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SAFETY STANDARDS IN EMPLOYMENT

HEARINGS
BEFORE
SUBCOMMITTEE NO. 5
OF THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 1264

RELATING TO INDUSTRIAL SAFETY IN THE
DISTRICT OF COLUMBIA

APRIL 28 AND MAY 4, 1967

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SAFETY STANDARDS IN EMPLOYMENT

FRIDAY, APRIL 28, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NUMBER 5 OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 o'clock a.m., in room 1310, Longworth House Office Building, Honorable B. F. Sisk (Chairman of the Subcommittee) presiding.

Present: Representatives Sisk (presiding), Dowdy, Jacobs, and Gude.

Also present: James T. Clark, clerk; Hayden S. Garber, counsel; Sara Watson, assistant counsel; Leonard O. Hilder, investigator; and Donald Tubridy, minority clerk.

Mr. SISK. Subcommittee No. 5 will come to order.

The business pending before the subcommittee this morning is H.R. 1264, which would amend Title II of the District of Columbia minimum wage law relating to industrial safety.

The original legislation was enacted in 1941 and it appears to have functioned reasonably well under the direction of an Industrial Safety Board until 1964. In that year, the Corporation Counsel rendered an opinion which sharply restricted the application of the existing law and confined its provisions to the regulation of safety conditions in manufacturing plants and building construction. In effect, this means that, according to my figures, only approximately 16 percent of the employed persons in the District of Columbia are covered by present law as so interpreted. For example, hotel and restaurant workers, retail workers, legal, medical, and other office workers, to the number of more than 100,000 would be excluded from coverage and protection under the present law as interpreted by the 1964 decision.

H.R. 1264 would amend the Code by eliminating "industrial employment" and would make adequate safety regulations applicable to all phases of employment. It would also modify the penalties for violation to provide a smaller minimum and a larger maximum fine, thus, in my opinion, enhancing enforcement and authorizing penalties in keeping with the severity of the violation.

I do not believe this proposed legislation is necessarily controversial; however, during these hearings I am sure there may be questions raised, and doubtless it will be desired to consider possible amendments and possibly to adopt such amendments.

We will start off by putting a copy of H.R. 1264 in the record at this point, together with staff memoranda.

(The bill H.R. 1264 and the staff memorandum follow:)

H.R. 1264, 90th Congress, 1st Session, by Mr. Sisk, on January 10, 1967

A BILL To amend title II of the Act of September 19, 1918 (40 Stat. 960), as amended, relating to industrial safety in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of title II of the Act approved September 19, 1918 (40 Stat. 960), as amended (sec. 36-432, D.C. Code), is amended (a) by striking in the definition of "Employer" the term "industrial employment"; and (b) by striking in the definition of "Place of employment" the word "industrial".

SEC. 2. Section 3 of title II of such Act of September 19, 1918, as amended (sec. 36-433, D.C. Code), is amended by adding the following sentence: "To promote the safety of persons employed in buildings or other structures, such rules, regulations, and standards may require, without limitation, changes in the permanent or temporary features of such buildings or other structures."

SEC. 3. Section 12 of title II of the Act of September 19, 1918, as amended, is amended by striking out "more than \$300, or by imprisonment of not exceeding ninety days. Prosecution for violation of this title shall be in the name of the District of Columbia on information filed in the municipal court for the District of Columbia" and inserting in lieu thereof the following: "less than \$100 or more than \$1,000, or by imprisonment of not more than ninety days. In any case involving personal injury, no forfeiture of collateral shall be permitted. Prosecutions for violations of this title shall be in the name of the District of Columbia on information filed in the District of Columbia Court of General Sessions."

STAFF MEMORANDUM ON H.R. 1264

PRESENT LAW

Chapter 2 of the Minimum Wage and Industrial Safety Act—approved Sept. 19, 1918, (40 Stat. 960), amended by act approved Oct. 14, 1941 (55 Stat. 738, D.C. Code, Title 36 Sec. 431)—as presently interpreted, authorizes the Minimum Wage and Industrial Safety Board to establish and enforce, rules and regulations governing the safety of employees in industrial employment in the District of Columbia.

The Industrial Safety Board is empowered to establish "reasonable" standards of safety for the protection of life and health of employees, to conduct inspections and investigations, to enforce reasonable standards, and to cite employers for any violations of the provisions of the Act for violation of the rules and regulations. Penalties for violation are a fine of not more than \$300 or imprisonment for not exceeding 90 days.

PURPOSE OF THE LEGISLATION

Prior to 1964, existing laws was interpreted as applying to safety standards in all places of employment in the District of Columbia except in federal or District of Columbia government establishments, the latter being specifically exempt under the Act. Because of a jurisdictional question between the Industrial Safety Board and the District of Columbia Department of Licenses and Inspections in 1964, the Corporation Counsel concluded in an opinion dated Nov. 5, 1964 that the history and intent of the legislation, as well as the terms of the Act limited the application to the places of industrial employment only.

The purpose of the amendments proposed in H.R. 1264 is to make the terms of the Act generally applicable to all places of employment in the District of Columbia, with exception of those of the federal and District governments, and to increase the penalties for violation of the Act to fines of not less than \$100 or more than \$1,000 or by imprisonment for not more than 90 days.

QUESTIONS

1. Is it the intent of the amendment to make the Act applicable to *all* places of employment—

- A. A private home which employs domestic help?
- B. The stenographer in a lawyer's office?

C. The clerk in a real estate office?

D. The newspaper delivery boy?

2. Section 2 appears to provide unlimited authority to order alterations "in the permanent or temporary features" of buildings or structures which are places of employment. Does this result in any conflict of authority between—

A. The regulations of the Department of Public Health as to sanitation and health requirements?

B. The regulations of the Department of Licenses and Inspections as to building requirements as to fire safety and conditions for issuance of occupancy permits?

C. The building and construction regulations, electrical, plumbing, and other similar regulations for the District?

Mr. SISK. We have with us this morning Mr. Robert Kneipp, Assistant Corporation Counsel.

Mr. Kneipp, if you would come forward, I think unless there are reasons not known to the Chairman, we might as well have the Board Members representatives, Mrs. Sarah H. Newman, chairman, along with the Director, Charles Greene, and Clark King, counsel, to be seated at the table.

As I understand it, you folks are the enforcing part of the program, and Clark King also.

Mr. Kneipp, do you have a statement?

STATEMENT OF ROBERT F. KNEIPP, ASSISTANT CORPORATION COUNSEL; ACCOMPANIED BY CLARK F. KING, OFFICE OF THE CORPORATION COUNSEL; MRS. SARAH NEWMAN, CHAIRMAN, INDUSTRIAL SAFETY AND MINIMUM WAGE BOARD; AND CHARLES T. GREENE, DIRECTOR OF INDUSTRIAL SAFETY, DISTRICT OF COLUMBIA GOVERNMENT

Mr. KNEIPP. I have the Commissioners' report on the legislation which I would like to offer for the record, Mr. Chairman. It is dated April 25, and is addressed to Mr. McMillan.

Mr. SISK. We will be glad to make the entire statement a part of the record, and you may read or summarize it, whatever you would prefer to do, Mr. Kneipp.

(The report referred to follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
Washington, D.C., April 25, 1967.

HON. JOHN L. McMILLAN,
Chairman, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.

DEAR MR. McMILLAN: The Commissioners of the District of Columbia have for report H.R. 1264, 90th Congress, a bill "To amend title II of the Act of September 19, 1918 (40 Stat. 960), as amended, relating to industrial safety in the District of Columbia."

Title II of the Minimum Wage and Industrial Safety Act of the District of Columbia approved September 19, 1918 (40 Stat. 960), as added by the Act approved October 14, 1941 (55 Stat. 738), has for its general purpose the fostering, promoting, and development of the safety of wage earners of the District of Columbia in relation to their working conditions. The employment to which this title of the Act relates, however, is "industrial employment", and examination both of the language of the Act itself and of the legislative history of the Act, as contained in Senate Report No. 675 of the 77th Congress, indicates that title II is limited to industrial employment or places where industrial employment is carried on.

The Commissioners are of the view that the protection afforded workers of the District of Columbia by title II of the Minimum Wage and Industrial Safety Act should be broadened to include other employees whose working conditions may be such as to be hazardous to them. Further, the Commissioners believe that District of Columbia law in this regard should be at least equal to the industrial safety legislation that is in effect in the more progressive States and municipalities of the United States. Accordingly, they favor, in principle, legislation which amends the existing District of Columbia law relating to the safety of employees so as to extend it to places of employment other than places of industrial employment.

The first section of the bill has the effect, by the elimination of the term "industrial employment" in the definition of "employer", and by striking "industrial" in the definition of "place of employment", of broadening title II of the Minimum Wage and Industrial Safety Act so as to cover virtually every place of employment in the District of Columbia, with the exception of the premises of any Federal or District of Columbia establishment. The Commissioners consider this unnecessary. They believe it would be better were the Minimum Wage and Industrial Safety Act, as amended by the bill, limited to essentially those kinds of employment covered by the Longshoremen's and Harbor Workers' Act, as made applicable to employment within the District of Columbia by the first section of the Act approved May 17, 1928 (45 Stat. 600; D. C. Code, sec. 36-501), but extending the Minimum Wage and Industrial Safety Act to cover the employees of common carriers, not now covered by the Longshoremen's and Harbor Workers' Act. Accordingly, the Commissioners propose that the first section of the bill be amended to read as follows:

"That section 2 of title II of the Act approved September 19, 1918 (40 Stat. 960), as amended (sec. 36-432, D. C. Code), is amended (a) by striking in the definition of "Employer" the term "industrial employment"; (b) by striking in the definition of "Place of employment" the word "industrial"; and (c) by inserting immediately before the period at the end thereof the following: "*Provided further*, That this title shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee subject to the provisions of subchapter I of Chapter 81 of title 5, United States Code; and (3) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer".

Section 3 amends section 12 of title II of the Minimum Wage and Industrial Safety Act (D. C. Code, sec. 36-442) to provide a penalty of not less than \$100 nor more than \$1000, or imprisonment for not more than 90 days, for violations of the title, and to prohibit the forfeiture of collateral in cases involving personal injury. The Commissioners are of the view that the prohibition against the forfeiture of collateral in all cases involving personal injury need not necessarily be provided by statute. The right to post collateral in any amount (in lieu of bond) for later appearance in court is established by rule of court. The privilege of forfeiting collateral is, likewise, fixed by rule of court. The District of Columbia Court of General Sessions, in its current collateral list, prohibits the forfeiture of collateral in a number of offenses. Should the court, for good cause shown, see fit to do so, it could similarly provide that there shall be no forfeitures in cases of violations of industrial safety regulations resulting in personal injury. Accordingly, the Commissioners see no reason for providing by statute that there shall be no forfeiture of collateral in such cases, and they recommend the deletion of so much of the amendment of section 12 of title II of the minimum wage and industrial safety law as reads "In any case involving personal injury, no forfeiture of collateral shall be permitted."

As the Commissioners have indicated above, they approve, in principle, the broadening of the Minimum Wage and Industrial Safety Act so as to make it applicable to more places of employment than are covered by existing law. Were the bill amended as the Commissioners have recommended in this report, they would favor its enactment. In its present form, however, for the reasons set forth above, the Commissioners are constrained to object to its enactment.

Sincerely yours,

WALTER N. TOBRINER,
President,
Board of Commissioners, D.C.

Mr. KNEIPP. I would like to start out first, Mr. Chairman, by saying the Commissioners favor the legislation in principle. They do have

two objections to it that can be very easily taken care of, but generally, the Commissioners do feel that the present industrial safety law of the District should be broadened.

It is, unfortunately, too narrow, or applicable to too few people at the present time, as you pointed out in your statement at the beginning of the hearing. Congress must have meant something by the use of the word "industrial" when they referred to "places of industrial employment."

And the Corporation Counsel two or three years ago, in reviewing the legislative history of the Act, concluded that it was intended by the Congress, at the time of enactment, to be limited to places that are ordinarily thought of as industrial, not service places, not such places as hotels and restaurants, but places where manufacturing and industry are carried on.

But the Commissioners realize that the Act, as so construed, does not afford protection to those persons who deserve to be protected, and so they favor the legislation. They have two reservations.

In its present form, the Bill is so broad as to cover virtually every place of employment, including domestics, agricultural workers, this kind of thing, so the proposal that the Commissioners are making to the committee is that the Bill be amended so as to make it practically co-extensive with the Longshoremen's and Harbor Workers' Act, which has been made applicable to private employment in the District of Columbia.

That is set forth, Mr. Chairman, at title 36, section 501 of the D.C. Code, which the clerk has just handed you, and title 36 section 502 of the D.C. Code sets forth the exceptions. With respect to the Longshoremen's and Harbor Workers' Act, that is applicable insofar as the District workers are concerned.

The Commission is proposing that the Industrial Safety Act, H.R. 1264, be amended so as to make the coverage of the Industrial Safety Act for the District of Columbia virtually coextensive with the coverage that is provided private employees by the Longshoremen's and Harbor Workers' Act, so as to exclude domestic workers, agricultural workers, any employment that is casual and not in the usual course of the trade, business, occupation or profession of the employer.

But the Commissioners feel that the Longshoremen's and Harbor Workers' Act is slightly too broad in that it also excludes employees of common carriers. So the Commissioners would want to exclude the Industrial Safety Act's coverage of employees of common carriers.

Accordingly, they have set forth in their report a proposed amendment of the Bill that would narrow its coverage to almost that of the Longshoremen's and Harbor Workers' Act.

In reviewing that report, Mr. Chairman, on page three there is set forth a suggested proviso saying:

Provided further, that this title shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee subject to the provisions of subchapter I of Chapter 81 of title 5—

This is the Federal Employees Compensation Act—

and (3) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer.

In considering that suggested proviso a little bit further, I should like to recommend that Clause 2 "an employee subject to the provisions of subchapter I of Chapter 81 of title 5, United States Code" be deleted from that suggestion, because the Industrial Safety Act presently excludes employees of the Federal Government and the District Government. And so this Clause 2 in this proposed amendment is really unnecessary, inasmuch as it deals with the Federal Employees Compensation Act.

The other objection that the Commissioners have to the Bill is that it prohibits the forfeiture of collateral in cases involving personal injury.

The problem there is this. The courts have a collateral list, and in this collateral list, the courts can indicate whether or not forfeiture of collateral is involved. They do this in a number of cases. It would be perfectly easy for the courts to specify that there shall be no forfeiture of collateral in personal injury cases, and just by a letter from the Commissioners to the judges this could be done. So the Commissioners feel that it is unnecessary to specify by statute that there shall be no forfeiture of collateral.

This seems to deal with the prerogative of the courts, and that is the reason why the Commissioners have this reservation with respect to that point.

Other than those two reservations about the present scope of the Bill, or of the Act as it would be amended by the Bill, and with respect to the prerogative of the court in connection with prohibiting forfeiture of collateral, the Commissioners favor the legislation, Mr. Chairman.

Mr. SISK. Thank you, Mr. Kneipp, for the comments and the report of the Commissioners.

I was going to ask before we have any questions if some of you folks on the Board have statements. Mrs. Newman or Mr. Greene.

Mrs. NEWMAN. I have a brief statement, Mr. Chairman.

Mr. SISK. All right, you may proceed.

Mrs. NEWMAN. The Minimum Wage and Industrial Safety Board is basically in favor of Representative Sisk's bill H.R. 1264, and urges its passage. Legislation is needed to reestablish the jurisdiction which the Board assumed was granted in the original legislation which Congress passed in 1941. Legislation to cover all workers in private employment within the District of Columbia will give the Board the tools it needs to combat on-the-job accidents more effectively and will place the Nation's Capital on a par with other progressive localities.

It is only fair, we believe, that if the recently amended Minimum Wage legislation extends coverage to approximately 290,000 workers, then these same workers should be able to work in places which meet minimum safety standards.

Employees in the retail, services, transportation, utilities, and finance industries contribute to the total accident picture and are as much in need of the protection of safety standards as are workers in the construction or manufacturing industries. We feel that Congress was of the same opinion in 1941 when it passed the Industrial Safety Act and urge that Congress now reaffirm this position by supporting H.R. 1264.

I may say there are no other Members of the Board here, but this is a unanimous feeling on the part of the three Members of the Board.

Mr. SISK. Thank you for that statement. Are there any other statements?

Mr. GREENE. I have a statement.

Mr. SISK. Would you like to make a statement?

Mr. GREENE. Yes, sir. As Director of Industrial Safety, I have the job of seeing to it that the safety regulations of the District of Columbia are complied with in places of employment. Through the years, the extent of the coverage of the Industrial Safety Act presents no problems either to our office or to the courts, for it was accepted that the law applied to all places of employment, excluding only places where federal or district employees worked.

Through the years our division received reports from the United States Employment Service as to the number of employees working within the District of Columbia and types of industries involved. We also receive all accident reports from the Bureau of Employees' Compensation, as required in the original law. In fiscal 1966, these reports indicated that approximately 290,000 people worked in private employment and that 29,758 of these workers suffered on-the-job injuries; 11,984 were disabling and 38 were fatal. These figures have been a part of the Commissioners' annual report since 1941.

The Industrial Safety Division is the only agency which investigates accidents which occur at places of employment. In a typical week, the Police Department or the Fire Department reports an amputation at the Railroad terminal, a fall down a stairs by a retail clerk, a death to a construction worker, and an electric shock injury to a worker in a drug store. We have been investigating accidents of this type for years and saw clear authority to do so.

H.R. 1264 would erase the possibility of any narrow interpretation of the Industrial Safety Law and permit the division to investigate accidents, investigate complaints of unsafe working conditions, inspect workplaces, and educate both employers and employees all for the betterment of all the working population in the District of Columbia.

Mr. SISK. Thank you, Mr. Greene.

Mr. King, do you have any comment?

Mr. KING. No, I have nothing to add.

Mr. SISK. With reference to your statement, Mr. Kneipp, I wanted to ask a few questions to understand just how broad you felt the proposed legislation would go. As I understand it, you are a bit fearful that maybe it goes a little bit too far, is that right?

For example, go to a private home employing domestic help, do I understand that you feel that would be covered under existing law?

Mr. KNEIPP. Yes, sir, under the bill.

Mr. SISK. Under the proposal.

Mr. KNEIPP. Yes, sir.

Mr. SISK. I would like to correct that.

Mr. KNEIPP. I think the proposal is this, Mr. Chairman. I am not saying that these domestics shouldn't be protected, but I think that we should look at what burden would be placed on the housewife, for example, if the domestic were injured in her home.

She would come under the burden of the Act. She would have to make her reports to the Industrial Safety people, and I think the idea

behind the possible exclusion of domestic, agricultural workers and persons engaged in casual employment is that to avoid burdening their employers with all of the provisions of the Industrial Safety Act, which are rather involved, and which provisions would hardly be expected to be within the knowledge of the average housewife, for example.

Since Congress in making the Longshoremen and Harbor Workers' Act applicable to the District saw fit to exclude certain employees, including agricultural, domestic, casual employees, the Commissioners take the position that the Industrial Safety Act should be given the same coverage and exemptions, just from the standpoint of uniformity, if nothing else.

MR. SISK. I would like to ask for any comment you might have, and I am not trying to create any controversy between the witnesses. Mr. Greene, as the Director, do you have any comments on this? What would you see as being the problem of enforcement, and so on, if it was interpreted to be that broad? Would it again afford you problems, or what would be your reaction?

MR. GREENE. We have problems now covering the people we have authority to cover, because of the lack of staff and budget considerations. Trying to get into homes would present many administrative problems, and since we would have no record of when or how these people get hurt, because there is no provision in the law now, mechanics for reporting these type of accidents to our office—in the law now we receive all employment compensation reports, so we know, we get a picture of what is happening among the average, the regular workers in the city. But we have no way of knowing what would happen in the home, and we probably would not have the force to even get into investigating anything like that.

Then another thing is, I don't know of any workers that would come under the agricultural category here in the District of Columbia whatsoever. I don't know of any even listed in any report under that category.

MR. SISK. Certainly it sounds to me like it would place an undue burden all right, if we attempted let's say to cover homes. I recognize that there are certain laws protecting domestics. Most all of us as homeowners carry protection in the event of injuries in a home.

On the other hand, I want to be certain that in any amendment changes we don't leave a loophole, because after all, in the final analysis I would assume, Mr. Kneipp, this is a question, certainly hotel employees and so on, you would expect to be covered.

MR. KNEIPP. Yes.

MR. SISK. And maids and so on who would be employed in hotels. Do you interpret the language as being broad enough, for example, to cover a stenographer in a lawyer's office?

MR. KNEIPP. I think it would, Mr. Chairman.

MR. SISK. A clerk in a retail office?

MR. KNEIPP. Yes.

MR. SISK. In a real estate office?

MR. KNEIPP. Yes.

MR. SISK. How about a newspaper delivery boy?

MR. KNEIPP. I think he would be covered.

MR. GREENE. He is self-employed.

Mrs. NEWMAN. I am not sure they would be covered.

Mr. KNEIPP. I think there is some controversy.

Mr. GREENE. As to whether they are casual workers or not.

Mr. SISK. I was going to say, in the amendment as I understand it, I have not had an opportunity, by the way, to study the Commissioners' report and to analyze exactly the amendments they propose, but as to this idea of casual workers, how would you interpret "casual worker"? I believe you mentioned that in your statement, is that right, Mr. Kneipp?

