



U.S. Department of Transportation
Bureau of Transportation Statistics

USDOT at 50: The Early Years

Compiled for the 50th anniversary, April 1, 2017

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An Introduction

Alan E. Pisarski

The essays and recollections appearing here have been assembled in the History Committee of the Transportation Research Board and will be housed in the US DOT's National Transportation Library on the occasion of the 50th anniversary of the opening of the US Department of Transportation. The opening document consists of excerpts from *A Great Honor*, the memoir of DOT's first Secretary of Transportation, Alan S. Boyd, with his permission. The remaining pieces were prepared by some of those who were at DOT at the beginning, many of whom had leadership positions in significant areas that established the early policies and directions of the agency. It does not aim to be a comprehensive or exhaustive history, but rather seeks to set down for future reference notable events and decisions, some very momentous, some more light-hearted, deemed worth preserving in the eyes of those who were there. No attempt has been made to design, organize, or otherwise modify the thoughts of the preparers. These are their thoughts in their words. You will find some very skilled writers here addressing some very important events in transportation history, and many authors who went on to brilliant careers beyond their early DOT days. It is a tribute to the amazing collection of people assembled there in the formative years of the agency.

This commemoration of the 50th anniversary of the opening of DOT has been marred by the death last night of William T. Coleman our fourth Secretary, whom we all remember with great fondness and respect. Several pieces, prepared over the past year refer to his role in the Department's early days. His very distinguished tenure as Secretary is overshadowed by his immense influence in American History. Thus, with his loss, of the first four Secretaries who served in the formative early years of DOT, only Secretary Boyd remains. It is notable that the tenure of those first four; Boyd, Volpe, Brinegar and Coleman encompassed the first ten years of the Department's history from January 1967 to January 1977. These documents focus on that first 10 years, the critical period in which the Department's culture formed. It is the most distant period and therefore the most important to preserve.

This collection is dedicated to Secretary Boyd, his successors and to the great agency they set on its path.

THE PEOPLE

EXCERPTS FROM *A GREAT HONOR WITH THE PERMISSION OF SECRETARY ALAN S. BOYD* FROM CHAPTER XIII

A Coherent Transportation System

In 1965, transportation represented about 20 percent of personal consumption expenditures. There were thirty-five agencies with transportation-related responsibilities, with a cumulative annual budget of more than \$5 billion. Many of us in government had talked for years about how to improve the situation.

In 1966, President Johnson revived the idea in his State of the Union address: “I recommend that you help me modernize and streamline the federal government by creating a new cabinet-level Department of Transportation, [which] is needed to bring together our transportation activities. The present structure...makes it almost impossible to serve either the growing demands of this great nation or the needs of the industry, or the right of the taxpayer to full efficiency and real frugality.”

Six months before the address, the president had set up a task force composed of representatives from the different transportation entities of the federal government. Charlie Zwick, the deputy director of the Bureau of the Budget, and I (as undersecretary for transportation in the Department of Commerce)

were co-chairmen. For some reason the name of our group was the Boyd Task Force. Our charge was to draft the organic law to present to Congress with the hope that it would be used as the basis to create the legislation for a new Department of Transportation. There were seven or eight members in all on the task force, each an expert on various aspects of the issue. Our White House liaison was Bill Moyers.

The task force started with the concept that, taken as a whole, transportation constituted one system. It is not a means to an end in itself, but rather, a service that moves goods and people to help businesses and individuals achieve their goals. Given that, our first focus was to determine what needed to be included—and excluded—in the proposed Department of Transportation.

We decided the department should include functions related to transportation policy, funding, safety, and research, but exclude economic regulation. We examined thirty-five agencies to determine whether they should be included wholly or in part, or to exclude them entirely. There were large agencies we thought should be included, such as the Coast Guard and the FAA, as well as smaller agencies such as the Great Lakes Pilotage Association and the St. Lawrence Seaway Administration. We also included the Maritime Administration, the Panama Canal, the Alaskan Railroad, and the Bureau of Public Roads—which didn’t have a large number of personnel, but did have an enormous budget.

Though we decided that the economic regulatory functions of the Civil Aeronautics Board and the Interstate Commerce Commission should remain independent, we determined that their transportation accident and safety investigation functions should be part of the department. However, we soon realized that to avoid any conflict of interest, safety investigation needed to be independent. We suggested the creation of a National Transportation Safety Board.

Many decisions about what to include in the department were fairly straightforward. One thorny issue, however, was what to do with urban mass transit. There were valid arguments for either placing it in the Department of Transportation or letting it remain in the Department of Housing and Urban Development. Our task force, along with the White House and the Bureau of the Budget, engaged in the debate. The ultimate, Solomon-like decision was to leave it with Housing and Urban Development temporarily, until it could move to a new Urban Mass Transit Administration (UMTA) to be created within the DOT. Though I thought this was the right decision at the time, I now think it was a mistake. Although UMTA was “transportation,” I believe HUD could have used mass transit funding to enhance and support their other development programs.

Fortunately, I don’t think we made many mistakes. In fact, I think the task force did a superb job of designing an efficient government department led by a secretary, an undersecretary, a deputy secretary with responsibilities like a chief operating officer, and a general counsel in charge of legal affairs. The organizational chart was structured by department-wide specialties, such as administration or policy.

We wanted to avoid organizing by transportation sectors like highways, railroad, and waterways, because we believed that could become a breeding ground for “stovepipes,” a term for territorial pettiness characterized by an inability to identify

with the whole organization and an unwillingness to share information. We proposed five divisions: Administration, Policy, Research and Development, International Aviation, and Public Information, each with its own assistant secretary. In addition, we suggested that the administrator of each agency in the department report directly to the secretary.

Once the task force finished the draft legislation and the White House added its stamp of approval, it was time to shop the proposed legislation around Congress.

I met with Senator John McClellan, the chairman of the Committee on Government Operations. He was fine with everything until he came to the earmarks proposal. An earmark is a provision within a bill that directs a specified amount of money to a particular project. Often this funding is for a project to benefit a congressional representative’s home district.

Even back in the 1960s, the validity of earmarks, sometimes called “pork,” was challenged. Our draft legislation was written to remove transportation projects from the general appropriations process and eliminate the use of earmarks. We wanted the department to perform a cost analysis on every project and report the findings to Congress, which would then vote on funding. This procedure would reduce the opportunities for pork.

After reviewing the earmarks proposal, Senator McClellan looked at me. In his wonderful Arkansas drawl he said, “Alan, that dog won’t hunt.” I knew right then the provision was dead. Legislation lives or dies by committee. If the chairman of the committee wants a provision out, it’s out.

Another senator on that committee, Henry “Scoop” Jackson, was very concerned about protecting the environment. I believe that Scoop was the force behind a requirement added to the legislation that no highways could be built through public

parks, wildlife or waterfowl refuges, or a historic site unless there was no feasible alternative. That determination was to be made solely by the secretary of the DOT. Senator Jackson deserves much credit and many thanks for his forthright contributions.

During our negotiations with Congress, we had to make a few other changes to the draft legislation as well. The shipowners and the seaman unions never forgot that I'd tried to end their subsidies. There was a possibility that I'd be named as the DOT's first secretary, since I was the senior federal official for transportation. The maritime industry used its influence at the committee level to remove the Maritime Administration from the department and therefore from any possibility of being under my control. Congress later put the Maritime Administration back in the DOT—but not until long after I was gone.

There were a few other relatively minor changes. After they were made, it was pretty smooth sailing. With bipartisan support, the legislation passed both houses of Congress. President Johnson signed it into law on October 15, 1966. At the signing, he said the following:

We have come to this historic East Room of the White House today to establish and to bring into being a Department of Transportation, the second Cabinet office to be added to the President's Cabinet in recent months. This Department that we are establishing will have a mammoth task—to untangle, to coordinate, and to build the national transportation system for America that America is deserving of.

And because the job is great, I intend to appoint a strong man to fill it. The new Secretary will be my principal adviser and my strong right arm on all transportation matters. I hope he will be the best equipped man in this country to give leadership to the country, to the President, to the Cabinet, to the Congress.

The obvious question was, who was best equipped to be the first secretary?



FROM CHAPTER XIV

An Honor to Serve

The president officially nominated me on November 6, 1966. Senator Warren Magnuson, chairman of the Senate Interstate and Foreign Commerce Committee, held my Senate confirmation hearing on January 11, 1967. I looked forward to the session. Maggie and I were good friends.

I was escorted into the hearing room by the two senators from Florida, my friends George Smathers and Spessard Holland. They were proud to stand with me. I was the first Floridian to serve in the cabinet. Well known in Congress by then, I was confirmed without opposition. At the White House on January 16, I was sworn in as the first secretary of the Department of Transportation.

The department was to begin operation on April 1, 1967, which gave us just a few months to organize a department with nearly 95,000 employees. It was a busy time, hiring staff, locating office space, and finding excellent people to fill the newly created executive positions.

There would be five new assistant secretaries, eight new administrators, an undersecretary, a deputy secretary, and a general counsel. All of these positions were “presidential appointments.”

I can honestly say that the department was staffed with the best people we could find without regard to political favors or party. We put together an excellent staff. My approach with these new appointees was simple: “I asked you to take this leadership position because you’re an expert in your field,” I told them. “If you need help, let me know. If you make progress, let me know. I don’t want to know everything, but I do want to understand what’s going on. Most importantly, I

expect everyone to work as a team and to deal with every problem as a common problem. I will not tolerate any stovepipes.”

I was particularly aware that in creating a new organization comprising preexisting, independent agencies, there is always a danger of groups keeping information to themselves. The new department required a mind-set of cooperation, not separation.

The group of leaders I selected worked together wonderfully as a unified team. They made the new Department of Transportation an outstanding organization. Each made unique contributions, but there were a few standouts in my mind.

Alan Dean was my chief administrative officer and the consummate bureaucrat, a term I use with great admiration in his case. He was a career public servant who knew everything there was to know about how our government functioned. He was honest, hard-nosed, and competent.

Cecil Mackey was my assistant secretary for policy. He’d been my right-hand man on the DOT task force. Cecil was bright, accomplished, and an idealist. He was also distinctive in that, unlike most people, he had no problem telling me when he thought I was wrong. There isn’t anyone from those years whom I thought of as a better friend.

Jo Philipovic was my wonderful, loyal secretary. I could not have survived without her. Jo had been my secretary at the CAB. I would have taken her with me to the Commerce Department, assuming she’d agreed, but that position had come with a secretary. Jo understood my foibles and I understood hers—though I can’t remember her having any.

Dick Copaken was my White House fellow. He basically showed up on my doorstep saying that he’d been assigned as my full-time aide for a year.

My response was, "You're just the man I need!" I immediately put him in charge of creating a grand opening celebration on April 1. I told him, "I want to have a big show, and I want you to set it up." That was nearly the only direction he got from me.

Also on my superb team were Paul Sitton, deputy secretary; Admiral Willard Smith, commandant of the Coast Guard; James Irwin, Coast Guard attaché; General Bozo McKee, Federal Aviation administrator; Don Agger, assistant secretary for international aviation; Joe McCann, St. Lawrence Seaway administrator; John Sweeney, assistant secretary for public information; Frank Lehan, assistant secretary for research; Langhorne Bond, my special assistant; and John Kennedy, my office executive secretary. These people worked together

to create one of the most productive and happy periods of my life.



As part of the department, we created two new agencies, the Federal Highway Administration and the Federal Railroad Administration. Lowell Bridwell was appointed as the first Federal Highway administrator. He knew highways, and he knew what needed to be done and took care to do it. He wasted no time. He did an excellent job organizing that agency

Scheffer Lang became the first Federal Railroad administrator. Shef was new to government, but he knew and loved trains, and was dedicated to his



Staff retreat of leaders of the new department. from left to right: John Robson, John Sweeney, A. Sheffer Lang, Langhorne Bond, Alan Boyd, Everett Hutchinson, William McKee, Lowell Bridwell, Alan Dean, Cecil Mackey, Willard Smith, Paul Sitton, Joseph Mc Cann, Donald Agger

work. He ingratiated himself to me when, during his maiden speech as administrator, he told the Association of American Railroads that one of the railroads' major problems was the inadequacy of railroad management. I thought he was right. Shef was a Republican, which I liked. I wanted the department to be completely nonpartisan. Transportation is ultimately not about politics—but service.

The months leading up to our April start were consumed in large part with filling the many positions and introducing myself to the various agencies. I always asked how I could be helpful, gave people my contact information, and invited them to call if they had any ideas.

I also spent a significant amount of time communicating with Congress, particularly the Interstate and Foreign Commerce Committee, and the Appropriations Committee in both houses. I knew exploring their ideas for the department would be productive.

The Washington headquarters for the department would need office space for about five hundred people. With the new DOT building still under construction, we had offices all over town. We used three floors of the Federal Aviation Building, which housed my office. We also had offices in a building at Sixth and D Streets, in the ICC Building, the Matomic Building, and the Universal Building, as well as a few other buildings on Indiana Avenue. I joked at my Senate confirmation hearing that we'd probably pitch tents on the Mall to take care of all other staff. As a team-building activity, we had a contest to design a logo for the department and invited all DOT employees to participate. Our volunteer judges were from the Metropolitan

Museum of Art, the National Museum, and the Heraldry section of the Department of Defense. The contest was a big hit. Submissions poured in. I was pleased with the winning design, a modified triskelion, which looks something like three bent human legs set in a triangular pattern. The legs represented transportation on land, sea, and air.

The department opened for business on April 1, 1967. I was impressed that all of the staff in their many locations came to work that day to find a directory on their desk with phone numbers for everyone in all DOT agencies. Alan Dean, my chief administrative officer, was responsible for that. Organizational efficiency and responsiveness were important to me. I set in place a process where every incoming letter or call to my office received a response within forty-eight hours.

The opening-day celebration that Dick Copaken organized was impressive. I was driven from the DOT office to the Mall in a horse-drawn carriage. There were public events in the Natural History Museum and the American History Museum. Several blocks of the Mall were covered with activities: a balloon ride, a hovercraft, and a man flying with a jetpack. Transportation, its history and its future, were on display. It was a wonderful day, and well attended by the public.



Excerpted by Alan E. Pisarski, who highly recommends the whole book.

A recent review states: *An enjoyable book from start to finish, filled with historical events and personal reflections.*

CHARACTERS OF EARLY DOT

John W. Barnum

As General Counsel of DOT from July 1971, then Under Secretary/Deputy Secretary from July 1973 until January 1977, I had the privilege and pleasure of working with an extraordinary cast of capable characters.

John Volpe was Secretary of DOT in President Nixon's first administration (1969-1973). He had been Governor of Massachusetts. I remember him as a warm, unpretentious person. At a Christmas service in the chapel across the street from DOT, he came over to my wife and me to ask how our son was doing; he had been sick. At the end of Nixon's first administration, all presidential appointees were asked to resign and to indicate whether they wanted to be reappointed. I don't know what Secretary Volpe did; I only know he was appointed Ambassador to Italy, quite appropriate for an émigré. The only problem was that his Italian accent marked him as a hick from the Abbruzzi. But when my wife and I visited him in Rome, I asked whether his valet could clean a spot off my jacket. His wife, Jennie, said "Come with me," and we both went upstairs to their bedroom and Jennie took a cloth out of her bureau drawer and removed the spot.

Jim Beggs was Under Secretary of DOT in Nixon's first administration. He and Mary were a wonderful couple and I think he largely ran the department. In the second Nixon administration he got a promotion to be Administrator of NASA.

Charlie Baker was Assistant Secretary for Policy in Nixon's first administration. He was smart as hell, and funny. He had a super staff in TPI, but he did not stay on for the second term. He went to teach in Boston, at Northeast University. I never saw him again after he left DOT, but for years he joyfully

sent me his Yale-Harvard football ticket stubs to rub in Yale's loss.

Claude Brinegar was DOT Secretary in Nixon's second term. He was an oil company executive in Los Angeles who had a Ph.D. in statistics. He had been recommended by Peter Flanigan, a wealthy Nixon supporter with a White House role. Nixon proposed that some Secretaries in the cabinet should function as "Super Secretaries," with other Secretaries reporting to them, but that never materialized. What did happen, though, was that Bud Krogh, who had been the White House interface with DOT, was appointed Under Secretary. Nixon's gurus, Ehrlichman and Haldeman, wanted to have "their man" in each department.

As the events of "Watergate" began to emerge and a grand jury was empaneled, I suggested to Krogh that I might be able to help John Dean, then Counsel to President Nixon, because in my private practice I had appeared before the grand jury with which the Antitrust Division was trying to establish that General Motors had monopolized the automobile industry. Krogh told me not to contact Dean, however, because "he is not on our side."

But Krogh had been a leader of the "Plumbers," the gang that raided the Democratic National Committee offices, and as Krogh's role began to emerge, he had to resign. That was when I became Acting Under Secretary. The existence of the "tapes" was disclosed to the House Committee staff one Friday by Alexander Butterfield, who had been on the White House staff in Nixon's first administration. (By then, however, he was the FAA Administrator.) I was sworn in as Under Secretary by Brinegar the following Saturday and Butterfield revealed the tapes' existence publicly at a congressional hearing the following Monday. Krogh and the other Plumbers were prosecuted and Krogh was disbarred, but years later he was reinstated after several of us put in a good word for him.

It was during Brinegar's watch that the six railroads in the Northeast went bankrupt. Brinegar and I were meeting with the chairman of the ICC one day in the conference room between Brinegar's office and mine when word from the House Commerce Committee came in: "What are you doing about the bankrupt railroads?" Brinegar immediately sent me to the Committee, leaving him and the ICC chairman to say good bye to each other. I proposed to the Committee that Congress give DOT 45 days to submit a proposal and the Committee did just that. Brock Adams was Committee chairman, and those were the days when Republicans and Democrats could work together. As I recall, the ICC was miffed at not having a role. Before DOT submitted its proposal, the ICC submitted its own proposal. The Committee and then Congress, however, followed our proposal and established the United States Railway Administration (USRA), which was charged with preparing a plan to get the bankrupt railroads operating again - - what became "The Final System Plan."

DOT's first choice, however, was to have the two still solvent railroads in the region, the Chesapeake & Ohio (the "Chessie") and the Norfolk & Western, each to acquire half of the properties of the six bankrupt railroads. That would assure continued competition in the region. Chessie Chairman Hayes Watkins was game, but the N&W chairman agreed only on the condition that Uncle Sam guarantee that his new railroad would not lose money. That was obviously a non-starter.

