March 5, 2009

Denise M. Boucher
Director of the Office of Policy, Reports and Disclosure
Office of Labor-Management Standards (OLMS)
U.S. Labor Department
200 Constitution Ave., N.W.,
Room N-5609
Washington, DC 20210

RE: Comments Labor Union Financial Disclosure, DOL Possible Disclosure Rescission, Policy Issues, and Matters of Law, RIN 1215-AB62

Dear Director Boucher,

Let's cut to the chase, the only people who will benefit from a rescission of the above referenced rule are union bosses and their cronies – not the people paying for their perks. Therefore, the real policy decision for Secretary Solis is whether to protect union fat cats or working Americans who foot the bills.

In her first few days in office, Madam Secretary Solis will set a tone by her decision. She and the Obama Administration can stand on the side of the millions of hardworking Americans or choose to side with a few thousand union bosses. It is our hope that she will decide the former, and we intend our comments to help support her and the Department in that decision. Her decision will reverberate throughout her tenure.

We are providing Madam Secretary with examples ranging from an AFL-CIO union president receiving a million dollars in hidden payments to the Machinist union's LearJet expenditures. We trust that the Secretary will agree with us that the people paying those bills should know for what and to whom they are paying. If the Secretary rescinds the January 2009 labor union disclosure rule, then she will cover-up over $1.4 billion in "benefit" expenditures.

The Foundation continues to urge that the protections afforded to millions by this disclosure outweigh its nominal costs.

The Foundation's comment will:

- Describe Our Interest in the Matter
- Challenge the Department's Rulemaking Process
- Illustrate the Need for LMRDA Protections
- Challenge the Legality of the Rule
- Provide Context for the Secretary's Policy Decision

The National Right To Work Legal Defense Foundation, Inc.

The National Right to Work Legal Defense Foundation, Inc. ("Foundation") is a charitable, legal aid organization formed to protect the Right to Work, freedoms of association and speech, and other fundamental liberties of ordinary working men and women from infringement by compulsory unionism. Through its staff attorneys, the Foundation aids employees who have been denied or coerced in the exercise of their right to refrain from collective activity.

Today, Foundation attorneys are representing tens of thousands of employees in more than 200 cases nationwide.

The Foundation's staff attorneys have served as counsel to individual employees in many Supreme Court cases involving employees' right to refrain from joining or supporting labor organizations, and thereby have helped to establish important precedents protecting employee rights in the workplace against the abuses of compulsory unionism. These cases include: Davenport v. Washington Education Ass'n, 127 S. Ct. 2372 (2007); Air Line Pilots Ass'n v. Miller, 523 U.S. 866 (1998); Lehnert v. Ferris Faculty Ass'n, 500

U.S. 507 (1991); Communications Workers v. Beck, 487 U.S. 735 (1988); Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986); Ellis v. Railway Clerks, 466 U.S. 435 (1984); and Abood v. Detroit Board of Education, 431 U.S. 209 (1977).

The Foundation's Approach

While disclosure of the profligate misuse of forced union dues is not the primary concern of the Foundation, we do believe that disclosure helps provide some spending controls and therefore potentially limit forced union dues demands. The public disclosure included in the New Form LM-2, Form T-1, and the Form LM-30 place a small curb on the spending habits of union bosses. Unquestionably, allowing workers the choice to stop paying altogether for union fat cat lifestyles provides the most effective constraint. Until workers regain their freedom of choice, we intend to fight creeping legislative and regulatory changes that decrease union accountability in the workplace and chip away at worker protections.

The Lackadaisical Labor Department Notice

The Department's vaguely worded notice tends to thwart commenters because the Department failed to provide specific items of inquiry. The Foundation requested that the Department provide some guidance and specificity. The Department refused our request for guidance.

But taking at face value the language of the public notice, it seems clear that in a schizophrenic rulemaking maneuver, the Department questions its own recently finalized rule and signals it wishes a rescission. In an attempt to provide clarity regarding its original notice, the Department's February 20 ruling explained that another notice of proposed rulemaking would be issued before any changes to the January 16 LM-2 rule are made. This only serves to further establish the Department's slipshod approach to the rulemaking at hand.

Yet another example of the Department's confusion

The Department's February 20, 2009 rule claims that the Effective Date extension was granted "to **allow additional time for the agency and the public** to review questions of law and policy concerning the regulations and, meanwhile, to permit unions to **delay costly development and implementation of any necessary new accounting and recordkeeping systems** and procedures pending this further consideration."

The department also claimed that delay is necessary "to determine whether the rule raises substantial questions of law and policy, necessitating additional review."

The Department continues "… In addition, under the original effective date, annual reports due under the new regulation would not be available in any event until **September of 2010, at the earliest."**

As if to magnify its lack of urgency, the Department continues …"The **implementation date of the regulations is not so time sensitive** that it forecloses present day policy and legal review."

But, the Department continues to insist…"The **purpose of extending the effective date of the regulations is to prevent labor organizations from incurring potentially unnecessary expense and effort** in modifying accounting systems and procedures in the event that the regulations are modified or rescinded, not to provide more time to implement the changes the regulation requires."

These positions seem contradictory or at least confused. If the Effective Date delay is of no consequence because no reports are due until "September 2010" and the first group to be affected by the rule is the few LM-2 filers that have July1 fiscal years, then why create the gratuitous and arbitrary extension?

The politically motivated memo from the President's Chief of Staff was the Department's explanation for the notice and review. However, the Department trips over itself to grant an unnecessary delay since by the Department recognizes that there is no hurry before the rule becomes applicable. Moreover, only a few unions would be affected in the next 9 months. It should be clear to those unions that need to "hurry" to prepare for their "September 2010" filings that the Department desires to rescind this rule and issue a new one.

Arbitrary & Capricious

The Department's February notice shows that the extension was arbitrary and based on an all-inclusive memo from the President's Chief of Staff. The Department reiterated the arbitrary nature of its actions in its February 20, 2009 ruling extending the effective date.

> "The Department's proposal to delay the effective date of the regulations is consistent with **the request of the Assistant to the President and Chief of Staff** and the Office of Management and Budget directed to all Executive branch agencies, **without regard to particular agencies or program areas, to determine whether it might be appropriate to delay the effective date of regulations to permit their review for matters of law and policy** before taking effect."[1]

> "Arbitrary [ahr-bi-trer-ee]: subject to individual will or judgment without restriction; contingent solely upon one's discretion: an arbitrary decision"[2]

What is more arbitrary than a blanket memo made on a whim without regard to pertinent facts regarding all rulemaking? The flawed reasoning described in the previous section adds additional evidence affirming that the Department's actions are arbitrary and capricious.