Mr. KNEIPP. Yes, Mr. Chairman. I think a casual worker at least in my thinking, is the handyman, the person that a householder might employ to remove some trash or do odd jobs about the house; he is not necessarily a domestic. He is just a sort of handyman. Whether you call him a domestic or not is another question.

Mr. SISK. That is true if he was working let's say in my home or in your home. Yet, let's say an individual might fall under that category if he was doing a minor repair on a faucet, although the work might fall under the job of plumber.

I mean you might use a casual worker in a place of business or somewhere else. I just want to be sure that in any definition we get involved with here, I would hope that any amendment that we put into the bill does not create an administrative monstrosity. I certainly am not opposing the amendment, because I do think that we want to make this enforceable, because I recognize the job that Mr. Greene, as the Director has, and that the Board has. But in connection with the casual work, that is a rather broad term, and we do not want to make it impossible to administer.

You referred to newspaper boys. I understand you don't know whether they are casual or not.

Mr. GREENE. The only information I can give you is that we have no record of any workmen's compensation insurance being applied to a newspaper delivery boy, and then an accident ever being reported.

We have another condition that falls in this casual category—a man who washes windows in an office building, who contracts this job on his own, and he has no employees. He washes the windows himself. He doesn't involve any other employees. He has no compensation insurance on himself. The law doesn't require him to carry any. So, he is not involved with anything, with any regulations that our agency has charge of.

Mr. SISK. Of course, if he is in the field of contracting, normally such protection as he would have would be his own responsibility.

Mr. GREENE. That is right.

Mr. SISK. I mean isn't that generally the rule anywhere?

Mr. GREENE. This is the rule, as long as he had no employees.

Mr. SISK. Yes, because I would think that he would be pretty much on all fours with, for example, a ditching contractor. You would contract with him to dig a ditch. Of course, if the ditch caved in, he has contracted it and it is not the responsibility of the person having the work done. It is the responsibility of the contractor who has contracted to do the job.

Mr. GREENE. We expect the employer to be the one responsible for the safety of the employee.

Mr. SISK. That is right, the one holding the contract.

Mr. GREENE. That is right.

Mr. SISK. That would be the same as with the window washer.

Mr. GREENE. Yes.

Mr. SISK. Now as to section 2, and I think we might just as well raise the questions here, which do not necessarily reflect my position on the legislation, but since you folks are those who will be interpreting the law and administering it and so on, I want to raise some questions that I understand have been raised through mail and in other ways, with reference to some interpretations.

There are some who feel that this section provides pretty much unlimited authority to order alterations in permanent or temporary features of building constructions which are places of employment.

Now the question has been raised as to a conflict of authority here between, for example, the regulations of the Department of Public Health, as to sanitation and health requirements, the regulations of the Department of Licenses and Inspections as to building requirements, safety and conditions for issuance of occupancy permits, also building and construction regulations, electrical, plumbing, and other similar regulations for the District.

I would like to ask, Mr. Kneipp, if you have given any thought to this—this is a question which we probably will have raised later by witnesses, because it has already been raised with me, I would like at this time to have any comments you or the Board would have on this.

Mr. KNEIPP. Mr. Chairman, this conflict of jurisdiction, shall we say, between District agencies is what gave rise to the 1964 opinion of the Corporation Counsel. At that time I believe it involved the Washington Hotel. Of course, Mr. Greene was probably on the Board then. But the Industrial Safety people ordered a handrail for the protection of waiters and waitresses in the Washington Hotel; is that correct, Mr. Greene?

Mr. GREENE. For all workers.

Mr. KNEIPP. Yes, and the hotel people contended that they were in conformity with the building code, and they did not have to supply this extra feature. And so, this is how the Corporation Counsel got knowledge of the matter in the first instance, to try to decide this conflict of jurisdiction, and the Corporation Counsel did conclude that the Department of Licenses and Inspections had primary jurisdiction over the construction of buildings, and that the Industrial Safety people were without authority to require this additional handrail in an area involving a type of work that was not covered by the law, inasmuch as it was not industrial employment. The opinion of the Corporation Counsel went very thoroughly into what constitutes industrial employment.

Mr. SISK. It has been suggested, Mr. Kneipp, and I think this would be good, could you furnish or send to us a copy of that decision?

Mr. KNEIPP. I would be glad to, Mr. Chairman.

Mr. SISK. We might include it in the record. Without objection, once it is forwarded, it will be made part of the record for the information of the committee.

(A copy of the decision referred to follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE CORPORATION COUNSEL,
Washington, November 5, 1964.

In re Overlap of Functions of Minimum Wage and Industrial Safety Board and the Department of Licenses and Inspections. (CCO:3.M3.1—Overlap of Functions—Dept. of Licenses and Inspections.)

The Commissioners of the District of Columbia.

GENTLEMEN: You forwarded to this office a memorandum from the Director, Department of Licenses and Inspections, requesting that I define "the limits of authority and jurisdiction of the Minimum Wage and Industrial Safety Board and the Department of Licenses and Inspections" with respect to "permanent features of a building or structure." The request for an opinion resulted from a jurisdictional dispute as to what regulations should be applicable to certain public stairways in the Hotel Washington.

The stairways in question are five in number and the widths vary from 47 inches to 53 inches. Rule 11-2314 of the Minimum Wage and Safety Standards and Regulations requires a handrail on each side of a stairway, the width of which is more than 44 inches but less than 88 inches. The Building Code in Section 3-619 specifies two handrails for stairways over 36 inches wide, but Section 3-6235(g) permits one handrail for interior stairways on existing buildings erected prior to March 8, 1946.

The Director of Licenses and Inspections, in memoranda dated April 28, 1964, and June 15, 1964, states that the industrial safety regulations deal "primarily with temporary construction standards and facilities for the protection and safety of workmen * * * and should not apply to normal public stairways within a building." In his view, the only regulations applicable to such permanent appurtenances of a building are those contained in the Building Code, enforceable by the Department of Licenses and Inspections.

The Director of Industrial Safety, in a memorandum dated June 12, 1964, points out that there are some 343 employees at the hotel, and that employees use the stairways in question. This, it is said, makes the hotel a place of employment, as that term is used in the statute defining the authority of the Board.

If both the Building Code and the industrial safety regulations are applicable, the fact that the requirements of the latter are more stringent in a given case, does not necessarily make them void. The validity of a regulation depends rather on whether a reasonable standard is presented (See *Davis v. District of Columbia*, 59 A. 2d 208,211 (Mun. App. 1948)), and whether the regulation is within the delegated authority of the enabling statute.

The handrail requirements specified in both the Building Code and the industrial safety regulations are sufficiently related to safety and protection against accidents so as to present reasonable standards. Whether these requirements as applied to the hotel are within the authority delegated under the pertinent statutes, depends, of course, on the wording of the statute in question. The requirements of the Building Code regarding handrails for stairways within hotels are valid on this ground because of the extremely broad authority given the Commissioners "to make and enforce such building regulations . . . as they deem advisable." 20 Stat. 131 (1878); Sec. 1-228, D.C. Code, 1961 ed. Whether the particular regulation of the Minimum Wage and Industrial Safety Board as applied to the Hotel Washington is within the scope of the Board's authority under its statute presents a more difficult question.

The Minimum Wage and Industrial Safety Board was created by an Act of Congress approved October 14, 1941, 55 Stat. 738, Ch. 438, which was amendatory of the Act of September 19, 1918, 40 Stat. 960, Ch. 174. The terms of the Act of 1941 are embodied in Title 36, Sections 401-442, D.C. Code, 1961 ed.

The 1941 amendment added Subchapter II which is entitled "Industrial Safety", and sets forth its purpose in Sec. 36-431:

"The purpose of this subchapter is to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions."

Other sections of Subchapter II relevant to the Board's authority provide in pertinent part as follows:

Sec. 36-432. Definitions.

"(a) 'Employer' includes any person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any industrial employment, place of employment, or of any employee....

"(d) 'Place of employment' means any place where industrial employment is carried on ***

Sec. 36-433. Additional duties of Board under this subchapter.

"The Board * * * shall * * * have power to make such inspections and investigations * * *; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records * * *; determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter."

"Sec. 36-434. Rules and Regulations—Public hearing—Publication—Effective Date.

Before any rules or regulations of the Board shall become effective a public hearing shall be held by the Board for the purpose of investigating reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment * * * If, after investigation, the Board is of the opinion that minimum standards of safety requirements are necessary to protect or safeguard the lives or health of employees covered by this subchapter, it may adopt and promulgate such rules and regulations as it may deem advisable * * *

"Sec. 36-438. Employers' duties—Furnish safe place of employment—Furnish required information—Report employees' injury, death, or disease—Record of employees.

(a) Every employer shall furnish a place of employment which shall be reasonably safe for employees, shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably safe and adequate to render such employment and place of employment reasonably safe.

"Sec. 36-439. Authority to examine place of employment.

(a) The Board, or any officer or employee acting under its authority, shall have the authority, at any reasonable time, to enter any place where an employment covered by this subchapter is being carried on, and to examine any structure, tool, appliance, machinery, or process used in or connected with such employment. No employer or other person shall refuse to admit any member of the Board or its authorized representative to any such place or to permit any such examination."

Although Section 36-431, "Purpose", is worded very broadly to include the welfare of all "wage earners" in the District of Columbia, other language seems to indicate that the Act is limited to "industrial employment." For instance, the subchapter is entitled "Industrial Safety", and the definitions of "employer" and "place of employment" refer to "industrial employment."

Admittedly, the act is not entirely free from ambiguity. Section 36-433 most directly defines the authority of the Board. A fair reading of this section indicates that the basic jurisdiction of the Board over employers is to require them to "keep their places of employment reasonably safe." Because "place of employment" by definition is limited to industrial employment, it would seem that the Board's jurisdiction is likewise limited. It is recognized that this section also defines the rule making authority of the Board by reference to "employment" without limitation and that in the definition of "employer" in Section 36-432 (a) the words "or of any employee" appear also without limitation. From this it could be argued that, in light of the stated purpose of the act, the said act is not limited to industrial employment. However, where the words "employees" and "employment" appear in Sections 36-434 and 36-439, they are limited by the qualifying phrase "covered by this subchapter."

The legislative history of the act as reflected in Senate Report No. 675, 77th Congress, 1st Session (1941) contains the following language:

"Section 3 confers upon the Board in addition to its duties in respect to the Minimum Wage Law, the power to administer provisions of the Act relating to *industrial accident prevention*. It is authorized to adopt rules and regulations after a public hearing governing minimum standards of safety requirements which the Board considers necessary in order to protect or safeguard the lives or health of *industrial employees*."

"*Industrial employers* are required by this Act to furnish a reasonably safe place for employees and to use safety devices and safeguards which are reasonably safe and adequate for the protection of employees."

"* * * *industrial accidents* in the District of Columbia have been increasing in appalling numbers * * * The majority of the total accidents happened in *construction work*. It is believed that most of these accidents are due to lack of program supervision and control over *industrial projects* and the lack of minimum safety requirements necessary to safeguard the health and life of *industrial employees* * * *" (Emphasis added.)

Similar statements are made in House of Representatives Report No. 918, 77th Congress, 1st Session (1941).

Because of the language of the statute and the statements in the Congressional Reports, this office is constrained to take the position that the authority of the Board to promulgate and enforce safety standards and regulations is limited to industrial employment or places where industrial employment is carried on. This conclusion reaffirms the reasoning and basic position taken in the Corporation Counsel's Opinion dated June 24, 1949, (CCO : 3.M3.1—Window Cleaning Operations).

Having established the proposition that the Board's jurisdiction is limited to industrial employment, the next question is whether hotel workers are engaged in industrial employment.

The term "industrial employment" has never been interpreted by the local courts. Decisions from other jurisdictions can be found to the effect that an "industrial establishment" is a place of business that employs much labor and capital and is a distinct branch of trade. E.g., *State ex rel Kansas City Power & Light Co. v. Smith*, 111 S. W. 2d 513, 515 (Mo. 1938). A hospital has been held not to be an "industrial enterprise". *Mayor and City Council of Baltimore v. Trunk* 190 A. 756, 759 (Md. 1937). See also *Brooklyn Hebrew Home and Hospital for the Aged v. Ottley*, 205 N.Y.S. 2d 397, 400 (1960). A bowling alley was held not to be an "industrial plant" for purposes of violation of a zoning decree. *Town of Oyster Bay v. Forte*, 219, N.Y.S. 2d 456, 460 (1961). It has been held that a hotel is not a "factory building" or a "mercantile establishment" for purposes of applying a regulation of an Industrial Board. *Mortimer v. Natapov*, 14 N.Y.S. 2d 971 (1939).

This office has rendered two opinions construing the term "industrial employment." In the first of these, it was concluded that employees of the Washington Terminal Company came within the Board's jurisdiction. (CCO : 3.M3.1—Washington Terminal Company, dated February 17, 1945.) In the second opinion (CCO : 3.M3.1—Window Cleaning Operations, *supra*.) it was stated that the Board's jurisdiction did not extend to the operation of an apartment building or an office building because such operations could not be construed as involving "industrial employment."

Based on the foregoing, it is not believed that the term "industrial employment" could under any circumstances be construed to include the employment of hotel workers. Accordingly, it is my opinion that the above-cited regulations of the Minimum Wage and Industrial Safety Board are not applicable to the Hotel Washington.

The broad question posed in the request for an opinion concerned the limits of authority and jurisdiction of the Minimum Wage and Industrial Safety Board and the Department of Licenses and Inspections with respect to permanent features of a building or structure. It follows from the foregoing discussion that the jurisdiction of the Minimum Wage and Industrial Safety Board is not dependent upon the nature of the building or structure or its appurtenances, but rather on what goes on inside of the building or structure. If the activity can be considered industrial employment, then the Board is authorized under its statute to fix reasonable safety standards and to promulgate rules and regulations after a public hearing. Secs. 36-433, 36-434, D.C. Code, 1961 ed. In places where industrial employment is carried on, such rules and regulations would be fully applicable and enforceable even though the Building Code may specify less stringent requirements.

CONCLUSIONS :

1. A hotel is not a place where industrial employment is carried on, and, thus, the safety standards and regulations of the Minimum Wage and Industrial Safety Board are not applicable to interior stairways of a hotel.

2. In places of industrial employment, the industrial safety standards and regulations are fully applicable and enforceable even though the Building Code may specify less stringent requirements.

Respectfully,

CHESTER H. GRAY,
Corporation Counsel, D.C.

Mr. SISK. Had you completed your statement?

Mr. KNEIPP. I just wanted to finish one thought. The language of Section 2 would authorize the Industrial Safety people, notwithstanding any jurisdiction in the Department of Licenses and Inspections, in its administration of the building code and other codes under its jurisdiction, Section 2 would allow the Industrial Safety people to require such changes in a building or other place of employment as would afford protection to the workers. This would resolve that conflict of jurisdiction between the various District agencies.

Mr. SISK. I believe, Mr. Greene, you had some comment you wanted to make.

Mr. GREENE. Relative to this?

Mr. SISK. Yes, if you will, please.

Mr. GREENE. I had an additional comment. I think that the tentative opinion of the Corporation Counsel just prior to this opinion, to the final opinion, would also be helpful in considering the whole, the total opinion. There were two opinions written. One was tentative and then the other one was a final opinion.

Mr. SISK. We might have both of those for the committee files. It would at least give the committee the information therein.

Mr. GREENE. Yes. I would like to add here the problem that we ran into. There were particularly two hotels involved, in that there is a requirement, and it is a nationally accepted requirement which our code refers to; it is the American Standards Association's Safety Code, which is now the United States of America Standard Institute, and the code involving stair widths and railings and landings, et cetera, has been in effect since 1932.

The building code of the District of Columbia, up until 1961, referred to just the same dimensions for railings and stairways. et cetera, up until 1951, I am sorry, as the American Standards Association code, which is good for workers and the public.

It says that any stairway over 44 inches in width shall have two railings, one on either side. This is for the purpose of people who pass each other on the stairs, if they happen to fall or slip, they will have a railing to grab hold of.

The Code of 1961, the building code even made that more stringent. They said a stairway 36 inches wide should have two handrails. But in 1961, a little later, they exempted certain buildings that were constructed prior to 1946. They got into the fire exit controversy, and this was put into the building code in 1961 or '62.

This is the only conflict when this was stuck into the building code. The problem is that under this section of the law, I interpret that as only those things in buildings that we would require for conformance with our regulations, like clear walkways, stairs that must be at least 22 inches in width, and having adequate height handrails.

To give you an example, there have been new buildings constructed in the city, under the existing building code, that do not have a 6½ inch clearance on fixed ladders leading to the roof, roof openings, et cetera, and we did have a very serious accident involving a man who fell off a smoke stack here in this town, and he only had three inch clearance, and with a brand new building.

Our code calls for 6½ inch clearance. Most codes throughout the country call for 6½ inch clearance. Where we see these kinds of things going up, we try to order these changes when the building is being constructed to 6½ inches, but it still isn't the responsibility of the builder to put it in, but to the employer who employs the workers that have to use these stairs later. This is what we mean by this situation.

We have had people who rented buildings and placed so many people and equipment in a building, there is so much congestion there that the building isn't suited for the kind of business that they are operating.

Sometimes you have to order spacing as to aisle widths, you have to order beefing up of platforms, where they are putting material. Now these normally may be considered structural changes, but to make something adequately safe for those workers I think is justifiable, when you are trying to prevent injury.

Mr. SISK. If I could just make a brief comment, of course, this was the point of putting Section 2 in the bill as I understand it, to clarify and to make certain that there was a clear line of demarcation, so that there would be authority to go ahead and require such minimum safety standards as it was felt were necessary for the protection of the workers.

As I said, there has been some question raised about how far this would go in the way of altering or substantially changing things that might be somewhat costly, and I simply wanted to get your comments.

As I understand it then, Mr. Greene, you feel that the language of Section 2 is really needed to give you the latitude to properly enforce safety regulations. Is that what you are stating?

Mr. GREENE. Any changes that we would necessarily order would have to be done in conformance with the building code.

Mr. SISK. Right.

Mr. GREENE. With the existing building code. The point is most of these structural changes that we get involved with do not call for the issuance of any permit to change. An additional handrail in a building does not call for a permit.

Mr. SISK. Yes.

Mr. GREENE. It is not a structural supporting part of the building. These are the things we usually get involved in, and there are cases when we have had buildings that we have had to confer with the building department about and had to clear workers out of, they had become so unsafe that there was imminent danger of the building collapsing.

So these are the kinds of problems that do arise. They don't arise often, but you see, when you have a hotel in this city, where you employ not only waitresses and bellboys, you have carpenters, laundry people, welders, printers, and everyone working in this big complex, they all use these facilities, so we are saying that if the rail is needed,

they use them, then it would apply to all people in this location, and they are good for the public protection. This is another point that can be argued.

Mr. SISK. I appreciate that statement.

Now let me ask this. In view of the fact that this question has been raised as to just how far this would go, Mrs. Newman, with reference to your Board and its actions in this field, let's say that a situation arises where substantial changes or alterations are required, or what a person might consider to be substantial alterations are required. What type of an appeal or what type of hearing does the employer or the owner of the building or the user of the building have with reference to your Board? They have certain rights, do they not?

Mrs. NEWMAN. They can request a hearing before the Board, and they can request an exemption, and there have been times when we have granted exemptions. I think just recently we granted an exemption.

Mr. SISK. Where it can be justified.

Mrs. NEWMAN. Yes, of course. Otherwise, we wouldn't grant it.

Mr. DOWDY. Will the gentleman yield? You said persons can request a hearing before the Board. Is that a matter of right, or can you say "Well, we don't want it, we are not going to listen to you, we are not going to give you a hearing"?

Mrs. NEWMAN. It is a very reasonable Board.

Mr. DOWDY. This is the point I am making. You might not have a hearing as a matter of right.

Mrs. NEWMAN. I would have to refer to Mr. Greene.

Mr. GREENE. The hearing is granted on the basis of a variation. If you are requesting a variation of a particular regulation, because of a hardship involved or practical difficulty, and this is the right of everybody, to appeal to the Board for consideration of a variation.

But there are cases when the request has been presented to the Board, and the request is so out of line with what the regulation states, and the facts that are involved here, that the Board has a time, it is such a clearcut case that it isn't a problem of a variation. The Board has written back to the person that their request for variation was denied—

Mr. DOWDY. I am not talking about a request for variation. I am talking about a request for a hearing.

Mr. GREENE. No, there is no provision in the law for a request for hearing. There is a provision in the law for application for a variation of the regulations.

Dr. DOWDY. A hearing was mentioned.

Mr. SISK. I actually brought this up, if I might interrupt, to try to be sure that in the case of questions arising where a difference of opinion exists, I mean for example, Mr. Greene, as a result of your inspection or upon a matter being called to your attention, a situation exists in which you feel that the workers are being endangered, and you may outline a certain procedure that should be followed or a certain type of alteration to correct that.

Now let's assume that the individual who is responsible, the owner of the building or the operator of the building, questions the work. In other words, let's say this is going to cost a substantial amount of money, and he raises the question as to whether or not there is an

alternative way of doing this. I think that this is the point I was getting at.

Here again, my own personal opinion is to not modify Section 2, because I feel that it is necessary for proper enforcement and protection of the workers. I don't wish to get into a defense of the bill just because it happens to have my name on it.

What I was seeking with reference to this hearing, is that in the event this situation develops, where there is a difference of opinion, and there might be an alternate way to do it, let's say a less expensive way, because I think most employers want to comply and they want to have safe working conditions, I thought possibly that you might already have a procedure set up, Mrs. Newman, by which the Board would automatically hear a complaint of this kind.

