The Railway Labor Executives' Association, an affiliation of railway labor unions, protested to the Commission, and asked that the trains be ordered restored until November 10, the end of the 30-day period. Division 3 ruled that the Santa Fe's action was a breach of its own notice and "therefore vitiates our jurisdiction." Division 3 then dismissed the notice. The full Commission later upheld Division 3 and rejected the Railway Labor Executives' Association appeal. The Commission predicated its decision on the view that Section 13a(1) "shelters" the carrier from state action, and that if violated by the carrier the "shelter" is withdrawn and the carrier is exposed to the laws and constitutions of the States involved.

The intent of Section 13a(1) is to provide a minimum of 30 days notice to the public affected by train discontinuances filed under this section. The time period does not appear to be an undue burden on the carrier and we can recall no protest about this waiting period during the legislative history of Section 13a, as part of the Transportation Act of 1958. Also, the record since 1958 reveals only one incident, the instant one, in which trains were discontinued prior to the 30-day statutory period.

The Commission's interpretation that a carrier could enter or leave Section 13a(1) proceedings at will prompted the Senate Commerce Committee to report to the Senate S. 2711, which was passed December 1, 1967. Chairman Warren C. Magnuson argued that the Commission's ruling in the Santa Fe case would enable other carriers to file notice of discontinuance with the Commission and then take off the trains before expiration of the 30-day notice period, if the Interstate Commerce Commission did not initiate an investigation. We are inclined to agree with Senator Magnuson that Section 13a(1) gives the public the right to a 30-day notice, and that this right has been set aside, under certain circumstances, by the Interstate Commerce Commission's Santa Fe decision.

In its report to the Senate, the Commerce Committee outlined the provisions of the bill as follows:

"(1) Provide that a railroad may not, after the filing of a notice, discontinue or change passenger train service, except upon order by the Commission;

"(2) Confirm jurisdiction, of the Commission upon the filing of a notice, by substituting the word "jurisdiction" for the word "authority";

"(3) That within 20 days after the filing by a carrier of a notice to discontinue, the Commission must either enter an order instituting an investigation or permitting the proposed discontinuance or change at the expiration of the statutory 30 days' notice period;

"(4) That if a carrier discontinues or changes its passenger train service in violation of the provisions of Section 13a(1), the Commission may require the continuance or restoration of such service; and

"(5) Delete the word "otherwise" and substitute the words "would have" to confirm that after the filing of a notice a carrier may not change or discontinue passenger train service except upon order by the Commission."

As is sometimes the case, to attempt to clarify a law in order to solve one problem can create another problem. We fear such is the case in S. 2711. The significant language change in the proposed bill occurs when the second sentence is amended by inserting after the word "may" the word "not" and by striking out the word "otherwise." It then reads, "The carrier or carriers . . . may not discontinue or change any such operation or service . . . except as ordered by the Commission."

The practical effort of the change is that the Commission would have to take affirmative action on all notices, whether it intended to investigate a notice or allow discontinuance after the 30-day period. If the Commission decided to investigate there would be no departure from present procedures. The new problem arises if the Commission decided not to investigate. Under S. 2711 it would have to issue an order authorizing the discontinuance. This order would become subject to judicial review and the attendant delays. We believe that opening all train discontinuance cases to judicial review would erode the original intent of Section 13a(1), which was to expedite removal of those few trains that were clearly unprofitable and unpatronized. Under Section 13a(1) the Commission, as of June 30, 1967, decided not to investigate 25 interstate proceedings involving 64 trains. In that same period 201 interstate proceedings involving 1,102 trains were before the Commission. Thus, only a small percentage of train discontinuance requests were permitted to become effective without investigation.

Significantly, there was no discussion of exposing all the Commission's actions under 13a(1) to judicial review in the Senate Commerce Committee's report to the Senate on S. 2711. The Committee was concerned with protecting the public's right to sufficient and proper notice. The proposed bill provides that protection,