March 5, 2009

Deborah Greenfield, AFL-CIO, and Appearance of Impropriety

The Foundation challenged the Administration's appearance of impropriety and believes that the Department's response, that it "strongly disagrees with this assessment," fails to adequately allay our concern that the Department's action is little more than political quid pro quo. Part of the Department's attempt to prove that its actions were nonpolitical was the following sentence, "the Department's proposal to delay the effective date of the regulations is consistent with the request of the Assistant to the President and Chief of Staff…" This declaration seems to agree with the evidence that we provided as support for our question, repeated below:

Tabling of New Disclosure Rule Creates Appearance of Impropriety

> The decision to seek this delay appears to be based on a "Jan. 20 memorandum from President Obama's chief of staff, Rahm Emanuel, advising agencies to consider extending for 60 days the effective date of regulations" (BNA 2/2/2009). The memorandum from the former Democratic Congressional Campaign Committee (DCCC) chairman to request this delay and thus extend the concealment of the special benefits to union officers is questionable. While Emmanuel was in charge of the DCCC, his committee received over $1.1 million directly from labor union management. Chief of Staff Emmanuel's request to delay disclosure of perks and benefits to the same union management that paid his committee $1.1 million and spent more than $300 million to elect Barack Obama creates an appearance of impropriety that alone should prevent this action.
>
> The Service Employees International Union (SEIU) provides an excellent example of possible conflict. SEIU recently expelled corrupt officer Tyrone Freeman, who used union dues for his personal advantage; information that was disclosed on the LM-2 reports led to Freeman's downfall. Rank-and-file employees do not know what kind of benefits package Freeman had set up for himself; but they would under the forms that the Obama Administration plans to delay. In 2007, Freeman's SEIU local, "the largest SEIU local in California," reported that it had 62,817 fee payers. **62,817 people were forced to pay hard-earned money to Freeman as a condition of employment**. They deserved to know how Freeman spent their money and now how his successor is spending it.

In the 2008 presidential election, **SEIU spent $27 million** from its PAC funds (CNSNews.com 12/18/2008) to help elect President Obama. The SEIU leadership has consistently opposed allowing employees to have useful union financial disclosure. Now President Obama and Chief of Staff Emmanuel owe their new positions in large part to the millions spent by SEIU officials and labor union officials. During the campaign, Obama said that he and SEIU are long time allies from his days as an organizer.

"**You will know who's on your side**, because I've been at this a long time. **I've spent my entire adult life working with SEIU**. I'm not a newcomer to this. I didn't just suddenly discover SEIU on the campaign trail. Oh, really, you all organized? Oh, you wear purple, do you, really? No, I've been there; done that. So we all know what we need to do to reverse the anti-labor policies of this administration … I've been working on behalf of working Americans for my entire adult life, for over two decades now, as a community organizer, a civil rights lawyer, a state senator, a constitutional law professor, as a United States senator …"

"… That's what you did with me in 2004, because **I probably wouldn't be standing here if it hadn't been for the SEIU endorsement** back then and the fact that all these folks sitting here right here, they walked doors for me, they made phone calls for me, they turned out the vote for me …"

"… Before immigration debates took place in Washington, I talked with Alcea Medina (ph) and SEIU members. Before the EFCA, I talked to SEIU. So we've worked together over these last few years, and I'm proud of what we've done. **I'm just not satisfied, because I know how much more we could accomplish as partners in an Obama administration**." (**Emphasis added**)

(Sen. Obama's remarks to the SEIU Political Action Conference, source: FDCH, 9/17/2007)[3]

Since Obama's Election, AFL-CIO lawyer Deborah Greenfield has been lurking in the halls of the Labor Department. On several occasions, she met with Office of Labor-Management Standards' staff prior to January 20. Since Jan. 20, Greenfield has been the Obama Administration political overseer in charge of the Labor Secretary's Office.

Greenfield is the AFL-CIO's lead lawyer fighting against the Department, specifically OLMS disclosure rules. In fact, she has made past comments against this very rule that the Department is now considering rescinding. Greenfield's presence certainly adds to the appearance of impropriety.

In a Greenfield letter submitted to the Labor Department, she asked for a comment period extension because she was going to be on travel for 15 days. The Department granted a 15-day comment period extension. This is a courtesy Shadow Secretary Greenfield did not give to the millions affected by her plans to rescind this same rule.

> In addition, I have the primary responsibility for preparing the AFL-CIO's submission to the Department of Labor in this matter. However, I will be traveling for work for 15 days of the current comment period and will be unable to devote attention to drafting the Federation's comments during this time.
>
> For both of these reasons, I am requesting an extension of 30 days. Thank you for considering this request.
>
> Sincerely,
>
> Deborah Greenfield
> Associate General Counsel

[4]

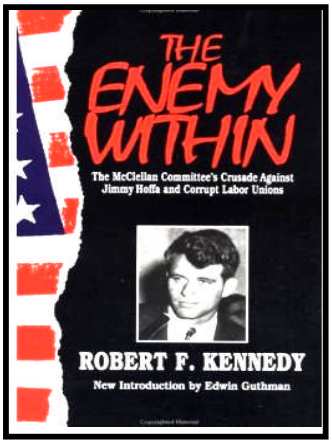
Rule Provides Protections From Union Bosses Like West

Why did Sen. John F. Kennedy, Rep. Robert Landrum, and others create the Labor Management Disclosure Act of 1959? Because unions were overrun with racketeers, gangsters, crooks, communists, and other ne'er-do-wells. Because federally granted powers allow unions to force fees from workers as a condition of employment, combined

with the decades of ineffective LMRDA reporting, racketeers and hoodlums remain a part of the labor union culture.

"Schemes involving bribery, extortion, deprivation of union rights by violence, and embezzlement used by early racketeers are still employed to abuse the power of unions."

2004 U.S. Department of Labor Inspector General Report[5]



John F. Kennedy's brother, Robert F. Kennedy, wrote a book, *The Enemy Within*, chronicling Labor union corruption and its costs to America. As lead counsel to the US Senate Labor Racketeering Committee, Kennedy amassed thousands of pages documenting corruptions by the Teamster James Hoffa and others. The books subtitle is "The McClellan Committee's Crusade Against Jimmy Hoffa and Corrupt Labor Unions."