Mrs. NEWMAN. Mr. Chairman, if the request for a hearing comes to the Board, and it seems reasonable that we ought to listen to the proposal being made by the employer, I doubt very much if we would turn down that request for a hearing.

Mr. SISK. I think Mr. Dowdy's question went to the actual right.

Mr. GREENE. No, there is no right as written into the original law, other than through variation, and every action that we take, 90 percent of the time, if it is a mandatory problem, is based on a regulation which was passed at a public hearing, at which everyone has a right to appear, where they have a right to appear and discuss these regulations.

So when the variation comes in, there is a type of variation that the Board sometimes doesn't get involved with until after the fact, and that is a variation in construction.

There are certain practices and ways of working in construction that a request comes in for permission to work in a certain way. It may be an emergency set up for certain reasons.

The Board has given me authority, if the worker, the person can guarantee to our satisfaction that they are providing equal protection under the regulations for the worker, then I can issue you a variation at that time by letter to these people, so as not to delay their operation.

The point here is that the Board only meets about every two weeks. It is a volunteer board. So therefore, in order to keep people from waiting this period of time, or having to call the Board away from their other jobs for a special meeting on a variation, this is why this permission authority was granted to me, and I always report back to the Board on such grantings.

All variations are kept in our office on file, in writing. Later, we may have to rescind them because the person did not follow through as they indicated, by letter or by drawings or whatever they submit.

Mr. SISK. Fine. Thank you, Mr. Greene.

The gentleman from Texas has some questions now.

Mr. DOWDY. First, Mr. Kneipp, I believe without exception, you have objected to having a minimum fine on anything. Did you object to it in this particular instance?

Mr. KNEIPP. The Commissioners didn't specifically object, no, sir, in this report.

Mr. DOWDY. Do you know why they made an exception in this case?

Mr. KNEIPP. I just don't know, Mr. Chairman.

Mr. DOWDY. I think you are well aware of the fact that I am in favor of minimum fines.

Mr. KING. I think one reason perhaps there was no objection is because in these type of cases where there is a conviction that the judges generally impose a maximum penalty, which is now permitted, but I suppose that is probably one reason why there was no objection to a \$100 minimum.

Mr. DOWDY. I was trying to catch up on some of this, and I don't know whether I followed your answers to Mr. Sisk's question about conflict of authority that might arise between your Industrial Safety and the Minimum Wage Board and the Department of Public Health and the Department of Licenses and Inspections, and building and construction regulations.

It seems difficult to me for a business or an industry, for instance, to have several departments of government making different rules about identical matters, and as I gather it here, you would make regulations concerning the way a building is built or some particular part of it?

Mr. GREENE. No, no, we make no regulations about how the building is built. That is the duty and the authority of the Department of Licenses and Inspections. The problem is this. That once the building is erected according to their regulations, the building gets changed. Many times it is changed and they know nothing about it.

Railings are torn down. They have added shelving in buildings, and sometimes they start using this as work platforms. Then when we make the inspections in the buildings, this is when we get involved in these problems of structural defects in the building.

Mr. DOWDY. Wouldn't they still have authority to make —

Mr. GREENE. If it is not covered by the building code, they do not take the authority. The point is that I have called the Building Department, involving a condition of some racks in a building, where apparently you could look at them and see where the board was swaying by the weight of material, and I called them to tell them about it, they said "They weren't put up with a permit", that we have nothing to do with it.

Now when we ordered these particular shelvings beefed up, because they had workers going in under these things and come out, we had these things beefed up, then they complied with it. There was no trouble, there was no conflict. The only conflict involved was when it came to these stair railings, and it happened to become a conflict when they had this grandfather clause in here about a building constructed after 1946.

Mr. KNEIPP. Mr. Chairman, I wonder if I might state Mr. Greene's proposition in a slightly different way. The building code that is applicable to the construction of buildings or to their alteration is prospective only. It isn't retroactive except for some features that have to do with fire safety. But the building code is prospective, and the person who builds a building or alters a building does so for a certain proposed use.

Now what Mr. Greene is saying I believe is that after the building has been built, in accordance with the plans for a certain proposed use, the occupant of the building uses it in a different way than was proposed at the time of its construction.

He may, as Mr. Greene has said, he may put in more people than the building was intended to accommodate. He may use it for different

uses. And it is at this point, involving the use that is being made of the building, that Mr. Greene comes into the picture, and determines that the use that is being made is not a safe use, and he requires additional features or changes in features to make that use a safe one.

And so really what is involved here I think is that if the occupant of the building wants to use that building in a certain way, then he is going to be subject to having to make some changes in that building in order to protect the workers.

Mr. GREENE. I might add the changes will be made in accordance with the building code.

Mr. KING. Maybe this will simplify it just a little bit. There is no conflict between the building code and the safety standards regulations except for the fact that there is this grandfather clause in the building code which says that buildings that were in existence prior to a certain date didn't have to meet the present-day building code.

Mr. Dowdy. You used the word, and it is also used in the bill, about "features" of a building or other structures. I don't know exactly what that means.

Mr. GREENE. Features can be temporary. Features can also be an exhaust fan, in a room where there are no windows, 20 people working, and all 20 of them at different times calling our office talking about the temperature of the room, and they are becoming more or less asphyxiated at times.

Now when you enter that office, you take air sample readings and the like and you can see immediately that this is not a wholesome atmosphere for these people, so we order the people in these general words, to provide proper ventilation for the number of employees, and that would mean keeping the temperature at a certain mean.

Then they go to an architect, you see, and make the changes in the building to suit the building code.

Mr. Dowdy. A "feature" of a building, then, might be how much air was coming into it?

Mr. GREENE. Well, a feature could be the ventilation openings in a building. A feature of the building could be the fact that a person was welding in a room that was not fireproof.

Mr. Dowdy. Is that a "feature" of the building, or is that a use of the building? Do you see what I am getting at?

Mr. GREENE. Let me explain. The feature of the building is that it is constructed, this room is constructed and it isn't fireproof. The man is using this room in a very unsafe way. Therefore, the order is if he continues to use this for welding, he must provide the safe wall covering or floor covering or ventilation that is required in a welding proposition.

You have grating in the floor, you have openings, duct work sometimes in floors, where people have opening grating, and you will find that they are using basement levels for this, and women are walking through this building getting their heels caught in this open grating. Now originally, you didn't have women on this floor perhaps.

Mr. Dowdy. We have the same problem on sidewalks now.

Mr. GREENE. This is right, and this is public safety, which I think ought to be covered better.

Mr. Dowdy. Either that or else quit using spikes for heels.

Mr. GREENE. That is true. I agree with you. If we could get them out of there, we have recommended this. It was only a recommendation, a change of footwear in certain locations, because they couldn't change anything else. But these are the things we have in mind that the building code doesn't cover.

Mr. DOWDY. Of course, you might say something about temporary features. Would that welding you were talking be where you would require a temporary change in the feature of a building, or would that be a permanent change?

Mr. GREENE. If the use would change, it could be temporary.

Mr. DOWDY. In talking about features, I suppose if I had a building here and wanted to put an elevator in it, which it didn't have, of course you have to make a foundation and some sort of support for the elevator and all that, but is that a feature?

Mr. GREENE. No. What we are referring to are things that involve the safety of the people working in the building.

Mr. DOWDY. An elevator might be that.

Mr. GREENE. It could be, but we have an elevator department that covers elevator inspection and how elevators should be erected.

Mr. DOWDY. Is that in your department?

Mr. GREENE. That is Licenses and Inspections, but there are certain features about elevators and how they are used, where we may order certain baffles or whatnot to keep peoples' hands in. We have had some serious amputations of hands on freight elevators because there weren't correct bafflings to knock peoples' hands in properly. There was nothing in the elevator code to cover this particular installation and you had this problem. By the erection of baffles and guards on these things, it eliminated the hazard at these particular locations.

I could give you one prime example of what I refer to, Mr. Dowdy. In a new building here in town, where a prominent, a very prominent federal agency is located, the building was issued a temporary occupancy permit for a certain number of floors. There was a fireman working for the District Government who was moonlighting as a building engineer. The fact that the people were in the building, it made it mandatory that they use the elevator rooms upstairs, the elevator control rooms, and the openings to all the heating and ventilation ductwork and places where they had to make adjustments.

This fellow one day walked into a room that had no lights in it whatsoever. There were no lights called for in the drawings. There were no lights installed. He walked into this building and proceeded to move around about eight feet, and he fell down a six-by-eight foot opening in that room and fell seven floors to the first floor and he was severely injured. Now, there was nothing in the building code requiring a railing at that opening.

When we got into it, we got hold of the owners of the building and said "If people must enter this room to perform their work, they must have a grating over this opening"—because air had to come and go through it—"or it might be provided with railings." They immediately put the railings up there. There was no conflict with the building code whatsoever by the addition of those railings.

If you look at the corner of 12th and F Street, you will see a building there that the Safeway store occupies. About two years ago, there was a door on the roof of that building that was located five feet from

the edge of the roof. Any person that opened that door could have walked off that roof. There was not provision in the building code for a railing at that particular spot. We required the building owners to furnish a railing across that opening for the protection of the maintenance people that would come out there.

We have since worked out an arrangement with the building code where they have put this requirement in there, so all the architects that design will try to take these things into consideration, so they won't be so expensive for somebody to change later on.

Mr. DOWDY. We have talked about a lack of lights in a building, and something about ventilation.

Mr. GREENE. Yes.

Mr. DOWDY. Doesn't the Health Department have jurisdiction on ventilation and lights?

Mr. GREENE. In some places. The Health Department only has regulations in some areas.

Mr. DOWDY. In the buildings that we have mentioned here, about not having enough ventilation fans, would the Health Department have jurisdiction of that?

Mr. GREENE. They don't, sir.

Mr. DOWDY. Or a place where they didn't have any lights?

Mr. GREENE. They don't, sir.

Mr. DOWDY. They don't or they just don't use it?

Mr. GREENE. They don't have any regulations that cover this. They have a very broad regulation, one very broad regulation, and to my knowledge, the Health Department mainly goes in the beauty parlors, restaurants and hospitals.

Mr. DOWDY. My question is do they have the jurisdiction or the authority, not whether they use it or not.

Mr. GREENE. They may have authority. They just don't have the regulations for it.

Mr. DOWDY. Now we have talked about the use change of the buildings. The District of Columbia does issue occupancy permits, does it not, and the permit for the use is granted. Isn't there an inspection that is supposed to be made as to the suitability of that building for the use by somebody?

Mr. GREENE. No, sir.

Mr. KNEIPP. No, Mr. Chairman.

Mr. GREENE. It doesn't happen at all.

Mr. KNEIPP. The certificate of occupancy is issued under the authority of the Zoning Act. It is merely a question of Zoning. It has nothing to do with the use of the building from the standpoint of safety. It is purely a zoning question. Do the zoning regulations allow this kind of use at that location?

Mr. GREENE. And how many people they put in there is not a requirement, is not a consideration at that time. We have had places where they don't have adequate toilet facilities in the building for the workers in there. We have had places that didn't have any toilet facilities for the workers. Yet the building code permitted the building, at some stage of the game, for this.

Our regulations say that every person is entitled to toilet facilities and washing facilities, if they are to work there. So therefore, we have had to order toilets in certain buildings, and we have had no difficulty

getting those put in the buildings when they are required. And the Board has also granted variations as to the number of people involved with these toilet facilities, because of space and things like this, and they have granted variations.

Mr. Dowdy. This Act that we seek to here amend gives the Industrial Safety and Minimum Wage Board the authority to make reasonable regulations. I was trying to find out just exactly what "reasonable" means. Of course, you said you have hearings whenever you are setting up regulations.

Mr. GREENE. Yes, sir.

Mr. Dowdy. I suppose you have a pretty big book, most agencies do, of regulations, don't you?

Mr. GREENE. It is considerable. It is not that big as you indicate, but it is considerable.

Mr. Dowdy. When you set up those regulations, of course you have a hearing.

Mr. GREENE. Yes.

Mr. Dowdy. But the people who came to testify at that hearing, of course, they didn't have any knowledge or opportunity probably to consider a great many of them, and I expect you wrote regulations in there when it was set up that probably nobody thought about except your agency.

Now let's suppose that a practice which exists in a given area has existed for a great many years, and essentially there has been no accident record, no record of accidents under that practice that has been set up. In those regulations you adopted, you don't permit that practice to continue. Now is an order to enforce a change from something that has been perfectly safe, is that a reasonable order?

Mr. GREENE. I think it is.

Mr. Dowdy. Even though there have been no accidents?

Mr. GREENE. The consideration of no accidents in a particular thing would not necessarily mean that it is a safe operation or considered a safe operation. The regulations that are for the exception of very few, I would possibly name four, would be peculiar to the District of Columbia only.

If I took the American Standards Association codes, if I took the codes of New York State or California or Wisconsin, and you start comparing regulations, you would undoubtedly see the same regulations or almost the same regulations in particular fields as you find here in the District of Columbia.

Now the fact that nobody can find that there is an accident does not necessarily mean that we know there is no accident.

Mr. Dowdy. Even though the practice has gone on for many years. We have talked about hearings awhile ago, and sometime in the past this regulation has been promulgated that you are going to use to make somebody change over from a safe practice that he has followed for many years. If he came in and asked you for a hearing, would you give him one?

Mr. GREENE. It would depend on what the request was based on.

Mr. Dowdy. Well, a request would have to be based on that you had an unreasonable regulation.

Mr. GREENE. If it is based on a waiver, variation of the regulation, then we grant a hearing on it.

Mr. DOWDY. In this instance, suppose these people had gone on for these many years without having an accident and you make them change their procedure, and a few days later they have an accident. Whose fault is that going to be?

Mr. GREENE. I don't know whose fault it is. We would certainly look in and find out whether that change caused that accident.

Mr. DOWDY. And maybe let them go back to the procedure used before they had the accident.

Mr. GREENE. If we found that what procedure we prescribed resulted in an accident, then it could be that we would change. I wouldn't want to say we would arbitrarily say you must continue, but I would have to see that case and be able to investigate that accident very seriously.

Mr. DOWDY. You know many of us are pretty much creatures of habit. We are used to doing a particular thing a particular way and automatically do it. And if you change it, make us change our procedure, we might have an accident just because you have changed the procedure.

Mr. GREENE. I realize that.

Mr. DOWDY. When I start home I always go the same way. When I leave the office I want to go by some place else for some reason, but when I get to the place where I turn, maybe I get home before I realize that I haven't gone where I wanted to. If you make people change something that for many years they have been operating under safely—

Mr. GREENE. It would have to be proven that they had operated safely.

Mr. DOWDY. I presume that in my question. Here we have a practice we have followed for many years in complete safety. You are to presume that to be a fact in your answer.

Mr. GREENE. Yes, but I said it would have to be proven that it was in fact safe. The fact that a person says it is being done safely does not necessarily—because you don't have an accident it doesn't mean it is safe.

Mrs. NEWMAN. Mr. Chairman, if I may add something here, regulations aren't promulgated without an opportunity for those who would be involved in what that regulation would cover, to be heard.

Mr. DOWDY. Another purpose for my statement was that you adopted all these regulations at one time without having hearings.

Mr. GREENE. No, we did not. These were done at different times, different dates.

Mr. DOWDY. Each of the regulations you have were adopted at different times and on different dates?

Mr. GREENE. Separately, as a different set of regulations to fit a different category have been done at separate times, at different public hearings.

Mr. DOWDY. Then to have a pretty good book of regulations you have had a multitude of hearings.

Mr. GREENE. We have had several hearings, several prehearings. We had a hearing no later than October 1965 I think on our last regulation. It took us from that time, about a year, to get that into shape, where the Commissioners finally approved it, and it all became effective this January.

There is a lot of time spent on these regulations and a lot of thought. We use the best authority that I know of in this country for formulation of our regulations and that is the U.S. Labor Department.

We don't differ too much with our requirement from what is required by the U.S. Labor Department or the regulations that you will find in the Walsh-Healey Act, which applies to all places that are under federal contract, and we used to do the inspections under the Walsh-Healey Act in these places here in the city.

Mr. Dowdy. I believe that is all, Mr. Chairman.

Mr. SISK. Mr. Jacobs.

Mr. JACOBS. Mr. Chairman, if I could ask of Mr. Greene, I will preface my question by saying my understanding is that one of the deciding causes of this bill, H.R. 1264, is an ambiguity in the existing Act, which resulted in a possible misinterpretation for some years and a final determination that it did not apply to certain businesses inside of the District of Columbia that things should apply to.

Therefore, I will ask you if the term "features" as it appears in this bill is a so-called term of art legally, whether it has been interpreted by courts in the District of Columbia or delineated?

Mr. GREENE. I have no knowledge of that, unless Mr. King or Mr. Kneipp have. I have no knowledge of how it has been interpreted, since it has never been in our regulations before.

Mr. JACOBS. Mr. King?

Mr. KING. It has not been interpreted because that word has not been used in the regulations in the past.

Mr. JACOBS. I will go further and ask whether or not it isn't possible within the accepted usage of the word "feature" to include both fixtures and structural aspects to a building?

Mr. KING. I think so, and I think it should be, if the safety requires it.

Mr. JACOBS. That being true, then, is it not possible, to use Mr. Dowdy's example of an elevator, if it were found by your authority that an elevator in a building was being used either too frequently or was bearing too much weight, it must either not be used in that way, or perhaps enlarged, the elevator itself enlarged, this might not involve a structural change in the building such as Mr. Dowdy indicated, requiring footing and extension of the elevator apparatus shaft beyond the configuration of the building, and if that was true, if such a permanent feature change were ordered by your authority, would that not then involve the building code? Would that not then cause your authority to have this and similar jurisdiction with the other authorities?

Mr. KING. It would be involved, but it would not be in conflict. For example, the construction and the installation of the enlarged elevator would have to comply with the building code and a building permit would have to be obtained. All that the Industrial Safety people would be doing would be saying that as it now exists, it is unsafe for the use to which you are putting it, and consequently if you wish to use it for the use that you are now making, you must increase its capabilities.

Mr. JACOBS. As I understand it, you may require the change in a permanent feature, which would be a structural change in a building.

Mr. KING. As I say, it would only come into being in connection with the use then being made. It may be perfectly proper in its present form for the use for which it was originally intended.

Mr. JACOBS. Assuming they proceed with that use however, you do have under this feature of this bill, you do have the authority to order permanent structural changes in the building, under this word "feature."

Mr. KING. I think so, where it involves a question of safety.

Mr. JACOBS. And not just additional fixtures such as have been described.

Mr. KING. No.

Mr. SISK. Will my colleague yield at that point because I happen to have had some personal experience along this line. I don't want to put words in your mouth, but this would go, or your authority would go to a limitation of the use of that elevator.

Mr. KING. That is right.

Mr. SISK. And that is not unusual. I mean that is a common practice. Every elevator has a maximum use.

Mr. KING. Capacity.

Mr. SISK. That is your only authority. Now if they want to use it for something else, sure they are going to get a building permit to do something about it.

Mr. JACOBS. I appreciate that, Mr. Chairman. Maybe other examples could be cited. As I read the language of this bill, under this bill your authority could order a permanent structural change under some circumstances in the building, is that correct?

Mr. GREENE. If it affected the safety of the employees using that equipment or building, it could involve that, but it would be done in conformance with the building code.

Mr. JACOBS. Let's just say that you found that either through deterioration of the building or through errors in the construction of the building that the structure itself was not safe, that it could not bear the stress.

Mr. GREENE. I would like to give you two examples of this so you can understand about this work. We had a man in Georgetown—

Mr. JACOBS. Mr. Greene, I would like a specific answer to that question.

Mr. GREENE. Can you restate the question?

(Question read).

Mr. GREENE. And if employees were involved in this particular building, we would be involved in it, yes.

Mr. JACOBS. The question is, do you understand that under the provisions of this bill, you would have the authority to order structural changes in the building?

Mr. GREENE. Yes, but not specific structural changes. The structural changes that are made according to plan, would be done according to the building code. The failure in this whole picture is that the Department of Licenses and Inspections does not inspect work places whatsoever. They inspect houses, apartment houses and new buildings under construction, or anything that a permit is granted for.

Mr. JACOBS. Mr. Greene, I think you are discussing practices and I am discussing the language of this bill.

Mr. GREENE. I am not an attorney. I can't specifically spell out what this language would mean.

Mr. JACOBS. I have the wrong man. Mr. King, would you respond.

Mr. KING. I think maybe I can.

Mr. JACOBS. Is it your interpretation of the language of this bill whether or not it does provide the statutory authority for your authority to order permanent structural changes in the building.

Mr. KING. It has that authority provided the use being made is endangering the employees. If a man ceases to have employees under those conditions, then the order would not be effective. It is only if he insists on saying "I am going to continue to use it in this fashion with my employees"—we can then say, you must make these changes.

Mr. JACOBS. I think that is understood. Then when you do make this order for permanent structural change in a building, it is your judgment that this does not conflict with any other building authority in the District of Columbia.

Mr. KING. No, because we would then go to the Building Department, get his permit and have to do it in accordance with the regulations.

Mr. JACOBS. Thank you.

Mr. SISK. Congressman Gude.

Mr. GUDE. Mr. Greene, you mentioned the jurisdiction of the Health Department as to say toilet and wash facilities. Do you presently, for example, have jurisdiction in buildings where industrial activities are carried on?

Mr. GREENE. Yes, sir.

