The original documents are located in Box 63, folder "Transportation Department" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

3/24/75 to Rod Hills

Dept. of Transportation

THE WHITE HOUSE

WASHINGTON

March 22, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM LYNN

FROM: JERRY H. JONES

SUBJECT: Reform of Surface Transportation Regulation

Your memorandum to the President of March 18 on the above subject has been reviewed and the recommendation contained in your memorandum -- submit a rail reform bill to Congress before the Easter recess, use a Presidential message to re-emphasize regulatory reform as a key Presidential initiative, commit the Administration to having motor carrier and air bills ready for submission within 30-45 days ---was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld
Phil Buchen
Jim Cannon
Jack Marsh
Bill Seidman

(FOI)
Fuel / Trans

THE WHITE HOUSE

WASHINGTON

April 3, 1975

Dear Ms. Reed:

On behalf of the President, I would like to acknowledge your letter of March 12, 1975, concerning the 55 mile per hour speed limit on American highways.

Under the Highway Amendments Act of 1974, all States are required to certify to the Secretary of the Department of Transportation that they are enforcing this speed limit. If you believe you have evidence that indicates a particular state is not enforcing this speed limit then you should contact the appropriate Federal office whose address is set forth below.

Administrator
National Highway Traffic Safety
Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Ms. Elizabeth Reed
10058 Cedarlawn
Detroit, Michigan 48204

ADMINISTRATIVELY CONFIDENTIAL

Transportation

THE WHITE HOUSE

WASHINGTON

June 20, 1975

MEMORANDUM FOR: JIM CANNON

FROM: PHILIP BUCHEN T.W.B.

Following your memorandum of June 17, I called Rod Eyster, General Counsel for the Department of Transportation, in order to inform him of possible problems which his office may want to investigate as a result of the relationships of the Federal Railroad Administration with one of its contractors.

I appreciate your calling this matter to my attention.

cc: Mike DuVal

DOT

THE WHITE HOUSE

WASHINGTON

August 23, 1975

MEMORANDUM FOR: MIKE DUVAL

FROM: PHILIP BUCHEN P.W.B

The attached is self-explanatory. Would you please arrange for the appropriate officials, I assume DOT, to make known to Mrs. Abzug our present position on this issue.

cc: Jack Marsh
Max Friedersdorf
General Scowcroft

THE WHITE HOUSE

WASHINGTON

August 23, 1975

Dear Mrs. Abzug:

This is in response to your letter of August 20, 1975, in which you requested copies of letters you understood former President Nixon wrote to then-Prime Minister Heath and then-President Pompidou in January 1973 concerning Administration support for the Concorde supersonic transport. I regret the delay in responding to you on this matter.

Mr. Herbert J. Miller, Jr., counsel for Mr. Nixon, has notified this office, in accordance with the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended, in Nixon v. Sampson, et al., C.A. No. 74-1518, that he refuses to consent to your request.

At the time of my June 9 letter to you, it was our understanding that all copies of the letters in question were subject to the above-referenced Order. However, we have since been advised by the Federal Aviation Administration that a copy of this correspondence was provided to them. Although that copy of this correspondence is not within the scope of the Order, we are unable to respond affirmatively to your request for its production.

A cardinal principle of diplomatic intercourse is the confidentiality of exchanges between heads of state. The President believes that the effectiveness of American diplomacy depends in many ways on our reliability in preserving this essential principle for all such diplomatic communications with other countries.

However, we have sought information concerning the government's position in 1973 on the Concorde. I have been advised that the following points were made at that time by officials of the United States during consultations with the British and French regarding the regulation of the Concorde:

1. Regulation of the Concorde is an important issue, both from a domestic and international viewpoint.

2. Concorde would be treated fairly and judged on its merits.

3. A draft fleet noise rule [then being considered but never promulgated] would not apply to Concorde.

4. The U.S. would work with the British and French to ascertain whether an SST noise standard could be developed that would meet our domestic requirements without undercutting Concorde.

5. Many aspects of aircraft regulation are outside the jurisdiction of the Executive Branch, and even the extent of Federal authority in this area is limited.

6. The Administration is committed to free commerce and non-discriminatory regulations.

7. The Concorde would be treated equitably, but it does raise new environmental and societal questions.

I have again requested that the appropriate officials contact you with respect to the present views of the Administration on the treatment of the Concorde.

Your inquiry is appreciated.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Bella S. Abzug
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

Transportation

September 3, 1975

MEMORANDUM FOR SECRETARY COLEMAN

FROM: MIKE DUVAL MD

SUBJECT: CONCORDE

In the attached letter to Representative Abzug, Phil Buchen declines, in behalf of the President, to release a copy of a letter from former President Nixon to then Prime Minister Heath and then President Pompidou, concerning the Administration's position on the Concorde.

Phil also advises the Congresswoman that appropriate Administration officials will be in contact with her personally to explain the Administration's overall position on the Concorde. Will you please ask the appropriate official of your Department (along with representatives of the State Department, if you think this would be advisable) to meet with Mrs. Abzug concerning the Concorde.

Thanks very much.

cc: Philip Buchen

THE WHITE HOUSE

WASHINGTON

August 23, 1975

Dear Mrs. Abzug:

This is in response to your letter of August 20, 1975, in which you requested copies of letters you understood former President Nixon wrote to then-Prime Minister Heath and then-President Pompidou in January 1973 concerning Administration support for the Concorde supersonic transport. I regret the delay in responding to you on this matter.

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Your inquiry is appreciated.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Bella S. Abzug
House of Representatives
Washington, D.C. 20515

Transportation

THE WHITE HOUSE

WASHINGTON

November 7, 1975

Dear Mr. Stuart:

On October 6, 1975, you phoned my office to inquire whether the Economic Policy Board had a position on the subject of investment tax credits in the transportation industry. You asked to know where the Administration stands on the subject.

We have made inquiries to the Treasury and Transportation departments. The Treasury Department reports that they have no such proposal other than the general investment tax credit which applies to all industries.

The Department of Transportation has provided a copy of its response to United Airlines' Vice Chairman, Charles P. McErlean, on October 15, 1975. A copy of his letter and Secretary Coleman's response is attached. I believe Secretary Coleman's letter should answer your question.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Robert Stuart
Member of the Board
United Airlines
P.O. Box 66100
Chicago, Illinois 60666

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 15, 1975

Mr. Charles P. McErlean
Vice Chairman
United Airlines
P. O. Box 66100
Chicago, Illinois 60666

Dear Mr. McErlean:

This is in response to your letter of September 10. 1975, in which you requested my support for proposed modifications of the investment tax credit laws. You expect the transportation industry to lose about $335 million in unused investment tax credits over the next three years, and feel that a cash refund for those expired credits is essential to the viability of the industry's capital structure.

While I am aware that several carriers are currently suffering serious financial difficulties, I do not feel that the changes which you propose to alleviate the problem are consistent with the purpose and intent of the investment tax credit program. The investment tax credit was designed to be an economic incentive to industry by providing a reduction of the tax liability on earnings to any company making new capital investment. If a company has low or no earnings (as in some segments of the transportation industry), then the ITC either offers little incentive or is not applicable. The ITC was never intended to provide cash payments to companies which lose money. Indeed, without any offsetting tax liability, the payments you suggest can be viewed as more in the nature of subsidy than a refund.

For the above reasons, I am unable at this time to support your proposition. However, I assure you that I fully share your concern for the maintenance of a financially sound air transport industry, and I hope that I will continue to have the benefit of your views on this and other matters in the future.

Sincerely,

CERTIFIED TRUE COPY

William T. Coleman, Jr.

UNITED AIRLINES

September 10, 1975

Honorable William T. Coleman, Jr.
Department of Transportation
400 - 7th Street, S. W.
Washington, D. C. 20590

Dear Mr. Secretary:

You may recall that early in June, I visited with you and some of your associates with respect to a legislative proposal that the air transport industry and the railroad industry was going to make to Congress to amend the Investment Tax Credit law to provide for refund of earned but expiring investment tax credits in the year after they expire. Since that time, two identical bills, namely H.R. 8670 and H.R. 8939, have been introduced in the Congress and are on the agenda being considered by the Ways and Means Committee in its current markup session.

As of the end of 1974, the airline industry had approximately $670 million in earned but unused investment tax credits; the railroad industry had approximately $320 million of such credits.

