



# BULLETIN

FEDERAL MEDIATION AND CONCILIATION SERVICE

**SUBJECT:** Distribution of Seminar Speeches

75-BUL-150

**No. :** \_\_\_\_\_

**Date:** December 15, 1975

**To:** See Special Distribution List Attached

**From:** Jerome T. Barrett, Director  
Office of Technical Services

The completed Seminar transcript has just been received from the Court Reporter. Bound copies of all speeches are being prepared for distribution to each office. However, because of the time required for binding, the most requested speeches, those by Fraser, Heneman, Dunlop, Morel and Chayes, are attached with this Bulletin for your use now. Regional offices will receive three copies and field offices one or two copies, depending upon size. Distribution for the bound volumes of all speeches will be the same.

In order to get these speeches in the bound volumes to you quickly, no attempt has been made to edit the transcript. Therefore, this material is intended for internal distribution only. If you receive a request for copies from outside the Service, you should have them submit that request to OTS in writing and inform them there will be a 20¢ charge per page.

Attachments

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STATEMENT BY JOHN DUNLOP, SECRETARY OF LABOR

MR. DUNLOP: Thank you very kindly, Bill, for those overly generous words.

As you were unveiling those portraits tonight, my

1 mind went back over the years to Cy Ching and indeed to the  
2 mediators, the head of what was the Conciliation Service in  
3 the Labor Department before that time, all of whom were  
4 friends of mine and, therefore, I particularly wanted to be  
5 here tonight and particularly have affection and affinity to  
6 the group who are here tonight.

7 I guess I ought to say just a few brief remarks. I  
8 am sure if the Secretaries of Labor of the last thirty years  
9 were to be assembled tonight, they would all confess or  
10 should confess that one of their most difficult problems was  
11 how to handle labor-management disputes. I am here tonight to  
12 tell you that that is in a way the least difficult of the  
13 problems that I have encountered since March 18, 1975, because  
14 of Bill Usery.

15 (Applause)

16 I think my friend Bill Usery and I work very closely  
17 together. We are on the phone once a day, if I can find him  
18 or if he can find me. I hesitate to wake him up very often  
19 in the mornings, but we do get together both personally and  
20 on the phone on a continuing basis.

21 It does seem to me that it is important for all of  
22 you to understand these points about that relationship. As  
23 far as I am concerned, the mediation function in the United  
24 States stops with Bill Usery.

25 (Applause)

1           If that were not so, the problems of labor and  
2 management relations would not only come to my office, but  
3 they would come to the White House. And for all of you and  
4 for all of us interested in labor-management relations, we  
5 know that these problems have got to be kept out of the White  
6 House.

7           (Applause)

8           The record of the past twenty-five years, I think I  
9 could confess, is that when they have landed there, their  
10 settlements have often not been in the best interest of either  
11 labor or management or the country as a whole. So I think it  
12 is well known among my labor friends and management friends  
13 that as far as this administration is concerned, Mr. Usery is  
14 a special assistant to the President of the United States.  
15 All matters involving mediation or dispute settlement are  
16 referred to him. We may talk occasionally on the phone about  
17 ideas, we may talk about problems, but as far as we are all  
18 concerned, the President and the rest of us, Bill is the  
19 point of last resort.

20           (Applause)

21           And it is well that is so because there could not  
22 be a more able man in his position over the last generation.

23           (Applause)

24           Now, I guess there is one other idea or two I would  
25 like to say tonight. Mediation is becoming increasingly of

1 age in our times. It is for me a strange combination of  
2 profession, of the application of knowledge, but it is also  
3 very much an art; an art with the quality of performance, very  
4 much, I think, dependent upon the skills and upon the  
5 imagination of the artist.

6 Now, I think that the two observations that follow  
7 from that in my mind, one is that the problems of mediation  
8 in labor-management disputes arise throughout the Western  
9 World and I am delighted that there are so many representatives  
10 here tonight from other countries, so that you may compare  
11 notes about the dispute settlement process, for it is in each  
12 society a distinctive process.

13 The second observation that I make about this  
14 process is that in the United States I think we might well  
15 transfer to the art of government more generally than we have  
16 the skills, the philosophy and the approach of mediators. The  
17 Labor Department which Bill served with great distinction for  
18 many years as an Assistant Secretary today has a major  
19 regulatory function at the work place.

20 I am dedicated to the proposition that that  
21 Department shall become less legalistic, litigious organization  
22 to determine regulation and in the process of setting standards  
23 in health and safety and pensions and the like, that we would  
24 draw into our Department the skills, the techniques, the  
25 approaches that are common to those of us who are mediators,

1 to those of us who wish to work it out, for the process in  
2 our society of government only setting standards and litigation  
3 to follow serves neither well the interests of workers or  
4 management or the government. It must be worked out, it  
5 must be mediated. So those of us in the Labor Department --

6 (Applause).

7 So those of us in the Labor Department have a great  
8 deal to learn about the techniques, the approaches of the  
9 Mediation Service.

10 In drawing these brief remarks to a close, I very  
11 much appreciate, Bill, the honor the Service has paid me and  
12 I very much was anxious to be here tonight. I am sorry I  
13 cannot be here tomorrow and the day after, as I hoped, but I  
14 do have a sneaking interest in the mediation process. Now  
15 and then I like to play my hand at settling a dispute here or  
16 there.

17 (Laughter)

18 It may be a Russian grain problem --

19 (Laughter)

20 It may be a couple of others that are upcoming, but  
21 I hope you won't be unduly concerned about jurisdiction in  
22 those matters for I am sure that in all matters we shall  
23 continue, as in the past fifteen years or more, to work  
24 closely together.

25 Bill, you are a great guy and I am very honored to

be here tonight. Thank you.

(Applause)

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STATEMENT OF BARNEY MOREL,

SUB-DISTRICT DIRECTOR OF THE STEEL WORKERS

MR. MOREL: Thank you, Chairman Livingston, new citizen Bill Usery, Mr. McCollam, ladies and gentlemen.

I was a little surprised that Mayor Moon Landrieu didn't even mention our Superdome, and I understand some of you got to visit over there for our winning ball game yesterday. We recently had Archbishop Fulton Sheen in the city to celebrate the first Catholic mass that was ever held in the Superdome, and he told a story that I think is worth-

1 while and ought to be passed on to some of you.

2 He said he was thumbing through the Bible he found  
3 in his hotel room and he ran across a handwritten notation  
4 on the inside cover and the notation said, "If you are happy,  
5 read Isaiah, Chapter 26, Verses 3 and 4; if you are sad, read  
6 Jeremiah, Chapter 51, Verses 11, 13 and 14; and if you are  
7 still sad, call Shirley, 489-4512."

8 (Laughter)

9 I wouldn't want some of you to bypass a resource  
10 that may be available in the hotel room.

11 (Laughter)

12 You heard your chairman this morning and he referred  
13 quite often to the federal mediators as being peacemakers and  
14 you have certainly picked a great city for a convention of  
15 peacemakers. As the Mayor has pointed out to you, we have  
16 many fine night spots and restaurants for those of you who  
17 have made peace with joy. As the Mayor has also suggested  
18 to you, we have numerous historical sites to visit for those  
19 of you who have made peace with honor. And we have a couple  
20 of high bridges over a deep river for those of you who were  
21 investing their money in Penn Central when they should have  
22 been out making peace.

23 (Laughter)

24 However, as I recall from the last time you  
25 assembled here in our city, there were no reported drownings,

1 and so from that I conclude that your sorrows are tolerable,  
2 and my friends in the Vieux Carre assure me your virtues  
3 include a generous capacity for Sjwa Du Vive.

4           When I learned that I would speak to you this  
5 morning to bid you welcome to New Orleans on behalf of  
6 organized labor, I got to wondering how the public views the  
7 Federal Mediation and Conciliation Service. So I conducted  
8 a little poll of my own to test public opinion of your  
9 organization. I formulated a couple of questions.

10           My first question was: "Have you heard of the FMCS?"  
11 An elderly lady in my neighborhood said, "Yes," she had  
12 heard of it. She said her late dear departed husband drove a  
13 truck for that outfit in Colorado. She thought it was some-  
14 where around the year 1934.

15           (Laughter)

16           A young lady who pals around with my daughter said  
17 she thought it was one of the radical student groups at  
18 UCLA.

19           (Laughter)

20           And my garage mechanic said yes, he knew what it  
21 was, it was a new model Jaguar.

22           (Laughter)

23           I began explaining that the FMCS meant "Federal  
24 Mediation and Conciliation Service," an independent agency  
25 of the United States government which encourages and

1 facilitates the collective bargaining.

2 With that explanation, a conservative Republican  
3 acquaintance of mine said he was going to ask Senator  
4 Goldwater to launch an immediate investigation to find out  
5 just how far this damned detente business was going to go.

6 (Laughter)

7 A Democrat friend of mine said he thought Congress  
8 ought to combine all of them Welfare agencies.

9 (Laughter)

10 And a Wallaceite supporter that works in the same  
11 building I do said George would run all of them pointy-headed  
12 bureaucrats into the Potomac right after the election.

13 (Laughter)

14 My second question was: "Did you ever hear of Bill  
15 Usery?" The bartender at the 809 Club said he was sure that  
16 they had a case of it in the back somewhere, but he suggested  
17 Cutty Sark instead.

18 (Laughter)

19 The piano player at Lucky Pierre's said, "I know  
20 Bill Bailey, but Bill Usery, you will have to hum a few bars."

21 (Laughter)

22 My niece said, "What does he look like?" I said,  
23 "Well, he's a big handsome looking guy, very distinguished,  
24 always smiling and with lots of white hair. He solves problems,  
25 that's his job." My niece said, "Oh, sure, I know him. He

1 teaches second year algebra at Chalmette High School and he's  
2 the coach of the shot-put and track team.

3 (Laughter)

4 So much for my poll. Actually the Service isn't so  
5 remote from the public eye. A whole lot of people do indeed  
6 know Bill Usery. President George Meany wanted him to come  
7 back to the AFL-CIO, and we were sorry when he didn't.

8 There are some parallels between your work and  
9 mine, of course. Collective bargaining offers rewards and  
10 frustrations to all who participate.

11 Yours is a sometimes difficult role as I see it. To  
12 be able to persuade without dispute is no simple task; it  
13 takes talent to convince without contradicting; it takes  
14 poise to promote bargaining when the parties prefer to battle.

15 We of labor share some of your frustrations. Our  
16 ulcers are probably smaller because we are not so circumspect;  
17 our tensions are more easily relieved and, as you know, we  
18 scream a lot.

