TITLE I AND UNION DEMOCRACY

I

INTRODUCTION

This Note will explore the actual and potential role the law can play in ensuring that the internal affairs of local unions are governed in accordance with democratic values. Part II will briefly outline the political roots and the philosophical basis of Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). Part III will examine the judiciary's interpretation of specific sections of Title I by summarizing and analyzing the relevant case law. Part IV will measure the effect of Title I on a union local, the degree to which the statute aids the efforts of union dissidents and the results which flow from the statute's inadequacies. Part V will contain suggested changes in Title I which would strengthen the rights of union members and aid union reform efforts, and Part VI will summarize and conclude the Note.

II

THE POLITICAL HISTORY AND PHILOSOPHICAL BASIS OF THE LMRDA

During the late 1950's, Americans came to believe that large and powerful unions presented a threat to the general welfare of the country.[1] The goodwill and government support which the entire labor movement had painstakingly accumulated during the thirties[2] was squandered through a series of events which generated unpopular sentiment.[3] The political forces

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1. See A. McAdams, Power and Politics in Labor Legislation 7, 8, 10, 48 (1964). At that time Americans maintained an ambivalent attitude toward the labor movement. Union power was believed to be a double-edged sword which could be wielded for either the general good of the common workingman or for the selfish purposes of labor bosses. This ambivalence was fostered by the general belief that extensive labor reform legislation was necessary and was reinforced by the spectacular revelations of the McClellan Committee concerning criminal activity within the union movement. Astute legislators gauged the mood of the country and took up the effort to pass such legislation.

2. Id. at 9, 23. The American labor movement benefitted from the generally adverse public reaction towards business people during the Depression. This, in conjunction with federal efforts to support and nurture the labor movement, translated into record levels of union membership and popular support.

3. Id. at 27-29. Strikes called during World War II by the United Mine Workers' president, John L. Lewis, were interpreted as arrogant and unpatriotic expressions of raw economic power. Lewis' behavior during the war was a primary cause for the introduction and passage of the Taft-Hartley Act, an anti-labor statute.

necessary to create major reform legislation existed but they were disparate and unorganized.[4] A sustained, successful attack on specific problems within the labor movement had to be carefully orchestrated.[5]

Although labor's detractors vastly overrated the power of unions,[6] labor, as a whole, did occupy a position of politically strategic importance[7] which gave it immunity from direct attack. However, some unions within the movement were run by corrupt officials.[8] Labor racketeering was perceived to be the chink in labor's armor, and this issue lent itself to exploitation for the purposes of generating political publicity and manipulating public opinion.[9]

In 1957, the McClellan Committee[10] began its two and one-half year investigation of criminal activity in the labor movement. The Committee created the impression that unions were hotbeds of criminal activity.[11] This perception was created, in part, by the Committee's practice of subpoenaing a variety of unsavory characters who constantly invoked the Fifth Amendment.[12] Throughout the course of the proceedings, Committee members regaled America with tales of illegal payoffs, rigged elections and violence.[13]

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4. See generally id. at 1-18.

5. See id. at 10. This was manifested in the selection of the investigation committee and in the timing of the passage of the bill. Id. at 37-40.

6. See generally id. at 19-36, 65-68. Although the labor movement possessed economic power, its political effectiveness was hampered by factional rivalry which continued even after the formal unification of the American Federation of Labor (A.F.L.) and Congress of Industrial Organizations (C.I.O.) in 1955.

7. Id. at 3-5. The labor movement's provision of manpower and resources to Democratic Party candidates opposed to right-to-work laws during the 1958 elections proved to be invaluable.

8. For example, the Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am. when James R. Hoffa was president (see Select Comm. on Improper Activities in the Labor or Management Field, Second Interim Report, S. Rep. No. 621, 86th Cong., 1st Sess. 108-13 (1959) [hereinafter Second Report]); Locals 342 and 640 Amalgamated Meat Cutters and Butcher Workmen of N. Am. when Max Block was president (Second Report at 370-75); the United Bhd. of Carpenters and Joiners of Am. when Charles Johnson, Jr. was general executive board member (Second Report at 590-92).

9. See A. McAdams, supra note 1, at 2, 11, 36, 273-76.

10. Formally titled The Select Committee on Investigation of Improper Activities in Labor Management Affairs. The Committee members were Senators John L. McClellan, Sam J. Ervin, Jr., Joseph R. McCarthy, Karl E. Munot, John F. Kennedy, Pat McNamara, Irving Ives and Barry Goldwater. See A. McAdams, supra note 1, at 28.

11. A. McAdams, supra note 1, at 39, 40. McAdams claims that the reporting bias of the media slanted public perception of the Committee's activities. However, the nature of the questioning and the character of the individuals called before the Committee predictably encouraged that type of reporting. See text accompanying notes 12-14 infra.

12. See generally Hearings of the Select Comm. on Investigation of Improper Activities in the Labor Management Field, 85th Cong., 1st Sess. 4149-84 (1957) (testimony of J. Dioguardi), 4625-82 (testimony of A. Corallo), 7488-92 (testimony of H.L. Boling) [hereinafter Hearings].

13. See generally Second Report, supra note 8, at 1-120.

Unfortunately, James R. Hoffa, the president of the International Brotherhood of Teamsters (IBT), was the witness who captured the public's fascination and catapulted the Committee into national headlines.[14] Hoffa, a veteran of many union hall fights and picket line brawls,[15] wielded his power in a brutal and autocratic fashion.[16] He was infuriatingly arrogant,[17] and nothing intimidated him.[18] For Hoffa, unionism was a business in which there was no room for a principled democracy.[19] In the eyes of Teamsters, Hoffa was a demigod;[20] in the eyes of the country, he typified the corrupt, powerful and irresponsible union boss who had to be controlled.[21]

The McClellan Committee hit pay dirt with the testimony of Hoffa and other IBT officials.[22] Teamster officials were aware of, condoned, and participated in a variety of abusive practices.[23] The type of unionism practiced by the Teamsters, as many investigative journalists have since documented,[24] demonstrated the compelling need for federal regulation of the internal affairs of unions. The behavior of Hoffa and his Teamsters justified the McClellan Committee's recommendations to the Senate for labor reform legislation.[25] Indeed, the Teamsters contributed in no small part to the political atmosphere which made passage of such a bill inevitable.[26]

After the Committee issued its first interim report,[27] legislators introduced a flurry of labor reform bills.[28] During the political maneuverings in

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14. A. McAdams, supra note 1, at 11-12.

15. J. Hoffa & O. Fraley, Hoffa: The Real Story 27-43 (1975).

16. Hearings, supra note 12, at 4928-66 (testimony of J. Hoffa).

17. A. McAdams, supra note 1.

18. Hoffa & Fraley, supra note 15.

19. Id. at 22-23; P. Jacobs, The State of the Unions 17 (1963).

20. Hoffa & Fraley, supra note 15, at 24. Hoffa believed that the vast majority of Teamsters would support him for a bid seeking the presidency of the union despite his past conviction; D. Moldea, The Hoffa Wars 82-83 (1978). Despite Hoffa's testimony and the widely reported results of the McClellan Committee investigations, Hoffa was elected union president by a wide margin.

21. A. McAdams, supra note 1, at 39-40.

22. C. Summers, American Legislation for Union Democracy, 25 Mod. L. Rev. 273, 273 n.1. It is impossible to detail all of the findings of the McClellan Committee's investigation into the Teamsters. Summers states that the Committee heard more than 1500 witnesses and took over 46,000 pages of testimony during the entire course of its existence. More than half of the Committee's total hearings concerned the Teamsters.

23. Second Report, supra note 8.

24. See generally Moldea, supra note 20; S. Brill, The Teamsters 31-75 (1978).

25. Compare Second Report, supra note 8, with the Select Comm. on Improper Activities in the Labor or Management Field, Interim Report, S. Rep. No. 1417, 85th Cong., 2d Sess. 450-51 (1958) [hereinafter First Report]. The findings of the Committee concerning the Teamsters' abuse of power and breaches of fiduciary duty directly influenced its recommendations to the Senate.

26. A. McAdams, supra note 1, at 39-40.

27. First Report, supra note 25.

28. A. McAdams, supra note 1, at 57, Table 1 (the bills were sponsored by Kennedy-Ervin (S. 505), Goldwater (S. 48), McClellan (S. 1137), Kennedy-Ervin-Javits-Cooper (S. 1555) and Curtis (S. 76)).

preparation for the passage of the Kennedy-Ives Bill,[29] Senator McClellan proposed an amendment which guaranteed union members broad rights within their organizations.[30] McClellan stated that the amendment would enable union members to clean up their own unions by placing the tools of democracy in their own hands.[31] McClellan's amendment, however, was revised and watered down as it passed through the political process leading toward final adoption.[32] Nonetheless, despite the adoption of restrictive clauses,[33] its general language and purpose remained unchanged.[34] The amendment became what is now known as Title I of the LMRDA.[35]

Title I implicitly recognizes a worker's right to belong to and participate in a democratic union.[36] Although Senator McClellan intended to grant protection primarily to those members who challenged corrupt union leaders,[37] the statute's guarantees are not limited by requiring showings of criminal activity.[38] In other words, Title I enables a union member to bring an action against an autocratic yet crime-free union for the purpose of checking anti-democratic behavior. Thus, Congress mandated, in effect, that all unions should be run in a democratic manner regardless of the absence or presence of corruption. In the past, Congress had provided that individuals had the right to organize for the purpose of collective bargaining and for provision of mutual aid and protection through the National Labor Relations Act (NLRA).[39] Title I's mandate, read in conjunction with that of the NLRA, implies that as a matter of public policy, any labor organization which purports to engage in representational functions on behalf of its members should respond to its membership's needs through established or impromptu democratic mechanisms.

