

Mr. EVERETT. No questions.

Mr. KARTH. Thank you very much, sir. Your testimony has been helpful, indeed.

Is Mr. Roger Conner in the audience? You are next, Roger, if you would take the witness stand, please, and identify yourself and the association or organization you are with and proceed with the testimony you chose to give before this committee.

**STATEMENT OF ROGER CONNER, ENVIRONMENTAL LAW SOCIETY  
OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL**

Mr. CONNER. Thank you, Mr. Acting Chairman.

My name is Roger Conner. I am speaking here with several hats on this afternoon. I am speaking individually, speaking also as a representative of the Environmental Law Society of the University of Michigan Law School, of which I am a student, and I also speak in my personal capacity as a member of the Michigan Air Pollution Control Commission. I have been a member for almost a year now.

I would like to thank you for the opportunity to share a few thoughts with you. Being a mere law student, I don't lay any claim to the wisdom of the ages, but perhaps I can share a few thoughts with you.

First of all, let me just speak to three aspects of the legislation or three objectives which the legislation which you eventually come up with, in my view, needs to fulfill.

The first objective is that it needs to establish a broad standard. It needs to establish a general principle of environmental quality, from which a new body of environmental law may develop. Now, I suggest that to you for two very important reasons, both of which have to do with the pace, what I would label the pace and the nature of technological development.

You know, it's a cliché by now how fast technology is developing, and one of the things that's happening is that research is constantly revealing activities to be dangerous which we once thought to be harmless. I think the DDT example is a perfect case in point. But the problem is: As Congressmen, you cannot examine annually every single program and every single policy which you have agreed on in the past and can't reevaluate it in the light of new evidence and new knowledge if it becomes available. Since that is true, there is presently a time lag between the discovery of new information and the time that that new information is implemented by changing or changing in some way programs and policies that have been established in the past.

I would suggest to you that, given the magnitude and the irreversibility environmental damage, it is critical that we shorten this time lag and by having a broad standard, by proceeding in this way rather than by specific legislation, you provide a forum in which these issues can be raised.

Now, the question, of course, should arise in your mind, was asked a little earlier this morning: Aren't we then giving the courts the responsibility that, in truth, belongs to the legislature? I would suggest to you that the answer is "no," for two reasons.

First of all, who has the job right now? The job of carrying out your will right now is not with the legislature, but it is with the administra-

tive agencies. But more important, the right way to view this is giving the courts the power to, in fact, implement the will of the Congress. Presently, the moods and attitudes of Congress—you know, the policies that you set down—are not always applied consistent with all the knowledge that is available. So this is the way I would suggest, by having a broad standard enforced by the courts, this is the way of making your will be enforced, rather than a way of having the courts take over a job that is not theirs.

I would suggest to you that the DDT example illustrates beautifully, illustrates very well the need to reduce this time lag between the gathering of information and the implementation of that new information and policy.

In 1967, a Michigan group brought a lawsuit in the State of Michigan. They were trying to prevent the spraying of DDT in massive quantities to stop Dutch elm disease. The court in that instance found that there was no right of the petitioners that was being violated and that case was dismissed.

As you well know, the litigation that's gone on in the Federal courts in the DDT issue, the District of Columbia court has done just about everything it can under present law to influence Departments of Agriculture and later the Environmental Protection Agency and this spraying of the DDT is still going on.

I would like to suggest to you that I have never seen a peregrine falcon and it is with some bitterness that I realize that I shall probably never see one.

The second reason that we need to develop a common law of environmental quality is because we need to develop a system of preventing environmental damage before it occurs. The mercury-laden waters of Lake St. Clair, the foul beaches of Lake Erie are mute testimony to the need to do a better job of evaluating the environmental impacts of new technologies before they are implemented, not after.

Well, now, how do you go about doing that? Well, just ask yourself the question: How have we managed to accomplish the same job with regard to other problems? How have we gotten the people who design a new technology to take other problems into account?

Take accident, so, for example, in industrial plants. You know, there was a time when the cost of accidents was borne by the workers, but then you had workmen's compensation laws that made the company pay for part of the cost of those industrial accidents, and the result is that there are safety measures built into the new plants that are now being designed because of the workmen's compensation laws.

