates on iron ore throughout the so-called eastern territory, including generally points east of the Mississippi and north of the Potomac and Ohio Rivers, including, of course, ex-Lake ore moving from Lake Erie ports. These reductions will eliminate all increases effected under Ex parte 74, and it is conservatively estimated the amount will reach in round figures $5,000,000 per year." For instances of important reductions made by the carriers voluntarily, see Smelter Products from Nevada & Utah, 61 I. C. C. 374; Grain from Illinois Points to New Orleans, 69 I. C. C. 38; Copper-Duquesne Reduction Co. *v.* Pennsylvania R. R. Co., 96 I. C. C. 351, 354–355.

[26] Railway Age, 1924—Vol. 76.1, p. 726.

[27] Letter of Chairman Hall to Senator E. D. Smith, May 28, 1924, 68 Cong. Rec., Part 10, p. 10275.

since has witnessed a further lowering in the revenue per ton mile and per passenger mile.[28]

This constant lowering of the weighted average of rates since 1920 must have been due to causes other than desire on the part of the Commission. Its aim was to adjust rates so that they would yield the prescribed return. But for the period from 1920 to 1927 inclusive, there was only one year in which the railroads of the United States as a whole, despite general prosperity and greater efficiency earned on the value found in Ex parte 74 brought down to date, the full average return prescribed as fair under § 15a.[29] The Commission repeatedly refused to permit carriers to make reductions, because the reduction would lower the revenues sought to be provided under § 15a.[30] On the other hand, carriers, although earning less than the fair return prescribed under § 15a, have often voluntarily reduced rates.[31] The lowering of rates was probably due in large measure to the influence of competing means of transportation.[32]

Sixth. Since 1914, the railroads have been obliged, to an ever increasing extent, to compete with water lines and with motors. This competition has been fostered by the Government [33] through the Panama Canal Act; [34] through the intracoastal waterways acts; [35] through the inland waterways acts; [36] through the development of coastwise shipping by means of harbor improvements,[37] and through federal aid in the construction of highways.[38] There has also been increased competition by pipe lines. Competition from other means of transportation has tended to arrest the normal increase in the volume of rail traffic; and as to some traffic it has actually produced a reduction in both the volume and the rates. It has resulted in a general shrinkage in the passenger business; [39] in some regions, in a lessening of the carload freight; [40] and in many, in a reduction of the volume of the less than carload freight.[41]

The influence of water competition on rates is strikingly illustrated by the effect of the Panama Canal on transcontinental freight rates.[42] In order to meet this water competition carriers have repeatedly asked leave to make sweeping reductions.[43] Rates voluntarily established by the rail carriers are lower now, on some articles of traffic, than they were in 1914. On others they are only a little higher.[44] The influence of competition by the inland waterways on the

	1921	1922	1923	1924	1925	1926	1927
[28] Revenue per ton mile (cents)	1.294	1.194	1.132	1.132	1.114	1.096	1.095
Revenue per passenger mile (cents)	3.093	3.037	3.026	2.985	2.944	2.941	2.901

Annual Report of the Interstate Commerce Commission for 1928, p. 115. It is impossible to say to what extent this persistent shrinkage has been the result of miscellaneous rate adjustments and to what extent to fluctuations in character of traffic. Statistics of Railways in the United States, I. C. C. 1927, p. X.

[29] The fair return for the first two years was fixed by Congress at 5½ per cent, and the Commission was authorized to add one-half of one per cent for improvements, betterments and equipment. This additional allowance was granted in Ex parte 74, 58 I. C. C. 220. For the rest of the period it was prescribed by the Commission at 5¾ per cent. Reduced Rates, 1922, 68 I. C. C. 676, 683. The rate of return calculated on Ex parte 74 value of the railroads as a whole brought down to date, was:

	1921	1922	1923	1924	1925	1926	1927	1928
Per cent	3.2	4.0	5.1	4.9	5.5	5.8	5.1	5.5

The return on that basis in the Southern group has in most years exceeded that prescribed as fair. In the Eastern group the return has since 1924 exceeded that prescribed. In the Western groups the prescribed return appears never to have been reached. Compare Bonbright, "Economic Merits of Original Cost and Reproduction Cost," 41 Harvard Law Review 593, 618.

[30] Trunk-Line & Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 610–611; Import and Domestic Rates on Vegetable Oils, 78 I. C. C. 421; Grain & Grain Products from Kansas and Missouri to Gulf Ports, 115 I. C. C. 153, 164; Grain & Grain Products to Eastern Points, 122 I. C. C. 551, 563–4; Lake Cargo Coal, 139 I. C. C. 367, 392–5. See Rates from Atlantic Seaboard, 61 I. C. C. 740; Salt from Louisiana Mines, 66 I. C. C. 81; Coal to Kansas City, 66 I. C. C. 457; Coal from Wyoming Mines, 68 I. C. C. 254; Coal from Southwest, 73 I. C. C. 536; Transcontinental Cases of 1922, 74 I. C. C. 48; Canned Goods from Pacific Coast, 132 I. C. C. 520; Cement in Carloads, etc., 140 I. C. C. 579, 582. Compare H. W. Biklé, "Power of the Interstate Commerce Commission to Prescribe Minimum Rates", 36 Harvard Law Rev. 5, 30.

[31] See Smelter Products from Nevada and Utah, 61 I. C. C. 374; Coal from Illinois to Arkansas, Louisiana and Texas, 68 I. C. C. 1; Coal from Kentucky, Tennessee and West Virginia, 68 I. C. C. 29; Rates from Chicago via Panama Canal 68 I. C. C. 74; Grain from Illinois Points to New Orleans, 69 I. C. C. 38; Trunk-Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589; Sugar Cases of 1922, 81 I. C. C. 448; Grain to Texas, 96 I. C. C. 727; Pig Iron from Southern Points, 104 I. C. C. 27; Grain and Grain Products from Western States, 104 I. C. C. 272; Coal to Cincinnati, 123 I. C. C. 561. The suspension docket for the calendar year 1928 shows that of the cases in which rates proposed by the carrier were permitted to become effective without suspension, after protest, 81 were reductions of existing rates and 93 were increases.

[32] Compare F. G. Dorety, "The Function of Reproduction Cost," 37 Harvard Law Review 173, 194.

[33] Transportation Act, Feb. 28, 1920, c. 91, § 500, 41 Stat. 456, 499: "It is hereby declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." Chicago, Rock Island & Pacific Ry. Co. *v.* United States, 274 U. S. 29, 36. Compare Transcontinental Cases of 1922, 74 I. C. C. 48; United States War Department *v.* Abilene, etc. Ry. Co., 77 I. C. C. 317; 92 I. C. C. 528; Houston Cotton Exchange & Board of Trade *v.* Arcade, etc. Corp., 87 I. C. C. 392; 93 I. C. C. 268; Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512; Southern Class Rate Investigation, 100 I. C. C. 513; Commodity Rates to Pacific Coast Terminals, 107 I. C. C. 421; Consolidated Southwestern Cases, 123 I. C. C. 203; Canned Goods from Pacific Coast, 132 I. C. C. 520; Tinplate to Sacramento, 140 I. C. C. 643; American Hawaiian S. S. Co. *v.* Erie R. R. Co., 152 I. C. C. 703.

[34] The Panama Canal Act, Aug. 24, 1912, c. 390, § 11, 37 Stat. 566, now incorporated in the Interstate Commerce Act as par. 10 of § 5 (see Transportation Act, Feb. 28, 1920, c. 91, § 408, 41 Stat. 482), prohibits any railroad from having any interest "in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad . . does or may compete for traffic." Compare Application of United States Steel Products Co., 57 I. C. C. 513; 77 I. C. C. 685; 151 I. C. C. 577.

[35] The Cape Cod Canal purchased pursuant to Act of Jan. 21, 1927, c. 47, § 2, 44 Stat. 1015, resulted in the elimination of tolls and an immediate large increase in vessel traffic. "The use of the canal under present conditions will undoubtedly operate to reduce freight rates." Report of Chief of Engineers to the Secretary of War, Oct. 2, 1928, p. 76. The Chesapeake and Delaware Canal was acquired and improved pursuant to Act of March 2, 1919, c. 95, § 1, 40 Stat. 1277, and Act of Jan. 21, 1927, c. 47, § 3, 44 Stat. 1016. "The opening of the canal at sea level to navigation within the limits of the dimensions authorized under the project has resulted in increasing the number and size of vessels passing through. New vessels to take advantage of the increased facilities are being constructed. Freight rates have been lowered as a result of the increased competition between carriers. Its effect on rail rates is to hold them at a minimum." Annual Report of Chief of Engineers to the Secretary of War, Oct. 2, 1928, pp. 408, 410. See Proposed Intracoastal Waterway from Boston, Massachusetts to the Rio Grande, Act of March 3, 1909, c. 214, § 13, 35 Stat. 822; Letters of Secretary of War transmitting to Congress letters from the Chief of Engineers on Surveys, House Doc. 391, January 5, 1912, 62 Cong., 2d Sess.; House Doc. 229, September 11, 1913, 63 Cong., 1st Sess.; House Doc. 233, September 11, 1913, 63 Cong., 1st Sess.; House Doc. 610, January 17, 1914, 63 Cong., 2d Sess.; House Doc. 1147, June 3, 1918, 65 Cong., 2d Sess.; House Doc. 238, April 12, 1924, 68 Cong., 1st Sess.; Senate Doc. 179, December 8, 1924, 68 Cong., 2d Sess.; House Doc. 586, December 14, 1926, 69 Cong., 2d Sess.

[36] The river improvements on the Ohio, the Mississippi and the Warrior rivers, and the creation of the government owned Inland Waterways Corporation to operate barge lines has been followed by legislation requiring the railroads to join in through routes and joint rates and providing for differentials. Act of May 29, 1928, c. 891, § 3 (e), 45 Stat. 980. Although barge lines are still limited in their sphere of operation, the through routes with differentials applied for by the Inland Waterways Corporation and ordered by the Commission pursuant to the direction of Congress cover a large part of the United States. Ex parte 96, 153 I. C. C. 129, 132. Compare Annual Report Inland Waterways Corporation, 1928.

[37] For an instance of the effect of harbor improvement in increasing coastwise shipping and thereby reducing rail rates, see Annual Report of the Chief of Engineers (1928) upon Miami, p. 722: "The completion of the 20-foot project has had a pronounced effect on railroad and water-transportation rates." The domestic water-borne commerce on the Atlantic, Gulf, and Pacific Coasts rose from 114,557,241 tons in 1920 to 231,530,937 tons in 1927. The tonnage on the rivers, canals and connecting channels rose from 125,400,000 in 1920 to 219,000,000 in 1927. Annual Report of the Chief of Engineers for 1928, Commercial Statistics, p. 3. On the New York State canals the tonnage increased steadily from 1,159,270 in 1918 to 2,581,892 in 1927. Commerce Year Book, 1928, Vol. 1, p. 617. The tonnage of the shipping occupied in the coastwise and internal trade increased from 6,852,000 tons in 1914 to 9,743,000 tons in 1928. p. 619.

[38] The competition by motor has, in large measure, been stimulated and made possible by the grants by Congress since 1914 of federal aid to highway construction. The highways completed with federal aid to June 30, 1928, aggregate 72,394 miles. The aggregate mileage comprised in what is designated as federal-aid highway systems is 187,753 miles. Report of Chief of Bureau of Public Roads, Sept. 1, 1928, pp. 3, 7.

[39] The passenger miles per mile of road dropped gradually from 199,708 in 1920 to 141,800 in 1927; the passenger revenues from $1,286,613,000 in 1920 to $974,950,000 in 1927. 42 Annual Report I. C. C., Dec. 1, 1928, pp. 115, 117. This shrinkage continued throughout 1928.

[40] For an example of reduction in carload traffic, see note 45.

[41] The less-than-carload freight on all the railroads of the United States shrank from 44,338,000 tons in 1923 to 38,440,000 tons in 1927. In the Eastern District (including the Pocahontas region) it shrank from 23,321,000 tons in 1923 to 19,363,000 tons in 1927. Statistics of Railways in the United States, 1927 [I. C. C.], p. XVII. This reduction has continued in 1928.

[42] "The volume of general cargo carried in United States vessels, particularly in United States intercoastal traffic, has been increasing from year to year." Annual Report of Governor of Panama Canal for 1928, p. 12.

"Like all other western lines we feel rather severely the effect of Panama Canal competition." J. S. Pyeatt, president, Denver & Rio Grande Western Ry., Railway Age, 1926—Vol. 80.1, p. 10.

[43] Class and Commodity Rates for Transshipment via Panama Canal, 68 I. C. C. 74; Reduced Rates from New York Piers, 81 I. C. C. 312, 315; Reduced Commodity Rates to Pacific Coast, 89 I. C. C. 512; Reduced Rates to Pacific Coast Terminals, 107 I. C. C. 421. Compare American Hawaiian S. S. Co. *v.* Erie R. R. Co., 152 I. C. C. 703, 705, 707.

[44] "Shortly after the opening of the Panama Canal, a rate of $10.90 per ton was established on copper, lead and zinc smelter products from certain far west mines to the eastern refineries for movement by rail to the Pacific Coast and thence by water through the canal. This forced a reduction in all rail rates from the same points to New York, first from $22.50 per ton to $16.50 per ton, and then to $12.50 per ton which is the present rate." Brass, Bronze and Copper Ingots, 109 I. C. C. 351, 355. Compare Eastbound Tariffs, San Francisco and Los Angeles to Kansas City and Chicago, Agent Countiss I. C. C. 978, July 1, 1914, with Agent Toll, March 25, 1929, I. C. C. 1209; Westbound, Kansas City and Chicago to Portland and Seattle, Agent Countiss I. C. C. 984 with Agent Toll, March 25, 1929, I. C. C. 1211; Agent Toll, I. C. C. 1209 with Agent Countiss, I. C. C. 1065; Agent Toll, I. C. C. 1206 with Agent Countiss, I. C. C. 1084; Agent Toll, I. C. C. 1210 with Agent Countiss, I. C. C. 1077; Agent Toll, I. C. C. 1211 with Agent Countiss, I. C. C.

volume of rail traffic is illustrated in the effect which improvement of the Ohio River and its tributaries has had in the Pittsburg district. The rail tonnage in 1927 was materially less than in 1914, while the water tonnage more than doubled.[45] The influence of barge lines in reducing or holding down rail rates is illustrated by the rail rates in competition with those of the barge lines on the Ohio, the Mississippi and the Warrior rivers.[46] The widespread effect of competition by motor truck in lowering both the rates and volume of rail traffic is obvious.[47] Not obvious, but indisputable, has been the effect of the potential competition of pipe-lines shown by reductions in oil rates caused by the threat of competing pipe-lines.[48]

Moreover, rates which are not so high as to prevent commercially the movement of traffic are often required to be lowered because they conflict with some statutory provision. Thus, Congress compels reduction of rates which discriminate unjustly against individuals, localities, articles of traffic or other carriers. Perhaps the most striking instance of the limitation by law of rates which the traffic would bear commercially is furnished by cases under the long and short haul clause. By that clause, a rail carrier is often obliged (unless relieved by order of the Commission) to elect between suffering practically a total loss of existing traffic between competitive points or suffering a loss in existing revenues by reducing rates at both the competitive points and intermediate noncompetitive points. The effect of this limitation upon rates, and hence upon the actual value of railroads, has become very great. Its influence has grown steadily with the growth of competition by water and motor, with the growth in the size of the individual railroad system, with the growth in the dependence of railroads for their revenues upon long-haul freight traffic and with the growing length of the average haul.[49] It has become so important for rail carriers to hold a share of the long-haul freight traffic at competitive points, that the long and short haul clause, if not relieved from, results in the carriers' giving, in large measure, to the intermediate non-competitive points which otherwise would be subject to monopoly exactions, the full benefit of that lowering of rates required to meet the competition. The many applications for reductions made in petitions for relief from the operation of the long and short haul clause illustrate the influence of rail, as well as of water and motor, competition in thus depressing rates.[50] Congress has by that clause limited values for rate making purposes under § 15a, almost as effectively as by its promotion of competitive means of transportation.

Seventh. In requiring that the value be ascertained for rate making purposes, Congress imposed upon the rate-base as defined in Smyth *v.* Ames, still another limitation which is far-reaching in its operation. By declaring in § 15a that the Commission shall, "in the exercise of its power to prescribe just and reasonable rates" so adjust them that upon the value a fair return may be earned "under honest, efficient and economical management" Congress made efficiency of the plant an element or test of value.[51] Efficiency and economy imply employment of the right instrument and material as well as their use in the right manner. To use a machine, after a much better and more economical one has become available, is as inefficient as to use two men to operate an efficient machine, when the work could be performed equally well by one, at half the labor cost. Such an instrument of transportation, although originally well conceived and remunerative, should, like machines used in manufacturing, be scrapped when it becomes wasteful.

Independently of any statute, it is now recognized that, when in confiscation cases it is sought to prove actual value by evidence of reproduction cost, the evidence must be directed to the present cost of installing such a plant as would be required to supply the same service. For valuation of public utilities by reproduction cost implies that "the rates permitted should be high enough to allow a reasonable per cent of return on the money that would now be required to construct a plant capable of rendering the desired service"; and does not mean "that the plant should be valued at what would now be needed to duplicate the plant precisely."[52] Proof of value by evidence of reproduction cost presupposes that a plant like that being valued would then be constructed. To the extent that a railroad employs instruments which are inconsistent with efficiency the plant would not be constructed; and because of the inefficient part, the railroad is obviously not then worth the cost of reconstructing the identical plant. While a part often has some service value, although not efficient according to the existing standard, its use may involve such heavy, unnecessary operating expense as to render it valueless for rate making purposes under § 15a. The Commission when requested to consider evidence of reproduction cost must, therefore, examine the value of every part of the plant, and that of the whole plant, as compared with the value of a modern, efficient plant. Upon such consideration the Commission may conclude that the railroad is so largely obsolete in construction and equipment as to render evidence of the reproduction cost of the identical plant of no probative force whatsoever. The duty so to deal with the evidence seems to flow necessarily from the rejection by the Court of prudent investment as the measure of value and the adoption, instead, of the actual value of the property at the time of the rate hearing as the governing rule of substantive law.

The physical deterioration of a railroad plant through wear and tear may be very small as compared with a plant new, while its

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1068. See Applications of the Southern Pacific-Atlantic S. S. Lines for fourth section relief, Nos. 13638, 13639.

A striking illustration of the effect of Panama Canal competition is furnished by the reduction in proportional rates made by the Illinois Central R. R. Co. to New Orleans, May 31, 1928, on shipments via the Redwood (steamship line) to California in order to place manufacturers in the Chicago District on a parity with those in the Pittsburg District shipping via the Atlantic seaboard. The domestic rate on iron and steel from Chicago to New Orleans was 55 cents; and the proportional rail and water rate to California had been 39½ cents. It was reduced to 31 cents, leaving the domestic rate unchanged. Tariff I. C. C. No. A–10314.

[45] In 1914, 158,327,451 tons were transported by rail and 17,601,661 by water. In 1927, 152,872,882 by rail and 39,998,562 by water. "The advantages of the utilization of the Ohio and its connecting waterways have been amply demonstrated and the rail carriers should realize that they cannot continue to handle by all rail routes much traffic which can be more economically transported by all water or rail-and-water routes. The interveners express fear that lower rates over a rail-and-water route will jeopardize the present rate structure, but assuming such fear to be well founded, that fact would not justify us in withholding approval of any plan which promises to reduce substantially the cost of necessary transportation." Construction of Branches by P. L. & W. Co., 150 I. C. C. 43, 52, 55.

[46] The establishment of barge lines, especially when followed by the establishment of through rail and barge line routes tends both to reduce rail rates and the volume of rail tonnage. See Inland Waterways Corporation *v.* Alabama G. S. R. R., 151 I. C. C. 126; Coal and Coke from Western Kentucky, 151 I. C. C. 543, 549; Rates on Fertilizer, etc., Within Florida, 151 I. C. C. 602, 608. Compare Vanderblue, "The Long and Short Haul Clause Since 1910," 36 Harvard Law Review, 426, 437. As to the development of the barge lines, see Annual Report of the Inland Waterways Corporation for 1928.

[47] For instances on Boston & Maine R. R., compare authority I. C. C. Nos. A–2535, 2540, 2565, 2597, 2600 with issue I. C. C. Nos. A–2556, 2657, 2600, 2654; M. D. P. U. 1706, 1717, 1719, 1728, 1729, 1730; N. H. P. S. C. 1166. Many illustrations of this are afforded by applications made under § 6 of the Interstate Commerce Act for permission, because of motor competition, to change rates on less than 30 days' notice. In the period from Nov. 23, 1928, to March 19, 1929, six such applications were made by the Boston & Maine Railroad; five by the New York, New Haven & Hartford, and two by the Boston & Albany. In one instance the rate was reduced to less than one-half; in another to just one-half; and in the others by varying percentages. The reductions related, among others, to articles as bulky as crushed stone and lumber, and as heavy as scrap iron and wire rods. Among such applications made by western lines in 1928, are those of the Southern Pacific and Atchison for carload rates on sugar (Nos. 87,723, 87,724) and on dried fruits (86,227); and that of the Southern Pacific for carload rates on iron or steel pipe (No. 90,219).

In a paper delivered before the Mid-West Transportation Conference, R. C. Morse, general superintendent, Pennsylvania R. R., said: "The truck has proved more economical than the box car for the transportation of less than carload freight for short hauls and, under special circumstances, for comparatively long hauls." Railway Review, 1925—Vol. 76, p. 1116.

In an address before the Western Railway Club, T. C. Powell, president, Chicago & Eastern Illinois Ry., said: "The great change, therefore, that has taken place since 1920 has been this growth of automobile traffic, and by this I mean not simply the ownership of automobiles, but the diversion to the passenger automobile and freight motor truck of a large number of passengers and a large tonnage of freight, respectively, of the character heretofore handled by the steam carriers, and this loss of gross-revenue producing traffic has brought about a reduction in train service on main lines as well as on branch lines, which has a very marked effect upon the number of employees engaged in train service." Railway Review, 1925—Vol. 77, p. 768.

For further comment on the motor bus and motor truck as competitive and auxiliary instruments of transportation, see Railway Age, Vol. 71.7, p. 432; Vol. 75.2, p. 995; Vol. 76.1, p. 319; Vol. 77.1, p. 275; Vol. 78.2, p. 1513; Vol. 79.2, p. 1017; Vol. 80.1, pp. 12, 547, 918; Vol. 80.2, pp. 1401, 1981; Vol. 81.1, pp. 153, 381; Vol. 81.2, p. 801; Vol. 82.2, p. 1651; Vol. 83.1, p. 601; Vol. 83.2, p. 753; Vol. 84.2, pp. 1025, 1315; Vol. 85.1, p. 399; Railway and Locomotive Engineering, Feb., 1928, p. 37; Engineering News-Record, Vol. 96.1, p. 305; Railway Review, Vol. 77, p. 604.

[48] Petroleum and Petroleum Products from Oklahoma (I. & S. 3144, April 6, 1929), 153 I. C. C. —, —.

[49] In the period from 1914 to 1927 the average freight haul for the individual railroad increased from 144.17 to 172.11 miles; and the average haul, treating all the railroads as a single system, increased from 255.43 to 314.75 miles. Annual Report of the Interstate Commerce Commission for 1928, p. 114.

[50] See e. g. Trunk-Line & Ex-Lake Iron Ore Rates, 69 I. C. C. 589; Reduced Rates from New York Piers, 81 I. C. C. 312, 317; Sugar Cases of 1922, 81 I. C. C. 448; Vinegar Rates from Pacific Coast, 81 I. C. C. 666; Iron from Southern Points, 104 I. C. C. 27; Reduced Rates on Commodities to Pacific Coast Terminals, 107 I. C. C. 421, 436; Pacific Coast Fourth Section Applications, 129 I. C. C. 3, 23. Compare Vanderblue, "The Long and Short Haul Clause Since 1910," 36 Harvard Law Rev. 426, 437.

[51] In confiscation cases the term "used and useful" had been commonly employed in making the valuations. The specific provision, requiring efficiency and economy, was doubtless inserted in § 15a because the Commission had theretofore expressed a doubt as to the extent to which it could, in determining the reasonableness of rates, consider the efficiency and economy of the management. Compare Advances in Rates—Eastern Case, 20 I. C. C. 243, 278–280. This provision must be read in the light of paragraph (5) of § 20, also added to the Interstate Commerce Act by Transportation Act, 1920, which directed the Commission to prescribe what depreciation charges should be allowed as a part of the operating expenses.

[52] Harry Gunnison Brown, "Present Costs", p. 6. (Reprinted from Public Utilities Fortnightly, March 7, 1929); F. G. Dorety, "The Function of Reproduction Cost," 37 Harvard Law Rev. 173, *passim;* James C. Bonbright, XL Quarterly Journal of Economics, pp. 295, 317. Compare 42 Proceedings, Am. Soc. of Civil Engineers, 1916, pp. 1719, 1772. Compare City of Spokane *v.* Northern Pacific Ry. Co., 15 I. C. C. 376, 393–4; Goddard, "The Evolution of the Cost of Reproduction as the Rate Base," 41 Harvard Law Rev. 564, 572; Robinson, "Duty of a Public Utility to Serve at Reasonable Rates: The Valuation War," 6 No. Car. Law Rev. 243, 256; "Railroad Valuation", by Leslie Craven, Railway Age, 1923—Vol. 75.2, pp. 807, 808.

functional deterioration may be very large as compared with a modern efficient plant. This lessening of service value may be due to any one of several causes. It may, in the first place, be due to causes wholly external. Freight terminals, originally well conceived and wisely located in the heart of a city, may have become valueless for rate making purposes under § 15a, because through growth of the city the expense of operating therein has become so high, or the inescapable cost of eliminating grade crossings so large, that efficient management requires immediate abandonment of the terminals.[53] And, even if the cost of continuing operation there is not so high as to require abandonment, the property may have for rate-making purposes a value far below its market value.[54] Compare Minneapolis & St. Louis R. R. Co. *v.* Minnesota, 186 U. S. 257, 268; Wilcox *v.* Consolidated Gas Co., 212 U. S. 19, 52.

The lessening of the service value of a part of the railroad plant may flow from changes in the volume or character of its traffic. For economy and efficiency are obviously to be determined with reference to the business of the carrier then being done and about to be done.[55] A station warehouse for less-than-carload freight may have becomes valueless for rate-making purposes, because, through motor competition the railroad had lost substantially all its less-than-carload business at that point. Large reductions in the value of passenger stations and equipment may have resulted from decline in the passenger traffic. Branch lines may lose all their service value so that they should be abandoned because motor transportation has become more efficient. On the other hand, the traffic may have grown so much as to render inefficient a part of a line originally wisely constructed with heavy grades[56] or curves.[57] In that event economy and efficiency will demand elimination of the grades and curves and may even require the building of tunnels or a cut-off.[58] In so far as such a condition exists, the railroad would obviously not be reconstructed with the heavy grades and curves;[59] and when considering the reconstruction cost of the whole property that part of the line must be given merely scrap value. Compare Kansas City Southern Ry Co. *v.* United States, 231 U. S. 423.

Perhaps the most common cause of the lessening of service value of parts of railroad plants originally well conceived and still in good physical condition is the progress in the art of rail transportation. Science and invention have wrought, since June 30, 1914, such extraordinary improvements in the types of automobiles and aeroplanes that no one would contend that the present service value of such machines should be ascertained by enquiring what their original cost was or what their reproduction cost would be. The progress since June 30, 1914, in the art of transportation by railroad has been less spectacular; but the art has been far from stagnant.[60] In railroading, as in other fields of business, the great rise in the cost of labor and of supplies, and the need of better service, have stimulated not only inventions but also their utilization. Through technological advances instruments of transportation with largely increased efficiency and economy have been developed. The price of lower operating costs is the scrapping of those parts of the plant which progress in the art render obsolete.[61] The present greatly increased efficiency of the railroads as compared with 1920, their greatly improved credit, and their present prosperity are, in large measure, due to the advances made toward introducing the improved instruments of

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[53] In a paper delivered before the Western Society of Engineers, F. J. Scarr, supervisor motor service, Pennsylvania R. R., said: "We are conducting inefficient terminal operations through inadequate facilities, and by means of antiquated methods. . . . Before the general acceptance of the motor vehicle as a dependable means of transportation, we had only the horse drawn vehicle available for the movement of freight over the highways. The limited effective radius of action, slow speed, and low capacity, of this instrument forced the railroads to place on track freight stations as near the centers of production and consumption as possible, almost regardless of cost or future expansion requirements. This factor, with reckless competition between carriers, influenced the railroads to engage in what approaches retail transportation, by the establishing of innumerable small stations and private sidings. It is my firm conviction that had the motor truck, with its greater radius of action, greater capacity, greater flexibility, and greater endurance, been available, the carriers would have developed terminals better adapted to take advantage of these characteristics." Railway Review, 1926—Vol. 78, p. 790.

[54] "'The time is fast approaching when railroads will stop buying expensive downtown city property for freight houses, and will, by the use of trucks, handle freight from outside and less costly freight houses direct to consignees' door.' . . . Where is the economy in hauling freight into terminals situated on the most valuable land in Chicago; and why should this same freight be hauled through Chicago's most congested district for delivery? . . . The delays in switching, due to congestion, are so costly that their elimination, if only in part, would pay very handsome dividends on a very large capital investment." Railway Review, 1926—Vol. 78, p. 403. See, also, Railway Age, Vol. 71.1, p. 21; Vol. 81.2, p. 968; Engineering News-Record, Vol. 96.1, p. 354.

[55] See Advances in Rates—Eastern Case, 20 I. C. C. 243, 271: "Assume that a railroad is originally constructed over a mountain, it being more economical to haul the traffic up and down the steep grades than to incur the great outlay which would be required by constructing a tunnel. With the development of traffic the time comes when this mountain must be pierced, and a tunnel is accordingly constructed at a large expenditure. When the tunnel is put into service and the line over the mountain abandoned the cost of the tunnel is added and the cost of the abandoned railroad subtracted from the construction cost, so that, as shown by the books, the cost of construction is the same as though the tunnel had been built at the outset."

[56] C. A. Morse, chief engineer, Chicago, Rock Island & Pacific Ry., in an address before the Western Society of Engineers in 1926, said: "Comparatively little has been done in the reduction of grades, and today a great majority of the trunk-line railroads in this country are operating over grade lines that were considered economical 50 or 75 years ago. These railroads were built in the days before steam shovels and other mechanical grading devices had been developed and when rock was handled with hand drills, black powder and carts. The result was that grading was very expensive and they sought to minimize it. . . . The reduction in the ruling grade and in the rate of curvature will result in both cheaper transportation and a saving in time. . . . During the last 25 years it has been the practice of most railroads to reduce their grades in connection with the construction of a second track, but unfortunately additional main track has been constructed on many of the older roads before the value of the lighter ruling grade was appreciated. The reduction of grade means practically the rebuilding of such lines and the expense of this together with the interruption to traffic while it is being done has prevented much of this from being carried out for unless the subject is thoroughly investigated, we are apt to consider it as impracticable. . . . Simply maintaining in first-class condition a roadway that, as far as grades and alignment are concerned, is of a type such as was constructed a half century ago, is not maintaining a modern railroad. . . . With the great majority of the railroads operating over lines that have the grade line and curvature of a half century ago the big job is to modernize the roadway." Railway Age, Vol. 80.1, p. 279. See also Engineering News-Record, Vol. 96.1, p. 309; Vol. 96.2, p. 803; Railway Review, Vol. 72, p. 937; Vol. 73, p. 124; Vol. 78, p. 187; Railway Age, Vol. 81.1, p. 181.

[57] "Curves, it is a matter of long record, have an important relation to speed of trains and cost of transportation as well as to track maintenance, while very sharp curves have a relation to safety of traffic. It has been found that in a 10-year period, with no rail renewals on 1 deg. curves, the rails were renewed once on 2 deg. curves, once or twice on 3 deg., and twice on 4 degree curves. Furthermore, track displacement by traffic has necessitated double or triple the amount of surfacing on the sharper curves, and there is a correspondingly greater wear on driving wheels, so that an engine working regularly over numerous sharp curves has a shorter period of service before it has to be sent to the shop for re-turning the tires. . . ." (Engineering News-Record, 1926—Vol. 96.1, p. 306.) For further comment on improvements in grades and curves, see Railway Age, Vol. 73.1, p. 94; Vol. 75.2, p. 1191; Vol. 78.1, pp. 502, 519; Vol. 79.1, p. 75; Vol. 81.1, p. 551; Vol. 85.1, p. 403; Railway Review, Vol. 77, p. 507; Engineering News-Record, Vol. 94.1, p. 392.

[58] "Tracks, though, are just as important as cars and locomotives in the railroads' program of reducing costs by moving heavier trains faster. The New York Central has just finished spending more than $20,000,000 to get freight trains around Albany and across the Hudson river without having to lower them to the river level and pull them up again. The Illinois Central is spending $16,000,000 for a straighter, flatter and more economical line through Illinois and Kentucky, crossing the Ohio river. The Southern Pacific is spending a similar sum to build its Natron cut-off in Oregon and California to get a better grade over the Siskiyous. The Central of Georgia is spending $5,000,000 to relocate and rebuild its line between Columbus, Ga., and Birmingham. The Central of New Jersey is putting a four-track steel trestle three miles across Newark Bay, a $10,000,000 job. The Louisville & Nashville is spending $5,000,000 or more to raise and move its Gulf Coast line out of the reach of storms. The Southern Ry. is spending a couple of millions to shorten the haul and cut the grades for coal trains moving out of the Appalachian fields to the South Atlantic. These projects represent the kind of improvement that will make it possible in the future to carry on the same line of development that American railroads have followed whenever and wherever they could. Each will pay for itself in reduced transportation costs and, along with hundreds of other improvements will make possible lower rates." Railway Review, 1925—Vol. 77, p. 522.

