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LEASING OF NAVAL PROPERTIES IN
THE VIRGIN ISLANDS

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HEARINGS
BEFORE THE
TERRITORIES AND INSULAR AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
EIGHTY-EIGHTH CONGRESS
FIRST SESSION
ON

THE STATUS OF LEASES ON CERTAIN LANDS OWNED BY
THE UNITED STATES NAVY ON ST. THOMAS,
VIRGIN ISLANDS

OCTOBER 29 AND 30, 1963

Printed for the use of the
Committee on Interior and Insular Affairs



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HEARINGS
IN FRONT OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

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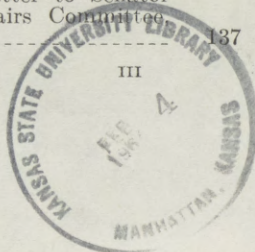
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LEASING OF NAVAL PROPERTIES IN THE VIRGIN ISLANDS

TUESDAY, OCTOBER 29, 1963

U.S. SENATE,
SUBCOMMITTEE ON TERRITORIES AND INSULAR AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 3112, New Senate Office Building, Senator Gaylord Nelson (presiding).

Present: Senators Nelson, Dominick, Mechem, and Walters.

Also present: Jerry Verkler, staff director; Stewart French, chief counsel; and James Gamble, professional staff member.

Senator NELSON. I will call the meeting of the subcommittee to order.

This is an open, public hearing by the Subcommittee on Territories and Insular Affairs of the Senate Interior Committee on the status of the occupants of certain lands owned by the U.S. Navy on St. Thomas, V.I., of the United States, and on the action or alleged actions of certain administrative officers with respect to such lands and their present occupants.

This inquiry is the result of the unanimous decision of the Interior Committee at its executive session on October 17, and I was asked to serve as chairman in the place of the distinguished Senator from Washington, Senator Jackson, who is chairman of both the Interior Committee and its Territories subcommittee.

The facts in the matter are not wholly clear from the records that have been available thus far to the committee, and I believe it would be far better for the witnesses to develop the facts than for me to try to state them at this point. However, we start with a few basic facts: The lands in question were purchased by the U.S. Navy prior to World War II for defense purposes. At the conclusion of hostilities, the Navy found it no longer needed to occupy the defense installations it had constructed on the lands, and the Department of the Interior took over their management in part. Just what the arrangement was between Interior and Navy will, I trust, be made clear by witnesses who are in full possession of the facts.

Subsequently, certain instruments which permitted private persons to occupy and use the lands were executed by Government officials for varying periods of time and for varying amounts of compensation. Recently, certain actions have been taken, primarily by the Department of the Interior officials, which the occupants believe are inequitable and in derogation of what the occupants consider are their property rights.

It is to the status of these Navy-owned lands, their present occupancy and use, and probable future action with respect to them, that this hearing is directed. The Interior Committee does have clear-cut responsibility and jurisdiction under the Legislative Reorganization Act of 1946 for Federal legislation respecting the Virgin Islands, and it is in fulfillment of this responsibility that this hearing is being held.

As witnesses this morning we had spokesmen for both the administrative branch of the Government and for the occupants of the lands. Our first witness will be Mr. John Kirwan, Acting Director of the Office of Territories of the Department of the Interior. Unless some member of the committee desires to make a statement, I will call Mr. Kirwan.

Mr. Kirwan, I thought it would be the most orderly procedure to have the presentation of the view of the governmental agencies involved and then a statement of any of the other people who have negotiations with the Department to follow that, and if anybody wishes at the end of the hearings when both sides have been heard to make any rebuttal we would be happy to hear that.

Mr. KIRWAN. I would like our counsel, Mrs. Van Cleve, to sit next to me, if she may.

STATEMENT OF JOHN J. KIRWAN, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MRS. RUTH VAN CLEVE, ASSISTANT SOLICITOR, TERRITORIES

Mr. KIRWAN. Mr. Chairman, if it would prove feasible I would like to complete the statement first before responding to questions but, of course, that is up to the chairman and the committee.

Senator NELSON. Why do you not proceed?

Mr. KIRWAN. On August 19, 1963, I sent the following memorandum to Assistant Secretary John A. Carver, Jr.:

AUGUST 19, 1963.

Memorandum

To: John A. Carver, Jr., Assistant Secretary, Public Land Management.

From: Acting Director.

Subject: Naval properties, St. Thomas, V.I.

On August 15, 1963, the Navy canceled the January 1, 1948, permit to Interior for the naval properties on St. Thomas. I acknowledged this cancellation on the same day. Copies of both Navy's letter and my reply I sent to you at the time.

I have also sent out on the same date, e.g., August 15, 1963, letters on the enclosed form to the 30 individuals concerned in St. Thomas. They should have received same on Monday, August 19.

I have also accepted, signing "John J. Kirwan, for Robert M. Mangan" a license revocable on 30 days notice from Navy to Vicorp, for all of the 125 acres of college land, which for technical reasons I have on a permit from Navy to Vicorp was necessary in order to do two things:

1. Allow Vicorp to issue at once the necessary sublicenses to the 30 individuals concerned, and to confirm the continued validity of the 70 odd permits also outstanding from Vicorp to the private parties.

2. To allow the continued existence of the Development Department of Vicorp, its payroll, its mission, and so forth.

The above actions will enable Navy now to declare the subject property excess to GSA, thus allowing the submarine base to be transferred to Vicorp, and the airfield to the local government.

I have also discussed with Governor Paiewonsky and with Mr. Robert Cramer the above lease, permit, and license cancellation situation.

I have urged Mr. Cramer to issue to the 30 individuals affected promptly licenses which will be identical in rent to be paid with the instruments canceled on August 15. These licenses (Vicorp standard permit forms) are revocable at will, although we would always try to give adequate notice. I suggested identical rental rates during the interim period of perhaps 3 to 6 months until Vicorp and the local government have title to the subject property.

I have urged both Mr. Cramer and Governor Paiewonsky alike to refrain from taking any fixed position, or from making any specific commitments for the future with any of the 30 former lessees. I suggested they reassure them that they will be given every consideration consistent with the public interest, and that both the local government and Vicorp (whichever may obtain a given parcel of land) have adequate leasing authority to work out any fair arrangements at the time the land is transferred. But I urged that both gentlemen remain free and uncommitted with regard to any specifics until their organization has both the facts and the responsibility for action. I also asked Mr. Cramer to make clear to the lessees in his dealings with them in issuing the new permits that it was the Office of Territories and not the Navy Department which took the initiative in this cancellation.

JOHN J. KIRWAN.

Enclosure.

cc: Hon. Ralph M. Paiewonsky, Mr. Robert P. Cramer.

The enclosure to that memo, and I would again call to your notice that it was dated August 19.

The enclosure was the standard form of notice of termination given to the tenant.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C.

DEAR SIR: This notice is to advise you that the Department of the Navy has today canceled the permit to this Department of January 1, 1948, pertaining to the St. Thomas naval property and has repossessed all such property. Accordingly, the premises you occupy in St. Thomas, V.I., pursuant to an instrument dated _____, is under paragraph _____ thereof, canceled.

The Virgin Island Corporation will be granted shortly a license for these premises, and will in turn tender to you a new sublicense substantially equal to the instrument canceled above, except that it will be revocable upon not more than 30 days notice.

Senator DOMINICK. Just a minute, Mr. Kirwan, did you say a new sublicense?

Mr. KIRWAN. I am sorry, tendered to you a sublicense substantially.

Senator DOMINICK. Thank you.

Mr. KIRWAN (reading):

Equal to the instrument canceled above. The property you occupy is expected to be transferred shortly to either Vicorp or to the Government of the Virgin Islands, each of which agencies has full negotiated leasing authority, and each of which can make leases of such duration, and upon such terms as may be in the public interest.

You may be assured that every consideration will be given to minimizing or avoiding completely any interruptions to your activities, or to any hardships or inconveniences to you, consistent with the public interest, and that due regard will be given all concerned to the circumstances of your occupancy to date.

Sincerely yours,

JOHN J. KIRWAN,
Acting Director.

Senator NELSON. I don't like to interrupt, but just a question here on the next to the last paragraph.

The property you occupy is expected to be transferred shortly to either Vicorp or to the Government of the Virgin Islands each of which agency has full—

Mr. KIRWAN. Negotiated leasing authority. That is, each of those agencies, Mr. Chairman, may enter into leasing arrangements with private parties without going through competitive public bidding.

Senator NELSON. This would be after GSA had disposed of the property, would it not?

Mr. KIRWAN. That is correct.

Senator NELSON. I thought you meant they have it now.

Mr. KIRWAN. They have the authority now but they do not have the property now. After the GSA had worked its work they would have had both the authority and the property itself.

I cite this statement of our intentions made more than 2 months ago because there has been some suggestion that Interior was indifferent to the potential problems faced by individual tenants, and had no real expectation that they would be dealt with fairly and justly, with due regard for the public interest on the one hand, and all relevant facts surrounding past occupancy on the other. I also wanted to make clear at the beginning that our concern on this matter did not date from the first inquiry from this committee, which we welcome, but indeed has been the most important and consistent single factor in our policy for some years.

On the subject properties today are 110 tenants, excluding the purely residential areas. Except for two or three instances, all 110 tenants are commercial enterprises, largely engaged in manufacturing or providing tourist services.

Of these 110 tenants, 85 occupy by virtue of instruments called "permits" and always have. These 85 tenants pay a total of \$15,986.12 per month rent. Many have many substantial investments.

The remaining 25 out of the 110 tenants held occupancy until August 15, 1963, by virtue of instruments called leases. They were not leases in fact, and never had been, but rather they were no more and no less than the same kind of permits held by the other 85 tenants. In most cases, however, it is likely that these 25 tenants thought they held leases rather than permits. These 25 tenants pay \$3,800.50 per month rent, or less than the "permit" holders on the average.

On August 15, 1963, these 25 tenants were given notice of what had always been the fact, i.e., their legal status differed in no way from the other 85 tenants. They were told, however, that notwithstanding this fact, the two entities foreseen as their future landlord (Vicorp and the government of the Virgin Islands) had adequate negotiating leasing authority, something which the Department of the Interior never had, and would work out with them fair arrangements, consistent with the public interest, which would take into account the history of any given occupancy.

In 1948, the Navy, having no immediate need for the properties in St. Thomas, gave them to Interior on a revocable permit, to allow them to be placed in such use as we could as a permittee subject to notice to quit at any time. The permit included language which said that leases could be given, subject to all such instruments falling at any time the property might be recaptured by Navy. Navy further stated that it did not intend to exercise such right of recapture (which right was itself unqualified) except in the case of an emergency.

Whatever may have been the intent of such language, it did not convey authority from Navy to Interior to lease, but at best indicated

that Navy had no objection to such leasing as Interior might otherwise be authorized to perform. It is possible, however, that such language was misread as itself authorizing leasing, at least until 1955, when Navy, in a letter relating to a nearby parcel of land but discussing it in the context of the 1948 permit, said that it was not able to delegate such leasing authority to Interior.

Nonetheless, beginning in 1950 (with respect to tenants still occupying the property), and continuing through 1960, the Interior Department or its agents did issue instruments to a total of 25 parties still in residence (out of an overall total of 110 tenants at present) which were called "leases" and which held themselves out to be leases.

It is difficult to reconstruct what must have been the rationale behind such a practice, particularly after the 1955 letter from Navy. There is no doubt that, in general, there was a great desire to cause these naval properties to play a vital role in the economic development of St. Thomas. It was realized that such lands could be developed more surely and efficiently if the tenants were there in a lessee, rather than a permittee status, and the wish may have been father to the thought. In retrospect, it was not a kindness to these 25 tenants to have given them instruments which did not accurately and candidly describe the nature of their occupancy. To point out in 1963 that these 25 tenants had been dealt with in a most unusual manner from 1950 to 1960, was simply to state the obvious, to establish a fact, and not to make a new decision.

By the early part of 1961, we were morally certain that all tenants without exception on the Navy properties held nothing more than revocable permits, however they might be denominated. By the end of 1961, we were legally certain of this. From the beginning of 1961, until the present time, we have not entered into a single "lease," nor have we permitted the assignment of such "leases" to other parties, in view of our knowledge of their nature. We have also not permitted any such tenants to make new substantial investment in their places, knowing them to be without the protection afforded by a valid lease.

From that time on, we adopted a policy of issuing permits, called such, for all new occupancy, revocable upon notice, and 85 out of 110 tenants today hold such permits. We also hoped to gradually cause some of the other 25 tenants to change over to an admitted permit basis; for example, when such party sought additional benefits from us, but we had little success on this.

We sponsored legislation in 1962, which would have had the foreseen byproduct of allowing the local government to deal equitably with this problem, just as we now propose in our recommended transfer to such government of part of this property. A similar legislative proposal was also sponsored by Interior about 1959, but was not introduced, which differed in that it would have transferred all such property to Vicorp.

The Department of the Navy notified us in February 1962, that it intended to declare excess this facility if the Congress did not enact during the existing session legislation dealing with the property. The Congress did not enact legislation that year, and we turned to methods of disposal of the property within the framework of existing law; for

example, the Federal Property Act. Let me make clear that our desire to have these properties transferred to the local government and Vicorp is not based upon the leasing anomaly we are now discussing, but rather the regularization of such situation is a foreseen, happy, but secondary byproduct.

To this end, we not only did not object when we learned that Navy wanted to go forward with the declaration of excess early in 1963, but we urged Navy to expedite such disposal action. We kept in touch with both Navy and the General Services Administration all during the spring of 1963, making clear in letters to GSA, a copy to Navy, that we wanted all of the property to go to the combination of Vicorp and the local government, and the sooner the better. Not only did we not seek the excess declaration as a device to terminate the 1948 permit, it did not occur to us that there was any connection. Instead, we expected that the 1948 permit would continue in force throughout the excess stage, until the properties were transferred to the local government. At no time did Interior seek any of the property involved, nor does it expect to seek any in the future. It simply does not have any program need or funds for the development of such property, while the other two agencies have both.

Navy declared the properties excess to GSA on May 23, 1963, to our complete satisfaction. We expected that the 1948 permit would continue, and that the property would move in due course to either of the two parties seeking it. If for some reason any of this property did not reach these parties, an unlikely event considering that the local government has a priority to purchase all surplus property, then we would have to notify the General Services Administration when the time came to describe the nature of the encumbrances upon this land that such instruments were not valid leases but simply permits. We would also have given to that agency at the time a full explanation of the circumstances surrounding the granting of each lease—and the circumstances differ markedly from lease to lease—and let it decide the extent and manner in which equitable adjustments should be made.

We could not and would not allow this property to be finally declared surplus and sold without disclosing the true nature of the encumbrances. We would have to do this for two reasons. Firstly, to the extent that disposal to private parties would be contemplated, it would put the matter beyond the reach of public bodies and their ability to grant such equitable relief as might be just. Secondly, the Federal Government would realize much less in proceeds from the sale of assets apparently encumbered for a long term of years than it would if such assets were free and clear. The extent to which equity and fair dealing would require these seeming encumbrances to stand, or to be compensated for, is one which should be determined on a case-by-case evaluation of the circumstances surrounding the granting of each instrument.

During June 1963, however, we learned to our surprise that the General Services Administration did not accept as submitted in May, the Navy excess declaration, but rejected it as not yet ready or eligible for declaration while it was still encumbered by the 1948 permit to Interior.

Only after receiving this information did we, for the first time, consider asking Navy to revoke the 1948 permit. We wanted to move the property into the hands of Vicorp and the local government as

soon as possible in order that Vicorp could begin a new program of industrial development on St. Thomas, that the local government could obtain title to the only airport on St. Thomas, to enable the College of the Virgin Islands to get land for its campus and its new dormitory construction, and lastly to allow a resolution to be made of this leasing problem that had, among other disadvantages, stymied the 25 tenants themselves in their desire to make new investment in the property.

Accordingly, we decided that the correct procedural step, in the light of GSA's unwillingness to take the property with the 1948 permit existing, was to ask Navy to cancel the permit.

We foresaw clearly at the time that this would have the result of terminating the form of the "leases," but it would have no effect whatsoever upon the substance of them, if their true substance was rightly understood.

If these instruments had in fact been valid leases, then we would not have undertaken to connive in their cancellation. Since we knew with certitude that they were not leases but rather revocable permits then we also knew that in fact none of the 25 tenants was being disadvantaged by this move.

On the contrary, it was a necessary first step in the long overdue resolution of this problem. Secretary Udall was assured both orally and in writing in a memorandum accompanying the letter to Navy of July 17, 1963, asking for such revocation, that this step would cause the property to be advanced to further stages where relief, where warranted, could be forthcoming—something that could not be done as long as the property remained in its present status.

We also foresaw that such a procedure would leave us open to erroneous but understandable charges of sharp practice from the 25 tenants concerned. We meant and knew the move to be in their own ultimate interest, but we could not spell out for them just why this was so without convicting ourselves of anomalous actions over the past decade, and leaving them no better off.

Incidentally, although the Navy permit to Interior said that Navy intended to revoke only in case of an emergency (i.e., this was its intention at the time the permit was granted), except for a few leases not on standard forms Interior did not give such statement of intention to the tenants but on the contrary put each tenant on notice that the property was subject to recapture upon demand, without any mitigating or softening language. Some of the rental rates charged would not seem to make sense in any other context.

Instead, we gave to them the assurance that their future landlords, public bodies both, had full leasing authority and would have a full knowledge of the circumstances of their occupancy to date, and could take any steps consistent with this in the public interest.

In our own talks with and memorandums to the representatives of these bodies, in turn, we also commended the tenants to them, with the recommendation that they give reassurances general in nature until they had an opportunity to get all the facts in each case, and until they had both the power and the responsibility to act.

In closing, I would like to turn to two more specialized aspects of this question. The first might be to ask what kind of leases these were, from the point of view of whether they were good from a business point of view, insofar as the Government is concerned.

No generalized statement is true of all aspects of all of these leases. They were entered into over a whole decade of time, although most date from the late 1950's. Some were awarded as a direct result of public advertising. Most were negotiated with private parties directly without any public bidding. Some were awarded following advertising followed by extensive negotiations with those responding. In language, there are many forms and differing provisions, although here again, the majority are on one standard lease form. Most contemplated that the local economy would be enhanced by the activity to be undertaken, but a few were for private residences with no obvious public benefit, even of a secondary nature. Most have workable rental renegotiation clauses, but some have ineffective ones and some have none. The one constant is that each differs, and must be analyzed on an individual basis.

I would like to stress that this was not done, and was intentionally not done. This individual analysis was expected to be done by the agency, either Vicorp or the Government of the Virgin Islands, using the records in the islands, and working with each tenant individually, as well as the Office of Territories. This was not expected to be done until the authority to act definitely was established in the agency to act, and until the tenant could be brought to the same state of awareness of the nature of his occupancy that we enjoyed.

Mention has been made of the fact that Navy in 1948, stated to Interior that it did not intend to revoke the permit except in a time of emergency, with the suggestion that the 25 tenants relied upon this. Except for a few of the minor leases, when Interior entered into leases with the tenants concerned, it did not include such language in their instruments. It seems reasonable to conclude, therefore, that either the tenants in such cases did not know of the Navy intention (which would have no legal effect in any case) in which case they could not have relied upon it, or alternatively they knew it was in the Navy permit, in which case its absence from their own instrument with Interior was patent, especially since the rest of the Navy recapture clause was inserted, an absence which it is unlikely would not be noted and evaluated by the tenants and their counsel. But in any event, this subjective point is academic, since as we have shown, we never had any purpose but to deal fairly with the tenants.

Similarly, the statement has been made implying that it was clear that these 25 tenants entered into these instruments in good faith, and that they all honestly believed, as did those representing the Government, that these were leases. I believe that this is not a fact to be discovered or averted to, but rather a subjective judgment that it is reasonable to come by in most cases, and difficult or impossible to prove the contrary in any case. Not surprisingly, our files do not show any instance of either party freely admitting that he knew these instruments were anything but leases. Where the instrument was entered into following public advertisement, I believe the presumption of good faith should be accepted without challenge. Where public advertisement was not practiced, I would be inclined to be more skeptical. Nevertheless, the instrument holds itself out as a lease, and in the absence of any showing in a given case that such good faith belief was not present, I would assume that a rebuttable presumption exists with regard to each given case that the tenant was in good faith. Ac-

cordingly, I would continue to regard the question of whether each tenant honestly believed or understood he was getting a valid lease as best answered by observing that many, perhaps most, probably did, and we are unlikely to be able to prove the contrary in any case at all. As a practical matter, for reasons I will state in discussing the individual leases very briefly, this is not a particularly significant point.

It has also been suggested that Interior first came to the conclusion that these "leases" were disadvantageous from a business point of view, and then began to cast about for some device to strike them down. This is a plausible theory, but completely untrue.

Instead, first came the conviction that these instruments were not valid—none of them—the seemingly advantageous ones, the seemingly disadvantageous ones, and the unexamined ones. At no time did anyone either propose treating them differently, or dividing them into "good" ones and "bad" ones. Once we concluded that all were invalid, we never reached the question of whether they were favorable to the Government or not, insofar as a motive for any actions we have taken are concerned.

This is not to say that many of the rental terms are not so low as to cause wonder, or alert one to the compelling necessity in the public interest to examine carefully each of these leases to make sure that one understands the extent to which equitable relief is appropriate. We want to put each of the 25 tenants in a position where he can expect to receive that to which he is entitled. This is not necessarily the same thing as saying that he is entitled to that which he expected to receive under the former leases.

For the reasons given earlier, Interior has not heretofore come to any conclusion about a given lease. Some of the rents are so low that one readily concludes that all would have to be examined, and were to have been, and will be, by the agency which gets the power to act—not Interior. One thing has always been certain, however, and that is the criteria which would have been used by Interior, and any other public body, was to be the same ones of fairness and equity any reasonable public servant would use. In no event would the question be: "Are the rents as much as we could get at this time?"

Rather, the question we would want to start out with would be: "Was this bargain reasonable at the time and in the context in which it was struck?" For several practical reasons, this question, difficult to answer definitively in a short time due to the passage of time, absence of records, and subjective judgment involved, can be further distinguished so that the number of former leases would give rise to problems is greatly reduced. Where the answer to the simple question would be in doubt, or even if defects were obvious, but either the passage of time or specific terms of the contract make the deficiency curable, then the presumption would be established that relief should be given.

To be more specific, we would expect to approach the evaluation of these 25 leases in the following manner:

1. Any lease awarded as a result of public advertising would be entitled to complete credence. This would hold true also for leases negotiated with the high bidder following a public advertisement even though the lease terms differed somewhat from the public offering. Of course, this would not be true of a negotiated lease too different in essentials from that which was offered publicly.

2. Any lease which, even though not publicly advertised, and without regard to its original terms, would be given complete credence if by its own terms it either permits now, or would shortly, genuine renegotiation of rent. The only exception to this would be the evidence of impropriety in the original negotiation.

3. Any lease which was not publicly advertised but which has a relatively short remaining life (say 1970), and absent any indication of impropriety, would be given complete credence except that the right to negotiate a new rental rate for the remainder of the term would be reserved to the Government.

4. This would leave a residue of 6 of 25 leases which should be examined critically and individually. They have in common the fact that they all were privately negotiated rather than exposed to public bidding, they are for long terms, and they do not permit effective rent renegotiation.

The six former "leases" which I have in mind here, based upon a review of our Washington office files, are set out below:

1. Gramboko Hotel. Expires 1980. Rent \$500 per month through 1970.

2. Texaco. Expires 1982. Rent \$179 per month.

3. Virgin Island Pleasure Boats. Expires 1984. Rent \$50 per month.

4. Gerard Berne. Expires 1980. Rent \$100 per month.

5. Tropic Isle Hotel (if the lease was not result of public advertisement). Expires 1977. Rent \$400 per month through 1967.

6. Fran de Pina. Expires 1989. Rent \$18 per month.

I do not foresee that any former lease not listed in paragraph 4 would pose any significant difficulties for the public agency dealing with it. If it were a lease arrived at through public bidding, the agency would accept it without change. If it had a rent renegotiation clause that is both effective and timely, the rent could be renegotiated and all other features left unchanged. Even if it has no renegotiation feature but has only a few years more to run, say about 1970, the rent could be renegotiated for the remainder of the term, in the case of these privately negotiated leases. But if it was one of the six leases listed above, then I believe that each case will have to be adjudged critically, and on the basis of more information than is available now and here. I believe each of these six can be given the same assurance of fair treatment, but this should not be presumed to be the same as an agreement to revivify the old instrument.

This is not to say that I agree that the terms of all the other instruments were reasonable even at the time. But I believe that the terms are better understood if one believes the parties:

1. Clearly understood that the instrument might well fall with the revocation by Navy for any reason whatsoever—the tenants paid "permit-type" rents, although they wanted "lease-type" protection.

2. The Government's representatives were advertizing to a philosophy of economic development rather than maximum return to the Government as the good to be attained.

To summarize, 25 tenants out of 110 on the Navy properties in St. Thomas were given instruments never valid as leases by Interior between 1950 and 1960. Our attempts to remedy this situation in 1963, as a subordinate part of a larger transfer of property proposal, threw light on the matter and brought it to a head, but did nothing to change

the basic standing of the tenants at all. Their only cause for complaint, providing they receive in the future the fair treatment they were promised all along, will be with regard to what happened between 1950 and 1960. We have no reason to believe that the tenants do not so regard the matter in the same light, since in the 2 months following our giving notice none of them has called upon me either in person or through counsel, although several have indicated they will.

Let me make clear, however, that we do not wish to deprive any tenant of any legal rights he feels he has. We start from a position that the tenant has and had no legal right to continued tenure, or any given rental rate, but we only start from there—not stop there. In view of the history of the matter, he has a moral, but not a legal, right to expect much more from his Government. That is why we have had a problem for years, instead of an easy legal solution. But if any tenant differs as to his legal position, we can only note that the courts remain open to decide matters of this nature. If any tenant elects to stand on his legal rights alone, then we will take no action adverse to his present status, and we will both abide by the result.

We believe this hearing will provide a most useful clarification of the subject, and we welcome it accordingly. One purpose it will not serve, however, will be to instill for the first time in us an intention to deal fairly and justly, even considerately, with the tenants disadvantaged by this history. I believe the record is clear that we never had any other intention, and the contrary should not be imputed to us.

Thank you, and I will be glad to answer any questions.

Mr. Chairman, might I ask Mr. Cramer, the President of the Virgin Island Corporation, also to join us at the table if the committee wishes.

Senator NELSON. On page 10, the second paragraph, the sentence—

Since we knew with certitude that they were not leases but rather revocable permits then we also knew that in fact none of the 25 tenants was being disadvantaged by this move.

I suppose you are referring strictly to it in the legal sense.

Mr. KIRWAN. That is right, Mr. Chairman. We were relying on the fact that if these leases in the legal sense were not leases then they were nothing but revocable permits.

Our position was that they would not be disadvantaged by the move that we took then, not even financially because we did not increase anybody's rent or ask anybody to leave. They were not disadvantaged technically because all we did was to make clear that they were there on a permit basis, a condition that we maintain had been the only one they ever were there on ever since they first came on to the premises somewhere between 1950 and 1960.

Senator NELSON. On page 12, in the last paragraph, second sentence, you state:

Except for a few of the minor leases when Interior entered into leases with the tenants concerned it did not include such language in their instruments.

Was there any language in the instruments which gave notice that they were revocable by the Navy?

Mr. KIRWAN. Yes, Mr. Chairman, each instrument without exception contained a clause that read, "Should the Navy recapture these

premises the party expressly understands that his instrument will fall and there will be no action for damages and he must leave." Every instrument had language of that sort in it, and we will be glad to introduce the exact language in each case.

Now, either three or four of the instruments in each case a minor one, none of the large properties, but three or four of the smaller ones which were in the early days entered into by the St. Thomas Development Authority rather than Interior directly, on a nonstandard form, added to it the same type of reassuring language that Navy gave Interior in its permit and said that, however, Navy did not intend to exercise its right to recapture, except in case of a national emergency.

This is present, I believe, in 4 of the 25 leases and none of the major properties.

Senator NELSON. So I took it——

Senator DOMINICK. What do you mean by a major property? Excuse me, Mr. Chairman.

Mr. KIRWAN. One is a small—the Sunbuilt Distilleries across from the arena, Senator Dominick, it is just a small building dealing with rum and not serving the public. Then it is present in three residences. So we have three residences and one small business operation.

Senator DOMINICK. Would it surprise you to know it is in the Beachcomber's lease, too?

Mr. KIRWAN. It would astound me, Senator, because I checked the Beachcomber lease for that language.

Senator NELSON. So then, the Navy's expressed intent to the Interior Department not to recapture except in case of a national emergency was not included in any of the other leases save these four or five that you mentioned now?

Mr. KIRWAN. My counsel tells me six precisely; that is right, sir.

Senator NELSON. And then you also assert further on here some place that even so, the Navy's expressed intent is not binding on the Navy legally from the standpoint of their capacity to cancel even though there were not a national emergency. That is your legal position.

Mr. KIRWAN. That is.

Senator NELSON. Do you know whether or not the island's government or Vicorp or anybody has developed a comprehensive plan for the use of the properties involved here?

Mr. KIRWAN. I know the extent to which they have done it, Senator, and it is not comprehensive. Both the Virgin Islands Corporation which hopes to get the submarine base and the local government which hopes to get the airfield, intends to have the subject properties surveyed in order to determine the highest and best use of the area.

Following the results of the survey it would attempt to implement the plan. The Virgin Island Corporation, for example, has requested a half million dollars in the current budget in order to acquire its part, part of which money is budgeted precisely for making this survey. For the engineering phase which caused this survey to be made, but neither entity has gone beyond that general intention to have it surveyed and develop a plan after they get it.

Senator NELSON. The property is valuable and is dramatically increasing in value and it would seem to be a matter of some concern that a genuinely comprehensive plan for appropriate use, including public use, recreational use, school use, business use, park use, what

have you, ought to be carefully drafted but so far as you know there is no such comprehensive plan now under study?

Mr. KIRWAN. I know there is no comprehensive plan, Mr. Chairman, because both Vicorp and the local government have been unsuccessful in getting this property for many years, so that in the past 2 years each agency has adopted the view that it would not spend money to have such a plan made until it actually was certain it would get the property.

On the other hand, because it, too, feels that the property is uniquely valuable it will not go on the basis of plans other than those which are expensive and thorough. Therefore, it has not done it until it knows it is getting the property for sure.

Senator NELSON. Does the Virgin Island Corporation have a termination date?

Mr. KIRWAN. June 30, 1969.

Senator NELSON. This is a public corporation?

Mr. KIRWAN. Wholly owned Federal corporation—wholly federally owned.

Senator NELSON. The Secretary of Interior is a member of the Board and the Secretary of Agriculture?

Mr. KIRWAN. The Administrator of the Small Business Administration, the Governor of the Virgin Islands, these are the four statutory members. In addition there are three public members chosen from the private business world. There is one vacancy today and two private businessmen, one is a lumberman, Mr. Robert Dwyer of Portland, Oreg.; one is an industrialist, Mr. Ward Canaday of Toledo, Ohio.

Senator NELSON. What is their function?

Mr. KIRWAN. Their function is to set the policy for the Corporation itself and also to make the major specific decisions for the Corporation. The Board has a Chairman, Mr. Stewart Udall, the Secretary of the Interior, who oversees the Corporation in between Board meetings. The Corporation itself is under the day-to-day executive direction of its President, Mr. Robert Cramer.

Senator NELSON. This is a full-time, paid position?

Mr. KIRWAN. Yes, Mr. Chairman.

Senator NELSON. Then I suppose if this property ended up, or a portion of it, under the control of the Virgin Island Corporation the respective government representatives on the Board of Directors could, if they so wished, assure that a comprehensive plan was developed before there was miscellaneous disposition of these valuable properties.

Mr. KIRWAN. Oh, the representations that the Virgin Islands Corporation would have to make before both the Bureau of the Budget on the one hand, the General Services Administration, and on the other before the Congress in order to get the money to acquire the property would mean that the Corporation would have to not only assure these bodies but bind itself to develop the properties before it would be entrusted with them, because the Corporation could not get the property simply in order to ultimately dispose of it. If it were only going to be disposed of the General Services Administration would retain cognizance, so that the Corporation, indeed, Mr. Chairman, will have to show that it intends to cause the property to be developed rather than sold off piecemeal.

Senator NELSON. I am not sure that is the law.

Mr. KIRWAN. No; it is not the law. The General Services Administration and the Bureau of the Budget have a discretion about whether to permit the Corporation to get the property or not and the Congress, as you know, has discretion about whether to give us the money to acquire it. We cannot as a practical matter get the clearance of the two control agencies in the executive branch and get money out of the Congress unless we go forward with a program of development of the property. If we were simply to say we wanted to acquire the property in order to sell it to private parties, the General Services Administration itself is the agency both authorized and more expert than we in a disposal program, so no one would seriously consider giving it to us foreseeing—

Senator NELSON. Who is us?

Mr. KIRWAN. The Virgin Islands Corporation—foreseeing near term disposal.

Senator NELSON. I ask these questions because this property is so valuable, and I would take it the only conceivable function that the Interior Committee has is to gather information to determine whether or not legislation is necessary respecting this problem.

If it is not necessary, this, I take it, is the end of the authority of the Interior Committee. Is that correct?

Mr. KIRWAN. Well, I would say that there are several areas where this committee reasonably might consider it, Mr. Chairman. One is certainly if any legislation not presently enacted is needed, of course, it would come to this committee.

Secondly, there is a bill on this subject pending before the House now, it was introduced over a year ago, but each year there have been bills on the subject. Thirdly, however, I believe we regard the committee also as having an oversight function as well as a specific legislative function so that it is meet and seemly that you examine the manner in which we are carrying out our present responsibilities, whether or not there is a clear need for legislation at the moment.

Senator NELSON. What is the nature of the legal dimensions of the oversight authority, do you know, by this committee?

Mr. KIRWAN. I would say, Mr. Chairman, and you are asking me a question that is not strictly in my field, but I would say it probably stems more indirectly from the ultimate need to legislate, but in addition to your immediate legislative requirement of looking at what we are doing to see if there is a bill needed tomorrow, you surely would need to take a look at how we are doing our job generally from time to time so that in the long run, as the general flow of legislation comes before you, you know whether you may entrust it to us and the extent to which you have to put peculiar safeguards or limitations in it.

Senator NELSON. I pursue this because again I am concerned about the question of whether or not there are any assurances that if the government of the Virgin Islands and/or the Virgin Islands Corporation should ultimately receive this land under the law through disposition by GSA, I am curious to know whether there are any assurances that they will, in fact, develop a careful, comprehensive plan for the best use and the best disposition of this valuable property.

I think that under the GSA there is no requirement that a comprehensive plan be submitted, but if the Virgin Islands Corporation secured some of this property and then wished to dispose of it the statute provides what the terms of the disposition are. If it is for

commercial use GSA must be paid the going value of the property for commercial use.

If it were for some other use, an airport, they have other authority to dispose, as a gift, I believe, to a municipality. If it is for the purpose, which would not be here, a wildlife habitat, they could have it for nothing. If it is for a park purpose they would have to pay half the price, or something to that effect.

So, GSA's authority, I think, under the circumstances, is only to comply with the statute and assure, if there is a commercial disposition, that the Federal Government gets full pay for it, but this does not contemplate a careful development of the properties at all. It could be a miscellaneous disposition of the property in a fashion that was not in the benefit of the islands at all.

Mr. KIRWAN. Mr. Chairman, first, as far as the comprehensive plan goes, I can assure you we would have the intention of both having the plan and actually developing it. I cannot assure you we will succeed because, among other things, we would have to get money from the Congress to do it; we might fail to.

Second, however, the General Services Administration disposal route, of course you are correct, does not contemplate development or management or thoughtful long-term disposal at all, it is in lieu of that, so the property would either go to the General Services Administration for immediate resale without regard to planning, without regard to end use, or alternatively it would go to some agency such as either Vicorp or the local government. I know of no third agency in the Virgin Islands with either the program, the money for the intention of having the type of survey made that we have been speaking about and the type of thoughtful development taking place at least for a couple of years, at the end of which time quite possibly areas of this would in turn then be either sold or leased out to private enterprise.

Senator NELSON. I take it that Interior is aware that there are 701 planning grant funds available from Mr. Weaver's Department for municipal and State agencies and whether it is available for a wholly owned Federal corporation I do not know, but there are planning funds available for this purpose.

Mr. KIRWAN. Those particular funds, Mr. Chairman, are not available to the corporation, but they are available to the local government and the local government has been successful in the last 2 years in getting a reasonable amount of such funds.

Senator NELSON. That would leave a substantial amount of property if it were given, transferred to Vicorp, that did not have any provision for funds for planning purposes. Is that correct?

Mr. KIRWAN. No, Mr. Chairman, we have our own money in Vicorp. Our difficulty with—not difficulty, our brush, our contact with the Congress where money and Vicorp are concerned is not, literally speaking, in order to get new money from the Congress to do this job, but to get the permission of the Congress which is given through the approval of the budget each year, through appropriations channels rather than substantive committee channels, for the corporation to use its own money which it already has in hand, so our problem is not to get half a million dollars from Congress to do the job, it is to get the clearance from the Appropriations Committees concerned, to get their permission to use our own half-million dollars which we already have to do this job.

It is a real—we have to really get the permission. It is just as difficult at times to get as money, but technically speaking, we do not need money, per se, we need permission from the Appropriations Committees.

Senator NELSON. I would like to have the record show and be clear that you can assure this committee that it is the intent of the Virgin Islands Corporation if GSA should dispose of part of this property to them, to seek the use of your own funds for a comprehensive plan for the orderly disposition of this property?

Mr. KIRWAN. I not only can, Mr. Chairman, but our 1965 appropriation request has already gone forward with that item in it.

Senator NELSON. How many acres are involved in the Navy lands here?

Mr. KIRWAN. Approximately 600.

Senator NELSON. And under the law, if this is not a valid lease then all authority for the Department of Interior to participate at this stage has been terminated? This is now a Navy problem and from the Navy to the GSA and from GSA under the law, some disposition.

Mr. KIRWAN. Mr. Chairman, the Department of Interior as such is completely out of the picture as of this date except for the limited extent that we have a revocable permit from Navy for 125 acres of land where in turn we have given a subpermit to Vicorp which has given a subpermit to the College of the Virgin Islands and the College of the Virgin Islands, a wholly public institution, is in its second year of existence on the subject land. Except for this part of the Naval properties concerned the Department of Interior itself today has no role here.

We are in the picture, so to speak, because of our close association with and responsibility for both the Virgin Islands Corporation on the one hand and the government of the Virgin Islands on the other, and I do not mean to imply that we are responsible for them in a sense that they are creatures or subordinate divisions of the Department, of course, they are not.

But we are the only Federal agency in Washington with any direct responsibility with our continuing concern for these two agencies. But that is our only involvement today in the subject properties.

Senator NELSON. But your interest continues even though there is a legal hiatus here in anticipation of the possibility that part of this property may go back to the islands and to Vicorp in which event you would have a direct legal interest of some kind?

Mr. KIRWAN. No; our interest is in more than possibility, in the almost certainty that the properties will go to one or the other, but even when they do, we will not have that direct legal interest except through the two agencies I indicated.

The Virgin Islands Corporation has been placed by the statute under the general oversight of the President or such individual as he may designate. He did designate the Secretary of the Interior, so we are involved there. The Secretary of the Interior is also Chairman of the Board and lastly, we perform all of the administrative or housekeeping functions for the corporation in Washington, including budgeting for it and justifying its budget.

Senator NELSON. On page 15, the opening sentence above numeral 1. where you use the word "we," you are using that not as the Department of Interior but as Vicorp?

Mr. KIRWAN. I am using that, Mr. Chairman, if I can—I do not wish to belabor the point, but if I can use the thought realistically instead of legalistically here, the Secretary of the Interior is charged by law with supervising the Governor of the Virgin Islands, he is also charged with supervising the Corporation, and as Chairman, which is a different hat, he is in charge of the day-to-day policy or the oversight of the Corporation.

Therefore, when I do say “we,” I mean both the Department of the Interior to begin with, but not only with regard to our own responsibilities but with regard to the de facto influence and cooperative relationship we enjoy with both the Corporation and the local government.

Senator NELSON. The first sentence, “Any lease awarded as a result of public advertising would be entitled to complete credence.”

You are talking about leases or permits that have already been granted. You are not talking about something in the future?

Mr. KIRWAN. Yes, Mr. Chairman. I am talking only about the subject 25 instruments that were terminated on August 15, 1963.

Senator NELSON. All right.

Do you intend to submit to the committee copies for the record of all the leases?

Mr. KIRWAN. We will be glad to, sir. In particular those, since most of them are on standard form, it might be more feasible if we submitted a copy of the standard form and indicated in any case where a lease differed from the standard form, indicated the nature and extent of the difference.

Senator NELSON. I am concerned about how much goes into the record here for purposes of the full committee to examine.

Would one standard form with some exceptions printed, not the whole lease, some exceptions printed—

Mr. KIRWAN. Yes, and I believe, Mr. Chairman, if we confined ourselves to those divergencies from the standard form. It would only be such language as was found in the standard form, either more or less, that might be reasonably relevant to any of the points under discussion.

We would be glad to submit those.

Senator DOMINICK. Mr. Chairman, I am not quite sure that would be completely accurate because it is my understanding that some of these people have constructed wholly new buildings on their property which were not there originally and for which they received special permission to construct these buildings. There might be some provisions in those permits which would be applicable.

Senator NELSON. I am wondering if, again, only for purposes of being sure we get everything into the record that ought to be there, but at the same time not too much duplication, that if it would be appropriate for some arrangement to get in the standard form and the exceptions that are pertinent and to be sure that any of the occupants who feel that there is a provision in the lease that has not been included that they want in, that that go in, too. Would that be acceptable?

Senator DOMINICK. That would be fine.

Mr. KIRWAN. Mr. Chairman, might we also submit for the record, the letter together with its attachments, from the Solicitor of the Department of the Interior addressed to you as acting chairman, stating to you the legal basis for many of the statements I have made today.

Senator NELSON. Yes, and that will be included in the record.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR.
Washington, D.C., October 25, 1963.

G-63-2011.16

HON. GAYLORD NELSON,
*Acting Chairman, Subcommittee on Territories,
Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR SENATOR NELSON: This replies to the request made in your letter of October 22, for my views as to the validity of certain instruments "styled as 'leases' * * * which were a basis for occupancy and use prior to August 15, 1963," of certain Federal property, formerly known as the Marine Corps air facility and naval submarine base, located on St. Thomas, V.I.

There have been no written opinions or rulings rendered by this Office on this subject except for approval of us of a letter of November 13, 1961, from Assistant Secretary John A. Carver, Jr., to Dr. Kenneth A. Bartlett, President, Virgin Islands Corporation, in which it is said that such leases are viewed with "dubiety" and that they are probably merely permits.

In July of this year we orally advised that, in our opinion, the instruments were not valid as leases. We are happy to comply with your request to reduce our views to writing.

The property in question, consisting of about 600 acres, was acquired by the United States in 1940 and 1941 for military purposes. Following acquisition, military improvements were placed on the property and it was, during World War II, operated as an active military base. In 1947 the Department of the Navy concluded that, "these installations are not required for military purposes during time of peace, but are required, or are likely to be required, in the event of military necessity or during a time of national emergency and, therefore, must be retained as a part of the ready and immediately available potential Military Establishment of the United States Navy."

Accordingly, in recognition of the responsibilities of the Department of the Interior for the economic development of the Virgin Islands, the Department of the Navy transferred to the Department of the Interior "cognizance and control" of the property effective January 1, 1948. The instrument stated that—

"This permit shall be for an indefinite term but shall be subject at any time hereafter to the right of the Navy Department, or higher military authority, to revoke this instrument in whole or in part, or as a temporary or a permanent measure, but it is the intention of the Navy Department that the right of revocation shall be exercised only in the event of military necessity or by reason of a national emergency."

The instrument further provided that—

"The Interior Department may lease or license various portions [of the property] to public, including Federal and territorial, or private agencies or persons, upon such terms as the Secretary may deem appropriate."

A copy of the 1948 permit is enclosed (enclosure No. 1).

The first instrument which carried the designation of "lease" was entered into on March 25, 1950, by this Department and the municipality of St. Thomas and St. John, a subdivision of the government of the Virgin Islands (enclosure No. 2.). It was supplemented by an agreement dated October 8, 1951 (enclosure No. 3). These instruments were revocable at any time by the Secretary. They "expressly agreed" that the municipality could sublease or license portions of the property. A few of the "leases" it made were for terms which have not yet expired.

In June 1954 the Secretary of the Interior terminated the lease to the municipality and, effective July 1, 1954, delegated the administration of the property to the Virgin Islands Corporation (Vicorp). Arrangements for this administration were formalized in a permit, effective that date (enclosure No. 4; 20:9 F.R. 7339). Section 7 thereof stated—

"It is expressly agreed that the permittee [Vicorp] may lease or license to public or private agencies or organizations, or to individuals, the properties covered by this permit * * *."

Vicorp entered into agreements, denominated leases, each of which contained a provision recognizing the Navy's right to revoke at any time. Many of these agreements were set forth on a standard form developed for the purpose (enclosure No. 4).

By letter dated August 15, 1963 (enclosure No. 5), in response to this Department's letter of July 17 (enclosure No. 6), the Department of the Navy terminated the 1948 permit. Accordingly, the rights of all persons to use and occupancy under unexpired "leases" terminated on August 15, 1963.

Property of the United States may be leased only by or pursuant to act of Congress (U.S. Constitution, art. IV, sec. 3, cl. 2; *United States v. Nicoll*, 27 Fed. Cas. 15879 (1826); 34 Op. Atty. Gen. 320 (1924); *United States v. Gratiot* 39 U.S. 526 (1840)).

The Department of the Navy was itself authorized to enter into leases with particular provisions (10 U.S.C., sec. 2667 and its predecessor, the act of Aug. 5, 1947, 61 Stat. 774), provided certain findings were made. It neither made such findings nor attempted to lease.

No department or agency can delegate its leasing authority to another department or agency without specific congressional authority (17 Comp. Gen. 1054 (1938), 18 Comp. Gen. 262 (1938)). The 1948 permit does not purport to attempt such a delegation. The Navy advised Interior in 1955 that no authority exists "whereunder this Department may authorize the Department of the Interior to outlease property under the jurisdiction and control of the Navy" (enclosures Nos. 8 and 9).

No question exists as to the limitations on the Interior Department's rights under the 1948 permit. Interior acquired a temporary and instantly terminable management authority. Administrative responsibility remained with the Navy. The property could have been transferred to the administrative responsibility of the Interior Department only by a reorganization plan, a special act of Congress, or a transfer pursuant to the pertinent Federal property laws (i.e., the Surplus Property Act of 1944, and later the Federal Property and Administrative Services Act of 1949). No such transfer has occurred.

One cannot convey a greater right or interest in real property than he holds (Tiffany, "Real Property," 3d ed., sec. 59). Since this Department had only a revocable permit from the Navy, the occupants of the property could acquire no more than that.

Furthermore, this Department cannot convey a leasehold interest unless authorized by Congress. The Department of the Interior has authority to lease Federal property in many circumstances, e.g. section 31(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 510, 48 U.S.C., sec. 1545(a)); section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended (43 U.S.C., sec. 315m); section 10 of the act of August 4, 1939 (53 Stat. 1196), as amended (43 U.S.C., sec. 347); section 1 of the act of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C., sec. 181); and section 1 of the act of March 12, 1914 (38 Stat. 305), as amended (48 U.S.C., sec. 301).

Section 31(a) of the Revised Organic Act, *supra*, authorizes the Secretary of the Interior to lease or to sell U.S. property "under his administrative supervision" in the Virgin Islands. The property involved here was originally under the administrative supervision of the Secretary of the Navy. Navy could use the property for any authorized purpose. Having no immediate need therefor, Navy made the property available to Interior, expressly retaining the power to recapture. Hence, Navy did not transfer "administrative supervision" to Interior, and the Secretary of the Interior did not acquire a sufficient interest in the property to lease or sell it under section 31(a).

