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FOR IMMEDIATE RELEASE

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and Phillip Burton
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SECRET JUSTICE DEPARTMENT MEMORANDUM PROMPTS CONGRESSMAN
BURTON TO CALL FOR NEW INVESTIGATION OF AUTOMOBILE COMPANIES

Congressman Phillip Burton (Dem.-Cal.) today called for a new investigation of conspiracy by auto manufacturers to delay development of smog-free motor vehicles.

The congressman, in a statement on the floor of the House of Representatives, said he had been given a secret Department of Justice Memorandum which had recommended criminal prosecution of the automobile companies in 1969.

Instead the Department of Justice settled for a civil consent decree with the automobile corporations, Congressman Burton noted.

Congressman Burton stated:

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Arthur Cantor
will not open files
Testimony - 638-0352
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Galassi - 298-8430

Rm 3111 -
Hollister
REG-2494

May 18, 1971

STATEMENT BY CONGRESSMAN PHILLIP BURTON

Mr. Speaker:

On September 13, 1969 (see Congressional Record for that date) I joined with 17 of my colleagues in urging an open trial in the smog control antitrust case.

Just this week I have received a document which I am offering today for my colleagues to examine, a document presented to me by reliable persons, and which is described as a confidential memorandum of the U. S. Department of Justice. This memorandum recommended to the Attorney General that criminal charges be brought against American auto manufacturers for conspiring to retard the development of a smog-free motor vehicle.

This memorandum_M which spells out in detail previously undisclosed evidence, was prepared before January 10, 1969, when the Department of Justice decided to proceed with a civil suit. Subsequently, the Department of Justice agreed to settle the matter with a consent decree.

These disclosures are especially painful in light of the settlement of the Government's civil case in September, 1969 which was filed in lieu of any criminal case. This settlement by a consent decree increased the legal burdens for later litigants, failed to provide for any restitution of damage done, failed to contain adequate reporting requirements, and failed to prohibit the destruction of past documents--all in tradition of ex parte negotiations which form the cornerstone of the consent decree program.

I release this document today because I agree with the metaphor principle behind Louis Brandeis' statement that "sunlight is the best of all disinfectants." Public exposure of these formerly secret materials can only serve to educate the people as to the industry's culpability for a major health problem. The consent decree settlement deprived the public of an open trial on all the issues. An open trial would educate the unreformed and deter the potential violator, especially in the auto industry which has for too long been dealt with by gentlemanly trust busters in the shadow of government. Sunlight will do it well.

All indications since the consent decree was approved point to the dismaying fact that nothing has changed.

The automobile companies continue their carefully orchestrated united front--claiming in every public hearing and in every public docket that they can't meet the deadlines for anti-smog devices.

Such a unanimous chorus suggests that the manufacturers continue to reject the principle that intense competition among them might result in speedy development of smog-free automobile.

The lack of progress gives rise to the question of whether the behavior which the Justice Department previously referred to as a "conspiracy" may still be continuing.

Therefore I call upon Attorney General Mitchell to empanel a Federal Grand Jury to investigate all the relevant facts and to take appropriate action both as to what the

automobile companies did prior to this memorandum, but also
as to their conduct since then.

And I suggest that the Department of Justice give serious consideration to conspiracy indictments for any executive the evidence indicates has been involved in criminal activities.

Further I ask that the appropriate committees of the Congress hold public hearings based on this document, and on the actions of the manufacturers since then.

The conclusion of the Justice Department memorandum was:

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C O N C L U S I O N

We believe that from the very start the industry never had any intention of using any independently produced device or system unless one was developed that was exceptionally cheap and did the entire job. We were, however, unable to prove that the automobile companies boycotted any independently produced motor vehicle air pollution control device including the four devices approved by the Motor Vehicle Pollution Control Board of California in 1964.

However, we are convinced that we have shown the grand jury and are in possession of evidence to prove beyond a reasonable doubt the existence of an industry-wide agreement and conspiracy among the auto manufacturers, through AMA, not to compete in the research, development, manufacture and installation of motor vehicle air pollution control devices for the purpose of achieving interminable delays, or at least delays for as long as possible. The cross-licensing agreement was used as a cover and focal point of the conspiracy. In addition, it contains provisions restraining the sale and licensing of patents of independent inventors and eliminating price competition among the auto manufacturers for the purchase of such licenses and patents. As part of the over-all agreement not to compete, we have proved agreements and understandings among the automobile manufacturers (1) not to publicize, except collectively, any solution of the auto pollution problem; (2) to adopt a uniform date for announcement of the discovery of air pollution control devices; and (3) to install devices only on an agreed date.

In Mr. Turner's language, contained in his Supplemental Memorandum for the Attorney General, dated May 12, 1966, "if the grand jury investigation discloses an absence of justification for the agreement not to compete, as seems quite likely, the agreement would be so plainly unlawful as to warrant a criminal proceeding." It is respectfully submitted that the grand jury investigation clearly disclosed such an agreement and absence of justification.

Throughout the entire conspiracy, the participants were cognizant of the antitrust implications of their activities. Despite this fact the conspiracy was carried on for economic reasons. The health and welfare of the community were disregarded. In these circumstances, criminal prosecution is clearly indicated.