"The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property."

- 1959 Senate LMRDA Report[6]

"The bill is designed to prevent, discourage, and make unprofitable improper conduct on the part of union officials…by requiring reporting of arrangements, actions, and interests which are questionable. In some instances, the matters to be reported are not illegal and may not be improper. But only full disclosure will enable the persons whose rights are affected, the public and the Government to determine whether the arrangements or activities are justifiable, ethical, and legal."

- 1959 Senate LMRDA Report [7]

"If the powers conferred [in the LMRDA] are vigorously and properly used, the reporting requirements will make a major contribution towards the elimination of corruption and questionable practices."

- Testimony *AFL-CIO President George Meany, 1959*[8]

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The following excerpts from a 2004 NY Daily News article[9] describe recent past "union leaders"…

> The Daily News continues its examination of the actions of union bosses who represent YOUR interests. Today, we probe how some union bosses exhibit questionable ethics, but still carry off sky-high perks.
>
> Jake West is an imprisoned embezzler. As then-president of the International Association of Iron Workers, he raided his union's benefits fund to pay for golf outings and booze bills, vacations and steak dinners.
>
> Arthur Coia is a convicted tax-dodger. As then-chief of the Laborers International Union of North America, he evaded sales taxes on a fleet of vintage Ferrari sports cars worth nearly $2 million.
>
> Michael Forde is an accused bribe-taker. As boss of the 23,137-member New York District Council of Carpenters, he allegedly pocketed cash from a mob-run firm to let it use nonunion workers to renovate the Park Central Hotel in midtown.
>
> The three are among the dozens of union czars who reap sky-high compensation and prodigal perks - in return for questionable ethics and rock-bottom performance.
>
> The Iron Workers, whose members build skyscrapers and bridges, slathered West with $952,632 to cover his legal fees over a two-year period. Behind bars, he still pulls down a $231,000-a-year pension.
>
> … The Laborers, who represent the lowest-paid construction workers, crowned Coia "general president emeritus" days before he was banned from running the union. The ceremonial post requires no work - yet pays $265,020 a year for life.
>
> … The Carpenters, whose last four leaders faced corruption charges, lavish Forde with $216,442 in annual wages, up 15% since his indictment in 2000. Several outraged members told the Daily News that union brass requested donations of $25 to $500 to fund his criminal defense.

… Forde was reached in Ka'anapali Beach, Hawaii, where he was attending a convention, paid for by the union, at the world-class Maui Sheraton. Temperature: 84.

"You want to know the bottom line? I'm not guilty of anything," he said. "I'll be found innocent when I get my day in court, and that's a guarantee." [note: Forde was convicted

… Union membership nosedived to 13% of the workforce, down from a peak of 35% in 1953, and the 532,000-member United Brotherhood of Carpenters quit the AFL-CIO in 2001.

But a Daily News examination of the finances and pay packages of dozens of troubled unions found that the wages of labor bosses keep rocketing into the stratosphere.

Consider the case of Louis Smith, president of Teamsters Local 810, … His résumé includes a 1988 gun possession conviction and a 1983 charge of beating up a carpenters union official. In 1999, he awarded a printing contract to his brother-in-law.

That same year, No. 1 Teamster Jimmy Hoffa threatened to throw 810 into receivership after Smith inked an alleged sweetheart deal with the Cipriani clan to represent workers at the Rainbow Room. In 2000, he was accused of signing a sham contract with a firm that had only one employee.

Despite his rep, Smith's compensation has ballooned - more than 100% over six years. He makes $239,533 on two Teamster payrolls, up from $117,292 in 1997.

… The Iron Workers union is a Washington-based international with three major locals in Queens and three in Manhattan. Members are known as the "cowboys of the skies" because of their agility atop skyscrapers. Seven ex-officers were convicted of plundering $1.5 million from a benefits plan.

As president, Jake West, 75, glommed union money to pay for personal pleasures like golfing in Palm Springs, dining in steakhouses and stocking his home with fine liquors. Sacking the pension fund - and filing false reports to hide it - bought him three years in federal prison.

But West still pockets $19,250 a month - that's $231,000 a year - from three separate pensions, including the one he embezzled.

… The Laborers, a Washington-based international … president, Arthur Coia, 60, was much investigated but never charged for alleged ties to the Patriarca mob family in New England. But in 2000, he pleaded guilty to mail fraud for evading taxes on a $1.1 million 1972 Ferrari Daytona and two other sports cars.

Spared prison time, sentenced to probation and ordered to pay fines and restitution, Coia was barred from an active role with the union. But his plea deal allowed him to grab a golden parachute - a $265,020-a-year lifetime paycheck as the Laborers' nonworking president emeritus.

… Last year, Daniel Kearney, 56, abruptly stepped down as $165,788-a-year secretary-treasurer of Local 79, the largest Laborers' chapter in the U.S., with 9,125 members. The local, at 520 Eighth Ave., discovered a staffer had improperly put $149,330 of personal purchases on Kearney's union credit card.

New York Hotel Trades Council, … Local 6 of the Hotel Employees & Restaurant Employees International Union… Council's president emeritus, Vito Pitta, 77, once identified as an associate of the Colombo crime family, gets $119,400 annually - even though he retired from the trade group in 1998… As Local 6's "retired CEO," he grosses $101,155 more - even though he stepped down from the local in 1995.

In 1979, a year after he won the top post at the Council, its board voted him a lifetime salary, to be paid at the same level as his last working year; in 1985, seven years after he became boss of Local 6, its board did the same.

… Local 32BJ of the Service Employees International Union, a 76,043-member local at 101 Sixth Ave., covers janitors and doormen… president, Michael Fishman, 54, was eager to transform 32BJ into a political powerhouse after his free-spending predecessor, Gus Bevona, was ousted in 1999 for squandering millions in union funds. His first attempt - Mark Green's 2001 mayoral campaign - backfired spectacularly.