[59] If it is reasonable to expect that large amounts of heavy freight will be offered, the question of grades to be adopted is of paramount importance and should be given most careful consideration, and the lightest grades possible should be adopted, even if some increase in distance and considerable increase in cost is caused thereby, because grade and curve resistance govern the tonnage that any locomotive will haul; and as the limit in the size of the locomotive that can be built within clearances of 10 feet wide and 15 feet high has been nearly reached, we must improve our grades to secure lower costs of handling.

"As an illustration of the importance of light grades to increase train loads and thereby reduce cost of movement, we may cite the fact that about three times as much tonnage can be hauled on a grade of two tenths, or 10.6 feet per mile, as on a grade of one per cent, or 52.8 feet per mile, with the same expenditure of energy. On a grade of four-tenths only half as much tonnage can be hauled as on a level with the same power." F. S. Stevens, engineer maintenance of way, Phila. & Reading Ry., Railway Review, 1923—Vol. 72, p. 937.

[60] Alba B. Johnson, president of the Railway Business Association, testifying before the Senate Committee on Interstate Commerce in 1924, said: "The heavier locomotives and cars and the longer trains brought about a new standard of rails, road-beds, bridges and other structures. If it were possible to show on a chart the rise in cost of replacing the railroad as a whole we would still not be telling the whole story, because the increase would represent not only a higher level of wages and prices but a change in the character of the plant. Rails and ballast are heavier, frogs and switches more powerful, bridges stronger. Capacity of track was increased by installation of signal systems. Repairs have been expedited and cheapened by new shop machinery. . . . The 90 pound rail . . . replaces a 60 pound rail. . . . Instead of replacing worn out locomotives with new ones of the same design . . . the railroad orders a type which costs more in original outlay but is expected to earn the difference by the economy with which it does the work. The same principle runs through all the schedules of maintenance of road and equipment and additions and betterments." Railway Age, Vol. 76.2, p. 1039. See, also, Railway Age, Vol. 71.2, p. 1295; Railway Engineering and Maintenance, Vol. 21, p. 274; Railway Review, Vol. 78, p. 601.

[61] "A glance at the operating returns of the railways of this country will show that those roads which have added most liberally to their facilities in recent years are today making the best showings." Railway Age, 1921—Vol. 71.2, p. 1295.

rail transportation which have become available.[62] Obviously much remains to be done.

The extent of this technological progress may be illustrated by the modern locomotive. The development of the superheater, the mechanical stoker, the booster, and other devices, the increase in the size of the boiler, and other radical changes in size, weight, and design have resulted in the production of engines which are recognized by railway experts as having set such an entirely new standard of efficiency in fuel consumption,[63] in tractive power,[64] and in speed[65] as to render wasteful, under many conditions, the use of older locomotives, no matter how good their condition. Statistics as to actual performances of the locomotive of to-day as compared with that built but a few years ago graphically illustrate this great advance in efficiency.[66]

Its economies are compelling. But important changes in roadway and equipment are conditions of its effective use. Heavier locomotives make greater demands on the road structure which carry them. To obviate large maintenance expenses attendant upon frequent repair and replacement the roadway must be made more durable.[67] To this end rails of heavier section,[68] and of increased length are adopted.[69] Anti-creepers are freely used to prevent rail movement.[70] Larger ties are selected; and they are treated to prevent deterioration.[71] Ballast is made deeper and heavier; and of gravel or stone rather than of cinders.[72] Bridges are of stronger construction.[73] And to facilitate the movement of traffic, watering stations[74] and automatic signals[75] of improved design are introduced. Moreover, the effective employment of the modern locomotive involves ordinarily the use of larger cars of steel construction, displacing the wooden car of small capacity with which so many of the railroads were equipped in 1914.[76] Engine terminals and carshops built prior to 1914 are, in many cases, inadequate[77] for the efficient and economical handling, housing and repairing of the modern locomotives and cars, and must be replaced to prevent curtailment of the productive capacity of the rolling stock by needless idle hours while awaiting service or repair.[78] And the waste incident to shop-tools and machinery long since rendered obsolete by progress in the art must be stopped.[79]

Thus, the efficient post-war railroad plant differs widely even from the efficient one of 1914. That during the recapture period here in question the plants of most of the railroads of the United States built before the War were lacking in improved instruments of transportation made available by recent progress in the art is of

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[62] The investment account of the railroads of the United States increased between December 31, 1919 and December 31, 1927, $5,152,751,000—that is about 25 per cent. Nearly all of that sum was expended in improving the road, terminals and shop facilities and in replacing outworn and obsolete equipment. During that period the operating ratio improved greatly. The percentage of operating revenues consumed in the several years by operating expenses was: 1920, 94.38 per cent; 1921, 82.71 per cent; 1922, 79.41 per cent; 1923, 77.83 per cent; 1924, 76.13 per cent; 1925, 74.10 per cent; 1926, 73.15 per cent; 1927, 74.54 per cent. The improvement in the operating ratio (after the 1920 rate increase) was due in large measure to the improvement of the railroad plant. This made possible, among other things, a reduction in the number of employees from 2,022,832 in 1920 to 1,735,105 in 1927. The reduction in the operating ratio and in the number of employees has continued in 1928 and 1929. See Monthly Labor Review, Vol. 28, No. 5, p. 215. The number of locomotives on December 31, 1927 was 3,629 less than on December 31, 1919; the number of freight cars 48,089 less. Annual Report of Interstate Commerce Commission for 1928, pp. 111–114.

[63] "There are numerous cases where the unit fuel consumption of locomotives that represented good practice five or six years ago has been reduced almost one-half by locomotives of thoroughly modern design. This saving alone goes far toward paying a return on the additional investment required to produce a thoroughly modern traveling power plant." Railway Age, Vol. 82.1, p. 171.

"As a result of intensive development and improvement, it is not unheard of for a modern locomotive to handle 80 per cent more ton-miles per hour on 50 per cent of the unit fuel consumption formerly considered good locomotive performance." Railway Age, Vol. 84.1, p. 659. See, also, Railway Age, Vol. 72.2, pp. 1295, 1686; Vol. 79.1, p. 256; Vol. 83.1, p. 45.

[64] Ralph Budd, president of the Great Northern Ry., in an address delivered in 1927, said: "It is just beginning to be realized that while in principle the steam locomotive is the same as it was a few years ago, the efficiency of the locomotive, as exemplified by the modern type, has been practically doubled, measured in ton-miles of transportation per unit of fuel consumed. Railway Age, Vol. 83.1, p. 250. See, also, Railway & Locomotive Engineering, Nov., 1927, p. 326; Railway Age, Vol. 78.1, p. 26.

[65] "By producing more ton miles of transportation per hour it reduces the total number of locomotives required; it postpones the time when increase investment in tracks and most other fixed properties to increase capacity will be necessary; it reduces the number of employees required; or that would be required in train service; it reduces the number of employees required in signaling and dispatching trains—in fact, there is hardly any form of fixed charges or transportation expenses that is not made less than it otherwise would be by locomotives that produce an increased output of ton miles per locomotive hour." Railway Age, Vol. 81.1, p. 493. See, also, Engineering News-Record, Vol. 98.1, p. 58; Railway Review, Vol. 74, p. 203; Vol. 78, p. 601; Railway Age, Vol. 83.1, p. 240.

[66] See Transactions of American Society of Mechanical Engineers (1921), Vol. 43, p. 334; Railway Age, Vol. 78.1, p. 26; Vol. 81.1, p. 487; Vol. 82.1, p. 928; Vol. 83.1, p. 322; Vol. 84.1, p. 659; Vol. 84.2, p. 1153; Railway and Locomotive Engineering, Feb., 1927, p. 42; Nov., 1927, p. 326; Feb., 1928, p. 41; Railway Mechanical Engineer, July, 1927, p. 405; Railway Review, Vol. 77, p. 521. Compare 15 The Commonwealther, No. 2 (April, 1929), pp. 14, 19.

[67] "There has been a steady development in the track structure in recent years. Rail of 75-lb. and 85-lb. sections have given way to that of 110-lb., 115-lb. and 130-lb. on many divisions; cinder ballast has been replaced by gravel and gravel by stone; stronger joints have been installed and more tie plates, rail anchors and other accessories used. At the same time and in spite of these improvements the impression remains among those most directly in touch with maintenance work that the roads can still afford to go much further in this direction with economy." Railway Engineering and Maintenance, 1926—Vol. 22, p. 174. See, also, Ibid., p. 190.

[68] Rail of 85 lb. section or lighter was the type most commonly used prior to 1914. Railway Age, 1921—Vol. 70.2, p. 998. 68.8 per cent of the 2,806,930 tons of rail rolled in the United States in 1927 was of 100 lb. section or heavier. Railway Age, 1928—84.2, p. 900. See, also, Railway Age, Vol. 71.1, p. 413; Vol. 78.1, p. 181; Vol. 79.1, p. 393; Railway Review, Vol. 74, p. 101.

[69] "The American Railway Association has announced that new specifications increasing the length of standard rails from 33 to 39 ft. have been approved by that organization. This change will result in a 16 per cent reduction in the number of rail joints and a saving of about one-sixth of the total of bolts, nuts, angle bars and spring washers now required." Engineering News-Record, 1925—Vol. 95.2, p. 816.

[70] "The rail anti-creepers thus saved 26,400 hours of labor on this thirty mile stretch in one year entirely aside from the saving arising from the lessening of damage to rail, fastenings and equipment caused by wide expansion and uneven line and surface where the rail was permitted to creep. As a result of the test the entire track was securely anchored and the practice inaugurated of anchoring all double track and whatever single track showed a tendency to creep." Railway Engineering and Maintenance, 1923—Vol. 19, p. 114.

[71] See Engineering News-Record, 1925—Vol. 94.2, p. 844; Railway Engineering and Maintenance, 1926—Vol. 22, p. 15.

[72] See Engineering News-Record, 1925—Vol. 94.2, p. 674; Vol. 95.2, p. 958; Railway Age, 1928—Vol. 84.1, p. 3.

[73] In noting that the Chicago & Northwestern Railway is replacing a bridge which, "while still as good as the day it was built", is too light for the heavier loads now being carried, the Railway Age observes, "This is characteristic of many units of railway construction which, if properly maintained, show little or no evidences of wear but must give way just as truly as though they wore out." (1924—Vol. 77.2, p. 918.)

[74] "More efficient pumping equipment is rapidly replacing antiquated machinery." Railway Engineering and Maintenance, 1926—Vol. 22, p. 132. See, also, Railway Age, 1928—Vol. 84.2, p. 1329.

[75] "The improvement in equipment and in methods of locating signals to meet the requirements of modern train operation, have to a great extent rendered obsolete much of the automatic signaling placed in service 20 years or more ago." Railway Age, 1927—Vol. 83.2, p. 1144.

[76] "An investigation made by one railroad a few years ago disclosed the fact that the retirement of a large number of cars of all-wood construction, and their replacement with new cars of steel or steel underframe construction, would effect a saving in maintenance alone which in five years it was estimated would amount to about 68 per cent of the entire cost of the new equipment. . . . A thorough study of the economics of freight car maintenance and operation today would lead to equally startling conclusions with respect to the 300,000 or 400,000 weak and unsuitable freight cars which are still in service." Railway Age, 1921—Vol. 71.1, p. 52, 53. See, also, Railway Age, Vol. 70.1, p. 490; Vol. 72.2, p. 1515; Vol. 73.2, p. 645; Vol. 74.2, p. 989; Vol. 75.2, p. 1023; Vol. 78.2, p. 1443; Vol. 79.1, p. 186; Vol. 80.1, p. 462; Vol. 80.2, p. 1301; Vol. 82.2, p. 1556; Vol. 85.2, p. 916; Railway Review, Vol. 72, p. 1073; Vol. 77, p. 522; Vol. 78, p. 767.

[77] "The advent of the overhead, electric traveling crane, as well as the modern smoke exhausting devices and other such improvements, have thrown many of the older type buildings into the obsolete class. . . . It is very difficult to add modern facilities to an existing plant which is designed and constructed without the contemplation of such added facilities. . . . It is impossible to install crane runways and other labor saving devices in existing buildings, due to lack of clearance and insufficient strength in the existing structures." Railway Review, 1921—Vol. 68, pp. 449, 450.

"The enlargement of locomotive terminal facilities and the modernization of locomotive terminal equipment is admittedly the most needed physical improvement in the railway structure of today . . . there are many railways on which the locomotive terminals have received practically no improvements for more than fifteen years." Railway Review, 1924—Vol. 74, p. 151.

"These are days of rapid improvement in methods, in which many facilities become obsolete long before their normal service life has been reached. This is particularly true of terminal facilities." Railway Age, 1927—Vol. 83.2, p. 966. See, also, Railway Age, Vol. 66.2, p. 994; Vol. 68.2, p. 1702; Vol. 69.2, p. 729; Vol. 71.2, p. 890; Vol. 76.1, pp. 269, 314; Vol. 76.2; p. 1494; Vol. 78.2, p. 1071; Vol. 83.1, p. 249; Railway Review, Vol. 72, pp. 112, 495; Vol. 77, p. 522.

[78] "The real terminal problem, therefore, is that of providing facilities that will enable the railways to effect some reduction in the enormous investment in idle locomotives now held at terminals." Railway Review, 1923—Vol. 72, p. 176. See, also, Railway Review, Vol. 70, p. 344; Railway Age, Vol. 68.2, p. 1745; Vol. 74.2, p. 1354; Vol. 75.2, p. 1141.

[79] "It is said that 'any machine that will run' is good enough for a railroad shop and while most railroad men realize the falsity of this statement, it is seemingly borne out by the large number of obsolete, worn-out machines now in use." Railway Age, 1921—Vol. 71.1, p. 1.

"Without doubt, railroad net earnings are appreciably reduced by the many obsolete and inefficient machines now used in railroad shops and enginehouses." Railway Age, 1923—Vol. 74.1, p. 211.

"The tools to be seen on any trip of inspection through your own shops or those of other roads, are in many cases a generation outgrown." Railway Review, 1924—Vol. 74, p. 733. To the same effect, see Railway Age, Vol. 67.2, p. 1101; Vol. 69.1, p. 90; Vol. 70.1, p. 222; Vol. 72.2, p. 1205; Vol. 74.2, p. 1082; Vol. 74.2, pp. 1082, 1351; Vol. 81.2, p. 629; Vol. 83.2, p. 706; Vol. 85.1, p. 599.

common knowledge.[80] That this is true even today of many of the railroads will not be denied.[81] To the extent that there is inefficiency in plant, there was and is functional depreciation, lessening actual value. That this functional depreciation, arising through external changes, through competitive means of transportation, and through progress in the art of transportation, may, in respect to a particular railroad, have become so large as to more than counterbalance that increase in its actual value which would otherwise flow from the rise in the price level since 1914, seems clear.

It may be urged that the continued use of the inefficient plant[82] and the repairing rather than replacement of its antiquated parts,[83] has been due to lack of capital and insufficient revenues.[84] Such an excuse for failing to install the improved plant might have been conclusive if prudent investment had been accepted as the measure of value. But the fact that the management may have been wholly free from blame in continuing to use the inefficient parts obviously does not add to their actual value. The actual value of an existing plant, and the difference between its value and the present cost of constructing a modern efficient plant which will render the service, is precisely the same whether the continued use of the obsolete part was due to lack of capital, or to lack of good judgment, or to somnolence on the part of the management. As was said in Board of Commissioners *v.* New York Telephone Co., 271 U. S. 23, 32: "Customers pay for the service, not for the property used to render it." Only the then service value of the property is of legal significance under the rule of Smyth *v.* Ames.

It may also be urged that such functional depreciation of the railroad plant since 1914 is allowed for in the depreciation customarily estimated by the Commission. But this is not true. Functional depreciation prior to June 30, 1914, was included when valuing as of that date the then property of the railroads. But the instructions of the Commission provided that functional depreciation arising after that date should not be considered unless "imminent." And the Commission made clear that it did not intend by the term to include functional depreciation of the character described above arising from external causes, from the competition of new methods of transportation, from the extraordinary urban growth, from the need of new economies arising from the largely increased labor and fuel costs, and from other incidents of the war and post-war developments in industry and transportation. Texas Midland R. R., 75 I. C. C. 1, 47–52, 124–130. Compare, Depreciation Charges on Steam Railroads, 118 I. C. C. 295.[85]

If weight is to be given to reproduction cost in making the valuation of any railroad for rate-making purposes under § 19a and § 15a, there must be a determination of the functional depreciation of the individual plant as compared with a modern, efficient plant adequate to perform the same service. To make such a determination for any railroad involves a detailed enquiry into the character and condition of all those parts of the plant which may have reduced functional value because of the post-war changes affecting transportation above referred to, and also into the character and the volume of the carrier's business. For the efficient plant means that plant which is economical and efficient for the particular carrier in view of the peculiar requirements and possibilities of its own business. To make such a determination justly, the Commission must have the data on which a competent and vigilant management would insist when required to pass upon the advisability of making capital expenditures. And the Commission would be obliged to give them the same careful consideration. The determination of the extent of functional depreciation is thus a very serious task; a task far more serious than that of determining merely physical depreciation.

To make such a determination of functional depreciation annually for each of the railroads of the United States would be a stupendous task, involving, perhaps, prohibitive expense. To make the necessary decisions promptly would seem impossible, among other reasons, because railroad valuation is but a small part of the many duties of the Commission. On the other hand, to adjust rates so as to render a fair return, and to provide through the recapture provision funds in aid of the weaker railroad, are tasks which Congress deemed urgent; and which must be promptly performed if its purpose is to be achieved. Obviously Congress intended that in making the necessary valuations under § 15a a method should be pursued by which the task which it imposed upon the Commission could be performed. Compare New England Divisions Case, 261 U. S. 184, 197. Recognizing this, the Commission construed § 15a as it had paragraph (f) of § 19a. That is, as permitting the Commission to make a basic valuation as of some general date (June 30, 1914, was selected); and to find the value for any year thereafter by adding to or subtracting from the 1914 value the net increases or decreases in the investment in property devoted to transportation service as determined from the carrier's annual returns with due regard to the element of depreciation.[86]

Eighth. The significance, in connection with current reproduction costs, of the requirement in § 15a that value be ascertained "for rate making purposes" as there defined becomes apparent when the position of railroads, in this respect, is compared with that of most local utilities enjoying a monopoly of a necessary of life. The fundamental question in the Southwestern Bell case was one of substantive constitutional law, namely: Is the rate-base on which the Constitution guarantees to a public utility the right to earn a fair return the actual value of the property at the time of the rate hearing or is it the cost or capital prudently invested in the enterprise? The Court decided that the rate-base is the actual value at the time of the rate hearing. That proposition of substantive law the Commission undertook to apply to the facts presented in the case at bar. Recognizing that evidence of increased reconstruction costs is admissible for the purpose of showing an actual value greater than the original cost or the prudent investment, it found in respect to some of the carrier's property that the evidence of enhanced reconstruction cost was persuasive of higher present value. As to the rest of the property, it held that the evidence was neither adequate nor persuasive.

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[80] "Little attention is ordinarily given to obsolescence or the economy of replacement with more modern equipment solely because of the reduced cost of operation with the newer units. In their failure to appreciate this principle the railways trail far behind many of the utilities with the result that they are paying the penalty in high operating costs. . . . The engineering and maintenance of way department is cluttered with equipment that it cannot afford to operate." Railway Engineering and Maintenance, 1926—Vol. 22, p. 2. To the same effect, see Railway Age, Vol. 81.2, p. 621, p. 1091; Railway Review, Vol. 68, p. 784.

"Our railroads were built for the locomotive of the past. They were and are operated in accordance with the locomotive of the past. . . . It remains to do on railroads the things manufacturers have done—to build better locomotives, improve old ones and to operate them according to the new conditions these improvements themselves have created." Railway Age, 1922—Vol. 72.1, p. 178. See, also, Transactions, American Society of Mechanical Engineers (1919), p. 999; Railway Review, Vol. 70, p. 43; Engineering News-Record, Vol. 98.1, p. 58; Railway Age, Vol. 69.2, p. 729; Vol. 76.1, p. 269; Vol. 79.1, pp. 256, 505; Vol. 81.1, pp. 45, 123, 492; Mechanical Engineering, Vol. 43.1, p. 311; Railway Engineering & Maintenance, Vol. 22, p. 2.

[81] In 1920 there were 68,942 locomotives in use on American Railways. (41st Annual Report of the Interstate Commerce Commission, p. 107.) Of these 12,000 were reported to be obsolete by the Railway Age (Vol. 68.1, p. 33). Of the 2,648 locomotives in service on the B. & O., on December 31, 1920, 633 were more than twenty years old. On the Southern, 501 locomotives out of a total of 1,865; on the Erie, 474 out of 1540; on the Seaboard Air Line, 142 out of 581; on the Lackawanna, 57 out of 757; and on the Pennsylvania, 624 out of a total of 7,599, exceeded that age. In 1926 it was estimated by the editor of the Railway Age that 68 per cent of the locomotives then in use were over ten years old. (Railway Age, Vol. 81.1, p. 493.) In 1928 there were about 65,000 locomotives in use. Of these, according to the Railway Age (Vol. 84.2, p. 950): "There are probably between 15,000 and 20,000 locomotives in this country, 20 years old or older, which have practically none of those features of locomotive equipment that are now regarded as the ear-marks of modern motive power."

[82] e. g. Locomotives no longer capable of pulling heavy loads, instead of being scrapped or rebuilt, have frequently been continued in use for branch-line or suburban service; or in switch-yards. It is said that their use in such passenger service has been rendered wasteful by the comparative economies of the modern motor rail-car. See Railway Age, Vol. 72.1, p. 315; 72.3, p. 1372; Vol. 76.2, p. 975; Vol. 82.1, p. 563; Vol. 83.1, p. 601; Vol. 84.1, p. 753; Railway and Locomotive Engineering, Feb., 1928, p. 37. And "just what measure of economy is effected by retaining locomotives in yard and work train service after their condition has become such that they are no longer capable of performing their assigned duties in road service, is not apparent, to say the least." Railway Review, 1924—Vol. 74, p. 771. The replacement of antiquated power with modern locomotives in its switch-yards by the Seaboard Air Line Ry. is estimated to have effected a saving in operating costs which will pay an annual return of fifty per cent on the investment in the new engines. Railway Age, 1927—Vol. 83.1, p. 45. See, also, Railway Age, Vol. 79.1, p. 209; Railway Review, Vol. 75, p. 396.

[83] "There is too much tendency to patch up and perpetuate an obsolete, inadequate and uneconomical unit of equipment rather than to retire it and purchase new equipment to derive the benefit of the advanced state of the art in building." F. H. Hardin, assistant to the president, New York Central Ry. (Railway Age, 1926—Vol. 81.2, p. 670, 671.) To the same effect, see Transactions, American Society of Mechanical Engineers, 1925—Vol. 47, p. 179; Railway Review, Vol. 78, pp. 195, 271.

[84] Samuel Rea, president of the Pennsylvania Railroad, in an address before the eastern division of the U. S. Chamber of Commerce delivered in 1923, said: "From an engineering viewpoint there are many improvements which could be adopted, or the present use of which could be greatly extended, and which would very materially increase the efficiency and reduce the cost of railroad operation. The initial installations, however, would require the investment of very large sums of money, and it is difficult to see how these sums can be raised. . . ." Railway Review, Vol. 74, p. 262, 263. To the same effect, see statement of R. H. Aishton, president American Railway Association. Railway Review, 1921—Vol. 68, pp. 783, 784.

[85] e. g. "With respect to account No. 3, 'Grading,' it appears that the retirement of grading is a contingency sufficiently remote in most cases so that it is not practicable to treat it as depreciable property." (118 I. C. C. 295, 362.)

[86] "Upon the completion of the valuation herein provided for the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session."

Compare Frederick K. Beutel, "Due Process in Valuation of Public Utilities," 13 Minnesota Law Review 409, 426–427.

Of both railroads and the local utility it is true, under the rule of substantive law adopted in the Southwestern Bell case, that value is the sum on which a fair return can be earned consistently with the laws of trade and legal enactments. But the operative scope upon railroads of the limitations so imposed upon the rates, and hence upon values, is much greater than in the case of local utilities.[87] Rail rates are being constantly curbed by the competition of markets and of rival means of transportation. Rail rates are curbed also by the influence of high rates upon the desires of individuals. The public can, to a considerable extent, do without rail service. If the rates are excessive traffic falls off. Thus, when passenger rates are too high travel is either curtailed or people employ other means of transportation. But the service rendered by a local water company in a populous city is practically indispensable to every inhabitant. There can be no substitute for water and to escape taking the service is practically impossible; for an alternative means of supply is rarely available. Even the common business incentive of establishing low prices in order to induce an enlarged volume of sales is absent; since the volume of the business done by a water company will not be appreciably affected by a raising or lowering of the rates, except in so far as water in quantity is used for manufacturing purposes. In other words, the commercial limitation upon rates—what the traffic will bear—is to a large extent absent in the case of such a local monopoly. The city water user must submit to such rates as the utility chooses to impose, unless they are curbed by legislative enactment.

The legal limitations upon rates (so potent in the case of railroads) are, in the main, inoperative in the case of such a water company. Rail rates are sometimes held illegal because the exaction is greater than the value of the service to the shipper. There is in fact no corresponding limitation upon water rates. The charge is so small, as compared with the inconvenience which would be suffered in doing without the service, that the worth to the water taker could rarely be doubted. The prohibition of discrimination against persons, places, or articles of commerce, which so frequently interferes to prevent railroads from charging higher rates, although the traffic would easily bear them, affords no protection to city water users; and seldom causes a loss of revenue to the water company. There is in respect to the water rates no prohibition comparable to that embodied in the long and short haul clause, which has an important effect in limiting rail rates. Hence, under the rule of substantive law declared in the Southwestern Bell case, practically the only limitation imposed upon water rates is the denial to the utility of rates which will yield an excessive return upon the actual value of the property. In applying that rule of substantive law, the then actual cost of reproducing the plant would (assuming it to be efficient) commonly be persuasive evidence of its actual value, as the current cost of reproducing the vessel was held to be in Standard Oil Co. *v.* Southern Pacific Co., 268 U. S. 146, 156.

It is true that in the Southwestern Bell case the Court passed also upon a subsidiary question—the weight and effect of the evidence of reconstruction cost. But the question of adjective law arose upon a record very different from that in the case at bar; and the action of the Commission here is entirely consistent with that decision. In the Southwestern Bell case direct testimony as to the then value of the property was introduced. The efficiency of the plant was unquestioned. Witnesses had testified both to the actual cost of constructing identical property at that time; and that the specific property under consideration was worth at least 25% more than the estimate of the state commission. The Court believed those witnesses. Concluding that this direct and uncontradicted evidence had been ignored by the State commission because of error as to the governing rule of substantive law, this Court set aside the rate order as confiscatory, saying: "We think the proof shows that for the purposes of the present case the valuation should be at least $25,000,000." (262 U. S. 276, 288.)

The action of the Commission in the case at bar was consistent also with McCardle *v.* Indianapolis Water Co., 272 U. S. 400, and Bluefield Water Works Co. *v.* Public Service Commission, 262 U. S. 679. Each of these water companies enjoyed a local monopoly of an indispensable service. In order to provide a substitute, the community would have either to take the utility's property by eminent domain; or, if it was free to do so, build a competing plant. There was practically no commercial limitation upon the earning power of these water companies except the extent of the local market; and practically no legal limitation except the requirement that the rates charged should not be so high as to yield an excessive return upon the actual value of the utility's property. The current cost of constructing then a plant substantially like the utility's (assuming it to be efficient) would be persuasive evidence of its actual value. For upon that issue, concerning a local water monopoly, the enquiry would naturally be: How much would it cost the community to substitute for the private monopoly a publicly owned plant? But evidence of the cost of reconstructing a railroad built before 1914 might, for the reasons stated above, be no indication whatever of its post-war value for rate making purposes under § 15a. And where, as in the case at bar, the probative force of the evidence may be considered free from any question of confiscation, the rule declared in Ohio Valley Water Co. *v.* Ben Avon, 253 U. S. 287, which requires in confiscation cases a judicial determination on the weight of the evidence, does not apply.

Ninth. A further question of construction requires consideration. It is suggested that, even if the Commission is not required to give effect to the higher price level when finding values for rate making purposes under § 15a, it must do so when fixing the amount of the excess income to be recaptured from a particular railroad under paragraphs 6 to 18. The language of the section affords a short answer to that contention. The valuation prescribed in paragraph 4 is declared to be "for the purpose of this section"—that is, for recapture purposes as well as for rate making. And paragraph 6, which provides for the recapture, declares: "The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

The recapture of excess earnings and the establishment of reserves are a part of the process of establishing such rates

"that carries as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management . . . earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." (par. 2.)

The recapture and reserve are the readjustment made necessary:

"Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers who are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which received such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States." (par. 5.)

Thus, the direction in the order here challenged to pay or reserve the excess over 6 per cent of the amounts earned from 1920 to 1923 by rates established pursuant to Ex parte 74, Increased Rates, 1929, 58 I. C. C. 220, is merely a readjustment of those rates.

Tenth. The question remains whether the Commission, in valuing the structural property acquired before June 30, 1914, abused its discretion by declining to give effect to the evidence of enhanced reconstruction cost.[88] The O'Fallon insists that the Commission, in fact, adopted a mathematical formula; that it declined to determine the present value of the carrier's property in accordance with "the flexible and rational rule of Smyth *v.* Ames, under which value is a matter of judgment to be determined by a consideration of all relevant facts and circumstances"; that it erected "an arbitrary standard of its own based on no relevant facts"; that if it had given consideration to all relevant facts and circumstances, including as one its cost of reproduction at current prices, "the value found must have been substantially higher"; and that its primary purpose was to determine the amount of the investment in the carriers' property. In short, the O'Fallon asserts that the Commission refused to find actual value; and instead, found the prudent investment.

In support of this assertion, the O'Fallon points to the statement in the report that "the value of the property of railroads for rate-making purposes . . approaches more nearly the reasonable and necessary investment in the property than the cost of reproducing it at a particular time." (p. 41.) The statement just quoted does not mean that the Commission accepted prudent investment as a measure of value. It means merely that the Commission deemed the estimated original cost a better indication of actual value than the estimated reconstruction cost. While this Court declared in the Southwestern Bell case that prudent investment is not to be taken as the measure of value, it has never held that prudent investment may not be accepted as evidence of value, or that a finding of value is necessarily erroneous if it happens to be more nearly coincident with what may be supposed to have been the cost of the property than with its estimated reproduction cost. The single-sum values found by the Commission do not coincide either with the estimated prudent investment or with the estimated reconstruction cost. They are much nearer

[87] Compare "Railroad Valuation" by Leslie Craven, counsel, Western Group, [Railroad] Presidents' Conference Committee on Federal Valuation of Railroads, 9 Amer. Bar Assn. Journal, 681, 683, 684.

[88] The nature of the order here challenged is described in the report which accompanied it: "At the outset it is to be borne in mind that in no sense can these proceedings properly be treated as lawsuits. No issue is raised between parties. There is no controversy between disputants, each contending for protection of its rights. They are purely administrative proceedings wherein we are following the direction of Congress to create a contingent fund to be used in furtherance of the public interest in railway transportation." Excess Income of St. Louis and O'Fallon Ry. Co., 124 I. C. C. 1, 7.

the estimated original cost of the property than they are to its estimated reproduction cost. But the values found do not conform to any formula.[89]

The general method pursued by the Commission in reaching its conclusion closely resembles that approved by the Court in Georgia Ry. & Power Co. v. Railroad Commission, 262 U. S. 625, 629–630. It appeared that the O'Fallon Railroad had been constructed long prior to June 30, 1914. The Commission had before it "the cost of reproduction new of the structural portion of this property estimated on the basis of our 1914 unit prices, coupled with the knowledge that costs of reproduction so arrived at were not greatly different from the original costs." As bearing upon the value of those parts of the Railroad's property which were added or replaced later the Commission had the actual cost. As bearing on the then value of the railroad land it had current values of adjacent lands. It had evidence concerning the railroad and the character and volume of its traffic, the working capital, revenues and expenses. It had evidence of increased price levels after 1914 and estimates of current reproduction costs during the recapture periods.

The carrier insisted that physically the property had appreciated more than it had depreciated; and urged the Commission to take as the basic measure of value the "cost of reproduction new at current prices to the exclusion of everything else, or at least of everything that might tend to a lower value." (124 I. C. C. 28.) This the Commission declined to do. It gave full effect to increased current market values in determining the value of the land. It gave to the additions and betterments made after June 30, 1914, a value approximating their cost less physical depreciation.[90] But, in respect to structural property and equipment acquired before June 30, 1914, it declined to give weight to the evidence introduced to show current reproduction costs greater than those of 1914. It concluded, despite the estimates of higher reconstruction costs, that, except for the additions, the actual value of this part of the O'Fallon Railroad had not increased; and it found the single sum value for rate making purposes in 1920 to be $856,065; in 1921, $875,360; in 1922, $978,874; in 1923, $978,246.

The Commission recognized, as stated in Minnesota Rate Cases, 230 U. S. 352, 434, that the determination of value is "not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts." Georgia Ry. & Power Co. v. Railroad Commission, 262 U. S. 625, 630. It states that "it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the carrier" as well as the evidence otherwise introduced; and that "from this accumulation of information we have formed our judgments as to the fair basic single-sum values, not by the use of any formula but after consideration of all relevant facts." The report makes clear that its finding was the result of an exercise of judgment upon all the evidence; that the Commission accorded to the evidence of reconstruction cost all the probative force to which it deemed that evidence entitled on the issue of actual value; and that it considered, as bearing upon value, not only the probable cost and the estimated reproduction cost, but also "descriptions of the carrier, of its traffic, of the territory in which it operates, its history, and summaries of the results of its operation." (p. 25.)