The fallback was to design a new railroad using the properties of the six bankrupts. The result was Conrail. For the new railroad to be profitable, however, it was necessary to identify those parts of the existing railroads that were money losers. In the days before "deregulation," railroads could not stop service on a segment just because it lost money. Passenger service had already been identified as unprofitable, and all but three railroads had leapt at the opportunity to discontinue passenger service.

The others turned their passenger equipment over to the new National Railroad Passenger Service Corporation, "Amtrak."

To solve the railroads' basic economic problem throughout the country, DOT led the charge to adopt legislation that would "deregulate" all U.S. railroads. In 1975 Congress passed DOT's Railroad Revitalization Act, followed in 1976 by the Railroad Revitalization and Regulatory Reform Act. The story of those initiatives is best described by the American Enterprise Institute study published in 1977 by Paul W. McAvoy and John W. Snow.

When Nixon resigned, President Gerry Ford appointed Bill Coleman as Secretary. Bill was a prominent Philadelphia attorney. Fortunately, I knew Bill because he and I had been co-chairmen of the Research Subcommittee of the President's Committee for Civil Rights Under Law in the 1960s. Judge Bruce Bromley, my senior partner at Cravath in New York, was co-chairman of President Kennedy's Committee and Bromley had enlisted me. I say "fortunately" because, when Bill came to Washington, he asked his Harvard Law School pal, Elliot Richardson, for advice. Elliot had been "Secretary of Everything" — AG and three other departments. "Fire your Deputy to show who's in charge," Elliot told him. "I can't do that," Bill replied. "John did all the work on our Subcommittee, getting law professors and busy attorneys to write briefs for the attorneys with time to go to the courts in the South where the civil rights cases were being prosecuted.

Bill Coleman was a great boss. He was also a great person, as attested by the outpouring of praise on the occasion of his recent death. He would tell me frequently "You and I are equal in this job every day except pay-day." He left much of the work to me, and I authorized the use of the autopen to sign Bill's name to letters drafted in the dozens of offices in the Department. He only overruled me

once: A Connecticut congressman had written Bill to protest the orange stripe painted on the *Eagle*, the Coast Guard's square rigged training ship. The Coast Guard prepared a letter for Bill's signature explaining that the orange and blue stripe, in use on all Coast Guard airplanes and other ships, large and small, was good advertising and public relations for the service. As a sailor myself, I thought the "signage" on a 300-foot square rigger was not appropriate. So I sent the draft back to the Coast Guard with instructions to rewrite the letter. I should have put a stopwatch on it; within a matter of minutes, the Commandant and the Vice Commandant were in Bill's office protesting my decision. They won.

But I won the next argument with the Commandants. Congress had passed a law requiring the military academies to admit women in two years, but that only affected West Point, the Naval Academy and the Air Force Academy. Bill and I argued that the Coast Guard Academy had an opportunity to steal a march on the other academies by opening their Academy to women the next year. The two admirals were full of arguments about the implications, and dangers, of having women pulling duty on lighthouses and small boats. In fact, I knew the Coast Guard had a rule prohibiting women from staying on a Coast Guard ship overnight. I knew because after I had taken our oldest son on the *Eagle* with me for a brief cruise off Cape Cod, I asked the following summer whether I could take our daughter on a similar short cruise, there was a hemming and hawing. "Oh Daddy," Sarah said, "Don't push it."

After Volpe, Beggs, Baker, Brinegar and Coleman there were literally dozens of men and women who made my years at DOT so rewarding. Tom Tidd was my Deputy General Counsel; Ted Lutz was a wonderful Deputy Under Secretary; John Snow came to TGC, moved up to be NHTSA Administrator, was grabbed by Hays Watkins for the Chessie, became Secretary of the Treasury, then a hedge fund mogul, and he remains a great friend. Jeff Shane was there when I arrived as my TGC special assistant for environmental matters, resigned to travel to Africa, was welcomed back at DOT and is now the U.S. rep at IATA.

Behind the brass, however, there was a legion of super staff that made it all possible. As S-2, I inherited Dorothy Jefferson as my secretary. But I had brought Annette Gnospelius from New York to be my personal secretary. She travelled to Europe with my team on the Coast Guard's Gulfstream and ended up marrying my Coast Guard bodyguard, Bill Miller.

Lindy Knapp, on graduation from Stanford Law School, was selected for the Honors Program in TGC and became my Special Assistant when I was Dep Sec. She was a wise woman, and persuaded me to overrule the FAA Administrator who had fired one of his deputies who had crashed the New York Region's prized antique plane because he did not know to lock the tail wheel when taxiing for takeoff. Peggy Bridge, Lindy's secretary, rounded out the staff of S-2.

In my life I never worked so many hours each day as I did at DOT, and the people I worked with made it all an infinitely rewarding pleasure.

SOME RAMBLING – THE EARLY DAYS OF DOT

Charles D. Baker

The US DOT came into being on 1 April 1967; obviously an auspicious date. Such a department was discussed off and on for the better part of a century, but since this would entail transferring various operations in the federal government, status quo forces prevailed—until President Johnson came on the scene. Johnson, a man of many talents, among them an in depth knowledge of how Washington worked, was equal to the task. Prime examples were the heretofore freestanding FAA would be an integral component of the new cabinet level department. Ditto the US Coast Guard, for more than a century under the aegis of the Treasury department. Likewise, the Urban Mass Transit Administration heretofore under USHUD.

The new department going through birth pains was blessed with a number of key people among them the designated secretary Alan Boyd. Alan had several virtues; bright and likeable, experienced in Washington ways as the undersecretary of commerce from which many of the operating units would come. A good relationship with the president who nominated him, Alan had the authority to take some key Commerce people with him. I got to know several when I came down in late 1968 (the election that year put Mr. Nixon in the white house) to help the new Secretary designate Gov. John Volpe. During the transition Boyd and his crew were of great help; for example; Ira Dye a wartime Submarine skipper who had moved into the federal government after retiring from the Navy. He was a great public servant who went from sinking Japanese ships to laying out plans for various transportation modes. John Robson—undersecretary (some years later chair of the CAB). Paul Sitton, an early DOT executive who later took

the reins of UMTA as it shifted to newly formed DOT. Paul was invaluable to me personally when the Volpe team took over and we had to figure out how to fund transit. Frank Turner, head of the Federal highway administration was on the job when “we” came on board. Ditto D/Asec for policy Dick Barber and soon to be paralleled by D/Asec and piano playing Bob Binder several years later to become ASec himself. I could list many others, but the above were typical of the exchange support.

And so Gov. Volpe’s job was to structure a newly staffed department. The new department was blessed with three absolutely key people; The governor himself who knew construction from a to z, but even more important how government—federal, state and local worked—or should. Where did his #2 come from? Jim Beggs, USNA/ Navy, Harvard Business school, Westinghouse Corporation, NASA and in 1969 undersecretary of DOT. The third key person—Paul Cherington – a Harvard professor of transportation whom John Volpe persuaded to come to DC and think about go forward policy. Sadly, health and related personal issues cut his tour back after a year and a half, but he insured that the newly staffed department knew what the overarching issues—and opportunities—were. In short he was a major force on getting the challenges and opportunities in line. Some things on the table? The airport and airways needs for the booming future legislation passed. Rail freight and what about intercity passenger rail? UMTA funding (We got a lot of help from Nixon’s key urban advisor Pat (later Senator) Moynihan). The rest of the interstate program. The Coast Guard and the St. Lawrence Sea Way. Safety paramount in all modes. And of course regulation ICC, CAB and the Maritime Administration still back at Commerce. Where was I in all this? I knew a lot about John Volpe the Governor but nothing of him on a personal note. Two meetings and I was hooked. Jim Beggs and I passed in the night, first in the Navy, never met. HBS—same class, never met—Westinghouse- he was in Baltimore, I in Elmira

New York. He was a great boss—once we met at DOT and a splendid person.

When Paul had to return to Cambridge I was tagged for the policy shop. Two things 1) when my confirmation was delayed, it was necessary for Sec. Volpe to persuade Rep. Senator Griffin of Michigan and Dem. Senator Mondale of Minnesota that DOT Sea Way plans were good for the Midwest. Aha! so that's what bipartisan is. 2) one of the early "maybes" on our table was the SST-Supersonic transport. Development was underway at Boeing with lots of federal dollars involved. Should the government continue its support? I'd met a lot of government professionals but never had a real insight. This issue and many others later persuaded me of several things. The civil service folks were very well educated. (took advantage of lots of "further education" options). Contrary to ill-informed critics they were invariably hard workers (At the shop on weekends? Not unusual). And well-tuned into policy and how to address big formulations. SST? Work done in the policy shop made clear that economically the route we were on was not going to be an economic winner and the side kick benefits to DOD were going to be not-so-much. The valiant French and English stuck it out for several decades but recently came to agreeing with our 1970 decision.

Alan Pisarski's recent challenge to me and others was "What was DOT like early on?" The foregoing reads somewhat like "reflections over a beer or two." Let me wind up with an olio of things and people.

The Penn Central merger unraveled early on. We didn't solve the problem overnight, but did get policy and plans aimed in the right directions so that today America's rail freight system is the envy of the world. John Barnum, by this time on board from New York was a key involvee. The North

East corridor re Rail passenger—Remember Bob Nelson? Amtrak got a modest high density route going but much beyond would call for serious bucks. Still does.—.

Who else? What else? A half dozen names from outside DOT were of substantial help George Schultz and Cappy Weinberger were both serious players in the Nixon government and helpful to us. Ditto Peter Flannigan, a key white house guy and Harley Staggers, Dem. Chair of the house commerce committee. Jerry Ford minority leader in the house (and later a distinguished President).

Back at the DOT shop? Jack Doyle—He of Texas A&M wrote a transportation policy bible in 1960. Since then lots of DOTers have delivered more. Gallamore, Huff and Walsh—decades later their fingerprints are still around. A young newcomer in the early days George Carneal moved up to FAA general Counsel. Secor Brown MIT professor was first A/Sec research and later Chair of the CAB. Our regulatory wizards included Dave Schwartz and Bob Calhoun. Charlotte Adams a lower level staffer on the property retired a number of years later as Assoc. Admin—UMTA. Maybe a much too brief series of encomiums is a good place to stop, but not without a tip of the hat to our resident congressional expert Bob Bennet. A half century later he remains acknowledged as an expert in an arcane field. (Later became a Senator. Volpe and company picked people well). A closing romantic note re this young department. Mary Carlile down from Maine to our staff married Bruce Schultheis in the policy shop and then off to Alaska with the incumbent Senator. Or our D/Asec for urban affairs who married our presidential student—then off to Chicago.

Having reached an age of "half a dead man's hand" time to stop. My three years at DOT were among the most rewarding in my peripatetic career.

HOW JOHN VOLPE SAVED THE WASHINGTON METRO

Jeffrey N. Shane

As a special assistant to the DOT General Counsel John Barnum in the early '70s, I acted as a kind of utility infielder – jumping on hot issues as they came up, and having the good fortune to spend a lot of quality time accompanying my boss to meetings with the Secretary. During President Nixon's first term, the Secretary was John A. Volpe, the former governor of Massachusetts. He had earlier served as the first Federal Highway Administrator under President Eisenhower, and now would be America's second Secretary of Transportation.

The ground-breaking ceremony for Washington's new Metrorail system, authorized by the National Capital Transportation Act of 1969, had taken place at Judiciary Square in that same year with Secretary Volpe manning one of the shovels. By the fall of 1970, however, the Washington Metropolitan Area Transit Authority (WMATA) – the entity charged with building the system -- had just about run out of funds.

Two-thirds of the money for the system was to have been provided by the District of Columbia; one-third from the surrounding jurisdictions. The other jurisdictions had lived up to their end of the bargain but the District had not. It was not DC's fault; it was the fault of the chairman of the DC Appropriations Subcommittee, Democratic Congressman William Natcher of Bowling Green, Kentucky. A number of controversial Interstate segments planned for Washington had been held up as a result of organized citizen opposition. In response to that opposition, the Federal-Aid Highway Act of 1968 had contained a provision ordering the construction of the segments, including a new Potomac crossing

west of Key Bridge – the Three Sisters Bridge -- and new freeways through the Northeast and Northwest quadrants of the city. Although the DC Government had reluctantly tried to comply with the requirement, progress had been held up by litigation brought by opponents.

Apparently determined to demonstrate loyalty to his Public Works Committee colleagues and thereby to qualify for more earmarks for his own district in Kentucky, Natcher refused to release the District's share of project funds until the DC Government provided an unequivocal and irrevocable assurance that it would proceed with the controversial projects. Court injunctions were no excuse.

Secretary Volpe had been a successful building contractor in private life; his company had even built the Nassif Building at Seventh and D Streets, S.W. – to be the new home of the Department of Transportation that he would be the first Secretary to occupy. He knew what happens when projects run out of money: contractors move their heavy equipment away – it's too expensive to be left idle – and it becomes almost impossible to restart the project without incurring huge additional (and unbudgeted) costs.

Volpe called a meeting with staff from the General Counsel's office and the Urban Mass Transportation Administration, a DOT sub-agency and predecessor to today's Federal Transit Administration. The Secretary wanted to know whether he had the legal authority to offer a loan to WMATA that would enable it to keep the contractors working.

The question came to me and to Joe Blundon, a senior lawyer with UMTA who knew the agency's enabling legislation better than anyone. Together, we combed through the statute in search of language that might be cited as support for what Volpe wanted to do.

Because Metrorail had been separately authorized by the National Capital Transportation Act, Congress might be forgiven for thinking that any money DOT made available to WMATA would have to have been appropriated in keeping with that legislation and no other. Nevertheless, we found some thin statutory reeds on which to predicate an argument that, the National Capital Transportation Act notwithstanding, Washington's Metrorail project was eligible for assistance through the national mass transit program. In other words, Secretary Volpe did have the authority to offer WMATA the proposed loan. It was a legal stretch to be sure, but it was the opinion our client wanted, and we gave it to him.

Volpe knew the loan would be hugely controversial and, given the likely Congressional objections to his end-run around Natcher, might even put other DOT programs at risk. He was offended by Natcher's shenanigans, however, which he felt might well damage the District beyond repair. He also knew that the Nixon White House was unhappy with the impasse over Metrorail; Nixon had specifically asked Volpe to get it resolved. Volpe quietly submitted the proposed loan idea to the Office of Management and Budget, where

it was approved by then Deputy Director Caspar Weinberger.

On October 14, 1970, one hour before a scheduled Congressional recess, Volpe announced that he was prepared to offer a \$57 million loan to WMATA. Headlines in the Washington Post the next day heralded the rescue of the project. WMATA formally applied for the loan the following day and announced that it would continue to let contracts. Natcher reportedly protested loudly, but the White House and OMB were fully behind the loan and his complaints were unavailing.

Had Volpe not acted when he did, the project might have been put on hold indefinitely. Holes already dug might have been filled back in, and Washington would have had to wait a long time for the project to start back up. The loan neutralized Natcher and provided more time to find a resolution to the Metrorail-Interstate impasse. (Eventually Volpe cancelled all of the controversial highway segments, in some cases under a welcome court order.) Metrorail's survival in October 1970 was wholly attributable to as courageous a decision as any Secretary of Transportation has ever had to make.

SECRETARY CLAUDE S. BRINEGAR AND THE OIL CRISES

Alan E. Pisarski

Secretary Claude Brinegar's tenure at DOT was not long, serving two years from February 1973 to February 1975, but in many ways it was crucial, given the nature of the times in which he served and his particular expertise. In the fall of 1973 the Arab States initiated an oil embargo via OPEC against the US as part of the Arab-Israeli conflicts of the period. Its imposition led to long lines at gas stations as stations lost supplies or rationed what supplies they had and a quadrupling of oil prices. At the time the nation was very dependent on imports of petroleum and discovered how exposed we were to oil blackmail.

It is hard today to explain what ignorance existed about petroleum and its products at that time. It was a commodity taken for granted as always being there like apples or toilet paper. At the time, for example, I was serving in a UN body that, with great humility, called itself the Group of Experts in Transport Statistics and in a meeting in Spring of '73 I suggested that the deep connect between petroleum and transportation argued for our greater focus on the topic. I was politely told that there was a committee on petroleum elsewhere in the Economic Commission for Europe, and if I liked, they would introduce me to its leadership. In the Fall of that year, after the boycott started, I received an urgent call from Geneva inviting me to chair a sub-committee on petroleum- transportation interactions.

The ignorance about the subject of petroleum was really quite acceptable as the boycott began, because just about everyone was ignorant together and learning fast was on everyone's agenda. Most people didn't even know how many gallons there

were in a barrel of oil (42!). What a propitious time then to have an oil man and a PhD mathematical statistician as Secretary of Transportation. Secretary Brinegar was the man of the hour. Imagine how valuable such a man was at the highest levels of government, largely surrounded by squabbling pygmies:

- In the Congress ideas for fuel savings were sometimes fatuous and we learned a lot fast about economic impacts. One Senator said turn off all the heaters driven by diesel -- the hot-house florist industry exploded. Then they said park all those big yachts to save fuel -- the yacht finance industry exploded. Then they said kill the diesel used to make electricity at remote places so people can use chair lifts to go up a hill and ride down and then go back up to do it again. The Senators from Colorado and New Hampshire coughed.
- The White House staffers said switch the refineries to making gasoline; the Secretary politely explained that refineries were highly focused, and specialized on given inputs and given types of outputs, changing over was possible but took substantial time and was not just a matter of flipping a switch.
- The White House was giving serious consideration to gas rationing and coupons were being designed and printed. I was in the Assistant Secretary for Policy's office on the phone with the White House as they went down the list of what parts of the economy would get how much fuel. It, of course, was easiest to take small amounts of fuel from auto use which accounted for the great majority of consumption and give it to something else where a small percentage of the auto share was an immense benefit to small users. When we had finished going down the list of diesel users I asked: "What about railroads?" and the voice from the White House said: "Trains use diesel?"

- Perhaps the quintessential Claude Brinegar story for me was, the Secretary and I were in a meeting with the FHWA Highway statistics staff director and when he told the Secretary that such and such was the state of affairs in energy –the Secretary reached into his top drawer and took out his very large K&E slide rule slid it back and forth a bit and then said: “No!” the poor head of FHWA statistics just about fainted. Brinegar asked” Where did you get that data?” and the answer talked about state reporting etc., to which the Secretary replied: No one uses that!”

