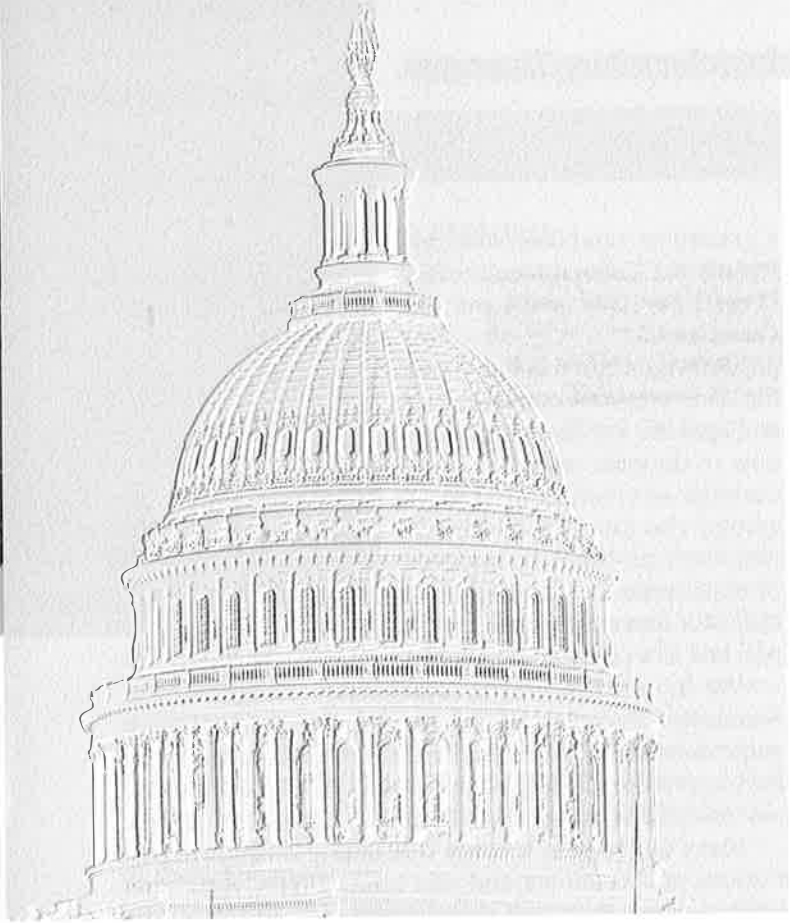

Blatnik to Now

A Modern History of U.S. Transportation Legislation

The Honorable John A. Blatnik was the chair of the Special Subcommittee of the Federal Aid Highway Program of the House Committee on Public Works, created in 1959. Before discussing the investigation conducted by that committee, let me give you a brief history of the development of right-of-way work from the perspective of the federal government's involvement and its influence on right-of-way programs nationwide.

In December 1914, the American Association of State Highway Officials (AASHTO) was organized "for the purpose of providing mutual cooperation and assistance to the state highway departments and the several states and the federal government, as well as the discussion of legislative, economic and technical subjects pertaining to the administration of such departments."

One of the first acts of the newly formed association was to instruct the executive committee to prepare for the consideration of Congress, a Bill authorizing federal aid to highways. The Federal-Aid Highway Act of 1940 permitted ,for the first time, federal participation in the cost "of necessary new or additional rights of way" in the territory of Hawaii under certain specified conditions related to the national defense. The Public Roads Administration was authorized to pay all or any part of the costs of specified projects, including the cost of rights of way.

In 1916, the *Federal-Aid Road Act* was passed. Twenty-seven years later, Congress gave recognition to right of way as a requisite to peacetime highway construction; however, no provision was made for acquisition of rights of way.

Congress made its first major departure from the policy of not participating in costs of rights of way within the *Defense Highway Act of 1941*. Then, passage of Public Law 146 by the 78th Congress on July 13, 1943, redefined the term "construction" to include the cost of rights of way, thus permitting federal participation in its funding. In 1953, the Bureau of Public Roads issued a new directive which required full documentation of right-of-way costs, if federal funds were desired. Still, right of way received little attention, as states were concentrating on construction.