The difficulties by which the Commission was confronted when requested to apply the evidence of reproduction cost can hardly be exaggerated. In the first place, the evidence was of such a character that it did not satisfactorily establish what would have been the current cost of reproduction during the recapture periods.[91] During the years here in question there was practically no construction of new lines.[92] Thus, the current cost of reproduction for those years had to be obtained by using index figures as the basis for a guess as to what it would cost to build then the identical railroad. To give to such figures effect as proving what it would then have cost to reproduce the O'Fallon Railroad, it must be assumed that there had not been introduced since June 30, 1914, new cost-saving methods of construction which would overcome, in whole or in part, the effect of the higher price level upon the cost of reproducing the identical property. This, in view of its experience, the Commission properly declined to do.[93] In the second place there was a lack of evidence to show to what extent, if any, higher reconstruction cost, in the several recapture periods, implied a value higher than that theretofore prevailing.[94] The Commission believed that it could act only on proof; that it was not required or permitted to base findings on conjecture; and that to assign, under the circumstances, any weight to the evidence of reconstruction cost would be mere conjecture.

Moreover, the Commission had, through its valuation department, special knowledge of the property of this carrier. It had acquired necessarily in the performance of its many duties the general knowledge, already referred to, concerning changes in transportation conditions and of the advances in the art; and it knew how great was their effect upon the actual values of railroad property. The value of the O'Fallon Railway not having been finally ascertained under § 19a, it was obliged by paragraph 4 to utilize "the results of its investigation under section 19a of this Act in so far as deemed by it available." The evidence introduced in the recapture proceedings showed, among other things, that of the five locomotives in the O'Fallon's service, December 31, 1920, one had been built as early as 1874, and that their average age was 20.8 years; also that the aggregate outlays for additions and betterments in the railroad, less small retirements, had in eleven years been only $98,148.25. The O'Fallon did not introduce any evidence bearing upon functional depreciation of the property. The Commission may reasonably have concluded that, even if there had been introduced persuasive evidence that the cost, during the recapture periods, of reproducing new the identical plant approximated the rise in the general price level, still the actual value of the O'Fallon Railway, as it existed June 30, 1914, had not increased, because the functional depreciation plus the physical depreciation since that date counterbalanced fully what otherwise might have been the higher value of the plant.

The O'Fallon urged that its large net earnings during the recapture periods and earlier fully established a higher value, independently of the evidence of reproduction cost. This contention ignores the peculiar character of the property. The Railroad, which is owned by the Adolphus Busch estate and family and lies wholly in Illinois, operates about 9 miles of main line from two coal mines also owned by the Busch estate and family, to the tracks of the Terminal Company in East St. Louis. There are 12 miles of yardage tracks, located largely at the Busch mines. While the Railroad is legally a common carrier, it is actually an industrial railroad. Ninety-nine per cent of its revenues are derived directly from the carriage of coal; and of the remaining one per cent, about half appears to come from a payment of $300 a month made by the Busch coal company for carrying its miners to and from its mines. Besides the coal from the Busch mines there is a sub-

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[89] The O'Fallon has calculated that the single-sum values found by the Commission for the several recapture periods exceed by $32,660.88 the sums of the following amounts: (1) the cost of reproduction less depreciation, as of June 30, 1919, of all property exclusive of lands and working capital at 1914 or pre-war prices; (2) the amount by which the actual cost of the property installed between July 1, 1914, and June 30, 1919, exceeded its cost of reproduction at 1914 prices; (3) the present value of the land; (4) the allowance for working capital; (5) the actual investment in additions and betterments, less retirements, subsequent to June 30, 1919. The calculation is correct; but the assertion that the $32,660.88 (which is about 5% of the aggregate of the other amounts) must have been allowed as overhead is without foundation in the record and is inconsistent with statements in the Commission's report.

[90] "The method which we therefore find logical and proper for determining the value in the subsequent recapture periods is to add to or subtract from the 1919 value the net increases or decreases in the investment in property devoted to transportation service as determined from the carrier's returns to valuation order No. 3, with due regard to the element of depreciation." 124 I. C. C. 3, passim, particularly pp. 37, 42.

[91] As to the evidence the Commission said: "The use of cost of production is by no means free from practical difficulties. For example, the record here shows that there was a dearth of reliable data from which an accurate estimate of such cost could be made for the period 1920 to 1923. In proof of this assertion reference need only be made to the sources of the data relied upon by the witnesses both for the bureau and for the carriers. Their estimates for those years were founded in large part upon manufacturers' records and price statistics appearing in various publications, and to a lesser extent upon cost of construction actually incurred by railroads in that period. There was, in fact, very little new railroad construction in those years.

"Synthetic estimates of cost of reproduction based upon statistics showing price and wage changes do not make allowance for improved methods of assembly and construction. As will hereinafter be more fully indicated, we found in Texas Midland Railroad, supra, [75 I. C. C. 1] at page 140, that the increase in the cost of labor and materials between 1900 and 1914 was largely offset by improvement in the art of construction. How far there may have been a similar offset, so far as costs in the period from 1920–1923 are concerned, is not disclosed of record." (p. 29.)

And later (p. 41): ". . . even if the cost of reproduction new in 1920 were to be regarded as a controlling element there is not in the present record evidence showing what it might have cost to reproduce the property of the O'Fallon at that time. The only evidence in this respect is that of the relation of general prices in 1914 and in 1920 and the other recapture years."

[92] Compare United States v. Boston, Cape Cod & New York Canal Co., 271 Fed. 877, 889, where the Court said that the jury "should not consider the evidence of reconstruction cost upon the question of value, unless they were satisfied that a reasonably prudent man would purchase or undertake the construction of the property at such a figure."

[93] "Costs of railroad building, owing to improvements in methods and economies thereby effected, did not vary greatly during the period of 20 years preceding 1914, although the prices of labor and material fluctuated. There is no testimony here as to how much it cost to build any railroad or any substantial part of one in any recapture periods, and for that reason it is impossible to make a comparison of costs in the two periods. It is not safe to assume, as the O'Fallon has assumed, that costs of building railroads have varied in recent years in direct ratio to the variation in costs of commodities in general use, or in the costs of materials or labor generally. The fallacy of basing reproduction cost upon price curves or ratios is clearly indicated by the tabulations introduced by the carrier." (P. 41.)

[94] The Commission says (p. 40): "Weighing the figures previously mentioned in the light of these considerations and the entire record, and viewing the carrier as a common carrier in successful operation and with an established business, we conclude that the value for rate-making purposes of the entire common carrier property of the O'Fallon on June 30, 1919, was $850,000."

stantial, but diminishing amount carried under a long time contract, from two mines located on an electric road, the East St. Louis and Suburban Railway, which crosses the O'Fallon. This coal it carries from the junction to East St. Louis. See St. Louis & O'Fallon Ry. Co. *v.* East St. Louis & Suburban Ry. Co., 81 I. C. C. 538. Obviously the value of this railroad property is wholly dependent upon the operation of the mines.

How long the four mines will continue to be operated was and still is entirely uncertain. Their product is subject to the competition of 221 other bituminous coal mines in Illinois. These, which are all located on other railroads, enjoy low rates to St. Louis. See Perry Coal Co. *v.* Alton & Southern R. R., 5 Illinois Commerce Commission 461. The vicissitudes of coal mining, the diminishing use of coal since the war because of increased fuel efficiency, the competition of oil as fuel, and the growing use of hydro-electric power are matters of common knowledge; as are the diminishing operations during recent years of the Illinois coal mines as compared with the mines in non-union territory.[95] Moreover, the decline in the volume of traffic, the reduction in coal rates made by Reduced Rates, 1922, 68 I. C. C. 676, and the growing expenses of the carrier due to increased payroll, were put in evidence by it. In view of these facts, the Commission was clearly justified in refusing to find that the Railroad had a higher value than in 1914, although the net earning as reported showed a return for the earlier period averaging 7½ per cent upon the amount claimed as reproduction cost.

This Court has no concern with the correctness of the Commission's reasoning on the evidence in making its findings of fact, since it applied the rules of substantive law prescribed by Congress and reached its findings of actual value by the exercise of its judgment upon all the evidence, including enhanced construction costs. Virginian Ry. Co. *v.* United States, 272 U. S. 658, 665–666; Assigned Car Cases, 274 U. S. 564, 580. We must bear in mind that here we are not dealing with a question of confiscation; that we are dealing, as was pointed out in Smyth *v.* Ames, 169 U. S. 466, 527, with a legislative question which can "be more easily determined by a commission composed of persons whose special skill, observation and experience qualifies them to so handle great problems of transportation as to do justice both to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people."

Mr. Justice Holmes and Mr. Justice Stone join in this opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 131 and 132.—October Term, 1928

The St. Louis and O'Fallon Railway Company and Manufacturers' Railway Company, Appellants, *vs.* The United States of America and The Interstate Commerce Commission

The United States of America and The Interstate Commerce Commission, Appellants, *vs.* The St. Louis and O'Fallon Railway Company and Manufacturers' Railway Company

Appeals from the District Court of the United States for the Eastern District of Missouri.

[May 20, 1929]

Dissenting opinion of Mr. Justice Stone.

I agree with what Mr. Justice Brandeis has said and add a word only by way of emphasis of those aspects of the case which appear to me sufficient, apart from all other considerations, to sustain the finding of the Commission.

The report of the Interstate Commerce Commission is rejected and its order set aside on the sole ground that in a recapture proceeding under § 15 (a) of the Interstate Commerce Act, it has failed to consider present reproduction cost or value of appellant's property and so to "give due consideration to all the elements of value recognized by the law of the land for rate making purposes." No constitutional question is involved.

The Commission was called upon to value a railroad, with less than nine miles of main line track, which had been constructed prior to 1900. Much of its equipment was purchased before 1908, a considerable part being second hand. Its traffic was very largely dependent on the output of a single coal mine which it served.

In performing its task the Commission had before it the cost of reproduction new of appellant's structural property, estimated on the basis of 1914 unit prices, "with the knowledge that the costs of reproduction so arrived at were not greatly different from the original costs." It had evidence of the actual cost of later additions and replacements, of the physical condition of the railroad and equipment, of the character, volume and sources of its traffic, of its working capital and revenues and expenses. It possessed, through its valuation department, special knowledge of the property of this carrier. Through its own experience it had the benefit of an expert knowledge of all the factors affecting value of railway property growing out of changes in methods of transportation, of improvement in transportation appliances and the consequent obsolescence of existing equipment, of improvement in methods of railroad construction and consequent reductions in cost. Although it had estimates of present construction costs in the form of index figures based on the comparative general price levels of labor and materials for 1914 and each of the recapture years, which it considered and discussed in its report, there was no evidence before it of the actual present cost of construction of this or any other railroad or any affirmative showing that, if appellant's road was to be built and equipped anew, competent railroad engineers would deem the present structure and equipment suitable for or adaptable to the economical and efficient management contemplated by the statute.

The Commission, with all these data before it, stated that "it considered and weighed carefully, in the light of its own knowledge, each fact, circumstance and condition called to its attention on behalf of the carrier." "From this accumulation of information," it added, "we have formed our judgment as to the fair basic single sum values, not by the use of any formula, but after consideration of all relevant facts." That the Commission gave consideration to present reproduction costs appears not only from its own statement, but from the fact that it gave full effect to increased current market values in determining the value of land and to additions and betterments since June 30, 1914, taken at their cost less depreciation. In the light of those considerations which affect the present value of appellant's structural property which Mr. Justice Brandeis has mentioned, I cannot say that the Commission did not have before it the requisite data for forming a trustworthy judgment of the value of appellant's road or that it failed to give to proof of reproduction cost all the weight to which it was entitled on its merits. Had the Commission not turned aside to point out in its report the economic fallacies of the use of reproduction cost as a standard of value for rate making purposes, which it nevertheless considered and to some extent applied, I suppose it would not have occurred to anyone to question the validity of its order.

I cannot avoid the conclusion that in substance the objection, now upheld, to the order of the Commission is not that it failed to consider or give appropriate weight to evidence of present reproduction cost of appellant's road, but that it attached less weight to present construction costs than to other factors before it affecting adversely the present value of the structural property. That this was the real nature of the objection voiced by the dissenting Commissioners seems to me apparent from their opinion. They seem to assume that as a result of Southwestern Tel. Co. *v.* Public Service Comm., 262 U. S. 276, and other cases in this Court, the Commission as a matter of law may never, under any circumstances, find that the value of the structural part of a railroad does not exceed its fair value of an earlier date, if the Commission has before it evidence of later increased construction costs. They say "under the law of the land", in valuing a railroad under § 15a "we must accord weight in the legal sense to the greatly enhanced cost of material, labor and supplies" during the recapture periods. Weight in the legal sense is evidently taken to be not that accorded by an informed judgment but imposed by some positive rule of law.

Without discussion of the evidence and other data which received the consideration of the Commission, the opinion of this Court seems to proceed on the broad assumption that the evidence relied on, mere synthetic estimates of costs of reproduction, must so certainly and necessarily outweigh all other considerations affecting values as to require the order of the Commission to be set aside. In effect the Commission is required to give to such index figures an evidential value to which it points out they are not entitled when applied to railroad properties in general or to this one in particular, and this, so far as appears, without investigation of the soundness of the reasons of the Commission for rejecting them.

This Court has said that present reproduction costs must be considered in ascertaining value for rate making purposes. But it has not said that such evidence, when fairly considered, may not be outweighed by other considerations affecting value, or that any evidence of present reproduction costs, when compared with all the other factors affecting value, must be given a weight to which it is not entitled in the judgment of the tribunal "informed by experience" and "appointed by law" to deal with the very problem now presented. Illinois Central, &c. R. R. *v.* Interstate Commerce Commission, 206 U. S. 441, 454. But if "weight in the legal sense" must be given to evidence of present construction costs, by the judgment now given we do not lay down any legal rule which will inform the Commission how much weight, short of its full effect, to the exclusion of all other considerations, is to be given to the evidence of synthetic costs of construction in valuing a railroad property. If full effect were to be given to it in all cases then, as the Commission points out in its report, the railroads of the country having in 1919 a reproduction cost or value of nineteen billion dollars would now have a value of forty billion dollars and we would arrive at the economic paradox that the present value of the railroads is far in excess of any amount on which they could earn a return. If less than full effect may be given, it is difficult for me to see how, without departure from established principles, the Commission

[95] See Geological Survey: "Coal in 1923," pp. 528–535; Bureau of Mines: "Coal in 1924," p. 460; "Coal in 1925," pp. 394–398; "Coal in 1926," pp. 420–431, 443–461.

could be asked to do more than it has already done—to weigh the evidence guided by all the proper considerations—or how, if there is evidence upon which its findings may rest, we can substitute our judgment for that of the Commission. Such, I believe, is the "due consideration" which the statute requires of "all the elements of value recognized by the law of the land for rate making purposes."

As I cannot say *a priori* that increased construction costs may not be more than offset by other elements affecting adversely the present value of appellant's property, and as there was evidence before the Commission to support its findings, I can only conclude that the judgment below should be affirmed. In any case, in view of the statement of the Commission that it considered all the elements of value brought to its attention by the carrier, I should not have supposed that we could rightly set aside the present order without some consideration of the probative value of the evidence of present reproduction costs which the Commission discussed at length in its report.

Mr. Justice Holmes and Mr. Justice Brandeis concur in this opinion.

"POLITICS AND YOUR ELECTRICITY BILLS"

Mr. DILL. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Politics and Your Electricity Bills" by the senior Senator from Nebraska [Mr. NORRIS], which appeared in Plain Talk for July, 1928.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POLITICS AND YOUR ELECTRICITY BILLS

By Senator GEORGE W. NORRIS, of Nebraska

(When you vote the next time, consider your light bills and how much it will cost you to keep Congressman McWhoosis in Washington. If this warning seems far-fetched, consider that Government power, such as in Canada, and municipal power, such as in several cities in this country, are three to five times cheaper than private power, although the latter should produce electricity much cheaper than mere municipal plants. Ask Congressman McWhoosis how he stands.)

For more than 20 years a few far-sighted citizens have been trying to center the attention of the American people on the danger, danger both to self-government and economic freedom, which is threatened by the rapidly increasing concentration, without any adequate public regulation, of electric power in a few hands.

This is the age of electricity. No other form of power has such labor-saving qualities or can be put to such general use. All that is needed to give humanity the full enjoyment of this marvelous force is to cheapen its production. Then every housewife, by the mere pressing of a button or the turning of a switch, will have at her command the modern counterpart of the omnipotent Genii who could be summoned for any service when Aladdin rubbed his magic lamp.

If stock manipulation can be eliminated and if financial legerdemain and unconscionable profits can be removed electricity will be the cheapest form of power known. Within the next 10 years every home in the United States—in rural regions as well as in the cities—should be equipped with electrical appliances and every railroad and every industry should be electrically operated. And they will be if our enormous potential water power sources are fully developed and the power generated sold at such cost as to place it within reach of the people's purse. They will not be if the Electric Power Trust is permitted to stifle development by monopoly control and excessive charges.

The Electric Power Trust, in spite of half-hearted regulation by various State commissions, is now charging exorbitant prices for electric current. By so doing it is denying the average home owner many electrical conveniences and seriously retarding the Nation's industrial development.

The consolidation of corporations supplying electric power has advanced so swiftly that to-day 41 companies control four-fifths of all the electrical energy developed in the United States. Out of some 68,000,000,000 kilowatt-hours of electricity produced in 1926, these 41 corporations produced 54,000,000,000 kilowatt hours. These 41 corporations have a total capitalization of $10,200,000,000. They completely monopolize all the sources of electric power for four-fifths of our people. Eighty-six million Americans must get electricity from these 41 corporations or go without.

Of these 41 corporations, some 29 are known to be owned or controlled by five central companies. These five dominant interests are the General Electric Co., the Doherty, Morgan and Ryan interests, all of New York, and the Insull interests of Chicago. It is probable—though it can not be proved—that the remaining 12 electric corporations also are dominated by these five holding companies.

Nothing like this gigantic monopoly ever before has appeared in the history of the world. It dwarfs the Standard Oil Co. in magnitude. It is the greatest industrial combine of our time.

Not content with dominating the industrial field, the Power Trust apparently proposes to control the political life of the Nation. Already, by the lavish expenditure of money, it controls numerous State commissions. It maintains an extensive and expensive lobby at Washington, headed by two former United States Senators. Other "lame ducks" favorable to its designs have been appointed on certain Federal commissions. The Insull interests reputedly spent more than $250,000 in the last Illinois senatorial election, and for that reason the candidate receiving the most votes was denied his seat in the United States Senate. But the Power Trust is liberally backing its political henchmen in other States, and more recently it has been purchasing newspapers for the obvious purpose of poisoning public opinion.

In the face of such a concentration of capital, industrial control, and political power, the State and National Governments can maintain their economic freedom and the ability to govern themselves only by some prompt constructive action.

Rival private enterprises already have been swept from the field. The only remaining organization great enough to meet the Power Trust on equal terms is the Government itself. Either the American people must tamely submit to the economic and political control of the Power Trust or support the group in Congress which advocates the creation of a far-flung national superpower system which will furnish heat and light and power to the people at cost. There is no other alternative.

This publicly owned superpower system should cover every section of the country and include such great projects as Muscle Shoals—already owned by the Government—and the Mississippi, Columbia, and Colorado Rivers. Nearly 20,000,000 horsepower now running to waste down these rivers could be harnessed into such a system.

As a matter of fact, electricity is most economically produced and distributed on a large scale. The nature of the industry lends itself to monopoly. Great saving can be effected by hooking up all generating plants on one system and transferring and relaying current so as to keep the consumption constantly up to the peak load. Electricity can be relayed from coast to coast and, the greater the superpower system thus connected, the greater the possibilities of human benefit. To be operated at the highest possible efficiency, every electric plant in the United States should be hooked up to a single system. That would bring down the cost of electricity to a small fraction of what it is to-day.

But it is unthinkable that this public resource should be turned over to a private monopoly. Human nature is such that men who control monopolies designed for private gain always charge all the traffic will bear. The Power Trust already has given ample indication of its selfish spirit. Its extortionate charges, based on watered stock, have cost the people of this country at least $600,000,000 a year. That is a heavy tax on our national industry.

Unless electricity is cheap the average person can not avail himself of it. Electricity should be as freely used in the average home as running water. Cheap power also would be an inestimable boon to our manufacturers and farmers. To-day, owing to its high cost, electric power is almost unknown on American farms.

Electricity has become a necessity in modern life. I do not believe that as a free people we will permanently submit to a private monopoly that controls a public necessity. Morever, the raw material from which electric power is produced is derived from our rivers. The people already have title to these natural resources. It firmly has been demonstrated beyond any question in all parts of the United States that municipally owned utilities furnish light and power cheaper than privately owned plants. The remedy is plain and if the American people permanently remain under the domination of the Power Trust they will deserve to lose their economic and political liberty.

A Government-operated superpower system is a perfectly practical project. Years of actual operation have proved that when municipally owned plants are efficiently managed, and not saddled with huge amounts of watered stock, they can produce electricity at one-third the price now charged by the Power Trust. The great municipal power plants at Seattle and Tacoma are eternal monuments to the wonders that can be accomplished under honest popular government. In their efforts to discredit municipal ownership, the propadandists of the Power Trust invariably avcid all mention of the extraordinarily low rates at which these two progressive cities on the western coast furnish light and heat and power to their citizens.

As a matter of fact, whenever they are managed with a modicum of honesty, municipal plants always undersell private power plants. The fundamental reason why city-owned plants charge less than privately owned plants is that four-fifths of the cost of producing electricity is interest on fixed charges. Municipal, state, and national governments can borrow money at much lower interest rates than private plants, in the first place, and, in the second place, they do not water their securities so that a few insiders can make fat profits.

The Seattle municipal plant was started 22 years ago. At that time the private company was charging 20 cents per kilowatt-hour. To-day the rate of the Seattle municipal plant is 3.28 cents per kilowatt-hour. Every year since 1906 the municipal plant has shown a surplus above all expenses, including amortization of the $13,000,000 invested. Its total earnings have been nearly $33,000,000. The Seattle rate is so cheap that 11,127 electric ranges are used in the city.

The Tacoma municipal plant has an even lower rate—approximately 1⅛ cents per kilowatt-hour—and grants a special charge of one-half cent per kilowatt-hour for heating plants. Nearly 3,000 homes in Tacoma—a city of only 80,000—are heated by electric furnaces and the use of ranges and other appliances is general. The Tacoma plant

has been running 20 years and saves the people of the city $3,000,000 annually. If it raised its rates to meet those in near-by cities, Tacoma could cease to collect taxes and make its power plant pay all city expenses.

Tacoma and Seattle, while perhaps the most conspicuous examples of efficent municipal operation, are by no means isolated instances. The city-owned plant at Los Angeles furnished power at far below the rates of the private plant in San Francisco. The difference—$15,000,000 a year—is more than the total municipal tax of Los Angeles. Cheap municipal power has been an important factor in attracting new industries to Los Angeles.

Cleveland's municipal plant sells electricity at 3 cents per kilowatt-hour. It is estimated that the reduction in rates has saved the people of that city approximately $14,000,000 in the last eight years.

Springfield, Ill., domain of the politically minded power magnate, Samuel Insull, also has a municipal plant. For 150 kilowatt-hours of lighting service the Springfield consumer pays $5.28. If he lived in Bloomington, Ill., where Mr. Insull operates under the blessings of private initiative, he would have to pay $15. If he lived at Danville, Ill., he would pay $11.25, and $13 at Urbana, Ill., both private plants.

Suppose the same man was in business and consumed 1,500 kilowatt-hours of lighting current. In Sprinfield it would cost him only $30. In Bloomington, the private plant of Mr. Insull would charge $100.50; in Danville, $84; and in Urbana, $97.50.

For 4,000 kilowatt-hours of power the Springfield municipal plant charges $68. In Bloomington, Ill., the same amount of power would cost $166; in Danville it would be $142; and in Uurbana, where Mr. Insull also owns a plant, $174. Possibly Mr. Insull's political contributions have increased his "overhead." This may explain the wide disparity in rates between the public and private power plants.

There are scores of other municipal plants scattered through the length and breadth of the United States which are making equally favorable showings. Lack of space forbids their mention.

Canada has proved on a large scale what can be done with publicly owned superpower. The Province of Ontario owns and operates its system, using the enormous power generated from the Canadian side of Niagara Falls The system has been operating for more than 20 years and now serves more than 1,000,000 customers at less than one-third of the rate charged by private companies on the American side of the border.

Almost every woman in the districts covered by the Canadian superpower system cooks with electricity because it is cheaper, as well as cleaner, than coal. More than 8,000 Ontario farmers light their homes and their barns, milk their cows, pump water, saw wood, and thresh with electricity, while their wives cook, wash, iron, and sweep with the same magic power.

In Ontario, during the last year more than 80 per cent of the commercial consumers of electricity paid less than 3 cents per kilowatt-hour, and more than 70 per cent of the power users paid less than $25 per horse power per year.

Last year in the United States the domestic consumers of electricity paid an average of 7.4 cents per kilowatt-hour, and during that same period the average domestic consumer of electricity in Ontario, Canada, paid 1.85 cents per kilowatt-hour. If the people of the United States had paid the same price for electricity during the last year that was charged by the publicly owned system on Ontario, they would have saved on their electric-light bills more than $600,000,000.

As I write, I have before me the bill of Mrs. J. Cullom, who lives at 250 Victoria Avenue, Toronto, Canada. She is the wife of a laboring man, but in a month she consumed 334 kilowatt-hours of electricity. The amount consumed is startling to consumers in the United States, but Mrs. Cullom washed, swept, cooked, and lighted her home with electricity. Her bill for the month for this service was only $3.55.

Perhaps Mrs. Cullom is fortunate in living in Canada. Had she in the same month burned the same amount of current in Washington, D. C., she would have been charged $23.18—nearly seven times as much as she actually paid. Washington has in Great Falls as fine a water power as there is in the United States. But the Power Trust has sufficient influence in the National Capital to block its development as a municipal project.

The superpower system of Canada consists of 380 municipalities acting cooperatively in an enterprise in which they have invested about $250,000,000. Power is sold at cost, including interest and an amortization fund. Each municipality pays its proportion of the cost for the service received.

In Ontario the rates have been steadily falling. In 1912, at the beginning of public ownership, the cost was 4.5 cents per kilowatt-hour. Ten years later the cost had dropped to 1.82 cents per kilowatt-hour, and recently it has come down to 1.4 cents in certain districts. Half the International Bridge at Niagara Falls is lighted by the Canadian publicly owned system and half by a privately owned American corporation. Both draw their power from the same source—Niagara Falls—and furnish the same number of lights and service. But the cost of lighting the Canadian side in 1921 was only $8 per lamp per month while the American side cost $43 per lamp per month.

Are the people of the United States less enterprising than the people of Canada? Are we less honest? Or less capable of properly managing a great municipal power plant? With the first unit of Muscle Shoals already built and ready for operation, why do we not insist that our Government build and operate the great superpower project which has been before Congress for 10 years? The answer is that the Power Trust, through its lobby and controlled newspapers, has carried on a systematic propaganda to prejudice the people against the theory of Government ownership.

The Government already has built a mighty dam at Muscle Shoals. It already has constructed the giant power plant there and built three towns. The river has been harnessed and more than $125,000,000 of the taxpayers' money was expended without a protest by private power companies. But when the proposition is made that electricity should be furnished to the factory and home without private profit, the Power Trust raises the cry that the people should not be permitted to enjoy the benefit of their own plant without paying tribute to a handful of Wall Street millionaires. For the 10 years that this question has been before Congress there has been a continuous fight between those who wanted to save the people's property for the people and those who urged that the people's property be used for private gain.

Two main objections are raised to Government operation of Muscle Shoals. One is that the Government would pay no taxes, whereas if private capital developed the plant taxes could be levied. The other objection is that if the Government operated the plant it could create a huge army of appointees who might become active in politics.

The taxation claim is feeble. In the first place, private enterprise never will develop some of the power sites on the Tennessee River. They will pick out only the cream; there will never be the maximum development that should take place. The amount of tax that would be paid by private parties is greatly overestimated, and the Government could vastly undersell private companies and yet get profit ten times as great as the total amount of the lost taxes.

But in a broader sense, the owners of private utilities are never taxpayers. They are only tax collectors. They push the burden onto the consumer every time. The man in the home and the man in the factory pay every cent of the tax. Not only are private utilities merely tax collectors but they customarily charge an enormous rate for this service. They tax the consumer more for collection purposes than the tax itself amounts to. This statement is borne out by facts in every public-utility project from the Atlantic to the Pacific.

Would Government operation of such a system as I have above outlined get the question of power into politics? Let me state first that power already is in politics. It has always been in politics. Every privately owned utility in the world is actively engaged in politics. The Power Trust mixes into politics in the election of every board of aldermen in the smallest village in the country. It is in politics in the election of every governor. It is in politics in the election of every Member of the House of Representatives and every Senator. It contributes liberally in every presidential campaign. And it never expends a cent that it does not expect to get back—and actually does get back with enormous profit on the investment.

In the recent fight over the Boulder Dam bill in the Senate it is estimated that the Power Trust spent more than $200,000. Telegrams came to many Senators by the hundreds from States that are 2,000 miles away from Boulder Dam. Telegrams came from the representatives of the Power Trust in little hamlets in Iowa, in Nebraska, in Kansas. When these men who oppose Government ownership talk about getting power into politics their one real fear is that it will be gotten out of politics. From my study of the question I am convinced that the only way to take public utilities out of politics is to take them over by the Government either of the Nation, the State, or the municipality.

The question of cheap power should be a question of business. But to make it a matter of business we must take the utilities away from the private interests who already are up to their necks in politics. The Power Trust never sleeps. It has its highly paid attorneys and "experts," like an army, covering the entitre country. Every municipal body of aldermen, every State legislature, and every Congress are importuned by these high-salaried lobbyists to pull their chestnuts out of the fire.

If they paid their own bills—if they met their own expenses—I would not so bitterly complain. But every cent these agents of the Power Trust spend when they bribe a public official is collected from the very people whose property they are wrongfully taking away and whom they are attempting to deceive.

In addition to this army of lobbyists, the Power Trust has employed numberless publicity experts. They are men of great ability who command high salaries. They write newspaper editorials. They write magazine articles. They write books based on false theories and full of deceptive propaganda against public ownership.

Sometimes directly, but more often indirectly, they control the owners and publishers of magazines and newspapers. They spread their literature, based on half truths, throughout the various news agencies in order to create a public sentiment in favor of private ownership

and operation of the people's property. And, to add insult to injury, they charge up the enormous costs of their deceptive publicity campaigns to "overhead expenses."

So long as we permit the Power Trust to control our sources of electrical energy we invite a continuation of this widespread political corruption. Abraham Lincoln once declared that this Nation could not survive half slave and half free. We settled that problem by abolishing chattel slavery. In my opinion, an analogous situation exists to-day, and one equally dangerous to the republican institutions of our country. If the United States Government can not control the Power Trust it follows, as night follows day, that the Power Trust will control the United States Government. It already has advanced perilously far in this direction. The Power Trust is riding Uncle Sam as the mythical Old Man of the Sea rode Sinbad the Sailor, and the one sure method by which its strangulation grip can be broken is Government competition. Then, and then alone, can we have real economic freedom and at the same time end the most threatening present menace to our political liberty.

"IT'S ALL IN YOUR ELECTRICITY BILLS"

Mr. DILL. Mr. President, I ask unanimous consent to have printed in the RECORD an article in Plain Talk for October, 1928, entitled "It's All in Your Electricity Bills," by Gifford Pinchot.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IT'S ALL IN YOUR ELECTRICITY BILLS

By Hon. Gifford Pinchot, former Governor of Pennsylvania

(What is? Why, the millions being spent every year in subversive propaganda by electric-power corporations: The subsidizing of newspapers, magazines, schools, colleges, Congressmen, that public power plants may not teach you that you are paying from two to twenty times what you should for your electric current. Once private corporations raised the cry of socialism against city-owned water plants, meanwhile charging monopoly rates. Mr. Pinchot does not argue for public ownership, but he points to vicious and unprincipled attacks by power interests on the public, to the end that power may be sold for "all the traffic will bear.")

All politically informed persons know that the electric utility corporations of this country have long maintained the most powerful lobby in Washington, but even the cynical newspaper correspondents who cover the Capital have been amazed at the facts brought out in the investigation of the electric monopoly now in progress by the Federal Trade Commission. Not content with hiring a corps of expensive "legislative assistants," headed by two lame-duck Senators who had access to the floor in both Houses of Congress, the utility corporations included in the National Electric Light Association have brazenly set under way a program calculated to corrupt and control public opinion by poisoning every possible source of information in America.

The extent of this wholesale debauchery is amazing even in this age of propaganda. Already it has been proved that utility companies have contributed $1,100,000 in the current year to be expended for "educational purposes" and $400,000 more was raised for a special fund to beat the Boulder Dam and Muscle Shoals legislation. Since June 30, 1922, the companies have collected $5,076,449.38 for politics and propaganda.

One high-salaried press agent of the National Electric Light Association boasted on the witness stand that "everybody above the eighth grade" is reached by their teaching, and since then additional evidence has come to light which shows that even the grade schools are not safe from the contamination which was widely spread in many universities. Official records and sworn testimony show that numerous professors were on the pay roll of the utility interests; that certain colleges were either endowed or paid direct subsidies; and that great pains were taken to prepare and to distribute textbooks for both colleges and grade schools.

In the effort to discredit effective control of utilities by public ownership or otherwise and to defend the extortionate rates they are collecting, the officials of the National Elictric Light Association seem to have stopped short of the kindergarten only. Every other educational institution in America was looked upon by these propagandists as a legitimate field for their activities. It is a matter of record that just before the Federal Trade Commission hearings began they were discussing means of influencing preachers as well as teachers. Neither the church nor the school was safe from these corruptionists who have carefully planned to overlook no possible means of reaching and distorting the judgment of the American people.

This unprecedented attack upon the schools was for the purpose of blocking every avenue by which young people and the public generally might learn the truth about the extortion, overcapitalization, and monopolistic practices of the electric public utilities.

In Pennsylvania, for example, 120,000 pamphlets were distirbuted free to high-school students in a single year and a "catechism" intended to poison the mind against public ownership was sent to more than 70 per cent of all the high-school students in Connecticut. The Insull interests, in their zeal for free education, sent out hundreds of thousands of carefully prepared pamphlets to the high school and grade students of Illinois. Students in Ohio, Iowa, New York, and a dozen other States also were given the same opportunity to acquire "sound views."