> For 18 months, Manhattan District Attorney Robert Morgenthau probed charges that union workers were improperly ordered to work for Green and give up sick time or vacation days to campaign. Reformists said even the backers of rival Fernando Ferrer - in a union that is 40% Hispanic - were forced to leaflet or perform other work for Green.
>
> "It was horrendous and undemocratic," said Neil Scotti, a doorman at Manhattan House on E. 66th St. and a former executive board member of 32BJ. "Staffers were pressured to take off personal days for Green."
>
> Despite allegations of coercion, hefty pay is the rule for 32BJ's ruling triumvirate: Fishman makes $197,081; Hector Figueroa, political director and treasurer, gets $174,413; Kevin Doyle, the vice president who was cc'ed on memos telling staff to take personal time off the day Green faced Ferrer in the runoff, gets $170,720.
>
> "The union denies wrongdoing or coercion," said spokesman Bud Perrone, who added that Morgenthau ended his probe last June "with no resulting charges, fines or other action." Shortly after, Perrone said, 32BJ hired a new law firm to ensure compliance with election law. He said Fishman, as a vice president of the parent union, is entitled to another $30,000 in yearly pay but declines to accept it.

Does the Secretary believe that hardworking Americans would be better off if embezzlement and self-enrichment is made easier for men such as these? Isn't it better to err on the side of a little more disclosure, than to allow crooks another place on the LM-2 to hide millions of hard-earned dollars? <u>This is your policy decision you must make here: choose disclosure protection for working Americans, or assist the concealment of union-financed self-indulgences</u>.

<u>AFL-CIO 3% Factor</u>

In addition to receiving the Foundation's fact-based comments, the Department will undoubtedly receive another imaginative and erroneous comment from the AFL-CIO as it filed in 2002. It is our recommendation that the Secretary take whatever the cost

estimates submitted by the AFL-CIO and simply multiply it by 3% to determine the most reasonable high water mark.

The AFL-CIO 3% comment multiplier was determined by comparing the AFL-CIO's 2002 comment estimated costs with the AFL-CIO's actual costs related to LM-2 filings disclosed on the AFL-CIO's first report under the 2003 reporting rule.

In 2002, the AFL-CIO made farcical projections. The AFL-CIO estimated that the 2003 form change cost $1 billion. It was ridiculous when John Sweeney said it and it was ridiculous when the AFL-CIO submitted it as part of its comment in 2002.

The AFL-CIO's Own LM-2 Disproves Union's Ability to Make Projections

Based on the AFL-CIO's first LM-2 report filed under the 2003 rule, the AFL-CIO spent just $54,150 on preparation of the LM-2 and the associated new software.

2005 LM-2 AFL-CIO Payee	Purpose for Payment	Date	Amount
CALIBRE CPA GROUP, PLLC	Preparation of LM-2	10/13/2004	**$ 14,000**
CALIBRE CPA GROUP, PLLC	Preparation of LM-2	12/2/2004	**$ 18,550**
CLEAR CONTACTS, LLC	Software Building - Compliance New LM-2 Filing	5/26/2005	**$ 11,070**
CLEAR CONTACTS, LLC	Software Building - Compliance New LM-2 Filing	6/23/2005	**$ 10,530**
Total AFL-CIO Reported Directly Attributable Expenses related to the Form LM-2			**$ 54,150**

It is most likely that the AFL-CIO spent many more times $54,150 on Deborah Greenfield and other lawyers trying to stop disclosures of how dues are spent.

Let me refresh the Department's memory further regarding the veracity of Mr. Sweeney and the AFL-CIO paid commenters:

> "These requirements create an enormous amount of red tape that **will cost union members an estimated billion dollars a year** – a crushing cost burden for which there is **no widespread support among union members at all."**
>
> - AFL-CIO President John Sweeney[10]

> "71% of Union Membership Want Increased Union Financial Disclosure"
>
> "Government ought to do more to protect union members from corrupt union officials. **Unions should be required to give detailed reporting of union finances to discourage abuse…"**
>
> - 2004 Zogby *Nationwide Attitudes Toward Unions* [11]

> "Based on a broad and detailed survey of labor organizations – of the kind the Department itself failed to undertake – we have estimated the NPRM's first-year costs to be …**possibly more than $1 billion."**
>
> - 2003 AFL-CIO LM-2 Rulemaking Comment[12]

> "As we show in Part IV and Appendix A, the proposed rule will impose **annual costs** of between $309 million and **$1.78 billion** on affected unions." [Only about 4,200 affected unions]
>
> - 2003 AFL-CIO LM-2 Rulemaking Comment [13]

> "The results of the AFL-CIO survey show that the most conservative estimate of the total cost of complying with the proposed rule for all filers of the LM-2 exceeds $310,000,000, and that the cost of **complying could easily exceed $1,000,000,000**. Id. **These estimates – which unlike the Department's estimates rest on a good faith attempt to ascertain what unions actually do with respect to recording financial information – demonstrate that the proposed rule will impose significant burdens on reporting**

unions that the Department has wholly failed to consider in promulgating the proposed rule."

- 2003 AFL-CIO LM-2 Rulemaking Comment [14]

"As Table 5 demonstrates, the average cost to national/international unions of complying with the 16 changes is **$1,239,482."** [Only cost AFL-CIO $54,150]

- 2003 AFL-CIO LM-2 Rulemaking Comment Appendix[15]

TABLE 5

AVERAGE COSTS PER UNION FOR INTERNATIONAL/NATIONAL AND LOCAL UNIONS TO COMPLY WITH PROPOSED LM-2 CHANGES

	Average Cost National/International	Average Cost Locals
a. Classify expenses by functional category	$ 67,607	$ 29,923
b. Identify each credit card transaction separately for each vendor by each functional category	61,905	5,337
c. Classify officer and staff time by functional category	116,168	49,043
d. Obtain sufficient information on trusts	47,395	2,847
e. Compile name, address, date, amount, and purpose for "other" receipts	37,393	2,363
f. Compile name, address, date, amount, and purpose for all charges, by functional category	59,249	14,568
g. Allocate additional time for staff and officers to complete more complex expense reports and vouchers, time-keeping, training, and supervising staff on these new responsibilities	357,460	18,996
h. Prepare an age list of accounts receivable	146,090	8,396
i. Prepare an age list of accounts payable	24,294	7,196
j. Classify and retrieve lists of members and total dues by active, inactive, associate, apprentice, retired, and fee payer	88,477	8,342
k. Adapt existing software to fulfill new requirements	124,653	17,959
l. Adapt existing hardware to fulfill new requirements	22,983	6,958
m. Develop forms and recordkeeping to comply with new requirements	33,942	6,100
n. Obtain sufficient computer program expertise	19,797	12,441
o. Obtain sufficient accounting expertise	14,665	10,263
p. Obtain sufficient legal expertise	17,404	16,777
Average per Union*	***$ 1,239,482***	***$ 217,509***

* Based on a spreadsheet of each of the 16 factors for each responding union, with 19-34 respondents from national unions and 6-14 from local unions.