19 We brag a lot, too, about our contracts. Not many  
20 union representatives go before the membership and report  
21 that a key breakthrough in deadlocked negotiations resulted  
22 from the good work of a federal mediator.

23 When industrial relations superintendents go before  
24 the company president, not many mention the mediator when  
25 they report on how their neat bargaining averted a strike and

1 saved ten cents that they had in the money offer.

2 Union representatives and company negotiators trade  
3 in the currency of acclaim, not federal mediators. So your  
4 satisfactions have to be personal ones, shared occasionally  
5 with your colleagues in the profession.

6 I don't have to tell you that collective bargaining  
7 in this country is unique -- because it works. And a good  
8 part of its success springs from the sound, unobtrusive work  
9 of the federal mediators. Collective bargaining is a  
10 voluntary means of securing industrial peace and it works  
11 without government coercion. But today bargaining seems to  
12 be hemmed in with more than the usual hazards.

13 In these times of destructive inflation and  
14 distressing unemployment, collective bargaining is faced with  
15 additional stresses. Companies are searching for new  
16 economies, for better and more productivity and for fewer  
17 management constraints.

18 On the other hand, unions are looking for cost-of-  
19 living escalators to guard the true value of an hour's work.  
20 Unions are attempting to broaden seniority rights, to secure  
21 long-term income guarantees, and to provide more job security.

22 The economies of international commerce now impinge  
23 more than ever on collective bargaining at home. Old constants  
24 have become variables; our former strength has been eroded.

25 My own union, the Steel Workers, with the tremendous

1 bargaining leverage implicit in industry-wide bargaining has  
2 agreed to submit strike issues to arbitration at contract  
3 termination time.

4           And, too, we have a new currency, food stamps, whose  
5 value is tied to the dollar, whose value is tied to  
6 declamations of confidence by the unconfident. We are  
7 suspicious of it. We believe prices are going to continue to  
8 go up. Inflation is a constant and only its rate is a  
9 variable.

10           Our tremendous military establishment, built at the  
11 expense of homes, schools, libraries, parks, hospitals,  
12 cannot win wars or discourage banditry by the oil sheiks.

13           Entire industries have been transferred overseas.  
14 In this land of once-great abundance, critical resources  
15 dwindle while demand accelerates. Our aggregate appetite is  
16 larger and the pie is smaller. We bargain against a back-  
17 ground of imponderables.

18           Yet for all this, collective bargaining in America  
19 has the flexibility to adapt to change. It permits  
20 innovation, it thrives on imagination. We of labor are  
21 confident. We believe the concept is sound and the system is  
22 durable.

23           And we welcome the good services of the federal  
24 mediators. We know your names; we have many old friends among  
25 you. We discuss you among ourselves with many compliments and

1 only a few expletives undeleted. Sometimes we even remember  
2 to thank you.

3 We know you wish us well. We know you wish industry  
4 well. We know Bill Usery does more, much more than teach  
5 algebra and coach the track team.

6 We know that Tally Livingston does a lot more than  
7 act in suspense movies such as "Barney and Clyde."

8 (Laughter)

9 Speaking for all of organized labor in Louisiana, I  
10 wish you all a hearty welcome to New Orleans. I know your  
11 conference here will serve us all well in the south and  
12 elsewhere.

13 In closing, I want to pass on a word of wisdom from  
14 a former resident of the French Quarter, Pirate Jean Lafitte,  
15 who on the eve of the Battle of New Orleans said to General  
16 Andrew Jackson, and I quote: "Price and pride goeth before a  
17 fall, Andy. By tomorrow night, the British will wish to hell  
18 they had called in the mediators."

19 (Applause)

13

PROFESSOR OF INDUSTRIAL RELATIONS

14

UNIVERSITY OF MINNESOTA

15

DR. HENEMAN: Thank you for that sterling recitation  
16 of my criminal record. If this gang is like most people,  
17 about half of them will blame me and the other half will blame  
18 my mother.

19

(Laughter)

20

Mr. Smith, I enjoyed your remarks very very much,  
21 but when you said that the Service got people out of a jam,  
22 I'm about to disprove that; we have got ourselves in the  
23 damndest jam for the next half-hour that you have ever seen  
24 in your life.

25

(Laughter)

1           Dick, you were very kind to me not to give away my  
2 remarks. You read the title and you pointedly used the  
3 phrase "more than anyone can handle." You didn't quite go as  
4 far as I know you intended to go and say, "It is certainly  
5 more than old Herb can handle" --

6           (Laughter)

7           -- but as you did say, I am the only professor on  
8 the program, I guess, and you were kind enough not to say, "We  
9 have only one professor too many."

10          (Laughter)

11          Actually, I guess my presence here is a lot like a  
12 corpse at an Irish wake, it is essential to the proceedings,  
13 but no one should expect too much of him.

14          (Laughter)

15          But, in any event, since Mr. Smith gave most of my  
16 talk anyway -- excuse me if I take my jacket off, but I think  
17 we had a little problem yesterday, too. I think I can go  
18 ahead now with some remarks that parallel his, but are not  
19 necessarily in agreement.

20          I really am honored and flattered to be on this  
21 program with such distinguished speakers and such a  
22 distinguished audience and I, too, would like to pay my  
23 respects to the Service. They have done some tremendously  
24 wonderful things. I am also proud to represent the best region  
25 in the country and absolutely the best office of all, of

1 course, up there in Minneapolis.

2 That's where we have all of those beautiful Swedish  
3 girls, the beautiful blonde Swedish girls, you know. The  
4 kind that won't go out of their way for a Norwegian, but they  
5 will do anything for a Finn.

6 (Laughter)

7 Actually, of course, as from the old pre-inflation  
8 days, we had Carl Corlgien up there and later Charlie LaValley  
9 and now we are coming up with such luminaries as Bart Hess,  
10 Ed Larson, and others. I would like to thank them for all  
11 they do for us.

12 One of the things that they do so well is they have  
13 a mock mediation that on November 19th will attract between  
14 five and eight hundred people. We have made a film of this --  
15 they have done it for many years -- and it is a wonderful  
16 film, it is the best film of its kind of anyplace in the  
17 country.

18 Actually, I look upon our FMCS boys as great movie  
19 stars, really. You wouldn't even know they are mediators in  
20 some ways. Although I am not so sure that is true. You can  
21 always tell a mediator, but you can't tell them much.

22 (Laughter)

23 Really, when I think about mediators, I am reminded  
24 of one true event that happened. You know, when St. Pete was  
25 up there at the Golden Gate -- he lives inside. He has got

1 sort of a lush palace in there and there is a bell outside  
2 and the bell just jangled quite insistently.

3           So old St. Pete gallops down there and, gosh, there  
4 were just two people; there was an ex-Pope and a mediator.  
5 He quickly rushed up and threw his arms around the mediator,  
6 dragged him inside and, Holy Smokes, for the next few hours  
7 you can't imagine the bedlam, the bands were playing, the  
8 wine was flowing, confetti in the air, flowers all over, and  
9 so forth.

10           For some unknown reason there was a slight pause  
11 and the bell was ringing louder than ever. So St. Pete runs  
12 down and here is the Pope standing there at the gate. This  
13 time he was pounding and pounding and pounding and he said,  
14 "Sir, sir, do you know who I am? Do you know who I am?" St.  
15 Peter said, "Calm it, bud. I know who you are. I have got  
16 over a hundred Popes up here already, but this is the first  
17 mediator we have ever seen up here."

18           (Laughter)

19           I am especially honored to have been invited by  
20 Jerry Barrett, a former student, and now a distinguished  
21 professional, and to see Bill Usery again. The last time I  
22 saw him, we were at San Clemente several years ago in a little  
23 conference "Should we have wage and price controls?" and I  
24 can remember I was trying to lead some Swedish singing in a  
25 Spanish restaurant and I didn't realize it, he sings better

1 Swedish than I do, which isn't very much.

2 (Laughter)

3 But in any event, he was fabulously impressive at  
4 that time, even more so professionally today. I think his  
5 performance is really unbelievable, and I mean that from the  
6 bottom of my heart. He certainly is one without peer and  
7 one whose charismatic leadership and example is a great  
8 inspiration and a challenge to us all.

9 A great nation needs great leaders where the  
10 action is and thank God, we have got Bill Utery to show us  
11 the way on the labor-management front. For truly these are  
12 times of strain, stress, conflict. They are times that well  
13 merit the title of my inquiry: "A Changing Environment for  
14 Bargaining: More Than Anyone Can Handle?"

15 To that question let me give you an answer at the  
16 outset so that some of you can rest your bloodshot eyes from  
17 last night. I will answer as any professor might by saying,  
18 "More than anyone can handle?" Well, yes and no, or that all  
19 depends.

20 Because your program wisely raises problems,  
21 alternatives and choices. We do stand at a crossroads where  
22 even the Service -- if it does business as usual, won't be  
23 adequate for the strains and stresses in our social and  
24 economic arena and where collective bargaining needs a new  
25 look.

1 I have thought much about the challenges of  
2 collective bargaining and had to. I taught and studied for  
3 some time at the University of Western Australia and at Perth  
4 two years ago and had a chance to see their system first-hand.  
5 I know something of the British system and I see no hope for  
6 that at all. In traveling around the world, I think it is  
7 more than colloquialism to say that we have the best collective  
8 bargaining in the world right here in the United States. It  
9 is effective, efficient, resourceful and has been experimental.  
10 Notice I said, "has been experimental." It protects and  
11 serves not only the parties, but also the public and serves  
12 them pretty darned well.

13 But here I would have to quarrel with what Mr.  
14 Smith said this morning. I don't think that the public is  
15 being well enough served at the present time and I don't think  
16 we need to serve the business of the parties a hell of a lot  
17 better.

18 Not the least of our successes is the quiet but  
19 absolutely vital role played in our collective bargaining  
20 system by a third party neutral system. With its emphasis  
21 on free enterprise, voluntarism, freedom to bargain, to strike,  
22 to resolve conflicts in a democratic way. For forty years  
23 now, collective bargaining has stood the test in the United  
24 States, and stood it well, but now one can see disturbing  
25 signs of hardening of the arteries, status quo, and resistance

1 to change.

2           When such resistance is foolhardy, the wrong answer.  
3 Indeed, at the very height of the success of our collective  
4 bargaining institutions, I think we must change them or we  
5 will repeat the tragic British experience and matters will  
6 get completely out of hand. We must realize that all of the  
7 society is the environment for collective bargaining and  
8 that all of the problems of society get reflected in our  
9 employment relationships. We must in collective bargaining be  
10 concerned with urbanization, violence, lack of capital, new  
11 technology, welfare, lack of job opportunities, faminism,  
12 busing, and the list could be expanded.