I enclose a summary sheet of the impact of this legislation if it were adopted for the years 1975, 76 and 77. It is drawn from a full underlying study which estimates the revenue impact through 1981. The estimates contained in that study were put together by Dr. Gerard Brannon of Georgetown University, working with staffs of the Treasury and the Joint Committee of Congress. The enclosed summary indicates that during the three years mentioned, a total of approximately $17.9 billion of investment tax credits will be taken by profitable companies. It further shows that during the three-year period approximately $470 million will expire and will not be able to be taken. This is about 2.6% of the amount that will be taken. The lower portion of the page is the estimate of distribution by industry. There is a variance in the figure believed to be caused in the distribution process. I have been advised that those preparing the document think, if anything, it may overstate the amount that will expire. The interesting point I wish to call to your attention is that of the credits expiring, close to 70% are in the transportation industry. It is believed that there can be no question about the importance of transportation to the total economy and the necessity of keeping it an efficient, viable industry if the economy is to recover, grow, prosper and provide jobs.

I am sure you are well informed on the tremendous increase in cost of fuel to the air transport industry and the potential additional increases that will occur with decontrol, even if eventually decontrol is phased in. The impact on this, as well as wage and benefit increases, makes the prospects of earning sufficient profits to take the credits that have been earned rather dim. If we are to keep the capital structure of the transportation industry viable, it seems to us that adoption of these two bills is essential. We would hope that you would use your influence in the Administration to get a nod of approval for the adoption of the principle by the Congress.

With best regards.

Sincerely,

Charles F. McErlean

Charles F. McErlean
Vice Chairman

CFM:cv
enc

Estimates of Revenue Effect of Proposal to Refund Expiring Investment Credits at End of Carryover Periods*

1. Estimates of Credits to be Refunded as Compared With Credits Usable Under Existing Law

Year	Estimated Credits To Be Used Under Present Law	Estimated Credits To Expire Under Present Law	Percentage Of E: Credits To Used
	($ amounts in millions)		
1975	$5,890)	$100)	1.7)
1976	6,500)-$17,890	150)-$470	2.3)-2.6
1977	5,500)	220)	4.0)

2. Revenue Estimate by Industry of Proposal to Refund Earned But Expiring Investment Credits at End of Carryover Period For Credits Expiring in 1975, 1976 and 1977

$ millions

	1975	1976	1977	Total	% of Total
Agriculture	0.4	0.7	1.1	2.2	.46
Mining	2.5	5.0	7.8	15.3	3.19
Construction	0.4	0.9	1.4	2.7	.56
Manufacturing	14.0	27.0	43.0	84.0	17.49
(Petrol. manufac. already in Mfg.)	2.7	5.6	8.7	17.0	3.54
Transportation	80.0	100.0	155.0	335.0	69.78
Communication	1.1	2.2	3.4	6.7	1.39
Elec. & Gas Util.	1.4	2.8	4.4	8.6	1.79
Wholesale Trade	0.4	0.7	1.1	2.2	.46
Retail Trade	1.0	2.1	3.2	6.3	.13
Finance Etc.	1.0	2.1	3.2	6.3	.13
Services	1.8	3.5	5.5	10.8	2.25
Total	104.	147.	229.**	480.1*	

* Estimates prepared by Dr. Gerard Brannon, Professor, Georgetown Uni

** Discrepancy of $10 million in 1977 expiring credits apparently is a tributable to discrepancy in allocation of total among industries.

Dudley: Please check with Treasury + Transportation & then prepare letter for my signature with copy to Don R.

October 6, 1975
5:10PM

TELEPHONE MESSAGE

Robert Stuart
Quacker Oats

312-222-7450

1) As Director of United Airlines he wanted to inquire as to whether or not the Economic Policy Board had indicated a position on the subject of investment tax credits for the transportation industry. He would like to know where the Administration stands on the subject and encourages a definite view point to be reached.

2) He wanted to explore the possibility of having Mrs. Ford come and address a group at the Rehabiltation Center in Chicago.

Judy

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

December 11, 1975

MEMORANDUM FOR: Honorable Philip W. Buchen
Counsel to the President

FROM: William T. Coleman, Jr.

As you know, Congress is talking about adjourning the First Session of the 94th Congress on December 19. One of the matters Congress has before it is the Rail Reorganization Act with respect to the Northeast and railroads in general. This legislation might not turn out to be satisfactory to the Administration although I think we will be able to work out the matter on the floor of the House and in conference.

In connection with the matter, however, I asked my General Counsel to research the question whether the President can pocket veto a bill which is sent to him less than ten days before the adjournment of the First Session. I am enclosing herewith a memorandum which indicates there is clear authority supporting the proposition that there can be a pocket veto. The memorandum does point out, however, that there may be some question of the continuing vitality of the case.

Bill

William T. Coleman, Jr.

Enclosure

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

DATE: DEC 11 1975

In reply refer to:

SUBJECT: Pocket Veto of the RRRA Amendments

FROM : General Counsel

TO : The Secretary

If Congress sends the RRRA Amendments to the President for his signature less than ten days before the Congress adjourns the First Session of the 94th Congress, the President may wish to pocket veto the bill, preventing an override and forcing the Congress to reconsider the bill ab initio. Article 1, Section 7, Cl. 2 of the Constitution provides in part:

> If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

The question raised by a pocket veto of the RRRA Amendments is whether an adjournment for intersession is an adjournment within the meaning of the Constitution.

In The Pocket Veto Case, 279 U.S. 655 (1929), the Supreme Court squarely answered that question in the affirmative. A group of Indian tribes attempted to sue the United States under a bill which had been pocket vetoed when the first session of the 69th Congress had adjourned on July 3, 1926. The Court held that the bill had not become law and dismissed the suit. Justice Sanford, writing for a unanimous court, noted two considerations underlying the pocket veto clause: first, that the pocket veto provision was intended to prevent the Congress from threatening to adjourn and thus forcing the President to formulate objections and veto a bill in less than the constitutionally mandated ten days; and second, that the return of a bill to the Congress during adjournment is undesirable because the public would be left in a state of uncertainty regarding whether the bill had become law, and the Congress would not have an opportunity promptly to reconsider the legislation and override the veto.

Adjournments for intersession in the 1920's ranged up to six months; in The Pocket Veto Case itself the adjournment in question was from July to January. There may have been, therefore, some substance to the Court's reluctance to permit the President to return a bill to Congress during the intersession. Currently, however, the Congress ordinarily adjourns for intersession for only a few days or a couple of weeks at most. Moreover, improved communications have reduced the likelihood that the return of a bill during adjournment will result in any public uncertainty as to its status. Consequently, putting aside the language of the Constitution as ambiguous, The Pocket Veto Case does not rest on a terribly firm foundation.

Two later decisions have further clarified the pocket veto clause in a way that reinforces doubt about the validity of The Pocket Veto Case. In Wright v. United States, 302 U.S. 583 (1938), the Supreme Court held that a three day recess of the Senate during May while the House remained in session did not prevent the President from returning a bill to the Senate with objections. In Kennedy v. Sampson, 511 F. 2d 430 (D.C. Cir. 1974), the Court of Appeals held that a five day Christmas recess of both Houses (the Congress reconvened on December 29 in the same session) did not prevent the President from returning a bill. Both of these cases relied heavily on the relatively short time of the adjournment.

Conclusion. A pocket veto of the RRRA Amendments would clearly be legal under existing law. If the pocket veto were challenged in court, the outcome would depend on the continuing vitality of The Pocket Veto Case. With Congressional adjournments as short and communications as good as they are today, there is probably little real justification for refusing to allow the President to return a bill to Congress during an adjournment. The clause is still in the Constitution, however, and the primary interest of the court would therefore probably be in maintaining hard and certain rules to govern pocket vetoes. Consequently, it would be likely to abide by the Pocket Veto decision, and the President's veto of the RRRA Amendments would stand.

John Hart Ely

FOR IMMEDIATE RELEASE NOVEMBER 13, 1975

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

PRESS CONFERENCE
OF
WILLIAM T. COLEMAN, JR.
SECRETARY OF THE
DEPARTMENT OF TRANSPORTATION
EDWARD SCHMULTS
DEPUTY COUNSEL TO THE PRESIDENT
AND
PAUL MacAVOY
COUNCIL OF ECONOMIC ADVISERS

THE BRIEFING ROOM

9:50 A.M. EST

MR. NESSEN: Let me say a couple of things before we start.

First of all, there is a photo at 10:15 of the President meeting the Danish Prime Minister, and that will no doubt come in the middle of the briefing, so those who want to take pictures of that should meet Bill Roberts at the side door at 10:10.

You should have received already two fact sheets and a message to Congress concerning the President's proposal going up today called the Motor Carrier Reform Act, which is really reform proposals in the regulations concerning the trucking and busing industries.

As you know, the President has previously sent up legislation governing the airline and railroad industries. There will be a more technical and detailed briefing on today's trucking and busing reforms at the Department of Transportation this afternoon at two o'clock.