Vicorp could get no more from Interior than Interior had. A fortiori it could convey no more than it got. The "leases" it made were subject to a double infirmity, the revocability of the permit from Navy to Interior and the revocability of the permit it received from Interior. Its interest, so limited, was insufficient as "property" to support a lease.

Although these instruments were invalid as leases, they were valid as revocable permits. A permit does not convey a property interest (Tiffany, "Real Property," 3d sec. 79; Thompson on "Real Property," secs. 710, 712). Therefore the permit to VICORP was not a disposal of property within the meaning of article IV, section 3, clause 2, of the Constitution and congressional authority was not thereby required. However, it is settled that revocable permits may properly be issued as a function inherent in the powers of the heads of Federal agencies (34 Op. Atty. Gen. 320 (1924), 30 Op. Atty. Gen. 470 (1915), 20 Op. Atty. Gen. 527 (1893), 19 Op. Atty. Gen. 628 (1890), 36 Comp. Gen. 561 (1957), and 22 Comp. Gen. 563 (1942)).

We are aware that the courts have considered the leases in question and have not held them to be invalid. However, validity was never at issue and no judicial authority has held any of these leases to be valid. (*Grammer v. Vir-*

gin Islands Corporation, 235 F. 2d 27 (1956), *United States v. Blumenthal* 315 F. 2d 351 (1963), and *United States v. Harvey*, *United States v. Gallagher*, and *United States v. Wermuth and Hotel Trade Winds*, Civil Actions Nos. 35-1959, 36-1959, and 37-1959 (unreported)).

It may be urged that officers and employees of the United States represented themselves as having the power to enter into genuine lease agreements but "it is enough to say that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit (*Utah Power & Light Co. v. U.S.*, 423 U.S. 389, 409 (1917). See also *U.S. v. San Francisco*, 310 U.S. 16 (1940) and *U.S. v. California*, 332 U.S. 19 (1947)).

Your final request is for copies of documents between the Departments of the Navy and the Interior relevant to this matter. They are referred to above and enclosed herewith. Those numbered 1, 5, 6, 8, and 9 particularly respond to your request.

Sincerely yours,

FRANK J. BARRY, *Solicitor*.

[Enclosure 1]

PERMIT AND MEMORANDUM OF AGREEMENT

This PERMIT AND MEMORANDUM OF AGREEMENT, dated as of the first day of January 1948, is entered into between the Department of the Navy and the Department of the Interior, acting through the respective Secretaries, for the purposes, and to obtain the objectives, hereinafter more fully expressed.

PURPOSES OF PERMIT

The United States Government is the owner of military installations which are under the cognizance and control of the Navy Department, located at St. Thomas in the Virgin Islands, an insular possession of the United States. It has been determined by the Chief of Naval Operations that these installations are not required for military purposes during time of peace, but are required, or are likely to be required, in the event of military necessity or during a time of National Emergency and, therefore, must be retained as a part of the ready and immediately available potential military establishment of the United States Navy. The Interior Department recognizes that these installations and the attendant military activities have greatly contributed to the development of the civilian economy of the Virgin Islands generally and the Island of St. Thomas particularly, and that the discontinuance of the operation of these installations will be injurious to that economy.

So that these installations may be kept in an operable condition in the event they should be required to be reactivated by reason of military necessity or during a time of National Emergency, the Navy Department recognizes that provision must be made for their maintenance and operation after attendant military activities have ceased. The Interior Department, pursuant to its responsibility to encourage and foster the improvement of the civilian economy of the Virgin Islands, urges the desirability of encouraging and fostering the commercial and productive utilization of these installations, because of the beneficial effect such utilization will have on the civilian economy of the Virgin Islands. In recognition of these factors, it is the purpose of this Permit and Memorandum, hereinafter referred to as the "Permit," to discharge, insofar as practicable, the respective responsibilities of the two departments. Pursuant thereto, there is hereby transferred from the Navy Department to the Interior Department, as of the first day of January 1948, the cognizance and control of these installations, subject to the terms, conditions, restrictions and understandings herein contained, all as more fully hereinafter set forth.

DURATION OF PERMIT

This Permit shall be for an indefinite term but shall be subject at any time hereafter to the right of the Navy Department, or higher military authority, to revoke this instrument in whole or in part, or as a temporary or a permanent measure, but it is the intention of the Navy Department that the right of revocation shall be exercised only in the event of military necessity or by reason of a National Emergency.

INSTALLATIONS COVERED BY PERMIT

Subject to the following general exceptions, the military installations covered by this Permit, and which are hereafter referred to in their entirety as "the installations," are those formerly designated as the Marine Corps Air Facility and U.S. Naval Submarine Base, St. Thomas, Virgin Islands. The installations, comprised of buildings, piers, and other facilities, including utility systems, together with a statement disclosing the condition thereof as of the date of this Permit, are shown in detail on Navy Public Works Drawings 10-34 and 10-35 and attached notes which are appended hereto and made a part hereof.

It is recognized by the Navy and Interior Departments that the Civil Aeronautics Administration, pursuant to Executive Orders 9709 and 9797, dated March 29, 1946, and November 6, 1946, respectively, has determined that the facilities specified on Exhibit "A", attached hereto, constitute the minimum requirements for the maintenance of a communication facility at the Marine Corps Air Facility and that additional buildings, facilities, and equipment comprising a part of the Air Facility may be determined by the Civil Aeronautics Administration to be necessary or reasonably necessary to the efficient operation of United States Aircraft and that, upon such determination, which shall be represented by an official request therefor, such buildings, facilities, and equipment shall be relinquished to the Civil Aeronautics Administration. The Department of the Interior will provide electric power to the Civil Aeronautics Administration at commercial rates currently charged in the vicinity and will permit the Civil Aeronautics Administration to use existing water and sewerage facilities without charge.

RESPONSIBILITIES OF THE DEPARTMENTS

(1) The Interior Department will assume full responsibility, except as otherwise provided by law, for maintaining the facilities in good repair, reasonable wear and tear excepted, and in such good condition that they may readily be returned to the Navy Department, should their return be called for.

(2) The Navy Department shall have the right to enter the facilities at any time within regular working hours for the purpose of inspecting the condition thereof.

(3) The Interior Department may lease or license various portions thereof to public, including Federal and territorial, or private agencies or persons, upon such terms as the Secretary of the Interior may deem appropriate.

(4) The proceeds, if any, which the Interior Department may derive from the leasing, licensing, or operation of the properties in question shall be deposited in the Treasury of the United States, to the credit of miscellaneous receipts.

(5) The Chief of the Bureau of Yards and Docks, the Director of the Division of Territories, the Administrator of the Civil Aeronautics Administration, and the Governor of the Virgin Islands, as an ex officio member, shall constitute an advisory board to confer from time to time in regard to the administration and operation of the installations.

J. A. KRUG,
Secretary of the Interior.
JOHN N. SULLIVAN,
Secretary of the Navy.

OCTOBER 2, 1947.

[Enclosure 2]

LEASE AGREEMENT

This agreement entered into this 25th day of March, 1950, between the United States, acting in this behalf by the Secretary of the Interior, hereinafter referred to as the "Secretary," and the Municipality of St. Thomas and St. John, herein-after referred to as the "Lessee".

WHEREAS the installations formerly known as the Marine Corps Air Facility and the Naval Submarine Base at St. Thomas, Virgin Islands, have been transferred by the Navy Department to the Interior Department for operation and maintenance under a revokable permit dated January 1, 1948, subject to the terms and conditions set out therein; and

WHEREAS it is the intention of the Secretary that said property be used to the greatest extent possible for the benefit of the people of the Virgin Islands.

Now, therefore, the parties hereto agree that the installations formerly known as the Marine Corps Air Facility and the Naval Submarine Base at St. Thomas, described more fully on Navy Public Works drawings 10-34 and 10-35 (except for (a) those areas made available by the Interior Department to the Civil Aeronautics Administration under permit and memorandum of agreement dated August 24, 1948; and (b) those areas withdrawn by the Navy Department from the jurisdiction of the Interior Department under Amendments dated October 27, 1949, and February 4, 1949) shall be leased to the Lessee in accordance with the following terms and conditions:

(1) The Lessee agrees to pay as rental for the said premises the sum of \$1 per year, payable yearly in advance.

(2) The Lessee shall use said property to the greatest extent possible for the benefit of the people of the Virgin Islands.

(3) The Lessee shall observe strict impartiality with respect to rates and services and shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require identical provisions to be included in all subcontracts.

(4) The Lessee shall, at its own cost and expense maintain said properties in good operating condition and effect such repairs, replacements, expansion, and improvement as may become necessary or desirable.

(5) The Lessee shall maintain such books and accounting records as will clearly reveal operations and transactions arising out of the use of said property distinct from any other operations of the Lessee. "The Lessee shall make an annual audit of its operations and transactions arising out of the use of said property and shall report the results of such audit to the Secretary." The Secretary, or his authorized representatives, shall have access to the books and accounting records of the Lessee and may make such inspection or audit of such books and accounting records of the Lessee as the Secretary deems to be necessary and the cost of such inspection or audit shall be paid by the Lessee.

(6) In the event that the Lessee fails to maintain the property and make the necessary repairs, replacements, expansion, and improvement as provided in clause 3, the Secretary may do so and the Lessee shall reimburse the Secretary for the cost thereof on demand.

(7) This Agreement shall continue in effect for a period coextensive with that of the revokable permit between the Navy and Interior Departments unless sooner terminated in accordance with this clause: *Provided*, That upon the failure of the Lessee fully to perform any part of this Agreement, to be determined by the Secretary, the Secretary may at his option terminate this Agreement by giving 60 days written notice to the Lessee: *Provided further*, That the Lessee may, if it finds itself unable to perform any part of this Agreement, terminate this Agreement upon 60 days notice to the Secretary.

(8) Upon the expiration or termination of this Agreement, the Lessee shall return to the Secretary in as good condition as when received, reasonable wear and use, and Act of God excepted, all of the above described premises and property, together with all replacements thereof and additions thereto and the Secretary shall thereupon have the right immediately to reenter and take possession of said property and premises, subject to the right of the Lessee to remove its property and the property of its members from the premises within a reasonable time thereafter.

(9) It is expressly agreed that the Lessee may sublease or license to public or private agencies or organizations, or to individuals, the properties covered by this Agreement; *Provided*, That no assignment or transfer of this Agreement shall be valid without prior consent by the Secretary in writing. In the event of any assignment or transfer without the consent of the Secretary, the Secretary shall have the right to terminate this Agreement immediately and without notice. In the event the properties covered by this Agreement revert for any reason to the Secretary, the Secretary will respect and be bound by the terms of any lawful outstanding leases or licenses theretofore entered into by the Lessee or its authorized agency.

(10) This Agreement shall be subject to the terms and conditions of the above-mentioned revokable permit issued to the Interior Department by the Navy Department.

(11) The Lessee shall save the United States harmless from any claim for damages which arises out of the operation of the above named property unless the claim accrues because of the negligent or wrongful act or omission of an employee of the United States while acting within the scope of his employment.

(12) No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Operating Agreement, or any benefit which may arise therefrom unless it be made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their duly authorized officers as of the day, month, and year cited above.

Attest:

HILDRETH BOND

LOUIS SHULTERBRANDT

Acting Government Secretary

THE UNITED STATES

By OSCAR L. CHAPMAN,

Secretary of the Interior.

Municipality of St. Thomas and St. John.

MORRIS F. DE CASTRO,

Governor.

[Enclosure 3]

SUPPLEMENT TO LEASE AGREEMENT DATED MARCH 25, 1950, BETWEEN THE UNITED STATES ACTING BY THE SECRETARY OF THE INTERIOR AND THE MUNICIPALITY OF ST. THOMAS AND ST. JOHN

This Supplement to a Lease Agreement entered into this 8th day of October, 1951, by and between the United States of America acting by and through the Secretary of the Interior hereinafter referred to as the "Secretary" and the Municipality of St. Thomas and St. John, hereinafter referred to as the Lessee",

WITNESSETH:

WHEREAS the parties hereto did on March 25, 1950, enter into a certain Lease Agreement whereby the installations formerly known as the Marine Corps Air Facility and the Naval Submarine Base at St. Thomas, Virgin Islands, were leased to the lessee by the Secretary pursuant to a Permit and Memorandum of Agreement dated January 1, 1948, between the Secretary of the Interior and the Secretary of the Navy; and

WHEREAS there were reserved from said Lease and Permit and Memorandum of Agreement (a) certain areas which had been made available by the Interior Department to the Civil Aeronautics Administration under Permit and Memorandum of Agreement dated August 24, 1948, and (b) certain areas withdrawn by the Navy Department from the jurisdiction of the Department of the Interior under amendments to said Permit and Memorandum of Agreement of January 1, 1948, which amendments were dated February 4, 1949, and October 27, 1949; and

WHEREAS, by letter dated September 5, 1950, the Department of the Navy did revoke said two amendments dated February 4, 1949, and October 27, 1949, to said Permit and Memorandum of Agreement dated January 1, 1948, and thus restored to the Secretary of the Interior the areas covered thereby; and

WHEREAS it is the desire of the Secretary and the Lessee that said areas be included within the terms of said Lease Agreement:

Now, Therefore, The Parties hereto agree as follows:

1. The Lease Agreement dated March 25, 1950, is hereby amended to include within the installations thereby leased to the Lessee the areas previously withdrawn from the installations which areas are described as follows:

(a) Entirety of the former U.S. Naval Submarine Base as shown on Y and D Dwg. No. 10-35.

(b) Areas designated "A", "B", and "C" within the former Marine Corps Air Facility (Bourne Field) as outlined on Y and D Dwg. No. 10-34 entitled "Map of Marine Corps Air Facility, St. Thomas, V.I. of U.S.A." attached to Amendment to Permit and Memorandum dated February 4, 1949, referred to above.

(c) Buildings Nos. 112, 126, and 138 located at the former Marine Corps Air Facilities (Bourne Field) together with the right of ingress and egress thereto.

(d) All that property, both real and personal, designated on "Inventory of Real and Personal Property located at St. Thomas, Virgin Islands, Transferred to San Jose Project" of which custody and possession was assumed by the Commanding officer, San Jose Project, St. Thomas, Vir-

gin Islands, April 7, 1948, and the Supplemental Inventory dated September 30, 1948, all attached to Amendment to Permit and Memorandum dated February 4, 1949, referred to above.

(e) 84.37 acres as outlined in red and designated as Area "E" as shown on map of U.S. Marine Corps Air Facility, dated June 30, 1947, attached to Amendment to Permit and Memorandum of Agreement dated October 27, 1949, and located within the former Marine Corps Air Facility, St. Thomas, Virgin Islands, together with the improvements thereon.

2. The powerplant located on a portion of the property hereby included in the Lease Agreement shall be operated by Lessee for its own benefit subject to the following terms and conditions:

(a) All power rate structures and schedules, approved by the Public Utilities Commission of the Municipality of St. Thomas and St. John under existing law of that Municipality, shall be so fixed as to provide adequate rates to allow for proper maintenance of the power plant in order that the Department of the Interior may return the properties to the Navy at the termination of the lease in as good condition as at the time of transfer, reasonable wear and tear excepted.

(b) All power required by the Department of Defense up to the present capacity of the plant shall be supplied to the Department of Defense at cost which is herein defined as the cost of fuel, labor, supervision, and materials used in the production of power.

(c) The Lessee shall have the right to increase the capacity of the present plant by the installation of additional cooling capacity, and additional generating equipment, and may extend the plant to house the additional generating equipment using a building of conventional construction. All additional units and equipment shall be designed to coordinate completely with the present plant both electrically and physically. All plans and specifications shall be approved by the Secretary or his authorized representative prior to the commencement of installation or construction.

(d) Title to all improvements and additions to the present plant shall rest and be in the Government of the United States.

3. Any portion of the property covered by the Lease of March 25, 1950, and this Supplement thereto may be withdrawn from the operation of said Lease and Amendment by the Governor of the Virgin Islands with the approval of the Secretary. The property so withdrawn shall be devoted to such use by the Government of the Virgin Islands as shall be approved by the Secretary.

4. The Lease dated March 25, 1950, and this Supplement thereto may be terminated or modified at any time if and to the extent so determined by the Secretary. Said Lease and this Supplement thereto shall also be terminated or modified if and to the extent that the Department of the Navy terminates or modifies the Permit and Memorandum of Agreement dated January 1, 1948, between the Secretary of the Navy and the Secretary of the Interior. In the event of termination of or of a modification which terminates the Secretary's right to lease the powerplant to the Lessee, the Secretary will initiate legislation appropriate to compensate the Lessee for the costs actually incurred in installing any additional equipment or structures. The Department of the Navy has agreed to comment favorably on appropriate legislation provided the compensation requested shall not exceed the cost of the Lessee's original investment less depreciation computed over a 20-year period on a straight-line basis.

5. The Department of the Navy has further agreed that in the event of termination or modification of the Permit and Memorandum of Agreement dated January 1, 1948, to such an extent that the Department of the Navy repossesses the site of the powerplant, it will grant to the Lessee the right to purchase the output of any additions to the plant installed by the Lessee, to the extent that such power is not required by the Department of Defense. The right to purchase shall continue for a time reasonably sufficient to permit the Lessee to install and place in operation new generating equipment in its own power plant sufficient to replace the additional capacity installed in the power plant now under lease. The power shall be purchased at rates in accordance with the regulations existing at the time the plant is repossessed by the Department of the Navy.

6. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Supplemental Agreement or any benefit which may arise therefrom unless it be made with a corporation for its general benefit.

IN WITNESS WHEREOF, The Parties hereto have caused this Agreement to be signed and sealed by their duly authorized officers as of the day, month and year cited above.

Attest:

THE UNITED STATES OF AMERICA.

By DALE E. DOTY,

Assistant Secretary of the Interior.

MUNICIPALITY OF ST. THOMAS AND ST. JOHN.

Attest:

By _____, Governor.

[Enclosure 4]

PERMIT

SUBMARINE BASE AND AIR FACILITY

This permit, effective the first day of July 1954, executed by the United States, acting in this behalf by the Secretary of the Interior, hereinafter referred to as the "Secretary," to the Virgin Islands Corporation, a Federal instrumentality created by the act of June 30, 1949 (63 Stat. 350, 48 U.S.C., 1952 ed., sec. 1407 *et seq.*), hereinafter referred to as the "Permittee":

WITNESSETH:

WHEREAS, the installations formerly known as the Marine Corps Air Facility and the Naval Submarine Base at St. Thomas, Virgin Islands, were transferred by the Navy Department to the Interior Department for operation and maintenance under a revocable permit dated January 1, 1948, subject to the terms and conditions set forth therein; and

WHEREAS, by amendments dated February 4, 1949, and October 27, 1949, certain areas were withdrawn by the Navy Department from the jurisdiction of the Interior Department; and

WHEREAS, by a lease agreement entered into on March 25, 1950, the Secretary leased to the Municipality of St. Thomas and St. John all of the installations known as the Marine Corps Air Facility and the Naval Submarine Base except for the areas withdrawn by the aforesaid amendments and except for certain areas made available by the Interior Department to the Civil Aeronautics Administration; and

WHEREAS, by letter dated September 5, 1950, the Department of the Navy revoked the aforesaid amendments and restored the said areas to the jurisdiction of the Department of the Interior; and

WHEREAS, by a supplement to the lease agreement of March 25, 1950, the Secretary leased to the Municipality of St. Thomas and St. John the areas thus restored to the jurisdiction of the Interior Department; and

WHEREAS, by letter of June 23, 1954, the Secretary terminated the Lease Agreement of March 25, 1950, as supplemented, pursuant to paragraph 4 of the Supplement to the Lease Agreement, such termination to be effective July 1, 1954; and

WHEREAS, it is the intention of the Secretary that the property be used to the greatest extent possible for the benefit of the people of the Virgin Islands:

NOW THEREFORE, The Secretary hereby grants to the Permittee a permit to use, occupy, and operate the installations formerly known as the Marine Corps Air Facility and the Naval Submarine Base at St. Thomas, described more fully on Navy Public Works Drawings 10-34 and 10-35 (except for (a) those areas made available by the Interior Department to the Civil Aeronautics Administration under permit and memorandum of agreement dated August 24, 1948, as supplemented on October 17, 1952, and (b) the powerplant and related facilities made available to the Permittee under a permit of even date herewith and more fully described therein).

THIS PERMIT is granted subject to the following terms and conditions:

1. The Permittee agrees to pay as rental for the said property the sum of \$1.00 per year, payable in advance.
2. The Permittee shall use the said property to the greatest extent possible for the benefit of the people of the Virgin Islands.
3. The Permittee shall maintain the property in as good condition as when received and shall effect such repairs and replacements as are necessary to that end. In addition, the Permittee shall, in accordance with good management prac-

tices, endeavor to restore the property as rapidly as possible to its condition on January 1, 1948: *Provided*, That in so restoring the property, the Permittee shall expend no more than the amount received in revenues from the operation of the property, less reasonable costs of administration, unless it obtains the prior approval of the Secretary in writing.

4. The Permittee shall submit to the Secretary quarterly reports showing revenue received and expenditures made, by general categories, in connection with the operation of the property. Such reports shall contain the information listed in Exhibit A which is attached hereto and made a part hereof.

5. This permit shall continue in effect for a period coextensive with that of the revocable permit between the Navy and Interior Departments unless sooner terminated in accordance with this paragraph: *Provided*, That the Secretary may, in his discretion, modify or terminate this permit at any time: *Provided, further*, That the Permittee may, if it finds itself unable to perform any part of this permit, terminate this permit, in whole or in part, upon 60 days notice to the Secretary in writing.

6. Upon the expiration or termination of this permit, the Permittee shall return to the Secretary in as good condition as when received, reasonable wear and use, and Act of God excepted, all of the above described property, together with all replacements thereof and additions thereto, and the Secretary shall thereupon have the right immediately to reenter and take possession of the property, subject to the right of the Permittee to remove its property from the premises within a reasonable time thereafter.

7. It is expressly agreed that the Permittee may lease or license to public or private agencies or organizations, or to individuals, the properties covered by this permit: *Provided*, That except for such leases and licenses as may have been approved by the Secretary between July 1, 1954, and June 1, 1955, all such leases and licenses shall comply with the following terms and conditions:

(a) *General considerations for leases*

(i) *Classes*.—Leases may be of three classes: commercial, housing, and government.

Commercial leases may be made covering buildings, facilities, and land, or any combination thereof, for industrial and/or other income-producing purposes under the direct control and management of the lessee. Leases for buildings used for multidwelling units (apartments) shall be classed as commercial.

Housing leases shall be limited to existing detached or semidetached residential units (or structures easily adaptable to such purposes) for personal occupancy by the lessee and his immediate family.

Government leases may be made with the Government of the Virgin Islands, the Government of the United States, or any of their subdivisions, covering buildings, facilities, and land, or any combination thereof, for any lawful governmental purpose.

(ii) *Land*.—Commercial, housing, and government leases may include land area, but should be limited to the minimum area necessary for the conduct of the activities contemplated or for the full enjoyment and protection of the leased premises.

In general, unimproved lands should not be leased. However, small areas may be the subject of (and limited to) commercial and government leases where a positive showing is made, in the case of commercial leasing, that the lessee (a) will promptly develop and improve the land in such a manner and to such an extent as will contribute materially to the economy of the Island of St. Thomas, (b) will make a substantial investment in such improvements, and (c) will agree that upon termination of the lease all improvements will vest in the lessor, and, in the case of government leasing, that the property is required in connection with a lawful and necessary governmental function.

(iii) *Leases* may be made with individuals, corporations, partnerships, or other lawful business entities.

(iv) *Lessee*.—Commercial leases shall be made only after the lessee has shown to the satisfaction of the Virgin Islands Corporation that he (a) has a satisfactory personal and business reputation, (b) has the necessary qualifications and experience to operate the particular business in an efficient and businesslike manner, (c) has sufficient financial strength and backing to carry on the contemplated commercial venture, to make needed improvements, and to contribute materially to the economy of the Island of St. Thomas, and (d) intends himself to operate the leased premises during the entire term of the lease.

No lease shall be made with any employee of the Virgin Islands Corporation, the Government of the Virgin Islands, the Government of the United States, or any of their subdivisions, except that this restriction shall not apply to the leasing to such an employee of a single residential unit for his personal occupancy. However, such leases shall, at the option of the Lessor, be cancellable at any time after thirty (30) days of the date of termination of employment with the governmental agency involved.

(b) *Lease terms*

All leases shall contain the following terms and provisions, as well as any others that may be necessary to protect the rights of the United States:

(i) *Secretarial Approval*.—All commercial and government leases shall be subject to the approval of the Secretary of the Interior.

(ii) *Form*.—All leases shall be in writing except for leases for housing or residential units renting for less than \$75.00 per month.

(iii) *Tenure*.—Commercial leases for existing structures or facilities shall not exceed 20 years, except that in special cases, in the discretion of Virgin Islands Corporation, an option to renew for one additional 10 year period may be granted. Commercial leases for industrial uses shall not exceed five (5) years. Leases of unimproved land shall not exceed thirty (30) years, except that in special cases an option to renew for one additional ten (10) year period may be granted.

Housing leases may be made on a month to month, or yearly basis, but no such lease shall be longer than three (3) years.

The term of all government leases shall be for a period not in excess of one year beyond the period during which the facilities are under the control of the Virgin Islands Corporation.

(iv) *Rent*.—Rent under all types of leases shall be comparable to rent charged for similar buildings and facilities available on the Island of St. Thomas.

Commercial and government leases shall provide that rents shall be subject to renegotiation every ten (10) years.

Bureau of the Budget Circular A-45, dated June 3, 1952, as promulgated by the Departmental Manual of Allowance for Quarters, Subsistence, and Services, issued August 7, 1952, as amended, shall govern the determination of rents for all properties occupied by employees of the Federal Government and any of its subdivisions.

Commercial and government leases shall provide that rents shall be payable no less frequently than quarter annually in advance. Housing rents shall be payable monthly in advance.

(v) *Assignment*.—Any assignment of a lease must be approved in writing by the Secretary of the Interior. The proposed assignee must make the same showing as to personal and business reputation and financial resources as is required of original lessees.

Upon a lessee failing in business, filing a petition in voluntary bankruptcy, making an assignment for benefit of creditors, etc., the lease shall then and there be terminated, and the premises shall immediately revert to the lessor.

Subletting shall be forbidden unless the prior written consent of the Virgin Islands Corporation is obtained.

(vi) *Discrimination*.—Provision against discrimination in use and in employment based on race, creed, or color shall be included.

(vii) *Maintenance*.—Commercial and government lessees must maintain the buildings and facilities and property in accordance with the standards set by the Department of the Navy in its annual inspections and in accordance with any requirements established by the Virgin Islands Corporation.

(viii) *Insurance*.—Each commercial and government lessee shall maintain fire and extended coverage insurance to the fair and reasonable value of the leased property.

(ix) *Navy Permit*.—Each lease shall contain a provision providing for the automatic termination of such lease in the event the Department of the Navy exercises its right to revoke, in whole or in part, the revocable permit of January 1, 1948, pursuant to the following paragraph of the said permit:

"This Permit shall be for an indefinite term but shall be subject at any time hereafter to the right of the Navy Department, or higher military authority, to revoke this instrument in whole or in part, or as a temporary or a permanent measure, but it is the intention of the Navy Department that the right of revocation shall be exercised only in the event of military necessity or by reason of a National Emergency."

(x) *United States a Party*.—Each lease shall be entered into in the name of the United States, acting by and through the Virgin Island Corporation.

8. No assignment or transfer of this permit or any part thereof shall be valid without the prior consent of the Secretary in writing. In the event of any such assignment or transfer, the Secretary shall have the right to terminate this permit immediately and without notice. In the event the property covered by this agreement reverts for any reason to the Secretary, the Secretary shall respect and be bound by the terms of any lawful outstanding leases or licenses theretofore entered into by the Permittee or its authorized agency.

9. This agreement shall be subject to the terms and conditions of the above-mentioned revocable permit issued to the Interior Department by the Navy Department.

10. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or any benefit which may arise therefrom unless it be made with a corporation for its general benefit.

11. Wherever the word "Secretary" is used in this agreement, it shall also mean his authorized representative, and whenever the terms "lease" or "lessee" are used, they shall be construed to include the terms "permit," "license," "permittee," or "licensee," as the case may be.

IN WITNESS WHEREOF, I have hereunto set my hand as of the day, month, and year cited above.

By (Sgd.) DOUGLAS MCKAY, *Secretary of the Interior*.

August 29, 1955.

Certified to be a true copy of the original,

PALMER A. AXTELL,
Certifying Officer.

EXHIBIT A

The report required of the permittee by paragraph 4 shall contain the following information:

Narrative statement:

1. Short résumé of operations
2. Maintenance completed
3. New developments
4. Difficult or unique problems of general interest
5. Other

Listing of rentors and lessees:

1. Delinquents:
 - (a) Name
 - (b) Building, land, or water bill (identify)
 - (c) Amount of delinquency
 - (d) Date due
2. Cancellation of rental agreements:
 - (a) Name
 - (b) House number
 - (c) Date
3. New rental agreements:
 - (a) Name
 - (b) House number
 - (c) Rental rate
 - (d) Date

Personnel:

Appointed
Per diem

Statement of income and expense:

Income:

1. Rentals:

- (a) Housing
- (b) Commercial leases
- (c) Other

2. Fees:

- (a) Airplane landings
- (b) Dock
- (c) Parking
- (d) Beach
- (e) Storage
- (f) Water sales

Statement of income and expense—Continued

Expense:

Salaries and wages
Materials and supplies
Transportation
Office expense

Overhead: Net profit or loss

[Enclosure 5]

DEPARTMENT OF THE NAVY,
BUREAU OF YARDS AND DOCKS,
Washington, D.C., August 15, 1963.

Mr. JOHN J. KIRWAN,
*Acting Director, Office of Territories,
Department of the Interior,
Washington, D.C.*

DEAR MR. KIRWAN: The Secretary of the Interior, by letter of July 17, 1963, requested termination of the January 1, 1948, permit issued by the Department of the Navy to the Department of the Interior for the use and occupancy of the former Marine Corps Air Facility and Submarine Base located at St. Thomas, V.I. By separate correspondence, the General Services Administration has notified the Department of the Navy that the reports of excess recently submitted by the Navy for the disposal of this same property could not be accepted, in view of the above permit which can be terminated only by the Navy Department or higher military authority. In view of these circumstances, the Assistant Secretary of the Navy (Installations and Logistics) has directed that this permit be terminated.

Accordingly, the permit of January 1, 1948, between the Department of the Navy and the Department of the Interior, relating to the use and occupancy of the former Marine Corps Air Facility and Submarine Base, St. Thomas, V.I., is hereby terminated. This property is recaptured effective as of the date of this letter. Acknowledgment of this action is requested by the execution and return of the two extra copies of this letter which are furnished herewith.

Pending a new attempt by Navy to report the above property excess to the General Services Administration, and the subsequent disposal of this property by that Administration, we proposed to issue a license to the Virgin Islands Corporation covering the use and occupancy of the land and improvements in question. This proposed license will be subject to termination by either Navy or General Services Administration at any time on 30 days' prior notice, to facilitate disposal action, and will authorize the licensee to issue sublicenses or permits, providing they are also subject to termination on not more than 30 days' notice.

Sincerely,

C. BITTENBRING III,
Assistant Chief for Real Property Management.

[Enclosure 6]

JULY 17, 1963.

HON. FRED KORTH
*Secretary of the Navy,
Pentagon Building,
Washington 25, D.C.*

DEAR MR. SECRETARY: Staff representatives of our two departments have been in frequent contact on the subject of declaring excess and other steps looking toward disposal of the properties known as the Marine Corps Air Facility and the Naval Submarine Base, St. Thomas, V.I.

After careful analysis, it is our conclusion that this transaction would be facilitated and the interests of the United States would be best served if, prior to declaration of excess, the permit to this Department which became effective January 1, 1948, were to be canceled. Accordingly, we recommend and request that such action be taken in timely fashion.

We recognize the necessity to work out interim permit arrangements for certain third parties now occupying the premises. Our staff will be available to assist in this effort and to perform such services as may be necessary in connection therewith.

Sincerely yours,

(Signed) STEWART L. UDALL,
Secretary of the Interior.

[Enclosure 7]

THIS AGREEMENT made this _____ day of _____, by and between the UNITED STATES OF AMERICA, hereinafter called the "LESSOR," acting by and through the VIRGIN ISLANDS CORPORATION, hereinafter called "Vicorp", and _____ hereinafter called the "LESSEE", and his/its heirs, successors and assigns, as the case may be.

WITNESSETH, that the LESSOR, in consideration of rents, covenants, and agreements hereinafter reserved to be paid and performed by the LESSEE, hereby does demise and let to the LESSEE, and the LESSEE has agreed to lease and take, and hereby does lease and take from the LESSOR, the following property located at the former _____, St. Thomas, V.I.:

as delineated and set forth on Exhibit A, attached hereto and made a part hereof: *Provided*, That the LESSOR retains the right to the full use of all cisterns, water catchments (including roofs), tanks, pipes, lines, utilities, and other structures located on the leased premises which are part of the facilities of the former military properties, as well as access to them, whether above or below ground.

To HAVE AND TO HOLD the benefit, use, and possession of said demised premises for a term of () years beginning on the date of approval of this lease by the Secretary of the Interior.

1. The LESSEE covenants and agrees:

a. *Use*.—To use the demised premises for the purpose of _____ and for no other purpose whatsoever.

b. *Rent*.—To pay as rent for the demised premises the sum of _____, (\$ _____) per annum, payable monthly in advance in twelve (12) equal installments of _____ (\$ _____) each, at the office of the Manager, Development Department, Virgin Islands Corporation, St. Thomas, V.I. It is agreed by the parties hereto that the time and payment of each and all of such payments is of the essence of this agreement: *Provided*, That in the event the term of this lease shall be for a period of more than five years, the foregoing annual rent shall be for the first through the fifth year. The annual rental for the sixth through the remaining years of the term, up to and including the tenth year if the term hereof should be for ten years, shall be determined as follows: No sooner than one hundred and eighty (180) days and no later than ninety (90) days prior to the start of the sixth year, LESSOR and LESSOR shall by mutual agreements in writing signed by both parties determine the sum to be paid annually as rent for the final portion of the term of this lease. In the event of the failure of the parties to reach mutual agreement with respect to rent prior to the said ninety (90) day period, the same shall be determined by a board of arbitration within the succeeding thirty (30) days, subject to the following terms and conditions:

(1) Said board of arbitration shall consist of three persons, one to be selected by the LESSOR, one by the LESSEE, and the third to be selected by the first two selected.

(2) Said arbiters shall make independent findings in writing as to the fair annual rental under this lease for the entire final portion of the term of this lease: *Provided*, That in no event shall the fair rental value as determined by any of the members of said board of arbitration be less than the annual rental first above stated.

(3) On the thirtieth (30th) day prior to the start of the said final portion of the term of this lease beginning with the start of the sixth year, or sooner by mutual agreement, the three arbiters shall meet with the authorized representatives of said LESSOR and LESSEE and present in separate sealed envelopes their findings as to the fair rental under the lease for the said final portion of the term.

(a) The arbiters selected by the LESSOR and LESSEE shall each open the envelope containing his determination and read it aloud.

(b) If the determinations as made by the arbiters selected by the LESSOR and LESSEE do not exceed each other by more than One Thousand Dollars (\$1,000.00) per annum then, in that event, the average of the two shall be the rent to apply for the said final portion of the term of this lease and both parties agree to bound thereby.

(c) If the difference in the determinations as made by arbiters selected by the LESSOR and LESSEE shall exceed One Thousand Dollars (\$1,000.00) per annum then, and only in that event, shall the third arbiter open the envelope containing his finding. If the third arbiter's determination falls between the determinations made by the arbiters appointed by the LESSOR and LESSEE, then, and only in that event, the average of all three determinations shall be the rent to apply for the said final portion of the term of this lease and both parties agree to be bound thereby. If the third arbiter's determination is greater or less than the determinations made by both the arbiters appointed by the LESSOR and LESSEE then, in that event, the third arbiter's determination will be added to the average of the first two, and one-half ($\frac{1}{2}$) of the said sum will be the rent to apply for the said final portion of the term of this lease and both parties agree to be bound thereby.

It is understood and agreed between the parties hereto that the annual rent determined pursuant to the above provisions shall be apportioned and paid in the manner first above stated.

c. *Condition of Premises.*—That the LESSEE has examined and knows the condition of the demised premises and accepts them as is, including the condition of the public halls, stairways, etc., located therein.

d. *Signs.*—That the LESSEE shall not install any signs without the previous written consent of the LESSOR.

e. *Alterations.*—That the LESSEE shall not make any alterations or additions (including permanent installations of trade fixtures, heavy equipment, etc.) to the demised premises without first submitting plans and specifications for the proposed changes to the LESSOR and then obtaining the written approval thereof by the LESSOR.

f. *Improvements.*—That any permanent improvements to the leasehold made by the LESSEE, excepting "trade fixtures", shall be and remain the property of the LESSOR.

g. *Maintenance.*—That the LESSEE will, at his/its own cost and expense, have and keep said demised premises in constant and good condition and repair, and at the end of the term provided herein, or sooner termination, shall return same to LESSOR in as good condition as received, reasonable wear and tear excepted. Without limiting the foregoing, LESSEE also agrees that it will, at its own cost and expense, correct such defects of maintenance on the demised premises as VICORP, taking into consideration the written annual inspection summary of the United States Navy, or the LESSOR, may reasonably require. Such defects shall be corrected within three (3) months after VICORP has furnished to LESSEE in writing the provisions of said inspection summary relating to the demised premises, with such modifications as VICORP, in its discretion, may make.

h. *Repairs.*—That the LESSEE will, at his/its own cost and expense and within _____ () days of approval of this lease by the Secretary of the Interior, accomplish the following repairs to the demised premises:

i. *Cotenants.*—That the LESSEE realizes that other portions of said Building No. _____ are or may be leased to other tenants, and specifically agrees that employees or agents of LESSOR shall have the right to enter the demised premises for the purpose of performing any work necessary for the further development of said building, or for the comfort or enjoyment of other tenants, including but not limited to the running of electrical cables and wiring and the installation of plumbing facilities through the demised premises, in such manner as not to unduly interfere with LESSEE's operations.

j. *Excessive Noise, Etc.*—That if any of LESSEE's operations in the demised premises causes inconvenience to other occupants of the building due to excessive noise, odors, heat, etc., LESSOR may demand that LESSEE install whatever devices may be required by LESSOR to eliminate the objectionable factor. Any such remedial action must be begun within fifteen (15) days after written notice is given by LESSOR and must be completed within thirty (30) additional days, unless satisfactory evidence is presented to show that delay is occasioned by conditioned beyond the control of the LESSEE.

k. *Movement of Materials.*—That in the movement of merchandise and materials in and out of the demised premises, LESSEE will keep noise to a minimum and will not allow trucks to damage buildings or vegetation.

l. *Fire Hazards.*—That LESSEE shall maintain janitorial services which will preclude the possibility of fire hazard because of accumulations of material scraps, excessive dust, paper, debris, etc., caused by or resulting from the LESSEE's operations in or upon the leased premises. And further, that LESSEE will promptly comply with all written recommendations made to him by the Fire Marshal of the Government of the Virgin Islands relating to fire prevention in the demised premises.

m. *Nondiscrimination.*—That LESSEE and his/its employees shall not discriminate because of race, religion, color, or national origin against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. Nor shall the LESSEE or his/its employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, or national origin. The LESSEE shall include and require compliance with a provision similar to the one contained in this paragraph in any subcontract made with respect to the operations authorized hereunder.

Further, in connection with the performance of work under this lease, the LESSEE agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LESSEE agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Virgin Islands Corporation setting forth the provisions of this nondiscrimination clause. The LESSEE further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

n. *Assignment or Subletting.*—That LESSEE agrees not to assign or in any manner transfer this lease or any estate or interest therein without the previous written consent of the LESSOR, and further agrees not to sublet the premises or any portion thereof without such written consent: *Provided*, That in no event shall any use other than that provided for in paragraph (a) hereof be consented to by the LESSOR.

o. *Inspection.*—That the duly authorized representatives of the LESSOR, VICORP, or the Department of the Navy, shall have the right to enter upon the leased premises at all reasonable hours for the purpose of making an inspection.

p. *Right of Reentry or Termination.*—That if the LESSEE shall fail to pay said rent in advance as aforesaid, or break or violate any of the within covenants, conditions, or agreements, and fail to comply therewith within fifteen (15) days after having written notice from LESSOR, and such notice having been given, this lease and the terms therein shall terminate at the option of the LESSOR as if such date were the date fixed for the termination of the term therein. Should LESSOR exercise its option in pursuance of this paragraph, LESSOR may reenter the leased premises, or any part thereof, either with or without process of law, using such force as may be necessary to do so, and remove any person or persons or chattels therefrom, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and LESSOR shall have at all times the right to distrain for rent due, and have a valid and first lien upon all property of LESSEE as security for the payment of the rent herein reserved.

q. *Holding Over.*—That in the event the LESSEE remains in possession of the demised premises after expiration of this lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month, subject to all the conditions, provisions, and obligations of this lease insofar as same are applicable to a month to month tenancy.

r. *Utility Services.*—That the LESSEE shall make separate arrangements for utility services, including electricity and salt and fresh water supplies, and shall pay for same at prevailing rates. The maintenance of all plumbing lines, other than common use lines, and fixtures within the leased area shall be the responsibility of the LESSEE. Failure to comply with the LESSOR's or other supplier's

maintenance requirements for the plumbing system will be grounds for discontinuance of water service (fresh and/or salt) until corrected.

s. *Nonwaiver*.—That one or more waiver of any covenant and condition by the LESSOR shall not be construed as a waiver of a further breach of the covenant or condition, and the consent or approval of the LESSOR to or of any acts by the LESSEE requiring the LESSOR's consent or approval shall not be deemed to waive or render unnecessary the LESSOR's consent or approval of any subsequent similar act by the LESSEE.

t. *Liability Insurance*.—That the LESSEE agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the leased premises, and to hold LESSOR free and harmless from civil or other liability of any kind during the time LESSEE is in control of the property pursuant to this lease. LESSEE shall, throughout the term of this lease, procure and maintain at its expense, with respect to its use of the property, third party bodily injury insurance of not less than \$25,000 for any one person or \$50,000 for any one accident.

u. *Fire Insurance*.—That LESSEE will maintain fire and extended coverage insurance on all existing and future improvements to the leasehold, naming LESSOR as the assured, in an amount not less than eighty percent (80%) of the fair insurable value thereof as determined at least once every three years. All insurance provided for in this paragraph is solely for the benefit and protection of the LESSOR and in the event of destruction or injury to the premises by fire or otherwise, LESSEE shall have no right, title, interest, or claim in or to any of the proceeds of such insurance policies: *Provided*, That the LESSOR shall have sole and uncontrolled discretion in deciding whether, in the event of destruction or injury to the premises by fire or otherwise, the demised premises shall be reconstructed or repaired, as the case may be. If the demised premises are destroyed by fire, or other cause beyond the control of the LESSEE, so as to render the same partially untenable or partially unfit for the use or purpose for which same is hereby let, and are repairable within six (6) months, then in that event, this lease shall remain in full force and effect, but there shall be an abatement in rent for such six (6) months in the proportion that the damaged portion of the demised premises bears to the whole of said premises. It is understood that any fire or extended coverage insurance with regard to trade fixtures, personal property, machinery, equipment, or supplies of the LESSEE's in or about the leased premises shall be maintained solely at the discretion and expense of the LESSEE and shall be in addition to the insurance herein provided for.

v. *Insurance Generally*.—That the insurance provided for in paragraphs (t) and (u) hereof shall provide that thirty (30) days' prior notice shall be given to the LESSOR in the event of cancellation of any policy required by such paragraphs by the insurer. Certificates of insurance or certified copies of each policy of insurance taken out pursuant to paragraphs (t) and (u) shall be deposited with 15 days after the approval of the lease with the LESSOR. LESSEE agrees that, not less than thirty (30) days prior to the expiration of any insurance required by this agreement to be carried by the LESSEE, it will deliver to the LESSOR a certificate of insurance or a certified copy of each renewal policy to cover the same risks. Each policy of such insurance shall contain an endorsement reading substantially as follows: "The insurer waives any right of subrogation against the United States, the Virgin Islands Corporation, or any officers or employees of either, which might arise by reason of any payment under this policy." In the event that the premises leased herein constitute only a portion of one building, and in the event that other portions of such building are also subject to lease, the LESSEES holding leases to any portion of such building may, by mutual agreement, jointly obtain the insurance required by this agreement and they may further agree to share the cost thereof on a *pro rata* or other basis agreeable to the LESSEES.

w. *Personal Property and Damage*.—That all personal property of any kind or description whatsoever in the demised premises shall be at LESSEE's sole risk, and the LESSOR shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the LESSEE from any act or neglect of cotenants or other occupants of the building. Nor shall the LESSOR be liable for any damage occasioned or done by plumbing, gas, water, steam, or other pipes, or sewerage, or bursting, leaking, or running of any cistern, tank, washstand, water closet, or waste pipe in, above, upon, or about said premises, nor for damage occasioned by water being upon or coming through any roof, ceiling, skylight, trapdoor, or otherwise.

x. *Forfeiture*.—That it is specifically understood that all the foregoing covenants and agreements, as well as other terms and conditions agreed to by LESSEE, are to be well and faithfully kept by LESSEE and that any failure by LESSEE to keep same will, at the option of the LESSOR, work a forfeiture of this lease, in accordance with the procedure set forth in paragraph (p), *supra*.

y. *Contingent Fees*.—That no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the LESSEE for the purpose of securing business. For breach or violation of this warranty the LESSOR shall have the right to annul this lease without liability or in its discretion to require the LESSEE to pay, in addition to the rent provided for, the full amount of such commission, percentage, brokerage, or contingent fee.

2. The LESSOR does hereby covenant and agree that it has full right to lease the demised premises for the term aforesaid and that said LESSEE, upon payment of rent and the faithful performance of all the other covenants, conditions, and agreements of the lease shall peaceably and quietly enjoy the same for the full term hereof.

3. IT IS FURTHER EXPRESSLY UNDERSTOOD by the parties hereto that said demised premises are located in an area which is subject to severe drought during periods of limited rainfall, and that LESSEE assumes the risk of such condition. Nothing herein shall be construed to be a promise or guarantee on the part of the LESSOR that there will be water available at all times for the needs of LESSEE's business.

4. IT IS FURTHER EXPRESSLY UNDERSTOOD by the parties hereto that the United States Navy is the owner of the demised premises covered by this agreement and that while said demised premises are now under the control of VICOOP, acting for the Department of the Interior, the Department of the Navy or higher military authority has the authority to repossess them at any time upon demand. In view of this fact, the parties hereto agree that should the aforesaid right to repossess the demised premises or any part thereof, be exercised, this agreement shall thereupon cease and terminate as if the date of such repossession were the date otherwise fixed herein for termination and the LESSEE shall have no claim against the LESSOR for any damage of any kind suffered by the LESSEE because of repossession, but the LESSOR shall refund any unearned rent paid by the LESSEE.

5. IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED that if LESSEE shall fail in business, file a petition in voluntary bankruptcy, make an assignment or other conveyance in trust for the benefit of its creditors, or after hearing and notice to it be adjudged bankrupt, or permit a final judgment or decree for debt to be entered against it and execution to issue and be levied upon LESSEE's interest under this lease, or if a Receiver shall after hearing and notice to it be appointed for LESSEE's property and assets, then upon the happening of any such event the term herein shall then cease and determine, it being expressly understood and agreed that the covenant hereinbefore contained against the subletting of the premises or any portions thereof or the assignment of this lease by operation of law, shall apply as well as to the subletting of the premises or the assignment of this lease by the voluntary act of said LESSEE, and any voluntary act of LESSEE which would in any way legally operate to defeat its title to this lease and pass the same to any other person or corporation, may, if LESSOR so elects, operate as a termination of this lease and the same shall then be held for naught.

6. IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED by the parties hereto that this lease must be approved in writing by the Secretary of the Interior or his authorized representative as a condition precedent to its validity.

7. No Member of or Delegate to Congress, or official of the United States, or any of its instrumentalities, or of the Government of the Virgin Islands, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this agreement if made with a corporation or company for its general benefit.

8. All notices sent or required to be sent hereunder must be by registered mail, return receipt requested. If addressed to the LESSOR, same shall be sent to the Manager, Development Department, Virgin Islands Corporation, Post Office Box 597, Charlotte Amalie, St. Thomas, Virgin Islands, or to such other place as LESSOR may hereinafter designate by registered mail, with a copy by regular mail to the President, Virgin Islands Corporation, Christiansted, St. Croix, Virgin Islands, U.S.A. If addressed to LESSEE, same shall be sent to _____, or to such other place as the LESSEE may hereinafter designate by registered mail.

IN TESTIMONY WHEREOF, the parties herein have hereunto set their hands and seals on the day and year first above written.

UNITED STATES OF AMERICA, Lessor,
Acting by and through VIRGIN ISLANDS CORPORATION,
By: KENNETH A. BARTLETT,
President, Virgin Islands Corporation.

By: RICHARD J. HOLMBERG,
Manager, Development Department, Virgin Islands Corporation.

-----, Lessee,
By: -----.

Approved:

-----,
Secretary of the Interior.

[Enclosure 8]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., February 4, 1955.

Mr. W. W. BRUNSON,
*Head, Disposals Section, Operations and Legal Branch, Real Estate Division,
Bureau of Yards and Docks, Department of the Navy, Washington, D.C.*

DEAR MR. BRUNSON: This will reply to your letter of October 25, 1954, (C-422/EJJ: mr MD10/N1-1 Virgin Islands-7), concerning a proposed permit authorizing the interim use by this Department of the former U.S. Naval Degaussing Station, Hassel Island, St. Thomas, V.I.

We have not yet determined precisely what means we wish to employ in making the property available for use by either public or private agencies in the Virgin Islands. We agree, however, that the proposed revocable permit might appropriately grant the use and occupancy of the degaussing station directly to this Department, rather than to the Government of the Virgin Islands.

The proposed revocable permit attached to your letter of October 25 is entirely acceptable to us except for two particulars. First, I suggest that on pages 1 and 2, the references to the Office of Territories as the permittee and as the agency accepting the terms and conditions of the permit be struck, since only the Secretary of this Department would have authority to accept the terms and conditions and the document will thus need to be signed by him. Secondly, I note that there is no provision in the proposed revocable permit specifically authorizing this Department to grant a lease or license to the property in question to public or private agencies. As you doubtless know, this Department has authority to use and occupy certain other Navy property in St. Thomas known as the Marine Corps Air Facility and U.S. Naval Submarine Base, under the terms of a permit and memorandum of agreement dated January 1, 1948. That permit provides, among other things, that "the Interior Department may lease or license various portions [of the property] to public, including Federal and territorial, or private agencies or persons, upon such terms as the Secretary of the Interior may deem appropriate." We suggest that the proposed permit regarding the degaussing station might appropriately include the same or similar language.

If modified in the manner suggested, we should be pleased to obtain the right to use and occupy the property in question under the terms described in your letter of October 25 and its attachment.

Sincerely yours,

WILLIAM C. STRAND, *Director.*

[Enclosure 9]

DEPARTMENT OF THE NAVY,
BUREAU OF YARDS AND DOCKS,
Washington, D.C., August 16, 1955.

Mr. WILLIAM C. STRAND,
*Director, Office of Territories,
Department of the Interior,
Washington, D.C.*

DEAR SIR: This is in reply to your letter of February 4, 1955, relative to a proposed permit authorizing the use by your Department of the former Naval De-

gaussing Station, Hassel Island, St. Thomas, V.I. In that letter, you requested a revision of the proposed permit in two particulars, i.e.:

(1) Deletion of all references to "Office of Territories"; and

(2) Inclusion of specific authority to lease or license the property to public or private agencies.

This Department agrees that all reference to the "Office of Territories" should be deleted from the proposed permit. The permit may be revised also to specifically authorize your Department to issue licenses or permits to public or private agencies for use of the property. There is no authority, however, whereunder this Department may authorize the Department of the Interior to out-lease property under the jurisdiction and control of the Navy.

If agreeable to the Department of the Interior, the proposed permit will be modified accordingly.

Sincerely yours,

DAVID W. AGNEW.

Senator WALTERS. Mr. Chairman, I wonder if he could tell us under how many of these leases they have built improvements?

Senator NELSON. Did you wish to elaborate on that?

Mr. KIRWAN. Mr. Chairman, I would say the 25 leases that we are talking about for the most part, and again I do not know of a single general statement to which there are not exceptions in this particular field, but for the most part these 25 instruments dealt with existing improvements, many of which have been markedly improved since the time they passed out of the Government's immediate control, so that you have everything from in a very few cases unimproved land, to cases where the improvement was leased and is today just about the way it was when it was leased, up to cases where the improvement at the time it passed out of Government day-to-day lands is the lesser part of the present improvements and that which was added to it today perhaps is even more so. The greater—more than half, in other words, has been added to it since the time of execution of the instrument.

Senator NELSON. Does either the Interior or Navy have statistics on the value added in terms of capital investment?

Mr. KIRWAN. No, Mr. Chairman; first of all, of course, the premises have been in the hands of the other party. Secondly, value added would have to be a matter of evaluation if we are talking about value. Now, if we are talking about cost, I am not sure, but I would have no reason to believe that the lessees would not have adequate records, most of them are in business, so I suppose they have records to support anything.

So we would have to distinguish again on what one wanted to show between an expenditure, let us say for furniture to be removed by the lessee or trade fixtures or improvements that as a practical matter will be used up before the property would normally revert to the Government anyway, and those expenditures made on capital betterments which are actually going to do the Government some good at the end of a given period of time when it gets the building back.

Senator NELSON. Has the Department of the Interior or Navy received any figures on what improvements have been made?

Mr. KIRWAN. We have neither sought nor received such figures, Mr. Chairman.

Senator NELSON. That is all the questions I have.

Senator DOMINICK. Mr. Kirwan, I want to say this is an extremely skillful statement and I congratulate you on it.

Mr. KIRWAN. I take it in the spirit that it is meant, Senator, and thank you.

Senator DOMINICK. Tell me, how long have you been with the Department of the Interior?

Mr. KIRWAN. I have been with the Department of the Interior since 1950, Senator Dominick. I have been in the Office of Territories since 1961.

Senator DOMINICK. Were you present at all in the process of negotiating these leases or permits as you call them?

Mr. KIRWAN. If you are using—by negotiating; no, sir. Absolutely. If you mean was I ever aware of any or had a brush with them earlier than 1961, the answer would be, "Yes."

Senator DOMINICK. Tell me something about this naval permit to the Department of the Interior. Was this a public document?

Mr. KIRWAN. I am sure it was. Everything not classified and not privileged for some other reason is a public document.

Senator DOMINICK. I think, Mr. Chairman, for the purposes of the record that we should include this permit in the record, among other reasons it contains a clause on the duration of the permit which I would like to read for the record.

It says:

This permit shall be for an indefinite term—

and this is the permit from the Navy to the Interior Department—

it shall be subject at any time hereafter to the right of the Navy Department or higher military authority to revoke this instrument in whole or in part or as a temporary or permanent measure, but it is the intention of the Navy Department that the right of revocation shall be exercised only in the event of military necessity or by reason of a national emergency.

And that is the clause, Mr. Chairman, which pertains to the duration of the permit.

The purposes of the permit are set out on page 1, and it says in here that the Interior Department recognizes that these installations and the attendant military activities have greatly contributed to the development of the civilian economy of the Virgin Islands and the island of St. Thomas, particularly, and the continuation of these operations will be injurious to that economy.

Then over on the last page of this permit, under subsection 3 of a caption entitled "Responsibilities of the Department," and I quote:

The Interior Department may lease or license various portions thereof to public, including Federal and territorial, or private agencies, or persons, upon such terms as the Secretary of the Interior may deem appropriate.

Now, I would presume, Mr. Kirwan, that if this is a public body, not only this clause in connection with duration of the permit but also the clause on the power of the Interior Department to lease, must also have been available to people who received permits or leases?

Mr. KIRWAN. This in its entirety is a public document, Senator Dominick, so it, together with every other record that either Navy or we have, absent classified material, was always before, in a theoretical sense, everybody.

Senator DOMINICK. Now, in 1948 did not the Interior Department take action to issue long-term leases on this property?

Mr. KIRWAN. Beginning with 1948?

Senator DOMINICK. Yes.

Mr. KIRWAN. I know that it did beginning with 1950, Senator Dominick. I would have no reason to believe it did not as early as

1948, but I do not especially recall it. But whether it began to lease, it issued instruments holding themselves out to be leases, yes. I am sure it did.

Senator DOMINICK. How long were the terms of those leases?

Mr. KIRWAN. In at least one case a hundred years. I do not know if any exceeded that, Senator, but I doubt it.

Senator DOMINICK. Were the rentals that were charged in that lease or leases as high as the subsequent ones in the late fifties?

Mr. KIRWAN. Pardon; my counsel informs me that these leases were by the municipality and not the Department, but since the municipality is an agent associated with Interior I am not making a great point of it. But to answer your question, Senator Dominick, on a given piece of property, you mean?

Senator DOMINICK. Yes.

Mr. KIRWAN. I would say, Senator, that my recollection of what people have told me about those is that I would have no reason to think the rentals were higher, and my guess would be lower. It was earlier in time, among other things.

Senator DOMINICK. Now, the only one of those leases that are still in effect as I recall, is the Texaco lease. Is that correct?

Mr. KIRWAN. Between 1950 and 1951, Senator, one of which is Texaco and the other are two residences and the distillery which I mentioned before having the language of the Navy intent.

Senator DOMINICK. Mr. Chairman, I think it would be helpful if we could have this permit from the Navy to the Interior Department dated January 1, 1948, included in the record.

Senator NELSON. It will be done.

Mr. KIRWAN. It is included in the record. It is an attachment which we requested earlier. Everything the Senator has asked be included was also part of our request. We asked that it be introduced in its entirety.

Senator NELSON. All right.

Senator DOMINICK. Before you wrote your letter to these lessees of August 15, 1963, did you have an opinion from the Solicitor in writing concerning the validity of the cancellation?

Mr. KIRWAN. Senator, if I can clarify the word "opinion," we had written—we first of all had a complete oral statement of the correctness of our views, but turning to writing, we had written evidence from the Solicitor of his concurrence in this conclusion a couple of years earlier. It was not in the form of an opinion, but if by opinion you simply mean a written evidence of the Solicitor's conclusion the answer would be "yes."

If you mean did he put it in the form of an opinion, which is the stylized manner within the Department of the Interior the answer would be, "No."

Senator DOMINICK. Did he refer to these specific 25 leases that we have been talking about?

Mr. KIRWAN. He referred to the category. We sought his views in dealing with 1 of the 25, and he made a general statement advertising to the nature of the one in such terms as it unmistakably applied to all.

Senator DOMINICK. Now, Mr. Kirwan, I was also interested, as was the chairman, in your statements on pages 15 and 16, you said under

No. 1, that any lease awarded as a result of public advertising would be entitled to complete credence.

Now, when you refer to complete credence, are you talking about terms, the term of the lease?

Mr. KIRWAN. By credence, Senator Dominick, I certainly do not mean to imply in any sense it was a lease or would ever be regarded as a lease. I simply mean it seems to me reasonable and appropriate that the Government grant to the party who obtained his lease as a result of direct advertising in the first place, a brandnew lease which would give him the lease for the first time in his life, a brandnew lease, identical in all of its terms with the permit that was revoked on August 15.

Senator DOMINICK. Now, wait a minute, Mr. Kirwan, you are walking all around the bush here.

What I want to know is, when you made this statement in here were you saying that you were going to have the Virgin Islands Corporation or the Government ratify existing documents that these people hold occupancy under?

Mr. KIRWAN. No, Senator.

In our opinion there are no existing documents to be ratified. However, what I did mean is that the Government would tender them new, for the first time, documents identical in terms with those instruments that were canceled on the 15th of August.

Senator DOMINICK. And including a term of duration comparable or identical to the term that they now have, or with a—

Mr. KIRWAN. Identical rather than comparable. In other words, in those instances where the other party got his lease as a direct result of advertisement, and let me clarify when I say direct result. If an instrument was advertised to the public and the same terms were awarded to the high bidder, I would expect that now a brand new lease, identical in term to that one, would be offered the other party, without a 30-day cancellation clause.

However, Senator, if there was a public advertisement on one set of terms and an award subsequently made on a very different set of terms I would not regard that as a direct result of advertising.

Senator DOMINICK. Mr. Kirwan, we have some people who are pretty vitally affected by this, and if I can get one I want a straight answer.

Mr. KIRWAN. Do you want to take an example, Senator?

Senator DOMINICK. Yes. Let me take Mr. Stanford, for example, of L'Escale, who has a lease on a gift shop at the airport. Would he receive an identical document to that, same rental, renegotiation terms, and duration, as he had before?

Mr. KIRWAN. Mr. Stanford would fall squarely under point 2 on page 15, my answer to you would be, "Yes." The reason is not because he had a publicly advertised instrument, which he did not as far as our files in Washington show, but rather because the very terms of the old instrument at this time permit a complete rental renegotiation. Therefore, in my opinion it is correct, it is logical, it is the fair thing to do to give him an instrument identical with the one he thought he had, except as the old instruments' very terms permit.

Right now have a brand new rent renegotiation.

Senator DOMINICK. Let me ask you this: That being the case, in your opinion, as you expressed it, why did you write a letter of Octo-

ber 2 saying that his document has been totally and completely canceled "and you have nothing t all just now, you would be better off with a permit from Vicorp?"

Mr. KIRWAN. Because my letter to Mr. Stanford which had the advantage of candor, directness, and usefulness to him stated exactly the circumstances existing then and they continue to exist today, Senator Dominick.

We would propose to do for him that which I outlined, but we are not presently able to do it and that is not the present situation.

Senator DOMINICK. Well, again, coming back to the point that I made, can you tell Mr. Stanford who is here that he will get a lease on a renegotiated basis as far as rental is concerned with exactly the terms he had before.

Mr. KIRWAN. I certainly cannot, Senator. I can say to you I believe that would be a fair and equitable solution to this, it would be one that I would commend, one I would press for and one that I would recommend, and one, incidentally that I would expect to see happen. If you mean, Senator, can I assure that the owner of L'Escale, that every Federal agency who has a role to play here would see it the same way I do or our Department, of course, I cannot say that.

Senator DOMINICK. Of course, this would be under the jurisdiction of one of two bodies over which you have no control.

Mr. KIRWAN. Senator, if the property finally goes to the Virgin Islands Corp. or the government of the Virgin Islands, particularly, of course, more so if it goes to the corporation rather than the local government, it is unrealistic to imply that we do not have that type of suasion, that type of cooperation or relationship with them that makes us unable to, working with them, enable to carry out equitable and reasonable arrangements.

Senator DOMINICK. Have you had any indication from Vicorp or the island government that they would honor these leases?

Mr. KIRWAN. Senator, we start with the position that there are no leases through no fault of our own. We have not had any indication from the Virgin Islands Corp. because the question has never been posed to the corporation, it has never had the property, as to what it would do if it got the property except that it would act fairly and in the public interest.

Senator DOMINICK. Well now may I say that your statement on pages 15 and 16 would indicate to most people, I believe on the committee, that the only ones out of the 25 that you would have any problems with reinstating would be the 6 listed.

Mr. KIRWAN. Senator, reinstatement would not be our problem, it would be giving them brandnew instruments for the first time, but I do believe that that is a realistic evaluation of the only ones that would give us a problem with the disclaimer that we find nothing in the local files inconsistent with what is in our own.

Our files here are not complete in Washington, but unless there is something unusual in local files, and I have no reason to believe there is, I do not see why any public body wanting to do the equitable, fair thing, would have a problem with any except these six, and I am passing no judgment as to what will happen to the six. When I say problem I don't mean I know the answers, no. I just mean I do not know what the answer is or should be yet.

I do not believe anyone would have a problem with any other than these six, providing the other party sees the criteria given in 1, 2, or 3, the same way as the Government. By other party I am referring to the private party.

Senator DOMINICK. Well, I must say I have concern because I have not yet gotten a "Yes" or "No" answer as far as I can see.

Mr. KIRWAN. Senator, if you will rephrase the question I will be glad to attempt to answer.

Senator DOMINICK. Well, I will try it again. With the exception of the six listed on page 16 is it my understanding that you, as a Director of Vicorp, and as the Acting Director of the Office of Territories—

Mr. KIRWAN. I am not a Director of Vicorp, Senator.

Senator DOMINICK. I beg your pardon, I thought you were. You are an officer?

Mr. KIRWAN. No; my connection with the Virgin Islands Corporation is: The Secretary of the Interior has entrusted to the Office of Territories the day-to-day carrying out of his responsibilities for and with the Corporation. That is the connection.

Senator DOMINICK. All right, then, with your connection as the agent for the Secretary of Interior and as the Assistant Director for the Office of Territories, is my understanding correct that all except these six leases listed on page 10 would be redrawn in identical terms as they now are and put into effect on those terms?

Mr. KIRWAN. No, Senator, you would correctly understand that the Office of Territories—and I will go further and I will say the Secretary of the Interior because I have cleared with him realistically this point of view—the Department of the Interior would commend to anyone having both the power and the responsibility to act in this matter, that approach, and knowing our relationships with the entities that are identified we would have great confidence that we do in any other workaday matter that they would give great weight to our recommendations.

I would not want to state it differently than that.

However, I do not know with certitude at this point that, indeed, these two agencies will be given the charge. I do not know with certitude whether any outside agencies, whether within an agency within control of the Government, might not interpose an independent view that might upset or might make a difference in the ultimate working out, but I can say that the Department of Interior believes this is the correct way to proceed with regard to all of these leases.

Senator DOMINICK. Then what you are saying on pages 9 and 10 is that you hope it would work out in this general direction?

Mr. KIRWAN. We both hope and have good reason to expect that unless someone frustrates us unexpectedly, it would work out this way.

Senator DOMINICK. Most of your notices of cancellation that you gave said that they were entitled to retain occupancy subject to a 30-day cancellation, did they not?

Mr. KIRWAN. We said they would be given new permits with the standard 30-day cancellation in. This is standard in every one of our revocable permits.

Senator DOMINICK. This would apply, as I understand your testimony at this point, to these leases other than the six that are mentioned here. These 30-day cancellation clauses.

Mr. KIRWAN. Senator, today every one of the 25 is there by virtue of a revocable permit either written or expressed, until the day comes they are handed new instruments everybody is subject to 30-day cancellation notice.

If they are interested in them, it is an understatement to say I cannot speak for them, when they get new instruments, those instruments which will be leases will not be cancellable at all, they will run out their term.

Senator DOMINICK. Now, Mr. Kirwan, apparently we are arguing back and forth as to what their document is or is not, or what you have done. I am not interested in—what I am talking about is the basic document under which they originally held occupancy.

Mr. KIRWAN. The instrument itself, the one from us that is?

Senator DOMINICK. Yes; that is correct.

Did you ever make any effort to have the Navy, as such, ratify these documents?

Mr. KIRWAN. We did not make an effort to ratify these particular documents, Senator Dominick. We attempted 1 year ago to get the Department of the Navy to issue a new single lease for one firm we wanted to bring in to make a substantial investment in the islands. It could have been a year and a half instead of a year.

The Navy told us they would not issue a lease because of the status of the property. However, we at no time went to the Department of the Navy and attempted to get them to so-call ratify these leases. In our view they were not leases with a minor technical effect, they were simply revocable permits that never did enjoy the benefit of being a lease.

Senator DOMINICK. Mr. Kirwan, you said you were trying to regularize these documents and you were concerned over their nonvalidity. Now accepting that at face value as I, of course, would, how did it happen that you did not go to the landlord to find out whether they would regularize them?

Mr. KIRWAN. Because, we did not want to go in a posture, Senator Dominick, among other things, of asking first of all, admitting publicly that the Department of the Interior had not handled this matter for a decade or for 12 years in a competent, good, correct manner. That is the first thing.

Second, we did not want to go to the Department of the Navy for an equitable settlement. If we went the Navy route we would have asked them to regularize all or none. We did not want to do that. We wanted to deal with these leases at the time on an equitable basis. We did not feel we had a minor technical deficiency to be corrected, but rather a problem that involved substance as well as form.

Senator NELSON. You did not have any legal basis to go ahead and regularize anything?

Mr. KIRWAN. None whatsoever, Mr. Chairman.

Senator DOMINICK. Now, why do you say you did not have any legal basis?

Mr. KIRWAN. The Department of Interior never had an interest other than a revocable permit from Navy in the property, Senator Dominick. We do not even approach Interior leasing authority.

Senator NELSON. I meant my statement to mean it is your position that you had no legal authority. I do not know whether you did or not?

Mr. KIRWAN. Oh, every statement I make is based on what our counsel, the Solicitor of the Interior, tells us in the state of the law.

Senator NELSON. I did not want the record to appear I stated you did not have legal authority.

Mr. KIRWAN. That is right, sir.

Senator DOMINICK. What did you mean by this subsection 3?

Mr. KIRWAN. The effect we gave to that was that the Department indicated it had no objection to such leases that we might be authorized by law to make. We ourselves are not only unaware of any authority, we are aware we do not have statutory authority to lease.

The Department of the Navy, however, would not necessarily know whether Interior had independently leasing authority or not. We read the 1948 permit as simply the Secretary of the Navy saying to the Secretary of Interior, as far as I am concerned you are free to enter into such leases, and I am paraphrasing here, such leases as you may have statutory authority to make, but you are going to have to find your statutory authority some place else.

Senator DOMINICK. And your position is you have not statutory authority of any kind?

Mr. KIRWAN. Any kind relevant to the subject matter. That is right, Senator Dominick. We have, again, authority to lease the grazing lands, but we have no statutory authority we can reach with these properties.

Senator DOMINICK. Did the Navy ever raise any objections to the improvements that were being placed on these properties?

Mr. KIRWAN. Not to my knowledge, Senator Dominick. Navy, for example, protected itself by making clear to all, clear to us and then it is up to us to make it clear to those who hold occupancy in the chain from us, that it was entitled to take the property back at any time, there would be no damages and there would be no complications. Within that framework the Department of the Navy never, to my knowledge, raised any question or any objection about the manner in which we managed it, except that they often expressed dissatisfaction as to the state of repair and the state or readiness that we kept the property in, but I know of no instance where Navy said—

Senator DOMINICK. When did they express those objections?

Mr. KIRWAN. Annually, Senator Dominick. Once a year the Yards and Docks makes an official inspection of the premises and then sends in a list of deficiencies which has been formidable in most years.

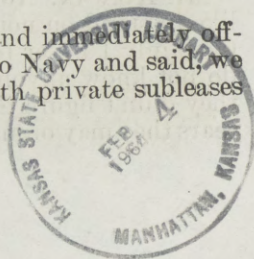
Senator DOMINICK. Now, in page 5 of your statement you said that in 1955 the Navy in a letter relating to a negotiated parcel of land said that it was not able to delegate leasing authority to the Interior.

Do you have a copy of that letter?

Mr. KIRWAN. Yes; and it has already been introduced in the record as an attachment to our Solicitor's opinion, Senator Dominick.

Senator DOMINICK. Was this part of the 600 acres that we were referring to before?

Mr. KIRWAN. No; it is a parcel of land, an island immediately offshore, this particular plot of ground. We wrote to Navy and said, we would like to have that island and develop it with private subleases



in the same way we are doing under the 1948 permit the Navy lands. After all, in 1948, we continued, you gave us the right to lease the Navy properties in St. Thomas, the ones we are talking about here. Navy replied in 1955 and said, we have to refuse your request. We are without authority to delegate to another agency the right to lease basic Navy lands. So that while the parcel of land differed it was discussed by both Departments in the context of the 1948 permit and using the 1948 permit as the precedent for that which we sought.

Senator DOMINICK. After 1955 the Interior Department continued to issue these documents to developers on this 600 acres of land; did they not?

Mr. KIRWAN. It did. In some cases by permit, in some cases by instrument denominated lease.

Senator DOMINICK. Is my understanding correct that you requested the Navy to revoke this permit?

Mr. KIRWAN. That is right, on July 17 as I recall, Senator Dominick, the Interior Department asked Navy for the reasons given in my statement to revoke the permit. These reasons had nothing to do with the desire to strike down the instruments, although that was a foreseen consequence. Instead, it was based on a desire to unencumber the land to permit it to move through normal channels into Vicorp and the local government's hands.

I might point out that if we had wanted to do what was implied we wanted to do, we would certainly have seen to it before May 23, when Navy with our urging tried to get rid of it once and for all, because then the door would have been closed to our doing that.

Senator DOMINICK. On page 9 where you refer to the actions of the General Services Administration, you stated that the General Services Administration rejected Navy's excess declaration on the ground that it was encumbered by the 1948 permit to Interior.

Do we have a copy of that in the record, that rejection?

Mr. KIRWAN. No; we do not have it on the record so far, Senator, what we do have in our possession and I suggest you may want the Department of the Navy to supplement this. What we have is simply the secondary source, namely the Department of the Navy saying to us, this is the fact, but the material, that which passed between GSA and Navy, the Department of the Navy itself, I am sure, would be able to furnish it.

Senator DOMINICK. Was there any intimation in that secondary document that you have that the GSA was concerned about the encumbrances of these documents denominated leases?

Mr. KIRWAN. No, Senator, this happens to be enclosure No. 5 to the letter from the Solicitor already referred to earlier. If you wish I would read the sentence or the pertinent part.

The answer is "No," they did not comment upon or enlarge upon the nature of these.

Senator DOMINICK. Prior to August 19 had any of the occupants of these 25 leases been told that their right of occupancy was in jeopardy?

Mr. KIRWAN. Not to my knowledge. Pardon me, Senator, I would like to stand on not to my knowledge. I do not know they were not. Certainly I never told them, I never asked anyone to tell them and I do not know anyone told them. On the other hand, I do not know they didn't figure this out themselves or I don't know that if in prior years they may or may not have been told.

So not to my knowledge is really the answer.

Senator DOMINICK. Then it would be fair to say, would it not, that as far as the occupants are concerned they entered into these leases in good faith, they paid their rentals, they put in capital investments that were required and they put in substantially more than that in most cases.

Mr. KIRWAN. That is a judgment, if you say they entered into it in good faith, I can only say I don't know they did or did not.

I can only go on the record, the record is just what it is. My own belief is that if we are dealing with 25 leases that what is true about the psychological makeup of one and the degree of knowledge, the degree of sophistication is not true of another. I have no opinion on the extent of their good faith. Instead, as a Government servant I am required rightly to go on the basis of the record. The record is just what it is here.

The lessees held themselves out to be leases. I do not know the state of mind of either the parties representing the Government over a decade or the private parties. I may have private views but they would not be useful.

Senator DOMINICK. Are you implying that they did not enter into these in good faith.

Mr. KIRWAN. No; what I am saying, Senator, is that most of these instruments are with what I regard as being knowledgeable competent business people for the most part I believe represented or often represented by counsel.

I do not really think the question here is so tricky, so esoteric, that a reasonable prudent businessman would not weigh, consider, and take into account a lot of these things. The fact that we did not pick up the cautionary Navy language. The fact there was no public bidding, he got his lease by a private negotiation.

Now, my own feeling is, I note these things in passing. We are not dealing with widows and orphans and children and so on. On the other hand, I have found nothing in the file where anybody has come forward and said, I know that this is not a lease. I am going in anyway. All I can say is the papers are all innocuous, the papers are all signed, stamped, they hold themselves out to be leases. I have no official opinion on what the parties were thinking at various times.

Senator DOMINICK. And in addition to the fact that these leases were signed by the Secretary of Interior they were also signed by Vicorp, I gather?

Mr. KIRWAN. Yes, well, again, remember five or six of them were by the local municipality. Some of them were signed by Vicorp as principal, most of them, however, were arranged by Vicorp and signed by the President but depend for their effectiveness upon the signature of the Secretary of the Interior because they were in the name of the United States rather than the name of the Corporation.

But as I say there were about four variations there.

Senator DOMINICK. All of them were signed by the Secretary of the Interior.

Mr. KIRWAN. Not all of them. Senator Dominick, the ones entered into by the local municipality were not countersigned by Interior. I am talking about 4 or 5 of the 25 we are talking about here.

Senator DOMINICK. The ones that are under discussion right now generally speaking have been signed, or all have been signed by the Secretary of the Interior.

Mr. KIRWAN. No, Senator, of the 25 that are under discussion right now either 18 or 19 have been signed by Interior. However, I do not put any significance in that, although Interior did not sign the ones in the early years.

They were entered into with I would say Interior's constructive knowledge, so I do not distinguish among them for that purpose.

Senator DOMINICK. A good many of these, as you say, were put out on public bid, were they not?

Mr. KIRWAN. Not a good many, Senator, several, but I would not say a good many. Our files here are not adequate on that but my best guess, and I say best guess because after going through these files during the week, my guess would be 6 or 7 or 8 maybe out of 25.

Senator DOMINICK. Would you say that the big ones were put out on public bids?

Mr. KIRWAN. As near as I can tell, the Gramboko and the Tropic Isle, and the L'Escale, three of them were not. The Beachcomber apparently was. The Caribbean was put out on a public bid but where the parties were not bidding on terms to be paid the Government, but on the amount of money to be paid to the creditors to a former corporation. You have some of the benefits of public bidding. However, the Beachcomber, the Caribbean and the Surfside the answer would be, yes.

The Tropic Isle, L'Escale, Virgin Islands Pleasure Boats, the answer would be no, no public bidding, and these to my mind are the seven or eight big ones.

Senator DOMINICK. I have some vague recollection that the property on which all these hotels were located were covered in a pre-existing lease to someone who went bankrupt and that there was something like \$1,000 a year rental and that all this property was in one lease.

When this fellow went bankrupt you broke it up and issued separate leases, is that right?

Mr. KIRWAN. No, not all of it, Senator, there was an earlier so-called Gallagher master lease that was broken up in the late 1950's, under circumstances that as far as I know were about as you say, but again we are talking about an instrument of this same nature, a revocable permit that was never a lease, but it was, I would say as much or as little a lease as any of these other instruments.

Senator DOMINICK. When you had these public bids how many bids did you get, do you remember?

Mr. KIRWAN. In the case of the Caribbean it is my recollection, Senator, four or five bids. In the case of the Beachcomber I believe we got a single bid. In the case of Tropic Isle I don't think it was advertised with regard to the present lease.

Senator DOMINICK. Would you say there was not very much interest shown in going ahead with this?

Mr. KIRWAN. I would say there was very little advertising. I saw for the first time the solicitation and it was local plus one Spanish-speaking paper over in Puerto Rico. If we were trying to move one of the large hotels on the island I cannot see our failure to advertise in the papers in Miami at all.

Senator DOMINICK. Are you doing this today?

Mr. KIRWAN. We have not authority to do any of these things, Senator.

Senator DOMINICK. Is this part of the purpose that you have as far as the use of this land is concerned?

Mr. KIRWAN. Certainly not. You asked me, though, did the paucity of bids received indicate a lack of interest. To me it indicated at least a lack of adequate advertising.

Senator DOMINICK. Now, the amount of required investment which was included in each of these leases varied, I gather, from lease to lease, did it not?

Mr. KIRWAN. In some cases it was none at all, in other cases there was a requirement that investment be in functional terms, not a money statement, in other words, they would do a certain thing, but without a dollar sign. In other cases the result of investment which I regard as relatively modest was in the neighborhood of \$5,000, \$10,000, \$15,000, something in that order.

Senator DOMINICK. Have those amounts been put in, have the terms been lived up to?

Mr. KIRWAN. I have no reason to believe they have not been, Senator.

Senator DOMINICK. You either know they have or have not.

Mr. KIRWAN. I know they have given our normal bureaucratic way of doing business. They would invest this amount of money by 1958, I have nothing at the Washington level to indicate they failed to perform. That gives us the normal assurance that they did. It does not rule out if I took a given case, went back 6 or 8 years, went down to the islands, I might to my surprise find they did not. But I would take for granted that the parties lived up to the terms of their agreement.

Senator DOMINICK. Now, can I get an answer, did they or did they not put this amount of money in it and live up to the terms? Has there been any claim by the Interior Department they did not live up to the terms of their agreement?

Mr. KIRWAN. Not in terms of putting the amount of money in it. It was to the lessees' benefit that they put in the amount of money. I say to the best of my knowledge and belief the parties would have made the modest required investments required by the leases.

Senator DOMINICK. Mr. Kirwan, we can get along a lot faster if you will just answer my question. Will you answer the question as to whether the Interior Department ever said these people had not fulfilled the terms of their leases?

Mr. KIRWAN. Senator, to answer you particularly the Interior Department as distinguished from the Virgin Islands Corporation was not charged with the day-to-day or year-to-year management of the property. I will say to the best of the knowledge and belief of our Department one step removed officially from lease management I believe they lived up to the requirements of their leases. In that particular regard.

Senator DOMINICK. This permit from the Navy is to the Interior Department, it is not to the Vicorp.

Mr. KIRWAN. That is right, but in turn in 1954, Senator, we gave a subpermit to Vicorp wherein we turned over the day-to-day management of all of these properties to Vicorp and divested Interior of it to this extent.

Senator DOMINICK. This is the action of the Interior Department, correct?

Mr. KIRWAN. Right, sir. It is not the divestment of continuing responsibility, but it does mean that our knowledge of day-to-day dealing with the tenants is necessarily less because we have farmed it out to an agency for whom we are still responsible, but we do not handle the day-to-day details.

Senator DOMINICK. Did the Vicorp ever tell the Interior Department that these investments had not been fulfilled? That is a simple thing you can answer yes or no.

Mr. KIRWAN. In the case I know of, Virgin Islands Pleasure Boats, it told us, yes. In the case of Caribbean Hotel. It stated they had made more investments at the time than we had permitted. Subsequently his investment was recognized and except for those two instances I do not recall—with regard to the present leases, I am not talking about cases where we would have closed out somebody for failure to perform. With the exception of those, I think that every lessee with the extent my knowledge can be perfected in Washington, every lessee has performed that part of his lease requirement. When I say, Senator, to the extent of the files in Washington, I am not trying to avoid your question; we just do not keep day-to-day files on these things.

We are talking about a period of time long since gone, because no one has required anyone to put money into the premises in the last 4 or 5 years.

Senator DOMINICK. Did you say in answer to a question of the chairman that you do not know how much money has been invested in these properties?

Mr. KIRWAN. That is correct, Senator Dominick. We did not feel it relevant in turning to the question of the legal validity of the leases. We do feel it probably is relevant when we come to the question of equitable relief of a given tenant, but we have never reached that question until I understood the committee wanted me to run ahead and decide how we would approach it in practice if we were ever faced with the opportunity and responsibility of dealing with it.

Senator DOMINICK. Do you have any opinion as to whether this has been good for the economy of the islands or not?

Mr. KIRWAN. Senator, on the one hand, to the extent any investment at all has been made, it cannot help but be good in that sense for the economy.

On the other hand, to the extent that the executive department takes upon itself to dispose of Government property without authorization from the Congress, I believe it is doing something corrosive of a lot of things, including in the long run the local economy.

For example, the way we have handled these leases over the past decade may make it harder as a practical matter for us to be entrusted with the sub base and the airfield tomorrow. If we do not get the sub base tomorrow because, in part, of the way this has been handled over the past decade, the local economy will lose more money because of lack of development of that base than it would have gotten from the small, piecemeal development of these individual properties over the past 10 years.

Senator DOMINICK. These buildings were in pretty bad shape when you leased them, were they not?

Mr. KIRWAN. Some I don't doubt were very bad; some were moderately run down. For example, the buildings that are leased out to industrial tenants on the sub base I have no reason to believe were in pretty bad shape. On the other hand, I do not doubt but that some of the hotels and perhaps the restaurants needed a great deal of rehabilitation. I do not know that the rehabilitation was structural. I have no doubt they were in bad shape from the point of view of a housekeeper or somebody ready to open a business.

Senator DOMINICK. Let me just go over a few points again and see if I can get short and clear answers.

First of all, I gather that you never asked the Navy if they would ratify any of these documents?

Mr. KIRWAN. We did not.

Senator DOMINICK. Secondly, I gather that your recommendations on pages 15 and 16 are recommendations only which you cannot say that you have the power to fulfill?

Mr. KIRWAN. We cannot say as a legal matter we can fulfill them. We can say, knowing the facts, that they do represent the Department of Interior's official, thoughtful position, and knowing the identity of the parties who would have the legal right to deal with these questions, we put them forward not as a pious expression of what we would like to see, but as that type of working out that we are reasonably confident we can bring about, unless unexpectedly prevented from doing so.

Senator DOMINICK. Mr. Chairman, I want to say for the record that I have not had a chance to read the Solicitor's opinion, despite the fact that I understood that it was going to be furnished to all members of the committee prior to this hearing. I also want to say that I have never had the opportunity of reading this Navy permit until just at this hearing, despite the fact that I understood we were going to be furnished copies of this by the Interior Department.

So there may be further questions after the opportunity of going into these, but at this time I think it might be helpful in connection with the statement of opinion that Mr. Kirwan has made to put into the record the letter from Mr. Kirwan to Mr. Stanford, L'Escale, dated October 2, 1963, in reply to the letter which Mr. Stanford had sent to Mr. Cramer.

Senator NELSON. The letter will be received for the record.

(The document referred to follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., October 2, 1963.

Mr. DONALD STANFORD,
L'Escale, Inc.,
Harry S. Truman Airport,
St. Thomas, V.I.

DEAR MR. STANFORD: Mr. Robert Cramer has sent me a copy of your letter of September 16, 1963, since it refers in part to me. I will be writing to him at greater length on the subject, but wanted to take this opportunity afforded me to restate and clarify the action taken with regard to your instrument dated August 20, 1958, and approved by Mr. Fred Seaton.

That instrument has been canceled. It is no longer in effect and has not been since August 15, 1963.

Mr. Cramer is not suggesting that you give up the instrument dated August 20, 1958, in return for a permit now from Vicorp. He is suggesting, for your own protection and self-interest, that since your old instrument of August 20, 1958, has been totally and completely canceled, and you have nothing at all just

now, that you would be better off with a permit from Vicorp. It would at least regularize your presence on the property, fix the amount of rent to be paid monthly, and so forth. I assume that Mr. Cramer, as a matter of policy, not law, has decided to charge you the same amount each month under the Vicorp permit—until further notice—as you had been paying under the old instrument dated August 20, 1958.

You mention that you are represented by counsel in Washington. I have not had the pleasure of a phone call or visit from him, so maybe you were speaking prospectively of engaging one. In any event, I would be glad to discuss this matter with him at any time, or with you for that matter upon any further trips to the Virgin Islands.

Sincerely yours,

JOHN J. KIRWAN, *Assistant Director.*

Senator MECHEM. Will Mr. Kirwan be here tomorrow?

Mr. KIRWAN. At the pleasure of the committee.

Senator NELSON. I take it you will be here throughout the hearings.

Mr. KIRWAN. Certainly, Mr. Chairman.

Senator NELSON. I take it anybody may be requested later or may offer rebuttal later on, either the occupants or the Department of Interior or the Navy.

Senator DOMINICK. Mr. Chairman, I wonder if I could ask one more question here before we go on?

I am not sure that I asked this question before. Did you have a specific legal opinion from the Solicitor's office on the validity of your notice of August 19 or August 18, 1963, to these lessees?

Mr. KIRWAN. August 15.

Senator DOMINICK. August 15; I beg your pardon.

Mr. KIRWAN. We had the most solemn, most careful assurance from the Solicitor that our legal conclusions were exactly right years before we sent the August 15 letter. We had a written indication of that in 1961. We had the oral approval of that specifically before we took the step August 15.

However, the Solicitor never saw any reason, and we agreed with him, to render an official opinion labeled such on the subject until requested by the committee. So that we had both oral and written assurance on the subject before; but for reasons that the Solicitor gave in his letter to the acting chairman, he regarded the subject as moot and therefore he never had been required to issue a formal opinion on this particular subject prior to the request received from the committee.

Senator NELSON. When you say you had a solemn statement from—

Mr. KIRWAN. By that, Mr. Chairman, I mean that the Solicitor—

Senator NELSON. Years ago—about when do you mean by “years ago”?

Mr. KIRWAN. I mean about once every 6 months we would get together with the Solicitor or his representatives. We would agree that if the legal conclusions were as unmistakable, as clear cut and as inevitable as we feared, then many individual people would be unfairly disadvantaged. It was noted that many people would potentially at least get hurt and that it was a serious matter and that it would be embarrassing the Department. It was in the face of all of these reasons why he would not want to come to this conclusion why the Solicitor, nonetheless, consistently came to this conclusion.

Senator NELSON. But as I recall your sentence, you had notice from the Solicitor orally years ago, then in writing in 1961—

Mr. KIRWAN. No; I would say that we had evidence both orally and in writing in 1961.

Senator NELSON. Oh, you did not mean by saying "years ago" that some long time prior to 1961 there was oral notice from the Solicitor?

Mr. KIRWAN. Since I only came to the Office of Territories in 1961, I was not in a position personally to know what the Solicitor's view was. I have no reason, though, to believe the Solicitor requested or let us say came to a conclusion that these were invalid prior to 1961. That is the first record we have of the view of the Solicitor.

Senator DOMINICK. Mr. Chairman, I think it would be helpful to members of the committee if we could get copies of this Solicitor's opinion with attachments. I do not think either ourselves or the staff have had an opportunity to review them. I think we could have the staff make up copies and get them to us.

Senator NELSON. They will get them to each member of the subcommittee.

Senator DOMINICK. Mr. Kirwan, were you ever present during any of the negotiations on these leases?

Mr. KIRWAN. No, sir; I came to Territories after the last one was signed. The answer to your question is, "No."

Senator DOMINICK. Not even working for the Department of the Interior.

Mr. KIRWAN. Correct.

Senator DOMINICK. You never participated in any of the negotiations at all?

Mr. KIRWAN. Absolutely.

Senator NELSON. Would you mind if I asked a couple of questions to follow up on that?

One, have you submitted for the record a listing of all the leases?

Mr. KIRWAN. We have not, but we would be glad to.

Senator NELSON. I think the record ought to show a listing of all the leases, the date they were signed, and insofar as possible just a brief description to identify them.

Mr. KIRWAN. I would be glad to.

Senator NELSON. Plus the rental involved, and to the extent that you have the information whether they were negotiated or publicly let by bid.

Mr. KIRWAN. Certainly.

Senator NELSON. And identifying the business as I suggested.

Mr. KIRWAN. Right.

Senator NELSON. And whatever has been renegotiated.

Mr. KIRWAN. Or the extent of renegotiation available.

(The information requested is as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
November 13, 1963.

HON. GAYLORD NELSON,

Acting Chairman, Subcommittee on Territories, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: This refers to the hearings held before your subcommittee on October 29 and 30 concerning the occupancy by private parties of the former Marine Corps air facility and naval submarine base in St. Thomas, V.I. Representatives of this Department were asked to provide certain additional information. We have made available to the committee certain of the documents which were requested, and the remainder are enclosed herewith.

There is enclosed, first, a list of the 26 individuals or companies who are named as lessees on the instrument which gave rise to your inquiry. In a few instances the name of the lessee appears in parentheses, preceded by the name used to designate the leased premises.

Also enclosed is a summary of the principal terms of each of the leases. This information indicates:

1. The name of the lessee and, if a corporation, the name of the person signing for the lessee. Also included is information concerning any assignments which have been approved in the Department of the Interior.

2. The date of the instrument (which, in the case of instruments approved by the Secretary of the Interior, is the date of his approval).

3. The purpose for which the leased premises are used.

4. A brief description of the leased premises.

5. Rent charged.

6. Term.

7. The method by which the lease was entered. If the files available to us in Washington make clear that the lease was either negotiated or awarded as a result of a public advertisement, that fact is stated. If our files are not definite on this point, we have stated "Apparently negotiated." The files maintained by the Virgin Islands Corporation in St. Thomas contain detailed information on this aspect. We are asking that we be advised promptly if any lease which we have referred to as "Apparently negotiated" was in fact the direct result of advertisement. In the event that our statements enclosed are incorrect on this point, we shall advise you promptly.

8. The presence or absence of a provision concerning rent renegotiation, and any special restrictions upon the extent of renegotiation.

We also enclose a copy of each of the leases. In most instances we have not duplicated the attachments, if any, because they are frequently cumbersome diagrams of the leased premises. In the event that you would find it useful to have the attachments in any case, please let us know and we will provide them.

I have referred to "leases" and used leasing terminology in this letter, notwithstanding this Department's position, of which you are aware, that the instruments in question constitute revocable permits. I have done this for the sake of convenience, and not because the Department doubts the correctness of that position.

We shall be glad to provide such further information as you might find helpful.

Sincerely yours,

JOHN J. KIRWAN, *Assistance Director.*

- (1) Arena, Inc.
- (2) Beachcomber Hotel (Allison Enterprises, Inc.)
- (3) Berne, Gerard.
- (4) Besabe Bakery.
- (5) Brammer Vee Link Belting, Inc.
- (6) Caribbean Hotel (Dowling).
- (7) Caribe Construction Co., Inc.
- (8) de Pina, Fran.
- (9) Francois' Hardware.
- (10) Gramboko Inn (Bay Corp.)
- (11) King, Owen (building No. 126).
- (12) King, Owen (building No. 138).
- (13) L'Escale.
- (14) McWhinney, Richard.
- (15) Maronna, Joseph P.
- (16) Matthewsons, Inc.
- (17) Oasis Beach Club Corp.
- (18) Reidarson, Marguerite.
- (19) Reliable Furniture Store.
- (20) S & P Corp.
- (21) Sebastian, Gerald P.
- (22) Sunbilt Tropical Fruit Products, Ltd.
- (23) Surfside Hotel (William Crawford).
- (24) Texas Co.
- (25) Tropic Isle Hotel (Allison Enterprises, Inc.)
- (26) Virgin Islands Pleasure Boats (Harman & Clerk).

(1) ARENA, INC.

1. Lessee: Arena, Inc., signed by Erwin Gross as executive vice president.
2. Date: September 3, 1960.
3. Purpose: Operation of a bowling alley.
4. Premises: 3,074 square feet of building No. 133.
5. Rent: \$108 per month.
6. Term: Until September 11, 1966.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(2) BEACHCOMBER HOTEL (ALLISON ENTERPRISES, INC.)

1. Lessee: Allison Enterprises, Inc., signed by Michael J. Resch.
2. Date: October 15, 1956.
3. Purpose: Guesthouse.
4. Premises: 0.69 acre, with improvements thereon.
5. Rent: First 5 years, \$3,000 per annum; second 5 years, \$3,600 per annum; and remaining years to be negotiated.
6. Terms: 20 years, with an option to renew for 10 years.
7. Method: Public advertisement. Mr. Resch was the only bidder.
8. Renegotiation: Provided for in section 1, with a \$5,000 per annum ceiling.

(3) BERNE, GERARD

1. Lessee: Gerard Berne (doing business as Nautilus Yacht Facilities).
2. Date: January 13, 1955.
3. Purpose: Building, maintaining, and renting boats, and private residence for lessee.
4. Premises: Former NCO beachhouse and surrounding one-half acre of land.
5. Rent: \$100 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(4) BESABE BAKERY

1. Lessee: Besabe Bakery, signed by Sanford G. Kelman.
2. Date: April 2, 1958.
3. Purpose: Bakery of food products.
4. Premises: 9,000 square feet of the former torpedo shop.
5. Rent: \$315 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(5) BRAMMER VEE LINK BELTING, INC.