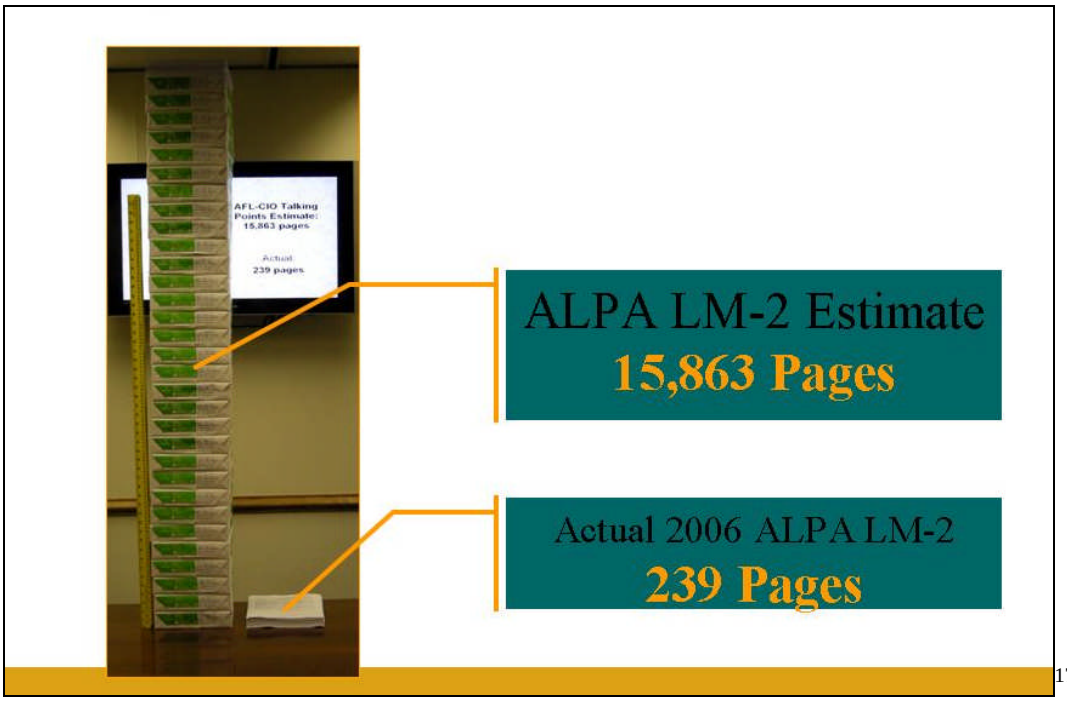
16

The AFL-CIO's estimates of the actual costs for complying with the LM-2 in the first year were off by 97%. With this kind of track record, the Secretary should not seriously consider any comments by the AFL-CIO. Nor should the Secretary use the AFL-CIO

comments as basis for concealing union officer pay from the people whose paychecks are docked in order to pay for this union corruption.

Please Madam Secretary, do not hide behind comment submissions from men like AFL-CIO President John Sweeney who has concealed his own past $1 million perk (described below). Rather, try to live up to Sweeney's recent words, "The confirmation of Rep. Hilda Solis is a huge victory: finally Americans will have a Secretary of Labor **who represents working people."**

The AFL-CIO was not the only union to make absurd claims. AFL-CIO member union Air Line Pilots Association had one as well that is illustrated below.



[17]

<u>Millionaire John Sweeney</u>

John Sweeney has portrayed himself as a "regular John" who rose to the top of the labor union movement. But his autobiography is a bit disingenuous. In the past he doubled

dipped from the NY SEIU 32-BJ and the SEIU International Headquarters while he was the International's president.

The AFL-CIO set up a special fund for Sweeney that received payments from the union for five years. At the end of the five years, Sweeney owned the fund and used part of the money in the fund to pay his income taxes. At that time, the AFL-CIO reported his taking of the only the money for the taxes on the 990 as income. It did not report the estimated million dollars paid into the fund.

This is how the transaction appeared on the AFL-CIO's 2000 IRS Form 990[18].

*
President Sweeney's compensation includes $225,000 of salary and a $233,333 pre-retirement distribution from the non-qualified AFL-CIO officers' pension plan in order to fund the tax liability to President Sweeney resulting from the vesting of these benefits during 2000, pursuant to Article V, Section 5(b) of the AFL-CIO Constitution.

This is how the AFL-CIO justifies the payment in its constitution…

> The Executive Council is authorized and directed to enter into a legal and binding agreement with the President, the Secretary-Treasurer, and the Executive Vice President to make these retirement compensation and annuity benefits payable by the Federation for their intended duration pursuant to the terms and conditions of this Section. The Executive Council is also authorized to provide, after such benefits become non-forfeitable, for (1) the cash-out of a portion of these retirement compensation and annuity benefits (through accelerated payment of the present value thereof) where the officer will be subject to taxes on the value of benefits not yet otherwise payable, and (2) appropriate arrangements, including payment by the Federation, for payment of employment taxes attributable to these retirement compensation and annuity benefits.
>
> *AFL-CIO Constitution*, 3/4/2005[19]

Union dues blindly finance much of the AFL-CIO's financial enrichment of Sweeney, and now the Obama Administration wants keep the blindfolds on the regular Joes. The 2008 AFL-CIO LM-2 report indicates that someone is receiving $200,000 a year. This looks very similar to the transfers to Sweeney in the late 1990s.