With the passage of the *Federal-Aid Highway Act* of 1956 (which increased the national interstate and defense system length to 41,000 miles) and an allocation of 90 percent of federal funds, the states earnestly went into the right-of-way business. States that were organized and functioning with right-of-way divisions expanded quickly. Those having little or nothing resembling operational right-of-way units found themselves confronted by an overwhelming task and had to begin organizing such units.

Under the Bureau of Public Roads (BPR), state partnership's new right-of-way policies were studied, discussed and finally agreed on as the most expeditious way to acquire the needed right of way for the interstate and defense highway system, and other federally-aided programs, with fairness to property owners, as well as state and federal governments.

By Wayne F. Kennedy, SR/WA

The federal highway administrator officially designated these policies and procedures as PPM 21-4.1 dated December 30, 1960, entitled *Right of Way Procedures (State Acquisition Under Federal Aid Procedures)*. It was barely more than 11 pages in length, with a $2^{1}/_{2}$ page attachment 1, entitled *Guidelines for the Preparation of an Appraisal for Right of Way Purposes,* a $2^{1}/_{8}$ page attachment 2, entitled *Guidelines for the Administration of Public Roads' Policy Relative to State Acquisition of Rights of Way by Condemnation*, and a one-page attachment 3 which was the format required for states to certify their right of way costs for a federal aid project. PPM 21-4.1 required states to submit information regarding regulations, procedures, and manner in which right-of-way matters were handled by the state. The information, as a minimum, had to respond to 35 statements or "points," as we used to refer to them.

Much later, on April 18, 1967, PPM 21-4.1, et al, was replaced by PPM 80-1, Right of Way Procedures (general principles and coordination with other governmental agencies). Suddenly, words like "documentation" and "justification" became very important in every state highway organization.

So much for the brief history ... Now for a discussion of

A Partial Listing of Findings by the Blatnik Committee

1. Certain statutory limitations and restrictions in state laws had the effect of substantially increasing the cost of rights of way obtained for highway purposes and may have caused delays in carrying out the Federal Aid Highway programs. They also hindered states in such matters as width of highways, slope easements and providing for county approval of right-of-way acquisitions for state highways.

2. Some states lacked authority to: (1) acquire rights of way in fee simple; (2) acquire rights of way by purchase, gift, or devise; (3) provide for the acquisition of marginal or excess land; and (4) to sell or exchange properties.

3. Supporting documentation for right-of-way acquisition was often inadequate.

a. Appraisals lacked essential information concerning the methods used to arrive at the fair value of a property and damages to remainder properties.

b. Property not needed for highway purposes was acquired by this state and cost thereof billed by the state and paid by the BPR.

c. The state acquired certain properties before the BPR had approved the programming of the particular projects.

d. Settlements were made with property owners, in certain instances, in excess of the appraised value, with no explanation about how the excess value was justified.

e. States failed to give the BPR information on its procedures and controls relating to revenue collections on properties acquired which were rented or leased.

f. Appraisers generally assigned an arbitrary 10 percent value to takings of excess rights of way that were landlocked.

g. Justification for recommended settlements was not documented.

h. Information was lacking as to source data used in determining the appraised value of improvements.

i. Certain appraisals did not include comparable sales data or the reasons for excluding data in developing appraisal amounts.

j. Appraisal reports did not show the bases and methods used in determining values for land, improvements, and severance damages.

k. When two or more appraisals were obtained, wide variations between appraisal values were not adequately explained in determining actual settlements with property owners.

l. Appraisals were sometimes made after negotiation with owners and agreements were executed.

m. Non-compensable items, such as personal property and loss of rent, were included in the acquisition price.

n. No indication was given in appraisal reports as to highest and best use.

o. Estimates of severance damages to remainder properties were based on an appraiser's experience and judgement without a presentation or reference to factual evidence.

p. Right-of-way acquisition files did not show the name of the negotiator or the date of initial contact with a property owner.

q. States' property acquisition records did not always include such items as: The name of a negotiator to whom acquisition was assigned or the date of assignment; the amount authorized to be offered and by whom it was authorized; and a record of each contact with the owner and results of each contact.

r. States used only one approach to determine the value of a property when their procedures specified the use of three, without an explanation of why only one approach was applicable.

s. Where more than one state appraisal was made, due to a procedural requirement, there was clear evidence that the two appraisers had collaborated in the preparation of their reports.

t. In addition to appraisal reports that were incomplete or inadequate, there was a high incidence of substantial differences in two or more appraisal reports without any explanation of the differences by the review appraiser.

u. Settlements with property owners were substantially above the amount established by the review appraiser without an adequate explanation of the reasons for those variations

4. Insufficient lead time for acquisition of rights of way increased highway costs.

5. Nonparticipation by right-of-way personnel in determining highway locations increased costs.

Blatnik. A partial list of the findings (on page 13) summarizes the investigations conducted by the committee chaired by the Honorable Blatnik.

