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Report of Committee on Federal Legislation

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mittee is probably responsible for it—in the past has been that as soon as some lawyer suddenly wakes up and puts on paper some idea that he has had in his heart for eight or ten years, we get busy and, as a result, the Legislative Committee for about fifty days of the session is doing nothing but mimeographing bills and transmitting them around the state.

So in the future we are going to recommend to the Board of Trustees of the Association and everyone concerned on the local bars that they inform their members of the Bar that we just can't take that work with any hope or expectation of having any success in the future.

We are making a number of other recommendations and whether or not we will have a special session is unknown. There are a number of bills left over on the agenda which we will take up if no new ones appear and there is a special session. But I assure you that your Committee has been working. It is an enlarged Committee the past two years and we are endeavoring to try to cooperate with each and every county Bar in the state.

REPORT OF COMMITTEE ON FEDERAL LEGISLATION

BY ROY A. REDFIELD

Mr. President, members of the Association, here is the Spence Bill, forty-two pages of government control. Our report is on file, the report of a divided committee. It was printed. Maybe you have not read it. Perhaps for the reason suggested by the president this morning, the review may not have reached you in time.

We might say, as another chairman did this morning, that we will rest our report and let it go at that, as a counsel might rest his case upon his brief.

But as experienced counsel, we are all familiar with that sinking feeling that you get in the pit of your stomach when you fear that the court may not have read your brief, after all.

Since the report may not be wholly familiar to all of you, I may therefore be permitted to paraphrase the more important parts of it, so that the matter will be fairly before you including those whose late arrival here may have prevented their reading the report.

The measure is pending in the lower house, introduced by Spence

of Tennessee, referred to the Committee on Banking and Currency, of which Mr. Spence himself is chairman.

It undertakes to deal with an emergency. The emergency is said to be a shortage of supply, great inflation, and unbalance in demand and supply. The remedy suggested is that three powers be given to the President.

One of those powers is to buy and sell commodities, to transport stores, process, manufacture, and otherwise deal in commodities. What commodities? I don't know. The bill doesn't say. The bill sets up goals for the President to achieve—goals of accomplishment, but it doesn't say what they shall be. That again is for the President to determine.

The next set of powers has to do with allocation of shortage materials. That may be entirely within the control of the President, without saying what shall control him, or what material shall be so allocated. He may succeed in making a voluntary agreement among producers. If it doesn't work, then he requires mandatory allocations—of what and to whom nobody knows. The bill does not guide him.

Finally, there is a power to fix prices given to the President and his assistants, the assistants consisting of the numerous persons composing the board to which these matters are entrusted. A very considerable machinery is set up in the bill itself for that purpose. The price-fixing will extend to any kind of commodities which significantly affect the cost of living or the cost of production or the national defense. The price-fixing is not by any means limited to the fixing of prices in interstate commerce. Any kind of prices. A man who wants to raise his prices—and it doesn't say whom or where—no matter how small or little he may be, or how large he may be, must give sixty days notice before he is permitted to raise the price. If he does so, a hearing may be had. In the meantime, the President may fix a price ceiling. Therefore, the powers of price-fixing are very broad. Indeed, the bill as a whole is far more broad and daring than anything that has been submitted so far, I think, in the way of a controlled economy for use during peacetime. It does not in any sense purport to be a war measure. It is from now on.

The Committee carefully abstained from discussing or even considering the economic aspects or the political implications of the bill. As instructed by the Board of Governors, we looked at the constitutional aspects of it. Our Committee was divided. Four, including the

chairman, report against the bill on constitutional grounds to be stated in a moment. One member favors the bill. I do not know whether he is present or not. He has been a copy of it. He may see fit to present his views.

We claim that the bill is bad on several grounds of which the chief, perhaps, is that Congress has no power to pass legislation of this kind for peacetime application. It cannot be sanctioned under any granted power nor any implied power, nor any power implied from an implied power.

It has been suggested that possibly general welfare might sustain the measure—the power to provide for the general welfare. But as many and perhaps most of you are aware, the Supreme Court has said that legislating for the general welfare is permissible to Congress only in connection with taxation. The Congress may tax and spend for the general welfare but that's about the only way that it gets into the general welfare. So the general welfare clause will not sustain the legislation. As for the commerce clause, I have already pointed out sufficiently, probably, that its not by any means limited to interstate commerce. It applies to interstate and intrastate commerce; it applies to anything, any commodity, any price which significantly affects the cost of living. That takes in a very broad territory

But if these reasons were not enough, gentlemen, we hold finally that, in any event, there is too much delegated power in the measure as submitted; that no sufficient standards are set up, and that the bill is bad for the same reasoning that impelled the Supreme Court to make the Schechter decision years ago when the NRA was knocked out. The power is given to the President and his advisers to set these goals and decide when they are reached, to decide what the emergency is, when it is passed, and everything connected with it.

Just a word, finally The bill has been compared to the Russian Five-Year Plan. It does bear some strong resemblances in respect to the setting of particular goals and the desire to reach and accomplish those goals within a definite time; also, in the establishment of extensive boards and bureaus to carry out particular functions and subdivisions of these powers. It is believed to have been written by Mr. Brannan. It rests securely, as I stated at the start, with the Committee on Currency and Banking in the House, where it will stay, probably, for this session. You may wonder why we are

excited about it, especially as Mr. Spence, himself, is the chairman of that committee and could easily take it out of the Committee and get it on the floor, if it were thought desirable.

It will not come before this Congress, but it has been thought by the Governors to be worthy of your attention because it probably marks a high-water effort in the direction of controlled economy during peacetime. It is a very marked indication of that attitude of disregard for the Constitution which is, unfortunately, so common in our national capital. Our Committee has disapproved the bill and recommends that you do likewise if you want to take action.

If you do, you may see fit to go on record and instruct our representatives in Congress accordingly

(EDITOR'S NOTE: *A motion was made that the Washington State Bar Association go on record as opposing the Spence Bill, and several members of the Association spoke for and against this action. It was finally decided to lay the motion on the table.*)

REPORT OF COMMITTEE ON REDUCING THE VOLUME
OF PUBLISHED OPINIONS

BY JOHN RUPP

Mr. President and gentlemen, I am sorry that the report was not completed in time to be published even in agate type, but "those is the fact." So I am going to read the report and it must perforce be an interim report. But I am going to read it now, at any rate.

Under the common law system of jurisprudence, the decided cases are the primary tools and source material with which the Bench and Bar work in solving the problems of the public. The tremendous bulk of that source material in America and the great size of the annual accretions to it have caused serious concern to lawyers and judges in this country for many years. Particularly during the past twenty years many writers and several committees of various bar associations have published comments and reports on the subject. The suggested solutions vary but all agree that the problem is a very real one and that unless some solution be found, our legal system—like a man suffering from a lung disease—may drown in its own secretion. Being aware of the problem and of the fact that it besets this state, as well as all of the United States, your