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HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

NOMINATIONS OF

JUNE 14, 1971

JOHN W. BARNUM, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION, VICE JAMES A. WASHINGTON, JR.

JUNE 28, 1971

VIRGINIA MAE BROWN, DALE W. HARDIN, AND LAURENCE K. WALRATH, TO BE COMMISSIONERS OF THE INTERSTATE COMMERCE COMMISSION

JUNE 30, 1971

DOUGLAS W. TOMS, TO BE ADMINISTRATOR OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Serial No. 92-24

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HEARINGS
BEFORE THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
SEVENTY-SECOND CONGRESS

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Biographical sketch
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**JOHN W. BARNUM OF NEW YORK, TO BE GENERAL
COUNSEL OF THE DEPARTMENT OF TRANSPORTA-
TION, VICE JAMES A. WASHINGTON, JR.**

MONDAY, JUNE 14, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 9:40 a.m. in room 5110, New Senate Office Building, Hon. Howard W. Cannon, presiding.

Present: Senators Cannon, Cotton, and Pearson.

Senator CANNON. The hearing will come to order.

This morning we are holding a hearing on the nomination of John W. Barnum of New York to be general counsel of the Department of Transportation, vice James A. Washington, Jr.

Mr. Barnum, would you come up and take a seat here, please. We have a biographical sheet that has been filed and a financial statement is also in the hands of the committee.

Would you care to make any opening statement or a brief summary of your background, sir, for the benefit of the committee?

STATEMENT OF JOHN W. BARNUM

Mr. BARNUM. Thank you, Senator. I have no opening statement to make. A letter which I addressed to Senator Magnuson under date of May 3 has in it a brief biographical description of myself. I would be happy to elaborate upon any aspect of that which the committee thought appropriate, but I do not want to take your time unnecessarily.

(The biographical sketch follows:)

BIOGRAPHICAL SKETCH OF JOHN W. BARNUM

Date of birth: August 25, 1928.

Marital status: Married, 3 children.

Home address: 1158 Fifth Avenue, New York, N.Y.

Education:

Yale, B.A. Latin American Affairs, 1949.

Yale Law School (Law Journal) LL. B. 1957.

Admission to bar:

Connecticut 1957.

New York 1958.

Employment:

1958—Present—Partner, CRAVATH, SWAINE & MOORE (45 partners, 110 associates; partner since January 1, 1963).

1952—1954—2d Lt., United States Army, Germany and Korea.

1951—1952—Bache & Co., London and Paris.

1950—First Banking Corporation, Tangier, Morocco.

Other activities :

Director and member of the Executive Committee of the American Arbitration Association.

U.S. Delegate to Inter-American Commercial Arbitration Commission.

Director and member of Executive Committee of the N.Y. City Center for Music and Drama.

Chairman of the Board of International Play Group (a pre-school for United Nations and other foreign children in New York City).

Senator CANNON. Now, in addition to your financial statement, you have been asked to obtain a letter from the Department of Justice concerning any conflict of interest or appearance thereof. From the Department's letter it appears that three investments could possibly create a conflict. It is my understanding that the committee now has a letter from you indicating that you have made arrangements to sell outright certain shares in one of those investments and place two other investments in a blind trust. Is that correct?

Mr. BARNUM. That is correct, sir. The Department of Justice wrote to Chairman Magnuson under date of May 17 calling attention to the same three investments that your staff had called to my attention, and I, by letter dated June 1, advised Chairman Magnuson as you have indicated.

Senator CANNON. In your biographical statement you indicated that you represented certain clients active in transportation. That is, Allied Chemical, Firestone, General Dynamics, General Motors, Youngstown, Westinghouse Air Brake, and Westinghouse Electric.

Did you represent any of these interests before the Federal Government in any way?

Mr. BARNUM. Yes, sir. I represented Allied Chemical in a proceeding before the Federal Trade Commission wherein the Federal Trade Commission attacked an acquisition by Allied Chemical of the Jim Robbins Seatbelt Co. That was a proceeding conducted here in Washington.

Senator COTTON. How long ago was that?

Mr. BARNUM. Two years ago, Senator Cotton. I believe it was 2 years ago. It was within the last 2 years. The result of that proceeding was a consent order approved by the Federal Trade Commission whereunder Allied Chemical was required to divest itself of certain seatbelt manufacturing assets.

Senator CANNON. Do you have any specialty in transportation, for example in Federal Aviation, the Interstate Commerce Act or other expertise?

Mr. BARNUM. My principal expertise relevant to my position at the Department of Transportation will be in the area of antitrust and the regulatory activities of the Government. I do not have any particular expertise in the Federal Aviation Act or the Interstate Commerce Act.

I would not like my silence to indicate that I have not had activities for some of these other corporations vis-a-vis the Government. I mentioned only Allied Chemical, the one that you mentioned first. I have also had activities on behalf of General Motors in antitrust division inquiries and lawsuits; on behalf of Westinghouse Electric, also largely in the antitrust area; and General Dynamics also in the antitrust area but having nothing to do with transportation. It had to do with carbon dioxide.

Senator CANNON. Senator Cotton.

Senator COTTON. Thank you, Mr. Chairman.

With the permission of the chairman, I would like to insert in the record a letter I received from Senator Buckley supporting Mr. Barnum.

Senator CANNON. It will be made a part of the record.

(The letter follows:)

UNITED STATES SENATE,
Washington, D.C., June 11, 1971.

HON. NORRIS COTTON,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR NORRIS: I wish to support the nomination of Mr. John W. Barnum as General Counsel to the Department of Transportation.

I have known Mr. Barnum for many years, and know him to be a very capable lawyer who has taken a leave of absence from his law firm at considerable personal sacrifice in order to accept this position. He is the kind of man who will serve the nation with great capability.

Yours sincerely,

JAMES L. BUCKLEY,
U.S. Senator.

Senator COTTON. Turning for a moment from any question about your possible holdings in companies that might give rise to a conflict of interest, I note that you indicate that in the event you are confirmed, you have no arrangement with or presently contemplated plan to re-enter your firm should your employment with the Federal Government terminate.

Mr. BARNUM. That is correct, sir.

Senator COTTON. This is a question we usually ask people. We do not expect to make slaves of them or make it impossible for them to change their mind, but if you are confirmed, is it your intention to serve out the full term?

Mr. BARNUM. I do not have a term as such.

Senator COTTON. I mean, serve out the term as long as the President wants you.

Mr. BARNUM. I am here at the pleasure of the President; yes, sir.

Senator COTTON. Just one more question. This has nothing to do with conflict of interest or any clients you represented. Have you some background or personal interest in the general field of transportation?

Mr. BARNUM. Very much so, sir.

Senator COTTON. And what has been the nature of that interest? I mean being interested in the sense of something that you have found yourself personally interested in and not financial.

Mr. BARNUM. I am very much concerned with the problems which modern day transportation present and I am specifically interested in attempting to find ways in which the various modes of transportation can both cooperate and compete.

Senator COTTON. Now, I am interested to note that you have New England connections. You have a home in Old Lyme, Conn., and you also have a summer place in Vermont.

Mr. BARNUM. Yes, sir.

Senator COTTON. What town in Vermont?

Mr. BARNUM. It is in Waitsfield, Vt.

Senator COTTON. Where is that?

Mr. BARNUM. It is on Route 100, about two-thirds of the way up the State, right in the middle. It is a town that has come to life in the

last 15 years through skiing. It is near Mad River and Sugar Bush and Glen Allen which I am sure you are familiar with.

Senator COTTON. Is it north of Rutland?

Mr. BARNUM. Yes, sir. It is about an hour north of Rutland, about 20 minutes south of Montpelier.

Senator COTTON. I see. Well, then, I just want to make a little something of that. Since you know something about Vermont and have spent some time there, I solicit your very keen interest and cooperation in trying to help us get some air transportation for northern New Hampshire, Vermont, and Maine. As you probably know, New Hampshire and Vermont, they have less access by air than any other section in the country. We have no railroad service at all, and if we are going to continue to exist we have to have some air service. I do not know whether you are aware of the situation.

Mr. BARNUM. I was made very much aware of this situation during this past year when Mohawk Airlines was on strike and we had to improvise ways to get up to Vermont.

I thought the Senator was going to make reference to the late and great Vermont Central which I used faithfully while it was still operating through my part of the State.

Senator COTTON. It has been so long since we have had any railroad service up in those areas that we have come to accept it as a matter of course. Any endeavors in that line would only be in the nature of a postmortem.

I also note that you have an interest with a partnership investment in a housing project in Nashua, N.H.

Mr. BARNUM. Yes, sir.

Senator COTTON. That is the Amherst Street Associates. Is that a business group in New York?

Mr. BARNUM. No, sir. I believe its headquarters are in Massachusetts. It is a housing project which I and some of my law partners helped finance through a limited partnership.

Senator COTTON. Well, I think that you will find that in the Department of Transportation they are fully aware of our transportation situation. It really is exceedingly serious. Northeast has never given us any real air service. When Northeast had the responsibility, and some years ago I introduced a bill which passed and which enabled the trunkline air carrier to receive subsidy for certain marginal service upon which they were losing money without affecting their other operations. Northeast, however, felt that receiving such assistance would jeopardize their constant seeking of new routes, so it turned the subsidy back. Then, it shifted the responsibility to Mohawk; and even before the strike Mohawk was cutting us down as far as possible.

In fact, about every other year during the last 10 years, we have had to have a knockdown, dragout fight to get Mohawk to continue to stop once a day each way on their way from Albany to Boston, and service from northern Vermont and New Hampshire to Boston now is under an uncertificated airline, Executive. They do the very best they can, but the type of equipment they have makes it very unsatisfactory. I have sat on this committee and it's aviation subcommittee for about 10 years now, and I am getting clear fed up to my teeth with a lot of kind words from the CAB and from the FAA. There also have been a lot of empty promises from various airlines. This is something I am

going to make a continuous nuisance of myself about, and Secretary Volpe is aware of my intentions in this regard, as are Mr. Shaffer and the CAB. I now want you to be made aware of it.

I am delighted that you have had occasion to go back and forth from northern Vermont. I hope, based upon your own personal experience, I can look forward to a sympathetic ear and some active cooperation from you in keeping the Department of Transportation conscious of our problem. May I hope for that?

Mr. BARNUM. You certainly will have my cooperation, Senator.

Senator COTTON. Well, that gets you my vote all right.

Senator CANNON. Senator Pearson.

Senator PEARSON. Thank you, Mr. Chairman.

Mr. Barnum, I do not have any questions. I want to observe, however, that there is no lack of challenging problems at the Department of Transportation. This seems to me to be a unique opportunity to serve the public good.

I have not been on this committee many, many years, but I recall when we first set up the Department of Transportation. When DOT was a new agency getting its feet on the ground, we had a change of administration. I thought perhaps my leader here, Senator Cotton, might make reference to this—the Department of Transportation in the past year has been very tardy in sending up the required reports that the Congress has requested. Very frankly, in the past 2 years we have had a difficult time getting recommendations from the Department on legislation. They have placed the ranking member in an awkward position. Many of us have been left in limbo as to what the administration position was.

So to the extent that you can properly aid that—and I make no criticism of the Secretary because many of these things have to come from down below—but to the extent that we can have a little more guidance on administration positions to the extent that we can have our reports a little more promptly, you would win favor of this committee. I wish you well, and I believe you are going to have a great opportunity to help us all.

Mr. BARNUM. Thank you, Senator Pearson. I take it as a great challenge, too, and I can assure you that I will be down below in the boilerroom working on those things for Secretary Volpe, too.

Senator COTTON. You will do well to help us. However, I am sure the Senator from Kansas will agree because he knows from the history of these troubles that in justice to Secretary Volpe and the Department of Transportation, I do not think they have been so much to blame for this problem we have had. It has been a problem, because as the senior Republican on this committee, I have had to constantly go to the chairman of the full committee and to those of our subcommittees begging them to postpone hearings in order to get extra time to receive the recommendations of the administration. In most instances, I think the Department of Transportation has known what it wanted, but it has been a case of getting the approval of the Office of Management and Budget and the White House. There are a lot of people down there who have to pass on these recommendations. I have made this problem known to the White House, but it is good that the Senator from Kansas brought it up. I practically gave my word a short time ago to Chairman Magnuson that unless something very, very,

very crucial were at stake, I was not going to come and bother him about postponing hearings or actions on legislation.

I do not think the fault has been so much in the Department as it has been the Department trying to get approval from the administration on its particular position before coming up here.

Senator PEARSON. I think the Senator is right. We just ask you to straighten up the White House, too, while you are down there.

Senator COTTON. Yes; and then when you get that done, tell us how you did it.

Senator CANNON. Mr. Barnum, one of the criticisms leveled at DOT is that while it was established to help achieve better coordination in the development of national transportation policy, little has been realized along these lines.

Do you contemplate taking any action which would help achieve coordination; and if so, what?

Mr. BARNUM. Senator, I have not yet had sufficient time to know exactly where the national transportation policy statement stands within the Department. I believe one is, of course, in preparation and, of course, one of my greatest interests is going to be in both the statement and implementing such a policy. I do know that the President's reorganization message contemplates a reorganization of the transportation activities of the Government, both administrative and regulatory, and I think that, too, contains a contribution to future coordination of transportation.

Senator CANNON. Thank you very much, sir.

Mr. BARNUM. Thank you, sir.

Senator CANNON. The hearing shall stand in recess.

(Whereupon, at 10 a.m., the committee was adjourned.)

ONE CHASE MANHATTAN PLAZA,
New York, N.Y., June 1, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I refer to my letter to you of May 3 and its enclosure describing my financial situation, both of which were submitted to you in connection with your Committee's consideration of the President's nomination of me to be General Counsel of the Department of Transportation.

Following conversations with members of your staff, and in view of the letter from the Department of Justice which flagged the same three possible conflicts, I have made arrangements to sell outright the 530 shares of Mobil Oil and to place in a blind trust my limited partnership investments in Port Arthur Terminal Company, and RCL Company. I submit herewith a photocopy of the trust agreement. Richard S. Simons, who is the trustee, is a partner in the Cravath firm.

I trust that you or your staff will advise me if you have any further questions concerning my financial affairs.

Respectively yours,

JOHN W. BARNUM.

Enclosure.

AGREEMENT DATED MAY 24, 1971, BETWEEN JOHN W. BARNUM, OF NEW YORK (SETTLOR), AND RICHARD S. SIMMONS, OF PLANDOME MANNOR, NEW YORK (TRUSTEE)

The settlor hereby transfers and herewith delivers to the trustee the property described in Schedule A annexed hereto, and the trustee, for himself and his successors, acknowledges receipt of such property, and agrees to hold, invest, reinvest and otherwise deal with such property and with any other property which may be given, bequeathed, devised or otherwise transferred to him for the purposes hereof, in trust as hereinafter provided.

The primary purpose of this agreement is to transfer to the trustee all decisions as to when and to what extent the original assets of the trust are to be retained or sold and how the proceeds of any sale are to be reinvested, without any participation in or knowledge of such decisions by the settlor. Accordingly, the settlor directs that the trustee shall not at any time disclose to the settlor in any way what assets are held in trust hereunder, any rule of law governing the administration of trusts to the contrary notwithstanding.

ARTICLE I

TRUST FOR SETTLOR

(A) As long as the settlor shall serve as General Counsel Department of Transportation or in a similar official capacity, the trustee shall hold such property as the principal of a separate trust for the primary benefit of the settlor and shall pay to him the net income therefrom. On the termination of the settlor's service as an official of the United States Government, the trustee shall distribute the then principal of such trust to the settlor or, if he shall not then be living, to his estate.

(B) During the continuance of the trust hereunder, the trustee shall submit periodically to Price Waterhouse & Co., the settlor's accountants, a summary of the figures which may be required by them for the preparation of the settlor's income tax returns, but shall not disclose to the settlor or his accountants the investments held in the trust. The settlor shall give to the trustee powers of attorney to represent the settlor in connection with the audit of returns filed by the settlor to the extent they are based on the figures submitted by the trustee.

(C) During the continuance of the trust hereunder, the trustee shall distribute to the settlor such amounts, if any, of cash as he shall, from time to time, request in writing for his personal needs. The trustee shall also make such contributions or gifts on behalf of the settlor for such charitable or personal purposes as he shall request in writing. At the request of the settlor, any such charitable contribution or gift on behalf of the settlor may be made in cash or in kind, but if it is made in kind it shall be made with securities selected by the trustee in his absolute discretion, without any participation in or knowledge of such selection by the settlor.

ARTICLE II

MISCELLANEOUS POWERS OF THE TRUSTEE

(A) In addition to, and without in any way limiting, any powers or authority which the trustees would have in the absence of this Article, the trustee is hereby authorized, from time to time and in his absolute discretion:

(1) without regard for any law prescribing or limiting the investment powers of fiduciaries, to retain any property of any kind (including securities issued by the corporation serving as trustee hereunder) and to invest in any property of any kind;

(2) to sell, at public or private sale and for cash or on credit, with or without security, or to exchange, or to grant options upon, any property on any terms;

(3) to borrow money from anyone (including the corporation serving as trustee hereunder) for the purpose of exercising stock options or for any other purpose and to secure repayment thereof by mortgage or pledge of any property;

(4) to lease any property for any term, without regard for any limitation imposed by law or for the probable duration of any fund at any time held hereunder;

(5) to partition or improve any property, to demolish, remodel or erect buildings or other structures on any property, and to foreclose, extend, assign, release partially or discharge any lien on any property;

(6) to receive, hold and administer hereunder as an addition to the principal of the trust hereunder any property which shall be acceptable to him and which shall be given, bequeathed, devised or otherwise transferred to him by the settlor;

(7) to settle or compromise any claim in favor of or against any trust hereunder;

(8) to vote in person or by proxy, or to refrain from voting, in respect of any securities, and to enter into any voting trust or similar agreement;

(9) with respect to any securities, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any cor-

poration; and to deposit any securities under any reorganization or other agreement or with any committee, depository, agent or trustee, and to pay fees, assessments and expenses relative thereto;

(10) to exercise or sell any rights of subscription or other rights received in respect of any securities;

(11) to register securities in the name of any nominee, with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form;

(12) to employ legal counsel, accountants, brokers, and other agents or employees, for necessary and useful services, including specifically the preparation of tax returns, and to pay to them reasonable compensation;

(13) to the extent permitted by law, to allocate to income account or to principal account, or in part to each, any money, stock distribution or other property received, and to charge to either of such accounts, or in part to each, any expense (including taxes, and interest and penalties, relative thereto) paid or loss incurred, as he shall deem equitable, and, in particular, to determine whether, and, if so, to what extent (a) premiums on securities acquired at a premium shall be amortized, (b) account shall be taken of discounts in the case of securities acquired at a discount, (c) receipts from wasting investments shall be allocated to principal account or (d) rentals from improved real property shall be withheld as a reserve for depreciation in respect of such property;

(14) to exercise any rights of election available under or in respect of any tax law, and, in particular, to file income, gift or other tax returns jointly with the settlor's wife and to pay any tax or collect any refund relative to any such returns; and, in connection with the foregoing, to make such adjustments, if any, as between income account and principal account as he shall deem equitable;

(15) to pledge any property held hereunder in accordance with any commitment made by the settlor or to increase the collateral allocable to any pledge or commitment made by him before or after the date of this agreement;

(16) to apply for the benefit of the settlor any amount, whether of income or of principal, which under any provisions hereof could be paid directly to him; and

(17) generally to exercise in respect of any property any power which an absolute owner of such property would have.

(B) Without limiting the generality of any other provisions hereof, the settlor expressly authorizes the trustee (a) to retain any property delivered to him and to purchase or otherwise acquire at any time additional property of the same or similar type, without regard for any rule of law which might limit the investment powers of trustees or encourage or require diversification of trust funds, and the trustee shall not be liable or accountable for any loss which may result from such retention or acquisition and (b) to employ investment advisers and, during any period when investment advisers are employed, to follow their advice and to pay to them reasonable compensation, without regard for any rule of law which might indicate or require that such services be rendered by the trustee.

ARTICLE III

MISCELLANEOUS PROVISIONS REGARDING THE TRUSTEE

(A) An individual (other than the settlor or his wife), or, at a time when no corporation shall be in office, a corporation, may be appointed as trustee hereunder by instrument signed and acknowledged and delivered to the appointee by the settlor.

(B) Any individual at any time in office as trustee hereunder may resign by instrument signed and acknowledged by such individual and delivered to the settlor.

(C) RICHARD S. SIMMONS shall not be entitled to any compensation for serving as trustee hereunder.

(D) Any other trustee hereunder shall be entitled to such compensation, if any, as shall from time to time be fixed by written agreement between such trustee and the settlor.

(E) No trustee hereunder shall be required, in any jurisdiction, to furnish any bond or other security, to render any annual or other periodic accountings, or to obtain the approval of any court before applying, distributing, selling or otherwise dealing with any property.

(F) No trustee hereunder shall be liable or accountable for any error of judgment or for any act or omission of his or any other trustee so long as he shall have acted in good faith.

ARTICLE IV

REVOCABILITY

The settlor reserves the right from time to time to revoke this agreement, in whole or in part, by instrument signed by him and delivered to the trustee. In the event of such revocation, the trustee shall deliver to the settlor, or to such other person as shall be specified in such instrument, such part or all of the principal of the trust hereunder as to which this agreement shall have been revoked, free and discharged of any trust; provided, however, that the trustee may at all times retain property sufficient, in his opinion, to pay his expenses under this agreement or any other proper charges.

ARTICLE V

GOVERNING LAW

The trust hereunder shall be a New York trust and shall be administered in accordance with the laws of that State, and the validity and effect of this agreement shall be determined in accordance with those laws.

In witness whereof, John W. Barnum has hereunto set his hand and seal and Richard S. Simmons has signed this agreement as of the date first above written.

JOHN W. BARNUM, *Settlor*.
RICHARD S. SIMMONS, *Trustee*.

STATE OF NEW YORK,
County of New York, ss:

On this 24th day of May 1971, before me personally appeared JOHN W. BARNUM, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed such instrument.

ANNETTE J. GNOSPELIUS,
Notary Public, State of New York,
Commission Expires March 30, 1972.

STATE OF NEW YORK,
County of New York, ss:

On this 24th day of May 1971, before me personally appeared RICHARD S. SIMMONS, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed such instrument.