With respect to the right-of-way side of this disturbing picture, it was clearly shown that due to very low salary ranges, thoroughly trained, competent and experienced professional right-of-way specialists were noticeably absent in some states. It was also shown that right-of-way personnel in some states were employed strictly based on political patronage and the fulfillment of political obligations rather than having been employed because of competence, efficiency and experience.

When temptation is permitted to fall into the path of employees because of weak policies and procedures within a state organization, inadequate training and experience plus the lack of proper policies and procedures create the underlying reasons for irregularities. The blame for this type of situation must be placed squarely on the shoulders of the top administrative officers of the highway departments.

The Federal Interstate Highway Construction Program was the largest single public improvement program in the world. Immediately upon enactment of the Federal Interstate Highway Act by Congress in 1956, maximum pressure was exerted on the state highway departments from all political and civic directions to get construction moving full speed ahead. Additionally, the states felt the full impact of federal participation in right-of-way costs.

Two states did not have right-of-way staffs. In other states, right-of-way activities were under some other division. Some highway departments had neither the sufficiently trained and experienced engineering and right-of-way personnel nor the required, established policies and procedures to meet the impact of this heavy increase in the workload.

Legal and political practices in some states prevented highway administrative officers from recruiting the necessary additional engineering and right-of-way personnel because of their inability to offer salaries comparable to those paid in other states and in private enterprise. The result was that trained, experienced and competent professional engineering and right-of-way personnel could not be secured. Therefore, those administrators had to accept whatever help was available.

The federal highway administrator and his aids in the Bureau of Public Roads (now the FHWA), the American Association of State Highway Officials (now AASHTO), and the American Right of Way Association (now IRWA) fully cooperated in an all-out program to assist all state highway organizations to secure trained, experienced and competent engineering and right-of-way personnel. The Bureau of Public Roads, with support from AASHTO, persuaded many states to begin their own internal audit review process and early involvement of right-of-way professionals, resulting in savings of millions of dollars.

In the June 1962 *Right of Way* magazine article covering the information I have just related to you, IRWA pledged its wholehearted support to assist state highway organizations in developing sound and practical right-of-way acquisition procedures; to further assist in developing a sound educational training program for the benefit of the then-employed right-of-way staff; and—as important—to properly educate and assist in guiding the training of new employees brought into the right-of-way organization, provided that the states that need help will, at the administrative level, adopt a policy of employing right-of-way personnel based on competency, efficiency and integrity, and not because of political patronage.

I have been a member of IRWA since 1957, joining Chapter 2 in San Francisco when I was an appraiser for the U.S. Army Corps of Engineers. Although I went to work for the BPR in Sacramento, California, in May 1963, I cannot recall just how many states acted on the offer made by IRWA to help. In the same June 1962 issue of *Right of Way,* there was an announcement that IRWA's Region 2 was having its first seminar, featuring The "Interstate Highway After Five Years," hosted by Tennessee Chapter 32 at Vanderbilt University, with subject areas covered by the BPR and the following IRWA Chapters: Alabama Chapter 24, Carolinas Chapter 31, Florida Chapter 26, Georgia Chapter 22, and Tennessee Chapter 32. Also, an article by Edward G. Zepp entitled "A Basic Course for Right of Way Agents" details his efforts, as education chair, in getting this course developed by the Pennsylvania State University and taught at all Pennsylvania State University Centers throughout the state. The course required attendance one night a week for 14 weeks, two hours per session.