13           We do live in an era of change and complexity,  
14 much more complicated social arrangements, much more  
15 complicated conflicts, problems and solutions. More groups  
16 overlapping, more institutions collide, more rights are  
17 claimed with higher priorities by more participants. Now, I  
18 will be the first to admit and state what you all know better  
19 than I do, that collective bargaining was never created to  
20 deal with each and every one of these problems nor was it ever  
21 intended to be an all-purpose tool, but the very success of  
22 collective bargaining, the concepts of preventive mediation  
23 as practiced by the Service, and the new directions in which  
24 Mr. Usery is taking us suggests that perhaps new forms of  
25 collective bargaining could give us respite and relief and

1 prevention in dealing with problems in areas where we haven't  
2 used collective bargaining before or haven't used it as well.

3 All of this in a time when perhaps the greatest  
4 discovery of all time is taking place; we have not only  
5 created a changed society, but the most overwhelming discovery  
6 is that we can change the rate of change itself, and we have  
7 done so. This might be called the intellectual speedup. I  
8 don't know what it is. I would like to call it sort of a  
9 social and economic problem speedup, where the change is  
10 uneven, unplanned and often chaotic with attendant fear,  
11 distrust, alienation, hostility and conflict.

12 Collective bargaining was developed, we must  
13 remember, to handle conflict in an industrial economy. We  
14 now live largely in a post-industrial economy, the so-called  
15 knowledge economy. And even as the industrial economy  
16 replaced brawn power with machine power, today the knowledge  
17 economy has replaced machine power with brain power.

18 The incredible superiority of specialized knowledge  
19 and specialized occupations is overwhelming. The question I  
20 would like to raise is: Is it possible that we can revamp  
21 and reshape collective bargaining to settle or prevent  
22 conflict in the knowledge economy?

23 As a corollary, if we can't use collective bargain-  
24 ing and mediation, what alternatives to collective bargaining  
25 are realistically available? Don't tell me the answer is

1 "just more legislation." I for one am damned sick and tired  
2 of legislating ignorance, legislating complex problems in  
3 ignorance or of political irresponsibility from non-specialists  
4 in power.

5 Well, all right. What are we up against if we try  
6 to reshape collective bargaining? What are the problems,  
7 areas of need and of opportunity? I would heavily like to  
8 underscore the word "opportunity."

9 At the outset we must face up to the fact that we  
10 are in an economic and social mess. We are in an economic  
11 and social mess; unemployment, underemployment, lack of job  
12 growth, racial inequality are bad. Let's quit kidding  
13 ourselves. Honest diagnosis is essential at the outset. We  
14 must face up to conflict between and among institutions, for  
15 example, between and among EEO and seniority layoffs.

16 Here again, we may see golden opportunities if we  
17 but search. I am not at all happy with the backlog of a  
18 hundred thousand or more EEO cases and I don't know anybody  
19 who is. Well, might not mediation, might not the Federal  
20 Mediation and Conciliation Service be moved in with vim and  
21 vigor to clean up many of these cases? This is no job for  
22 amateurs as we are demonstrating daily. Just perhaps  
23 collective bargaining could be modified to deal with this. I  
24 think so, and I urge this group to lead the way. But if we  
25 are going to do so, we need not only a vast expansion of

1 concept, but a vast expansion in staff and financial resources  
2 to do this extra job.

3           Secondly, I would like to point out that although I  
4 see many people who date back to the War Labor Board days --  
5 and I don't know if this is the badge of honor or not, but it  
6 looks like it on some of my pals here -- doggone it, there  
7 is abroad in the land a whole new breed of professionals that  
8 are moving into the field, professional participants in  
9 employment relationships.

10           We are getting more and better personnel managers,  
11 for example, more and better colleges and courses, training  
12 for unions becoming much better, and so forth. We are able  
13 at last to truly use the word "professional" in the sense  
14 in which that was meant.

15           I would like to point out something you may not  
16 know, but it is of great significance: That the American  
17 Society for Personnel Administration is now undertaking an  
18 accreditation and certification program that goes into effect  
19 this coming year in all phases of personnel and industrial  
20 relations. That largest of professional groups will now be  
21 certified on a regular and recurring basis in all phases of  
22 this field, including collective bargaining and labor relations.

23           You are going to meet new people when you are doing  
24 your mediation because these new people are going to have  
25 had professional training.

1           A third big change will be required; we don't need  
2 as many kinds of collective bargaining laws and systems. Let's  
3 combine our federal and state laws and agencies in the  
4 private sector. Let's bring the public sector under the same  
5 set of rules, and for good measure, let's close down every-  
6 thing -- and I underscore "everything" -- connected with the  
7 Railway Labor Act and put all of it into a single system. Our  
8 current chaos in collective bargaining laws leads us to  
9 reinvent the wheel, fumble needlessly. It is like providing  
10 separate road maps for people who drive Oldsmobiles and  
11 separate road maps for those who drive Fords.

12           How silly can we get? If we can clean up this mess,  
13 we can revitalize the whole collective bargaining system and  
14 can make it better able to handle these problems. If we  
15 continue the piecemeal, patchwork quilt approach, no way.

16           Then we must keep up our economic and job health.  
17 Collective bargaining must contribute to solutions. Let me  
18 repeat that: Collective bargaining must contribute to  
19 solutions. There is too much short-run tunnel vision now. We  
20 do not, for example, put aside enough money for job creation,  
21 for new technology, new plants and equipment. In short, we  
22 sacrifice the future for current gratification and alleged  
23 gains.

24           Our collective bargaining settlements must help  
25 raise the four trillion dollars in new plants and equipment

1 and capital that is needed in the next decade if we are going  
2 to have jobs that are productive and enable us to compete in  
3 the world market. Otherwise, we can bargain for smaller pies  
4 and better junkyards.

5 Any institution, even collective bargaining, must  
6 be responsive to and help maintain its environment. I want  
7 to put this as bluntly as I know how. Very simply, we are  
8 going to have to cut out wage increases that are not  
9 consistent with demonstrated productivity gains, and I  
10 underscore the words "demonstrated productivity gains." But,  
11 first of all, we are going to have to learn how to measure  
12 productivity. We can't even measure productivity at the plant  
13 level in this country and certainly not in any sector such as  
14 the public sector. These measurements are a joke.

15 It is no joke at all when I tell you that unless we  
16 go back to this as our basic yardstick, the state house and  
17 the school house and the plant, unless we accept this need  
18 for responsibility and integrity in collective bargaining,  
19 collective bargaining won't be able to handle its old roles,  
20 let alone its new ones.

21 Parallel with this, we need new and better yardsticks  
22 of success in collective bargaining. Our old one is worthless;  
23 what it takes to settle or go off on a COLA kick, the Cost of  
24 Living Adjustment. But we need to use as the prime yardstick  
25 how well our settlements help the organizations, how well

1 these settlements help the organizations get their jobs done  
2 more effectively and more efficiently. If we use our second  
3 yardstick, what the other fellow has got, let's move our  
4 efforts to a leper colony where this is where this applies.

5         Indeed, we truly lack standards in our field. I  
6 will never forget I was invited to speak to a group at  
7 Vancouver last spring, the International Personnel Management  
8 Association which, as many of you know, is a coalition of two  
9 public personnel groups that went broke and then went  
10 together. At the end of the talk some lady got up kindly and  
11 said, "Well, Professor, I am from such and such hospital out  
12 here in the boonies" -- well, she didn't say, "in the boonies,"  
13 but at least I didn't recognize the town, and she said, "You  
14 know, I want to ask you a question. We have sixteen percent  
15 absentee rate out there, sickness and absenteeism rate; is  
16 that good or bad? Well, I thought for a moment and I thought  
17 again and somebody thought I had swallowed my teeth or some-  
18 thing and I finally said, "My gosh, I have to be honest." I  
19 had to say, "Hell, I don't know, I haven't got any idea."

20         Since that day I have hardly slept. We really  
21 haven't developed standards as we do in other professional  
22 fields. I think that day is coming.

23         I have only got a few more. I am not going to try  
24 to bore you to death -- I am cognizant of the time. We have  
25 yet to feel the full turbulence of the new job rights. The

1 aged, the minority, women, and so forth, presently these are  
2 too rapidly pushing collective bargaining to the back burner,  
3 way too much so. We, the public, I think need to hammer away  
4 at some of the bureaucratic meatheads in Washington and tell  
5 them that there are real live problems in the world, there  
6 are real problems out there other than which agency is going to  
7 get the biggest budget. While they think bureaucratic  
8 machismo is the name of the game, they are wrong.

9         Their track record is most unimpressive. They could  
10 learn much in the way of conflict prevention and settlement  
11 from our four decades of success in collective bargaining.

12         In the short run, if we are going to talk about  
13 the climate of collective bargaining realistically, our  
14 overwhelming problem is to get production costs back into  
15 line, to get production costs back into line both in the  
16 public and private sectors. We must devise incentive and  
17 payoffs and premiums for those who accomplish this. We must  
18 point collective bargaining squarely towards this. Even as  
19 in the long run we must help in the problem of capital  
20 accumulation.

21         To all of this, with all of the problems and  
22 everything we have, don't overlook our practically national  
23 commitment, and certainly the self-commitment the younger  
24 generation feels, to graft onto our work places a new  
25 dimension that is called quality of life in the work place.

1 It is ill defined at the present, I will be the first to  
2 admit, but I cannot -- and I emphasize "I cannot" -- over-  
3 emphasize the impact that that is going to have on past  
4 traditional institutions and that it is having now.

5 As the job market improves you are going to feel  
6 more and more the weight of this collective bargaining and  
7 let's be prepared to handle this.

8 With all of these changes and challenges about us,  
9 I would like to touch very briefly on the impact of  
10 practitioners and mediators. Their job requirements will  
11 become exceedingly more difficult, specialized, and will  
12 require most of us to go back to school more often. We  
13 aren't going to have room for the old-fashioned mediators.  
14 It must have been up in Chicago where they had this one: This  
15 guy was so dumb, you know, that he took his girl friend to a  
16 brewery to she could get a Pabst test.