ANNETTE J. GNOSPELIUS,
Notary Public, State of New York,
Commission Expires March 30, 1972.

SCHEDULE A

ATTACHED TO AGREEMENT DATED MAY 24, 1971, BETWEEN JOHN W. BARNUM, AS SETTLOR, AND RICHARD S. SIMMONS, AS TRUSTEE

All right, title and interest of John W. Barnum in, to and under that certain Partnership Agreement dated April 30, 1966, by and among Carlyle E. Maw, Edward S. Pinney, et al., such partnership being known as RCL Company.

All right, title and interest of John W. Barnum in, to and under that certain agreement dated as of October 1, 1968, by and among the persons signing such instrument on Schedule A or Schedule B thereto, such partnership formed under such Agreement being known as the Port Arthur Terminal Company.

UNITED STATES SENATE,
Washington, D.C., June 15, 1971.

HON. WARREN G. MAGNUSON,
Chairman, U.S. Senate, Committee on Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing on behalf of John W. Barnum, a constituent of mine, who has been nominated to be General Counsel of the Department of

Transportation. As you know, Mr. Barnum is presently a partner of Cravath, Swaine, & Moore, one of the most distinguished law firms in New York State. He is an attorney of stature and is highly respected by his colleagues and by the legal profession generally for his competence, intelligence and thoroughness.

I believe that Mr. Barnum will be able to serve in the capacity of General Counsel with distinction and significantly contribute to the efforts of our government to work out our country's transportation problems.

I am pleased to express my support of Mr. Barnum's nomination.

With warm regards,
Sincerely,

JACOB K. JAVITS,
U.S. Senator.

**VIRGINIA MAE BROWN, OF WEST VIRGINIA; DALE W.
HARDIN, OF VIRGINIA; AND LAURENCE K. WALRATH,
OF FLORIDA, TO BE COMMISSIONERS OF THE INTER-
STATE COMMERCE COMMISSION**

MONDAY, JUNE 28, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The Committee met at 10:15 a.m. in room 5110, New Senate Office Building, Hon. Vance Hartke presiding.

Present: Senators Hartke, Spong and Stevens.

Senator HARTKE. The committee will come to order.

This morning we have the nominations of Virginia Mae Brown, Dale Wayne Hardin and Laurence K. Walrath, submitted by the President for the advice and consent of the Senate, before this committee for hearing.

**STATEMENT OF HON. NORRIS COTTON, U.S. SENATOR FROM NEW
HAMPSHIRE**

Mr. Chairman, thank you. I would like to make a brief statement.

I believe that Mrs. Brown will recall that on the occasion of her last nomination in 1964 I supported it but joined with two of my colleagues in filing individual views in our committee's report. On that occasion I, along with Senators Morton and Scott, pointed out that with Mrs. Brown's confirmation the Commission would have "a pronounced geographic bias * * *"

The problem of a potential "geographic bias" still troubles me with respect to the present three nominees. You will recall that when Commissioner Gresham was before this committee in November 1969 to fill out the remainder of the term of the late Commissioner Burke from Connecticut, I pointed out that the nominee would be taking a seat formerly occupied by a New England Commissioner.

Again, when Commissioner Brewer came before this committee in June 1970, I pointed out the lack of representation on the Commission from the Northeast area. As a matter of fact, it is my recollection that on that occasion I stated that "* * * the next time there is a vacancy, I can promise them that there will be opposition to it even if they nominate St. Peter" I, therefore, must humbly congratulate the President on his reappointment of the three nominees now before us, since I shall acquiesce and not oppose their nomination, which can

only mean that he, the President, has outdone my high standard of nominating St. Peter

Seriously, however, the lack of representation on the Interstate Commerce Commission from our Northeastern area is of grave concern to me, and I fully intend in the future to make good on my announced intention to oppose any future nominations to this Commission unless and until the current "geographic bias" with respect to New England is corrected.

Up to this point I have gone more than the full measure with my administration, and I feel that it is high time that I and my colleague from Vermont, Senator Prouty, receive just consideration so as to remedy this situation in a prompt fashion. Thank you.

Senator HARTKE. Another of the members of our committee, Senator Spong, will now be heard concerning one of these nominees.

STATEMENT OF HON. WILLIAM B. SPONG, JR., U.S. SENATOR FROM VIRGINIA

Senator SPONG. Thank you, Mr. Chairman. I appreciate the opportunity to say a few words about Mr. Dale W. Hardin, who needs no introduction to this committee because he has been associated with the Interstate Commerce Commission for some time.

As you know, he took the oath of office as a Commissioner in 1967 and served in all three divisions of the Commission. He was elected vice chairman last year and reelected this year.

He and his family live in Alexandria, Va., and he is a member of the Virginia Bar.

I am pleased to have this opportunity to introduce him to the committee as a nominee from Virginia.

I would also like to take this occasion to say that I am pleased that you will be considering the nominations of Commissioner Walrath and Commissioner Brown, who also have the good judgment to reside in the State of Virginia.

Senator HARTKE. I reside there, too.

Senator SPONG. I understood that you did.

Senator HARTKE. It is a nice place. We all like Virginia.

Senator SPONG. I commend you for your judgment.

Senator HARTKE. Also, Senator Chiles is here this morning concerning Laurence Walrath.

I might say to you that a lot of us would like to live in Florida.

STATEMENT OF HON. LAWTON CHILES, U.S. SENATOR FROM FLORIDA

Senator CHILES. We would be delighted to have you have a home there. I do not know about residency. I would like to have you keep your residency in the State you are elected from, but would be delighted to have you winter or summer in Florida.

It is my pleasure to have the distinguished honor to add my endorsement of Mr. Laurence K. Walrath, from Florida. He has been recommended by the President for reappointment to the Commission for a 2-year term.

As each member of the committee knows, Mr. Walrath has served on the Commission since 1956—indeed a long history of fair and

honest service to the people of the United States. During this time he assumed his share of leadership roles on the Commission, serving as Vice Chairman in 1962 and as Chairman in 1963. In addition, Mr. Walrath has served as a member of all divisions of the ICC, and as Chairman of Divisions 1 and 2, currently holding the chairmanship in Division 2.

As Senators, you know the true value of experience that can only be collected over the passage of time. Mr. Walrath has this experience in the matters that come before the ICC, most of which are of a complex nature. I think it is reassuring to see a man of his capabilities step forward again.

Perhaps the best testimony to support Mr. Walrath's reappointment is not what I or anyone else has to say. His most outstanding "supporter" is his own record on the Commission. Mr. Walrath's 15 years on the ICC, under four Presidents, dating back to President Eisenhower, are viewed by many as a tribute to his honor, his capacity to serve well, and his dedication. In Florida we are extremely proud of Mr. Walrath because he is the first member of the ICC to be appointed from our State.

A learned attorney—a man who served his community well through active participation in civic organizations—a veteran of the Second World War—Commissioner Walrath has always kept the trust of the people.

I strongly and sincerely endorse Mr. Walrath for confirmation by this committee and by the Senate for an additional 2 years on the Interstate Commerce Commission.

Thank you.

Senator HARTKE. Thank you.

From the House of Representatives, we have Congressman Ken Hechler who would like to speak on behalf of Virginia Mae Brown.

STATEMENT OF HON. KEN HECHLER, U.S. REPRESENTATIVE FROM THE FOURTH DISTRICT OF WEST VIRGINIA

Mr. HECHLER. Mr. Chairman, hearing what has been said about Virginia, I would like to speak up with a word for the great State of West Virginia.

Senator HARTKE. I think that is a great State, too, with one of the most beautiful State parks they have in the whole country. I commend them to the people here in Washington. They ought to go to West Virginia and stay overnight at any of their great State parks.

Mr. HECHLER. I appreciate that, Mr. Chairman.

Commissioner Brown was born in Pliny, W. Va., and is a native of that State.

I had the honor 7 years ago when she was first appointed to the Interstate Commerce Commission by President Johnson to testify in her behalf, and also to be present at the ceremony at the White House when she was sworn in as a member of the Commission. Her record is an exemplary one as a member of the Interstate Commerce Commission.

It just so happens—and I believe you would share this opinion also, Mr. Chairman—that her decisions and even her dissents are of the nature that I think deserve public support because they have been in the public interest.

She was the first woman in West Virginia to be appointed assistant attorney general in 1952. She served as insurance commissioner of West Virginia, and also a distinguished service as a member of the public service commission of West Virginia, the first woman in West Virginia appointed to that body.

It is a great honor, Mr. Chairman and members of this committee, to endorse wholeheartedly the nomination of Commissioner Virginia Mae Brown for reappointment to the Interstate Commerce Commission.

Senator HARTKE. I want to thank you, Congressman, and thank you for presenting her here this morning.

We will proceed with the others here.

We do have in the hearing room today the chairman of the Commission, Mr. Stafford, and Commissioners Bush, Murphy, Deason, Tuggle, and Jackson. We are glad to have them here this morning.

The financial statements of all three nominees are on file and are open for inspection; and also, the biographies of each one of the nominees will be made part of the record.

(The biographies follow:)

BIOGRAPHICAL SKETCH OF VIRGINIA MAE BROWN

Virginia Mae Brown, the first woman to head an independent administrative agency of the United States Federal Government, was born November 13, 1923, at Pliny, West Virginia, the daughter of Hester (Crandall) Brown and the late Felix M. Brown.

She was educated in the public schools of Putnam County; graduated from Point Pleasant High School in 1940; and received an A.B. Degree from West Virginia University in 1945. After a brief teaching career at Winfield High School in her home county, she entered the West Virginia University College of Law where she graduated in 1947 with an LL.B Degree and a Doctor of Jurisprudence.

After graduation and admittance to the West Virginia Bar, she accepted a position as Law Clerk to the Attorney General of West Virginia.

In 1949, she was appointed Executive Secretary to the West Virginia Judicial Council, the first woman in the United States to serve in this capacity.

In 1952, she was appointed an Assistant Attorney General, the first woman in West Virginia to be appointed to that position, and the first six months of 1961 she served as legal counsel to the Governor.

In 1961, she was appointed Insurance Commissioner of West Virginia, the first woman in the United States to hold this position.

In 1962, Commissioner Brown was appointed a member of the Public Service Commission of West Virginia, the first woman in West Virginia appointed to this body.

In March, 1964, she was nominated by the President to be the first woman member of the Interstate Commerce Commission. Her nomination was confirmed by the Senate, and she took the oath of office on May 25, 1964, in a White House ceremony.

During her term at the ICC, Commissioner Brown has served as Chairman and Vice Chairman of the Commission, Chairman of the Policy and Planning Committee, as a member of the Commission's Ad Hoc Committee on Small Shipments, and has served on all of the Commission's three divisions.

Her election as Chairman of the ICC for the year 1969 established another important "first" as she became the first woman to head an administrative agency of the Federal Government.

President Nixon announced the renomination of Commissioner Brown on April 8, 1971, for the term ending December 31, 1977.

Commissioner Brown has been admitted to practice before the Putnam and Kanawha County Circuit Courts, the West Virginia Supreme Court of Appeals, the United States District Court for the Southern District of West Virginia, and the United States Supreme Court.

She is married to James V. Brown, who is also an attorney of Washington, D.C. They reside with their two daughters, Victoria Anne, age 15, and Pamela Kay, age 11, in Alexandria, Virginia.

BIOGRAPHICAL SKETCH OF DALE WAYNE HARDIN

Name: Dale Wayne Hardin.

Date of Birth: September 9, 1922.

Place of Birth: Peoria, Illinois.

Family:

Wife: Virginia Phillips Hardin.

Son: Bradley James Hardin, age 13.

Daughter: Rebecca May Hardin, age 6.

Education: Bradley University, Peoria, Illinois (2 years); 1948, A.B., George Washington University; 1951, J.D., George Washington University Law School.

Previous Experience:

1951 Lawyer—private practice, Washington, D.C.

1951-54 Special Agent, Federal Bureau of Investigation, Newark, N.J., and New York City.

1954-55 Attorney-adviser, Bureau of Finance of the Interstate Commerce Commission.

1955-63 Legislative Attorney and Congressional Liaison Officer for the Interstate Commerce Commission. (For several months in 1959 served as Secretary and Counsel at Transportation Association of America, Washington, D.C.)

1963-66 Manager, Transportation and Communication Department, Chamber of Commerce of the United States, Washington, D.C.

1966-67 Vice President, The Overmyer Co., Inc. (Warehousing and Communications Firm), Washington, D.C.

1967 Special Counsel, American Trucking Associations, Inc., Washington, D.C.

July 31, 1967 Took oath of office as Commissioner, Interstate Commerce Commission. Served on all three divisions of the Commission.

January 1, 1970 Elected by the Commission as Vice Chairman for the year 1970. Re-elected for the year 1971.

February 8, 1971 Appointed by President Nixon to serve on 10-member Council of the Administrative Conference of the United States.

Military Service: 1942-46 U.S. Marine Corps, active duty (1944-45 served in Central and Southwest Pacific).

Organizations:

Member, Virginia Bar and District of Columbia Bar.

Member, Federal Bar Association.

Member, National Lawyers Club.

Member, Phi Delta Phi.

Member, Post Mortem Club, American Legion, and member, American Legion.

Member, Executive Committee, George Washington Law Association.

Member, Society of Former FBI Agents.

Politics: Republican.

Home Address: 1011 Emerald Drive, Alexandria, Va. 22308.

 BIOGRAPHICAL SKETCH OF LAURENCE K. WALRATH

Laurence K. Walrath took the oath of office as an Interstate Commerce Commissioner on March 29, 1956, to succeed the late Commissioner Kelso Elliott for a term expiring December 31, 1956. He was reappointed for a term expiring December 31, 1963, and took the oath of office on February 21, 1957. He served as Vice Chairman for 1962 and as Chairman for 1963. In March 1964, he was again renominated by President Johnson for a term expiring December 31, 1970. March 29, 1971 marked the end of 15 years as a member of the ICC. He has served as a member of all divisions of the ICC and as Chairman of Divisions 1 and 2, currently holding the latter position.

Commissioner Walrath was born in Meadville, Pa., August 16, 1909. He attended Emory University Academy, Oxford, Ga., and graduated from the University of Florida with the degrees of A.B. in 1931 and J.D. (including LL.B.) in 1934 with high honors.

He was admitted to the Florida bar in 1934, and has been admitted to practice before the United States Supreme Court, the ICC, and numerous other Government agencies and courts. At the time of his appointment to the Commission,

he was the senior active partner of Knight, Walrath, Kincaid and Young, a law firm in Jacksonville, Florida.

During World War II he voluntarily entered the service in February 1942 as a Lieutenant (j.g.) in the Navy, served in the Atlantic and Mediterranean areas, and was released from active duty as a Lieutenant Commander in 1945.

Commissioner Walrath was a member and past president of the Jacksonville Bar Association, a lecturer for the Florida Bar Association, and a member of the American Bar Association and of the ICC Practitioners Association.

He has been active in many civic organizations including Boy Scouts of America, the American Red Cross, the Salvation Army, and the Chamber of Commerce. He is a member of the University of Florida Alumni Association, Phi Delta Phi, Phi Kappa Phi, Pi Kappa Phi, and the American Legion, and is a 32nd Degree Mason, and Shriner.

He is married to the former Mildred Hoff. There are four children, Jean Camille (Mrs. E. K. Goethe), Laurence Kaye, Jr., Timothy Glass, and Shelby Ann (Mrs. Joseph F. Shad, Jr.). The Commissioner and Mrs. Walrath have ten grandchildren.

He resides at 4201 Massachusetts Avenue, N.W., Washington, D.C., but maintains his legal residence at Keystone Heights, Clay County, Florida.

Commissioner Walrath is a Democrat and is the first member of the Commission appointed from the State of Florida.

Senator HARTKE. Mrs. Brown—do all of you want to join us up here and we will just take all three together?

Mrs. Brown, I would comment on this. Of 11 members of the Commission, there is only one member of the female sex. In this day and age of the equality of women, do you think 10 to 1 is really a fair ratio? You do not need to answer that.

I say that in a light vein, but I want you to know it is one of those daggers I carry for the White House every now and then. I will even give them another one. There is not one black member of the Commission. I think, certainly, thought ought to be given to that. I want to see if they give much serious thought to anything except the Supreme Court this morning.

Mrs. Brown, Commissioner Hardin and Commissioner Walrath, do you have any preliminary statements you care to make?

MR. WALRATH. No, thank you, Mr. Chairman.

Senator HARTKE. Since becoming chairman of the Subcommittee on Surface Transportation, the members of this committee and I have made a determined effort to have the subcommittee exercise its responsibility to oversee the operations of the Interstate Commerce Commission. In my opinion this effort has been constructive.

Since those hearings began in June 1969, we have seen the Interstate Commerce Commission become the focal point of much discussion and debate. I think the Interstate Commerce Commission's new visibility has been healthy. There have been a few indications that maybe the agency is beginning to recognize the general public's problems. But we are a long way from perfection in the regulation of surface transportation and it is necessary to continually search for methods of improving such regulation.

Some have proposed, and others are considering proposing radical surgery, even to the point of elimination of regulation entirely. So today we have before the committee three current members of the Commission who have been renominated by the President. Each have been before the committee on numerous occasions. We are not strangers tonight.

I think it is entirely appropriate as a part of the confirmation hearings to inquire somewhat of these nominees about some of the recent actions or inactions of the Commission. And therefore I do want to

raise a few questions this morning, not only to guard against complacency, but also to continue this search for better regulation in the public interest.

I think probably the most obvious question to each of you, and I would like to address it to each of you individually and collectively, is: Since you are nominees to the Interstate Commerce Commission, why do you want the job?

In other words, perhaps this is not so much of a question as an observation that the Commission is coming into the spotlight. You are somewhat under attack. As I said, there are proposals before the Congress even now to abolish the Commission of which you are members.

So this question arises from the belief that the Commission needs to answer some questions.

Those who advocate its extermination have said that you have failed to exercise sufficient regulation over transportation. On the other hand, there are proposals springing from a belief in the efficacy of competition to reduce the Commission's powers. If not just abolish it, at least to reduce it, because they claim it regulates too much.

All of you know there is a crisis in the transportation industry that calls for imagination and far-reaching decisions. So, as much as that seat has been an experience for you in the past, I would imagine that it is likely to be a very warm one as you start out on a new term, and it is probably going to grow hotter as time progresses.

Mr. Hardin, do you want to start out? Why do you want to go back? Why are you coming back for some more of the same?

STATEMENT OF DALE W. HARDIN

Mr. HARDIN. Mr. Chairman, I have about 20 years of government service now. My entire professional career has been that of government service. I have enjoyed it.

I have felt that it is a place where I can make a contribution. I feel that I have made one, and I would like to continue to try to make one in this field of transportation where I have spent about 18 years of my life now.

That in general is my position on it.

Insofar as the criticism of the Commission, yes, we have had that; but I do not think it is new to the Commission. This is something that I think occurs in all areas of government service. I do not consider it unhealthy. I consider it something that we should look at, examine, and where we can find ways of improving that which we are doing now—we should do so. And I will devote my efforts to that end.

Senator HARTKE. Mr. Walrath?

STATEMENT OF LAURENCE K. WALRATH

Mr. WALRATH. Mr. Chairman, unlike my beloved and distinguished colleague, the Vice Chairman, I have just about divided my professional career half and half. I have had 18 years of private practice of law and, if confirmed, I will have about 18 years of service on the Commission, or over 20 years of service with the government—including World War II experience in the Navy.

I had some doubts about seeking renomination in the light of the current atmosphere, but I resolved them in light of the same considerations mentioned by Commissioner Hardin.

We are in a period of critical analysis looking toward improving agencies such as ours. It seemed to me no time to quit. And as you mentioned at the outset, the benefits of our self-analysis are becoming more and more apparent. We are searching for better ways of rate-making, for example. We are trying to find out to what extent, if at all, our rate structures have gotten out of balance because of successive rate increases. *Ex parte 270* is an example, *Ex parte 271* is another. And *Ex parte MC-82* involving motor carrier revenue cases, is a third area of progress.

And frankly, sir, it would not sit well with my conscience if I did not stay around long enough to follow through on our efforts in those areas.

Senator HARTKE. Commissioner Brown?

STATEMENT OF VIRGINIA MAE BROWN

Mrs. BROWN. Thank you, Mr. Chairman.

I certainly believe that the field of transportation, which affects the lives of every person in America and in the world, is a very important place to work and be a part of. The country was developed upon transportation and, indeed, the world itself.

It is true that the Interstate Commerce Commission was created in 1887. It is the granddaddy of all the independent regulatory agencies. And in my opinion, it is one of which analysis is now being made concerning the things that are good and the things that are bad. Whether it is a young agency or an old one, I feel that the Interstate Commerce Commission in the past few years, as I think was indicated by your statement, has made tremendous strides toward trying to be a "now" agency for the people as we live and work today.

The problems are certainly very extreme. They have not been solved. I would say, within the statutes—the working frame of the Interstate Commerce Commission—that I want, as do my colleagues, to work toward trying to provide a better system for the American transportation scene. And these difficult problems require certainly deep analysis. And the statute, of course, is what rules us.

We are before your committee. I think you, Mr. Chairman, and your committee, have been a shining star to us to help guide us along the lines that we should go, plus our statutory authority; and we appreciate that.

I personally remember the oversight hearings, as we all do, and I think this endeavors to make a better Commission.

Thank you.

Senator HARTKE. I do have some more questions, but Senator Stevens is here.

Do you care to ask some questions at this time?

Senator STEVENS. Yes, Mr. Chairman.

I am most pleased to be here with the three of you. As one who believes the Commission ought to remain independent and not be merged with some other agency, I am happy to see that we are going to continue the experience that you have accumulated on the Interstate Commerce Commission.

My colleagues here on this side of the aisle, Commissioner Walrath, have asked me to ask you a few questions.

There has been a great deal in the press lately about a proposal to establish a so-called zone of reasonableness with respect to rail freight rates within which rail managements would be permitted to set rates freely, subject only to the prohibitions in the act against discrimination. As I understand it, the Commission already has established a zone of reasonableness concept. Could you explain to us how that concept is applied by the Commission at the present?

Mr. WALRATH. I will endeavor to give you a brief overview, Senator, and then will attempt to answer any detail that you may care to hear about.