Well, now, I would suggest that for the same reason you need a general law of environmental quality. At present, you see, the maintenance of environmental quality is not a design parameter in most new technology.

Take the SST, for example. I would turn your attention to a 1968 comment of the Department of Transportation official concerning the SST. He said:

Given a plane with the range of 4,000 miles, a speed of 2.7 Mach, payload of 60,000 pounds, operating over existing runways, the contract objectives are the lowest possible noise level expectations, given those parameters. If you start by setting noise figures which would eliminate complaints about noise, you might end up with a very different kind of plane, one that would not fit our conception of an SST.

Plainly, the design parameters in that instance were speed, carrying capacity and range. If we had had a legal system which said to them, "One of your design parameters has to be the maintenance of environmental quality," that would have been, perhaps, a much different plane, if it was ever designed in the first place.

So that is the reason why it is necessary to establish a general standard of environmental quality, and I would suggest to you that the due process problem of vagueness of a standard that is general is not a real problem, as Professor Sax suggested earlier.

In addition to establishing a legal standard, something else the legislation must do, must spell out clearly a new relationship between the courts and administrative agencies. In the first instance, it must be clear that a person can go and have a court decide a case in which the administrative agency has failed to act.

Now, as you well know, if you have had some of these agencies come before you with their budget requests, there is practically no regulatory agency that has sufficient staff to fulfill its statutory responsibilities. Now, what that means is they have to establish priorities. The practical effect of that is, of course, if you have any complaints to an administrative agency, you are going to be told that "we don't have enough staff and we can't do everything at once."

Well, I was talking to Representative Anderson earlier, who suggested that the first caveman bureaucrat must have made that one up a long time ago and told his constituents that he had limited staff and couldn't do everything at once.

But my point is that if you have a problem or if I have a problem that's low on the priority list of an administrative agency, fine. Let them keep their priority list, but give me a forum in which I can have my problem solved, in which I can have my claim adjudicated and reviewed in this sense, from the perspective of the agency, the citizens' suit in the courts in a case in which they have not acted could be a way of supplementing the regulatory process rather than thinking of it as replacing the regulatory process. But it's also important that the individual be able to challenge an agency's determination.

I would like to support the suggestion which you will find in Professor Sax's testimony, that you need to spell out very clearly that the courts are able to make a determination on their own, make a determination of whether agency action is consistent with the legal standard that you have laid down. It is not enough merely to declare a general policy of the environment.

I would refer you to a case that was just recently decided in the eastern district of Arkansas, February 19, 1971. The issue in that case was: Under the National Environmental Policy Act, the Congress has stated a policy and the question was: Can the court, under that act, look at that declaration of policy and say that the agency's action, the agency's decision, is inconsistent with that policy? Here was the judge's response:

If the Congress had intended to leave it up to the courts to determine such matters, indeed if it had intended to give up its own prerogatives and those of the administrative agencies, it certainly would have used explicit language to accomplish such a far-reaching objective.

You are going to have to say that in very clear terms and I think that it is only fair from the point of view of the judges. They are

not taking a restrictive view. They are saying if that is what you want them to do, then they want you to say it in very clear terms and I would agree with Professor Sax, that once you say that, they will be willing and take and make what Mr. Goodling had referred to as the difficult decisions.

But I would like to comment just briefly on the potential effect of a bill like this on administrative agencies. I can speak about this problem with just a very small bit of perspective, having sat on the Michigan Air Pollution Commissions for the last few months. In fact, just recently, the air pollution commission, myself included, was sued under the Michigan Environmental Protection Act. We and a foundry were named as defendants for permitting excessive air pollution. In fact, in the pleadings it was stated that the Michigan Air Pollution Commission was encouraging air pollution instead of stopping air pollution.

Let me just see if I can explain to you briefly what has happened in the case. For obvious reasons, I can't comment terribly extensively.

