LETTERS

Letters to the editor should be addressed to INQUIRY Magazine, 747 Front St., San Francisco, California 94111. The editors reserve the right to edit letters for length when necessary.

Reining in the nuclear monster

IN YOUR ARGUMENTS AGAINST government regulation of the nuclear industry [Sept. 22] you give too much credit to the abilities of private industry to police itself and prevent disaster. The comparison of nuclear energy with the automobile is an unfair one, since the scope of potential disaster is in no way close. Nor can you compare the complexity of building and operation of a dam with that of a nuclear power plant—dams cannot melt down. In all honesty it must be said that the fiasco at Three Mile Island was caused by not enough regulation—it was private industry that put incompetent, untrained operators in the control room, and it was private industry that built flawed equipment. While the NRC is a flawed organization in drastic need of redirection, its services are very, very necessary. We've seen the harm that greedy corporations have inflicted upon individuals and the environment as a whole. When business grows as large as government the solution is not to abolish government. What is needed is honest and efficient regulation, not a free rein for the monster corporations.

GARY GRILL
New York, N.Y.

Hard to swallow

I FIND YOUR "NEW LUD- dites" editorial on nuclear power singularly ill-informed, and riddled with clichés and false analogies. The danger lies not in explosions or emitted radiation but in the manufacture and indiscriminate spread of the most toxic substances ever created—plutonium, americium, tritium, cesium, strontium, and the like.

Take just one small item, the smoke detector now being ballyhooed into millions of American homes (but banned entirely in Japan). Looking inside, one finds it contains americium-241, a substance more poisonous than plutonium, emitting radiation for hundreds of years (half-life of 458 years). The smallest particle of americium when inhaled or ingested is fatal, and it is only a matter of time until it gets into the food chain.

Governmental authorities recognize this danger when they instruct the purchaser not to attempt disposition but to return the gadget to the manufacturer. Big joke. Each one will end up at the public dump and later be whisked up into the air or settle into the water supply. Standing near an emitter may be relatively harmless, but swallowing it is something else.

LOUIS W. JONES
San Mateo, Calif.

Militant ignorance

THE MOST APPROPRIATE response to *INQUIRY*'s editorial "The New Luddites" would be to send its author a list of books and studies to read on the history, economics, and technology of the nuclear industry. The editorial's militant ignorance can best be corrected by knowledge, not a letter. Some issues, however, must be set straight here.

Your attempted analogy between the development of radar and nuclear power proves the opposite of what you intend. Although radar was invented by the military, its civilian applications were left to private industry and had to sink or swim on the market. No federal "Radar Commission" was established to monopolize, plan, and develop its civilian applications, nor did the government unveil a massive "Radar for Peace" program to shove a particular application down our throats.

All serious studies of the skyrocketing costs of nuclear energy—Bupp and Derian's *Light Water*, the Rand Corporation, and the House Government Operations Committee—conclude that problems integral to the industry, not regulation, are primarily to blame for the "massive escalation of capital costs" you cite. NRC regulation obviously makes nuclear generation more expensive—but let's not be naive about the meaning and purpose of federal regulation. The NRC is a legitimizing device, not an adversary. All of its members are committed to nuclear power, and it hasn't prevented a single plant from being licensed.

The scientific controversy over low-level radiation is unresolved and too complicated to go into here; there are respected scientists on both sides. But your editorial manages to ignore the only relevant political issue: namely, what gives a government agency the right to tell an industry it can dump "acceptable" levels of radiation into other people's environment? Shouldn't the acceptability be determined by litigation starting from a basis of individual rights, and not by government fiat?

Apparently your editorial writer needs to be reminded that Price-Anderson is not the only, or even the most important, subsidy to the industry. The federal government controls the entire nuclear fuel cycle, subsidizing both uranium enrichment and waste disposal. The Export-Import Bank keeps the industry alive by subsidizing the purchase of reactors by Third World client states. The whole business of fission reactors makes little economic or technical sense unless we use their waste in breeder reactors (as the old AEC always planned). And no one but the federal government is now or ever has been willing to put up the billions necessary to develop breeders.

In this context, it's ridiculous to speak of "deregulating" the nuclear industry in the same way we speak of deregulating trucks and airplanes. Take out the government, and what's left?

The fact is, government created the civilian nuclear industry out of whole cloth to legitimize its nuclear weapons complex and to help maintain its hegemony over nuclear technology and materials. (Don't take my word for it—read the memoirs of Dwight Eisenhower and the speeches of John Foster Dulles.) Thus, if people are attacking the nuclear industry itself and not merely government intervention in it, perhaps it is because they recognize that the *entire industry* is a product of government intervention. That recognition is something *INQUIRY* ought to welcome, not sneer at.