The Commission has long recognized a "zone of reasonableness." Generally stated, except to the extent undue preferences or discrimination is involved, carriers in their managerial discretion may set rates at any level within a range bounded, on the one hand, by a point where the rate would exceed a maximum reasonable level and, on the other hand, by a point where it would go below a minimum reasonable level. We have treated rates which are below compensatory levels as unreasonably low.

Unreasonably high rates, of course, differ with the economic climate and with the changes in our cost structure, periods of inflation, periods of recession.

The precise boundaries of the zone are determined as a judgment matter by the Commission based on a given record including pertinent economic and cost data. Within the zone of reasonableness carriers are permitted, without suspension and without investigation—sometimes investigation but without suspension—to set rates at any level they desire.

The Commission does not "make" rates. It simply judges the lawfulness of carrier-filed rates based, most frequently, on a standard of whether they are unreasonably high or unreasonably low.

Senator STEVENS. What would you think about a legislative attempt to define this with precision, using some measure of cost to set the upper and lower limits of this zone of reasonableness? And if this could be done, what cost standard could be used to define the limits of the zone of reasonableness?

Mr. WALRATH. I take the question as really being in two parts, Senator Stevens.

One, what would I think of the effort?

I would think kindly of the effort, and I would point out for the record that this is not a new concept. It has been talked about periodically throughout my tenure on the Commission, as early as 1956, 1957, and especially in 1958, when Congress was considering amendments to section 15(a)(3).

In any event, the problem has always been to find a formula that could be written into a statute that would be flexible enough to take care of the economic changes which occur.

I would certainly not oppose such an effort. I would have some reservations about whether it can be translated into an effective statutory formula.

The second part of the question concerns the selection of a cost standard and the limits of such a formula if it could be devised. At the present time, the carrier industry and the Commission use out-of-pocket costs in far different ways.

Our friends in the railroad industry have tried to develop what they call an incremental costing approach. Others talk about a long-range variable cost; these being the floors below which rates should not go.

The Commission talks about an out-of-pocket cost which, on its face, sounds like we mean the same thing. But under our definition, we include a small margin of return to the carrier for overhead. In other words, our out-of-pocket cost includes not only the amount of dollars that it costs to move a commodity from point A to point B, but also includes a certain return on rolling stock and that type of thing. However, under our current definition, we do not include such things as income tax and depreciation, and reserve for depreciation.

I think every effort should be made to reconcile differences between our standard and those of the carriers in order to arrive at a standard definition of the floor below which rates should not go.

Senator STEVENS. You said you would look with favor on a legislative attempt. Do you think it is necessary that we seek a legislative attempt to define this?

Mr. WALRATH. I am not suggesting it at the present time, Senator; for this reason I am told that currently there are serious talks going on between the railroad representatives, the motor carrier representatives, the water carriers and even the National Industrial Traffic League and the user panel of the Transportation Association of America.

I would personally think it would be advisable for the Commission, and perhaps for the Congress, to let the industry have an opportunity to develop a uniform standard on their own initiative. If all of these competitive forces, including the shippers, could reach a general agreement about what a standard should be, I think that development would be in the public interest.

Such an industry-sponsored solution might even be made the subject of a rulemaking proceeding, and would not have to come to you except perhaps on an oversight basis to determine whether we were going in the right direction.

Senator STEVENS. Thank you.

Commissioner Brown, I looked over your biographical sketch, and I think it is obvious you have distinguished yourself in your career, and I am sure that we would be very happy to see that you continue as a member of the Commission.

Mrs. BROWN. Thank you, Senator.

Senator STEVENS. Mr. Hardin, the same thing—I notice that you have the background of being a special agent with the FBI, and your total experience is a very broad experience, and I am happy to see you decided to stay with the Commission also.

Mr. HARDIN. Thank you, Senator.

Senator STEVENS. Thank you, Mr. Chairman.

Senator HARTKE. I would like to ask a question or two about this question of adequacy of carrier service, and how we can improve service as far as transportation is concerned. I suppose that may be for you, Commissioner Walrath. Service Order 1009, are you familiar with that by number?

Mr. WALRATH. Not precisely, Senator, but I know generally what you are referring to.

Senator HARTKE. This is the order that went into effect in October. It expired on December 31, 1970, and required the expediting in the handling of cars on a nationwide basis.

Will you just briefly describe what the intended purpose was, and whether in your opinion it achieved that purpose?

Mr. WALRATH. I would be reluctant to try to describe it in detail, Senator, except to say it was issued for the purpose you mentioned; that is, to keep cars moving by prohibiting undue detention.

If I am not mistaken, we have transmitted to your committee over the signature of our chairman certain statistics relating to enforcement of our orders and have shown that we have been vigorously penalizing carriers who failed to comply.

Now, I do think that compliance is improving and carriers are striving to improve utilizations of cars. For one thing, we are receiving fewer and fewer complaints from the field. Nevertheless, as our transmittal of a week or 10 days ago indicated, there were \$300,000 or \$400,000 in penalties and assessments against carriers for failing to comply with the outstanding service orders.

Senator HARTKE. I suppose in a way—you see, I have you three here, and I have some more out of here. But what I am going to say is exactly at the heart of something I have been trying to bring to the attention of the Commission for a long time.

You say, well, you suppose that the order has been effective because the complaints have been fewer. And I have said repeatedly that I do not believe the Commission is merely a place which is supposed to take care of registered complaints. It is not just a complaint section.

It is the job of the Commission to be an affirmative Commission and not just a negative one. And as long as you deal only with complaints, you are dealing with everything, a negative basis. Our whole concept of government has to change in this—and that is not just with this Commission alone, but I do not have all the rest of them that I can deal with directly.

I hear this all the time. "I do not receive any complaints, so I assume everything is all right." Some people get tired of complaining; and when you do, you have come an awfully long way down the track to being nothing.

Mr. WALRATH. I did not make myself clear, Senator. I do not treat—

Senator HARTKE. I thought you did make yourself clear. That is what bothered me:

Mr. WALRATH. May I supplement it, then, in order to clarify my position?

We know from our limited field force—and it is very limited; it is spread terribly thin over the whole country.

Senator HARTKE. Let me stop you there. Let me say this in regard to personnel. If you do not have adequate personnel and do not ask for them, then I blame you. If you do not have them and ask for them and are turned down, then we blame somebody else.

Mr. WALRATH. I think the latter is the case, sir.

In any event, what I meant to say is that our field reports—which represent on-the-spot checks—indicate the validity of what I just said.

Now, it so happened that just before the hearing I asked for certain statistics in order to find out whether or not car utilization was improving under those orders, including the one you mentioned.

In particular I was interested in one of our problem children, the Penn Central. I noted that in the week ending on May 1, 1971, they had handled with about 212,000 cars the same amount of traffic that it had taken them 215,000 cars to move a month before. Now, that means that they are using equipment more efficiently. I use that one railroad as an example.

And again—

Senator HARTKE. Without going into the specifics on the details, do you think it accomplished its purpose?

Mr. WALRATH. I think the order is a step in the right direction, and greater enforcement capability on our part would move it even more effectively.

Senator HARTKE. Do you believe it somewhat accomplished its purpose?

Mr. WALRATH. Yes, sir.

Senator HARTKE. Let me give you an aside on the question of personnel. We did approve \$4 million more for personnel for you than the President had asked, and that fourth arm of Government, which ought to be put under somebody's finger—it used to be called the Budget Bureau, I guess it is now the Office of Management and Budget. It has bad initials—is probably one of the greatest detriments to good service at the moment in the country. They will not let you spend that money.

Senator Stevens, on your side of the aisle I hope you will help us get that money.

That is just an aside.

What I am coming to, though, you see, in regard to this order 1009, you issued an order here to improve service; right?

Mr. WALRATH. Yes, sir.

Senator HARTKE. Now, it is your opinion, therefore, certainly, that you have the authority under the law to do just that; right?

Mr. WALRATH. Yes, sir.

Senator HARTKE. Now, if you have the authority, and you issued an order, and you feel that the results were somewhat accomplished as a result of that type of thing, then do you not believe more improvement is necessary today yet in the railroad service?

Mr. WALRATH. Definitely, sir. And the utilization of cars is one of the major points. But there are other areas that are equally serious.

Senator HARTKE. Now if service is efficient, does that not really provide for better opportunity for reduction of cost to the shipper?

Mr. WALRATH. It is our combined judgment that that is true; yes, sir.

Senator HARTKE. And yet when you have the rate cases in front of you, why do you not make and establish rules of adequacy of service as a condition upon the granting of the increase in rates?

Mr. WALRATH. Well, your question, Mr. Chairman, assumes that we did not take that into consideration.

Senator HARTKE. Why not?

Mr. WALRATH. Well, I am trying to say that we did.

And with reference to the last of such cases, where we made service a basic issue and received evidence on it, the majority, as well

as the four dissenters, found that the carriers had failed to meet the standard of section 15(a)(2), so far as adequacy and efficiency of service was concerned.

Now, those inadequacies and inefficiencies fell into different categories. Car utilization was one of the main ones.

But neither the majority nor the minority disagreed that service had to be improved. There was some difference of opinion on the part of one of my colleagues as to just what sanctions to take and when to take them.

But the majority of the Commission also found that the carriers were deficient in those areas where it took new capital to create improvements, such as building more cars and identification systems and all that. However, in the area of moving cars promptly and avoiding the bunching of cars, in that area, no one disagreed that they had to upgrade their service.

Now, the main difference between the majority and the dissenters concerned the latter situation. In *Ex parte Nos. 265-267* we were confronted with an overwhelming economic crisis. Just to mention a few of the salient facts, our record stands unrefuted that 44 of the 70 class I railroads in the United States were operating at a deficit, at the working capital level. Some 22 of those 70 were actually suffering a net deficit in all respects.

Now, in that situation, to have imposed sanctions in the way of withholding revenue relief, in my judgment and that of the majority, and even of three of the dissenters, would present us with the alternative of holding a postmortem over a number of other bankruptcies. And at that point it seemed to us that it was better to grant a measure of revenue relief and continue our investigation of car service, even in *Ex parte No. 270*.

Parenthetically I would add that service has been made a specific issue in the *Ex parte No. 270* investigation. And we have also incorporated in that proceeding the record in *Ex parte Nos. 265-267*.

I would add that since the record closed in *Ex parte Nos. 265-267* last fall, there has been an almost dramatic change for the better in the utilization of cars. I mentioned the Penn Central as only one example. But nationwide the cars are moving better than they did before.

Senator HARTKE. But where is the leverage?

Mr. WALRATH. The leverage is the sanction that we may impose—

Senator HARTKE. At a later date?

Mr. WALRATH. Very shortly, if 270—

Senator HARTKE. Let me read to you what you said:

We conclude the respondents will be required to institute promptly those measures necessary to correct deficiencies of the type mentioned above. Thus, the respondents shall report to the Commission, Bureau of Operations, no later than July 1, 1971, and on or before the first day of each third month thereafter (that is, for example, October 1, 1971, January 1, 1972, et cetera) until further order of the Commission, the corrective actions undertaken.

And then, as you have indicated, and which is true, "Disposition of the question of sanctions related to particular deficiencies will be held in abeyance pending examination of the results of corrective measures taken by the carriers."

That is the very heart, in my opinion, of the criticism of the Commission.

Now, I understand what you are saying. But here what I am saying is, if you are going to improve the service, the improved service will probably do two things: Lower the cost to the shipper, and probably force force the management to take those types of steps. If you put sanctions on immediately when you grant the rates, you force them to take action now. Otherwise they know the old story; they can stall and stall and stall and not really move until you turn the key.

Mr. WALRATH. I find it difficult to disagree, Mr. Chairman. I do not really, in principle. But this very Thursday is July 1.

Senator HARTKE. I know Thursday is July 1. And let us assume they are going to say they have improved the service. Let us assume they have not done one substantial thing. What then? You are going to issue orders? You cannot issue them retroactively and say they did not do it, they did not follow through in good faith.

Mr. WALRATH. No. But among the sanctions which were suggested by shippers—and which we have not cast aside—one would be penalties for failure to make on-time deliveries and on-time movement of cars. These are still available remedies.

And since car service is an issue in *Ex parte No. 270*, we can expedite that proceeding as soon as we get responses from shippers to the reports that come in next Thursday.

Senator HARTKE. All right. Let me ask you, what standards will you use now on July 1 to determine whether or not these shippers have taken corrective action?

Mr. WALRATH. We would like to have responses from the shippers as to what they think.

Senator HARTKE. But, you see, if I can come back again to the heart of the difficulty. If you set the standards, I would have thought you would have had something at least to make an objective judgment. In other words, you are coming to them and saying, "The burden is on you to prove to us what specific items you have done to correct a deficiency."

I do not believe that it is the responsibility of the Commission to go on out and say, "Well, you did not place a spike in one of the rails going into the tie." All right? I do not believe that is the job of the Commission, but I do believe that you have the requirement to set certain performance standards for them, for example, which you expect them to show that they have complied with. You should have a standard rather than just a general override, where they can come on in and say, "Well, you know, we did something, here is what we did. Well, we thought we had done enough to satisfy you, but we did not."

I would like to interrupt at this point. We have the distinguished assistant majority leader, Senator Byrd, who has brought a lot of decorum and order into the U.S. Senate and is doing an excellent job in that capacity.

We are delighted to have you here, sir, to listen to your words of wisdom.

STATEMENT OF HON. ROBERT C. BYRD, U.S. SENATOR FROM WEST VIRGINIA

Senator BYRD. Thank you very much, Mr. Chairman.

First let me express appreciation for your indulgence in allowing me to speak at this time. I am sorry for my tardiness, but I am grateful

for the opportunity to appear this morning in behalf of the very distinguished lady from West Virginia.

It is my pleasure to appear before this committee once more in support of Mrs. Virginia Mae Brown, an outstanding citizen of my State. And having supported Mrs. Brown's nomination to serve her first term on the Interstate Commerce Commission in 1964, I have been gratified that the President has seen fit to renominate her for another term. She is really an outstanding woman. She has many "firsts" to her credit, both in West Virginia and here in Washington.

Among other things, she was the first woman to serve as assistant attorney general in West Virginia. She was the first woman to serve as insurance commissioner for any State, an appointment she received in 1961.

Subsequently she was the first woman to serve on the West Virginia Public Service Commission. And as members of the committee will recall, the confirmation by the Senate of the President's nomination of Mrs. Brown in March 1964 made her the first woman member of the Interstate Commerce Commission.

She was elected Chairman of the Commission for the year 1969. She became the first woman to head an administrative agency—certainly the first woman to head this agency.

I am not here, however, to recommend Mrs. Brown's reappointment to the Interstate Commerce Commission on the basis of her many "firsts" as a woman. Rather, on the excellence of her record as a member of the Interstate Commerce Commission.

She has served as Chairman and Vice Chairman of the Commission, chairman of the Policy and Planning Committee, as a member of the Commission's Ad Hoc Committee on Small Shipments, and has served on all the Commission's Divisions. The scope of her service with the ICC and the outstanding manner in which she performed on the Commission are her best credentials.

I express the hope, Mr. Chairman, that the committee will see fit to approve this nomination promptly.

Again I thank you for allowing me to interrupt your hearing. I am very appreciative, and I thank you and congratulate you on the fine job you are doing, not only on this committee, but on other committees, and especially as chairman of the Veterans Affairs Committee.

Senator HARTKE. Thank you, Senator, for coming forward.

Senator BYRD. May I just add one word? I am sure my colleague, the senior Senator from West Virginia, Mr. Randolph, will echo what I have said, and emphasize and underline everything I have said. I am not sure that he is in the city this morning, but I am confident that he will submit a statement if he does not appear.

Senator HARTKE. We will hold the record open for his statement.¹ Thank you, Senator Byrd.

Mrs. BROWN. Thank you, Senator.

Senator HARTKE. Commissioner Walrath, to return to the matter we were discussing, it is not as though this were new with me because Commissioner Murphy, in his dissent, made this very point. He agreed generally with the majority that they were in need of additional revenues to meet their increased expenses and maintain their plant and

¹ See p. 43.

facilities, but disagreed because the record is seriously deficient with regard to the adequacy of respondents' service.

Then it goes on—which I think is a fair statement :

Admonitions to respondents in broad general terms to improve their services or face some unexplained action in the future is mere wordage and is as ineffective as a threatened 'spanking' if a child does not behave.

Now, what he says should be done, and I quite agree :

What should be specified is enumeration of service deficiencies which can be treated immediately without the expenditures of substantial sums of money. Respondents are, however, left with no recognizable standards with which to begin their task of improving service and, more importantly, with the approval of the proposals, in part, respondents are deprived of any incentive to upgrade their services.

The requirement that respondents file a report by July 1, 1971, as to corrective action taken with respect to service problems will not convince the critics of this Commission that it is, in fact, fulfilling its functions in the face of repeated requests for assistance by shippers.

Contrary to respondents' allegations that improvements in service can only be made by the investment of additional funds into plant and equipment, many serious service problems are actually susceptible to solution by the enforcement of the carriers' own rules and regulations or operating procedures.

And I do not want to belabor this point, but let me say that as one person who has repeatedly said that I am not in favor of abolishing the ICC, I want you to know that it is sometimes rather difficult to defend the Commission in the face of such actions which really make some of the criticisms extremely valid.

Now let me ask you if I am mistaken in this approach—it would imply that it is not possible to correct some of these service deficiencies without expenditure of a lot of capital. Is that your opinion?

Mr. WALRATH. That is only part of it, sir. And may I say quickly I do not disagree with my colleague, brother Murphy, in his summary of what the facts are in this record. Nor do I condone those deficiencies any more than he does.

The point I tried to make was that the majority of the Commission, and even the three other dissenters, in part, felt that we could not impose a sanction representing a withholding of funds at that point without endangering a major section of our national rail transportation system. With so many carriers operating at a deficit, many of them marginal to the extreme, we felt that we had to give the immediate relief that would permit them to continue to operate while we endeavored to put pressure on them in every conceivable way to upgrade car service.

Now, that was the only point on which Commissioner Murphy and I disagreed. I agree with his concern. I am just as deeply concerned, and I think that all of my other colleagues are. It is a question of whether at that particular point in time and history disapproval of the carriers request for a revenue increase would have resulted in another 15 to 17 or 18 bankruptcies and whether we would be holding a post mortem for those lines. Instead of taking a few months to upgrade the service.

And as I said earlier, I think even Commissioner Murphy would agree that in the time since this record closed last fall and the present time, that the carriers have effected significant improvements in those services which could be improved without expenditure of huge amounts of capital; and if there are instances where they have not cooperated, we have retained the power to impose sanctions, to penalize them for

late deliveries, for bunching cars, for deliveries of cars at times when shippers cannot use them, and for wasting of transportation resources.

I am one of those who believe that more efficient utilization of existing transportation facilities is equally as important, if not more important, than building more cars. I think that improved use of the existing car fleet is more important to the alleviation of the immediate crisis than a sudden influx of additional money to buy or build more cars.

So I fully share Commissioner Murphy's concern. However, in the particular situation presented in the *Ex parte* cases the vast majority of the Commission felt that withholding revenue increases could well result in another rash of critical insolvencies and even threaten continuance of vital services.

Senator STEVENS. Could I interrupt for a moment?

Senator HARTKE. Yes.

Senator STEVENS. Am I properly informed that the reporting requirement was new, however, and that you did take the first step and the handwriting is on the wall if there is not some affirmative action as far as the shipper is concerned?

Mr. WALRATH. You are correct, Senator, and car service has been made an issue in the pending case, *Ex parte No. 270*. And, as I indicated before, shippers have made representations to us that there has been some improvement in on-time delivery.

They are not by any means satisfied and neither are we. But improvements are being experienced.

And you are correct; it was the first time we ever made them file such reports.

Senator HARTKE. Let me ask Commissioner Hardin: Do you think that you should have put in specific requirements for improvement in service rather than just voluntary reporting?

Mr. HARDIN. In my dissent, Mr. Chairman, on page 262 of that report I said this:

Rather than requiring respondents to file compliance reports * * * I would require of the respondents that, as part of their initial case in any subsequently filed general increase request, they submit documentary evidence of steps taken from the date of the order in these consolidated proceedings to improve service. The shippers most concerned would then be in a position to challenge by competent evidence, of the type introduced in this record, the respondents' contentions. Absent an affirmative showing of improved service, I would find it extremely difficult to conclude that respondents are efficiently managed and, as stated in the 5 percent case, that "no one could reasonably contend that the public should pay higher transportation rates because once prosperous properties * * * may now be in need of additional funds as a consequence of mismanagement."

So my feeling was that the service was inadequate at the time. There were improvements being made, I acknowledge that. There was no question as to the need for additional revenue by these carriers. I think that was shown adequately on the record.

But where we have this, these are the steps which I would have preferred to take.

Senator HARTKE. Commissioner Brown, what do you think? Do you think that positive action should have been required in that regard?

Mrs. BROWN. Well, I will say, Mr. Chairman, that in these proceedings, that service was the part that concerned me most. And it is so stated by me, in a separate expression.

But I am concerned because I firmly believe that the shippers of the country were willing to come forth and, shall we say, lay out more money and, at the same time, in their willingness to do that, they wanted and were entitled to good service. I think, herein lies an extreme problem, for the Interstate Commerce Commission and for the industry as well.

It was my desire, my wish, to improve the service in the very best way we could. I was for doing it then. Actually, when people want money is a very good time to do it.

Senator HARTKE. I think it is quite true, as Senator Stevens has indicated, that in this reporting you asked for something new; there is no question about that. But this whole idea of voluntarily improving service or correcting deficiencies is one of the entire history of this Commission. In 1947 a freight car shortage was found. It really began in 1887, as Senator Magnuson always says, with that first case; and we have a long history of voluntary action being anticipated.

But if it is true that anticipation is greater than realization, then we still are having a great deal of fun with anticipation and have for a long, long time. I would hope that you give this serious consideration.

I might say, though, that in my discussion of this matter, I do think the Commission has indicated and shown a recognition of the problem that we have in the field of adequacy of service and that in and of itself is a step forward. I think it is also commendable there are differences of opinion on the Commission, as expressed by the independent views and by the dissents. I think that is healthy. I am not encouraging it necessarily but I do think that the monolithic approach toward some of these matters is not necessarily the best kind. And I think it is also a step in the right direction for the ultimate movement for making the Interstate Commerce Commission what we think it should be.