The President met with Secretary Coleman and the others a few moments ago in the Cabinet Room. He told them he wanted them to work like the devil to get this legislation passed, and he wished them good luck.

He pointed out this is the third reform program in the transportation field, railroads and airlines having gone up previously.

MORE

Bill Coleman pointed out to the President there has been no basic change in trucking and busing regulation since 1935, so this is long overdue. The President's feeling is there may be opposition from special interest groups in this field, but his legislation is aimed at giving the consumers better prices, better competition, and an all around better deal from the trucking and busing industries, and that this will fight inflation in that industry and also will stimulate competition, which will be beneficial to the consumer.

For a more detailed explanation now of what the President is sending forward today, we have first of all Transportation Secretary Coleman. We also have Ed Schmults, who is the new Deputy Counsel to the President. Mr. Schmults replaces Rod Hills as the Co-Chairman of the Domestic Council Review Group, which is dealing with regulatory reform. He is the chairman of that group, along with Paul MacAvoy of the Council of Economic Advisers, and we have all three of those gentlemen here today to answer your questions.

MR. SCHMULTS: Thank you, Ron.

First of all, I am Ed Schmults, Deputy Counsel to the President. Let me say first I am very pleased to be part of the President's regulatory reform program, and I look forward to working with Paul MacAvoy and the others who have been carrying on these efforts.

I think it is very important to keep in mind that although this legislation that we are going to talk about today is extremely important, it is only one part of the President's program which is going to take a fundamental look at regulation and remove those that no longer make any economic sense.

In the meeting with the President, which we just left, he re-emphasized the importance not only of this bill but also the railroad bill and the airline legislation, which are already before the Congress.

One of our highest priorities will be to concentrate our efforts on getting this legislation enacted. We think it is important that we get some concrete results here in the form of laws.

In that regard, we are encouraged by the Congressional response in several areas. Congress is moving ahead on the repeal of the fair trade laws. There are positive signs the Financial Institutions Act is also moving ahead and this act, as you know, will provide for greater competition among financial institutions.

MORE

Finally, I think Secretary Coleman should be commended by all of us for his leadership in dealing with very difficult issues of transportation regulation in a manner that will greatly benefit our long-term national interest.

Bill?

SECRETARY COLEMAN: As has been said, the Motor Carrier Reform Act, which is being sent to the Congress today by President Ford, represents the third in a series of Administration proposals to revise Federal economic regulation of the transportation industry.

I think it is quite significant to note that while there has been much talk and little positive action on this subject in other quarters, President Ford has been hard at work.

The result is that we now have comprehensive legislative suggestions in three vital areas -- railroads, trucks and buses, and aviation. Also, under President Ford's guidance--and I might say prodding--we have begun reforming the regulatory procedures in the department itself.

The transportation industry, unfortunately, has become accustomed to regulatory protection. This protection has limited private initiative while fostering inequities and inefficiencies.

The fact is these industries are inherently competitive and economic regulation inhibits competition. The Motor Carrier Reform Act will benefit the consumer, the shippers and the industry. Consumers will benefit because it will promote economies and provide greater opportunities in price and service.

Shippers will benefit because they will be permitted broader use of available capacities and have available a greater variety of rates and services. Wasteful backhauls will end. Energy consumption will be reduced.

The industry itself will be helped in the effort to improve service, correct cost inefficiencies resulting from over-restrictive regulation and improving their overall safety records. It will also enhahce opportunities for well-managed companies to earn a reasonable return on their investments, thus creating new capital opportunities and employment opportunities.

Let me point out also, while this is primarily a trucking bill, it will assist the traveling public as well by encouraging increased variety in motor bus fares and services.

It should be emphasized that we are not recommending sudden or disruptive changes. The changes will be phased in gradually with the stability of the industry, and the best interests of its customers very much in mind.

I do not believe that at this time in our free enterprise system we can afford to have naturally competitive forces constrained to the point their efficiency is impaired, innovation is stifled and the public interest is harmed.

Our Nation needs the motor carrier freight and passenger industry operating at peak efficiency. Therefore, I am hopeful Congress will act favorably on the Motor Carrier Act.

Its passage, along with the railroad and aviation reform measures we have proposed, will modernize the economic regulatory process. This will enable the industries concerned to respond more effectively to our Nation's transportation needs.

I wish the American people would realize the basic law in effect now with respect to railroads was adopted in 1887, that with respect to trucks and motor carriers was adopted in 1935, and that with respect to avaiation was adopted in 1938.

Obviously, times today are different, the problems are different, and we think we have suggested solutions which will solve today's problems.

Thank you.

MORE

Q Mr. Secretary, how much of an economic savings are you talking about in terms of percentage to shippers and also to travelers?

SECRETARY COLEMAN: Obviously, you can't quantify it in that great detail just how much, whether it is 3 percent or 5 percent. But let me give you one example.

Under present law there is an agricultural exemption which means whenever a farmer ships a product from Kansas to New York it is unregulated, but the person that does that carrying to New York now cannot pick up goods to take back to the farm country. Obviously, therefore, the person that is pricing the cost of the trip has to make a calculation for coming back empty-handed.

Under this proposed legislation he would be able to pick up furniture or some other types of material to bring back to the farm country and I think it doesn't take even an economist to realize that means the price should be much less.

Q Mr. Secretary, if this is to accomplish all that you say it is, why does the American Truckers Association oppose it so violently?

SECRETARY COLEMAN: In the first place, I think in public policy you will find out one of the greatest factors is that word "inertia" -- that people are just in the habit of doing business in one way and they don't wish to have changes made.

I think when the bill goes to the Hill there would be the hearings and that the trucking industry, that part which is enlightened, will support it. On the other hand, in this country if we are going to make public policy only when we have every interest in complete agreement, then we will only have the status quo. That is why President Ford has gone around the country trying to talk sense to people and saying under the new conditions it does have to be changed.

Q You would think, if this will do all you say it will do, the truckers representing 15,000 different trucking firms in the country would back you. Yet they say it will have just the opposite effect -- it will allow big companies to get bigger and will drive small truckers out of business.

They say they don't need less regulation. They say they have 15,000 trucking companies and Mr. Bresnahan, the president of the ATA, said last night the trucking industry needs more competition like Custer needed more Indians.

MR. MacAVOY: Can I give an economist's response to that?

Q Yes.

MR. MacAVOY: Paul MacAvoy, from the Council of Economic Advisers.

An interagency task force has been working for a number of months trying to assess the effects of this change in regulatory procedures on this industry. We expect that the largest or more significant changes will occur in the less than truckload service, the partial loads of mostly finished goods in the large population centers in the upper Midwest and the eastern part of the United States. These services are now very much encumbered by restrictions on certificates on routings, on the provision of service to individual carriers.

The trucking companies that are now being protected by regulation are the largest regulated common carriers. They seem to have the largest voice when it comes to making public relations statements in this industry.

We also found, however, that there are a large number of smaller carriers, middle-sized companies in the transportation business that would very much expect to be able to increase their market shares, their share of total shipping, if they were free of these encumbrances in the certificates and in the rate setting process.

Our expectation is that only the largest regulated common carriers will not benefit from this regulation. It appears to me that it is fair to say that these are the strongest voice in the trucking association but they may not speak for truckers at large.

Q Mr. Secretary, every proposal the President ever sends up he hopes the Congress will approve but realistically that doesn't happen very often in these years. What realistic appraisal can you give us about the chances for this getting through Congress and what have the leadership of the Congress said about it?

SECRETARY COLEMAN: Well, we sent the bill up. We have notified the leadership that we are sending it up. I don't think we are at that stage.

I would say that after debate this legislation ought to get through. I really think that in the Congress there is a feeling that there has to be change.

When we sent the rail bill up, we were told that we didn't stand much chance there. It is in the period of mark-up now. The fact is, I think so far -- and I better touch wood -- on the regulatory part of the bill we are still way ahead of the game. I think the same thing is true here. It takes hard work. We are meeting conflicting interests but we do think that we have listened to those interests and we have made the proposal.

So I would say that the chances here are better than 50 percent that they will be changed. That does not mean every word will be adopted. I would suggest to you reporters at some time you reread the history when the Securities Exchange Act was sent up and you will realize what went up and what finally came out, which was good legislation -- there was some change.

We think here basically we are on the right track and we do think the chance of the bill getting through, as the same thing is true for the aviation and the rail bill, are certainly better than 50 percent.

Q What about hearings, Mr. Secretary? Have you been informed hearings will be held on the Hill soon?

SECRETARY COLEMAN: No. The President today instructed me to send a letter to the Chairman of the Committee, both in the House and the Senate, that will have this matter, and ask for early hearings on that.