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NAT HENTOFF

The battle of 'Richmond'

"THE AMERICAN PEOPLE won a victory of enormous importance a few weeks ago," Katharine Graham, who chairs the American Newspaper Publishers Association, wrote in August. "Unfortunately, not many of them are fully aware of it."

The victory was a 7-to-1 Supreme Court decision in *Richmond Newspapers* v. *Virginia* declaring that under the First Amendment, the press and the public have a constitutional right to attend criminal trials. Graham was far from alone in her dance around the Liberty Tree. Dan Paul, one of the nation's most respected First Amendment lawyers, called *Richmond* "one of the two or three most important decisions in the whole history of the First Amendment."

And indeed, John Paul Stevens, one of the justices in the majority, trumpeted: "Today . . . for the first time, the Court unequivocally holds that an arbitrary interference with *access to important information* is an abridgment of the freedoms of speech and of the press protected by the First Amendment." (Emphasis added.)

What bothered Katharine Graham, in her message to other newspaper publishers throughout the land, was that most of the stories about *Richmond* have done little to explain to readers why the ruling was a victory for *them*. "I suspect," she said, "that all too many of our readers viewed this decision as just another round in the mystifying wars constantly being fought by an assertive press."

Graham is probably right. Coverage of the Court is customarily so shallow that except for readers of her own *Washington Post*, the *Kansas City Star*, or a few other papers, most of the citizenry have only the vaguest notion, if any, of the portents of *Richmond*—not all of which, by the way, necessarily warrant all the present huzzahs among the press. Although it was not addressed to me, I accept Graham's charge to illuminate, so far as that is possible, the *Richmond* decision.

First, however, why was it necessary? After all, Chief Justice Warren Burger, writing for the overwhelming majority of the Court in *Richmond*, spends many pages on a rather lyrical history of the openness of criminal trials, going back as far as one can trace that institution in Britain and then in the colonies.

As in this declaration of a general court in Kent, in 1313: "The King's will was that all evil doers should be punished after their deserts, and that justice should be ministered indifferently to rich as to poor; *and for the better accomplishing of this*, he prayed the community of the county *by their attendance* there to lend him their aid in the establishing of a happy and certain peace that should be both for the honour of the realm and their own welfare." (Emphasis added.)

Coverage of the Court is so shallow that few people have any notion of the Richmond case's importance.

Given the rich and ample precedent for public criminal trials, the July 2, 1980, decision in *Richmond* v. *Virginia* should have been no surprise. But there is a little tangled Court history involved here. Exactly a year before, the Court, in a 5-to-4 vote, ruled that the press and the public can be barred from pretrial hearings, and indeed from criminal trials, under the Sixth Amendment. The Court noted that the Sixth Amendment guarantees the accused the right to a public trial, but that there is no such guarantee in the amendment for the press and public to attend a criminal trial. And there can be times when the accused's fundamental right to a fair trial requires that it be closed.

Actually, the case (*Gannett Co.* v. *DePasquale*) concerned only a pretrial hearing which two men indicted for murder wanted closed lest there be injurious pretrial publicity. The Court's majority decision, however, written by Justice Potter Stewart, appeared to extend the barring of press and public to trials as well as pretrial hearings—if the defendant, the prosecution, and the judge agree.

Have I confused you? Well, it soon became clear that the Court itself didn't know exactly what it meant in *Gannett*. Reacting to press characterizations of the decision as "cloudy" and "incoherent," the Chief Justice made a public point of insisting that the ruling applied solely to pretrial hearings. Justice Harry Blackmun just as publicly disagreed with the Chief, claiming that *Gannett* applies to all proceedings in a criminal case. Three other justices felt impelled to clarify the intent of the decision, thereby muddying it all the more.

Meanwhile, lower courts took *Gannett* as a grand invitation to evict press and public from their proceedings. (In one West Virginia case, the press was barred, but not the public.) During the year before *Richmond* v. *Virginia* was decided, there were more than 270 efforts to close criminal justice proceedings, of which 160 were successful. Of those 160 secret proceedings, 126 were pretrial hearings and 34 were actual trials. Contrast this with Hugo Black's statement in the 1948 case, *In re Oliver*: "We have been unable to find a single instance of a criminal trial conducted in camera in any federal, state, or municipal court during the history of this country."

THE SUPREME COURT MAY or may not follow the election returns but the justices do read the newspapers, and it was evident that unless they said something clear and soon about whether there is a presumption of openness for criminal trials, less and less of a distinction would be made between closing pretrial and trial proceedings.

In *Richmond*, a murder defendant in Virginia was undergoing his fourth trial on the same charge (the three others had ended in mistrials). Fearing that the press would bring some of the testimony

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