Although Title I protects union members from some forms of abuse,[40] it does not place a positive duty upon union leaders to respond to the dictates of their membership nor does it give union members tools which are

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29. See generally A. McAdams, supra note 1, at 87-112.

30. Remarks of Senator McClellan, 86th Cong., 1st Sess. (1959), reprinted in II NLRB, Legislative History of the LMRDA at 1102-03 (1959) [hereinafter NLRB].

31. Id.

32. A. McAdams, supra note 1, at 87-266.

33. Id. at 87-112, 185-86, 245.

34. Id.

35. 29 U.S.C. §§ 411-15 (1975). The full text of Title I appears in the Appendix, infra.

36. Id.

37. NLRB, supra note 30.

38. 29 U.S.C. § 412 (1975).

39. National Labor Relations Act, 29 U.S.C. § 157 (1976).

40. See Salzhandler v. Caputo, 316 F.2d 445, 448-49 (2d Cir.), cert. denied, 375 U.S. 946 (1963). The court determined that § 101(a)(2) protected union members from union discipline imposed in retaliation for the exercise of free speech. Before the passage of the Act, the court would have been unable to make such a ruling.

powerful enough to ensure that leaders will respond.[41] Congress did not correctly gauge the combined strength of the organizational, philosophical, sociological and historical barriers[42] which stood in the way of the union reformers who would attempt to utilize Title I. Congress' miscalculation can be attributed to the belief prevalent at the time that union democracy would occur naturally if unions were required to hold regularly scheduled elec-

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41. See Yanity v. Benware, 376 F.2d 197, 199-200 (2d Cir. 1967). The court held that § 101(a)(2) does not place a positive duty upon union leaders to open the doors of the union hall for members who request a general meeting. As a result, union members are deprived of opportunities to discuss issues of importance and to guide the actions of union leaders.

42. Sharp analytical lines cannot be drawn between the causes of resistance to democratic union reform. To a degree, a union takes on the character of its president who sets the tone and creates the atmosphere in which union members participate. The leaders, in turn, are shaped by the philosophy of leadership that they adopt. For example, Jimmy Hoffa believed that unionism was a business and should be totally devoid of the philosophical values which originally shaped the movement. P. Jacobs, supra note 19, at 3-39. On the other hand, progressive leaders whose honesty and integrity could not be questioned can grow out of touch with a changing membership. Such leaders would find it difficult to resist the paternalistic impulse to quash dissent simply because they "know better." Id. at 111-36; Autocracy and Insurgency in Organized Labor 147-200 (B. Hall ed. 1972). (These articles detail the problems which faced the International Ladies Garment Workers Union (I.L.G.W.U.).)

Organizational barriers which are accidents of history or the results of careful structural planning often frustrate democratic participation. For example, many unions have business agents, who are appointed officials in charge of administering the daily affairs of unions. At present, these officials have a great deal of power over the working lives of union members but their appointed status immunizes them from responsibility towards union members. Business agents originally functioned in some unions as organizers who would receive a commission for every new member they recruited. They would also be responsible for regularly collecting dues. As unions solidified their positions in society, obtained closed shop agreements and dues checkoff privileges, the impetus to provide fast, efficient and effective service dissipated. In other unions, business agents also acted as political precinct captains, whose main job was to keep the membership in line at election time. In either of these cases, it is difficult for a union member to bypass or confront her business agent without running the risk of having her insubordination remembered to her detriment at some later date. It would be virtually impossible for union members to change the constitution of their union to provide for the direct election of business agents. P. Jacobs, supra note 19, at 20-38.

The vagaries of human nature and social interaction can also come into play. On the one hand, union leaders become quickly accustomed to the benefits of holding office. Their work environment is considerably improved, they are bestowed with a hitherto unknown sense of social prestige and they usually receive generous benefits. Naturally, union leaders are not inclined to voluntarily step down from office; if challenged, most leaders fight to remain in office.

Another factor contributing to the difficulty of reforming a union is the average union member's apathy about the affairs of her union. This apathy, however, is not necessarily the result of a natural disinterest. Union members who complain, dissent or confront union officials are often perceived to be either crackpots or loudmouths. This perception, which sometimes has a basis in reality, may discourage union members with legitimate claims from pressing those claims for fear that they too will be so labeled.

tions.[43] However, experience has revealed the erroneous nature of this belief.[44] Elections are merely an indicia of democracy, not the sum and substance of democracy.[45]

Absent sweeping changes in the law,[46] the civil liberties protections of Title I remain the key to attaining internal union reform and ensuring leadership responsiveness.[47] The limited success of Title I litigants indicates that Congress should amend the statute to improve the chances of successful reform efforts. The degree to which Title I should be amended can be determined, in part, through an analysis of the case law which interprets and applies the statute.

III

TITLE I AND THE COURTS

Members of the judiciary adopt one of two positions in Title I litigation. Some judges are reluctant to interfere in internal union affairs unless they find that Congress has clearly ordered them to do so.[48] Other judges actively seek to further the congressional goal of establishing union democracy and ending arbitrary or despotic leadership.[49] A survey of Title I case law indicates that the courts are adopting the latter approach with increasing

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Many union members justifiably fear that union leaders (and employers) will retaliate if they press a claim too far or enlist the support of others on a particular issue. Retaliation usually translates into dismissal from the job. This is too high a price for the average working person to pay. Many long-term union members who have held union office and have voiced their dissent have been dispatched quickly and efficiently. Their peers are mystified by their behavior because, after all, "they should have known better." These reactions plainly indicate that dissent by anyone, in any form, regardless of its legitimacy, will not be tolerated in most unions. See generally P. Jacobs, supra note 19, at 141-42; S. Lipset, M. Trow & J. Coleman, Union Democracy 238-69 (1956); P. Sultan, The Disenchanted Unionist 104-64 (1963); cf. J. Bellace & A. Berkowitz, The Landrum-Griffin Act: Twenty Years of Federal Protection of Union Members' Rights 82-83 (1979); D. McLaughlin & A. Schoomaker, The Landrum-Griffin Act and Union Democracy 74-126 (1979).

43. Title IV of the LMRDA, 29 U.S.C. §§ 481-83 (1975). See generally J. Bellace & A. Berkowitz, supra note 42, at 151-206 (1979).

44. H. Benson, Democratic Rights for Union Members 52-134 (1979).

45. See generally S. Lipset, M. Trow & J. Coleman, Union Democracy (1956) (study of the institutions within a typical democratic union which legitimize dissent and opposition).

46. Congress could enact a uniform labor union code which carefully defines the organizational structure which a union shall maintain, the exact legal relationship between union leaders and members and the amount of control union members would have over their union leaders.

47. Benson, supra note 44, at 22-25. See also B. Hall, Autocracy and Insurgency in Organized Labor 1-8 (1972).

48. See, e.g., Allen v. Int'l Alliance of Theatrical, Stage Employees, 338 F.2d 309, 317 (5th Cir. 1964).

49. See, e.g., Schuchardt v. Millwrights and Machinery Erectors Local Union No. 2834, 380 F.2d 795, 797 (10th Cir. 1967).

frequency.[50] Nowhere is this trend more apparent than in litigation concerning the equal rights provision of the LMRDA.[51]

A. Equal Rights

Section 101(a)(1) of the LMRDA guarantees that every union member shall have an equal right to nominate candidates and vote in union elections, to vote on referendums, to attend and participate in union meetings and to vote upon the business before such meetings subject to the reasonable rules and regulations of the union.[52] The subject matter of the litigation over the equal rights provision can be separated into two areas of analysis. The first area involves election-related cases in which Section 101(a)(1) and other provisions of Title I give rise to private causes of action within the scope of the federal courts' subject matter jurisdiction.[53] This often conflicts with Title IV's exclusive grant of discretionary power to the Secretary of Labor to resolve all election-related complaints.[54] The second area concerns cases in which the courts interpret the equal rights provision's substantive guarantees.

1. Elections

The Supreme Court resolved some of the issues raised by the conflict between Titles I and IV in *Calhoon v. Harvey*.[55] In *Calhoon,* the plaintiffs, members of the National Marine Engineers Beneficial Association, challenged the validity of those sections of their union's constitution and bylaws which restricted nomination rights and candidate eligibility in union elections.[56] The union's constitution and bylaws deprived a union member of

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50. See text accompanying notes 51-112 infra.

51. EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

29 U.S.C. § 411(a)(1) (1975).

52. Id.

53. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

29 U.S.C. § 412 (1975).

54. 29 U.S.C. §§ 481-82 (1975).

55. 379 U.S. 134 (1964).