17 (Laughter)

18 But, in any event, a heavy percentage are going to  
19 have to learn statistics. EEO is going to make believers out  
20 of you, believe me, because in bargaining you are going to  
21 be talking about reliability and validity of statistics. And  
22 you are going to have to learn detailed personnel techniques  
23 because we are going to argue about it much more than we have  
24 in the past. There is a lot less room for bluffing and in  
25 some cases, no bluffing at all.

1 I regret to tell a group as pratmatically oriented  
2 as this that you are going to have to learn theories and  
3 when somebody says, "Is this an equity theory or expectancy  
4 theory?" you are going to have to cock up your ears and know  
5 what the hell they are talking about, just as when they say,  
6 "construct, content, predictive validation," these are things  
7 that mean one hell of a lot to collective bargaining.

8 Now, if this is true, it becomes increasingly  
9 obvious that no one mediator can know all of this and,  
10 consequently, it means that we are going to have to develop  
11 more specialist mediators, not just the specialist by industry  
12 as today, coal, longshoremen, and so forth, but specialty in  
13 terms of personnel techniques; we are going to have job  
14 evaluation mediators and testing mediators and rating scale  
15 mediators, and so forth.

16 Indeed, it can safety be said that for now and for  
17 the foreseeable future, as far as we can see, the best  
18 training for mediators and the best retraining for mediators  
19 is going to be in personnel management. I will also freely  
20 predict a lesser role for lawyers unless they also become  
21 familiar with specialized knowledges of the personnel  
22 profession. Cases and procedures and past practices are  
23 being deflated in the role of values and these absolutely,  
24 of course, do not meet our current EEOC and similar related  
25 standards.

1           Indeed, with EEO collective bargaining has had a  
2 sock in the whiskers which is going to cause us to turn  
3 around almost 180 degrees or else it will go to its knees.  
4 Our problems will truly be more than collective bargaining  
5 can handle.

6           So if preventive mediation is going to continue, I  
7 think it is going to have to expand into other areas that are  
8 closely contiguous, related to, and heavily affect collective  
9 bargaining. I think we are going to have to upgrade our  
10 mediators and, to put it very bluntly, the way we do it now  
11 is probably the wrong way.

12           So on this cheery note let me bring my remarks to  
13 a conclusion. It is now too late for me to remember the old  
14 slogan: "It is a far better thing to act the fool and keep  
15 your mouth shut than to open it and remove all doubt." But,  
16 nevertheless, for my final words I would like to say we must  
17 again return to the basics, to what are the objectives of  
18 collective bargaining. Here I would emphasize everything  
19 within my power the objectives of collective bargaining are  
20 not industrial peace. If you are looking for perfect peace,  
21 go to the graveyard; you can find a lot of fine examples.  
22 That is not what we are talking about, if we think that is  
23 what we are talking about, we are way out of whack.

24           No, the objective is solution to the basic problems  
25 of employment at the plant level. So I call for a new look in

1 collective bargaining and in mediation, a mission dedicated  
2 not just to settlement, but to solution. A mission dedicated  
3 not just to settlement, but to solution.

4 This is going to require a vast increase in research,  
5 training, resources at the professional level. We are already  
6 woefully short of skilled mediators and arbitrators. I am  
7 glad I don't have to provide a rest home for all of us War  
8 Labor Board types that are about ready to leave the game,  
9 believe me. We must at least double the quantity and at least  
10 double the quality of our mediators and that calls for two  
11 times two, a fourfold increase in our resources.

12 While this is true, it will require substantial  
13 resources, financial and otherwise, the potential return and  
14 payoff is fantastic. In my opinion, this would be the best  
15 single bargain American can buy today, far better than having  
16 boatload after boatload of economists up there contradicting  
17 each other's proposed solutions.

18 Conversely, if we are penny wise and pound foolish,  
19 the changing environment for bargaining will indeed be more  
20 than anyone can handle. The resulting problems and failures  
21 and crises will get deeper and worse, conflict and even  
22 violence can be expected. Our economic solution processes  
23 will suffer badly. So we must act now, I feel, with dispatch,  
24 with courage and with discipline.

25 For those who prefer to continue with collective

1 bargaining and mediation as usual, if you would like to know  
2 what I think of the results of this approach, may I remind  
3 you of Heneman's Law: "Fertilizer has more than one name."

4 Thank you.

5 (Applause)

**STATEMENT OF DOUGLAS FRASER, VICE PRESIDENT,  
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA**

1 MR. FRASER: Thank you very much for your kind  
2 introduction, Jim:

3 Director Usery, it is a real pleasure for me to be  
4 with the members of FMCS and talk about this oftentimes  
5 frustrating business of collective bargaining. And while it  
6 is oftentimes frustrating, you know that it is oftentimes  
7 stimulating and many times exciting. In fact, sometimes it  
8 is too exciting and we would like some relief from the  
9 excitement.

10 Young people in our union come up to me and they  
11 say, "Well, how do you learn this process of bargaining?"  
12 We were talking about it outside, and I really don't know if  
13 you can teach anyone adequately. There are no books that  
14 I know of that you can read and after you have finished that  
15 book or a series of books be what we would consider in this  
16 room a good bargainer. Some people have the feel for it and  
17 some don't.

18 I tell the young people there are certain essential  
19 ingredients that go into a person who we would, I think,  
20 jointly agree is a good bargainer. They have to always main-  
21 tain their flexibility and never say, "Never." And you  
22 have to have -- what probably is more important than anything --  
23 an acute sense of timing. Then, as we all know, you go  
24 absolutely berserk if you don't maintain your sense of humor.

25 I think all of us really missed the boat when we

1 don't chronicle all of the great stories that come out of  
2 negotiations. We set the auto pattern at Chrysler in '73,  
3 and I have told a couple of you this story, and, you know, it  
4 got tense and after six weeks you begin to repeat yourself,  
5 and you know what the situation is. Sooner or later every  
6 bargainer, I don't care who they are, sooner or later you  
7 are going to stick your foot in your mouth. That's really  
8 not truthful; the trick in bargaining is to extract one's  
9 foot from one's own mouth with a certain degree of class and  
10 grace.

11 (Laughter)

12 In this situation, the chairman of our committee --  
13 our committees are elected from the various local unions  
14 around the country -- a fellow by the name of Neal Brook,  
15 he got overextended this day and the company guys pounced on  
16 him and instead of letting him find a graceful way out, they  
17 kept pursuing him, pursuing him. You know how those company  
18 guys are.

19 (Laughter)

20 And they had poor Neal trapped. And I stopped them  
21 and said, "This reminds me of the story I heard of the fellow,  
22 he's about five foot four, weighs about 130 pounds, and he  
23 is in O'Hare Airport and he is having a drink. A great, big  
24 giant of a man comes in, six foot six, 250 pounds, and they  
25 start chatting as people will do in the airport.

1                    "The little fellow said, 'I am just changing  
2 planes; I just came in from New York; I am going out to  
3 California.' The big guy said, 'Well, I am just coming in  
4 from Green Bay.' The little guy said, 'Oh, Green Bay. I know  
5 Green Bay well. There are only two kinds of people from  
6 Green Bay, professional football players and prostitutes.'  
7 That big guy got up and looked down at that little guy and  
8 said, 'I want you to know that my wife was born and reared in  
9 Green Bay.' The little guy gulped and he looked up at the  
10 guy and he said, 'What position does she play?'"

11                    (Laughter)

12                    Well, in 1976, you are going to be put to the test  
13 and we are all going to be put to the test to think of some  
14 of the great problems we have before us. In addition to  
15 autos, of course, you have got the rubber workers, you have  
16 got the teamster negotiations, national negotiations, and my  
17 observation about those two negotiations -- and I leave it  
18 to those unions as they have an added problem that we don't  
19 have and that is the rubber workers union survived this past  
20 three years without a cost of living clause at all, and the  
21 teamster's union under the national agreement, they survived  
22 for three years with, I believe it was eleven and eleven the  
23 second and third year, caps on the cost of living, twenty-two  
24 cents in total.

25                    Let me tell you something about our process and how

1 we arrive at what our collective bargaining priorities are  
2 going to be. First off, the local unions adopt resolutions  
3 and then they are channeled through, like in GM, Ford and  
4 Chrysler we have what we call sub-councils. The assembly  
5 plants have a sub-council, stamping plants, machining plants,  
6 skilled tradesmen, and, at Chrysler, the office workers, so  
7 that you get people of like occupations together and they  
8 do two things; they elect their person to be on the national  
9 negotiating committee and Chrysler's international negotiating  
10 committee. It is one agreement between the United States  
11 and Canada.

12 Then we have special conferences. We have a TOP  
13 conference for the office workers and engineers. In January  
14 we will have a production workers' council. This is  
15 something new in the UAW. Then we will have a skilled trades  
16 conference in February and finally, on March 17, 18 and 19,  
17 3,000 delegates elected by their constituents throughout the  
18 United States and Canada will come together in convention and  
19 at that point will formulate our collective bargaining  
20 demands.

21 Now, all of you know how risky it is to try to  
22 predict what those demands might be, but let me express  
23 conjecture anyway. I don't have to tell you about the  
24 recession that has taken place in our country. In the auto  
25 industry, when there is a recession in the nation, we have a

1 depression in the auto industry. The old cliché, "If  
2 the national economy has a cold, the automobile industry gets  
3 pneumonia."

4 So I think what you are going to see from the  
5 auto workers is this never-ending quest of workers for  
6 security. You know, a lot of workers in our industry, they  
7 are going through layoffs for extended periods for the first  
8 time in their lives. They sort of thought they had security  
9 in the auto industry. And if you look back in the history of  
10 the labor movement, the thrust towards a shorter work week  
11 has come not from a desire for more leisure time, but for a  
12 desire in the eyes of the worker, at least, for more security.  
13 As you reduce the work week, obviously you need more workers  
14 to produce the same amount of material, and that gives a  
15 cushion to those working and, obviously, opens up job  
16 opportunities for those laid off.

17 So I think you are going to see and hear a lot from  
18 the auto workers about shorter work time. Now, is this  
19 going to embark us upon a road of confrontation with the  
20 employers? You know and I know, and this is true in other  
21 industries other than auto, but particularly true in auto,  
22 if you can avoid fights over what they consider major  
23 principles or ideological struggles, then you have got a good  
24 chance of avoiding a strike. Shorter work time, after all,  
25 there is nothing new about it. I don't know what form it

1 might take, longer vacations, more paid absences, lost days,  
2 than we have in our industry. More holidays; a variety of  
3 ways to do it.