Mr. GUDE. Do you oversee this question of toilet facilities? Do you issue orders in this regard?

Mr. GREENE. Yes, we do. Our regulations state a certain number of facilities for a certain number of employees. In laundries there is a different regulation involving that, and in regular fixed establishments there is a different regulation, and in construction there is an entirely different regulation, because these facilities are temporary.

But all facilities that we say we count heads in the place, so to speak, and see that the facilities are in there that conform with the Health Department regulations.

Now if there is a question, we feel that these toilets do not meet Health Department regulations, we call the Health Department, and then get them in on the situation. But the requirements in regularly fixed establishments, one toilet for every 15 or any part thereof, of employees, is a requirement in the plumbing code. It is a requirement in the Health Department Code. It is also a requirement in our general code. So there is no conflict on what the requirement is.

What we do get involved in is when we have a small number of employees, say two men and one woman, he feels this is a hardship having a toilet for this female. Therefore this is the time when he comes into the Board, and asks for a variation of these regulations, and at times these variations have been granted, in instances such as these.

Mr. GUDE. In other words, in an industrial site, you have simultaneous jurisdiction with the plumbing board and the health department, is that right?

Mr. GREENE. Very easily, yes.

Mrs. NEWMAN. If I may clarify that, I think the Industrial Safety Department just has to determine whether the proper number of facilities is available, whereas the other jurisdiction is with respect to the kind of facilities it is, whether it meets your plumbing code, or whether it is a clean operation.

Mr. GUDE. Thank you.

Mr. SISK. All right, if no one has further questions, let me express my appreciation to you, Mr. Kneipp, Mr. Greene, Mrs. Newman, Mr. King. You have been very helpful, and we appreciate it very much.

Mr. KNEIPP. Thank you, Mr. Chairman.

Mr. SISK. Mr. Harry Schnabel, Jr., of the D.C. Metropolitan Subcontractors Association. If you have others accompanying you, have them come up with you. The committee will be glad to hear your statement or if you have a statement you want to make part of the record, summarize it and that will be acceptable to the committee.

STATEMENT OF HARRY SCHNABEL, JR., REPRESENTING THE DISTRICT OF COLUMBIA METROPOLITAN SUBCONTRACTORS ASSOCIATION; ACCOMPANIED BY RICHARD L. JACKSON, OF JOHN H. HAMPSHIRE, INC.; ANTHONY J. IZZO, JR., SECRETARY, AND JOHN B. KNEIPPLE, COUNSEL

Mr. SCHNABEL. My name, Mr. Chairman, is Harry Schnabel, Jr. I am President of Schnabel Foundation Co. Inc. I am testifying on behalf of D.C. Metropolitan Subcontractors Association, Inc., which I shall refer to as MSA, as Chairman of its Committee on Safety.

With me, also representing MSA, are its President, Mr. Richard L. Jackson, of John H. Hampshire, Inc.; its Secretary, Mr. Anthony J. Izzo, Jr., of Anthony Izzo Company, Inc.; and its counsel, John B. Kneipple, of the D.C. bar. These gentlemen are prepared to assist me in answering any questions which the members of the Committee may have when I have finished with my prepared statement.

The 160 members of MSA are building construction subcontractors operating primarily in the Washington, D.C. area. We estimate that the gross annual dollar volume of business in the D.C. area handled by our members, approximates \$500,000,000. We also estimate that the subcontractors furnish at least 80 per cent of the labor and materials required for the average construction project.

Since MSA was organized a little over two years ago, greater safety has been one of MSA's primary objectives. The reasons are obvious. The cost of workman's compensation insurance, aside from direct labor and material costs, is one of the highest items of overhead in the subcontracting business. Obviously, the cost to any particular establishment bears a direct relationship to its accident experience. Moreover, the supply of competent construction workers, regardless of trade, is so short that no subcontractor can afford to risk losing any of them through unsafe practices. Above and beyond the economic aspects, we are motivated by deep, personal consideration in promoting safe practices. The members of MSA are essentially small business establishments, and there is invariably a close personal relationship between us and the people working for us. The last thing any of us want is to have one of our employees maimed or killed. They are our personal friends, in most cases.

Thus, as a matter of general policy, I assure the members of the Committee, that MSA favors any law, any rule or regulation, any enforcement policy, or any program of education on safe practices that will reduce the number of and severity of accidents in our industry. We have found that the promotion of safety on a concerted basis has brought gratifying results. Many MSA members report substantial savings on Workmen's Compensation premiums, simply because management has become safety conscious and has insisted that safe practices be followed by every employee.

No small part of the credit for MSA's encouraging start in the area of safety belongs to DC's able Director of Industrial Safety, Charles T. Greene. Mr. Greene takes his job seriously. While we can be sure that he is going to insist on compliance with safety regulations, we have also learned that he is keenly interested in promoting safety through educational methods. Mr. Greene has attended some of MSA's meetings, and several hundred of our supervisors and key personnel have had the benefit of a course in safety instruction provided by the District of Columbia under Mr. Greene's direction.

To the extent that H.R. 1264 will help the good work of the Director of Industrial Safety and his staff, we favor it. There are certain provisions of this Bill, however, which we believe may hamper, rather than help. For that reason, I would like to make specific comments on its various provisions.

Section 2 of title II: We agree that the definition "Employer" should not be limited by the term "Industrial employment" and likewise that "Place of Employment" should include all employment in the District of Columbia, "industrial" or otherwise. Incidentally, we have heard Mr. Kneipp's comments this morning, and I think that we would certainly agree that the reporting procedure under the Longshoreman's Act would make it possible to police this thing more effectively, and perhaps it should be limited to people that are covered there.

Section 2: This would amend Section 3 of title II by extending the existing rule making authority of the Minimum Wage and Industrial Safety Board as follows:

To promote the safety of persons employed in buildings or other structures, such rules, regulations and standards may require, without limitation, changes in the permanent or temporary features of such buildings or other structures.

While we agree that the Board should have broad authority to make all necessary rules and regulations to carry out the policies of this legislation, we have some doubts about this proposed amendment, as some of you gentlemen obviously do.

Depending on how the language is interpreted, we suggest that it may be susceptible to conflicts of responsibilities. We have always assumed that the construction of a new building must conform with the standards of the D.C. Building Code, but if the Board has the authority to require structural changes, "without limitation" much confusion and contradictory requirements could arise. If this rule making authority were limited to existing buildings and structures which may have been constructed and used for purposes other than a place of employment, but later converted to a place of employment, we see no problem. However, the building code should govern new construction. We suggest that the following clause be added to the above-quoted language ". . . provided such rules, regulations, and standards

shall not apply to any building or other structure that is under or scheduled for construction."

Section 3. This would amend Section 12 in several respects, including the following:

(a) Establishment of \$100 as a minimum fine for a safety violation.

We have no objection to this amendment.

(b) Establishment of \$1000 as a maximum fine.

We question whether a \$700 increase in the present maximum fine would help effectuate the purposes of this legislation. Under the present law, we understand that when an information is filed alleging one or more violations, it is customary for the defendant employer to post collateral of \$300 (The present maximum fine for a single violation) regardless of the number of violations charged. Most cases, we are informed, are disposed of by forfeiture of the \$300 collateral. If the maximum fine is increased to \$1000 and the amount of collateral increased accordingly, many employers may prefer to appear in court in the hope that the trial judge will find mitigating circumstances and impose a lesser fine. In fact, we are told that where an employer elects to present his case to the court, a fine less than \$300 often results. While the potential fine should be high enough to impress both the violator and the public with the seriousness of a safety violation, we suggest that the desired result could be attained by requiring collateral of not less than the proposed minimum fine on each separate violation, or more than \$300. Thus the amount of collateral required could be sufficiently high to impress all concerned with the seriousness of the violation, without any change in the present maximum fine.

This, coupled with the stigma of being found in violation, the impact on compensation costs, and the potential loss of workers, certainly will be enough to satisfy MSA members, and we believe to employers generally, that compliance with the regulation is an absolute "must." Frequent court appearances will help neither the subcontractor nor the enforcement authorities.

(c) Mandatory court appearance where a personal injury is involved.

We object to the sentence which reads: "In any case involving a personal injury no forfeiture shall be permitted."

Such a provision is burdensome and completely unnecessary. Whether or not forfeiture should be permitted should be left to the direction of the court on a case by case basis, without regard to whether or not a personal injury is involved. In cases where the Director of Industrial Safety has reason to believe that intentional and repeated violations are involved, the government is in a position to recommend trial to the trial judge. The latter, under the present provisions, has full authority to order the defendant to appear in person.

While any personal injury is serious, many, in fact most, of them are relatively minor and frequently involve no compensable loss of time.

Under the above language, any injury, however minor, would require a court appearance by both the employer and the Director of Industrial Safety. On the other hand, a far more serious violation that involved great potential danger to the employees on the job, and even the element of willfulness, would be settled by a forfeiture of collateral if no one had been injured at the time the violation was discovered.

Court appearances are necessarily time consuming, and would be burdensome on both the employer and the Director's staff. If the latter's time is taken up with frequent court appearances, it could not help but detract from the effective job of enforcement it is now doing. The above language will serve no useful purpose to anyone, except possibly an attorney who contemplates a personal injury action. We recommend deletion of this sentence.

Mr. Chairman, we greatly appreciate the opportunity to be present and participate in these most important hearings. Should you or any of the Committee have any questions we shall be happy to try to answer them.

Thank you.

Mr. SISK. Thank you, Mr. Schnabel, for a very excellent statement and one that I am sure the Committee will give serious consideration to.

Prior to any questioning, do any of you other gentlemen have a statement that you wish to make?

Mr. Izzo. No, we do not.

Mr. SISK. Then you are speaking for the entire group, Mr. Schnabel. The gentleman from Texas has a question.

Mr. Dowdy. I believe you said you had your attorney with you. He may answer this question.

Mr. SCHNABEL. Mr. Kneipple.

Mr. Dowdy. I am glad to see you. This is the question I would like to ask. In the second section of this bill, where it relates to permanent or temporary features of such building, the word "features" disturbs me. Is there in the District of Columbia any law or decision of a court that makes "features" a word of art that we might know what it means?

Mr. KNEIPPLE. Sir, I do not know about that, but I think the words "without limitation" certainly connote to us that this is susceptible to any type of a change, structural, or otherwise. The bill is so broadly stated that we think that the Board of Industrial Safety would have the authority, under the language of the bill as it now is, to even come in on a new construction project and direct changes, and we feel that if we comply with the building code requirements, that that should be sufficient.

Mr. Dowdy. I am glad that this whole question was raised. When I started to ask questions, I did not know there would be any witnesses here who would raise it, or I may have waited until you presented it. Of course, the word "features", when connected with the other words in the sentence, makes it even more alarming as you have indicated. I am just wondering if there aren't some words that have been used in the law as construed by the court which could be used to get at what is actually intended by this bill, rather than the use of the word "features" without limitation and so forth.

Mr. KNEIPPLE. My colleagues are in the construction business, and we have gone over it rather carefully, and certainly to them it means almost any change, structural or otherwise.

Mr. Dowdy. That is the way it appears to me, or it did when I read it.

Mr. SCHNABEL. Mr. Dowdy we think if a building is built in accordance with the Building Code and used in accordance with the proposed use, that the approvals that you get to erect that building

should include the necessary requirements for safety, so that at the time you are ready to occupy it, there is not a question raised of whether or not the occupancy is proper and you have to go back and make structural changes.

Mr. DOWDY. Then you see the same possible danger as Mr. Jacobs and I were talking about with the prior witnesses?

Mr. SCHNABEL. Yes, sir.

Mr. DOWDY. Of a conflict between the jurisdiction of various bureaus in the City Government.

Mr. SCHNABEL. Yes, sir.

Mr. DOWDY. Do you have the same thought about it that occurs to me, that a person for instance in your business should be able to go to one department and get the answers, rather than having conflicting decisions from various agencies that would affect you? Does that hurt your business to have possible conflicting authority in different agencies?

Mr. SCHNABEL. Yes, sir.

Mr. DOWDY. I would think so. Now, you had one statement in here that I wanted to ask about. You said this: "If this rule-making authority were limited to existing building, and structures which may have been constructed and used for a purpose other than a place of employment, but later converted to a place of employment, we see no problem."

I think I can see a problem. If you wanted to convert a place used for one purpose to a place of employment, wouldn't you have to get some kind of occupational permit or license to make that change?

Mr. SCHNABEL. I don't really believe so, Mr. Dowdy. I think if you were operating a particular type of say retail establishment, that it is conceivable that you would have the proper zoning and use some other type of installation in the same building, and that you might create an unsafe condition without requiring any structural changes in the building at all.

Mr. DOWDY. Perhaps I was thinking about the discussion that transpired with the prior witnesses and perhaps I did not incorporate enough into my question. The prior witnesses were testifying that changes had to be made, ventilation and I believe an elevator well was involved and different lighting. Changes of that character would have to be done to the building to make it suitable for the place of employment, when it was converted from one use to another. Would not licenses or permits have to be acquired to make those changes, to, for instance, put in an elevator shaft.

Mr. SCHNABEL. Sure you would need a permit to put in an elevator shaft.

Mr. DOWDY. There you would perhaps run into the same conflict with the people you get the permit from, to do the remodeling or changes to go into the new business, you would have to get a permit from one department, and then still have this Industrial Safety and Minimum Wage Board to contend with on the same problem?

Mr. SCHNABEL. It is conceivable, yes, sir.

Mr. DOWDY. I believe that is all, Mr. Chairman.

Mr. SISK. The gentleman from Maryland, Mr. Gude.

Mr. GUDE. No questions.

Mr. SISK. The gentleman from Indiana, Mr. Jacobs.

Mr. JACOBS. The question is on this proposed change that you have, regarding other structures, whether or not those other structures would include a wing added on to a building that was being converted, that would not strictly be a new building.

Mr. SCHNABEL. Yes, you need a permit for adding a wing.

Mr. JACOBS. I am sure you do, but the question is provided such rules and regulations "shall not apply to any building or other structure." Does your language "other structure," include a wing added on to a building or the elevator shaft that becomes an appendage to the building?

Mr. SCHNABEL. Mr. Jacobs, what we are concerned with is that somebody seeks to build an addition to a building, and they require a permit for this. They get approval for it. They go ahead and they proceed with it, and they have got the thing built.

At this point they begin to have employees in it, and at that point under this, they could find that they had a building that they could not use.

Mr. JACOBS. That is fine, but suppose you—

Mr. SCHNABEL. Now, I don't think we feel that that should apply to the remainder of the building that had been there for thirty years. I mean I think what we are concerned with is that this wing, for which a permit has been issued, and which has been built in accordance with an approved drawing and so forth, is usable, and is safe.

Mr. JACOBS. It is your opinion and the opinion of your counsel that the words "other structure" in the proposed change in this bill would cover the additions to existing building, that would require building permits, is that correct?

Mr. SCHNABEL. Yes.

Mr. GUDE. Would the gentleman yield?

Mr. JACOBS. Yes.

Mr. GUDE. Would it clarify this to designate only where a permit has been issued under the Department of Buildings and Licenses?

Mr. JACOBS. I would think it would.

Mr. GUDE. This would delineate where the authority would be.

Mr. KNEIPPLE. Yes, I think that would much more adequately cover our problem.

Mr. SCHNABEL. Yes, sir.

Mr. DOWDY. If the gentleman will yield, in other words, I think what I probably have not yet made clear was that if you go in and work in an old building, you have got to have a permit for it, and instead of just applying this to any new building or other structure, you apply it where any kind of a building permit is required, to have that in your exception.

Mr. SCHNABEL. I don't think we would have any objection to that.

Mr. KNEIPPLE. I think that would adequately cover it, sir.

Mr. DOWDY. That it seems to me would be the logical thing to do, because then it would include all the instances where you have to have a building permit.

Mr. KNEIPPLE. Yes, sir.

Mr. DOWDY. Thank you.

Mr. KNEIPPLE. If there is that limitation on this proposed language, I think we would certainly have no objection to any rule-making authority within that, that is beyond this limitation you suggest, sir.

Mr. JACOBS. I think, sir that what we are all interested in is eliminating as much red tape and conflict of authority as is possible any place in government and any place in this country. The next question that comes up, on the other side of the coin, is as to the point raised by the prior witnesses, as to whether the Building Code itself does not leave structures in some instances less than safe, from the point of view of safety experts. Therefore my question is should that be true, it is true the Building Code is not comprehensive enough to provide for the safety features with which we are concerned, the authority that issues the Building Code should not be required to change its regulations so that there wouldn't be two different authorities dealing in safety, or whether it is impossible to eliminate the conflict. That is the nub of the question as I see it. Do you have any comment on that?

Mr. SCHNABEL. We have tried—there was a discussion about a Grandfather Clause—we have tried to exclude that type of situation from this, because we feel that if some unsafe working condition is found, and the building is not actually being built now under the approval of the building permit, that there should be provision for making the thing safe.

Mr. JACOBS. That is fine on general coverage, but again with the two different agencies of government involved, let me ask you then is the agency that issues the Building Code competent, fully competent, to protect the public entirely in the area of the use of the building and the safety features and the structure that is required to make that use safe?

Mr. SCHNABEL. Mr. Jacobs, I think you are asking a question a little bit out of my field of competence. The intent of the Building Code is to insure safety. This is its primary reason for being.

Mr. KNEIPPLE. I believe, Mr. Jacobs, that Mr. Green said that any change of the nature that we are talking about, where a building is under construction or newly constructed, that the Industrial Safety Board would recommend that it be in accordance with the Building Code. I don't think he said that—

Mr. JACOBS. If I may interrupt, the question is would the Building Code in all instances conform to what safety experts—

Mr. KNEIPPLE. I would assume that it would, although there is always—

Mr. JACOBS. You have testified that it does not.

Mr. KNEIPPLE. There is always the possibility of some oversight or omission I suppose.

Mr. JACOBS. Let me ask this. Have any of you gentlemen at the table considered just what the law should provide in terms of the coordination between those issuing building permits and those charged with the more specific responsibility of insuring the very last ounce of safety for employees in the building?

Mr. KNEIPPLE. Yes, we have certainly considered that, and we feel that if the Building Code in some respects, in the opinion of the Industrial Safety Board, did not have sufficient requirements to create a safe condition, that it should be a matter for discussion between the two agencies, so that they can coordinate it, rather than impose any burden on the owner or the people that construct these buildings to say "which one are we going to follow."

Mr. JACOBS. It is your opinion, then, that there is a conflict that comes naturally and not just as a result of ambiguity of legislation. That there is a natural conflict?

Mr. KNEIPPLE. Yes, sir.

Mr. JACOBS. Between those with building permits and those who are charged specifically with industrial safety?

Mr. KNEIPPLE. There certainly could be. I don't know the extent of such conflicts.

Mr. JACOBS. I am sure that is quite a can of worms, Mr. Chairman. I don't think we can pursue it to its logical conclusion now but I think it is important to have that known.

Mr. JACKSON. May I just add one comment, Mr. Jacobs. I would suggest to everyone concerned that perhaps the easiest solution, and I think this is what Mr. Dowdy and you—

Mr. JACOBS. Sir, I think you should be cautioned that unless the Chairman orders it that this is not off the record.

Mr. JACKSON. I will speak for the record then.

Mr. SISK. If there is any enlightenment let's have it.

Mr. JACKSON. As I understand all the problems that you and Mr. Dowdy are trying to work out, there seems to be in your mind that there is a possibility on a given project whether it is new construction or existing construction of conflict between authority of let's say the Industrial Safety Board, you mentioned the Health Department, you forgot the Fire Marshal. He is the only one you forgot, and also you have your Building Permit Department. It seems only logical that all these agencies could simplify the matter, that before a permit would be issued, that they review the plans and specifications, and have a stamp on them that they have been reviewed.

If there is a conflict between the Building Code and the Industrial Safety Board, it could be resolved before new construction was started, or before renovation work started. This to me would simplify it. I think this is what you are all asking.

Mr. JACOBS. This is a very useful statement and I am delighted that it was not off the record, Mr. Chairman.

Mr. SISK. Let me say to you gentlemen I appreciate your comments. Actually I agree that we want to be sure that whatever we do does not lead to confusion or to overlapping authority. I think you gentlemen will agree with reference to new construction, for example, a new building that is being constructed downtown, that the architect having charge of the design of that building and preparation of the structure prior to the time that a building permit is obtained of course has in mind, and I am sure does confer with, for example, the fire marshal. He has a responsibility, at least I know in my own state of California he would. In other words, he would not be an architect worthy of his name, and I have some personal interest because I have a son-in-law who is an architect and I know a little bit about the procedures, that before he had completed those plans for submission, he would have checked with the Industrial Safety Commission and he would have checked with reference to the fire regulations, he would have checked with reference to Health Department requirements, so that for the use that that building was intended to be constructed for, and so long as that use conformed to that purpose, then really once that permit was issued, there would be no problem. Isn't that generally true to your experience here in D.C.? I am talking now of new construction.

Mr. JACKSON. It is not a practice, no.

Mr. SISK. It is not a practice?

Mr. JACKSON. Not to my knowledge it is not.

Mr. SISK. It certainly should be. It would be a practice which I would think, whether it is required or not required it would seem to me to be only logical and good judgment on the part of the architect having the responsibility for design of the building.

Here again I am not sure as to what extent his responsibility extends from the standpoint of inspection and conformity to the building permits, but in my own State of California the regulations are very specific as to his responsibility and the fact that he has to maintain inspection on the site at all times to see that not only the safety regulations, the health regulations, the fire regulations et cetera are all conformed with. I am somewhat startled that that would not be the general practice here.