In this environment the Secretary was absolutely crucial. He had me institute a reporting system from gas stations all over the country so we knew how many were open, what supplies they had on hand, and how were they allocating fuels. This

report went to the White House every Monday morning with other key statistics and was used to brief Vice President Rockefeller each week and to support cabinet meetings. I learned that Rockefeller was dyslexic and so pages of text were useless, so we instituted a system of just charts and graphics with small bullets – kind of what a standard PowerPoint presentation was like 20 or so years after. Later, when William Simon was named “Energy Czar” and created and led the Federal Energy Administration, they worked together. At one meeting, Simon said to the President: “Our data show...” And Brinegar interjected with a smile: “your data is our data!”

It was my great privilege to be able to serve at that time with a man so well-equipped and well-positioned to serve his country in an hour of need.

BILL COLEMAN'S UNIQUE DECISION-MAKING PROCESS

Donald T. Bliss

A little before 11:00 pm on July 31, 1975, Bill Coleman called me into his office. As he had instructed, I had prepared two alternative drafts of a decision on Virginia Governor Miles Godwin's proposal to build an eight-lane freeway through northern Virginia to the shore of the Potomac River, across from the District of Columbia. A press conference to announce the decision was scheduled for the following morning.

When Bill Coleman accepted President Ford's offer to be Secretary of Transportation, he agonized over whether to accept full time government employment. He had turned down numerous previous offers including several judgeships, preferring to pursue his first love as a law firm managing partner and litigator. But the country was recovering from Watergate, and Ford was anxious to supplement the cabinet he inherited with individuals with diverse backgrounds, stellar reputations and integrity. Having worked with Ford on the Warren Commission and other part time endeavors, Bill could not turn him down.

So William T. Coleman, Jr, first in his class at Harvard Law School, brought to Washington the skills of a litigator, a penchant to understand fully the complete record, to listen carefully to the arguments pro and con, and to explain clearly and in writing his decisions. He thought that a full and fair hearing that would make clear to the public that decisions were to be made on the merits and not through behind the scenes political intrigue was essential to restoring confidence in government in the post-Watergate era. He expressed these views in speeches to the Time Magazine leadership conference and Phi Beta Kappa.

The first of many controversial decisions he faced was whether to approve the eight-lane I-66 highway that would feed commuter traffic from the western Virginia suburbs over the Theodore Roosevelt Bridge into the District of Columbia. A plan to build a new Three Sisters Bridge over the Potomac had been scrapped along with the transfer of highway funds allocated to DC to build the new 98-mile Metro system. There was strong support from the further out residential communities which faced increasingly congested commutes to the capital and strong opposition from DC and near-by Arlington County which feared increased automobile traffic in their jurisdictions and had made a commitment to Metro.

Bill decided to publish in the Federal Register a list of issues that he needed to consider and to schedule a full day public hearing to hear the arguments directly from both sides. Environmental issues, such as air pollution, were a serious regional problem. The Organization of Petroleum Exporting Countries' oil embargo had quadrupled the price of imported petroleum, precipitating an energy crisis. Master plans in DC and Virginia were in conflict.

After the July 21st hearing, Bill called me in, outlined the arguments pro and con, and asked me to draft two decisions, one approving and one rejecting the Virginia proposal. At our late evening July 31st meeting, he told me that he planned to disapprove the proposal on the grounds that constructing an eight-lane freeway to feed peak hour traffic into the District was contrary to emerging policies on energy conservation, air quality, noise, park conservation, the quality of urban living and the region's commitment to rapid transit. However, he instructed me to add certain conditions at the end of the decision: to direct the Department to develop plans to improve access to Dulles Airport, to improve public transit alternatives in northern Virginia, and finally to enable Virginia to submit a modified proposal that addressed the environmental and other concerns

articulated in his decision. I pointed out that this final condition would probably engender another proposal from Virginia that he would feel obligated to approve. He said that condition was essential if he were to disprove the eight-lane freeway.

There was a strong reaction--negative and positive-- the next morning after he announced his decision. A *Washington Post* editorial strongly praised the decision as a wise and forward looking view of national transportation policy, recognizing the need for alternatives to the automobile. As Bill predicted, Virginia and the Department entered into lengthy negotiations which resulted in a compromise proposal for a four-lane highway, with the median preserved for metro expansion (and ultimately access to Dulles) and precedent setting car pool restrictions during peak hours. Like so many of Bill Coleman's decisions, it was a compromise between two competing policies and positions, all of which were achieved with transparency and clearly explained decisions and all of which were upheld after judicial scrutiny.

On the theory that no issue is ever finally resolved, I-66 remains controversial today as plans to widen it are debated. Nonetheless, the issues addressed in Bill's decision remain remarkably prescient, taking on a new dimension with the debate on climate change, and Metro extends to Vienna, Virginia and beyond with the new Silver line providing rapid access to Dulles Airport.

The unique Coleman decision-making style was used for many controversial issues, from admitting the supersonic Concorde to the US, to the introduction of airbags in automobiles, to building a new St. Louis regional airport. In each case Bill conducted a lengthy public hearing and drew upon the thoughtful presentations and extensive record in fashioning a compromise, which was explained in detail in a written decision and upheld on appeal.

There were some interesting variations. At the hearing on airbags, Ralph Nader with little flare for diplomacy opened his presentation in support of a mandate with a comment along the lines of: "some of us feel as strongly about automobile safety as you, Mr. Secretary, feel about civil rights." Controlling his resentment at Nader's implication, Bill calmly responded that as Secretary of Transportation his overarching concern in presiding over a six-hour hearing is automobile safety.

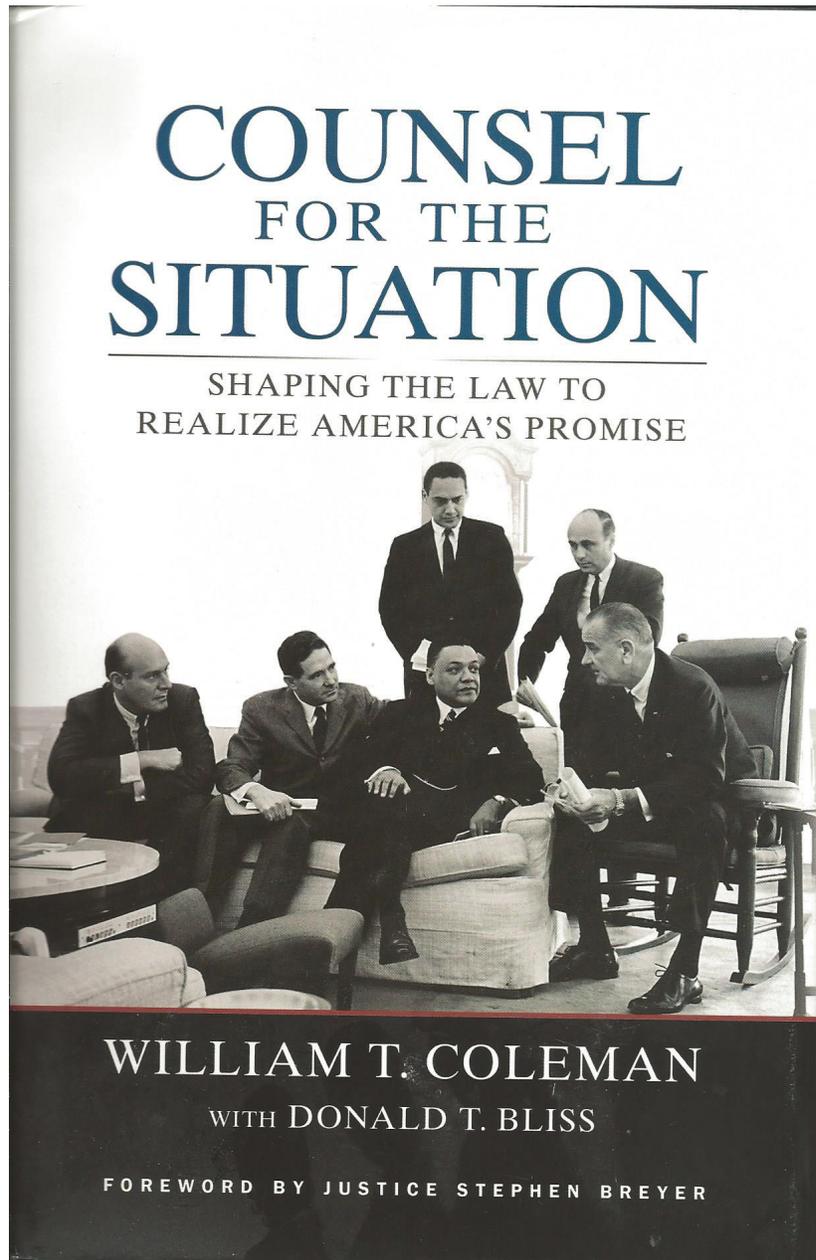
While Bill was agonizing over the Concorde decision, I walked into his office while he was rereading the multivolume Environmental Impact Statement (EIS), all dog eared and underlined. He asked for an aircraft noise specialist to come to his office to explain the meaning of certain measurements. I said: "Bill, you don't have to read that whole EIS, that's what you have staff for." He responded: "I read the statute, which requires the decision maker to address the issues raised in the EIS. I am the decision maker so I have to read it myself."

When Bill issued his Concorde decision, he invited the press to come into a locked room an hour in advance and read the 120-page decision, before he appeared to answer questions. He did not want a sound bite announcement without an understanding of the complex underlying rationale and process. Because there were rumors flying that President Nixon had made a secret deal with French President Pompidou to allow Concorde service to the US, Coleman did not even inform Secretary Kissinger and the National Security Council of his decision, which begrudgingly sent over a couple of staffers to sit in the locked room and read the decision. After an early morning appointment on Capitol Hill, Bill stopped at a pay phone to call President Ford to inform him of the decision. He misdialed and had to borrow a quarter from a *Washington Post* reporter who was tailing him in order to call the president. He

offered to resign if Ford was unhappy with his decision. The president was not.

With cell phones today, Coleman's antics with the Concorde decision likely would not work. Indeed, the Coleman style of decision-making was unique and probably has not been replicated at the cabinet secretary level, although it has been studied in law

schools and schools of public administration. At a time when there is so much mistrust of Washington, it might be useful to examine the benefits of using a transparent process in which the decision maker outlines the issues at stake, presides over a public hearing and explains his or her decision in writing. This is one of the Coleman legacies.



THE REGULATORY ERA

THE NEW DOT TAKES ON TRANSPORTATION REGULATORY POLICY

Jeffrey N. Shane

Introduction: DOT and the Regulatory Challenge

The Department of Transportation Act of 1966 was predicated in large part on Congress's finding that America required "the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith..."¹

Moreover, the Act said, it was necessary to establish the new agency, among other things, to --

- "make easier the development and improvement of coordinated transportation service to be provided by private enterprise to the greatest extent feasible;" and
- "provide general leadership in identifying and solving transportation problems...."²

¹ Department of Transportation Act, Public Law 89-670, 80 Stat. 931 (Oct. 15, 1966), §2(a). Interestingly, while every Secretary of Transportation has routinely declared that "safe" transportation is DOT's top priority, Congress in fact placed "fast" first in its list of statutory objectives.

² *Id.* at §2(b)(1).

There was a small problem with this ambitious mandate, however. Back then, more than a decade before the advent of transportation deregulation, a lot of transportation policy was being made by three independent regulatory agencies – the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. Their authority, like the Secretary's, had been delegated by Congress and had not been diminished by anything in the DOT Act. Indeed, even though the statutes allowed the President to appoint members of these tribunals (with Senate approval), the agencies themselves were technically arms of the Congress. With only minor exceptions, they were not subject to Administration oversight or direction. Their members all had fixed terms and could be removed only for cause, not for policy differences.

The administration bill proposing to establish DOT had been prepared, at President Johnson's behest, by the Department of Commerce under the supervision of its Under Secretary for Transportation, Alan S. Boyd. Boyd had earlier been a member and then Chairman of the CAB and had formed strong views about the extent to which traditional economic regulation had begun to outlive its usefulness. It was also clear that maintaining different regulatory regimes for different modes was inconsistent with developing the "coordinated transportation service" the bill drafters felt was so badly needed. Accordingly, the draft bill that Boyd and his team drafted for President Johnson proposed measures that would phase out the independent agencies' authority.

Interviewed decades later, Boyd said that President Johnson was sympathetic but felt that proposing deregulation and a new Cabinet-level department simultaneously would ensure the failure of both objectives. He therefore insisted that the deregulation language be omitted in the interest of a bill that could be passed quickly. Indeed, in sending the bill to Congress on March 2, 1966, President Johnson wrote: “the Cabinet-level department I recommend will not alter the regulatory functions of” the various agencies. It was a prescient decision: the Department of Transportation Act passed within a matter of months; deregulation would not happen for a dozen more years.

During hearings on the bill, members of Congress were still suspicious. They wanted to know how the new Department would deal with issues that were the province of the ICC, CAB, and FMC. Appearing on behalf of the Johnson administration, Cecil Mackey – who would become DOT’s first Assistant Secretary for Policy and International Affairs – said: “The kinds of cases I think the Department of Transportation should participate in are those which concern broad issues of national transportation policy.”

President Johnson nominated Alan Boyd as America’s first Secretary of Transportation. He was quickly confirmed. Upon taking office on April 1, 1967, he immediately began the process of moving policy in a historic new direction. He created a staff of attorneys and economists and directed them to intervene in significant ICC, CAB, and FMC proceedings for the purpose of advocating, on the record, greater flexibility and a more rational approach to the regulation of transportation. The Department would respect the statutory mandates of the three agencies but would advocate positions based on the administration’s reformist policy convictions. The positions advocated by DOT would be accepted or rejected wholly in keeping with the agencies’ discretion. In other words, DOT’s ability to affect those elements of transportation policy

vested in the independent transportation regulatory agencies would be a function of the quality of the Department’s evidence, analysis, and advocacy.

The DOT team

I joined DOT as a regulatory litigator in the spring of 1968. I had cut my teeth during two years at the Federal Power Commission working on natural gas pipeline rate cases. I wanted to learn about economic regulation in other sectors, however, and working with the team at the new DOT seemed like the perfect way to do it.

And what a team it was! It was led by a young assistant general counsel, Peter Craig, who was quite simply the smartest regulatory lawyer I’ve ever known. Craig had come to DOT from Covington & Burling where he had acquired an astonishingly sophisticated mastery of transportation regulatory jurisprudence. Working closely with intellectual giants in DOT’s policy office – Cecil Mackey, Jim Nelson (on leave from Amherst), Ira Dye, Jim Miller (years later, Director of OMB), Don Agger, Bob Calhoun, Frank Bohan, and others – he oversaw DOT interventions in every ICC, CAB, and FMC proceeding that was deemed to present a significant transportation policy issue.

Despite DOT’s avowed respect for the independent agencies’ authority, the Department’s strategy was controversial from the start. First of all, the agencies believed *they* were the appointed repositories of the public interest in their subject matter areas – not DOT -- and so it was awkward to have DOT appearing before them and purporting to instruct them on what the public interest required.³

A further complication arose at the appellate stage. Decisions of independent regulatory agencies were appealable in court. If DOT’s arguments were rejected, the Department might well want to seek

³ “Executive Intervention in Rate Cases Stirs Debate on Regulatory Policies,” *National Journal*, July 19, 1970, p. 152.

judicial review. When an aggrieved private party filed an appeal from a regulatory decision, the Civil Division of the Department of Justice would defend the agency's decision. The DOJ's Civil Division also represented DOT, however. Obviously DOJ couldn't represent both sides in a dispute between DOT and a regulatory agency. So DOT's ability to challenge in court an agency decision it didn't like might well be compromised by DOJ's view of the stronger position. In effect, DOT had to "litigate" before the Civil Division first and win its support.

Advocating intermodalism

These complications notwithstanding, DOT stayed the course. Among DOT's most important contributions through its participation in these agency proceedings was the advancement of intermodalism.⁴ With different agencies regulating different modes of transportation, efforts by the different modes to work with each other had become excessively complicated and inefficient. Jurisdictional conflicts had become an increasingly nettlesome impediment to the coordinated and efficient transportation system DOT was supposed to encourage.

Peter Craig and his team monitored regulatory agency proceedings closely. They found no dearth of opportunity to advocate change in the interest of a more efficient, more coordinated, and indeed more rational approach to transportation regulation.

In retrospect, the cases are amusing. My favorite was the *Substituted Service Investigation*.⁵ The

⁴ The terms "intermodal" and "intermodalism" did not actually find their way into DOT's enabling legislation until a quarter-century after the passage of the DOT Act. They first appeared in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914 (Dec. 8, 1991). Title V of ISTEA added to the Department's mission a mandate to "coordinate Federal policy on intermodal transportation and initiate policies to promote efficient intermodal transportation in the United States...." ISTEA, § 5002, 105 Stat. 2158, now codified at 49 U.S.C. §301. The 1991 legislation also established within DOT an Office of Intermodalism and an Advisory Council on Intermodal Transportation.

⁵ CAB, *Substitution of Other Service for Air Transportation Rule*

CAB launched the proceeding in order to revisit air carriers' longstanding practice of shipping freight by truck in order to expedite a delivery that might otherwise have been delayed because of weather, a mechanical defect, or some other anomaly that prevented the air carrier from moving the freight by air. The Board wondered whether it was fair in such cases that shippers who had paid a premium for air transportation might get only surface transportation. What rate should they pay? What notice should air carriers provide of their substitution of motor service for air service?

DOT's view, captured in a 28-page brief that included a tour of substituted service through history (e.g., stage coaches on ferry boats), was that the Board should leave everything just the way it was. An air carrier using substituted service had turned itself into a shipper vis-à-vis the motor carrier and would pay whatever rate the motor carrier required for the movement in question. The air carrier's customer – the actual shipper – would have no interest in the air carrier-motor carrier arrangement as long as the freight reached its destination in keeping with expectations. The only notice required should be set forth in the air carrier's tariff, noting that substituted motor-for-air service would be used at the air carrier's discretion when necessary to ensure timely delivery. The Board went along.