The commission established regulations applying to foundries back in 1967 and the staff informed Betz Foundry, the defendant in this case, which is a foundry that operates in Grand Rapids, that it was in violation of these regulations. That was in 1968, and they said at that time they wanted a control program to bring them into compliance within 2 years and they wanted the foundry to submit such a control program. In the records of the commission you will find that there were then seven subsequent visits by the staff over the next 2½ years. In each visit, the staff told the foundry owners that they were in violation, that controls had to be adopted, that they were to submit a control program. On two or three occasions, the foundry promised very faithfully they would be submitting a control program within a few months and inevitably problems arose.

Well, a lawsuit was filed a few months ago and the suggestion was, you know, this has gone on too long. There comes a time at which we want a decision and there were some people apparently who were a little tired of breathing the smoke of the Betz Foundry, especially in light of the fact that other similarly sized foundries had already been required to install control equipment.

Well, let me just comment about what the effect of the suit has been, rather than speaking about the merits of the controversy itself.

First of all, the lawsuit has not brought the commission to a halt. I should add that it probably took the commission about 30 or 45 minutes of discussion to get accustomed to the fact that it had been named a defendant and there was much strong rhetoric in the commission discussion about what a great job we had been doing and—what are these people doing in here, suing us? But it is my feeling—and I have tried to think about this with some care—as to what the real effect of this lawsuit has been on the commission and I don't think it's been terribly dramatic but it is clear in my mind that it has been one factor in influencing the commission to take a more careful look at the control programs submitted to our commission. In a case that was considered the same day as the *Betz Foundry* case, a foundry owner submitted a rather unclear control program with only an approximate date for compliance. Based on my experience in sitting on that commission, such programs had been approved by the com-

mission in the past, with the problems of delay that can arise, but in that instance the commission declined to grant a variance, declined to accept the control program, and one of the commissioners remarked, and this is an approximate quote, "We are just setting ourselves up for another lawsuit if we accept this program without a more definite commitment."

While I would draw no firm conclusions from this one case, I would submit that every organization can benefit from an occasional crisis which becomes the occasion to reevaluate the procedures of the organization and the direction of the organization, and the lawsuit can provide such an occasion.

Thus, I would suggest that lawsuits have an excellent therapeutic value even if the commission might have accomplished something near the same objective as a lawsuit in the first instance. Additionally, during the luncheon with one of the staff members, I said, "Look. The next time you go and talk to somebody like this who promises you that he is going to submit a program and a month later you don't have the letter, you ought to drop by and you ought to say, 'Look, you can cooperate with us, if you want, but, you know, there are these citizens looking over our shoulder and I don't want to be nasty to you; we are friends, I have talked to you before, and I don't want to be mean, but, you know, these guys are looking over my shoulder now and I'm not as free as I was to give you a couple of extra months, and, gee whiz, after all, you know, it's cheaper for both of us in terms of money and image and so on. Let's see if we can't bring this thing to a conclusion,' and he looked at me, a little surprised in his eyes and he said, 'Good idea.'"

You know, these are the kinds of impacts that it is difficult to talk about, but I would suggest that, viewed in the right perspective, the bills such as the ones you are considering can be a highly valuable asset to all of the environmental agencies and not a stumbling block.

But in my mind, the heart of this legislation is that a private citizen can have his day in court and that is with regard to something that is affecting the quality of his life. There is a fundamental sense in which the legislation which you are considering is about people and about life. Let me see if I can explain what I mean by that.

You know, there is a well-documented attitude among poor people which sociologists have documented ad nauseum. They term it "powerlessness." It's the feeling that one is bound on every side by forces beyond your control, you are on a treadmill. You are in a trap. It's called alienation. But perceptive observers have realized that this feeling of powerlessness to control one's life is not limited to the poor, that it is a malaise, it is an attitude that is pervading many, many levels of this society.

Joseph Lifert has put it this way:

People feel powerless in their personal efforts to achieve their own ideals for society. He has been defeated by political pressures and organizational politics which go on regardless of anything he does. This means that it is not any one group of persons or any one thing; it is a system that frustrates every individual regardless of his politics who is attempting to deal with it. For example, the person in the suburb who talks about having his property taken away from him is just as much a victim of this sense of powerlessness and fear as anybody else.