We have had these broad increases in rates across the board. I do not know—Commissioner Walrath, maybe you want to answer this. In *Ex parte 265 and 267*, you granted again the broad increase right across the board without being specific in the tariffs which were to be changed.

Now, in that decision you said that the selective increase which the southern carriers desire to apply is more informative to the shippers than is the flat rate increase of a greater amount, which is later made the subject of exceptions or lesser actual increases by the various carriers. That is from your order of March 4.

Now, if the carrier can make a determination after a rate increase is made as to which rates shall be specifically reduced, could they not make that same determination before the request is made and come in and specifically ask for those rates which they think should be increased, rather than for an across-the-board increase?

In other words, what you have done here, again, you leave it up to the rail industry to make a decision rather than the Commission making the decision as to what is the proper increase; is that not correct?

Mr. WALRATH. Yes, Mr. Chairman, and I agree with you. The ideal situation would be for the carries to agree in advance upon areas in which they should take increases and other areas where they should not take them, or take less. In short I think selective increases are the proper way to make general revenue adjustments.

I can only speculate because we do not sit in on their rate conferences, but we do know, as everyone does, that the carriers spend several months before they file an increase proposal trying to reach agreement. They meet usually in Chicago—the southern group, the eastern group, and the western.

Now, I think any individual railroad, if it were making its own rates and did not have to be concerned with its interline relationships—with transcontinental and north-south lines, for example, might very easily or at least more easily, determine its precise revenue needs in certain commodity classifications. But as long as they have to deal as a national system or a regional system, they debate these things for months, and when they come up with the across-the-board proposals we have had in recent years, it means that they were not able to get together. And then it is left to the individual lines to take selective action, independent action, as to where to apply the overall increases that have been approved.

Senator HARTKE. Can I take you back to a bit of philosophy for a moment? You see, your concern here is whether or not the railroads can get along with each other, rather than to question whether the rate is fair and whether it is in the public interest.

Mr. WALRATH. No, that is not my concern. My concern is only—

Senator HARTKE. Well, now, that is what you just said.

Mr. WALRATH. No. I said we know they cannot get along with each other on specific adjustments.

Senator HARTKE. I understand that. But the concern was not whether or not the specific rate would have better served the public interest and been fair. Your concern was whether or not the railroads could make this adjustment between themselves.

I have nothing against the railroads. I want them to be successful, and I tell you I honestly believe that if they get the type of direction from the Interstate Commerce Commission as a regulated industry, they are going to be better served for themselves. I think they are going to do a better job for themselves. But as long as they have to go through this compromise arrangement—and that is what this amounts to with them—what they are doing is dealing with each other, not even sometimes for what is in the best interest of the railroad industry itself, but in order to accommodate the railroads among themselves and their own little special problems they have. There is no one there making sure that you bat their heads together and say, "Look, can you justify this specific rate increase? Can you be fair to the public?"

You see, if you approach it from that philosophy—and that is what I keep on saying; this is a criticism of the Commission, criticism not for the fact that as-a Commission you do not have fair treatment for the railroads. They probably would be better served if you were a little bit more stringent in these applications.

Let me ask you, Commissioner Hardin: Do you think you could be more specific in your granting of rate increases for specific rates?

Mr. HARDIN. I think one of the problems we have is that the rates are initially made by the carriers themselves and are presented to us.

Now, in that context, the Commission in this particular instance did apply holddowns on certain commodities.

I had some differences on those which were not necessarily extensive, but I had some differences in the application of holddowns. But we

were looking at the individual shipper's interests in this as well as trying to look at the broad picture, Mr. Chairman.

Senator HARTKE. What about you, Commissioner Brown?

Mrs. BROWN. Mr. Chairman, in one of our last rate proceedings, the southern carriers did come in with what you are talking about—I guess maybe it is termed "selective increase." They came in late in that proceeding to do that. They did come in with something that showed that they selected what they had taken on and what they would not.

Now, the general rate increase cases we have had, or the experience as I have been able to find out, is that about 80 percent of what we authorize is collected. In other words, there is 20 percent in there that we take credit for giving to them when in effect it is something that is a matter in their discretion afterward.

But I would say from the southern carriers' experience that it might be feasible to do that which you were speaking of.

Senator HARTKE. Yes, Commissioner?

Mr. WALRATH. May I add just this, Senator? If we were talking about a rate case involving a single commodity or commodity group, take grain and grain products or coal or any given major commodity group, then costs and revenues are used to determine precisely what the rate levels should be. That is, they propose a rate and we either approve it or disapprove it. In effect we do exactly what you are talking about.

But in a general revenue proceeding where they need hundreds of millions of dollars to meet increased costs and escalations, the Supreme Court on many occasions has held that we must look not to individual commodity cost-revenue relationships but to the overall revenue need of the carriers; and that is a standard not of our own making.

But again, *Ex parte 270*, is a proceeding designed to correct any inequities that may result.

Senator HARTKE. Let me ask you if the Commission made an order under the authority of the Supreme Court decisions, if you made an order in which you said in advance to these people, "When you come in for a general rate increase, you will document this with your specific rate requests as to how it is specifically going to raise the total revenue"—you see, there are two ways of approaching that matter. If you go ahead and do give them a specific rate increase, but if you come in and make them document their story—because, after all, there is no such thing as carrying general freight. There is no such thing. You carry specific items.

Mr. WALRATH. That is correct, sir.

Senator HARTKE. The general is made up of the specifics. And if they can do it afterward, they certainly ought to be able to do it before. But I will guarantee you, if I were a carrier, I would prefer to do it the other way around; if I had my way, I would rather make the decision after the fact rather than before the fact.

But when they make the overall request for the amount, they figure out exactly the same thing.

Mr. WALRATH. In many instances they do not know what their competitive situation may be until after they have our permissive approval of an across-the-board increase, and then they find they cannot afford to take full advantage of it.

Senator HARTKE. I think you will find out they can come pretty close to that.

Let us come to the question of diversion of traffic. What is the effect of the rate increase? You said that in regard to the diversion of traffic and the argument that rate increases will or will not lead to diversion of traffic:

Evidence with respect to individual railroads confirms the conclusion that the past three rate increases have caused no significant diversion of tonnage, or any appreciable reduction in volume. While rate increases on particular traffic movements may produce diversion to other modes, generally, service features appear to be the more significant factors in the choice of mode of transportation.

That is from the March 4 order, on page 192. Do you still believe that?

Mr. WALRATH. Yes, sir.

Of course, if you take into account the expanding economy then the carrier might be faced to handle a lesser percentage of the overall traffic. I mean some traffic has been diverted, but enough was handled to maintain or increase their total over that handled in prior years.

Senator HARTKE. Well, the Interstate Commerce Commission letter of June 18 stated that the Penn Central might not join in the proposed 2-percent rate increase for fear of loss of traffic. Do you think they are wrong in that? Were you wrong in making that assertion?

Mr. WALRATH. That letter does not ring a bell with me.

Senator HARTKE. Pardon me?

Mr. WALRATH. I said your reference to that particular letter does not ring a bell with me at the moment.

Senator HARTKE. I will have them get the letter for me and we will bring it in in just a minute.

Mr. Hardin, on page 268 in the first paragraph you said: "I believe the high water mark of blanket percentage increases to have been reached in these consolidated proceedings." In other words, that henceforth you will adjust the specific rather than take across-the-board increases. Is that still your belief? Do you think the question of diversion of traffic has resulted from these broad increases in rates or not?

Mr. HARDIN. Not a substantial diversion; no, sir.

Senator HARTKE. Not a substantial diversion?

Mr. HARDIN. No, sir.

Senator HARTKE. Let us take up the question of transactions with affiliates. In your March 4 order you discussed the carrier transactions with affiliated companies. It is on page 157, if you want to find it.

The National Industrial Traffic League, who was a party to that proceeding, requested consideration of such transactions; is that not true?

Mr. WALRATH. Yes, sir.

Mrs. BROWN. Yes.

Senator HARTKE. And the Commission arrived at this conclusion, as is reflected in their view, prior to the examination of the data which was submitted in this case?

Mr. WALRATH. Oh, no, Mr. Chairman. If you recall, in this record for the first time we required the carriers to show affiliate transaction data for a representative period of time. And from the study year, it is quite evident, and I think not really controverted, that some moneys went out to affiliates for services related to transportation, notably equipment leasing. But if they had not leased cars from an affiliate, they would have had to lease from an independent company, and in

many instances they would have been subjected to outside mortgages that covered the total properties of the railroad.

Now, they persuaded us that these equipment transactions with affiliates were simply good business practices.

As to the nontransportation affiliates, the record for the study year—and that is all we had before us—showed that more money came back to the carrier than went out to the nontransportation affiliate.

Senator HARTKE. Why was that the only information you looked at? You say that is all the record you had before you.

Mr. WALRATH. It was all we could expect them to complete in the short time between the time they filed for their application and the time we had to act on it on a suspension basis.

Senator HARTKE. Why did you not have this type of information previously yourselves for other years?

Mr. WALRATH. It is simply a lack of accountants. It simply takes so many accountants.

Senator HARTKE. Had you started to examine this question at all?

Mr. WALRATH. We have been doing so ever since conglomerates became a problem; yes.

Senator HARTKE. Now, the Penn Central debacle certainly ought to have been enough warning to you to look into this matter, and continue to do so with a great deal of interest; should it not?

Mr. WALRATH. Had we attempted it for the entire railroad industry here, we would not have been finished before 1976.

Again, I plead our thinness in personnel qualified to examine these books, Mr. Chairman. We simply cannot do it except where we take them one at a time; and we could not have covered 70 class I railroads at once.

Senator HARTKE. Where did you find that the payments of dividends had occurred notwithstanding the apparent inadequate level of earnings? What cases? That is in your findings. You make the statement that in a few instances payment of dividends have occurred notwithstanding the apparent inadequate level of net earnings.

Mr. WALRATH. My colleagues suggest one of the cases—and I have for the moment to rely on them—Western Pacific. But I would have to examine the appendixes in our report. From memory I cannot tell you. But we did find that situation in a few instances.

Senator HARTKE. Will you submit that for the record?

Mr. WALRATH. Yes; I would be happy to, sir.

(The following information was subsequently received for the record:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 8, 1971.

Hon. VANCE HARTKE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: During the course of the nomination hearings on Monday, June 28, 1971 you requested that I supply for the record the basis for our finding (in *Ex Parte Nos. 265-267*, at page 157) that "in a few instances, payment of dividends has occurred notwithstanding an apparently inadequate level of net earnings."

I regret that at the time I was not able to pinpoint another portion of that report which, I believe, contains the information you desire. I refer to the paragraph on page 161 which reads as follows:

"The six railroads which paid dividends notwithstanding deficits in net income were the Central of Georgia, Chicago and North Western, Chicago, Milwaukee, St. Paul and Pacific, Monon, Penn Central, and Western Pacific. We have made

allowance hereinafter for the particular effect of the Penn Central statistics on both eastern territory and the United States as a whole. Total dividends paid by the other five railroads do not exceed \$8 million and, even if disallowed entirely, would not materially affect our conclusions as to revenue need and lawfulness of the authorized increases."

If I can be of any further assistance in this matter, please call on me.

With personal regards.

Sincerely,

LAURENCE K. WALRATH, *Commissioner*.

Senator HARTKE. If you were a casual observer, would you not conclude from this statement that the Penn Central affiliates were pretty good operators, in regard to their affiliated—

Mr. WALRATH. Based on this record?

Senator HARTKE. Based upon what you say here in your findings.

Mr. WALRATH. In that one year; yes.

Senator HARTKE. But does it not leave the impression, I mean, pretty generally that—

You know, I find it very difficult, I have to admit, to look at the Penn Central thing as anything except miserable.

Mr. WALRATH. That is right, sir.

Senator HARTKE. We are continuing that investigation, and all I can say to you is it becomes murkier and murkier day by day.

Mr. WALRATH. I agree, sir.

Senator HARTKE. The difficulty with that operation is probably going to go down as one of the saddest operations in the history of railroads.

Mr. WALRATH. May I add something on the point that I was trying to make? I am quoting now from page 57 of our report:

A few protestants contend that the data must be interpreted as indicating unwise or improper transfer of funds to affiliates.

That was the contention you mentioned earlier.

The next sentence:

They agree—meaning the protestants—however, that far more extensive studies would be required to support any valid conclusions, and that the record of transactions for a single year is insufficient.

That is the only point I was trying to make, sir.

Senator HARTKE. All right.

Now let me show you what bothers me. This was March 4, 1971, right?

Mr. WALRATH. Yes, sir.

Senator HARTKE. What you say in substance, if you take the paragraph on 158 about the Penn Central, you come to the conclusion that they received more from their affiliates which were engaged in unrelated activities than they gave to them; right?

How do you reconcile that with the letter you sent to me on November 18, 1970, some 5 months previous to this, 4½ months previous to this hearing, that showed the cash impact of the Penn Central's transactions with its nontransportation affiliates at that time over the period 1963 to 1970? It showed a cash loss to the railroad of \$153 million. Why would not that have been appropriate?

Mr. WALRATH. It simply was not made a part of this record, Senator. We had to act on this record in connection with these requests.

Senator HARTKE. Can you not see that—

Mr. WALRATH. We were concerned with the revenue requirements which exceeded the requirements that had been met in previous cases, including 262.

Senator HARTKE. Are we going to take each one of these situations bit by bit and not take the overall effect of unrelated businesses as to how they are affecting the railroads?

Mr. WALRATH. No, sir. I would have to agree with you on that.

But in this proceeding we asked for affiliate data relating to the period of time during which the carriers were contending they had increased expenses and decreased revenues.

And please, Mr. Chairman, bear in mind that our reporting requirement was an innovation—

Senator HARTKE. Let me just leave you with this thought. You see, by isolating the situation, it is sort of like going in and saying I bought a whole basketful of apples and they picked the best one out of that basket and gave it to me and said, what do you think about the basket? Was it good or bad? On the evidence of this one apple submitted to me, it was good. But you knew in your own mind that the whole bottom was rotten as all get out.

Can you not see that, that you have a little bit deeper responsibility?

Even Commissioner Hardin did recognize that, I think, on page 264—maybe you want to say it yourself, Commissioner—you say:

However, it is equally true that the evidence of record submitted in literal compliance with the Commission's order is insufficient upon which to base any conclusion with respect to intracorporate transactions. For example, the evidence of the record does not provide the Commission with answers to the following questions:

Have the respondents made excessive payments to affiliates for managerial services?

Have the respondents sold assets to affiliates at less than market value?

Has there been an excessive drain of carrier assets through dividends to corporate parents in the form of cash or securities?

Has there been use of carrier tax credits in a consolidated return without consideration moving to the carrier?

Have the carriers' relationships with their affiliates caused a drain on their working capital so as to affect service and create an inflated need for additional revenue to meet current operating expenses?

All I can say is that those questions remain unanswered as of this date. Is that not true?

Mr. WALRATH. That is correct, sir. And I think they should be answered in the future.

I have the unhappy position of being caught between two distinguished colleagues who both dissented from the majority.

Senator HARTKE. I might say that being in the middle does sometimes create an uncomfortable feeling.

Mr. WALRATH. I assure you, sir, you have not made me uncomfortable. I am happy to be here.

Senator HARTKE. I might say I do not think these decisions are doing to interfere with your confirmation, if that makes you feel any better.

Mr. WALRATH. Thank you, sir.

Senator HARTKE. Have you perfected your study that you have been making in regard to the results of these conglomerates? How far are you coming?

Mr. WALRATH. May I defer to the Vice Chairman? I think he is more currently informed.

Mr. HARDIN. Mr. Chairman, we are in the process, as you know, of examining a number of the conglomerate situations. I think there are basically three situations in which we find ourselves at this particular point.

The first one is where a holding company is seeking to acquire control of a railroad, a single carrier, or a single established system. In that particular type of instance there is no authority—there is no approval—required from the Commission.

The second situation we have is the situation where a holding company either already in control of a carrier—is already in control of a carrier and is seeking control of a second—or is seeking control of two or more carriers; in that instance they are subject to provisions of section 5 of the act. In that situation the Commission has the power under section 5 to require them to comply with the reporting and accounting provisions of the act as well as the security provisions.

The third situation, and one that is a little more delicate at this point, because it relates to cases pending before the Commission, and that is in the case of a merger, or merger proceedings. Now in those, of course, where holding companies are involved and are parties applicant to the proceedings, the Commission may impose conditions and terms with regard to the particular merger proceeding that is pending before us.

Insofar as the transfer of assets from a rail company to subsidiaries, the Commission cannot prevent that kind of transfer to subsidiaries.

Senator HARTKE. You cannot what?

Mr. HARDIN. We cannot prevent that transfer to subsidiaries, in terms of a lawfully acquired dividend, or transfer of assets.

Senator HARTKE. In your annual report for 1970, on page 6 you mentioned an industrywide survey of corporate conglomerates, several pilot investigations of rail and motor carrier conglomerates, and a detailed plan on what to look for in carrier related diversified conglomerates and how and where to find relevant information. Is that going forward?

Mr. HARDIN. Yes, sir; it is.

Senator HARTKE. And you are gathering information?

Mr. HARDIN. We are gathering information on that in the individual cases, and the Chairman has established a committee of Commissioners to look into these conglomerate situations with a view toward determining what types of legislation, if any, additional legislation, if any, that we should recommend to the Commission, and it will be considered at that time.

Senator HARTKE. Let me be real frank with you. I really do not believe that you know what is going on. I am going to give you some evidence of that.

Early last week it came to my attention that the Union Pacific Railroad planned to transfer some assets from the railroad to subsidiary companies. I was concerned that this might be part of a plan to divert resources which were needed for rail services into other activities. And the events in the Penn Central history with which I had become fa-

miliar justified that concern. So I sent a letter to the Commission asking for details of the contemplated transaction and for an appraisal of it.

The Commission's reply, as I subsequently have written to you, was completely unacceptable. You simply sent a copy of the Union Pacific's notice to stockholders and your outline of what it proposed to do. But then you said you had no power to take any action.

Now, I did not ask you to take any action. I only asked for information and the Commission's expert—and I hope you have some expertise in this area—judgment as to the impact of the transaction. You did not give me your judgment. In fact, your letter suggests that you did not even know what was going on. You did not place the transaction in context. You did not even say enough to raise the slightest though that the ICC could tell whether or not the transaction would adversely affect transportation services.

Now, I do not know how you can claim to know "how and where to find relevant information," which is a quote from you. If you do not know how and where to find relevant information of this kind, then I think that you ought to find out how you are going to make detailed study, as you say you are doing.

Now, with reference to the claim that you have no power to take action, you see, this is what again bothers so many of us. I think it is so typical of the Commission's attitude, of its lack of imagination, of its lack of vigor in acting to protect the public interest. Too often you claim, in my opinion, that you do not have enough power to do anything. And in many cases it leaves with me the question of "Do you think you can fulfill your duty by ducking the issue in this manner, by saying you do not have the power?"

I think it would be better, and I would ask you: Would you not think it would be better to do what you can do rather than to say you have no power before you even try to do anything?

Mr. HARDIN. May I comment at this point, Mr. Chairman?

The Commission has attempted to do something in a particular situation where the facts were essentially these: In the case of the Kansas City Southern Industries Holding Co., there was an effort on the part of another conglomerate totally unrelated to transportation, known as Lee National. Over the period of years Lee National had purchased somewhere in the neighborhood of 22 percent of the stock of Kansas City Southern Industries.

Subsequently they were able to get two or three men on the board of directors of Kansas City Southern Industries.

Thereafter, an agreement was reached between Lee National and Kansas City Southern Industries whereby the stock which Lee National had purchased, which was valued at somewhere in the neighborhood of \$14 million, would be exchanged for assets and other securities of Industries valued somewhere in the neighborhood of \$24 million.

Now, in connection with the Commission's investigation and surveillance of this entire situation, we went into this in some depth. We found that some of the property to be transferred to Lee National carried with it an option to repurchase within 2 years. If that option was not exercised, then a leaseback to Kansas City Southern Industries would occur at graduated annual rentals totaling over a period of years some \$45 million.

The Commission considered the entire matter and raised the question of what this meant in terms of the railroad, the carrier operations of Kansas City Southern Industries. And as a result of that we went to the Department of Justice and sought their assistance to obtain an injunction against the transaction until we could get further information on this to determine what the impact and effect would be, because a stockholders meeting to approve this had already been scheduled.

If I may, Mr. Chairman, I would like to read one paragraph from that letter which we received last month.

Senator HARTKE. Certainly you may.

Mr. HARDIN. Confirming the position which the Justice Department gave us when we attempted to get an injunction in this matter.

They said:

We have been advised and our own examination confirms that there is currently no statutory authority prohibiting a railroad holding company from engaging in financial transactions in which funds lawfully obtained from its carrier subsidiary in the form of dividends or otherwise are thereafter purportedly misapplied or wasted. In the course of our discussion with you, we considered whether Section 10 of the Clayton Act or Section 660 of the Criminal Code would reach any of the conduct involved in the present situation. We concluded that they would not.

Senator HARTKE. But were you gathering the information specifically on each one in this situation?

Mr. HARDIN. Oh, yes, sir; we were going along with this, all the way along, as we were able to obtain it.

Senator HARTKE. Why did you not tell me that in the letter then?

Mr. HARDIN. We got this just last month, Mr. Chairman, and it will be coming.

Senator HARTKE. Last month? I wrote the second letter to you just Thursday or Friday, whenever June 24 was, last week, the follow-up letter, in which I was rather straight-forward, I think.

Mr. HARDIN. That was my fault, Mr. Chairman. And I will make a copy of this letter available to you immediately.

Senator HARTKE. I asked for that other information this morning, and it is still not here.

You see, I suppose I cannot assume you are going to get it to us?

Mr. HARDIN. We will get the information that you asked for.

Senator HARTKE. Let me put it this way. Can I get it?

Mr. HARDIN. Yes, sir. The information which you requested is pretty broad and quite voluminous.

Senator HARTKE. Is it informative?

Mr. HARDIN. Yes, sir. But we were in an appropriations hearing all afternoon Friday afternoon, and we have not had an opportunity to put this together yet. We would like a little more time, I think, beyond today.