But persuading the CAB not to complicate the practice of substituted service with unnecessary regulation wasn't sufficient; we also needed to address the question with the ICC as well. Looking at exactly the same practice in the context of an application by some truckers for contract carrier authority, the ICC had held that the only way an air carrier could put freight on a truck was (1) if it had established a through route, joint rate agreement with the motor carrier, or (2) if it had applied for and obtained surface freight forwarder authority

Proceeding, Docket 19797 (1969).

from the Commission. “The Commission’s decision,” DOT wrote, “if permitted to stand, would be a step backward in the quest for an efficient, coordinated system of transportation.”⁶

In other proceedings, the Department successfully persuaded the CAB to allow long-haul motor carriers to acquire air freight forwarding companies for the first time;⁷ persuaded the ICC to allow trucks and buses to deviate from authorized routes in order to take advantage of the new Interstate System;⁸ argued that the CAB should extend the exemptions from economic regulation enjoyed by smaller air taxi operators to the operators of larger commuter aircraft,⁹ and asked the CAB to relax restrictions on air taxi operators in order to the Northeast Corridor.¹⁰

Advocating transportation “at the lowest cost”

Of all of DOT’s regulatory interventions, its participation in ICC motor carrier rate cases was by far the most controversial. Organized into “motor freight bureaus,” long-haul truckers could not raise their rates without approval from the Commission. The LBJ administration was keeping an eye on inflation and thus instructed DOT to challenge a number of rate increases that might otherwise have been approved routinely. We did so and inadvertently discovered a classic case of a regulatory agency captured by the industry it was meant to regulate.

Perhaps the most visible of these cases was one involving a rate increase sought by the

⁶ ICC, Petition for Reconsideration of the Department of Transportation, in A.A.A. Cartage, Inc., Contract Carrier Application, Docket MC-127730 (Sub-No. 1), p. 8.

⁷ CAB, *Motor Carrier-Air Freight Forwarder Investigation*, Docket 16857 (1969).

⁸ ICC, *Motor Service on Interstate Highways, Passengers and Property*, Ex Parte Docket MC-65 (Sub-No. 2).

⁹ CAB, *Part 298 Weight Limitation Investigation*, Docket 21761 (1970).

¹⁰ CAB, *Northeast Corridor VTOL Investigation*, Docket 19078.

Middlewest Motor Freight Bureau.¹¹ The simple question before the Commission, as always, was whether a rate increase sought by the proponents was “just and reasonable” within the meaning of the Interstate Commerce Act. Motor carrier rate increase applications typically followed the renegotiation of labor contracts. If the Teamsters had won a 5% increase in wages during a contract renegotiation, the motor carriers promptly showed up *en masse* at the ICC to ask that they be permitted to pass the increase through to shippers through higher rates. The Commission had typically gone along.

But things had begun changing after DOT started showing up. Using the formidable economic talent available within its new Policy office, DOT attacked the truckers’ rate justifications with highly sophisticated and multi-pronged analyses. We looked at the truckers’ cash flow, capital structure, rate of return on investment, and turnover. We cross-examined their witnesses in hearings, challenging the quality of their traffic forecasts and their expense projections. We produced powerful evidence of the benefits truckers had enjoyed through new, technology-driven efficiencies in logistics, better roads, and other factors. The truckers, we were able to show in case after case, had simply failed to demonstrate the need for the rate increases they sought.

The effort was successful in the *Middlewest* case; the Commission denied the proposed rate increase in keeping with the Department’s position. But the case involved a new wrinkle. Under ICC procedure, the Commission could permit truckers to begin collecting a proposed increase even before its justness and reasonableness had been assessed. According to Commission regulations, if any part of the proposed increase was disallowed at the end

¹¹ ICC, *Increased Rates and Charges, from, to and Between Middlewest Territory*, Docket No. 34971.

of the Commission's proceeding, the Commission could require the carriers to refund it to the shippers who had paid it.

As sensible as this procedure seemed, however, nobody could find any evidence that the Commission had ever ordered truckers to refund a disallowed rate increase. It created a novel issue.

It had taken the Commission 13 months to render a decision on the Middlewest Motor Freight Bureau's proposed rate increase, during which time the truckers had been charging the increased rates. To the truckers' shock and dismay, the Commission for the first time in history ordered them to refund the disallowed portions to their shipper customers. Wasting no time, the truckers appealed to a friendly ICC Commissioner for relief, arguing that it was physically impossible for them to calculate and remit the refunds ordered in the time prescribed by the Commission's order. It was a successful tactic. Commissioner Laurence K. Walrath promptly issued an order postponing the Commission's deadline for making the refunds for 10 weeks – thus single-handedly overruling an order of the full Commission and giving the time they wanted to mount an effort to overturn the refund order completely.

I was one of the DOT lawyers working on the case. I can still remember the outrage I felt at the way the motor carrier freight bureaus were able to manipulate the ICC. I immediately drafted vehement objections to the postponement that Tenney Johnson, Acting General Counsel at the time, enthusiastically signed. We argued that Walrath's order represented a violation of Commission procedure and that, if the refund order were ultimately overturned, the truckers would have collected rates for 18 months that they had "failed to prove were just and reasonable." They had enjoyed interest-free use, we said, of some \$6.47 million "found properly belonging to the shippers."

DOT and the shippers ultimately won the case, but it was a Pyrrhic victory. The full Commission confirmed its refund order, but then approved an immediate 6% increase.

It wasn't all for naught, however. The *Wall Street Journal*, reflecting on the case in an editorial published shortly after its conclusion, wrote:

If this sort of price fixing had not achieved legal sanction, the chance that Midwest truck lines could have set rates that were truly "unreasonable" would be slim... . With more competition in transportation generally, it would be unnecessary for august commissioners in Washington to ponder, seemingly almost endlessly, the "proper" charge for carrying eggs from Des Moines to Chicago and steel from Pittsburgh to Paducah. ... *If the Transportation Department goes on shaking up the system, maybe more people will see the logic of a free market.*¹²

Conclusion

All told, DOT intervened in 72 regulatory proceedings during its first three years of existence: 33 before the ICC, 29 at the CAB, and 10 at the FMC.¹³ These interventions, most of which were successful, cumulatively exerted a profound impact on the conduct of ICC, CAB, and FMC regulation and ultimately on regulation itself. By the end of the next decade, deregulation of airlines, motor carriers, and railroad undoubtedly seemed less radical because of the flexibility already introduced into many of the agencies' programs. Unquestionably, DOT's early advocacy had a lot to do with paving the way.

¹² *Wall Street Journal* editorial, Sept. 24, 1969 (emphasis added).

¹³ *National Journal*, July 19, 1970, p. 153.

EARLY POLICY ISSUES

Robert L. Calhoun

Note: I have to do this from memory since the records involved were either left at DOT when I left in 1971 or have been lost or discarded. However, I have told these “tales” to a number of people over the years and, allowing for “some improvement in the telling” I think they are fairly accurate.

The Railroad Problem

I came to DOT from the Interstate Commerce Commission (ICC) and apparently was the only person in OST having any real knowledge of the railroad industry which was extensively regulated by the ICC. DOT was still new enough that relations between OST and the modal administrations, in this case the Federal Railroad Administration (FRA), were not always warm and fuzzy. In addition, FRA at the time was a loose collection of programs—rail safety programs inherited from the ICC, high-speed ground transportation etc. However, at the same time, there were some really good people in what passed for a policy shop in the FRA—Jim Hagen, Jim McClellan and Bill Loftus with whom I developed good working relationships as the “railroad guy” in OST.

The Nixon Administration had apparently promised the railroad industry that it would tackle the industry’s problems. Under Paul Cherington’s direction, there was a three-pronged effort: 1) get the railroads out of the money losing passenger business; 2) find ways to enhance the industry’s financial basis, and 3) reform of the economic regulatory structure.

The first item led in time to the creation of Amtrak which I think has been well-covered by the

Gallamore/Meyer book. Two additional points: First, an additional take on Jeff Davis’ comment on John Volpe’s threat to resign over a possible veto of the Amtrak legislation. I was in a meeting in Jim Beggs’ office with the folks from FRA and the Penn-Central, the first of many meetings to attempt to stave off the eventual collapse of that company. Secretary Volpe was supposed to be at the meeting but didn’t show so Beggs started the meeting without him. About a half hour into the meeting, a very wet (it was raining that day) and angry John Volpe came into the meeting, stating he had come from the White House and put his resignation on the line if the Amtrak bill got vetoed. This must be the letter Davis speaks about. I was told later that he had gotten out his car and walked partway back to DOT, accounting for the drowned look. Second, the Amtrak legislation required the Secretary to submit to Congress a map showing the proposed routes for the new passenger rail system. John Olson (C. Bakera’s successor as S-5) was tasked to chair this effort with myself, Jim McClellan and others from FRA and some folks whose names I do not recall from other parts of the Department. We went to work with a big railroad map of the United States and a box of colored pencils. As routes were added, Jim and others from the FRA objected most of the routes being penciled made little sense from a ridership point of view and even less from a financial perspective. No matter, that was not the purpose of the drill; we wanted get the map approved so the exercise was purely political. Hence, the addition of a route from Baltimore to Parkersburg West Virginia (the “Harley Staggers Special” after the Chairman of the House Commerce Committee) or the “Vance Hartke Express” from Chicago to Indianapolis. The Map got approved but most of these “special” trains disappeared in later years.

The second part of the effort had to deal with the fact that the White House didn’t want to spend any money. As a result, there were several small initiatives, two of which I was involved in.

First, a perennial problem facing the industry was a shortage of freight cars. One proposal was to make investment in freight cars more attractive by shortening the tax depreciation schedule from 14 years to five. We got Treasury to sign off on the idea at a lunch (3 martini version) with Paul Cherington and Edward Cohen(?) Assistant Secretary of the Treasury for Tax Policy and myself. This together with legislation to add a financial “incentive” to the per diem rate (the rent one railroad pays for using another railroads cars) dealt with the problem.

Second, I got a call from C. Baker’s office to expect a call from Arthur Burns who at that point was a Senior Counselor to President. In due course, he called and his query concerned the arcane subject of discriminatory taxation of railroad property by state and local governments, a very large grievance of the railroad industry particularly in New Jersey and the West. As it happened, I was familiar with the issue from my days at the ICC. There had been legislation to address this issue in several sessions of Congress and I urged Burns to get the Administration to support it. I don’t remember what happened after that but the subject came again and was eventually enacted as part of the Staggers Act in 1980.

Washington Airports

I may have been at DOT a week at most when I was asked to go to a meeting, chaired by Undersecretary James Beggs concerning Washington National Airport. Apart from being an occasional passenger, I knew nothing about aviation or airports. I assume I was sent as the TPI rep because I was the new kid on the block. In any event, it was a big meeting. In addition to Jim Beggs, others at the meeting who later became famous in other ways included C. Baker (in his then capacity as Deputy Undersecretary (S-5) and Jim Wilding, then Manager of Washington National Airport (WNA) and later the first President and

CEO of the Metropolitan Washington Airports Authority.

Issue on the table—the need to upgrade Washington National Airport (WNA). WNA, constructed in 1940, and Dulles International Airport (IAD), opened in 1961, were the only two civilian airports in the country owned and operated by the Federal Government, under a division of the FAA called the Bureau of National Capital Airports or BUNCA. BUNCA was headed by Arvin Saunders and it was his task to convince the assembled group to support the expenditure of several millions to modernize WNA. As support, BUNCA had commissioned a fancy study of the needs and plans for WNA. Apart from money issues, the more fundamental issue was the future status of WNA. If I recall correctly, the original idea been to shift all air traffic to IAD, particularly in light of the introduction of jet plane service in the late ‘50s, and close WNA or limit it to General Aviation. However, the convenience of WNA to members of Congress and others of influence soon precluded that, while opposition to jet noise in Arlington and Alexandria seemed to block any new money for improvements.

I do not recall how it evolved, but the discussion started to turn in the direction of getting the Federal Government out of the airport business. Not surprisingly, the FAA thought this was a terrible idea. There was semi-serious discussion of putting them up for sale to the airlines or some other private entity. On paper, WNA showed a profit since no real money was being spent on it while Dulles was an expensive white elephant. That idea got dropped. Regionalism was all the rage with the recent establishment of WMATA and thoughts turned to doing the same thing with the airports. Paul Cherington, working with the FAA, was tasked by the Secretary to undertake this effort. Somewhere along the line, it was thought important to make this effort truly regional by including Baltimore’s Friendship (as it was then called) Airport in interstate compact. The high

point for me was the meeting between Cherington and staff and members of the Baltimore Airport Board. The contrast could not have been greater. For those who remember Paul Cherington, he was the very essence of the Harvard B School from whence he had come in dress, accent and manner. He was also not that tall. By contrast, the Baltimore representatives were mostly quite tall and gave the general impression of being kind of folks you would not want to meet on dark night. The meeting did not go well.

After some further travail, a bill to create a regional airport authority to operate WNA, and IAD and Friendship (if it wanted in) was introduced by Senators Mathias (MD) and Spong (VA). At the

Senate hearings on the bill, Secretary Volpe was doing fine until he was asked an out of left field question about how the METRO system then under construction was going to pay its operating cost. As I recall the situation, he responded that the “profits” from WNA could help. The bill vanished.

Epilogue

With the failure of the compact bill, WNA continued to decay with leaking roofs, falling plaster and the like. Except for two small terminals built by the airlines at the far end of what is now Terminal A, no real improvements were made in WNA until the creation of the Metropolitan Washington Airports Authority.

PRESIDENT FORD AND DEREGULATION

John W. Snow

In early 1975, there was growing concern in the White House about the state of the economy -- slow growth, rising inflation, high unemployment and an incipient budget deficit. These were the days of the “Whip Inflation Now” buttons and the beginning of what became known as stagflation. As part of the government’s response, President Ford established a working group drawn from the major cabinet agencies to identify ways in which government policies and rules might be contributing to the problem. Secretary Coleman asked me to serve as the DOT representative on the council known as the President’s Domestic Policy Review Group. Our task was to identify government-imposed impediments to greater efficiency and productivity to the US economy. My task was to coordinate the Department’s internal effort in response to the Department’s request; and as it turned out we had a lot to contribute.

Since its earliest days the Department had been making the case for less regulation of the transportation industries. Despite a great deal of good work, those efforts had not met with great success either in Congress or in the key regulatory agencies -- the Interstate Commerce Commission, which regulated rates for surface transportation, and the Civil Aeronautics Board, which regulated rates for air travel.

President Ford’s charge to the Domestic Policy Review Group gave renewed impetus to the Department’s efforts and in the end put us at the forefront of the deregulation movement. A year earlier the Department had submitted rail reform legislation to the Congress as part of our efforts to revitalize the railroad industry in the wake of

the collapse of the Penn Central and other eastern rails. In response to the President’s directive, we developed a revised and more far-reaching proposal, the Railroad Revitalization Act, which went to Congress in May of 1975.

We also reviewed prior analytical work in the Department on the aviation and trucking industries which suggested they were ripe for regulatory reform as well. Aviation and trucking appeared to be naturally competitive industries that were being regulated as if they were public utilities with tight controls on entry, exit and pricing to the economic detriment of passengers, shippers, and the economy as a whole. To no surprise, the trucking and aviation regulatory system enjoyed broad support among carriers, the labor unions, and even the capital markets, which saw deregulation as a threat to the financial stability of these companies and to their bond holders. The status quo was deeply entrenched, enjoying powerful political support. In pushing for reform, we knew that the Department faced an uphill battle to change the system, and would bear a heavy burden of proof to get proposals approved by the White House and acted upon by Congress.

In developing our reform proposals for motor carriers and aviation, we decided we needed to supplement the traditional academic economic efficiency arguments with real-life on-the-ground examples of how regulation operated in practice, pointing out the absurdity and waste associated with it. So our internal team undertook a close examination of some of the rules and how they worked in practice. What we found was both humorous and telling, providing many anecdotes which were to become part of our case for reform.

For example, we identified a number of motor carriers that had a license to haul a shipment from point A to B, but were not allowed to haul a return shipment back from B to A thus resulting in many empty miles and lots of extra costs. The energy

crisis the country was going through at the time underscored the need for change and we quantified the enormous amount of wasted fuel caused by the limitation on backhauls.

The CAB had a lot of regulations which were equally absurd. One required air carriers to use small inefficient planes rather than the larger and more efficient planes that were readily available, so it took a lot more planes, a lot more fuel and a lot more pilots to move a given amount of freight. The CAB's pricing rules caused the airlines to charge fares that were far above a competitive market level, denying passengers the kind of low-cost airfares that we take for granted today while planes flew half empty, again a great waste of fuel.

Relying on our internal efforts to document the failures of motor carrier and aviation regulation, the Department produced two far-reaching legislative proposals over the next ten months -- the Aviation Act of 1975 which was sent to the Congress in October and the Motor Carrier Reform Act which went to Congress in November. These two proposals -- along with the earlier rail measures -- served as a high water mark for the Domestic Policy Review Group. I think it's safe to say that DOT had the most ambitious program for regulatory reform of all the cabinet agencies and proved most responsive to President Ford's request.

In getting these proposals out of the White House and up to the Congress, the Department was blessed by the extraordinary leadership of Bill Coleman and John Barnum; both talented,

experienced lawyers with a gift for advocacy. They championed the Departments' deregulation efforts and made possible the favorable White House response. Bill Coleman had a wonderful perspective on the role of a cabinet secretary. I recall being with him at some point in his office where he gestured east to Capitol Hill and then west to the White House and said: "Your job is to get me good ideas, good proposals; and then my job is to take them to both of those places." And that's exactly what he did for the Department's deregulation program.

But getting Bill on board was no cakewalk. On the aviation proposal, he had to overcome deep reservations about how deregulation would work in practice. At one of our meetings he said: "If we have free entry into the aviation industry, what's to stop some fly-by-night operator leasing some cheap old equipment and putting it into service at bargain basement prices that are ruinous for the other airlines?" We eventually convinced him that there were ample protections for this kind of scenario. But dealing with his skepticism and the Deputy Secretary's probing questions made us all much better advocates with both the White House and the Congress.

While our efforts did not yield legislation during the Ford years, I think it's safe to say that the work DOT did during the Ford Years on transportation regulatory reform paved the way for the air and truck deregulation that came only a few years later and I think all of us who worked at the Department can take great pride in our efforts.

THE USDOT'S LEADERSHIP IN RAILROAD DEREGULATION

Eric Beshers, Steven Ditmeyer, and
Robert Gallamore

Economists and other analysts had long called for economic deregulation of U.S. railroads, but genuine political support did not appear until the 1970s. The driving force was the bankruptcy in 1970 of the Penn Central, a large railroad in the Northeast, together with the bankruptcies of several other, smaller, northeastern railroads and a couple of middle-sized Midwestern railroads. The Penn Central bankruptcy was the largest bankruptcy in American history up to that time, and it made clear beyond any doubt that the railroad industry was in severe financial straits. For a brief time, nationalization was actually discussed as an option, although most parties found that idea to be distasteful. Realizing that substantial and unprecedented new efforts would have to be made in order to ensure continued railroad service in the Northeast, however, Congress created a new railroad company, Consolidated Rail Corporation (Conrail), to take over and operate the assets of the bankrupt railroads. Conrail, it turned out, was necessarily owned by the federal government for several years (in contrast to long American tradition) before its securities could be sold to the general public, i.e. to private investors.