56. Id. at 135-36.

the right to nominate anyone but herself and further provided that a member would not be eligible to hold office unless she had spent a set amount of time working in the trade.[57] These requirements severely limited the pool of potential candidates.[58] The plaintiffs argued that these requirements unreasonably infringed upon their right to nominate candidates.[59] The Court disagreed, stating that Section 101(a)(1) "is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote."[60] Union members may complain of infringement of the right to nominate and vote only when discriminatory requirements are applied unevenly in an arbitrary or capricious manner.[61] Challenges to discriminatory voting and nomination restrictions which are universally applied can only be raised through the administrative proceedings established under Title IV.[62]

Many commentators voiced their concern over the possible scope and the practical ramifications of the *Calhoon* doctrine.[63] An overly broad reading of *Calhoon* would inevitably lead to the total evisceration of the substance of the equal rights provision.[64] Furthermore, without the right to maintain a private suit alleging Title I violations which occurred during an election, union members would be forced to utilize the unpredictable administrative remedy of Title IV.[65] Many of the lower courts now recognize the validity of these objections and interpret *Calhoon* narrowly.[66]

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57. Id. at 136.

58. Note, Pre-Election Remedies Under the Landrum-Griffin Act: The "Twilight Zone" Between Election Rights Under Title IV and the Guarantees of Titles I and V, 74 Colum. L. Rev. 1105, 1109 n.26 (1974) (plaintiff's attorney estimated that only 47 of the union's 10,000 members met the eligibility criteria) [hereinafter Twilight Zone].

59. 379 U.S. at 138.

60. Id. at 139.

61. Id. at 139-40.

62. Id.

63. See generally Note, Titles I & IV of the LMRDA: A Resolution of the Conflict of Remedies, 42 U. Chi. L. Rev. 166 (1974) [hereinafter Resolution of the Conflict]; Twilight Zone, supra note 58, at 1105; Note, Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections, 13 Harv. C.R.-C.L. L. Rev. 247 (1978) [hereinafter Autocracy and Insurgency]; Note, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L.J. 407 (1972) [hereinafter Thirteen Years].

64. See, e.g., Alexander v. Int'l Union of Operating Engineers, 624 F.2d 1235 (5th Cir. 1980).

65. See notes 44, 63 supra; see generally H. Benson, supra note 44; Resolution of the Conflict, supra note 63; Twilight Zone, supra note 58; Autocracy and Insurgency, supra note 63; Thirteen Years, supra note 63. See also Kraska v. UMW, 686 F.2d 202, 207 (3d Cir. 1982).

66. See Crowley v. Local No. 8, Furniture & Piano Moving, Furniture Store Drivers, 679 F.2d 978, 987-93 (1st Cir. 1982), cert. granted, 51 U.S.L.W. 3552 (1983); *Kraska,* 686 F.2d at 204-07; Kupau v. Yamamoto, 622 F.2d 449, 454-57 (9th Cir. 1980); Aguirre v. Automotive Teamsters, 633 F.2d 168, 173-74 (9th Cir. 1980); Bunz v. Moving Picture Machine Operators Local 224, 567 F.2d 1117, 1122-24 (D.C. Cir. 1977).

The First Circuit is the latest court to narrowly interpret *Calhoon*. In *Crowley v. Local No. 82*,[67] dissident union members alleged that they were falsely declared ineligible to run for union office and wrongly denied a place on the ballot because union officials discriminatorily and incorrectly applied certain candidate eligibility requirements.[68] The district court granted the dissidents' request for a temporary restraining order to prevent union officials from counting the ballots.[69] After the court found that the plaintiffs were likely to prove their allegations, it issued an injunction ordering the union officials to conduct a new nomination meeting and election.[70] On appeal, the local union challenged the injunction on the grounds that the district court had "erroneously reconciled the conflict between Titles I and IV of the LMRDA" in contravention of the *Calhoon* doctrine.[71]

The First Circuit began its examination by reviewing the policy considerations which underlie Title IV. The court found that Title IV was intended to ensure free and democratic elections,[72] to give unions great latitude in resolving election disputes,[73] and to prevent unnecessary governmental intrusion into a union's internal affairs.[74] The exclusivity of the post-election remedy reflected the desire to leave the resolution of election disputes to the expertise of the Secretary of Labor,[75] to protect unions from frivolous suits and unnecessary judicial interference[76] and to consolidate all of the claims arising from a single election into one suit.[77] The court observed, however, that despite the significance of these policy considerations, recent Supreme Court decisions had given union members the right to intervene in Title IV proceedings[78] and to petition the courts to review the Secretary of Labor's decision not to sue under Title IV.[79] These decisions undercut the judicial interpretations of *Calhoon* which mandated an exclusive administrative remedy in post-election disputes.[80]

The court then explored the legislative history of the LMRDA and found that there was tension between, on the one hand, giving a judge the

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67. 679 F.2d 978 (1st Cir. 1982).
68. Id. at 982.
69. Id. at 983.
70. Id. at 981.
71. Id. at 984.
72. Id. at 986 (citing Wirtz v. Local 153, Glass Blowers Ass'n. 389 U.S. 463, 470 (1968)).
73. Id. at 986 (citing *Wirtz*, 389 U.S. at 471).
74. Id. at 986 (citing *Wirtz*, 389 U.S. at 470-71; Hodgson v. Local 6799, United Steelworkers, 403 U.S. 333, 338 (1971)).
75. Id. at 986 (citing *Wirtz*, 389 U.S. at 471).
76. Id.
77. Id.
78. Trbovich v. UMW, 404 U.S. 528 (1972).
79. Dunlop v. Bachowski, 421 U.S. 560 (1975).
80. 679 F.2d at 986 (citing *Bunz*, 567 F.2d 1124).

power to remedy any Title I violations which occur during an election and, on the other hand, granting exclusive remedial powers to the Secretary of Labor for any Title IV violations which occur after an election.[81] Nevertheless, despite the tension, the court held that absent a specific statutory provision to the contrary, federal courts are not foreclosed from asserting jurisdiction over Title I claims in election cases where the ballots have yet to be counted.[82] The court found that the importance of Title I and the rights which it protects require the speedy and effective relief which only the courts can supply.[83] Otherwise, those rights might be violated with impunity.[84]

The crucial question is whether a complaint alleges direct violations of the rights enumerated in Title I. A district court will not have jurisdiction over a Title IV complaint disguised as a Title I complaint.[85] The court found that the *Crowley* plaintiffs properly alleged Title I violations and did not attack the substance of the union's eligibility requirements.[86] Accordingly, the district court did have jurisdiction over the case. The court found that because the ballots had not yet been counted, the election had yet to be "conducted."[87] Therefore, the district court did not infringe upon the Secretary of Labor's jurisdiction under Title IV and could use its equitable powers to order that a new nomination meeting and election be held.[88]

2. Substantive Guarantees

The extent to which the equal rights provision grants and protects substantive rights is questionable. The unknown breadth of the *Calhoon* doctrine also makes the issue unclear. Some courts read *Calhoon* literally and expansively. The most extreme instance of this is *Alexander v. International Union of Operating Engineers.*[89] In *Alexander*, the membership of a local union unanimously rejected the ratification of an industry-wide contract,[90] and it was clear that the local's members had an absolute right to do so under the International's constitution.[91] Their vote should have decided the matter.[92] However, the International president ordered the local's business agent to sign the agreement.[93] The plaintiffs instituted a suit claiming that their equal right to vote under Section 101(a)(1) had been violated.[94]

81. 679 F.2d at 989.
82. Id. at 989-90.
83. Id. at 986-87.
84. Id. at 993.
85. Id. at 987 (citing Depew v. Edmiston, 386 F.2d 710, 712 (3d Cir. 1967)).
86. Id. at 990.
87. Id. at 993.
88. Id. at 998.
89. 624 F.2d 1235 (5th Cir. 1980).
90. Id. at 1237.
91. Id.
92. Id.
93. Id.
94. Id. at 1239-40.

On appeal, Judge Roney of the Fifth Circuit ruled that the issue, under Title I, was not whether the members were treated fairly but whether they were treated equally.[95] In this instance, the International's abrogation of a unanimous vote affected all of the local's members equally.[96] In addition, the court reasoned that the union was not required by law to submit the contract to a membership vote.[97] Therefore, there was no violation of the plaintiffs' equal right to vote.[98]

Alexander was significantly modified the following year in *Christopher v. Safeway Stores, Inc.*[99] There the Fifth Circuit, per Judge Politz, ruled that the Section 101(a)(1) right to vote in referendums was broad enough to protect the right of union members to vote on collective bargaining agreements when their union's constitution or bylaws so provided.[100] The court refused to accept the argument that a right created or protected by the statute may be abrogated as long as it is equally denied to all.[101] The court found neither logic nor the rudiments of justice in such a proposition.[102] Thus, the overly broad interpretations of *Calhoon* which insisted on that proposition are subject to question.