We have done the same thing with respect to the air bill and we have had the hearings, and we are in the period of mark-up on the rail bill.

Q Mr. Secretary, in preparing the legislation, did you hear from any groups of consumers, any railroad train riders, any bus passengers?

SECRETARY COLEMAN: Yes. In trying to operate the department, we are trying to talk to all types of groups and we do talk to all types of groups. I ask them to come in, or they do come in. I must say at times you have problems because people come in and talk to you and for some reason they go out and hold press conferences and sometimes we get a wrong impression. But I do think the duty of any Cabinet officer is to hear from as many people as possible.

MR. MacAVOY: If I may add to that, in our attempts to assess the results from regulatory reform, we were impressed by the opinions or expectations of shipping firms; that is, companies that have large volumes of material or final goods to ship by common carrier.

A number of them felt that they would not be -- a number of them expected they will not be in the future in the transportation business themselves if competition in common carriage will improve the quality of service.

We had discussions with retail firms, large retail organizations that have their own trucking companies against their better wishes and, as the transportation service for LTL in particular, less than truckload volumes, improves, then they will go out of the business of having their own trucks.

Now this is an expression of consumers' interest because, with better shipping service, there will be a reduction in the prices or the costs of final goods.

MORE

Q What kinds of retailers are those?

MR. MacAVOY: Clothing, general dry goods retailers, department stores, more often than food retailers, because again the agricultural exemption plays a large role there and that is deregulated to a great extent.

Q So, they have told you they will go out of the business of running their own --

MR. MacAVOY: They really don't want to be in the transportation business, and they are there because the route restrictions, the whole structure of common carrier regulation, has made it necessary for them to go into the business to get the flexibility and quality of service they need.

They are waiting for their own subsidiaries to fade away in the presence of a higher quality common carrier service.

Q Mr. Secretary, are you going to recommend any changes within the next 12 months, reforms along the line of the airline, railroad and trucking industries for the barge line industry?

SECRETARY COLEMAN: I am not here to talk about the water barges today.

Q But would you anticipate the Administration will suggest reforms there similar to the reforms suggested?

SECRETARY COLEMAN: As you know, and I now know, because my deputy tells me, it is substantially unregulated right now. We have other problems in the industry, and you know I have talked about them on other occasions.

Q Have you estimated any impact on small communities?

SECRETARY COLEMAN: I think this would be very, very helpful to small communities. One, to the rural communities I have described how they would be benefitted. Secondly, our complaints that we hear are that in the small communities the common carriers do not truly serve them. Obviously, if they are serving them at a loss, unless they want to cross subsidies, they cut down the quality of the service.

This now means new people will be able to come in and perform that service in a much more efficient manner. So, we think this will have quite a beneficial effect on small communities.

THE PRESS: Thank you, sir.

END (AT 10:10 A.M. EST)

EMBARGOED FOR RELEASE
UNTIL 12 NOON E.D.T.

NOVEMBER 13, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

Throughout our history, an effective transportation system has played a vital role in promoting the economic growth and development of this Nation. Yet, over the years in response to a variety of economic and political pressures, the Federal Government has become increasingly involved in the management of our transportation industries. We have built up a patchwork of economic regulation which shapes and controls competition in industries which are naturally competitive. As a consequence, these industries have come to rely on regulation to protect them from meaningful competition. It is now clear that this patchwork regulatory structure has not kept pace with changes in the industry and the economy. We have permitted regulation designed in theory to protect the public interest to become in practice the protector of special industry interests.

I have observed a growing public and congressional concern over the need to eliminate outdated regulation and to restore our regulatory system to its original purpose of serving consumers. In response to this concern, I have sent two previous transportation proposals to the Congress. Today I am sending to the Congress the Motor Carrier Reform Act which will modernize the regulation of another major transportation industry.

Like the Railroad Revitalization Act and the Aviation Act of 1975 which are already before the Congress, the basic thrust of this proposed motor carrier legislation is to improve performance of our transportation industry by replacing Government regulation with competition. Together, these three bills will produce a regulatory system that responds to the needs of the consuming public instead of to the interests of the regulated industries.

Under the current regulatory system, carriers, shippers and passengers alike are confronted with a web of Government restrictions and regulations which discourage innovation, promote inefficient transportation service and artificially distort rates and fares. The prices of many consumer products are higher than necessary because Government regulations and restrictions permit price fixing and produce inefficiencies such as empty backhauls and circuitous routing. Too often bus passengers pay higher fares because the Federal Government sanctions efforts by a few firms to block the entry of new companies into the market. Archaic and artificial regulatory constraints also force unnecessary usage of significant quantities of energy and other valuable resources.

This legislation will benefit American consumers in several ways. For example, it will have a direct effect on the traveling public by encouraging a greater variety of bus transportation services at a wider range of prices. Also, it will enable interstate household moving companies

more

to be more responsive to customer needs and give the public a choice of services. Individuals who want quick moving service and are willing to pay a premium will be able to do so. Others who prefer to pay less for moving services that are not so immediate will find such alternatives available.

These are two examples of how the bill will benefit consumers directly. Other less visible results will have an even greater impact. For example, the bill will provide trucking firms with more freedom to adjust prices to meet market conditions. It will remove artificial entry barriers and encourage new companies to enter markets and to compete on the basis of innovative services and lower prices. It will allow smaller trucking firms -- owner operations and contract carriers -- to compete more effectively and to grow in response to normal market demand. It will strengthen the common carrier system and enable small businesses to better meet their transportation needs. Such actions will enable some manufacturers to lower the costs of distributing goods and thereby help reduce consumer prices. The removal of uneconomic restrictions on the goods and commodities a truck is permitted to carry and the specific routes it must travel also will help eliminate wasteful energy consumption and avoid empty backhauls which raise prices unnecessarily.

In summary, the bill will reduce or eliminate many of the inefficiencies which have crept into the motor carrier industry during 40 years of regulatory control. Where regulation is acknowledged as necessary to protect the public interest, the bill will streamline and improve such regulation. For instance, the bill eliminates gaps in present safety enforcement statutes to improve the already high overall safety record of the motor carrier industry.

The importance of regulatory reform to improve our transportation system cannot be overemphasized. I urge the Congress to give this measure serious consideration at the earliest possible date.

GERALD R. FORD

THE WHITE HOUSE,
November 13, 1975

# # # # #

THE WHITE HOUSE

WASHINGTON

Transp.

December 11, 1975

MEMORANDUM FOR

THE HONORABLE JOHN ELY
GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION

Attached is a proposed statement for Secretary Coleman to use before the Committee on Government Operations when he submits the Federal Aviation Administration's copy of the State Department telegram of January 23, 1973.

Please call me after you have reviewed it.

Phil

Philip W. Buchen
Counsel to the President

Attachment

THE WHITE HOUSE

WASHINGTON

December 10, 1975

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: PHIL BUCHEN

SUBJECT: Attached Statement by Secretary Coleman upon Submission of Concorde Document

Attached is a suggested draft of the statement to be used by Secretary Coleman. Please let me have your comments as quickly as possible.

Attachment

Phil -
I have suggested a couple of minor changes on p. 2.
Brent

DRAFT STATEMENT
FOR
THE HONORABLE WILLIAM COLEMAN
SECRETARY OF TRANSPORTATION

BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS - SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION --

(At the time he presents an information copy of the State Department's Cable of June 23, 1973, to its Embassies on the Subject: CIVAR-CONCORDE; President's Reply to Heath Letter.)

At the request of this Committee, I am submitting a document which contains a text of former President Nixon's letter of June 19, 1973, to Prime Minister Heath of the United Kingdom. The text is given as part of a telegram of January 23, 1973, sent from the State Department to the American Embassies in London and Paris, with information copies to various agencies of the Government including the Federal Aviation Administration. The copy you are receiving is a duplicate of the document in the possession of the Federal Aviation Administration.

Earlier requests for a copy of former President Nixon's letter made to the President raised the problem that the former President's copies of the correspondence are subject to the Order of the United States District Court for the District of Columbia, entered October 21, 1974, as amended in Nixon v. Sampson et al., Civil

Action No. 74-1518 which enjoined the disclosure of Nixon papers without consent of counsel for the former President. It was not until later that the Federal Aviation Administration advised the Counsel to the President that the document now being submitted was in its possession. Even then, the Administration was and remains concerned about protecting the confidentiality of exchanges between Heads of State. However, in view of the wide distribution given within the Federal Government of the State Department's telegram containing the text, I have been authorized by Counsel to the President to make available to you at this time the Federal Aviation Administration's copy.