SCHEDULE 20 - BENEFITS FILE NUMBER: 000-106

Description (A)	To Whom Paid (B)	Amount (C)
DEFERRED COMPENSATION PLAN MATCHING	TRUST	$296,923
HEALTH AND WELFARE	INSURANCE COMPANY and TRUST	$11,817,269
PENSION	TRUST	$6,722,720
POST RETIREMENT BENEFIT OBLIGATIONS	INSURANCE COMPANY and TRUST	$242,462
RETIREMENT BENEFITS PURSUANT TO AFL-CIO CONSTITUTI	FORMER OFFICERS	$121,749
VISION BENEFITS	EMPLOYEES	$2,141
WORKERS COMPENSATION INSURANCE	INSURANCE COMPANY	$220,970
Total Benefits		$18,624,234

Form LM-2 (Revised 2003)

IAM LearJet

The Machinists (IAM) own and operate a private corporate Lear jet. In 2006, IAM reported disbursing **$1.8 million** for hangar, jet fuel, jet maintenance, mechanic, pilot, co-pilot, and associated loan repayments. Think about how much dues would have been saved if the Machinists' bigwigs had flown first class rather than by private plane. When these flights get charged next to the officer's names, members may demand that IAM President Buffenbarger and company fly commercial. Here is a little perspective …

> "At its zenith, in 1969, the machinists' union was about a million strong, but … now has some 380,000 active, dues-paying members. … the union had lost more than 100,000 members in the last four years alone …
>
> [President] Buffenbarger … flies around in the union's very own Lear jet. 'We couldn't do what we do without it,' he explained unapologetically."
>
> (*NY Times*, 1/30/2005)

UAW LearJet

$1.4 Billion – Who Benefits?

In 2005, labor unions reported paying $1.4 billion in benefits mostly to officers and employees of the union. This amount did not include strike benefits. Now, Greenfield and the folks at the AFL-CIO want to repeal a ruling that allows dues payer to know who is receiving over $1.4 billion a year of their money. At least Greenfield clarified in her comment opposing the rule that she was writing "on behalf of 56 of its affiliated national and international unions," because she certainly was not writing on behalf of the rank and file.

Greenfield writes that that the Department's proposal to add a benefits schedule for union officers and employees "will not produce meaningful information to union members." Greenfield's and the AFL-CIO's claim is that members' knowledge of how $1.4 billion of their dues was spent would be meaningless. The Secretary should inform the AFL-CIO brass that it is not "their" money.

In some unions, "benefit" expenditures are 50% of the union's expenditures.

Organization Name	Benefits	Total Disbursements	benefits/total disbursements
ALPA Master Executive Council	$1,716,239	$1,915,500	90%
Asbestos Workers #75	$1,275,216	$1,494,770	85%
IBEW #124	$7,187,031	$12,330,586	58%
Teamsters Joint Council #16	$749,726	$1,289,103	58%
IBEW # 22	$1,450,256	$2,771,137	52%
Stage & Picture Operators #5	$1,122,402	$2,274,337	49%
American Postal Workers #295	$799,585	$1,651,374	48%
UFCW National Headquarters	$77,317,248	$176,996,735	44%
Boilermakers National Headquarters	$17,853,647	$43,021,836	41%
Bricklayers #7	$1,482,810	$3,593,698	41%
Operating Engineers #49	$5,757,154	$14,125,230	41%

2005 Total LM-2 Benefit Disbursements	$1,433,745,233

AFL-CIO LM-3 Comment

Since we are referring to the AFL-CIO 2008 comment regarding the rule that may be rescinded, we wish to quickly rebut the 8-page attempt to scare LM-3 Filers and exaggerate the effects of the rule. The Department seemed clear that unless the LM-3 filer ignores the law or frequently violates it the Secretary will not ask an LM-3 filer to file an LM-2 report. Therefore, we believe that unless the Department is granted

authority to fine recalcitrant unions with respect to LM reports, some kind of enforcement stick is needed. This approach seems harmless enough that it should not be problematic.

Union Shenanigans with Sales of Assets

As Greenfield noted in her original comment John F. Kennedy introduced and co-authored Senate Bills that became part of the LMRDA. The following are a few quotes to remind the Department, Greenfield, and others of Kennedy's intent and purpose. To kill the suspense, it was not to conceal labor relations activity or its costs. (All of the following quotes are from the LMRDA legislative history.)

> "It [Kennedy-Ervin Bill] will require union officials to completely disclose all possible conflict of interest transactions, so that [union] members urged to buy lots in a so-called model Teamster community in Florida would know that Jimmy Hoffa had arranged the financing of this development through coercion on the union's banks, had placed the promoter on the Teamster's payroll and stood prepared as a hidden partner to reap a large hidden profit."[20]

> "In short, it [Kennedy-Ervin Bill] is a strong, effective bill. It will enable all union members to know how their dues are spent, instead of having them carried around in a little black box by Anthony Doria the friend of racketeers, or used to purchase an air-conditioned Cadillac by the secretary-treasurer of the Garbage Local in New York."[21]

2006 LM-2 Filer	Sale Description	Book Value	Union Received From Sale
NY Plumbers Local 22	Land and Building at 3900 Packard Road	$1,026,251	**$208,915**
St. Louis Carpenters DC	DISPOSITION OF WORTHLESS COMPUTERS & OFFICE EQUIPT	$816,208	**$3,600**
Saginaw UAW Local 668	PROPERTY AT 1601 N. 6TH AVE SAGINAW,MI	$1,711,345	**$122,937**
UAW International Headquarters	Land, Winnsboro, SC	$323,903	**$63,938**
See Appendix 1 for more examples and further details about these examples.[22]			

Only One Question of Law in Final Rule

Although the Department has only provided a vague notice and a new effective date ruling as guidance, the Foundation will direct its comment to the Department's misapplication of law in the final ruling – its special unlawful "secrecy" provision. The plain language of the LMRDA and the plain language used by the authors of the LMRDA makes it clear in no uncertain terms that the LMRDA is a Disclosure Act. It is in the title – the Labor-Management **Disclosure Act** of 1959.

> "Honest union members and businessmen, responsible labor leaders, law enforcement officers, and the general public – all will benefit from the increased protection this bill [Kennedy-Ervin Bill – U.S Senate Bill authored by JFK that later in conference became a majority part of the LMRDA] will provide."[23]

> "It [LMRDA] compels comprehensive detailed reporting of union economic and administrative data so that the members and the public can really know what is happening."[24]

> "It [LMRDA] sets up strong barriers against the control of unions by unreformed convicted thieves, racketeers, and thugs, or their service as union officers. It prevents union officials from using union funds to perpetuate themselves or their friends in office."[25]

> [The LMRDA] "… can eliminate the evil practices by which [a corrupt officer] and his associates rose to power, their conflict of interest transactions, their destruction of union books, their manipulations of trusteeships, their rigged elections and conventions, their appointments of exconvicts as union officials, their use of union funds to build personal financial empires, their private arrangements with employers, their shakedowns and tributes … their falsification of union reports, their reprisals against honest members …"[26]

Legal Analysis

Before the 2003 Form LM-2 final rule was published, the Department failed to solicit comments regarding the concealment clause that became part of the 2003 final rule. This provision is an exception that is destroying the LMRDA protections.