At their request, copies of the course outlined and additional detail were sent to the highway departments of Alabama, Alaska, Ohio, Oregon, and North Carolina. In another article in that same issue entitled "The Psychology of Right-of-Way Negotiations," Dexter D. McBride, then Assistant Chief of Right of Way for the state of California, talks about a one-day right-of-way negotiations workshop initiated by the Calif. State Division of Highways. Dexter had served as National Secretary for IRWA and was past President of Los Angeles Chapter 1 and was then serving as Regional Chair for Region 1.

With the entry in 1962 of BPR and the state highway departments into the field of relocation assistance and payments, the problems incidental to a multiplicity of laws and procedures applicable to right-of-way acquisition were increased. It was possible for several federal and state agencies to be operating on projects in the same community simultaneously, each under its own individual laws and directives. (That was especially troublesome when a project straddled the line between two states.) Such situations resulted in considerable differences in acquisition procedures and in relocation assistance and payments provided the neighbors from whom rights of way were taken, this lack of uniformity often resulted in

inequities to individuals. (By the way, Congress included in the 1968 Act the first mandatory payment program for people who must relocate because of federal-aid highway construction.)

An emerging social concern in 1962 was the plight of those persons required to move because of highway construction. At first, they were required to provide relocation assistance counseling for those people whose property or dwelling was taken. In 1968, however, limited financial reimbursement for relocation assistance was authorized.

During the years of 1963 and 1964, a select subcommittee on real property acquisition conducted many public hearings of the Committee of Public Works House of Representatives, on real property acquisition practices and adequacy of compensation in federal and federally assisted programs. At the completion of the subcommittee's hearings, A *Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs* was printed for the committee on public works on December 22, 1964. Clifford Davis (Tennessee) chaired the select subcommittee on real property that did the study. The chief counsel and staff director was Henry H. Krevor.

The study examined: (1) the magnitude of the land acquisition requirements for federal and federally assisted programs; (2) the extent of displacement of families or individuals, business concerns, and farm operations, and the effects of displacement; (3) the land acquisition practices and procedures of federal, state, and local government agencies; (4) the judicial rules defining the scope and limitations of the just compensation required by the Fifth Amendment; (5) laws enacted by the Congress and state legislatures authorizing the payment of moving expenses or other incidental losses, or authorizing relocation assistance for displaced persons; (6) the policies and practices of federal, state and local governments in making relocation payments and providing relocation assistance; (7) other programs providing, or capable or providing assistance for displaced persons in such matters as housing, business counseling, financing, retraining, and employment; and (8) provisions of the Internal Revenue Code relating to takings of property for public use.

Let me expand a little on the issues just listed. At the time of this study, December 22, 1964, the amount of disruption caused by federal and federally assisted programs was found to be astoundingly large. The accelerated pace of government activity, supported by broadened concepts of "public use," made any lessening of current activity in the future highly unlikely.

The market value standard of just

compensation under the Fifth Amendment requires payment for the property taken, but does not provide for other losses or expenses, however severe, that may be incurred by property owners or tenants because of the taking of property. Typically losses of this kind include:

- Costs of moving personal property and of the disconnecting, dismantling, reassembly, and reinstalling of structures, machinery, equipment, etc.
- Transportation and other expenses to move a displaced family to replacement housing
- Expenses in obtaining a substitute real property, such as costs of appraisal, survey, necessary charges to obtain financing, title examination, and closing costs
- Losses on forced sale or disposition of personal property not usable after displacement
- Expenses incidental to the transfer of title to real property required for public use, such as recording fees
- Transfer taxes, clerk fees, etc.; penalty costs for prepayment of mortgage incident to the real property and real property taxes paid to a taxing entity which are allocable to a period subsequent to the transfer
- Increased cost of rent for substitute dwelling or other property
- Increased cost to acquire a substitute home, farm, or business
- Loss of home ownership because of inability to obtain financing within the financial means of the displacee
- Loss of rental or other income between the time of announcement of a public improvement and the time of taking
- Business interruption. Loss of going-concern value, good will, or a livelihood, where a business cannot relocate without a substantial loss of its patronage
- Loss of ability to continue in business, by proprietors of a small retail or service establishment with inadequate capital or credit resources to finance new operation; or by elderly proprietors or others with inadequate training or health to withstand the pressures of relocation, i.e., increased costs, more competitive situations, greater risks, etc.
- Loss of employment due to the discontinuance or relocation of a displaced business

Under the judicial Standard of compensation, residential tenants ordinarily received no compensation, and few small business tenants were compensated when the property they occupied was taken.