See, this proposed legislation allows those people to be actively involved, to have an impact on decisions which affect the quality of

their environment and thus, in a very direct way, the quality of their lives.

Now, how can they have a say in these decisions that affect their lives right now? Let me give you an example.

Consider the case of Traverse City, Mich., the Northern Reduction Co. It is a rendering plant. Now, this particular rendering plant takes dead carcasses and turns them into dogfood and the process turns out a rather nauseating odor.

Well, here is the scenario—early 1960's: Citizens become aroused and complain to the city fathers and the county health department. The county health department refers them to the State health department. That was 1963.

The State Health Department says it can't do anything about the primary source of odors and refers them to the Department of Agriculture.

The Department of Agriculture licenses the company, but they are only interested in the quality of dogfood—first, deadend.

In 1968: A little more powerful person than perhaps just a citizen—a neighboring business. He is in the canning business and he finds that when he cans things, they come out smelling kind of interesting when you open the can. He doesn't like that, so he complains to the county health department.

The county health department refers the complaint to the Air Pollution Commission, newly constituted in 1967.

Fall, 1969: Complaints reach the Air Pollution Commission and a member of the staff sends a letter, indicating that progress must be made or else he will be sent before the Air Pollution Commission.

September 1969: Company agrees with the Commission to install afterburners to get rid of the noncondensable gases and solves the odor problem, and an informal agreement between the Commission and the gentleman who runs that plant.

April 1970: The Commission is flooded with letters from citizens complaining about the continued odor and we can't understand that because there was an agreement, after all, that they were going to put in afterburners. Interestingly enough, they go out and they discover that the afterburners have not yet been installed. So at this point, the Commission, after 30 days' notice and hearing, issues a notice of complaint and there is a public hearing before a hearing examiner.

The Commission takes up the matter in September of 1970, but then they realize that they have to give another 30 days' notice before they can make a final decision and accept the conclusions of the hearing examiner.

October 1970: The Commission finally adopts a final order of determination, that the odors shall be controlled by May 1, 1971.

On April 30, the day before they are supposed to have the control measures implemented, the company sends in a letter, applying for a permit to install the equipment. Now, the May 1 deadline is past and unless they work 24 hours with a very large crew, I have the distinct feeling that the afterburner is not yet operating, although I tried to make a phone call and I couldn't find out exactly.

Well, I have one question: How do you expect people to respond to a system like that? There must be an alternative, a place that people can go and have their grievances resolved, to have an end to this endless process.

You know, I was talking to a lawyer who has brought one of these cases and he said, "You know, I have had automobile liability cases, and the people hurt right up until the day the trial is over, until there is a decision."

There needs to be a place where people can go and get off the treadmill, and it must be a forum, I would submit to you, that focuses on people and their lives rather than the faceless computer printout which assures us that everyone is really better off in the long run.

One of the first actions that was brought under this new Michigan Environmental Protection Act was brought by the county air pollution agency in Wayne County. That is the county of Detroit. They brought an action against the Chrysler Huber Foundry, which has been the bane of the existence of the Detroit communities since 1963, when it was put in there. Well, the negotiations between the department and the Chrysler Huber people went on for about 6 months. People in the area decided that they would like to have these actions proceed a little more vigorously and that perhaps the actions might, indeed, proceed more vigorously if the people who were being dumped on all the time were involved in the decision. So they made a motion to intervene.

I have had an opportunity to be at the hearing on the motion and intervene and it was a revealing experience.

It is a courtroom with room for about 30 to 40 people, over flowed with about 150. They were flowing out of the jury box—blacks, whites, mostly working people, the people that have carried this country on their backs, people that had built their homes with their own hands, that had lived in a nice, clean community for 40 years until the city of Detroit decided that its tax base and the flow of products to the Chrysler Huber Foundry would be improved if there were a foundry placed right across the street from their community.

Without implicating the merits of the controversy, I listened to some of the discussions that were going on. I found them kind of interesting. I heard one lady whisper to another, "How do you explain dirt and dust?" "You can see it; you feel it in the air and it builds up on you. You can feel yourself breathing it."