Nothing and no one were neglected. Teachers in the schools were "sweetened" when necessary. The writing of text books on economics favorable to the utility interests was procured, and their publication, supposedly under neutral auspices, was arranged for. Passages in existing textbooks unfavorable to the private utility point of view were eliminated through pressure brought to bear upon authors and publishers. The adoption or rejection of textbooks was controlled through State or county superintendents or other school officials. Indeed, the doctoring of school books has gone so far that complete censuses of textbooks have been carried out in several States for the purpose of simplifying the task of censorship.

Having covered the common schools and high schools, the electric propaganda went on into the colleges and universities. Professors in very considerable numbers were given secret subsidies to help them see the electric problem in the electric way. "Safe and sane" investigations by "safe and sane" economists were liberally financed. More than one university was paid tens of thousands of dollars a year to the same end of hiding the truth.

Offers of scholarships to college and university students and of aid to professors, so that they might pursue "research" relating to public utilities, were uncovered in the correspondence of the National Electric Light Association when its New York office files were suddenly seized by William C. Wooden, investigator for the Federal Trade Commission, and more than a ton of documents removed to Washington.

The contents of these files, document by document, page by page, were reluctantly identified by Rob Roy McGregor, assistant director of the Illinois committee on public utility information. Mr. McGregor admitted that he was concerned in preparing the Illinois publicity plans—plans which worked so well that similar schemes already had been undertaken in Indiana, Ohio, Kentucky, Missouri, Arkansas, Nebraska, and Oklahoma, and soon were to be set on foot in Michigan, Wisconsin, Iowa, Texas, California, and New York.

"I should say," Mr. McGregor modestly conceded, under the probing of Robert E. Healy, chief counsel of the Federal Trade Commission, "that almost everybody in Illinois is reached who can be reached by the methods we use." The witness asserted, however, that the Illinois committee did not regard it as worth while to circulate pamphlets below the eighth grade. In other States they did.

Numerous college professors were named in the letters exchanged between the directors of the various State public utility information committees and their attitude on public utilities was discussed in the correspondence.

The files of the Illinois committee included an address made by Dean Ralph E. Heilman, of the School of Commerce, Northwestern University, before the Illinois State Normal College in 1924, which was printed and circulated by the electric utilities. Dean Heilman later addressed the Wisconsin Utilities Association. The same files contain the following account of what he said:

"Through these colleges courses, not only students, but the public as well, according to his [Dean Heilman's] statement, must realize that public regulation of utilities must not be too rigid or confiscatory. He pointed out that a survey by educators shows a great dearth of literature on the subject of public utility regulation and management, especially the kind favored by members of the National Electric Light Association."

Dean Heilman's pamphlets urging gentle regulation of public utilities are compulsory texts in the courses which have been started by the utility companies to train women speakers. When trained, they tour the country, inculcating "right" ideas about electric-light regulation. Dean Heilman also was asked in a letter from B. F. Mullaney, director of the committee, to revise a "municipal credo" prepared by Mr. Mullaney.

According to the evidence of these files, Northwestern University receives an annual subsidy of $25,000 from the Illinois utility interests, which supports special "research work" by the institute and research in land and public utility economics, of which department Prof. Richard T. Ely is the head. Miss Florence C. Hanson, of the American Federation of Teachers, in October, 1927, denounced the Ely Institute of Northwestern University on the ground it was "a research institute supported by private interests and masquerading under false colors."

Professors of economics in many colleges were rounded up by electric utility agents and had their expenses paid to conferences in Kansas City and New Orleans last fall, conducted by Dean C. O. Ruggles, of Ohio State University, who took a year's leave of absence from his teaching and was paid $15,000 by the electric light corporations to make a national survey of textbooks which gave "unfair treatment to utility subjects."

The national survey and Dean Ruggles' swing around the circle, for personal conferences with educators from coast to coast, were preceded by several vigorous protests against "poisonous" textbooks and

"sour" professors in letters exchanged between public utility magnates and their men. Ruggles was described as an educator whose "ideas coincide with our own" in a letter from Benjamin E. Ling, director of the Ohio committee on public-utility information, to H. M. Lytle, assistant director of the Illinois committee. Later Thorne Browne, director of the Middle West division, characterized Dean Ruggles as "a real whizz bang."

Dean Ruggles also worked out a "survey of a public-utility education" for the committee on cooperation with educational institutions of the National Electric Light Association, which was adopted on October 28, 1927, on the day after its presentation.

A. W. Robertson, one of the Pennsylvania utility magnates, wrote to Maj. J. S. S. Richardson, director of the State utility information committee, the following practical suggestion:

"The thought occurs to me that the reason why so many educators are more or less hostile to big business is in many cases due to the fact that they themselves are not successful in a business way. There ought to be some way in which educators could be better paid. It would certainly help to cure at least their mental bias. Would it not be possible for some of our men to approach the large publishers of textbooks and produce some quick results in clearing up the situation?"

Possibly this astute suggestion was acted upon, for a letter was introduced to Dr. J. R. Benton, of the College of Engineering, University of Florida, which offered to aid in obtaining publishers for textbooks relating to public utilities which might be in the course of preparation. It was admitted that this offer was made generally to various colleges throughout the country.

In 1927, the records showed, funds were contributed for "educational research" to the following universities: Harvard, $33,000; Northwestern, $32,500; Johns Hopkins, $5,000; Massachusetts Institute of Technology, $3,000; and University of Michigan, $12,249.37.

A contribution of $30,000 to the General Federation of Women's Clubs was made in 1926. In the same year the Harvard Graduate School was given $22,233.36; in 1927, $30,000; and in 1928, $10,000. Northwestern University also got $25,000 in 1927 and $12,500 in 1928.

The minutes of the National Electric Association's public policy committee of February 16, 1928, show that the directors recommended the payment of $30,000 a year for three years to the School of Business Administration of Harvard University, with the pious hope it might produce a textbook on public utility regulation which "would better appear under academic auspices than as a publication of the association."

Dozens of college professors were remunerated handsomely for preparing pamphlets, had their expenses paid to "conferences," or accepted lavish "expense money" for making speeches favorable to the utility interests. It is a sorry record, but perhaps the individual professors should not be censured too harshly when great colleges like Harvard, Northwestern, Johns Hopkins, and the University of Michigan accept substantial sums of utility money for "research" which by its very nature must be biased.

Never in the history of America has there been uncovered so outrageous an attempt to undermine the soundness and independence of our educational institutions. In attacking the integrity of our schools, the electric utility monopoly attacks the very basis of self-government. As an attempted threat to democratic institutions, it is no less disreputable than wholesale bribery or the stealing of votes. Moreover, this electric effort to prevent our people from forming sound conclusions based upon unbiased evidence does not end with the schools and colleges, but extends into every possible source of public opinion.

Subsidized writers, editors converted to "sane views," "planted news," and "canned editorials" broadcast by "sweetened" news syndicates are successive chapters of the sordid story of wholesale, civic debauchery which has unrolled day after day under the steady probing of Judge Healy. Propaganda was planted in magazines as well as newspapers, inserted in the movies, broadcast by radio, and sneaked into Government publications.

Chambers of commerce were influenced, bankers' associations enlisted, organizations of women's clubs financed, governors were given money, members of important committees or conferences were put on secret pay rolls, ex-Senators were retained as lobbyists, ex-governors were hired to speak at interstate power and light conferences, at least one ex-Cabinet officer received a princely salary, and a former ambassador accepted $7,500 for writings printed under another man's name—and all this was done after Samuel Insull's attempt to buy the seat of one of the United States Senators from Illinois in an election in which it was admitted that the utility interests spent $225,000.

On top of all this comes the assertion from one of the leaders of the electric monopolists, Philip H. Gadsden, on May 3, that their propaganda in educational institutions and their flagrant suborning of men in public life were right and honorable, an assertion made immediately after one of his colleagues, Mr. W. H. Johnson, had found it impossible to remember under oath what he had done with any part of some $20,000 of slush funds which he had drawn to influence the Pennsylvania State Legislature.

It already has been developed that among the prominent men (and lame ducks) paid by the National Electric Light Association is ex-Senator Irvine L. Lenroot, of Wisconsin, foe of La Follette and staunch administration supporter, who received $20,000 for opposing the Walsh resolution for a Senate investigation of the electric interests. Lest the Democrats feel neglected, the committee also retained ex-Senator Charles S. Thomas, of Colorado, for the same sum to lobby among his former colleagues in the Senate. Both of these men have the privileges of the floor in both House and Senate.

George B. Cortelyou, private secretary to Theodore Roosevelt and later Secretary of Commerce and Secretary of the Treasury, was chairman of the joint committee of the National Utility Associations, which handled the special fight in Washington against the Walsh resolution, Boulder Dam, and Muscle Shoals.

Judge Stephen B. Davis, who used to be Herbert Hoover's solicitor in the Department of Commerce at a salary of $6,000 a year, got $28,735.64 for nine months' work with the electric utilities.

Ex-State Senator Josiah T. Newcomb of New York is the high-paid and high-powered executive officer of the Washington lobby. Senator Newcomb draws $35,000 a year and expenses.

Richard Washburn Child, former ambassador to Italy, magazine writer and author, received $7,500 for preparing a pamphlet opposing Boulder Dam which was signed by Frank Bohn. Bohn was paid $100 a week for several months for editing a pamphlet. Bohn was formerly a radical and once collaborated with the late "Big Bill" Haywood on a book, Industrial Democracy.

Ernest Greenwood, former representative of America in the International Labor Office of Geneva and former member of the District of Columbia School Board, was paid $5,500 for writing a supposedly independent study of power development in the United States, entitled "Aladdin, U. S. A." The Greenwood book was financed on condition that copies be furnished to a list of 1,091 libraries.

Former Governor Merritt C. Mechem, of New Mexico, was paid $5,299 for attending and reporting on the conference of western governors last August on Boulder Dam. Mechem also signed the report advocating no action by Congress until the western governors could agree on a policy.

Ex-Governor James G. Scrugham, of Nevada, received $600, hotel, and traveling expenses, to come to Washington to talk with Judge Davis and George B. Cortelyou on January 19 of this year. Scrugham testified that Judge Davis invited him. Davis testified that Scrugham invited himself. In any event, his expenses were liberally paid.

The cash book, it was testified, showed payment of the incredible sum of $175,269 for small pamphlets—envelope stuffers—containing reprints of articles by Bruce Barton, so-called "inspirational writer," author of The Man Nobody Knows, in which Jesus Christ is treated from a Rotarian viewpoint.

J. Bart Campbell, Washington, D. C., newspaper man, received $245 a month for nine months for furnishing the association with copies of all news releases.

J. S. S. Richardson, formerly chief of the United States Army Secret Service in France, received $22,135.18 as assistant to Judge Davis for nine months.

Naturally, newspapers were not overlooked by the skilled press agents employed by the electric monopoly. In practically every State the electric utilities maintain a separate press bureau which sends out news releases, clipping services, and free "boiler plate" to every daily and weekly paper in its territory. Correspondence also showed that efforts were made by local utility managers to persuade the newspaper editors in their vicinity to print this propaganda. Evidently these efforts bore fruit, for, according to the reports of the public-information committee in a period of 47 months, more than 108,000 column inches of clippings appeared in the newspapers of Illinois alone.

Mr. McGregor also admitted writing a letter to managers of local utilities in which he said:

"The use of paid advertising is not contemplated for the present, but whatever relations you have with local newspapers by reason of advertising done in the regular course of business can doubtless be used to engage the editor's interest in the facts of our case."

Mr. McGregor sent to the local manager a copy of his news service and concluded by suggesting that "as a beginning you might try to have some of the inclosed news articles used, or at least commented upon."

When Federal Trade Commissioner McCulloch demanded what the witness meant by directing the local utility managers to approach newspaper men on the basis of advertising, McGregor defended himself by stating, "If a man is an advertiser, he has got the right to talk to the publisher on matters of mutual interest."

Evidently this cleverly conceived policy also bore fruit. Mr. McGregor testified that the electric utilities spend approximately $30,000,000 a year in advertising, and a little later he admitted, "Newspapers that were unfriendly have become friendly; helpful editorials have appeared in the State press."

The Iowa committee on public-utility information subscribes for every newspaper and magazine in the State, and every one is carefully perused in search of news items or editorials concerning public utilities.

"The committee lets it be known to the newspapers (declared the official report) that all references to public utility affairs are carefully scanned. Although it does not heckle over minor mistakes, whenever

a glaring misstatement which is calculated to do the industry particular harm is published the attention of the editor is called to the same in a courteous manner.

"It has been found that if editors know their articles are being watched and carefully scrutinized, they will be more cautious in accepting for facts statements derogatory to public-utility interests.

"Immediately upon the organization of the committee, the governing board instructed the director to use every effort to educate member companies to the necessity of advertising. But few companies in the State were doing so.

"Taking the results of the first year's efforts in this direction as a basis, the utility companies represented on this committee have increased their newspaper advertising 100 per cent during the past four years."

Documentary evidence in the Federal Trade Commission inquiry shows that public-utility interests mapped out a campaign to spread "correct information" in "every single newspaper in the country" this year, when the Boulder Dam project and a threatening senatorial investigation were pending in Congress.

The great drive took the form of a flood of paid advertising, reaching beyond the thousands of columns of free space gained by 28 State committees, the National Electric Light Association, and the Joint Committee on National Utility Associations. It was designed particularly to influence country editors.

Pennsylvania propagandists had a "high command" to discipline newspapers, according to a letter of March 24, 1924, written by J. S. S. Richardson, then director of the Pennsylvania public service information committee, to H. H. Ganser, manager of the Counties Gas & Electric Co., of Norristown.

"I agree with you that the campaign being conducted by the North Penn Review constitutes a minor menace in the region where the paper is circulated (Richardson wrote). However, I believe the soothing sirup will be applied by the 'high command' of the Pennsylvania power and light interests.

"Now we shall have to wait and see. I have forwarded the clippings to Mr. Flor, of the Electric Bond & Share Co."

Ganser made laconic report of results in another case in a letter to Richardson on March 17, 1924:

"It gives me great pleasure to advise you that your efforts in reference to discrediting newspaper publicity in connection with the activities of a certain utility company are bearing fruit. I have learned that definite orders have been given not to handle the matter in such a strenuous manner. I know this will be quite gratifying to you."

The propagandists like to write for themselves the articles which are going into the newspaper, it was explained by Joe Carmichael, director of the Iowa committee, who testified he ground out so much material he could not remember it all. He said:

"When we write the articles ourselves the points we desire to emphasize receive attention and not inconsequential points."

Louisville newspapers were kept fully informed about the Swing-Johnson Boulder Dam bill. R. Montgomery, of the Louisville Gas & Electric Co., wrote to George F. Oxley, head propagandist of the light association, on February 9 last:

"The only newspapers here with state-wide circulation are the Louisville papers, and for some years my office has enjoyed very pleasant relations with these papers in addition to furnishing them with all local and State news. I personally keep the editorial departments informed on all matters of importance to the industry, such as Boulder Dam controversy, the Walsh resolution, etc.

"Printed matter on these subjects is not mailed to our newspaper writers and editors, but is handed to them personally and, as a result, the Louisville papers have continually run news stories and very splendid editorials favoring the interests of the public utilities.

"One of the best editorials of the year on the Walsh resolution recently appeared in the Louisville Herald Post, and one of the best editorials I have ever read on the subject of water power versus steam power appeared in the Courier-Journal last week.

"John E. Davis, an ex-newspaper man of long experience, is employed as public-relations man by the Kentucky Utilities Co., and he is in close contact with all newspapers in the cities in which the company operates. He also has a local contact man, usually the general manager, at each property, who works under his direction.

"The other utilities throughout the State, as a general rule, are handling this work in a similar fashion."

Montgomery added that "about the only difficulty" with the press had been opposition by Tom Wallace, editor in chief of the Louisville Times, to the harnessing of Cumberland Falls by the Insull Co., and noted:

"I mention this because it is about the only instance of any consequence in the last two or three years where a newspaper of this State has done anything to particularly annoy or embarrass any of our utilities."

This editor-clubbing policy was nation-wide. Ohio, Minnesota, Colorado, New York, California, and many other States also had "public information committees" which boasted of the amount of space they filled in city dailies and country weeklies. And, to add insult to injury, every cent of the money that the electric utilities spent in debauching the schools, distorting the news, and deceiving the people was and is paid by the consumers of electric light and power.

The public-utility companies charge their outlay for "publicity" and "public relations" to operating expenses. On their books it is carried as one of the costs of service which must be paid by the consumer, in addition to the guaranteed return upon the company's "investment."

That is, a newspaper can be bought by an electric concern and charged to the consumer as a part of the cost of operation, just like a ton of coal; and a professor can be hired and charged as an operating expense, precisely like a stoker. Money spent for influencing legislators is considered exactly like money spent for hiring engineers or buying oil.

Indeed, the public-utility organizations admit it frankly and urge these facts upon their members as a reason for contributing liberally to associations like the National Electric Light Association, with its $1,100,000 to spend this year, and the Joint Committee of Public Utility Associations, with its $400,000. The chairman of the public-relations section of the National Electric Light Association said in his annual report for the year ending June 20, 1926:

"The dollar expended for public relations is not a waste or a loss. It is an investment. So far as I know, no expenditure for any branch of public-relations work in our industry has ever been considered an improper expense by any public-service commission. Public-service expenditures are an investment in public understanding and cooperation. They are insurance against misunderstandings and hostility; against ill-founded rate cases, with their heavy costs; against unreasonable, hampering, legislative enactments which affect service and revenue, whether or not through rate fixing; against the present menace of Government ownership and operation in some form."

If this means anything it means that the electric power and light companies of the country claim and exercise the right to tax us in rates as much as they please for the purpose of collecting funds to influence press and schools, and that public-service commissions sit by and let them do it.

And why are the electric utility companies so grimly determined to control public opinion? First, to prevent the building of Boulder Dam, which would provide cheap electrical current at cost and thus show up the extortionate rates of the electric monopolists. The Los Angeles municipal plant already is furnishing electricity at 5 cents per kilowatt-hour. The monopolists naturally object to this demonstration that their own rates are too high.

Second, to defeat Government production of electricity at Muscle Shoals, which holds out the promise of cheap electric power to the South, where private utilities handicap industry by excessive rates.

Third, so that the utilities may befog the people and block State legislation which would compel the electric companies to hold their rates down to a reasonable interest on the money actually put into the plant instead of on the blue sky; in other words, accept regulation of rates upon prudent investment.

The amount at stake is simply enormous. It explains the huge political and propaganda slush funds raised by the electric utilities. If they can continue to collect rates on watered stock they can make unlimited profits. Hundreds of millions of dollars of unjust charges are involved every year, and the monopoly has advanced to such an extent that already 41 corporations control four-fifths of all the electrical energy produced in the United States. Five groups control more than half.

More and more our domestic comfort is dependent upon cheap electric light and our industrial efficiency upon cheap electric power. This is the electrical age. Our national progress demands economical production and consumption of this marvelous, labor-saving device which has been so instrumental in transforming civilization and is to be still more so. The almost universal electrification of both homes and industry is being postponed only by the exactions of a little group of selfish monopolies. They are foolish indeed if they think they can stop the demand for cheap electric current by floods of misleading propaganda.

Domestic and lighting consumers of electricity—mostly small users—are not only paying for what current they get, but for a great deal more that they never get. The level of rates charged for electricity for power purposes has been steadily and markedly declining during the last five years, but lighting rates have actually been rising. Average domestic rates are from five to ten times as great as average wholesale-power rates. The net result is that domestic and lighting consumers pay two-thirds of the total revenue from electricity, but use only one-fifth of the current consumed.

Even if we assume that the total charge paid for electricity by all kinds of consumers, big and little, is reasonable (which it is not), this is clear proof that domestic and lighting consumers are practically carrying the overhead charges for the entire industry.

Any electric rate above 5 cents is an unfair rate except under unusual conditions. Cleveland, Ohio, has long had a 5-cent rate—fixed by city ordinance, and the private company which provides the service is very prosperous. The Massachusetts public utility department re-

cently ordered the rates at Worcester reduced to 5 cents and quite recently lowered an 8.5-cent rate in Cambridge to a similar amount.

Most of the rates in publicly owned electric plants range well below 5 cents. In Pasadena—publicly owned—the average domestic rates in 1927 were 4.8 cents for lighting and 2.7 for power. In Tacoma—also publicly owned—the top rate for the first 40 units is 4.5 cents and after that 1 cent with a one-half cent rate for heating.

The average domestic rate for all of Ontario—publicly owned—in 1925 was 2.1 cents; in 1926 for all the cities of Ontario it was 1.6 cents; for the city of Toronto it was 1.7 cents and for the city of Ottawa only 1 cent. If, to be more than fair to the private companies, we add another cent for taxes, dividends, and any other possible costs the companies have to pay that the public plants do not, the fact still remains that in general we are paying the private companies more than double what we we ought to pay and in particular cases three or four or five times too much.

I am not advocating public ownership. On the contrary, I am working for effective regulation. But it ought to be clear to anyone with a head on his shoulders that rates charged by private plants running from double to ten or even twenty times the rates of publicly operated plants can not continue without making people ask whether the private companies are not earning too much and whether, after all, their accusation that public ownership is wasteful and inefficient is actually true.

Many people will make the natural deduction that if private operation, as the companies claim, is so much more economical, efficient, and generally desirable, then certainly it ought to be able to compete on equal terms with the publicly owned plants, which the agents of private companies never tire of denouncing.

Most electric companies make a practice of not knowing what it costs them to supply the different classes of service. Their accounting methods often make it impossible to obtain costs in the sense in which that term is used in other industries. But to the people who pay the bills it is clear that the rates of any particular company ought to be more nearly based on "cost of service plus a fair profit" rather than on "what the traffic will bear"—which is the practice now.

Although the lighting rates have been rising, the cost of producing electricity has been steadily falling. That means that the companies have been taking the benefits of this reduction in the form of excess profits instead of giving it to the householder. The benefit of all such reductions during the next five years should go to the people who pay the present excessive domestic rates.

A generation ago city water systems were almost invariably owned by private corporations. Feeling secure in the possession of a monopoly, the private water companies customarily charged all and sometimes more than the traffic would bear. As an inevitable result, our city water systems to-day are almost universally conducted as municipal utilities.

People are proverbially long suffering, but history proves that public patience can be quickly exhausted when pocketbooks are concerned. The electric monopoly seems to be traveling this well-marked road. If the present abuses continue there can be only one result. The actions of the electric industry will drive the people to public ownership in self-defense.

DECENNIAL CENSUS AND APPORTIONMENT OF REPRESENTATIVES

Mr. JOHNSON. Mr. President, I ask the Senator from Nebraska to yield to me for the presentation of a unanimous-consent order.

Mr. NORRIS. I yield to the Senator for that purpose.

The PRESIDING OFFICER. The proposed unanimous-consent agreement will be read for the information of the Senate.

The legislative clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, by unanimous consent, That after the hour of 3 o'clock p. m. on the calendar day of Thursday, May 23, 1929, no Senator may speak more than once or longer than 30 minutes upon the pending bill, S. 312, a bill to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress (Calendar No. 3), or any amendment proposed thereto.

The PRESIDING OFFICER. Is there objection to the proposed unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. BLACK. Mr. President, I send to the desk a proposed amendment to the pending bill.

The PRESIDING OFFICER. The amendment will be printed and lie on the table.

ACQUISITION OF NEWSPAPERS BY POWER TRUST

Mr. NORRIS resumed his speech, which for the day is as follows:

Mr. President, day after day the country has been startled by the new developments as to the activities of the Power Trust as disclosed by the investigation conducted by the Federal Trade Commission. Although the previous developments were startling and of transcending importance, there has recently been shown before the commission a nation-wide activity on the part of the Power Trust to buy the newspapers of the country. After all it is only carrying out the program that has been so often mentioned, and is only an attempt by money secretly to purchase the avenues of publicity with a view of carrying out their nation-wide—yes, Mr. President—their world-wide attempt to control the natural resources of the country.

I intend this morning, Mr. President, to take the Senate on an inspection tour of the country—to go over the Nation, as it were, in an airplane, and to stop briefly at various important places so as to take note of what has been going on recently, particularly in the purchase of the newspapers by the Power Trust.

I have borrowed an airplane, Mr. President, from Colonel Lindbergh, and I intended to secure the services of the colonel himself in piloting us over the country; but, as the Senate probably knows, he is otherwise engaged in very important social duties, so that, much to his regret and mine, I am unable to obtain his services. I think, however, I have almost made up the loss in acquiring the services of the pilot whom I have employed. I have selected a distinguished gentleman, whom I shall soon name, and he has consented to act as our pilot, so that we may be assured of safety at all times. The very distinguished statesman from Connecticut [Mr. BINGHAM], who is authority on all aviation matters, has consented to act as our pilot, and now if we will all step into the machine——

Mr. SIMMONS. Who did the Senator say is to be the pilot?

Mr. NORRIS. The Senator from Connecticut [Mr. BINGHAM].

Mr. CARAWAY. I hope the Senator has insurance.

Mr. NORRIS. The insurance we have is the ability of our pilot to take us safely through every storm and to land us without any danger of accident or harm.

The first stop, Mr. President, will be at Boston. Recently we have heard a great deal about the secret purchase of two of the very largest newspapers in Boston by the Power Trust. I am going to read a brief description of what happened there from one of the daily newspapers of the country in an article written by Mr. M. L. Ramsay, who has followed the investigation of the Federal Trade Commission from the beginning. He says:

> Fully developed plans to blanket the South with newspapers financed by the International Paper & Power Co., and an attempt at wholesale buying of papers in the name of the Insull interests, were revealed before the Federal Trade Commission yesterday.

That was on May 16.

* * * * * * * *

> A $2,500,000 appropriation to finance Hall & Lavarre deals was voted by directors of the International Co. last October 31, the company's minute books revealed. The written program of Hall & Lavarre was submitted to the company 11 weeks later, on January 16.
>
> Thus far they have bought only four papers. The International Co. supplied all the purchase money—$870,000.

Let me digress there, Mr. President, to say that there is no more reason why the Power Trust should own newspapers than why men engaged in the manufacture of shoes or sewing machines should own newspapers in their business. Under the law newspapers possess a special privilege. The Government carries them through the mails to readers all over the country at a loss of many millions of dollars. The theory is that the readers of the newspapers, the general public, will thereby be enabled to secure definite and correct ideas of the news of the day. It presupposes that the newspapers will not be subsidized; that they will not be published in the interest of any particular special interest. The Power Trust deals also in the natural resources of the country and is given in the various localities where it operates through its subsidiaries in most instances a monopoly. It is therefore subject, and justly so, to the laws of the Government and of the States where they operate.

So both the newspapers and the Power Trust are, to a great extent, profitable in business by reason of particular subsidies or rights or privileges given to them by the laws of our country. It follows, therefore, that a power company harnessing the streams that come down the mountain sides and flow into the sea should treat with honesty and fairness the people who own the natural resources; that it should deal with the people in a way that is absolutely fair; and, because it possesses these special privileges of eminent domain and the right to harness the streams that are owned by the people of the United States, it is peculiarly subject to the laws of our country.

Mr. Ramsay says further in this article that testimony was given before the Federal Trade Commission that—

> The New England Power Association, international subsidiary, paid $1,075 to Thomas Carens, State house correspondent of the Boston

Herald, for writing and other services. Payments of $400 a month were made to another New England newspaper man, identified only as Sullivan.

So we find, as we have found through all the investigation, that these newspapers to which we must look for the news of the day, which control to a great extent the politics of the country, are being subsidized by the power companies with our money, because they have no income except that which they extort from the people of the United States who use electric current.

Mr. Ramsay said, further, that a Mr. Grozier testified—

That former Gov. Channing H. Cox, of Massachusetts, who recently became "consultant" to the Boston Herald and the Boston Traveler, now half owned by the International Power Co., approached him about buying the (Boston) Post.

* * * * * * *

Secrecy thrown about the Herald-Traveler deal—

Which was purchased, as we all know, several weeks ago, or the publicity in connection with it came up only several weeks ago—

was reflected in a letter from Archibald R. Graustein, president of the International, to Sidney W. Winslow, jr., of Boston, formerly chief owner of the papers.

* * * * * * *

The list of water-power properties in the South and Middle West owned or controlled by International and its subsidiaries, put into the commission's record, showed these properties are in Michigan, Wisconsin, and South Carolina.

* * * * * * *

The electric monopoly projected for most of New England, exclusive of what has been called Samuel Insull's "province" in Maine, was discussed candidly by Comerford—

Another witness, Mr. President—

He identified himself as a director, vice president, and treasurer of the International Paper & Power Co., a director of the subsidiary International Paper Co., and president and active head of the New England Power Association, another subsidiary.

The power association subsidiary owns stock in 35 or more hydroelectric, public utility, and service companies.

* * * * * * *

Healy asked about the "integration" of the New England utilities. Comerford answered—

Here is a quotation from the testimony of this power man—

We do hope to bring together under one ownership and one operation all of the electric companies in the area touched by our lines, so far as it is sound to do it. I mean by that there are exceptional cases where it would not be sound. But so far as it is sound we hope to bring together the electric distribution under one ownership and one management.

He was asked this question:

Q. And that one ownership and that management to be yourself, may I ask?—A. We hope so, Judge.

Q. Does that include all of the territory that you are in?—A. No; there are exceptions.

Q. Well, does it include all of the territory you are in generally, with certain exceptions?—A. Yes.

A frank admission showing the ultimate intention of the Power Trust to get practically all of the newspapers, to control all the means of communication in this country.

Here is an extract from the minutes of one of these corporations:

The president stated he had been conferring with two young men who propose to purchase newspapers, principally, at least, in towns of 50,000 and over, and that he wished the board to authorize an appropriation of $2,500,000 gross for use in assisting in the financing of such purchases—

It read—

Upon motion, duly seconded, it was unanimously voted:

"That an appropriation of $2,500,000 gross for the purpose of assisting in the financing of the purchase of newspapers as stated to the meeting be, and the same is hereby, authorized.

Here are the locations of some of the newspapers that they were negotiating for:

Gadsden, Ala.; Greenwood, S. C.; Hendersonville, N. C.; Gastonia, N. C.; High Point, N. C.; Salisbury, N. C; Gainesville, Ga; Rome, Ga.; Columbus, Ga.—but they would be too costly to operate if they could not be administered as complementary units.

Now we are taking over the Augusta Chronicle as of the 18th, and with the prospect of closing Columbia and Spartanburg soon, thereby acquiring three major units, we will let negotiations drift while building a profit-producing foundation to which other properties may advantageously be added.

That was a report made to the power company by these young men after they had gone out to make their survey in their nation-wide purchase.

Some time prior to that it was disclosed before the Federal Trade Commission that the International Paper & Power Co. had purchased interests totaling $10,789,700 in 11 newspapers in eight cities. This disclosure was made by Mr. Graustein, the president of the International Paper & Power Co. Newspaper holdings of the International Paper & Power Co. in 10 papers in various parts of the country were disclosed in his evidence, as follows:

Chicago Daily News, $250,000 in preferred and common stock.

Chicago Journal, $1,000,000 in debentures, $600,000 in preferred stock, and 10,000 shares of common stock.

Knickerbocker Press and Albany Evening News, both of Albany, $450,000 in preferred and common stock.

Boston Herald and Traveler, 10,248 shares of common stock, for which it paid $525 a share.

The Brooklyn Eagle, $1,954,500 in notes and common stock.

Hall & Lavarre, $855,000 in notes, secured by stock of the Augusta Chronicle, the Columbia Record, the Spartanburg Herald and Journal.

The Ithaca Journal-News, $300,000 in notes.

It was disclosed also that an offer of $20,000,000 was made by the trust for the Cleveland Plain Dealer, and declined by the owners of that great newspaper.

Mr. President, it would be interesting to note what some of the leading writers and newspapers think of this campaign that is going on. I want to read an extract from the New York Times in a dispatch coming from Cambridge, Mass. It says:

Newspaper owners are bound to control such opinions as their papers express, as well as their news policies, Robert Lincoln O'Brien, former editor of the Boston Herald, told a meeting of the Cambridge League of Women Voters in an address here to-day. He was discussing the purchase by the International Paper & Power Co. of an interest in the Boston Herald and Traveler and other newspapers.

Mr. BORAH. Mr. President, will the Senator read that statement by O'Brien again?

Mr. NORRIS (reading):

He was discussing the purchase by the International Paper & Power Co. of an interest in the Boston Herald and Traveler and other newspapers.

Is that what the Senator wanted?

Mr. BORAH. He said the newspapers were bound to control opinion.

Mr. NORRIS. Oh, yes—

Newspaper owners are bound to control such opinions as their papers express, as well as their news policies.

Further on he says, speaking of this purchase——

Mr. WALSH of Massachusetts. Mr. President——

The PRESIDING OFFICER (Mr. FRAZIER in the chair). Does the Senator from Nebraska yield to the Senator from Massachusetts?

Mr. NORRIS. I do.

Mr. WALSH of Massachusetts. I should like to add that Mr. O'Brien ought to know whereof he speaks. For many years Mr. O'Brien has been a leading Republican editorial writer of Massachusetts, and his experience as editor and manager was both extensive and skillful.

Mr. NORRIS. I thank the Senator. Further on in this same address Mr. O'Brien said:

Intelligent people need not waste much time in discussing whether an ownership finds any way of relating itself to the news policies of newspapers, to say nothing of the editorial opinions.

No one need go further than to contrast the reporting only last week of the Graustein testimony in the New York Herald-Tribune, whose managing owner, Ogden Mills Reid, is also a director of the International Paper & Power Co., with the reporting of the same events in the New York Times, with no such connection. In one place the story was minimized and obscured; in the other it was set forth in fullness and detail. Ownership opinion remains the one basic thing in the conduct of the newspaper.

In this case, as in all others, it is ownership that fundamentally controls. Do you not run the things you own as you want to run them? I think so.