By the time Congress was grappling with the problems of establishing Conrail as a publicly owned if not operated railroad,¹⁴ it was widely accepted that excessive regulation was one of the major causes of railroad financial problems. Other principal factors were that freight railroads

were required internally to cross-subsidize deficit-producing passenger operations, and the increasing importance of rail-competitive intercity motor carrier service as new links the modern Interstate Highway System were being completed. Additionally, the Northeast railroads in bankruptcy were burdened with too many employees under restrictive labor agreements, and too many miles of lightly-trafficked, redundant, and consequently under-maintained rail lines. Congress largely resolved the regulation issue in two major pieces of legislation: The Rail Revitalization and Regulatory Reform Act of 1976 (the 4R Act) and the Staggers Rail Act of 1980 (named for Representative Harley O. Staggers (D-WV), a Congressman who was instrumental in securing the enactment). The 4R Act dealt with a number of major railroad issues aside from regulation. The Staggers Act was primarily concerned with lessening the regulatory burden on railroads, then estimated by economists to cost the economy at least two billion dollars annually.

Deregulation of Railroads in Brief

Rail regulation was transformed during the period 1973-1985, and it changed yet again in 1995. There were six stages in the process:

1973—Passage of the Regional Rail Reorganization (3R) Act, establishing the United States Railway Association to plan consolidation of the bankrupt Northeast railroads.

1976—Passage of the 4R Act (described further below)

1976–1980—Lukewarm implementation of the 4R Act by the Interstate Commerce Commission (ICC)

1980—Passage of the Staggers Rail Act (also discussed in more detail below)

1980–1985—Initial actions by railroads and

¹⁴ The main precedent in U.S. railroad history was the reverse: Under emergency mobilization during World War I, the federal government took over control of all railroads, but not their ownership, which was left with private companies.

shippers to take advantage of Staggers Rail Act reforms, including especially with more reliance on private carrier-shipper rate and service contracts, more rate flexibility, and easier line abandonments or transfers to new railroads outside traditional labor agreements.

1995—Passage of the ICC Termination Act and replacement of the 100-year-old Interstate Commerce Commission with the Surface Transportation Board (STB).

A widely-held belief is that the Interstate Commerce Commission (ICC) made the regulatory changes contained in the 4R Act ineffective through timid and cautious implementation. The members of the Commission were either afraid of, or in agreement with, the political forces opposed to deregulation. The ICC's half-hearted implementation of the 4R Act meant that the economic fortunes of railroads continued to decline through the remainder of the 1980s, a period characterized by "stagflation" – high energy prices, general inflation, and recession, especially in the old industrial Northeast. These circumstances were the main reason Congress passed the Staggers Rail Act with its more aggressive deregulatory agenda.

The political view that the venerable but dysfunctional system of railroad regulation had to be radically changed had begun to take hold in the 1970's, but agreement was by no means universal. Not all of the railroads were ready to agree on what they wanted in the way of change, and indeed, not every railroad even recognized the need for widespread regulatory reform. Unsurprisingly, substantial economic reform is a long process, and ongoing political tension regarding the extent of railroad deregulation has persisted over the years. It is important to note, especially in view of the 50th Anniversary this year (2016) of the Department of Transportation's establishment, that the main impetus for the Staggers Rail Act came from within the Carter Administration's DOT. President

Jimmy Carter had advocated lessening of federal regulation in his election campaign, and Carter appointees at DOT (in FRA and the Office of the Secretary) spearheaded drafting of the legislative vehicle. The DOT proposal was approved by the White House and sent to Committees in both the House and the Senate for further refinements, hearings, and Congressional approval, before it was signed by President Carter on October 14, 1980.

In addition to the Staggers Act, Congress enacted a number of specific strategies to strengthen Conrail, including funding for catch-up on maintenance of rail lines and locomotive fleets, buyouts of redundant employees, discontinuance of responsibility for passenger service, transfer of commuter operations (and their operating deficits) to local governments, and liberalization of rules for abandoning light density lines or shifting their operating authority and labor arrangements to other railroads. These measures enabled Conrail to become profitable in the early 1980s and to be sold to public investors in the largest Initial Public Offering (IPO) to that time, in 1987.

Key Provisions of the 4R Act and Staggers Rail Acts

Some key regulatory provisions of the 4R Act were:

Market Dominance: Under the new 4R Act provisions, the ICC could not find a railroad rate to be unreasonably high unless it first found that the rail carrier had "*market dominance*" over the transportation to which the rate applied. *Market dominance* was defined as the absence of *effective competition* from other carriers or modes of transportation. This provision was designed to permit rates to be set by competition in situations in which effective competition existed. The ICC was directed to establish standards and procedures for making market dominance determinations.

Revenue Adequacy: The ICC was directed to develop reasonable standards and procedures for establishment of *adequate levels of revenues* (defined as the level of rates needed under economical and efficient management to cover a rail operator's *total operating expenses, depreciation and obsolescence*, plus a fair, reasonable and *economic return on capital employed* in the business).

Exemptions: The ICC was authorized, on its own initiative or in response to a carrier or shipper's petition, to grant *exemptions from regulation* when regulation was not necessary to effectuate the policies of Congress or would otherwise serve little or no purpose.

As documented in a remarkable report drafted by the Federal Railroad Administration and issued by Secretary Brock Adams in October 1978, *A Prospectus for Change in the Railroad Industry*, the Commission was especially weak in establishing standards for determining *market dominance* and *revenue adequacy* under the 4R Act. These administrative failings essentially meant that the 4R Act would be of little help in returning railroads to self-sustaining financial viability. Basically, the ICC made it easy for a shipper complainant to show its serving railroad had *dominance* of the relevant market. These Commission standards provided ways of establishing *market dominance* without actually addressing the issue of the presence or absence of competition. The *revenue adequacy* standards were vague and not rigorously tied to a rail firm's *return on invested capital*, and therefore it was impossible for rail enterprises to recover their *sunk costs*, whether or not they could exit the industry.

During this period, however, the Commission was changing, as terms of old members expired and they were not reappointed. The new members appointed by President Carter were strongly supportive of deregulation; by the end of the

decade, these members had the upper hand and a new Chairman of the Commission was their leader. By 1978 in fact, the reformers had enough power to issue an order exempting all intermodal traffic on railroads from regulation, and a blanket exemption of traffic moving in boxcars followed.

Some key provisions of the Staggers Act were:

Rate Reasonableness and Revenue Adequacy: Congress made it clear that a railroad could establish any rate for transportation or other services it provided. It could price-differentiate, but it could not illegally discriminate against any persons or places. The Commission could not consider whether a rate was reasonable, however, unless it first determined the railroad had market dominance over the transportation to which the rate applied, otherwise; the Commission had no right to question a rate. Further, the Act directed the Commission, when it did consider rate reasonableness cases, to take into account the provision of the Act that railroads should have *adequate revenues*.

Market Dominance: Congress provided that the Commission could not find market dominance if the rate challenged were below:

160% of variable cost before September 30, 1981,

165% of variable cost in the year ending September 30, 1982,

170% of variable costs in the year ending September 30, 1983,

175% of variable costs in the year ending September 30, 1984,

and 180% of variable costs in years beginning October 1, 1984.

In the Staggers Rail Act, Congress also directed the Commission to determine whether or not ***product***

and geographic competition should be considered in making market-dominance determinations. *Geographic competition* is the ability of the shipper or receiver of the product to ship it to other destinations (or to obtain it from other sources) that do not involve the use of the rail carrier in question. For example, an electric power generating plant may be able to receive coal from several mines in different places, each mine served by a single railroad, but not all by the same railroad. The result is that no one railroad has market power over the level of rates for coal actually moving to the power plant. *Product competition* would exist in the example if the power plant had the ability to use fuel other than coal in generating electricity, e.g., natural gas delivered by pipeline.

Revenue Adequacy: Congress directed the Commission to set revised standards of revenue adequacy and to determine annually which railroads had been able to realize levels of revenue adequate for sustainable reinvestment in the firm.

Exemptions: Congress expressly permitted shippers and rail carriers to enter into rail transportation contracts that would be exempt from the jurisdiction of the Commission. Copies of these contracts had to be filed with the ICC, but were to be kept secret. In addition, Congress revised the exemption provision of the Act to *require* the Commission to exempt from regulation any type of transportation or transaction, when:

- (1) regulation was not necessary to further the stated policy of Congress; and
- (2) the transaction or service was of limited scope, *or* regulation was not necessary to protect shippers from an abuse of market power.

In the report accompanying the Staggers Act, Congress made clear that it intended the Commission to exercise its new exemption power aggressively, and indeed the Commission did so.

The ICC soon exempted from all regulation the transportation of a wide range of commodities and products, including fresh fruits and vegetables, trailer and container on flat-car service, all commodities moving in boxcars, all agricultural products except grain and soybeans and many others. In addition, the Commission decided to exempt from regulation a broad range of structural transactions conventionally included within its regulatory scope: These included certain line acquisitions, line abandonments, and trackage rights agreements.

With passage of the 1980 Staggers Rail Act, the ICC, now dominated by reformers, aggressively implemented the new law. In the process, the Commission reversed many other policies and precedents that had long hindered the railroads' ability to be financially self-sustaining. Again, among these issues the three most important were:

Market Dominance: The Commission revised its market dominance guidelines permitting consideration of intermodal, intramodal, geographic and product competition in determining whether a railroad had market dominance.

Revenue Adequacy: The Commission revised its revenue adequacy standards and adopted an economically rigorous single factor determination of whether the railroad had sufficient revenues to earn a return on its net investment equal to its cost of capital determined on a forward-looking basis.

Rate Reasonableness and Ramsey Pricing: In its 1985 *Coal Rate Guidelines* decision, the Commission adopted an economically rigorous approach to maximum rate reasonableness that recognized the peculiarities of railroad operating parameters and cost structures, and explicitly allowed railroads to charge differentiated demand-based rates to recoup overhead costs using a strategy to mark-up prices over variable costs.

These mark-ups over variable costs are based on *inverse elasticities of demand*, or “perfect pricing,” meaning that a customer’s willingness to pay determines that commodity’s contribution to overhead (also known as “charging what the traffic will bear”). The inverse elasticity rule was worked out by a British economist named Frank P. Ramsey in the 1920s, and thus it is called *Ramsey pricing*. In natural monopoly situations, Ramsey pricing maximizes public utility, subject to a profit constraint covering total costs. It could not have been used under traditional ICC rate regulation, of course, and without it, solving the age-old “Railroad Problem” was impossible (see next section below).

In these complex ways the three critical issues of *Market Dominance*, *Revenue Adequacy*, and *Rate Reasonableness* came together in the application of regulatory reform legislation to the actuality of modern railroad economics, accomplished through the 4R and Staggers Rail Acts. There these three economic and regulatory principles will remain as long as steel wheels roll on steel rails and American country musicians play and sing the railroad blues.

Reprise: Why There Was a “Railroad Problem”—and Why Deregulation Was the Needed Remedy

For almost exactly one hundred years (back to the writings of Charles Francis Adams -- he the son and grandson of American presidents) the “Railroad Problem” had been understood to be because high initial (or *threshold costs*) had to be “sunk” in building a railroad and amortized over time. The classic railroad economists following Adams realized there would be common or shared costs difficult to attribute to specific products the enterprise might want to sell. As important, the economists knew these overhead fixed costs would result in *economies of scale* (declining unit costs with greater output) that to this day give importance to greater *density* of railroad operations.

The public relations disaster for railroads was that *economies of scale and density* meant railroads were so-called “*natural monopolies*” – an often pejorative and misunderstood term implying that railroads had to be regulated to prevent abuses. To be sure, in the days of the “robber barons” the railroads were fully capable of scandalizing their own reputations, but the academic purgatory of the label “natural monopoly” didn’t help.

It was an article of conventional economic wisdom that unrestricted natural monopolies would grow in size and economic power until they drove out all competition. Natural monopolies and railroad economies of scale meant mainly one thing to agrarian and Progressive Era politicians in the historical period between the Civil War and the end of World War I – railroads had to be regulated as to rates, services, mergers, issuance of financial securities, and other business practices. Otherwise, if railroads found it to their advantage, they would do such as charge more for short hauls than longer hauls, drive out competitors with predatory rates and practices, water their public stock, discriminate among different customers in the same market, abandon and strand customers that are inconvenient or costly to serve, and discontinue services to out-of-the way places.

On the other hand, the classic transportation economists eventually had to point out that enforcing a *common carrier obligation* to meet all requests for service *regardless of demand levels and operational costs*, and limiting the ability of railroads to recover overhead *sunk costs*, would soon bankrupt railroads. And unless a rail firm were folded into a larger railroad company with a corporate merger, a bankrupt railroad (or simply one enduring under the curse of stranded, underutilized assets), unlucky railroads may not even be allowed to exit the industry.

Before the regulatory reforms of the late 1970s, railroads were required to operate services below

cost in the face of publicly subsidized competition – holding their rates high so that favored industries could benefit from use of subsidized rival modes operating under the rail rate umbrella. Rail rates themselves were developed in secret cartel-like meetings of regional “rate-bureau” members, following often uneconomic precedents, arbitrary rules, and unfair voting schemes. Approvals of final rate schedules were subject to adversary proceedings and challenges, and unpredictable general (across-the-board) adjustments or limitations.

Of course this system was not sustainable, but its political supporters (and the regulatory regime under which it operated) held on to rigid administrative regulation as long as possible. It took outside reformers – mainly staffers in the Department of Transportation, a few enlightened shippers and their allies on Capitol Hill, new leadership at the ICC, and comprehensive reform legislation to overturn the old order. The Staggers Rail Act replaced the old rigid rate patterns –with flexible rates set in public gatherings limited to market participants. And the Staggers Rail Act opened the door to its most lasting and innovative rate-making outcome, *long term private contracts for rates and services* negotiated between carriers and shippers under the discipline of market forces.

Creation of the Surface Transportation Board (STB)

The sunset of the ICC, which had been established in 1887, occurred on December 31, 1995, under the provisions of the ICC Termination Act of 1995 (ICCTA). In its place, the STB was established on January 1, 1996, as a decisionally independent, bipartisan, adjudicatory body, with jurisdiction over certain surface transportation economic regulatory matters. The 1995 legislation provided for the STB to be housed organizationally within the Department of Transportation for administrative simplicity and efficiency, but that status never

set well with STB Board Members. The ICCTA also eliminated various functions previously performed by the ICC; transferred licensing and certain non-licensing motor carrier functions to the Federal Motor Carrier Safety Administration within DOT; and transferred remaining rail and non-rail functions to the STB. Passage of this legislation represented a further step in the process of streamlining and reforming the Federal economic regulatory oversight of the railroad, trucking, and bus industries that was initiated in the late 1970’s and early 1980’s.

The STB adjudicates disputes and regulates interstate surface transportation through various laws pertaining to the different modes of surface transportation. In this regard, the STB’s general responsibilities include the oversight of firms engaged in transportation in interstate and in foreign commerce to the extent that it takes place within the United States, or between or among points in the contiguous United States and points in Alaska, Hawaii, or U.S. territories or possessions. Surface transportation matters under the STB’s jurisdiction in general include railroad rate and service issues, railroad restructuring transactions (mergers, line sales, line construction, and line abandonments) and labor matters related thereto; certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and certain pipeline matters not regulated by the Federal Energy Regulatory Commission.

In the performance of its functions, the STB is charged with promoting, where appropriate, substantive and procedural regulatory reform in the economic regulation of surface transportation, and with providing an efficient and effective forum for the resolution of disputes. Through the granting of exemptions from regulations where warranted, the streamlining of its decisional process and the regulations applicable thereto, and the consistent

and fair application of legal and equitable principles, the STB seeks to facilitate commerce by providing an effective forum for efficient dispute resolution and facilitation of appropriate market-based business transactions. The STB continues to strive to develop, through rulemakings and case disposition, new and better ways to analyze unique and complex problems, to reach fully justified decisions more quickly, to reduce

the costs associated with regulatory oversight, and to encourage private-sector negotiations and resolutions to problems where appropriate.

By nearly all accounts, the STB has become an exemplary agency in its area of expertise, and it is regularly listed as one of the best federal agencies for which to work.

HOW DOT BATTLED DOJ ON BEHALF OF CITIZENS

Jeffrey N. Shane

The launching of the Department of Transportation in 1967 engendered a number of remarkable episodes in the annals of government. One that has been lost to history is the new Department's enlightened policy regarding the defense of lawsuits brought against it by citizens – a policy so enlightened that it was rejected out of hand by the Department of Justice. But it speaks volumes about the idealism of the new Department's leaders and their determination to overhaul America's transportation programs in a way that made them fully responsive to the public interest. At the risk of using a shopworn cliché, I think of these early years as DOT's Camelot period.

A principal objective of the Department of Transportation Act was to bring previously independent or quasi-independent mode-specific agencies under one roof in order to foster a more coordinated transportation system.

Coordination wasn't the only statutory objective in the act, however. The legislation was characterized by a powerful emphasis on ensuring that transportation developments were pursued in an environmentally responsible way. There was also to be a newfound attention to citizen concerns regarding the location, design, and overall quality of transportation projects. Thus, for example, in 1968 the Federal Highway Administration adopted a new two-hearing procedure for the planning of new highways where only a single hearing had been required before. Now there would be a hearing on the basic right-of-way and alignment; a second hearing would be held in order to get public input on the design of the facility.

Section 4(f) of the Department of Transportation Act prohibited the approval of any transportation project or program that required the use of publicly owned land from a “public park, recreation area, or wildlife and waterfowl refuge” of “national, State, or local significance,” or “any land from an historic site” unless supported by a finding that there was “no feasible and prudent alternative” to the use of the land and that, if not, that the project included “all possible planning to minimize harm.” DOT's first Secretary, Alan Boyd, reserved all decisions that required a Section 4(f) finding to himself and made each one personally.

Sensing that the new Department was attempting to make important adjustments in the conduct of America's transportation programs and encouraged by the inclusion of strong environmental language in the DOT Act, citizen groups began to understand that they had been gifted with a new franchise. They now had more leverage that ever to affect the quality of transportation planning and construction in their communities. Noting a predictable gap between the statutory language and the government's performance, they began suing the Department with greater frequency to enforce Congress's perceived intent. A great many cases were filed charging the Department and/or its modal administrations with a failure to observe fully their new statutory obligations.