THE WHITE HOUSE

WASHINGTON

December 30, 1975

MEMORANDUM FOR: ED SCHMULTS

FROM: PHIL BUCHEN P.

Many thanks for the informative memo you and Paul sent to me on the Response to Proposed Motor Carrier Reform Act.

I hope you are passing this material on to others who would like this information, particularly Margita White.

April 7, 1976

Received --

Original of 3/25/76 memo to
Ed Schmults from Art Quern --
Subject: DOT Inquiry re: Executive
Privilege ----- with attachments.

_____
Judy Hope

_____
Date

Please return to:

Eva Daughtrey

4/7/76

Mr. Buchen

~~THE WHITE HOUSE~~
WASHINGTON

Judy Hope has asked if she can have the attached.

She was out of the office when this was staffed — and said that was the reason they sent it to Mr. Schmults.

Since its highly classified — she would like to have the file — not a copy.

O.K. to release?

Lou

Transportation

THE WHITE HOUSE

WASHINGTON

May 19, 1976

Dear Carl:

Thank you for your recent letter regarding the taxicab situation at the Federal Aviation Administration's (FAA) Washington National Airport.

I am advised that the policy of the airport has been to allow any taxicab driver to pick up passengers at the airport upon payment of a $.50 fee. However, because of the practices of some taxicab drivers and the condition of many of the vehicles, most notably the condition of some of the so-called "gypsy" taxicabs (those not licensed locally), the FAA is taking steps much along the lines you have suggested.

On October 23, 1975, the FAA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register for public comment in order to amend Part 159 of the Federal Aviation Regulations. In addition to other items contained in the NPRM, the FAA proposed to allow only taxicab operators licensed by certain local jurisdictions, and whose vehicles are also licensed by one of those jurisdictions, to pick up passengers for hire at the airport. If the proposed regulation is adopted, the taxicabs at Washington National Airport would be subject to adequate standards of vehicle safety, cleanliness, and insurance, and the taxi drivers would be regulated as to the fares to be charged. The draft amendment is now under review by the FAA, and it is expected that the amendment will be published in the Federal Register sometime next month. Enclosed for your information is a copy of the NPRM as it appeared in the October 23 Federal Register.

I can assure you that the FAA is quite concerned over this matter and is moving as expeditiously as possible to bring about a greater measure of control over taxicab transportation provided to airport patrons.

With best wishes,

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Carl L. Shipley
Shipley Smoak & Akerman
1108 National Press Building
Washington, D.C. 20045

THE WHITE HOUSE

WASHINGTON

May 31, 1976

Dear Bill:

Many thanks for sending me the complete text of your remarks before the American Law Institute. I was delighted by your analogy between the tasks of the public servant and those of artists like da Vinci, Cezanne and Picasso.

The other evening when Lovida accused me of having "Potomac fever" I told her that the term was too ugly for what I had. I told her my problem was a case of "chronic exhilaration" which is in large measure caused by my having come to know people like you and Lovida.

Sincerely,

Phil

Philip W. Buchen
Counsel to the President

The Honorable William T. Coleman, Jr.
Secretary of Transportation
Washington, D. C. 20590

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 25, 1976

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C.

Dear Phil:

I enjoyed seeing you and talking with you last night. Enclosed herewith is a copy of the speech I made last Friday at the annual dinner meeting of the American Law Institute.

With warm regard,

Sincerely,

Bill

William T. Coleman, Jr.

Enclosure

DEPARTMENT OF TRANSPORTATION | NEWS

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20590

14-S-76

SUGGESTED REMARKS FOR SECRETARY OF TRANSPORTATION WILLIAM T. COLEMAN, JR., BEFORE THE AMERICAN LAW INSTITUTE, WASHINGTON, D.C., MAY 21, 1976

Thanks for the honor of inviting me to speak before this annual meeting of the American Law Institute. Lawyers are an odd lot. (Incidentally, I imagine this is why legal fees are so high.) They make a lot of money being lawyers, but they still spend a good deal of their time trying to figure out a way to be something else. In Gore Vidal's book on Aaron Burr, a young apprentice asks Burr if he should take the bar examination. Burr replied "certainly," "but I don't want to be a lawyer," the young man replied. Burr answered, "well, who does? I mean, what man of spirit does? The law kills the lively mind. It stifles originality. But it is a stepping stone...." The smart lawyers become law professors or judges, I suppose, and the ones who aren't smart enough to be law professors or judges go into the government. Of course, on rare occasions the public gets both -- those like Ed Levi and Archibald Cox who have combined an academic career with brilliant stints of government service. In any event, when President Ford asked me to go into government, I took the job. I certainly hope I can keep it for a while.

-more-

I am not here tonight to talk about the law, I suspect there are a good many people here who would rather avoid the subject. For law has been your diet for the past three days while your spouses took in the art museums.

I thought perhaps it would be more appropriate and instructive for me to reflect on my new role as a political public servant. I've been in the government for a little more than a year now, and during that year I've dealt with problems that have generated a lot of controversy -- I-66 and the Metro financing problem are familiar to those who live in the Washington area. The rail freight reorganization was news in the Northeast, while auto passive restraint systems -- a euphemism for seat belts and air bags -- concern the midwestern auto manufacturer. The Concorde decision achieved national prominence. And there are many other transportation issues which frequently touch the lives of the public, even if they fail to capture the imagination of the press.

Dealing with these issues has caused me to struggle with how a political public servant should discharge his functions in the post-Watergate period -- if we want to keep an open, free society, based upon the rationality created by our system of a government of laws, not men.

Several things contribute to the effectiveness of a political public servant. The one that comes most immediately to mind is the history of the moment -- for times often do make the man. It is no coincidence, I think, that most of our greatest Presidents served during wartime or during time of great national trial -- Washington, during the first formative years of the nation; Lincoln, during the Civil War; Wilson, during the First World War; and FDR, during the Depression and the Second World War. I believe history's verdict on President Ford's tenure will develop as it has for President Harry Truman -- a man thrust into power to restore balance to the nation after a serious crisis. Likewise, I think it is no coincidence that some of the least noted Presidents -- men like Cal Coolidge and Warren Harding -- served in times of national complacency -- in times, in other words, when the people wanted to be left alone and they were left alone. Times of crisis are, of course, no guarantee of greatness. I assume that times of crisis in this country could beget a political public servant who is as great a failure as Lincoln was a success.

To the extent that a public servant is not goaded into greatness by the push of events, there is the man himself -- his ideas, his beliefs, and the way in which he preforms his duty. These are things that can make a man great. Whether a man's ideas and beliefs do make him great, however, is and always will be open to debate. Many people never will

agree on FDR's greatness. On the other hand, I doubt if those same people would contend that Herbert Hoover -- even a Herbert Hoover with FDR's style and forcefulness -- would have been the nation's answer to the Depression. The great Depression plainly and simply called for action and for new programs, not for a President content to sit back and rely on the 1930's classic economic solutions. Likewise, I don't suppose a person with Roosevelt's ideas, but with Hoover's style, could have been a successful President. A man with good ideas, even in times of crisis, has to be able to implement these ideas effectively -- to be able to put his programs into action and make decisions in a way that will make people believe both in the man and the decision.

The point I'm making is that public servants must be able to conduct programs with style. I would like to spend a few minutes talking about style tonight. The best way to make my point is by analogy to an artist.

Two artists can sit down in the same room, each with his own canvas. They can use the same paint and the same brushes, and they can be asked to paint a portrait of the same woman. But when they both finish, they will have painted two completely different pictures. One may have painted every hair on the woman's head with a very fine brush -- he may have shown every eyelash, carefully painted the pupils of her eyes, so that no matter how close you get, the eye still looks like an eye. The other may paint the hair with two or three broad brush strokes, and the eye with a single flick of the brush, so that you have to stand at a distance merely to identify the subject. A third artist may decide to eschew literal representation altogether -- to paint something that doesn't remotely resemble the common subject. He may put an eye here, another eye there, perhaps leaving out the mouth altogether if it pleases him. A fourth artist might have no desire to portray the subject, but rather desire to paint something entirely different -- a field of colors, a can of tomato soup. A hundred different artists would develop a hundred different paintings, each in his own particular style.

A national leader deals in a different medium, of course. He doesn't use a brush, paint and a canvas. Instead, he works with problems, people and facts. He deals with the most delicate of subjects -- the human mind and the human spirit and the intangibles which hold us together as civilized people.