He said further:

But the political relations are not so easy to dismiss. If the Herald remains the chief vehicle of Republican opinion in this community, may not the party leadership be ultimately affected thereby? Would aspirants for distinction in Republican ranks feel safe in selecting for themselves such an issue as the Worcester Post has made in our neighboring city. Would they not be afraid of losing caste with the newspaper upon whose favoring publicity they must chiefly depend? May it not be possible that this very alliance will vitally affect the attitude of the Republican Party upon the great issues of public utilities?

I would like to commend that to the Senate and to the people. It is said by these men, when they purchase these papers, "We have no intention of backing up the fight of public utilities; we are just investing our money in them," and yet this man shows, as every thinking man and woman must know, that the ownership of a paper by a particular interest, as is demonstrated by the reporting of the Graustein testimony by two newspapers, the owner of one a stockholder in a power company, and the other not owning any stock in the power company. The one connected with the power company covered the matter up, published as little news about it as possible; the other displayed it as any honest newspaper would, important news that it was.

The point made by this speaker—a leading Republican of New England—was that if these newspapers, the leaders in a particular community in Boston, Mass., are owned by the Power Trust, what do Republican candidates for office in that community face? Do they want to displease these leading newspapers? Are they not apt to lean in their direction? When the leaders of the party lean and go in that direction, where do you expect them to lead their followers? The answer, it seems to me, is inescapable, that such ownership has a direct bearing upon governmental policies, upon men running for office, controlling legislatures, controlling State governments, controlling Congress, controlling the White House itself.

The speaker referred to the issue that was raised by a paper in Massachusetts, and now I am going to read an extract from an editorial in the Springfield Republican, of Springfield, Mass.:

The International Paper & Power Co. now has a large property interest in about a dozen newspapers.

Since that was written it has been developed that that ownership extends to many more than a dozen newspapers, and the number is still growing.

Yet most persons reading the quarterly statements of those papers that are required by law would not know from them that this great corporation was financially concerned in their management. To the ordinary person the Publishers Investment Corporation of Delaware, which publishes the Boston Herald and Traveler, does not suggest the International Securities Co. of Massachusetts, nor does the International Securities Co. suggest that still higher up is the International Paper & Power Co. The Piedmont Press Association (Inc.) is now a large owner of the securities of the Brooklyn Eagle, but Mr. Average Citizen who reads the Eagle has no ready means of identifying the Piedmont Press Association as a subsidiary of the International Paper & Power Co. Nor has the ordinary reader of the Chicago Journal the slightest idea that the Bryan-Thomason Newspaper (Inc.) is a concern covering up the property interest of that same International Paper & Power Co.

Publicity for newspaper ownership means stripping off the last shred of covering, "incorporated," so that he who runs may read a newspaper with knowledge of the property interests that underlie its business management and editorial policies. A potent cause of the present distrust of the International Paper & Power Co. as a holder of newspaper properties is that it placed several partitions of subsidiary corporations between the newspaper and itself. The sooner these doors within doors are done away with the better.

Mr. Graustein left Washington confirming the impression that the International will continue to lap up newspaper properties whenever it seems good business to do so. If Mr. Graustein will publish the fact whenever his company absorbs another newspaper, only a few years probably will be required to convince him and his board of directors that what had seemed to be good business was not good business at all.

These newspapers will not long flourish under "Power Trust" ministrations. For, insist as he may on the commercial motive of insuring a market for the newsprint branch of his company, Mr. Graustein will learn in time that the public believes that the International Paper & Power Co. has a major interest in public utilities and only a minor interest in newsprint. As a great power producer the International's business is "affected with a public interest," and that gives it a monopolistic character requiring public regulation.

It might be well to say there, Mr. President, that this investigation discloses the fact that the International Paper & Power Co. secures 54 per cent of its income from power and only 35 per cent of its income from its manufacture of paper.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Tennessee?

Mr. NORRIS. I yield.

Mr. McKELLAR. Does the evidence disclose how this organization obtained the papers? Do they buy the bonds or the stock of the papers?

Mr. NORRIS. They obtain the ownership in all kinds of ways. Sometimes it is through the purchase of stock, sometimes through the purchase of bonds; any way to get control.

I want to read from another editorial in the Springfield Republican.

Mr. WATSON. Mr. President, will the Senator yield to me for a question?

Mr. NORRIS. I yield.

Mr. WATSON. I quite agree with the Senator that it is inadvisable in our country for the Power Trust, or any other trust, or any other combination of capital or aggregation of wealth, to buy up, own, and control newspapers, or any considerable number of newspapers, but I am just wondering what legislation can be passed to prevent it.

Mr. NORRIS. Mr. President——

Mr. WATSON. Will not the Senator permit me to finish my question? If a man owns a newspaper, he has a right to sell it. If another man has the money to buy a newspaper, he has a right to buy it. If there be a power trust, that trust can be directly assailed in the courts, and in that way the ability of the Power Trust to buy up newspapers might be destroyed or retarded. But let us suppose that an aggregation of individuals with money should come together to buy up newspapers and should put up some money to buy newspapers. Unless they directly formed a trust or combination of some kind amenable to law, would there be any way by which that could be prevented? In other words, what legislation is the Senator proposing at this time to prevent the ill which he decries?

Mr. NORRIS. Is that all of the question?

Mr. WATSON. That is the question.

Mr. NORRIS. In the first place——

Mr. WATSON. I am not asking this question in a controversial spirit at all. I am just asking because I am wondering what the Senator has in mind.

Mr. NORRIS. I am going to take the Senator's question in that spirit. In the first place, when Congress wants to legislate, it gets hold of facts. We have not all the facts yet. We do not know how much further developments are going to show this trust has gone. We have had only a peek into its financial operations. There is a case pending in court where they have refused to answer questions. But I will show before I get through the pyramiding, and the operations of electric-light facilities through subsidiaries of subsidiaries of subsidiaries, until we are lost in a maze of corporations, until, as this editorial shows, the statement of the ownership and operation of any particular public utility is no indication, to begin with, as to who really owns it. I am going into that, before I get through, as to some other sections of the country. I am only stopping shortly in Boston to get a little more gas and a little oil for our flying machine. I am going to take the Senate to some other localities, where I think these things come out more prominently.

In the first place, there is no reason why a public utility should own a newspaper. Public utilities are charged with a public duty. They deal in the natural resources of our country. They are given a monopoly in most instances where they operate. They are given the right of eminent domain, the same as a railroad company, and that means that the people who give them that privilege have a right to say how far they shall go, and have a right to say that the corporations shall not make money enough in the operation of their business to buy all the newspapers of the United States. The people have a right to say how any surplus earnings the corporations may make shall be invested, if at all. They have a right to deny to public utility companies the ownership of the means by which public opinion and the news of the country can be spread before the country.

The people have a right on the other hand to say under what conditions newspapers shall be carried through the mails of the United States and get the subsidy that comes to them. They have a right to say how long and how far and how high one corporation may be pyramided on top of another. They have a right to make it illegal and they have a right to tax it, both State and Nation. I have an idea that when we get through with all this investigation we will probably have well-defined ideas as to just how far it is going to be necessary in these various propositions.

All of the propaganda of the Power Trust from the beginning to the end is in the main to fight public ownership of public

utilities. That is the chief burden they have. That is the reason why they go into the churches, the schools, the Boy Scouts, women's clubs, commercial organizations, and secret societies, and now going into the newspapers. They want to educate public sentiment to their viewpoint. They want to poison their minds with half truths and complete misinformation in many instances as to what can be done in the way of municipal ownership of public utilities, as to what can be done by the people in supplying themselves with the comforts and happiness of life derived from their own property.

Mr. WALSH of Massachusetts. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Massachusetts?

Mr. NORRIS. I yield.

Mr. WALSH of Massachusetts. It seems to me the Senator might well answer the question of the Senator from Indiana [Mr. WATSON] by stating that the airing to the public of the conditions which have recently been disclosed as to the acquisition of newspapers by various power interests in the country was of the highest kind and type of public service. Public service does not consist solely in passing laws to prevent abuses. Public service consists in exposing abuses which may ultimately lead us into socialism or other grave difficulties detrimental to the preservation of our free institutions. If the time comes in our country when all the press is controlled by sinister interests or selfish big business, there is no other position left for a free independent people than to establish a Government-owned press.

No one desires a censored press nor a Government-controlled press. The mere airing of abuses may arouse the public conscience of the country to a realization that if this or other evil economic tendencies are not now checked we may be led into avenues of public action that we all hesitate even to consider. We can not afford to wait for revolutionary movements in order to prevent the correction of dangerous political and economic tendencies. The Senator is rendering an important public service.

After all, is not what the Senator is saying what has been said again and again in this Chamber, and by many independent thinkers and leaders, namely, that there is in this country indications of the development of an unmistakable alliance between big business and certain controlled channels of public information; also that so-called big business and their channels of public information are together allied with or seeking alliances with political leadership and political parties for the control of important agencies of the people's Government? What has been discovered by this exposé is that certain financial interests have gotten so confident of their strength that their purpose and its evil consequences has come to the surface.

We now know that it is not necessary any longer merely to insinuate that special selfish interests are at work to throttle and control all the public information of the country. We now know that they are so brazen and determined that they openly declare it to be their purpose and their policy. God help our free institutions when the channels of public information are suppressed, controlled, or directed in such a way as to exploit for selfish ends the making, administration, or judicial interpretation of laws. We all know that when public opinion and the press of the country are controlled by any selfish group, big business, or whatever else it may be, it means the control of the Government; it means the people are powerless to protect and defend their rights.

I commend the Senator for his courage in taking the floor and exposing to the open daylight all the facts, so that the people of the country may know in what direction we are drifting and to arouse the public conscience to a realization that it must stop or a remedy immediately found before it is too late. Therefore I resent the suggestion that because the Senator has not in his pocket a proposed law which will immediately cure these abuses he ought not to be discussing such an important and vital question.

Mr. NORRIS. Mr. President, I thank the Senator very sincerely, and while I am interrupted by the Senator from Massachusetts I want to digress to refer to another newspaper and to ask him whether the statement which I am about to make is borne out by the facts.

I have referred to the Power Trust offering $20,000,000 for the Cleveland Plain Dealer. That ought to shock the conscience of every progressive, patriotic citizen in the United States, but since the Senator from Massachusetts has interrupted me, I am reminded that in his city the testimony shows that $20,000,000, the same amount, was offered for the Boston Post. As I understand it—and this is what I want the Senator to correct me about if I am wrong—the Boston Post is one of the largest papers and perhaps has the largest circulation of any daily paper published in the United States. I would like to ask the Senator if that statement is true.

Mr. WALSH of Massachusetts. Mr. President, the Senator's statement is correct. The Boston Post at one time a few years ago had the largest circulation of any morning paper in the world, with the possible exception of a morning paper in Buenos Aires. It has to-day almost if not the largest circulation in the United States. In New England, of course, it lies first in circulation and is read daily by at least 2,000,000 readers. It is also an exceedingly prosperous and profitable financial enterprise. Its political and civic policies have been of an independent and courageous character. It has been very generally on the side of what I believe to be the general public welfare in its position upon the political questions of the day. It has been politically independent, supporting both Democratic and Republican candidates for public office. It has been like its owner—broad, tolerant, and uncontrolled by wealth, big business, or any particular political groups. Its influence with the people is perhaps as great if not more powerful than that of any other paper in New England. It is trusted and respected by millions of daily readers, extending from the great working classes to the business and professional classes. If it were possible to surreptitiously buy the Boston Post and take hold of the marvelous assets of public confidence that it has won for itself as an independent newspaper by standing for high civic ideals and prevent it being known that its property had come into the possession of predatory interest, not in the public interest, a good deal of havoc would be caused by such a sudden control.

Perhaps I have gone a little further than the Senator intended to ask me, but I want to repeat that what he has said about the size and value of the newspaper financially and as a channel of public information is true.

Mr. NORRIS. I thank the Senator again.

Mr. President, I want to digress here also to say that in this great struggle to control editorial and news policies in the country there are a large number of able newspapers, of which the Boston Post is one, who refused to sell to the special interests. To such newspapers we owe a debt of gratitude that I can not, and therefore will not, attempt to express in words. When the avenues of publicity of the country become contaminated with special interests, then the life of our very Republic is in danger. We can see the end if that time ever comes. It is to the everlasting credit of many of our newspapers that they have stood out so nobly and are standing out nobly against the aggression that is being made in that field. If I have time before I conclude I shall read some of the editorial expressions coming from papers of that kind.

The Power Trust tried to get the Cleveland Plain Dealer with $20,000,000, and were turned down. They tried to buy the Boston Post with another $20,000,000 and were refused. I have no knowledge as to the value of those papers, but with the ordinary individual, to comprehend just what $20,000,000 means requires the stretching of the imagination. But when we remember that those are only two instances, when we remember as I shall show later that they have men on the road traveling over the country to buy newspapers, that they have unlimited funds with which to do it, the danger point and the danger signal ought to be visible to every citizen of this great Republic.

Mr. DILL. Mr. President——

Mr. NORRIS. I yield to the Senator from Washington.

Mr. DILL. I want to add to the comment of the Senator from Massachusetts [Mr. WALSH] when he said that if the Power Trust were able to get control of the Boston Post without the public knowing it, great damage would be done. The fact is that even if the public did know, its damage would still be almost beyond estimate because of the great amount of money that it takes to start a newspaper and win its place in the community. I am wondering whether it will not become necessary even to limit the use of the mails to organizations that would create public opinion against the interests of the public, even though we do know the owners.

Mr. WALSH of Montana. Mr. President——

Mr. NORRIS. I yield to the Senator from Montana.

Mr. WALSH of Montana. The question addressed to the Senator from Nebraska by the Senator from Indiana [Mr. WATSON] reminded me that when the resolution was before the Senate which authorized the investigation to be conducted by the Federal Trade Commission resulting in these startling disclosures, the same cynical inquiry was made: What good is it to do anyway? What legislation is proposed? What is the power of the Senate legislatively in the premises anyway? All this, of course, was a part of the effort to defeat the inquiry and to retire the resolution. I would like to address an inquiry to the Senator from Indiana, were he on the floor at the moment, as to what he thinks about it now and whether it would be worth while.

Mr. BLACK. Mr. President——

Mr. NORRIS. I yield to the Senator from Alabama.

Mr. BLACK. I am very much interested in the discussion of the Senator and the apprehension with reference to the control of the channels of information. I desire not to call the Senator's attention, but simply to remind him at this point that the same influences which are seeking to control the press are also making an effort—it seems almost too successfully—to control the last great channel of public information, which is the radio. With the radio and the press in the hands of one influence, how will there be any possibility, if such a thing should ever occur, for the people to receive any information which is not poisoned by reason of the channels through which it flows?

Mr. NORRIS. I thank the Senator. The suggestion he has made is one which I shall probably speak of at great length before I conclude. The control of the press is the control of only one instrumentality, great as it is, so great that our forefathers provided in the Constitution what they supposed would give to the country forever a free press.

But the Power Trust, while spending hundreds of millions of dollars and offering hundreds of millions more, to buy newspapers and control the press, as I before stated, are engaged in various other activities in the attempt to control the sentiment not only of the present generation but to educate the school children so that when they grow up and have the responsibilities of citizenship placed upon their shoulders they will have the viewpoint of the trust. The trust commences at the craddle and goes on through life to the grave. Everywhere at every avenue the individual is beset with secret undertakings which are paid for by the Power Trust to influence and control the human mind and try to get possession of the entire natural resources of our country.

Mr. FLETCHER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Florida?

Mr. NORRIS. I yield to the Senator from Florida.

Mr. FLETCHER. The Senator from Nebraska may perhaps enlighten us a little as to whether or not these large expenditures for newspapers and for municipal and other power plants do not eventually come out of the public. They may be paid for now out of the funds of the Power Trust, but will they not be considered a part of their investment upon which they are entitled to return?

Mr. NORRIS. They certainly will.

Mr. FLETCHER. So eventually all these expenditures will come out of the public?

Mr. NORRIS. They all come out of the public as we go along; all of this money is coming out of the public.

Mr. FLETCHER. One other thought in that connection: Referring to the control of the means and methods of communication, I have been thinking that perhaps the doctrine of standardization may be going a little far in the direction of giving information to the public. For instance, the Secretary of State heretofore has set apart one or two days a week for receiving the correspondents of the newspapers of the country and giving them information as to foreign affairs. Those correspondents must rely mainly upon what is furnished them by the Secretary of State with reference to our foreign affairs. Then, once or twice a week, these correspondents are notified that they will be received at the White House, and there they are handed out information with reference to our domestic affairs, public policies, and all that. So what information they are getting is standardized as to foreign affairs by the State Department, and as to domestic affairs it is standardized by the White House. The correspondents furnish that information to the country. I am not saying that the information thus supplied may not be accurate and full, but it is certainly from one viewpoint, from the viewpoint of the administration. The information thus acquired goes out to the whole country through the newspaper correspondents, and is furnished to the people practically from those sources alone. I am not so sure but what this standardization of information may eventually lead to a standardization of thinking and that we shall all be thinking as we are told to think by the highest authorities.

Mr. NORRIS. Mr. President, at this point I wish to insert in the RECORD without reading, as time is rapidly passing, an editorial from the Springfield Republican, which is entitled "Power and the Press."

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

The editorial is as follows:

[From the Springfield Republican, Friday, April 12, 1929]

POWER AND THE PRESS

The mischief that might have been done to public interests has now been largely prevented by the public disclosure that the International Paper & Power Co. has acquired control of the Boston Herald and the Boston Traveler.

These are important newspapers, and the fact that certain power interests with great resources and financial backing control them ought to be known to the people of New England, for the people can hereafter be on their guard in reading these publications when public utility questions are given space in the news columns or are given editorial consideration. There is no law against the ownership of newspapers by power companies. The vice of such a situation is chiefly in secret ownership. Give the public the truth and it may be left to safeguard itself against insidious propaganda.

The public utilities have recently been exposed by the investigation of the Federal Trade Commission in efforts to shape the sentiment of the school children and college students of the country through propaganda literature specially prepared. The exposure has put a stop to the shameful business. Incidentally, the power interests were done more harm than good by this adventure in a field they are not chartered to occupy. What hurt them most in public esteem was the secrecy of their educational enterprise. After the exposure it was clear why the power interests had opposed so strenuously the investigation demanded by Congress.

Mr. NORRIS. I wish to read from the Boston Post, which has been referred to by the Senator from Massachusetts, an editorial in its issue of April 11, 1929. The editorial is entitled "A Bold Move by the Power Trust." An extract from it reads as follows:

* * * * * * * *

An independent, fearless press is the chief safeguard of the people's welfare and the people's rights.

One can not find a truer statement of that fundamental fact in the Bible itself. Every word of it is true, and the violation of that truth means in the end the destruction of human liberty. This editorial further states:

At a time when we are engaged in a nation-wide controversy over the wisdom of allowing the great power resources of the Nation to pass into the hands of huge combinations of capital and when the power companies are spending millions of dollars for propaganda in certain newspapers, colleges, and public schools, the Power Trust of New England States control two of our leading newspapers.

We submit that this constitutes a grave menace to the people of Massachusetts.

Farther on this editorial states:

The Power Trust is seeking favors from the people of Massachusetts. It is vitally interested in every bit of legislation concerning the electric power and light and gas industries. Yet it is not content with receiving a square deal from an independent press. It spends several million dollars to acquire control of two of the avenues by which news reaches the public and the voters form their opinions on questions affecting their welfare.

The boldness of this transaction is exceeded only by its capacity for harm, both to the citizens of Massachusetts and the honor of the newspaper business.

I also ask to insert in the RECORD at this point, without reading, a short editorial from the Worcester (Mass.) Post.

The PRESIDING OFFICER. Without objection, permission is granted.

The editorial referred to is as follows:

[From the Worcester (Mass.) Post]

All collections of paper and ink are not newspapers in the true sense of the word * * *. The newspaper which measures up to the standards of conscientious journalism is the newspaper which is an institution, which feels that its duty to the public comes before all else and will not permit any influence to turn it one inch from * * * honest public service.

Many other journals in the section where the transaction occurred express the same concern. That concern is natural, particularly among newspaper customers of the International, which may henceforth be suspected, though innocent, of being financed by the paper-power corporation because they buy of its output.

Mr. NORRIS. Mr. President, I now wish to read an extract from the Washington Herald of May 1, 1929:

* * * * * * * *

Its newspaper holdings, as Graustein revealed them in writing and in sworn testimony, are:

Ten thousand four hundred and twenty-eight shares of common stock in the Boston Herald and the Boston Traveler, acquired at a cost of approximately $5,380,000.

Four hundred and fifty thousand dollars preferred stock and 3,000 shares, or 30 per cent, of common stock of the Knickerbocker Press, of Albany, N. Y., and the Albany Evening News, both owned by Frank E. Gannett, of Rochester, N. Y.

I will show farther on that Mr. Gannett has repurchased his newspapers from the grip of the trust, and I will, before I conclude, quote something from Mr. Gannett himself.

One million nine hundred and fifty-four thousand dollars in notes and 400 shares of the common stock of the Brooklyn Daily Eagle Corporation, publishing the Brooklyn Daily Eagle, another unit in the Gannett chain, which was described as comprising 17 newspapers. The 400 shares represent 40 per cent of the common stock, according to Graustein.

A $300,000 "contingent interest" in Gannett's Ithaca Journal-News.

Two hundred and fifty thousand dollars' worth preferred stock and 5,000 shares of the common stock of the Chicago Daily News, representing 4.15 per cent and 1.25 per cent, respectively, of the outstanding stock of those classes.

One million dollars' worth of debentures and $600,000 preferred stock of the Bryan-Thomason Newspapers (Inc.), publishing the Chicago Journal, the Tampa (Fla.) Tribune, and the Greensboro (N. C.) Record. These securities, with 10,000 shares common stock of the Chicago Journal, were bought for $1,600,000.

Eight hundred and fifty-five thousand dollars in notes, representing an "advance" to Harold Hall and William Lavarre.

I put the figures as to that transaction into the RECORD a few moments ago, and will not repeat them now.

I wish to read, Mr. President, from an article in The Nation of May 15, 1929, on this subject, the article being written by Paul Y. Anderson, a recognized trustworthy newspaper correspondent of national reputation. He says:

I hope to be pardoned for displaying a slight cynicism toward the astonishment and horror which the newspaper editors and owners all over the country are now manifesting over the disclosure that the Power Trust has gone actively into the newspaper business by purchasing a tangible financial interest in 14 American daily papers. It is true that every believer in a free press is entitled to feelings of wrath and dismay over this vicious development. But it is impossible to forget that scores of the same editors who now fill the air with their solemn warnings and recriminations have for nearly a year consistently suppressed or "played down" the news of the Power Trust's efforts to form and control public opinion, as they were revealed by the Federal Trade Commission's investigation. Where was their righteous wrath when the public utility companies were insinuating their pamphlets into the public schools in the guise of textbooks? What ailed their indignation when colleges, universities, and professors were being subsidized or intimidated? Where was their vigilance when the propaganda of the power companies against public ownership was being accepted and reprinted in their own columns as original news and editorial matter?—

And so on.

Mr. President, we can not pause too long in Boston. We must proceed on our way, and so, after partaking of a luncheon of Boston baked beans and Boston brown bread, we hunt up our illustrious pilot, step into our flying machine, and fly across New England to Portland, Me. That is an interesting place for our investigation for a short time. Before we land in Portland we fly over the great State of Maine, which has been blessed by the Creator with some of the greatest natural facilities for human happiness and comfort that have ever been given to a people. With the streams flowing through that great State, with the potential power that can be developed there, it would be possible to light every home and turn every wheel in that great Commonwealth. Yet we find, Mr. President, that Maine, perhaps, is the most hard-ridden State by the Power Trust that there is in the Union. The control of the Power Trust is exercised in Maine, perhaps, to a greater extent than in any other State in the Republic. In the meantime Senator BINGHAM has landed us safely at Portland, and we are looking around over that great city, the metropolis of the State of Maine, one of the oldest cities in the Union. We find some interesting things about power. Here are some of the companies:

The Central Maine Power & Light Co., the Cumberland County Power & Light Co., the Androscoggin Power & Light Co., and the Western Maine Power & Light Co. are all owned by the New England Public Service Co.; and the New England Public Service Co. is owned by the National Electric Light Co.; and the National Electric Light Co. owns the Middle West Utilities Co. The Middle West Utilities Co. is owned by the Insull interests; and there you have it—pyramided, one corporation after another, one subsidiary beneath another subsidiary, one corporation swallowing another corporation; and the ordinary citizen, the ordinary Senator, the ordinary individual, is not able to determine who owns anything in Maine unless he goes to the top of the pyramid; and there sits Insull of Chicago.

We thought Mr. Insull handled Illinois at one time. He sent one of his hired men down here, and we refused to admit him, and the people of Illinois vindicated our action. But up in Maine, if you want to go into business, see Insull of Chicago. If you want to establish a newspaper, see Insull of Chicago. If you want to advertise in a newspaper, see Insull of Chicago. If you want to run for office, see Insull of Chicago.

Suppose you lived in Lewiston, Me., and you wanted to see who it was that was collecting from you money in payment for the electric light used in your home; how would you go about it? Well, Lewiston, Me.—one of the large cities—is supplied with electricity by the Lewiston & Auburn Electric Light Co.; and the Lewiston & Auburn Electric Light Co. is owned by the Androscoggin Electric Co.; and the Androscoggin Electric Co. is owned by the Androscoggin Corporation; and the Androscoggin Corporation is owned by the Central Maine Power Co.; and the Central Maine Power Co. is owned by the New England Public Service Co.; and the New England Public Service Co. is owned by the National Electric Power Co.; and the National Electric Power Co. is owned by the Middle West Utilities Co. That is Insull. We have come out at the same place here that we did before. On the top of the pyramid is Insull. And so through all these subsidiary corporations having offices and officials, all of the machinery of which must be oiled, all of the expenses of which must be paid, all living like parasites upon the poor consumer of Lewiston; and so you have it all over Maine.

In Portland, in particular, we have a new light on the newspaper situation. Until a year or two ago that great city had practically one newspaper. It had two names. It had a morning edition and an evening edition, but both were owned by the same outfit. So in that great city there was no opposition to that newspaper. It had a monopoly. I should think, regardless of a man's politics, regardless of his business associations, if he lived in Portland and wanted to see Portland prosper and its business interests go forward, he would have been glad to welcome to the city of Portland an opposition paper, provided only it was a high-class, honorable newspaper.

Things were in that condition when Doctor Gruening went into Portland and established the Portland Evening News, another newspaper. Doctor Gruening is a man of national reputation, known personally, I presume, by most Members of this body; a man whose standing in the literary world is without a blemish; a man of outstanding character and unquestioned ability. He established the Evening News, seeking to make a living in the newspaper business, and immediately there came a boycott of the Evening News in that city, where it would seem that there ought to have been and ought to be, for the good of the city itself, another newspaper. The story of the struggle of the Evening News reads like a romance—another place where the Power Trust existing in Maine, as I have outlined it here, used its wealth, its influence, and the old-established papers to try to browbeat and drive this man out of the newspaper field.

I am going to read, Mr. President, an extract on the Portland situation from The Nation of December 21, 1927. This article was written by Mr. Earl Sparling. He says, to begin with:

For two years Samuel Insull, the Chicago power and political magnate, has been battling in Maine for what is called the greatest water-power prize in New England. Mr. Insull did not start the quarrel. He only inherited it. But the voters of Maine, of whom there are still a few, are beginning to realize just what that means.

Farther on he says:

The Maine power fight actually started in 1909, but it gathered momentum after Mr. Insull began to buy up Maine power properties two years ago. Mr. Insull to-day controls companies reputed to own two-thirds of the State's total developed water power. And to-day the Republican Party in Maine is divided into two opposing camps. The fight for and against the primary has been one of the chief results of this split. * * *

A state-wide advertising campaign, in which thousands of dollars were spent, was opened the next year—

After a year that he refers to here—

by 16 associated power companies and large power users, the latter being paper companies directly interested in power development. The apparent purpose of the advertising campaign, according to Baxter, was to defeat reelection of himself and his associates and "thus forever end water-power discussion." From that day to this water power has been inextricably involved in Maine politics. * * *

The primary was saved mainly because of the efforts of Doctor Gruening's Evening News and of Brewster and Baxter. These two men stumped the State to save the primary. And the end is not yet. * * * "They seek," says Baxter, "to use our natural resources as a link in the great chain they are forging to control the electric industry from the Atlantic to the Mississippi, from the Canada line to the Ohio River."

I will show before I get through that Mr. Baxter has not taken in enough territory; that they go from the Atlantic to the Pacific and from the Lakes to the Gulf.

The methods used by the Insull interests have been disclosed in the United States senatorial primary in Illinois, in which, according to the newspapers, Mr. Insull admitted having expended upward of $125,000 to nominate his favorite.

A great deal of attention was attracted by this contest in Portland, by this effort to drive Mr. Gruening out of the field; and the editors or publishers of The New Republic sent a man up there to make an investigation, and he wrote the story after he had gone up there and looked it over. At this point in my address, Mr. President, I ask leave to insert this article, written by Mr. Silas Bent, and published in The New Republic of March 20, 1929.

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

The matter referred to is as follows:

[From the New Republic, March 20, 1929]

THE BATTLE OF PORTLAND

Placid, prudent, unresponsive Portland sits upon two hills beside her Maine harbor. She is near three centuries old and suffers a little, one suspects, from a sort of mental sclerosis. Thrice she has been well-nigh destroyed, once in a French and Indian raid, once in bombardment by an irate Revolutionary British sea captain, once by fire. She has survived, but adversity has made her cautious. She has grown slowly, with never a boom, for booms are foreign to her nature. And now, with but a thin sprinkling of alien blood, the descendants of early settlers look at their world with an aloof conservatism.

It is not to be expected, therefore, that Portland will wax excited over the fact that a significant journalistic struggle is being waged within her gates. It is the struggle of an independent voice to make itself heard and to survive. Until Dr. Ernest Gruening began printing the Evening News, less than two years ago, the newspapers there were dominated by Guy P. Gannett (not to be confused with Frank Gannett, of the Brooklyn Daily Eagle), whose father had founded the family fortune some 30 years ago by the establishment of Comfort, a magazine which now has a circulation of more than a million. Eight years ago the son consolidated the Portland Press and Herald, the surviving morning papers; in August, 1925, he bought the Evening Express and the Sunday Telegram; and he has made a great success financially as their editor and publisher.

Now, Mr. Gannett is not only a publisher; he is also a banker. He is vice president of the Fidelity Trust, of which his long-time friend and business associate, Walter S. Wyman, is president. Mr. Wyman is the personal representative in Maine of Samuel Insull; the Fidelity is recognized as a "power trust" bank; and the Insulls control all Maine's electric and hydroelectric production, save one small company. Their grip on the State is as tight as on any in the Union, and they take an acute interest in its political as well as its economic life. Mr. Gannett sold his common stock in the Central Maine Power Co. to Samuel Insull, but still retains preferred stock in it.

Prior to the advent of the Evening News the Portland papers were "Power Trust" papers. I do not mean by this that Mr. Insull owned stock in them. They are owned by Mr. Gannett, his family, and some employees. But Mr. Gannett's social and business connections are such as to make it inevitable that he should sympathize deeply with the Insull plans and aspirations.

The establishment of the Evening News meant cleavage at this important point. The paper dissents from Gannett views on many other questions, but this is paramount; for Ernest Gruening's distinguished record as a liberal of courage is incompatible with Power Trust ideals. He launched at once, editorially, into a candid discussion of Mr. Insull's attempt to buy a seat in the United States Senate for his man, Frank L. Smith; and he greeted the Senate's rejection of Smith with a militant voice of rejoicing. He has exposed the machinations of the power interests at every turn. In Maine an outstanding political issue is whether power shall be exported by the State. This is now forbidden by law, and Mr. Gruening opposes attempts to repeal the law because he believes that once the Insulls tap the rich Boston market they will be even less considerate of Maine consumers than now. The Gannett papers consistently favor export.

The most disagreeable thing Mr. Gruening did, from the standpoint of his adversaries, was to investigate and reveal in his paper the structure of the power interests in Maine, with four tiers of holding, investment, and finance corporations superimposed on the producing companies. The Maine consumer pays not only a merited dividend on the securities of the producer, but also on the securities of all these successive upper layers. The situation is not unique. Raushenbush and Laidler, in Power Control, devote a chapter to this system, whereby authority is concentrated in a few hands at the top. But at any rate, so far as Maine went, Mr. Gruening was impudently anticipating the Federal Trade Commission at Washington, which had been preoccupied with the activities of the "million-dollar lobby," and with the costly utilities propaganda in the daily press, the public schools, and the colleges. (Walter Wyman accepted recently the vice chairmanship of a committee to raise funds for the development of Colby College at Waterville. "It was here," said the Waterville Morning Sentinel, "that his first big business, the Central Maine Power Co., got its start, and here he won his spurs as one of the great industrial builders of the country.")

Mr. Gruening's unsparing analysis shows that the Central Maine Power Co. pays interest on seven varieties of bonds, and dividends on three preferred stocks, two at 6 per cent and one at 7; and that after all this it was able recently to announce a surplus for dividend on its common stock at 19½ per cent. Space forbids my going into his outline of the overlying holding companies and their structure. It is enough to say that he believes power and light could be sold profitably for domestic purposes in Maine at about a cent and a half per kilowatt-hour, instead of at the present excessive rates (rural electrification is almost unknown, and the lot of the farmer the harder thereby); and that he would give the Maine Public Utilities Commission arms and eyes and teeth, so that it could get at the facts instead of accepting passively such reports as are handed to it.

It is not difficult to perceive that publications such as these in the metropolis of the State might prove irritating to the Insulls and their associates. Mr. Gruening charges that through personal influence and banking pressure they have dissuaded the principal merchants—in particular some big department stores—from advertising in the Evening News. In the sense that boycott means "to refrain from the use of; to keep aloof," his charge is unquestionably true; in the usually accepted sense of a conspiracy or conscious combination, clinching proof of a boycott, as might be expected, is lacking. Taxi drivers with whom I talked, soda clerks, a haberdashery salesman, a barber, cigarette salesmen, all without exception told me there was a boycott. Merchants emphatically denied it, declaring that their reason for staying out of the Evening News was wholly economic. They could cover their field, they said, with the Gannett papers—which require that every advertisement shall be placed in both the morning and afternoon issues.