1. Lessee: Brammer Vee Link Belting, Inc., signed by Irving Patron, president.
2. Date: October 3, 1958.
3. Purpose: Manufacture of industrial belting.
4. Premises: Building No. 109, consisting of 7,200 square feet.
5. Rent: \$250 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(6) CARIBBEAN HOTEL (DOWLING)

1. Lessee: William C. Dowling, Sr., and William C. Dowling, Jr., assignment to Coral Reef Properties, Inc., approved December 8, 1955.
2. Date: October 28, 1955.
3. Purpose: Hotel.
4. Premises: Building No. 53, formerly known as the dispensary.
5. Rent: First 5 years, \$4,800 per annum; second 5 years, \$6,000 per annum; and remaining years to be negotiated.
6. Term: 30 years.

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7. Method: Advertisement, with bidders bidding a lump sum for the right to lease at the rental above specified. Lump sum to be distributed between Vicorp and creditors of bankrupt former lessee, pursuant to orders of the District Court of the Virgin Islands.

(7) CARIBE CONSTRUCTION CO., INC.

1. Lessee: Caribe Construction Co., Inc., signed by Roger F. Moran.
2. Date: July 30, 1958.
3. Purpose: Storage of material and equipment, and office space for use in construction work.
4. Premises: 4,000 square feet of building SB-75.
5. Rent: \$75 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provide for in section 1b.

(8) DE PINA, FRAN

1. Lessee: Mrs. Fran de Pina.
2. Date: March 16, 1954.
3. Purpose: Residential.
4. Premises: 0.80 acre and four walls.
5. Rent: \$18 per month.
6. Term: 25 years, with an option to renew for 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: No provision.

(6) FRANCOIS' HARDWARE

1. Lessee: Francois' Hardware, signed by Evan A. Francois.
2. Date: July 30, 1958.
3. Purpose: Storage.
4. Premises: 1,500 square feet of building No. 75.
5. Rent: \$40 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(10) GRAMBOKO INN (BAY CORP.)

1. Lessee: The Bay Corp., signed by Eleanor Heckert, secretary.
2. Date: November 29, 1957.
3. Purpose: Hotel.
4. Premises: Building No. 7, formerly known as Crown Bay Hotel.
5. Rent: First 3 years, \$3,000; 4th to 13th years, \$6,000; and remaining years to be negotiated.
6. Term: 23 years, from December 1, 1957.
7. Method: Negotiated.
8. Renegotiation: Provided for in section 1b.

(11) KING, OWEN (BUILDING NO. 126)

1. Lessee: Owen King.
2. Date: November 28, 1951 (effective May 1, 1951).
3. Purpose: Not stated in lease, but premises are used as a studio.
4. Premises: Building No. 126.
5. Rent: \$120 per annum.
6. Term: 10 years, with an option to renew (which has been exercised) for one additional 10-year period.
7. Method: Apparently negotiated.
8. Renegotiation: No provision.

(12) KING, OWEN (BUILDING NO. 138)

1. Lessee: Owen King.
2. Date: June 7, 1951, effective July 1, 1951.
3. Purpose: Storage.

4. Premises: Building No. 138.
5. Rent: \$60 per annum.
6. Term: 10 years, with an option to renew (which has been exercised) for one additional 10-year period.
7. Method: Apparently negotiated.
8. Renegotiation: No provision.

(13) L'ESCALE

1. Lessee: L'Escale, Inc., signed by Donald Stanford as president.
2. Date: August 20, 1958.
3. Purpose: Restaurant, cocktail lounge, and gift shop.
4. Premises: 1,800 square feet in airport terminal building.
5. Rent: \$250 per month.
6. Term: 20 years.
7. Method: Negotiated.
8. Renegotiation: Provided for in section 1b.

(14) M'WHINNEY, RICHARD

1. Lessee: Richard McWhinney.
2. Date: July 30, 1958.
3. Purpose: Engine repair shop and cabinetmaking.
4. Premises: 976 square feet of building No. 1.
5. Rent: \$34 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(15) MARONNA, JOSEPH P.

1. Lessee: Joseph P. Maronna.
2. Date: October 15, 1960.
3. Purpose: Providing tourist accommodations and operating a plant nursery.
4. Premises: 5.45 acres and six buildings.
5. Rent: \$50 per month, subject to renegotiation in 1965.
6. Term: 10 years.
7. Method: Negotiated. Mr. Maronna formerly held a 100-year lease from the St. Thomas Development Authority, at \$300 per annum. He accepted the October 15, 1960, instrument as a substitute.
8. Renegotiation: Provided for in section 1b.

(16) MATTHEWSONS, INC.

1. Lessee: Matthewsons, Inc., signed by Justin M. MacCarthy, vice president.
2. Date: July 30, 1958.
3. Purpose: Manufacture of lace and other cloth items.
4. Premises: 7,000 square feet of building No. 1.
5. Rent: \$122.50 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(17) OASIS BEACH CLUB CORP.

1. Lessee: Oasis Beach Club Corp., signed by Edin Barbel Steele, as an officer of the corporation.
2. Date: July 30, 1958.
3. Purpose: Conducting a restaurant for the sale of food and beverages.
4. Premises: Eastern portion of the beach clubhouse at Lindbergh Bay (building No. 165).
5. Rent: \$50 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(18) REIDARSON, MARGUERITE

1. Lessee: Mrs. Marguerite Reidarson.
2. Date: August 2, 1958.
3. Purpose: Manufacture, storage, and sale of local handicrafts.
4. Premises: 1,000 square feet of building No. 37, with certain surrounding land.
5. Rent: \$40 per month.
6. Term: 10 years.
7. Method: Negotiated.
8. Renegotiation: Provided for in section 1b.

(19) RELIABLE FURNITURE STORE

1. Lessee: Reliable Furniture Store, signed by Grace I. Sparks.
2. Date: September 3, 1960.
3. Purpose: Furniture warehouse.
4. Premises: 1,845 square feet of building No. 1.
5. Rent: \$71 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(20) S. & P. CORP.

1. Lessee: S. & P. Corp., signed by Samuel Stomberg.
2. Date: April 2, 1959.
3. Purpose: Manufacture of jewelry, electronic components, ballpoint pens, and bamboo novelties.
4. Premises: 3,410 square feet of building No. 1.
5. Rent: \$60 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(21) SEBASTIAN, GERALD P.

1. Lessee: Gerald P. Sebastian; assignment to Gerald P. Sebastian, Inc., approved January 17, 1961.
2. Date: July 30, 1958.
3. Purpose: Storage of perishable foods.
4. Premises: 1,520 square feet in building No. 1.
5. Rent: \$55 per month.
6. Term: 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: Provided for in section 1b.

(22) SUNBILT TROPICAL FRUIT PRODUCTS, LTD.

1. Lessee: Sunbilt Tropical Fruit Products, Ltd., signed by A. M. Brauer, president.
2. Date: December 7, 1963.
3. Purpose: Not stated in lease, but premises are used for producing and selling beverages.
4. Premises: Former cold storage plant (building No. 66).
5. Rent: First 5 years, \$75 per month; second 5 years, \$100 per month; and third 5 years, \$125 per month.
6. Term: 5 years from March 29, 1954, with options to renew for two additional 5-year periods.
7. Method: Apparently negotiated.
8. Renegotiation: No provision.

(23) SURFSIDE HOTEL (WILLIAM CRAWFORD)

1. Lessee: William Crawford.
2. Date: November 20, 1954.
3. Purpose: Guesthouse.
4. Premises: Building No. 69 (formerly known as the chapel), building No. 72 (a pump house), and 1.2 acres of land.

5. Rent: \$225 per month.
6. Term: 15 years, with an option to renew for 10 years.
7. Method: Negotiated. Lessee held somewhat similar lease of June 2, 1953, with St. Thomas Development Authority, which resulted from public advertisement.
8. Renegotiation: No provision.

(24) TEXAS CO.

1. Lessee: The Texas Co. (Puerto Rico) Inc.; assignment to Texaco Antilles, Ltd., approved September 12, 1961.
2. Date: April 9, 1952.
3. Purpose: Not stated in lease, but premises are used for storage and marketing of petroleum products.
4. Premises: Tanks, fuel lines, buildings, and land.
5. Rent: \$179 per month.
6. Term: 20 years, with an option to renew for 10 years.
7. Method: Apparently negotiated.
8. Renegotiation: No provision.

(25) TROPIC ISLE HOTEL (ALLISON ENTERPRISES, INC.)

1. Lessee: Allison Enterprises, Inc., signed by Michael J. Resch.
2. Date: October 22, 1957.
3. Purpose: Guesthouse.
4. Premises: Building No. 52, former administration building.
5. Rent: First 5 years, \$3,600 per annum; second 5 years, \$4,800 per annum; and remaining years to be negotiated.
6. Term: 20 years.
7. Method: Negotiated.
8. Renegotiation: Provided for in section 1B.

(26) VIRGIN ISLANDS PLEASURE BOATS

1. Lessee: Harry E. Harman and Frederick E. Clerk; assignment from Clerk to Harman dated August 24, 1956; assignment from Harman to Virgin Islands Pleasure Boats (Peter Corson and William A. Wilson) approved September 23, 1959.
2. Date: September 28, 1954.
3. Purpose: Sightseeing boats, soft-drink stand, marine laboratory.
4. Premises: 2½ acres of land.
5. Rent: \$50 per month, or 5 percent of gross business, whichever is greater.
6. Term: 15 years, with an option to renew for 15 years.
7. Method: Negotiated.
8. Renegotiation: No provision.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 13, 1963.

Hon. GAYLORD NELSON,
Acting Chairman, Subcommittee on Territories, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: Supplementing my letter to you of November 13, 1963, find enclosed two statements on the negotiation of leases for (1) L'Escale, Inc., Restaurant, and (2) the Tropic Isle Hotel.

Sincerely yours,

JOHN J. KIRWAN, *Assistant Director.*

[Enclosure 1]

L'ESCALE, INC.

Reference was made to a purported advertisement of the restaurant in the airport at St. Thomas in March 1955.

Our Washington office files show nothing on this, but a file in St. Thomas shows that such an advertisement was forwarded to Vicorp's counsel in March of 1955 for his checking for legal sufficiency. We have no record of any further action on this proposed advertisement, and do not know if it ever ran in the papers, or

if it ran if any bids were either received or opened. A more complete check of all files in the Virgin Islands will probably give us such information. The one thing we do know is that no award of a lease was made on the basis of such advertisement, certainly not to Mr. Stanford or any predecessor in interest, and so the question is really not relevant to the present issue.

The advertisement (if it ran), was for 1,000 square feet of space in hangar, and did not provide for any gift shop, nor did it convey any exclusive concession for food and liquor, nor any rights in a new terminal.

Mr. Stanford has a lease for 1,800 square feet, the exclusive right to sell food and drink in the airport, and valuable rights in any new terminal to be built. This lease held by Mr. Stanford is dated August 20, 1958, and replaces one for less space entered into on November 6, 1956—or more than 1½ years after the proposed advertisement. In any event, not only was the advertisement too long before the subsequent lease to Mr. Stanford to be controlling (and on different terms) but he did not respond to the advertisement in any event, according to his own testimony. Thus he would have no standing or right to be negotiated with arising from an advertisement to which he did not respond.

The fact that a facility may have been advertised in March 1955 on one set of terms, without success, has no relevance to the fact of Mr. Stanford's getting a negotiated lease on the same facility in November 1956 on different terms.

[Enclosure 2]

TROPIC ISLE HOTEL, BUILDING No. 52

Building No. 52, now the Tropic Isle Hotel, was offered for public bidding, date not specified, with bids to be opened October 31, 1956. Only one bid was received, from Messrs. Brewer and Stanford.

Considerable delay was encountered in the entering into a lease with these gentlemen, notwithstanding their apparently having been the only bidders. The delay seems to have been due to complexities on the Government's side. In any event, on July 3, 1957, Mr. Brewer withdrew the bid, and that ended the attempt to lease building No. 52 by means of public bidding.

On July 27, 1957, the local manager of the Development Department (Vicorp), Mr. Gray commended a Mr. Roger McCarthy to Vicorp's private attorney, Mr. Dillion, as being interested in leasing this building. The file shows that Mr. McCarthy had been interested in the building at the time of its public advertisement in 1956, although he did not submit a bid at the time.

Mr. Dillion then worked out a negotiated lease with Mr. McCarthy, without any public notice to other parties, but before it was signed, Mr. McCarthy, on September 17, 1957, notified Mr. Dillion that he had bought stock in Mr. Michael Resch's firm of Allison Enterprises, and that this firm would like to take over the proposed lease. Mr. Resch confirmed this on September 19, 1957. Lease with Allison Enterprises was signed on October 31, 1957.

Final terms were comparable to the bid received from Brewer-Stanford 1 year before. However, 1 whole year had elapsed. The withdrawal of the Brewer bid on July 3, 1957, left the Government completely free to readvertise. In any event, neither Mr. McCarthy nor Mr. Resch had any standing in the matter which would call for the Government to negotiate with them (even if there was authority to waive the rule of competitive bidding, which there was not) since neither party had bid on the property at the time it was offered.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 20, 1963.

MR. STEWART FRENCH,
Chief Counsel, Interior and Insular Affairs Committee,
U.S. Senate, Washington, D.C.

DEAR MR. FRENCH: In accordance with your telephoned request of November 20, 1963, find set out below the information you requested on leases on Navy land on St. Thomas.

The Virgin Islands Corporation seeks the entire submarine base on St. Thomas, while the government of the Virgin Islands seeks the entire former air station. Further, however, Vicorp has also asked for as much of the air station, if any, as the local government might not succeed in obtaining. Therefore, while we know that Vicorp will get the entire submarine base (if our request is approved;

by the Bureau of the Budget), we cannot be completely sure at this time where a given parcel of land at the air station will go to the local government or to Vicorp. However, I will proceed on the assumption that the local government will be successful in obtaining all of the air station.

In this event, the following leases (keyed to our list supplied the committee on November 13, 1963) would be handled by Vicorp:

- (4) Besabe Bakery.
- (7) Caribe Construction Co.
- (9) Francois Hardware.
- (10) Gramboko Inn.
- (14) McWhinney, Richard.
- (16) Matthews, Inc.
- (19) Reliable Furniture Store.
- (20) S. & P. Corp.
- (21) Sebastian, Gerald P.
- (24) The Texas Co.
- (26) Virgin Islands Pleasure Boats.

On the same assumption, the following leases would be handled by the local government:

- (1) Arena, Inc.
- (2) Beachcomber Hotel.
- (3) Berne, Gerard.
- (5) Brammer Vee Link Belting, Inc.
- (6) Caribbean Hotel.
- (8) de Pina, Fran.
- (11) King, Owen.
- (12) King, Owen.
- (13) L'Escale.
- (15) Maronna, Joseph P.
- (17) Oasis Beach Club Corp.
- (18) Reidarson, Marguerite.
- (22) Sunbilt Tropical Fruit.
- (23) Surfside Hotel.
- (25) Tropic Isle Hotel.

Sincerely yours,

JOHN J. KIRWAN, Assistant Director.

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
November 21, 1963.

HON. GAYLORD NELSON,

Acting Chairman, Subcommittee on Territories, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: This replies to your oral request for information concerning the legal authority of the Virgin Islands Corporation and the government of the Virgin Islands to enter into negotiated leases, and the authority they have to agree to rental terms which represent less than the fair market value of the property proposed to be leased.

First, as to the Virgin Islands Corporation, the Corporation is authorized by section 4(f) of its Organic Act (48 U.S.C. 1407c(f)).

"To acquire, in any lawful manner, any property—real, personal, or mixed, tangible or intangible—to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same, whenever any of the foregoing transactions are deemed necessary or appropriate to the conduct of the activities authorized by this Act, and on such terms as may be prescribed by the Corporation."

The foregoing language constitutes the "program leasing authority" of Vicorp, that is, the power to enter into leases without public advertisement, in order to further the program of the Corporation. Among the authorized activities of Vicorp are at least two which are relevant in connection with the leasing of the former Navy property:

"To encourage and promote the investment of private capital in industrial *** commercial, or related enterprises, undertakings, or activities in the Virgin Islands * * *" (48 U.S.C. 1407b(b)).

"To encourage, promote, and develop, and to assist in the encouragement, promotion, and development of, tourist trade in the Virgin Islands" (48 U.S.C. 1407b(e)).

The leasing of Vicorp property, when the Corporation acquires title to it, for hotel purposes would appear to fall within both the above quoted authorized activities. Most of the remainder of the leases would appear to fall within the first of the two.

The Federal statutes which require public advertising in connection with the disposal of Federal property uniformly exempt from their application disposals which are otherwise authorized by law. Section 4(f) constitutes such "other authority," and hence public advertisement is not required if the disposal is effected under that section. As noted, such disposals must advance the program of Vicorp, that is, must be within its authorized activities. On the basis of the foregoing considerations, we regard the negotiation of leases with those now occupying the Navy property to be within the legal authority of Vicorp.

Section 4(f) does not, you will note, require that the fair market value of the property be obtained. It requires only that the sale or lease be "on such terms as may be prescribed by the Corporation." The Corporation thus has full discretion to determine to what extent current market value must be obtained. Differently stated, it has full authority to defer to the equities of a given situation, and to require consideration commensurate with these equities. Because the matter is within its discretion, the Corporation cannot be second-guessed, unless it errs so egregiously as to raise questions as to its good faith.

Turning, then, to the government of the Virgin Islands, it too has, potentially, full authority to negotiate the terms of leases with current occupiers of the Navy property, and such terms could reflect less than the fair market value of the property leased. The current property disposal laws of the Virgin Islands require public advertisement and award to the highest bidder (31 VIC 235, 236), but the Legislature of the Virgin Islands has authority to enact new property disposal laws or, as would be more likely to be the case in this instance, special laws in special circumstances. Section 8(a) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1574(a)) provides that—

"The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands. * * *"

This legislative power is very broad, having been termed "plenary" and having been analogized to "that habitually exercised by the legislature of a state." (See both the opinion of the Court and the dissent in *Granville-Smith v. Granville-Smith*, 349 U.S. 1 (1955).) That the Virgin Islands Legislature would have authority to enact a law permitting the negotiation of leases with respect to any property which it owns is clear. It has often done so. Laws concerning the acquisition and disposal of a government's property are unquestionably "rightful subjects of legislation" by it. Because such laws, if they were drafted with a view to giving redress to those now occupying the Navy property, would not contain a requirement that consideration be at fair market value, no legal objection could be raised if the consideration charged were less than that amount. The Virgin Islands Legislature has authority to enact private relief bills, based upon equitable considerations. Legislation permitting continued occupancy at the Naval property upon payment of reasonable, but less than fair market, rental, would be within the legislature's powers and could not be effectively challenged.

Please let us know if you have further questions concerning the foregoing.

Sincerely yours,

JOHN J. KIRWAN, Assistant Director.

Senator NELSON. Now, I take it respecting those properties by which the lease or permit agreement were received as a consequence of a public bid that you have not asserted here that that changes the legal status of the occupant, vis-a-vis those which were negotiated?

Mr. KIRWAN. That is right, sir.

Senator DOMINICK. Mr. Chairman, excuse me, I did not understand that question or answer.

Mr. KIRWAN. Senator Dominick, what I mean is that whether the instrument was arrived at as a result of direct public competitive bidding or by private negotiation would be immaterial as far as its

status as a legal, binding valid lease. It had none, it is our position, apart from the method that was used in arriving at its terms.

Senator NELSON. Therefore, I assume that the leases for any new permit arrangement, or lease arrangement if and when Vicorp or the Islands Corporation receives control, could be the basis for any renegotiation is an equitable one?

Mr. KIRWAN. Exactly, only that.

Senator NELSON. Then, just so it is clear in my own mind when you say that they should be given complete credence under item 1 on page 15—

Mr. KIRWAN. I am not referring to the lease, Mr. Chairman, to imply that the instrument in any way was valid, I am simply saying its terms were arrived at in such a correct and laudable manner, that the terms of an instrument which was the first valid one ever given should be identical to the old one which never had any validity.

Senator NELSON. Is it your position that since the basis for it is purely an equitable one that if the rental charge is unconscionable it should be perpetuated under—

Mr. KIRWAN. No, I am going on the position if it were publicly advertised the result by definition could not be unconscionable absent something we do not know. If an instrument were adequately described, if the premises were adequately described, adequately advertised, if there was a long enough period of waiting, if all of the usual things were found to be in order then I would say that whatever the term involved proved to be it could not be called unconscionable by definition.

Senator NELSON. Therefore, you are saying that no matter what the rental basis is, that should not be, in your opinion, subject to renegotiation?

Mr. KIRWAN. In the case of the publicly advertised prior instruments, that is correct.

Senator NELSON. Then if I understand you correctly you are saying that if Vircorp gets some or all of this property through GSA, that Interior would exercise its good offices, so to speak, to attempt to assure that equity was done in behalf of the present occupants?

Mr. KIRWAN. Exactly, and it is neither more nor less than that. That is exactly our position.

Senator NELSON. Is there any possibility that Interior Department may wish, for any purpose, to retain some of the properties or secure some of the properties itself?

Mr. KIRWAN. Mr. Chairman, the Interior Department has neither the desire nor any reason to acquire any of these properties. I would say that the Interior Department might well like to work out itself the terms of what we would regard as equitable and correct adjustments to be made so that we would once, having done this, be in a position to be highly specific with regard to each instrument. It would be a process that would take, I would say, 6 weeks to 2 months. Once we had with regard to each and every lease worked up what our departmental position was, then that entire package would be as a practical matter available for the scrutiny, observation, evaluation of any interested party, following which time the Secretary of the Interior could commend it in its entirety to the Virgin Islands Corporation.

Senator NELSON. Do we have any appraisals of the value of this property?

Mr. KIRWAN. No, we do not, Mr. Chairman. We have always felt—we have never reached the stage in any of these things where we could do anything with an appraisal if we had it.

We would be concerned with an appraisal of the property only in those instances, and they are the minority, where the general principles that I have stated here in my statement would not pertain. If the public bidding was the answer we would not need to know the answer, we would abide by the earlier results; that is, the results of bygone years on public bidding. If the instrument canceled on August 15 provided for full renegotiation again we would learn the value of the property only in our process of arriving at what rent to ask in the future. It would be inevitable for us to do that, but it would not come until the time came for us to make our rental demand.

Senator NELSON. If, in the disposition of these properties, assuming again that the Virgin Islands government or the Vicorp receives it, if it appeared perfectly clear that one or a number of any of these properties was not being put to the best use and, in fact, was interfering with the development of the area on the island, and as a consequence Vicorp decided that they did not intend or did not wish to extend any lease, does the Vicorp or the government have the legal authority to make an equitable adjustment for any out-of-pocket loss? I do not mean loss of profit; out-of-pocket loss as a consequence of an investment. Do they have the power to make some adjustment for that?

Mr. KIRWAN. The local government by definition would, Mr. Chairman; Vicorp in my opinion, and it is subject to counsel if we are talking about money, would not. If we are talking about making available an alternative site out of other Vicorp lands over at the other end of the property, yes, it would enter into an exchange lease basis.

I would say that if a party using land for marginal purposes and tying up a larger site had arrived at that lease through the public bidding route I would say we would be and should be stuck with it. On the other hand, if they arrived at it through other than public bidding, we would at that point give consideration to the alternative uses of the site, among five or six factors. But if the equities were strong enough on the private side we would abide by even the disadvantages to the government. If they were not that strong, then one of the factors to be taken into account would be highest and best use of the site, but only where the equities were not compelling.

Senator MECHEM. I will reserve my questions.

Senator DOMINICK. Mr. Chairman, No. 3 of the ones that are listed is the Virgin Island Pleasure Boats which I think you referred to in your testimony, which has the rent of \$50 per month.

Now, that lease, as I recall—if I am incorrect I hope you will correct me, but that lease provided that they could only use this property for boating purposes, was that not it?

Mr. KIRWAN. No, they were to use it for glass-bottom boat rental, but they also were supposed to develop it for a marine laboratory and an aquarium and other water-related functions.

Senator DOMINICK. And it was necessary for them, as I understand it, to have water in order to be able to operate, is this not true?

Mr. KIRWAN. Senator, you have touched upon what I think is perhaps the unhappiest and sorriest lease there. I think the conditions under which that—I am giving a personal judgment—but that is the last lease I would care to defend, and by defend I am referring to the rate obtained, the circumstances under which it was negotiated, and the purpose that it has never been put to in the 6 or 8 years that it has been in existence.

It is my understanding, based I will say on hearsay, but it came from responsible sources and I credit them, that within a couple of years after the government leased that two and a half acres of land for \$50 a month, another party came along and paid \$40,000 for the leasehold interest alone. It seems to me this is again creating a rebuttal presumption that the United States did not obtain anything like the value for that site at the time it was leased.

If this had been advertised I would have no complaint, I mean, that is the luck of the advertisement. But a lease that is negotiated, where the United States gets \$600 a year, and where a few years later it changes hands at, I am told, about \$40,000 where we are not dealing with significant improvements that would complicate it, to be an offset, there it seems to me a rebuttable presumption is created that the United States did not get value received there.

Senator DOMINICK. Mr. Kirwan, I am not trying to defend any lease one way or another, I am simply trying to find out what the facts are. It is my understanding that the facts are that recently, in the process of making that fill, they dumped sand all over the dock and the entrance and there is no possible way of his even getting to the shoreline now, so he is sitting there with a lease which he cannot use, by operation of the Government.

Mr. KIRWAN. First I do not know either way, Senator. I had not heretofore heard that complaint. Certainly the lessee, Virgin Islands Pleasure Boats has never written, phoned, or called us with that allegation.

Senator DOMINICK. I have seen a copy of a letter to the Virgin Islands Corporation in which the man said he left in the morning and came back in the afternoon and there was 18 inches of sand over the entire cut, and his boat.

Mr. KIRWAN. It must have been recently. The last time I was down in the islands this was not a problem, this did not come to my attention. I know this site has not been developed in the 8 years that it has been in the two ownerships, this man's predecessor and himself. There was to be a biology lab, a marine lab, and an aquarium there. This was a commitment, a part of the obligation of the lessee, it was never fulfilled. I do not know why—it could be that something has happened this summer that makes it impossible of fulfillment. I do not know either way.

I know if so it is a novel because that did not exist before the last couple of months.

Senator NELSON. When was that lease made for \$50 a month? What date?

Mr. KIRWAN. The lease itself was September 28, 1954.

Senator NELSON. It was sublet, was it?

Mr. KIRWAN. It was sublet September 1959, you had a 5-year lapse during which time the original party did not perform. He left it unimproved and at which point he subleased to another party for, I am

told, \$40,000. The other party since 1959 has also not performed in the sense of constructing these attractions that were to be placed on the premises.

Senator NELSON. What evidence do we have that he paid \$40,000 for it?

Mr. KIRWAN. I do not have written evidence which is the sort of thing, Mr. Chairman, that I would want to develop before I make a positive recommendation with regard to any of these six, and let me hasten to say that although I have placed Virgin Islands Pleasure Boats on this listing for a number of reasons, of which this was one, I listed the other five for reasons that have nothing to do with the gross—the sort of grossness that I indicated here. So I am not implying that any of the other six are on that list because of any question of the sort that I have concerning this lease.

But to answer your question, it is hearsay only on my part but if it did not come from a source I believe in a position to reasonably know I would not repeat it. I would still check into it myself, but I would not have repeated it publicly if I did not credit the source.

Senator NELSON. And did I understand you to say that the original so-called lessee in 1954 did not perform in accordance with his agreement with Interior between 1954 and 1959?

Mr. KIRWAN. The Washington file shows the extent of his obligations which were to have constructed these buildings and opened these facilities. I know that he did not perform. Now, what I do not know, and this is the reason why at times Senator Dominick may think I take longer to answer than I should, what I don't know is, are there letters in the file in the islands where the man may have come in year after year and gotten an extension. Now, if he got an extension, it was given by someone not authorized to give it. I know that, otherwise it would be in the Washington file. But I cannot rule out that one or another of our local managers may have given him some evidence in writing that he did not need to worry about it. I do not know he did, I am not implying that I know it, but I don't have it with me. I just mean that is the kind of thing I cannot be sure about.

Senator NELSON. But in any event what was provided for in the original permit or lease—

Mr. KIRWAN. Was not performed right.

Senator NELSON. Then, in 1959, what date?

Mr. KIRWAN. September 1959, the assignment from the first party to the second was approved by the Department of the Interior.

Senator NELSON. And was there performance under that subpermit?

Mr. KIRWAN. Not in the respects to which I advert.

Senator DOMINICK. Mr. Chairman, there are just a couple of questions I am not quite clear on.

What do you mean when you say that you will give these leases credence which permits genuine renegotiation of rent? What do you mean by genuine renegotiation?

Mr. KIRWAN. Let me indicate what I had in mind. Take the case of the Beachcomber Hotel. Again, from the state of our Washington records I would say the Beachcomber Hotel, as a matter of fact, I did list it among the six, because it does not have genuine rent renegotiation within the next couple of years.

Senator DOMINICK. The Beachcomber is not.

Mr. KIRWAN. I say if I limited myself to our Washington record, I first listed it, because although it says rent can be renegotiated I believe it is in 1966, in fact, even though there are two pages worth of saying

how they will both choose arbitrators and they will average the best guess of rent, and so on, there is an overriding provision that says in no case can the rent that they pick go higher than \$5,000 a year. Well, this makes meaningless the whole procedure.

It just means the most you can get no matter what the rate is is a nominal raise. At that point I would list it as not being entitled to the full equitable relief. In a phone call yesterday though I found that it would appear, again I am not sure, I have not seen it, but my present belief is that the very invitation to bid held out to the party bidding that he would not need to face real renegotiation in 1966.

If this is the case, and I presently believe it is, then that is our hard luck, he was offered this benefit at the time he bid and we have no reason to hold it against him.

But I use the word genuine renegotiation to mean not only the form but the substance of it has to be present.

Senator DOMINICK. So you are not planning, then, on renegotiating through Vicorp or the Virgin Islands Corporation any of these rental terms except those which come up under their own terms right now or in the real near future?

Mr. KIRWAN. No, Senator, under point 3 here——

Senator DOMINICK. And under point 3, that is the one I was going to say.

Mr. KIRWAN. Right.

Senator DOMINICK. Now, under point 3 what you are saying is that any lease which has a relatively short remaining life and which was not publicly advertised, would be given credence provided the Government gets what you think is a fair rental in the process of doing this?

Mr. KIRWAN. That is correct.

Senator DOMINICK. And this would be based, I would presume, on the status of the improvements at this time as opposed to the time when the lease was entered into?

Mr. KIRWAN. Senator, let me first say as a practical matter I do not think that it is going to be a hard one. Most of the leases as far as I know that fall in this category do not involve substantial betterments in any case, but to answer your question, I would say if the instrument provides that the United States gets title to the improvements, most of them do cross that bridge, they say whether the United States—whether title passes to the United States when the improvement is made or not. I would say in that case if it did, and if it didn't, it didn't. It would depend on who owns the improvement, but I do not really believe that will be a problem in category three-type leases.

Senator DOMINICK. And you will be present during the remainder of the hearing, Mr. Kirwan?

Mr. KIRWAN. Certainly.

Senator NELSON. It is 10 minutes to 12.

Who is here representing the Department of the Navy?

Captain BITTENBRING. I am, sir.

Senator NELSON. Do you have a presentation to make?

Captain BITTENBRING. I have no prepared statement, no sir.

Senator NELSON. Would you identify yourself, please.

Captain BITTENBRING. I am Capt. Charles Bittenbring.

Senator NELSON. What is your responsibility in the Navy—respecting the matter before us?

Captain BITTENBRING. I am the Assistant Chief of the Bureau of Yards and Docks for Real Property Management.

Senator NELSON. And the property under consideration here is within your direct jurisdiction?

Captain BITTENBRING. Yes, sir.

Senator NELSON. Did you wish to make any informal statement?

Captain BITTENBRING. After hearing the questioning probably I could foreshorten some future questions by making a very brief narrative statement of what our position has been.

Senator NELSON. Would you do that?

STATEMENT OF CAPT. CHARLES BITTENBRING, USN, BUREAU OF YARDS AND DOCKS; ACCOMPANIED BY LAWRENCE WRIGHT, LLOYD SHAID, AND ABNER FRANK

Captain BITTENBRING. You realize we utilized the property for operating purposes up to the time we permitted it to the Department of the Interior in 1948. At this time we concluded that we no longer had a peacetime need, but we did not proceed to dispose of the property because we at that time had a mobilization need. It is for this reason that we, in attempting to cooperate with Interior and their expressed desire to assist the economic development of the islands, agreed to furnish it to the Department of the Interior under permit.

Later in the 1950's, as things changed, we concluded we no longer had a mobilization need for it and at that time we began to look into the possibility of disposing of it.

These things, of course, take time, we processed it through the various steps that are required by statute and this year, as has already been stated, we declared it to GSA and received back from GSA the statement that they would not accept it with the outstanding permit.

I think that, in brief, brings us up to where we are.

Senator NELSON. Does your legal counsel take the position that the Navy does have the authority to cancel its arrangement with the Interior Department unilaterally at any time?

Captain BITTENBRING. The permit says we can revoke at any time. There is included therein a stated intent that we will not do this except in the case of a national emergency. But our position is that we had no intention to cancel or recapture for our own peacetime use, except in the case of a national emergency, but when it develops that we no longer have any use for it then we must proceed with the steps to dispose of it. So, this would be in accordance with all the intent of the administration and Congress.

Senator NELSON. Did you consider the statement that you did not intend to recapture it except in the case of a national emergency to mean you did not intend to retake it for your own purposes?

Captain BITTENBRING. Yes, sir, we considered this; but at the same time it became pretty much academic because there was no disagreement between us and Interior when it developed that we had to cancel in order to declare the property to GSA. As Mr. Kirwan has already stated, Interior concurred in this action and, in fact, requested it, so there was no disagreement.

Senator NELSON. Do I understand you to say you do not feel that this statement respecting national emergency was any limitation on your authority to cancel?

Captain BITTENBRING. No, sir; it was no limitation on our authority. It was merely a declaration of intent.

Senator NELSON. Do you have any elaboration you wished to make respecting the presentation of Mr. Kirwan as to its relationship with the Navy?

Captain BITTENBRING. No, sir.

Senator DOMINICK. Captain, did you ever object to the development that was instituted by the Interior Department on these properties?

Captain BITTENBRING. No, sir, we would have had no official knowledge of the development. Our position was the property was permitted to Interior. They were operating it. We had no official knowledge of anything that was going on.

Senator DOMINICK. Well now, when you say you had no official knowledge, surely you do not mean to tell me you did not know what was going on?

Captain BITTENBRING. In what respect, Senator?

Senator DOMINICK. The development down there on the basis of this various property.

Captain BITTENBRING. We knew property was being developed, but we were not required to be aware of any terms or conditions between Interior and its permittees.

Senator DOMINICK. You made a yearly inspection of the properties, did you not?

Captain BITTENBRING. Yes, sir.

Senator DOMINICK. So you would have had official notice at least from that yearly inspection as to what was being done on the property?

Captain BITTENBRING. To an extent. You realize, of course, that our yearly inspections were merely to determine if the facilities that we had left there were being maintained or retained in a condition that we could utilize them again if we had to in the case of a national emergency. If there was an additional building constructed that was not in our way or did not harm us, this was of no consequence to us.

Senator DOMINICK. Did you find that the buildings you had left had, in fact, been rehabilitated and placed in better condition than when you left them?

Captain BITTENBRING. I would prefer not to give you a definitive answer, Senator. I have not reviewed the files completely. Generally it is my understanding that there were times when we were not as satisfied as we might have liked to have been with the condition of the buildings. I do not think this was ever so serious that we took any action toward canceling or complaining. But if you wish this we can review our records and give you a statement.

Senator NELSON. These buildings were in pretty bad shape, were they not, in the fifties?

Captain BITTENBRING. I would have to review the condition report. This was back in 1948.

Senator DOMINICK. Now Captain, you never made any formal objection to the development of these properties?

Captain BITTENBRING. No, sir.

Senator DOMINICK. Did you ever indicate to Interior that in order to declare these surplus that these leases or permits had to be canceled from the Interior to these other occupants?

Captain BITTENBRING. No, sir. Not Interior's agreements with their parties; no, sir. The only problem here was our permit to Interior.

Senator DOMINICK. And the General Services Administration did not indicate to you that these occupants had to get off before the land could be declared surplus, did they?

Captain BITTENBRING. I have the GSA letter here—I could read a portion.

Senator DOMINICK. I have not seen it.

Captain BITTENBRING. Here is what GSA said. Referring to the agreement, it says:

That instrument provides for an indefinite term subject to the right of revocation by Navy or higher military authority only in the event of military necessity or by reason of a national emergency, thereby precluding any disposal action at this time by GSA.

So they referred only to the agreement between us and Interior.

Would you like a copy of this in the record?

Senator DOMINICK. I think we have it, from what Mr. Kirwan said.

Captain BITTENBRING. I think Mr. Kirwan referred to our letter to Interior which referred to this, but I do not think you have a copy of this.

Senator DOMINICK. Then I think we should have that in the record, Mr. Chairman.

Senator NELSON. It will become part of the record.

(The document referred to follows:)

GENERAL SERVICES ADMINISTRATION,
UTILIZATION AND DISPOSAL SERVICE,
New York, N.Y., June 18, 1963.

Subject: Former Marine Corps air facility, St. Thomas, V.I. (CARIB-2);
former U.S. naval submarine base, St. Thomas, V.I. (CARIB-82).

Capt. B. O. ROESSLER,

Area Public Works Officer, Caribbean, U.S. Naval Station, San Juan, P.R.

DEAR CAPTAIN ROESSLER: Your reports of excess on the subject properties are unacceptable and are returned herewith.

Both properties are subject to the terms of the permit and memorandum of agreement dated January 1, 1948, between the Department of the Navy and the Department of the Interior. That instrument provides for an indefinite term subject to the right of revocation by Navy or higher military authority only in the event of military necessity or by reason of a national emergency, thereby precluding any disposal action at this time by GSA.

It is noted that your reports were unaccompanied by written descriptions of the properties, a requirement of GSA Regulation 8-IV-201.02. Reference to maps is inadequate for this purpose and for the granting of easements. Written metes and bounds descriptions are required in both cases and should hereafter accompany all reports of excess real property.

Sincerely yours,

ALBERT WILSON,
Chief, Real Property Division.

Senator DOMINICK. On what grounds did you cancel the permit from the Navy to the Interior?

Captain BITTENBRING. On the grounds that we had the authority and that this met with Interior's concurrence. There was no disagreement between us.

Senator DOMINICK. Did you have any letter from your own counsel or solicitor on the right of revocation of this permit in the absence of a military or national emergency?

Captain BITTENBRING. No sir, not to my knowledge. We did not have a written opinion, but all of our correspondence regarding this matter was looked at by our counsel and initialed by our counsel so in this sense I would say, yes, we had a concurrence.

Senator DOMINICK. I think that is all I have.

Senator MECHEM. Would Navy have had the authority to enter into these leases originally?

Captain BITTENBRING. I would prefer to check that. I think we did have. We would have today. We would have the authority to lease but not to delegate to another Government agency to lease.

Could I have Mr. Frank, who is our counsel, sit here at the table with us?

Senator MECHEM. What steps do you have to take to declare property surplus?

Captain BITTENBRING. First, we must decide within the Navy we have no further military need or use for it, then we screen it within the Department of Defense. We then declare it excess to GSA.

Senator MECHEM. Is this something you are obligated to do by law, or is this discretionary on your part?

Captain BITTENBRING. Well, these are within GSA regulations, sir. I am not sure—but specific steps of screening.

Senator MECHEM. What I mean is do you have to review your property annually to determine whether it is surplus or not? And then report it if you find it surplus?

Captain BITTENBRING. By law?

Senator MECHEM. Yes, sir.

Captain BITTENBRING. No, sir; but we have a procedure within the Department of the Navy which is tied into our planning procedure which, in effect, requires the same thing. As we develop new projects, we also screen existing properties.

Senator NELSON. So that I understand this—in reviewing your properties you, as a matter of internal routine, screen the Navy Department and other Defense agencies to see if they have a military need for it?

Captain BITTENBRING. That is right.

Senator NELSON. When you turn it over to GSA they, under the law, are required to screen all Federal agencies to see if they have a use for it?

Captain BITTENBRING. Yes, sir.

Senator NELSON. And then they seek disposition, if there is no other use within the Government of the United States?

Captain BITTENBRING. That is right. We have followed that procedure.

Senator MECHEM. But it is discretionary whether you determine property surplus or not?

Captain BITTENBRING. Well, I am not sure I understand your question. Yes, if you mean can we retain a piece of property after we know we no longer need it; or do you mean we must take a look at it on a certain date each year?

There is no requirement that we must take a look at it once a year on a certain date, but we do have a procedure, which is tied in with our planning procedure and our utilization procedures, which effectively brings this up every time. So I would say, practically, the answer is "Yes."

Senator MECHEM. But, you can declare it surplus or not. This is a matter of discretion?

Captain BITTENBRING. I would say, practically, yes.

Senator MECHEM. Fine; those are all the questions I have.

Senator DOMINICK. May I follow up on the question that was asked originally, Captain, whether you do have the power to lease. You do have it, I gather?

Captain BITTENBRING. That is correct.

Senator DOMINICK. Were you ever asked by the Department of the Interior to ratify these documents that we referred to as leases before?

Captain BITTENBRING. To ratify these documents, no, sir. The only correspondence was that which Mr. Kirwan has previously referred to, which was the 1955 exchange where they asked us a question about a similar or adjacent piece of property.

Senator DOMINICK. Mr. Kirwan's statement indicated you did not feel you had power to lease in there?

Captain BITTENBRING. I do not think that was exactly the tenor of his statement. I think he indicated, as we indicated to him, that we did not have the authority to delegate to another Government department our authority to lease. We have the authority to outlease ourselves.

Senator DOMINICK. So, if there had been a question on the validity of the leases which had been issued by the Department, it would have been possible to regularize these by ratification by the Navy. Would this be correct?

Captain BITTENBRING. I am not a lawyer, Senator, and the word "ratification" is something—to regularize somebody else's lease, I doubt it, but I would have to turn to my counsel on that.

Mr. FRANK. I do not think it would have been possible.

Captain BITTENBRING. We have the authority to lease ours; whether we have the authority to let somebody else take an action, and then say, "Yes, we confirm it," I doubt it.

Senator NELSON. For the stenographer, would you identify the counsel?

Captain BITTENBRING. This is Mr. Abner Frank; he is a Bureau of Yards and Docks counsel.

Senator NELSON. Are there any other questions?

(No response.)

Senator NELSON. Off the record.

(Discussion off the record.)

Senator NELSON. On the record.

We will meet tomorrow morning at 9 o'clock, and would the staff advise the other members of the subcommittee? The first presentation will be by Mr. Stanford.

Captain BITTENBRING. Could I add a statement that just occurred to me, in further clarification, since I may not be here? You asked if we had the authority to lease the property and, when I said we did, this refers to our leasing of the property up until the time we determined it to be excess. Our authority is to outlease nonexcess property. Now that we have determined that the property is excess, we no longer have the authority to lease.

In other words, we have sort of written ourselves out of it.

Senator MECHEM. What was the date of that determination?

Captain BITTENBRING. It was in 1959 on one parcel, and 1962 on the others; but, I would have to get the exact dates.

Senator NELSON. All right; the committee will stand in recess until 9 o'clock tomorrow morning.

(Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 9 a.m., Wednesday, October 30, 1963.)

LEASING OF NAVAL PROPERTIES IN THE VIRGIN ISLANDS

WEDNESDAY, OCTOBER 30, 1963

U.S. SENATE,
SUBCOMMITTEE ON TERRITORIES AND INSULAR AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9 a.m., in room 3112, New Senate Office Building, Senator Gaylord Nelson presiding.

Present: Senators Nelson, Dominick, Mechem, and Walters.

Also present: Jerry Verkler, staff director; Stewart French, chief counsel; and James Gamble, professional staff member.

Senator NELSON. The subcommittee will be in session.

Mr. Kirwan, I understand you wanted to elaborate briefly on your statement.

Mr. KIRWAN. Yes, Mr. Chairman; yesterday Senator Dominick asked me if I would be surprised if the Beachcomber lease contained certain Navy—what we have generally been calling intention language. I told him I would be astounded if it did. Having checked the file to see whether or not it did, I wanted to say for the record this morning that both Senator Dominick and I were correct. He was correct in that the language is there. I was correct in that I was astounded, so I wanted the record to show it before we passed inevitably beyond that point.

Senator NELSON. Mr. Cramer, President of the Virgin Islands Corporation.

STATEMENT OF ROBERT CRAMER, PRESIDENT, VIRGIN ISLANDS CORPORATION; ACCOMPANIED BY MRS. RUTH VAN CLEVE, GENERAL COUNSEL OF VICORP

Mr. CRAMER. Mr. Chairman and members of the committee, I have a formal statement which I believe is in your hands, and I would like to just briefly summarize it perhaps in a little different language but saying the same thing.

Senator NELSON. We will have your formal statement put in the record at this point.

(The document referred to follows:)

PREPARED STATEMENT OF ROBERT P. CRAMER, PRESIDENT OF THE VIRGIN ISLANDS CORPORATION

A better understanding of the present activities and future prospects of the Virgin Islands Corporation will be enhanced and perhaps clarified for this committee by a brief review of its present enterprises and current developments affecting them. This involves also an abbreviated review of events of the recent past in order to have some historical perspective of our present situation.

At the present time, and over the past several years, Vicorp has engaged in four principal business-type activities. Historically, the main emphasis of its operation has been to support the sugar economy on the island of St. Croix. For this purpose Vicorp operates the only sugar grinding mill in the territory, producing a substantial proportion of the cane which justifies the mill's existence and purchasing the balance from some 111 private growers, the overwhelming number of whom represent clearly part time operators. As its second important activity, the Corporation generates and distributes practically all of the electrical energy used in the territory and is the only public utility performing this service. The power operation on the island of St. Thomas also includes a small salt water distillation plant, the production of which is sold to the municipal government for distribution to the users.

In addition to these large-scale operations, Vicorp has for several years acted as the agent for the Department of the Interior in managing certain properties of the Navy Department which were formerly used for defense purposes but which have been held in a standby status for approximately a decade. These properties include the Harry S. Truman Airport, formerly a Marine Corps facility, but now the only civilian airport on the island. Associated with this airfield are some adjoining lands, including a housing area and a number of sites on which old structures have been converted for commercial use, principally as tourist housing. Management of the airport itself includes concessions for the usual airport services, such as food and drink, commercial sales, and taxi accommodations. The other defense property consists of the naval submarine base located a short distance from the airport. Part of this area is occupied by the Corporation's power and salt water distillation plant. The balance is utilized for office space, some fuel storage capacity and minor activities of an industrial and public service nature. It has a high potential for light industry purposes.

Among the matters receiving careful review in the early part of 1961 was the question of Vicorp's continued utility as an effective instrument for promoting the economic welfare of the territory. At that time, there were pending in the Congress one or more bills calling for the immediate termination of its corporate existence and the disposal of its assets.

The Department of the Interior and the incoming members of the Virgin Islands Corporation Board of Directors recommended against this action as being premature, at least until there had been a reasonable opportunity to become familiar with the activities involved and to assess the best procedure for their continuance. This review and evaluation was continued over the following year through the medium of the quarterly meetings of the directors. In December of 1962 the Board, as its main item of business, adopted a resolution recommending the early dissolution of the Corporation and the transfer of its functions and its assets to the Government of the Virgin Islands. This conclusion was based on a conviction that the local government was in a far more advantageous position to assess and meet local needs, that it was already performing many of the economic development functions that the Corporation might logically undertake, and that it had the capacity and the motivation to assume these responsibilities. This recommendation was transmitted to the Congress by the President as one of the elements of an omnibus bill relating to Virgin Islands affairs.

The bill in question did not receive congressional action during the remainder of the 86th Congress and, during that period, the Corporation continued to review its activities and to act otherwise as a going concern performing essential functions for the territory. In the interim, however, the Navy Department determined that there would be no future need for the airport as a military facility and initiated procedures to dispose of it through the processes provided by the Federal Airport Act. While title has not passed to the local government yet, it is in process and will probably be accomplished in the near future. At the same time, Vicorp will be relieved of that facet of its activities.