In the non-election context the right to vote upon union business entails more than a right to cast a naked ballot. In *Bunz v. Moving Picture Machine Operators' Protective Union Local 224,*[103] the plaintiffs alleged that their Section 101(a)(1) rights had been violated because they were denied the right to cast a meaningful ballot.[104] The plaintiffs' union had held a referendum to determine if assessments should be levied upon members who had refused to walk on a picket line.[105] The local's bylaws required that assessments be approved by a two-thirds majority of the members present at the referendum meeting.[106] Although the measure was approved by a majority of those

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95. Id. at 1240.
96. Id.
97. Id.
98. Id. See also Stelling v. Int'l Bhd. of Electrical Workers, 587 F.2d 1379, 1384-85 (9th Cir. 1978).
99. 644 F.2d 467 (5th Cir. 1981).
100. Id. at 470-71. See also Trail v. Int'l Bhd. of Teamsters, 542 F.2d 961, 966 (6th Cir. 1976).
101. 644 F.2d at 470.
102. Id. This is not to say that every provision of a union's constitution and bylaws is enforceable under the equal rights provision. Only those sections which fall within the meaning of the statutory terms of whose application is discriminatory in effect may be challenged under § 101(a)(1). Cf. Nienaber v. Ohio Valley Carpenter's Dist. Council, 652 F.2d 1284, 1286 (6th Cir. 1981).
103. 567 F.2d 1117 (D.C. Cir. 1977).
104. Id. at 1119.
105. Id.
106. Id.

present, it failed to receive the necessary two-thirds support.[107] In spite of this, the union imposed the assessment.[108]

The District of Columbia Circuit Court observed that an equal right to vote encompasses the right to a meaningful ballot.[109] After reviewing Section 101(a)(1) case law, the court determined that a union member's right to vote would be denied if serious discrimination, irregularities or foul play occurred at any point during a referendum.[110] In this case, the abrogation of a union bylaw which protected minority rights clearly denied the plaintiffs of the right to cast a meaningful ballot.[111] Therefore, the union violated the equal rights provision of the LMRDA.[112]

The equal rights provision remains an important weapon in the legal arsenal of dissidents seeking to bring democracy to their unions. Inroads into the *Calhoon* doctrine, coupled with a new willingness to enforce union created rights and to protect the integrity of membership decisions through the invalidation of unfair balloting procedures are evidence of the potential power of this provision. However, the reluctance of some courts to accept the "new" equal rights provision and the failure of Congress to specifically describe the substantive rights which should exist in the absence of union created rights indicate that the statute can be considerably improved through amendment.

B. Freedom of Assembly, Freedom of Speech

Section 101(a)(2) of the LMRDA provides that every member of any labor organization shall have the right to assemble freely with other members and to express any views concerning the affairs of the union, subject to the organization's reasonable rules and regulations.[113] The freedom of as-

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107. Id.
108. Id.
109. Id. at 1121.
110. Id. at 1120-22.
111. Id. at 1122.
112. Id.
113. FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.
29 U.S.C. § 411(a)(2) (1975).

sembly clause has two possible interpretations. It could place either a duty upon union leaders to hold meetings at the request of the membership or a sanction upon interference with members' rights to assemble at places outside of the union hall.[114] Until recently, the latter interpretation was the predominant view.

In *Yanity v. Benware*,[115] the plaintiffs requested that their union president hold a general membership meeting to discuss whether the union should support them in a union-related matter pending before a state court.[116] They accompanied their request with a petition signed by other union members as required by the union's constitution.[117] The president refused the request and plaintiffs brought suit alleging that their rights under Section 101(a)(2) had been violated.[118] The Second Circuit ruled that the freedom of assembly provision was only intended to enable union members to meet outside of the union without fear of reprisal.[119] The court concluded that the provision did not place a positive duty upon union officials to hold general membership meetings at the request of the membership.[120]

At least one court has reached the opposite conclusion. In *Wade v. Teamsters, Local 247*,[121] the plaintiffs filed suit to compel the union to hold monthly membership meetings.[122] According to the defendant local's own affidavits, a general membership meeting had not been held for at least eighteen years.[123] The court ruled that the failure of the local to hold regular membership meetings violated the plaintiffs' rights under Section 101(a)(2).[124]

Perhaps the two cases can be distinguished on their facts.[125] In *Yanity*, the plaintiffs requested a special meeting to discuss a specific proposition, while in *Wade*, the plaintiffs requested a schedule of regular meetings.[126] Thus, the two cases could be reconciled by claiming that Section 101(a)(2) imposes a positive duty to hold only regular meetings and not special meetings. However, neither the language of the statute nor the scope of the *Yanity* rule justifies this harmonization. The *Yanity* court clearly stated that

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114. J. Bellace & A. Berkowitz, supra note 42.
115. 376 F.2d 197 (2d Cir. 1967).
116. Id. at 199.
117. Id.
118. Id.
119. Id. at 200.
120. Id.
121. 527 F. Supp. 1169 (E.D. Mich. 1981).
122. Id. at 1170.
123. Id. at 1172.
124. Id. at 1175.
125. See text accompanying notes 115-24 supra.
126. *Wade*, 527 F. Supp. at 1170. (Indeed, the *Wade* court attempted to make this very distinction.)

the freedom of assembly provision only extends as far as protecting the right of union members to hold "rump [sic] sessions" outside of the union hall; the court refused to place any affirmative duty upon a union to hold meetings.[127]

A recent decision by the Ninth Circuit indicates that the *Yanity* rule may no longer be the preferred interpretation of Section 101(a)(2). *Lodge 1380, Brotherhood of Railway, Airline and Steamship Clerks (BRAC) v. Dennis,*[128] presented the court with an opportunity to determine the breadth of Section 101(a)(2). After reviewing the relevant legislative history, the court rejected *Yanity*'s narrow interpretation of Section 101(a)(2).[129] The court declared that Congress desired to prevent reprisals for the exercise of free speech and assembly *and* to protect the free speech of union dissidents from any chilling effect.[130] Refusals by union leaders to provide open forums in which free speech may be exercised can produce a chilling effect.[131] This case undermines the logical basis of the *Yanity* decision by finding that Section 101(a)(2) seeks to prevent a chilling effect on union dissidents' speech, whether it be in the form of actual reprisals or actions taken before the right to speak is exercised.

The freedom of speech clause protects the content of statements made by union members but does not provide a basis for obtaining access to a forum or a medium in which effective debate may take place (subject to the dissident union member's arguable right to a forum to prevent a chilling effect on free speech).[132] The Second Circuit ruled upon the issue of content soon after the enactment of the LMRDA in *Salzhandler v. Caputo.*[133] In *Salzhandler*, the plaintiff was disciplined by his union for issuing allegedly libelous statements concerning the handling of union funds by union officers.[134] The plaintiff sought to have his punishment revoked by a district court, claiming that the union violated his rights under the freedom of speech clause of the Act.[135] The district court dismissed his complaint, but the Second Circuit reversed on appeal.[136] The court ruled that the free speech provision of the Act granted broader protections than the First Amendment.[137] If it did not, then a union trial board consisting of laymen unfamiliar with the intricacies of libel law would inevitably discipline dissi-

127. 376 F.2d at 199-200.
128. 625 F.2d 819 (9th Cir. 1980).
129. Id. at 826-27.
130. Id.
131. Id.
132. Id.
133. 316 F.2d 445 (2d Cir. 1963).
134. Id. at 446.
135. Id.
136. Id. at 446, 451.
137. Id. at 449-50.

dent union members whether or not their statements were, in fact, libelous.[138] This result would defeat the purposes of the LMRDA.[139] However, the court indicated that libelous statements such as Salzhandler's could be the basis for a civil suit under state libel laws.[140]

The latter portion of the Second Circuit's holding is troublesome. Although state courts render judgments for plaintiff-union officials only in situations where it is proven that the libelous statement was made with the "knowledge that it was false or with reckless disregard of whether it was false or not,"[141] the financial burden of maintaining a defense to such an action is considerable. Widespread use of harassing libel suits could have a chilling effect upon open debate within a union.

The *Salzhandler* court also pointed out the existence of two express exceptions to the free speech provision.[142] The LMRDA provides that nothing within Section 101(a)(2) will impair the right of a union to enforce rules which either define the responsibility of a union member towards his union as an institution or command a union member to refrain from conduct which interferes with the performance of the union's legal or contractual duties.[143] The substance of these exceptions has not been extensively litigated, but the scope of *Salzhandler* indicates that they should be applied narrowly.

Freedom of speech necessarily entails the right to communicate with others in a forum or through a medium. One such means of communication is the union meeting.[144] Mass mailings and articles in union newspapers are other means by which union members may engage in intelligent discourse. One court has ruled that union officials must mail literature submitted by a union member provided that the member pays for it.[145] Another court has ruled that union officials are not required to give dissidents access to the union newspaper provided that members are not denied the opportunity to communicate by other means.[146] Neither judgment furthers the cause of

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138. Id. at 450-51.

139. Id.

140. Id. at 451.

141. See McIntyre v. Bakers for a Democratic Union, 54 A.D. 2d 872, 873, 388 N.Y.S. 2d 587, 599 (1st Dep't 1976) (where the court applied the standard of New York Times v. Sullivan, 376 U.S. 254 (1963) and overcame the hurdle of federal pre-emption by way of Linn v. United Plant Guard Workers, 383 U.S. 53 (1966)).

142. 316 F.2d at 450. See text accompanying note 113 supra.

143. For example, a union member may criticize his union during a critical period in contract negotiations but he may not advocate a strike which would violate the union's commitment to maintain work without interruption during that same period. Compare Leonard v. MIT Employees' Union, 225 F. Supp. 937 (D. Mass. 1964) with Falcone v. Dantinne, 288 F. Supp. 719, 728 (E.D. Pa. 1968), rev'd on other grounds, 420 F.2d 1157 (3d Cir. 1969).

144. See text accompanying notes 115-31 supra.

145. Blanchard v. Johnson, 388 F. Supp. 208, 216 (N.D. Ohio 1975), aff'd in relevant part, 532 F.2d 1074 (6th Cir. 1976).