Mr. SCHNABEL. No, sir, and I think that the essence is what we are talking about. We don't find nor can we conceive of cases when this thing is all completed, we find that it does not comply with safety regulations and that structural changes or any other changes could be ordered at that time, which just does not seem rational.

Mr. SISK. We always assume when a new permit is issued for a building for a specific use, and I would think that normally there would be little problem on the part of the Director of Safety in that case. Now, of course, we can always get into the case of the fact that a year later that use was changed, in that that building was leased, and a wholly new operation, a new type and more people et cetera go into it. Then there is not any question, I believe you gentlemen agree with me, that there might have to be changes to conform to make it safe for this differing use. Would you not agree that that would be a correct statement?

Mr. SCHNABEL. Yes, we do agree, certainly.

Mr. SISK. Again, let me thank you very much for your appearance. I think it has been helpful to the Committee, and it will certainly be considered once we get to the point of writing up the bill.

We have on our list Mr. Stanley Olmen of the Nave Typographic Service and Mr. Harry Drazin, president of Goodhart's Printers. Are you gentlemen appearing together?

(Discussion off the record.)

Mr. SISK. We will call now Mr. Wilbur Garrett.

STATEMENT OF WILBUR R. GARRETT, JR., CHAIRMAN OF THE SAFETY COMMITTEE, MASTER BUILDERS' ASSOCIATION, INC.

Mr. GARRETT. Mr. Chairman, my name is Wilbur Garrett. I am Chairman of the Safety Committee, Master Builders' Association. Since your time is so limited, I would like to file this statement in opposition to these amendments, but the particular amendments are the increase in fine and the forfeiture of collateral.

Mr. SISK. Would you prefer to file your statement with the committee or would you prefer to come back? These hearings will be continued.

Mr. GARRETT. I would like to file it now and then if I can, I shall return.

Mr. SISK. Without objection, Mr. Garrett's statement will be received for the record.

(The prepared statement of Mr. Garrett referred to follows:)

STATEMENT OF THE MASTER BUILDERS' ASSOCIATION, INC.

The Master Builders' Association, Inc., which is the District of Columbia Chapter of the Associated General Contractors of America, Inc., and representing about 80% of the commercial builders in the Washington Metropolitan Area, opposes the increase of fine and the removal of discretion from the Office of the Corporation Counsel for the District of Columbia as to forfeiture of collateral provisions in the amendments proposed by H.R. 1264 to Subchapter II of Title 36 of the District of Columbia Code.

First, the fine in the bill is increased by more than 300%, namely, from \$300.00 to \$1,000.00. That does not seem to be in keeping with the modern theory that severer punishment is not a deterrent of offenses generally. Furthermore, the tendency is to ameliorate punishment, to look to underlying causes, and to avoid them by education. The above seems especially to be true in regard to the amendments under the bill.

Regardless of what may be the views of some, contractors are interested in safety as much, if not more so, than anyone else, both from humanitarian and financial standpoints. There really is no financial incentive deliberately or intentionally to increase safety hazards. On the contrary, every pressure is to reduce the hazards of injuries and damages.

A personal injury on a construction work not only increases the cost of workmen's compensation to the employer of the injured person but also suits for damages may result against subcontractors (if the injured employee is employed by the general contractor) or by suits for damages against the contractor and some of its subcontractors (other than the employing subcontractor) if the injured employee is employed by one of the subcontractors. The general liability insurance rate thus goes up for all involved so there is nothing gained by the contractors or subcontractors in slighting safety standards. Thus from such injuries there is only loss, and often delay in construction, which results in more cost and loss to the contractors and subcontractors.

Then, too, it ought to be kept in mind that a misdemeanor is thrust upon the contractor for the acts or omissions of its, their or his employees. The members of the Committee certainly realize that the officers of the corporate contractor do not physically erect or construct the walkways, scaffolding and so forth: nor do the owners of a contracting firm, whether partners or individuals. Thus, fine or imprisonment is imposed upon the contractor vicariously for the negligence of its, their or his employees, or for the negligence of their subcontractors. Holding one liable in crime so to speak for negligence, not personal to the one held is a serious thing and should be approached cautiously.

The provisions of the bill that "In any case involving personal injury, no forfeiture of collateral shall be permitted" seems extreme.

In the first place, it applies "to any case involving personal injury," no matter how slight. Thus, a court trial is mandatory even though collateral might have been as high as \$1,000.00, and maximum fine. Moreover, such trial is required even though the particular safety violation might in a civil suit be held or found not to be the real or actual cause of the personal injury. This seems unduly burdensome where it is remembered that the criminal docket of the District of Columbia Court of General Sessions, the court presently charged with jurisdiction of cases involving safety violations, is already overcrowded and the matter of great public concern. Further, if the constitutional right to a jury trial is invoked, additional delay, time and expense of all persons involved would result.

The legislative interference with the discretion of the prosecuting agency charged with the enforcement of this law seems out of place and not in keeping with the prosecuting function. It is a blanket prohibition, regardless of the facts and circumstances in individual cases, which vary so widely that no one can foresee or envisage them. Hence, we question whether there should be included at all this legislative straight-jacket, which would not authorize forfeiture of collateral even when approved by the court.

Mr. SISK. Since we have some five minutes, Mr. Garrett, if you don't mind if you will have a chair there, you may be heard briefly.

Do I understand that your statement is in opposition to specific provisions of the bill, or is it to the bill in its entirety?

Mr. GARRETT. No, it is just the specific provisions of the increase in penalty, the fine.

Mr. SISK. That is the only thing you find objectionable?

Mr. GARRETT. Plus the amendment that would not allow us to forfeit collateral, and would make us appear in court for all personal injuries.

Mr. SISK. In other words, your opposition goes to Section 3 or at least that portion of Section 3 having to do with the change in maximum and also no forfeiture of collateral be permitted in personal injury?

Mr. GARRETT. Yes, sir, we feel that we have abilities and incentive to operate our jobs safely. If we have injuries on the job, it naturally increases our insurance costs. It puts us in a very bad competitive position, and if we have to go to court, that will create an additional hardship on us. My statement also points out that if we have to go to court to settle all of these injuries, the docket of the court, which we understand is extremely crowded, will be almost impossible. We also point out in our statement our record that The Master Builders' Association is a branch or a chapter of the Associated General Contractors of America. We do about 80 per cent of all the commercial work in this area, and we represent I think a very important segment of the business community here. Our record has been good, I believe, and it is improving all the time. We favor the regulations that Mr. Green has promulgated.

However, we do not want to have any additional penalties; we do not think this is the answer to the thing. We feel that the natural restrictions that we have against having accidents which would increase our costs and our operations, slow down our operations, the built-in problems make it so that we just naturally are penalized, if we have an accident, without having to have an additional penalty of a fine, and an additional hardship of having to go to court.

We as owners and administrators naturally in ourselves cannot go out and watch every nail that is driven on the job. We would be the ones that would have to go to court.

Mr. SISK. We appreciate your comments. I just wanted to get that in. I think I understand where your objections lie to the present bill, and it will certainly be in the minds of the committee at the time that we prepare the bill for write up. I appreciate very much, Mr. Garrett, your statement.

Mr. GARRETT. Thank you for allowing me to make a statement, sir.

Mr. SISK. I will insert this letter from the American Insurance Association in the record at this point.

(The letter referred to follows:)

AMERICAN INSURANCE ASSOCIATION,
Washington, D.C., April 26, 1967.

Re H.R. 1264.

Hon. B. F. SISK,
House Office Building,
Washington, D.C.

DEAR MR. SISK: The American Insurance Association is a non-profit, public service organization with a membership of 168 capital stock insurance companies, most of which are licensed to do business in the District of Columbia. We support H.R. 1264, which you introduced on January 10, 1967.

In the field of industrial safety, the Association's Engineering and Safety Department develops and publishes recommended safety codes and ordinances for buildings, elevators and the control of fire hazards. It prepares and issues bulletins to members and to public officials on matters of special interest in accident and fire prevention. This Department studies special hazards in specific industries and recommends, on a consultative basis, safety measures.

Thus, the Engineering and Safety Department is dedicated to providing the research and facilities the industry must have to keep pace with new processes, materials, and procedures produced by advancing technology. The Department augments the efforts of the engineering departments of our member companies. The common objective is the maintenance of high standards of advisory service to insured organizations and to the public generally.

H.R. 1264 would clarify the responsibilities of the District of Columbia Industrial Safety Board. The provisions of the bill would better carry out the intent of Congress when it established the Industrial Safety Board in 1941. The Congress then declared the Board's purpose to be "to foster, promote, and develop the safety of wage earners of the District of Columbia in relation to their working conditions."

We understand that through a series of opinions rendered by the District of Columbia Corporation Counsel, the Board's jurisdiction has been limited to industrial places of employment. While we do not purport to dispute the accuracy of these opinions, we believe that the law should be clarified in the public interest and in the manner proposed by H.R. 1264.

Hence, we agree that the definitions in Section 36-432 of the D.C. Code should be broadened so as to extend beyond places of "industrial employment." establishments should be subject to safety regulations and inspections.

We note that the District of Columbia Board of Commissioners would retain their present authority to approve and issue safety regulations proposed by the Board. We are sure that the Board and the Commissioners will only issue regulations after due consideration of the effect of such regulations on all interested parties.

It is respectfully requested that this letter be made a part of the record of the hearing on this bill, which we understand is scheduled for April 28, 1967.

Very truly yours,

DAVID M. MARSH, *Counsel.*

Mr. SISK. With that, the committee will stand adjourned subject to the call of the Chair.

(Whereupon, at 12:00 noon, the subcommittee was adjourned, to reconvene subject to the call of the Chair.)

SAFETY STANDARDS IN EMPLOYMENT

THURSDAY, MAY 4, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NUMBER 5 OF THE
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:35 o'clock a.m., in Room 1310, Longworth House Office Building, Honorable B. F. Sisk (Chairman of the Subcommittee) presiding.

Present: Representatives Sisk (presiding) and Gude.

Also Present: James T. Clark, Clerk; Hayden S. Garber, Counsel; Sara Watson, Assistant Counsel; Leonard O. Hilder, Investigator; and Donald Tubridy, Minority Clerk.

Mr. SISK. Subcommittee 5 will resume its hearings on H.R. 1264, Industrial Safety Act amendments.

When the Committee concluded last week, we had completed the testimony of a number of witnesses and we were down to Mr. Stanley Olmen of Nave Typographic Service and Mr. Harry Drazin, of the Goodhart's Printers. So if the gentlemen are here and will take their place at the witness chair we will be glad to hear you at this time.

STATEMENT OF MR. STANLEY OLMEN, PRESIDENT, NAVE TYPOGRAPHIC SERVICE, AND MR. HARRY DRAZIN, PRESIDENT, GOODHART'S PRINTERS

Mr. SISK. Now, let us see, you are Mr. Olmen?

Mr. OLMEN. Yes, sir.

Mr. SISK. All right, Mr. Olmen, you have a statement, do you, on behalf of the Nave Typographic Service?

If you would like, your statement can be made a part of the record and you can briefly summarize or if you want to read the statement, the Committee will be glad to hear it. We will leave that up to you. You may proceed.

(The prepared statement follows.)

NAVE TYPOGRAPHIC SERVICE, INC.,
Washington, D.C.

The Honorable Congressman Sisk and Members of House District Subcommittee No. 5.

GENTLEMEN: I appreciate the opportunity to testify before the Committee. My name is Stanley N. Olmen. I am President and owner of Nave Typographic Service, Inc., a Maryland corporation operating a typesetting plant in the District of Columbia. While I am a member of the Printing Industry of Washington, D.C., Inc. a local trade association which is composed of some 180 printing establishments in the Washington area, I am appearing before your committee as an individual although I am currently receiving the association's help in contesting the unreasonableness of the present statute, its rules and regulations, and the arbitrary and capricious enforcement thereof.

We of the printing industry are completely in favor of all reasonable and proper rules and regulations that safeguard the health and welfare of our employees. Over the past thirty years we have found that the health of our employees is of vital concern, not only because of the human considerations involved but it is just good business. Accidents are not economical. It has been asserted that nearly 30,000 accidents of "on the job injuries" cost our economy over \$32,000,000 in 1966. As these costs are borne primarily by the employer through loss of time, increased insurance premiums, medical payments and workman's compensation awards, every reputable employer is safety conscious.

In the present law which HR 1264 seeks to expand the coverage of employment and work practices of some 300,000. Employees and employers working in the private sector of this economy should have an active part in establishing those safety standards, rules and regulations under which these members have to operate. No one, without adequate knowledge of the hazards sought to be safeguarded, who is unfamiliar with the industry's working conditions and who proceed blindly from the mere words set out in a guide with archaic standards can properly know if and when a safety hazard exists.

The employers and employees of an industry can see the problems, they know the hazards and can assist the Minimum Wage and Industrial Safety Board in setting standards for their particular industry rather than having one set of regulations apply so generally to all sectors of the private economy as to become absurd and/or unreasonable, and which, when an attempt is made to enforce such general standards, it depends upon education, knowledge of the hazard, the likes and dislikes, the reasonableness, or unreasonableness, the fairness or unfairness of one individual—the government safety inspector.

May I respectfully suggest to the committee that an amendment be added that would require the safety board to meet with representatives of the employers and employees of each industry to formulate a safety code for their particular industry, and any change thereafter in said safety code should not be made without a similar meeting.

May I further suggest that provision be made in the bill for a hearing so that the aggrieved party who has been charged with a violation of the safety rules and regulations, can, at his option, appear in person before the Board and present his side of the case. This is only basic American justice.

Further, in the advent of an adverse decision by the Board, there should be an appeal to a higher authority so that the Board itself will not act unreasonable or arbitrarily.

And last the inspectors who enforce these regulations should have knowledge of the particular industry involved, the hazards to be safeguarded against and should cooperate with the representatives of the Employers and Employees of that industry in their enforcement of the rules and regulations.

We are definitely against the expansion of the present law unless the above safeguards are included.

To illustrate by a specific case, how, in the face of the experts of the printing industry and its union representatives, the director of safety and his staff have actually enforced rules under this unreasonable statute, rules and regulations which were established over thirteen years ago and even though said statute provided variances for machines which had been in use ten years prior to the promulgation of said safety standards, and in its enforcement actually created hazards which had not existed prior to the enforcement of this antiquated rule.

Nave was charged with three violations on 6/22/66 by the Safety Director. I challenged the third violation as been unreasonable. The violation related to Machine guards set forth as follows:

The American Standards Association guide used by the District Inspector under section 11-2302 of the regulations set up too general a standard. The applicable portion of such provisions set out as follows:

"... all types and shapes of power-transmission belts except the following when operating at two hundred and fifty (250) feet per minute or less: flat belts one (1) inch or less in width, flat belts two (2) inches or less in width which are free from metal lacing or fasteners, round belts one-half ($\frac{1}{2}$) inch or less in diameter and single strand V-belts, the width of which is thirteen thirty-seconds (13/32) inch or less..." (Mechanical Power-Transmission Apparatus, ASA B15.1-1953)

These provisions as applied to our equipment cannot properly be enforced as most machines run at several different speeds depending on which gear-set is necessary for the size type being set by the machine. The larger the type, the

slower the machine operates; the smaller the type, the faster the operation. Therefore, it is unreasonable to say that belts do not need a guard when operating under 250 feet per minute and do need a guard when operating over 250 feet per minute. It is the same machine.

The only two companies that make the machine in question report that they have never had a report of an accident on this part of the machine. Mergenthaler Linotype who have marketed 75,000 linotypes over a period of 75 years stated they never had the requirement for a guard because they never considered the belt as a hazard. They have never placed a guard on a single machine.

Further the Safety officer for the Government Printing Office stated:

"It is my considered opinion that accepting the speed of a belt in feet per second and/or size of the belt as the sole criteria of determining the need for guarding is not valid."...

"It has been determined by the Engineering Staff of the Government Printing Office and the undersigned that a guard enclosing the matrix distributor drive belt would create a hazard to the operator when it is necessary to clear a jam in the distributor unit and that the open belt does not constitute a hazard based on the above criteria."

My plant was periodically inspected by the Columbia Typographical Union No. 101 and the inspection report as to the health, safety and welfare of the employees by their own representatives disclosed no unsafe conditions.

Despite the testimony of all these experts from industry, labor and management, that the guide as set out by the rules and regulations and enforced by the Minimum Wage and Safety Board were unreasonable, and in fact compliance therewith, created a real hazard, the inspector and the Director adhered to the archaic standards of the American Standard Safety Codes.

Our problem would never have occurred had the statute allowed members of industry and labor to assist in formulating the safety standards for their industry or if the inspector had a workable knowledge of the machines, or if I had had the right of a personal appearance to appeal the directors decision to the Board. As it was, I sent a letter in accordance with instructions from the Director of Safety, and was subsequently notified that a hearing had been held and an adverse ruling was held against me. I have never appeared or been represented before the Board.

A law, rule or regulation which does not afford these safeguards, should not be expanded to other private sectors of the economy without adding safeguards to protect the individual employer and the industry in providing reasonable standards and rules of safety.

I realize that in presenting this testimony before this committee I may in the future, be subjected to harassment, unfounded accusations, and other acts of badgering, by those who seek expansion of the present law. However, I feel that it is my duty to appear and offer what I believe to be constructive suggestions to this committee so that what has happened to me and to our industry will not happen to others when this law is expanded to cover 300,000 additional workers.

Mr. OLMEN. I do not know whether any purpose would be served by reading the complete statement, and I think we have left copies of it for the Committee.

Basically our purpose here is not applied to the additional coverage of the Act, but presently the administration of the Act. It is our feeling if the continuation of the present administration is included in the new coverage it will open up a field that could be extremely hazardous as far as the employers in town are concerned and we base this on the experience of the printing industry in Washington.

We would like to suggest, which we have outlined somewhat here in the back of the statement that some changes be made to allow the aggrieved party some action, some appeal rather than go to Court with it. Going to Court, in addition to being timely, I mean untimely, and costly, is really not the place for a hearing such as this type where you want to introduce evidence where you would like to cooperate rather than argue. The courts usually restrict what can be introduced and this sort of thing so there is a real story, and in our particular

case—in our particular case, after ten months no impartial body has heard our problems.

In my particular shop, again, in seventeen years we have had two accidents, and both accidents happened on the metal saw which is properly guarded. As a matter of fact, it is the best guarded piece of equipment in my plant. And no legislation would correct these two accidents. It is possible in the future we will have more accidents on the saw, but it is generally caused by carelessness or stupidity, neither of which we can legislate against, nor can we teach them not to cut themselves. Accidents, as far as we are concerned, are not economical. We are certainly as much for safety as the Board itself. And we feel that any reputable employer is too.

We would like to have some place we can go where rather than the Director of Safety, a decision be made as to whether or not the equipment is hazardous. We do not believe that the enforcing agency here should decide whether or not the interpretation is correct.

The problem directly affecting my particular plant, I would like to point out first that the reason, primarily the reason for the two witnesses, that in my particular plant we are only a type-setting plant so that we do not do any actual printing so that we are pretty much contained with Linotype machines. My friend here has a printing shop where, of course, there is a more broad coverage. However, his problems have been somewhat similar as far as interpretation and enforcement and the right to appeal are concerned.

The Government Printing Office, which is the largest printing office in the world, which is under direct instructions from the President to reduce accidents, tried out the guards that they have been suggesting for our industry and have found out that they are not satisfactory. And I have here in my bag a notarized statement to that effect by the Public Director of the District Print Shop which is operated by the District of Columbia, do not have a guard, at least did not have. And I take it in both these cases it is lack of jurisdiction. But, further is that the plants themselves do not feel that this particular thing was a hazard. The Superintendent of the Composition Department of the Government Printing Office has stated also in an affidavit which I have that he does not believe in this particular guard. All the people who manufacture the machines, the representatives of the union that represents our workers and the management, we have not found a single witness who in any way feels this particular problem is a hazard. As a matter of fact the safety officer at the Government Printing Office in his affidavit has stated the hazard has increased with the addition of the guards.

If the purpose of the Safety Director is to eliminate hazards and foster safety as it says in the preamble here of your original Act, then I think that the decision by the Board which actually increases the hazard should properly be brought before the attention of the Committee. There seems to be no other body that we can go to to bring our problem to.

In substance, this is our problem. We would like to have something incorporated in the Act that would allow us an appeal.

They say they have a Board, but I was told in a letter, a copy of which I have, that if I did not approve of this decision I could appeal to the Board in writing. I appealed to the Board in writing and I got

a letter back from the Board in two weeks which said that the Board had heard my case and they decided against me. I was not represented nor was I called to appear, and the entire decision is made by the agency enforcing the law. It just does not seem quite correct.

I think in substance that takes care of our case.

Mr. SISK. Does that conclude your statement, Mr. Olmen?

Mr. OLMEN. Yes, it does.

Mr. SISK. Now, Mr. Drazin, do you have a statement that you would like to make? I believe that you have a prepared statement? If you wish to insert your statement in the record and summarize it, that will be fine, or you can read the statement, whichever you prefer to do. (The complete statement of Mr. Drazin follows:)

PRESENTATION OF A SAFETY INSPECTION OF GOODHART PRINTERS, INC.