The Corporation has been acutely concerned for several years, as has the Congress, over the fact that the sugar industry of St. Croix has become an increasingly shaky enterprise. For a wide variety of reasons, including climatic factors and inadequate volume, the sugar-grinding activity of Vicorp has lost substantial amounts of money in all but 1 or 2 years. When Congress adopted the policy of deducting these losses from revenues otherwise due the territorial government in lieu of direct appropriations, the Board of Directors was compelled to face the issue as to whether it should continue to operate an enterprise which returned low wages to principally alien workers and only benefited a relatively few substantial producers. After extended consideration the Board

reached a decision that it would close the sugar mill after a 3-year period, during which it would attempt to find a substitute activity for the island.

One of the steps taken to invite such an alternative enterprise was to offer for sale a portion of the lands owned by Vicorp and now utilized for cane production. This offer reserved the right to reject any or all bids and emphasized that the character of the proposed use would be a major consideration in their evaluation. Only two valid bids were received from private sources, the most favorable proposing to develop a citrus industry on the island. At the same time, however, the Government of the Virgin Islands exercised its statutory right to match the high bid and acquire the lands for its own use and management. In the end, the Board decided to reject all of the proposals and to investigate the possibility of introducing the citrus alternative under a lease which would retain the lands in Federal ownership. A lease proposal submitted by the Virgin Islands Citrus Corp. has been considered by the Board but no decision reached as to acceptance or rejection.

In meeting the electric power requirements of the territory, Vicorp has been faced constantly over the past several years with the problem of providing expansion capital to keep pace with a phenomenal increase in demand. Historically such capital has been secured through borrowing from the Federal Treasury, as authorized in basic legislation. This procedure requires a congressional appropriation. During the last fiscal year, requests for such funds were included in budget submissions which were considered in extensive detail by the Appropriations Committees. Ultimately the appropriation was denied, the House committee stating expressly that it did not favor continued Federal financing and recommending strongly that the Vicorp power facilities be sold to the Government of the Virgin Islands. A conference report later adopted by both Houses adhered to the House viewpoint.

To summarize these events, therefore, Vicorp now finds itself in a position of having decided to get out of the sugar business and is confronted with a congressional mandate to dispose of its power facilities in a particular manner. In addition, it will be relieved of responsibility for management of the airport and related facilities at such time as the process of transfer to the local government has been completed. Thus, three of its major activities will have been liquidated within a relatively short period of time, certainly prior to the running of its statutory life in 1969.

Notwithstanding these developments and unless the Congress should determine that the Corporation should be terminated prior to the statutory date, the Corporation still has the duty assigned to it by Congress "to promote the general welfare of the inhabitants of the Virgin Islands of the United States through the economic development of the Virgin Islands." At the present time, there is a continuing need for pursuing this objective in the direction of further diversification of economic endeavor. Although the historical attachment to sugar is gradually being dissolved by economic forces, there is as yet no assured substitute to provide a decent level of income to the people of St. Croix. Similarly the prosperity which tourism has brought to St. Thomas requires support in the form of a stable industrial base as insurance against the possibility that the flow of vacationists might be cut off or diverted elsewhere.

The properties now in Federal ownership in the submarine base site represent the most valuable single resource for the attraction of such an industrial base. In order to accomplish this objective, however, the kind of industry which would be most compatible with the St. Thomas situation requires incentive to locate there. It is my present feeling that merely making land available through the usual surplus property channels offers little assurance of this result. In short, the land must be under positive management, in the nature of an industrial park, possessed of sufficient authority and resources to develop its potential. For the remaining $5\frac{1}{2}$ years of its corporate existence, if such is to be the case, this seems to me an entirely proper and feasible role for Vicorp to play in the economic life of the Virgin Islands.

Senator NELSON. You may proceed as you wish.

Mr. CRAMER. Since the lease permit problem was handled at the Washington level I am not going to get into that, I am merely going to discuss a subject which was brought up yesterday and that was the Virgin Islands Corporation interest in the subbase property. In order to get at that and put the total picture of Vicorp in perspective I would like to review a little history.

I think you all know in 1934 Vicorp was founded before the private Danish company running the sugar industry at that time went into bankruptcy, which put about 700 local native people out of work and the U.S. Government at that time came in to help out with the problem.

Shortly after that we acquired the power of operation and during the course of our history we have taken on and shed various other things, including the Bluebeard Castle Hotel in St. Thomas.

In 1954, Interior became agents to manage the Navy property and they put that burden onto the Virgin Islands Corporation.

This included the Harry Truman Airport and the subbase in St. Thomas.

In 1959, the charter was renewed by Congress for another 10 years to expire June 30, 1969.

In December of 1962, the Board of Directors of Vicorp voted to dissolve the corporation and to transfer its assets and functions to the local government. A bill was filed to this effect but no action was ever taken on it.

In the meantime, four major things have happened to the Virgin Islands Corporation.

Because we are now employing mostly aliens, that is to say in this last crop we brought up 700 aliens from the English islands, and in view of the fact that we usually lose about \$300,000 annually, the board put 1,700 acres of sugar land out for bid with the hope of replacing the sugar industry. No decision on this has been taken as yet.

No. 2, Congress did not give us any money this year for power and mandated that we turn the operation over to the local government. As a result of this we have declared the power operation surplus, we have turned it over to the GSA, and suggested that they negotiate a favorable sale with the local government.

No. 3, the Navy, as you know from the discussion yesterday, declared the lands surplus, turned their land over to the GSA, and our hope is that this land that they have turned over will be split into thirds, about a third of it going to the College of the Virgin Islands, and a third going to the local government, that is the airport area, and the other third, the subbase, going to the Virgin Islands Corporation.

The fourth item that has come to pass, of course, is the cancellation of the leases which is probably why we are here today.

Now, if all of these developments mature but Congress still feels that the Vicorp should help with the economy of the Virgin Islands, the economic development, I am suggesting that Vicorp acquire the subbase and turn it into an industrial park.

What we would like to do there is to set up sort of a miniature bootstrap like they have in Puerto Rico, a small fomento operation. I think, and I believe the Interior Department agrees with me, that this would be good for the islands. We could do it without asking Congress for any additional funds; it would turn into a self-sustaining operation, and in 1969, when our charter expires, we could turn it over to the local government as a going concern.

So that is really the statement that I wanted to present to you this morning, Mr. Chairman, to let you know where Vicorp stands at the present moment and what our future interests are.

Senator NELSON. Thank you.

Do you have any questions?

Senator DOMINICK. I do.

I do not know why I should be asking the questions, Mr. Cramer, but let me start.

You said something which interested me, and that was that you were importing labor from other lands for the sugar plant, or for the sugar crop, or both?

Mr. CRAMER. The sugar crop, the harvesting end of it.

At the present time we do not have one American citizen, we do not have one local native who is actually cutting cane. It seems to be a job that is beneath them and so we must import and bring up by jet clipper and house and feed approximately 700 aliens in order to do this job.

Senator DOMINICK. Then we are not really helping the unemployment situation by the sugar crop, are we?

Mr. CRAMER. That is correct. Of course, we have no unemployment problem there, Senator. Our problem is underemployment. We have about, I believe, roughly 5,000 aliens working in St. Thomas to keep the economy going and about 4,500 in St. Croix.

Senator DOMINICK. You mentioned as the second point the power situation and said that Congress had mandated that it be turned over to the local government.

What did you mean by that?

Mr. CRAMER. Well, we, as you know, asked for about \$4 million to put a new 5,000-kw. turbine, steam operation, in St. Thomas, and put another 3,000-kw. diesel in St. Croix, plus some new distribution lines. As I understand it, the House passed this and then it got over to the Senate and the Senate turned the complete thing down. There was a compromise committee formed and the compromise was that we got nothing. In the process of that I can remember the chairman of the House committee stating very strongly that he felt that the Federal Government was no longer interested in putting money into the operation down there, that the island had come along well enough and they had enough money to take over the power operation and run it themselves.

I assumed that the Senate group must have agreed with this because we got no money and we have a very, very serious, urgent problem of getting this unit for St. Thomas, so we will have blackouts next year.

Senator DOMINICK. But there was no expression made by Congress anywhere, was there, that the system should be turned over to the local government?

Mr. CRAMER. Yes, this is very strongly brought out in the House hearing.

Senator DOMINICK. The House hearing?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. Was any expiration made during the process of that presentation as to the possible sale to private industry?

Mr. CRAMER. There was no discussion, to my recollection, in the House hearing.

Senator DOMINICK. I think for the sake of the record, and I may be wrong, Mr. Chairman, but I think that the money request was turned down on the ground there was no authorization.

I have had some letters from people indicating that they would be glad to form a local co-op or whatever may be necessary in order to take over the power and water system.

Now do you think this would be possible?

Mr. CRAMER. Well I believe, Senator, that the board of directors of the Virgin Islands Corporation have made a decision to turn it over to the local government and that is where the matter now stands.

Senator DOMINICK. Do you think that the local government is capable of operating this?

Mr. CRAMER. I am not too well acquainted with the local government, Senator. I would rather not make any judgment on their abilities or lack of abilities.

Senator DOMINICK. Mr. Cramer, when did you become president of the Virgin Islands Corporation?

Mr. CRAMER. November 1, 1962.

Senator DOMINICK. And you actually lived down in St. Thomas; did you not?

Mr. CRAMER. I lived in St. Thomas for 2½ years and I have just moved to St. Croix this summer.

Senator DOMINICK. But you do keep your residence in the Virgin Islands?

Mr. CRAMER. Yes, sir; I do live there.

Senator DOMINICK. In the process of the controversy we seem to have over this Navy property here, were you involved in any of the mechanics of this leasing proposition?

In other words, were you connected with the Virgin Islands Corporation prior to 1962?

Mr. CRAMER. I came with the Virgin Islands Corporation in July of 1961. Therefore, I had no previous dealings with the leases.

Senator DOMINICK. Have you been one of the people who have been asked to check on the compliance with the terms of these leases by the occupants?

Mr. CRAMER. Have I been——

Senator DOMINICK. The compliance by the occupants with the terms of the leases.

Mr. CRAMER. I have never been asked by the occupants about the terms of the leases, particularly. I suppose as President of the Corporation it has been my job to make sure that the occupants are complying with the terms of the leases.

Senator DOMINICK. Do you know whether the local government has ever asked that the leases be canceled?

Mr. CRAMER. No sir, I do not know that.

Senator DOMINICK. Have you had any contact with the local government concerning these leases?

Mr. CRAMER. No sir.

Senator DOMINICK. Did you live on the islands prior to 1961?

Mr. CRAMER. No sir.

Senator DOMINICK. So your knowledge of the condition of this property, then, would be since 1961?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. Have there been improvements made to these properties since 1961?

Mr. CRAMER. I think in some instances there have, and in others there have not been.

Senator DOMINICK. In the ones where improvements were made were you asked for authority to make these improvements?

Mr. CRAMER. Well, Senator, I might say in passing that since I have been president I do not believe there have been any improvements made, but I am acquainted with improvements that were made by them before that which were authorized by Mr. Holmberg who was then the manager of the development department. I do not mean to imply there have not been improvements made because I am sure from the time these people acquired the properties, I have seen pictures of what they used to look like and there have been tremendous improvements, of course, made.

Senator DOMINICK. Were you consulted by the Office of Territories prior to the issuance of this cancellation letter of August 15 referred to by Mr. Kirwan yesterday?

Mr. CRAMER. There have been discussions over a period of time on the cancellation of these leases, but Mr. Kirwan, of course, did not feel obligated to consult me as to whether he should write the letter. As you know he is my boss and I received a copy of the letter that he wrote to the lessees.

Senator DOMINICK. Did you make any recommendations to the Office of Territories as to treatment that should or should not be given to the occupants?

Mr. CRAMER. I believe at one time, Senator, that I wrote a letter to Mr. Kirwan, the assistant director of territories, suggesting that in view of the fact that these people had originally gotten their leases through the Interior Department any future dealings with them perhaps should be handled by the Interior Department rather than any other agency of the local or Federal Government.

Senator DOMINICK. During the time you have been connected with the Virgin Islands Corporation have you had any particular complaints about the activities of the occupants of these leases?

Mr. CRAMER. We have had a few complaints on a small number of them that they were not keeping their property up properly or they were allowing their garbage to accumulate, or they were not really keeping the place neat and tidy as it should be.

Senator DOMINICK. Have these complaints been handled by you?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. Did you have any problem straightening them out?

Mr. CRAMER. Well, we have two of our tenants who do not happen to be here—that is not why I am talking about them—who have been kind of nuisances and you have to keep after them all the time.

Senator DOMINICK. Amongst the ones who are here, I presume you know the ones who are here?

Mr. CRAMER. I think I know most of them at least, and I cannot recall any complaints on any of the ones who are present.

Senator DOMINICK. Would you say that their leases have been good for the economy of the island? Their activities have?

Mr. CRAMER. Yes, sir; I would answer that, "Yes."

Senator DOMINICK. Mr. Cramer, have you received the impression that Congress would like to see the Virgin Islands Corporation out of existence?

Mr. CRAMER. I received just the opposite impression from the action that they have taken on what we have been attempting to do since I

have been down there, and that really was to get the corporation out of business. I had a very strong feeling and I believe that the board of directors, as I indicated, in December of 1962, felt that the Virgin Islands Corporation has really pretty much served its purpose and it ought to be liquidated either to private interests or to the local government or to both, but the Congress—some legislation was filed to liquidate it in December of 1962, and never had any action taken by the Congress.

As I understand it, the Congress is sort of split on this subject. Part of them feel it should be turned over to the local government and part feel that it should be put into the hands of private interests.

Senator DOMINICK. Without being critical of you, let me say I share your viewpoint.

Obviously it would seem to me that if the Virgin Islands Corporation is going to acquire title to approximately a third of this land that this is a far cry from liquidating the Virgin Islands Corporation.

Now, which third are you applying for?

Mr. CRAMER. I am talking about the sub base which is fairly close to the town that already has the power and salt water distillation operations in there. It has the garbage disposal operation of the local government. It has a landing dock there where boats come in and unload produce and merchandise. It has a lot of small warehouses and a little bit of industry in there now so that it is really—it has a start in the direction of being an industrial park but it has not had very good guidance and the only reason we want to take it over is because we feel that we might be a little more effective in getting something like this started rather than the local government who might not be in as good a position as a Federal agency to get the thing going.

Senator DOMINICK. Mr. Chairman, at one point we were to be furnished a map of this property so we could see the areas we are talking about. Did we ever get that map?

Senator NELSON. I have not seen it.

Mr. KIRWAN. I have maps available, Mr. Chairman and Senator, if you wish them?

Senator DOMINICK. I think that would be helpful, Mr. Kirwan.

This sublease, does that include the Gramboko Hotel?

Mr. KIRWAN. Yes, sir; one is the Gramboko Hotel and the other one, two major ones, is Texaco. There are three or four other small ones.

Senator DOMINICK. Would that be part of the reason why those two occupants were classified as being subject to renegotiation by Mr. Kirwan?

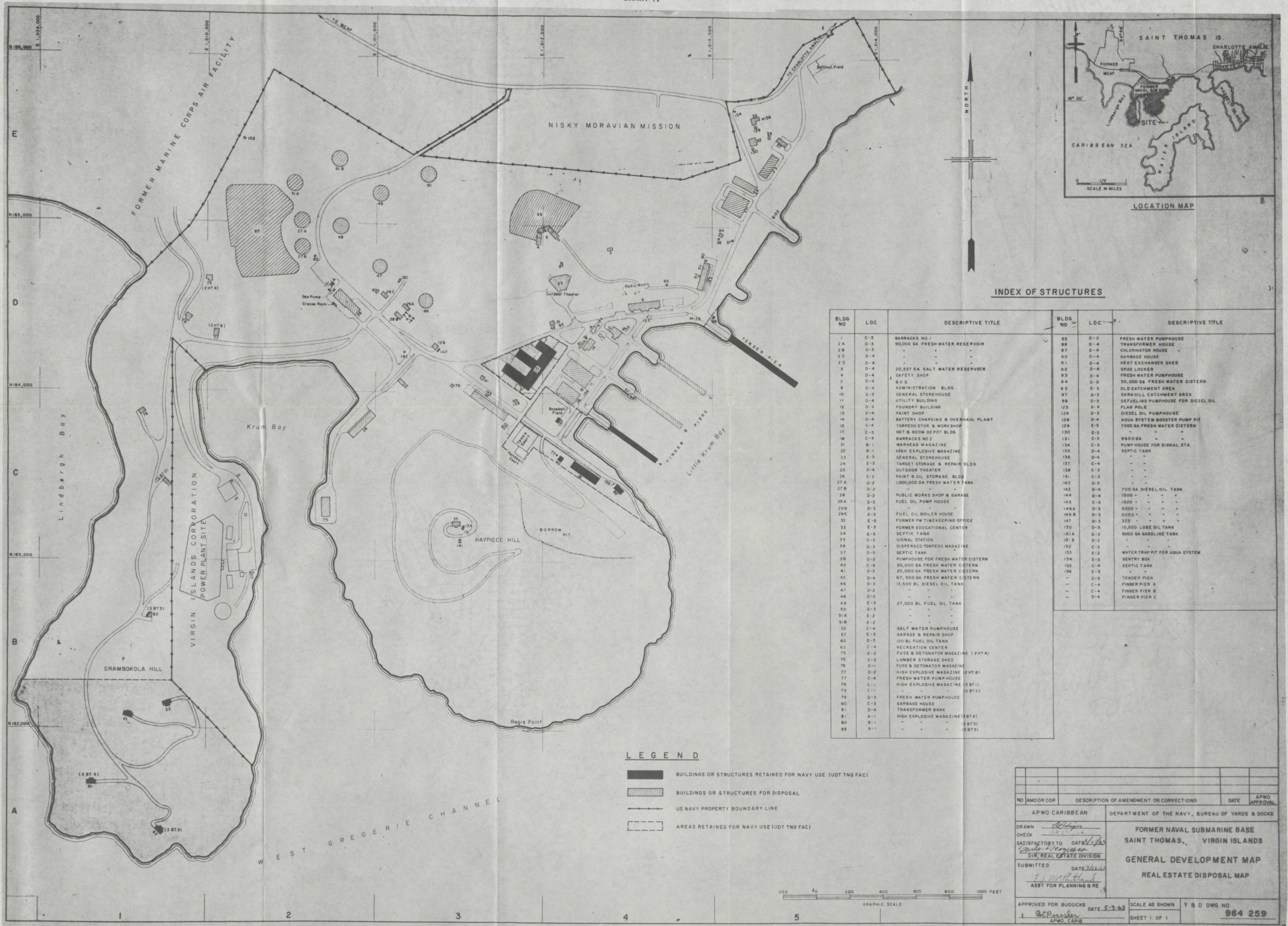
Mr. CRAMER. I would certainly not want to speak for Mr. Kirwan, Senator.

Senator DOMINICK. Would it be necessary to cancel those leases in order to make this an industrial park?

Mr. CRAMER. No, sir; I do not think the leases—as I understand it, these leases are not really valid. If they are leases, and we will call them that, their cancellation or continuation would have nothing to do with our interest in the development as an industrial park.

Senator DOMINICK. In other words, they could continue without interrupting the development of an industrial park?

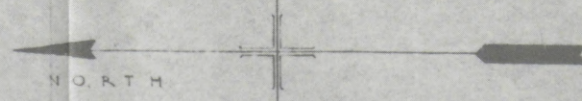
Mr. CRAMER. Even if we took them, you know, went in there and started this industrial park, we have no thoughts of using that building, the Gramboko Hotel, for any commercial operation.





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3	G-11	GENERAL STOREHOUSE	64	F-5	74,000 GA. SALT WATER RESERVOIR
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			130	G-8	CHLORINATOR STATION



LOCATION MAP

LEGEND

- BUILDING OR STRUCTURE OWNED BY NAVY
- BUILDING OR STRUCTURE OWNED BY OTHERS
- BUILDING RETAINED BY U.S. NAVY
- PAVED AREAS
- U.S. NAVY PROPERTY BOUNDARY LINE
- ROADS**
- PAVED ROAD (BITUMINOUS)
- PAVED ROAD (COMPACTED STONE)
- DIRT ROAD

BLDG NO	LOC	DESCRIPTIVE TITLE
132	H-9	TRANSFORMER BANK
133	H-9	RECREATION CENTER
134	D-8	145,000 GA. FW TK FOR RANGAR SPRINKLER SYS
135	E-12	CHLORINATION STATION
138	H-8	STOKEROOM
142	C-6	QUARTERS "A"
143-145	D-7	MANNED OFFICERS QTRs
161	C-9	30,000 GA. FW CISTERN
162	E-13	CATCHMENT AREA
165	F-5	"
165	I-12	OFFICERS CLUB
167	I-12	SEWAGE PUMP HOUSE
173	G-6	HURDLE SHED
174-176	H-9	NGO QUARTERS (6 BLDGS)
177-182	I-8	LOW COST HOUSING (24 BLDGS)
188	G-6	FLOWER SHED
219	E-6	PUMP HOUSE
240	H-10	"
261	C-9	DIESEL OIL TANK
262	B-8	"
263	G-8	"
264	E-12	"
265	D-9	SEPTIC TANK
266	A-7	"
267	E-12	600 GA. GAS TANK
269	F-6	FRESH WATER TANK
271	F-12	"
278	H-10	WELL
279	H-10	SEPTIC TANK
279	H-10	FW CISTERN
284	F-13	DIESEL OIL TANK
284	F-13	"

BLDG NO	LOC	DESCRIPTIVE TITLE
284	G-8	CARTRIDGE HOUSE
285	K-11	FW CISTERN
291	G-12	FW CISTERN
292	J-12	"
294	E-11	FLAG POLE
295	C-6	"
297	I-12	FW CISTERN
298	G-9	DIESEL OIL TANK
303	F-13	GENERATOR SHED
A	E-11	ALCOHOL & OTHER MAGAZINE
B	E-8	READY BOMB MAGAZINE
C	F-13	1855 DET MAGAZINE

NOTE:
FOR BOUNDARY SURVEY &
REAL ESTATE ACQUISITION SUMMARY
SEE YED DRAWING NO. 142 & 143

14		15	
NAVY RETAINED QTRs & BLDG. LOT RETAINED			
NO. AND OR COR. DESCRIPTION OF AMENDMENT OR CORRECTION			
APWD CARIBBEAN		DEPARTMENT OF THE NAVY, SUBMARINE BASE	
DRAWN: [Signature]		FORWARD: [Signature]	
CHECK: [Signature]		FORWARD: [Signature]	

At least it is not in our plans, nor would we use the Texaco operation.

Senator DOMINICK. I wonder, Mr. Cramer, if you would be nice enough to come over here and show us what we are talking about here so we can get it straightened out.

Mr. CRAMER. The area that I am now pointing out to Senator Dominick starts here at the stop light on the main road and now the Virgin Islands Boats operation is right about there.

So we start there and it goes this whole area here and this is a big hill here. It would be about like that.

This is all mountain here; there is no land available. Quite a bit of this is mountain. There are 176 acres of land, but actually there are probably not more than 75 that are really usable.

Senator NELSON. 176 acres where?

Mr. CRAMER. Within that pencil line, I believe.

Senator DOMINICK. Mr. Cramer, where are the resort hotel leases?

Mr. CRAMER. They are over at Bourne Field, which is over here.

Senator DOMINICK. Farther to the left as far as the map is concerned.

Mr. CRAMER. Yes, sir; that is the Gramboko there, and the resort hotels—the Beachcomber, Surfside, Beachcomber there, Tropic Isle there, and this is the Caribbean Beach up here.

Senator DOMINICK. And on the larger map the area you have circled in pencil on the smaller map is in the upper right hand corner; is that correct?

Mr. CRAMER. That is correct. It is surrounded by hills, incidentally. It is cut off from the rest of the island so, you know, sometimes an industrial park gets a little bit untidy, and it would be completely out of the view of the tourists or anyone else surrounded by these hills.

Senator DOMINICK. For the purposes of the record, Mr. Chairman, could we designate the first map with the penciled circle line on it as map A and the one you were looking at as map B.

Senator NELSON. All right.

Senator DOMINICK. Mr. Cramer, under date of August 15 Mr. Kirwan wrote a letter to these lessees or occupants, or whatever we have been calling them. In the second paragraph he says the Virgin Islands Corporation will be granted shortly a license for these premises and will in turn tender to you a sublicense substantially equal to the instrument cancelled above except that it will be revocable upon not more than 30 days' notice.

The first question is, Did you receive a license for these premises from the Office of Territories?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. And did you in turn tender a sublicense to these people?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. And did they accept them?

Mr. CRAMER. My recollection, Senator, is that there are three of the tenants who signed these new permits and returned them to us.

Senator DOMINICK. And these were revocable upon 30 days' notice?

Mr. CRAMER. Yes, sir.

Senator DOMINICK. Now, is this at the will of the Office of Territories? To revoke them for any reason?

Mr. CRAMER. We can revoke them for any reason and at any time. Or for no reason.

Senator DOMINICK. Have you had any of these people object to these sublicenses?

Mr. CRAMER. Yes, sir; we have.

Senator DOMINICK. Did the group that is here object to them?

Mr. CRAMER. Three of the four here have objected to me in writing.

Let me correct that. Three of them have objected. I am not sure at the moment whether they objected to me or to Mr. Kirwan, and they may have objected to me and I referred it to Mr. Kirwan or they may have objected directly. I believe that Mr. Dowling objected to Mr. Kirwan directly in a letter saying that he wanted to sit down and discuss the subject with him, which I considered an objection. The Gramboko tenant and the Beachcomber—no, the Gramboko and L'Escafe, Mrs. Heckert and Mr. Stanford, objected in writing to me, which I referred to Mr. Kirwan, but I have had no objection from the Beachcomber.

They may have objected to Mr. Kirwan directly, but I am not acquainted with it.

Senator DOMINICK. What was the form of this sublicense?

Mr. CRAMER. We took our standard permit which we have been giving out since July of 1961 and took out all of the pertinent information from the old lease, that is to say the rent, description of the property, and the renegotiation terms and everything else, and put them in the permit. We took everything from the lease except the term of the lease and reproduced it exactly in the permit. The permit, of course, was a 30-day permit.

Senator DOMINICK. No further questions.

Senator NELSON. Mr. Mechem?

Senator MECHEM. Do you have statutory authority to execute a lease for a term of years which is revocable subject to cause?

Mr. CRAMER. I have a letter from Mr. Kirwan dated, I believe, around December of 1962, in which he told me that we had no authority to make any leases whatsoever—I guess that was December of 1961—without consulting Washington, so that as far as I am concerned, connected with the Virgin Islands Corporation, I have been told by the Assistant Director of Territories that I have no right to give any leases. I would have to ask our counsel, Mrs. Van Cleave, to answer that question.

Mrs. VAN CLEVE. The Virgin Islands Corporation does have statutory authority to enter into leases for terms of years with respect to property over which it has a sufficient interest to enter into a lease.

Mr. Cramer is referring to the property here in question over which the Virgin Islands Corporation had only a revocable permit interest and for that reason the corporation's statutory authority, that is a provision of its organic act, codified at 48 U.S.C. 1407 C.F. This authority is not applicable to the particular property. It does apply to other Virgin Islands Corporation property to which the corporation holds title, and the corporation has, in fact, entered into leases for terms of years with respect to such property as that.

Senator MECHEM. Now, in 1948 when this property was turned over to the Department of the Interior by the Navy, did the Corporation have authority at that time to take this property?

Mr. CRAMER. The Corporation as such did not come into existence until 1949, a predecessor organization then existed. I simply do not know what leasing authority it had, but the point would not become material until 1954, which was the year in which the Virgin Islands Corporation became the permittee of the property indirectly from the Navy through the Interior Department.

Indeed, in 1954, the Corporation had the leasing authority which I have described.

The difficulty, however, then maintained which I also alluded to, is that it had a lesser interest than that which it purported to convey.

Senator MECHEM. I believe that is all.

Senator NELSON. Any questions?

Senator WALTERS. No thank you.

Senator NELSON. Thank you, Mr. Cramer.

Mr. CRAMER. Thank you very much.

Senator NELSON. Mr. Stanford.

STATEMENT OF DONALD STANFORD, ST. THOMAS, V.I.

Mr. STANFORD. Mr. Chairman, members of the subcommittee, as I suggested yesterday—

Senator NELSON. Will you identify yourself.

Mr. STANFORD. I am sorry, my name is Donald Stanford, I am the president and sole stockholder of L'Escale, Inc., which is located in the St. Thomas airport terminal building.

Mr. Chairman and members of the subcommittee, because there were a number of things that I think required clarification yesterday, I am going to proceed to read a general statement of position of those individuals who are represented here as lessees.

Might I state in the beginning that our position is that we have leases and the purported cancellation is something that is not recognized.

Shortly after the Navy abandoned their properties in St. Thomas, the U.S. Department of the Interior, through a Federal, duly established subsidiary agency, the Virgin Islands Corporation, publicly offered these Naval properties for business leases. At that time these properties were providing little or no income for the Department of the Interior, were depreciating rapidly, and the businesses were in some cases bankrupt. Consequently the available land and buildings were in small demand by the public.

A number of American citizens had the courage to believe in the future of the Virgin Islands and the potential of these properties for business investment. The Department of the Interior induced these people to establish commercial and other business facilities in the public interest.

The inducement was in the form of leases with the United States of America as lessor, acting by and through the Virgin Islands Corporation. These leasing instruments were, in most instances, approved and signed by the then Secretary of the Interior, a Cabinet member, Mr. Fred A. Seaton, with signatures affixed by both the President and Manager of the Virgin Islands Corporation.

The very fact that the United States of America issued these leases to citizens of the United States, induced the lessees into contract although the leases contained one unlikely element of risk. This was a

clause which is commonly called the Navy recapture clause. The clause states, and this is something out of context of the clause, "That the Department of the Navy or higher military authority has the authority to repossess them." But, in all cases the lessees were led to believe by the lessor that the military intervention could and would only be enacted in the event of war or a national emergency.

Some time ago the Department of the Navy declared that the majority of these properties, including incidentally all that were leased, as surplus. This simply meant that the Department of the Navy had gone on record to the effect that the properties in question no longer had any value to them. With this announcement, the lessees were, for the very first time, in a position to breathe freely, as the threat or danger of repossession was clearly removed.

In return for a lease on these properties, the lessees were required to invest large sums of money to the rehabilitation of these dilapidated structures for use and occupancy as well as to provide essential services to encourage tourism and trade in the Virgin Islands. In some instances the lessees built, from the ground up, completely new structures to house their businesses and growth. All lessees were required to receive written permission to make major changes to the existing structures, thus being sanctioned and encouraged by the lessor in the act of making further investment to the leased property.

On August 15, 1961, a form letter from the Office of Territories, signed by John J. Kirwan, Acting Director, was mailed to the lessees, containing the quotation—

the premises you occupy in St. Thomas, Virgin Islands, pursuant to paragraph 4 to an instrument signed, and it is dated with regard to an individual lease, under paragraph 4 thereof, canceled.

Paragraph 4, to which the quotation refers, is the Navy or higher military authority repossession clause. This was sent out after the Navy, by its declaration of surplus, had gone on record that they do not need or desire to possess these buildings or properties again. Since the leases do not contain a cancellation clause, the Office of Territories is apparently attempting to invoke paragraph 4 of these leases to give legal sanction for an extremely wanton act.

The leaseholders were truly amazed that such an attempt would be made by the Government of the United States to abrogate a solemn contract of lease with a group of American citizens. This is perhaps one of the most elementary attempts at forfeiture our Government has made to date.

These properties are about to be transferred to the local government or to the Virgin Islands Corporation. Contrary to the lack of interest that prevailed when most leaseholders made their original contracts, these properties are now very much in demand. For them to be transferred to any other lessor without recognition of the existing leases would be highly illegal and unethical.

I might add, and also immoral.

An act of this nature would force the tenants to forfeit their enormous investments and interests. If a lease with the United States of America can be invalidated by the whim of one agency of our Government, then what protection does a U.S. citizen have?

This is a profoundly serious legal and moral issue on which rests, with the eventual outcome, the fidelity of the United States of America to her citizens.

While on the local level, and when I refer to the local level I mean the Virgin Islands—while on the local level, here is the opportunity to test the loyalty and strength of voice of our home government agencies and representatives. Weren't these leaseholders further wooed by the propaganda of "tourism" and "industry" into putting forth unlimited time, effort, and money in the belief that they were a necessary part of the island's growth and a bona fide footing of our economic structure?

These people contributed a great deal to the island's most important industry, tourism, when the island needed people of courage and confidence.

Mr. Chairman, and gentlemen of the subcommittee, a number of allegations were made here yesterday with regard to the condition of leases—the question as to whether they went out on bid or whether they were negotiated privately. I say now that many of these allegations were completely inaccurate and failed to give full and detailed information. I believe that I will prove the inaccuracies and give you the information and give you the documentation to substantiate those things that I refer to as being inaccurate yesterday.

If you will permit me, then, I will go along with my individual situation and when I arrive at the point where it seems fitting and proper to bring in the question of accuracy I will indicate it.

My name is Donald Stanford, I am a resident of St. Thomas, Virgin Islands, where I operate a gift shop, dining room and cocktail lounge called L'Escale in the airport terminal on St. Thomas.

I appear here today in response to a cable from the chairman of this subcommittee who is Mr. Henry M. Jackson.

My tenure is based on a lease dated June 13, 1958, between the United States of America, lessor, acting by and through the Virgin Islands Corporation, more commonly known as Vicorp, and L'Escale, Inc., of which I am president and sole stockholder, as lessee.

I have already filed with the chairman a copy of that lease and have the original with me for inspection by any member of the subcommittee who may wish to see it. I call attention to page 14 of that instrument, the execution page, which, in addition to my own, contains the signatures of Dr. Kenneth A. Bartlett and Mr. Elliott H. Gray, then president of Vicorp and manager of its development department, respectively. In particular, I would like to call your attention to the fact that the lease contains the personal written approval of the Secretary of the Interior, at that time, Fred A. Seaton.

My first visit to the Virgin Islands was in October 1954 as a tourist. Like perhaps 99 percent of the visitors, I landed at the St. Thomas Airport. At that time, the terminal was an enormous, old weather-beaten airplane hangar with a ticket stall and a lunch counter at one end, the conditions of which would discredit a Bowery establishment. Members of this subcommittee or others in this room who passed through the St. Thomas Airport prior to January 1957 may recall the disgraceful condition of the terminal.

My next trip to St. Thomas was some 3 months later in January of 1955, when I decided to move my family to the Virgin Islands for a year. I leased a home in St. Thomas at that time.

I soon became enchanted with St. Thomas and interested myself in seeking business opportunities there.

As I have already stated, one of the most obvious needs of the islands centered around the airport terminal. It was there that most visitors got the first impression of St. Thomas. Likewise, departing tourists spent considerable time while awaiting their flights.

The condition of the airport terminal was a source of great concern to everyone interested in the Virgin Islands, and its major industry, tourism. The economic upsurge which was to occur during the past 5 years was not evident at that time.

I conferred with the Vicorp officials. They explained that the owner-operator of the existing food-handling establishment at the airport terminal had failed to comply with even the minimum sanitary standards as required by law. It was emphasized that I could help the Virgin Islands and myself by establishing a first-class restaurant facility in the airport.

I might add at this moment, Mr. Chairman and gentlemen of the subcommittee, I have the original correspondence concerning the effort to get me to come to St. Thomas to do this, which will be available for your inspection if you so desire.

I know that Vicorp had endeavored to interest many other St. Thomas businessmen in the airport restaurant, but apparently had been unable to convince them of its commercial possibilities. Several of them told me that its prospects would not justify the tremendous capital investment required to provide the type of facility that the Government desired. Nevertheless, I entered into protracted discussions with Vicorp officials. As a direct result of these conferences, I agreed to have designed, built, and established a restaurant, coffee shop, and cocktail lounge to cater to the public.

It might interest you gentlemen, also, that I came to Washington to discuss this with counsel at that time.

I was aware at the time that Vicorp was involved in litigation with a lessee who allegedly had failed to enhance the property in accordance with his commitment. Because the litigation dragged on for too long a time, as well as for personal reasons, I moved my family back to New York in November of 1955.

Almost a year later, in August 1956, after I had more or less given up the idea of investing in the airport terminal restaurant, I received a letter from Vicorp advising that the litigation had been resolved in its favor, and soliciting my renewed interest.

Sometime later I returned to St. Thomas, this was a matter of weeks, and resumed my conferences with Vicorp officials, examined their drawings of the terminal, and sketched rough ideas for improvement of the restaurant portion. The officials were delighted with my determination to provide a first-rate facility.

I returned to New York and immediately entered into consultation with an architect—his drawings incidentally I have—Norman Cherner, equipment suppliers, shippers, and so forth. Vicorp was kept apprised of these developments and, indeed, was given copies of the architect's drawings and renderings.

In December 1956, I returned to the Virgin Islands, having purchased the necessary furniture and equipment, to arrange for the installation. You will be interested in knowing that the premises originally provided neither power nor waterlines. It was a basic minimal structure of concrete blocks and 2 by 4 exposed fir studs. No

doors were provided so that the premises could be protected, closed or locked. The only section of value at the time I began my occupancy was that section with concrete blocks providing the perimeter wall enclosure and the 1-by-8 planking that provided ceiling and roof. It was immediately necessary to build a store front and bring in power and waterlines.

Subsequently, I built a second story, including the installation of the structural beams necessary to support said second story and install the existing stairwells for access and exit. Now the structure has been 70 percent rebuilt, completely air conditioned and furnished, of course, all at my expense.

On January 9, 1957, there were not even two full-time employees working in the airport terminal building, other than those employed by Caribair, which is the airline serving the islands, and the few individuals who worked for Vicorp at that time as porters and cleanup men in the terminal.

I now employ 26 persons on a full-time schedule at L'Escale in the airport. My payroll there for the last fiscal year ending June 30, 1963, was \$98,900.

On January 10, 1957, L'Escale opened as a service business to the general public. About a year and a half after our opening date, it became apparent to me that the facilities that I had provided were inadequate in size if I was to make proper provision for our tourist potential. Once again, conferences were commenced with Mr. Elliott Gray and with Mr. Kenneth Bartlett, of Vicorp, in an effort to develop planning for the building and service expansion. It was my desire to have Vicorp build the additional accommodations and raise my rent. The Vicorp officials informed me that this could not be done.

I was told that if the property was to be improved further and a second story added, I would have to do it with my own funds. I agreed to do so. In addition to the construction of a second story, including toilets, air conditioning was installed throughout the entire building known as L'Escale.

A conservative estimate as of today is that I have invested in excess of \$100,000. I might say this, Mr. Chairman, gentlemen of the subcommittee, if anyone is concerned with the precise figures I will have my accountant make up a statement with regard to my investment. The reason I do not have precise figures is, first, I do not know whether they would be desirable or necessary. And secondly, there has been a gradual increase and addition to service facilities throughout the years, automatic glass washers, everything that would in some way give additional service, make our operation more efficient, as I discovered that they might be useful.

I might repeat this, I conservatively estimate that as of today I have invested in excess of \$100,000 in improving the St. Thomas airport restaurant facility. With this in mind, you can appreciate my concern last August when I opened a communication from Washington which I will describe.

Under date of August 15, 1963, a letter from the Acting Director, Office of Territories, Department of the Interior, a photocopy of which is herewith submitted, the contents of which gave me no serious cause for alarm, for I did not then believe that it was to or would be pre-

sented on a "take it or leave it basis." The second paragraph of the letter reads as follows:

The Virgin Islands Corporation will be granted shortly a license for these premises and will in turn tender to you a sublicense substantially equal to the instrument canceled above, except that it will be revocable upon not more than 30 days' notice.

However, after receiving the sublicense I did have cause for alarm, for instead of the "substantially equal" instrument promised, I found an entirely different lease. The most apparent differences are set forth in the following table:

	Existing lease	Proposed rental agreement
Term.....	20 years.....	2 years.
Cancellation clause.....	None.....	30 days.
Terminal relocation.....	1st right of refusal.....	None.

The existing lease is for 20 years, with 15 years left to run. The proposed rental is for 2 years.

In the existing lease there is no cancellation clause at all; this is an expressed agreement, and I understand that nothing can be implied; there is no way of canceling this lease by any measure other than a court measure. The proposed rental agreement gives me 30 days without cause.

Cancellation clause—none in the existing instrument; 30-day cancellation or at the will or whim of any individual who might so decide.

There is another point in the lease. In the existing lease under which I am now operating I have the right of first refusal in the event that the airport terminal is relocated. Under the proposed rental agreement I have no rights if the terminal is relocated.

There are several other things that have no relationship to each other that could in any way relate to the words "substantially equal," but I think that these were three, in order to give you a general idea, of what the difficulties are.

I decided to write to Mr. Robert Cramer, president of Vicorp. A copy of that letter, dated September 16, 1963, is herewith submitted.

SEPTEMBER 16, 1963.

MR. ROBERT CRAMER,
President, Virgin Islands Corporation,
Christensted, St. Croix, V.I.

DEAR MR. CRAMER: This will acknowledge receipt of the new sublicense for my signature covering the premises that I occupy and operate under the name of L'Escale at the St. Thomas Airport.

In August I received a letter from Mr. John J. Kirwan, Acting Director of the Office of Territories, and his letter states and I quote the second paragraph, "The Virgin Islands Corporation will be granted shortly a license for these premises, and will in turn tender to you a sublicense substantially equal to the instrument canceled above, except that it will be revocable upon not more than 30 days' notice."

After reading the sublicense instrument that I have received from you I regard the quotation for Mr. Kirwan's letter as having little or no relationship to the new sublicense. In the first place, the leasing instrument under which I am operating is a bona fide term instrument containing no cancellation clause at all. It does contain, however, what is regarded as a military recapture clause which I understand is a part of most of the leases covering naval property. This clause states and I quote, "It is further expressly understood by the parties

hereto that the U.S. Navy is the owner of the demised premises covered by this agreement and that while said demised premises are now under the control of the Virgin Islands Corporation, acting for the Department of the Interior, the Department of the Navy or higher military authority has the authority to repossess them at any time upon demand. In view of this fact, the parties hereto agree that should the aforesaid right to repossess the demised premises or any part thereof be exercised, this agreement shall thereupon cease and terminate as if the date of such repossession were the date fixed herein for termination and the lessee shall have no claim against the lessor for any damage of any kind suffered by the lessee because of repossession, but the lessor shall refund any unearned rent paid by the lessee."

Now it appears that in the first paragraph of Mr. Kirwan's letter he has used the word repossessed when this in fact is not the case. The word canceled would be fitting and proper, not repossessed.

As you know, I have been operating under a leasing instrument approved and signed by Fred A. Seaton who was the Secretary of the Interior. The value of the instrument now in effect gives me the protection that I would be tossing out of a window if I were to consider signing the sublicense or permit.

The only reason for my willingness to invest a substantial sum of money to create a representative commercial facility in the airport terminal in St. Thomas was because of the type of leasing instrument that was granted to me at that time and surely this is true of the other lessees who have invested their money.

The lease also contains a clause on page 12, No. 2, and I quote, "The lessor does hereby covenant and agree that it has full right to lease the demised premises for the term aforesaid and that said lessee, upon payment of rent and the faithful performance of all the other covenants, conditions and agreements of the lease, shall peaceably and quietly enjoy the same for the full term thereof."

I contend, Mr. Cramer, that the letter from Mr. John J. Kirwan to me is not providing for the repossession of the premises in question but rather for the cancellation of a lease properly validated by a former Cabinet member of the U.S. Government and under the circumstances I have no intention of signing an instrument that gives me less than I already possess. I will, however, be more than willing to discuss this matter with you or Mr. Kirwan. If any effort is made to attempt to enforce a substitution of instrument then I will be left no choice but to institute legal proceedings to protect my interests.

Meanwhile, I have engaged counsel both here and in Washington for the purpose of giving me guidance as to what my position should be in this matter.

With kindest personal regards.

Sincerely,

DONALD STANFORD.

I have already submitted to the chairman a copy of the sublicense dated August 16, 1963, which the Department has attempted to force upon me. The original is available should you care to examine it.

On or about October 5, 1963, from the Office of Territories, in answer to my letter dated September 16 to Mr. Cramer, I received this letter:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., October 2, 1963.

MR. DONALD STANFORD,
L'Escale Inc.,
Harry S. Truman Airport,
St. Thomas, Virgin Islands.

DEAR MR. STANFORD: Mr. Robert Cramer has sent me a copy of your letter of September 16, 1963, since it refers in part to me. I will be writing to him at greater length on the subject, but wanted to take this opportunity afforded me to restate and clarify the action taken with regard to your instrument dated August 20, 1958, and approved by Mr. Fred Seaton.

That instrument has been canceled. It is no longer in effect, and has not been since August 15, 1963.

Mr. Cramer is not suggesting that you give up the instrument dated August 20, 1958, in return for a permit now from Vicorp. He is suggesting, for your own

protection and self-interest, that since your old instrument of August 20, 1958, has been totally and completely canceled, and you have nothing at all just now, that you would be better off with a permit from Vicorp. It would at least regularize your presence on the property, fix the amount of rent to be paid monthly, and so forth. I assume that Mr. Cramer, as a matter of policy not law, has decided to charge you the same amount each month under the Vicorp permit—until further notice—as you had been paying under the old instrument dated August 20, 1958.

You mention that you are represented by counsel in Washington. I have not had the pleasure of a phone call or visit from him, so maybe you were speaking prospectively of engaging one. In any event, I would be glad to discuss this matter with him at any time, or with you for that matter upon any further trips to the Virgin Islands.

Sincerely yours,

JOHN J. KIRWAN,
Assistant Director.

Mr. Chairman and gentlemen of the subcommittee, I would have made concerted direct efforts in order to discuss this with Mr. Kirwan but when Mr. Kirwan sent me a letter as conclusive and as arbitrary as this, as far as I was concerned this precluded any further conversation and I had no intention of getting into a letter writing controversy with Mr. Kirwan.

There are a number of things that I should like to relate to you with regard to the statements in Mr. Kirwan's letter.

One, refers to repossession. Two, refers to cancellation. Three, since I have been here on Capitol Hill there has been a tremendous amount of talk about the fact that we are sitting on valuable property and paying no rent. Four, the question of the Secretary's authority to sign. And five, the request of General Services as was related; I took this from a press release, supposedly contributed to an interview with Mr. Kirwan stating that GSA had directed Interior to unencumber these encumbered properties.

Now, in the first place, repossession, as I understand it, is a positive, physical act. This is not something that you suggest through a letter. Repossession is when you have the authority and you go in and take possession of the premises that are repossessed.

Fortunately, the captain who was representing the Navy here yesterday clarified the Navy's intention with regard to the repossession clause.

The second item is cancellation, and these words have been used in both of the letters. I say repossession has never taken place. Cancellation, I am not a lawyer, but I know that in an expressed agreement, in a written agreement, nothing can be implied. There is no cancellation clause in this lease, and if it was the intention that this lease should be canceled or could be canceled at some time, legally it would require a cancellation clause.

The question of the amount of rent that is being paid: While it is true that the rents that we pay today are substantially lower than a new tenant would pay if he had the opportunity to go into the same facilities, I think it must be remembered that these properties were not producing any income. These properties, almost all of them, went out on bid. In several instances, and this I will substantiate for you in at least one instance, property which went out on bid either had no bidders or had a single bidder whose bid was so unsatisfactory that the Virgin Islands Corporation turned it down.

The fourth question has to do with the authority of the Secretary of the Interior.

Yesterday in the testimony Mr. Kirwan stated—and, fortunately, I have written many notes, I have not referred to them yet—that the Secretary of the Interior did not have the authority to enter into these permits. Of course, I make no reference to a permit. What I have is a lease.

Now, I should like to ask, this is not really a question, but if the Secretary of the Interior did not have the authority to sign them, then how, gentlemen, could I find out? Should I go and ask the President of the United States does the Secretary of the Interior have the right to make leases? If I even suggested it to the Secretary or the Assistant Secretary they would laugh me out of Washington right into the Pacific.