4           It seems to me that we should not get into an  
5 ideological trap that because we are trying to advance what is  
6 really an old idea, and I think you can avoid that pitfall  
7 of having a principle struggle with the company as long as  
8 you arrange the shorter work week so they can utilize their  
9 facilities, because the tremendous cost of capital expansion  
10 these days argues that you should utilize the facilities and  
11 the productive capacity you have rather than expanding,  
12 because you are working short work time, and I think we can  
13 do this.

14           The other rather obvious one is our SUB program.  
15 I can remember when we left the bargaining table in 1973 in  
16 Chrysler, we felt so secure in the knowledge that the  
17 Chrysler SUB fund was well-funded and I can recall we had a  
18 nine-day strike in 1973, and we made up our minds going into  
19 that strike to do everything we can to contain that strike  
20 and drive it to a conclusion in a short period of time,  
21 because if we didn't do that, drifted, drifted, weeks into  
22 months, and we were successful. Well, after the strike  
23 started we were arguing for Chrysler to contribute more into  
24 the SUB fund. They argued that we didn't need it and, frankly,  
25 they convinced us. And we would have agreed with them except

1 for one little detail; the GM fund was not in a sound position  
2 and we know something about pattern bargaining, and if we  
3 had walked away from the table in Chrysler without an improve-  
4 ment in the fund, they could have never got -- they needed  
5 improvement in the GM, so we stood in there and hung in  
6 there until we got the improvement, thank God, and it passed  
7 throughout the industry.

8           Since January of 1974, the GM SUB fund has paid up  
9 \$450 million to laid-off people and their families, and that  
10 fund went bankrupt in May. It is now back to the stage where  
11 we can pay benefits for a little while. Chrysler, a year ago  
12 today, we had \$80 million; and in terms of security, we had  
13 more security than the \$450 million represented in General  
14 Motors.

15           Now, in Chrysler we could have survived a fifteen  
16 per cent layoff, a twenty per cent layoff, a twenty-five per  
17 cent layoff, but the fund simply couldn't stand what happened  
18 to us and that was starting in November '74, and any given  
19 week right through April we had more than fifty per cent of  
20 the work force laid off, and the average SUB benefits the  
21 worker got on top of unemployment compensation was \$89.00  
22 a week. So someone can say, "Well, why didn't you prepare  
23 for it?" I don't have to convince this group, you know, we  
24 ran all sorts of tables. We knew what the fund would stand  
25 and if we had put in thirty or forty cents an hour for a

1 long period of years, we would have had a fund that could  
2 have withstood this catastrophe that we had, but why should  
3 we put a vast amount of money in a fund that we are never  
4 going to use? That was the rationale. So we just kept  
5 over the years -- we increased the contributions from five  
6 to six, seven, eight, nine, and finally ten cents, and now  
7 it is twelve cents. But obviously in 1976, we have to take  
8 a fresh look at that and try to strengthen the SUB fund.

9           Also, we have to restructure the fund because as  
10 they are now constructed and as has happened in General  
11 Motors and Chrysler, the layoffs that took place, the  
12 younger workers got the \$450 million in GM, by and large, and  
13 the \$80 million in Chrysler. And now you have a layoff of  
14 older workers, there is nothing left in the fund from which  
15 to draw benefits by the older workers. So as a consequence,  
16 it is very difficult to explain. We have to restructure the  
17 SUB fund so that there is always money in the fund to pay  
18 the older workers.

19           Now, I don't have to tell this group how important  
20 the SUB fund is, not only to the workers, but to the community  
21 in which they live, because if the workers during times of  
22 layoff are getting ninety-five per cent of their pay, less  
23 \$7.50 a week, it seems to me that that represents security  
24 for the workers, and I would suggest to you that the auto  
25 workers are not raising as much hell as they might ordinarily

1 be expected to do during this time of depression, because  
2 we sustained their income in large measure. Just think what  
3 it does for the stability of the community where workers who  
4 are laid off are able to sustain their purchasing power,  
5 by and large, and then you don't have the snowballing effect  
6 of the unemployed workers' purchasing power drying up and  
7 then the owner of the corner grocery and all of the other  
8 commercial establishments, they feel the full impact of the  
9 recession. So this is a very, very important issue with us.

10 One other area I want to touch upon, and that is  
11 an old woman that is very familiar to all of us, and that is  
12 seniority. You know, in the days of prosperity and very  
13 little layoff -- and I can say this about Chrysler and it is  
14 true in General Motors and Ford, by and large -- we have  
15 paid very little attention to seniority about the last three  
16 rounds of negotiations. We knew there were weaknesses there,  
17 but we had relatively full employment most of the time. Well,  
18 during the kind of depression that we had, the frailties and  
19 weaknesses of the seniority system surfaced and I think we  
20 are probably going to have to do more about strengthening  
21 the seniority system in this round of negotiations than we  
22 have in a great number of years.

23 You are also going to be involved because you know  
24 there are some pitfalls in seniority based upon the development  
25 in the law. For example, departmental seniority, which almost

1 inherently serves in some systems to discriminate against  
2 minorities, has to go. And you are going to have to look at  
3 a different type of seniority. You have this complicated  
4 question of how you have an affirmative action program on  
5 the one hand and not impinge upon an individual's contract  
6 rights on the other.

7 Then you have the problem that I don't think is  
8 soluble at the bargaining table, and I don't know what term  
9 you use, but we call it "phantom seniority" or "artificial  
10 seniority." We have had several suits against us -- let me  
11 give you the most current case that we have.

12 In the GM plant in Fremont, California, in 1975,  
13 or perhaps even December of '74, laid off the total second  
14 shift. The second shift was preponderantly made up of women,  
15 because they just started hiring women in the California GM  
16 plant in 1968. So a woman brought a class-action suit and  
17 they went into court with this kind of argument: "That we  
18 should have greater than 1968 seniority because we applied  
19 for a job in this plant in 1960, '61, '2, '3, and '4, all  
20 the years before 1968, and because General Motors Corporation  
21 was discriminating, we weren't hired. Therefore, I should be  
22 given phantom seniority from the date that I made application."

23 Now, that concept has been upheld in various courts  
24 throughout the country and, as the Detroit people know, it  
25 went one step further in the Detroit case, Detroit-Edison

1 case. The workers went into federal court, made the same  
2 argument as the woman in California, and then they were  
3 making the claim -- and the company was disposed to make a  
4 settlement -- they said, "Well, all right, if you can prove  
5 you made application and we discriminated against blacks in  
6 this case" -- they were talking about working out a  
7 settlement for phantom seniority.

8 Then the individuals said to the court, "We  
9 didn't apply because we knew it was futile to apply, because  
10 we knew that Detroit-Edison wasn't hiring blacks," and the  
11 federal judge gave that consideration and ruled in behalf of  
12 those people even who didn't make application, on the basis  
13 that they knew it was futile to try. Well, it was subsequently  
14 struck down by the Sixth Circuit.

15 Now, the question is: Are we going to deal with  
16 this in negotiations? I don't know any way to deal with it.  
17 Our position is that minorities, blacks, women, chicanos, can  
18 really make a prima facie case that these companies did, in  
19 fact, discriminate, and I don't think you can argue about  
20 that at all. The only argument we have in our mind is what  
21 is the remedy?

22 We said in the GM case out in California it should  
23 be front pay. You have got to work out an arrangement to  
24 compensate these people who clearly have been discriminated  
25 against, but you can't do it at the expense of the older,

1 white male, and put the whole burden on the institution that  
2 discriminated. The worker didn't discriminate, the  
3 institution did. Now, that is our posture.

4 Now, the teamsters people -- I think this is the  
5 name of the case -- "Franks vs. Bowman" -- that goes right  
6 to the heart of the phantom seniority, and that is now before  
7 the Supreme Court. And my feeling is, Bill, that this case  
8 will not be solved at the collective bargaining table, but  
9 will be solved in the courts of the land.

10 My other suggestion is I think it is insoluble at  
11 the bargaining table because I tell you, frankly, that if  
12 I went back with an agreement that in some way altered  
13 people's seniority rights for any sort of system of phantom  
14 seniority, it is a futile gesture anyway, even if I wanted  
15 to do it -- which I don't, because you could never get it  
16 ratified.

17 Well, let's talk a little bit about the economic  
18 climate in which we might find ourselves when we go to the  
19 bargaining table, and this is also risky. But Tom Murphy,  
20 Chairman of the Board of General Motors, said that we are  
21 going to sell ten and a half million cars in this current  
22 model run. I think logic tells me that he is far off the  
23 mark, an- the way I look at it logically is that what the  
24 auto industry is offering to you and the rest of the American  
25 community is the same car, labeled 1976 model, as they gave

1 you in 1975, with one important distinction; they are going  
2 to give you the right and the privilege to pay two hundred  
3 fifty or three hundred dollars more for the same model.

4 I can't see the people breaking down dealers' doors to seize  
5 that opportunity, although I hope they do.

6         The only thing new is finally the American industry,  
7 automobile industry, is coming to grips with this problem  
8 of imports. I don't want to go into a long dissertation  
9 about the imports, but the basic weakness has been our own  
10 fault. We know we have got to design the cars and we have  
11 the talent and genius, know-how, to meet the Volkswagen  
12 and the Toyota and the Datsun head to head. GM is finally  
13 doing it with the Chevette, and you just watch that car go.  
14 They will be able to sell every car they build. Ford will  
15 have one on stream, and Chrysler, as usual, late, but  
16 nevertheless, they will come around in about two years from  
17 now -- because it does take time -- with a small car, and it  
18 will be a four-cylinder transaxial engine, and you will get  
19 about forty miles to the gallon of gas.

20         Well, I think that the prospects of the industry  
21 are not as bright as Murphy says. And the other thing is  
22 that everybody talks, you know, about a V-shaped recession  
23 that we have always had in this country where the economy  
24 goes down very sharply and up very sharply, and what we are  
25 experiencing now is what the economists call an L-shaped

1 recession, where it goes down sharply and bumps along at  
2 a much lower level. I'm afraid that is what we are experienc-  
3 ing and I hope that Murphy is right and I am wrong.

4           The other thing that is happening in the auto  
5 industry, the auto industry, as it has been described, the  
6 car itself is really a postponable purchase. You can't  
7 postpone the purchase of food and shelter and clothing, but  
8 you can postpone the purchase of an automobile. And Ralph  
9 Nader notwithstanding, the American automobile worker and  
10 the industry is producing the best car in terms of longevity  
11 and durability that has ever been built in the history of the  
12 industry. Now, your door handles may fall off or a few  
13 little things like that, but in terms of being able to run  
14 that instrument, you can run it for a much longer time than  
15 you ever could, and this is showing up. In 1974, we scrapped  
16 in this country 4,900,000 cars. That is 5.7 per cent of all  
17 of the cars on the road.