146. Sheldon v. O'Callaghan, 497 F.2d 1276, 1282 (2d Cir. 1974).

union democracy. In the former case, union dissidents must pay a service charge for the privilege of communicating with their fellow union members by mail. As a result, the exercise of free speech depends directly upon the ability to pay for the privilege. However, most dissidents are not in a financial position to take advantage of this option. In the latter case, union members are denied the opportunity to have articles published in a newspaper which is directly supported by union dues. As a result, the financial backers of the union newspaper cannot exercise any editorial control over its content. In either case, Section 101(a)(2) is unnecessarily handicapped by these judicial interpretations.

On the whole, the freedom of speech and assembly provision has fared well in the courts. However, the provision does not protect union members from harassing suits based upon state libel laws filed by union officials. Nor does the provision guarantee union members access to forums or mediums in which they may exercise their rights to free speech and free assembly. Union democracy would be advanced if statutory amendments remedying these problems were passed.

C. Safeguards Against Improper Disciplinary Action

Because unions have a legitimate interest in maintaining some semblance of order within the rank and file,[147] Congress never considered taking away unions' disciplinary powers. However, Section 101(a)(5) contains procedural safeguards against improper disciplinary action in order to prevent unions from using this power in an arbitrary and capricious manner.[148] Although it is not necessary to provide a union member with the full panoply of safeguards found in criminal proceedings,[149] the courts interpret this section broadly and require a number of additional safeguards not expressly stated in the statute.

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147. A union has a legitimate interest in maintaining member solidarity during a strike, for example, and therefore, it is completely justified in levying fines against members who cross a picket line.

148. SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION: No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

. . .

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

29 U.S.C. § 411(a)(5), (b) (1975).

149. See, e.g., Ritz v. O'Donnell, 566 F.2d 731 (D.C. Cir. 1977).

The charges must be written and delivered to the accused. A union official may not eliminate the notice requirement by assuming that the member has knowledge of her transgression.[150] The notice of charges must contain specific allegations, identify the accuser and state the time and place of trial.[151] The degree of specificity required varies from case to case,[152] but if the notice informs the member with reasonable particularity of the details for the charges,[153] then the statutory notice requirements have been fulfilled.

Courts will use a rule of reason to determine what is or is not an adequate time to prepare a defense. One court has ruled that seven days' notice does not meet the procedural due process standard required by this section.[154] Others have ruled that fourteen days' notice[155] and twenty-three days' notice[156] fill the procedural requirement.

A fundamental requisite to a full and fair hearing is an unbiased tribunal.[157] If an accused is found guilty but the verdict is set aside, she may not be retried on identical charges before the same panel.[158] The accused has a right to face her accuser,[159] call witnesses,[160] confront witnesses[161] and cross-examine them.[162] Since the standard for sufficiency of the evidence necessary to convict is less weighty or formalized than that required in court trials, it is rare that a tribunal's decision on the sufficiency of the evidence will be reviewed by a court.[163]

As noted, Section 101(a)(5) contains procedural, not substantive, protections. The Supreme Court in *International Brotherhood of Boilermakers v. Hardeman*[164] decided that "section 101(a)(5) was not intended to autho-

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150. Berg v. Watson, 417 F. Supp. 806, 811 n.11 (S.D.N.Y. 1976).

151. Reilly v. Sheet Metal Workers' Int'l Ass'n, 488 F. Supp. 1121, 1126 (S.D.N.Y. 1980).

152. Eisman v. Joint Bd. of Amalgamated Clothing Workers, 352 F. Supp. 429, 435 (D. Md. 1972), aff'd, 496 F.2d 1313 (4th Cir. 1974); Gleason v. Chain Serv. Restaurant, 300 F. Supp. 1241, 1251 (S.D.N.Y. 1969), aff'd, 422 F.2d 342 (2d Cir. 1970).

153. Int'l Bhd. of Boilermakers v. Hardeman, 401 U.S. 233, 243-45 (1971); Jacques v. Local 1418, Int'l Longshoremen's Ass'n, 246 F. Supp. 857, 860 (E.D. La. 1965).

154. *Jacques,* 246 F. Supp. at 859.

155. Vars v. Int'l Bhd. of Boilermakers, 215 F. Supp. 943, 948 (D. Conn. 1963), aff'd, 320 F.2d 576 (2d Cir. 1963).

156. *Falcone,* 288 F. Supp. at 727.

157. Stein v. Mutuel Clerks' Guild, 560 F.2d 486, 491 (1st Cir. 1977).

158. Feltington v. Moving Picture Mach. Operators Union Local 306, 605 F.2d 1251 (2d Cir. 1979).

159. Ritz v. O'Donnell, 566 F.2d 731, 735 (D.C. Cir. 1977).

160. Yochim v. Caputo, 51 L.R.R.M. 2516, 2517 (S.D.N.Y. 1962).

161. Id.

162. Id.

163. Rosario v. Amalgamated Ladies' Garment Cutters' Union Local 10, 605 F.2d 1228, 1243 (2d Cir. 1979).

164. 401 U.S. 233 (1971).

rize courts to determine the scope of offenses for which a union may discipline its members."[165] Nor may a court scrutinize a union regulation to determine if a particular act warrants punishment at all.[166] Indeed, a union may even discipline members for offenses which are not proscribed by specific rules as long as it is reasonably ascertainable from general provisions that certain conduct is forbidden.[167]

Although the Court is essentially correct in this interpretation of Section 101(a)(5), many problems necessarily follow from it. Union members may be disciplined under vague or overbroad provisions. They may be disciplined under ex post facto rules. These considerations alone would justify a grant of discretionary power to the courts to examine the substantive rules upon which disciplinary action is based, especially in particularly flagrant circumstances.

Under present law, the courts will examine the substantive basis of the disciplinary action if the disciplined member alleges that the union's action was in retaliation for the exercise of Title I rights. The court's analysis and final judgment in such cases will depend upon whether the disciplined individual is a member, an appointed official or an elected official. Each class calls for a different standard of review.

If the disciplined individual is a member and is being punished for the exercise of his Title I rights, then the court will automatically strike down the union's penalty.[168] If the disciplined member is an appointed official, a different result follows. The Supreme Court laid down the applicable standard in such instances in *Finnegan v. Leu*.[169] In *Finnegan,* the plaintiffs were former business agents of a local union.[170] During a campaign for the presidency of the union, the plaintiffs threw their support behind one candidate.[171] Unfortunately for the plaintiffs, the opposing candidate won the election.[172] The new president promptly fired all of the local's business agents,[173] and plaintiffs brought suit alleging that they had been improperly disciplined for exercising their rights under Title I.[174] The Court rejected this argument and stated that neither Section 101(a)(5) nor Section 609[175] was

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165. Id. at 244.
166. Id. at 245.
167. Id. at 244-45. See Perry v. Milk Drivers & Dairy Employees Union Local 302, 656 F.2d 536, 539 (9th Cir. 1981); Semancik v. UMW, 466 F.2d 144, 157 (3d Cir. 1972).
168. *Salzhandler*, 316 F.2d at 451.
169. 456 U.S. 431 (1982).
170. Id. at 433.
171. Id.
172. Id.
173. Id. at 433-34.
174. Id. at 434.
175. PROHIBITION ON CERTAIN DISCIPLINE BY LABOR ORGANIZATIONS: It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to

intended to protect a member's status as an employee of the union.[176] In other words, removal from office is not "discipline" for the purposes of the Act.[177] The Court stated further that Title I does not place any limits upon an elected union leader's freedom to choose and appoint a personal staff.[178] Title I, the Court emphasized, protects union members, not union officials.[179]

The *Finnegan* decision contains loose and overbroad language. If the decision is interpreted broadly, then any elected union official may be fired by a union president for exercising his Title I rights. This totally ignores the possibility that the discharged official could have a mandate from the members to speak out vociferously on a particular issue. His dismissal would then have a "chilling effect" upon free speech within the union. Because two of the Justices of the five member majority in *Finnegan* specifically limited their decision to the facts of the case and reserved this free speech issue for a future time,[180] this argument retains some vitality.

If *Finnegan* is not broadened to cover elected officials as well as appointed officials, then the discipline of elected union officials may be reviewed under the standard announced in *Maceira v. Pagan.*[181] In *Maceira,* the plaintiff was an elected shop steward who, by all accounts, was an effective advocate and an active union member.[182] However, his position on certain issues was often diametrically opposed to those of the local's officials.[183] This friction resulted in the plaintiff's dismissal from his position as shop steward.[184] After exhausting all union remedies, he brought a court action alleging that he had been improperly disciplined for exercising his Title I rights[185] and requested a preliminary injunction. The district court denied his request but the First Circuit reversed on appeal.

In its opinion, the circuit court determined that the Section 101(a)(5) protection of union members who were "otherwise disciplined" did not

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fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of Section 102 shall be applicable in the enforcement of this section.

29 U.S.C. § 529 (1975).

176. *Finnegan,* 456 U.S. at 437-39.

177. Id.

178. Id. at 441.

179. Id. at 442.

180. Id. at 442-43 (Blackmun, J., concurring).

181. 649 F.2d 8 (1st Cir. 1981).