Gentlemen: On October 3rd, 1961, Mr. R. B. Anderson inspected our plant at 1507 14th St., N.W. and thereafter issued a notice of violations of the D.C. Safety Regulations with 5 violations as follows:

1. Guarding Vee Belts-(All Vee belts and pulleys shall be guarded) (2).
2. Guarding Gears-(All exposed gears shall be guarded) (1)
3. Grounding-(All portable electrical tools and equipment shall be properly grounded) (2)
4. Machine Guarding-(Repair the platen guard so it will operate properly) (1)
5. Machine Guarding-(Repair the two handed control on the paper cutter) (1)

At that time Mr. Anderson explained and cooperated in every manner. We repaired and corrected every violation shortly thereafter, including the grounding of machines with a direct wire to a water pipe from the frame of the machine.

On February 14, 1967 we again were inspected by Mr. Anderson but this inspection began in a very different manner. The inspector entered our office and removed a leather shoulder pouch from his back, placed a camera around his neck and immediately proceeded in our plant. If I remember correctly his first stop was at the Ludlow, a molten metal typesetting machine, which we have operated and owned about 1953; he stopped at the Ludlow and snarled, "Where is the guard for that machine" pointing to the Ludlow. I replied "What guard?" He replied "Someone probably removed it." I then again reiterated "What guard?", and continued, "there was never a guard for that machine and I had never seen one in 35 years in the printing trade." He then snapped back, "Where is your parts book?" I immediately stopped my typesetter from his work and instructed him to produce the book. The inspector then proceeded to scour the book for a picture of a guard; after about 15 minutes of fruitless searching, he stated "this book doesn't have one—but get one anyway"—and proceeded to take a picture of the machine.

Coincidentally, earlier that morning of February 14, 1967 we had to move one of our presses to repair a steam heating pipe imbedded in the concrete floor. Our pressman had taken the day off since he could not operate the press because the new concrete was still wet. Mr. Anderson then proceeded to this newly repaired area and immediately noticed that electrical wires from the press control were exposed; I immediately explained and showed him where the power had been turned off on all machines in the area. One of the many items that was temporarily displaced was a light table, a translucent glass topped table with lights underneath used in inspecting printed sheets, etc. He duly took a picture of this table.

We proceeded to a folding machine where he inspected the air pump, belt and pulley guard. He moved the guard off the belt and pulley it was covering and proceeded to take a photo with the guard removed from its normal place. I immediately interceded and asked why he was taking a picture AFTER HE HAD MOVED THE GUARD FROM ITS PROPER PLACE; he ignored me and did not answer me; I replaced the guard and he continued taking pictures.

On a folding machine there is an attachment which trims off excess paper from pamphlets, etc., while being folded. When Mr. Anderson came in this particular morning, we were folding and trimming excess paper off of a printed folder—

the machine is designed for the trimmings to fall under the machine for later removal. The particular time he came in, the trim was still under the machine because it is DANGEROUS to remove this trim while the machine is operating.

After the inspection Mr. Anderson stopped in the office and issued a Notice of Violations of which the first item was 1. Housekeeping (Clean up all waste material from the floor in the passageways and around the machines as often as necessary to maintain a safe work place.)

Section 11-2306. Insofar as the nature of the work will permit, the workplace shall be kept free of discarded material, refuse, debris, protruding or upturned nails, and other unnecessary materials or equipment which may cause persons to trip or fall.

With the interpretations that Inspector Anderson has made of the violations of the 1961 inspection, he could at his whim charge us and fine us for this violation any time he appears in the plant and we are trimming any printed pieces on the folding machine. We are completely at his mercy with no right of appeal as Mr. Green has stated except to go through a costly and time-consuming court case.

Item 2. Standard Railings (provide standard railings along the exposed edge of the storage platform).

Please note the inspector listed on his notice "storage" platform; I think that this is an example of a completely incorrect interpretation of the regulations, Section 11-2312 which reads as follows:

11-2312. Standard railings shall be provided along the exposed edges of all floor openings, wall openings, ramps, platforms, runways, or other workplaces, to prevent the falls of persons.

Standard railings shall be of the following, or equivalent, construction:

- (a) Posts or uprights set not more than 8 feet apart, center to center.
- (b) A top rail, the top of which is not less than 36 inches nor more than 42 inches above the floor or platform.
- (c) An intermediate rail midway between the floor and the top rail.

The minimum dimensions of members of wood railings shall be: posts 2x4 inches; top rail 2x4 inches; intermediate rail, 1x6 inches.

From the language of this section, in or out of context, it states—platform, or other workplaces to prevent falls of persons. The distance from the top of our storage platform to the ceiling is 36' and obviously, no one could work, stand or walk there, much less work there. The storage platform was exactly that—and the inspector saw this, since there was about 30 cases of 48" fluorescent light tubes stored on it. I pointed this out to the inspector to no avail.

Item 5. Electrical (Effectively ground the non-current-carrying parts of the following items by the multi prong (3 or more) system or other method approved by the D.C. Electrical Code and the U.S.A.S.I. Code: 4 time clocks, 1 Davidson press, 1 water cooler, 1 light table. . . .

In item 5 of the Violations Notice of 1967, Mr. Anderson commands us to effectively ground a water cooler; we do not have a water cooler; we do have a water fountain which is positively grounded merely by having a water pipe directly connected to it. It seems the inspector does not know the difference between a free standing water cooler and a water fountain connected to the water and sewer system.

Inspector Anderson requested to see the fire extinguishers which were shown to him. His only inspection of them was to look at the label. We have a fire inspector who comes periodically and inspects the fire extinguishers; but his inspection is thorough, he tests the various moving parts and weighs them to see that they are fully charged. The Safety Divisions inspection seems to be perfunctory and superficial.

Item 6. Machine Guards (Install a cylinder guard on the Little Chief 20 press. Install guards covering the drive belts and pulleys on the following machines: 1 Ludlow machine, 1 Little Chief 20 press, 1 folder compressor and 1 Davidson press. All guards must be constructed out of 22 gage sheet metal or the equivalent and securely fastened in place. Install a small mesh guard over the delivery end of the chief 15 press.)

Section 11-2341. All power driven machinery shall be properly guarded. Effective point-of-operation guards shall be provided and used on all power-driven tools the use of which presents a recognized hazard to the operator or other workers. All guards shall be constructed in a substantial manner, and shall be effectively installed and maintained.

After the inspection in 1961, we immediately ordered a guard for our press from the Davidson Corporation; we received it about 1 month later and installed

it immediately and continued operating the press with no problems. In the 1967 inspection, we were charged with a repeated violation of this safety regulation, when in fact we actually rectified the violation immediately. We feel the Industrial Safety Division, without a final inspection in 1961, made their determination in an arbitrary manner.

B). Guard on ATF Chief 20 press is within main frame of press—he took a photo of this. Manufacturer did not make guard because it is actually within the main frame of the press.

C). ATF Chief 15 press bought in 1963 has a sheet delivery guard constructed of parallel $\frac{1}{8}$ " steel rods spaced $1\frac{1}{4}$ " apart. Inspector Anderson states that we are in violation of the regulation and required us to place over this an additional wire mesh.

What constitutes properly guarded seems to be any interpretation that the inspector wishes to make. No guidelines are in the regulations.

Two weeks after the inspection of February 14, 1967 I was mailed a summons to appear before the corporation counsel.

While waiting for our turn for a hearing, I listened to a hearing by Corp. Counsel Clark King and another inspector from Mr. Green's office with a Mr. — of the Gibraltar Construction Co. The gist of the conversation was as follows: Mr. King listened to both parties and then said to the inspector, "I think that this man has shown no malice, he sent a form to the Labor Dept.—the name on the Form—I don't think he tried to hide anything." Then there was a pause—and Clark King continued speaking to the inspector. "Well, what do you want to do?" The inspector casually replied "The usual." Whereupon Mr. King said "I think you ought to talk it over." The inspector then replied "I can't do anything, I'll have to go back and talk it over with Mr. Green."

"The usual" seemed hardly a just method of fixing the penalty.

During our hearing with Mr. Clark King there came a time when a statement by Mr. Anderson that he (Mr. Anderson) called me in 1961 and asked me if all the violations had been corrected? I was astounded and immediately interjected "That's a lie", whereupon Inspector Anderson pulled out his copy of a form and showed a purported 1961 notation that he had spoken to me and was assured orally by me that all the violations had been corrected. This fact immediately cast a pall over the hearing to our disfavor. Needless to say, we were found guilty and were required to post a \$300 collateral.

Upon my return to the plant, I was still amazed that I said the inspector had lied and he produced the paper with the 1961 notation. I discussed this point with some of my long-time employees to try to help me remember just when he called. Curtis Hall, one of our pressmen immediately stated "Harry, I talked to that man; he called one morning before you came in, and he asked me if we had the guard for the Davidson press. I remember it exactly because I went back to the press and checked to see if the guard was on the press—as it was. I then returned to the phone and told him, 'Yes'. I didn't tell you, because I didn't think it meant anything. I thought the inspector wanted information—I gave it to him and forgot about it."

Now, I understood why I said "That's a lie"; the inspector did not know that he hadn't actually spoken to me but based a criminal charge against the corporation on telephone conversation of over 5 years previously.

A number of years ago, the sales tax division of the D.C. Government noted a confused area in the Sales Tax Law dealing with diplomatic employees of foreign governments. I was one of these businessmen. Shortly after discovering this misunderstanding by their investigations; they sent out a detailed explanation in the spirit of helping the businessman conduct their affairs within the law.

The Safety division, after an obvious misunderstanding of the law, regarding for instance, grounding of time clocks did not notify any printer that the Safety division requires that time clocks be grounded. No official oral or written notification was ever sent to any printer to my knowledge. We feel that the safety division is not out to help the businessman to stay within the law but to penalize him.

After our hearing, I sent a man from our office to post \$300 collateral; while at the police station, he was notified by the police officer that a date had to be set for the trial and the latest that he could make it was one week from that day. When I became aware of this, I tried to call our attorney. When I would be unable to reach or discuss the case with our attorney, until after the date set for trial, I called the Corporation Counsel's office to ask for a continuance. The Assistant Corporation Counsel stated that he could not change a date without Mr. Green's

approval and that I should contact Mr. Green. I did so, and my first conversation with Mr. Green was as follows:

I said, "I would like to set the trial for a later date 2 weeks or so that I might talk to our attorney and to prepare for trial, if any." Mr. Green replied "I can't give you that much time, but I will let it go til Tuesday. (The Trial was originally set for the previous Friday) What is all this fuss about this case? What do you want to talk about to your attorney." I replied that "I wanted to decide with my attorney's advice whether we want to fight the case, when and-or how. I feel I have that prerogative."

To say the least, I think that this is a high-handed method of handling a criminal charge against a man or organization. From other printers, I have been told that they were advised by the various officials of the Safety Division—"Why don't you forfeit."

When I received the summons from the court to appear for a hearing, I called Mr. Green's office, without identifying myself, to ask about how long a person could be liable for a repetition of a violation of the Safety Regulations. Mr. Yendell of that office replied, "Well, we keep the files for 5 years, after which we usually destroy them." I asked, "Don't you operate under a statute of limitations?" Mr. Yendell replied, "This office has no statute of limitations." I then asked "Do you mean that as a businessman who might inadvertently repeat a violation 25 years later and still be charged?" Mr. Yendell replied "Yes!"

In the future I may be subject to further fines and harassments at the whim of the inspectors—by his interpretation of the Safety Violations. I may even be harassed for appearing here today.

Since there seems to be changes in policies and attitudes between this 1961 and the 1967 inspections, I wish to note that there seems to be something more sinister than is apparent to the casual observer. In the meantime, the legitimate businessman seems to be in the midst of the crossfire.

In view of these high-handed and completely capricious and arbitrary interpretations of the regulation, I *strongly urge* this committee to insert definite guidelines for the Industrial Safety Division for interpreting these regulations and to clearly and promptly notify all the affected businessmen of any change in policy. I *also strongly advocate* that this committee make provisions for a proper exchange of views through a public hearing by the Safety Board of any changes in policy or interpretation of these regulations.

In view of Mr. Green's own statements that "There is under the present law, no requirement by the Safety Division to permit a citizen to appeal an interpretation of an inspector or his superiors of a Safety Regulation". I strongly request that this committee insert a positive provision in the law to grant a citizen the right of appeal before the Industrial Safety Board. And *lastly*, I request the committee in some fair manner to limit the time a violation can be called repetitious.

Mr. DRAZIN. Well, I think it would serve again no purpose. It is pretty well stated in my paper I have presented here, my views.

But, I would like to point out a few other things that I think the Committee, and I urge the Committee to consider. There seems to be no provision in the act for a statute of limitations. I called the office of Mr. Greene and spoke to Mr. Yendell there on the question how long a person would be liable for a violation, prior violation, and he indicated there was no statute of limitations. And I feel that the Committee should try to put into the Act some provision for not having someone obligated twenty-five years later for a repeat of a violation.

I think otherwise, basically, I had the same objections as Mr. Olmen has here and it is enumerated in my statement.

Mr. SISK. Does that conclude your statement?

Mr. DRAZIN. Yes, sir.

Mr. SISK. All right, the gentleman from Maryland, Mr. Gude, do you have any questions of these gentlemen?

Mr. GUDE. I do not believe so, thank you.

Mr. SISK. Let me ask you Mr. Olmen with reference to—as I understand it at the present time you have a court case pending, is that correct?

Mr. OLMEN. Yes, we are pursuing this in court.

Mr. SISK. As I understand it, after your case was decided by Judge Hyde who ruled you were guilty as charged and then at the present time that is on appeal, is that the situation?

Mr. OLMEN. No. The present situation up until this morning, I received a communication this morning, and here again is the difficulty with a thing like this is that the corporation counsel of the District Government, I do not know just what terminology to use, they have argued that the appeal motion or the appeal for a new trial was not filed within the proper number of days or some technicality which has absolutely nothing to do with the merits of the case, I mean it is something that probably is just and fair under legal rules, but we are asking for either a new trial or appealing to whatever the next higher court which would be eligible, the General Sessions Court. And our brief was filed just this morning. But, one of the difficulties as I noted here in the—first, is the thing should never have to go to court. Courts are busy enough without this sort of thing. It should be some impartial board. And in the note here, as suggested, the board, if possible, should be composed, it should not be just a three member, it should be more than a three member board if possible and that a member of that industry and a member representing the workers in that industry should be called for particular rules in particular industries. It is pretty hard to say that the same rules apply to an outdoor contractor where they use heavy equipment and the same rule apply to a printing shop.

However, printing is one of our largest industries, probably the largest other than building in Washington, and we are willing and able to provide a member and I am sure that the most of our workers in Washington organized, and I am sure that the union would be very happy to. We have provided a Committee in the Graphic Arts Association, which is an employer group, which I think met one time with Mr. Greene so that possibly there has been some benefit derived here. But, I think the benefit would exist only in formulating the rules and regulations if we were allowed to participate and suggest what is and what is not a hazard and that they would follow the advice and we would be very happy to police the industry ourself.

Mr. SISK. Fine. I just wanted to get in the record this particular situation. We certainly do not wish to try this case before the Committee—

Mr. OLMEN. I understand.

Mr. SISK.—because it is a situation which the Courts will handle. As I understand it the only argument that you have at the present time is so far as regulations have to do with the guard on the drive belt and Linotype machines, that is the issue, basically, is that right?

Mr. OLMEN. Well, there is two other machines that we feel the circumstances are exactly the same.

Mr. SISK. Now, let me ask you, do you have any idea how many of these machines of this type or general type are in use in Washington? It would run into a good many hundred, or several thousand?

Mr. OLMEN. Well, it would be several thousand. For instance, the Washington Post has sixty-eight and the Star would have about fifty, I mean roughly these figures, and all your smaller shops. In my particular case I have eight. I would say 2,000 would be a rough estimate.

Mr. SISK. Well, as far as you know has there been any discrimination on the part of the inspection service or the enforcement agency enforcing the requirement for guards?

Mr. OLMEN. No. There is somehow or other—there is discrimination—this discrimination deal crept into our court case, which is unfair to both myself and the Government. I have never claimed discrimination, that they were picking on me particularly because I felt that the rule that would apply to me certainly would apply to the rest.

What we are fighting, however, is the fact the improvement they are making actually is creating a hazard. It is pretty hard to reason that when every expert in the trade, and I say when every expert we had twelve and the Government offered none in our particular court suit, every expert said that it creates greater hazards than the present situation. I think this should temper the thinking of the Board or temper the thinking of the Director of Safety. He alone. But, he alone should not be the judge.

Now, it has been fortunate really that they have enforced this thing to the other places in town. When I first—when it was brought to my attention there were several smaller printers that had already been told to put these guards on. This created another problem. The first man he went to it cost him \$150 to have samples made and finally made a guard that was not satisfactory and finally made a second guard. As a matter of fact, we have a letter from the manufacturer which says in 75,000 machines and seventy-five years they have never had a report of an accident nor have found any need for the guard.

As part of the regulations I quote here, and this is another thing which is scribbled, is that they use the American Standard's Association booklet as their guide. And I do not even know whether it was made a part of the Act. But, whether or not it was it would not really change it. But they have a section in here which they either forgot to read, or did not appear to read that says equipment sold prior to the date of this book need not, however, be modified to conform to its rules unless a supervised authority deem that sufficient hazard exists to warrant such action or definite provision is made in an Act in the law. Now, they do bring up a question that if the machine is in practice and in some cases they have mentioned in other booklets about a ten year grandfather clause I presume. I think this is based, at least it seems reasonable to assume that it is based on, if the experience over a ten year period had produced no accidents this is not positive proof that it is entirely safe, but it certainly is a pretty dominating factor. In our particular case we have used these machines for seventeen years and no one has ever been scratched. It certainly indicates that there certainly is a less hazardous condition here than would reasonably be assumed.

Mr. SISK. Well, I understand that. The point I am making is based on information that has been furnished to the committee which would indicate—for example, you mentioned the Washington Star, the Washington Post, the Evening News or the Washington Daily News, now they do have a lot of machines yet they are all guarded and as I understand it most of the machines or a large percentage of the machines do have these guards on. Now, your case seems to be, let us say one of the few or maybe the only one, at least that we have a record of, in which there has been a difference of opinion on the guards and I nat-

urally would have arise in my mind if other companies have found it advisable to go ahead and put the guards on why you seem to have a problem. Frankly, that is the question.

Mr. OLMEN. Well, of course, I did not bring this up in the statement here I made, but reading the statement will indicate that I am not bring the action. The Printing Industry of Washington is also a party to my particular court case. They have joined with me, which is 180 firms. The problem has been that pending a decision in our particular case the Safety Director has made it a point to canvass everybody else and after our first adverse decision informed everybody that they were going to lose anyway and on the threat of a \$300 fine if they did not have them installed. Actually, it is an advantage as far as proving our particular point because either the Washington Post or the Daily News or any of the large places who have installed the guards now are firmly convinced that it is a greater hazard. The machine is at the Washington Post and I talked to them just yesterday so that I know this is a current situation, they said that they have been scratched more and hurt more with the guards in the short period of time which is maybe a month, I am not exactly sure of the date, they have received more scratches on the thing than they did in twenty-five years prior to the guard. Now, this is not, when you mentioned the fact that I, as an individual, was bringing this, the case we have in court is supported by and being paid for by the Printing Industry of Washington. I am testifying here only because I am more familiar with it. I am directly concerned with a particular case, but this case has been joined by all the printers. This does not include the Publishing Association, that is, the three newspapers. We figured they were going to take care of their own cases. But as concerns everybody other than the newspapers, they are combined in this case. It is not an individual action, sir.

Mr. SISK. I might ask you Mr. Drazin, I believe you were cited for lack of guard. You have now put on a guard, you are now complying, do you have any problem with your guard?

Mr. DRAZIN. Well, I do have one of the machines in question that Mr. Olmen has and I wrote a letter to the manufacturers of the machine for a guard. In fact, I enumerate my experience with the inspector in that regard. He walked in and stated—this is a Ludlow machine by the way, a different type-setting machine which has a flat I think about a one and a half inch belt and the machine comes that way from the manufacturer—and he said in a sarcastic manner where is the guard for that machine. And I have owned the machine since 1953 or thereabouts and I have never known there was a guard for the machine. And I have seen many, many, many of these machines around the city and in other cities and have never seen a guard for it. I said, "What guard?" I didn't know what he was talking about. And he said there was a guard there and someone must have taken it off. I said I do not know what you are talking about and he said well let me see your parts book. And I immediately instructed my typesetter to give me the parts book or to give the inspector the parts book and he looked through this parts book thoroughly. He never did find a picture of this guard and he after a while said, well I guess there is none in this book but get one anyway. So I said to him no one has ever been hurt, I have never heard of one for that but I would and

I place an order for a guard and this was in February, about the 20th or thereabouts, near that day, and I have not received a guard yet nor a communication from the manufacturer. Now, I am waiting for it. I will install it when it comes in.

Mr. SISK. Getting back to what I understand, Mr. Olmen was your original reason, at least as I understood your statement, for appearing here was to seek what you felt would be a more logical remedy for appeal to the Board. I believe that was the reason that you were primarily concerned, that where a question having to do with safety arose, whether it had to do with guards for these machines or other matters, which I am sure that you would be concerned from a safety standpoint, that in the event of a difference you feel that you should have some specific right to appeal. Am I stating correctly what your position is?