18           Then you look at the previous five years prior to  
19 '74, and you find out that we scrapped seven per cent. Well,  
20 the difference between 5.7 and seven, when you are talking  
21 about 107,000,000 passenger cars on the road, is 1,400,000  
22 cars, 1,400,000 fewer cars got scrapped in '74 than the  
23 average of the previous five years.

24           Well, I think that the automobile industry is  
25 being much more rational than they were last year. You might

1 have seen this morning's paper where they talk about the  
2 October sales being so far ahead of last year's sales.  
3 You know, this is a propaganda in the industry, and I wish  
4 they really wouldn't do it, because what they are comparing  
5 is they are comparing October of '75 as against a disastrous  
6 October 1974. A better way of looking at it is look at the  
7 November production schedules and in November production  
8 schedules in the auto industry is the lowest production  
9 schedules since 1958, seventeen years. So we are not out  
10 of the woods yet, and I hope we can make a recovery. My  
11 feeling is that we cannot make as strong a recovery as we  
12 would like to in the auto industry until first the national  
13 economy has an upsurge.

14 I hope that the American people don't forget and  
15 don't leave behind those people who are still out there  
16 unemployed, you know, 8.3 per cent of our work force, not  
17 counting the people that have just given up. In the auto  
18 industry, about 60,000 workers who were working this time  
19 last year, are no longer working in the auto industry, and  
20 we can't forget them and leave them behind. When we come  
21 out of each recession we leave a larger and larger percentage  
22 of the indefinitely unemployed, and I would hope that we  
23 would avoid that this time.

24 Well, I see yesterday you had some discussion  
25 about the unit labor costs and we are going to hear this at

1 the bargaining table. The American management is going to  
2 talk about the imports -- they always do -- and that is  
3 their right, to raise the question.

4 The one other observation I would like to make,  
5 and I get this feeling all the time and I wonder if you do,  
6 too, and that is more and more we are losing control of our  
7 destiny because of external forces. Look at our cost of  
8 living provision in the auto industry. Since we signed the  
9 agreement two years ago, that cost of living has yielded  
10 95 cents an hour; seven cents we siphoned to pay for the  
11 increase on fringe benefits negotiated in 1973; 88 cents,  
12 new pennies, went into the float. And, as you know, 88  
13 pennies, that purchasing power, it doesn't increase. We  
14 would be better off without it with a stable cost of living,  
15 but there you know what happens at the bargaining table  
16 certainly has an impact to a degree, depending upon the  
17 bargaining situation, but generally this is the control in  
18 the national economy. It is caused by our Department of  
19 Agriculture's sale, or through the speculators with the  
20 Soviet Union on grain, and we really don't have charge of  
21 our destiny.

22 Blue Cross-Blue Shield in the State of Michigan,  
23 the family plan -- this is in Chrysler, now -- costs \$98.28  
24 a month. That is 58 cents an hour, \$1,179.36 a year. Now,  
25 I can predict for you, those that are close to the auto

1 industry, what is going to happen is they are going to come  
2 in and say, "We want the workers to pay for half of that  
3 premium." It's overwhelming, and we are going to fight  
4 them off. Then they will have a back-up position, and that  
5 back-up position will be: "Well, okay, we will pay the  
6 premiums that now exist during the life of the agreement,  
7 but the employees have to pay the excess." We have got to  
8 have strength to fight that off, but after all, what have  
9 you accomplished. It is something beyond Chrysler's control,  
10 something beyond our control.

11 I think a lot of times, Bill, there is greater  
12 burdens placed on the employees in the United States than  
13 any other country in the world. Every other free nation  
14 has national health security, pensions. Practically every  
15 nation depends upon government, not defunct SUB. I challenge  
16 you to point out one SUB plan in the world other than the  
17 United States and Canada, and Canada was a spin-off.

18 That is the simple ABC's of collective bargaining,  
19 we keep telling our fellows, because to us that is the only  
20 solution. You really don't have control of your own destiny  
21 at the bargaining table, and we must become not less active,  
22 but more active in the political arena because it is in the  
23 legislature that you find solutions to these problems, and  
24 not at the bargaining table.

25 Some of us had association with the Democratic

1 Party and in 1972, when the convention nominated McGovern  
2 and then we had the campaign results of the election, the  
3 guys said, "How the hell did we get into this mess?"  
4 I said, "We got in this mess because the Democrats nominated  
5 McGovern, and you know that is not the way we endorsed all  
6 over this country." We had five thousand local union  
7 leaders participate in the secret ballot election after a  
8 meeting and discussion, and we had on the ballot: "Are you  
9 for McGovern, Wallace or Nixon, or no endorsement at all?"  
10 McGovern, out of five thousand he got eighty-three per cent;  
11 Nixon got some, and about twelve per cent were saying, "No  
12 endorsement at all."

13 In any event, the international took this blame  
14 and responsibility and I said to the local unions:

15 "Confucius says that victory has a thousand fathers and  
16 defeat is an orphan." The international is the orphan.

17 When I think back to that campaign, the McGovern  
18 campaign was not exactly a howling success; in fact, it was  
19 a God-damned disaster. But the people in Michigan know that  
20 this is an absolutely true story, which I will tell to you.

21 The Friday before the election, McGovern was in  
22 Battle Creek, Michigan, and, you know, he was hoarse, he  
23 had a cold, and it was wet and damp, and by this time I  
24 suspected he knew he wasn't going to be President of the  
25 United States. So a big kid comes up to the Senator and

1 said, "Next Tuesday, election day, we are going to make you  
2 sorry you ever left the State." McGovern said, "Come here,  
3 young man," and whispered to the kid, "Kiss my ass."

4 Well, because he was hoarse, the reporters heard  
5 it, so McGovern went back to his room. He had a meeting  
6 that night, and every day you have a press conference and  
7 the national press is there, and McGovern sends a wonder man  
8 in, Frank Mankowicz, and he knows the question is going to  
9 come up, and finally it comes up after a series of questions.  
10 A newspaper man said, "Mr. Mankowicz, how do you explain  
11 your candidate for President whispering in that young man's  
12 ear, 'Kiss my ass'?" Mankowicz said, "Well, I'll tell you.  
13 George McGovern is a loyal Democrat; what do you want him  
14 to say, 'Kiss my elephant'?"

15 (Laughter)

16 Let me suggest one other thing you and we might  
17 have to grapple with, possibly, and that is that I think a  
18 lot of people in the trade union movement are going to say  
19 that in this decade and in the decades ahead, changes come  
20 so often and the changes are so profound, is it wise any  
21 longer to go to a three-year agreement and be locked in for  
22 that length of time? Now, in this connection -- and,  
23 obviously, I speak only for the UAW -- it has been our  
24 history -- I think we have to look for new ideas, new ideas  
25 in the sense that the concept is not new; new ideas to the

1 extent it is new in the mass-production industry and maybe  
2 we could dust off and think about profit-sharing, because,  
3 you know, the process that we are engaging in now is  
4 absolutely insane.

5 Here we are sitting at the bargaining table, the  
6 company and the union, and you fellows are in the periphery,  
7 and we try to anticipate what will happen within the next  
8 three decades and we try to anticipate what the economic  
9 condition is going to be like, and you know it is really  
10 not a very good process, not a very logical process. In a  
11 recession and in the depths of recession, and I think we  
12 really settled last time because we made a recovery to a  
13 degree in '59 and '60, because we were trying to anticipate  
14 your thinking, a decision on what was happening at that  
15 moment, because you couldn't project in the future.

16 In 1973, I would suspect the auto industry would  
17 like to get that settlement back because they didn't predict  
18 the atmosphere of 1974-'75. As Walter Reuther said, "What  
19 we ought to do is make the pie and put it in the oven before  
20 you decide how you are going to divide it. We divide the  
21 pie before we even know the size of the pie." I say this  
22 and raise this as a possibility.

23 The other comment I wish to make is the complexities  
24 of bargaining today, and you know and I know in our union --  
25 I don't know if it happens in others -- but the older

1 generation, the guys of my generation, find it harder and  
2 harder to tell the younger generation "Well, hell, it is  
3 easy today; you should have been there when I was starting  
4 out, it was really tough." That's nonsense. It's nonsense  
5 in that it was tough physically, but I didn't learn about  
6 pensions, I didn't learn about SUB, there wasn't any.  
7 I didn't have to learn about holidays because there weren't  
8 any. It was a relatively simple life. The contracts in  
9 the old days were four pages long and now the Chrysler  
10 agreement, including the pensions and all, the SUB, is 638  
11 pages long.

12 And in the other complexities that you have to  
13 face, as well as we -- we do initially -- but it is the  
14 fact the constituents of the unions are much different, the  
15 young people are different today. They are not as material-  
16 istic as were their fathers -- and I suggest to you that in  
17 the long run it's not a bad thing, but they are different.

18 UAW, and a lot of people in this room remember it  
19 was true in all unions, I'm sure, that if you could frame an  
20 issue so the union was one side and the company was the  
21 other, the fellow emotionally reacted in favor of the union.  
22 That's not true today, and they are asking intelligent  
23 questions, and that doesn't disturb me, because if you have  
24 intelligence as well as emotion, you have a lot more loyal  
25 person. So it doesn't bother me, but it does pose some

1 problems at ratification meetings. One of the things that  
2 really -- you go to a ratification meeting and you can't  
3 tell them word for word what is in the contract, it would  
4 take too long, and the members, they wouldn't understand  
5 pensions, et cetera. I know the essentials, and it inhibited  
6 me. But, in any event, they distrust what you are telling  
7 them. You know you are telling them the absolute truth in  
8 facts and I suppose that is the mood of society. A lot of  
9 our people say, "Well, the young guys are trying to move  
10 up too fast and take over," and I have thought about that and  
11 I thought, "Where the hell was I when I was twenty-five  
12 years old?" I was running for president of my local union  
13 and we were running on a youth movement. The theme of it  
14 was "Turn out the old fogies," and now that I have got a  
15 few years on me, fogies are all of thirty-eight or forty  
16 years old, and the guy says to me, "You got elected  
17 president when you were twenty-five."

18 In those days, unless you had a crisis, the  
19 attendance was falling off and we had small meetings and  
20 someone said, "Doug, we have got to do something about these  
21 small membership meetings. Why don't we serve beer at the  
22 membership meetings?" So I was naive and impresionable and  
23 we started serving beer, and we no longer had small membership  
24 meetings, we had small drunken membership meetings.