Her friend answered, "What do they think we are? We aren't crackpots. We have lived here for years, what do they think, we live on the wrong side of the tracks?"

These are real people who are coming in and saying, "We want to be involved in a decision that affects our lives."

When the judge ruled on the motion to intervene, I think he expressed an understanding of what these laws are all about. He said, "We have your pollution affecting homes, health, and property. This goes to the very soul of the issue. Who else has a greater right to be represented in this lawsuit than these people?" "One of the great sins of our times," he continued, "is a breakdown in communications between public, quasi-public," and in this category he included the defendant, "between those groups, those institutions and the citizens. This communication must take place if confidence in government is to return. If this communication can take place only through the medium of this court, I will accept the responsibility. Since October of 1970," he concluded, "there have been tests, negotiations and so on, but for some reason these people have not been informed of what is

going on. 'There are people here in this room,' he concluded, 'young and old alike, that have become disturbed and understandably so about this lack of information. Somebody has to explain to them what's going on.'

It is my feeling that the debate over this legislation is part of a debate over a much larger issue. It is the fundamental assumption of whether people can have an impact on the decisions that affect their lives.

You know, this whole argument about working within the system has now become a cliché, but I would submit to you that when people are attempting to influence those decisions that impinge on their lives, that the response that they get is an experience and it is an experience that is either consistent with that assumption about being able to affect decisions that affect your lives or it is inconsistent with that assumption, and when repeated attempts lead to frustration, when the court in Texas says, 'You have a real case, there is a problem here, there is an indication to me that somewhere along the line something has gone wrong but I'm not permitted to allow you to raise those issues in this court'—when they lead to that frustration, there can be only one of two responses. One is to fight back. In Michigan, there is a law which, on its base, makes many billboards illegal. Well, it hasn't been enforced, so there is a band of billboard bandits that are going around with buzz saws and if you take I-94 between Ann Arbor and the capitol, then you will see a whole row of them wiped out. That's humorous. But, you know—the billboard people complain; it breaks my heart, but at the same time, in a much more serious vein, I have sat in on conversations and heard people say, 'Those companies are poisoning me. They are killing me. They are shortening my life and nothing is being done about it and I have only one alternative as an organism and that is self-defense.'

I think our reaction is going to be much more serious when we see a plant blown up—not that I would want that to happen.

But, you know, the other response, instead of fighting back, is to fall back into apathy, to give in, to become more alienated, and I would submit to you that when people do that, that one element, one more element of their humanness, the will to struggle, is gone.

That is why I submit to you that this proposed legislation represents an extraordinary idea. It is about people and about life and that's why it is important.

Thank you.

Mr. DINGELL. Mr. Conner, the committee remembers with appreciation your other appearances before this body and the other associations that you and I have had over a number of years and I want to tell you it's been a privilege to have you here. Your testimony has been most helpful and I am delighted to see that the State of Michigan has somebody like you on our air pollution control commission. I think you will provide there a most valuable and distinguished service.

Mr. Karth?

Mr. KARTH. Thank you, Mr. Chairman.

Are you familiar at all with the so-called *Mineral King* case that is now before the Supreme Court? Doesn't that get to the heart of the question that you are talking about, the right of the individual to sue the agency—



Mr. CONNER. Not really.

Mr. KARTH (continuing). That is charged with the responsibility to do some of these things that we are talking about?

Did you say "Not really"?

Mr. CONNER. Not really, and the reason is this: The *Mineral King* decision is over whether—you know, the standing question—whether you ever get into court in the first place, not the issues you can argue once you get in.

One of the difficulties that we have had in environmental litigation, as I am sure you well know, that once you get over that hurdle, once you spent the \$50,000 or \$100,000 on the *Mineral King* case, I'm sure at least a half a million dollars to get into court, to get past standing, then you are told that you can never get to the merits of the issue and you get back on the treadmill.