When an executive department of the federal government is sued, the Department of Justice (DOJ) is typically responsible for defending it. At DOT, the General Counsel's office through its Office of Litigation was responsible for managing the cases and liaising with the appropriate division at DOJ regarding the conduct of the defense.

Given the reforms that the Office of the Secretary (OST) was attempting to mount under Secretary Boyd, it was OST's view that some of this litigation was potentially helpful. Where program managers were resisting change and even arguing that

nothing in the law required it, for example, a well-reasoned judicial decision might actually support the more responsive approach contemplated in the law and advocated by the Secretary.

But there was a problem: The Department of Justice had a long-established policy of fighting citizen lawsuits against the government with a long litany of purely technical and procedural defenses. The lawsuit, Justice would plead, is premature because the agency's decision isn't final, or it is late because the decision *is* final. Or the decision is subject to the agency's sole discretion and thus non-reviewable, or the plaintiffs don't have standing to sue, or the court doesn't have jurisdiction, etc.

I attended a meeting in 1969 between Stanford G. Ross, DOT's second General Counsel (after John Robson, the first, had been elevated to Under Secretary), and Edwin L. Weisl, Jr., Assistant Attorney General in charge of DOJ's Civil Division. DOT had asked the Civil Division repeatedly to stop raising technical defenses in cases in which citizens were challenging decisions made by the Department's modal administrations, but the Civil Division had routinely ignored the requests. Pressed on the point by DOT's Ross, Weisl said DOJ routinely raised technical defenses in cases involving *every* agency of the government; if they didn't raise them in cases involving DOT, it would weaken their defenses in all the other cases. I recall Ross getting increasingly heated, arguing that we were the client and that a lawyer should listen to his client's instruction. Weisl saw things very differently. There was no resolution.

DOT's position was summed up comprehensively in a letter dated March 4, 1969, by Peter S. Craig, DOT's Assistant General Counsel for Litigation, to Glen E. Taylor, Acting Assistant Attorney General in charge of DOJ's Land and Natural Resources Division – the unit that defended government agencies in environmental cases. The letter enclosed a sheaf of letters and memoranda that DOT had sent

to the Civil Division in its effort to persuade DOJ not to raise technical defenses. It said:

Our position is that these defenses do not serve DOT's best interests. First, recognition that administrative decisions may be subject to judicial review helps to insure that operating officials in the Department's many administrations will follow the guidelines set forth in relevant statutes, regulations, and internal orders. This is a valuable aid in running a Department of over 100,000 employees. Second, the courts have been expressing an apparent distaste for technical bars to judicial review of administrative action. The result has been that the assertion of procedural defenses – especially if successful in the first instance and unsuccessful on appeal – serves only to prolong litigation and delay Departmental programs. Finally, we believe that the liberalization of rules governing access to the courts is a healthy trend. In the majority of cases, because the scope of judicial review of administrative decision is quite narrow, the time required for a court to dispose of a complaint on the merits would be no longer than that required to litigate a motion to dismiss on technical grounds. The only difference would be that a party allegedly aggrieved by administrative action would have his day in court. The system, by becoming more responsive to dissatisfied citizens, is to that extent enhanced.

It was ultimately a quixotic campaign. DOJ never stopped throwing technical defenses at citizen plaintiffs. Thanks, however, to an increasingly activist judiciary – particularly with the passage of the National Environmental Policy Act in 1970 – more and more cases were decided on the merits, and program administration throughout DOT's modal administrations improved.

And it is probably fair to say that no agency of government has since pleaded with DOJ to be less aggressive in defending it against those importunate citizens.

SELLING THE ALASKA RAILROAD TO THE STATE OF ALASKA

Steven R. Ditmeyer

Early in the 20th century, several private companies tried to construct and operate a railroad in Alaska, but they all went bankrupt. US President William Howard Taft in 1912 authorized a commission to survey a railroad between Seward and Fairbanks. The Alaska Railroad was completed when President Warren Harding drove the golden spike at Nenana on July 15, 1923, and it became a part of the US Department of the Interior (USDOI). There it remained until it was transferred to the Federal Railroad Administration (FRA) in the newly created US Department of Transportation (USDOT) on April 1, 1967. In both the USDOI and USDOT, The Alaska Railroad was simply a part of a government agency; it was not a government-owned corporation, and its employees were Federal civil servants. Starting in 1953, the USDOI and then the FRA recruited general managers for The Alaska Railroad from the ranks of executives on US railroads for term appointments.

When John Sullivan became FRA Administrator in 1977 at the start of the administration of President Jimmy Carter, he decided to reactivate the Management Committee of The Alaska Railroad, which had been moribund for a number of years. The Management Committee, established by an FRA administrative order, served as a board of directors for The Alaska Railroad and to advise the FRA Administrator on matters related to the railroad. It was comprised of the several department heads within FRA: Chief Counsel (Chairman), Associate Administrators for Policy (the position I held), Safety, Programs, R&D, and Administration, and the General Manager of the railroad. William Dorcy had been appointed General Manager in 1975; he had taken a leave of

absence from the Missouri-Kansas-Texas (Katy) Railroad to which he planned to return in the early 1980's.

Dorcy's plans were altered when the Ethics in Government Act was enacted in 1978. A provision in the law forbade senior executives in the Federal government from having fiduciary or other relationships with private companies. He had to either to terminate his leave of absence agreement with the Katy, or resign from the position of general manager of The Alaska Railroad. Dorcy weighed his alternatives and elected to resign from The Alaska Railroad effective June 30, 1979.

Administrator Sullivan asked me to serve as acting general manager of the railroad until a permanent general manager could come on board in about three months. Before I moved to Alaska, Sullivan and I paid a courtesy call on Senator Ted Stevens (R-Alaska), who was then the Minority Whip of the US Senate. Stevens made it clear that he was not pleased with the appointment of an FRA political appointee as acting general manager and that he wanted a railroad executive appointed as permanent general manager.

Sullivan asked me to do two things in Alaska. One was to come back with a recommendation on what the FRA and USDOT should do with The Alaska Railroad. The other was to attempt to negotiate contract rates with shippers and file them with the Interstate Commerce Commission (ICC). FRA was, at that time, in the process of drafting legislation to deregulate the freight railroads in the US, and the ability of the railroads to negotiate contract rates was to be a key element of that legislation. (The Staggers Rail Act was passed and signed into law in December 1980.) The ICC had already issued regulations indicating they would be receptive to contract rate proposals, and Sullivan wanted me to test that proposition.

One of the first actions that I did on arriving at the railroad was to ask the railroad's Manager of

Marketing to set up meetings for us with each of the railroad's shippers. I wanted to learn how they perceived the railroad's service, what changes in service they would desire, and what their future projections of traffic were. I also wanted each shipper to know that the railroad wanted its business, and that I recognized that the shipper and the railroad both needed to cover their costs and earn a profit in order for the commodity to be transported on the railroad. The visits were well received, and I frequently received the comment that I was the first general manager of the railroad that had ever called on them.

In order to carry out Sullivan's first request, I wrote letters to the commanders of the military bases in Alaska – Fort Richardson and Elmendorf Air Force Base at Anchorage and Fort Wainwright and Eielson Air Force Base at Fairbanks – to find out what current and future reliance on the railroad they saw for their bases and whether or not the railroad was essential for their deployment or augmentation plans. They responded in a couple of months that, even though they used The Alaska Railroad for receiving supplies, there were other shipping alternatives available to them, and they were not counting on using the railroad for deployments and troop augmentations. If they needed the railroad for these purposes, they would handle arrangements with the railroad just as the military did with railroads in the Lower 48.

To carry out Sullivan's second request, I let the shipping community know that the railroad was interested in entering into contract rate negotiations. Crowley Maritime, the operator of the "Hydro-Train" rail barge service that connected the port of Whittier on the railroad with the port of Seattle, was particularly interested. Crowley and The Alaska Railroad jointly negotiated contract rates for service between Seattle and Anchorage and Fairbanks with several shippers and filed them with the ICC, which upheld them. These were the first railroad contract rates ever filed with the ICC.

Over the years the State and Federal governments had carried out numerous studies to examine the feasibility of extending the railroad in various directions from its northern terminus at Fairbanks. In the late 1970's, the State's Department of Commerce and Economic Development (DCED) had contracted for a study to look into the extension of the railroad southeast from Fairbanks to the Canadian border, where it would connect with an extension of the British Columbia Railroad (now CN) northwest through Yukon Territory from its terminus at Dease Lake, BC.

The DCED was advocating the extension because it believed that with Anchorage being the closest North American port to the Orient, freight between the Orient and the US Midwest could be attracted to the new line. DCED was very pleased when the consultant's report in mid-summer 1979 said the extension might carry one million tons of freight annually. DCED was not pleased, however, when I told them that, in planning for the restructuring of the bankrupt northeast railroads into Conrail, FRA viewed any existing lines carrying less than two million tons of freight annually as being candidates for abandonment. This was the approximate tonnage that was being carried annually on the main line of The Alaska Railroad.

FRA's Office of Personnel conducted the search for a permanent general manager by placing ads in newspapers, magazines, and the trade press. By mid-July, it appeared that one of the applicants for the job could make a very suitable general manager. He was a relatively young chief engineer for an eastern railroad about the same size as The Alaska Railroad, and he met Senator Stevens' criteria.

Before the candidate could be interviewed, however, there was a major shake-up in President Jimmy Carter's cabinet. On July 20, Carter asked for and received resignations from several of his cabinet officers, including Secretary

of Transportation Brock Adams. That put an immediate halt to all personnel actions for senior executives in DOT, including that for the general manager of The Alaska Railroad. I realized immediately that I would probably be staying in Alaska longer than three months.

Neil Goldschmidt was confirmed as the new Secretary of Transportation on August 15, but it took several months for Goldschmidt to get his hands on the “levers of power” in DOT and for personnel actions to begin moving through the system again.

The Alaska Native Claims Settlement Act was enacted in 1971, and provided for the transfer of federal lands and cash to 13 Native Corporations and approximately 200 Village Corporations. In 1979, however, there had been no final determination regarding which federal lands were to be transferred. Several Native Corporations claimed some of The Alaska Railroad’s right-of-way, saying the railroad did not need a 100-foot wide right-of-way, as well as railroad owned gravel pits, saying that they were not intrinsically part of railroad operations. Railroad staff, FRA staff in Washington, and I spent quite a bit of time with representatives of the Native Corporations explaining the railroad’s need for right-of-way and ballast. Resolution of this issue would not occur for several years.

Even before I arrived in Alaska, I was aware that the railroad was not financially healthy. I went to work trying to get additional business, raise the rates, and cut operating costs. It is difficult to determine with any precision the effect that I had on the financial performance of the railroad; I served as acting general manager for the last three months of FY1979 and the first four months of FY1980. However, the changes I had set in motion resulted in an increase in revenue from \$25.2 million in FY1979 to \$28.9 million in FY1980, an increase of 14.7%. Expenses increased from \$31.5

million in FY1979 to \$34.7 million in FY1980, an increase of 10.1%.

As a result, the Operating Ratio (expenses divided by revenues, excluding depreciation) decreased from 121.5 in FY1979 to 115.4 in FY1980. Normally, a decrease in the Operating Ratio of 6.1 points would be highly commendable on a Class I railroad, but only if the Operating Ratio were already well below 100. The fact that the Operating Ratio in FY1980 was still well above 100 indicated to me that The Alaska Railroad did not have long-term going-concern value.

On my return to Washington in February 1980 following the selection of the new general manager who had been president of a short line railroad in Colorado, I presented Sullivan with my evaluation of the railroad and my recommendation for its disposition. I had concluded that, even despite the potential of export coal traffic to Korea through the port of Seward, a rational businessperson would not want to acquire the railroad, since it was not likely to earn a profit from rail operations and since there were potential claims on railroad property by Native Corporations under the Alaska Native Claims Settlement Act. The only reason a businessperson would want to acquire the railroad would be to sell its track and rolling stock components for scrap. The economy of Alaska was much like that of an underdeveloped country, based largely on the sale of commodities like coal and oil. While an annual shift of traffic by 10 per cent up or down was considered large for a railroad in the Lower 48, The Alaska Railroad sometimes experienced either a halving or doubling of traffic from one year to the next. I was unable to find any Federal role or mission that the railroad was carrying out.

In drafting the Annual Report for FY1979 for The Alaska Railroad, which was to be formally submitted by the Secretary of Transportation to the President for transmittal to The Congress, I

proposed that a paragraph be included that would be in keeping with the Alaska Statehood Act that transferred many Federal properties to the State of Alaska:

“The Federal Government believes that ownership of The Alaska Railroad should be transferred to the Government of the State of Alaska. The Federal Government believes that The Alaska Railroad exists primarily for the residents and shippers in Alaska; they need and deserve a much larger voice in determining the role that they want the railroad to play.”

The Budget Office in OST, in consultation with OMB, however, rejected the concept of a direct transfer because the State of Alaska had recently announced plans to distribute to all its residents cash dividends from the Alaska Permanent Fund made up of proceeds from oil and gas sales and royalties. OMB felt that Congress would not agree to a transfer of federal property to a state that was distributing cash to its residents. Consequently, the first sentence in the paragraph was changed to read as follows:

“Since the Government of the State of Alaska has substantial surplus funds because of the growth of oil revenues, the Federal Government believes that ownership of The Alaska Railroad should be with the State Government.”

The version of the Annual Report containing this language was approved and sent forward to the President and to The Congress. It set in motion the process that resulted in the enactment of the Alaska Railroad Transfer Act in 1982, the valuation of the railroad at \$22.3 million by the United States Railway Association (which previously had done valuations of the bankrupt northeast railroads), the settlement of land claims issues with the Native Corporations, and the sale of the railroad to the State of Alaska in 1985.

When the State wrote its check for \$22.3 million to the US Treasury and took control of the railroad, they made it a state-owned corporation called the Alaska Railroad Corporation with a Board of Directors appointed by the state government. The employees worked for the corporation; they were not employees of the State of Alaska.



HOW DOT OPENED THE GLOBAL SKIES¹⁵

Jeffrey N. Shane

Introduction

In 1944, representatives of 54 countries came together at the Stevens Hotel in Chicago—today’s Chicago Hilton—and forged a treaty that would become the foundation for the future of international civil aviation. Known appropriately enough as the Chicago Convention,¹⁶ it was designed to establish global consistency in governments’ treatment of air transport. Standards were set for national regulation of aviation safety, aircraft registration, taxation, and other exigencies of international airline operation, all of which enabled the dramatic expansion in international flying that occurred during the post-war era.

As important as the treaty was, it failed to address a vitally important issue: market access. It set the rules that would govern flying across national boundaries, but whether a particular airline was actually *allowed* to cross a particular national boundary was left to the governments in question to decide. How many airlines, how many flights, which cities they could serve, which intermediate and onward stops they could make, what prices they could charge – all these issues would be for future negotiators to work out. The United States had proposed a multilateral agreement guaranteeing commercial landing rights everywhere to all of the

world’s airlines without restriction, but it didn’t sell. A number of other proposals also fell on deaf ears. Thus, the establishment of commercial traffic rights henceforth would be a matter to be negotiated by governments on a market-by-market basis.

It was a fateful decision. By failing to establish an open global marketplace for international airline operations, the Chicago conference by implication created a closed market. Three hundred years after the Dutch jurist Hugo Grotius had written that the seas were open to everyone and that ships could call at any port in the world regardless of their flag, the world’s aviation powers gathered in Chicago had established precisely the opposite principle. Aviation, now as vital to global commerce as shipping, would be shackled by a host of restrictions – explicitly enshrined in government agreements -- that would have been deemed illegal trade barriers in any other sector of economic activity. Airlines would not be allowed to fly between any two countries without first obtaining explicit permission from both. That permission would be granted, route by route, carrier by carrier, pursuant to carefully calibrated, highly mercantilist bilateral accords that would compromise the growth of aviation and limit its potential benefits for years to come.

As explained more fully in the account that follows, the U.S. government began moving global aviation policy in a new direction beginning in 1977 at the behest of President Carter. Fifteen years later, under President George H. W. Bush, the United States pioneered a new “Open Skies” approach to international aviation in a groundbreaking new agreement with the Netherlands – the first of 120 Open Skies agreements that the United States enjoys as of this writing. Increasingly, governments everywhere are backing away from their earlier micromanagement of international aviation, allowing carriers to tap market opportunities where they can be found far more easily and responsively.

¹⁵ Portions of this article are based on a presentation (the “Assad Kotaite Lecture”) by the author to the Royal Aeronautical Society (Montreal Branch) on Dec. 8, 2005, available at <http://tinyurl.com/mljr5e3>.

¹⁶ Convention on International Civil Aviation, opened for signature Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S 295. It superseded the Convention relating to the Regulation of Aerial Navigation (or Paris Convention) adopted at Paris on Oct. 13, 1919, and the Pan American Convention on Commercial Aviation (or Havana Convention), adopted at Havana on February 20, 1928.

The benefits to peoples and economies around the world have been incalculable.

This is the story of that vitally important policy transformation, and of how, against all odds, the political courage of two Secretaries of Transportation made it happen.

Domestic Deregulation in the US

Unquestionably, the liberalization of international aviation would not have been possible had the United States not first demonstrated the benefits to consumers in its *domestic* market of allowing the quality and price of air transportation to be determined by competition rather than regulation. Deregulating the domestic U.S. market, however, didn't come easily.

In 1975, the Subcommittee on Administrative Practice and Procedure of the United States Senate, chaired by Senator Ted Kennedy, launched public hearings on whether the Civil Aeronautics Board's regulation of airline routes, rates, and services was still delivering value to the public.

On the first day of the hearings, the Acting Secretary of Transportation, John W. Barnum,¹⁷ announced that the Ford Administration had developed a major proposal for reform of the CAB and its functions. The present structure of regulation, he said, was "outdated, inequitable, inefficient, uneconomical, and sadly irrational."¹⁸

Just a few months later, the CAB itself made a surprising announcement. Led by a bold new chairman, John Robson,¹⁹ the Board proposed to launch a series of experiments "to assess the

operation of the U.S. domestic air transport system under limited or no regulatory constraints."²⁰ The Board would establish "zones of reasonableness" within which airlines would have the freedom to raise or lower their fares without regulatory interference, and would allow carriers the freedom to enter or exit selected markets at will, without prior CAB approval.

