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THE WHITE HOUSE

WASHINGTON

February 4, 1976

MEMORANDUM FOR: ED SCHMULTS

FROM: KEN LAZARUS *KL*

SUBJECT: Concorde

British Airways and Air France have applied for an amendment to their operations specifications which would permit the Concorde to fly in U. S. airspace. Operations specifications are provided for under Federal Aviation Regulation 129 which implements Sections 601, 313(a) and Section 1102 of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1421, 1354(a) and 1502]. Under the Department of Transportation Act of 1966, the authorities of the Federal Aviation Administrator were vested in the Secretary of Transportation, but the duties relating to aircraft safety were transferred back to the Administrator in order to insure the continuity of the Federal Aviation Administration's safety programs. [Section 6(c)(1), 49 U.S.C. 1655(c)(1)]

Pursuant to this statutory framework, the Secretary will rely upon the Federal Aviation Administrator's determination as to whether the Concorde meets the Federal Aviation Administration's applicable safety requirements. However, the overall decision whether to permit Concorde operations in this country is much more than a safety question. It involves substantial issues of environmental and aviation policies and international relations. The Department of Transportation Act Section 2(a) [49 U.S.C. 1651(a)] charges the Secretary of Transportation with "the development of national transportation policies and programs conducive to the provision of fast, safe, efficient and convenient transportation . . ."

Under Section 2(a)(1), the Secretary is directed "to stimulate technological advances in transportation . . . [and] provide general leadership in the identification and the solution of transportation problems" Under the Federal Aviation Act, as amended by the Department of Transportation Act, the

Secretary is instructed to "encourage and foster the development of civil aeronautics and air commerce in the United States and abroad . . ." (Section 305, 49 U.S.C. 1346) Under the National Environmental Policy Act of 1969 [55 U.S.C. 4321, et seq.], the Secretary is further required to consider the environmental impact of the Concorde in making this decision. For these reasons, the Secretary has decided to exercise these powers in making the decision himself except with regard to the determination regarding safety.

Of course, the President, as Chief Executive, has some inherent constitutional powers with respect to the foreign policy considerations involved in this decision. He has some control by virtue of his authority to direct the relevant Federal agencies. However, notwithstanding his responsibility to "take care that the laws are faithfully executed", the President does not normally assert a right to substitute his own judgment for that of the principal officer regarding the discharge of a duty when the law casts such duty upon the head of a department eo nomine.

No automatic Presidential review.

If the Decision is Fully Affirmative

Q. Do you think Secretary Coleman was right in overruling the strongly expressed concerns regarding the environmental impact of the Concorde and approving Concorde flights into JFK and Dulles?

A. Secretary Coleman carried out an exhaustive study of the issues connected with allowing Concorde entry to the U.S. He personally held public hearings on the questions involved -- particularly relating to Concorde's possible environmental impact. He has explained his decision in great detail in the paper released today. Regarding the environmental questions, his analysis shows only the slightest impact in noise exposure near the airport and no measurable effect on the environment otherwise. The President has complete faith in the Secretary's judgments and his decisions.

Q. How much pressure was put on us by the British and French for Concorde approval?

A. The British and French have made a heavy investment in the Concorde, not only in terms of money, but also in industrial and human effort. They have stated their concern for the future of the project were the U.S. to deny the aircraft entry. We made no commitment to the British and French to give special consideration to the Concorde -- only that we would be fair and non-discriminatory. The considerations that shaped Secretary Coleman's decision are clearly and fully put forth in his paper -- backstage pressure did not dictate or influence that decision.

Q. EPA has proposed that all Concorde s-- with the exception of the two operating before December 31, 1974 -- should be banned from the U.S. How is Secretary Coleman's decision consistent with that recommendation?

A. These are separate questions with different procedures and different time tables. EPA made one recommendation to the FAA last year regarding a so-called SST noise rule which would apply to aircraft certification. EPA has recently changed that recommendation. I understand that the new EPA input may have to go through a public hearing process again, and then be weighed by the FAA within the statutory guidelines for aircraft rule making. The final outcome cannot be predicted now and will probably take some time to complete.

Q. But might not an eventual SST noise rule have the effect of overturning Secretary Coleman's decision today?

A. There obviously are several possible outcomes of this particular rule making: the one you suggest is a possibility.

Q. Do you expect Congress to try to overturn Secretary Coleman's decision?

A. I am not in a position to speak for the Congress. However, Secretary Coleman has done such a thorough analysis of the issue that I would hope the Congress would accept his judgment.

Q. Do you expect the courts to intervene?

A. Secretary Coleman has done such a superb job of preparation that one would not expect a basis for judicial intervention. But that is obviously a question for the courts to decide if they are petitioned.

Q. Might the Port of New York and New Jersey Authority refuse Concorde entry to JFK?

A. The PONYNJA has its rules regarding airport use. If the Concorde meets those rules, there would not seem to be a basis for denying Concorde use of JFK.

Q. Won't Coleman's decision set a precedent whereby more SST flights will be allowed, and environmental deterioration will eventually occur?

A. Secretary Coleman made reasonable projections of future SST activity and concluded that the environmental impact would be small. Also, the decision today is not a commitment to more and more flights. Other applications would be evaluated as they are received. If there are such applications, we will have the experience of the Concorde flights upon which to make further judgments.

If the Decision is to Allow Entry to Dulles but not JFK

Q. Do you think Secretary Coleman was right in overruling the strongly expressed concerns regarding the environmental impact of the Concorde and approving Concorde flights into Dulles?