182. Id. at 10-11.

183. Id. at 11.

184. Id.

185. Id. at 12.

extend to disciplinary removals from union office.[186] However, the very same language in Section 609[187] did offer some degree of protection to elected union officials from retaliatory dismissals for the exercise of Title I rights.[188] The court stated that the removal of dissident officers might have a "chilling effect" on political speech within the union.[189] This "chilling effect," if not properly countered by judicial review, might cause irreparable harm to the democratic environment which the LMRDA seeks to create.[190] The court enunciated a test which balanced the plaintiff's free speech interest against the legitimate union concerns which might warrant restrictions on that interest.[191] The three factors which must be considered are: 1) the precise nature of the activity for which the official has been disciplined; 2) the duties of the official in question; and 3) the nature of the interests which the union seeks to protect.[192] The results of this test will determine the outcome of the dismissed officer's suit.

Although Section 101(a)(5) provides adequate procedural safeguards, it cannot be used to challenge the substantive rules which are the foundation of a union's disciplinary actions against its members. Title I read in conjunction with other provisions of the LMRDA might protect elected union officers under the *Maceira* test, but the broad language of the *Finnegan* doctrine seriously undermines it. Both problems could be corrected by amending Section 101(a)(5).

D. Exhaustion of Internal Remedies and the Right to Sue

Sections 101(a)(4)[193] and 102[194] govern union members' right to sue under Title I. Section 101(a)(4) lifts any union-imposed bar upon a mem-

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186. Id. at 13 (citing Grand Lodge of Int'l Ass'n of Machinists v. King, 335 F.2d 340, 345 (9th Cir.), cert. denied, 379 U.S. 920 (1964)).

187. See note 175 supra.

188. 649 F.2d at 14.

189. Id. at 18.

190. Id.

191. Id. at 14.

192. Id. at 15.

193. PROTECTION OF THE RIGHT TO SUE: No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance or petition.

29 U.S.C. § 411(a)(4) (1975).

194. See note 53 supra.

ber's right to sue.[195] However, union members may be required to exhaust their internal union grievance procedures for up to four months after the alleged violation before instituting any legal or administrative proceeding.[196] This requirement clearly expresses Congress' intent to give labor unions the opportunity to resolve their own internal problems before the courts become involved. The courts interpret this provision flexibly and will usually drop the exhaustion requirement when: 1) the internal remedy is uncertain or futile;[197] 2) the violation of federal law is clear and undisputed;[198] and 3) the injury to the union member is immediate and difficult to compensate by means of a subsequent remedy.[199] Some courts place the burden of proving the utility and effectiveness of the internal union appeals process upon the union.[200] Others require the plaintiff to show that exhaustion would have been clearly futile and dilatory.[201] On the whole, the cases indicate that the courts have used this discretionary policy wisely.

Section 102 of the LMRDA grants the federal courts jurisdiction to hear claims arising under Title I and the power to fashion any appropriate remedy.[202] The award of attorneys' fees to successful plaintiffs is the most important remedy to evolve from the interpretation of this section. In *Hall v. Cole*,[203] the Supreme Court ruled that it is permissible for the courts to award attorneys' fees under Section 102.[204] The Court reasoned that when one member's Title I rights are violated, the rights of all other members are threatened.[205] A successful lawsuit which vindicates the member whose rights were infringed necessarily benefits all other union members.[206] Therefore, reimbursement of attorneys' fees shifts the cost of the litigation to the class which benefits from the litigation.[207] This rule greatly benefitted union members who would have been otherwise unable to vindicate their Title I rights.

The award of attorneys' fees, however, remains a discretionary remedy which may be awarded only if a class benefit is shown. Yet, there could very

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195. See note 193 supra.
196. Id.
197. Detroy v. American Guild of Variety Artists, 286 F.2d 75, 81 (2d Cir. 1961).
198. Id.
199. Id.
200. Fruit and Vegetable Packers & Warehousemen Local 760 v. Morley, 378 F.2d 738, 745 (9th Cir. 1967).
201. Farowitz v. Associated Musicians Local 802, 241 F. Supp. 895, 906-7 (S.D.N.Y. 1965).
202. See note 53 supra.
203. 412 U.S. 1 (1973).
204. Id. at 14.
205. Id. at 8.
206. Id.
207. Id. at 8-9.

well be instances where a potentially successful Title I litigant hesitates to bring suit because she is poor and the nature of the case indicates that it will not benefit the class of union members to which she belongs.[208] These plaintiffs should not be discouraged from taking full advantage of Title I simply because they are unable to pay for litigation expenses. In the interests of furthering union democracy, private enforcement should be encouraged by amending the statute to guarantee an award of attorneys' fees to all successful Title I litigants.

IV

A UNION AND ITS MEMBERS

The full effect of Title I upon the internal affairs of labor unions cannot be gauged solely through an analysis of the relevant case law. The statute's functional utility must also be measured by examining its influence on the day to day affairs of a local union. Accordingly, this Note now explores the internal affairs of Local 100 of the Transport Workers Union of America.[209]

A. The Workplace

A quick glance at a New York City subway map reveals its enormous size. The system consists of 239 route miles,[210] 458 stations,[211] 8,800 pieces of rolling stock[212] and carries approximately 990 million passengers a year[213] to destinations throughout four of New York's five boroughs.[214] The system's size is matched by the problems which beset it. Inadequate financing,[215] crime,[216] unsafe and unhealthy environmental conditions,[217] gross

208. See Kerr v. Screen Extras Guild, 526 F.2d 67 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976).

209. The author interviewed two dissidents within Local 100. An edited transcript is on file and available for inspection at the offices of N.Y.U. Rev. L. & Soc. Change. Because the dissidents' identities must remain anonymous, some information which they gave was not directly verifiable. Therefore, the author has attempted to buttress their information with references from other sources wherever possible (reference to the transcripts shall be hereinafter cited as Interviews).

210. N.Y. Times, Apr. 4, 1980, at B1, col. 1.

211. Id.

212. N.Y. Times, July 6, 1982, at B4, col. 1.

213. N.Y. Times, Oct. 23, 1982, at 29, col. 3.

214. The Bronx, Brooklyn, Queens and Manhattan are served by the three interconnecting systems: the BMT, the IRT and the IND.

215. See S. Estreicher, Collective Bargaining in the New York City Transit System, 1937-1950: A Case Study in the Politics of Municipal Unionism 6-14 (May 1974) (Master's thesis) [hereinafter Bargaining]; N.Y. Times, March 14, 1981, at A1, col. 6.

216. N.Y. Times, Aug. 28, 1981, at B1, col. 1.

217. N.Y. Times, Oct. 4, 1981, at 48, col. 1.

mismanagement,[218] declining ridership,[219] expensive equipment failures,[220] political attacks,[221] low productivity[222] and low worker morale[223] continually plague the system. Yet, the trains keep on running. In part, this accomplishment is due to the combined efforts of the 31,000 members of the Transport Workers Union, Local 100 (TWU)[224] who operate the system.

B. The Union

1. A Brief History

During the years prior to 1934, executives in New York's transit industry maintained a vehemently anti-union labor policy.[225] Spies, scab labor, mass firings, "yellow dog" contracts and compulsory membership in "company" unions effectuated this policy of worker domination.[226] In this hostile environment, the TWU took root and grew.[227]

The TWU was the product of a joint venture between the American Communist Party (C.P.), which sought to establish control over the transportation industry,[228] and Irish immigrant workers,[229] led by Mike Quill,[230] who sought to better their working conditions. Accounts of the nature of this alliance vary depending upon the personal loyalties of the individuals questioned.[231] Some maintain that Quill was a willing dupe of the Communist Party.[232] Others believe that Quill manipulated the party.[233] Whatever the case may be, it is reasonable to assume that the C.P. provided Quill with valuable support and guidance in his drive to organize transit workers.[234]

The hostile environment created by industry's labor practices coupled with the political character of the participants of the alliance produced a unique organizing strategy:[235]

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218. N.Y. Times, July 6, 1982, at A1, col. 4.
219. N.Y. Times, Oct. 23, 1983, at 29, col. 3.
220. N.Y. Times, Feb. 3, 1984, at B1, col. 1; Nov. 11, 1981, at A1, col. 3; and Aug. 3, 1981, at B1, col. 6.
221. N.Y. Times, Oct. 4, 1981, at E6, col. 1.
222. Id.
223. Id.
224. N.Y. Times, Apr. 1, 1980, at B8, col. 2.
225. Bargaining, supra note 215, at 18-34.
226. Id.
227. Id. at 42-44.
228. Id. at 37.
229. Id. at 15-18, 44-46.
230. Id. at 35-36.
231. Id. at 35-42.
232. Id.
233. Id.
234. Id.
235. Id. at 47.