The experiments were launched, but the Senate hearings continued. They were highly contentious, and they made the subject of airline regulation a highly visible, national issue for the first time. The proponents and opponents of continued economic regulation of the airline industry came out in force, and their differences stood out in sharp relief. Because the most conspicuous proponents of regulation were the airlines themselves, and because they were occasionally overheard vilifying the advocates of change, the hearings made for great theater.²¹

They also made for a demonstration of the American legislative process at its best. The airline proponents of continued regulation were far better organized and politically powerful than the opponents.²² And yet, in 1977, Congress passed a law deregulating all-cargo air services.²³ It

²⁰ "CAB Suggests Experimental Program to Test Consequences of Deregulation," Civil Aeronautics Board Press Release, July 7, 1975.

²¹ See generally Thomas Petzinger, Jr., *Hard Landing* (1995), at 86-105; Breyer, fn. 1, at 317-340.

²² "[P]rior to the Kennedy hearings the conventional wisdom was that those who might lose through deregulation – the airlines, the unions of airline workers, and certain business travelers – would know of their potential losses and strongly oppose change, while the potential gainers, primarily nonbusiness travelers, would neither know nor care enough to overcome their opposition. This analysis proved faulty primarily because it overlooked the potential of [making the issue visible through the hearing process]." Breyer, fn.1, at 321.

²³ Public Law 95-163 91 Stat. 1278 (Nov. 9, 1977). The Ford Administration was lukewarm on air cargo deregulation based on opposition from incumbent all-cargo airlines. Speaking two decades later to the International Bar Association in Vancouver, John Barnum said: "I had to hedge the Administration's position on cargo deregulation because, at the Madison Hotel in Washington the night before [a House hearing on the air cargo deregulation bill], I had not been able to persuade Joe Healey and Wayne Hoffman of Flying Tigers,

¹⁷ John W. Barnum had earlier served as DOT's General Counsel (1970-73), Under Secretary of Transportation (1973-74), and Acting Secretary and Deputy Secretary of Transportation (1974-77).

¹⁸ Stephen Breyer, *Regulation and its Reform* (1982), at 329.

¹⁹ John Robson had served as DOT's first General Counsel (1967-68) following which he was promoted to Under Secretary of Transportation (1968-69).

passed the Airline Deregulation Act,²⁴ covering all domestic commercial aviation, a year later. Against all odds, the public interest had prevailed, and a once radical idea was enshrined in U.S. law.

Spreading Liberalization to International Aviation

Shortly after coming into office in 1977, while promoting domestic deregulation, the Carter Administration also began to re-examine the traditional approach to *international* aviation regulation, including what it perceived to be an excessively protectionist bilateral negotiating process. The closed market created by the Chicago Convention, the Carter Administration believed, needed to be opened up more robustly than traditional bilateral arrangements allowed. On October 6, 1977, President Carter sent an important letter to Secretary of Transportation Brock Adams. It said that the “central goal in international aviation should be to move toward a truly competitive system. Market forces should be the main determiner of the variety, quality, and price of air service....” The letter went on to direct the Department of Transportation to pursue a fresh approach to the negotiating process:

We should seek international aviation agreements that permit low fare innovations and scheduled service, expanded and liberalized charter operations, nonstop international service, and competition among multiple U.S. carriers and markets of sufficient size. We should also avoid government restrictions on airline capacity. For keeping in mind the importance of a healthy US flag carrier industry, we should be bold in granting liberal and expanded access to foreign

then the largest all cargo air carrier, that air cargo deregulation was in their interest. Because of the very short notice of the hearings, I had been authorized to promote all cargo deregulation at the hearing only if I could get politically powerful Flying Tigers on board.” Available at <https://shar.es/1QCNVM>.

²⁴ Public Law 95-504, 92 Stat. 1705 (Oct. 24, 1978).

carriers in the United States in exchange for equally valuable benefits we receive from those countries. Our policy should be to trade opportunities rather than restrictions.²⁵

It is difficult to appreciate, in this era of ubiquitous Open Skies agreements, the magnitude of the change reflected in those words. Only a year before, the Ford Administration, while generally supporting the deregulation of domestic aviation, had nevertheless issued a policy statement embracing a far more traditional approach to international aviation. Orderly markets and meticulously calibrated, reciprocal exchanges of rights had been the most important U.S. objectives – “trading restrictions” -- not innovation and competition.²⁶

With their new marching orders from President Carter, U.S. aviation negotiators began the quest for liberal bilateral agreements – offering the airlines of other countries expanded but not unlimited new access to the U.S. market – including new interior gateways -- in return for provisions guaranteeing open entry, freedom to set fares and schedules, liberal charter rules, and other elements of greater commercial freedom.

In 1978, the CAB decided it was time to require price competition among international airlines, and it proposed to do so by administrative fiat. For more than three decades, international air fares had been established by government-sanctioned airline agreements conducted under the auspices of the International Air Transport Association. Fares agreed at those conferences would be presented to

²⁵ Quoted in International Economic Policy Association, “Aviation Services in America’s International Trade: A Review Under Open Skies” (December 1981), at 16.

²⁶ The White House, “International Air Transportation Policy of the United States” (September 1976). For example, while maintaining that a “basic tenet of US economic philosophy is that market-place competition produces improved services and lower total costs for the consumer,” the statement said: “However, it does not follow that there must be multiple US flag carriers on all international routes.” *Id.* at 9.

governments for approval or disapproval. The CAB proposed now to terminate the antitrust immunity that IATA's fare-setting machinery had enjoyed for the previous 33 years, thereby putting an end to the legalized cartel once and for all.²⁷ There had been no prior consultation with the Departments of State or Transportation prior to the announcement, let alone with America's trading partners.

Liberalization Criticized Everywhere

Thanks to these initiatives of the Carter Administration and the CAB, the United States became highly unpopular throughout the global aviation community. The CAB's IATA proposal was delivered in what many observers thought was the most offensive possible way: as an "order to show cause" why the Board should *not* terminate the immunity. It looked to most observers like a *fait accompli*, and it was immediately denounced everywhere as an egregious example of U.S. unilateralism – single-handedly calling into question the established global framework for a seamlessly connected and convenient international aviation system. The Department of State organized a number of regional meetings with governments around the world in an effort to lower the temperature of the issue.

Even the offer of greater access to a few more U.S. gateways as payment for liberalization was resented by many of America's trading partners. It was seen as an effort to leverage the attractiveness of the American air travel market as a means of ramming American aviation policy down the throats of unwilling governments.

As I recall it, there was an abiding nastiness and tension about much of what we were doing in aviation policy at that time. My own first exposure to all of this was in 1979, when I joined – more accurately, *rejoined* -- the Department of Transportation as an assistant general counsel. (I'd

been there earlier, between 1968 and 1972, as a trial attorney and special assistant to the General Counsel.) Shortly after arriving at my new job I was invited to sit in on a round of aviation talks in Washington between the U.S. and Canada. I will confess now that, while I did my best to keep a knowing and intelligent look on my face, I had not the slightest idea what the two chairmen were talking about. All I knew was that they were furious at each other and flord-faced. I wondered what I had gotten myself into.

The nastiness was by no means confined to relations with our trading partners. The established U.S. international airlines – primarily Pan Am, TWA, Northwest, Braniff, and Flying Tiger – found nothing to like in their government's newfound determination to inject meaningful competition into international markets that had long been their private preserve. They knew that the real threat would not come from foreign airlines but rather from home, where deregulation was quickly spawning a new generation of highly efficient and aggressive carriers whose international flights – once they were permitted – would be fed by huge and efficient domestic route networks. From the outset, therefore, the "incumbent airlines," as they were called, were hostile to the entire enterprise.

Even views within the U.S. government itself were by no means homogeneous. Everyone knew and agreed what the core principles of our policy were; the President had told us. Ways and means were an entirely different matter, however. Every round of aviation talks was preceded by one or more meetings among the agencies during which U.S. objectives for that particular bilateral aviation relationship were defined. What pace of change would we insist upon? How much compromise would we accept? Would we continue to protect particular gateways at the behest of U.S. incumbents? The meetings were long and often unpleasant. And while the U.S. tried to maintain the appearance of unity in response to the avalanche

²⁷ CAB Docket 32851, Order 78-6-78, June 9, 1978.

of criticism that greeted the CAB's so-called "show cause order" on IATA's tariff agreements, the truth was that the Departments of State and Transportation were highly critical of the CAB's action.

Still, despite all of the internal and external rancor, the Carter Administration negotiated a number of important bilateral breakthroughs. New, liberalized agreements with trading partners in Europe, the Middle East, and Asia established an important new model for international aviation relations.

Congressional Oversight of International Aviation Policy

No success, as they say, goes unpunished. Those new agreements galvanized the incumbent U.S. international airlines into action. They complained bitterly to Congress that Uncle Sam was giving away "hard rights" – new U.S. gateways for the benefit of foreign airlines – in return for "soft rights" – nothing more than the willingness of foreign governments to stop regulating entry, fares, and schedules. The U.S. government's worst failing, they said, was its ineffectiveness in responding to the discrimination and other obstacles to full market participation that they routinely encountered in their overseas operations.

In late 1979, Congress passed a new law – the International Air Transportation Competition Act – and spelled out a number of objectives "to guide the United States Government in establishing a negotiating policy for international aviation."²⁸ While the legislation confirmed the basic elements of the Carter Administration's procompetitive aviation policy, it placed a new and greater emphasis on the consequences of liberal aviation agreements for U.S. carriers. Among the goals for international aviation policy from this point forward, the Congress wrote, was –

the strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.²⁹

A particularly important provision said that it was permissible for U.S. negotiators to offer opportunities for carriers of foreign countries to increase their access to United States points, but only "if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away."³⁰

Finally, the legislation made clear that U.S. negotiators should place greater emphasis on eradicating discrimination and other barriers to doing business as a major objective of U.S. aviation policy.³¹ All in all, it looked as though the incumbent U.S. international carriers had been highly successful in persuading Congress to recalibrate U.S. aviation negotiating policy in a way favorable to their position.

They weren't satisfied, however. Another year went by and Ronald Reagan was elected President. As the new Reagan Administration settled in, the incumbents launched a renewed, two-pronged assault on liberalization. First, they submitted a "white paper" to the incoming Administration denouncing the excesses of the Carter Administration's aviation policy, and bolstered it with an economic study purporting to demonstrate what a catastrophe that policy had been for U.S. carriers. "[O]n an overall basis," the study said, "the United States is worse off today in market

²⁹ Pub. L. No. 96-192, § 17(e)(1) (1980), now codified at 49 U.S.C. § 40101(e)(1).

³⁰ *Id.*, § 17(e)(8), now codified at 49 U.S.C. § 40101(e)(8).

³¹ *Id.*, § 17(e)(9), now codified at 49 U.S.C. § 40101(e)(9).

²⁸ H.R. Rept. No. 96-602, 96th Cong., 1st Sess. (1979), at 6.

shares than at any time in the last decade.”³² In response to the white paper and study, the Reagan Administration instituted a moratorium on further negotiations that lasted several months.

The campaign was by no means confined to the Executive Branch. At the same time, they were complaining to the Reagan Administration, the incumbents were also renewing their complaints to Congress. As a result, nine separate hearings on aviation policy were conducted by the House Subcommittee on Investigations and Oversight within a ten-month period – from July 1981 to May 1982. The Subcommittee, led by Congressman Elliott Levitas (D-GA), issued its conclusions in a document that became known as the “Levitas Report.”³³

After paying the usual lip service to the importance of allowing consumers to benefit from competition, the report roundly denounced the performance of the government agencies responsible for aviation policy. “Our carriers’ economic viability has been adversely affected,” the Subcommittee said, “by an Open Skies policy which has extended domestic deregulation to the international arena.” “Our agencies,” it continued, “. . . have not forcefully negotiated bilateral agreements that support our air industry. . . .” The nearest thing to a compliment in the report was a single sentence:

The Subcommittee is pleased to have noted that the attitude of U.S. negotiators at bilateral conferences seemed to have hardened since the beginning of our hearings in July 1981 in that they don’t seem to give away rights for the sake of having a treaty.³⁴

³² “Aviation Services in America’s International Trade: A Review Under Open Skies,” International Economic Policy Association (December 1981), at 23.

³³ H.R. Rept. No. 98-19, 98th Cong., 1st Sess. (1983).

³⁴ *Id.* at 7.

Quiet and Consolidation

The story thus far should make it abundantly clear that there is nothing easy about liberalizing aviation markets. For the next several years, the U.S., chastened by the violent objections of some of its most important airlines and their congressional champions, was less aggressive in the pursuit of liberal agreements. An important multilateral agreement in 1981 between the U.S. and the individual aeronautical authorities that comprise the European Civil Aviation Conference introduced greater pricing flexibility into the trans-Atlantic aviation market, and the CAB cited that agreement as justification for postponing its decision to terminate IATA tariff coordination on four separate occasions.³⁵

The proceeding was finally terminated in 1985.³⁶ In the main, however, U.S. negotiators focused less on grand reforms than on individual, market-specific issues: the elimination of ground-handling monopolies; reducing excessive airport fees; securing market access for computer reservation systems; ensuring that United Airlines was permitted to succeed Pan Am on routes to Asia that it purchased in 1985; obtaining new market access opportunities in Japan, China, India, Canada, and elsewhere; and so on.

While the rest of the 1980s was a period of relative quiet in U.S. international aviation relations, the U.S. airlines began exploiting more effectively the broad new freedoms that had been delivered – sometimes over their own vehement objections -- in the earlier liberal bilateral agreements.

³⁵ CAB Docket 32851, Orders 81-5-27, May 6, 1981; 81-9-68, September 15, 1981; 82-1-31, January 7, 1982; 82-3-77, March 15, 1982. The agreement was finally terminated by the Department of Transportation in 1985, following the CAB’s “sunset” at the end of 1984. DOT Docket 32851, Order 85-5-32, May 10, 1985.

³⁶ DOT Docket 32851, Order 85-5-32, May 10, 1985. (The Department of Transportation succeeded to the international aviation responsibilities of the CAB after the Board’s “sunset” at the end of 1984.)

In fact, the performance of U.S. airlines in international markets during the 1980s was extraordinary. They carried nearly twice the number of passengers in 1990 as in 1980; their market share grew by about 20 percent; revenues attributable to international operations more than doubled; and the percentage contribution of international services to their overall system-wide revenues increased by about 20 percent.³⁷

Consumers and communities benefited in even more dramatic ways. In 1980 there had been 17 U.S. gateways with nonstop services to Europe; by 1990 that number had increased to 25. The number of nonstop routes across the North Atlantic – city-pairs with nonstop service – grew from 92 to 161 in 1990. Similarly dramatic increases were seen in the number of gateways and nonstop routes to the Asia/Pacific region and to Latin America. Passenger growth was consistently stronger in liberalized markets than in non-liberalized markets. Cargo carried by U.S. airlines more than doubled between 1980 and 1990.³⁸

Open Skies: Broadening the Definition

The policy had been a success – at least as far as it went. But it didn't go far enough. Even our most liberal bilateral agreements still contained major restrictions on the operation of airlines – both U.S. and foreign -- in international markets. Many of those restrictions had been maintained for the protection of U.S. airlines, particularly after the Congressional criticism of the late 1970s and early 1980s. In many cases, they prevented foreign airlines from bringing international service to U.S. communities that badly wanted it. The foreign airlines were often unwilling to seek an exchange of rights to facilitate that new service because the exchange would merely increase the competitive advantage they felt U.S. carriers already enjoyed.

The problem was particularly intractable when no U.S. airline was seeking new opportunities in its service to a foreign airline's home country. The conventional wisdom – that U.S. bilateral aviation agreements needed something close to mirror-image reciprocity – meant that there was no easy way to deliver new international services that foreign airlines were proffering to U.S. cities that badly wanted it. Instead, our answer was likely to be “not now.” We would wait until some U.S. carrier needed comparable new rights, at which point an exchange would be discussed. Because we now had so many liberal agreements that already delivered everything that U.S. carriers were likely to need in terms of market access, however, there was no longer anything to wait for. When we asked ourselves what value such restrictions brought to the U.S. economy, we found we had no good answer. In fact, it was clear that the restrictions actually reduced the value of our agreements by limiting competition unnecessarily.

I had moved from DOT to the Department of State in 1985 to become Deputy Assistant Secretary for Transportation Affairs. Among other responsibilities, I served in that job as chief U.S. aviation negotiator. This conundrum – being the victim of our own success – quickly became a source of real frustration, particularly when I was invited to address local chambers of commerce in cities around the U.S. that were seeking valuable new international air services. I had to explain to them in too many cases why Uncle Sam wasn't helping. The message wasn't well received. Concluding that the best defense might be a good offense, I started making speeches delicately suggesting to civic groups around the country that it was time to get better organized and to help provide more visible support in Washington for the more community-friendly aviation policy that they needed.

In 1988 I was invited to deliver luncheon speech to the Wings Club in New York, an old and venerable

³⁷ Unpublished DOT study, December 1992.

³⁸ *Ibid.*

social club for aviation aficionados. The event would be well covered in the aviation press, and so I thought it might be a good opportunity to point out the counterproductive consequences of our negotiating stance. Not sure whether my superiors would be comfortable with shining a spotlight on the deficiencies in our established policy, I decided not to seek any formal clearance for my remarks.

“For all of its near-term benefits to our airline industry,” I told the gathering, “the bilateral negotiating system may not be serving the larger public interest nearly as well. The big losers in the picture, of course, are air travelers and shippers, and U.S. cities that seek new direct air service to foreign points – service that foreign airlines want to provide but cannot because their aspirations for new service are not matched by those of the U.S. carriers.”

“An anachronistic, highly regulatory system of bilateral agreements,” I continued, “has actually worked to the advantage of the U.S. airline industry to such an extent that we are beginning to deny ourselves the widely acknowledged benefits of an expanding, dynamic international air transport market.”

I returned to Washington wondering what sort of reaction my truth-telling would receive. I didn’t have to wait long. Walking down one of the long hallways in the State Department’s Foggy Bottom headquarters a few days later, I saw my boss, Assistant Secretary for Economic and Business Affairs Julius (“Jules”) Katz coming in the opposite direction. I had sent him my Wings Club speech after the fact and I was sure he’d read it. He was looking at a document as he walked but I knew he’d seen me. I held my breath as the distance between us closed. As he passed me he looked up, said, “Good speech,” and kept on walking. I rounded a corner and leaned back against the wall breathing a huge sigh of relief. If Jules Katz liked the speech, skepticism about the traditional approach to aviation negotiations could now be treated as official State

Department policy. No less important, I would still have a job.