Take the *Storm King* case as a classic example. The courts have felt unable to rule on the merits of that case. The results as I say—well, you didn't consider issues 1, 2, 3, 4, 36, and 38 in the hearings, so back it goes and let's have some more hearings. Not surprisingly, the same decision comes out. We go back to another appeal. Ha! There are 13 more issues you didn't consider. Back it goes for more hearings and we are on the treadmill and that isn't the kind of thing that benefits anybody, and there have been a lot of instances in which the standing problem gets solved and the judge says—I mean, in a sense, it's a cop out. In another sense, you know, he's being in compliance with what the law is right now, that he cannot substitute his judgment for that of an administrative agency.

Mr. KARTH. Well, Mr. Atkinson referred to it in his testimony before the Senate, and I think the testimony is misleading because it does not say specifically what question it is going to decide. The implication is that it is going to decide the very situation or the very case that you first ascribed to which was so needed in this legislation.

One other thing: Have you prepared any legislation or any language on this broad standard?

Mr. CONNER. Not specifically. I have read over the suggestions of—

Mr. KARTH. Would you do that and submit it for the record?

Mr. CONNER. I would be happy to do so.

Mr. KARTH. I think it would be invaluable to the committee.

Thank you, Mr. Chairman. That is all.

Mr. DINGELL. Thank you very much, Mr. Karth.

Mr. Goodling?

Mr. GOODLING. No questions, Mr. Chairman.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. No questions.

Mr. DINGELL. Mr. Conner, the committee is very much grateful to you. We thank you not only for your help but also for your patience. We know you are pressed to be elsewhere and we do thank you.

Mr. CONNER. Thank you very much.

Mr. DINGELL. The Chair notes that Mrs. Merrill Petoskey, wife of the distinguished conservationist in the State of Michigan and good friend of the present occupant of the Chair, speaking on behalf of the Federated Garden Clubs of Michigan, has requested the opportunity to present a statement by mail, and, without objection, the record will

remain open and she will be afforded permission to insert a statement, which will be inserted in the record at this particular point.

(The statement had not been received by the time the hearing went to press.)

Mr. DINGELL. The Chair does feel compelled to make one announcement, and that is that the record will remain open for an appropriate period. I am not able to say precisely what that is, but it will be 30 days at least, for any person who desires to submit additional information and so forth for purposes of the record. Anyone who wishes to make a statement will have full opportunity to do so.

I think Mrs. Martha Reynolds has indicated she is in some haste. Mrs. Reynolds, would you like to come forward? The Chair also notes that you have several associates and staff members with you. If you would like to have them present with you at the witness table, we would be honored to have them.

Mrs. Reynolds, we are certainly happy to welcome you, speaking on behalf of the UAW for such statements to this committee as you feel appropriate.

#### STATEMENT OF MARTHA REYNOLDS, UNITED AUTO WORKERS OF AMERICA

Mrs. REYNOLDS. Representative Dingell, members of the Merchant Marine and Fisheries Subcommittee, and ladies and gentlemen, thank you, first of all, for allowing me to appear. Time is beginning to get pressed and I have to make my way up to Saginaw this evening.

I am here speaking on behalf of Olga Madar, vice president of the International Union, UAW and its members, and I am here to say that we support the proposed legislation which would extend to all citizens of this country the right to protect their environment through legal process of the court.

As you know, Mr. Dingell, because we have worked with you, the UAW has a long and consistent history of fighting for better health and safety standards within our plants—and, of course, we are going to continue to do this—but we find that we make little progress when our members leave the plants and return home and find that the communities in which they live are polluted. We are concerned about this, and we intend to pursue the struggle for health and safety in the community with the same vigor and tenacity that we have applied to the plant problem because our members have become increasingly concerned about the destruction of our natural resources and the environmental crises we face today. It is a crisis which has developed because our environment has been consistently compromised in the name of increased productivity and because of faulty economic theories. We have come to reject the false assumption that we have to choose between the right to a clean environmental and our right to full employment.

The UAW supports the basic principle that no one has a right to pollute our natural resources, and we feel that the passage of H.R. 5076 will provide the means through which individual citizens can express this principle and participate in the protection of its environment.