> The original half-dozen members . . . decided that each was to build his own little group of five or six. Each man was picked only after long deliberation. Members of each cell knew only their leader and fellow cell members. They were not told the names of men in other groups. In three weeks, we had forty-five [men], chipped in, took an office and printed circulars.[236]

Locations which contained high concentrations of workers who performed functions essential to the subway's operations were the focal point of organizational activities.[237] This strategy was purposely designed to give the TWU offensive and defensive capabilities. On the one hand, a walkout by essential workers alone would paralyze the entire system.[238] On the other, management could not successfully deploy its tried and true union busting tactics against a cellularly structured organization.[239] With this strategy, the TWU organized the workers of New York's transit industry.[240]

Once the TWU had become an established union, the organizational structure began to serve a third purpose, namely, the perpetuation of leadership control over the will of the rank and file.[241] A variety of techniques were employed to attain this goal. Groups of members were divided into divisions which were subdivided further into sections.[242] Carefully supervised meetings were called section by section.[243] As a result, the members of each section never knew or understood what was actually transpiring in the other parts of the union.[244] Local-wide meetings were never held except when a strike vote was needed.[245] These votes were held at open air meetings which were packed with non-union members who "voted" by shouting their support for the leadership.[246]

The dissemination of information was controlled and manipulated by appointed officials (organizers) who often planted information to pit one section against another.[247] The organizers also functioned as business agents often providing representational services to members of the rank and file.[248] Because organizers were appointed, they were responsible to the president

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236. Id. at 42 (quoting Tallmer, The TWU Story: It Was Quill's Idea in the First Place, N.Y. Post, Jan. 4, 1966, at 19, col. 3.).
237. Id. at 52.
238. Id. at 51.
239. Id.
240. Id. at 35-75.
241. Id. at 76-79.
242. Id.
243. Id.
244. Id.
245. Id.
246. Id.
247. Id.
248. Id.

alone and not to the membership they represented.[249] An organizer's appointed status enabled him to wield his representational powers in a manner which would ensure membership loyalty.[250] Finally, the leaders of the union disciplined any member who dared to speak out or organize a group against the official policies of the union.[251] Expulsion from the union for "disloyalty" inevitably led to the loss of a job.[252] Naturally, not many members were inclined to challenge Quill's leadership.[253]

Circumstances, however, do not remain static; they change. The C.P. has long since been purged from the union.[254] Mike Quill is dead. Most of the old-time rank and file have been replaced by a young and ethnically diverse workforce.[255] Yet Quill's legacy, the organizational structure of the TWU, remains largely intact.[256]

2. Current Problems

Generally, the historical forces and circumstances which shaped the TWU are not unique.[257] Many other industrial unions were also founded by strong leaders who exercised total control over the rank and file to maintain solidarity and to squelch opposition.[258] Title I was intended to put an end to this type of autocratic control by placing the tools of democracy into the hands of union members.[259] Therefore, Title I's effectiveness should be judged by analyzing its utilitarian value in achieving democratic reform in centrally controlled unions. Accordingly, the experiences of dissidents within the TWU provide an excellent basis for rendering this judgment.[260]

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249. Id.
250. Id.
251. Id.
252. Id.
253. See id. at 156-91, 255-81. The only real opposition that Quill encountered came from staunch Irish Catholic members who wanted the union purged of Quill's Communist Party allies. Quill did eventually break with the Communist Party; this rank and file opposition was a contributing factor. The purge did not bring democratic reform to the union.
254. Id.
255. N.Y. Times, Apr. 7, 1980, at B1, col. 6.
256. E.g., TWU Constitution and Bylaws (on file at the offices of N.Y.U. Rev. L. & Soc. Change).
257. Namely, the political effects of the Depression, i.e., official government support of the labor movement, as well as the formation of the C.I.O., the surge of socialism and communism, and the rabid anti-union stance of employers. See generally P. Foner, History of the Labor Movement in the United States Volumes II, III, IV (1955, 1964, 1965).
258. For example, Dave Beck of the Teamsters, John L. Lewis of the United Mineworkers.
259. See text accompanying notes 26-39 supra.
260. See note 209 supra.

The dissident movement within the TWU coalesced during the 1978 transit contract negotiations.[261] At that time, rumblings could be heard throughout the system that the new contract would be a sellout.[262] This fear was generated by two perceptions. First, many members believed that the TWU and the New York City Transit Authority (NYCTA) had established a mutually advantageous relationship which was detrimental to the interests of the rank and file.[263] Second, many members also believed that the leadership engaged in various tactics designed to maintain authoritarian control over the rank and file for the purpose of perpetuating its rule.[264] When the terms of the new contract were announced, many believed that these fears had been justified.[265]

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261. Before 1978, a variety of ad hoc dissident groups were in operation. However, their activities focused upon specific locations.

262. N.Y. Times, Apr. 19, 1978, at A25, col. 2.

263. I was . . . completely disheartened with the manner in which . . . meeting(s) (were) conducted . . . . At that meeting . . . union members who disagreed with the chair were continually ruled out of order and not permitted to voice their opinion on union matters. Whenever a . . . member tried to speak, he was shouted down by what might be called the house crowd . . . we have begun to think of these meetings as a tactic to discourage participation and to perpetuate the rule of the old guard . . . .

For years, I have heard fellow workers express dissatisfaction with the TWU. The loudest complaint is the union's complacency, as working conditions deteriorate and the cuts in services and jobs mount. Another major concern . . . is the lack of union protection in grievance and disciplinary procedures.

Up until the recent contract, however, the feeling has been that this was something that we would just have to live with. Most workers felt that we could trust our union at contract time . . . . It [is] . . . . clear is that this trust has been betrayed by the leadership of the TWU . . . .

[W]henever there is widespread worker dissatisfaction with any union, management usually exploits the situation . . . . (by trying) to weaken or destroy the union. . . [T]his has not happened . . . . [w]hat has happened is . . . management exploitation of workers with what can only be described as union compliance.

The fact is that the Transit Authority and the leaders of the Transit [sic] Workers Union seem to be in a shameful state of blissful harmony. And why not? How else can it be when management saves the union the cost of having to collect union dues and gives the union patronage assignments. Union members are now wondering which side our union is on . . . . [W]hen the traditional adversary roles of union and management disappear we begin to think that our interest is not being looked after . . . .

Workers have now realized that it is more important to make the union responsive to the needs and the demands of its members . . . . [A] "no" vote against the contract will, in reality, be the workers' way of regaining control of the union . . . . The latent dissatisfaction workers held for the union has surfaced and now the workers are talking about change.

Id.

264. Id.

265. Id.; see Bargaining, supra note 215, at 298-312. Estreicher's analysis of collective bargaining between the TWU and the NYCTA strongly supports the contention that political

The rank and file exploded when the terms of the new contract became known.[266] Several hundred transit workers descended on the union hall and spontaneously formed a picket line to express their dissatisfaction.[267] Believing that the ratification vote would be rigged[268] by the leadership, the dissidents filed a suit to challenge the voting process which had just begun.[269] Although the dissidents eventually succeeded in attaining the right to publicize their opposition,[270] the issuance of new ballots[271] and the appointment of an impartial observer to supervise the ballot count,[272] they lost the contract ratification fight by a slim 540 vote margin.[273] Despite this loss, the dissidents learned and proved that the leadership could be challenged.

From 1978 up to the present time, dissident activity has grown and flourished. Even though the incumbent leadership was reelected in 1979 and 1981,[274] the dissidents have been able to achieve some reform.[275] However,

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ties had been established between the government and the TWU leadership in the past. The degree to which these ties have been either strengthened or weakened remains a matter of conjecture.

266. N.Y. Times, Apr. 12, 1978, at 19, col. 4.

267. Id.

268. The dissidents sought a temporary restraining order on two grounds. First, they claimed that the ballots were "confusing, misleading and erroneous because they contained only two choices: either the member voted "to accept" or to "reject and strike." They maintained that this was a bullying tactic to scare the membership into approving the contract by waiving the possibility of a strike before them. See Black v. TWU, 454 F. Supp. 813, 815 (S.D.N.Y. 1978); N.Y. Times, Apr. 11, 1978, at B3, col. 2. Second, union officials planned to mix the ballots of union members who worked for the private bus lines, the NYCTA and the Manhattan and Bronx Surface Transit Operating Authority (MBSTOA) all together although the terms and conditions of employment for each were different. See *Black,* 454 F. Supp. at 815. But see N.Y. Times, Apr. 25, 1978, at 28, col. 3; Interviews, supra note 209, at 42, 46. In a close count, the votes of the union members who worked for the private bus lines and benefitted from the contract would be a determining factor. N.Y. Times, Apr. 25, 1978, at 28, col. 3. The judge issued the injunction. Id.

269. Id.; see *Black,* 454 F. Supp. at 813.

270. Id.; Interviews, supra note 209, at 35-37. NYCTA managers were ripping down informational flyers posted by the dissidents even though the union was allowed to post notices of its position on the new contract. This practice was ordered to be stopped.

271. N.Y. Times, Apr. 26, 1978, at 1, col. 4. The TWU relented after the injunction was issued and agreed to send out new ballots.

272. Id. The leaders also agreed to procedures to ensure that the ballot counting procedures were fair.

273. N.Y. Times, July 27, 1978, at D16, col. 3. TWU members in the NYCTA voted 10,825 to 8,506 against the contract. TWU members in MBSTOA voted 3,214 to 577 for the contract. The lopsided vote in the MBSTOA unit as compared to the NYCTA unit indicates that there were very real differences in the contract terms applicable to each group. N.Y. Times, Apr. 7, 1980, at B1, col. 6.

274. N.Y. Times, Apr. 7, 1980, at B3, col. 1-2. In 1979, the president of the local won the election by a plurality, not a majority. Three dissident leaders won a majority of the votes, thereby indicating widespread membership dissatisfaction with the union's "old guard." In 1981, the president won by a majority. The dissidents restrained themselves because the union was about to be forced to pay fines for violating the Taylor Law, during the 1980 strike, N.Y. Civ. Serv. Law § 210 (McKinney 1983) (the Taylor Law bars public employees from striking.)