Most displacements affected low- or moderate-income families or individuals, for whom a forced move generally was a very difficult experience. The problem was aggravated for the elderly, the large family, and the non-white displacee. The lack of standard housing at prices or rents that low- or moderate income families could afford was the most serious relocation problem. Moving costs, where not reimbursed, and related expenses and losses were substantial burdens.

Displaced business concerns required to relocate at their own expense often incurred substantial economic losses and sometimes suffered hardships. Displacement created special problems for small businesses that could not relocate without the loss of their established patronage. The problem was most severe for owners of small retail or service establishments that depended primarily on neighborhood trade.

The lack of adequate financing, and the absence of advice and counseling for displaced small business concerns contributed to the high rate of business discontinuance.

In contrast to the vast amount of displacement and disruption in those programs, the courts adopted the market value standard, limiting compensation to the value of the property taken, in a comparatively uncomplicated time in our nation's history, when land was plentiful, and government acquisitions skirted cities and bypassed homes and businesses, causing few displacements and relatively little damage. Nevertheless,

the federal courts made it plain that they were bound by the established precedents, and that it was the responsibility of the Congress to decide whether the public should absorb other losses suffered by property owners or tenants.

The Congress had authorized relocation payments and other assistance for displaced persons in some, but not all federal and federally-assisted programs. Relocation provisions of the various programs differed greatly. The scope or amount of the relocation payment or the assistance provided for a displaced person frequently depended on the program involved more than the loss suffered.

Concern for the effects of displacement by government action was consistent with the policy of the nation to assure economic and social opportunity for every citizen. It was concluded that, in all programs conducted by the federal government, or with the assistance of federal funds, the public should bear the economic costs of displacement on a uniform basis. Also, a broad range of relocation services and other assistance should be provided for all program displacees, consistent with their needs.

Requirements for detailed documentation were costly for the public and for the displaced person. It was concluded, therefore, that fixed payment schedules should be provided in all programs for all residential and most business relocation claims. It was believed that simplified procedures would encourage prompt payments and substantial savings in costs of administration, with adequate safeguards for all parties.

Many small business concerns suffered substantial economic injury because of the construction of public improvements, although the property they occupied was outside the project boundaries.

The market value standard generally provided a reasonable measure of compensation "for the real property taken," but subsidiary rules relating to the determination of market value in many jurisdictions was not always clear and sometimes resulted in inequities.

Significant differences existed among federal agencies and among federal, state, and local government agencies with respect to policies and procedures for the acquisition of real property. In some instances, there were material differences in the practices of agencies within the same executive department.

When witness after witness, testifying before the subcommittee, was critical of practices which provided less compensation for the property owner than the agency's approved value estimate, the study members concluded that every property owner should be entitled to reasonable information concerning the agency's opinion of the value of his property, and he should be entitled to receive an offer for his property at the full amount of the agency's approved appraisal. Any other practice in a situation where, in effect, the owner must sell, is unfair.

The subcommittee's proposed bill to carry out its recommendations was entitled the *Fair Compensation Act of 1965*.

A study transmitted by the Secretary of the Department of Transportation (Alan S. Boyd) to the Congress (as requested by the Federal-aid Act of 1966) on the subject of advance acquisition of highway rights of way was published in July of 1967. It reported on the substantial benefits that advance acquisition could accomplish, saving millions of highway dollars with very low costs for administering the program.

The Federal-aid Act of 1968 authorized establishment of a $3 million right-of-way revolving fund to be used for the advanced acquisition of rights of way.

Also, included in the 1968 Act was a new chapter entitled Highway Relocation Assistance. It stated that, "Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers and nonprofit organizations displaced as a result of the federal highway programs and the construction of federal-aid highways is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

The 1968 Act also amended Section 35 (A), Chapter 1 of Title 23, United States Code by adding 141. Under the heading of real property acquisition policies: (1) Every reasonable effort shall be made to acquire by negotiation; (2) construction of projects shall be so scheduled that to the greatest extent practicable no person lawfully occupying real property shall be required to move from his home, farm or business location without at least 90 days' written notice from the state or political subdivision having responsibility for such acquisition; and (3) before initiating negotiations for real property, an amount which is believed to be just compensation under the law of the state must be established, and a prompt offer to acquire the property for the full amount so established.