We resubmit the following part of comments that were submitted last year regarding the January 2009 rule.

If any changes are made whatsoever, the Department of Labor must go further than what already went into final effect the week before the Obama inauguration in January. More specifically, the Committee and the Foundation urge the Department of Labor to reject the provisions concerning the "Protection of Sensitive Information." This "sensitive information" exception to full disclosure is simply a loophole allowing union and trust fund officials to unilaterally determine what disclosure must be made public, and then hide a vast array of questionable expenditures. Financial reports of trust fund operations and expenditures can never be considered "confidential" information, because this money is owned by the employees, not the union or trust fund officials. Fiduciary agents have no right to maintain secret records or engage in secret transactions that are purposefully hidden from the principals – the employees who are the actual owners of the funds. As the Department of Labor's own proposed regulations note, "The searchlight of publicity is a strong deterrent."

In the civil law context, union and trust fund officials have no "sensitive information" exemption from discovery or disclosure. Indeed, courts regularly decline invitations to create new blanket privileges for union activity, because privileges "are not lightly created nor expansively construed, for they are in derogation of the search for truth." United States v. Nixon, 418 U.S. 683, 710 (1974); see also United States v. Porter, 986 F.2d 1014, 1019 (6th Cir. 1993)

For example, no "privilege" exists when unions seek to shield internal strategy from discovery in proceedings before the National Labor Relations Board ("NLRB").1 There is "no substantial authority for the notion that a bargaining party's strategy records enjoy some special, categorical insulation from discovery in an unfair labor practice

prosecution where the party's strategy is a relevant subject." Taylor Lumber & Treating, Inc., 326 NLRB 1298, 1300 (1998)[27].

Similarly, there is no blanket protection of union "negotiation and organizing" strategies. The NLRA contains numerous provisions restricting many common union organizing tactics, see e.g., 29 U.S.C. §§ 158 (a)(2), (b)(1)(A), (b)(4), (b)(7), union negotiating tactics, see e.g., 29 U.S.C. §§158(b)(3), and (d), and the legality of certain contractual provisions sought by unions, see 29 U.S.C. §§158(a)(3) and (e). Thus, when the NLRB adjudicates whether a union's organizing tactics are coercive, or whether the union has negotiated in bad faith, it of necessity investigates the union's bargaining strategies and tactics, and such things are not shielded from discovery or disclosure.

Moreover, characterizing some union activity as "negotiating" or "organizing" does not make it inherently "favored" by the NLRA and thereby exempt from disclosure. See e.g., Duane Reade, Inc., 338 N.L.R.B. No. 140 (2003) (NLRB inquiry into union violations of the NLRA for receiving illegal employer assistance with organizing); Merk v. Jewel Food Stores, 945 F.2d 889, 895 (7th Cir. 1991) (secret deal between employer and union held to be "in derogation of national labor policy"); Aguinaga v. United Food & Commercial Workers, 993 F.2d 1463 (10th Cir. 1993) (same). To say that all of these underhanded union actions, characterized as "negotiating or organizing," are so "favored" as to permanently shield them from discovery or disclosure is absurd.

Union organizing or negotiating tactics can be unlawful under 29 U.S.C. § 302 as well. Section 302 is itself an integral component of federal labor law, enacted by Congress specifically to govern the conduct of unions and corrupt union officials. See Arroyo v. United States, 359 U.S. 419, 425-26 (1959). The provision expressly governs agreements that unions negotiate with employers, and has been applied to employer payments made to affect union organizing. See, e.g., United States v. Pecora, 798 F.2d 614 (3d Cir. 1986); Reinforcing Iron Workers Local Union 426 v. Bechtel Power Corp., 634 F.2d 258

(6th Cir. 1981) (provision in collective bargaining agreement requiring employer to contribute to industry steward fund unlawful under §302).

The "sensitive information" loophole is not ameliorated by the proposal to allow union members to personally "examine" any books and records that union and trust fund officials deem to be "too sensitive" for public disclosure. Few employees are going to have the knowledge, wherewithal or persistence to secure disclosure from union and trust officials intent on hiding it. Subtle and not-so-subtle pressure can be brought to bear on such employees. No employee should be forced to publicly stick his or her neck out and ask for disclosure from the very union or trust fund officials who have determined that it must be hidden. Instead, all financial information should be publicly disclosed and made available to employees without the need for a specific request.

Questions of Policy

The most important policy question for Secretary of Labor Solis is whether she is going to side with the millions of American workers whose yoke is laden down with union opulence, or side with the few union bosses who will again be allowed to conceal their financial abuse.

The arrogant rule of union officials like Ironworkers President Jake West who spent thousands daily at the Prime Rib restaurant in DC on booze, steaks, and prostitutes will be forced into the light of day. At the time of his arrest in the Prime Rib, the Ironworker's President, as if he was in the *Casino*[28] movie, said, "You sure know how to ruin a good martini." It seems clear that West did not take his federally imposed position of power and its accompanying fiduciary responsibilities seriously. West and his ilk are the type of union officials who will and should fear the disclosure created by this final rule. Honest individuals should not. The Secretary's policy should betray the dishonest union officials to the workers.

Conclusion

The Foundation expects the Department to fulfill the congressional description that the LMRDA "compels comprehensive detailed reporting of union economic and administrative data so that the members and the public can really know what is happening."

Past Labor Secretaries shirked their responsibility to enforce the Act effectively, and now it appears that the Department is considering going back to the old ways of allowing unions to conceal their finances; thus undermining the purposes of the Act. Returning to business as usual is not the change millions are looking for; they are looking for open and honest bookkeeping. Something unions fail to produce.

Let's go back into time where the Obama Administration is taking America again and listen to the words of Sen. John L. McClellan who chaired the "Rackets Committee" and who heard years of testimony about labor union corruption.

> "The sordid disclosures made and improper practices revealed by the Senate select committee in the course of two and a half years of investigations are appalling and shocking to the extreme. We have exposed many, many evils that are outrageously cruel, corrupt, contemptible, and criminal. It has been clearly established that the infiltration of gangsters, racketeers, and underworld characters into some labor unions and businesses is primarily responsible for the rotten, nauseating situations that now prevail"
>
> "We have had to deal with people of no character, with manipulators, conspirators, crooks, thieves, mobsters, extortionists, and murderers. In trying to get the facts, we have repeatedly encountered exasperating hindrances and efforts at obstruction. On the witness stand we have been confronted with forgetfulness experts, bald-faced perjurers, and 5th amendment artists. Out of more than 1,300 witnesses heard during 250 days of public hearings, some 225 or 230 Fifth Amendment slackers have paraded before us in sickening and disgusting succession invoking the privilege against self -incrimination."