Senator HARTKE. You know, we had this question of the conglomerate-merger study a year ago. It was sort of an indictment along the same line, of failure of the Commission to really keep on its toes in this regard on a continuing basis.

That was made public about a year ago. And at that time it was brought out really without the enthusiastic support of the Commission—I think that is putting it mildly.

But what I am asking for is, you know, in your annual report of 1970, as I repeat again, you said that you have an industry-wide sur-

vey of corporate conglomerates a detailed plan on what to look for in carrier-related diversified conglomerates and how and where to find relevant information. I just wondered why we have to wait now? Is that information all of a sudden just being accumulated at this late date?

Mr. HARDIN. Well, of course, the intercorporate manipulations in some of these, Mr. Chairman, are pretty complicated.

In the Penn Central case alone we have over a hundred subsidiaries there, with half of them being transportation companies.

Senator HARTKE. I understand that. And we are going to have real trouble. I am going to ask you now to tell me very simply if you think we are going to have a Penn Central operating January 1, 1972?

I will tell you I do not think so unless something dramatically changes. The whole thing is going to come tumbling down, and anyone who has followed this operation as I have knows this is the truth. I do not see that type of concern which I think is necessary to keep the transportation system going.

I know they have problems, and I am not being critical of what they have done. They have increased their position somewhat in relation to their cash position, but everyone who knows and listens to what they say, they tell you they are going to be running out of cash again. There is very little money left.

How much is left in the fund out of that \$125 million?

If you went tomorrow, there is maybe \$15 million left, I suppose. That is available if the court would approve going for another loan and if the stockholders would not insist on liquidation.

The fact remains, with all due respect to the repeated offer to take bids—not offer to sell, the offer to take bids on the New York properties of the Penn Central, that could not possibly provide them that cash this fall. The work rule changes, as you well know, could not possibly provide any help for them in cash this fall. And I do not know if the Almighty is going to come down and rescue them or not. But I know that they are going to come back before Congress and ask them to be doing something definitely around about the time we want to go home with the kids for Christmas.

I do not want to perform another Lazarus operation. And I will tell you for one, I told them last time I was not going back. I do not know who is going to carry the ball next time for them.

Here you have another situation on your hands reminiscent of that maybe.

I want to know where you are going, what you are going to do about it. You see, even on the field of action—when you plead no power to act, I would rather see you try to act and get your head beat in once in a while. There are worse things sometimes than getting your head beat in.

Mr. HARDIN. We need legislation on this.

Senator HARTKE. Then come and tell us what you need. You come and tell us what you need. You know very well I will take on those other people. If I get my head beat in—well.

I will help you get the legislation; but the real threat, I think, to the Commission is not the fact Congress is about to abolish it, or that the White House is going to budget you out of existence. I think there is great disappointment in regulatory agencies, generally speaking,

throughout this country, and I think the Interstate Commerce Commission is just one aspect of this. The problem is, you interpret yourself out of existence. You say you do not have the power to do this or the power to do that, no power to act.

Mr. HARDIN. You had scheduled hearings on the problems of the railroads, Mr. Chairman, and in connection with that, the Commission had a piece of draft legislation which it intended to present at that time. But because of the press of other business of the committee, that was postponed.

So, at such time as that comes up, we will be in a position to discuss that. But it is drafted, and we do have it available and ready for consideration.

Senator HARTKE. Let us move into another field here, since it is getting close to the time here—passenger train service. To what extent does the Commission have jurisdiction over Amtrak?

Where did they ever get the name, by the way? Somebody told me in Britain that it had as much appeal as a 1919 bathing suit. As I understand it, Amtrak was some type of amphibious vehicle used in World War II, that never performed effectively; is that not right? It never did work?

Mr. WALRATH. I was in the Navy, and I think they tried it.

Senator HARTKE. Did they ever fix it? I remember that thing. It looks like we have got two of them in a row. What kind of authority do you have over Amtrak?

Mr. WALRATH. I tried to get each of my colleagues to take that question. I know only generally that we are left with the determination of whether passenger trains are commuter in nature or short-haul in nature and, therefore, not part of the intercity transportation. If the trains are commuter, we still have a measure of jurisdiction. If they are intercity, then it is my understanding that the new Railpax or Amtrak has responsibility.

Now, beyond that, Mr. Chairman, I would defer to either of my colleagues who might want to expound upon that question.

Senator HARTKE. Well, you know we had an adequacy issue in which we had that little exchange before about whether or not the Commission had power to deal with adequacy of service for rail passenger trains, and then at that time there was a unanimous conclusion that there was a need. I think Commissioner Brown was the only one who dissented at that time in regard to whether or not you had the authority. All of the Commission otherwise claimed they did not have the authority to act.

Now we have passed Public Law 91-518, the National Rail Passenger Service Act. In section 801, "Adequacy of Service," the Commission is authorized to prescribe such regulations as it considers necessary to provide for safe and adequate service, equipment, and facilities for intercity rail passenger service.

Now, that has been the law for 8 months. Can you tell us what you have done?

Mrs. Brown. Mr. Chairman, I will take a stab at this, since I looked at the others and they seemed to think it is my turn, too.

The safety part, when I first came to the Commission, was vested in the ICC. Safety was then transferred to the Department of Transportation in 1967. Now, legislation of safety in regard to Amtrak comes back to ICC. The Interstate Commerce Commission adopted the

safety regulations of the Department of Transportation, which were set up as the safety standards applicable to all rail passenger service.

Now, at this time, the ICC will be determining what takes place from there. As of right now, there have been no new regulations adopted in the agency as such. Of course, Amtrak has not been actually in existence very long right now, but they have had one bad accident.

Senator HARTKE. Have you established any standards of service?

Mrs. BROWN. The standards that were in effect that the Department of Transportation—

Senator HARTKE. But you have done nothing in the Commission since then?

Mrs. BROWN. No new ones.

Senator HARTKE. For 8 months. Let me show you what you do. You have made a decision in which you said there was not any question about that, that standards must be established. The Commission said I did not have the power to establish standards. But we then gave you the power to do so. Now here, 8 months later, nothing has happened; right?

Mrs. BROWN. Amtrak came into operation May 1, 1971. It has taken a period of time to get those others transferred.

Senator HARTKE. Would you have taken any different action if we had just given you the authority and had not put the passenger service train act into effect with so-called Railpax or Amtrak, or whatever it is?

Mrs. BROWN. If there were none, you would have to act right away.

Senator HARTKE. Have you ridden on them?

Mrs. BROWN. No; I have not. I have ridden on the Metroliner and other passenger trains throughout the country.

Senator HARTKE. Would you like to go with me this afternoon on one of those new trains? And I am not talking about the Metroliner to New York. Have you ever ridden on these others?

Mrs. BROWN. Yes.

Senator HARTKE. Recently? Since Amtrak has been in effect?

Mrs. BROWN. No.

Senator HARTKE. If they have done something in this field, I guarantee you the passengers do not know it. I was very enthusiastic about it, about trying to put together a passenger service program.

I rode in trains in Britain last week at 80, 90 miles an hour. The service was absolutely excellent. The trains were on time. They were clean. And it was not the most modern equipment under the sun, but it was clean; not late.

The Southern Railway is operating their trains themselves. I can tell you that repeatedly they are waiting; they are waiting and late in their service very simply because they cannot get the connections on this end from the Penn Central. It is 4 hours late sometimes just getting down to Washington to go south to New Orleans.

I think Amtrak can be made to work.

And I think on the question of safety and adequacy of service—you take one train ride with them, and you will be convinced that they are not doing the job. And to the extent that there was a cutback in the number of passenger trains operated at that time, there certainly should not have been more accidents.

I said at the time, unless it was definite—that is, unless they made massive changes in a hurry which encouraged people to believe something was coming—they were going to be in trouble, and they are in deep trouble.

From now on in, the burden is going to be on them. I was willing to help, but now the situation has changed. They are going to have to show me they have a little bit more than a new sign and new posters. People want service, and that is what they are entitled to.

I might say in this regard, I understand that there are some more cars which could be put on the Metroliner, that the Budd Co. has 12 or 14 of them that are available, just sitting. Do you know that?

Mrs. BROWN. No.

Senator HARTKE. I would like for you to look into that and find out. I would think with the condition of some of the cars they could be used someplace better than to sit in a warehouse someplace.

On April 26 of this year, I have been told that Amtrak filed an application with the Commission for authority to issue common stock to participating railroads. Is that correct?

Mr. HARDIN. Yes; that is correct. I am sure that is correct.

Senator HARTKE. That was on April 26. That application was decided and granted by Division 3 on April 28, 2 days later. Now, is it not true that the Commission's own regulations governing application for authority to issue securities specifically provide that such applications shall—in your own words—"shall be filed sufficiently in advance of the date of the proposed issue or assumption to give the Commission reasonable time, not less than 30 days, for the notice and investigation required by law"? Is that not true?

[No response.]

Senator HARTKE. Well, it is true. Let me just tell you. I will give you the references if you want. The authority to issue securities is in 49 CFR part 1115, and that is 1115.3. That is the subsection number.

The Amtrak application then obviously did not comply with that regulation.

Do you customarily ignore your own regulations just because it is Amtrak?

Mr. WALRATH. Mr. Chairman, unfortunately, none of the three of us are members of Division 3, and I do not know what the circumstances were.

Senator HARTKE. Well, we will just leave that for the record. We will not ask you in these hearings, but will specifically ask the Chairman back there to direct his Division 3 to inform us whether there is a special form of treatment which is given to Amtrak which is not accorded to anyone else.

While you are doing that, I am going to submit some more questions about the failure to instruct the Governors in accordance with your own regulations and, specifically, failure to—really refusal to give the copies to the Governors, and as to why they should be treated differently than anyone else.

Mr. HARDIN. Do you want this submitted for this record?

Senator HARTKE. No; we will submit that for a separate reply, although it will be carried as a part of the summary of this record.

The letter to which I referred before and which we did not have available at that time concerning other corporate conglomerates and other corporate holdings, your letter of June 18, 1971, says: "The 1971

forecasted revenues include \$7.9 million as a result of the rate increases effective October 1, 1971." It means whether or not there would be a decrease of revenue. Here is your signature, Commissioner Walrath. I think you had said it did not substantially affect revenues.

This increase has not been applied for and the trustees of the railroad have indicated in subsequent discussions they may not be able to increase the rates due to competition conditions with other modes of traffic which might cause a substantial diversion of traffic.

So evidently they have convinced you that that was true at that time.

Mr. WALRATH. I take it, Mr. Chairman, that that is simply a report from us, what they told us.

Senator HARTKE. That is not what it says. It leaves the implication that this is your conclusion. I think you ought to be careful if that is true, if that is what you meant to say.

Mr. WALRATH. That deals with the Penn Central, is that correct?

Senator HARTKE. Yes. We will leave that with you.

Mr. WALRATH. I must have approved the letter, but I assume it is signed by our chairman, and based on the statistics developed for him.

Senator HARTKE. It is a status report.

Mr. WALRATH. Mr. Chairman, I am reminded that our current reports to you on the status of the Penn Central are not even passing through me but, rather, a special committee who are advising you. I must have a copy of that in my file.

Senator HARTKE. This is June 18. That was your last status report in regard to Penn Central, which you have been requested to do, and which you are doing.

Mr. WALRATH. But which did not come through my division.

Senator HARTKE. Let me wish you all good wishes on your next joyful venture down the rapids of the Interstate Commerce Commission's river. I am sure you will be successful.

I have the highest regard for each one of you personally, and I hope you know that.

Mrs. BROWN. We do.

Mr. WALRATH. Thank you, sir.

Mr. HARDIN. Thank you very much, Mr. Senator.

Senator HARTKE. I do not anticipate you will have any difficulty being confirmed. And I still am looking forward to the time when the Interstate Commerce Commission is going to be held up as the great Commission demonstrating the Government can work for the benefit of the people. Thank you.

(Whereupon, at 12:10 p.m., the committee was adjourned, subject to the call of the Chair.)

HOLLAND & KNIGHT,
Bartow, Fla., April 28, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have just learned through my former administrative assistant that the President has sent over to the Senate his nomination of Honorable Laurence K. Walrath of Florida for an additional term as a member of the Interstate Commerce Commission. When Mr. Walrath was first appointed to the ICC and on every subsequent occasion, he was strongly recommended for such appointment by my then colleague, Senator George A. Smathers, and myself. I now strongly recommend him for this additional appointment and request his early confirmation.

I have known Mr. Walrath since his student days at the University of Florida, from which he earned academic and law degrees. He later practiced in Jacksonville, Florida and was a highly regarded attorney of the finest possible reputation and standing.

I am sure that his long service as a member of ICC has demonstrated his sense of honor, his industry, and his great capacity. I simply want to be on record as again strongly endorsing Laurence K. Walrath for confirmation by the Senate for an additional term as a member of ICC.

With cordial personal regards, I remain
Yours faithfully,

SPESSARD L. HOLLAND.

U.S. SENATE,
Washington, D.C., May 24, 1971.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On June 17, 1971, your Committee is scheduled to take up the nomination of Mr. Laurence K. Walrath of Florida for reappointment to the ICC for a term expiring December 31, 1972.

Mr. Walrath is a Democrat first appointed to the Interstate Commerce Commission by President Eisenhower in 1956, and reappointed by President Johnson.

He has served with great distinction on the ICC and he has won the respect of his colleagues and I think it is safe to say, the respect of all those who follow the ICC closely.

I have known Commissioner Walrath personally for several years and I joined Senator Holland last year in urging his renomination last year. It is my pleasure now to endorse Commissioner Walrath to your Committee and to urge favorable consideration on his nomination.

With kindest regards,
Sincerely,

EDWARD J. GURNEY,
United States Senator.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., June 15, 1971.

HON. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR WARREN: Mr. Dale Hardin, who will appear before your Committee for confirmation as Chairman of the ICC, is formerly from Illinois. I am very pleased to recommend him to you as a man of energy, intelligence and integrity. It is my feeling that he would serve with distinction.

Sincerely yours,

CHARLES H. PERCY,
United States Senator.

UNITED STATES SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., June 27, 1971.

HON. WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Senate Commerce Committee is scheduled to act tomorrow on the nomination of Virginia Mae Brown for reappointment to the Interstate Commerce Commission.

Virginia Mae Brown has discharged her responsibilities in a distinguished manner and she is highly respected by her colleagues. She is a valued member of the Commission and it is my hope that the Committee, which you so ably chair, will act favorably on her nomination. Her capable service is an example of her dedication and high integrity.

With warm regards, I am,
Truly,

JENNINGS RANDOLPH.

James Brown and his wife since his graduation from the University of Florida. He has been a member of the Phi Kappa Phi Honor Society and has been elected to the Phi Kappa Phi Honor Society and the Phi Kappa Phi Honor Society.

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James Brown

James Brown

DOUGLAS W. TOMS, TO BE ADMINISTRATOR OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

WEDNESDAY, JUNE 30, 1971

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 2:10 p.m. in room 5110, New Senate Office Building, Hon. Philip A. Hart presiding.

Present: Senators Hartke, Hart, and Cook.

Senator HART. The committee will be in order.

First, of course, Mr. Toms, it is a pleasure to have you with us again. Since the Bureau has been upgraded to the Highway Traffic Safety Administration, again the Senate has an opportunity to review your qualifications to direct the auto safety program for the Federal Government.

There is no need to make the comment, but we always make the obvious comments around here. The position of the Administrator carries enormous responsibility. You recite the figures all the time—you live with them—but all of us understand that each year we have been killing 55,000 people on the highways of this country, and that in economic loss alone we roll up about \$17 billion a year as a result of automobile accidents.

Before we hear from you, I should indicate that Chairman Magnuson has invited the Senate Public Works Committee to participate with us in this hearing. The chairman of that committee, the able Senator from West Virginia, Jennings Randolph, and his colleagues of course have had a longtime and very effective concern and interest in highway safety. Indeed, the legislation creating the new Administration was processed by that committee.

Senator Cook, did you have anything to say?

Senator Cook. No.

Senator HART. The committee is in receipt of your biography and your financial statement. If there is no objection, we will print the biography, unless you have reason to suggest any corrections in it.

Mr. Toms. None whatsoever, Mr. Chairman. I only wish I had more money in the statement.

Senator HART. You didn't have to say that on the record. Our practice is to receive and file the financial statement from a nominee. It is in the files and available to the public, but there is no reason to have any concern about a conflict, Mr. Toms.

(The biographical sketch follows:)

BIOGRAPHICAL SKETCH OF DOUGLAS W. TOMS

Birth, September 17, 1933. Height, 5'11". Weight, 175 pounds. Military, Korea, 1952-1955 Full Discharge, 1960. Wife, Geraldine Toms, Son, Gregory Toms.

Present Position: acting administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20591.

Present Assignment: Appointed in December, 1969, by President Nixon, to be Director of the National Highway Safety Bureau Simultaneously, the NHSB was, by Administrative Act of Secretary John A. Volpe of the Federal Department of Transportation, upgraded from the jurisdiction of the Federal Highway Administration as an independent administration working directly with and reporting to Secretary Volpe's office.

Previous Positions: Director, Department of Motor Vehicles, Olympia, Wash. Special Consultant, Department of Licenses, Washington State Legislature. College Professor, California State College at Los Angeles, Los Angeles, Calif.

Education: B.S. Central Michigan University; Major, Accounting; Minors, Economics and Industrial Geography, M.A. Michigan State University, Major, Traffic Administration. Ph. D. Michigan State University, (not completed); Major, Traffic Administration; Minors, Police Administration, Guidance and Counseling.

Honors: F. E. Robinson Memorial Scholarship Award, Central Michigan University.

State of Michigan Scholastic Award, Central Michigan University (twice).

Allstate Foundation Scholarship, Michigan State University (twice).

Michigan Inter-Industry Highway Safety Committee Scholarship, Michigan State University (twice).

Auto Industries Highway Safety Scholarship Award, Michigan State University.

Phi Kappa Phi, Michigan State University.

TOYM (one of three outstanding young men in Washington) Washington State Jaycees.

Teaching: Elementary: Eaton County Schools, Eaton Rapids, Michigan; Cheboygan County Schools, Cheboygan, Mich. Secondary: Mount Pleasant Public Schools, Mount Pleasant, Mich., Lansing Public Schools, Lansing, Mich., Okemos Public Schools, Okemos, Mich.; College: Central Michigan University, Mount Pleasant, Mich., Michigan State University, East Lansing, Mich., California State College at Los Angeles, Los Angeles, Calif.

Other: Ford Motor Co., Carnahan and Toms, Traffic Analysts.

Committee and Association Activities.

American Association of Motor Vehicle Administrators, President, 1970: First Vice President, 1969; Executive Committee, Region IV AAMVA; Chairman, Motorcycle Legislative Committee; 1966 National Chairman, Registration and Title Committee; Past Chairman, Driver Licensing Committee (Region IV).

Governor's Data Processing Advisory Committee.

Governor's Sub-Cabinet on Traffic Safety.

U.S. Air Force Traffic Safety Advisory Committee.

Governor's Traffic Safety Conference Planning Committee.

Advisor, Evans' Industries (Simulator Development).

Western States Military-Civilian Traffic Safety Conference; 1965 Chairman, Resolutions Committee; 1965/66 Member, Conference Planning Committee; 1968 Regional Chairman—WSMCTSC.

American Driver and Traffic Safety Education Association; Past Member, Committee on Research; Past Member, Committee on Public Relations.

California Driver Education Association; Conference Chairman, 1963, 1964; Past Chairman, Committee on Research; Past Chairman, Committee on Teacher Preparation.

Washington State Good Roads Association.

Council of Western State Governments.

American Personnel and Guidance Association.

American Education and Research Association; Member, Executive Committee (1968-68); Research in Safety Education.

National Safety Council; *Executive Committee on Driver Education and Traffic Conference; Executive Committee, Traffic Division.

*Higher Education Section, Executive Committee.

National Education Association.
 Michigan Driver Education Association.
 Washington Safety and Driver Education Association.
 California Driver Improvement Association.
 American Red Cross; Past Member, Safety Service Advisory Committee.
 National Ski Patrol System; Past Member, Advisory Council on Winter Driving.
 Phi Delta Kappa; Member, Committee on Traffic Safety.
 Kappa Delta Pi.
 CALDE Managing Editor, Calendar (Quarterly Journal on Traffic).
 Driver Instruction Curriculum Committee, California Department of Education.
 Traffic Safety Planning Committee, U.S. Air Force.
 International Association for Accident and Traffic Medicine, Planning Committee.
 Washington State Commission on Equipment.
 Washington Traffic Safety Commission, Vice Chairman.
 Washington Real Estate Commission, Chairman.
 Institute for Educational Development, National Research Committee on Driver Licensing.
 Community Activities: Member, Board of Trustees: Olympia YMCA; Patrons of South Sound Cultural Activities (POSSCA); Museum, State of Washington. Chairman: YWCA Capital Fund Drive, Olympia; UGN—all state, local and federal employees, 1966 and 1967; Boy Scouts—Capital Fund Drive.

BACKGROUND DATA

Academic: The Acting Administrator holds a Master's Degree in Traffic Administration from the Michigan State University and is in process of completing his doctoral dissertation in the same field of study. He was a professor at the California State College at Los Angeles and has had extensive teaching experience.

Professional: In addition to a long list of academic and civic awards, the Acting Administrator is a regularly published writer in the fields of highway safety and driver education. He is author or co-author of some ten major, completed and widely used research studies in highway safety and allied fields. He is a past member of the National Safety Council, the Council of Western State Governments, the American Driver and Safety Education Association, the National Ski Patrol System, and many other organizations both national and state-wide in scope.

His activities with the American Association of Motor Vehicle Administrators include: President, 1970; First Vice President, 1969; a member of the Executive Committee, Region IV; Chairman of the Motorcycle Legislation Committee; 1966 National Chairman of the Registration and Title Committee; and past chairman of the Driver Licensing Committee, Region IV. He has been a consultant for the Institute for Education Research (a driver license research project); Michigan State University (grant by the Automobile Industry Highway Safety Commission on development of education program for traffic administrators); and the Insurance Institute for Highway Safety.

As director of the Washington State Department of Motor Vehicles, he directed special efforts in the fields of driver behavior research, driver improvement programs, and driver license examining.