275. Interviews, supra note 209, at 95-96. The dissidents believe that the union is more democratic now than it was in the past but that change has come about very slowly.

the dissidents cannot resort to Title I to institute changes which would bring responsive democracy to the union because the statute is too narrow.

For example, the equal rights provision does not ensure that union officials are directly chosen by the electorate they serve.[276] In the TWU, this shortcoming is manifested in two ways. First, the president of the union still retains the power to appoint organizers at will.[277] As a result, TWU members cannot choose or control the officials who represent them at grievance and disciplinary proceedings.[278] Second, in the TWU it is possible for some officials to be elected by members they do not represent.[279] The TWU is divided into divisions and each division is represented by an elected vice-president.[280] Although each vice-president represents only one division and runs for a specific divisional post, every member of every division can vote for each vice-president.[281] Therefore, it is possible for a divisional vice-president to be reelected even if the majority of the members in her division oppose her.[282] The history of the TWU indicates that the rules which govern the president's appointive powers and the election of vice presidents are designed to perpetuate the power and position of union office holders.[283]

The freedom of assembly provision does not ensure that TWU members may assemble freely in their union hall. First, members cannot force the TWU to change its long-standing rule against holding local wide meetings.[284] Second, members of one division may still be legally barred from attending and observing the meetings of other divisions.[285] Although the union rules governing these situations probably fall under the "reasonable rule and regulation"[286] proviso of Section 101(a)(1), the history of the TWU indicates that these rules are designed to maintain control over the membership.[287]

The freedom of speech provision does not adequately ensure that issues of local wide concern are freely and openly debated. It is important to note that the TWU has approximately 31,000 members who work different shifts

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276. See McKeon v. Highway Drivers & Helpers Local 107, 223 F. Supp. 341 (D. Del. 1963).
277. Interviews, supra note 209, at 69-71, 90-91; see text accompanying notes 248-49 supra.
278. Interviews, supra note 209, at 69-71.
279. Id. at 91-94.
280. Id.
281. Id.
282. Id.
283. See text accompanying notes 248-50 supra.
284. See text accompanying notes 243-45 supra.
285. Interviews, supra note 209.
286. See note 113 supra.
287. See text accompanying notes 242-45 supra.

around the clock at different locations throughout the New York City transit system.[288] Because union officials are not required to provide either a mailing list of members[289] or space in the union newspaper upon request,[290] it is virtually impossible for dissidents to provide information to a majority of members in order to encourage local wide debate of specific issues on a regular basis.[291] Historically, the union leadership has used this centralized control over the flow of information to hamper effective debate[292] and Title I provides no remedy for this situation.[293]

3. *The Results of Title I's Failure to Establish Participatory Democracy in the TWU*

The issues of rank and file control of the union and the lack of leadership responsiveness to the needs of the membership were the primary causes of the 1980 New York City transit strike.[294] George McDonald, a dissident leader,[295] stated: "The workers' morale is broken. If the union and the NYCTA had addressed the issues, the real issues, before Tuesday, we'd have a contract now. And it would have been a figure that's already been passed by."[296] The "real issues" included union representation which accurately reflected the ethnic and racial makeup of the union;[297] oppressive managerial practices;[298] unhealthy and dangerous working conditions;[299] the lack of promotional opportunities,[300] and the need for a job training program.[301] If the leadership had been conscientious in its duty to respond to the dictates of the membership, these issues could have been addressed. Instead, the transit workers were forced to go on strike.[302]

Currently, the NYCTA is seeking to make productivity gains.[303] Yet, these gains will not be possible if rank and file members of the TWU

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288. See text accompanying notes 210-14, 224 supra.
289. See text accompanying note 145 supra.
290. See text accompanying note 146 supra.
291. Interviews, supra note 209, at 98.
292. See text accompanying note 247 supra.
293. See text accompanying notes 145-46 supra.
294. See generally N.Y. Times, Apr. 15, 1980, at A1, col. 2, at A34, col. 3; Apr. 12, 1980, at A1, col. 6; Apr. 11, 1980, at A1, col. 6; Apr. 10, 1980, at A1, col. 6; Apr. 9, 1980, at Al, col. 6; Apr. 8, 1980, at A1, col. 1; Apr. 7, 1980, at A1, col. 3, at B1, col. 6; Apr. 6, 1980, at A1, col. 6; Apr. 5, 1980, at A1 col. 4; Apr. 4, 1980, at A1, col. 6; Apr. 3, 1980, at A1, col. 6; Apr. 2, 1980, at A1, col. 6; Apr. 1, 1980, at A1, col. 6, at B8, col. 5.
295. See N.Y. Times, May 10, 1980, at 27, col. 6.
296. N.Y. Times, Apr. 7, 1980, at B3, col. 2.
297. N.Y. Times, Apr. 7, 1980, at B1, col. 6.
298. Id.
299. Id.
300. Id.
301. Id.
302. See note 294 supra.
303. N.Y. Times, Oct. 4, 1981, § 4 at 6E, col.1.

continue to believe that they cannot control or trust the leaders of their union.[304]

Two generalizations may be drawn from the preceding case history. First, the failure to establish real democracy within unions will inevitably lead to unnecessary industrial strife. Second, Title I's guarantees are not broad enough to foster leadership responsiveness to the needs of the membership.

V

SUGGESTED REFORMS

From the case law and the TWU's case history, it is apparent that certain reforms must be implemented in Title I.

A. Equal Rights

The democratic process necessarily entails the right to choose representatives and to dictate the courses of action which they will take. If democracy is to be established within unions, then the breadth of the equal rights provision must be expanded to encompass this concept. Such an expansion would guarantee union members the absolute right to: 1) directly vote for all union officials who engage in representational functions;[305] 2) cast a binding vote on all issues which significantly affect contractual rights and union business;[306] 3) submit proposals to the general membership for approval;[307] 4) request the recall of officers;[308] and 5) nominate any member in good standing for election to any union office.[309] These guaranteed rights would be enforced in the federal courts to ensure that they are neither infringed nor denied.[310]

B. Freedom of Speech and Assembly

Democracy also encompasses the concept of free, fair and open debate of relevant issues. Accordingly, the freedom of speech and assembly provisions in Title I should be expanded to facilitate such debate. The provisions should be amended to guarantee union members the right to: 1) gain access to all union publications;[311] 2) receive, upon request, a mailing list of all

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304. Interviews, supra note 209, at 122-27.
305. See text accompanying notes 276-83 supra.
306. See text accompanying notes 89-112 supra.
307. See text accompanying notes 113-31 supra.
308. Id. See text accompanying notes 40-41 supra.
309. See text accompanying notes 55-66 supra.
310. Id. (In cases in which Titles I and IV conflict, the courts would necessarily have discretionary jurisdiction.)
311. See text accompanying notes 144-45, 288-92 supra.

union members;[312] 3) hold regularly scheduled union meetings at the union hall;[313] and 4) hold special meetings at the union hall upon a reasonable showing of membership interest.[314]

C. Safeguards Against Improper Discipline

In a democracy, the governed should not be at the mercy of the governors. Adequate safeguards which will protect union members from abuses of disciplinary power should be established. Therefore, an expanded provision should grant the courts the discretionary power to examine the substantive union rules upon which the disciplinary action is based.[315]

Furthermore, the right of union members to be represented by officers of their choosing is endangered by the lack of procedural and substantive protections available to elected officers.[316] Accordingly, the *Maceira* balancing test should be included within the new provision.[317]

D. Right of Action

If these rights are to have any meaning, a union member must have the right to enforce them in a court of law. In most instances, however, union members cannot afford to pay for the expenses which litigation necessarily entails. Therefore, a provision which requires a court to make a mandatory award of attorneys' fees to successful Title I litigants should be adopted.[318]

VI

CONCLUSION

This Note has set forth the manner in which Title I of the LMRDA affects the relationship between union members and their leaders. It has been shown that Title I does not provide union members with the power to force their unions to operate in a democratic manner.

Under Title I, union members do not have a clear and inalienable right to nominate and to elect those fellow union members who they believe are qualified to hold union office. Union members do not have a right to ratify contracts which will affect the very essence of their lives. They do not have a right to gain access to union halls or union publications which are directly subsidized with their dues. They cannot live free from the fear that active

312. See text accompanying notes 145, 288-93 supra.
313. See text accompanying notes 115-31, 284-87 supra.
314. Id.
315. See text accompanying notes 164-67 supra.
316. See text accompanying notes 169-92 supra.
317. See text accompanying notes 181-92 supra.
318. See text accompanying notes 202-08 supra.

participation will be punished by the maintenance of harassment suits or disciplinary proceedings. They cannot be sure that brutal and cynical violations of the few rights which they do possess will be redressed in a court of law. Finally, union members can never safely assume that their union is not, in reality, the private business enterprise of their leaders. If Title I is carefully revised, then perhaps union members will be able to institute real and lasting changes in their organizations.

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APPENDIX

TITLE I—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

BILL OF RIGHTS

SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) DUES, INITIATION FEES, AND ASSESSMENTS.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of the Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar

governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

CIVIL ENFORCEMENT

SEC. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

RETENTION OF EXISTING RIGHTS

SEC. 103. Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

RIGHT TO COPIES OF COLLECTIVE BARGAINING AGREEMENTS

SEC. 104. It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of section 210 shall be applicable in the enforcement of this section.

INFORMATION AS TO ACT

SEC. 105. Every labor organization shall inform its members concerning the provisions of this Act.