

difficult to administer than the one you describe as a sound administrative practice; that is, that the full property be taken where the amount of the severance damage closely approximates the value of the whole.

We are both getting at the same problem. Obviously—at least it seems obvious to me—you consider it an equitable situation to acquire the taking, so the question is what is the best way to approach it. I think perhaps we both have clearly in mind the kind of situation that we are trying to get at. But I think closely appropriating the value may not necessarily reach all the inequitable situations.

Mr. HART. Our recommendation or suggestion, Mr. Chairman, was directed primarily to the fact that this may be considered mandatory. I think you are correct that we are both thinking of the same thing in connection with severance damages or where you take so much of the man's land that he cannot really use it for anything. Our policy has always been that not only for the sake of the owner, but also just for good business, in a severance damage case of taking a part, you are going to pay for the whole, so it has been our practice to acquire the entire tract to avoid the extensive severance damages.

On the other hand, when we read this, we are not really certain that this was meant to be mandatory, that we would have no discretion, because lots of times, we might be acquiring a piece of property and the owner—it may not be an economic unit, but maybe the owner desires to retain it. It might not be our desire at all one way or the other. If you read this strictly as a mandate, then regardless of the owner's desires, we would have to acquire it. This was all we were trying to direct attention to, that it should be flexible. I think you will find this runs through most of our statement.

Senator MUSKIE. If the bill requires it, it would result in an inequitable situation.

Mr. HART. That is correct. And I think if there is a severance, I think under the existing interpretation of the court on severance damage, we would be paying for the whole whether we took it or not.

Senator MUSKIE. It may be that in your administration of that principle, you have been more humanitarian than other agencies. We are trying to find a test here that will insure equitable treatment whatever the agency and program.

Mr. HART. Mr. Chairman, we are not objecting to the principle at all. We are only worried about whether or not there is room for both parties to have a say.

Senator MUSKIE. I understand. I think perhaps we ought to try to work out some language here. I do not think we are in disagreement as to the objective at all.

Mr. HART. I think, Mr. Chairman, that most of our recommendations have really been based on not in any way objecting to the policies or principles. It is a question strictly of administration, that we do not get ourselves boxed in so that in our desire to do it one way, we are unable to avoid equally inequitable situations. As was said in earlier testimony before me, we cannot foresee all of these situations; therefore, the Department of Defense basically has simply said, let us make the rules flexible. We will have uniform rules and regulations. Certainly within those rules, there is that latitude.

Senator MUSKIE. That is my feeling about the thrust of the testimony, Mr. Hart. It reflects a great deal of experience in this field and,