But, in many ways, asking a political public servant to make a decision -- to do his job -- is like asking an artist to paint a picture, and like artists, no two will do the job in the same way. Suppose, for example, a President has to decide whether the United States should go to war. One man might work himself, and Congress, and the nation into a

frenzy of patriotism. Another may go to Congress and to the public carefully and deliberately, discussing all the risks, taking no chances. A third might ignore Congress and just send some advisors, maybe a few hundred at a time, and before anyone understands it, we're at war. Now in the end the nation might go to war regardless of leadership, but one President might go down in history as a great man, and another as a villain. Theodore Roosevelt, for example, was something of a political jingoist. If he wasn't responsible for sending the country to war in 1898, it was only because he wasn't President. He did resign his position as Secretary of the Navy to lead a regiment to battle in Cuba. He believed in carrying a big stick -- whether or not he spoke softly is still open to debate. As President, he apparently incited a revolution in Colombia to ensure American control over the Panama Canal, beginning a problem for the present incumbent, and he sent the U.S. Navy around the world on tour even when Congress refused to pay for it.

Contrast his style with that of Woodrow Wilson only a few years later -- an academician in the White House who led the nation to war only after the war had been in progress for three years. I think there can be little doubt that if Theodore Roosevelt had been President in 1914, the United States would have gone to war earlier than it did, and I doubt if "T.R." would have gone down in history as a great President. And if instead of Dwight Eisenhower, a man of "T.R.'s" attitude had been President in 1954, this country might well have gone to war in Vietnam then. History would scarcely have applauded that.

Now you might ask what distinguishes a good national leader from a bad one. My analogy to style might answer that question too. I spoke a few minutes ago about two or three artists painting a picture of the same subject, and developing completely different pictures. You might just as well ask what makes one of those paintings a great work -- another just a pretty picture, or even a waste of paint. At the most basic level, I suppose, one's preference for a painting can depend on any number of undefinable factors. One person might like the colors in a particular painting, and another may not. One person may find the subject, perhaps a woman, beautiful, while another may find her unattractive. Another might even prefer pictures of trees.

On a higher level, one might rate the painting depending on its fidelity to the subject. If the artist tried to paint a portrait of the woman, did it look like her?

These factors are important to the quality of a work of art, but a great work of art needs more than that. An artist must do more than portray a woman who looks like the woman. I think an artist's greatness depends on his style, and whether an artist's style gives him greatness

depends on history. Leonard da Vinci is recorded as one of history's greatest artists. He was a master technician and a great observer of nature. As a result, he had the ability to paint figures that were extraordinarily lifelike. It isn't an accident that every time you view the Mona Lisa, her facial expression changes.

Cezanne's paintings of women are radically different. The impressionist painted with rough strokes of the brush; a couple of dabs of paint would be the hair, another dab of paint the eye. The figures are anything but lifelike. Up close, a Cezanne looks like so much paint -- you have to view the painting from a distance to understand the work and the subject matter. Cezanne was painting pictures of light and shadow, not of people. The simplest and surest thing that can be said of him is that he taught the world to see things in a new way.

And today, you can walk over to the National Gallery and look at Picasso's paintings and you may barely be able to discern the gender. Yet everyone agrees that Leonardo da Vinci and Cezanne and Picasso were all great artists. How can this be? The answer, I think, is that they were great artists first because their style was appropriate for their time. When Leonardo painted, artists were concerned with realism and with trying to depict accurately the human form. They wanted to breathe life into the pictures they painted. They were commissioned to paint portraits of people which had to be as lifelike as possible. By the 19th Century, artists were becoming less concerned with lifelike appearances. Cameras had been invented and artists were no longer needed to create likenesses. The impressionists abandoned realism in order to capture the kinds of ineffable nuances that a camera couldn't capture. Picasso went even further, and abandoned imitation altogether. He began creating new forms and ideas on canvas; he wanted his art to be admired for the ideas the painting itself evoked, completely aside from the subject matter. Picasso was not concerned with painting a picture of a woman, but with creating something altogether new. Ask, then, whether Leonardo da Vinci would be considered a great artist if he were alive and doing the same kind of work today. I think not. Picasso certainly wouldn't have been considered a great artist in the 16th Century. The style must be appropriate for the time.

I think that the public's and the historian's perception of the quality of a political leader likewise depends very much on individual style. A political public servant must, of course, like an artist, be a good technician. He needs a thorough understanding of the issues with which he deals. His brush, paint and palate translate into the hardworking people of his staff. But a political public servant cannot be great just by being a good administrator. He must have a style of governing that is the right style for his moment in history.

The public servants that I spoke about earlier provide good examples. Theodore Roosevelt is perhaps the best. He was probably the perfect President to lead the United States into a position of world power in the Twentieth Century. He had the insight to realize that the United States would play a powerful role in world politics in this century, and he had the personal force to lead the nation into that position. His impact on the domestic front was equally forceful. He understood, for example, that business monopolies were a significant threat to the competitive economy of the United States, and more than others he had the courage and the audacity to refuse to be intimidated by big business. By the end of his term, Roosevelt had brought antitrust suits against 44 of the biggest industrial combinations in the country -- companies such as Standard Oil, the American Tobacco Company, and Dupont.

He didn't consult the J. P. Morgan's or Congress. He simply began suing people, and evaded the conservative business forces who might have persuaded a less independent and forceful President to back away.

In the same way, Franklin Roosevelt's political style was appropriate for the Thirties. The United States was in a Depression, and FDR's style met the people's needs. First, he was in a good mood most of the time, most people weren't. Second, he took action; he tried to get the country moving again when it was locked in economic paralysis. It didn't always matter what he did, as long as he was doing something.

I don't know, and I don't suppose anybody knows, whether we would have come out of the Depression any sooner or any later if we had had a different President. But Roosevelt was a great President because he led the public to action when leadership was needed, and he gave them real hope when hope was needed.

In another time, these men might not have been such great Presidents. Particularly in these past two-and-a-half decades when this nation needed thoughtful and deliberate leadership, a President in the style of either of the Roosevelts might have been less than satisfactory.

The United States in these years was beset by a number of hobgoblins -- the supposed threat of communists in the State Department, and the impulse to take aggressive action against these threats had to be restrained by careful and considerate leadership.

Numerous times in the last 25 years -- in Vietnam, in Cuba, in Berlin, in the Middle East -- this nation has been on the brink of what might well have been national and international disaster, and the aggressive, self-righteous leadership of a Teddy Roosevelt, or the action-for-action's sake approach of an FDR -- might easily have pushed the United States over the brink.

I hope my point in this excursion into art and history is evident by now. I think both the quality of an artist and the quality of a political public servant, are a function of style and history.

The question I must answer is what kind of style makes a good political public servant in 1976. And, in particular, how can I run my department in such a way that the people I am supposed to be serving will know I'm doing a good job?

When I was appointed Secretary of Transportation, the image of the public servant in this country was probably at an all time low. A President and Vice President had been forced out of office under threat of prosecution. Several of the President's closest advisors were under indictment for federal crimes, including three former Cabinet members, among them an attorney general.

I think these events gave the new appointees under President Ford an imperative not only to be technically good, but to perform their jobs with a style that would restore the public's faith in government.

The personal implication to me was that I had to do more than sit back and think through all the issues with which I had to deal, to be honest and make the right decisions. That was important, but it had to be done in a way that would emphatically underline honesty and integrity in a public servant.

A prime example, I think is the Concorde problem. This decision was difficult for two reasons.

First, it was technically complex. The Federal Aviation Administration sent over a mountain of data about noise, about ozone, about air pollution, about fuel reserves, and a dozen other things. Some people told me it was safe, some said it wasn't. Some told me it would cause skin cancer, some said it wouldn't.

The second thing that made the problem difficult was three or four years of history. The U.S. government had known for several years that the British and French wanted to fly the Concorde to the United States, and people -- and by people I mean Congressmen as well as other types of people -- believed that secret deals had been made.

All this was, in fact, not true. The only way to counteract that impression was to conduct the whole process out in the open. I called for a public hearing on the Concorde and I spent a day listening to people tell me what they thought or knew about the airplane.

British and French government officials were there and testified at the hearing, an unprecedented occurance. People from the area around Dulles and New York City attended. I announced that I would give my decision in 30 days, a difficult deadline to keep.

Thirty days later I issued a 60-page opinion explaining my decision, and then exposed myself to an extended press conference by a press that had had two hours to study the decision.

I laid out one side of the argument and then the other, and finally authorized a test period, as I'm sure most of you know. During this time, I answered people in Congress who had wide ranging questions and made available all documents which were in the Department.

The point of all this was to open the Department of Transportation to the public, to let people have a chance to participate in the decision and to see that we were trying to make difficult decisions in the open under public scrutiny.

The decision might not have changed if I had done the whole thing quietly in my office, but I hope people felt reassured when I was done.