25 (Laughter)

1 Well, this is a service of real professionals.  
2 We have our tasks cut out for us in 1976, and when we have  
3 finished up in Detroit, a lot of your work will just be  
4 beginning. I am not going to try to tell you how to conduct  
5 your affairs. As I said, you are professionals. Anyway,  
6 prior discussions I think would be a very worthwhile thing  
7 this year. I think you should be thinking through solutions  
8 and alternatives to this whole question of workers' security,  
9 how we can give the workers security, because I think the  
10 most frustrating thing is a worker who is ready and willing  
11 and can't find employment. It is such a feeling of  
12 hopelessness and helplessness, and maybe it is only those that  
13 are close to us that really understand.

14 A lot of people in high places don't understand  
15 it. Don't be afraid to suggest to us new ideas, and I think  
16 you will find that most of us, even companies, are much more  
17 receptive to new ideas. Hell, in 1973, we came out with a  
18 health and safety committee, we came out with a fair  
19 employment practice committee, we came out with an alcohol  
20 and drug abuse committee -- all of these are joint  
21 committees -- to tackle these most difficult problems,  
22 humanizing or enriching the worker. On an assembly line  
23 operation it is to give a worker a greater degree of satis-  
24 faction and achievement and accomplishment. And since 1973 --  
25 and I think GM is ahead of Ford and Chrysler in conducting

1 experiments, and that is what we should continue to do, try  
2 to find a way.

3 I read this morning that you had a visit from Mr.  
4 Smith from the Chamber of Commerce. I didn't hear him.  
5 And maybe we should have been invited together; you would  
6 have had something to mediate. But he was making the point  
7 about government intervention and, if you look at most all  
8 of the things that he recited, the government stepped in  
9 because we failed, because we didn't do the job itself.

10 That is the way to keep government out of your  
11 affairs, is to handle it yourself. With your help, I think  
12 we can do that. With all of the difficulties that we face,  
13 we are going to survive '76, with your help. I know in our  
14 area where we have a great concentration of membership, with  
15 the good offices of Eddie O'Brien we will find a way. It  
16 may be difficult.

17 Let me close with one problem that I think we share;  
18 in fact, not only we in this room, but I think American  
19 society generally, and that is the depth of cynicism of this  
20 nation. In all instances pure cynicism is probably the worst  
21 thing that can happen in a democratic society. When people  
22 lose faith in the integrity of that government, democracy  
23 is in trouble. Your service is not as troubled as many  
24 institutions. I think it is because Bill Usery, in addition  
25 to his considerable talent and ability, has total and

1 unquestioned integrity. Other institutions aren't faring  
2 as well.

3 Lowell Harris conducted a poll in July of this  
4 year, and they measured the people's faith in institutions.  
5 He conducted the same poll in 1966 and attitudes of '75, and  
6 he looked at the military establishment, and fifty per cent  
7 of it had confidence; that has dropped to twenty-three per  
8 cent. We have had higher drops: Organized labor relations  
9 from 41 to 29 per cent; Supreme Court from 52 to 28 per cent;  
10 Executive Branch from 43 per cent to 13 per cent; Legislative  
11 Branch from 42 to 12 per cent; the business community from  
12 55 per cent to 18 per cent; and union leaders -- we never  
13 were very high -- from 21 per cent to 14 per cent. The only  
14 ones that finished worse than the labor leaders were the  
15 big oil companies, which isn't saying a hell of a lot.

16 Then the other measurement that concerns me even  
17 worse is that in the Congressional elections of 1974 --  
18 other democracies in this world don't understand us, they  
19 won't believe this figure -- only 38 per cent of the good  
20 citizens of this country who are eligible to vote even  
21 bothered voting for the Congress of the United States, the  
22 lowest since 1942. In 1942, millions of us were in the  
23 armed services and couldn't vote anyway.

24 Well, it is easy to be cynical and I really  
25 understand it, I think, to a degree. Watergate was

1 devastating to all political parties, to all institutions,  
2 and I keep telling the young people that you should never  
3 forget that in Watergate for every crooked vice president  
4 you did have, there are thousands upon thousands -- that the  
5 people don't appreciate -- who are dedicated public servants  
6 with unimpeachable integrity.

7 Well, the geniuses of our society say if people  
8 want to change things, you can change things. This country  
9 of ours certainly has its failings true to the revolution,  
10 but on balance, you know, this country has been a good country.  
11 Sometimes it has even been a great country. And nearly  
12 always it has been a generous country. One hundred  
13 ninety-nine, two hundred years ago next year, young people  
14 had a novel and radical idea, and it was very simply that  
15 this was the revolution. Things are not sovereign, only the  
16 people are sovereign; and if the people would exercise that  
17 sovereignty and try, we will have a rebirth and faith in  
18 all institutions and tend to turn this country around and  
19 improve everything.

20 Thank you.

"WOMEN'S RIGHTS: A NEW HORIZON AT THE BARGAINING TABLE"

Address Before

FEDERAL MEDIATION AND CONCILIATION SERVICE  
National Seminar

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by Antonia Handler Chayes

Equal employment opportunity issues are surfacing at the bargaining table. The composition of actual bargaining groups has broadened considerably to include women and minorities over the last decade. The changing labor force which it reflects, occurs in most job categories, most industries and all levels of responsibility.

I would suggest that the change is due more to vigorous enforcement of the comprehensive anti-discrimination laws that are, by now, viewed as uncompromising, than the result of a softening of stereotypes and perceptions.

Typically, the EEO issues have not arisen in the context of management-labor disputes. EEOC, the Department of Justice and plaintiffs in class actions have been responsible for the enforcement effort, over the last decade. I would be surprised, therefore, to find out from you that EEO issues play a significant role yet in the range of problems with which you deal in your efforts to mediate and resolve disputes.

Certain issues are emerging in contract negotiations and I will discuss several of them today. Others will occur to you as I review the legal framework, and I hope we will

have an opportunity to discuss them as well. While I know that I was asked to focus on women particularly, it is important to place those questions that particularly affect women in the broader perspective of law and policy directed against discrimination, and in employment.

Many of you are familiar with the broad reach of the legislative framework governing employment discrimination, now nearly universal. Coverage and administration differ, and the jurisdictional overlap among federal, state and local agencies complicates the compliance effort.

A further complicating factor has been the conflicting messages that have emerged from Washington, the courts and local compliance officers on the issue of adequate compliance with anti-bias legislation and affirmative action regulations. In the last two years, such messages have compounded an already difficult and complex area of the law. Further, the economic downturn has already both magnified the needs for a clear equal employment policy, and made consistent adherence to it extremely difficult for companies and unions.

This confusion has now received official recognition from Secretary Dunlop and the U.S. Civil Rights Commission. Both have proposed a form of administrative consolidation. Although the proposals differ, we may hope for some bureaucratic streamlining in the next year.

Until some consolidation occurs, it is important to understand the major components that have formed the backbone of federal regulation.

(1) The most straightforward, and in some ways, the most effective piece of legislation, has been the Equal Pay Act of 1963, which prohibits wage discrimination based on sex. The

Act now covers executive, administrative and professional workers. It has been extended most recently to small retail chains. It relies upon the investigatory experience of the Labor Department's Wage and Hour Division for enforcement.

While the courts have had to deal with some difficult fact issues in defining what is "equal work", within the meaning of the Act, there is now a body of precedent. Furthermore, the Act was interpreted by the Supreme Court in 1974 in Corning Glass v. Brennan. Its opinion made it clear that the work differentiation put forth to justify pay inequalities must be scrutinized sharply by the courts in order to enforce the broad remedial policies of the Act.

(2) The largest body of case law has come under Title VII of the Civil Rights Act as amended in 1972 covering employment discrimination. The amendments extended federal jurisdiction and the enforcement powers of EEOC. Many of you know of the enormous dollar awards and settlements that have occurred under Title VII. Both AT&T and the steel settlements have exceeded 30 million dollars in back pay and other wage adjustments. Furthermore, the Supreme Court, in its 1975 decision of Albemarle Paper Co. v. Moody definitively stated that a showing of bad faith or bad intent is not required for a back pay award. Back pay is compensatory, not punitive, under Title VII. This does not mean that punitive damages may not also be available to "discriminatees" (awkward judicial shorthand for workers who have suffered discrimination). That issue is before the Supreme Court now.

Monetary compensation, though, may be a less complicated remedy than other kinds of relief granted by Courts in the exercise

of their equity jurisdiction. As I will discuss later, other judicial solutions pose the question of how equal opportunity can be fostered without displacing existing workers in a tight labor market.

(3) Executive Order 11246, as amended by 11375, as you know, applies to government contractors and subcontractors. It not only outlaws discrimination, but requires affirmative action to remedy the present effects of both the individual contractor's and society's past discrimination. The requirements of the Order have been spelled out in an increasingly precise and detailed series of regulations demanding an exhaustive analysis of job classification, recruiting and hiring practices. These elaborate requirements may have a far greater impact than the potential sanctions of the Executive Order. These sanctions, though rarely invoked, are awesome: contract suspension, withdrawal and contractor disbarment.

Recently, in Commercial Envelope Manufacturing Co. v. Dunlop, (10 EPD ¶ 10,252) a District Court upheld a federal agency determination without hearing that a contractor was "nonresponsible" because of its failure to comply with affirmative action regulations. Although such determination is not tantamount to permanent debarment, the loss of a contract can have profound economic impact upon a company.

The shadow of any of these possibilities makes casual or partial compliance a dangerous course to pursue. Yet compliance may entail basic and expensive changes in the modus operandi of a company. Required goal-setting to correct "underutilization" of women and minorities is frustrating because the necessary data is not ordinarily available. Affected Class analyses and

justification is becoming extremely difficult. Furthermore, there is a period of vulnerability to EEO charges when the affirmative action plan is written. The regulations require a self-evaluation of the company's past shortcomings; identifying problem areas, as well as developing concrete steps to overcome them. A self-evaluation rigorous enough to satisfy the compliance agency may become a litigation document to be used by plaintiffs in Title VII actions.

(4) The Age Discrimination in Employment Act, protecting older workers between 40 and 65, is now becoming a seriously enforced ingredient in the anti-discrimination mix. Its impact is being felt as industry and government find the need to diminish their work force and seek methods such as early retirement to minimize lay-offs. As New York's Mayor Beame learned abruptly last year, forced early retirement contravenes this potentially strong legal weapon against age discrimination.