Mr. Kirwan has assumed, has made allegations to the effect that these are smart business people; they knew that they did not have any leases. Of course, I do not believe that anyone in this room would have failed to accept a lease under the circumstances with a Cabinet member of the U.S. Government where the lessor is the United States of America.

I will not disparage the statement further.

The fifth item, the item that was released through the newspapers and came through one of the Washington bureaus—I will not quote the newspaper, although I have the newspaper here—was in effect that the General Services Administration had directed Interior, it might have been Territories, I do not recall, to unencumber these encumbered properties.

There are two ways to unencumber encumbered properties that I know of. One is to buy the encumbrances, to purchase the leases. The other way is through condemnation. However, if condemnation were attempted now that this is out in the open it would purely be subterfuge.

Senator DOMINICK. Mr. Stanford, I think the letter from the GSA which was put in yesterday clarifies that point. All they said was that they could not do anything about declaring these properties surplus as long as the Department of Interior held a permit from the Navy. They did not say anything about these leases.

Mr. STANFORD. Right, my quotation, Senator Dominick, was the result of an alleged newspaper or interview or release by Mr. Kirwan to the Washington bureau. It appears in the press.

Yesterday Mr. Kirwan made very positive allegations, statements, and I should like to refer to my notes on his testimony yesterday. I am sorry to hold you up. What I am trying to find here is the language that referred to the basis on which credence would be given to some of the lessees.

Page 16. I should like to start with the item under 3:

Any lease which was not publicly advertised but which has a relatively short remaining life, say 1970, and absent any indication of impropriety, would be given complete credence except that the right to negotiate a new rental rate for the remainder of the term would be reserved to the Government.

Well, I do not quite know what Mr. Kirwan means by impropriety, but let me correct this.

This will leave a residue of 6 to 26 leases which should be examined critically and individually. They have in common the fact that they all were privately negotiated rather than exposed to public bidding. They are for long terms and do not permit effective rental negotiation.

Mr. Kirwan referred to L'Escale as being one of the properties in his conversation; that is part of the testimony that was taken yesterday, that L'Escale was one of the properties that did not go out on bid, and that this was done through private negotiation.

Mr. Kirwan was in error.

I have copies of the proposal, the solicitation to bid; I know the man who bid on these.

Mr. Chairman and gentlemen of the subcommittee, perhaps you would like to read this solicitation. This solicitation went out sometime in March 1955. I knew these things because I was concerned with the Virgin Islands and I received many solicitations from the Virgin Islands and other places. I wanted to take my wife and my son somewhere else to live other than New York, and I had an especial concern with these things.

I do not have to read this bid for you.

This is an exact copy of the solicitation to bid. Now the originals to this, or copies thereof should be in Mr. Kirwan's files.

I cannot give you precise dates, but this took place the latter part of March 1955. This went out on bid.

As you can see, the Virgin Islands Corporation was, at this time—they originally asked for \$1 per square foot, but this would have been too little money; so, normally, when you make a lease \$1 per square foot it is per annum; so, they changed it to 10 cents per square foot per month, which, on the basis of approximately 1,000 square feet, would have given them a return of \$1,200. There was one bidder on this; his name is Allan Grammer, a man who is still a resident in the Virgin Islands.

Mr. Grammer, incidentally, was the person who engaged—who was involved—in the litigation that I referred to in my testimony that was resolved in favor of the Virgin Islands Corporation.

Mr. Grammer bid \$1,000 a year. The Virgin Islands Corporation rejected this bid. One bidder, \$1,000. Incidentally, this appeared in the press. Unfortunately, because I am in Washington and I did not know that there was going to be this type of question, it has not been possible for me to attempt to get the newspapers of March that would indicate that these were advertised bids.

However, the Virgin Islands Corporation rejected the bid. The Virgin Islands Corporation rejected a bid of \$1,000 a year. They were requesting a minimum bid of \$1,200 a year.

They negotiated with me privately, as a result of no further bidders, and I paid \$2,400 a year from the time of its inception.

Mr. Chairman, and gentlemen of the subcommittee, I have reason to believe that in my file in New York—unfortunately, the office has long been closed, and they are down in the basement—that I have many other solicitations that were sent to me at that time. This one was available to me only because I did something about this and I occupy these premises.

Certain allegations were made yesterday to the effect, and I refer once again to allegations by the Assistant Director of Territories, to the effect that these people did not spend very much money. I do not know what the other people spent. I know that they did a tremendous amount of work, and maybe they succeeded in putting up buildings without spending any money—I do not know.

I would like to submit to you a group of photographs, and there is only one thing that I have to do on these, in order that you can get an idea of what existed before. These are "before" photographs that I had seen that Moco Edwards had.

Now, I do not know whether the Department of the Interior has these. These photographs, and we can pass them down, represent L'Escale. However, when I took these premises, there was no second story; there were no staircases; there was no front; there were no doors. What I leased at that time, which is a matter of record and on the naval maps, has to do with the actual perimeter blocks that you see, and some sliding latticework, that you could go through with your body, that were used as enclosures.

This is all new construction.

May I repeat, there was no second story; there was one small existing business at that time, a perfume shop that was operated under a firm known as Europe Street, Inc., which was a branch of the French Shop. This business opened, supposedly, for the arrival of scheduled planes. On one of the periods that I stayed in St. Thomas—and, incidentally, when I opened L'Escale I did not live in St. Thomas; I lived in New York—but, on one of my subsequent visits, I had rather an undesirable management situation. I sat out on the bench and watched the people who would come in getting off planes and looking in the window of this little shop called the French Shop.

They were looking in the window, because it was never open. They called themselves opening for the arrival of scheduled planes. Well, somehow the person who was delegated to open it frequently did not get there. And I thought, well, everyone who looks in a window might be a potential buyer. I negotiated with Ettienne Lemmonier, who was the president of Europe Street—who, incidentally, has a business in Washington now—and we came to an agreement where, truthfully, I paid him a fantastic amount of money for these small premises, but this would solidify, give me a composite, insofar as what I had hoped to do. I might add that there was no business there in those years.

In my first year of business, my gross income was less than my paid wages for the fiscal year ending June 30, 1963.

Anyhow, I bought the French Shop branch. They did not have a lease; they had a rental permit. I bought it at this risk. I came to Washington to negotiate a lease, to incorporate it in the original place that I had, and then subsequently came to Washington again, in order to build the second story.

Now, I could talk all morning, there are so many things. I know everyone else wants to talk, and perhaps I should just shut up and listen to you.

Senator NELSON. I assume you understand that the legal questions you raise respecting the lease cannot be settled by the committee. If there are any legal questions, dispute between the occupants and the Government, they will have to be settled in court.

It is not a matter on which the committee can make a decision.

Mr. STANFORD. I understand that, Mr. Chairman. I am sort of a small boy a long way from home, and all I am trying to do is project these things. One thing I failed to tell you. There was a question of a renegotiated rental. I complied with the requirements of renegotiation, received a confirming letter from Mr. Cramer, and signed a

document containing two other signatures, that of Mr. Robert P. Cramer and Mr. John J. Kirwan, and perhaps I should read this to you, with regard to renegotiation. I am skipping the preliminary part of it because it has been complied with.

Senator NELSON. What is the date?

Mr. STANFORD. It is dated May 17, 1963. [Reads:]

Mr. STANFORD: For the sole purpose of fixing the time for rent renegotiation and subsequent effective date of any change in the rental charge, the date of approval of the instrument dated August 20, 1958, between you and Vicorp, or the United States of America, with the mutual consent of the parties as evidenced below, will be deemed to have been 270 days later than it, in fact, was.

This means one thing. My lease provides for 5-year periods of renegotiation. The lease provides that some time, not before 180 days or fewer than 90 days, before the date first appearing on the lease—that date is June 13, 1958—that I notify the president of the Virgin Islands Corporation to the effect that I am ready and willing to renegotiate this.

That I did, precisely 113 days before, in my letter to Mr. Cramer dated February 21, 1963.

I will read it very rapidly and briefly. [Reads:]

Dear Mr. CRAMER: This is just a reminder concerning my request for appointment date to discuss the question of a renegotiated rental in the space in the airport terminal building. May I hear from you soon?

With every good wish,

STANFORD.

Mr. Cramer's reply to me:

This letter is to acknowledge yours of February 21 in which you requested an appointment to renegotiate the rental on your space in the airport terminal building. Obviously you have written this request as a part of your lease with us which states that you must some time within 180 days before June 13 renegotiate the rental.

That is an error, it is between 180 and 190 days.

Since the Navy land is in a further state of flux I will not set up an immediate appointment. I do, however, via this letter, want to acknowledge your request so you are protected in this instance. As soon as I have more definite information on the Navy land status from Washington I will set up an appointment for renegotiation.

With kindest personal regards.

This is the letter for renegotiation. There has been none and no effort at it.

Instead, if I might use the language without being offensive, the purported cancellation.

Senator NELSON. Has 5 years expired since the beginning of the lease?

Mr. STANFORD. Yes; it has.

Senator NELSON. What was the expiration of the 5 years, what date?

Mr. STANFORD. The expiration date of 5 years would have been June 13. This was the date of the instrument although this perhaps did not represent the date of the Secretary's signature.

He signed it as of August 20. These things are signed first by the lessees and then sent to the lessor and they go through the various channels here in Washington and are subsequently returned to the lessees.

Senator NELSON. Has this solicitation for a bid been made part of the record? If not, we will put that solicitation in the record at this point.

(The document referred to follows:)

SOLICITATION OF PROPOSALS

The Development Department of the Virgin Islands Corporation announces that it will receive proposals of interested parties until the close of business (15 days), from persons interested in developing at their own expense and operating and maintaining a combination coffee shop-restaurant and cocktail lounge in the terminal building at Bourne Field.

Available space

Approximately 1,000 square feet of floor space.

Rent

A minimum of 10 cents per square foot for floor space per month.

NOTE.—This minimum figure may be increased as part of the proposal.

Tenure

A primary term of 10 years with an option to renew subject to rental negotiations.

Business

Tenant to use and occupy the leased space for the business of selling food and liquor items for consumption on the premises.

Investment

Tenant agrees to spend a minimum of \$10,000 prior to November 1955 in accordance with plans and specifications previously approved by the management of the Development Department.

Utilities

Water and electricity will be for the account of the tenant.

Deposit

All interested persons are required to accompany their proposal with a certified check for \$1,000, which amount will be returned to the party whose proposal is accepted upon execution of the lease, the others to be returned immediately upon selection of proposal.

Conditions

The foregoing conditions are not exclusive and further provisions will be incorporated in the lease.

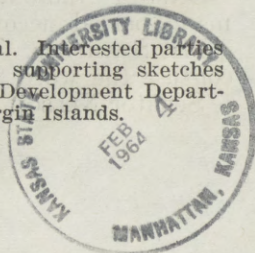
NOTE.—This solicitation of proposals is not an offer. The Virgin Islands Corporation reserves the right to reject any and all bids. Any lease issued pursuant to this notice must be approved by the Secretary of the Interior or his designated representative. Any action taken or expenditure made by an interested party pursuant to this solicitation is at his own risk of final approval of a lease by the Secretary of the Interior.

Proposals will be promptly evaluated by the local members of the Board of Directors of the Virgin Islands Corporation, the Manager of the Development Department, and the legal consultant. The committee will select the proposal which in its judgment is best calculated to serve the interests of the tourists and other persons using the airport. The following factors among others, will be considered by the committee in evaluating each proposal.

1. Whether it is best calculated to serve the interest of the tourists and other persons using the airport.
2. The type of service to be offered.
3. Applicant's financial status, credit standing and previous business history.
4. The qualification of the applicant to operate the business including previous experience.
5. The promptness with which the applicant guarantees to initiate and complete the work.

Submission of proposal

No particular form is prescribed for submission of proposal. Interested parties should address their proposal in writing (including such supporting sketches and data as will clarify their proposal) to the Manager, Development Department, Virgin Islands Corporation, Box 597, St. Thomas, Virgin Islands.



Senator NELSON. At the time that this agreement between you and Interior was negotiated, were you represented by legal counsel?

Mr. STANFORD. No, I was not. My counsel was in New York and I consulted counsel on the matter, but I was not represented in Washington.

Senator NELSON. But your legal counsel examined the instrument.

Mr. STANFORD. He read the instrument, that is right.

Senator NELSON. And did he call your attention to paragraph 4, page 12, respecting the Navy's reservation on the part of the Navy to cancel upon demand?

Mr. STANFORD. As a matter of fact, I called his attention to it, Mr. Chairman.

Senator NELSON. Did he explain to you the significance of that paragraph?

Mr. STANFORD. He explained what he thought it meant and I also received an interpretation here in Washington from Moco Edwards, from Kenneth Bartlett, and from the attorney who represented Interior at that time.

Senator NELSON. What were you advised about it?

Mr. STANFORD. That it was a military recapture clause, that in the event of a national emergency the Navy could and probably would, come in and repossess the premises.

This, Mr. Chairman, would not disturb me at all. As a patriotic American I would willingly give my premises or my home or anything else in the event of a national emergency.

Senator NELSON. Your legal counsel did not advise you that in a lease for property the express language of the instrument determines the legal status of it?

Mr. STANFORD. Basically, yes.

Senator NELSON. It does not say for military purposes in the instrument is what I am getting at.

Mr. STANFORD. No; it says the Navy or higher military authority. The Navy or higher military authority has the authority to repossess these premises.

Senator NELSON. At any time upon demand?

Mr. STANFORD. That is right.

Senator NELSON. Well, did you understand that your verbal conversations were a modification of the written document? Your verbal conversations respecting the advice to you that they would only do so in the case of a national emergency.

Mr. STANFORD. I recognized that was rather an assumption. I also felt that basically my Government was not going to do anything to harm me or to harm any other American citizen in giving service unless it was absolutely necessary.

Senator NELSON. What I am getting at is the paragraph is very clear and simple that the Navy, upon demand, without stating a reason, may simply cancel—

Mr. STANFORD. It does not say that, Senator. It says repossess.

Senator NELSON. But, they can take the property back upon demand, period; according to the paragraph, as I read it.

Mr. STANFORD. Generally this is so, but I do not think we should confuse the word "repossessed" with the word "cancellation."

Senator NELSON. What is the distinction in your mind?

Mr. STANFORD. The distinction, as I know it, and there are very many lawyers here and I am certain they have a far better definition than mine, means repossessed. It means that you go in and take possession of.

This is repossession.

Senator NELSON. You understand this is what they are in the process of doing. Whether they have the legal authority is another matter, but they have given notice to Interior, or Interior has given notice of cancellation. Navy is proceeding to turn the property over, as I understand it, to GSA, and GSA will proceed from there under the law. You understand that that is the proceeding that they are operating under, do you not?

Mr. STANFORD. Yes, Mr. Chairman, but I think there is a little misunderstanding here. The Navy is not proceeding to repossess anything, and the Navy has not repossessed anything.

With your permission, may I read the first paragraph of this letter from the Office of Territories dated August 15?

Senator NELSON. What year?

Mr. STANFORD. 1963; please forgive me.

This notice is to advise you that the Department of the Navy has today canceled the permit to this date of January 1, 1948.

First, I never knew there was any—I would have no knowledge of this—"pertaining to the St. Thomas naval property, and has repossessed all such property."

Now, Mr. Chairman, the Navy has not repossessed anything at all.

Senator NELSON. I think this is a refinement we need not worry about, I think it is a constructive repossession, but in any event the Navy, under the terms of this, if you wanted compliance with your position, could move in tomorrow and occupy it.

Mr. STANFORD. That is right.

Senator NELSON. Well, I think this is a constructive repossession, but in any event you did read the paragraph at the time and you did have legal counsel advising you at the time you signed the lease.

Mr. STANFORD. Not at the time. But I was aware of the paragraph and I was aware that the paragraph did not have the inclusion of words "national emergency."

Senator NELSON. And you did have legal counsel, your legal counsel did, as I understand you, read the lease before you signed it, and you have discussed it with him?

Mr. STANFORD. That is a hard question for me to answer. I would have to think about it—

Senator NELSON. I understood you to say that.

Mr. STANFORD. Actually what happened was this: My lease was read by counsel. I was aware of the conditions of the lease and I was not deluded by the paragraph 4 to which you refer.

I still must say that repossession means something else and the Navy cannot repossess property that it does not have, and apparently they do not have it now.

Senator NELSON. Well, I will leave that up to them and you.

Mr. STANFORD. All right.

Senator NELSON. You stated in your testimony that you would be willing to have your accountant submit figures on your investment in these premises.

Mr. STANFORD. Surely.

Senator NELSON. I am not sure that that is of any value for purposes of this committee, but it may be information that the full committee would like to look at, so would you have your accountant submit a statement and I think it should be clear in there what amount was invested for construction purposes on the building itself, and the name of the contractor.

Mr. STANFORD. I happen to be in the contracting business. I am a builder.

Senator NELSON. You did the building?

Mr. STANFORD. Operating under the name and style of Donald Stanford, Inc., as I have been for many years.

Senator NELSON. So all of the repairs and construction on that building were done by your firm.

Mr. STANFORD. Not repairs basically. Many repairs are done by outside firms or individuals. But the actual construction, and I have done more construction, a fair amount in the Virgin Islands was done by me, by my organization.

Senator NELSON. Fine.

Would you submit your accountant's statement of the amount put into construction, the amount put into repairs, the amount put into personal property, the depreciation taken as of this date upon the personal property—with a clear distinction between what is personal and what is real property?

Mr. STANFORD. Right; that will be done, Mr. Chairman. That, of course, cannot be done immediately, I will have to go back to the Virgin Islands, but I will submit it.

Senator NELSON. Surely.

(The information requested is as follows:)

Leasehold improvements-----	\$40, 220. 88
Depreciation reserve-----	(36, 320. 65)
Furniture and fixtures-----	35, 502. 63
Depreciation reserve-----	(25, 974. 05)

NOTE.—The above figures are as of Oct. 31, 1963.

Senator NELSON. As I understood you stated that your payroll was \$98,000 and you have 26 employees?

Mr. STANFORD. That is right, \$98,900, it is a part of the testimony, for the fiscal year ending June 30, 1963.

Senator NELSON. What was your gross income for that year?

Mr. STANFORD. Approximately \$430,000. Now the payroll, unfortunately, is exceedingly high, but that is because this dining room business is not a very profitable one. It is in the public interest and we are open 7 days a week, approximately 14 hours a day. Consequently, we find that we have—it is necessary to have some overlap and two full shifts to run this operation.

Senator NELSON. I believe that is all I have.

Senator DOMINICK. For the purposes of the record, I think it would be wise to show that this lease contains a provision that all improvements made to the property, except for trade fixtures, became the property of the government. That is correct, is it not?

Mr. STANFORD. Right.

Might I add one other thing: There is a provision in that lease that I should like to read to you that provides for the continuation of activity for any successors of Vicorp.

I refer to page 2A of this lease and I quote the last paragraph on page 2A.

It is expressly understood by lessee that there exists a distinct possibility that during the term of this lease building No. 1 may cease to be used as the terminal building due to modification or relocation of the St. Thomas airport. In such event this lease shall be terminated in its entirety and be of no force and effect as of the close of business on the last day building No. 1 is used as the St. Thomas airport terminal. Provided that should this lease terminate pursuant to the terms of this paragraph during the terms of this lease and a new terminal be elected which is under the control of the Virgin Islands Corporation or its successor, lessee shall have a right of first refusal for a lease for a coffee shop, fountain, and cocktail lounge in said new terminal for the unexpired portion of the term of this lease providing that satisfactory terms and conditions, including rent, are agreed upon at least 60 days prior to the opening of said new terminal.

Senator DOMINICK. Now, Mr. Stanford, on page 16 of Mr. Kirwan's statement of yesterday there were references to six particular pieces of property which may be subject to renegotiation of some sort, or that he thinks should be subject to renegotiation. Included in that is the Tropic Isle Hotel which I understand you had something to do with at one point?

Mr. STANFORD. That is true.

Senator DOMINICK. I wonder if you would tell us what that was about?

Mr. STANFORD. Sometime during the year 1956, incidentally I have that solicitation for bid, it went out on bid. In combination supposedly as a joint venture with a man named E. Leonard Brewer from the Virgin Islands we bid on that parcel and incidentally won the bid.

Well, first, the general arrangement with Mr. Brewer in a management capacity as far as I was concerned left something to be desired after opening the facility in the airport. And I thought it advisable to discontinue any further dealings with him.

Meanwhile, plans were made for the purpose of rehabilitation of this building No. 52 as a hotel-guest house. Because I decided that my relationship with Brewer left something to be desired at that time I released the property incidentally to a man by the name of Roger McCarthy who was at that time in some way connected with Michael Resch here and they subsequently took this.

The bid was for \$3,600. I have the solicitation on that.

Senator DOMINICK. So that as far as you were concerned, then, this Tropic Isle Hotel was offered by public advertisement?

Mr. STANFORD. Of course it was, sir, just as the airport was offered by public advertisement.

Senator DOMINICK. I think that is all I have.

Senator NELSON. May I ask one more question at this point?

Mr. STANFORD. Yes, sir.

Senator NELSON. You bid on this property in 1956?

Mr. STANFORD. You are speaking of building 52—yes, I did.

Senator NELSON. And signed an agreement October 15, 1956; is that correct.

Mr. STANFORD. I do not recall whether I signed it or whether Mr. Brewer signed it, but essentially it was a Brewer-Stanford enterprise at the time.

Senator NELSON. Then in 1958 you signed the agreement for L'Escale, 2 years later?

Mr. STANFORD. No, Mr. Senator, there were two leases. There was an original lease for the lower portion that was signed in November 1956, and then when it was my desire to reconstruct this in its entirety, building a second story, stairwell, everything, a new lease was signed that is dated June 13, 1958. That is the lease that is in question. This is the solicitation for building 52.

Senator NELSON. So the solicitation you are talking about, for the Tropic Isle, was in 1956, and the first lease for the airport was a month later in 1956?

Mr. STANFORD. I cannot vouch as to the authenticity of the lease with the Tropic Isle.

Senator NELSON. The copy we have says October.

Mr. STANFORD. Right.

Senator NELSON. Did it strike you as having any significance at all that the paragraph in the Tropic Isle lease signed in October differed from the lease for L'Escale in this respect that—

It is expressly understood by the parties hereto—

I am reading from the Tropic Isle lease of October—

It is expressly understood by the parties hereto that the U.S. Navy is the owner of the premises covered by this agreement and that while said premises are now under the control of the lessors the Department of the Navy or higher military authority has the right to repossess them at any time upon demand.

That is the exact language that is in the lease for L'Escale.

Mr. STANFORD. Right.

Senator NELSON. But in this lease the sentence continues:

In the event of military necessity or by reason of a national emergency.

Did it not strike you or your attorneys that specifically in two leases a month apart the Tropic Isle one provides that in case of military necessity it be cancelled, and a month later you are making a lease which drops that last part of the sentence that refers to military necessity?

Mr. STANFORD. Mr. Chairman, there is a very good possibility to the best of my knowledge, my memory, recollection, a lease was never signed for the Tropic Isle. We had money on deposit. There is normally quite a lapse of time between a bid and the time that you receive a document for purposes of creating the facility that you are required to.

Now, I do not recall whether a lease was signed at that time.

Senator NELSON. This is a copy that shows no signature.

Mr. STANFORD. It shows no signature.

Senator NELSON. Correct.

Mr. STANFORD. That is right.

Senator NELSON. I do not know whether the Department has an original with a signature or not.

Mr. STANFORD. I do not think it was signed. You must remember I recall talking to Mike Resch around the time I was installing the primary work in the airport and he was building, from nothing, to something. And we were talking about leases and I asked him, I said, "Mike, did you get your lease?" And he indicated that he did not have his lease in his hands. And I indicated that he was not doing a very wise thing, that he should never start improving property until he has the right to improve it and until he has an instrument duly signed and executed.

Senator NELSON. I understood you won the bid on the Tropic Isle.

Mr. STANFORD. I am not speaking of the Tropic Isle, I am speaking of the Beachcomber. Yes, sir; that is correct.

Senator NELSON. You at some stage signed a lease; did you not.

Mr. STANFORD. I do not know whether the lease was ever submitted. You can bid on something today, Mr. Chairman, say the 30th of October, and with our Government you might wait until next March 15 before you get your leasing document.

Senator NELSON. Did you operate the Tropic Isle?

Mr. STANFORD. No; I did not. We had a plan made for it. You see, there was an unfortunate thing that happened. I took in a partner, an operating partner, a managing partner in the airport facility when I opened. I explained to you that I did not live in St. Thomas. The situation was very unsatisfactory. It was so unsatisfactory that 7 weeks later I sent him home; I gave him a check for \$4,200 for being so gracious as to come to work every day, plus \$100 a week additional in order to pay his cab fare, plus \$50 a week for any anguish that his wife might have been caused as a result of his going to work.

That was 7 weeks later and this is why we did not continue with Tropic Isle.

Mr. Brewer was going to be the individual who would be the manager both for the Tropic Isle and for L'Escale. L'Escale opened first. After I wound up with nothing but a headache and my family was in New York, then I decided to leave any guest house business alone.

It would have been a little more than I could handle alone at the time and I had no one to rely on.

Senator NELSON. Thank you.

Senator DOMINICK. Have you ever received any notice from the Navy or demand from the Navy for the premises of L'Escale?

Mr. STANFORD. No, I have not, Senator.

Senator DOMINICK. Mr. Chairman, this is the copy of the solicitation for proposals on building 52 which was apparently the Tropic Isle. I think we should probably have that in the record.

Mr. STANFORD. That is correct.

Senator NELSON. That will be part of the record.

(The document referred to follows:)

SOLICITATION OF PROPOSALS FOR BUILDING 52 (ADMINISTRATION BUILDING)

The Virgin Islands Corporation announces that it will receive proposals until 2 p.m., Wednesday, October 31, 1956, to persons interested in leasing the property designated as No. 52, more generally known as the administration building, on the former Marine Air Force facility. Interested parties will bid on the opportunity to secure a lease. The bid proposals should be accompanied by a certified check for an amount equal to one-half of the annual rent as set forth in the bid. Checks submitted by unsuccessful bidders will be returned as soon as the award has been made. The deposit of the successful bidder will be applied toward the annual rent following satisfactory compliance by the lessee to the terms of his bid proposal as accepted by the development department. Failure on the part of the lessee to fulfill all of the terms of his bid proposal can result in forfeiture of his deposit.

The area involved is approximately 27,000 square feet, fronting approximately 475 feet along the road; bounded on the south by the Caribbean Hotel grounds, bounded on the north by building 21 grounds. Beach is not included and separate financial arrangements must be made for use of the beach by the lessee and/or his guests. This area should be developed for a guest house or efficiency units with all services normally incidental to the operation of same. Its use cannot be primarily as a nightclub or restaurant.

The minimum acceptable bid will be as follows: 1st to 5th year, \$3,600 per annum; 6th to 10th year, \$4,800 per annum.

The annual rental for the period between the 11th and 20th years will be renegotiated. This amount not to exceed \$5,000 per annum.

Lessee must agree to clear the property within 60 days from approval of the lease and expend \$10,000 within 6 months. At the expiration of the term, or sooner termination, all improvements to the leasehold will be the property of the United States.

All leases will contain the following provisions, among others: Lessee required to furnish fire and extended coverage at his own expense and to maintain the property in good condition. A provision will be included preserving the Navy's right to retake the property in the event of a national emergency. Leases will be issued by Vicorp in the name of the United States, pursuant to authority contained in a use permit covering the subject property among others, granted to the said Corporation by the Secretary of the Interior.

No particular form is prescribed for submission of proposals. Interested parties should address their proposals in writing (including such supporting sketches and data as will clarify their proposals) to Elliot H. Gray, Development Department, Vicorp, St. Thomas, V.I. Envelopes should be tightly sealed and plainly marked building 52. Bids will be opened publicly at 2 p.m., Wednesday, October 31, 1956, at the office of the Development Department, Vicorp, St. Thomas.

No award will be made until the bids have been evaluated. The highest bid will not necessarily be accepted. Financial reputation, managerial ability, experience, the proposed plan for development, and other factors will be given consideration.

Vicorp reserves the right to reject any or all bids.

E. H. GRAY,

Manager, Development Department.

Senator DOMINICK. Mr. Stanford, on page 16 there are some five other lessees listed in addition to the Tropic Isle. Did you have anything to do with any of the others as far as making bids on them or otherwise?

Mr. STANFORD. No, I did not, Senator Dominick.

Senator DOMINICK. Mr. Stanford, you said you were in the construction business?

Mr. STANFORD. That is true.

Senator DOMINICK. You were, I presume, therefore, acquainted with leases and legal terminology in leases.

Mr. STANFORD. To an extent; yes. I had more than a passing relationship with them.

Senator DOMINICK. Would it be safe to say it was on the basis of the terms of this lease and the other provisions in it that you invested \$100,000?

Mr. STANFORD. Yes, it is.

Senator DOMINICK. That is all I have.

Senator MECHEM. I have no questions.

Senator WALTERS. No questions.

Senator NELSON. Thank you very much.

By the way, can you tell us about when you might be able to have your accountant submit the figures?

Mr. STANFORD. Well, I do not know when these hearings will be over. It is my intention to return to the Virgin Islands immediately and I should think I should have them within a week.

Senator NELSON. Fine, thank you.

We will take a 5-minute recess.

(Short recess taken.)

Senator NELSON. The subcommittee will be in order.

I do not recall whether those bids that were offered for the record had a date on them. I think at some place in the record information

should be supplied as to the year when the offer for a bid was made and the dates that the bids were accepted and the dates on which leases on the same properties subsequently were negotiated.

In the record that should show some place and I would ask the Department of Interior to furnish that information if they have it.

Mr. KIRWAN. Certainly, Mr. Chairman.

(The information requested is printed on p. 51.)

Senator NELSON. You may proceed, Mr. Dowling, if you would identify yourself for the record.

STATEMENT OF WILLIAM C. DOWLING, ST. THOMAS, V.I.

Mr. DOWLING. My name is William C. Dowling, and I am the proprietor and manager of the Caribbean Beach Hotel, St. Thomas.

I made a statement, Mr. Chairman, I had prepared and sent up to Washington some time ago, and there are a few things I would elaborate on perhaps as I go along or when I finish with it in light of the various evidence that has been introduced.

First of all I would like to give the history of the Caribbean Beach Hotel, both prior to myself and since I took it over.

Mr. J. Richard Fedder was the first one who attempted to convert the former naval dispensary, which this was at the time, into a hotel of a sort. I understood he had a long lease for this and several other buildings for approximately \$1,000 per year. After 4 years of effort, plus the expenditure of large sums of money, he unfortunately suddenly suffered a fatal heart attack and died on Christmas Eve 1953.

I might mention that this event highlights the extreme difficulties under which hotel people have had to operate during their early years. On Christmas Eve the help just did not show up, which is more or less par for the course in the Virgin Islands, and Mr. Fedder had to cook the whole dinner himself and his heart just gave out. And he died in room 201. I know because the help do not like to go near that room. [Laughter.]

But it was an extremely difficult time.

Bankruptcy proceedings were instituted and the building was put into receivership under the direction of Gerald Solomon, the largest creditor at the time. That was the food-supplying place.

Things, however, went from bad to worse, and in May 1955 the Government was forced to close the premises due chiefly to the nonpayment of rent. The total amount in the bankruptcy case on file reached a figure exceeding \$120,000. Due to the circumstance of conditions at the time, many of the distressed creditors made it a point to remove much of the contents before the court action actually got underway.

In August 1955 the Federal Government, acting through the Virgin Islands Corporation, advertised through the media of newspapers for bids on the Caribbean Beach Hotel. At that time it was not called the Caribbean Beach Hotel, it was just the Caribbean Hotel. There was no beach then.

The bids were to be for the privilege and rights of a 30-year lease and the furnishings. It was under these conditions that the bids were then offered for consideration. As it turned out, only two bidders considered the proposition: myself and another individual. My bid was for \$30,000 cash, and his was for a figure of \$11,000. That should be corrected, it was \$13,000, and I only learned 2 weeks ago that it was

Mr. Stanford who was the other bidder. I naturally received the bid and the Virgin Islands Corporation seemed pleased that a responsible person had decided to undertake the venture.

The hotel by the way was boarded up at that time and had to be reopened and all that.

At that time, most of the people I visited with bluntly told me I should have my head examined for getting into such a mess, as they called it. I refer to this only to show the attitude of the public toward the place at the time.

That would be the reason why there were so few people interested in the property, the tremendous bankruptcy it had gone into and everything.

The hotel was in a terribly rundown condition, as one would expect it to be under the circumstances that prevailed at the time. It was nothing but a glorified dance hall. It had 21 rooms with bath and 7 without, and many of the rooms were used for storage purposes. There was no kitchen equipment in operating condition, nor was there any beach facilities for whatever guests that did come here. If people wished to bathe, they had to get passes to go to Lindbergh Beach. It was natural that the reputation of the hotel was in a very bad way, and I might say that in every sense of the word it was in a bad way because they had about 12 hostesses there.

It was natural, and it took me almost a full year to persuade travel agents to send people to the hotel. Credit was impossible to secure due to previous bankruptcies, and I had to pay cash for all merchandise for a very long time.

In the 8 years I have operated the hotel, I have given it my complete time, working 16 hours a day, 7 days a week, and putting back into the operation of the hotel every bit of capital gain that was made. I was determined, with the aid of my dad, who spent a part of every year here and who put in as many working hours as I did, to make this into a first-class hotel and one of the real beauty spots of the island.

Incidentally, my dad is an experienced plumbing and heating contractor.

I myself am a civil engineer. May I also state we have approximately a hundred persons working whereas they had only about 12 people working in the old days before it was closed.

They are all local people, too.

The present status of the hotel today is:

(1) We now have a total of 72 rooms, all with private bath, which involved the construction of 44 new rooms and 51 baths.

(2) We have constructed two large dining rooms which accommodate a total of 400 people. The former dining room had a capacity for only 58 people.

(3) We have constructed, terraced, and planted to a degree that, next to the Hilton Hotel, we have one of the loveliest spots in the island.

(4) We transported tons of rock and sand to form a 120-foot-long beach of our own, and incidentally, it is now the only hotel with a beach connected directly with the hotel itself.

(5) We have built two new kitchens and two new bars—one on an artificially constructed island reached by a bridge.

(6) We have expanded the lobby of the hotel, built new writing room, cardrooms, and gift shops, as well as created a new office space.

(7) We have modernized all the existing plumbing in the building, including a new boiler, et cetera.

All this work and development involved a demonstrable capital of over \$280,000, plus rent to date of \$43,000, which does not include any services rendered by me or by my father. An annual minimum set on his services of \$15,000 plus \$10,000 more for myself, I think would be low. This makes a grand total of over \$523,000 invested to date by us in this building. I say that with labor and the actual materials.

We are looking forward to this year being the first year that will enable us to meet all our obligations in full. The reason I say this is every year I have had to borrow money to pay my taxes, including last January, but this year it looks like maybe I will not be able to. I will not be able to even if I want to.

All these improvements and additions, which literally made a complete transformation of the hotel, had full approval of the Virgin Islands Corporation. In fact, a letter received from Dr. Kenneth A. Bartlett, the then president of Vicorp on October 13, 1961, had this to say:

You have done an outstanding job in developing the area and the hotel as a showplace, and we are very pleased with the improvements you have made.

You can now appreciate the terrible distress that came over me when, after 8 years of the most difficult kind of work and the enormous amount of money invested, I received this notice from the Office of Territories that my lease will be canceled.

At the original signing of the lease, Mr. Timothy V. A. Dillon, the Government attorney at the time, along with Mr. Elliott Gray, the then manager of Vicorp, informed me about the true meaning of the repossession clause. They both assured me that this was a technical term, and the clause would only be invoked by the Navy in the event of a national emergency. They felt that in their judgment the Navy probably would never have any more use of this building, but that in the event it had to be used, it would again be returned to me with the occupancy term deducted from the original 30-year lease.

By the way, my lease states "Provided further"—after it goes through the right of the Navy to recapture, they say "Provided further," and those two words are underlined in the original lease, that the lease will be returned after use and that the original term of occupancy will be deducted from the 30 years in the lease.

I could give a little more light later on how that came about, too.

There never was any question in my mind about the purpose and meaning of the necessity clause being put into effect in the case of the stated emergency, should it ever take place. This phase of the lease we recognized very well, and as patriotic Americans we stood ready to do whatever was necessary under the circumstances. You can now see for yourselves that against all these overpowering odds that we had to face, we have done a rather remarkable job, and have played an important part in helping to develop tourism.

In conclusion, all I am asking for is a clarification of the lease and pleading for the equities that I feel properly belong to me under the circumstances. One further note I would like to add at this time, and that is to inform you that even at this date we stand ready to

increase our occupancy status and make this development the outstanding beauty spot in the entire Caribbean.

We are enclosing photographs of the original structure along with those showing the present setup of the hotel. I want to take this opportunity to thank each and every one of you individually very much for the interest you have taken in the case, and also for the time that you have made available to me. Should there be any further questions you would like to ask me concerning any phase of the operation, I will be only too happy to try to answer them.

Then I made a little summation at the bottom of the page which may help you get through all this verbiage, but I would like to perhaps digress since the various testimonies that have been given, I think, bear a little more light and I could perhaps shed a little more light on some of these events because I was the first one. I have been there 8 years, and the others have been perhaps 5 years, and so forth. I was the first one to deal with the authority, the Virgin Island Corporation.

At that time, both Mr. Elliott Gray and Mr. Dillon, who were the attorneys—I did not have an attorney in the Virgin Islands at this time, and when I signed the lease at the bidding I did so without an attorney, but my father and myself signed the lease together and then it was put into a corporate name with permission from Vicorp to transfer it to a corporate name, but both Elliott Gray, who is now deceased, and Mr. Dillon, who is now an attorney in Washington, and Mr. Dillon is the one who put me onto this building because at the time I was interested in an entirely different building and he told me that this building was up for bid and he thought it was a very good proposition.

At the time both of them—I did ask them what that meant about the repossession business——

Senator NELSON. Who did you ask?

Mr. DOWLING. Both Mr. Gray and Mr. Dillon, and they both told me that they knew that it was in the original documents from Navy that this would only be done in a national emergency, and this satisfied me because I did not feel that it had to be put into writing.

However, if I could go a little further I might say that the reading alone of the lease shows a clear intent that the repossession clause was meant to be exercised only in the event of a national emergency.

Senator NELSON. What part of the lease gives you that impression?

Mr. DOWLING. Well, it states only military people are mentioned; there is no mention of any other authority to take the building—Navy or higher military authority—and then——

Senator NELSON. Your lease reads, however, upon demand?

Mr. DOWLING. Yes, that is right, but as I say they represented to me and they told me it was in the permit. I did not see the permit from Navy to Interior, but they told me that it stated, and I figure it must have stated, because Mr. Fedder's old lease did have that in it—the lease that Mr. Fedder had upon the Caribbean Hotel.

However, if any further proof of this intent is needed, I think it can be substantiated by the fact that after me, both the Tropic Isle and the Beachcomber had that in their lease. The Tropic Isle is a matter of form and that was advertised after my building perhaps a year or so afterward.

Senator NELSON. What was that?

Mr. DOWLING. The form about intervention—

Senator NELSON. National emergency.

Mr. DOWLING. Emergency, yes. Why would they put that in the form if it was not the intent?

Secondly, Mr. Resch, whose lease did not have it in it originally, went to Washington, and apparently the Government had no objection to adding it to his lease, although, as I state right here, his lease in that case read exactly the same as ours in its original form. I believe that all of us have made major improvements and construction, some considerably in excess of the lowest which do contain this clause, and we certainly all deserve the same protection since all the lowest were advertised and bid upon at the time they were bid with the identical clause in it.

I do not think that the fact that we were satisfied in my case, satisfied with the verbal assurance of the meaning of the clause lessens the Government's obligation to us. I have a few things that I might like to bring up. One is that in Mr. Kirwan's testimony he stated that since 1961 they had permitted no improvements. I do not know what page that is on; oh, "from the beginning of 1961 until the present time we have not entered into a single lease, nor have we permitted the assignment of such lease to other parties in view of our knowledge of their nature."

We have also not permitted any of such tenants to make substantial investment in their places knowing them to be without the protection afforded by a valid lease.

This is not true. Perhaps Mr. Kirwan does not have the real facts in the case, but since the beginning of 1961 to date, I think I probably spent about \$150,000. I do not have the figures from 1961 on, but I know I have added, perhaps, 30 rooms to the hotel, minimum, and that I have done tremendous construction, including entire new buildings, and this was approved not by Mr. Cramer, because Mr. Cramer became president of Vicorp only in a more or less recent time, but by Mr. Holmberg, the manager, then, of Vicorp, and with the signatures of Kenneth D. Bartlett, the present of Vicorp. I have done a lot of work, which I have pictures of since that date, and they have been approved and I had to submit the full plans and everything else on them, including plumbing diagrams, electrical diagrams, and everything like that, so this statement is not correct that since 1961 nothing has been done or has been approved.

Now, also, I have been continuing building, until I received this notice, on prior approved expansions of the hotel.

In other words, I have just built a very elaborate pavilion which was approved in 1961 or 1962, but I can understand that presently today they would not approve it, but it was approved in those days and I have gone ahead doing it without any interference.

That is one little point I wanted to bring up.

My lease would fall into the category on page 16 of a lease to which Mr. Kirwan would suggest be entitled to complete credence since it was publicly bid at the time and with—no, I believe Mr. Kirwan also mentioned in his testimony that the hotel, a large part of that or most of it was for paying the tenants. Vicorp promised to pay the creditors of the hotel everything above \$10,000.

Now, I do not have this in writing, but that is what was told to me at the time because they did not expect a bid much in excess of \$10,000

and when my bid for \$30,000 came they just put \$20,000 in their own pocket and only distributed the last \$10,000. But that had nothing to do, I am sure, with Mr. Kirwan or anyone else presently in the Vicorp setup.

Senator NELSON. By putting the money in their pocket, you mean the Government received the money, the benefit?

Mr. DOWLING. Yes, naturally. [Laughter.]

I would like to make one statement. I believe I speak for all of us when I say that we were filled with apprehension of the very suggestion of transfer to the local government, a very erratic and unpredictable instrument at best, and presently engaged in a knockdown-dragout court battle over who represents what, with all sorts of charges of fraud and what have you, and misuse of funds, and everything else.

Now, I am sure Mr. Kirwan means well and probably has many friends in the present local government and legislature, but this situation could change overnight, as we well know from the Virgin Islands, and an entirely new group of people could come with whom Mr. Kirwan would not have any influence and his recommendations would not stand any weight if a new group of people were to come in. We must remember the past and the history of the Virgin Islands and the history of the legislature, present senators and Governors excepted. When Governor Alexander, only a few years ago, resigned, he made the statement that he was honored that he was able to have voted 96 of the 98 proposals of the legislature; and then another case that we remember very well was the homestead lands which were supposed to go to the poor people. But through some quirk or government agency, the only people who ever got them were the political people in the island, in the legislature.

I think, finally, Mrs. Harmon, by screaming blue murder, got some land for herself. She writes the books on the Virgin Islands; she threatened to expose all that. The point was they took this homesteading land, 500 acres, and divided it up among them, and nobody who was on the list in view of their qualifying, the poor people. Homestead land is not supposed to be for people with income over \$30,000 or so. Almost all of these people who did take it resold it for enormous prices within the year they got it and went back and got more pieces. This can all be checked through the Virgin Islands records. I think probably you are familiar with that event. You can see the apprehension we have in putting ourselves in the hands of government which is right now in a terrific battle and we do not know who is going to be what.

Mr. Kirwan himself has referred to this several times. Once he stated—I might just read his remark—that any agency wanted to do the equitable, fair thing. Now, this is a statement probably intended for a Federal agency because in the island we would look askance at a statement like this, and secondly, he stated again, "Certainly more so when these recommendations, and correct me if I am wrong," he stated, "certainly more so," as far as who would take his recommendations, "certainly more so in the case of Vicorp."

Then he also said he would make some kind of a package for the next 2 months to try to determine just what rates we had and outlined according to the way he was thinking what he would be able to commend to Vicorp, but all mention of the local government has been omitted and, for some strange reason, I think we have a right to know

whether the local government has requested this land and what purpose they want it for, because not that we have anything against any of our people in the local government, but they change overnight and they can do whatever they want and they have the authority to do anything, including just confiscate your lands down there. For no reason at all. It seems to me that this is a long history and after it is done it is a fait accompli. Even this particular senator who sold all these lands, they never were able to get it back from him, because they were legal contracts.

So, anyway, we feel that it would be tantamount to throwing us into the lion's den with a sign around our necks, "Please don't bite." I would like to ask why cannot these long-term leases be retained under the jurisdiction of Vicorp, an organization directly under Federal control and an instrument in which we have confidence?

I said if Mr. Kirwan could give assurance that these leases would be honored by the local government it might not be so bad, but he has admitted and we know he cannot; therefore, we appeal to you gentlemen to protect us from such a disastrous eventuality. It would not be fitting for our Government to permit this type of thing to happen to its lessees after all their struggles and the good faith that they have shown in fulfilling the terms of their agreements.

I had one little thing I wanted to say. I have already given to Vicorp a very large plan showing an expansion of our hotel.

Right now there is a great deal of talk in St. Thomas about the need of expanding hotels and the growth of tourism, and, as a matter of fact, they are supposed to build some big hotel but it keeps falling through all the time, and they need more space because in Puerto Rico, there are quite a few hotels and there are very few in the Virgin Islands. I would like to have the record show that in St. Thomas we are daily reminded of the need of additional rooms and the erection of other hotels in order to take care of the many visitors coming to our shore. We are ready and willing to negotiate for the purchase of the present properties. We say this in view of the fact we have been informed the Navy has declared these properties surplus.

In the event the above proposition is not expedient or possible at this moment we would naturally like to have our present lease reinstated in its present form. We would like to suggest as an alternative proposal we would consider an extension of the present lease so we could move forward immediately to increase our occupancy capacity and in such a way increase our occupancy so that it would benefit our Federal Government.

Senator NELSON. I do not know the legal status of these occupancies but I think I am correct in saying that should the Navy position prevail it would be their intent to dispose of the commercial properties involved, or most of them anyway, through the Virgin Island Corporation. Is that not correct, Mr. Kirwan?

Mr. KIRWAN. The property occupied by the Caribbean Hotel is one associated with the airport. Up until the beginning of these hearings when we all suspended our forward-moving plans, it was foreseen that the airport would go to the local government and the submarine base would go to the Virgin Islands Corporation.

Mr. DOWLING. But we don't want to go to the local government.

Senator NELSON. Just a couple of questions.

Mr. DOWLING. Would you like to see any pictures, sir?

Senator NELSON. If you have some pictures you may leave them with the committee. I am sure they would like to see them.

Were you represented by legal counsel or did you have your legal counsel examine your lease prior to your signing it?

Mr. DOWLING. No, sir. When I saw the lease it was for the first time in the office of Elliott Gray.

Senator NELSON. And you did not have any legal counsel?

Mr. DOWLING. No, the only counsel I had was the Government's counsel in Washington, Mr. Timothy V. A. Dillon, who was very proud of this lease and thought it was a wonderful thing and would give us good opportunities. As I pointed out, I have invested over half a million dollars, that is the figure that is down, but I mean, I would not have done so had I not had the knowledge or had I not thought that this was a legal instrument, and it is stated to be a lease and it is signed by the Secretary of Interior. At that time it was not Mr. Seaton, it was Douglas McKay who signed mine.

Senator NELSON. Would you also submit to the committee a breakdown of your investment in these premises, construction, separated from your acquisition costs and so forth, so we would have a breakdown.

Mr. DOWLING. I would be happy to, I have all those figures available, sir, because I have been trying to obtain a tax exemption and it was—you see we have an industrial incentive board in St. Thomas and it was on the basis—it is rather ironic that the same mail which brought me this termination notice also brought me the signed copy by the Governor of my tax exemption.

Senator NELSON. If you will submit that data for the record we would appreciate it.

(The information requested is as follows:)

CARIBBEAN BEACH HOTEL, ST. THOMAS, V.I.