Personal: Acting Administrator Toms is an outdoors man. He is an accomplished skier and mountain climber. He is also an active leader in civic projects which have included the Boy Scouts of America, the YMCA, the JAYCEES, and many, many others. In 1966 he was named one of the "Three Outstanding Young Men" of the State of Washington.

Senator HART. Did you care to make any statement at all or did you just wish to answer questions?

STATEMENT OF DOUGLAS W. TOMS

Mr. TOMS. I thought with your permission I would make a very few brief statements about my appreciation for the Bureau's being up-

graded to the level of an Administration, my pleasure in having the opportunity to be here again for reconfirmation, my indebtedness to the President to be nominated to this critical position, and my sincere appreciation to the Secretary. The strong emphasis that he places on traffic safety and the vigorous support he gives us for our programs make my job a lot easier.

Further, I would like to pay tribute to this congressional committee and the Public Works Committee, for their landmark safety legislation and the strong interest that they have shown and continue to show in traffic safety activities. We in the National Highway Traffic Safety Administration appreciate this interest very much. I don't have to repeat, Mr. Chairman and Senator Cook, the problem of the carnage on our highways.

I think everybody is aware of this epidemic problem. Fifty-five thousand fatalities is a very difficult figure for many people to comprehend. One of the ways I like to put it to make people appreciate how serious a problem this is, is by pointing out that we were rapidly approaching an injury and death rate on our highways where one out of every second child born will be seriously injured or killed in traffic accidents.

We are very pleased to note that last year was the first year in history that this rate decreased. It was the first reduction in spite of an increase in car sales and an increase in the mileage driven on our highways.

I have two basic objectives in my job as an Administrator. One is to organize the National Highway Traffic Safety Administration in the best possible way to tackle this problem. We are all committed professionally to reduce these deaths on our highways.

I view my second administrative task as that of focusing our resources on the job. As everyone close to this program is well aware, there is a very broad range of activity. It is tough to sort out all these activities and establish priorities. We realize there are times that people have special interest programs and may not agree with our establishment of priorities. However, we feel that this is important with the limited resources available to us.

You are well aware, Mr. Chairman, of our three priority programs: Passive restraints, alcohol countermeasures, and the experimental safety vehicle.

The successes of this experimental safety vehicle has been surprising to us all. It has really turned the world auto industry around and focused a great deal of attention on safety in the car.

Alcohol countermeasures deals with a large problem. A lot of people do not realize that as much as one out of every eight cars on the roadway has a problem drinker behind the wheel. This ranges from one out of eight to one out of 25. That is a lot of people on the road who are problem drinkers. The number of deaths that this group accounts for is a target for this Administration to try to get at so we can reduce this figure.

Passive restraints have been in the news a lot lately. We feel that you could lead a horse to water, but you cannot make him drink. Similarly, you can put seatbelts in cars, but we have to admit that our successes have been very modest in getting people to fasten them. In light of this evidence we feel that passive restraints is the only way to go.

We are enormously pleased with the breakthrough in airbag technology in the past year. We think this could be one of the greatest developments to date in saving lives in car crashes. We feel that our projections are fairly accurate. They show that we may reduce that number of 40,000 people each year killed in cars down to as little as 5,000 if we are able to do the kind of job that we think can be done in passive restraints.

That concludes my random comments, Mr. Chairman. I am delighted and pleased to be here.

Senator HART. Before reacting to the three priority programs that you mentioned, let me raise with you for the record an item that I think ought to be put in the record.

It was reported last year that you planned to leave the Highway Safety Bureau and take a position in private industry with a firm that was identified as one which made drivers' licenses. Would you explain to the committee the circumstances surrounding that, whether it is correct or not, and indicate your intentions now with respect to the period that you would anticipate serving as Administrator of the Department?

Mr. TOMS. Most of it was rumor, Mr. Chairman. It is true that a couple of firms approached me in a low-key way and asked me what my long range plans were and if I might be interested in their company. In each instance this was done by an intermediary. It was a kind of offhanded sort of thing. But some news of this did leak out from the sources, and consequently there was some talk about my plans.

No firm offer was ever made to me. I indicated to these people at that time that, like everyone else in the political field, it is flattering to one's ego. You like to know what is going on and what kind of interest there might be in one's services. However, I did turn these people down and indicated to them I was not interested. I did not want to make a long-term career as a civil servant in Government and I didn't intend to try to pursue any kind of Federal appointment on a permanent basis, but nothing materialized, and it was mostly scuttlebutt.

My intention is to stay here. We have bought a home in the area, my family is in school here, and we will be here at the President's wishes, as long as he will have me, God willing.

Senator HART. Anyone who reads your biography and additionally, knows you could understand why you would be sought after. My question certainly did not imply any criticism. I think it is helpful to clear the air.

So, your plan with respect to this nomination is that if confirmed you will remain so long as the appointing authority wants you?

Mr. TOMS. After all the painting and decorating and the work we have done in the house we bought, I am sure my wife has very strong feelings about that. Anybody who talks about any changes at this time has her wrath to look forward to.

Senator HART. That is a circumstantial guarantee of the trustworthiness of your answer.

The staff has prepared a number of questions, and I think we will agree that each is a relevant and useful one. They suggest a hypothetical. Suppose the Congress directs you to undertake a particular program relating to the reduction of carnage on the road, you get that

legislative directive from Congress, but in your judgment, based on information available to you, you feel that other programs are more deserving of your action and attention; what would you do in a situation like that?

Mr. TOMS. I am faced with that regularly. I think the uniform quality grading system for tires is a perfect example. That was a situation where we genuinely recognized the problem to the consumer. However, we had questions as to what the payoffs would be. Further, we did not know how to do it. Consequently, we had great difficulty in trying to develop a program that would do it without Congress' objectives.

I think that we have an obligation as an agency, and I have an obligation as an administrator, to put forth every human effort to fulfill the wishes and the objectives of the Congress and try to keep the Congress posted. In a program like tire quality grading, we are still working at what we hope will be the highest possible level that technology today will permit. I think the professionals are aware that the trade-offs between tread wear and traction are such that we have not yet found a way to tell people what they need to know on quality. I can cite other examples.

There are always things that the Congress very much would like to achieve. Very often I have the same problem with my own boss, Secretary Volpe, when he feels that something is very important and would like to see it achieved, but we just really do not know how to do it. If it isn't a matter of knowing how to do it, but purely a matter of what the payoffs are, obviously we are obligated to speak up immediately and talk about those payoffs.

I think vehicle inspection is a good example in talking about payoffs. We have very carefully studied this activity. We have a great deal of documentation now. We think it is a very important program, but we do not think that it should get out of proportion to those that in our judgment, and based upon the evidence we have, pay off better. As soon as the resources improve we have every intention of dedicating full attention to inspection.

I remember—and I really took it to heart—some of the admonishments at my first confirmation hearing and some of the subsequent talks with Members of Congress. I was told that you cannot be a mile wide and an inch deep with your resources, you have got to have your priorities, and you should have enough guts to fight for what you think will do the job.

We like to think a reduction of 1,100 traffic deaths last year was at least a partial indication that some of these priorities were paying off. But I am very sympathetic to your question, Mr. Chairman. This is a troublesome one for me. I wish that this were the kind of world that whenever someone really felt strongly and sincerely about an issue that we could fully meet their objectives.

Senator HART. The question was phrased, as hypotheticals often are, rather generally, and you have responded with more precision really than the question was precise. Let me rephrase it.

Any program which the Congress explicitly directs to be established, you have no option on it: have you?

Mr. TOMS. When the administration or the Congress requests specific action, I think we have an obligation to fulfill their instructions.

Senator HART. As, for example, long ago Congress mandated the development of vehicle-in-use standards. Now, it is our understanding that that gets pretty low priority. The obvious question is why?

Mr. TOMS. As you know, we have a full-time office headed by Tony Jacklin. We are constantly reviewing the material that our statisticians in the vehicle-in-use office generate. We see real payoff in the future, particularly when safety and air pollution inspection can be combined. I have always felt that one of the areas that needed to be beefed up was the investigation of defects of equipment of vehicles in use. We are concentrating an enormous amount of attention on this problem right now. The best answer that I can give to you is that we found, after carefully analyzing the problem, the payoffs aren't as good as those for passive restraints or for efforts to control the drunk driver. We have by no means given up on this program. It is an active program, but we are trying to maximize the other activities that will provide a higher payoff.

Senator HART. It is our understanding that you have two people now working to develop the vehicle-in-use standards, and that for fiscal 1973 you plan for three. Are we to understand that that is the maximum allocation of resources that is given to the vehicle-in-use effort?

Mr. TOMS. Mr. Chairman, that at least from my view as the Administrator would not be a good representation of our resources to the problem, because we work on vehicles in use in two major programs. We have people that are working on vehicle in use and vehicle inspection activities with the States and the communities. In our motor vehicle program, we have Tony Jacklin's shop and his employees working on vehicles in use. In our Research Institute, we have Lynn Bradford and his people who are dedicated heavily to this program. In our Office of Planning and Programing, under Jack Goldberg, we have several people who are constantly analyzing and evaluating the vehicle-in-use program.

If you add all these people together that are concentrating and are working toward this goal, it is a considerable number.

Senator HART. I am sure that this question will be asked by someone on this committee of you for so long we have awaited those standards.

Mr. TOMS. Nothing would please me more, Mr. Chairman, than to be able to say to you that we now know how to develop standards for vehicles in use that would really justify the money spent and would pay off. I can assure you of our dedication to that goal.

Now, one of the more common areas discussed is vehicle inspection. I think your staff is very well aware of where the strengths are in that program, one of which is diagnostics. We are going to do everything we can to move it forward. We worked hard with Volkswagen who had a pretty good head start. Mr. Jones at G.M. has done a great deal of work in this area. We are working closely with him to get space age electronics applied to this program. I think the payoffs are going to begin to show up quickly. You'll see us in the future working very hard to maximize them.

Senator HART. You commented in your opening statement about motor vehicle inspection and, as I recall it, cautioned us against hanging too much hope or committing too much of our resources to that as

distinguished from other areas of concern. In the August 1960 issue of *Traffic Safety*, the publication has you saying that periodic motor vehicle inspection should be given a lower priority than driver licensing, law enforcement, and traffic engineering because "there are no hard data available that would show that periodic motor vehicle inspection significantly reduces traffic fatalities."

Is there no data available?

Mr. Toms. We have taken a look at the data that shows that it does reduce fatalities and we have grave doubts about its accuracy.

Now, we know that a safe car with all the components operating safely is obviously a better bet on the highways than an unsafe car. We don't quarrel with this. I think that our major point is that the vehicle inspection programs are of much lower quality than we would like to see. I have heard you speak to this subject yourself, Mr. Chairman. We feel that the real key to maintaining safe cars on the road is enforcement.

Now, a vehicle inspection program, be it periodic, random or whatever, has to be a supporting kind of activity. You will note that we maintain this in one of our safety standards.

The important thing is that as we scientifically analyze the studies done to date we find that there are no hard data that are truly reliable and that are not open to serious question. This does not mean that in the future we will not find ways to prove the value of the program. I think we will.

I think that the diagnostic part of the program is where we are going to get the costs down and the quality up, so that perhaps we can get the payoffs we are looking for.

Senator HART. Is it fair then to say that you recognize that improved inspections, whether they are labeled diagnostic or otherwise, would promise the kind of payoff that would encourage you to give it a maximum push?

Mr. Toms. Yes, clearly that has a much greater potential than the way inspection is presently being done in many cities.

Senator HART. You gave us some priorities—the reduction of death, the passive restraints, the countermeasures for the alcoholic, and experimental safety vehicle. You have been consistent, I think, since your very first appearance here. You said you would emphasize the packaging of people in automobiles to improve automobile safety. I take it that remains a shorthand description of your priorities?

Mr. Toms. Yes. There is just no question, Mr. Chairman, that proper packaging of people in crashes has one of the best payoffs of anything that we have surveyed. We can, as I indicated, with a good strong program, possibly reach the goal of reducing vehicle deaths from 40,000 down to 5,000.

Senator HART. Incidentally, I used the figure of 50,000 or 55,000. Am I high on that?

Mr. Toms. No. There are 55,000 annual traffic deaths. 10,000 involved pedestrians, bicyclists; 5,000 involved persons in trucks and other types of motor vehicles; 40,000 died in the passenger car, and that is, of course, the great bulk. So this is where we are trying to concentrate our energy.

There are excellent payoffs in pedestrian fields in certain areas, such as certain urban locations where pedestrian deaths are high. Of course,

pedestrian deaths involve mostly the elderly, the very, very young and the drunk. So we are now beginning to focus great deal more attention on this part of it.

But the best payoffs are still in that big group of 40,000. We have reconciled ourselves to the fact that there will continue to be crashes. The possibility of eliminating crashes at this stage of technology is not possible.

People say what we ought to be doing is not trying to save the people in the crash but to prevent the crash from occurring in the first place. That is a laudable goal. I could not agree more, if it could be done. But with increasing congestion, higher speeds, more cars and more driving and this sort of thing, there are going to be crashes. We have to accept this.

With that type of analysis, then one of the best ways to attack the problem is to prevent people from dying and being injured in those crashes.

Senator HART. And passive restraints are the things that are almost immediately at hand?

Mr. TOMS. Yes.

Senator HART. All of us have been aware of the criticisms that have been voiced, some of them in advertisements, where there is a presentation of a pro and con on the safety of airbags.

What position do you take now with respect to the value of airbags and the immediacy in terms of time within which you could require them if you feel they are desirable?

Mr. TOMS. First off, Mr. Chairman and Senator Cook, we feel strongly that we should stick with performance standards. Our standard does not require an airbag. There are many devices that can meet our performance requirements.

I think one of the reasons that the controversy has settled on the airbag is that it is a different concept of packaging people. It is the sort of thing that only works when you need it in a crash. It does not operate at any other time.

I admit that there is something to be said about the psychological reaction of a person who gets in and fastens something around him or has a harness around him. He knows that it is there, that it is functional, and that it is working versus something that is hidden and will only work instantaneously in the event of a crash. We recognize how people feel about that. We recognize that engineers have differences of opinion as to what is best for people.

Our concern in this matter is what will save the most lives and what will reduce the greatest number of injuries. Our tests have shown beyond scientific challenge that the air bag today is the best device for saving lives. It manages energy better than any other device we have ever seen. It also reduces injuries better than any device we have ever seen. It has the greatest distance in which to manage energy and it distributes the force over a greater portion of the body. It requires less resources of the human being in daily use and provides more flexibility and freedom in the automobile.

We have to confess that as we professionals review all this evidence, the pluses for the air bag greatly overwhelm the other devices. But we are going to stick to our performance standards.

You know, we do not really feel that the Government should be designing cars, and we are not going to say the vehicles must have airbags. But we are going to set performance requirements that they must meet. We think that they might be hard-pressed to justify some other devices in light of the outstanding quality of the airbag. We feel this is where the controversy is now centered.

Senator HART. I will phrase that narrowly. Notwithstanding the manifest advantages of an airbag, do you believe that the standard which you will fix can be met without using an airbag?

Mr. TOMS. Oh, yes.

Senator HART. You are satisfied as to that?

Mr. TOMS. It is tough to do so. Anytime you take a strap or two straps and stretch them across the body and then compare this system to a large cushion that touches every part of the body and, in particular, controls the head so there is no rotation, it becomes immediately clear that the forces on those two straps are going to be much higher than that same force spread over the entire body.

One of the difficulties that they are facing with straps is the rotation of the head. The body of a lap belt wearer arches forward in a collision from the fulcrum point of the lap belt and often hits the dash panel or other parts of the car with great force. Of course, with an airbag it does not happen.

If a blanket or certain kinds of net systems can control the head, they get pretty good crash test results. If the straps can expand or stretch or if there are energy management devices on the straps so there is more distance over which to stop the body, they can do a better job.

But they can do it. The state of the art will permit it. The point is well made, though, that meeting the standard without air bags is more difficult.

Senator HART. Turning to the experimental safety vehicle program, here I think there is very general recognition that the performance has been excellent.

Mr. TOMS. Thank you. We are very pleased.

Senator HART. I hope you would express to Dr. Brenner and others associated with you the feeling that it has been.

What information are you getting from that experimental safety vehicle program, not alone here at home but from other countries where the same efforts are being made?

Mr. TOMS. The thing that sticks in my mind most is our surprise at how well they are able to package people and manage energy in very small cars.

Now, it has been commonly agreed that the less distance is in which to manage emergency, the tougher it is to protect the passenger. In the little cars in the 1100 to 1500 pound category, there is not much metal to absorb impact energy. If you place two 200-pound males in a big car, there is a lot of metal and space to manage that energy. In a 1,100-pound car, there is much less. The ESV program has proven to us that you can measure this job. It has brought out the know-how in very tiny cars of assuring that you can get complete survivability at the 40 miles per hour plus range and perhaps at 50 and above.

I think the second thing that has impressed us about the experimental safety vehicle program is the fact that these cars can be excellent.

handlers in such things as antiskid brakes and crash avoidance capability. They can be greatly elevated and at the same time provide a comfortable ride and are able to do the things that the public has come to expect from their cars.

The ESV has also indicated that you can get improved vision. You need not settle for cars that are difficult to see out of. There is a whole list of safety innovations that we think the experimental safety vehicle has demonstrated.

Senator HART. To get into an area at least as discussed and debated as any, what do those experimental vehicles tell you about the capability of bumpers?

Mr. TOMS. The bumpers in one of our experimental safety vehicles extends out from the vehicle at a distance that varies with speed. It has not been decided whether that bumper will immediately move forward when the engine has started or whether it will move forward only after a certain speed is reached.

One of the questions is how often you articulate it back and forth in traffic.

We are looking forward to the testing to see whether or not this type of bumper does a better job of energy management. We want to gain the greatest distance between the impacted object and the occupants.

Now, one of the side benefits of the improved bumpers will probably be to lessen property damage of the vehicle. Obviously, if we can do that, we will. So, we will be testing from several angles to try to find out whether these bumpers can be lightened. Right now, they are very heavy which hurts the handling and the economy of the car. We want to find out whether they can be lightened, how much energy they can absorb, and whether articulating the bumpers greatly improves the safety over the crush of metal. We are moving rapidly toward the testing program now.

Senator HART. Beginning in the middle 1960's or whenever it was that you first, as Detroit phrases it, intruded in the design business of automobiles, we were really compelling sort of add-on equipment for safety, and there is a debate as to how much that add-on costs.

Is it not true, however, that as you design cars from the ground up, from scratch with safety as a goal, that the safety features would come to cost less cost?

Mr. TOMS. No question. I have always said publicly that it strikes me that it is just as easy or just as inexpensive to design a safe car as an expensive one. The key ingredient is how much work you put into the know-how so you can accomplish this. Let me give you some illustrations of this point.

We feel that you need not necessarily have an add-on head restraint. You can recontour the seat to accomplish the problems engaged in whiplash.

The same is true of the dash panel. You do not have to add on a large pad with added cost. You can actually design the sheet metal to do this job if you wish.

The same is true with the nose of the vehicle. You can manage energy very effectively, with the sheet metal. Many cars have done this for some years. We now see accordion or pleated structural members in the car designed to manage energy.

So, it is a matter of good design. We think that these charges of \$800 in added costs are preposterous. Sure, you can make it that expensive if you want to. Anybody can add on cost after cost after cost and then say it is the Government's fault.

I think that the challenge here is to do a better design job and keep those costs down and accomplish the objective. Of course, that is one of the reasons we are moving toward total system performance requirements rather than the specifics.

Senator HART. When we were talking with you in this committee on several bills that are in the committee for consideration, specifically S. 976, you said that you would provide the Senate committee with information about the cost of anticipated and required safety improvements and provide it on a regular basis.

Now perhaps you would provide this for the record. I would doubt you would be in a position to tell us now. But we are concerned whether you have sufficient personnel assigned to the cost and lead time activity, and whether those reports will both come on schedule and be, to the extent humans can make them, foolproof.

So, for the record, how many supergrade positions have been allocated for this office—cost and leadtime analysis—and how many have been filled?

What is the current status of the cost and leadtime analysis office? Where is it located and at what functioning level?

Would you provide for the record the name and grades of cost and leadtime professional staff, together with their experience in cost and leadtime analysis?

Would you state your future plans for the cost and leadtime activity in the National Highway Traffic Safety program including your approved program plans?

That is a bundle on that subject.

Mr. TOMS. We will provide that information.

(The following information was subsequently received for the record:)

A personnel summary of the cost and leadtime functions reflecting applicable grades, years of experience and current assignment is given below.

	Grade	Years experience	Current assignment
Dean Niedernhofer.....	16	10	Office of Operating Systems.
Morris Abrams.....	15	3	Do.
Welfred Redler.....	14	4	Do.
Louis Blanchette.....	17	9	Office of Crashworthiness.
Under Recruitment.....	14	-----	Do.
Do.....	13	-----	Do.
Charles Westphal.....	15	10	Engineering Systems Staff.

The cost and lead time function will continue to provide pertinent analysis, procedures and techniques to the operating functional areas. Cost and lead-time as an organizational entity was established to provide basic program support to the functions assigned to the Offices of Crashworthiness and Operating Systems. The organization was designed to centrally provide in-house expertise and service to two of Motor Vehicle Programs four (now five) program offices.

Since the services provided by cost and lead-time were independent and required basic data and technical input from the representative program office it was determined that cost and lead-time analysis could be more effectively performed on a decentralized basis. It was primarily for this reason the function was relocated to the areas of primary concern. This locational placement assured

close and continued coordination and assured responsive expertise directly attuned to the particular needs of each program office.

This positive impact is made in the areas of time, cost and performance by shifting the organization location of cost and lead-time.

Additionally the Engineering Systems Staff located in the immediate office of the Associate Administrator for Motor Vehicle Programs is using 20 percent of its staff time performing program-wide cost and lead-time analysis. The main focus of their effort is in the area of lead-time and public/industry impact. The Engineering Systems Staff has 8 people.

The future plans for cost and lead-time activity are to give this function its due attention and emphasis to permit to provide a responsive, viable, integrative product to support the development safety improvements and meaningful Motor Vehicle Standards.

Senator COOK. Mr. Chairman, because there is a vote in progress, I would like to get into the record, if I might, Mr. Toms, that I would like to submit some questions to the nominee in writing so that they might go into the record.