Robert Braun, treasurer of the Porteus, Mitchell & Braun Co., is chief executive of the largest advertiser in Portland, and one of the "boycotters" of the News. He is a power company director and a director of the Fidelity Trust, although his firm does not carry an account there. On November 7, last, he wrote to the News:

"You have charged that five department stores not using your advertising columns were engaged in a boycott of the News. You have also stated that you have incontrovertible evidence of the existence of such a boycott.

"We assume that we are one of the five department stores referred to in this most serious charge.

"We herewith declare your statements, in so far as we are concerned, are absolutely false.

"This immediately raises the question of veracity.

"While we have no intention of engaging in a newspaper controversy or making any further statement beyond the one we now make, we are most anxious that the truth be established beyond any question of doubt in the mind of reasonable persons, and that at the earliest possible moment.

"As a means to that end we ask the Evening News to join us in requesting the Hon. Scott Wilson, chief justice of the Supreme Judicial Court of the State of Maine, to select some person to act in the capacity of referee whose duty it shall be to pass upon this question and to make a decision as to the truth or falsity of these charges.

"Please give this the same publicity as the prior communications which have appeared in your paper."

Mr. Gruening did give it ample publicity. He ran it at the top of his editorial column. And he answered it, standing upon the first definition of boycott which I have quoted. It is possible, although he did not say this to me, that some of the "incontrovertible evidence" he has in hand could not be made public without embarrassment to his advertisers. He has charged openly, for example, that the Fidelity Trust called the notes of a merchant when he began advertising in the News, but he is not at liberty to name this man.

Mr. Gannett, as vice president of the Fidelity, denies this charge with vehemence. He does not deny that Mr. Gruening made it in good faith, but says he believes the editor has been imposed upon. As for Mr. Braun, he has refused to say anything for publication since writing his letter. The position which he and other large advertisers take is that, although readers may prefer the Evening News to the Express, they still read a Gannett paper, the Press-Herald, of a morning, thus covering their field. The Express has a circulation of 25,000, the combined Gannett daily circulation being about 62,000. The Evening News is soliciting advertising on the basis of 15,000, with the guaranty of a rebate if the forthcoming Audit Bureau of Circulation report does not show that figure. On that basis unquestionably its rate is very moderate. Portland has a population of 75,000 persons, but a trading area of 150,000.

This city, the largest in Maine, is unable to support opposing papers either in the morning or afternoon field, Mr. Gannett told me. I retorted that my town in Kentucky, with 15,000 population, had supported for years two healthy afternoon papers. Mr. Gannett was unmoved. He insisted that under modern conditions economic management required that in a city the size of Portland the daily press should be under a single management. The competition of the Evening News has not cut in either on his circulation or his advertising.

To the contrary, both have greatly increased. His papers are prospering. One might suppose he would welcome the newcomer. Certainly his afternoon paper has been greatly improved in content since the Evening News made its appearance.

Mr. Gruening charges that advertisers who do not use the Evening News get preferred position in Mr. Gannett's papers. This Mr. Gannett does not deny.

Editor and Publisher, an outspoken trade publication, has declared this to be "the ugliest situation we have noted on the newspaper map of the United States in a long time." The editorial in which this statement was made dealt with the utilities boycott; and Mr. Gruening has printed the statement, made to one of his solicitors, of a representative of the Cumberland County Power & Light Co. as follows:

"I am extremely sorry, but my orders are not to give the Portland Evening News a line of advertising. I got those orders from Mr. Gordon. Mr. Gordon gets his orders from Mr. Wyman. Mr. Wyman gets his orders from Mr. Insull. Go to Chicago."

The situation has both its heartening and its amusing aspects. The Evening News has printed scores of indignant letters from its readers, declaring themselves "shocked and amazed" at the boycott, and asserting that the coming of the News was a "godsend." (Any advertiser might well take into consideration that sort of reader-loyalty, built up in a single year—for Mr. Gruening did not make his boycott charge until he had been publishing a year. Loyal readers make a good market; and readers of the Evening News are now proposing a counterboycott against the merchants who do not use that paper.) And there was the case of A. Clifton Getchell. He wrote a letter, extremely derogatory of the News, but gave only a post-office box number; Mr. Gruening demanded that he identify himself before publication of his letter. He did not come forward, so Mr. Gruening printed it anyhow, and answered it. Then a great mystery developed as to who A. Clifton Getchell might be. Could this be the alias of a Power Trust propagandist. A reader suggested that a $25 reward be offered for Mr. Getchell "dead or alive." This the News gravely did. Another thought the reward should be increased to $250, another that 25 cents was a plenty for a man of that caliber. To this day A. Clifton Getchell remains a mystery, discussed with sarcasm and hilarity by many residents of Portland.

One may suppose that the editors of the Gannett papers observed these carryings-on with a certain disquiet. If so, they gave no sign. The Evening News has never been mentioned in their columns, not even when violently assailed in court by the lawyer for a policeman under charges for protecting a disreputable tavern; the charges arose from an Evening News exposé. The Gannett papers had said nothing of these dives, where lumberjacks and sailors are debauched and despoiled.

Yet I would not have you think that Mr. Gannett is a spineless publisher. He once printed, and replied to, a letter from a political candidate who threatened reprisals because the Gannett papers were publishing news about Democratic candidates. And on another occasion, when the son of one of his large advertisers got into trouble, pressure was brought to bear on him to suppress the story. He had no competition then, and if he had consented the story would have been buried. His papers printed the original story and the developments under 8-column banner lines on the first page. If anything, they overplayed it.

There was another occasion worth noting. The fact that the mysterious Continental bonds in the Teapot Dome scandal had been traced at last to Will H. Hays and the Republican National Committee "broke" on February 11, 1928, a Saturday. The Evening News gave the story a great play; the Express ignored it. The next day Mr. Gannett's Sunday Telegram printed an Associated Press story about the Senate committee hearing, but limited it to John D. Rockefeller's statement and the refusal of Colonel Stewart, of the Standard Oil of Indiana, to testify. Not one word about the tracing of the Continental bonds to the Republican National Committee.

Mr. Gannett is a great friend of Will Hays and a former member of the committee. Mrs. Gannett is now a member of it.

Those who read only the Gannett papers may be in ignorance even now of that sinister development in the oil scandal. One begins to perceive the uses of an independent opposition press.

Portland's first newspaper was founded 144 years ago, soon after the town took its present name. At the turn of the last century there were five dailies, three Sunday papers, and several weeklies. Then through mergers and consolidations the daily press shrank into a single management. The same process is going on all over this country, and is one of the most disquieting facts about modern journalism. In 937 cities there is but one newspaper; in scores of cities, such as Springfield, Mass., Rochester, N. Y., and Wilmington, Del., the daily press is in the hands of one person or one family.

The evils inherent in such a situation are manifest. Not only is the selection of news subject to a single interest but there is the possibility of coloring, suppression, or distortion. Editorials know but a single tone. The individual who would voice an opinion in a letter to the editor or from the platform is under the tyranny of a single judgment or whim.

For this deplorable situation the advertiser has been quite as much to blame as the publishers' merger impulse. The advertiser would prefer to cover his market with a single appropriation if he could. This must be taken into consideration in the Portland situation. Undoubtedly there were merchants who resented the presence of a newcomer. If they thought selfishly of nothing but advertising appropriations and not at all of the community's welfare, they may have thought kindly of a boycott. They may have undertaken to label Mr. Gruening—whose management of Robert M. La Follette's presidential publicity campaign is a damning fact in Portland—as a Bolshevist. This tag is a recognized and publicly proclaimed part of the Power Trust propaganda technique, but the power interests have no monopoly of it.

On the train returning from Portland I noted that a man in the smoking compartment was reading the Boston Evening Transcript. I always wonder why anyone reads the Transcript, and so I asked him. Thus we fell into a long and pleasant conversation. The man proved to be a Portlander, a director of the Fidelity Trust, and a friend of the power interests. He scoffed at the notion of an organized boycott against the Evening News.

"And yet I must say," he added, "that the power people have shown very little finesse in fighting the paper. There is the case of the Augusta House, in Augusta. Walter Wyman is the controlling stockholder in that hotel, and he bars the Evening News from the lobby. The only effect is to make people wonder what the News is printing that Wyman doesn't like, so they go outside and buy it." He shook his head, "Very poor finesse!"

SILAS BENT.

Mr. NORRIS. I desire to read, for the benefit of the Senate, a few extracts from Mr. Bent's article. He says:

Until Dr. Ernest Gruening began printing the Evening News, less than two years ago, the newspapers there were dominated by Guy P. Gannett (not to be confused with Frank Gannett, of the Brooklyn Daily Eagle), whose father had founded the family fortune some 30 years ago by the establishment of Comfort, a magazine which now has a circulation of more than a million. Eight years ago the son consolidated the Portland Press and Herald, the surviving morning papers; in August, 1925, he bought the Evening Express and the Sunday Telegram; and he has made a great success financially as their editor and publisher.

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The establishment of the Evening News meant cleavage at this important point. The paper dissents from Gannett's views on many other questions, but this is paramount; for Ernest Gruening's distinguished record as a liberal of courage is incompatible with Power Trust ideals. He launched at once, editorially, into a candid discussion of Insull's attempt to buy a seat in the United States Senate for his man Frank L. Smith, and he greeted the Senate's rejection of Smith with a militant voice of rejoicing. He has exposed the machinations of the power interests at every turn.

* * * * * * *

Mr. Gruening's unsparing analysis shows that the Central Maine Power Co. pays interest on seven varieties of bonds, and dividends on three preferred stocks, two at 6 per cent and one at 7; and that after all this it was able recently to announce a surplus for dividend on its common stock of 19½ per cent.

Let us pause to consider that for a moment. After oiling all the machinery of the various companies, piled one on top of the other almost mountain high, after paying all of the expenses connected with the propaganda which has been going on and which has been exposed here, they paid to the holders of the common stock 19½ per cent.

Mr. President, in the State of Maine there ought to be no home paying more than 2 cents a kilowatt-hour for electricity, just the cost of a line over into Ontario from that State. On the average the domestic consumers are getting their electricity for less than 2 cents a kilowatt-hour. But this concern, with its

tentacles reaching out into every home in the State of Maine, practically, gathering in every city and every village, piling one subsidiary on top of another, paying its share of the expenses of the propaganda, of hundreds of millions of dollars that have been invested in methods of deceiving the people in all other activities—after paying all that, they still paid a dividend of 19½ per cent.

Electricity is made from the natural resources of the country, is developed, handled, and distributed by a corporation that is given the power of eminent domain, that could not exist if it were not for the right given to it by the people, and yet that corporation is charging the people of that great State such an enormous profit that they were able, after paying all these expenses, to pay a dividend of 19½ per cent on the common stock.

It is an outrage, Mr. President; it is a condition of things which, if understood by the people of Maine, would cause them to rise in their might and overthrow this monster which has its chains, almost of human slavery, bound around their limbs. Yet when Gruening comes there, when Gruening establishes the Evening News to give the people the truth, to tell them how they are being deceived, this same Power Trust boycotts him, as I shall show later, tries to drive him out with that weapon known as the boycott, a thing whose very name bears with it a hideous sound and a hideous meaning. He is only trying to earn an honest living in an honest business, in telling the people of Maine the truth, but the trust is attempting to drive him off the face of the earth because they can not control him.

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

Mr. NORRIS. I yield.

Mr. KING. Will the Senator tell us further, before he leaves Doctor Gruening, that they have prohibited him from selling his papers in the hotels there?

Mr. NORRIS. I will mention that in a few minutes.

Mr. KING. I shall not intrude on the Senator.

Mr. NORRIS. I will read further from this article from Mr. Bent:

> It is not difficult to perceive that publications such as these in the metropolis of the State—

He is speaking of the Evening News—

> might prove irritating to the Insulls and their associates. Mr. Gruening charges that through personal influence and banking pressure they have dissuaded the principal merchants—in particular some big department stores—from advertising in the Evening News.

Mr. President, I hope the Federal Trade Commission will go into that. That statement, of course, is denied, but Senators will recognize how difficult it is to prove such a thing. From what I have learned about the matter, I think the proof exists that they went even further than that, that the connections of the trust, through its banking institutions, have called notes against business men who refused to follow their advice and decline to advertise in the Evening News. I read further:

> Mr. Gruening has printed the statement, made to one of his solicitors, of a representative of the Cumberland County Power & Light Co., as follows—

Before I read that quotation let me call attention to the fact that the Cumberland County Power & Light Co. is one of these companies whose names I have read, which is owned, through several subsidiaries, by Mr. Insull, so that it is Insull's company. One could not find a company up there that was not Insull's company. Mr. Gruening, like every enterprising newspaper man, sent his representative to this power company to get some advertising, and this is what the representative of the company told him:

> I am extremely sorry, but my orders are not to give the Portland Evening News a line of advertising. I got those orders from Mr. Gordon. Mr. Gordon gets his orders from Mr. Wyman. Mr. Wyman gets his orders from Mr. Insull. Go to Chicago.

That is the answer.

Mr. WALSH of Massachusetts. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. WALSH of Massachusetts. Has the Senator brought out the opinion of the Portland Evening News as a newspaper?

Mr. NORRIS. Yes; I think I have.

Mr. WALSH of Massachusetts. The Senator has already gone into that?

Mr. NORRIS. Yes.

Mr. WALSH of Massachusetts. That it has been independent politically?

Mr. NORRIS. Yes.

Mr. WALSH of Massachusetts. And has been independent of any financial interest?

Mr. NORRIS. Absolutely.

Mr. WALSH of Massachusetts. And has appeared to be a champion of the public interest on public questions?

Mr. NORRIS. I have no doubt of it. That is perfectly evident.

Mr. WALSH of Massachusetts. That is my judgment.

Mr. NORRIS. The Senator from Utah [Mr. KING] interrupted me a while ago——

Mr. WALSH of Massachusetts. I might say that, so far as I know, the Portland Evening News is the only paper in Maine of that type and character.

Mr. NORRIS. Yes; Insull owns the papers of Maine. The capital of Maine is Augusta. This man Wyman, vice president of one of these power companies connected with the Insull group, the group that controls the papers in that State, owns the largest hotel in Augusta, the capital of the State. Not only have the power interests boycotted the News by refusing to advertise or let anybody else they can control advertise in its columns, but this man Wyman, who owns the largest hotel in Augusta, will not permit the Evening News to be sold by a newsboy in the lobby of his hotel. That is the matter about which the Senator from Utah was inquiring.

Mr. KING. That is the matter to which I referred.

Mr. NORRIS. I do not know how a boycott could be carried further. There is not a place where Mr. Gruening can lay his weary head in the State of Maine where he does not come in contact with the Power Trust, with the Insull interests of Maine; and there is only one way for him to live in that State, and that is by a surrender of his convictions, a discontinuance of the issuing of that paper, of the fight that he is making in behalf of honest government. He has exposed the things to which I have referred, as every honest newspaper ought to do. As far as I know, his is the only paper in Maine that has exposed them. This Power Trust not only compels the advertisers over whom they hold their financial grip to refrain from advertising in the Gruening paper, but they refuse, through their ownership even of hotels, to permit little newsboys to come into the lobby of the hotels and sell that paper.

Mr. KING. Mr. President, will the Senator permit an interruption?

Mr. NORRIS. I yield.

Mr. KING. Perhaps this is not germane to the question the Senator is discussing, but I would like to have his permission to pay tribute to Doctor Gruening, whom I have known for many years. He is a courageous, indefatiguable worker. He is a liberal in the sense that he believes in democracy and in the principles of democracy. He is not bound by any party. He speaks the truth. As a journalist, he has always sought the truth, and has sought to present the truth to the people. I am familiar in part with the opposition which he has encountered in Maine. It is intolerable in a free country, and I am amazed that the State of Maine, with its fine history, with the splendid men who have in the past brought luster to that State, and who bring luster to that State at present, should permit corporations to do as this corporation is doing, injecting itself into the affairs of the State, dominating the public, and acting in such an arbitrary and ruthless manner as this corporation is acting in that State.

Mr. WALSH of Massachusetts. Mr. President, will the Senator yield again?

Mr. NORRIS. I yield.

Mr. WALSH of Massachusetts. Will the Senator permit me to express my approval of and agreement with the statement of the Senator from Utah in respect of Doctor Gruening? He is in every sense of the word a liberal, independent-thinking, high-class newspaper man, and in my judgment has been and is rendering a great public service by the type of newspaper he is printing and editing in the State of Maine.

Mr. NORRIS. Mr. President, of course the testimony of these Senators could be corroborated without limit. Everybody who has known Mr. Gruening, either by reputation or in person, knows that what the Senators have said is true. It is not necessary to agree with Mr. Gruening's ideas in order to have great admiration for his courage, his ability, and his honor. He went into that power-ridden State alone and unarmed, into the city of Portland, to establish a newspaper, and every newspaper man who had investigated would have said there was an opening for an opposition paper in that metropolis of that great State, with only one idea emanating from its morning and its evening papers, owned, edited, and published by the same men; and because Mr. Gruening committed the sin of going in to establish an opposition paper, he has that kind of a fight for the two or three years he has been there to which I have referred, and it is still going on. Every possible influence which ingenuity and the power of money could devise has been brought to bear to drive that man out of the newspaper business.

The Power Trust engaged in the newspaper business, the Power Trust not only buying newspapers but boycotting newspapers that it can not buy and that are not for sale! That is the story in Portland. That is the story of the situation there.

Mr. WALSH of Massachusetts. Mr. President——

Mr. NORRIS. I yield.

Mr. WALSH of Massachusetts. Has the Senator also developed the fact that the Portland Evening News is a Republican newspaper which invariably supports Republican candidates and that the sin it is committing is that it shows independent Republican tendencies and liberal views?

Mr. NORRIS. I had not brought that out, but it is all true.

Mr. WALSH of Massachusetts. It is not a Democratic newspaper in any sense.

Mr. NORRIS. Oh, no. I believe I obtained permission to publish this article in full in the RECORD.

The PRESIDING OFFICER. Permission was granted.

Mr. NORRIS. In the newspaper fraternity, their bible, as I understand it—and there are newspaper men who are doing me the honor of listening to what I say, and if I am wrong I would like to be corrected—is the Editor and Publisher, a trade journal that goes to practically all the newspapers in the United States. It does not engage in newspaper controversies. It has no politics. It is a business institution. It has ever and always defended the honor of the newspaper profession. It has high ideals as to how newspapers should be conducted. Where there is a controversy in a city between two newspapers, it does not participate, and it never mixes in anything of the kind unless it gets so rank that, for the honor and the dignity of the newspaper profession, it deems it necessary to take part.

It took up the Portland situation in an editorial, and I want to read to the Senate what was said in that editorial in the Editor and Publisher. The article is headed Utilities and the Press, and I read as follows:

In our opinion a newspaper does right to carry its case to its readers when it has proof that it is being discriminated against, boycotted by advertisers, under duress of financial powers, because of free exercise of its right to inform readers of public affairs. No other course is open to the honest publisher and editor. Candor concerning a newspaper's affairs on equal terms with those of the affairs of banks, department stores, hotels, railroads, utilities, and other businesses dependent on public support is due the readers. And if the case is just and conduct of the newspaper fair, the policy will win in the long run. It is characteristic of the American citizen to respond to such candor.

Later on it is said:

The Portland situation possesses certain earmarks which unmistakably point to unfair, even despicable, methods to kill a newspaper enterprise. It is no heavy draft on imagination to see the hand of Insull in the picture, even if the News did not openly charge it. For Insull's trusted press agent, Bernard J. Mullaney, of Chicago, has distinct notions about how a recalcitrant newspaper can be brought into line for a public-service corporation. We quote from the testimony adduced by the Federal Trade Commission, with Mullaney credited as the sponsor:

Here is Mr. Mullaney's testimony, which they quoted:

We are trying to promulgate the idea rapidly among the newspapers that public utilities offer a very fertile field for developing regular, prompt-paying customers of their advertising columns. When that idea penetrates the United States, unless human nature has changed, we will have less trouble with the newspapers than we had in the past.

That is the end of the quotation. Now continues the editorial comment of the Editor and Publisher:

That statement has been in the nostrils of newspaper men now for more than a year. The one who is said to have uttered it would, we can well believe, take a similarly sinister attitude toward a newspaper engaged in printing adverse stories and editorials about Insull's power rates in Maine. The knife would turn both ways.

Honest newspaper men everywhere will watch this Portland fight with keen interest, for a great principle is at stake there. It transcends in importance any mere natural rivalry between old established newspapers that want to hold the field to themselves and a newcomer. The advertising system is and must be the foundation rock upon which a newspaper is built. To use it to intimidate truth is as wicked and cowardly a perversion of journalism as has been devised. American newspaper men will not tolerate it.

I ask permission to publish the entire article at this point in my remarks.

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

The article is as follows:

[From the Editor and Publisher The Fourth Estate for February 23, 1929]

UTILITIES AND THE PRESS

In our opinion a newspaper does right to carry its case to its readers when it has proof that it is being discriminated against, boycotted by advertisers, under duress of financial powers, because of free exercise of its right to inform readers of public affairs. No other course is open to the honest publisher and editor. Candor concerning a newspaper's affairs, on equal terms with those of the affairs of banks, department stores, hotels, railroads, utilities, and other businesses dependent on public support, is due the reader. And if the case is just, and conduct of the newspaper fair, the policy will win in the long run. It is characteristic of the American citizen to respond to such candor.

The ugliest situation we have noted on the newspaper map of the United States in a long time is reported from Portland, Me., where Dr. Ernest Gruening and his associates of the Evening News have carried their case of alleged advertising boycott and bank and Insull utility oppression to readers, demanding a show-down. Doctor Gruening writes editorials, couched in direct but courteous terms, frankly telling the people what he is up against. He charges that an advertiser was informed by an official of a local bank that if he used the Evening News for his public announcements the bank would call his notes—indeed, that the advertiser refused to be bullied and the notes were called. If this is not true, the bank might jolly well sue the News for libel, since it can easily be judged that this charge would not sit very happily in the minds of honest citizens. It has not sued. The editor says the head of a large department store refused to use his paper, though he took space in many other papers over the State, because the merchant is a director of the same bank which represents Insull in Maine. Doctor Gruening has been critical of Insull utilities on the ground of alleged excessive rates and financial manipulation. Newspaper men of the country will easily catch the significance of the remark of one advertiser of Portland that he would not permit Doctor Gruening to "black jack" him into advertising in a paper which he did not believe would pay out, though that newspaper has a rate which seems reasonable to us and a circulation which we regard as sizable for the community, since it has been developed from a scratch line in less than two years.

The Portland situation possesses certain earmarks which unmistakably point to unfair, even despicable methods to kill a newspaper enterprise. It is no heavy draft on imagination to see the hand of Insull in the picture, even if the News did not openly charge it. For Insull's trusted press agent, Bernard J. Mullaney, of Chicago, has distinct notions about how a recalcitrant newspaper can be brought into line for a public service corporation. We quote from testimony adduced by the Federal Trade Commission, with Mullaney credited as the sponsor:

"We are trying to promulgate the idea rapidly among the newspapers that public utilities offer a very fertile field for developing regular, prompt-paying customers of their advertising columns. When that idea penetrates the United States, unless human nature has changed, we will have less trouble with the newspapers than we had in the past."

That statement has been in the nostrils of newspaper men now for more than a year. The one who is said to have uttered it would, we can well believe, take a similarly sinister attitude toward a newspaper engaged in printing adverse stories and editorials about Insull power rates in Maine. The knife would turn both ways.

Honest newspaper men everywhere will watch this Portland fight with keen interest, for a great principle is at stake there. It transcends in importance any mere natural rivalry between old-established newspapers that want to hold the field to themselves and a newcomer. The advertising system is and must be the foundation rock upon which a newspaper is built. To use it to intimidate truth is as wicked and cowardly a perversion of journalism as has been devised. American newspaper men will not tolerate it.

Mr. NORRIS. Mr. President, time passes and we can not remain in Portland any longer if we are to make the stops that we have scheduled to make; so we get back into our machine with the eminent specialist at the helm and we start for the city of New York. As we are going along over the country between Portland, Me., and New York, we must necessarily pass over the great State of Connecticut, and as our pilot looks down upon the fertile valleys and fields and prosperous cities of that great State, which he is so ably representing in this body, he becomes homesick. I do not know but what he is a little disgusted with some of us anyway on this trip and whether he is in full sympathy with what we are doing at these various places. Anyway he makes up his mind that he wants to stop off and so, being so courteous that he does not want to interfere with the rest of us going on with the trip, he dons his parachute and gracefully jumps overboard and descends to earth. We watch him as he goes down gracefully, and when he lands, showing that he is uninjured, he waves his hand to us

in farewell and we leave him with his home people, and with a new and much less experienced pilot we pass on to the great financial center of the world.

Mr. McKELLAR. Mr. President, may I ask the Senator if he and his party converted their pilot?

Mr. NORRIS. Oh, no. Our pilot was there simply to conduct the party. I am not claiming that he was in sympathy with the object we had in view in making the inspection trip.

Mr. CARAWAY. Did you not carry a parachute?

Mr. NORRIS. Yes; we carried a parachute, and in this case it was used. [Laughter.]

We have not any particular object in stopping in New York City, except to get a glimpse of the financial headquarters of the world and to get a little more gas and oil and something to eat. While our new pilot is fixing up and getting ready to continue the trip, I want to read to the Senate the simple announcement of what is an ordinary occurrence in the great city of New York. The article from which I am going to read is under a New York date line of April 23 and is speaking of a holding company.

I told you something about the holding companies up in Maine. There are other holding companies. A holding company is a popular thing. If you own a corporation and it is not owned by a corporation, and that corporation is not owned by still another one, and if those corporations do not own seven or eight more, and all in turn are owned by a dozen other corporations, you are not in the corporation business to-day. You have no idea how the Power Trust conducts its business. I now read from the article to which I have referred:

A new holding company, United Power, Gas & Water Corporation, has been organized to acquire not less than 79 per cent of the outstanding class B stock of Federal Water Service Corporations and all of the outstanding class B stock of Peoples Light & Power Corporation it was announced to-day. The new concern will thus own the controlling voting interest in both of those corporations, whose subsidiaries show annual gross earnings of over $22,000,000 and combined assets of approximately $200,000,000.

Let us see how easy it is just to visualize the whole thing:

Through their respective constituent corporations Federal Water Power Service Corporation and Peoples Light & Power Corporation supply electric light and power, artificial and natural gas, and water service in territories having a total estimated population in excess of 2,800,000.

Besides this diversification of public-utility service the various operating subsidiaries of these corporations are located in 21 States and include Great Mountain Power Corporation, New York Water Service Corporation, Alabama Water Service Co., California Water Service Co., Scranton Spring Brake Water Service Co., Arizona Edison Co., West Virginia Power Service Co., and Wisconsin Hydroelectric Co.

Those are the subsidiaries, and one owns the other. The big fish swallows the little fish, and the little fish find that the big fish has swallowed a lot more little fish, and they commence within the belly of the big fish to swallow each other, and it goes on without end. The man who controls the holding corporation, who controls the topstone of the pyramid, controls the whole thing. The people all the way down through are furnishing the sinews of war and the money that is used to deceive them. They are paying for their own deception. They are paying for their own undoing. As was shown in Maine, after all this machinery has been oiled, the stockholders even made a profit in one year of 19.5 per cent.

This article states:

Upon completion of financing to be undertaken in the near future, the oustanding capitalization of United Power Gas & Water Corporation will consist of $4,000,000 5 per cent convertible gold debentures, series due May 1, 1979; 45,000 shares no par value preferred stock, $3 series, with common-stock purchase privilege; and 100,000 shares of no par common stock.

Present financial requirements of the new company have been underwritten by G. L. Ohrstrom & Co. (Inc.)—

That, I think, will be found on investigation to be an Insull company—

and a nation-wide group, and rights to purchase United Power Gas & Water Corporation's common stock have been issued to common-stock holders of Federal Water Service Corporation and People's Light & Power Corporation, while rights to purchase its preferred stock have been given to the holders of preferred stocks of these two companies.

That is just as "plain as mud"; everybody understands it. In order to find to whom one is really paying one's electric-light bill he would have to employ a technical lawyer, and he would have to employ also a lot of technical experts to assist him. Then the chances would be that he would never find the end. That only illustrates, while we are stopping in New York, how these things are handled.

Here is another newspaper item:

UTILITY ISSUES RISE; BIG DEALS ON WAY—SHARES OF PRACTICALLY ALL LEADING COMPANIES ARE IN DEMAND ON EXCHANGES HERE—ALLIED AND UNITED ACTIVE—THEIR NEGOTIATIONS ARE CLOSELY WATCHED BY TRADERS—TRANSIT AND COMMUNICATIONS STOCKS UP

What Wall Street regarded as unmistakable signs of the early conclusions of several public-utility mergers or affiliations of the highest importance brought about a general demand for public-utility shares yesterday, with the result that the common stocks of the leading holding companies rose 2 to 5 points in active trading, the strength in this group stimulating a general recovery of the rest of the market—

And so on. That is from the New York Times of April 12, 1929.

These great combinations when they form new holding companies always bring about a "bulling" of the market, involving profits of millions and millions of dollars without the production of a single thing.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER (Mr. CUTTING in the chair). Does the Senator from Nebraska yield to the Senator from Tennessee?

Mr. NORRIS. I yield.

Mr. McKELLAR. Can the Senator from Nebraska give us any information as to whether or not the Federal Trade Commission, in making this investigation, is going to ascertain the names of all the newspapers in the land that are owned or controlled, in whole or in part, by power companies?

Mr. NORRIS. I can not. I have no idea that the commission will ever find out all of them; I do not expect that they will get all the information that it is possible to get.

Mr. McKELLAR. But the Senator thinks that the commission is going to make a very thorough investigation of that question?

Mr. NORRIS. Yes; I think so.

Mr. McKELLAR. I hope it will.

Mr. NORRIS. Mr. President, from an Associated Press dispatch of April 25, reporting action taken by the American Newspaper Association assembled in national convention in New York, I learn that the American Newspaper Association had called to their attention the purchase of the two Boston newspapers by the Power Trust. I will read the news item:

NEW YORK, April 25.—Election of officers and a refusal to adopt a resolution censuring the International Paper Co. for buying up interests in newspapers occupied the American Newspaper Association convention here to-day.

All of the present officers were reelected, including the four directors whose terms expired.

I will omit some of that.

Col. Robert Ewing, of the New Orleans States, launched an attack on the International Paper Co. at this morning's session and introduced a resolution condemning "any paper or power company for buying interests in newspapers." The resolution was amended to include "public utilities, banks, and other outside business interests," but was tabled without a vote.

It was the opinion of the publishers that the invasion of the newspaper field by newsprint companies was a matter for the Federal Government to investigate. Simultaneously with this action an announcement by the Federal Trade Commission in Washington stated that four witnesses had been subpœnaed to testify at a hearing in connection with the reported purchase of two Boston newspapers by the International Paper Co.

Colonel Ewing declared that "any commercial concern could not be fair as both a seller and a purchaser," in his attack on the International Co., and cited instances of purchases or attempts to purchase newspaper interests by that firm.

Mr. President, it is a sad commentary, it seems to me, that the organization which is known as the American Newspaper Association refused to take any action upon the resolution introduced by Colonel Ewing, of New Orleans. He stated a truth that no one can deny when he said that no person and no corporation can at the same time act fairly as a seller and a purchaser. He saw the evil that even from the newspaper point of view itself must eventually bring destruction and ruin to that profession if it does not clean its own house. Here was an attempt by the Power Trust to invade the newspaper field by using money collected from the people to buy outright newspapers, and this association would not condemn it. I take it, if an association of lawyers or doctors had called to their attention a violation of their professional ethics in a way not half so disreputable as this, they would have been excoriated and condemned from one end of the country to the other if they had refused to take any action in condemnation of such conduct.

(At this point Mr. NORRIS yielded to Mr. WALSH of Massachusetts, who suggested the absence of a quorum, and the roll was called.)

Mr. NORRIS. Mr. President, while we are still in New York I want to read part of a letter that I have received from Utica, N. Y., that has a direct bearing upon the connection between some newspapers and the power companies. This letter reads as follows:

For your information I wish to state that William E. Lewis, a director of the Mohawk-Hudson Power Corporation, is a large stockholder in the Utica Daily Press. Mr. C. B. Rogers, who is also on said board of the First Bank & Trust Co. of Utica, N. Y., is also a director of the Mohawk-Hudson Power Corporation and was executor of the will of George E. Dunham, another large stockholder of the Utica Daily Press. I think it would be wise to expose to the public the fact that Mr. Lewis is a stockholder in both the Mohawk-Hudson Power Corporation and also the Utica Daily Press, as surely he has had in the past a large bearing on the management of the Utica Daily Press and has kept it from telling the people of this community the truth. The Press on several occasions has refused to publish articles which I presented which exposed the Power Trust.

The rate case which I am leading against the Utica Gas & Electric Co. is proceeding very satisfactorily—

And so forth.

Now, Mr. President, we have achieved the purpose for which we stopped in New York; and we will leave Wall Street now and start with our plane to the great State of Nebraska.

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

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from New York?

Mr. NORRIS. I yield.

Mr. COPELAND. Does the Senator have the same driver of the plane now?

Mr. NORRIS. Not the one we started with from Washington. But, Mr. President, when we get over the great State of Iowa, where they produce a good share of the foodstuffs of the civilized world, we find our gas getting low. We find that it is necessary to land in the State of Colonel BROOKHART; and while we are there replenishing our tanks with oil we find that the great Power Trust has not forgotten Iowa. It is all accidental that we get this information. We find that, while in Massachusetts and a good many other parts of the country they buy newspapers, out in Iowa they buy men. We pick up the Des Moines Register, and we find there that over in Fort Dodge they have had a grand-jury investigation, and this is the report of it:

The Webster County grand jury Friday returned 20 indictments against the Fort Dodge Gas & Electric Co. on charges of making illegal expenditures in the campaign preceding the reelection of Mayor C. V. Findlay and Commissioners W. F. Hohn and J. J. Brennan to the city council March 25.