Well, I was sued by a half a dozen people the day I made my decision. The point of the process was not to avoid a law suit, but to try to restore some of the faith in the government that had been lost in the last two or three years, and to make the decision a legitimate one in the eyes of the public.

The Concorde decision was typical, I think, of the type political public servants increasingly are asked to make -- decisions which require balancing seemingly remote or competing interests.

There has been in the public view, a dichotomy between "political" and "business" decisions -- a distinction which the test of history.

This is especially true where, with the railroads laying track along rights-of-way made available by the Federal Government; and with water carriers using the canals and rivers improved by federal agencies, conscious decisions were made on the growth patterns of America. A Pittsburgh would thrive -- an Abilene might fade.

The timely investment in mass transit may save a strangling city. An enlightened policy to protect the environment against aircraft noise may also stimulate a stagnate aircraft industry.

It is the political public servant who must strike the balance between competing community and commercial interests. He must operate openly, giving constant assurance to everyone that their interests -- however remote -- are being served by a process designed to render the best decision -- develop the best policy -- a masterpiece of political art incorporating the technical excellence and sensitive style of a great artist.

But here the urge to compare artists and politicians should be tempered by my earlier caveat -- the importance of time. A Michelangelo, a Picasso, a Rembrandt will be of timeless value. A Concorde decision serves only its moment and must always be reviewed. Only the process has value.

As with any aspiring artist, I have my own view of what is necessary to raise political artfulness in 1976, to the status of a masterpiece. First, I believe that all major political public servants must involve themselves in public hearings.

A prospective housing program is as important an issue as an urban Interstate highway. A proposed closing of a defense installation affects more than the armed service concerned.

Second, to be valid, a decision must stand the scrutiny of public review -- regardless of the alignment of controversy. One may not agree with the decision, but it is important to see its logic.

This must be done through the discipline of writing the decision. Only then can the decision-maker force himself to tackle all the issues -- for any omission will be noted by those adversely affected.

Individual values are important considerations. A society might be better off in the long run if progress were not equated with doing something faster. Restraint and time for leisure are also high values for a civilized person.

I think Attorney General Levi has responded to some of the same types of problems over at Justice with a style of his own that is perfect to restore faith in that Department.

He has brought a certain intellectual and moral leadership to that Department which has quite frequently been missing in the last decade, and I think as a result the Justice Department's reputation is as high now in the eyes of the Bar as it has ever been.

A man of less courage or less dedication to a fair process of deliberation could not have corrected the abuses of the FBI and CIA with no infringement of the rights of the individual. He certainly could not have done so in a way that was accepted by the agencies involved, the Congress and a wide range of the public.

I don't always agree with everything Ed Levi does. Indeed -- and I say this here because it's already public knowledge -- I have been urging him during these last several days not to add to our inventory of disagreements by taking a position in the Boston school litigation which, in my respectful view, would be ill-timed and unsound in law.

But what has most impressed me throughout our frank and extended discussions has been the Attorney General's insistance that he, and he alone, bears final responsibility for determining the government's legal position.

I will acknowledge that for a while I thought that the matter should be resolved by the Cabinet. I now feel -- and I am glad publicly to state it -- that I was wrong.

The Attorney General must decide this question, just as the Secretary of Transportation had to decide the Concorde question, without having to defer to the Cabinet, or the President -- or even (and, maybe this is hardest of all) his own trusted subordinates. On questions of law, the buck stops with the Attorney General. This was a point a former Attorney General forgot in the ITT case.

Just as I applaud his acceptance of responsibility, I also applaud the Attorney General's recognition of his obligation to listen to opposing points of view. He has listened to Roy Wilkins. He has listened to Louise Day Hicks. He has listened to Senators and law professors -- and even to the Secretary of Transportation, who has been careful not to argue that busing falls in his domain.

I know -- and this makes me proud to be your colleague, Ed -- that you will weigh all views and make up your own mind. If you reach the wrong decision, I won't refrain from telling you so -- and I know you wouldn't want it any other way.

I also know, Ed, that you and I are agreed on one other thing -- that it's a rare privilege to serve a President who asks only that each of his chief officers will accept the responsibility for decisions that accompany acceptance of high public office.

In the long run, whether particular governmental decisions are wise or foolish is less important than whether the process of decision is rooted in integrity and an open process. For, if the process is right, the decisions will tend to be sensible ones.

In other words, I think that the style of government that is now, or should be, in vogue in this Administration to solve the problem of governing in the late Seventies is one of honesty, openness, and intellectual courage that will restore the faith of the public in its political public servants.

Now I hope this hasn't sounded like a campaign speech. I do campaign a little now and then for President Ford, but I hadn't intended to do any tonight.

I might also add one last thing. I haven't been too careful about my pronouns tonight, and whenever I've been talking about a political public servant I've said "he this" or "he that" and never "she this" or "she that."

I notice there are a lot of women in the audience tonight, and I suspect that if some women are here because they are married to lawyers, some men are also here because they're married to lawyers.

Well, I realize that some women are public servants -- Carla Hills and Shirley Hufstedler, for example -- and I don't want the women to feel slighted. So please understand that when I said "he this" tonight I meant "he or she this," and when I said "he that" I meant "he or she that."

The problem is that if I really had said "he or she" everytime, nobody would have paid any attention to what I was saying. If anyone can find a way to solve that problem with style, he or she really will be a great political public servant.

# # # # #

THE WHITE HOUSE

WASHINGTON

July 28, 1976

MEMORANDUM FOR: DICK CHENEY
JACK MARSH
PHIL BUCHEN

FROM: ED SCHMULTS

SUBJECT: Treasury Department Audit of United States Railway Association's Financial Records

This is just a note to advise that you may be reading in the newspapers a story that officers of the U.S. Railway Association (principally Arthur D. Lewis, Chairman of the Board) may have used government funds to pay for private club memberships, relocation expenses and similar items. Jerry Thomas, who succeeded me as Under Secretary of Treasury and also took my position on the USRA Board, has had the Treasury audit team review USRA's financial records and apparently has concluded that some of the expense items were unwise or inappropriate.

Mr. Lewis was appointed to his present position by former President Nixon after Senate confirmation. I don't think the matter is significant from each of your standpoints, but I wanted you to know about it as Bill Coleman wanted us to be aware of the situation.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

DOT

October 14, 1976

Honorable Philip W. Buchen
Counsel to the President
The White House
Washington, D.C. 20500

Dear Phil:

Enclosed herewith are my comments on S. 2278, the Civil Rights Attorney's Fees Awards Act of 1976.

I feel that this bill should be signed into law by the President and any reservations by the Treasury Department are clearly unfounded. I believe even without the Allen amendment the courts would act the same way if there were a finding that the Treasury Department had harassed a taxpayer and brought a frivolous suit.

Sincerely,

Bill

William T. Coleman, Jr.

Enclosure

10/20 Sec'y was aware that bill was signed.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 14, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is to give you formally my views on S. 2278, an enrolled bill, "The Civil Rights Attorney's Fees Awards Act of 1976"

> To amend Revised Statutes section 722 (42 U.S.C. 1988) to provide for the award of counsel fees for the prevailing party,other than the United States,in the discretion of the Court in cases brought pursuant to certain statutory provisions.

The enrolled bill would amend the Civil Rights Act of 1866, Revised Statutes section 722, to provide for the award of counsel fees to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, Title IX of Public Law 92-318, the Internal Revenue Code and Title VI of the Civil Rights Act of 1964.

Actions Brought Pursuant to the Civil Rights Act of 1866

Section 2 of the bill would amend Revised Statutes section 722 (42 U.S.C. 1988) of the Civil Rights Act of 1866 to provide counsel fees for prevailing parties at the discretion of the Court for actions brought to enforce the provisions of the Act. Sections 1977, 1978, 1979, 1980, and 1981 of the 1866 Act respectively (1) provide for and protect equal rights by giving to all citizens the full and equal benefit of all laws, (2) guarantee the property rights of all citizens, (3) ensure legal redress and liability for deprivation of rights secured by the Constitution and laws, (4) vest jurisdiction to review all proceedings arising hereunder in the Supreme Court and (5) protect against conspiracies to interfere with civil rights.

As you know, these statutes were passed by Republican Administrations and still afford the basis for relief against unconstitutional action based upon race. See e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). These provisions have traditionally been used by Blacks, Mexican Americans, Puerto Ricans, American Indians, and other minority groups to bridge the equality gap by enforcing national policies favoring equality in housing, employment, public accommodations, quality of medical care and a host of other fundamental rights.