Senator HART. Indeed yes. There are other questions that the committee has prepared which given the vote and the fact that I did not anticipate this hearing and have a series of other obligations beginning at 3 o'clock, I will be required myself to submit questions.

The record will remain open to receive them.¹

Senator HART. With the time available, let me ask here now this final question.

Can you tell us how much the Government spends per passenger mile for automobile safety compared to what extent it spends for aviation safety?

Mr. TOMS. I cannot from memory, Mr. Chairman, but I would be very pleased to supply this for the record. I am not confident that we have this information immediately available, but we will develop it for you to the best of our ability.

Senator HART. While the number of dollars is not always the single factor in making a judgment, certainly the amount of money that is applied to one program as against another is an essential measure of the commitment we make, one as against the other.

Given the economic waste that results from automobile accidents, it is important to measure how much we are spending per passenger mile for auto safety compared to air. Are we spending enough on auto safety?

We will receive that comparative figure, and I would think that while you may not have it, the Department itself would be able to provide you with a comparison.

Would more money permit you to accomplish some of those things that you say you have to give lower priority to because of limited resource; the more resources you have, the more of these things you could get done?

Mr. TOMS. Absolutely.

Senator HART. Do you recommend that we allocate more money to auto safety?

Mr. TOMS. Yes. Each administrator in the Transportation Department obviously is very biased in favor of his own program, so we always have to compete. I guess I am pleased that I am able to do very often as well as I am.

¹ See p. 58.

I guess each of my colleagues kibitz with each other from time to time. We work hard to pursue our own programs, and we try to advance our programs, but we do recognize that we are competing for limited amounts of resources.

Senator HART. In that competition, how do you personally plan to try to get more money for auto safety?

Mr. TOMS. Just like there are lobbyists at the Members of Congress, we also lobby each other. We are always working on our budget people and back and forth. You never miss an opportunity to get it plugged into the Secretary and others. I can assure you that I try as hard as I sometimes think harder than, some of my colleagues, to pursue these objectives.

Senator HART. Well, Mr. Toms, I wish very much that we could spend more time in the direct give and take, but, as I indicated, a number of the questions to be asked will be furnished to you in writing, and the record will be held open, and we ask for your response to them.

Mr. TOMS. I would be very pleased to do so, Mr. Chairman.

Senator HART. Thank you very much.

Mr. TOMS. And thank you. I am honored and pleased at this opportunity to be here.

Senator HART. We are adjourned.

(Whereupon, at 2:55 p.m. the committee was adjourned.)

QUESTIONS OF THE COMMERCE COMMITTEE TO MR. TOMS AND THE ANSWERS
THERETO

Question. Mr. Toms, is your Administration drafting amendments to the National Traffic and Motor Vehicle Safety Act? When will these be submitted to Congress? We will need them soon if you expect us to take any action. Could you submit them before the end of July?

Answer. The NHTSA is drafting amendments to the National Traffic and Motor Vehicle Safety Act. We hope to submit these legislative proposals to the Congress by the beginning of September.

Question. Mr. Toms, let's turn now to the consumer information program which you have told us your Administration has launched. a. Since you assumed your office how many consumer information standards have been promulgated?

Answer. No new consumer information regulations have been issued. However, an amendment to each of the existing regulations was published in 1970. We have devoted our efforts to upgrading safety performance particularly in occupant crash protection.

Question. What plans at the present time have you made for providing greater consumer information?

Answer. The NHTSA's present consumer protection program consists of the following:

(1) *Plans for the Future.*—Building a more prompt, more effective consumer service is the objective of our Consumer Affairs program, divided into five major elements.

(1) EFFECTIVE RESPONSE AND TREATMENT OF CONSUMER COMPLAINTS

The NHTSA is keenly aware of the consumer's frustration in getting immediate assistance from any agency of the Federal Government. We feel that the regulatory and investigative role of the NHTSA should enable us to promote a more immediate and effective dialogue between these consumers and their manufacturers and dealers.

First, we must explore the most effective consumer aids used in State programs, private consumer groups, and industry. Combining the best of these into a consumer response system will have a double benefit; that of providing the prompt and efficient response the public expects of us, and that of greatly augmenting our sources of consumer experience with all makes and models of vehicles on the nation's roadways.

This information will be fed into existing computer facilities and will be added to the print-out experience that presently provides a partial basis for compliance and defects investigation, and for the upgrading of Motor Vehicle standards.

The improvement of our consumer response system is thus envisioned as an accelerating program to bring immediate relief for the consumer's problem, and to provide a greatly enlarged base of consumer highway/vehicle experience—essential to the establishment of effective Standards and the prompt discovery of safety-related defects.

(2) IMPROVEMENT TO THE CONSUMER WARNING SYSTEMS

In addition to the consumer response system, we hope that the immense vehicle performance files kept by fleet operations and automobile-oriented groups will be made available to the NHTSA. The information contained in these files is equal to years of citizen reporting and would be invaluable in our efforts toward informing and protecting the motoring public.

In the area of owner-notification and product recall, we intend to create means of bringing the manufacturer's attention to inadequate performance or actual defect experience much more promptly than through the present lengthy process of investigation and formal notification.

(3) ENLARGEMENT OF PUBLIC ADVISORY SYSTEM

The NHTSA's consumer-oriented goals have primarily centered on *long-range* consumer protection gained through Safety Standards, State and Community safety programs, and the enforcement efforts attendant to these responsibilities. Through a variety of research projects and contracts, through information gained in investigations and through the technical data compiled in the establishment of the NHTSA's Motor Vehicle Standards, a tremendous store of information is available and must now become the basis for an accelerating, direct-to-consumer information program.

The program will involve much closer co-ordination between the offices of the NHTSA. It will entail a scheduled effort to inform the consumer through Public Advisories on all topics related to highway safety—the automobile, motorcycling, maintenance procedures, accessory equipment, the changing requirements upon safe driving in the various States, etc.

(4) IMPROVEMENTS OF THE CONSUMER INFORMATION REGULATIONS AND EFFECTIVENESS

The present consumer information regulations constitute a beginning only. Major improvements will come in our proposed program outlined in the Automobile Owners Information Act which will provide consumers with information on damage susceptibility and crashworthiness of all makes and models.

We think this information will be a major step in providing the consumer with the selective criteria he needs. The legislative proposal establishing this program has been submitted to the Congress for consideration.

In addition, we expect to issue the first phase of the Uniform Tire Quality Grading regulation within the next year. This regulation will inform the consumer of quality grades or points with respect to strength, endurance, high speed and uniformity thus providing him with quantitative information to assist him in his selection of tires.

We are hopeful that future research efforts will develop the data base necessary to add traction and treadwear to this regulation.

(5) IMPROVED DISSEMINATION OF CONSUMER INFORMATION

Perhaps the most important element of the NHTSA's consumer program lies in the area of dissemination of vital information. No amount of data, no dedicated effort to protect the motorist can be effective unless the final product—whether written, spoken or designed for the TV screen—reaches the consumer who needs it.

We recognize that great effort is needed now to determine the best type of information to provide and how to provide it. We plan a vigorous campaign to enlist the interest of the automobile trade press, to explore the use of public service television and radio time, and to interest consumer and other private organizations in spreading the word on consumer information.

In addition, we are in frequent contact with the Consumer Product Information Center, initiated by Mrs. Knauer. New methods of dissemination may be

opened up through this organization, as well as from vastly expanded mailing lists and other contacts with consumer and auto enthusiast organizations.

The greater use of the DOT field organization and regional offices will provide additional contacts and methods. We will also be exploring the possibilities for coordinating our efforts with those of other government agencies such as the Environmental Protection Agency.

Finally, the continued interest of Congress can focus the spotlight of attention on consumer problems related to vehicle and highway safety.

Question. Would you please submit for us in writing in two weeks your consumer information program plans for the next five years. In your five year plan for safety standards I did not note any proposals for consumer information standards.

Answer. See (b) (4).

Question. Would you also present the Committee with a summary of the progress to date in the consumer information area.

Answer. Summary of Consumer Information and NHTSA Public support since January 1, 1968.

Listed by year and subject matter, the following public advisories and consumer protection bulletins provide an indication of the growth in public demand, and NHTSA response, for consumer protection information. In general, the listing reflects a gradual change in emphasis from information supporting the Bureau's first generation of safety standards to responses to specific hazards subsequently to be treated in the issuance of new standards.

Increases in this information activity from year to year reflects a proportionate increase in all consumer-protective activities—the issuance and up-grading of Motor Vehicle Standards, the establishment of comprehensive State and Community safety programs, increased number of compliance and defects investigations, etc.

NHTSA CONSUMER RELEASES—ADVISORIES AND PROTECTION BULLETINS

1968

5/19/68: *Power-Operated Windows and Hazard to Children.*—Cautioned against hazards of injury and death when children are left unattended in vehicles so equipped. Steps outlined to avoid risk and alteration of switch control when possible.

9/26/68: *Proper Use of Required Head Restraint Equipment.*—Explained need, use, correct adjustment of restraints newly required by Federal Safety Standard. Explained injuries attendant to improper height adjustment or disuse.

1970

3/15/70: *"Farm Use Only" Tires.*—Warned of operator risks in the purchase and use of these tires in regular highway uses. Public advised that unscrupulous dealers are illegally selling these products, with potentially hazardous consequences for the unwary buyer.

3/26/70: *Steel-Studded Tires.*—Warned of hazards due to improper installation of studs and dangerous results of over-studding. Steps outlined for proper procedures.

5/15/70: *Mounted Luggage Racks.*—Advised owners check and retighten before use. Deterioration due to vibration or improper installation explained; with maintenance and inspection procedures outlined.

10/13/70: *Proper Selection of Brake Fluids.*—Advised of hazards associated with improper fluid for each brake system. Steps outlined for proper selection, refilling and maintenance.

10/14/70: *Creation of Consumer Protection Bulletins.*—Announced new policy of providing public warning when operator-risk has been verified but lacks full investigation necessary to initiating a customer-notification or recall. Policy will "come to the motorist's aid as soon as use-risks are known to the NHTSA.

10/14/70: *Consumer Protection Bulletin . . . Ford Front Suspension.*—Advised of degree of risk, models affected, remedy available. Also requested consumer response to facilitate investigation.

10/14/70: *Press Release Further Publicizing Consumer Protection.*—Reiterates DOT policy of early consumer alert and redescribes Ford risks.

11/2/70: *Danger of "Mixing" Passenger Tires.*—Warned of degraded vehicle handling characteristics due to use of a "mix" of tire types on the same passenger-

vehicle. Outline provided for correct selection to avoid incompatible combinations.

11/6/70: *Consumer Information Series . . . Publication.*—Announced first edition of an annual publication for automobile purchasers, as an aid to safety and an informed selection. Publication of a composite listing of all manufacturers' data, for all new U.S. sold makes and models, in Tire Reserve Load, Passing Ability, Stopping Distance.

12/31/70: *Alcohol Countermeasures Forum.*—Announced January Forum marking the beginning of a national program to combat drinking driver problem. 118 women's organizations represented in over 300 forum registrations.

1971

1/20/71: *Special Motorcycle Hazards.*—Detailed special risks resulting from inadequate fuel tank types and the crash hazards of luggage racks and protruding accessories. Advised special items needing removal or replacement.

1/14/71: *Consumer Protection Bulletin . . . G.M. Corvair Fumes.*—Advised of degree of risk, models affected, remedy advised. Also requested consumer response to facilitate investigation into frequency of CO fumes intrusion and heater defects.

1/14/71: Press release further publicizing risk and remedies for Corvair fumes problem.

1/30/71: *Y.O.U.T.H. Advisory Committee appointed.*—Announced formation of youth advisory group to enlist U.S. Youth in crusade for highway safety and new approaches.

5/1/71: *NHTSA Consumer Affairs Office.*—Announced creation of this office at the Administrator's staff level, indicating new emphasis on direct consumer services and protection programs.

5/21/71: *Defect Notification Letters.*—Advised tighter requirements in regard to manufacturers' notices to motor vehicle users. Advised public that closer follow-up on customer notification and defect reporting will assure more effective protection for all users. Fuller disclosure of hazards and remedies are to be required in manufacturers' consumer releases.

SPECIAL PROJECTS

1969

New Car Safety Standard Exhibit—A cut-away car model designed to illustrate the specific areas of motor vehicles for which Federal safety standards have been established. An accompanying narration explains, in laymen's terms, the regulations and the standards.

Slide Presentation on Roadside Hazards—A slide presentation, available with either tape recorded narration or written commentary that concentrates on numerous safety hazards alongside highways and the means of avoiding or correcting them.

Radio Spot Announcements—A series of 60-second radio spot announcements to increase public awareness of the safety aspects of driving, such as the use of safety belts, caution in driving habits, the involvement of alcohol in highway crashes.

Read Before Driving—A pocket-size booklet designed to accompany the New Car Safety Standards Exhibit. More than 600,000 copies were made available to several automobile manufacturers who inserted them in the glove compartments of new vehicles, to members of the National Automobile Dealers Association, to schools, and to State highway safety offices.

RADIO AND TV

1970

1. *Radio spot announcements.*—A series of 60 second radio spot announcements to increase public awareness of the safety aspects of driving, such as the use of seat belts, caution in driving habits, and the involvement of alcohol in highway crashes. More than 2,300 radio stations had received the public service announcement album, and indications are that more than 60 percent of these stations have used or are still using the material on a regular basis.

2. *TV spot announcements.*—A series of three 30 second filmed television spot announcements to make the public aware of frequent problem driving situations

on Interstate highways. The television spot announcements inform the public how to enter a freeway safely, how to obtain emergency assistance, and how to drive safely in inclement weather. Distribution was made to all commercial television stations, and indications were that nearly all stations had used or were still using the material on a regular basis.

3. *Read Before Driving*.—This pocket-size booklet, up-dated annually to reflect new and/or revised vehicle safety standards, was designed to accompany the New Car Safety Standards Exhibit, or to be used independently. More than 750,000 copies of the booklet were made available to several automobile manufacturers who inserted them in the glove compartments of each new vehicle, to driver education classes, to State highway safety offices, to local police departments, and to numerous other sources. An additional 900,000 copies were made available as an insert in a publication aimed at new, used, and foreign car purchasers.

FILMS

1. *To Save Your Life*.—Production was underway on this 30 minute motion picture which would inform the general public that the entire highway safety problem was now being studied in a truly scientific manner, and that scientific research is being applied in an organized and concerted effort to determine not only the causes of highway crashes, but what causes the injuries and deaths, and how they can be ameliorated.

2. *Alcohol and Highway Safety*.—Production was also underway on this 30 minute film which would define the immensity of the highway safety problem as it relates to alcohol.

The Public Service Council, Inc., adopted the National Highway Traffic Safety Administration's alcohol/highway safety program as one of its projects. The Public Service Council is a non-profit organization made up of executives of some of the major public relations agencies in the country who donate their talents to projects which they deem to be of sufficient public interest to warrant their attention. The Council will assist the NHTSA in developing an effective and integrated public information and education film campaign for an alcohol program of vital national concern.

TECHNICAL INFORMATION COLLECTION

The National Highway Safety Bureau continued and expanded its program of acquisition and dissemination of technical information during 1969. The technical information collection expanded from 7,000 titles at the end of 1968 to more than 9,000 at the end of 1969. Plans for 1970 include expansion to approximately 60,000 titles.

During the year two compilations were produced from the technical information acquired and were released to the public. These were: *Highway Safety Literature*—containing all titles announced; *Executive Summaries—National Highway Safety Bureau Contractor Reports* containing technical summaries of research reports released.

OTHER INFORMATION

Other information to the public was distributed in great volume during the year. More than 150,000 copies of standards, pamphlets and other publications such as the following were distributed:

- Highway Safety Literature: An Announcement of Recent Acquisitions.
- Federal Motor Vehicle Safety Standards and Regulations.
- Highway Safety Program Standards.
- Motor Vehicle Safety Defect Recall Campaigns.

EXHIBITS—1971

In cooperation with the Department of Transportation's Office of Public Affairs, two major exhibits were developed and shown during the year. One deals with the entire range of State and local community highway safety program standards. The second deals with our program for the control of the drunken driver. The latter exhibit was developed specifically for a first showing at the Women's Forum on Alcohol conducted by the NHTSA in Washington. The exhibit proved so popular that preparations are being made to develop two more to answer the number of requests for it from various places around the Nation.

FILMS

Production was completed on the half-hour color film suitable for television or other general use entitled *To Save Your Life*. This film is for general public dissemination and discusses the entire highway safety problem.

Production also was completed on the half-hour documentary color film treatment of the drinking driver. This 30-minute film defines the highway safety problem as it relates to alcohol. It suggests new methods that can assist in identifying the problem drinker before he becomes involved in crashes, and new methods to either restrict his opportunities to drive or to provide him with appropriate treatment.

A second film, in preparation, also treats the problem of alcohol in relation to highway safety. This film will be a dramatic treatment of the problem of the drunken driver. It is entitled *Gentlemen of the Jury*, and filming is scheduled for this year.

RADIO AND TELEVISION

The Administration has expanded its use of radio and television spot announcements for various purposes. During this year, two color television public service spot announcements were developed in an effort to induce more people to use safety belts. These announcements feature a husband and wife comedy team in a new approach to the issue of safety belts.

Three public service spot announcements deal with the subject of alcohol. These announcements, developed under contract with a company that specializes in TV spots, offer a fresh approach to the alcohol problem.

The consumer information series consists of eight radio spot announcements and four television spot announcements.

The NHTSA also sponsored a series of announcements featuring well-known drivers in the automobile racing community. These expert drivers donated their services for a series of 24 radio spot announcements and four television spot announcements, in which they talked about highway safety and some of the ways to stay alive on the highway.

Question. More specifically, Mr. Toms, the National Highway Traffic Safety Administration has been promising the Committee for years that they would develop a crash survivability index. Senator Hartke discussed the time table for this development on May 28th of this year. For the record of this nomination hearing, would you please provide us with a detailed explanation of why the crash survivability index has been delayed and when you will have such an index available. Thank you.

Answer. When I took office, we, of course, began a total reassessment of our programs. This reassessment was undertaken solely for the purpose of determining which programs offered maximum payoff.

We determined that our maximum payoff for safety was lodged in increasing the crashworthiness of vehicles by setting crash survivability standards. The most important of these standards to date is the occupant protection standard.

A crash survivability index, which would rate vehicles that have already been designed, manufactured, sold and now in use will not result in any direct pay off in a foreseeable time frame. Because we felt that progress could be made faster by setting standards, we devoted most of our resources to that area.

Further, the rating of vehicles became, upon closer examination, a very complex and an extremely expensive activity. Therefore, we did not continue to pursue the development of a comparative crash survivability index. We have not ceased trying to mathematically model the accident. As you may recall, the comparative crash survivability index was intended to be a function of computer capability. We have pursued the development of computer models of the vehicle occupant. We have continued the development of computer models of passenger restraint systems, and we are beginning to explore the development of models of vehicle structures. However, because of their complex geometries and the non-linear quality of the response of the vehicle in a crash environment, these are tough problems to solve.

But, we believe we can answer the feasibility question within one year. This feasibility study will be limited to a determination of our capability to mathematically model the structural response of a vehicle in the crash mode. Parts of that work are underway now.

We will not be able, however, to publish quantitative ratings of the survivability of vehicles by weight class based on analysis of accident data with limited

crash testing within the 30-month time frame that we promised in our November 16 letter. This project will take *at least* 6 months longer than we anticipated at that time.

Question. Mr. Toms, your Administration has been engaged in a number of defect recall investigations ranging from the examination of the Ford lower control arm to Corvair heater and stability problems.

a. What priority do you assign to the defect recall work of the National Highway Traffic Safety Administration.

b. How many vehicles have been recalled since the auto safety act went into effect?

c. Recently a dedicated Ford employee informed the Senate Commerce Committee that Ford had taken films of Corvairs which showed their roll-over potential. Have you inquired of Chrysler Corporation or American Motors as to whether or not they have such information available? Will you do so? Please send a copy of that request to the Committee.

Answer. (a) Defect recall work is one of our highest priority programs. In March 1971, the defects investigation function was elevated from Division status to Office status within the National Highway Traffic Safety Administration organization, and the defects investigation staff was increased by approximately 70% to a new total of 34 persons. This is indicative of the importance now assigned to defect recall work.

(b) 14,501,286 domestic vehicles and 2,139,743 foreign vehicles, totaling 16,641,029 vehicles have been recalled by vehicle manufacturers, between September 9, 1966, the effective date of the National Traffic and Motor Vehicle Safety Act, and June 30, 1971, for inspection and correction of safety defects. It should be remembered that recall vehicles necessarily include many vehicles that do not contain defects. Beginning in September 1971, manufacturers will be reporting quarterly the actual incidence of vehicles with defects in the total of vehicles recalled.

(c) Information requests have been sent to Chrysler and American Motors. Copies of these requests are available for Committee inspection but are not attached, consistent with National Highway Traffic Safety Administration policy regarding to information dealing with active defect investigations. The Ford information referred to has been obtained and currently is being analyzed.

Question. Mr. Toms, compliance testing is closely related to your defects work. Your Administration has sent a prospectus to our Committee asking for approval of a \$9 million compliance test facility to be built in East Liberty, Ohio. We have received information from the Association of Independent Testing Laboratories to the effect that their facilities are adequate to handle compliance testing for the National Highway Traffic Safety Administration and that, in fact, they were encouraged to expand facilities in order to perform such testing. Would you please comment on why a compliance test facility is needed and what response you would make to the Association of Independent Testing Laboratories?

Answer. The following information discusses in detail the Compliance Test Facilities in relation to the Association of Independent Testing laboratories.

LEGISLATIVE HISTORY

It could be inferred from testimony offered in behalf of the independent testing laboratories that a Government compliance testing facility was a new and unvoiced concept prior to the present hearing. However, as borne out by the legislative history, such was not the case. The need for a Government test facility was recognized and attested to, in general terms, from the very inception of the program in 1966.

Report No. 1301, June 23, 1966, from the Senate Committee on Commerce, states on page 16 under Traffic Accident and Injury Research and Test Facility ". . . Laboratory facilities are needed where the Government *itself* can conduct systematic scientific research and evaluation of all safety performance characteristics of motor vehicles and motor vehicle components. The facilities must be suitably equipped and staffed to evaluate standards already in effect, as well as proposed deletions, changes, or additions of wholly new standards. *Facilities* are required to carry out these responsibilities." (Emphasis added.)