No true bills were voted against individuals. The grand jury reported to Judge Sherwood A. Clock, bringing to a close a 3-weeks' investigation in which more than 125 witnesses were called, one of whom, Frank Crosby, of Fort Dodge, was ordered to jail for refusing to testify. County Attorney John E. Mulroney and D. M. Kelleher, appointed to assist him by the board of supervisors, directed the probe.

CHARGE VOTE BUYING

Each indictment charges the Fort Dodge Gas & Electric Co. with "the crime of giving and contributing money, labor, and things of value for political purposes and campaign expenses to and for the benefit of candidates for public offices in violation of the Iowa statutes regulating election funds."

County Attorney John E. Mulroney announced that the grand jury had unearthed expenditures of between $2,000 and $3,000. Payments for election services were traced to more than 50 persons, he said, the amounts ranging from $5 to $100. The utility company is subject to a maximum fine of $1,000 on each indictment, a total of $20,000.

PROBE ORDERED BY JUDGE

Trial of the cases will probably take place next fall.

The investigation was ordered by Judge Sherwood A. Clock after a committee had appeared before the board of supervisors with the complaint that the Fort Dodge Gas & Electric Co. had spent "large sums" to defeat John M. Schaupp, candidate for mayor on a platform of lower electric-light rates.

The utility company was not represented when the grand jury reported. It will receive formal notification of the indictments within the next few days.

Mr. BROOKHART. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Iowa?

Mr. NORRIS. I yield to the Senator from Iowa.

Mr. BROOKHART. That is an important little matter in the history of the public utilities in Iowa; but they have had such a powerful control of the legislature of the State that it has been impossible to pass a public-utility law or create a public-utility commission that would really regulate. A few years ago they had such control that they passed a law of their own that exactly suited them. It reached Gov. Nathan E. Kendall, whom, I think, the Senator knew in the lower House of Congress, and he vetoed the bill; and but for that we would be ruled by a public-utility law framed by the public-utility companies themselves.

Mr. NORRIS. Mr. President, this only demonstrates that, as I have said many times, the Power Trust does not forget anything. They are not above looking after the little baby in the cradle. They take care of everybody. They follow everybody. They mix up in village elections as well as national elections. They not only buy great newspapers in Boston and other parts of the country but they come out into Iowa and they buy men who are running for village elections, for councilmen in a city council, in order to defeat the man who stands on a platform of lower electric-light rates. They go into every kind of activity, according to the very nature of the activity itself. If it is a metropolitan newspaper, they undertake to devise ways and means by which they can buy it. If it is a little country newspaper, they go into a local utility to get it. When they want to hire a lawyer, if he has a special purpose, if it is for a particular use, some particular individual that they want to control, they take the lawyer that they think can exercise that control, although he may have no ability as a lawyer.

This was well illustrated, Mr. President, when the resolution of the Senator from Montana [Mr. WALSH] was before the Interstate Commerce Committee of the Senate. The Power Trust were fighting it. They had raised a fund of $400,000 to be used in Washington, and one of the objects was to beat Muscle Shoals. Another one was to beat the Boulder Canyon Dam bill. Another one was to defeat the resolution itself, or at least to provide that the investigation should not be made by a Senate committee, and so they hired lawyers. You will remember that that is when they employed ex-Senator Lenroot, who had served in this body for about 10 years.

Did they hire him because he was a lawyer? Why, God bless you, no! They knew he was not a lawyer. They had good lawyers of their own. They had another reason for hiring him. As a matter of fact, ex-Senator Lenroot up to the time he left this body never tried a real lawsuit in his life. He was not admitted to practice before the supreme court of his own State. They were not looking for a lawyer. They were looking for an ex-Senator; and so they selected him, and they paid him a fee of $20,000, so the evidence before the Federal Trade Commission shows.

His activities as a Senator had been fought out before the people of Wisconsin. They converted him into a lame duck. The Power Trust were willing to contribute a $20,000 fee for a man who had never tried a lawsuit because they thought that might influence some United States Senators. Incidentally, they never forget their friends. That is one thing that is commendable in them.

Later on, in the preconvention fight at Kansas City, Mr. Lenroot did valiant service for Mr. Hoover, and now we find him ascending the bench, putting on judicial robes, to hold a job for life at $12,000 a year, not because he is a lawyer but because he has the favor not only of the Power Trust but of the great political powers in his own party. With $20,000 jingling in his pockets, he mounts the bench to preside as a judge as long as he lives, or at his option, after 10 years of service, to retire and still draw the salary for life.

I hope that the time will come, I hope to God it will come soon, when men high in official life, when a President of the United States, will not undertake to pay private political debts by elevating men to judicial positions for life.

Mr. President, having replenished our supply of gas, we hop over the Missouri River and come down in the great State of Nebraska. We find that the legislature adjourned just a short time ago, and that during that session of the legislature one of the principal things at issue was a power proposition, in which the Power Trust took an active part. I have a letter from a friend of mine in Nebraska, a man who has lived in that State nearly all his life and is now an old man, a man who has always taken an active interest in the political affairs of his State, a high-minded, patriotic, courageous, and able man. I want to read some extracts from a letter which recently reached me from him, but before I read I want to state what the issue was. Similar issues exist in other States.

A municipally owned electric-light plant can not extend its lines or do any business outside of the limits of the corporation in which it is located. A private company supplying a municipality is not thus limited. It can extend its lines out as far as it pleases and whenever it pleases. So the municipalities of

the State which owned their own electric-light plants and were operating them had a meeting, drew some bills, and went before the legislature. The principal thing they asked of the legislature was that they should permit a municipality operating an electric-light plant to extend its lines beyond the city limits if the farmers beyond the city limits desired to have that done and wanted to get the service.

That looks like a simple proposition. It would seem that no fair-minded man would oppose that kind of a program. Here is a municipality supplying its people with electric light. Just across the road, but outside the city limits, lives a farmer who wants electric light in his house, who wants some power facilities, who wants electricity for power to fill his silo, or wants to grind some of his feed for his hogs or his cattle by electricity, who wants to light his house, who wants to churn his butter, who wants to enable his wife to wash the clothes by electricity, and perhaps who wants to give his wife the benefit of an electric range. Less than a hundred feet away is the power, and the people who have the power want to sell it to him, and he wants to take it. Why in the name of God should it be prohibited by law? That is what the municipalities asked, that is what the farmers outside of the municipalities asked, and you would think they would get it by the unanimous vote of the legislature; but not so. They were defeated. The power influences were too great. I will read now, what my friend says in his letter:

Our legislature has adjourned. * * * Municipal bills were all killed but one and it was amended so it was worthless.

After making several definite charges as to what was done, he says:

The largest and strongest power lobby ever known was there and it is wholly responsible for the disgrace. It was plain and perfectly obvious to everybody. I am anxious to see what the State at large will think of it. Strange, the power lobby and university lobby pulled together all through. They helped each other openly.

Mr. President, I noticed, just after the legislature adjourned, that a division of the Power Trust had a meeting in that great State, at Omaha, and they boasted of their bosses. They were not the ones, of course, who bought the Boston Herald and Traveler, and who sent traveling men all over the country to buy newspapers. Their domain was somewhat circumscribed, but they had a meeting and boasted of the activity of their bosses.

I read now from a newspaper account:

"No apology should be made for any acts of the Power Trust as disclosed by the Federal Trade Commission's power investigation," Thorne A. Browne, managing director of the Middle West division of the National Electric Light Association, declared at the closing session of the annual convention.

Mr. Browne said no apology should be made. He is not ashamed of all these activities, which bring the blush of shame to many an honest newspaper man, and every patriotic citizen who is dumfounded and almost breathless at the daily disclosures that come from the Federal Trade Commission investigation. Mr. Browne said:

A careful perusal of all the testimony before the Federal commission, not only of witnesses from the Middle West but from many sections of the country, has not disclosed anything for which an apology should be made.

That is the statement of their representative in the State of Nebraska, Mr. Browne, managing director of the Middle West division of the National Electric Light Association. If these men can not be shamed by the disclosures that have been made, then they are proof against disgrace and shame, no matter where they may go or what they may find.

Unfair inferences—

He says—

were made both in the examination of witnesses from the Middle West and in newspaper accounts of the testimony.

The stand followed statements Thursday afternoon to the effect that electric-light organizations in the Middle West were still "keeping in close touch" with educational institutions, and that in Iowa the distribution of public-utility bulletins and booklets, exposed during the Federal Trade Commission inquiry, is still going on.

Notwithstanding these disclosures, they are continuing along the same line and are boasting of it out in the great city of Omaha. There was another speaker at that meeting. I read:

We are keeping in close touch with educational institutions—

Said Mr. Chubb.

During the public relations meeting Clarence A. Davis, former attorney general of Nebraska, explained the nature of the bills affecting public utilities introduced in the 1929 Nebraska legislative session.

That is another instance where they employed an ex-official. Mr. Davis was one of their representatives before the legislative committees, I take it from this, and he came before this meeting and explained to them how they beat the bills. He used to be attorney general. That is the kind of fellows they employ. I think that is the reason they employed him. Here is a quotation:

"Only one of these bills of any importance was passed," said Mr. Davis.

"The most complete municipal ownership program proposed in Nebraska since the war was offered to the Nebraska Legislature."

Davis declared several very unfair bills had been proposed in Nebraska, but that the utilities were able to beat all of them.

That is how they handle the legislatures. Let me read some more of what occurred at this meeting. There was a man at the meeting who attacked the newspapers and magazines which gave publicity to municipal-ownership reports. He termed them "bunk bulletins," and coupled them with demagogic politicians and socialists. That is the old cry. That is what they said over in Illinois when Insull was running things over there. When they want to beat a man and they can not find anything against him except that he is against the Power Trust, they say, "Don't say anything about the Power Trust, but call him a Bolshevik; call him a socialist." That is what they have done, and that is what this man is still doing—attacking newspapers. If this man had lived in Maine he would have helped boycott the Portland Evening News. He would fight any newspaper that dared to publish the truth. He attacked newspapers and magazines which gave publicity to municipal-ownership reports. That is part of the Power Trust activities. That is part of the newspaper propaganda. While we are exposing their tricks in the East they are uniting for additional warfare along the same lines in the West.

The principal man they have there is this man Browne, a very fine gentleman. I have not anything in the world against him. He is a man of ability. But let us see who he was. Let us see how they happened to get him as their representative.

It will be remembered that Mr. Browne is the managing director of the Middle West division of the National Electric Light Association. He used to be on the Railroad Commission of Nebraska. He was defeated for renomination in the Republican primary mainly because of his propower inclinations. When he was defeated, what happened to him? The Power Trust gave him a better job than he lost, just the same as Lenroot. When Lenroot was defeated by the patriotic people of Wisconsin for renomination, after working a little bit down South and getting a lot of colored delegates to come across and support Hoover, he was given a better job than the people of Wisconsin took away from him. That is the way these things go.

I want to read from another letter telling something about Mr. Browne and his connection with the Power Trust. Here is a letter that was written November 13, 1928, in which it is said:

Mr. Thorne A. Browne was a candidate in the Nebraska primary election in the summer of 1925 for the nomination for State railway commissioner—

They have charge of electric-light rates—

to succeed himself. He was opposed by Mr. John Miller—

Miller is another Republican, and this was the Republican—

who was recognizedly very poorly equipped for the position. The utility people naturally supported Browne. There was some talk started about furnishing him with a campaign fund, and I was asked to inquire about how much he would need. Commissioner Taylor—

Another member of the commission—

had lately gone through a campaign, and I asked him about it, and we decided that $800 or $1,000 would be a substantial help. We also thought that Taylor should handle the fund.

Incidentally Taylor is now working for the railroads, a very fine man, a very able man, but he tried to be appointed to the Interstate Commerce Commission down here in Washington, and because he could not get the support of either one of the Nebraska Senators the thing went by the wayside. When he could not be put on the Interstate Commerce Commission in Washington, the railroads picked him up and gave him a better job than he had on the Nebraska Railway Commission, and he is there now. I presume they would rather have had him on the Interstate Commerce Commission, but if they could not get him there they would take him where they paid him a regular salary. All this is said without any criticism of Mr. Taylor. As I said, he is an able man and, I think, conscientious in his belief. But it is pretty hard for him to discover that a big

corporation like a public utility or railroad company can ever do anything wrong.

Mr. HEFLIN. Mr. President, I take it that, as Paul said, a man in his environment had good influence.

Mr. NORRIS. A great deal.

Mr. WHEELER. Mr. President——

The PRESIDING OFFICER (Mr. NYE in the chair). Does the Senator from Nebraska yield to the Senator from Montana?

Mr. NORRIS. I yield.

Mr. WHEELER. It is not only true with reference to the State railroad commission but it has also come to be true with the national organization by their putting directors of railroads on the Interstate Commerce Commission. When they are appointed, the next day after they are confirmed of course they resign from the directorship. If they can not have a director on the railroad appointed on the commission then they put on a bondholder, and if they can not get a bondholder on the commission, if they can not get away with that, they put some ex-officer of a railroad on the Interstate Commerce Commission with a view of having him fix the rates and valuation of the railroads for the people of the country. We have had at least three illustrations of that in the last two or three years during the Coolidge administration.

Mr. NORRIS. I thank the Senator from Montana.

We are trying to find out who this man Thorne Browne was and what his connection was, this fellow who spoke at the meeting in Omaha and who boasted of everything the Power Trust had ever done and that they were going to keep on doing the same thing:

Following this conclusion there was a meeting in Omaha of the electric light, gas, telephone, and possibly street-car interests, and at least two steam-railway companies were represented.

Remember, Browne is running for renomination and he has opposition.

The matter was discussed and acted on favorably. I was not at the meeting and do not know how much money was raised. A gentleman who was there told me that there was a scramble among the attorneys representing the various interests to be the messenger who would deliver the funds to Mr. Browne personally. After Mr. Browne was defeated in the primaries the utilities furnished the money to finance Mr. Miller's campaign.

The man they had fought they are now supporting because they think he is not as good as Browne, but he is still better than the Democratic candidate, so they go into the election campaign and there they win.

After Mr. Browne was defeated in the primaries the utilities furnished the money to finance Mr. Miller's campaign against Floyd Bollen, who was the Democratic nominee. Mr. Miller was elected and has, I believe, paid back the money advanced to him. I give him credit, however, for not knowing who actually furnished the money, which was handled by a very intimate friend of mine.

Mr. President, sometimes as in this case they did not like the man they supported, but it was because they disliked the other fellow more that they supported the man whom they had fought in the primaries. Incidentally and in passing, while it has not anything to do with the question I am discussing, I want to state that no man can blame Mr. Miller. As this writer says he never did know that the utilities furnished the money to support him. What they were trying to do was to beat the other fellow, and they did it.

Here is another letter from the same individual in which he said in part:

For a year and a half I have not had the remotest connection with the electric industry, except that I have accepted employment for certain fees or on a per diem basis. I was secretary and publicity director for nearly eight years for the electric-light industry until a committee called upon me to say that Former Railway Commissioner Thorne A. Browne, who had been defeated for reelection, had been employed to take over my work.

So without notice to their former director they take care of their friend after the people had defeated him.

Here is another letter bearing on it. This letter was written by Horace M. Davis, and it was brought out at the Federal Trade Commission investigation, in which he refers to the same thing. The letter is dated at Lincoln, Nebr., August 11, 1923, and reads:

This will acknowledge the file of correspondence with universities and colleges about textbooks for utility studies. I have not waded through it yet, but have touched the high spots and will go into it more completely. Thanks for your thoughtfulness, and I will be glad to bring the matter, as you suggest, to the attention of my committee which will not meet until September 25.

One of our State university professors, Kirchman, of the College of Business Administration, is writing a work, under contract with Shaw Publishing Co., on investments. He is now ready for a chapter on public utilities and came to see me. We spent a couple of hours to-day, and I was able to furnish him with some literature that he considers "pat." He said that he is trying to write the text in such a way that it will fit into his own needs in the classroom. Either he is stringing me or he is undertaking to see things as we would have him see them. I had never heard of him before, but will undertake to get a "close-up" on him and learn his antecedents and what influences may be back of his writing.

In the meantime, if you have any suggestions I will be glad to have them. I pointed out "regulation," "customer ownership," and "capitalization—without reduction" as salient features for his chapter on utilities.

That letter, as I said, was signed by Horace M. Davis. He was the recognized man there whom they had put out in order to put Thorne Browne in, whom the people had defeated, and while he lost his job, as the testimony before the Federal Trade Commission shows, they are still paying him considerable sums of money for extra help.

Here is something else that came out about the Nebraska situation before the Federal Trade Commission. All these things, we must remember, the power people are now proud of. They are boasting about them already among themselves, how they controlled the legislature and how they beat the municipalities. I read:

A statement that he had been told that Nebraska utility companies had contributed in 1926 primary campaigns of Thorne Browne, who unsuccessfully sought reelection to the State railway commission, was made in the Federal Trade Commission's utilities investigation to-day by Horace M. Davis, of Lincoln, Nebr.

Davis, after previous refusals to answer, named F. E. Helvey, secretary of the Insurance Federation of Nebraska, as the man who gave him the information.

Helvey afterwards denied it.

He identified Helvey to-day only upon the insistence of Commissioner McCulloch, presiding, after questions by Robert E. Healy, commission counsel, were ignored.

A letter of May 5, 1927, from Davis to John N. Coadby, secretary of the Wisconsin Utilities Association, was introduced in reference to the Browne defeat.

That is the same Browne, who is now their representative, who now holds Davis's job and who made the speech from which I quoted earlier in my remarks. Here is the letter:

"Our people were particularly interested in him," Davis wrote, "and lost immeasurably in his defeat."

He is speaking of Browne.

They figured they owed him something—true enough. He is a judge, a philosopher, methodical, studious, impelling in personality, opinionated, and naturally executive.

That is what Davis wrote about Thorne Brown.

Healy wanted to know why Davis wrote that the untility interests felt they owed Browne something, and the witness said this was because they felt Browne had been satisfactory to them in dealing with matters which they had before the railway commission.

Davis's letter continues:

Our company executives have an unconscious feeling that they want some supermen to study Muscle Shoals, Boulder Dam, and other such big matters and tell the executives what to think so that they will have more time to golf and play hooky. Mr. Browne is the very boy to do that for 'em.

Mr. WALSH of Montana. Mr. President, what kind of a man did they say they wanted?

Mr. NORRIS. They wanted a man to tell them how to think.

Mr. WALSH of Montana. No; the Senator read something about "unconscious."

Mr. NORRIS. I will read it again. Mr. Davis's letter continues:

Our company executives have an unconscious feeling that they want some superman to study Muscle Shoals, Boulder Dam, and other such big matters and tell the executives what to think, so that they will have more time to golf and play hooky.

Mr. WALSH of Montana. Did they not use the wrong word there? Was not the word which they should have used "unconscionable," not "unconscious"?

Mr. NORRIS. The Senator may be right about it.

Mr. WHEELER. Mr. President, I will say to the Senator from Nebraska they could have come out to Montana and taken

some of our railroad commissioners and have accomplished substantially the same purpose.

Mr. NORRIS. I have no doubt of it. The letter continues:

Mr. Browne is the very boy to do that for 'em. When Browne was offered a good place at Washington and threatened to go, our men engaged him instanter.

He was a "lame duck," one of those whom the Republican electors had defeated for renomination for the position, mainly because, as I have before stated, of his inclination to favor public utilities and the railroads.

Mr. WHEELER. May I inquire of the Senator from Nebraska whether or not he is a lawyer?

Mr. NORRIS. I do not know.

Mr. WHEELER. I was going to say that if he is, there might be some more judgeships down in Washington to which he could be appointed.

Mr. NORRIS. At the present time, as the Senator knows, Mr. Browne has a job, though what the Senator suggests may be necessary later.

Mr. WHEELER. They may not want to keep him on the payroll all the time, and when they get through with him on the pay roll they may want to get him a Federal job.

Mr. NORRIS. That may be so, but the difficulty in that respect is, I will say to my friend from Montana, that the people have made so many "lame ducks" it is pretty hard for those in power here to find places for all of them, but they are doing the best they can. Give them time and they will get all the "lame ducks" jobs after a while.

Mr. WHEELER. It has been suggested to me that it is not necessary for this man to be a lawyer in order to be appointed a Federal judge.

Mr. NORRIS. I think it may be necessary for us to change the requirements for office, for at a meeting where, of course, I shall not dare disclose what happened, we heard it argued by the greatest lawyers in this body that to be a good judge one never ought to have tried a lawsuit.

Mr. McKELLAR. Mr. President, if the Senator from Nebraska will permit me to interrupt him, I desire to suggest that to be eligible to appointment to a judgeship it would be necessary for the applicant to have obtained a license somehow in same way at some time.

Mr. NORRIS. Yes.

Mr. WHEELER. But he could get a license to practice in the Supreme Court apparently without being a member of the bar of the supreme court in his own State.

Mr. NORRIS. Let me read the last sentence again:

When Browne was offered a good place in Washington and threatened to go our men engaged him instanter, but without thinking just what they would do with him. You can see the logical result. They looked upon him as a judge and upon me as a secretary, a hired man. I can not bring myself to the point of working under Browne. I will work with him—he and I have been the best of personal friends for 20 years—but I can scarcely become a clerk.

Another letter introduced, written in May, 1924, by Davis to A. Flor, Electric Bond & Share Co., New York, outlined the work being done by the Nebraska utility-information committee at that time:

We have had a very high-class lecture course at the Nebraska University—

It said—

with such men as Martin Insull, Major Forward, Dean Raymond, of Iowa State University, Carl Jackson, L. O. Ripley, H. L. and M. H. Aylesworth among the speakers. We can't ring up receipts in the cash register for such efforts, but there are reasons to believe that the profession is dignified by contact between such authorities and university people.

We are very averse to brass-band methods, and not a small part of our success is due to personal contact with such organizations as State bankers, State manufacturers' associations, insurance groups, good-roads organizations, State teacher association, and the State press associations, and others.

That, it would seem, would be almost enough. That shows their methods, and every student knows, from the investigation that has been going on, that recent activities in the purchase of newspapers for millions and millions of dollars are only incidents in the great propaganda fight which the power interests have been making all along the line.

Let me read on:

We undertake to keep an eye open to happenings at the State house, and are measurably in touch with developments in the political organizations. We are knee-deep in a survey of the forthcoming legislators and can venture something of an appraisement of the issues to be met and the temper of the body.

From the letter which I read awhile ago it is quite evident that they looked after the last legislature as well as the preceding ones.

Davis testified that the utility companies had financed the sending out of a questionnaire by O. O. Buck, secretary of the Nebraska Press Association, to newspaper editors.

Think of that!

The article states:

Davis testified that the utility companies had financed the sending out of a questionnaire by O. O. Buck, secretary of the Nebraska Press Association, to newspaper editors. One introduced into evidence was signed by John Berney, of the Bartlett Independent, which answered an inquiry whether public ownership of utilities was as profitable for newspapers as private ownership in the negative.

That was one of the questions that would call at once to the attention of the editors of the various newspapers the financial point. Do you get the most money from the private company operating the utility in your town or from the municipality operating it? In other words, the power interests are great advertisers, and the secretary of the Nebraska Press Association, in his questionnaire, was able to call that fact to the attention of all the newspapers of the State. They did not know that the expense was paid by the Power Trust, but it was.

Although his official connection with the N. E. L. A. (National Electric Light Association) in Nebraska has been severed, Davis testified that he still receives an average of $150 a month in connection with the preparation of digests of State news for circulation in its bulletin.

So, while they took Brown into their arms and gave him a fat job as soon as the people defeated him for reelection, Horace Davis, although he lost his job, still gets $150 a month, and that will keep the wolf away out in Nebraska. It might not go far in Washington or New York City or Boston, where the Power Trust offers $20,000,000 for a newspaper, but it will go quite a ways out in the short-grass country.

Earlier in the hearing to-day Davis declared his organization had ceased distribution of pamphlets and publicity releases last spring.

Earlier in the investigation testimony was given to show that the joint committee had played a major part in activity against the adoption of the Walsh Senate resolution, which ordered the present inquiry, and that much of this was handled through publicity channels. Testimony also was given that more than $400,000 had been spent in connection with the work, some of it going to widely known men who opposed the resolution.

Davis said the joint committee still issues bulletins periodically, but that they are not sent to newspapers. He testified that issuance of publicity matter had tapered off gradually until it was discontinued entirely last March or April. Negotiations are now under way, however, he added, to get out publicity releases about the commission's investigation.

Commissioner McCulloch inquired whether these would relate only to the inquiry, and the witness assented. He said there was no thought of reviewing the past and that the material would be solely in connection with future hearings when the financial phase, as ordered by the Walsh resolution, is to be gone into.

* * * * * * *

Only after a warning by Commissioner McCulloch, presiding, that steps would be taken to compel him to answer, did Davis give the name of a man he said had first-hand knowledge of the Browne campaign?

* * * * * * *

Browne for eight years was a member of the railway commission, which regulates issues and transmission-line construction by the power companies. It was during a Republican primary in 1926, when Browne failed of renomination, that Davis said he "heard" of money being put up by utility men—

And so on.

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

Mr. NORRIS. I yield.

Mr. WHEELER. I was just examining the resolution which was adopted by the Senate requiring the Federal Trade Commission to conduct the investigation. I notice that on page 3 it reads as follows:

The commission is further empowered to inquire and report whether, and to what extent, such corporations or any of the officers thereof or anyone in their behalf or in behalf of any organization of which any such corporation may be a member, through the expenditure of money or through the control of the avenues of publicity, have made any and

what effort to influence or control public opinion on account of municipal or public ownership of the means by which power is developed and electrical energy is generated and distributed, or since 1923 to influence or control elections: *Provided*, That the elections herein referred to shall be limited to the elections of President, Vice President, and Members of the United States Senate.

Since the passage of this resolution I have noticed that the commission has been inquiring into various newspapers that have been bought and owned by some of the public-utility corporations. I am wondering if the Senator can tell me whether or not the commission intends to go into the ownership of all of the newspapers, whether they are owned directly by the utilities, or whether they are owned not only directly but indirectly—say by corporations or the directors of corporations that are associated with public utilities.

Mr. NORRIS. Mr. President, the commission, of course, are limited in the scope of their investigation by the resolution under which they are acting. I have not looked at that resolution recently, but from my recollection of it I should say that they would not be authorized to make an investigation per se of the ownership of newspapers. The only place where they would be able to take up that question would be where there was evidence to show that power companies had something to do, either directly or indirectly, with the ownership of those papers.

Mr. WHEELER. I should gather, from the investigation that has already been made, that the power interests are so interwoven with many other great corporations that it would be difficult to tell whether or not many of the newspapers of the country were owned partly or whether they were not owned partly by power interests; and I was wondering if the Federal Trade Commission would not go into practically all of the newspapers of the country to determine just what money, if any, was invested in those newspapers by power companies.

Mr. NORRIS. I should think perhaps it would require additional authority if they undertook to do that.

Mr. WHEELER. It struck me that under this resolution, as I read it, they really could inquire of every newspaper in the country as to whether or not the power companies had any interest in that paper, or whether or not any corporation which was affiliated with a power company had any interest in the newspaper.

Mr. NORRIS. They certainly have a right to get that evidence, I think, under the existing resolution. I do not have any doubt of that, as I remember it; but I do not know how far the investigation is to go. I suppose that as long as these leads are coming out the commission will not stop until they get to the end of it. They certainly have done a great work. They certainly are entitled to a great deal of credit, I think, for the masterful way in which they have handled the matter; and it is quite evident that they are far from the end.

Here is a letter that came out in the investigation, written to Carol B. Jackson. He was an attorney for one of these light corporations. The letter says:

> It has a certain psychological value, in fact a very definite one, of having little Billy Smith's stock in the name of little Billy. Billy's dad is much less apt to forget that he intended the stock for him and hesitates to sell or mortgage it. The fact that it is in the child's name puts a certain sentiment behind it.

That is in their propaganda to induce parents to buy stock in the Power Trust for their babies, for their little children, for the psychological effect it may have upon the parents; and if the child grows to manhood or womanhood, and still owns the stock it may perhaps have an influence upon his or her activity, even in the political field. They forget nothing. They are handling our children as well as they are handling us. They are laying the foundation for the complete ownership of the United States. They are letting no stone go unturned.

The suggestion was made by one of the Senators some time ago that they would go into the broadcasting business. Why, Mr. President, they are already in the broadcasting business. This man Aylesworth, whose name figured prominently all through this investigation, is the head of the National Broadcasting Co. That is the company that is controlling, more than any other one, the air we breathe. Not only the water that God has given us, but the air that we must breathe, unless we in some way call a halt, will soon be within the control—yes; within the ownership—of the Power Trust! We will not dare or be able to breathe without their consent. In other words, we will be slaves. There is not any other explanation of it. They own the air, and the earth, and the water on the earth. What, for God's sake, are the people going to do except be subservient to that kind of a master?

Mr. President, let us get into our machine again. We have seen what they have done in Nebraska. We have seen how they handled the legislature. We have read the testimony of the man who handled the legislature a couple of years ago. We have read the testimony of Mr. Clarence Davis, ex-attorney general of the State of Nebraska, telling how, through his manipulations, the Power Trust succeeded in defeating every power bill in the legislature. They made it impossible for a municipality to supply a farmer across the street with a single kilowatt of electricity. If you are outside of a municipality, you must pay tribute to the Power Trust if you have an electric light in your house.

No farmer in the State is able to have his house lighted, is able to have any machinery about his farm of an electrical nature, is able to permit his wife to have an electric churn or toaster, or even an electric fan to cool the hot kitchen, or an electric stove, or an electric iron, or an electric washer, without first paying tribute to the Power Trust.

There is a municipality just across the road ready to give it to you practically at cost; but no! The Power Trust is so big that in this great State of Nebraska, that is supposed to be free and supposed to be progressive, if you are outside of a municipality, as all farmers are, you can not have a kilowatt unless you contribute to the Power Trust; and here comes their ex-attorney general boasting how he beat them. Here comes their ex-railway commissioner boasting how he beat them for the Power Trust, and here come the letters showing who furnished the money when the campaign was on.

Mr. President, I wonder how long a free people of that kind are going to suffer in silence. How long are they going to permit their legislature to be manipulated and controlled by power men who boast of it afterwards?

Well, we are in the machine again. We are going to take a long jump, because I have to hurry on. I had some stops arranged, but under the circumstances we will put in an extra supply of gas and we will go clear to Los Angeles.

Mr. NYE. Mr. President——

Mr. NORRIS. I yield to the Senator from North Dakota.

Mr. NYE. The Senator speaks of putting in an extra supply of gas. Is that at the Iowa stop?

Mr. NORRIS. It is at the Nebraska stop that we are doing that. We have gone out of Iowa.

Mr. NYE. But that was where the Senator replenished his supply of gas, as I recall.

Mr. NORRIS. Yes. We get some more in Lincoln, Nebr., where they have a municipally owned supply station. We get it at several cents cheaper than you get it here.

Mr. NYE. What assurance has the Senator that this Iowa supply is going to carry him through? Might it not easily be that it is pseudo-gas that the Senator got in Iowa? [Laughter.]

Mr. NORRIS. Yes; but I have learned from my experience here that pseudo-gas is the best gas there is. If you want something to explode real well, even a Senator, just say "pseudo" to him, and you touch him off at once. [Laughter.] I think a great deal of pseudo-gas. It is working first-rate on this trip.

But now, Mr. President, here is a night letter from Los Angeles. I know the man who sends it, and yet I can not give his name. In the case of some of these other letters I have not given the names, because when I tell you the story of how they went after Gruening in Portland, Me., and boycotted him and did everything they could to injure him, you will realize how a man almost takes his life in his hands when he tells the truth about this gigantic monopoly.

Some time ago, a year or so ago, I had something to say on the floor of the Senate about Colonel Copley and the Illinois situation, and it was investigated by the Federal Trade Commission upon his request. This night letter says:

> Federal Trade Commission only skimmed Copley matter in its short investigation last spring. It did bring out that Copley still has about $5,000,000 of security holdings in Insull companies, and that shortly after he sold control of his own companies to Insull he started buying papers, apparently with this Insull money. He paid $3,000,000 for the San Diego papers, and floated a bond issue of $3,200,000 to pay for them. Bond issue handled by W. W. Armstrong & Co., of Aurora, Ill. That bond house is regional distributor for Utilities Securities Co., which is Insull security marketing concern.
>
> Copley's attorney told Federal Trade Commission last April that the $5,000,000 had been "overlooked" by Copley, who did not consider stock holdings a business connection when he stated in the San Diego Tribune that he had "no connection with any public utilities anywhere." Think commission should reopen case, subpœna Copley, and question him about all money transactions, bank loans, and sources of funds for either temporary or permanent use in purchasing newspapers.

Should also subpœna records of Copley Press (Inc.) and records of W. W. Armstrong & Co., and find names of purchasers of the bonds and present holders. In that way they probably can clear up question as to whether power crowd have any direct control with Copley in addition to present proven close association.

Mr. President, it was peculiar that Colonel Copley just overlooked $5,000,000 when he was making professions that he had no interest in these great corporations. It is peculiar also that when he issued bonds on the strength of his newspaper purchases in California those bonds should be handled in Aurora, Ill. A California bond can be handled better in California than in Aurora, Ill. Aurora, Ill., compared with Los Angeles, is just a country village. Yet he brought them back there to be handled. Incidentally it developed that this corporation which handles them is an Insull company, and he operates in Aurora, Ill. That is worthy of investigation. I think the Federal Trade Commission ought to follow this suggestion and go to the bottom of it.

In an article by Mr. Ramsey, republished in the Capital Times, Madison, Wis., which is the paper from which I am reading, it is said:

Electric power companies poured out $664,000 for propaganda and other measures to influence California voters against State development and operation of public-utility plants, the Federal Trade Commission learned yesterday.

* * * * * * *

The records showed that the greatest battle was fought out in 1922. Heading the forces opposed to State development of water supply and electric plants were the Greater California League—

What a beautiful name!—

and the People's Economy League.

Another beautiful name, representing the Power Trust.