(5) One of the most important developments for you to watch is the role of the NLRB in enforcing national antidiscrimination policy. It is not surprising that the EEOC, whose primary task is eliminating discrimination, holds unions to a far higher level of responsibility in representing employees against a discriminatory employer than does the NLRB in articulating the statutory duty of fair representation. But the courts may be slowly providing the needed nudge. In NLRB v. Mansion House Center Management Corp., 473 F2d 471 (1973) the Court of Appeals stated that the remedial machinery of the NLRB is not available to a union that discriminates. Thus far, the definition of discrimination is more narrowly drawn for these purposes than for Title VII. See Vaca v. Sipes, 386 U.S. 171.

Over time, however, Title VII definitions are bound to have their impact upon the NLRB as well as judicial interpretation of the Labor Act. The Supreme Court has refused to permit employees to bypass contract grievance procedures and picket against employer discrimination. Such a reinforcement of collective bargaining must bring with it a strengthening of the union's duty of fair representation.

(6) Another area to watch is an expanded EEO role for the regulatory agencies. The SEC has been requested to amend its disclosure requirements to include EEO information. The FCC has now issued proposed EEO regulations, having already made it clear in the Alabama case, and in considering many renewal challenges that license renewal can be denied on the basis of discrimination in employment by the broadcaster.

(7) The Office Revenue Sharing has proposed regulations to refine and clarify the scope of its EEO enforcement in the distribution of funds to state and municipalities.

Finally, the total framework becomes still more complex with the passage of P.L. 93-508 requiring affirmative action by business and government to employ and promote disabled veterans and Vietnam era veterans. Both that law and the amendments, P.L. 93-516, requiring affirmative action and outreach by government contractors for handicapped workers will have to acquire a gloss of judicial and administrative interpretation before it becomes clear how these legal changes will affect the earlier anti-discrimination framework. The

constitutionality of veterans' preference is being tested by women's groups, since to a certain extent they are at cross purposes with equality of treatment for women.

The detail of this overview seems excessive for a short speech, and yet, for any of you who may have struggled with the legal issues, it is clearly inadequate in its superficiality. The growing list of Supreme Court decisions in the area and petitions for certiorari filed and granted so far for the October 1975 term bear witness to the importance and pervasiveness of equality in employment problems.

If this were a full employment economy, I think I could conclude that the legal framework is far-reaching and strong enough to assure substantial compliance with equal employment objectives within the foreseeable future. For women, the passage of the Equal Rights Amendment will remove archaic barriers and promises to further strengthen the current legislative framework. However, in the present economy, I fear that the EEO legislation and affirmative action regulations may become increasingly difficult to enforce. Furthermore, they may prove divisive rather than curative of prejudice and discrimination. I would like to develop these possibilities, and ask you to join me in trying to think through solutions.

The remedial thrust of the legislative framework I have outlined is to make the victims of discrimination whole, and to prevent future discrimination. In the area of back pay, the problems of measurement may be tricky, but they are not insurmountable. The definition of the class is not simple, but the courts deal with such matters in many contexts

other than discrimination. Some practical limitations must be imposed both in time and scope. Title VII provides its built-in short statute of limitations, and the Federal Rules of Civil Procedure set forth general requirements for class actions. The courts are likely to limit the class to actual employees and applicants for employment, as the facts warrant. Even a tightly circumscribed class, however, can cost a company or municipality unplanned-for millions of dollars. This is no doubt the reason for the many consent decrees in which compensation is compromised in dollar amount, and other equitable relief is accepted in an overall package. See U.S. v. Allegheny-Ludlum Industries 10 EPD ¶ 10,368 at p. 556. Even law firms find consent decrees preferable to litigation.

Prospective adjustments in compensation inequality are also economically difficult, but the equities do not pose serious conceptual problems. Where an employer has paid women less for work that, upon analysis, is equal to that performed by men, relief ordered for past and future is a matter of simple justice. It may be harder to comprehend the position taken by the Labor Department, EEOC and the courts requiring absolute equality of pensions and maternity benefits. Despite the actuarial showing of greater longevity for women, some courts have refused to require a greater contribution or lower payout for women. There will be considerably more litigation before this issue is settled. See Manhart v. City of Los Angeles (9 EPD ¶ 9932).

In the area of pregnancy and maternity, the notion that pregnancy is a voluntary act to be celebrated is a hard notion for many men to relinquish. Celebrate it we should, but the courts are nearly unanimous in holding that Title VII prohibits employers from distinguishing pregnancy and maternity-related disabilities from other illness covered under a disability program. The issue is now before the Supreme Court in Wetzel v. Liberty Mutual Insurance Co. (Docket 74-1245). In the past six months Courts of Appeals for the 2nd, 4th, 6th, 8th and 9th circuits have made it clear that the antidiscrimination requirements of Title VII on this point go beyond the equal protection requirements of the constitution as set forth in the Geduldig v. Aiello, 417 U.S. 484 (1974). While the legal issues are fascinating and deserve more attention, I only want to point out here that even this hard-fought concept of equal compensation poses no fundamental conflict of equities.

The crucial problems of equity are posed when "making whole" a class or group of workers involves the displacement of others. These problems are necessarily posed in layoffs, promotion and even hiring policies, particularly in an economy of high unemployment.

As the history of Title VII litigation makes clear, monetary compensation for past discrimination and the prevention of future discrimination is not sufficient under the law to eradicate the present effects of past discrimination. One important additional form of relief has been to eliminate departmental seniority systems and require plantwide seniority instead.

Thus, employees previously locked into jobs segregated by race or sex would not only be in a position to be bid plantwide for jobs, but would not be forced to lose seniority to white males junior in time of service because of previously segregated seniority rosters. Local 189, Papermakers v. United States, 416 F2d 980 (5 Cir. 1969), United States v. Sheet Metal Workers, Local 36, 416 F2d 123 (8 Cir. 1969). See generally, Cooper & Sobel Seniority and Testing Under Fair Employment Laws; 82 Harv. L. Rev. 1598. (1969).

The courts have taken one further step on the seniority issue. They have developed the concept, known as "rightful place", under which plantwide seniority is applied retroactively with respect to open jobs. They are to be assigned on the basis of the seniority that would have existed if a non-discriminatory plantwide system had been in effect from the beginning. This approach had some effect in an expanding economy. But beyond this, few courts have been unwilling to go. In particular, they have been reluctant to create fictional seniority for those who would have been hired but for discrimination, or to permit the use of plantwide seniority to bump existing workers from higher paying jobs.

Until now, there has been on the whole, a rough accommodation of equities, although the legal developments are fraught with conceptual difficulties. Clearly every discriminatee, ever since the passage of Title VII, is not and could not be made whole.

On the other hand, where courts have imposed quotas remedially for blatant past discrimination, it is not clear that

the burden would always be borne by the real offenders, which might be the employer, or the union, or more likely the state, but least of all, workers now in the labor market in competition for the same job. And then there is the currently contested issue: What happens when strict seniority provisions of union contracts require that the last hired - often as a result of remedial court orders or affirmative action programs - should be the first laid off when economic conditions turn down.

A Louisiana District Court held that a layoff eliminating all but two World War II Black employees constitutes discrimination. Watkins v. Local 2639, United Steelworkers of America, 369 F. Supp. 1221 (E.D. La. 1974); order, 8 F.E.P. Cas. 729. Other courts have gone further and refuse to sanction layoffs with a disproportionate impact on minorities and women. The opposite view is held by two Courts of Appeal. See Waters v. Wisconsin Steel Works, 502 F2d 1309 (7 Cir. 1974). In upholding layoffs on the basis of plantwide seniority despite discriminatory impact, one court relied on §703(h) of Title VII which exempts bona fide seniority systems and on some language in the legislative history of that section.

One issue before the Supreme Court will be whether a seniority system that perpetuates past discrimination can be "bona fide" under the Act. The 3rd Circuit in the Jersey Central Power and Light case, now before the Court, takes the position that Congress considered the issue. It concluded that even if a plantwide seniority system perpetuates past discrimination, Congress chose not to disrupt the collective bargaining process. While that case could be disposed of on narrower grounds, the larger issue must be dealt with ultimately.

No wonder that there is a lack of judicial agreement. Title VII fails to address the issue clearly despite the language about bona fide seniority systems. Job security is a hard-won right. The unions have made clear their bitter opposition to any weakening of the seniority system. The duty of fair representation, as I pointed out, has not been developed by the NLRB to the same extent as the unions' obligations under Title VII.

Nor is layoff the only situation where the clash of rights is likely to occur. Promotion policies raise similar conflicts. In Kirkland v. N. Y. State Department of Correctional Services, 10EPD §10, 357, the Second Circuit reversed the District Court's imposition of quotas in the promotion of correctional officers. While it recognized that Civil Service promotion policies could perpetuate past hiring discrimination, it refused to defeat the expectations of existing officers who relied upon a legislatively-established merit system. There is considerable discussion about reverse discrimination in the opinion. The whole concept of the judicially-imposed remedial hiring quota may be thrown into question. "The replacement of individual rights and opportunities by a system of statistical classifications based on race is repugnant to the basic concepts of a democratic society." Implicit there is the notion that individuals who have done no wrong should not bear the brunt of societal discrimination. But should blacks, other minorities and women bear the brunt? The argument for not displacing the existing worker or denying him opportunities for advancement because of past discrimination by his employer or union is strong. And in a tight labor market, the question will be asked

whether a worker - or potential student or faculty member - should be denied job entry despite merit because the hiring institution has had a prior history of discriminatory acts? This is a very crude way of "making whole" the previously excluded groups.

Are we left with worker pitted against worker in a "zero sum game" where one must lose?

The Courts have been imaginative, thorough and powerful in their approach to the discrimination cases before them. But their resources are limited. The array of legislative alternatives available is vastly superior. Job training, promotion of a full employment economy and expansion of public employment are just a few obvious approaches that might ease the strain. But legislative resolution seems improbable at this time.

In this setting, it may be that the unions will have to bear some of the burden of accommodation. Surely this is not the first time unions have been faced with the necessity of reconciling divergent interests within the bargaining unit. Adjustments have been made between young and old; security or fringe benefits against higher wages. This is no different. The duty of fair representation implies a responsibility for balancing the interests of job security and equal employment, not sacrificing one to the other.

The last 15 years are years of accomplishment in our commitment to equality. Now that commitment is being tested in a situation that necessarily involved sacrifice for some. The question we face is whether the commitment will extend to equality - or at least a sharing - of sacrifice, or whether the whole burden will have to be borne again by those who in the past have been the victims of inequality.