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December 11, 1975

SUBJECT: BOB TIMM'S RESIGNATION

Was Mr. Robert Timm fired as Commissioner of the CAB, and if so, why?

GUIDANCE: Robert Timm's resignation was requested by the then President's Counsel, Roderick Hills, on behalf of the President. As to the details, there really seems to be no need to get into them here since Mr. Timm has resigned, and they are set forth in Mr. Buchen's December 5, 1975 letter.

Under what authority can the President remove a member of an independent regulatory body?

GUIDANCE: The President does have statutory removal power under the Federal Aviation Act (49 U.S.C. 1321[a][2]).

Under what conditions can the President and the Federal Aviation Act remove an independent regulatory member?

GUIDANCE: The Act cites that a person can be removed for neglective duty, inefficiency, or malfeasance.

If the President could remove an individual on this basis, why was Mr. Timm offered a hearing?

GUIDANCE: It was felt by the Counsel's office that to be completely fair to Mr. Timm, he should be given a chance to air his views.

Mr. Timm has said that his forced resignation resulted from policy differences with him or his criticism of Administration's regulatory reform program. Did this enter into your decision?

GUIDANCE: No, neither the President nor any member of his staff was concerned with Mr. Timm's policy decisions as an independent regulatory commissioner or with his views of the Administration's regulatory reform program. The concern solely related to whether Mr. Timm has "neglected" his duties or had conducted them "inefficiently" which are among the statutory standards for removal from office.

Has Mr. Timm's resignation been accepted?

GUIDANCE: Officially, it has not since we just received his letter yesterday afternoon. However, I know of no reason of why it would not be accepted.

What is the effective date of the resignation?

GUIDANCE: Mr. Timm stated in his letter that he would resign effective upon the appointment of his successor, his confirmation by the U.S. Senate, and his taking the oath of office.

Is that acceptable to the President?

GUIDANCE: Since the letter and resignation just arrived yesterday, I cannot answer that.

In his letter, Bob Timm states that Congress has provided no specific procedures for exercise of his removal by the President. However, under the Fifth Amendment and with the specific charges of malfeasance, neglect or inefficiency, there must be a full hearing before an independent hearing officer on the record and a right of full judicial review. Do you agree with Mr. Timm's interpretation?

GUIDANCE: Under the Federal Aviation Act, there is no requirement that charges against a member of the CAB be made by the President and presented to an Administrative law judge or any other official. The President's role under Section 1321 (a) (2) is not to make charges, but to decide.