A. Secretary Coleman carried out a most careful analysis of the issues connected with allowing Concorde entry to the U.S., and he personally held public hearings on the questions involved -- particularly relating to Concorde's possible environmental impact. He has explained his decision in great detail in the paper released today. Regarding the environmental questions, his analysis shows no impact in noise exposure near the airport and no measurable effect on the environment otherwise. The President has complete faith in the Secretary's judgments and his decision.

Q. Is it fair to expose those around Dulles to noise that was not acceptable for JFK?

A. I understand that Secretary Coleman's analysis indicated no increase in noise exposure at Dulles, while a slight increase at JFK was predicted. Based on this, the Secretary decided it would be preferable to approve entry only to Dulles. Presumably, after some experience has been gained at Dulles regarding the actual noise impact -- as opposed to the calculation we are now dealing with -- the question of New York entry may be reconsidered.

Q. How much pressure was put on us by the British and French for Concorde approval?

A. The British and French have made a significant commitment in terms of money, effort and prestige in developing this plane.

They have stated their concern for the future of the project were the U.S. to deny the aircraft entry. However, we made no commitment to the British and French to give special consideration to the Concorde -- only that we would be fair and nondiscriminatory.

The considerations that shaped Secretary Coleman's decision are clearly and fully put forth in his paper -- backstage pressure did not dictate or influence that decision.

Q. EPA has proposed that all Concorde s , with the possible exception of two operating before December 31, 1974, be banned from the U.S. How is Secretary Coleman's decision consistent with that recommendation.

A. These are separate questions with different procedures and different time tables. EPA made one recommendation to the FAA last year regarding a so-called SST noise rule which would apply to aircraft certification. EPA has recently changed that recommendation. I understand that the new EPA input may have to go through a public hearing process again, and then be weighed by the FAA within the statutory guidelines for aircraft rule making. The final outcome cannot be predicted now and will probably take some time to complete.

Q. But might not an eventual SST noise rule have the effect of overturning Secretary Coleman's decision today?

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Q. Do you expect Congress to try to overturn Secretary Coleman's decision?

A. I am not in a position to speak for the Congress. However, Secretary Coleman has done such a thorough analysis of the issue that I would hope the Congress would accept his judgment.

Q. Do you expect the courts to intervene?

A. Secretary Coleman has done such a superb job of preparation that we would not expect a basis for judicial intervention. But that is obviously a question for the courts to decide if they are petitioned.

Q. Won't Secretary Coleman's decision open the door to more and more SST flights?

A. Secretary Coleman has made it quite clear by today's decision that SSR flights would be considered on a case-by-case basis -- and no future approval can be implied.

If the Decision is to Allow Entry on an Experimental Basis (For example, six months commercial trials into Dulles)

Q. Isn't this six month approval just the nose-under-the-tent approach to ultimate approval?

A. No. It has become clear from months of studies and hearings that the noise impact of the Concorde is uncertain. Calculations have been made but they are based on models which may or may not be fully valid. The Secretary has decided that we need experience on which to make a final decision regarding Concorde, and the Dulles trial will provide that experience.

Q. Do you expect British or French retaliation to this situation of incomplete approval?

A. We think the British and French experts understand the uncertainties we need to resolve. We hope the public will also understand -- particularly that these difficult decisions carry with them no anti-foreign bias or are excuses for covering up a commercial concern. The Concorde is a significant achievement and we look forward to the upcoming experimental period to answer various questions including those relating to environmental factors.

Q. How much pressure was put on us by the British and French for Concorde approval?

A. The British and French have made a significant commitment in terms of money, effort, and prestige in developing this plane. They have stated their concern for the future of the project were the U.S. to deny the

aircraft entry. However, we made no commitment to the British and French to give special consideration to the Concorde -- only that we would be fair and nondiscriminatory. The considerations that shaped Secretary Coleman's decision are clearly and fully put forth in his paper -- backstage pressure did not dictate or influence that decision.

Q. EPA has proposed that all Concorde s , with the possible exception of two operating before December 31, 1974, be banned from the U.S. How is Secretary Coleman's decision consistent with that recommendation?

A. These are separate questions with different procedures and different time tables. EPA made one recommendation to the FAA last year regarding a so-called SST noise rule which would apply to aircraft certification. EPA has recently changed that recommendation. I understand that the new EPA input may have to go through a public hearing process again, and then be weighed by the FAA within the statutory guidelines for aircraft rule making. The final outcome cannot be predicted now and will probably take some time to complete. It is completely consistent to proceed with the trial at Dulles so that we can base future decisions on experience and not guesses and estimates.

Q. Do you expect Congress to try to overturn Secretary Coleman's decision?

A. We hope Congress will be as interested as we in obtaining information from the trial period so that a better based decision can be reached.

Q. Do you expect the courts to intervene?

A. Secretary Coleman has done such a superb job of preparation that we would not expect a basis for judicial intervention. But that is obviously a question for the courts to decide if they are petitioned.

If the Decision is Negative

Q. Does the President agree with Secretary Coleman's decision?

A. Although disappointed that this new mode of air travel will not be available to the U.S., the President understands and accepts the decision.

Q. Would the plane have made that much difference environmentally?

A. The Secretary obviously feels that approving the Concorde would be a reversal of the direction we have been moving toward improving our environment. He also was concerned that approval of a few flights would inevitably lead to more flights in the future -- a trend he did not want to see initiated.

Q. Won't the British and French take retaliatory action?

A. The decision was taken in the most open possible way, and it is clear that no anti-foreign or commercial bias was involved. Our relationship with these friends and allies is much broader than that embodied in any single issue, and we do not expect retaliatory action. It would be unwarranted.

Q. Might the British and French take legal action against us?

A. Secretary Coleman has considered very carefully the legal aspects of his decision, and is convinced that he is acting within our legal and treaty obligations.