Each of these organizations, the records showed, was the power companies in a false face.

There might be for some of these things some excuse if they were done openly and honestly and aboveboard, but they are secret. Crime, debauchery, and wrongdoing always hunt the darkness, always operate underneath the surface. If they had nothing to cover up, if they had no sins to cover, if they were doing what they had only a right to do under their charters, an honest, upright business, these secret operations would not have been carried on.

The Greater California League got $133,000 of its $245,000 expenses from the Pacific Gas & Electric Co. The rest was collected by this company from other concerns in the industry and turned over to the league. A director was employed for a $25,000 fee to engineer the league's campaign.

A $107,000 fund for the People's Economy League—

Oh, that poor economy league, that blessed name! They got $107,000 from the Power Trust. It was contributed, similarly, by and through the Southern California Edison Co.

The "league" sent out field agents who organized about 60 subordinate "leagues." Their members or agents distributed literature, arranged meetings, talked to neighbors, and worked at polling places.

The directing head of this "league" was H. L. Cornish, Los Angeles real estate and insurance man. He was paid $26,000 by the Southern California Edison Co. for his services, the records showed.

A woman publicity agent was employed by Cornish to conduct a department of women voters. She was paid $65 a week.

She should have gotten more than that, judging by the way this fellow was getting money. The poor woman did not know about that, or she probably would have held him up for more.

Several women under her made speeches against the water and power act at meetings of women.

That is the way they worked the women. I hope that when this evidence comes out, and the women of the United States read it and see how much some of these men got, they will insist on getting more. For instance, this one man, whose name I read a moment ago, got $26,000 from the Power Trust, and this poor woman, who undoubtedly controlled a dozen votes to his one, got only $65 a week. If they ever have another fight the women will not work so cheaply.

I read further from the editorial in the Capital Times:

The use of questionable, misleading, and deceptive campaign methods was attacked in the California State Senate investigating committee's report. Employment of "high-sounding, patriotic names" for organizations masking the power companies, was cited.

The committee also found evidence that supposedly disinterested members of bona fide organizations were hired as campaign workers for the purpose of obtaining the indorsement of those organizations or to influence their membership.

The investigation disclosed that $501,000 was spent in the 1922 campaign. For those of 1924 and 1926 there were only the utilities' own reports of expenditures. The amounts were $94,000 and $68,000, respectively.

That is how they do things out in California. That is how they work the people in California.

Upon the purchase of his California papers Colonel Copley announced:

I have no connection with any public utility anywhere, and no connection with any companies other than the newspaper business anywhere.

That is pretty explicit; that seems to be so explicit that there is no way to dodge it. But let us see what the truth is.

His San Diego Evening Tribune, on January 21, 1928, proudly announced:

He [that is, Colonel Copley] regards a newspaper as being more nearly a public utility than as anything else, for it is depended upon for a constant and trustworthy service, and in business details the two have many similarities. Colonel Copley has, however, completely severed his connection with all public utilities and will not have any further connection with them.

A few months later Mr. Copley's lawyer had to admit to the Federal Trade Commission that the colonel had $2,400,000 preferred stock in the Western United Gas & Electric, also 30,000 shares of its class A common stock and $1,000,000 in its bonds, an investment totaling around $5,000,000.

That is something for the Federal Trade Commission to think about. In other words, retaining $5,000,000 worth of utility interests means completely severing your connection with them.

So, when you want to investigate the matter, when you have taken for the truth the testimony given, perhaps not on a close examination, having faith in the honesty of witnesses, you often find, if they represent the Power Trust, that they have taken a technical advantage to conceal the truth, instead of making a clean breast as their duty to the country demands that they should do. So much for California.

(At this point Mr. DILL suggested the absence of a quorum and the roll was called, when other business was transacted, as appears previous to Mr. NORRIS's speech.)

Mr. NORRIS. Mr. President, we are now about to leave California. After supplying ourselves with a liberal amount of the various kinds of food to last us, we start on our trip to the South. The Power Trust has been quite active in a good many portions of the great South. From the Washington Herald of May 11, I want to read a few extracts, items of news which appeared in that paper regarding disclosures made before the Federal Trade Commission in the power investigation. I quote:

A weird carnival of newspaper buying in the South, the Power Trust interest putting up every penny of nearly $1,000,000 that went into four papers, and standing with an unlimited bank roll behind dickerings with a score of others, was chronicled before the Federal Trade Commission yesterday.

William Lavarre, a smooth young man of 30 with a high-pressure manner and a Harvard background, told how he and another embryonic publisher made a grand tour of the Southern States with the $600,000,000 International Paper & Power Co. financing them.

The International Co. provided them funds to buy the papers without restricting either the number to be bought or the total amount they were to spend, Lavarre testified.

Mr. President, the Power Trust put up $885,000 in cash to buy the Columbia (S. C.) Record, the Augusta Chronicle, the Spartanburg (S. C.) Herald, and the Spartanburg Journal.

Neither Lavarre nor Hall, the partner who followed him on the stand, disclosed the possession of capital other than a bold front and some newspaper and business experience. Both admitted neither had invested a dime.

Instead, records showed, the International Co. has been paying them $1,250 a month salary each since November 15. It allowed them thousands of dollars for expenses while they were traveling about deciding what papers they would like to have. It even put up $15,000 to meet operating expenses of the Augusta Chronicle, when, as Lavarre admitted, there was no cash on hand to run it.

The International Co. sent down $400,000 to pay for the Spartanburg papers, so unencumbered, Lavarre testified, "that I could have taken it and gone to Europe if I had wanted to." Five thousand dollars was handed over to them by the company's lawyers on another occasion, after their first scouting trip through the South without an acknowledgment or receipt.

Why, Mr. President, in this case the Power Trust employed a couple of traveling men. They started them out on the road to buy newspapers. The amount they are to spend is practically unlimited. They go where they please, stay as long as they

please, and come back when they please. Their funds are unlimited. They represent the great Power Trust. They are traveling men on the road. The Power Trust is kind to their traveling men. To avoid lonesomeness they travel in pairs. Lavarre and Hall, traveling together, buying newspapers, spending millions, no receipts taken. As he said on the stand, "We could have taken money and gone to Europe."

The Power Trust are lavish with their funds. They are unlimited with their money. They go on the theory that every man and every institution has his and its price and with that money, backed by hundreds of millions more, they are of the opinion that they can buy the newspapers of the country and through them and their other propaganda instrumentalities buy the Government of the United States.

These traveling men, going down South trying to deal with and buy a newspaper, found on one occasion that there were a couple of other traveling men trying to buy the same newspaper. On investigation they found that the other traveling men represented the Power Trust also. Think of it, Mr. President! The traveling men buying newspapers for the Power Trust were so thick that they came in competition with each other.

In other words, the Power Trust walks down the street with its pockets lined with money and meets itself coming back. The ordinary business man would not think of using his money like these people use their money or what they called their money. No business man would be as extravagant as they were. They spent money as though thousand-dollar bills were as thick as leaves on the ground after the first heavy frost, and they thought about as much of them as we would think of the leaves. There was no limit. "Buy the papers. Pay anything you want to, boys." They started another bunch of men out with the same directions, and, as I said, sometimes they conflicted with each other.

Charles O. Hearon, who was one of the owners of the Spartanburg papers, and has continued as editor, wired Lavarre on May 1, after the International's interests had been publicly exposed by Graustein:

"When I agreed to the sale of the Spartanburg Herald and the Spartanburg Journal I was under the impression that we were selling these newspapers to you individually. I may have considered the sale of the newspapers to the International Paper & Power Co. under some circumstances, but I would not have entered into any agreement to become the editor of newspapers owned or controlled by the International Paper & Power Co. or any other special interest.

"If the Spartanburg Herald or the Spartanburg Journal are owned or controlled by the International Paper & Power Co., I am hereby tendering my resignation as editor in chief of the Spartanburg Herald and the Spartanburg Journal and supervising editor of the Columbia Record and the Augusta Chronicle."

In other words, the men who sold the newspapers did not always know who the purchaser was. These young men armed with millions bought newspapers without always disclosing the interests they represented, and in this case the editor did not find it out until afterwards. Like the man that he apparently is, he refused to take dictation from the Power Trust and resigned his position.

"The International Co. owns and controls the whole purchase price, doesn't it?" asked Healy.

"Only in the same way as a bank," rejoined Lavarre.

"You are under obligations to turn the stock over?" Healy pursued.

"Morally the company has held it all the time," Lavarre acknowledged. "If it hadn't been for this thing (indicating he meant the storm of protest over the International's activity) they would have it now."

* * * * * * *

"So spirited was the scramble for southern papers that Hall and Lavarre once or twice found themselves bidding against other interests having International backing * * *."

Bryan and Thomason were trying to buy the Greensboro News to merge it with the Record, according to the testimony. Lavarre testified he and Hall "stepped out of the way" when they learned who their rivals were.

* * * * * * *

For the Augusta Chronicle, which is the oldest newspaper in the South, but had at the time only 12,000 circulation and had failed to pay dividends on its preferred stock for 10 years, Hall and Lavarre paid $174,500. Lavarre asserted the circulation had since advanced to 17,000.

Here are some of the questions that Attorney Healy asked the witness:

Q. Up to that time you had never owned or had never edited a newspaper of your own?—A. No.

This is Mr. Lavarre who is testifying.

Q. Or you had never edited a newspaper for anybody else or had sole charge of one?—A. No.

Here was this young man without any newspaper experience, never having owned, never having edited a newspaper, turned loose by the Power Trust to go anywhere he pleased, to buy any newspapers, at almost any price, and they agreed to put up the money, and they did. Further on he was again questioned. The question is:

Q. You were not restricted to particular towns, were you?—A. Except as we restricted ourselves.

Q. Well, you could have gone into other towns?—A. Well, I would say anywhere in the South.

Q. You were not restricted to any particular newspapers?—A. No, sir.

Mr. President, let us take a look at conditions in Texas. The Power Trust does not confine itself to great big newspapers. We have an instance where they are getting after a little country newspaper in Ranger, Tex. I will quote from Mr. B. C. Forbes, who is referred to in the Eastland County News, of Ranger, Tex., and who knew about this activity of the Power Trust:

Mr. B. C. Forbes, writer of national reputation, last Friday in the Fort Worth Record-Telegram under the heading of Should Newspapers be Owned by Public Utilities? gives an account of the sale of two Boston newspapers to the International Paper & Power Co. In his opinion, the Power Trust has committed a great blunder in getting into the newspaper business, and says that some of the things done to influence public opinion by the power companies have aroused widespread criticism and that they should think twice before taking any avoidable step calculated to stir up fresh criticism and that this step on the part of the power company will be immediately interpreted as an attempt to mold public opinion in favor of the far-flung activities and plans of the power company.

* * * * * * *

In Mr. Forbes's opinion the transaction was most ill-advised, short-sighted, trouble-breeding, suicidal, and that it should be undone.

It is strangely coincident that the Ranger Times, published in Ranger, Tex., a few weeks ago joined in a merger and change of control as did the Boston papers. It is also strangely coincident that as in the case of the Boston deal the Times deal was announced through another newspaper. And the Eastland County News had evidence at that time that the deal was made, at least three weeks before we announced it.

The Times deal, as the Boston deal, was also veiled in secrecy. In fact, the Times deal was so much veiled in secrecy that even a large number of stockholders did not know of the deal until this paper announced it. And quite a few of them as yet have not had it explained to them or know any more about it than what was published in the paper. It looks to this editor like the methods are the same and this editor shares the almost unanimous belief of the newspaper fraternity that it looks like the money is coming from the same source that is putting over most all the daily newspaper mergers and consolidations and newspaper chains all over Texas.

* * * * * * *

We do not charge that the power interests have anything to do with the Times deal, but we do know that the statement of ownership of the Ranger Times, published on April 2, includes the names of the general manager of the Oil Belt Power Co., the company that generates the electric power for this west Texas territory, as a stockholder. Whether or not this is a private investment we do not say, but we believe, as Mr. Forbes does, that the power industry should think twice before taking any unavoidable step calculated to stir up fresh criticism.

Mr. President, this is just an instance of what is going on in a small way, the same as it is going on in a big way in other instances. The owner of a power company becomes the owner of a newspaper, and he keeps still about it until from other sources the truth is discovered and publicity of the transaction is given.

In Alabama, Mr. President, they have had some trouble over newspapers. For example, in Mobile, where, as in Portland, there was a newspaper fight. In this case, however, the interests are exactly reversed. The existing two newspapers of Mobile have been independent and fearless. The power companies have not been able to control them. I had something to say about that several months ago, I think, in the Senate.

The charge was then made that the power companies would establish another newspaper in Mobile because they were unable to handle the newspapers which were already there. Now they have established it. I am not complaining that another newspaper has been established there. I have no interest in a newspaper controversy anywhere in the world, and particularly I have none there; but it is worthy of note that the stockholders in the new company are very close to the power companies. One of the stockholders, Mr. Bestor, is president of the First National Bank; he is also a director in the Alabama Power Co., also a director in the Mobile & Ohio Railroad Co.,

and in the Mobile Light & Railroad Co. Another incorporator is the surgeon of the Alabama Power Co. Another is the attorney for the Alabama Power Co. Another incorporator, as I remember, is the vice president of the Alabama Power Co., and the editor, Mr. Chandler, recently testified before the Federal Trade Commission that he put up $100,000 of the capital stock. It was a surprise to his friends and to all who knew him. They considered him a poor man, but all at once he announced that he had put up $100,000. Nobody believed it was his money; and so the Federal Trade Commission sent a subpœna for him. They had him on the stand the other day and under oath before the commission he had to admit that it was not his money, but he declined to give the name of the man who furnished the money. I understand that he offered to tell the commission privately afterwards, and that he has told them privately, but no publicity, at least, has been given to it so far as I know.

Mr. HEFLIN. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Alabama?

Mr. NORRIS. I yield.

Mr. HEFLIN. Why should he be permitted to disclose the fact privately and not give it to the public?

Mr. NORRIS. I do not know.

Mr. HEFLIN. They ought to compel him to tell the public.

Mr. NORRIS. I think so. Why should not the public know who owns the newspapers? The law implies that the public shall know, and requires statements to be made; but, no matter who it is that furnished the money, they were not dealing fair with the people, because they announced that this man had put up $100,000. Nobody believed it, and now it is admitted that he did not put up $100,000, although the public does not know as yet who actually did put up the money.

So we can go on the theory that when a newspaper is about to be established in a community, if the Power Trust are satisfied with the newspapers that are there they will boycott the new paper; they will drive them out of business; they will resort to all kinds of things to keep them from even living. When you reverse the case, if there is a newspaper in existence that they do not like, that will not do their bidding, that will not be subservient to their demands, then they say, "We will put another newspaper in the field and put you out of business in that way." They are going into the business. They will not suffer anybody to live and do business who will not be subservient to them.

That is the spirit that is shown. That is what we are up against in the United States. That is what the Power Trust means. If they can not own, they will destroy; and to get permission to live, if it goes on, you will have to make application to them. To get permission to do business, on your knees you must ask them for the favor. Their power that is so great, their influence that is of such magnitude, comes from the money which they control—banks, trust companies, all kinds of corporations—and they are able to do it because of the extortionate rates that they wring out of the toiling masses of the American people. They are able to do it only because they are taking out of the pockets of the people money that they have no moral or honest right to take. They have subsidized the press; they have debauched the commissions that were supposed to regulate them; and from day to day they are issuing their edict as to what papers shall live and what shall not, as to what business shall prosper and what business shall fail. You must pay tribute to the Power Trust or you must suffer the consequences.

They had before the Federal Trade Commission Mr. Thomason. He was one of the representatives of the trust. He was one of the traveling men who went around buying newspapers. Before the Federal Trade Commission Mr. Thomason listed the papers which he had discussed for purchase with the International officers, but none of which was bought. Now, let us get a list of the papers they were trying to get. This man gives it—the representative of the Power Trust himself, under oath, compelled by the Federal Trade Commission to give the evidence. Let us see what they are. These are the papers they tried to get:

The St. Louis Globe Democrat, the Columbus (Ohio) Dispatch, the Kansas City Star, the Atlanta Constitution, the Milwaukee Journal, the Dayton (Ohio) Journal, the Memphis Commercial Appeal, the Detroit Free Press, the Cleveland Plain Dealer, the Cleveland News, the Indianapolis News, the Philadelphia Inquirer, the Minneapolis Star, the Minneapolis Journal, the Newark (N. J.) Evening News, the Booth newspaper chain in Michigan, the South Bend (Ind.) News-Times, the Star-League newspapers in Indiana, comprising the Indianapolis Star, the Munice Star, and the Terre Haute Star; the Buffalo Courier Express, and the Buffalo Times.

There is a list for you. I do not know what they offered these papers, or how far they went with their negotiations; but it is in evidence, undisputed evidence, that for one of the papers, the Cleveland Plain Dealer, they offered $20,000,000 in cash.

Why, Mr. President, this trust could put the Federal Reserve Bank out of business. Their command of cash and money and credit upon notes is unlimited. As I said when we were over in Portland, Me., Insull practically owns that State. It is not his money but he has control. There are thousands of little investors in these various corporations that are built one on top of another, but he has or his friends have the control; and when they get to the top of the whole pile, the holding company, they control. They own a control in every one, clear down through to the bottom; and what is left for the people? There is hardly anything left; and it seems to me that the only escape for the people of Maine, for instance, when they know the truth, when they know that a newspaper is trying to protect their interests and conduct an honest and an honorable campaign for righteous government, is to flock, regardless of party, to the support of such a paper or such a man. If the boycott is to start, let us let it be known that it is a 2-edged sword, and that boycotts can work both ways.

Mr. HEFLIN. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Alabama?

Mr. NORRIS. I yield to the Senator.

Mr. HEFLIN. I should like to say to the Senator that I was in the State of Maine not long ago. Ex-Governor Brewster is making a gallant fight against these papers that have been subsidized by the power interests, the Insull interests; and they are fighting him most viciously, and seeking to destroy him, because he is championing the cause of the people.

Mr. NORRIS. There is not any doubt about that.

Now, Mr. President, I want to take up the case of Mr. Gannett, the owner of the Brooklyn Eagle and several other papers.

I suppose all of those of us who are familiar with the Brooklyn Eagle and its history have rather a great admiration for it. As I understand, it is one of the great newspapers of the United States. It has been engaged on the side of the people in many a battle for righteous and honest government; and when it was disclosed that the owner of that paper had practically sold it—mortgaged it, at least—to the power company, there was not only great surprise but there was a great deal of sorrow.

Mr. Gannett, the owner of the paper and the other papers involved, has been before the Federal Trade Commission. I have a great deal of sympathy for him in his position. Evidently he was too anxious to broaden the scope of his work, and he perhaps thought that by borrowing all this money and mortgaging all these papers he could do a better work in a wider and a greater field; but when he thought it over, and realized what honest men and women thought of the deal, he became conscience-stricken, and he says in his testimony that he made arrangements with the bank and borrowed the money again and paid it all back to the power company.

Mr. Gannett reviewed the negotiations leading up to advances made by the international concerns to aid him in the purchase of the Brooklyn Daily Eagle, the Albany Knickerbocker Press, the Albany Evening News, and the Ithaca (N. Y.) Journal-News.

He testified that Archibald R. Graustein, president of the International Paper & Power Co., approached him at New York in September, 1928, with a proposal of financial assistance in the purchases, and that he accepted Graustein's proposal as a good business venture, affording an excellent contact between his papers and the newsprint products of the company.

I am reading from a report of this testimony in the Baltimore Sun of May 16, 1929.

"If I had for one moment believed," Mr. Gannett said in a statement placed in the record, "that any arrangements with the International Paper Co. could possibly involve me with the so-called Power Trust, I would not have touched one dollar of International money, no matter how advantageous the circumstances in which it was available to me."

Mr. Gannett's statement said that for himself the arrangement with the International enabled the obtaining of funds at rates lower than from investment bankers, and that for the International Paper Co. it was a good investment, as the Gannett newspapers annually bought 20,000 tons of newsprint "at about $55 a ton, a gross business of $1,100,000."

In his testimony, Gannett said, "Every cent the International has advanced to me has been paid back, plus accrued interest to date, and all the stock held by the International has been turned back to me."

To pay the obligations to the International, Mr. Gannett said he borrowed the money from the Chemical Bank & Trust Co., New York.

"I felt we were in a mess about this," he said. "I didn't want any of our papers connected with any power company."

* * * * * * *

After the testimony of Mr. Graustein before the Federal Trade Commission, Mr. Gannett said he "didn't sleep on the train on which he was traveling from Rochester to Washington," and got off at Philadelphia and telephoned Graustein of the plan to pay back the obligations.

Under questioning by Robert E. Healy, chief commission counsel, Mr. Thomason testified that he "did a stupid and foolish thing," because it gave the appearance that "I was trying to hide my backers," in not recording the International in the post-office circulation and ownership statement of April 1 of the three Bryan-Thomason newspapers. The Greensboro Record and the Tampa Tribune had no relation to the International loan, he said.

Mr. President, that reminds me: This man Thomason, I think—if it was not he, it was some other representative of the trust—made affidavit under the law as to the ownership of the mortgage and the bonded indebtedness of the Chicago Journal; and the ownership was placed in the name of a man whose name I can not now recall, but he was an employee in the office, who had no interest in it. He had not invested a dollar. It was put in his name in order to prevent publication of the fact that the Power Trust in reality owned it; and the man who made this affidavit knew that. He said in his testimony before the Federal Trade Commission that it was done in that way at his suggestion; and he made his affidavit under the law that applies to all newspapers and requires them to make affidavit as to the ownership of their stock and the holders of their bonds. He is compelled to state in that affidavit under oath who in reality and in truth does own the bonds. He afterwards filed an amended statement in which he corrected this one. So that it appears from his own statement, his own sworn testimony, that one or the other of his statements was false, and he knew it to be false when he made it, because he said that that arrangement was made according to his suggestion.

I am wondering now whether the Post Office Department will call this discrepancy to the attention of the Department of Justice. I am wondering now whether this representative of the Power Trust, who thus made a false statement, who, under the law, on the face of the testimony, at least, as it stands now, has committed perjury, will be prosecuted for that crime by the Department of Justice. It seems to me that the Post Office Department, where these affidavits are filed, must take notice of this statement, of the fact that it was a false statement, and then call it to the attention of the Department of Justice, laying the evidence which they have before the officials of the Department of Justice with a view to an indictment for perjury.

Mr. President, I have here an editorial from the Alabama Journal. It starts first with a quotation of testimony. The title of the editorial is "Judge by Results." I read:

"I am constantly furnishing information and propaganda advantageous to utilities, not only to newspapers and members of the public-service commission, but to other organizations as well." (Extract from letter of Leon C. Bradley, director of Alabama Utilities Bureau, to Thomas W. Martin, president Alabama Power Co., introduced as part of Bradley testimony before Federal Trade Commission in Washington.)

The editorial proceeds:

One of the things which has been revealed most forcibly by the Federal Trade Commission's investigation of Power Trust activities in the Nation is the widespread ramification of the propaganda and the many hands into which it was placed. Mr. Bradley's admission that the Alabama propaganda advantageous to utilities was sent not only to newspapers in the State, but invaded even the official precincts of an important department of the State government intrusted with the regulation of these utilities, is further proof of the ramifications of this material and proof that no avenue was overlooked where advantage might be secured in behalf of the power company and its associated utilities.

How effective this flood of propaganda has been in Alabama no one is able to say. The people of the State can only judge by results. They know that Muscle Shoals legislation has been held up for nearly 10 years. They know that valuation of the power company's properties for rate-making purposes has dragged along its weary length for nearly seven years. They know that such rate changes as have been made in the State have come only after petition for change had come from the power company itself. They know that one municipal plant after another has been gradually gobbled up until there are less than half a dozen independent units left in the State. They know that the power company threw its influence to the defeat of a bond issue for schoolhouses in Alabama, the most crying need of the State during the present generation. They know that representatives of the Alabama Power Co. have been placed in important places of official responsibility, and that power company influence is a potent factor in every matter which comes before our legislative bodies affecting public utilities.

Developments like this investigation of the Federal Trade Commission are sure to be of powerful effect in counteracting propaganda efforts, for the revelations there have placed a label on much of the material which has been circulated in the State so that it is easy of recognition. In that respect the investigation is serving an inestimable public service.

Mr. President, right along the line of what is said in that editorial, I want to read something about what has happened down in Alabama; how men who represent the power interests have been put in places of honor and of trust in that great State. I read from an editorial appearing in the Mobile Register, of Alabama:

Alabama has had abundant information regarding the manner in which the Alabama branch of this utilities bureau of information functioned. From the presidency of the National Light Association, Aylesworth was promoted to the presidency of the National Broadcasting Co., and he is authority for the statement that the National Broadcasting Co. now operates the greatest broadcasting chain in the world. Greatly pleased with the decision of the three largest educational institutions in Alabama to place WAPI in this chain, Aylesworth is quoted by the Birmingham News as saying with reference to its continued expansion plans: "We intend to carry out the policy even though we do so at a temporary loss, for we believe that the National Broadcasting Co. as a national institution must not hesitate to make its programs available to everybody everywhere," and he adds with significance, "WAPI is a pioneer radio station operated by an educational institution"—

Just listen to that:

WAPI is a pioneer radio station operated by an educational institution.

That is a statement made by Aylesworth, the head of the great propaganda here when they tried to control the Senate in the last Congress, now the president of the National Broadcasting Co. He made this statement:

WAPI is a pioneer radio station operated by an educational institution.

That refers to the University of Alabama, as I understand it But who is at the head of it; who is operating that station? It is none other than Dr. James S. Thomas. Who is Doctor Thomas? He is part of the faculty of that university, operating that broadcasting station in the name of a university. Who is this man, this professor, this doctor? He is the same man who, the investigation of the Federal Trade Commission showed, traveled all over the State of Alabama making speeches in the name of the university, introduced as a university professor, people believing that he was representing the university, always explaining that he was doing all this for the good of the great State of Alabama; but one suspicious circumstance was that in every speech he made, wherever he delivered a lecture, there was a paragraph or a sentence or a statement of some kind that contained the poison of the Power Trust, that was always trying to mislead the people on the municipal ownership question.

Then the Federal Trade Commission in their investigation brought out the fact that this man, during all that time while, as a representative of the Power Trust, he was traveling over the State speaking to commercial clubs, to farmers' clubs, to women's clubs, to all kinds of organizations, was getting $660 every month from the Alabama Power Co. People did not know that when he was around addressing them. Some of them who were critical were able to tell from his speeches that there was something the matter. It was not known that he was drawing two salaries, one from the State and another from the power company. That came out, however, in the investigation, and he is the great man they are going to place at the head of this broadcasting station in Alabama. Aylesworth, the Power Trust man, the head of the broadcasting business in America, lauds this thing to the skies. But he does not say that this man has always been in the employ of the Power Trust. He does not tell the truth to the people of Alabama. He does not say to them that this man was traveling under a false face. He pretended to be doing something for the advancement of the university when he was serving his master, the Power Trust.

The article continues:

Dr. James S. Thomas, who has been designated to supervise the programs broadcast from the University of Alabama, is the same Thomas who as director of extension work at the university confessed that he was secretly on the pay roll of the Alabama Power Co. and following the retirement of Leon C. Bradley was actually put in charge of the Power Trust's bureau of information in Alabama, without ever surrendering his place with the university. The revelation that he was posing as an educational extension worker and accepting public funds for that service and at the same time drawing pay from Alabama Power Co. as a propagandist proved so shocking that even President Denny, of the university, stated publicly regarding this double employment and the amount of money he was receiving from the university

and the Power Trust, "I would have approved neither if I had been consulted."

Prudence may now prompt him and the National Broadcasting Co. not to put flagrant Power Trust propaganda on the air just now, but there is one assumption it appears may be made safely, and that is that no word of criticism of the Alabama Power Co. will be broadcast over Alabama even if it fills all of the offices of importance in the State with its representatives and uses the power sites which Alabama has given it without cost to boost rates sky-high for the consumers of the State.

Mr. JOHNSON. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from California?

Mr. NORRIS. I yield.

Mr. JOHNSON. I merely desire to ask the Senator whether he would prefer to go on to-night or to take a recess at this time. I should be guided by whatever his wishes may be. If he would prefer to continue we will continue, or if he would prefer to take a recess until to-morrow and then conclude, I am willing to follow that course.

Mr. NORRIS. I would like to say to the Senator from California that I will follow his wishes.

Mr. JOHNSON. I have no wishes in the matter.

Mr. NORRIS. The Senator has charge of the unfinished business now before the Senate, and I am frank to say I feel a little embarrassed for taking so much time to discuss something not directly applying to the bill. I shall accommodate myself to the wishes of the Senator from California.

Mr. JOHNSON. I have no wishes in that regard. I was consulting the convenience of the Senator from Nebraska and that is the only reason why I rose. We have now a unanimous-consent agreement in relation to the bill which is the unfinished business, and under that unanimous-consent agreement any Senator may talk an hour, so that it gives ample time for debate as far as that is concerned. I was simply consulting the Senator's convenience.

Mr. NORRIS. I suppose if we take a recess now I would have the floor when we reconvene?

The VICE PRESIDENT. The Senator from Nebraska would be entitled to the floor.

Mr. NORRIS. Is there a limitation on debate commencing to-morrow?

Mr. JOHNSON. Not until Thursday at 3 o'clock.

Mr. HEFLIN. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Alabama?

Mr. NORRIS. I yield.

Mr. HEFLIN. I suggest to the Senator from Nebraska that we take a recess at this time. He is making a very important speech and I know that he must be tired. To-morrow he would be fresh and able to continue without difficulty.

Mr. NORRIS. I am not particularly tired or weary and I can proceed further, but it would suit me just as well to quit now until to-morrow if that arrangement will not inconvenience the Senator from California.

Mr. JOHNSON. Will it suit the Senator better?

Mr. NORRIS. Well, probably. I have not much choice.

RECESS

Mr. JOHNSON. I move that the Senate take a recess until 12 o'clock to-morrow.

The motion was agreed to; and the Senate (at 5 o'clock and 2 minutes p. m.) took a recess until to-morrow, Tuesday, May 21, 1929, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES

MONDAY, *May 20, 1929*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Father in Heaven, for this new day we thank Thee; its call is with us. There never was a better opportunity, a better place, or a better time than now and here. May we prove that we are strong and brave enough to legislate wisely for our Republic and to maintain the integrity and the authority of its free institutions. Stir us with that enthusiasm that calls us to the high levels of service and that sets a great end to which our work may converge. Keep our pathways unbroken and lead us on to life, higher life, ever answering the call of Him, which is ever onward and upward. Reveal to us the vision of that love that unifies creeds and peoples, that inspires service, that makes sorrow useful, and that redeems us from sin. In the name of the Christ. Amen.

The Journal of the proceedings of Friday, May 17, 1929, was read and approved.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The Speaker announced his signature to an enrolled joint resolution of the Senate of the following title:

S. J. Res. 36. Joint resolution to amend Public Resolution 89, Seventieth Congress, second session, approved February 20, 1929, entitled "Joint resolution to provide for accepting, ratifying, and confirming the cessions of certain islands of the Samoan group to the United States, and for other purposes."

SENATE CONCURRENT RESOLUTION REFERRED

A concurrent resolution of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. Con. Res. 6. Concurrent resolution to provide for the printing of 2,000 additional copies of hearings on farm relief legislation; to the Committee on Printing.

THE TARIFF BILL

Mr. HAWLEY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 2667) to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. SNELL in the chair.

The Clerk read the title of the bill.

Mr. HAWLEY. Mr. Chairman, I yield five minutes to the gentlewoman from New York [Mrs. PRATT].

Mrs. RUTH PRATT. Mr. Chairman and Members of the House, my remarks to-day are not to be confined to the labor situation in the domestic sugar industry. The letter I read here on Friday from William Green is expert testimony. Coming from the Federation of Labor, which stands for protection of American labor and for farm relief legislation, this testimony is final on the matter of the employment of women and children and Mexican labor in the beet fields.

My reason for standing against an increase in the tariff on sugar is the obvious impossibility of an expansion of the sugar industry in this country to a point where it can even begin to supply our needs. The domestic industry is not only bound by its labor problem; it is limited by our climate. Statistics show that it is impossible to expand the production of sugar cane in this country. In 1902 twenty-seven per cent of the whole source of our consumption was supplied by domestic sugars. After a quarter of a century of protection the percentage of domestic sugars dropped from 27 per cent to 15 per cent in 1927. Why? Because sugar belongs to the Tropics.

There have been recent attempts to produce cane in the Everglades, but, according to our Department of Agriculture (No. 893, Sugar, p. 14) drainage of the Everglades has never advanced to attain immunity from inundations. The cane can not stand in wet muck. If it escapes the flood, it is destroyed by drought. The Department of Agriculture attributes 85 per cent of the failure of crops in Louisiana to drought. (No. 893, Sugar, p. 16.) We have also early frosts and diseases of cane due to our temperate climate. We learn from the Department of Agriculture (No. 893, Sugar, p. 38) that the presence of these diseases constitutes one of the hazards which confront the cane growers. The amount of seed cane necessary to get a good stand in this country as compared with tropical countries shows the injury worked by disease. In the Tropics, where the dormant period is almost negligible, 1½ tons of seed will produce a good stand. In Louisiana 4 to 6 tons of seed are required.

Farmers' Bulletin No. 1034 states:

> Sugar cane requires a warm climate and long season, so its culture in the United States is limited to a region 200 to 300 miles wide along the extreme south Atlantic coast and the Gulf coast and to some low-lying valleys under irrigation in southwestern Arizona and southern California.

A glance at the past history of the sugar industry in this country makes it impossible for me to hold but one opinion as to the expansion of our sugar production. The cane growers are limited by climate, and, according to their own testimony, the beet growers' problem is labor.

Work in the beet fields is not work for Americans. I have heard it said on this floor that Mexican labor is not employed in the beet fields or that when it is employed the percentage is small. Note the conflict of the opinions of Colorado when it wants labor and when it wants tariff. Hon. EDWARD T. TAYLOR, a Member of this House, has testified before the Committee