Mr. OLMEN. I think that pretty generally covers it. More specifically, is that there is a dispute between the industry, I am not talking about an individual now again, if a dispute arises as to whether or not it constitutes a hazard, if there is some doubt, and I think that for instance in this particular case a doubt was arisen by all the experts and in this particular case we ought to have a hearing before someone and if they rule adversely, incidentally, there is no question about carrying it out. I have carried out other directors of the committee for seventeen years, I mean of the Director of Safety for seventeen years. We have never had a problem. We have never had a problem with the fire inspector or the police or anybody who comes into the place. It is all done, incidentally, and particularly the fire people, it is done on a cooperative basis. It is done where they suggest and sometimes we suggest to them. And I think a safety program trying to be carried out without this cooperation is—it loses a lot of its weight.

We are certainly in favor of any safety measure they can introduce. But, if this measure does create a further hazard in the estimation of both manufacturers, employees and employer I think there is doubt enough that we ought to have a fair hearing some place.

Mr. SISK. Mr. Gude, do you have any questions?

Mr. GUDE. Yes, thank you, Mr. Chairman. Which machines specifically would it be up to the Washington Post or the Star, you say they have installed these guards.

Mr. OLMEN. Yes, they have installed them. I do not know just when, but I would say recently.

Mr. GUDE. As a result of this case?

Mr. OLMEN. Yes, sir. Not as a result of my particular case.

Mr. GUDE. Which machines would they be specifically.

Mr. OLMEN. Well, you see, you do not get into the specifics on this thing. As a matter of fact, the entire case is based on the speed of the belt.

Mr. GUDE. In other words, any machines that have belts on them according to the speed would be subject to provisions, such as if belts have a certain speed then the guards would have to go on? Is that the idea?

Mr. OLMEN. Well, this code which I have a copy of which is American Standards Association, which incidentally no longer exists, it has been replaced by a new U.S. Research Institute which cooperates with the Labor Department of the Government for promulgating new

rules. According to this booklet it says that—it suggests that it is a guide. It suggests that if a belt goes over 250 feet per minute and it is of a certain size or less, and in our particular case incidentally the regulation here calls for a belt a half an inch wide. Our belt is one-eighth, so it is four times less than the minimum requirement, I mean we are talking about technical terms, there is a slack in the belt. In other words, it has a functional purpose. We cannot seem to get this point across that actually the belt is installed as a safety device on the machine. The reason for it is it has some slack in it, if for any reason a friction gear does not disengage the operator can reach, can go around the machine and flip the thing off with his finger. He does this so that the top of the machine will stop operating. So actually it has a functional purpose. By guarding this you destroy part of the functional purpose of the machine.

But, further on the machine, the only two manufacturers that make the machine are Linotype and Unitype, most plants have Mergenthaler Linotype machines and they are similar in appearance and similar in results. But, there is no need, I mean there is no reason to assume they all go at the same speed. Our machines and any machine including, excluding the ones that set photographically, can be adjusted to run at 323 feet per minute or 230 revolutions, whatever the thing is, all the way up to 278 or 279. So by changing a little sprocket on our machine we could conform to the law. By reducing the speed, this achieves nothing. It is the same belt, in the same position, going approximately eight percent slower. It has the same degree of unsafeness as going twenty-seven miles an hour in a twenty-five mile zone. I mean the extreme outside would be equivalent to two miles above in a twenty-five mile zone. But, we could reduce all this by just changing a sprocket. But, operators are tempermental people and they like to have the machine run and most machines run seven lines a minute, we could make them run 6.75 and conform to the statute. But, it does not eliminate the hazard which supposedly exists.

We have shown, I think, conclusively that it is not a hazard and creates a greater hazard than without it on.

Mr. GUDE. Thank you. I notice, Mr. Drazin, you mention the inspector came into the plant to remove the guard and then took a picture of the machine?

Mr. DRAZIN. Yes. That is another objection to tactics which the entire industry objects to and I was one of them subject to it. I did observe the inspector on this particular occasion was inspecting a belt on a folding machine which I had a guard cover. He removed the guard, moved it out of the way and proceeded to take a picture of it. And, as I stated in my statement, I interjected, why are you moving the guard and taking a picture and he ignored me and continued so I immediately moved over and put the guard back on where it was. The machine was not operating, by the way. And, if he was going to take a picture take it as he found it. I was amazed that he moved it. Two of my men witnessed it. They were amazed too, but I passed it off.

Mr. GUDE. Could there be any reason he would want to take a picture of the machine without the guard.

Mr. DRAZIN. If he had a reason he did not answer me. I asked that exact question.

Mr. SISK. Okay gentlemen. We appreciate your appearance before this Committee.

Mr. OLMEN. Thank you.

Mr. DRAZIN. Thank you.

Mr. SISK. Next, we have Mr. Howard McGuigan the Legislative Representative of the Greater Washington Central Labor Council, AFL-CIO. Now, do you have someone with you, Mr. McGuigan?

STATEMENT OF F. HOWARD MCGUIGAN, LEGISLATIVE REPRESENTATIVE, AFL-CIO, GREATER WASHINGTON CENTRAL LABOR COUNCIL; ACCOMPANIED BY J. C. TURNER, PRESIDENT, WASHINGTON CENTRAL LABOR COUNCIL; AND FRANCIS M. WYNN, BUSINESS REPRESENTATIVE, RETAIL STORE EMPLOYEES UNION, AFL-CIO LOCAL 400

Mr. MCGUIGAN. Yes. I have with me, Mr. Chairman, Mr. J. C. Turner who is President of the Greater Washington Central Labor Council.

Mr. SISK. All right.

Mr. MCGUIGAN. He is also President of the Washington Building and Construction Council.

Mr. SISK. Fine.

Mr. MCGUIGAN. He also has served for six or seven years as a employee member of the Minimum Wage and Industrial Safety Board, but he is not currently serving.

I also have Mr. Francis Wynn who is the Business Representative of the Retail Store Employees Union, Local 400.

Mr. SISK. Fine. All right Mr. McGuigan, you may proceed then with whatever statements you have or if you want to summarize. Whatever you prefer. The full statement will be made a part of the record in any event.

(The complete statement referred to follows.)

STATEMENT OF F. HOWARD MCGUIGAN, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ON BEHALF OF THE AFL-CIO AND THE GREATER WASHINGTON CENTRAL LABOR COUNCIL

Mr. Chairman, my name is F. Howard McGuigan. I am a legislative representative for the AFL-CIO. I am here today representing the AFL-CIO and the Greater Washington Central Labor Council.

We wish to compliment the Chairman of this subcommittee, the Honorable B. F. Sisk, on his foresight and interest in introducing this pending industrial safety bill, H.R. 1264.

The AFL-CIO represents approximately 125,000 members in the Washington metropolitan area most of whom work either permanently or in various stages in their careers in the Nation's Capital. We are therefore, pleased that this proposed legislation has reached the hearing stage and we urge the committee to recommend its passage with a few modifications.

It is clear that the intent of the legislation passed by Congress in 1941 intended that all employees in private industry be adequately protected by having a safe place of employment. Subsequent rulings of the Corporation Council have narrowed coverage of this safety legislation. As a result of these narrow, restrictive, administrative interpretations of the word "industrial", only workers employed in manufacturing and construction now are assured of the protections of the safety law.

We are sure that Congress intended no such interpretation and we believe that the Congress should move expeditiously to eliminate this injustice.

We believe that the Industrial Safety Board as constituted in the original 1941 legislation should be allowed to continue to promulgate and adopt, after public hearings, such regulations as they deem appropriate for the protection of the lives and health of all workers in places of private employment.

The current \$300 maximum on fines has had a very limited deterrent effect on violators. The practice of violators in forfeiting collateral has become a public scandal. We advocate mandatory court action with denial of permission to forfeit collateral in all cases where personal or fatal injuries are involved. We also urge raising the maximum fine per violation to \$1,500 and heavier fines for repeated violations.

In the past 25 years the responsibility for literally dozens of fatal accidents have been met simply through the callous forfeiture of \$300 collateral. Simple justice contradicts this solution to basic problems of health and life itself.

The 89th Congress passed amendments to the District of Columbia Minimum Wage law making substantial improvements in wages and extension of coverage to workers in the District of Columbia. We are sure that this committee will continue to recognize its responsibility to those workers in private employment by updating the Industrial Safety Law.

The Public Health, Education and Welfare Subcommittee of the Senate Committee on the District of Columbia held hearings on an identical industrial safety bill on March 10, 1967. There is a reasonable expectation that the Senate committee will favorably report the legislation. Favorable action by the House committee would help to insure action on this important legislation.

We are grateful for this opportunity to appear before your Subcommittee. We urge prompt action on this industrial safety legislation which vitally affects the lives of many workers in the Washington metropolitan area.

Mr. McGUIGAN. The statement is very brief, Mr. Chairman, so with your permission I will read it.

Mr. SISK. All right.

Mr. McGUIGAN. My name is F. Howard McGuigan. I am a legislative representative for the AFL-CIO. I am here today representing the AFL-CIO and the Greater Washington Central Labor Council.

We wish to compliment the Chairman of the Subcommittee, the Honorable B. F. Sisk, on his foresight and interest in introducing this pending industrial safety bill, H.R. 1264.

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It is clear that the intent of the legislation passed by Congress in 1941 intended that all employees in private industry be adequately protected by having a safe place of employment. Subsequent rulings of the Corporation Council have narrowed coverage of this safety legislation. As a result of these narrow, restrictive, administrative interpretations of the word "industrial," only workers employed in manufacturing and construction now are assured of the protections of the safety law.

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In the past twenty-five years the responsibility for literally dozens of fatal accidents have been met simply through the callous forfeiture of \$300 collateral. Simple justice contradicts this solution to basic problems of health and life itself.

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We are grateful for this opportunity to appear before your Subcommittee. We urge prompt action on this industrial safety legislation which vitally affects the lives of many workers in the Washington metropolitan area.

MR. SISK. Thank you, Mr. McGuigan. Now, Mr. Turner, did you have a statement that you would like to make?

MR. TURNER. I would like to say that I attended the last hearing. I heard the statement made by Mr. Kneipp on behalf of the D.C. Commissioners and I was quite disturbed that in his statement he urged that casual employment not be covered by the act. Now, agricultural workers and domestic workers I can understand, but the present law says that the employer shall provide a safe work place. Now, when you start breaking down into categories of workers I think it changes the whole concept of the bill. And certainly we believe that casual employees are just as much in need for a safe work place as anyone else.

Also, he made the statement that so far as cases not being tried rather than collateral being forfeited that he thought this matter could be settled by a letter from the Board of Commissioners to the Court, asking the Court to give a trial perhaps in the case of fatalities or serious personal injury. The fact of the matter is, however, they never have written such a letter despite the fact, as Mr. McGuigan has said, this forfeiture of collateral. For instance, we had thirty-eight fatalities last year. A number of these were cases where employers forfeited collateral rather than standing trial and giving an opportunity of some publicity to what did occur, maybe to learn something through the trial procedure as to why the accident occurred or help to inform the public as to how to prevent future accidents of this nature. As Mr. McGuigan said, it is a public scandal that we keep reading about these matters. Therefore, we believe that

mandatory trial since it has not been requested by the Commissioners, and I do not know how we can insure ourselves that they will in the future ask that the court change this procedure, so we urge, Mr. Chairman, that on these two matters the position of the Commissioners not be sustained.

Mr. SISK. Does that complete your statement Mr. Turner?

Mr. TURNER. Yes.

Mr. SISK. Mr. Wynn, do you have a statement?

Mr. WYNN. I have a statement which I can submit. Of course, it is in support of H.R. 1264. So in essence, to save time I will just submit that, if I may.

Mr. SISK. All right. Fine.

(The statement referred to follows.)

**STATEMENT OF REX CLIFFORD REPRESENTING THE RETAIL STORE EMPLOYEES UNION,
LOCAL #400, AFL-CIO, OF WASHINGTON, D.C.**

I am appearing as a proponent of House Bill HR-1264. Having represented employees in retail establishments within the boundaries of the District of Columbia for many years, I have learned to realize the great importance of the Legislation adopted by Congress in October, 1941, establishing safety standards for those who toil for a living. I firmly believe that if those employed in the retail industry should not continue to be protected by a safety law, that the employers would soon learn to disregard safety standards within retail establishments.

There are many pieces of equipment used in retailing whereby an employee could be injured if such equipment was not covered by proper safety codes. In food stores for instance, there are compressors for refrigeration, garbage disposals used in produce departments for the trimming and preparation of produce, saws, grinders, tenderizers and so forth, used in meat departments, and various other pieces of electrical equipment. Cash registers must be properly grounded; deep freeze storage lockers must maintain proper safety latches so employees cannot become locked in; stair steps must be maintained with proper rails and so forth. Many other instances could be pointed out where safety of the retail employee must be guarded by proper safety standards and codes enforced by inspectors from a Government agency.

In 1965 (fiscal) employees in the retail trade, not including restaurants, reported 7,225 injuries of which 2,954 were disabling. There are presently in excess of 48,000 employees working within the retail industry. Any one who has been familiar with the number of accidents occurring, even with the protection of the Industrial Safety Law, can readily realize that without the protection of the law, this number would soon multiply itself many times.

In reviewing House Bill HR-1264, I wish to say that I do not believe that the fines are established as high as they should be.

Again, I want to say that not only myself, but the organization I represent, very strongly feel that Senate Bill HR-1264 should be enacted into law.

I want to thank you for the opportunity of having been able to appear today as a proponent of the Bill.

REX CLIFFORD, President.

Mr. McGUIGAN. Mr. Chairman, Mr. Philip J. Daugherty of Office Employees, Office Employees International, Local 2, also has a statement in support of the legislation which we would like to include.

Mr. SISK. All right, Mr. Daugherty. Do you wish to appear, Mr. Daugherty, in person and make any brief statement?

**STATEMENT OF PHILIP DAUGHERTY, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 2**

Mr. DAUGHERTY. Yes, very briefly.

Mr. SISK. Well, come on up to the table. Your statement, without

objection, will be made a part of the record. If you wish to summarize or make further comments on it why go right ahead.

(The statement referred to follows:)

STATEMENT OF PHILIP J. DAUGHERTY, STAFF REPRESENTATIVE OF OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 2

Mr. Chairman, my name is Philip J. Daugherty and our Union represents over 3,000 office and professional employees in the Greater Washington Metropolitan area. We wish to compliment the Chairman of the Committee, the Honorable B. F. Sisk, on his foresight and interest in introducing this pending Industrial Safety Bill HR 1264. Our organization feels that safety in the working place should be controlled by law irrespective to the type of work being performed or the category of the employer's business. It is clear that the intent of the legislation passed by Congress in 1941 intended that all employees in private industry be equally and adequately protected by having a safe place of employment. As a result of narrow restrictive interpretations by the Corporation Council, the word industrial has been construed to mean only those employees employed in manufacturing and construction are to be covered by the law and that office workers, sales clerks, restaurant and hotel employees would not generally be considered as being engaged in industrial employment. In our specific field it has been our experience that unsafe conditions and improper use and placement of equipment in offices can be just as dangerous to the welfare of employees as would be the case if no safety laws covered construction and manufacturing employees in those particular fields. We are sure that Congress intended no such interpretation as currently in effect and we believe that the Congress should move expeditiously to eliminate this injustice. We are also in favor of striking out the current provision under Section 3, which calls for a fine of not more than \$300 and support wholeheartedly the amendment as called for in HR 1246. The current \$300 maximum fine has had very limited deterrent effect on violators. We feel that a much heavier penalty should be assessed so that the employers are hurt in the "pocketbook" and cannot continue the practice of paying for violations of the law and just write it off as part of a business operation. Simple justice demands that when health and safety and life itself are involved, the highest financial penalty cannot be too severe.

Mr. Chairman, we are grateful for this opportunity to appear before your Committee. We urge prompt action on this Industrial Safety Legislation which vitally effects the lives of so many of our members in the Washington Metropolitan area.

Mr. DAUGHERTY. Well, I will just briefly summarize. In behalf of the office and professional employees we support wholeheartedly H.R. 1264 and we feel that in our specific field that unsafe conditions and improper use of equipment and so on can be just as dangerous as in the manufacture and construction field. And we are sure that Congress when they passed this bill did not mean to exclude the office workers and hotel workers and restaurant workers who have been construed under the law.

We also feel the present penalty, financial penalty, is much too low because the employers seem to be with impunity just treating this violation and paying as a part of doing business. We think that to raise the maximum penalty to \$1,500 or above would certainly be very meaningful in the pocketbook which may cut down on these violations.

We wholeheartedly endorse this legislation.

Mr. SISK. All right. Thank you Mr. Daugherty for your statement. Mr. Gude, did you want to ask some questions?

Mr. GUDE. Yes. I do not know who might answer this. I know that in the State of Maryland under, I believe, the Department of Industrial Safety has developed a series of courses which have been very

interesting for supervisors and laborers, particularly in construction sites, teaching them about safety and proper conduct and so on and is there such a course here in the District of Columbia for the supervisors and employees?

Mr. McGUIGAN. Mr. Turner could probably respond to this better than I as far as the construction field is concerned, because as I indicated earlier, he is involved in that field.

Mr. SISK. If the gentleman would yield, I notice Mr. Greene had his hand up. I want to say, Mr. Greene once we have concluded here we are going to recall you briefly to the stand and without objection if you want to make any comments at that time you can go ahead.

Mr. TURNER, do you have some comment?

Mr. TURNER. Yes. As part of the testimony of one of the construction groups the other day, the employers group, they indicated that literally hundreds of their foremen and workmen have been put through various programs of training initiated by Mr. Greene and the Industrial Safety Board. The Industrial Safety Board for over twenty years has been supplying teachers and places and arranging programs for educational re-education for supervisors and personnel as well as workmen. Outstanding program.

Mr. GUDE. In reference to the comments by the gentlemen from the printing industry, how do you feel about the idea of a representative of labor and management particularly in the promulgation of rules and regulations?

Mr. TURNER. Well, as far as I know there has been participation. I was under the impression—I know that the original construction safety code at that time there was a part time committee which considered them and adopted and made recommendations to the Board. The Board then adopted their regulations. My impression now is that there is consultation with—maybe this is not as formal now as it was twenty years ago when things were done a little differently—but there is consultation and then as a result of this there is a public hearing at which the proposals are discussed and they are there in writing and anyone from management or from labor can come and can make objections or proposals for change. My impression generally is that the procedure we now have is adequate.

Mr. GUDE. Are any of you gentlemen specifically tied to the printing industry? I was wondering if you have any comments about the regulations they mentioned in their testimony?

Mr. TURNER. This is a highly technical question as far as I am concerned. I cannot comment on it.

Mr. McGUIGAN. If I may, Mr. Chairman, I would like to indicate that this bill, H.R. 1264, has the support of the Columbia Typographical Union. I believe the Committee has received a letter from that union in support of the legislation.

Mr. TURNER. This is the large union that has about 3,500 members working in the printing industry.

Mr. SISK. We do have a number of statements from various groups to go into the record. I might state that without objection this statement from the Building Service Employees' International will be made a part of the record.

Just a few very brief questions. As I understand it, you gentlemen are recommending actually an increase in the penalties over what we

now have included in Section 3 or what we have proposed in Section 3, is that right? Mr. McGuigan, as I understand it you were talking about a \$1,500 maximum?

Mr. McGUIGAN. Yes.

Mr. SISK. And I believe that you know on line 12 of the present bill we provide, on line 11, following: "less than \$100 or more than \$1,000, or by imprisonment of not more than ninety days." Now, this is a pretty substantial increase over the present penalty, and do you feel that is inadequate to bring enforcement or compliance rather?

Mr. McGUIGAN. We feel that it is somewhat inadequate, Mr. Chairman. First, the maximum was \$100 as compared to \$300 in 1941 is not much of a dollar increase if you compare the value of the dollar in 1967 to that of 1941. Secondly, we feel that this takes no discretion from the courts in determining the amount of the fine. We are particularly interested that in cases of repeated violations that the court should take note of the repetition and that they should impose more severe penalties. But we do not think that \$1,500 in the case, for instance, where an employer under the safety code might be required to erect a scaffold in order to perform a certain function on the outside of a building and instead of doing this in order to save money maybe he swings a boatswain's chair or something equivalent to that outside of the window hoping that he will not be observed process and this is a flagrant violation as a result of which someone might lose his life. We do not think \$1,500 is a very heavy penalty for that kind of violation.

Mr. SISK. One other comment and I think one of you gentlemen mentioned this that the testimony of the Commissioners recommended changes in the proposed legislation dealing with the requirement that no forfeiture of collateral be permitted in a personal injury case and further there was testimony last week by some of the individuals testifying that this could tend to jam up our courts and, of course, as we all know, they are badly overloaded today and are way behind. There is no question but what cases are piling up, unfortunately, faster than the courts apparently can dispose of them. Yet, on the other hand, I recognize the need to, particularly in personal injury cases, to crack down some on it. As I understand it you are opposed to the recommendation of the Commissioners to leave this up to the court, is that right?

Mr. McGUIGAN. Yes, we are, Mr. Chairman.

Mr. SISK. What has been your experience in this area? To what extent were personal injury cases involved? Is it prevalent or is it unusual that forfeiture of collateral is permitted. Among the people in your various locals where personal injuries occur, do you have any figures, any indication of what has been the general practice and to what extent you feel it has not lead to proper enforcement or proper compliance?

Mr. McGUIGAN. Well, we do not have—

Mr. SISK. In other words, I am seeking something for the record here to justify what we are attempting to do. Or, on the other hand, as I say, all these things have two sides to them and, of course, in the testimony that has come out certainly none of us seek to further burden the courts if this is going to be a problem. Now, if it is a justifiable case we certainly want the court to handle it. There is no question about that.