Statement of investment in and improvement of hotel and beach property, also additional sums to be considered in connection with constructing, improving, and maintaining the property as at Oct. 31, 1963

Payment to Virgin Island Corporation, 1955-----	\$30,000.00
Construction and improvements-----	250,460.57
Repairs and maintenance-----	95,950.15
Rent to Virgin Island Corporation-----	42,750.00
Uncompensated time, William C. Dowling, Sr., (8 years, at \$15,000 per year) ¹ -----	120,000.00
Uncompensated time, William C. Dowling, Jr. (8 years, at \$10,000 per year) ¹ -----	80,000.00
Total-----	619,160.72

¹ For time devoted to construction and maintenance.

NOTE.—Caribbean Associates, Inc., which operates Caribbean Beach Hotel, owns no property other than the property and improvements. Figures for which are included in above statement.

Mr. DOWLING. By exemption we have to pay the tax but we get some of it back.

Senator NELSON. What are you paying now in rents?

Mr. DOWLING. I pay \$500 a month for the property and another \$150 a month on a permit basis for an adjacent property.

I might say to clarify it, we do have a negotiation clause which comes up in 2 years.

Senator NELSON. On your rent?

Mr. DOWLING. Two years from tomorrow we have to renegotiate our rental and there is no ceiling set and it is done in the Government pattern of us paying someone, they paying someone, if they disagree, getting a third party. We are not opposed to paying more rent, that is not the question.

Senator NELSON. Those are all the questions I have.

Senator Dominick?

Senator DOMINICK. What is the amount of your gross payroll now, do you know?

Mr. DOWLING. I don't know, but I think it is around \$150,000 or so.

I could make another statement, also, that the Tropic Isle Hotel is right next to my hotel and it is approximately 200 or 250 feet between us. That is why I feel that the same clause applying to them would apply to me, you see.

Senator DOMINICK. Mr. Dowling, in your statement here you referred to Mr. Fedder's lease. It is my understanding that when you took the Caribbean Beach Hotel that this was only a portion of what he formerly held under his lease, is that correct?

Mr. DOWLING. I believe that is true, sir. But I do not know the real facts of it. I know he held the Tropic Isle also. What is now called the Tropic Isle was in the Caribbean lease. I believe also the very large building which is 350 feet long below that which was later turned into something else and burned down about 2 months ago was also part of his property.

Senator DOMINICK. He had that whole thing for \$1,000 a year according to your understanding.

Mr. DOWLING. I understand, that is what Mr. Gray told me. I did not see the document but I believe it to be true. I know that his lease had the military recapture clause in it with the further provision about the national emergency.

Senator DOMINICK. Have you ever had any demand from the local government to turn over the Caribbean Beach Hotel to the local government?

Mr. DOWLING. No, sir; I have had nothing but good relations, as a matter of fact, I think I have had most of all the people on the island come there, including all the official parties from Washington. Of course, our Reef Room is quite an elegant dining room, it is made in steps to the sea. I think Mr. Kirwan has eaten there.

Mr. KIRWAN. I have eaten there.

Mr. DOWLING. Everyone has been delighted and as I have cited this has been a big improvement in the Island. As a matter of fact, I might say it is the biggest improvement in St. Thomas since the time I came there.

The biggest investment. It is really a very pretty place now.

Senator DOMINICK. What have your contacts been with the Navy?

Mr. DOWLING. I have never had any contact with the Navy, sir, except they sent people to inspect the building about 3 years ago. Once a year a fellow came over and he would sort of check and see whether the lights were—if I took down an old Navy fixture and put up a chandelier or something like that, he would make a note I had to save the old fixture, and things like that.

But that was stopped. I mean no one has come by in, oh, 3 or 4 years now. They used to spend about a week going around.

Senator DOMINICK. What did you do with those fixtures and things? Did you turn them over to the Navy, or do you still have them in storage?

Mr. DOWLING. No, we have stored them. Even the old boiler I had to save. Truthfully I really did not save them, I cannot say I did. I felt if the Navy ever had need again for it that these fixtures would be so obsolete, they would rather have a chandelier.

Senator DOMINICK. I think that is all I have, Mr. Chairman.

Senator NELSON. Senator Mechem?

Senator MECHEM. No questions.

Senator NELSON. Thank you.

Senator NELSON. Mr. Resch.

Will you identify yourself for the record.

STATEMENT OF MICHAEL J. RESCH, ST. THOMAS, V.I.

Mr. RESCH. Yes, Mr. Chairman, members of the committee; my name is Michael Resch, and I live in the Virgin Islands.

In view of Mr. Stanford's thorough background material I am just going to make this very brief and bring out the highlights of my particular situation.

I will take the Island Beachcomber—

Senator NELSON. Did you have a prepared statement for the record?

Mr. RESCH. No, sir.

I think the Island Beachcomber first, which is adjacent to the airport—

Senator NELSON. This is your property?

Mr. RESCH. Yes, sir.

Senator NELSON. This is the one you have leased from Interior?

Mr. RESCH. Yes, sir.

In August of 1956, this particular parcel was put out for public bidding, which I bid on and at that time it was a miniature golf course, which went bankrupt. As a matter of fact, it was part of the original Caribbean beach enterprise, and it did not work out at all as a miniature golf course so they abandoned it and left it there. It was completely overgrown. There were no naval buildings on it at all; there was a hotdog stand and the miniature golf course.

The public bid, which I fail to have a copy of here, but I do have it in my files in St. Thomas, indicated that they required a minimum bid requirement of \$2,400 a year. I took out a proposal bid under these conditions and I was informed that there was a lot of interest shown in this particular parcel; as a matter of fact, there were 12 inquiries and 12 applications were sent out to prospective parties.

In view of this I bid a little more than the minimum that was required, as a matter of fact, \$600 a year more over the \$2,400, and I went to the bid hoping to win this thing. I found out I was all alone, there was not anybody else. So I went ahead and built from scratch a hotel there, starting originally with 12 rooms, one building with 12 rooms, and then subsequently added on as the years went by.

At this time now I have 28 rooms at this particular spot, with a minimum of \$150,000 in capital improvements on the site.

I have a 30-year lease on this particular parcel and I was able to secure a lease which is similar to most of the others but with one notable exception. It did say that the Navy or higher authority has a

right to repossess at any time—in this particular case, it says only in a national emergency.

Senator NELSON. Your lease arrangement says that?

Mr. RESCH. Yes, sir; and that is on page 12 of the copies I had submitted, but I have another one here, in case it is not readily available, if you would like to look at it.

I have it underlined in red on page 12.

Of course, as I said, I originally built 12 rooms and then at later dates I applied and received permission, in writing, to proceed with additional rooms until I have now 28 rooms at this particular spot.

All along I was encouraged to build more rooms and naturally I was receptive to this because things did improve very much.

I have a lease which calls for an automatic rent increase, the first one at 5 years, and the second one at 10 years. Therefore, I would have to arbitrate for an additional rental.

Senator NELSON. What is the amount of the automatic increase?

Mr. RESCH. It started out with \$2,400, but \$3,000 a year, so that was the base, at the end of 5 years it would be \$3,600, and at the end of 10 years we would have to renegotiate.

Senator NELSON. When did you sign your arrangement with the Interior Department? What date was that?

Mr. RESCH. In October of 1956.

Senator NELSON. So you have had one automatic increase already?

Mr. RESCH. Yes, sir.

My wife has a picture there, as a matter of fact, I have only one small picture showing this particular parcel when I took it over.

Senator NELSON. Is that on the beach?

Mr. RESCH. Yes, sir, right on the beach.

My wife and I operate this hotel and we built it from scratch, and we worked very hard on this thing, and for the first 5 years we did not take a penny out of it at all.

Senator NELSON. May we have these pictures?

Mr. RESCH. Yes, sir.

Senator NELSON. And you have some pictures of the present building?

Mr. RESCH. They are at home; we will mail them.

In substance, that's about it for the Beachcomber.

As you probably know, I am also involved in the Tropic Isle, which was—I was not originally interested in this particular parcel, but I did get involved and how it came about—

Senator NELSON. You now operate the Tropic Isle?

Mr. RESCH. Yes, we operate both places, the Tropic Isle and Beachcomber.

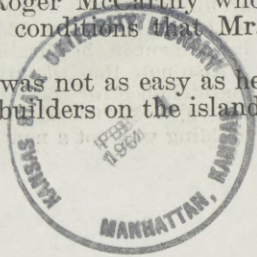
Mr. NELSON. And you signed your agreement with Interior when?

Mr. RESCH. A year later, in October of 1957.

How that came about—as Mr. Stanford said, originally he had bid on this particular parcel and won the bid and then before signing the lease he changed his mind about going ahead with it and dropped it.

Along came another man by the name of Roger McCarthy who picked up the lease with the same terms and conditions that Mr. Stanford had.

He decided to make a hotel out of it, which was not as easy as he thought it would be, and he talked to different builders on the island



and found that it was almost impossible to get someone to give him a fixed price as far as building this.

So, he heard that I was formerly in the construction business and he sought me out and asked if I would go into this particular project with him on a joint venture, which I agreed roughly on a price, what we would put in, what it would cost, and we at that time determined it would take about \$30,000 to restore this particular building, each of us would contribute \$15,000, which we did. But when we had a total of \$30,000 in the building and we were yet quite a ways from completion, Roger McCarthy refused to continue further on this and pulled out, just said, "I am not putting another dollar into this project," and he wanted out.

I had considerable money invested over the \$15,000 already, so I was forced to borrow additional funds to pay him off, to get a release and continue the completion, so I wound up with another operation as well, which we have now completed and it is functioning as an 18-room hotel. My wife has pictures there. I had taken pictures before we started. I would like to say this was a former Navy administration building which after the war was just abandoned, and it was looted by vandals that went in and stripped all the hardware off it, and slept there, and took all the plumbing fixtures out and for years, as a matter of fact, up until 1957, no one came near it.

Senator NELSON. Did you raze this building and rebuild? Did you tear this building down?

Mr. RESCH. No, we just improved it, rehabilitated it: and as I said, up until 1957 the Navy or Interior was not too interested as to how good a condition this building might be in until after we signed the lease; then they came around every year and made sure that the building was in great shape for eventual use, if necessary.

In this particular building we have a minimum of \$40,000 in fixed improvements. Of course, that does not include such things as extensive landscaping and many other things. Again, we did not receive any income out of this thing for a good 5 or 6 years, while we built up the business and whatever we had we put right back into it.

Senator NELSON. You will submit a statement to the committee respecting your investment in building construction and so forth?

Mr. RESCH. Yes, sir.

(The information requested is as follows:)

ISLAND BEACHCOMBER HOTEL,
St. Thomas, V.I., November 25, 1963.

HON. HENRY JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: In accordance with your committee's request regarding our investment in the Island Beachcomber Hotel and Tropic Isle Hotel located in St. Thomas, V.I., we submit herewith a schedule of investment and other information concerning both of these properties.

You will note that the Island Beachcomber has an investment of \$166,474.45. This figure includes the cost of constructing the buildings, architectural and supervision fees, and the cost of furniture and furnishings directly connected with the hotel. Tropic Isle Hotel, formerly a Navy building, required extensive renovation before it could be used as a hotel. The cost of conversion, including architectural and supervision fees, furniture, and furnishings directly connected with this hotel was \$36,694.85. Between these two hotels, therefore, our total investment in the Virgin Islands at the present time is \$203,169.30.

Also note that the attached schedule reflects the amount spent for repairs and maintenance for these two hotels in the past few years. The total for both, as shown, is \$63,036.02. The Tropic Isle figure is exceptionally high because the building was not a new one.

Payroll for the past year for both hotels amounted to \$37,734.69.
If additional data is needed, please do not hesitate to contact me.
Cordially yours,

MICHAEL J. RESCH.

ALLISON ENTERPRISES, INC.

Schedule of investment and other information

	Beachcomber	Tropic Isle	Total
Cost of buildings including architect and supervision...	\$117,569.45	\$24,241.26	\$141,810.71
Furniture and furnishings.....	48,905.00	12,453.59	61,358.59
Total	166,474.45	36,694.85	203,169.30
Repairs and maintenance:			
1957.....	510.11		510.11
1958.....	1,768.44	402.38	2,170.82
1959.....	4,312.56	37.79	4,350.35
1960.....	8,726.52	5,555.27	14,281.79
1961.....	10,953.42	690.44	11,643.86
1962.....	13,201.91	1,743.23	14,945.14
1963.....	9,443.29	5,690.66	15,133.95
Total	48,916.25	14,119.77	63,036.02
Payroll (last year).....	26,200.56	11,534.13	37,734.69

PATERSON, N.J., November 30, 1963.

Re Island Beachcomber and Tropic Isle Hotels, St. Thomas, V.I.

HON. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The following information is submitted as per your request:

(1) Amount put into construction:		
Island Beachcomber Hotel.....		\$117,569.45
Tropic Isle Hotel.....		24,241.26
Total.....		141,810.71
(2) Amount put into repairs:		
Island Beachcomber Hotel (1957-63).....		48,916.25
Tropic Isle Hotel (1958-63).....		14,119.77
Total.....		63,036.02
(3) Amount put into personal property:		
Island Beachcomber Hotel.....		48,904.90
Tropic Isle Hotel.....		12,453.59
Total.....		61,358.49
(4) Depreciation taken as of Oct. 29, on personal property:		
Island Beachcomber Hotel.....		20,787.60
Tropic Isle Hotel.....		6,143.79
Total.....		26,931.39

The above-listed items 1 and 3, include architectural, supervision, and interior decorating fees. I hope that the above information is satisfactory as requested.
Respectfully submitted.

JULIUS RUBENSTEIN.

Mr. RESCH. I think that just about covers the high points of both cases.

Senator NELSON. I think you have covered everything as far as I am concerned.

Senator Dominick?

Senator DOMINICK. Mr. Resch, No. 5 on page 16 of the statement of Mr. Kirwan, refers to the Tropic Isle Hotel and then it has a parenthesis, "(If the lease was not the result of public advertisement)".

I gather what you took over was the lease which Mr. Stanford got by virtue of public advertisement or did this go to your partner? In other words, how did this come about?

Mr. RESCH. It went to the partner under identical terms that Mr. Stanford won this lease under the bid proposal, minimum bid requirements.

Senator DOMINICK. Does this lease have a renegotiation clause in it? I have not had a chance to read it.

Mr. RESCH. Yes; it has a fixed beginning of \$300 a month, and now we are up to \$400. It had an automatic increase and now we are up to \$400 a month.

Senator DOMINICK. Does it also have a renegotiation clause?

Mr. RESCH. Yes, sir; at the end of 10 years, for the last 10 years, we have a 20-year lease on this particular site and the last 10 years are renegotiated.

Senator DOMINICK. Could you tell me your payroll as far as the Beachcomber is concerned, the amount of it?

Mr. RESCH. I would have to actually, at this time, guess at it for the year.

Senator DOMINICK. Estimate it.

Mr. RESCH. I would say probably between \$40,000 to \$50,000, somewhere in that range. This is the last year, we do not have all our figures insofar as the sum total is concerned.

Senator DOMINICK. How many employees do you have?

Mr. RESCH. We average around 18 at the Beachcomber and around another 8 at Tropic Isle.

Senator DOMINICK. Those are local people of the Virgin Islands?

Mr. RESCH. Most are local, except for the office secretary or manager.

Senator DOMINICK. Does the payroll figure that you refer to also include the Tropic Isle or just the Beachcomber?

Mr. RESCH. I am not quite sure on that; I believe it includes just the Beachcomber.

Senator DOMINICK. Have you ever had any demand by the government of the Virgin Islands to turn over the property to them or to make any kind of an agreement with them on your occupancy?

Mr. RESCH. No, sir.

Senator DOMINICK. Have you ever had any contacts with the Navy with regard to the terms of your lease?

Mr. RESCH. No, sir.

Senator DOMINICK. Did they come around and inventory your property the way Mr. Dowling talked about?

Mr. RESCH. Yes, sir. After it was fixed up they did come around, actually only at Tropic Isle, since this was a former Navy building, did they come around to make sure that everything was ready. Incidentally, the plumbing and electrical system was completely shot on this building which we did not know of at the beginning, which was the reason for the additional investment.

Senator DOMINICK. Did you have to get written approval before you did any building?

Mr. RESCH. Yes, sir; in every case.

Senator DOMINICK. This is true of both the Beachcomber and the Tropical Isle?

Mr. RESCH. Yes, sir.

Senator DOMINICK. Who gave you that approval?

Mr. RESCH. Well, in varying stages it was Elliot Gray when he was Manager, and Mr. Holmberg when he was Manager, and just recently it was Mr. Cramer on the last improvement we made.

Senator DOMINICK. Mr. Dowling referred somewhat uncomfortably to the prospect of having this property turned over to the local government. Do you share that feeling?

Mr. RESCH. I certainly do.

Senator DOMINICK. When was your last improvement made?

Mr. RESCH. I think it was 2 years ago.

Senator DOMINICK. What kind of an improvement was it?

Mr. RESCH. Well, at the Tropic Isle we put a shed roof over some of the front rooms. A minor improvement, but yet it was required that I would get permission in writing from them.

Senator DOMINICK. Mr. Kirwan said, during his testimony, he had not heard anything from you concerning the letter of August 15 that he wrote to everybody?

Mr. RESCH. Well, I felt the same way as Mr. Stanford did. The letter did not indicate the end of the world at that time. It said the new lease would be substantially the same, rather the new permit, and I thought I would wait and see what this new permit consisted of before I answered it, which, when we saw it, why, we certainly did answer it.

Senator DOMINICK. And to whom did you answer?

Mr. RESCH. We engaged Everett Birch, attorney on the island, to represent us as a group, and he has written a letter to Mr. Kirwan, on our behalf, asking that a meeting be formulated in discussing this particular case. He received an answer, in essence, saying he would be glad to meet with us or members of us, but there was not any real purpose to it since it is already established that the leases are invalid. We have copies of this letter in St. Thomas.

Thank you very much.

Senator NELSON. Thank you.

We will conclude this hearing without stopping for lunch. I think Mr. Kirwan wants to make a remark or two in response to some testimony. Senator Mechem wants to ask some questions of Mr. Kirwan. I have a firm engagement that I have to keep, so I will turn the meeting over to Senator Dominick, but before I go I wish to thank all of you and I want to commend both Mr. Kirwan and the witnesses here for a very orderly, thorough, polite, fine presentation of their respective viewpoints. It is appreciated.

STATEMENT OF ELEANOR HECKERT, GENERAL MANAGER, THE BAY CORP., ST. THOMAS, V.I.

Mrs. HECKERT. I am Eleanor Heckert, general manager of the Bay Corp., conducting a hotel operation in St. Thomas under the name of Gramboko Inn.

In the spring of 1957 I began to negotiate to acquire a master lease on a Navy-owned building located on the submarine base at St. Thomas.

At that time Mr. Croxton Williams held a master lease on these premises for a rental of \$250 a month, and a term of approximately 13 more years. Mr. Williams, due to financial difficulties, in the former operation of a business in this building, had in turn subleased the premises to Bluebeard's Castle Hotel to run as a laundry operation.

The Virgin Island Corporation was in the process of bringing suit against Mr. Williams for neglecting the upkeep of the building, as well as for failing to comply to the specified improvements as outlined by the Navy inspectors.

In turn, Croxton Williams was putting pressure on Bluebeard's Castle to make the required rehabilitation. I walked into a situation where all three parties—Croxton Williams, Bluebeard's Castle, and the Virgin Islands Corporation—were willing to make a new deal.

I do not have any old pictures of the building, I am going to New York and I hope to get one, but I would like to describe it a little bit to the group.

I think if you take a 5-pound American cheesebox and you imagine that with an old, broken-down roof that leaked so badly that when you walked on to the second floor, not the third floor, but the second floor in a rainstorm, the rain ran down on the floor in the second hall—in every room in the building. There was not one bit of plumbing that worked in that entire building. The third floor was completely without fresh or salt water in any of the facilities, which created a tremendous fire hazard. The storm windows and doors had been boarded up, when you pushed them out they dropped down on to the ground from all the bolts and things having rotted out of the wood. I think without a doubt anybody who lives in St. Thomas could testify that this building looked like a tropical haunted house.

Subsequently, after we moved in and started it, as Mr. Dowling pointed out, they put more pressure on us as we put money in it than was ever put on the former leaseholders.

By fall I had concluded satisfactory arrangements to have the lessee and the sublessee sign off their leasehold rights, and a new lease with the United States of America as lessor, acting by and through the Virgin Islands Corporation, was issued.

When the leasing agreement was received by me I made a special trip to Washington to have a clause added to the effect that if the Navy did repossess the building that, at the end of this repossession, the building would be returned to me.

This was granted, provided the premises were subsequently restored to the administrative responsibility of the Department of the Interior. I have my lease here which I would like to leave; this is a copy of it. If you refer to page 9-A you will see this clause.

Incidentally, on my way back from Washington at that time I ran into Mike Resch on the plane and we got to discussing what we had been in Washington for, rentals and so forth, and Mike told me he had had the clause put in his that it would be a war national emergency. However, I never actually felt I had to fight this point, because I felt we had been guaranteed often enough and it was, let us say, not "insinuated" would be the word, continuously, that it would be only in war national emergency.

As we had all been verbally assured by the Virgin Islands Corporation, and by Mr. Moco Edwards in my case, of the Department of the Interior, this would only be in the event of war or national emergency,

I did not feel that I had to have that added in there. I felt it was taken for granted that it was a bona fide military recapture clause strictly by the wording of it, the military or the Navy or higher military authority words in there.

Aside from that I think everyone who is acquainted with St. Thomas knows that I am on the most strategic military part of the island, I am sitting right in front of the Navy submarine docks, unfortunately, and they come right in and park there, so if there were any danger of the military wanting that property or properties I would be the first that they would want because of my location, and they still use these pens continuously, and it has been increased year after year because of the Cuban situation, and so forth, and still I never felt that I was in a position of danger, as I felt we stood together on the repossession of this.

In December of 1957 a lease was issued to the Bay Corp. for the term of 23 years. The 3 years were granted to me presumably as a token for having eliminated the impending lawsuit that the Virgin Islands Corporation was bringing against Mr. Croxton Williams. I was to have 20 years in the original form.

My rental was for those first 3 years the same as Mr. Croxton Williams' had been, \$250 a month. For the following 10 years, the rent was raised to \$500 a month.

Now, this amount is the highest rental that the Virgin Islands Corporation had contracted to that date for a single building on the Navy-owned properties.

Now, Mr. Dowling's rent at that time—I managed the Caribbean Hotel the year before—had been \$400 a month, and his was to step up to \$500, but they issued a lease to me that started out actually, after my 3 token years, at \$500 a month, and I think Mr. Dowling and I, to this day, still pay the highest rentals for a single building.

Now, maybe collectively they have put out, long since then, to factories and so forth that they break down in buildings, I don't know. But I think this committee ought to know another thing. When the Virgin Islands Corporation rents any of those buildings to a factory they are losing sight of the fact that we have increased their worth so much by what we have done to these buildings that it is an asset to them, aside from the rent we are paying. The rent almost becomes immaterial, and none of us are here to fight the rent. We are here to fight for the money we put into these buildings, and I think that should stand for itself inasmuch as none of our industrialists from St. Thomas have arrived here to fight it. Because they are not standing to forfeit as much money as we are for the amounts we put in these old buildings.

The following and last 10 years of my lease are to be determined by a renegotiated rental board of arbitration provided that in no event shall the fair rental value as determined by any of the members of said Board be less than \$6,000 per annum as a minimum, but with no limit on a maximum.

Now, the point I want to bring out here, as I said before, none of us are arguing the rentals at a later date. We all feel if the island's economy has grown and these properties are worth more and they can get people in there, fine; but we all feel we should have a great deal of consideration for what we have done to properties that were actually draining their cash reserves, and the whole history of the Virgin Islands Corporation at the time that we invested money and

got our original leases was a maze of redtape, lawsuits, everything going on that kept them continuously in a tailspin. I think this is the first group that came along that conducted themselves in a businesslike manner and moved forward to make an asset for them.

Now, considering that I was instrumental in saving the Virgin Islands Corporation from their impending lawsuit with the former leaseholder and that the Virgin Islands Corporation was not in the position to offer the building at public bid, due to the lease already on the property, and that I had an effective rent renegotiation clause, and that in the first 10 years of my lease following the 3 years token, I pay the Virgin Islands Corporation double the amount that they had contracted with the former lessor for the identical period of time, I am rather shocked that my property, the Gramboko Inn, is listed on page 16 of the statement of the Assistant Director of the Office of Territories, as one of the six leases not to be given credence to.

A survey of the Navy properties at the time my lease was issued and prior to that time will show that these properties were in little or no demand. All of the old master leases which had been for 99 years and less, at very low rentals, which I am sure were indicative of the economic slump that the Island was in, had been broken by the Department of the Interior either due to lack of maintenance or insolvency on the part of the tenants. By the mid-1950's the Virgin Islands Corporation was in the position to negotiate completely new rentals on the increased, accepted worth that prevailed at that time. We can only assume that the Department of the Interior and the Virgin Islands Corporation are agents controlled by intelligent people who did use that clean slate for best advantage in the new rental negotiations at that time.

About the time I acquired my lease a few people were beginning to feel the tempo of the Virgin Islands as a tourist spot and we had the foresight to make investments in the Navy properties even though past records showed them to be financially disastrous to the former leaseholders. Most of the buildings were in deplorable condition and needed almost as much money to rehabilitate them as it would take to make brand new construction.

Now, I would like here to refer to page 4 of Mr. Kirwan's testimony in which he gives you percentages with regard to the people that hold permits and the people that hold "leases."

At the time that we were issued leases I believe I am right in stating that there were no such things as permits being issued. Am I right, Mr. Kirwan?

MR. KIRWAN. I have no recollection, but it may well be, I do not know whether the Corporation at that time issued permits. I know they have issued nothing but permits since 1961.

MRS. HECKERT. This is the point I want to bring out. I do not want anybody to be misled about these percentages about rentals and so forth. The permits were issued at a much later date and aside from that, at the time we all took our leases the Virgin Islands Corporation told us that they were authorized only to lease out properties that contained an existing structure.

The reason I make mention of that is that it illustrated what was verbally promised, that although I was putting a great deal of time and effort into a building that was located in a very bad place for a hotel operation, that I did not have to consider there ever being any

more handicaps that would be adverse to a hotel operation because they could not rent automatically just a barren piece of land, it had to have a structure existing on it.

Since that time they have eliminated that clause and many people are renting small pieces of land, and building on them, under permits. I, in fact, have a piece of land myself across from the hotel that I have just gotten under a permit. And, by the way, I put close to \$15,000 in that in 2 years, but this is what you call confidence in your Government.

My point there is that these figures would naturally represent people who got rental basis at a later date, so, therefore, they should be higher; everything has accelerated over the state that it was the time we took it.

It is a known and admitted fact that the buildings on the submarine base, being mostly industrial, were and are in bad shape. The Gram-boko Inn is located on the submarine base amid the industrial buildings and it sticks out like a sore thumb. There are several occupied Navy buildings close to me that are so near condemnation from weather rot and neglect, that without exaggeration you can put your fists through the side boards into the buildings. These buildings are leased on industrial leases so those people are not putting anything back into those buildings.

However, for the rehabilitation of my building—and I am going to use the technical expression which in our bookkeeping is maintenance and repairs, that is something you would put into a building which is not what you would actually call an improvement, a capital improvement, but just to maintain and repair a building—my situation was entirely different than theirs. I took a building, the first floor of which is concrete and the top two floors are wood, and the wood frames were eaten out with termites. The roof had such holes it rained on the floor. The first time I was in the building when it rained, every room on the third floor without exception had live wires exposed and fire jumped around the room, and at the time there was no water to extinguish a fire if it started. There was no water on that floor to put a fire out.

I do not believe that the Department of the Interior or the Virgin Islands Corporation is really aware of the amount of money that I put into that building on maintenance and repairs alone, and I have substantiated figures that I have invested to date only in that field, close to \$100,000. Now, I think also the record will show in time that this is the greatest amount that has been put into any Navy-owned building just for maintenance and repairs alone. So I do not think it has really been a question of them understanding. If they look at a building they think you slapped a coat of paint on it. They are crazy, because nothing worked inside and the whole thing has to be put together. Aside from that I have put \$51,000 into the fixtures and improvements—which I am not adding to those capital improvements—to that \$100,000 figure.

Those of us who have made these extensive leasehold improvements are aware of the fact that our properties have increased in value through that investment and through the increase of the island's tourism in general. But are we not fortunate that we were correct in our faith of the future of the Virgin Islands? Should those of us who had the courage and really the guts to take the risk when it was

known to be abnormally high, now be expected to open ourselves to any type of renegotiation on the basis of the time, the energy, the work, and money put in by us? Are we to be penalized for our belief in the future of the islands by competing today with every man who has a dollar in his pocket to invest in any kind of a business that is risk tested?

The purported cancellation of this lease by the Office of Territories, is without a doubt an attempt by an agent of the United States of America to forfeit these investments. I would expect this sort of treatment if I invested in South America or Haiti, or Cuba; but I certainly do not expect it under the Stars and Stripes.

I do expect much more from my Government than the treatment presently received.

In view of the history of the entire Government of the United States I have always expected that representatives of this Government would stand as firmly on the moral basis involved in a situation as the legal one.

In the light of the amount of money I have reinvested to my lease property and my performance with regard to the terms of my lease, the Department of Territories has every reason to believe that I have conducted business in a manner which leaves no question as to whether I regard my lease as legal.

I feel I have every right to continue tenure under the terms as outlined within this lease. And I sincerely hope that this meeting will be concluded with a recommendation that the leases will hold so that we that have invested will be protected.

Senator DOMINICK (presiding). Thank you, Mrs. Heckert. I have just a few questions here.

On page 16 of Mr. Kirwan's statement, prior to listing the Gramboko Hotel, he says, and I quote:

They have in common the fact that all were privately negotiated rather than exposed to public bidding. They are for long terms, and do not permit effective rent renegotiation.

Is it my understanding that your lease does permit renegotiation after 10 years?

Mrs. HECKERT. Yes, sir, I am due to renegotiate in December of 1970. It would have been December of 1967 had they not given me the 3 token years.

Senator DOMINICK. Your lease was privately negotiated, I gather?

Mrs. HECKERT. That is correct.

Senator DOMINICK. Was the original lease which you took over a publicly advertised lease, do you know?

Mrs. HECKERT. I have no idea.

Senator DOMINICK. What did you have to do to get rid of the existing lease of the lessees?

Mrs. HECKERT. Mr. Croxton Williams had begun a hotel operation in that building under the name of the San Jose Hotel. That was sometime prior to 1955, I know that, and he had failed, but he had put in beds, dressers, you know, equipment. He had not changed the physical plant at all, and he bankrupted and subsequently in 1955 he subleased to two men who ran the hotel as a hotel operation, presumably, for 3 or 4 months, and they also bankrupted. In fact, they caused the Navy so much trouble that the Navy made a move with the local government to close them up. They were in a very touchy spot

there with the Liberty ships coming in and the men coming home at night and people being allowed to walk around on a submarine base in their workclothes, and he allowed the sailors to come up there in their workclothes and it was running really as a saloon rather than a hotel. I know, because I checked in there and then checked out.

When I started to negotiate, Mr. Williams, I think, wanted \$20,000. Anyhow, we came to the price of \$12,000 supposedly for fixtures. Then I went to the manager of Bluebeard's Castle who wanted out of the situation, they were pressuring him, and the owners of Bluebeard's Castle felt the laundry room was not profitable over there for the rental they were paying—they could move it up to their own hotel. What he wanted me to do in turn for him signing off was he had taken all the good furniture, and if I did not make him replace the good furniture and I paid Croxton Williams for the furniture and kept quiet about it, then the deal would be consummated. Actually it cost me \$12,000 to buy them out, to get both parties out.

Senator DOMINICK. How big is your inn?

Mrs. HECKERT. It is now 40 rooms.

Senator DOMINICK. And what is your payroll?

Mrs. HECKERT. My payroll runs between \$30,000 and \$35,000 a year.

Senator DOMINICK. How many employees?

Mrs. HECKERT. Approximately 18.

I would like to add another thing here, too; because of my location I cannot run a posh hotel operation; it is impossible. I am right in this industrial section and I run what we call a budgetwise operation. I have the lowest hotel rates on the island in season—off season probably—our publicized rates, and, therefore, even when I am maintaining the same occupancy as the other people my income is much lower. It is impossible for me to give great service and we have sort of created a concept of you come to Gramboko and you wait on yourself. I run around in paint clothes all the time. I don't think anybody has seen me in a dress for years.

Senator DOMINICK. Senator Mechem.

Senator MECHEM. No questions.

Senator DOMINICK. Thank you very much, Mrs. Heckert, we appreciate your testimony.

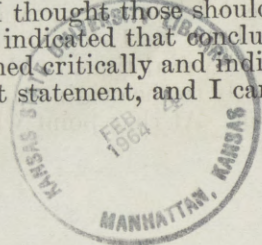
Mr. Kirwan, I gather that you would like to make a statement.

STATEMENT OF JOHN J. KIRWAN, ASSISTANT DIRECTOR, OFFICE OF TERRITORIES, DEPARTMENT OF THE INTERIOR—Resumed

Mr. KIRWAN. Very briefly, Mr. Chairman, I do not want to delay the group.

I do not intend to restate our view of the controvertible issues. I do not know whether that is what Mr. Stanford meant to infer by the word "inaccuracies." I will confine myself to the specific things and then go on.

First of all, though, Senator Dominick, I believe that both you and Mrs. Heckert inadvertently misconstrued what I said on page 16 with regard to the six leases. I did not say I thought those should be renegotiated. I did not say anything that indicated that conclusion. I said simply that they should be examined critically and individually, and I meant nothing more than that statement, and I can



see no reasonable objection to examining them critically and individually.

Secondly, I would like to observe that I think a great deal of the discussion here has been—we have been talking on different basis. I attempted to show yesterday why we thought we were on sound ground in concluding that you never had leases. I certainly do not ask you to accept that, surely I do not ask you to accept it on my say-so, but to see why we proceeded in the way we did you have to realize the basis from which we started.

Now, I have always realized the basis from which you start, you not only thought you had leases, you had excellent reason to think you did, I know that, but I tried to show yesterday, and it is a technical field, why we felt we had equally, I will say, better reason to believe you never did.

Now, I cannot proceed on the assumption that because you ought to have had, or thought you had, you in fact did have. I do proceed on the assumption that we should see what we can do in order to keep you from getting hurt, because of that. I cannot start out by saying, "Let's pretend you had one"; that is not my prerogative, even if it were my choice.

Turning to more of the specific points: Mr. Stanford indicated that L'Escale had been advertised. We are talking about completely different things there. I believe Mr. Stanford referred to any advertisement in March of 1955, on which he did not bid, whereas in November of 1956, a year and a half later, he got a lease on what later grew to be the present L'Escale. But the lease I am talking about when we are discussing these 25 leases, particularly L'Escale's, is a lease for much more space, it includes an exclusive right to handle the restaurant, cocktail, gift shop concession in the airport, and it includes what Mr. Stanford identified as a valuable right to have first crack at a similar facility in a new airport.

Now, these were not part of the invitation held out to the public a year and a half before Mr. Stanford got his present lease. When I speak about leases, the result of public advertising, and I believe in my point 1 on page 15 I indicated the difference between a lease that is the more or less direct result of public advertising than some other lease.

The fact that a given premises may or may not have been advertised at one time does not endow it with a mysticism that carries on throughout its life. I am only talking about if the instrument were involved as a result of public advertising.

Another point, several of the lessees mentioned that they took over from someone else. Whenever a lessee took over by virtue of an assignment of the original lease, of course, I do not make a distinction; to me that is the original lease, and if the lease they took over had been publicly advertised, I do not care whether it was assigned to them a year or decade later. I endowed them with all of the rights and prerogatives of the man who originally got the lease on public bid, but if A got a lease on public bid and subsequently that instrument fell, expired, canceled, or was given up, and then B came along and got it, I do not regard that as taking over. It is taking over in physical time, in chronological order, but he is not succeeding directly to the original instrument. I think that is a reasonable distinction. At that point when the old lease fell, the Government became

able, technically able, once again, to go out and advertise, or once again to negotiate. I do not believe that is playing with words, and I do not believe one should blur the distinction.

Just to supplement briefly a couple of Mr. Dowling's opinions; \$30,000—incidentally, I mentioned this in talking, I stated the other day that the Caribbean happened to be one, and I also mentioned the Beachcomber, two of them that were the result of public advertising and therefore I had no difficulty with them. But the \$30,000 which was your bid, Mr. Dowling, \$12,500 went to the Government, not \$20,000; \$17,500 of that went to the private creditors of the predecessor, Tropicana Corps, no benefit to the Government.

Now, this was all in accordance with a court order to which Vicorp was a party, so there was no wrongdoing, and you paid the full amount, you went through all the rigors of public bidding as I indicated, so, no quarrel with you on that. However, on the record, you were not bidding to see who would pay the most money to the Government, you were seeing who would pay the most money to the creditors of a private corporation. I am unable to find the Government had any sort of legal responsibility for making this sort of an arrangement. It was a matter of at best administrative convenience at the time. That is not your problem, but I merely wanted the record to show it.

MR. DOWLING. May I say something?

Senator DOMINICK. Let's let him continue.

MR. KIRWAN. Mr. Resch, where the Beachcomber is concerned, as I indicated, I know the Beachcomber was public bidding and I do not want to belabor the point, but to me public bidding, I give tremendous weight to that in my own mind. If a person gets it through competitive public bidding I have no quarrel with it, although I did say that as a practical matter I certainly regret that invitation for bids was not published in any of the other papers except there on the island. That was not your fault, you were not placing the newspaper ads. I cannot help but feel that if a \$20 or \$30 newspaper ad for a bid had been placed the response would have been better and they could have found somebody to come over and take it over. Why not put a \$20 or \$30 ad in a newspaper—

Senator DOMINICK. Mr. Kirwan, that is the fault of the Government, not Mr. Resch.

MR. KIRWAN. That is what I say, Mr. Resch is not responsible for that. I note it was advertised only in the local papers and other lessees have said "they pressured me to come in," or "they encouraged me to come in and do it," for all I know rightly. I note also that if the Government had put a hundred-dollar newspaper ad maybe they would have gotten 50 people on the mainland to come in and do this. That is a speculation.

What I was leading up to, Mr. Resch, you have a renegotiation coming up soon, there is a stipulated \$5,000 ceiling on it, so it is not a meaningful renegotiation. As near as I can tell, that was in the invitation itself in 1956. There is no reason why you should not get the benefit of that ceiling, but I wanted the record to show there is that ceiling—so not very meaningful renegotiation for quite a while.

With regard to Mrs. Heckert's point on permits bringing in more than leases. Permits by the large also are always better than leases. Almost always they are on unimproved property, whereas leases are

almost without exception on improved, where it is true we can expect higher rent in later years. On the other hand, people would expect more rent for leases on improved land.

My letter to Mr. Birch, representing all of you, is not a fair inference to say I indicated to Mr. Birch there was nothing to talk over. It was not only not the intention, but I have no reason to believe the attorney getting it, Mr. Birch, who I have known for many years, unlike any of you who I have not known, would misinterpret it. I am sure he would understand it exactly as it was written.

Senator DOMINICK. Will you supply a copy of that for the record?

Mr. KIRWAN. I will be happy to.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., October 15, 1963.

Mr. EVERETT B. BIRCH,
Post Office Box 1239,
St. Thomas, V.I.

DEAR MR. BIRCH: With regard to your purported letter of October 11, 1963, I would be glad to chat with you at any time, here or in St. Thomas, on the subject of your clients' seeking permits to replace their former leases—at least I assume that is the subject of the discussion. In any event, I am looking forward to it, and in a cause which cannot help but tax the most ingenious counsel, I am glad to see that they have so forearmed themselves.

As to where would be the most useful place, let me consult in turn both my own schedule (which I keep on the back of an old envelope) and my own counsel, Mrs. Van Cleve, whom you have met. As the old saw has it: "It is a wise man that keeps his own counsel," and accordingly I keep Mrs. Van Cleve—in a manner of speaking, of course.

Sincerely yours,

JOHN J. KIRWAN, *Assistant Director.*

Mr. KIRWAN. Lastly, a minor point: On investments that have been made, I think it is minor but pertinent to show if this sheet is correct, that the Government only required that the Gramboko investment be \$15,000, and that the Tropic Isle be \$10,000, and that the Beachcomber be \$10,000 or \$15,000—I believe \$15,000.

Now, in some cases, for example, L'Escale, I do not believe the Government specified a dollar figure, but there was probably a functional requirement that presupposed that one would have to spend money in order to comply, so the fact that, for example, in L'Escale there is no dollar amount specified does not mean that the Government did not realize you had to spend some money in order to come into compliance, such as offering food to the public, or something else. But most of the amounts of money discussed here, and, of course, as I answered, Senator Dominick—and now what seems like a month ago, but it must have been yesterday—we not only did not know, but we feel it was premature to inquire as to what you put into these properties because we had not proposed yet to sit down with you to see what equitable arrangements you have made.

Most of the money you have put into the properties you have put in as a matter of business judgment. I do not quarrel with it, I do not second-guess it. I did not want the record to have a mistake or inference that the Government required you to put these amounts of money into the property.

To save time, Mr. Chairman, with that sort of miscellany, factual, allegedly factual commentary on some of the statements made, I would like to be available for questions.

Senator DOMINICK. These leases do include provisions for capital investment, and additional investments that were made were approved by the Interior Department or by Vicorp?

Mr. KIRWAN. They require the amounts of capital investments that I named, up to \$15,000, the additional investments were wholly discretionary, the only role of the Government in that was the advance requirement that we give our consent to additional expenditures—

Senator DOMINICK. And you did give that consent?

Mr. KIRWAN. In any case I know of. I do not know of a case we did not. The decision as to whether to, and how much was left to the lessee—apart from the minimal requirements I cited.

Senator DOMINICK. You are not indicating you would prefer they had not done this?

Mr. KIRWAN. I have no opinion on it. I would not prefer either. I would say, frankly, that knowing them to be without valid leases, I would have preferred, as I did everything I could to keep the Caribbean from investing more money since 1961, I did everything I could to prevent people from what I thought might be throwing good money after bad. I do not think any one should have been allowed to put substantial amounts of money in.

By the way, I use the word "substantial," because on one or two occasions I know we would have had no objection to somebody making a \$300 or \$400 betterment of a sort that you would let a man, even if he is on a month-to-month basis, make. But we felt in fairness to the tenants they should not be allowed to make substantial investments once we had good reason to believe the nature of their occupancy was as fragile as it, indeed, proved to be.

Senator DOMINICK. Senator Mechem.

Senator MECHEM. Mr. Kirwan, in your statement at page 2 at the top of the page, it states:

These licenses, Virgin Islands Corporation standard permit forms are revocable at will, although we would always try to give adequate notice.

Then on page 3 in the second paragraph, you recite—

Each of which agencies has full negotiating leasing authority, and each of which can make leases of such duration and upon such terms as may be in the public interest.

Now, is there some reason? Is there a policy matter that you suggest that these be made terminable at will, or revocable at will?

Mr. KIRWAN. I am talking about the property in two different categories, Senator Mechem, the revocable at will is not a decision, that is the nature of a revocable permit, so as long as Virgin Islands Corporation itself has only a license it is not, in fact, able to give more than a permit revocable at will.

Now, the difference between the "at will" and the 30 days, comes about that the Navy language on sublicenses allowed us to make them revocable at not more than 30 days' notice.

Now, to distinguish those two short-term notices, whether at will or whether at 30 days, from the leasing authority paragraph on page 3, the leasing authority could come into play only at such time in the future as the Corporation succeeded in getting title to the property rather than simply a revocable permit or license interest in it.

Senator MECHEM. Well, this is what you are seeking to accomplish, is it not, at this time?

Mr. KIRWAN. Yes, sir. For half of the property.

Senator MECHEM. At this time, would you enter into a different type of lease for a duration that would be canceled only at cause?

Mr. KIRWAN. The Department of the Interior would recommend to whomever has negotiating leasing authority, and that is the Virgin Islands Corporation, or the local government, or both, that we made arrangements as I outlined on pages 15 and 16, but certainly we contemplate that the only kind of instruments that would be given would be clear-cut leases, not revocable upon 30 days' notice, but good until the expiration date shown in the instrument.

So that we see no position for a permit, except, perhaps as a courtesy to one or another tenant who for one reason or another is not going to get a lease. But certainly, we have never felt that a business can be conducted on a sound basis on the strength of a permit.

Senator MECHEM. But you would recommend that the term of the lease be made with specific duration?

Mr. KIRWAN. Absolutely.

Senator MECHEM. In the event that GSA turned this over to Vicorp or to the Virgin Islands local government; is this correct?

Mr. KIRWAN. Certainly.

Senator MECHEM. Now, on page 10 you make the statement at the beginning of the second paragraph—

If these instruments had, in fact, been valid leases then we would not have undertaken to connive in their cancellation.

Is the word "connive" one that you intend to use here?

Mr. KIRWAN. It is the one I intend to use, Senator Mechem, not because I believe that fairly describes what we did, but because I thought it fairly described what we were accused of doing, so I was borrowing what I thought I rightly understood to be the attitude toward our actions held by some of those disaffected by it.

Senator MECHEM. It is your language, though?

Mr. KIRWAN. Certainly.

Senator MECHEM. You apply it to your conduct which gives some—

Mr. KIRWAN. Not to a conduct we did, but conduct we would not have done. I do not say we have, in fact, ever connived.

Senator MECHEM. That is not quite the way I read it, Mr. Kirwan. It appears to be different. I just wondered if you wanted to utilize that language there, or if you would like to change it.

Mr. KIRWAN. No, Senator, for the reasons I have given: one, because that is what we were accused of doing; and two, because I think that is what we would have been doing under such circumstances. I meant to use connive and meant to leave it, and I also would like to make clear, however, that I am not saying we did connive but we should not have or would not have under other circumstances, I am saying we would not in a given set of circumstances have connived.

Senator MECHEM. It indicates, though, that you may have connived, does it not?

Mr. KIRWAN. It could be incorrectly read that way, Senator Mechem.

I am not fond of the word. My reason for not taking it out, it would indicate that we had done it but I did not want to own up to it. I state we did not do it, therefore, I am not defensive about the word at all.

Senator MECHEM. It carries a connotation of bad faith, does it not?

Mr. KIRWAN. It does. I think it would have been bad faith for us to have worked out something with Navy to have caused valid instruments to fall. It is something we never contemplated doing, it is something we would not have done, it is something we did not do.

Senator DOMINICK. May I interject at that point, Senator?

Senator MECHEM. Yes, sir.

Senator DOMINICK. You have said on a number of occasions, and just repeated, that by having the permit from the Navy to the Interior Department canceled that this caused these agreements to fall.

Mr. KIRWAN. Automatically and without any of our doing, Senator. I am glad—I honestly am glad you brought that point up. What we did on August 15, 1963, we believe, was not to thereby cancel the agreements but to notify, and I am not saying that the form letter was happily phrased, but to notify the tenants that automatically, by option of law, by the very wording of the instruments, this had happened, not that we did it, but the instruments themselves provided that should the property be repossessed then, indeed, they, themselves, would fall.

Senator DOMINICK. You were taking the position, then, that the cancellation of the permit from the Navy to the Interior Department constituted a repossession of the property by the Navy; is that correct?

Mr. KIRWAN. Exactly.

Senator MECHEM. On page 16 with reference to the negotiated leases, do you feel that the Government was in any way responsible because it negotiated leases and if you do not feel so, why do you make the distinction in these recommendations?

Mr. KIRWAN. I say, Senator Mechem, that where the Government advertised, no matter how imperfect the advertisement, if its imperfections were due to the Government and they were in every case I know of, I would accept the results.

Where the Government did not use the advertised route neither I nor the representatives of the Government can know whether they were bilked, they cannot know—that is not my word, Senator, but I am using the same one given me, the Government cannot know whether in the absence of advertising it got the best deal for the Government that it might have.