Report No. 1776, July 28, 1966, from the House Committee on Interstate and Foreign Commerce, states on page 33 under Title III—Accident and Injury Re-

search and Test Facility “. . . Section 301 of the reported bill authorizes the Secretary of Commerce to make a complete investigation and study of the need for a *facility or facilities* to conduct research, development, and *testing* . . .” (Emphasis added.)

As a result of the authorized investigation and study, a report to Congress from the Secretary of Transportation was made in October 1968 which, in more specific terms, indicated the need for a Government compliance test facility. The Report, “Requirements for Motor Vehicle and Highway Safety Research and Test Facilities” states in part (Volume 1 of 2, page 6) “. . . To implement its enforcement responsibilities, the Department must have the capability of corroborating through its own independent laboratory and test track procedures the correctness of any supporting data and other demonstrations provided by the manufacturer in support of his certification that his products comply with the applicable Federal standards. The Department must also be able to determine with its own test procedures if consumer experience in actual driving, of the vehicle matches performance certified by the manufacturer. Finally, this all important responsibility of providing consumer protection extends as well to independent testing of consumer complaints of unsafe vehicle features not covered by standards. . . .”

In July of 1969, Report No. 91-350 from the Committee on Interstate and Foreign Commerce (House of Representatives) dealing with Motor Vehicle Safety Act Amendments stated on page 2 “. . . SEC. 301. (a) The Secretary of Transportation is authorized to plan, design, and construct (including the alteration of existing facilities) facilities suitable to conduct research, development, and *compliance with other testing* in traffic safety (including highway safety and motor vehicle safety), except that no appropriation shall be made for any such planning, designing, or construction involving an expenditure in excess of \$100,000 if such planning, designing, or construction has not been approved by resolutions adopted in substantially the same form by the Committees in Interstate and Foreign Commerce and on Public Works of the House of Representatives, and by the Committees on Commerce and on Public Works of the Senate.” (Emphasis added.) The same language appeared in H.R. 10105 (page 5 under Title III—Research and Test Facilities), September 4, 1969, in the Senate. The identical language was also retained in the Act as amended May 22, 1970.

As illustrated by the foregoing excerpted legislative history, it was possible for any interested party to be fully aware of the intent to construct a Government compliance test facility and, if desired, to have participated in the many related hearings that have taken place since the National Traffic and Motor Vehicle Safety Act became effective September 9, 1966.

ENCOURAGEMENT TO EXPAND INDEPENDENT FACILITIES

It was also inferred during testimony in behalf of the independent testing laboratories, that encouragement was given by DOT officials, to independent contractors, to enter the business of providing testing services to the Department and, further, to expand into other test areas as new safety standards were issued.

No encouragement other than announcements soliciting competitive bidding for testing services have been offered to independent contractors. In situations where any contractor or potential contractor may have, themselves, solicited input from DOT relative to the test program potential they have always been frankly appraised of the competitive and changing nature of our requirements and of the desirability of establishing a Government operated test facility.

PROBLEMS ASSOCIATED WITH CONTRACTED COMPLIANCE TESTING

At the inception of the test program in 1968, it was recognized that the facilities and expertise necessary to implement a compliance test program on a national scale was not readily available outside the automotive industry, itself. Although a few laboratories had some related experience (testing for GSA, trade associations, and State certification, etc.), upon evaluation it was only possible to select eight laboratories accommodating a very limited range of standards in the first year of the program. Heavy monitoring by Government engineers was necessary then, and, continues to be so now, in order to assure a level of report

acceptability compatible with our requirements for unassailable evidentiary type documentation necessary to support our regulatory function.

Regardless of statements to the contrary in testimony offered by independent laboratories, it has not been found possible during the four years in which the compliance test program has been operative to find one single laboratory source that could *acceptably* perform to NHTSA's satisfaction covering the spectrum of standards now effective. It should be recognized, in this regard, that although a contractor may be willing to submit a proposal to test to a wide range of standards, upon evaluation of his ability to perform (facilities, equipment, and experienced personnel, etc.) the optimism that prompted the proposal is not always confirmed by the NHTSA engineers who conduct the related pre-award evaluations.

Certainly, then, many problems have been experienced or aggravated due to the lack of a Government test facility. Scheduling of tests, particularly when testing to multiple standards on a single vehicle involving interlaboratory transfer, or a retesting situation on a "need to know now basis," would certainly be enhanced operating in a centralized facility with both test personnel and the associated analytical staff closely coordinated.

ANTICIPATED PROBLEMS

As the second and third generation standards are developed and become effective, the state-of-the-art relative to testing techniques will certainly be pushed. It would not be possible to handle the day-to-day working relationships that must exist between the engineers who develop the standards and those charged with the responsibility for assuring compliance, through the medium of a third party (independent testing laboratory). The shirt sleeve type interchange envisaged here requires the flexibility of equipment and personnel application not available on a contractual basis.

As the standards themselves become more sophisticated, the associated compliance testing procedures will require more stringent controls relative to instrumentation and calibration techniques. These should be developed and standardized by the Government personnel having direct responsibility in these areas and working in a facility over which they exercise operational control.

JUSTIFICATION OF FACILITY

As indicated in the prospectus of construction of the compliance test facility submitted earlier, it is not intended to absorb the entire testing workload of the Standards Enforcement and Defects Investigation Program in the East Liberty, Ohio, facility. It is anticipated that contracting support will still be required at, certainly, no less a level than the \$2.4 million budgeted for that purpose in FY 1971, subject to availability of adequate funding.

The activity level at full capacity projected for the compliance test facility (Estimated Annual Operating and Maintenance Cost \$4.2 Million) is based on a level workload. That is, the facility will operate at a planned 100 percent utilization (ideal) over the entire years span. Leveling of the workload will be achieved by accommodating cyclic variations on a contracting basis with independent laboratories.

Primarily, justification for the project lies in the overall increased operating efficiency that will result from a centralized testing base that will provide more effective utilization of engineering personnel, ability to be more flexible and responsive in scheduling of critical investigative requirements, and the in-house capability to develop and prove out special equipment and testing procedures.

IMPACT OF COMPLIANCE TESTING CONTRACTS ON INDEPENDENT LABORATORIES

The following listing of Fiscal Year 1971 compliance testing contracts and related financial data, where such financial data was available, is indicative of the impact of the compliance contracting activity on the total dollar volume of business transacted by the companies involved in the program.

Company name	Latest gross sales volume	Compliance contracts	Compliance contracts as a percent of gross
Approved Engineering Test Laboratories	\$16,118,000	\$7,150	0.04
Automotive Research Associates	5,000,000	128,134	2.60
Cornell Aeronautical Laboratory, Inc.	32,832,261	48,900	.15
Compliance Testing, Inc.	(1)	107,569	(1)
Dayton T. Brown, Inc.	5,000,000	102,223	2.05
Detroit Testing Laboratory	(1)	3,780	(1)
Digitek Corp.	1,315,932	27,655	2.10
Dynamic Science	25,950,200	27,500	.11
EG&G Co.	112,925,097	46,440	0
Electrical Testing Laboratories, Inc.	2,224,245	83,367	3.70
Foster D. Snell	(1)	2,900	(1)
General Testing Laboratories, Inc.	2,726,723	157,990	6.60
Hodges Transportation, Inc.	1,282,543	32,130	2.50
Industrial Testing Laboratories	40,000	12,390	30.50
International Rubber Industries, Inc.	(1)	28,500	(1)
Martin Marietta Corp.	940,926,738	2,730	0
Material Research Laboratory	(1)	4,535	(1)
Ogden Technology Laboratories, Inc.	798,000,000	66,345	.01
Retreading Research Associates, Inc.	500,000	36,690	7.30
Smithers Laboratories	(1)	250	(1)
Southwest Research Institute	18,241,770	53,200	.29
Teledyne Brown Engineering Test Laboratories	12,500,000	28,734	.23
United States Testing Co., Inc.	5,986,397	16,600	.28
Value Engineering Co.	(1)	30,674	(1)
Virginia Polytechnic Institute Industry Center	(1)	20,213	(1)

¹ Not available.

ALCOHOL COUNTERMEASURES

Question. What Countermeasures are you investigating?

Answer. This nation has lived with the massive problem of traffic accidents for many years. Our highway death toll is a tragedy and an outrage of unspeakable proportions. The Department of Transportation is dedicated to do all possible to make it safe for our citizens to travel the roads of the United States. The goal is a one-third reduction in the highway fatality rate per 100 million vehicle miles, but the Secretary and the Administrator, NHTSA, have agreed to a goal of reducing fatalities by one-half by 1980.

Studies both in Europe and in the United States have shown alcohol to be a heavy contributing factor in about half of all highway deaths. The NHTSA believes that drunk drivers can be identified, apprehended and controlled, and has launched a comprehensive alcohol countermeasures program to do just that. As part of this program, Alcohol Safety Action Projects (ASAP's) are being advanced with the assistance of Federal funding in states and communities across the country. Twenty-nine projects are now under contract. The projects are designed for:

Direct reduction of death and injury.

Maximum impact and visibility in each state.

Practical demonstration to show that comprehensive coordinated alcohol countermeasure projects will work out to show how to establish and operate them.

Catalytic action within each state with a view to extension statewide.

Defining and resolving legal, administrative, jurisdictional and interagency relationships so that alcohol countermeasure programs may then be duplicated in other areas of the state.

The plan for each ASAP is to *identify* the extent of the drinking habits of an offender apprehended on the highways, to *decide* case by case how best to deal with him and to follow through with *action* to assure that he will not repeat his dangerous drinking-driving behavior.

Countermeasures that are considered for implementation in each ASAP fall into seven general areas:

1. Enforcement.
2. Social and Service.
3. Medical.
4. Judicial.
5. Legislative and Regulatory.
6. Licensing and Registration.
7. Public Information and Education.

1. ENFORCEMENT

The NHTSA role in the enforcement area is a two-pronged effort.

Detecting or identifying the drinking driver.

Both efforts, especially the former, require the cooperation and full support of local enforcement agencies.

Keeping him off the road until he can be successfully rehabilitated.

At the present time, the principal manner in which problem-drinker drivers first enter the record system is through DWI (driving while intoxicated) arrests. Likewise, the primary means of assuring that license suspension or revocation is effective is close police surveillance of convicted problem drinkers. Possible activities within this countermeasure area include routine roadside checks and chemical testing for blood alcohol concentration, better accident analysis to identify more precisely the instances when alcohol is a factor, and more stringent enforcement of existing laws, (e.g., arrest for DWI).

One of the problems in obtaining a DWI conviction is the presentation of reliable evidence. Chemical tests are more reliable than testimony of witnesses and are admissible as evidence in most jurisdictions. Since most drivers suspected of being "under the influence" would normally be expected to refuse to take a chemical test, many states have enacted implied consent laws. These laws generally provide that anyone agreeing to accept a driver's license has, in effect, given his consent to a testing for BAC. If he then refuses, his license can be revoked. In most localities, implementation or augmentation of enforcement countermeasures will require additional enforcement personnel and specialized training.

Specific countermeasures in this area are:

Provide for special enforcement of drinking-driving laws.

Provide for special training on breath testing equipment.

Determine locations and times of day of accidents involving drinking, and increase patrols during those hours and places.

Provide for special surveillance of drivers with revoked license.

Train law enforcement personnel in methods of detecting, apprehending and handling intoxicated drivers.

Establish a system of spot roadside checks.

Equip police patrols with a supply of breath testing devices which could be used for pre-arrest screening.

Review arrangement procedures with a view toward simplifying and reducing the involvement of arresting officers.

Train officers in methods and techniques of collecting evidence and presenting testimony in DWI court cases.

Use video tapes to record speech and demeanor of the drinking driver at the time of his arrest.

2. SOCIAL AND SERVICE

This countermeasure area encompasses various public and private groups and institutions that would be expected to become actively involved in an effective comprehensive approach to the drinker-driver problem. Alcoholics Anonymous, fraternal orders, religious groups, and the local civic council on alcoholism should be contacted to determine their interest in providing services and support to the countermeasure program.

Specific countermeasures are:

Organize transportation for drivers who have had too much to drink.

Introduce a transportation assistance program for those whose licenses have been revoked to enable them to keep their jobs.

Establish a "Crisis Intervention Center" to assist individuals in coping with stress which might lead to heavy drinking.

Encourage development of social and recreational centers which can serve as alternatives to taverns and bars.

Encourage business leaders to hire cured alcoholics and those undergoing treatment who might otherwise have difficulty in finding employment.

Encourage public and private groups to assist the families of problem drinkers who are undergoing rehabilitation.

3. MEDICAL

General hospitals, medical clinics, mental health centers, alcoholism clinics, and alcohol rehabilitation centers are potential participants in a comprehensive countermeasures program. Diagnosis of the nature and extent of a person's drinking problem and his treatment and rehabilitation are crucial elements in any attempt to reduce the number of drinking drivers. The NHTSA role in this countermeasure area is limited to programs directed at apprehending those who drive or use the streets too often after excessive drinking, and to ensure they do not continue to do so. Extensive treatment and care of problem drinkers, while essential to successful countermeasures program, are outside the NHTSA direct purview; however, interagency agreements between DOT and HEW have been formalized to help ensure that offenders are properly treated. Personnel of both agencies are working together on a day to day basis in this countermeasure area:

Specific countermeasures are:

Arrange for detoxification and diagnosis for drivers arrested for DWI.

Establish a diagnostic center for medical and psychological evaluation of heavy drinkers-drivers.

Organize a medically managed drug regime for problem drinkers-drivers referred for treatment.

Develop a rehabilitation program for problem drinker-drivers, using group therapy approach.

Seek and develop increased public support of alcohol treatment facilities.

Encourage health and medical officials to seek cooperative funding of alcohol treatment facilities from NIMH.

4. JUDICIAL

Activities of the courts within this countermeasure area include presentencing investigations, prosecution of DWI drivers, postsentencing follow-up and court referrals for treatment. The courts not only have the responsibility of determining the innocence or guilt of drivers charged with DWI, but they must also provide appropriate sentencing for those convicted. For the average social drinker or "first offender" the standard fine or sentence will probably suffice as a deterrent to further offenses. A substantial number of defendants appearing in courts, however, are problem drinkers who have developed a pattern of paying fines and/or serving short jail sentences. Then they are released to continue their drinking habits, eventually returning to the courts on the same DWI charges.

Experience has shown that fines, jail sentences, and license revocation are ineffective deterrents where the problem drinkers are concerned. Many continue to drive without a license and drink excessively as had been their habit. In an effort to break this cycle and reduce the rate of recidivism, presentencing investigations and trials for all alcohol-related areas must be so well conducted that those individuals who are the true problem drinkers will not only be identified but their conviction assured so that appropriate rehabilitation can be initiated, together with close probation surveillance.

There are several deficiencies or problems often noted in the court's DWI conviction rates and its ability to distinguish the social drinker from the problem drinker, the first offender from the perennial offender. In many communities police are reluctant to make DWI arrests because of the difficulty in presenting evidence and getting convictions in the courts. Instead, they resort to lesser charges such as "drunk and disorderly." Well-prepared lawyers who have specialized in DWI defense cases know of more than 100 physical conditions which can create symptoms much like those brought on by high consumption of alcohol, and they can effectively create doubt within the minds of jury members regarding a prosecuting officer's testimony. Prosecutors often drop charges due to lack of sufficient evidence.

Specific countermeasures in this area are:

Require presentence investigation of convicted drinking drivers.

Require all individuals convicted of alcohol related offenses to undergo a physical and psychological evaluation as a means for diagnosing problems and assessing the individual's motivation for treatment.

Provide for referral of problem drinker-drivers to treatment.

Provide special training to qualified chemical test personnel in explaining tests and interpreting results to juries in DWI court cases.

Provide special training for selected prosecutors whose sole function would be devoted to prosecution of DWI violations.

Augment probation staff with personnel especially trained in alcohol problems.

5. LEGISLATIVE AND REGULATORY

Appropriate legislative action can span many of the other countermeasures by providing progressive legislation for punishment (e.g., fines, sentences), remedial programs and treatment facilities, and preventive measures (e.g., funding of educational programs, implied consent, and expressed consent laws). Implied consent laws have been enacted in most states, but there is one disadvantage to the law: many drivers are not aware of the law, and the implication is that they give consent when, in actuality, they do not. Thus, knowledge of the law cannot act as a deterrent. Maryland dealt with this problem by being the first state to enact an expressed consent law. Upon initial application for a driving license as well as when renewing his driving license, an applicant affirms under oath that he will consent to a chemical test in exchange for the privilege of driving in the state. Implied consent laws have also been enacted to cover out-of-state and unlicensed drivers.

Chemical tests are scientific proof that the symptoms observed by witnesses were caused by alcohol. The next problem, of course, is determining a safe blood-alcohol-concentration (BAC). Experts agree that .10 percent BAC or higher constitutes intoxication, and that .05 percent or less is within the realm of sobriety. However, there are sharp differences of opinion as to that point between .05 and .10 percent where the legal limit should be set. While many states have adopted the .15 percent BAC as the presumptive level of intoxication, realistically, the legal limit should be lower and legislative action will be necessary.

Another current legislative problem is the so-called safeguards built into the laws for chemical testing. Most states with implied consent laws have no provision for administering a chemical test until after a person has been arrested for DWI: Thus, many intoxicated drivers escape detection since they cannot be arrested until they commit a traffic violation or are involved in a traffic accident. A provision is needed to permit a test of suspected drivers without a preliminary formal arrest and DWI charge. In a number of states with implied consent laws people charged with DWI often avoid the test because of defects in the law. For example, some states allow drivers an option of blood, breath, or urine tests, and the knowledgeable driver can select the type he knows is not available in that particular jurisdiction.

Specific countermeasures in this area are:

Provide for chemical tests and specify legal concentrations to define drunkenness at no higher than .10 percent BAC.

Provide for implied consent for chemical tests.

Require license revocation if test is refused.

Set specification and procedures for chemical tests.

Establish qualifications for persons authorized to administer chemical tests and analyze results.

Provide for use of pre-arrest chemical test.

6. LICENSING AND REGISTRATION

Some licensing agencies issue licenses to individuals with serious drinking problems because no system exists for collection of information concerning known alcoholics from courts, hospitals, social agencies, and other organizations that deal with problem drinkers. Licenses are often issued to persons who have had a license suspended or revoked in other localities. A system that infers records of the separate agencies needs to be established, not only for licensing agencies, but for the courts so they will be cognizant of a problem drinker's previous record. Hospitals and clinics should be encouraged to establish procedures for providing information on problem drinkers known to them. Present record systems are often inadequate because all information which might be useful and pertinent is

not recorded. Driving records should include entries of all arrests indicating original charges and convictions, notation as to presumed presence of alcohol, and results of any chemical tests performed.

Countermeasure activity in licensing should include identification of problem drivers via arrest records and/or medical or clinical records, revocation or suspension of driving licenses for known alcoholics, and screening of new and renewal applicants with the aid of a detailed record system on problem drinkers.

Specific countermeasures in this area are:

Include alcohol safety questions in license examination and driver handbook.
Provide for certification by the license applicant regarding previous arrests and treatment for alcoholism.

Enter alcohol related traffic convictions from court records in driver's record.

Enter non-traffic alcohol related convictions in driver's record.

Enter all alcohol-related information from public social health agency records in driver's record.

Provide for flagging vehicle records for cars owned by problem drinkers.

Provide for the inclusion of chemical test data in accident record.

Establish Medical Advisory Boards (MAB's) for licensing agencies.

Provide for review of convicted DWI drivers by MAB prior to reinstating licenses.

Empower MAB to require physical exams of drivers whose records they review.

Provide for impounding vehicles of drivers who have a second DWI conviction within a three-year period or have driven while licenses were revoked.

Develop guidelines for special restricted or occupational licensing of persons whose driving privilege is otherwise revoked.

7. PUBLIC INFORMATION AND EDUCATION

Public support, an important prerequisite for a strong, effective countermeasure program can be generated best by a coordinated program having three major objectives:

To make the public aware of the alcohol problem as it relates to highway safety problems.

To emphasize that the Alcohol Countermeasure Program is not aimed against drinking per se, but against persons who are problem drinkers and who drive too soon after excessive drinking.

To make the public realize that the problem of alcohol-related death and injury on the highway is not hopeless, that the number of highway accidents can be substantially reduced by means of sound identification and rehabilitation programs for the problem drinker.

This countermeasure area involves the substantial cooperation of the mass media (radio, television, newspapers), and use of other means of communication, such as direct mail brochures, pamphlets, information packets, signs, and posters.

In addition to a broad information campaign, programs at all levels in the public school system to create an awareness of the drinking-driver problem must be established. The effects of alcohol on drivers should be thoroughly discussed in driver education courses in both public and private schools.

Specific countermeasures in this area are:

Develop mass media public education campaign on alcohol highway safety.

Develop speakers bureau program on alcohol highway safety.

Augment alcohol highway safety sections of high school driver education programs.

Add sections on alcohol to primary safety courses and to appropriate secondary courses (Family Life Courses, etc.).

Develop school driver improvement programs for special offenders.

Develop presentations on needed measures and use them before civic and professional organizations.

Prepare frequent news releases on the countermeasure efforts.

Organize a "personal correspondence program" to assure that the ASAP message reaches all key community leaders and officials (doctors, lawyers, religious leaders, social workers, etc.).

Encourage visits to DWI courts by school classes and other interested community groups.

Question. What types of countermeasures appear to offer the best pay-off?

Answer. The separate countermeasures employed in the typical ASAP represent mainly activities which have been going on in certain areas, some measures in one community, others in another. Coordination and singleness of purpose have been lacking. The ASAP project ties together in a meaningful way several countermeasures that bear on the drinking-driver problem. The concentration and coordination of effort by several public and private agencies is new and lies at the heart of the program. Increased police enforcement without regard to court loads, for example, will clog dockets. Referral to treatment requires that treatment processes be available. Thus, a coordinated comprehensive attack rather than individual countermeasures will gain real payoff.

Question. How is the alcohol countermeasures program being funded?

Answer. Under provision of Section 403 of Public Law 89-564 which amends Section 101, Title 23, United States Code.