Traditionally, the parties seeking enforcement of these basic human rights vindicating policies that Congress have found to be of the highest priority are those least able financially to afford counsel. It has long been recognized by the Courts and the Congress that plaintiffs, who bring actions to enforce important Congressional policies such as those reflected in the civil rights laws, act not for themselves alone but act as "private attorneys general" enforcing the law through the Courts. Newman v. Piggie Park Enterprises, Inc. 390 U.S. 400, 402 (1968). (Also see list of attorney's fee provisions in Congressional enactments since 1870, 94th Congress, 2d Session, S.R. 94-1011 at p. 3.)

Attorney's fee provisions for prevailing parties in civil rights cases are not a new remedy. Both Congress and the Federal courts have traditionally recognized the appropriateness and effectiveness of this remedy in enabling private parties to enforce the civil rights laws. All major civil rights legislation enacted since 1964 now include an attorney's fee provision. The standard in this bill, S. 2278, is the same as in the post-1964 legislation: a party who seeks to enforce these rights who is successful "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust". Newman, supra, at 402.

Federal courts had bridged the gap between the post-1964 civil rights statutes with attorney's fee provisions and the 1866 Act with no attorney's fee remedy by using their inherent equity powers to award attorneys fees to prevailing parties at their discretion. Knight v. Anciello, 453 F.2d 852 (1st Cir. 1972), Lee v. Southern Home Sites Corp., 444 F.2d 143 (5th Cir. 1971), see list of cases in Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 270, Fn. 42 (1975).

However, on May 12, 1975 the Supreme Court in Alyeska, supra, held that only Congress could authorize the award of attorney's fees ("it is not for us to invade the legislature's province . . ." Alyeska, supra, at 271) and that although fees are desirable in a variety of circumstances, courts simply do not have the authority to fashion a rule. As a result of Alyeska, attorney's fees became unavailable in civil rights cases which seek to enforce fundamental rights similar to those protected by post-1964 statutes in which fees are available. Thus, the bill merely provides the same counsel fee provisions for pre-1964 civil rights legislation which is in all post-1964 civil rights legislation.

Minority groups, therefore, across the country welcomed the passage of S. 2278 because it filled a gap created by the Alyeska decision. Civil rights litigants have been hard-pressed for funds when they litigate against discriminators who are frequently financially affluent. The Committee reports in both Houses make an overwhelming case which demonstrates that existing legislation is not sufficient to enable the economically disadvantaged litigants, whose civil rights are often violated, legally to enforce and protect these rights. In order for this provision to be operative, the civil rights litigant must first win in order to prevail and, even then, his attorney's fee is fixed at the discretion of the judge.

The purpose and effect of this provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

Attorney's Fees in Actions Brought Pursuant to Title IX of Public Law 92-318 and Title VI of the Civil Rights Act of 1964

Title IX of the Education Act of 1972 prohibits discrimination on the basis of sex and Title VI of the Civil Rights Act of 1964, on the basis of race and national origin "in any education program or activity receiving federal financial assistance." Their enforcement provision is found in Revised Statutes section 722, the provision amended by this bill.

These provisions are major civil rights provisions and the counsel fee remedy is not new in either Act. Other sections in each of these Acts have provisions similar to the one passed here. (Title VII, section 706 (k),Civil Rights Act of 1964, and Title VII, section 718, Educational Amendments of 1972.)

Internal Revenue Code Proceedings

This provision which allows the Court in its discretion to award attorney's fees to the prevailing party in a suit brought by the United States pursuant to the Internal Revenue Code imposes quite a different legal standard from the "private attorneys general" standard applicable to prevailing parties in civil rights litigation.

The amendment, in its effect on cases brought pursuant to the Internal Revenue Code, applies solely to prevailing defendants to provide protection against harassment. The sponsor of the bill, Mr. Tunney (D-Ca.) expressed the intent of the amendment as follows:

> Mr. TUNNEY. Mr. President, as initial sponsor of S. 2278, I would like to make clear my understanding of the intent of this amendment, which I support.
>
> Essentially, it would apply to a situation where a taxpayer is harrassed by the IRS. In such a case, a court has discretion to award reasonable attorneys' fees to the defendant. The standard to be applied is the one the courts have adopted with respect to prevailing defendants, as described in the Senate report.
>
> The purpose of this amendment is not to discourage meritorious lawsuits by the IRS, but to discourage frivolous or harrassing lawsuits.
>
> The amendment would not apply to a situation where the Government is plaintiff on appeal since the Government did not bring the action in the first instance.
>
> (Cong. Record, Senate, 94th Congress, 2d Session at S. 17050.)

The legislative history further reveals that after this expression of the intent of the amendment which was sponsored by Messrs. Allen (D-Ala.), Helms (D-N.C.), Thurmond (D-S.C.), Scott (D-Va.), and Stone (D-Fla.), the Senate voted its adoption by a vote of 72 to 0.

The courts would be guided by well-settled judicial principles made clear by the applicable case law that a stricter test is used in awarding fees to prevailing defendants than to prevailing plaintiffs. Specifically, the existing case law requires that the defendant, in

order to receive a counsel fee, must show bad faith on the part of the government. He must show that the suit was unreasonable, frivolous, meritless, vexatious and brought for purposes of harrassment. Carrion v. Yeshiva University, 397 F. Supp 852, (S.D.N.Y.), aff'd 535 F.2d 722 (2d Cir. 1976); United States Steel Corp. v. United States, 519 F.2d 359, 364 (3d Cir. 1975).

The fundamentally different Congressional purposes served by the counsel fee provision as it affects prevailing parties in civil rights cases and defendants in tax cases was articulated by Senator Kennedy (D-Mass.):

> It should be clear, then, that a provision authorizing fee awards in tax cases has a fundamentally different purpose from one authorizing awards in lawsuits brought by private citizens to enforce the protections of our civil rights laws. In enacting the basic civil rights attorneys fees awards bill, Congress clearly intends to facilitate and to encourage the bringing of actions to enforce the protections of the civil rights laws. By authorizing awards of fees to prevailing defendants in cases brought under the Internal Revenue Code, however, Congress merely intends to protect citizens from becoming victims of frivolous or otherwise unwarranted lawsuits. Enactment of this amendment should in no way be understood as implying that Congress intends to discourage the Government from initiating legitimate lawsuits under the tax laws.
> (Cong. Record, Senate, 94th Congress, 2d Session, at S. 17051.)

The counsel fee provisions for prevailing parties in civil rights laws clearly reflect the Congressional intent to facilitate the enforcement of those laws, whereas similar fee provisions in cases under the internal revenue code are intended to protect defendants from vexatious and frivolous lawsuits brought to harass. The standard for prevailing defendants to receive counsel fees is a tough one and remains so under this provision.

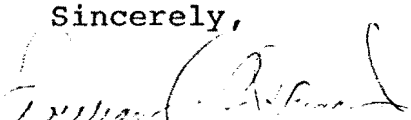
On the basis of my analysis of the intent of Congress, the legislative history and the applicable case law, I recommend that the enrolled bill be signed by the President. The amendment making possible the award of counsel fees to defendants in certain cases brought pursuant to the Internal Revenue Code is subject to the same strict test

in its application that the Courts have already applied in distinguishing prevailing plaintiffs from defendants: there must be a legal determination of harassment and bad faith on the part of the government in order for a "fee shifting" provision to apply to a prevailing defendant.

In fact, I am sure that the courts, even without such a statute, would impose counsel fees on the government if it were shown, as required by the statute, that the government acted in bad faith and only to harass the defendant. (See e.g., Rude v. Buchalter, 286 U.S. 451, 459-60 (1932); Local 149, I.U.A.A. & A.I.W. v. American Brake Shoe Co., 298 F.2d 212, 214-15 (4th Cir.), cert. den., 369 U.S. 873 (1962); Cleveland v. Second National Bank & Trust Co., 149 F.2d 466 (6th Cir.), cert. den., 326 U.S. 775 (1945); Guardian Trust Co. v. Kansas City Southern Ry., 28 F.2d 233 (8th Cir. 1928); Carrion v. Yeshiva University, supra; cf. United States Steel Corp., v. United States, supra (fee sought against plaintiff under civil rights statute); Paddison v. Fidelity Bank, 60 F.R.D. 695, 699 (E.D. Pa. 1973) (Title VII suit in which defendant's petition for attorneys' fees against plaintiff was denied on ground that "(s)uch an award would normally be made to prevailing defendants only if the case had been unreasonably brought . . ."); Richardson v. Hotel Corp., of America, 332 F. Supp. 519 (E.D. La. 1971), aff'd, 468 F.2d 951 (5th Cir. 1972). Since this provision, therefore, only enacts into a statute what is clearly the common law already, this does not afford any reason to disapprove the statute.

I strongly urge the President to sign the bill.

Sincerely,



William T. Coleman, Jr.