“To such men, union charters (which are sometimes bought and traded as a rare and prized commodity of great value) have become a form of hunting license, letters of mark and reprisal, to prey upon arid exploit working men and women in commerce and industry. Those who are perpetrators of this criminal exploitation have become brazenly arrogant and defiant. Some of them are threatening to go so far as to challenge the very supremacy of the Government. We now know that labor cannot clean its own house. The AFL-CIO's code of ethics is ineffective. It has not stopped corruption or improper activities. The truth is that code is flouted at will and with reckless abandon and contemptuous disregard by the Hoffas, the Brennans, the Cohns, the Becks, the Dioguardias, and others who neither respect nor observe it. Effective legislative remedies will have to be applied. That is now the only course we can pursue.”

“The Senate select committee has sampled the results of some instances where city and county governments have come under the influence of exploiters and terrorists. We know what it is like. Freedom ends. The man who dares to object or interfere is frequently marked for extinction. The internal government of unions dominated by these criminal elements is a ghastly burlesque on democracy. A rank and file member of such a union has no freedom. He is a helpless serf. His type of employment becomes a vested interest of the union. His job – his very means of livelihood – is treated as a property of the union. He is made dependent, and acceptance of his unhappy lot is enforced upon him by economic coercion and physical brutality.”

“It may well be impossible for you or anyone else who has not sat through the long hours of hearings as I have to grasp even dimly the fullness and extent of oppression imposed on some union members and the suppression of their natural rights as men and their political rights as citizens.

“We think that couldn't happen in America, but it has happened; and I tell you now if that pattern of democracy and justice should ever become our way of life, if such disreputable elements to which I have made reference should ever come to influence, make and administer our laws and control our economy, then the answer to the question before us, ‘Can American freedom survive?’ would have to be a resounding ‘No.’ Freedom would be dead.

“I regret to note that there is increasing doubt and growing concern about what Congress will do. I had confidently hoped that Congress would measure up and face up to the issue and do its duty, but I must confess I am beginning to wonder if it will. The Kennedy-Ervin bill with the many

> strengthening amendments adopted by the Senate will do some good if it is enacted into law. It will not be a total loss, but it will not by any means do the whole job that is needed."[29]

Right now forces have gathered and are trying to take us back to 1959. Through Executive Orders, a growing push for the Employees Forced Choice Act (EFCA), and repealing regulations like this that force union officers to be publicly accountable for their fiscal behavior. The Secretary of Labor should represent all Americans not just Big Labor's high command.

It is flawed logic for Congress to enable union corruption by establishing a regime of forced unionism only to place a band-aid on the resulting corruption with another law (that has been half-heartedly enforced over 50 years). Until Congress removes the cause of the problem by ending forced unionism, the Department must at least give those forced to pay dues knowledge of how their money is spent.

The Department's previously finalized rule should remain intact other than eliminating the illegitimate and broad loophole discussed in the Legal Analysis section of this comment.

Sincerely,

Mark A. Mix
President

[1] Labor Department statement regarding justification of arbitrary action (*Federal Register,* Vol. 74, No. 33, 02/20/2009)
[2] Dictionary.com (2009 edition)
[3] National Right to Work Legal Defense Foundation, Inc. comment regarding the superfluous Effective Date change proposed by the Labor Department highlighting the obvious financial connections between the few that benefit from concealment of finances and the Obama Administration (Comment ID: LMSO-2008-0002-0058.1[1], 2/9/2009)
[4] AFL-CIO Associate General Counsel Deborah Greenfield explains the she will be traveling for work for 15 days and therefore the Department should delay the end of the Comment Period. Greenfield had "primary responsibility for preparing the AFL-CIO's submission." (Comment ID: LMSO-2008-0002-0011[1], 5/14/2008)
[5] 2004 U.S. Department of Labor Inspector General Report
[6] Senator Jon F. Kennedy's Committee on Labor and Public Welfare submitted LMRDA report to Senate (S. REP. NO. 187 ON S. 1555, 4/14/1959)
[7] Ibid.
[8] Excerpt form AFL-CIO President George Meany's testimony, (Congressional Record, House, 7/29/1959)
[9] *Sleazy Labor Leaders Live High on Hog as Members Struggle to Earn a Weekly Wage*, Douglas Feiden (NY Daily News 2/1/2004)
[10] AFL-CIO President John Sweeney statement that LM-2 would cost $1 Billion annually, (*Political Finance*, 12/2002)
[11] Nationwide Attitudes Toward Unions, by John Zogby, President and CEO (Zogby International, 2/26/2004)
[12] 2003 AFL-CIO Comments regarding 2002 Labor Department revised LM-2 proposed rulemaking, Jonathan Hiatt (AFL-CIO, 3/27/2003)
[13] Ibid.
[14] Ibid.
[15] Ibid., (2003 AFL-CIO Comment Appendix, "Report of Dr. Ruth Ruttenberg")
[16] Ibid.
[17] AFL-CIO BushWatch Website posting
[18] AFL-CIO's 2000 IRS Form 990
[19] AFL-CIO Constitution, 3/4/2005, AFL-CIO Website page
[20] Sen. John F. Kennedy introducing the Kennedy-Ervin Labor Management Reform Bill, (*Congressional Record*, Senate, 4/29/1959)
[21] Ibid.
[22] U.S. Department of Labor, LM-2 Reporting and Disclosure website, UnionReports.gov, 2006 LM-2 union self-reported database
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] In fact, because the NLRA and the LMRDA supposedly exist solely to protect employee rights, the policies underlying these Acts strongly favor the production of relevant information to employees, not the withholding of such information. See Lechmere Inc. v. NLRB, 502 U.S. 527, 532 (1992) ("the NLRA confers rights only on employees, not on unions or their nonemployee organizers").
[28] Casino movie based on actual union pension laundering by the mob.
[29] Senator John L. McClellan, Pepperdine College's Freedom Forum, Biltmore Hotel, Los Angeles, Calif., 6/23/1959 (Cong. Rec., 17497-8, Senate, 9/1/1959)