Hearings on Senate Bill 1 were held before the subcommittee on intergovernmental relations of the Committee on Government Relations, United States Senate, on February 19, 20, 25, 26, and 27, 1969, Chairman Edmund S. Muskie presiding, on Legislation S.1 to establish a uniform policy with

Cont'd on page 34

Cont'd from page 17

respect to relocation assistance and land acquisition involving federal and federally-assisted programs. Senator Muskie submitted a report, subsequently, to the Committee on Government Operations. The report accompanied S.1, the *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969.*

It later became the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* and was finally enacted as Public Law 91-646, 91st Congress, S.1 dated January 2, 1971. This Act has become more commonly known as the *Uniform Act* and its declared purpose was to assure consistent treatment to owners involved in federal programs and to promote public confidence in federal land acquisition practices.

To implement this Act, the FHWA issued policy directives which the individual state highway departments followed. FHWA made periodic reviews to assure that the intent, as well as the letter of the Act, was being carried out.

In April 1983, the U.S. Department of Transportation published a *Notice of Proposed Rulemaking* to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Acquisition for federal and federally-assisted programs. This effort was accomplished by means of a uniform act interagency regulatory review working group, which was formed by the Office of Management and Budget to review existing federal agency regulations which implemented the Uniform Act, and to develop recommendations for uniform regulations to be issued by each agency to implement the Act. This was due to concerns expressed by states and local governments through the President's Task Force on Regulatory Relief. The DOT was selected as the lead agency along with HUD, the U.S. Corps of Engineers, the Department of the Interior (Fish & Wildlife), and the Environmental Protection Agency to develop this regulation which would become the single government-wide Uniform Act regulation to be followed by all federal agencies. The DOT took the lead in arranging public hearings for public comment.

The Final Rule on the Uniform Act was signed out of executive departments and agencies by President Ronald Reagan in a memorandum dated February 27, 1985 and published in the *Federal Register* on March 5, 1985.

Subsequent changes to that Final Rule were published in the *Federal Register* on February 27, 1986. On December 17, 1987, an interim Final Rule requested comments incorporating certain statutory amendments to the Uniform Act. A Notice of Proposed Rulemaking was issued on July 21, 1988

and the Final Rule on March 2, 1989.

Although I retired from the position of Director of the Office of Right of Way for the FHWA at the end of April 1987, Subsequently worked for the New Mexico Department of Highways and Transportation as the Director of Right of Way and for the Florida State Department of Transportation as Manager of Appraisal and Appraisal Review through August 1992; therefore, I kept advised of requirements. I am sure that new legislation and many polices and procedures changes have been implemented in the past four years of which I am unaware. I suspect, however, that there have been no significant changes in the law, or polices and procedures. Even if there have been some changes, I would not attempt to explain them. I have neither the authority nor the detailed knowledge. I am sure you are not only fully aware of what the current laws, regulations, and policies and procedures are, but do your job accordingly.

What has changed is that at every level of government and in most private enterprise, there has been one major and very significant change. With very few exceptions there is as much work as ever and, chances are, some major increases in work loads. Simultaneously, most of you have experienced some "downsizing."

What are you doing to adapt to these dynamic changes in your life? How are you coping? Nothing is more challenging than having your workload significantly increased and your available work force cut severely. How do you assure yourself and your employer that everything that needs to be done is being done, and that no laws, rules or policies/procedures have been violated? I would suggest that you do everything in your power to keep your top management fully informed as to exactly what your work situation is, and how much risk management is involved. There is a limit to what anyone can do when available workers cannot manage the amount of work. The risks have to be recognized and accepted by top management.

What does concern me, as a taxpaying citizen, is the strong possibility that through no particular fault of the people involved, we may again be faced with some new select congressional committee holding hearings and investigating someone else's complaints about not being treated fairly and appropriately, in full accord with the law, regulations, policies, and procedures. It can be a very painful process for some people. It is also a costly process. I sincerely hope that it can be avoided.■