If we are comparing letting the building stand idle in disrepair to putting it to productive use, fine. If we are comparing a good bid with a better bid or good lease, I can never tell.

Senator MECHEM. Do you take the view that the Department of the Interior had authority to negotiate these leases?

Mr. KIRWAN. No, sir; we take the view that the Department of the Interior at no time had the authority to negotiate the leases.

Senator MECHEM. On page 18 in the third paragraph you say:

In view of the history of the matter, he has a moral but not a legal right to expect much more from his Government.

The sentence after that—

If any tenant differs as to his legal position we can only note that the courts remain open to decide matters of this nature. If any tenant likes to stand on his legal rights alone we will take no action adverse to his present status and we will both abide by the results.

Could you tell us what legal place the tenants have in this particular status?

Mr. KIRWAN. I do not regard that paragraph as giving comfort or hope to a lessee. Instead, I put it in there for the sole reason someone told me, to my almost disbelief, that the tenants, after having consulted counsel, after having considered the matter, were still of the opinion that they held valid leases.

I cannot follow the reasoning; I was not told what the rationale was, but my feeling was that if that is a tenant's belief, we would not want to prevent him from taking action consistent with it. I cannot really see that I think he would have a chance.

Senator MECHEM. But do you not hold out a ray of hope to them by the recitals in this paragraph?

Mr. KIRWAN. Not in view of the statement I have just made, at least, Senator.

Senator MECHEM. Well, without that clarifying statement, it certainly indicates that they may have the legal right.

Mr. KIRWAN. They have legal remedies. They have a forum to determine accurately and competently whether they have legal rights. I do not mean that because the courts exist they have legal rights. I mean they have a place available to them to decide precisely that question. It is obvious that when I say they have no legal rights to the premises I am not referring to their legal rights to go to court, you know, which are inherent in their citizenship, but again it is equally obvious to them that it is not up to me to pass finally on legal questions that are in dispute between the Government and the private party, so, I note that we do not need to quarrel about that.

If, in reality, they are convinced that they have a legal right as distinguished from a moral or equitable right, which we concede, but if they believe they have a legal right to continue a given term or given rental rate, I note that the remedy is so obvious that it should be almost unnecessary to state it.

I stated it not to call it to their attention but to show them that we, too, recognize that we would not have the last word on a legal question, confident though we are of the outcome.

Senator MECHEM. What courts would take jurisdiction of this question?

Mr. KIRWAN. I would assume it would be the Federal District Court in the Virgin Islands.

Senator MECHEM. How would it be raised?

Mr. KIRWAN. Either of two ways, Senator Mechem. Either we could—now—we have never thought of this, but let me tell you the two ways it could be.

We could raise the rent \$1, say, and Mr. Stanford, and I single him out simply because of his spokesman role here, would refuse to pay and then we would go to court to get him evicted.

Or alternatively, we might attempt to do something adverse to the property, sell it to somebody else and then presume he would go to court to enjoin us from doing it.

But it seems to me it would not be difficult to get the matter into court were anyone so minded.

Senator MECHEM. So you do, under the circumstances, agree that there is some legal recourse if they wish to go to court, on these contracts?

Mr. KIRWAN. No. I would like to distinguish, Senator. I am not sure I am interpreting the word "recourse" right. The courts are there to determine whether they have the slightest legal rights here.

I, myself, am convinced that the court would say, you have not the shadow of a legal right here. Therefore, if that is how you meant legal recourse, no.

On the other hand, the court, as an institution is there and we, I am sure, would cooperate reasonably, if someone were minded to test a case here. I do not know why we would not do what we could do to accommodate them.

Senator MECHEM. There is a very serious question in my mind that they could even get into court on these contracts. I am curious about this: Have you had an opportunity to review this question and make a determination that this was subject to a declaratory judgment or something, and have you had any answer to that particular question?

Mr. KIRWAN. I can say that before I put that paragraph in the statement I discussed it in our department to see if this was rhetoric, and certainly the thought among all with whom I discussed it was that, of course, it would be easy enough to get into court, and the two ways that I indicated to you, Senator Mechem, were brought up.

We would do something they would mind or they would fail to do something we would mind, then one of us would bring the other into court.

Senator MECHEM. The Secretary of the Interior, then, is amenable to suit under these circumstances, on these contracts?

Mr. KIRWAN. Senator, first, if we went the other route, where if they refused to pay we would move to evict them, I know we can reach them through the court. As I say, we would cheerfully do it, if it were part of a cooperative arrangement with our long and valued tenants. But to turn about, Senator, I do not know the answer to the other half of your question. How would they go about it?

I would assume they could enjoin him from doing something that was contrary to a contractual obligation.

Senator MECHEM. Now, in the opinion of the Solicitor that was sent out October 25, 1963, on page 4 at the end of the second paragraph, the recital is:

Hence, Navy did not transfer administrative supervision to Interior, and the Secretary of the Interior did not acquire a sufficient interest on the property to lease it or sell it under section 31-A.

In the permit that was issued by the Navy to the Secretary it recites:

There is hereby transferred from the Navy Department—
this is on page 2, just above the permit—

There is hereby transferred from the Navy Department to the Interior Department as of the 1st day of January 1948, cognizance and control of these installations.

On page 3, at the beginning of paragraph 1:

The Interior Department will assume full responsibility except as otherwise provided by law.

Now, what difference do cognizance and control and the assumption of full responsibility bear to administrative transfer of administrative supervision?

Mr. KIRWAN. Senator, do you mind if I ask Mrs. Ruth Van Cleve, who is the Assistant Counsel for Territories of the Office of the Solicitor?

tor of the Department of the Interior, to respond to your question inasmuch as it is a legal point?

Senator MECHEM. Fine.

Mrs. VAN CLEVE. Both of the phrases you point to, that is, "cognizance" and "control" on the one hand and "full responsibility" on the other, would, if they stood alone, pose a difficult question here.

The fact is, however, that they are contained in an instrument which, by its term is a revocable permit.

You are familiar, I am sure, with the paragraph on page 2, entitled, "Duration of Permit," which makes clear that the Navy retains a right to revoke it. This contradicts the possibility of a transfer of full administrative responsibility to another department since such an arrangement cannot be done on a revocable basis.

The Solicitor alludes to the methods by which it can be accomplished—a reorganization plan, a special act of Congress, or compliance with the pertinent Federal property laws. It is the latter course which we are in the process now of pursuing, that is of having the Virgin Islands Corporation obtain a portion, at least, of the property by a transfer from GSA under the provisions of the Federal Property Administrative Services Act.

Senator MECHEM. So, this has been a very difficult legal question to determine, has it not? It has taken considerable time to cover the ground with very few written opinions; is that correct?

Mrs. VAN CLEVE. There have been no written principles prior to this particular letter. Whether the question is difficult is, of course, a subjective judgment.

Senator MECHEM. And it has had attention for a period of about 2 or 2½ years now, has it not, something of that kind?

Mrs. VAN CLEVE. People have certainly given consideration to the question for that period.

Senator MECHEM. It has been very diligently researched, apparently.

Mrs. VAN CLEVE. I thank you.

Senator MECHEM. So it would be extremely difficult for any individual through counsel who was not learned in the ways of the statutory interpretation and things of that kind, to arrive at a conclusion as far as the authority of the Department of the Interior was concerned to execute these leases; is that correct?

Mrs. VAN CLEVE. I am reluctant to concur because the judgment is, of course, a subjective one. I would say that from the first moment forward that any lawyers in the Interior Department looked into this question they reached the conclusions set out in Mr. Barry's opinion.

Senator MECHEM. And how long did that take to determine?

Mrs. VAN CLEVE. Are you speaking of particular individuals or of the Solicitor's Office as an institution?

Senator MECHEM. The entire period of time it took to determine from the time it was brought to the Solicitor's attention until the time the final question was answered?

Mrs. VAN CLEVE. The Solicitor answered the question very promptly when he was first asked a definitive question in 1961. He did so, however, orally.

The correspondence referred to on page 1 of the Solicitor's letter confirmed that oral conclusion but was not in the nature of an opinion.

Senator MECHEM. And it was not put in writing until the 25th of October of this year?

Mrs. VAN CLEVE. There was no signed document until that date; that is correct.

Senator MECHEM. I am trying to find a copy of the order that came from Navy to Interior in 1955.

Mrs. VAN CLEVE. Those, I believe, are attachments 8 and 9 to the Solicitor's letter.

Senator MECHEM. Now, Mr. Kirwan said this should have brought to any person in the Department the position the Navy held on this particular subject, and under the circumstances, it seems to me that this thing is subject to two interpretations. It recites:

This Department agrees that all reference to the Office of Territories should be deleted from the proposed permit, the permit may be revised also to specifically authorize your Department to issue licenses or permits to public or private agencies for the use of the property.

There is no authority, however, wherein this Department may authorize the Department of the Interior to outlease property under the jurisdiction and control of the Navy.

Under the circumstances the Navy had already, to a very definite degree, ceded its control and a great part of its authority over this property located in the Virgin Islands.

Mrs. VAN CLEVE. I might quarrel with your precise words but in balance, I agree that what you say is correct. Ceded control may be a bit strong, is my point.

Senator MECHEM. Well, that is different from ceding jurisdiction, which could be taken back at any time apparently as they saw fit, with the limitation of a national emergency which is not apparent in this case.

Mrs. VAN CLEVE. With a statement of intention to that effect, but the language is not in the form of a condition precedent, a point which I think is very important here. Had the duration of the permit language in the Navy to Interior permit stated that the Department of the Navy limited its right to revoke for those reasons we would have quite a different legal situation, at least vis-a-vis, the August 15 letter than we have, in fact.

Senator MECHEM. But we have here a case where Navy has violated its intent, apparently, at the solicitation of Interior. Of course, I can readily understand what it may have thought to be real good reason for this thing, in order to clarify the legal background and clear the underbrush and put these people in a position where they might be able to go ahead with legitimate leases. But under the circumstances we have a violation of intent which gives some indication that actually there is a little evidence of bad faith in connection with this thing.

We have this done at the solicitation of the Department of the Interior. They said we are not going to bother with this any longer, we will get it to Vicorp. It looks just a little strong.

Mr. KIRWAN. And I still stated, Senator Mechem, I said not only that we even foresaw that our action would be wrongly but understandably construed to be just what you have said.

Senator MECHEM. Could you have brought these people in? Your letter was rather abrupt.

Mr. KIRWAN. Senator, as I said in my statement, why we did not feel that we could be fully frank, why we could not be fully informa-

tive with these people was that we could not bring them to the same stage of awareness as we held without convicting ourselves of anomalous actions over the past decade.

We were, I submit, understandably reluctant to call in the lessees and say, we, the people you have dealt with for a decade—we either did not know what we were doing or we were deliberately dishonest with you. Now, we could have done it but it is just not attractive.

Senator MECHEM. Is this bad to say; we made a mistake?

Mr. KIRWAN. No, it is not bad, it is not attractive, popular, usual, or advantageous. That is the first thing that comes into one's mind. If there was no way out, Senator, other than that, I do not say we would have shrunk from it, but as long as we had what we felt was an adequate remedy which would in time preserve them from actual damage, actual loss to the extent compatible with public interest, we chose a way which I cannot blame and have not blamed anyone for misconstruing.

I insist that their misconstruction, though understandable, is still a misconstruction, but it is a very natural one, because I feel what we did look as though it were bad faith.

Senator MECHEM. You indicate in your statement a certain degree of, well maybe not surprise, but failure to understand that these people have not tried to come in and negotiate these things with you and discuss them, but actually your first letter to them was an invitation to an argument rather than an invitation to come in and try to settle this thing.

Mr. KIRWAN. I do not think the form letter was, Senator Mechem. It certainly was not intended to be. It was written as a legalistic document. Frankly, what I thought, the first thing is they would take it to their lawyer and we would get it out of people who are rightly emotionally involved.

I thought it would be Mr. Birch I would be dealing with and not various lessees. I thought the first thing Mr. Birch would want to know would be why did Navy take it back? On what authority? Mind you, I said in a news release 2 days after we did this, Interior asked Navy. We said we did it, not Navy. I thought Mr. Birch would come in and demand proof that indeed, the leases had been invalid. I fully expected it, not in the middle of October, but about 3 days after the notices went out in August.

Mr. Dowling is the only one who wrote. He wrote and said, "I want to talk to you." I wrote back and said, "Anytime." I never heard from Mr. Stanford until 6 or 8 weeks after all this took place.

Either one or two lawyers wrote. Mr. Birch wrote and said, "I would like to get together and talk with you." I wrote back and said, "I would love to." Again, nothing came of it. I am really puzzled with that.

Senator MECHEM. Those are all the questions I have.

Senator DOMINICK. Mr. Kirwan, you have indicated that the permit which was given by the Navy to the Interior Department was cancelable at will and that anybody with a brain in his head should have been able to see this and hence should have known that the leases would fall.

Mr. KIRWAN. I did not characterize it that way, Senator, but I believe counsel for a lessee looking at the permit would reasonably have come to that conclusion.

Senator DOMINICK. I have here the letter from the General Services Administration dated June 18, 1963, to the Navy, in which they rejected the application of the Navy for disposal of the property as surplus. And I quote—

That instrument provides for an indefinite term subject to the right of revocation by the Navy or higher military authority only in the event of military necessity or by reason of a national emergency.

Thereby precluding any disposal action at this time by GSA.

Now, it seems to me that at least GSA when they looked at this did not think it was quite as evident as you did.

Mr. KIRWAN. First, Senator, that letter was not to us.

Senator DOMINICK. I said it was to the Navy.

Mr. KIRWAN. Second, I knew nothing of the letter until yesterday, but I note it was from someone other than the General Counsel of GSA or the Administrator, I do know from my own knowledge it was from the operating level of GSA.

Senator DOMINICK. It was the Chief of the Real Property Division, according to the title.

Mr. KIRWAN. Operation, as distinguished from either the Counsel's Office or the administrative head of the agency.

Third, we rely upon the meaning of the 1948 permit from Navy, upon both Navy's own statement as to what that meant, and our own interpretation as to what it meant, and not this letter from GSA. Although I think it is reasonable that you note the phraseology used in the GSA letter.

Senator DOMINICK. The point I was making was that if the GSA and the Chief of the Real Property Division looked at this permit in this way, it is entirely plausible to think that the lessees who entered into leases at the request and at the invitation of the Interior Department probably looked at the thing the same way.

Mr. KIRWAN. The permit that you refer to, the 1948 permit, was part of the package turned over to GSA by the Navy Department. They declared it subject to the permit which they spelled out.

This is not the case in a majority of the leases. Our 1948 permit was not made a part of their own instrument.

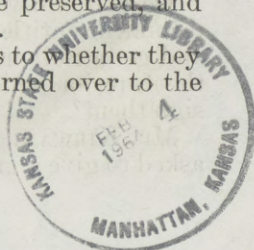
Secondly, it is not true in all, I would say most, if we are talking about a majority of the 25 leases, that these people were urged to. I know that for the most part the industrial lessees came to us and urged that we rent them space, not that we urge them to occupy our buildings.

Thirdly, my whole statement, I thought, was predicated on the view that there is great reason to believe that most of the tenants understood all of the things that they said they did. I believe they understood they were getting leases, most thought that the Navy would cancel only in the event of a national emergency. Far from denying it, we erected our whole case for equitable relief on our agreement with this.

Senator DOMINICK. Of course, the only thing I am interested in is that if they have equities that these equities are preserved, and this is what we are trying to get at during this hearing.

Now, some of them have expressed great concern as to whether they will be preserved, particularly if the property is turned over to the local government.

What is your position on that?



Mr. KIRWAN. My position would be twofold, sir. One is in our opinion the local government itself, with its Governor chosen by the President and with the advice and consent of the Senate, and its democratically elected legislature is the equal in quality of any government I know of and we reject either implications or statements that it is reasonable to expect less than American justice and American treatment from that government.

Having said that, I would also like to add that the difficult position the lessees find themselves in today comes about through either omissions or commissions on the part of the Federal Government, not the local government. Therefore, I think it is certainly not unreasonable to expect that the Federal Government face up to this problem and the answers to it.

If this whole leasing question had not been forced out into the open we would have allowed the local government to handle its share of this matter with full confidence because we have no doubt of the fairness of that local government.

On the other hand, now that there is no reason why we should not face up to the whole record there is no reason that I can see why the Federal Government should not complete action in each of these cases before the property passes out of Federal control.

Now, that is a statement of opinion, Senator Dominick, but I wanted to point out that it is not unreasonable for the Federal Government to handle it without in the least considering the remarks made about the local government, the validity of same.

Senator DOMINICK. I would certainly say that it seems to me that the Federal Government is primarily responsible in this particular instance.

Mr. KIRWAN. Wholly responsible.

Senator DOMINICK. Wholly responsible. All right, I will accept that.

Mr. KIRWAN. As distinguished from local government, I am only considering the two of them.

Senator DOMINICK. But I do think there is some cause for concern on this local government end. As you say, you do not know of any of any higher quality. I do not know of any local government in which there is pending a suit for collusion or anything else of the two branches that handle the legislation.

Mr. KIRWAN. There is a party fight but fortunately it does not involve either the legislature or the Governor as such.

Senator DOMINICK. Well, that is not my understanding.

Let me say just a couple more things.

It would seem to me at least that there is one thing that has been shown in this hearing, and that is that the people who occupy these buildings have either responded to an invitation to bid or have been urged by the Federal Government prior to this time to enter into constructive endeavors to aid the economy of the country and the Virgin Islands in particular, and have done so.

Do you really think that under circumstances of that kind, with a document entitled "lease," that these people should be required to go and get a Solicitor's opinion to determine whether the Department of the Interior which has signed these leases has the power, in fact, to sign them?

Mr. KIRWAN. No, I do not think they should, Senator. If I am asked to give a gratuitous advice I will urge them to accept the opinion

of our Solicitor in whom we have complete confidence. If they are unwilling to do that, then I assume they will consult their own counsel, as indeed they have.

Senator DOMINICK. But your Solicitor did not have an opinion, nor did the Interior Department, that these leases were invalid or even revocable at will at the time they signed them.

Mr. KIRWAN. At the time they signed them?

Senator DOMINICK. That is correct.

Mr. KIRWAN. No, sir; I am sure that at the time—I will not say I am sure, there is nothing in the record to indicate that at the time the leases were signed either party knew beyond doubt that they were other than what they held themselves out to be.

Senator DOMINICK. But a reasonable businessman, and this is the point I am making, with these requests from the Federal Government to take on these types of endeavor were prone to rely on the assurance that they had a document that would be honored by the Federal Government.

Mr. KIRWAN. I do not want to accept uncritically the Federal Government went out door to door and rooted these people out of what would otherwise be peaceful existence and inveigled them into business. In most cases, apart from advertising, in most cases the privately negotiated leases, I have no one in mind, the other party seeks out the Federal Government.

Now, there is a fruitful interaction when the two sit down together. The lessee wants to do business, the Federal Government wants to put it to use, but I think it is a little one sided to imply that we lured them in a way reluctantly and against their will to get them into doing these things. They usually sought us out first.

Senator DOMINICK. Mr. Kirwan, in this particular situation the Navy had said that the property was no longer useful to us and the Department of the Interior said that unless something was done, the economy of the island would be hurt and therefore they requested permission to take control and do something to start promoting this land.

Now, you know that just as well as I do. So, in fact, the Department of the Interior was authorized and told to go ahead and do something about this property in order to help the economy of the island.

Mr. KIRWAN. They were authorized to do that which they could do within the boundaries of a revocable permit. They were not authorized to go further as they decided to do, and to purport or attempt to give long-term leases on the property.

It is regrettable that they were not so authorized because it is the only way to develop the property efficiently.

Senator DOMINICK. Senator Walters?

Senator WALTERS. No questions.

Senator DOMINICK. I have been asked by the chairman to say to the witnesses that if there are additional points which they would care to make in reply to anything Mr. Kirwan may have said today, would you put them in a letter and send them so we can include them as part of the record. We will be glad to do so. This should be done within the following 2 weeks. This is new material that you may have. We will have a transcript of the testimony that has been given over the last 2 days by tomorrow, if any of you want to stay and read it over here in the committee room. It will take a little longer before copies will be available. We will have to get the printed hearings

prepared and this may take as much as 3 weeks before we can get that done.

I think the hearing has been fruitful. If it has not done anything else, it has certainly solidified the positions of the parties and I think perhaps cleared the air to some degree. I do feel that pending action by the full committee on this, and we have been asked by Senator Jackson to give a report to him of the hearings, that we probably should continue leaving the status quo as it is until the Senator and the full committee has had a chance to review this.

Mr. KIRWAN. We certainly will, Mr. Chairman.

Senator DOMINICK. At this point in the hearing record we will include letters from Howard L. Rosov, president of Quality Sales Corp.; Joseph Maronna of Thatch Farm; and Edwin Gross, vice president, Arena, Inc., all of St. Thomas.

(The letters are as follows:)

QUALITY SALES CORP.,
St. Thomas, V.I., October 24, 1963.

Senator CLINTON P. ANDERSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: Our firm is a small business corporation doing business in the U.S. Virgin Islands. We render a service to the community by providing an assortment of wholesome frozen food products of all types to hotels, restaurants, hospitals, and private homes. We, of course, are in business for the purpose of earning profits.

Our corporation has a lease with the Virgin Islands Corporation, who as you know is under the jurisdiction of the U.S. Department of Interior. This lease is for warehouse facilities. Our lease was negotiated in July of 1958, for a period of 10 years from the date of approval by the Secretary of Interior, who at that time was Mr. Fred A. Seaton. This lease was negotiated in complete good faith with the express understanding implied, at that time, that the only provision for canceling the lease was the condition incorporated in the lease, which stated that the Department of the Navy or higher military authority had the authority to repossess the properties on the area called the naval submarine base, and that the lease could then be terminated. It has been the understanding throughout the years that the purpose of the clause was necessary if military authorities would need the property in case of national emergency.

All the various leaseholders, including ourselves, have been notified by the Virgin Islands Corporation that all our leases have been canceled. It is beyond our understanding as to the moral and legal measures utilized in taking these steps. The people and firms who have signed these discussed leases with an official branch of the U.S. Government and signed by a Cabinet member of the Government did so in good faith with the belief that they could work toward developing and rehabilitating the properties leased to them. Most of the people put these efforts forth at a time when the U.S. Virgin Islands were not enjoying the improved economy of today.

Our firms employ a combined labor force numbering hundreds of persons, contributing substantially to the local economy.

If we did not have the foresight years back when the leases were negotiated, the Virgin Islands would assuredly have not enjoyed a good part of its growth.

I can honestly say that if our lease were not to be honored, this corporation would suffer irreparable damage to the extent that our firm could not survive.

To have a governmental agency arbitrarily cancel and void the legal leases without any reason is beyond comprehension as the U.S. Navy has declared these properties surplus and in doing so turned them over to the General Services Administration for disposal. The purpose in signing a lease is for the protection of the parties concerned. I am sure our Government is interested in seeing that not only are the legal rights of its citizens protected but also the moral rights.

Our firm has invested tens of thousands of dollars in rehabilitating its leasehold. Our lease is a valuable asset to this corporation and the actions of the Department of Territories has injured us as we are now in a tenuous position in not being able to negotiate business arrangements and plan for further growth until such time as this matter is clarified to our satisfaction.

We ask you as an elected representative of the people of our country to intercede in all our behalves to see that justice is done during the forthcoming Senate subcommittee hearings.

Sincerely,

HOWARD L. ROSOV,
President, Quality Sales Corporation.

THATCH FARM,
St. Thomas, V.I., October 23, 1963.

Hon. HENRY JACKSON,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR JACKSON: This document presents the case of the tenant of the area known as Thatch Farm, St. Thomas, V.I.

I arrived on St. Thomas during January of 1949 from New York City on a visit. Immediately all phases of life here appealed to me and I decided to make my home here. At the urging of a number of local residents I applied for a lease on 5 acres of property then known as the experimental station of the botanical gardens.

This land was part of a parcel of land purchased by the Navy Department during World War II. After the closing down of naval facilities this land was placed under the management of the Interior Department.

On my arrival, the St. Thomas Development Board, a local group, was handling the management of this property for the Interior Department.

I found a long wooden tool shed, termite-ridden, a 12-by-30-foot stone room with no roof or windows and several broken down nursery floors. I applied for this land to furnish tourist accommodations and to restore as a nursery. The governing board approved my application and tendered me a 99-year lease, renewable every 10 years upon application in writing 6 months before expiration of each 10-year period.

This property had no water, electricity, or sewage disposal. With money I had saved before and during my military service, and a loan from my brother, I proceeded to clear the land. I found about 1 acre of flat land, with the balance rising in steep hillsides. I ran water in from a quarter of a mile away and paid the power company to run in current and finally had to hack a road out of the hillside. I further improved the property by building cottages for tenants plus living accommodations for myself, plowing every cent earned back into the property. I augmented what moneys I had by working nights on various jobs and have finally built up a thriving plant nursery business. Approximate costs to me have been over \$40,000 and 10 years of my own hard labor.

The lease required three signatures for approval: The development board, the Governor of the Virgin Islands, and finally the Municipal Council of St. Thomas. Please note that this final signature, making the lease binding was not affixed until January 17, 1950.

In July of 1959 I stated my intention to exercise option in renewal. At this point the Interior Department, now managers of the property, wrote that they chose to accept the Governor's signature as the final one and not the municipal council's, that I was therefore late in applying for renewal, obviously did not want to renew, and had 60 days to vacate the property. This was a great shock to me and their actions quite incomprehensible.

After many discussions and presentation of facts I was issued a new lease by the Interior Department on October 15, 1960, for a 10-year tenure with no options for renewal. This was very arbitrary in action and left me no opportunity to recoup investment or to make any further additions. The Interior Department made no reimbursements for investment and at the end of the 10 years I will have found myself completely bereft of all possessions and with no source of income—not a pleasant prospect for middle age.

I was counseled to accept this lease however and to hope for some readjustment during the 10-year period to 1970.

On the 15th of August this year, the Interior Department informed me that the Navy Department was repossessing its Virgin Islands properties and therefore the lease was canceled and I was placed on a 30-day notice.

First of all, I have in writing from my first lease that "It is the intention of the Navy Department that the right to revoke permit shall be exercised only in the event of military necessity or by reason of a national emergency."

Secondly, this lease cancellation by Interior states that the Virgin Islands Corporation "will in turn tender to you a sublease substantially equal to the instrument canceled."

Now on the 7th of September 1963, I am offered a 2-year lease by Interior Department, canceling out the other 5 years of my lease.

To sum up, I place all these facts before you and rely upon good intentions and justice so that there may be honor in our Government department actions and decisions that written contracts cannot be summarily broken.

I request consideration of the restoration of my first lease or a substantial period of at least 25 years so that the security I have earned cannot be destroyed and my faith restored in the given words of any member of our governing bodies in Washington.

Respectfully yours,

JOSEPH MARONNA.

ARENA, INC.,
St. Thomas, V.I., October 23, 1963.

Re canceled lease by Department of Interior, building No. 133, Bourne Field, St. Thomas, V.I., owned by U.S. Navy.

Senator HENRY M. JACKSON,
Chairman, Senate Subcommittee on Territories,
New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The undersigned executive vice president of above-stated corporation has just been informed of hearings before the Senate Subcommittee on Territories of which you are chairman regarding the leases of U.S. Navy properties canceled by the Department of Interior that was managing these properties by a permit of the Navy.

I am submitting to you a copy of the lease that Arena, Inc., received in 1958 respectively 1960 on building No. 133 in order to establish the first bowling lanes in the island of St. Thomas. This was done with a considerable investment. This lease has been canceled per September 3, 1963, by a letter received from Mr. A. Kirwan, Assistant Director of the Department of Territories.

Owing to the adverse publicity that the cancellation of the lease held by Arena, Inc., has received here, the corporation has lost a management contract as per attached copy that I submit to you for your perusal. The reason to terminate the management contract per November 9, 1963, is stated in Mr. Butler's letter addressed to me. I am also submitting a copy of this letter to you which is self-explanatory.

At the moment it cannot be estimated which effect the cancellation of this management contract will have on the financial status of Arena, Inc. This contract was necessitated through my poor state of health that did not allow me to manage the bowling lanes, etc., myself. Unfortunately, my doctor's advice is still not to assume any additional work.

Thanking you for your consideration in this matter and no doubt your assistance in case you and the members of the committee should come to the conclusion that our lease should not have been terminated the way it was done or replaced by a permit that does not consider any protection regarding the investments made based on our lease.

Respectfully,

ERWIN GROSS, Vice President.
[Enclosure] BOURNE FIELD, ST. THOMAS, V.I.

Re management contract.

Mr. ERWIN GROSS,
St. Thomas, V.I.

DEAR Mr. GROSS: With reference to my call on you with Mr. Williams and our verbal discussion regarding your lease of building No. 133 in which the bowling lanes are located.

I regretted to learn from you that your lease was terminated by the Department of Interior and that you were promised a permit of uncertain time limit with a notice to vacate building No. 133 within 60 days either by Virgin Islands Corporation or any other agency that will take over this Navy or U.S. Government property.

I had to tell you that during the 9 months of managing your establishment we have reached the limit of our possibilities to increase business. I told you that my comanager and myself could only improve results for ourselves if we

could make some changes that would involve an additional investment of approximately \$4,000. However in view of the adverse publicity in our newspapers and your admission that you cannot make such changes nor to give us the go ahead with them on our own account owing to the uncertainty of keeping the building for the duration of the lease, i.e., until September 1966, we have decided to terminate our management agreement with Arena, Inc., per November 9, 1963. Please confirm termination accordingly.

Sincerely,

WILLIAM BUTLER, *Comanager, Arena Bowling Lanes.*

Senator DOMINICK. If there is no further business, we will adjourn.

(Whereupon, at 1:25 p.m. the committee was recessed subject to call.)

(Under authority previously granted the following communications are included in the hearing record:)

ADDITIONAL STATEMENT OF DONALD STANFORD, L'ESCALE, INC.

Chairman Jackson and members of the subcommittee, as per your request, the following is the continuation and conclusion of the statement that I desire to make following the second interrogation of Mr. John J. Kirwan by the members of the Senate subcommittee.

Although there are many things that I feel impelled to correct with regard to the testimony of Mr. Kirwan I shall, for this occasion, limit myself only to the single matter concerning my occupancy of the airport terminal in St. Thomas for the purpose of correcting one more inaccuracy by Mr. Kirwan.

The record shows that during Mr. Kirwan's first interrogation he stated that the premises known as L'Escale never went out on bid. This statement was proven to be false, as I submitted to you photostatic copies of the solicitation to bid issued by the Virgin Islands Corporation during the month of March 1955. Mr. Kirwan, in his rebuttal, stated that the solicitation to bid that I presented was of questionable relationship to my negotiation for these premises because some 18 months had elapsed between the bid and the negotiation with me. Once again, Mr. Kirwan is inaccurate. My negotiation did not begin 18 months later. In fact, it actually began approximately 4 weeks after the solicitation to bid was sent out by Vicorp. The Vicorp records will show that the first rent that I paid for a part of the premises in question was paid during the month of April in 1955 and not at the date that the lease was signed, which was November 1956.

I previously testified, as is indicated by my written outline of testimony on page 4, captioned "Renewed Interest," and I quote, "Almost a year later, in August 1956, after I had more or less given up the idea of investing in the Airport Terminal Restaurant, I received a letter from Vicorp advising that the litigation had been resolved in its favor, and soliciting my renewed interest."

The facts behind the above quotation are simply these: In 1955, approximately 1 month after the bids had been opened, Vicorp had only one bidder with a bid of \$1,000 for annual rent. Vicorp rejected this bid as it was \$200 per annum less than they requested as a minimum. The reason for the lapse of time before my occupancy was due to the litigation, as it was agreed between the Vicorp officials and myself that there would be little point in my attempting to open a first-class restaurant facility in competition with the existing food-handling counter that I have already described in my earlier testimony.

May I reiterate, the first rent that I paid on the premises that I was later to occupy was paid to Vicorp during the month of April 1955. To further authenticate this statement, I herewith submit photocopies of the architectural drawings that were made for me by Norman Cherner Associates for a partial area of the premises that I now occupy. I especially call your attention to the date on this architectural drawing.¹ The date, Mr. Chairman and members of this subcommittee, is May 5, 1955.

May I once again take this opportunity to thank you for your invitation to appear at this hearing.

¹ The drawings referred to are in the files of the committee.

VIRGIN ISLANDS CORPORATION,
St. Croix, V.I., November 4, 1963.

Mr. MICHAEL RESCH,
Care of Tropic Isle Hotel,
St. Thomas, V.I.

DEAR MIKE: At the Interior and Insular Affairs Subcommittee hearing in Washington last Wednesday you made the statement that I had given you written permission to make certain improvements on the Tropic Isle Hotel. In order not to prolong the hearing any more than it had already prolonged, I did not go on record at that time to correct what I think is a misstatement. You may recall that I discussed this with you after the hearing and requested that you try to find a copy of this written permission so that the record would be completely in order.

I have now gone through all of our files here and can find no such written permission.

In view of this fact, I would appreciate your either sending a copy of the letter which I wrote to you (and I would appreciate a copy being sent to me) to Senator Henry Jackson, chairman of the committee, or writing to him that you do not have such a letter.

I do this only for the record, since the repairs which you mentioned were of such a minor nature.

With kindest personal regards.

Cordially,

ROBERT P. CRAMER, *President.*

ISLAND BEACHCOMBER HOTEL,
St. Thomas, V.I., November 7, 1963.

Mr. ROBERT P. CRAMER,
President, Virgin Islands Corp.,
Christiansted, St. Croix, V.I.

DEAR BOB: With regard to your letter dated November 4, and the statement made by me at the subcommittee hearing in Washington that you had given me written permission to make certain improvements at Tropic Isle, I stand corrected.

This permission was granted by Mr. Richard Holmberg, former manager of Vicorp, in his letter to me dated December 21, 1961. Enclosed is a photostat of this letter, along with photostats of my requests dated November 8 and December 1, 1961.

Please accept my apologies for the erroneous statement.

Kind regards.

Cordially yours,

MICHAEL J. RESCH.

NOVEMBER 8, 1961.

Mr. RICHARD HOLMBERG,
Virgin Islands Corporation, Development Department, St. Thomas, V.I.

DEAR Mr. HOLMBERG: I am hereby requesting permission to continue the existing porch reef by 30 feet on the south side of building No. 52, otherwise known as Tropic Isle Hotel. The construction will be the same as the present roof.

Thank you.

Very truly yours,

NICHAEAL J. RESCH.

DECEMBER 1, 1961.

Mr. RICHARD HOLMBERG,
Virgin Islands Corporation, Development Department, St. Thomas, V.I.

DEAR Mr. HOLMBERG: Please refer to our copy of November 8, requesting permission to extend the existing porch roof on south side of building No. 52, otherwise known as Tropic Isle Hotel. I would like to request further permission to incorporate this same roof to make a partially screened porch room 12 feet by 14 feet.

Thank you for your consideration on this, I remain

Very truly yours,

MICHAEL RESCH.

VIRGIN ISLANDS CORPORATION,
DEVELOPMENT DEPARTMENT,
St. Thomas, V.I., December 21, 1961.

Mr. MICHAEL RESCH,
Island Beachcomber Hotel,
St. Thomas, V.I.

DEAR MR. RESCH: This will refer to your correspondence of December 1 requesting permission to extend the existing porch roof on the south side of building 52 and to make a partially screened porch room 12 feet by 14 feet.

Approval is hereby given for the extension and construction as outlined above. Your attention is called to paragraph (h), page 4, of the lease between Allison Enterprises, Inc., and Vicorp covering the rental of building 52. This paragraph states in pertinent part that "permanent improvements to the leasehold made by lessee shall be and remain the property of the lessor." Your lease further provides that the rent from the 11th to the 20th year will be determined in accordance with an arbitration clause located in paragraph (b). At the time of arbitration, all improvements made to the leasehold will be considered as property of the Government for purposes of determining the new rental to be charged from the 11th to the 20th year.

Sincerely yours.

RICHARD J. HOLMBERG, *Manager.*

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
November 14, 1963.

Hon. HENRY M. JACKSON,
Chairman, Territories and Insular Affairs Subcommittee, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of a statement from Mr. Anthony T. Lausi, former Director of the Office of Territories, Department of the Interior. This statement was directed to me in response to certain questions that I propounded to Mr. Lausi in order to clear up some gaps in the testimony before the Territories and Insular Affairs Subcommittee regarding the leasing of Navy property in the Virgin Islands.

I spoke with Senator Nelson whom you appointed as acting chairman for the purpose of these hearings. Senator Nelson also suggested that I send copies of this statement to John Carver, Assistant Secretary (Public Land Management), and John J. Kirwan, Assistant Director, Department of Territories. This has been done under separate cover.

I respectfully request that this statement be placed in the hearing record at the appropriate time.

Sincerely yours,

PETER H. DOMINICK, *U.S. Senator.*

NOVEMBER 12, 1963.

Hon. PETER DOMINICK,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR DOMINICK: This letter is in response to your several questions concerning the leasing by the Department of the Interior of the naval properties known as the submarine base and the Marine Corps air facility located on the island of St. Thomas, V.I.

1. I served as Director, Office of Territories, Department of the Interior between May 1, 1955, and March 3, 1961. Prior to this appointment, I served as Deputy Director from early November 1953.

2. During the period of my employment as Deputy Director, and Director, Office of Territories, I had knowledge of the leasing of the properties to private parties by the Virgin Islands Corporation (Vicorp). In order that you may more clearly understand the situation, the following is a brief résumé of the facts concerning the matter:

On January 1, 1948, the Department of the Navy transferred to the Department of the Interior the management and operation of the properties involved, reserving the right of repossession at any time, but stipulating its intention of exercising such repossessionary right only in the event of a national emergency. The Department of the Interior in turn delegated its authority with respect to the properties to the local Virgin Islands government. The local government, under this authority, granted many long-term leases on certain parcels of the properties.

In early 1954 the Governor of the Virgin Islands, who had only recently assumed that position, received a communication from the Department of the Navy enumerating a long list of deficiencies which were found to exist in the course of the annual inspection made of the properties by the Navy. The cost to correct the deficiencies was estimated to be in excess of \$400,000. Confronted with this situation, the Secretary of the Interior revoked the agreement with the Virgin Islands government, and arranged to have the properties managed and operated by Vicorp. The Secretary of the Interior, by law, serves as a member of the Board of Directors of Vicorp, and since the Corporation has been in existence, the Secretary of the Interior has served as its Chairman of the Board of Directors.

The Secretary of the Interior sent a communication to the President of the United States requesting approval for Vicorp to receive and disburse funds accruing from the operation of the properties, which was granted. The President then informed the Speaker of the House of Representatives and the President of the Senate of this approval. It is my understanding that such a procedure is required under the act of Congress establishing Vicorp.

Vicorp then proceeded to carry out the responsibilities assigned, and a committee of three, the Governor of the Virgin Islands, a member of the Vicorp Board of Directors, one other member of the Board, and the President of Vicorp, was appointed to review and pass on all leases entered into on the properties. All such leases thereafter were also reviewed and passed on by the entire Board of Directors prior to submission to the Secretary of the Interior for his formal approval and signature. Elliot Gray was employed by Vicorp to manage the properties, and to undertake the necessary steps to correct the deficiencies noted in the previous annual report by the Department of the Navy. In addition, Vicorp employed Timothy V. Dillon, a very competent Washington attorney, as a consultant to review the then existing leases, and the preparation of future leases on the properties. In this capacity Mr. Dillon carried on most of the negotiations that were required in entering into new leases, and also prepared a standard form lease.

3. With respect to the representations or assurances given to the lessees in connection with their leases with Vicorp, the leases were very detailed in every regard, and any party thereto was well informed of the terms and conditions of the document. In addition, Mr. Dillon, who negotiated most of the leases was very careful to explain to the lessees the terms of the lease, with particular reference to the rights of the Navy to repossess the properties. To the best of my knowledge each lessee understood that the Navy did not intend to repossess the properties except in the event of a national emergency. There is no question in my mind that each lessee believed that he was getting a term lease subject to its terms and conditions, and that this was the intent of the lessor.

4. During my employment with the Department of the Interior, Mr. John J. Kirwan, presently Assistant Director, Office of Territories, was serving on the staff of the Secretary of the Interior as a property management analyst in the Division of Property Management. This Division functioned under the direction of the Assistant Administrative Secretary.

After a lessee was selected following the normal procedures, a lease was prepared in the office of the Associate Solicitor. Generally the Assistant or Acting Assistant Solicitor for Territories prepared such leases. In addition, a memorandum for my signature as Director, Office of Territories, addressed to the Secretary of the Interior, and explaining briefly the terms of the lease, was also prepared and attached to the lease. The memorandum and the lease were then signed by the individual preparing the same, and the Associate Solicitor, indicating their approval. These documents were then sent to me, and if I approved I would sign the memorandum to the Secretary, and send it forward to the Administrative Assistant Secretary. At this point, under the normal procedures, the Division of Property Management would review the documents, and if anyone in the Division having responsibility had objections to the lease he could make them known to the Administrative Assistant Secretary. Following this review the documents were reviewed by the Solicitor, or someone authorized by him, the Under Secretary, and then would be presented to the Secretary for his signature if he approved. To the best of my knowledge, none of the above-named officials, or their subordinates objected to any leases which I sent forward for Secretarial approval on the properties concerned.

5. The purpose of granting leases on the properties was twofold: (1) the Department of the Interior, in assuming responsibility for the properties was required to maintain same in good condition, and it was believed that this could best be accomplished by having tenants occupying the properties under appropriate leases; and (2) perhaps most importantly, the properties were situated

on the best available sites that would be conducive to development of the island. Many of the buildings on the properties were suitable for use as hotels, restaurants, and other facilities which were badly needed to take care of the fast expanding tourist industry.

When the Department of the Interior assumed responsibility for the properties, the tourist industry was in its infancy. The normal tourist season extended from about the middle of December to the 1st of April. In 1954 the Congress enacted Public Law 517, the Revised Organic Act of the Virgin Islands, and several provisions in this act were designed to assist the development of the economy of the Virgin Islands. It was anticipated that the tourist industry would expand, and facilities would be needed to implement this expansion. The properties concerned offered the best hope in this respect, if tenants could be found willing to expend their own funds for improvements, etc., and knowing full well that the Navy could repossess the properties at any time. The tourist industry has flourished in the past several years to the point where, since about 1957, it has become a year-round business. Without doubt, the hotels, restaurants, and other facilities located on the naval properties contributed greatly to the economic development of the Virgin Islands.

6. At no time during my tenure in the Department of the Interior did any official in authority in the Department of the Navy object to the leasing of the properties. It is apparent from the files at the Department of the Interior that the Department of the Navy was fully aware that long-term leases were being placed on the properties. As one example, on November 26, 1947, just prior to the Department of the Interior assuming the responsibilities for the property, a letter signed by A. D. Hunter for the Chief, Bureau of Yards and Docks, Department of the Navy, to the CO, U.S. Naval Sub Base, St. Thomas, contains the following statement: "Among other things it is provided in this permit that all leasing and licensing of specific facilities shall be the responsibility of the Department of the Interior." Again, on September 5, 1958, the Secretary of the Interior wrote to the Secretary of the Navy requesting Navy's views with regard to permitting lessees to construct major improvements on leased premises. The Navy replied that no major improvements which would render the properties unsuitable for immediate naval use should be permitted. Many conferences were held with officials of the Navy on various questions relating to the properties, and at no time was objection made to the leasing of the properties.

To the best of my knowledge and recollection, the above represents my answers to your questions. These answers are the result of my personal knowledge of the matter, and facts contained in the files of the Department of the Interior, which I had opportunity to briefly review in the past few days. I have not attempted to answer any of the legal questions that may be involved in the present controversy since I consider myself not qualified to do so. If I can be of further assistance to you in this matter, please do not hesitate to call upon me.

Sincerely yours,

ANTHONY T. LAUSI.

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., November 18, 1963.

HON. PETER DOMINICK,
U. S. Senate,
Washington, D.C.

DEAR SENATOR DOMINICK: Thank you for sending me the statement of November 12, 1963, made by Mr. Anthony Lausi. I found Mr. Lausi's paragraph 4 dealing with me as an individual quite surprising, since I had taken pains in my own testimony to avoid any ad hominum approaches.

I found the last sentence of paragraph 4 very disappointing. When Mr. Lausi was in my office 2 weeks ago—where I made our files available to him for 2 days—we reminisced about the good old days, and the long, heated, complicated battles I used to have with the Associate Solicitor about these leases. It was Mr. Lausi himself who first adverted to these endless fights I had over them. It seems so unnecessary to me for him to have gone out later in the same week and made the statement that I had never objected to these leases.

Senator Mechem asked me during the hearings why we did not have the ordinary decency or humility to have admitted we had made a mistake in issuing the leases (I am paraphrasing from memory) rather than engage in the elaborate circumlocutions and lack of candor with the lessees. I gave Senator Mechem an unconvincing reply that it was just contrary to human nature to admit mistakes. This was not the case at all—since I as an individual had not been in

office at the time and had not made this particular series of mistakes. I have made many others but none where issuing Virgin Islands leases on St. Thomas are concerned. My reason for not gleefully confessing to the lessees that a mistake had been made was that it would be tasteless for me to have so easily fobbed off the blame onto Mr. Lausi, and his colleagues, who, whatever their errors and incorrect actions, I believe to have been acting in the public interest as they saw it.

I would hope that my successor in this office, in 1969, will find it possible to gloss over as many of my mistakes as he reasonably can, and I hope that I, in turn, will not seek to postdate them so as to make them seem to be his, or ours jointly.

Find enclosed a copy of my letter of this date to Senator Nelson.

Sincerely yours,

JOHN J. KIRWAN, *Assistant Director.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF TERRITORIES,
Washington, D.C., November 18, 1963.

HON. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: On November 14, 1963, Senator Peter Dominick brought to your attention a statement dated November 12, 1963, from Mr. Anthony Lausi, and asked that it be made a part of the record of the hearings held October 29-30 on certain leases in the Virgin Islands.

This statement refers to me by name at some length, the first ad hominum reference in the hearings, and a marked departure from the impersonal testimony given by all other witnesses at the hearings. It is also not clear what relevance such comments have to the issue before us.

I am writing to you now and asking that this letter also be made a part of the record to the same extent as the statement of November 12, 1963, because the statement misrepresents my past position on this matter to be the exact opposite of what it was consistently for 6 years. I am particularly resentful of this since it is very difficult to see how such a misrepresentation could be other than calculated.

The first time I ever saw a Virgin Islands lease was in April 1957. I protested it at the time, instantly and insistently, and I continued to protest each of these leases with increasing shrillness and vehemence until finally officially ordered to mind my own business. No responsible official interested in and affected by the months' delay I caused with these instruments could have any doubt whatsoever of either the nature of my objections or the firmness with which I held them.

Fortunately, Mr. Lausi's total loss of memory on this point is not likely to be shared by any of the responsible officials who were here both then and still now, such as the Director of Property Management, the Administrative Assistant Secretary, and in particular Mrs. Van Cleve, both then and now the Assistant Solicitor for Territories, and a witness designated by Interior for the hearings.

In addition, my memoranda of May 20, 1957, and March 30, 1959, on this subject spell out in great detail both my objections to the leases and a warning against letting the Secretary sign them. I said as early as the 1957 memorandum that there was no legal basis for such leases, that the Solicitor would not indicate the source of the legal authority, if any, relied upon, and declined to give any written rationale for them, that we were misleading innocent tenants by letting them believe these were valid leases, and that they stood the chance of risking sizable investments made in good faith in the future. I urged that Secretary Fred Seaton not be allowed to put his signature on such questionable documents and I believe I served him better in this affair than those who allowed him to approve documents he personally could have no way of knowing were invalid.

I regret that there is any sentiment for bringing personalities into this matter, but if any member of the committee has any doubt as to my position, as misrepresented by paragraph 4 of the statement of November 12, I would welcome the closest inquiry on such point.

Sincerely yours,

JOHN J. KIRWAN, *Assistant Director.*