Mr. McGUIGAN. Mr. Chairman, we do not the figures. I would assume that the Board would have the figures. However, I think it should not be overlooked that first the violation has to be alleged before the employer is in the courts on a personal injury case. He would not be in the court unless a violation of the code was alleged by the Industrial Safety Board. So the language as proposed, of course, does not state this specifically, but this is the understanding I am sure that we are talking about here action against people who have violated the codes or the law.

I would suggest that as to the figures that either the Corporation Council's office or the Board would have those figures. I did not or do not have them, sir.

Mr. TURNER. If I may, Mr. Chairman, also in the community at large any number of times I have heard people in private conversation commenting on the fact that here we have a, let us say a fatality and they read in the paper about someone posting \$300 collateral and that was it. I think——

Mr. SISK. Pardon me for interrupting; do you mean there are cases where there has actually been a fatal accident that this has been permitted?

Mr. TURNER. In almost every case. I do not remember a case since the law was passed where anyone had to go to court in a fatality under this law. In other words, they posted \$300 collateral and that is it. And what in the community——

Mr. SISK. As far as the violations was it where the violation had caused the fatality?

Mr. TURNER. That is correct, sir. In other words, this whole procedure is a blot on the conscience of this community and it was described as a public scandal by Mr. McGuigan and I certainly agree with him. I think this is one of the real changes, the really important changes that are needed, that is needed in this law. I mean people come to me knowing that I once have been on the Board and say well how can this happen, why does it happen?

Mr. SISK. Well, that, of course, is one of the things I was trying to bring out for the record. I know in some of the discussions sometimes, there have been minor injuries and I recognize a person could be skinned up or get a finger broken or something and yet these are not to be taken lightly, but at the same time the only way, of course, that the court gets into a situation from the standpoint of safety regulations have to do with an injury or a fatality that resulted from a violation of the safety regulations. That would be the only justification for putting up collateral. It is fantastic to me to believe that in the face of a violation that caused a fatality that forfeiture of collateral would settle the case. I am just amazed.

Mr. Gude, do you have some questions?

Mr. GUDE. Yes. What kind of violations would be involved in these fatalities?

Mr. TURNER. Well, let us take a ten story building and let us suppose that the employer is supposed to have a handrail on the stairway, and let us say he neglected to put one there and as a result of that failure to have a handrail a workman fell down the well and was killed. Another case could be like Mr. McGuigan cited where a boatswain's chair was being used to paint a building when as a matter of fact cer-

tain safe scaffolds are provided by the code and as a result of using that boatswain's chair the workman fell down and let us say the employer that provided this defective equipment and not only was the equipment defective, but he was violating the safety laws by even using this kind of procedure. There would be the kind of case where the employer would have been charged and, of course, usually these matters are not determined or known about by the Board until the accident occurs.

Mr. GUDE. Well, I certainly agree with you that in that kind of case it should go to court. I think we could make some differentiation on the very minor cases. I do not know how that might be brought about.

Mr. TURNER. I think serious personal injuries and fatalities are much more important—

Mr. GUDE. Well, we do not want to hamper the courts, but at the same time, that type of case should go to the courts.

Mr. TURNER. I am glad to hear that.

Mr. SISK. I think this, I do not know whether there are available records or whether you would have this Mr. McGuigan, or Mr. Turner, or any of you gentlemen have available records. I think it might be well for the record, and this is what we are seeking, all the light and all the truth that we can get on this subject before we make a determination of the final terms of this piece of legislation. It might be well to furnish for the record cases say for the past five years in which a fatality occurred and in which there was certain forfeiture of collateral and court action. I think it would be well to have this for the record.

Mr. GUDE. I agree with you.

Mr. SISK. If you gentlemen cannot get it, later I am going to ask Mr. Greene and Mrs. Newman to return briefly, and I will ask them about it. But, if the gentleman from Maryland agrees with me I think it would be helpful.

Mr. GUDE. It certainly would. Very helpful.

Mr. SISK. Because I, particularly in these cases of fatalities or even of a grave injury like a broken back or things that paralyze or fully disable a man for life, to me, I had not realized that these could be disposed of without court action. As I say, I am amazed.

Mr. TURNER. It happens every week.

Mr. SISK. All right, will you gentlemen do what you can to see that that is made available for the record.

Do we have Mr. Somlyo here? He is not here?

Mr. WYNN. He was here for the first meeting, but he is not here today.

Mr. MCGUIGAN. He has a statement we would like to submit.

Mr. SISK. Without objection, his statement will be made a part of the record then.

(The statement referred to follows.)

STATEMENT OF FRANCOIS SOMLYO ON BEHALF OF THE JOINT EXECUTIVE BOARD OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO, OF WASHINGTON, D.C.

Speaking in the interest of approximately 18,000 workers, we urge the inactment of House Bill 1264.

For many years coverage of the Hotel & Restaurant Workers were excluded from the Fair Labor Standards Act, and since we have finally overcome this hurdle we find that these same workers are shackled by lack of coverage under Industrial Safety.

Until the opinion of the Corporation Counsel in the fall of 1964, quote, "a hotel is not a place where industrial employment is carried on," unquote, we thought we had a fair Industrial Safety Law. On this decision alone, hotel and restaurant workers are automatically removed from coverage and we challenge that decision.

The Hotel Association is one of the biggest industries in the District of Columbia. They book and reserve for massive groups of cliental through various services, including food and lodging. Helping to supply the means of enjoyment and comfort, are about 18,000 hotel workers assisting these hotels to cater to the requirements of their cliental.

Our International Union distributes to nearly a half million members through the country, a magazine called the Catering Industry Employee, and no one has challenged the validity of hotels as a industry. Therefore, we feel there is no question but that the hotel is a industrial employer which is trying to dodge a responsibility of the safety of its workers through a technicality.

We feel that the Industrial Safety Board acted justly and properly when it ruled that, after an increase number of reported stairway accidents, that all stairways in places of employment must have hand rails according to safety regulations.

When the Congress of the United States pass laws, they are passed with the intent of serving the best interest of the people. When Congress established the Industrial Safety Board 26 years ago, we think its declared purpose was to foster, promote and develop the safety of wage earners in the District of Columbia in relation to their working conditions and we are positive that the United States Congress intended that Hotel and Restaurant Workers be included.

The Corporation Counsels interpretation of the Act as it affected hotels, brought to the realization that over 80% of workers in service industries totaling 100,862 employees (hotels, motels, window-cleaning, laundries, personal services) are now excluded under the present opinion of the Corporation Counsel.

In the fiscal year of 1966, the total on-the-job injuries were 6,912, total disabling injuries 2,650, and total fatalities were 7. Of the 100,862 employees in these industries approximately 10,000 are members of our union working in hotels, and are involved in these statistics.

House Bill 1264 if passed, will lawfully correct this injustice and we urge that this committee will give it favorable consideration.

Non-Fatal Injuries By Type:

Handling materials or equipment-----	1,602
Falls of persons-----	929
Striking against objects-----	833
Unclassified-----	627
Hand tools-----	455
Falling objects-----	433
Vehicles-----	359
Machinery-----	334
Struck by moving objects-----	320
Stepping in or on objects-----	278
Hot substances-----	240
Dusts, gases, chemicals-----	198
Flying particles-----	192
Explosive substances-----	31
Fire-----	27
Pressure equipment-----	22
Electricity-----	17
Flash burns-----	8

Fatalities by type:

Falls of persons-----	3
Vehicles (airplanes)-----	3
Natural causes (heart attack)-----	1

Mr. SISK. Mr. Greene, as far as I am concerned, this probably will conclude the hearing unless someone knows of another witness that I have no information about. If you and Mrs. Newman would come up just briefly, I would like to conclude by asking you a couple of brief questions here with reference to some of the questions that have been raised.

**STATEMENTS OF CHARLES T. GREENE, DIRECTOR, AND MRS. SARAH
NEWMAN, CHAIRMAN, INDUSTRIAL SAFETY AND MINIMUM
WAGE BOARD; ACCOMPANIED BY MR. CLARK KING, COUNSEL—
Resumed**

Mr. SISK. First, in view of our just recently talking with the gentlemen representing labor, are you or is your office, Mr. Greene, in a position to furnish or would you have such records as Mr. Gude and I have just agreed would be beneficial to the record regarding the grave injuries or fatalities caused by violations and yet settled merely by forfeiture of collateral?

Mr. GREENE. We do have cases and we can furnish you a list going back five years that would deal with whether the finding of the court and as to whether it was a fatality and/or personal injury which would be noted. We keep all our findings in our court cases as records in our office. It will take a little time to compile it for five years back, but I would say we can do it within three or four days.

Mr. SISK. Well, I was going to say the record will be kept open for five or six days. We will give you time to get it in all right, Mr. Greene. But, it seems to me, as I said, I had drawn some conclusion earlier that there might be some justification due to the statement of the Commissioners and others about the Committee considering further this matter of no forfeiture of collateral. But in view of the recent statements here this morning I would find myself very much concerned that an actual violation, which is the only thing that would involve you, that could be simply written off on a forfeiture of collateral. I am amazed, particularly in a fatality. It struck me as quite unbelievable.

Mr. GREENE. Mr. Sisk, our problem with that particular thing administrative wise was the fact that when we cite information it has to be cited to the court based on a violation of the regulations. Any time or many times the court is not aware of a personal injury when they consider whether it is a collateral forfeiture, they are not aware that this is different from another one because there is nothing in the regulation now that would permit us to feed that information in on the picture. We have to treat it as violations of regulations or standards or rules, etc.

Mr. SISK. You mean to say, and again as I understand it and I believe you did testify on this point last week, that if a man was killed from a fall from a boatswain's chair where no scaffolding had been prepared and where someone was trying to do a little painting or window cleaning or something to do through this use that in your report all you cite is that there had been a violation, but not what happened to the individual?

Mr. GREENE. No, not what happened to the individual. It would read something like the employer did fail to provide a certain type scaffold for use of employees at the work place at so and so address, that would be the typical information on this particular accident. Unless it came up at a hearing by the Corporation Counsel or in the court and a judge specifically asks whether there was, to help to weigh his decision, as to whether there was an injury involved, this would be the only time this would come into the information.

Mr. SISK. If I could just express an opinion, in a case like that it certainly seems to me that the contractor is guilty of criminal negli-

gence in this case and should pay for it in the courts as criminal negligence. And I recognize the problem that you have. You are not in a position to bring that about, but I think certainly this now deals with something that is a much more serious situation than I realized existed right here in the District and I am sure this is something that the Committee will be interested in.

Mr. KING. Mr. Sisk, I think the big problem in all of these cases at the present time is the fact that we do have a \$300 maximum and the court if it gets one of these cases regardless of what happened, says well what can I do. He has got \$300 up and that is all I can fine so what do I gain by bringing him in here.

Mr. SISK. Under the statute, Mr. King, under the statutes and code of the District of Columbia are penalties dealing with what could be, and maybe my terminology is not correct, practically criminal negligence of permitting a man or ordering a man to do a job in such a way that he is killed in the act of doing that job or performing that task and doing it in such a way that it is in violation of the safety regulations of the District. Certainly the courts under existing codes, do they not, have the right to go well beyond that \$300?

Mr. KING. I think what we are mixing up here is this: the United States attorney would handle any prosecution involving criminal negligence and that would be under a different statute completely. What we are talking about here is the safety standard regulations and, of course—

Mr. SISK. Specifically for the failure to comply with safety regulations separate and apart from what happened?

Mr. KING. Certainly. So, if you had a criminal case it would be of a criminal nature that would be for the United States attorney. Now, that is an entirely different statute.

Mr. SISK. All right.

Mr. KING. In other words, this would be under the Safety Standard regulations and, of course, the court would charge him under the Safety Standard regulations as the Corporation Counsel would be required to do. And he comes up in the court and the man has got \$300 up and the statute says the maximum is 300 the court says what can I do.

Mr. SISK. Yes. Well, I think that very well places this in the proper perspective.

Now, Mr. Greene, I particularly wanted to ask you, I am sorry Mr. Gude had to step out briefly, but I merely wanted to ask you to comment with reference to this problem of giving a hearing to an individual who has been notified of a violation in which some question arises. Now, we discussed in some length you remember the other day this problem and as I understand it, Mrs. Newman, of course, your Board is actually a volunteer board?

Mrs. NEWMAN. Yes, it is.

Mr. SISK. You are not a full time board or fully paid board?

Mrs. NEWMAN. That is right.

Mr. SISK. In view of the testimony by the gentlemen from the printing industry this morning and the other questions raised, I was interested in what problems there would be if the Committee in its wisdom, and this is pure speculation you understand, attempted to set up some kind of a hearing as a matter of right; that is, where a ques-

tion or controversy has arisen as to whether or not a requirement in the present regulations were really in the best interest or not, to give as a matter of right an individual an opportunity to go into a hearing room and discuss and present his side of the case. Do you—to what extent would that afford and how often do you feel it might occur? How often do you have requests for such hearings at the present time.

Mrs. NEWMAN. From time to time we get requests for hearings and when we think there is justification for a hearing we arrange for it and we have the appropriate interested parties present. We recently held a hearing with respect to a regulation that the industry people wanted to consult us about and we called in representatives both from the industry and the workers concerned as well as the public. And with respect to regulations there always is this kind of a set up. The industry people are called in, the workers are also called in, and the public is called in before new regulations are promulgated or recommended to the Commissioners.

Mr. SISK. That would be held in the changing of regulations or the adoption of new regulations?

Mrs. NEWMAN. And if this member of the industry feels that the regulation needs to be changed he can ask that the regulations be amended in which case we would set up the same kind of a hearing at which the three parties; that is, the employer, the employee, and the public, would come in and consider the proposed amendment.

Mr. SISK. That leads me really to the last question. Then at the time that a regulation was promulgated, as I assume it was, requiring guards on the belts of belt driven machines whether it be Linotype machines or others, I would like to know was such a hearing held?

Mrs. NEWMAN. Well, I would guess it was, but I was not a member of the board at that time.

Mr. SISK. Well, all right, Mr. Greene.

Mr. GREENE. In our archives in 1945 since the hearing was held that deals with the specific code that is enforced in fixed establishments and that code was promulgated in 1945 and a public hearing was held and all representatives of most of the labor organizations and most of the management organizations, including the printing industry, were present at that public hearing and had a chance to make statements. That same code applies to the American Standards Association code, safety codes, which are the codes that the Labor Department is the main sponsor of and advises municipalities to adopt as good bases for safety codes, that organization now is now the United States of America Standards Institute. It took over all their former codes, but still is in being, they have just changed the name under a new congressional charter.

Now, this was in our codes at that time. They have every right at that time at public hearings. If any labor organization or person felt that there was some regulation that need amending at the time they could request to the Board that they feel certain regulations should be amended and at that time the Board could proceed to make investigations and then recommend a public hearing for amending if they were so voted to do and allow everyone, public and the workers and management to get in on a public hearing.

Mr. Gude asked about the composition of the Board. The Board has had or has been composed ever since its formation of a labor member,

a management member, and a public member. It is still so comprised at this time. And often the public member, I mean the labor and management member get inquiries from groups, their groups and what not and they come into the Board with questions about certain things people ask them. The Board goes into quite a bit of study on different subjects. The question of this printing and belts, we went into a lengthy study on before the Board ever reached a decision. Even no matter how it looks otherwise these belts must be guarded because they do meet this criteria. Now, when they reached this decision they had prosecuted two other firms prior to the time that Mr. Olmen wrote his letter for—to be heard before the Board. The Board voted then, we have already set this policy, we have already prosecuted, the courts have sustained it, now why should we at this time open up this particular thing for this particular individual.

And it is not true as stated earlier, the printing industry has no part in this case whatsoever. I am working very closely with the printing industry now on developing cooperative liaisons in cases so we can establish schools, training schools for their foremen in their plants and maintenance men. We are going to set those up the first thing in the Fall like we have in the construction industry and we have also in the laundry industry. Now, we are working very closely with this and I just spoke to their group at a luncheon meeting just this past week and for just this purpose. Now, we have no other contact in this case as such. They are guarding their machines. They can see the reasoning behind it, for nothing else, just to protect people who walk through their plants, because if we did not have some knowledge of what this regulation says is a minimum standard then we could not defend ourselves in cases of the public who got hurt in here and came to us and said why do you permit these things to go unguarded when you know that this nationally is an accepted regulation which says this type of guard for a belt and it shall be guarded and it does not say should in the regulations, it says shall be guarded. And we have to accept it as this. We checked all these belts. They are running faster than 250 feet per minute. We cannot ignore this particular thing.

And we are getting fine cooperation from the printing industry at this time and they have gone along with this and I think it is a milestone that we have now reached this point with the printing industry because we are backed in this thing by the Labor Department. They are particularly interested in this because under the Walsh-Healy Act this is a similar requirement for all industries that operate under the Federal contract.

The man he mentioned at the Government Printing Office which happens to be the safety engineer is a member of my society, the American Society of Safety Engineers, and he released the statement and he was very apologetic to me for having to do it. He said he was forced to do it and he apologized for it because it was not a statement that a safety engineer could make based on his knowledge of machinery and equipment and other things.

Mr. SISK. All right. I appreciate very much your taking the time to come back and make these comments and with that—

Mr. KING. I think it might be of some help if we did bring up that in a court case, a case in the court, the only issue before the judge at the time there was a trial is the question of whether this regulation

was reasonable and the court held it to be reasonable and the issue in court today is solely a matter of him getting a statement from the Government Printing Office as has already been referred to, wherein the courts have said well, in light of this I will grant a new trial. But, we take issue because it was too much later. It was two months later.

Mr. GREENE. Mr. King was the attorney that prosecuted that case and he knows it thoroughly.

Mr. SISK. As I indicated, I understood that it was on appeal and we are not here to retry that case. I think that is a matter that the courts will act on in the best interest of all concerned.

Mr. KING. I am sure they will.

Mr. SISK. I have here a statement of David Sullivan, General President, Building Service Employees' International which will be included in the record.

(The statement referred to follows:)

STATEMENT OF DAVID SULLIVAN, GENERAL PRESIDENT, BUILDING SERVICE
EMPLOYEES' INTERNATIONAL UNION

Building Service Employees' International Union has three local unions in the District of Columbia which represent over 5,000 service workers. We are vitally concerned with industrial safety not only for our own members, but for all employees of the District of Columbia.

Since the United States Congress does indeed have the safety of workers as a direct and major interest, it is our belief that it should be especially concerned with the workers in the District of Columbia, the Federal City itself. By legislation the Congress has intended to promote such safety. The original legislation, passed in 1941, was passed with this in mind. Through the years, because of various rulings of the Corporation Counsel, the coverage of this safety law has been diminished. This is to be greatly deplored.

The present Bill, H.R. 1264, reverses that trend and once again puts the safety of the workers in the proper perspective.

The Industrial Safety Board, which was set up in 1941, should be permitted with proper procedure to further its regulations which are necessary to promote the health of all employees in private employment and to promote the protection of their lives and well-being.

Building Service Employees' International Union has strong hopes that this legislation now present before your Committee will be adopted by the United States Congress as a result of favorable recommendation by this Committee.

Mr. SISK. Also, statement of M. A. Hutcheson of the United Brotherhood of Carpenters and Joiners of America, which will be included here.

(The statement referred to follows:)

STATEMENT OF M. A. HUTCHESON, GENERAL PRESIDENT, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA, IN SUPPORT OF H.R. 1264

The purpose of this statement is to express our support for the Revision and Amendments to the Industrial Safety Act of the District of Columbia. As we understand it, these revisions which are embodied in H.R. 1264 (Introduced by the Chairman of this Subcommittee, Mr. Sisk of California (are badly needed to correct three major weaknesses in the Act. As it now stands, many workers in the District of Columbia are receiving absolutely none of the protection to their health and safety that the Act is supposed to provide. For other workers, limitations on the authority of the administrators of the Act to correct unsafe conditions and token penalties for violations make it difficult or impossible to provide really effective protection.

Certainly all workers in the District of Columbia are entitled to the protection of the Act. This first objective of H.R. 1264 is simply to assure that such workers as hotel and restaurant employees, retail clerks, and office employees receive the same protection as other workers. No one should object to this act of simple justice.

The second objective of H.R. 1264 is to permit the correction of unsafe conditions even when they involve the structure of a building. It doesn't make sense to permit the administrators of the Act to correct certain kinds of unsafe conditions in a workplace and to forbid them to do anything about other kinds of unsafe conditions. As long as they are carrying out the proper and lawful purposes of the Act, they should have the authority to take the action necessary to assure safe workplaces for District workers.

The third and badly needed objective of H.R. 1264 is to increase the penalties for violations of the Act. We believe that, to serve as effective deterrents, the penalties could well be considerably larger than those provided in H.R. 1264; but the increases are a step in the right direction. The provision that the prosecution of cases involving personal injury can no longer be avoided by forfeiture of collateral is a big improvement. Particularly as a construction union, we feel that gross neglect leading to death or injury should involve somewhat more inconvenience and penalty than the mere forfeiture of a few hundred dollars.

In conclusion, we strongly support the objectives of H.R. 1264 and its companion bill S. 1168. We trust that the Congress will soon take favorable action so that all workers in the District of Columbia will receive the kind of protection of their health and safety that they need and deserve.

Mr. SISK. With that then, unless there is other testimony to be offered, the hearings are closed, but the record will be kept open for additional material which we have requested.

With that then, the Committee stands adjourned, subject to the call of the Chair.

(Thereupon, at 11:45 o'clock a.m., the Subcommittee was adjourned, to reconvene subject to the call of the Chair.)