I moved back to DOT from State in 1989 after receiving my first Presidential appointment – as Assistant Secretary of Transportation for Policy and International Affairs in the administration of President George H. W. Bush. The position covered the entire range of transportation policy, domestic and international, which meant that international aviation policy was still part of my portfolio. I found in my new boss, Secretary of Transportation Samuel K. Skinner, a clear-eyed, courageous, politically adroit decision-maker who had come to Washington (from Chicago) to make a difference.

In 1989, concerned about what often seemed like a pointless denial of international air service to U.S. cities that needed it, Secretary Skinner proposed a new “unserved cities program.” The idea was simple: If a foreign airline wished to fly to a U.S. city that no U.S. airline was serving, and that foreign airline was based in a country that had entered into a liberalized aviation agreement with the U.S., we would permit the new service without the need for a new negotiation. DOT decided, in other words, not to let the traditional bilateral negotiating process stand in the way of beneficial air service without a good reason.

It sounded simple enough, but Secretary Skinner knew the program represented a dramatic departure. We needed to ask ourselves whether the initiative fully respected the requirements set forth in the International Air Transportation Competition Act of 1980 – most importantly that foreign carriers could be granted new opportunities to serve the U.S. *only* “if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away.” Yet here we were, proposing to award new opportunities to foreign airlines free of charge, without any exchange whatsoever.

The analysis served up to Secretary Skinner concluded that the proposal was indeed consistent with the statutory mandate. By definition, the cases covered by the proposal would be those in which our trading partner literally had nothing more to give. Moreover, the new service would certainly create benefits of similar magnitude for the traveling public. Secretary Skinner fully understood the risk he was taking, but he instructed the staff to finalize the proposal.³⁹ A number of new services were launched without the need for formal negotiations.

In the meantime, I had been discussing with my State Department counterpart, Eugene McAllister, who had succeeded Jules Katz as Assistant Secretary of State for Economic and Business Affairs, whether we might take the initiative even further. I shared with him my conviction that it was time to break away even more radically from the international aviation policy of the past and found him wholly sympathetic. I took the idea next to Lehman Li, Director of the President's Economic Policy Council; he expressed enthusiasm and asked that we create a White House working group to develop the idea. Once it was clear that the State Department and White House were on board, I drafted a short message to Secretary Skinner proposing that we start working on a major policy initiative to "move the world toward a far more rational approach to international air services."⁴⁰

Typically in government, the best that can be expected from a memo proposing a major departure from existing policy is the establishment of a committee with a mandate to examine the idea, consult with stakeholders, and report back in six months. I sent Secretary Skinner my memo on October 20, 1989 – a Friday – fully anticipating a

similar response. It came back to me the following Tuesday – two working days later.

I had been in government for many years and had sent forward a lot of policy proposals. Nothing prepared me for what I saw. In the margin of the memo, Secretary Skinner had written: "Go for it."

We went for it. The unserved cities initiative had demonstrated that we could actually give routes away free of charge to the airlines of liberal trading partners as long as we could defend the exchange on the basis of benefits to the traveling public. Communities and airport operators by this time had become more organized and were aggressively supporting the more flexible interpretation. It wouldn't be a big leap – either conceptually or politically -- to the next obvious step: launching a new Open Skies approach to international air services that allowed airlines to fly wherever they found a commercial opportunity.

Secretary Skinner embraced the idea enthusiastically, but by the time it was ready to be proposed in a formal DOT order, he had moved to the White House as Chief of Staff. He was replaced at DOT by President Bush's former Deputy Chief of Staff, Andrew H. Card, Jr. There was no transportation policy-making in Secretary Card's background, but he was a very quick study. Even more impressive, I thought, was the clarity of analysis he brought to the decisions he was faced with. Like those of his predecessor, his actions were consistently informed by his sense of what the public interest required. Moreover, his years in the White House had seasoned him; he was fearless when making decisions he knew would be controversial.

With Secretary Card's blessing, the new Open Skies policy was adopted in August 1992.⁴¹ It was even simpler than the unserved cities program:

³⁹ DOT Docket 46534, Order 90-1-62, Jan. 30, 1990, modified by Order 91-11-26, Nov. 20, 1991.

⁴⁰ A copy of the memo went to the Deputy Secretary of Transportation--and at this writing Secretary-- Elaine L. Chao. The memo is reproduced in the Appendix.

⁴¹ DOT Docket 48130, Order 92-8-13, Aug. 5, 1992.

The airlines of countries that agreed to open their air services markets to U.S. carriers – regardless of their size or the number of airports they had -- would receive, in return, open access to and through the United States.

It didn't unfold exactly as expected, however. My initial memo to Secretary Skinner had anticipated early agreements with a "critical mass" of important European states – France, Germany, Italy, and the U.K. – and noted that, by happy coincidence, aviation talks with all four countries were already on the calendar. We needed that critical mass, I believed. "No one partner, by itself," I had written, "can offer us enough in the way of new opportunities to justify any major movement on our part." The memo even suggested the possibility of a "scramble" within Europe to join us in the new vision, thereby ending with a stroke the worrying prospect of a "fortress Europe" – increased resistance among European states to the expansion of U.S. airline services once a single European market for aviation was established.

In the end, my predictions turned out to be utter nonsense. None of the major aviation partners we spoke to had the slightest interest in forging closer aviation ties with the U.S. on the eve of the Single Market and what they hoped would be a much stronger bargaining position. So much for the "scramble."

Predictably, the only country that expressed interest in the new policy was the Netherlands. Given the importance of unfettered global trade to their history and prosperity, the Dutch had consistently championed aviation liberalization. The problem was that the Netherlands had a very small indigenous air travel market compared to the U.S. While KLM's flights to the U.S. were often full, a great many of the passengers came from other countries on flights that connected at Amsterdam. An Open Skies agreement with the Netherlands thus would allow KLM to "poach" even more

passengers traveling from other countries to the U.S. Moreover, U.S. airlines already enjoyed virtually unlimited access to Amsterdam by virtue of the already liberal U.S.-Dutch aviation agreement; they would get no new market access whatsoever from any new agreement with the Netherlands.

In short, the Netherlands was the classic example of a partner that, by itself, could not "offer us enough in the way of new opportunities" to justify the major shift in policy we were contemplating. In terms of the political optics, it would have been difficult to imagine a less attractive candidate for America's first Open Skies agreement.

Whether to proceed with the agreement given its obvious downsides would have to be decided by Secretary Andy Card. It was clear that, by the usual calculus, it would be a seriously lopsided accord; KLM would get access to the huge landmass of the United States and beyond to anywhere in the world, while U.S. carriers would get nothing that they didn't already have. The criticism from the U.S. airline industry was likely to be withering – directed at Secretary Card personally and even at the President, who was struggling in a difficult re-election campaign.

Following careful deliberations, Secretary Card, determined to move policy in a more rational direction, gave the green light. The U.S. signed its historic first Open Skies agreement with the Netherlands on September 4, 1992.

U.S. airline industry reacted as expected -- reminding us of deficiencies we fully understood. One CEO of a major airline informed me that he would now have to fire 5000 employees because of the damage done to his markets by the agreement. Critics reminded us that the statute said we could allow KLM to increase its access to U.S. points only "in exchange for benefits of similar magnitude." Had we lived up to that requirement?

As Secretary Card knew, DOT had anticipated the question in its initial Open Skies policy proposal, and it had asked interested parties to comment on it. After reviewing the submissions, the Department addressed the issue in its final order adopting the new policy:

We are frankly and firmly committed to freer trade in civil aviation services, and our commitment is grounded, in large part, on our experience with both the market-oriented and the restrictive approaches that govern many of our current bilateral aviation relationships. We have seen much larger dividends in those markets which allow greater scope for airline prices and service initiatives. Indeed, if we were to embark on negotiation initiatives only where we could anticipate precisely equal economic benefits we would have been deterred from some of the most successful agreements we have achieved in the last decade. As with the Cities Program before, we find that the Open-Skies program represents a further progression along the path toward a truly open environment for international aviation service...⁴²

Conclusion

The U.S.-Netherlands Open Skies agreement represented an important new template for government-to-government relations, as we knew it would, but it also engendered a change in industry structure that nobody in government had anticipated. Northwest Airlines and KLM had earlier forged a joint venture. Even before the ink was dry on the new agreement, representatives of both airlines visited DOT with a radical proposition: Because the U.S.-Dutch aviation market was now open and competitive, DOT should confer antitrust immunity⁴³ on

the Northwest-KLM joint venture. A grant of immunity, they explained, would enable the two airlines to act as one, thereby enhancing efficiency, enabling much closer cooperation, and thereby delivering a much higher level of seamless international service to their customers. DOT conducted a public proceeding toward the end of 1992 in which it solicited public comment on the proposal. Early in 1993, DOT granted most of the immunity the airlines had sought.⁴⁴

The immunized joint venture enabled Northwest and KLM to become more effective global competitors, and the advantages of the arrangement were quickly noticed by other airlines. DOT had made clear in its order granting antitrust immunity that it would be conferred only in markets that were fully open to competition – i.e., markets governed by Open Skies agreements. European airlines and those from other regions began urging their governments to enter into Open Skies agreements with the U.S. in the hope that they too could obtain antitrust immunity for their joint ventures.

In retrospect, it was the interest expressed by domestic and foreign airlines in securing antitrust immunity for their increasingly important alliances that accelerated the movement toward Open Skies following 1992. After two years of further deliberation, the Clinton Administration adopted the policy, as did every subsequent administration, Democratic or Republican. As noted earlier, the U.S. has entered into 120 such agreements as of this writing.

Civil Aeronautics Board, particularly for the purpose of shielding inter-airline agreements on standards and even air fares in some markets from antitrust litigation. The power was transferred to DOT at the end of 1984 with the “sunset” of the CAB. 49 U.S.C. §§ 41308 and 41309. Airlines are prohibited from entering into cross-border mergers by the national laws of most countries as well as by traditional bilateral aviation agreements, most of which require that airlines based in a particular national territory be owned and controlled by citizens of that country. Obtaining antitrust immunity enables participants in a cross-border joint venture to enjoy most of the benefits of a merger without actually merging.

⁴⁴ DOT Docket 48342, Order 93-1-11, Jan. 11, 1993.

⁴² *Id.* at 2.

⁴³ The power to immunize cross-border agreements of airlines from the operation of the antitrust laws had long been a tool used by the

The immunity granted to cross-border joint ventures has engendered three global airline alliances – Oneworld, Skyteam, and the Star Alliance – and they have largely redefined the international air transport marketplace. Of equal importance, the advent of Open Skies has also facilitated a variety of other innovations in the provision of international air services, from the low-cost flights within Europe offered by Ryanair and EasyJet, to the “superconnector” model forged by Emirates, Etihad, Qatar, and Turkish Airlines, to the multinational footprint established throughout South America by LATAM, to the low fares offered across the Atlantic by Norwegian, Wow Air, and British Airways’ aptly named subsidiary, Open Skies.

In 2008 the U.S. and EU signed an Open Skies agreement that superseded many bilateral agreements that the U.S. had forged earlier with EU Member states – including the 1992 agreement with the Netherlands -- and added the U.K. to the Open Skies club for the first time.

Most importantly, bilateral Open Skies agreements are now increasingly common between pairs of countries that do not include the U.S. It may be too soon to call it a default policy in much of the world, but Open Skies policies are more and more ubiquitous. The policy is bringing untold value to travelers, airlines, and economies everywhere.

Without the vision and courage shown by Secretaries of Transportation Sam Skinner and Andy Card, Open Skies might still be nothing more than an aspiration. The world owes them a huge debt of gratitude.

APPENDIX



U.S. Department of Transportation
Office of the Secretary of Transportation

Assistant Secretary

400 Seventh St., S.W.
Washington, D.C. 20590

JC 20
13

October 20, 1989

NOTE FOR THE SECRETARY

FROM: Jeff Shane *JMS*

SUBJECT: Initiative on International Aviation Liberalization

10

My counterpart at the State Department (Gene McAllister, Assistant Secretary of State for Economic and Business Affairs) and I want to formulate some ideas for what could become a major Bush Administration initiative on international aviation liberalization. It would go beyond our "unserved cities" proposal of a few weeks ago, and would begin to move the world toward a far more rational approach to international air services. The initiative would almost certainly require an EPC presentation. Lehman Li, who organizes the agenda for EPC's, is extremely enthusiastic, and has asked us to create an EPC working group as a first step.

I believe that we can find a formula that will win the support of all of our communities (and thus their congressional delegations) as well as most, if not all, of our airlines. Implementation -- a genuine opening of international aviation markets -- would require the agreement of a "critical mass" of important partners. No one partner, by itself, can offer us enough in the way of new opportunities to justify any major movement on our part.

The initiative might well trigger a scramble within the EC to join up, thereby defusing much of the "fortress Europe" problem. It would also hold so much more promise than the Uruguay Round that it would moot USTR's arguments about aviation in the GATT.

By happenstance, we are scheduled to have bilateral negotiations with our four most important European aviation partners between now and the end of the year: France, Germany, Italy, and the U.K. If we are able to formulate some ideas quickly, we might be able to use these rounds to explore, informally and preliminarily, whether the Europeans would be receptive to a proposal.

cc: The Deputy Secretary
Ken Quinn

Jeff 10/24/89
60 for it
[Signature]

DOT AND ME

S. Fred Singer

I was asked to contribute a few personal recollections, celebrating the 50th birthday of DOT, the US Department of Transportation

My first contact was in 1970, when FAA chief Wm Magruder asked me (then serving as a Deputy Assistant Secretary of Interior) to chair an inter-agency panel to evaluate the environmental effects of the two prototypes of a supersonic transport aircraft (SST), then under construction at Boeing. The main issues were the putative effects of water vapor (WV) exhaust on depletion of stratospheric ozone and a possible rise in the rate of skin cancers.

We learned much from this exercise:

1. An SST for passenger travel may not be commercially viable. 2. The skin cancer model was wrong. 3. And WV was not the most important ozone depleter; it was the exhaust of nitrogen oxides. 4. We found that the ongoing human-related production of methane should lead to the stratospheric WV equivalent of a fleet of 500 SSTs. [I published this conjecture in *Nature* in 1971, after *Science* mag rejected my paper.]

In 1987 I was recruited from the U of VA to the post of DOT Chief Scientist, mainly to supervise the FAA's design of their new Air Traffic Control system – a real challenge. But I also had responsibility for civilian applications of GPS, a task assigned to DOT by the Defense Department. Little did we anticipate the explosive growth of GPS.

I recall a Senior Staff meeting where I asked my colleagues: “Do you ever wake up and wonder: Where am I and where am I going? Well, this little GPS receiver will tell you.” No one believed me at the time.

BTW, I was most impressed by the competence of the women of the Senior Staff. Maybe I should not have been surprised, but having spent my career in engineering and hard sciences, it felt like a discovery.

Probably, the most fun aspect of my job was working on simulators around the country. I crashed trains in Pueblo, CO, cars in Ohio, and ran ships aground in King's Point, NY. But nothing beats smashing airplanes into the tarmac at the flight simulator in Oklahoma City.

DOT AND THE ENVIRONMENT

Martin Convisser

The Department of Transportation was established in 1967 at a time of growing national environmental concern and action. In fact, the DOT Act itself contained a very specific and significant environmental provision, Section 4(f), which is discussed below.

These environmental concerns were strongly reflected in statutes, court decisions, policies and administrative decisions during the early years of the Department that significantly influenced the development of the national transportation system in the ensuing years, and continue to do so today. Some of these key developments are discussed below.

Assistant Secretary for the Environment. An early and important step occurred when Sec. Volpe took office in 1969 and established the position of Assistant Secretary for the Environment and Urban Systems (TEU in organizational shorthand). Sec. Volpe gave TEU strong support throughout his tenure. This was critical because some of the modal administrations, particularly the Federal Highway Administration (FHWA), strongly opposed environmental constraints on their programs.

Section 4(f). This provision of the DOT Act stated that “the Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic sit unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm” to such land.

This provision reversed decades of implicit transportation policy that often preferred such areas for project construction in order to reduce costs and

displacement in built-up residential or commercial areas.

Of central importance in implementing Section 4(f) was Sec. Volpe’s decision to delegate his authority under this provision to TEU, rather than to the modal administrations (despite strong opposition from some modal administrations to this delegation of “line” decisions to a “staff” office). In effect, this meant that a transportation project falling under Section 4(f) could not proceed unless the Assistant Secretary approved the project.

The seminal project where a modal administration decision was reversed or significantly modified was Interstate 40 through Overton Park in Memphis. After a Supreme Court ruling in that case which emphasized “no feasible and prudent alternative” and “all possible planning to minimize harm,” DOT rejected the project. Following the standards set in the Overton Park decision, numerous other projects (primarily Interstate highway proposals) were abandoned or significantly modified, including, for example, the proposed Riverfront Expressway in New Orleans, I-93 through Franconia Notch in New Hampshire, I-10 in Phoenix, and a proposed I-66 crossing from Virginia into Washington, DC.

National Environmental Policy Act (NEPA).

Signed into law on January 1, 1970, NEPA had a major impact on the Department’s programs in the following years.

NEPA set forth a national policy of promoting efforts to “prevent or eliminate damage to the environment,” and created the Council on Environmental Quality (CEQ) to oversee implementation of the Act. Further, NEPA established the requirement that a detailed environmental impact statement (EIS) be prepared for any major federal action “significantly affecting the quality of the human environment.” The EIS was (and is) required to discuss the environmental impact of the proposed action and alternatives to it.

Under requirements established by CEQ, a draft EIS had to be prepared and circulated for comment to the public and appropriate federal, state, and local agencies. After taking those comments into consideration, the acting agency had to publish a final EIS before it could proceed with the contemplated action.

Within DOT, a key decision was the assignment of responsibility for implementing the EIS requirement. Some modal administrations strongly urged that they should have full authority for implementing this provision. FHWA, for example, argued that personnel in the Office of the Secretary (e.g., TEU) were not trained or knowledgeable enough on highway matters to analyze and question the judgments and conclusions of federal and state highway experts. Further, they opposed centralizing project approval authority in Washington, rather than at the state level, where it had been located in FHWA's long-standing decentralized decision-making process. Finally, they argued that the highway program had long and adequately practiced environmental protection.

TEU, on the other hand, took the position that leaving full authority for the EIS with the modal administrations would not result in any significant change in the environmental protections envisaged by the Act.

That argument, and the earlier assignment of Section 4(f) authority to TEU, helped pave the way for Sec. Volpe to also assign authority for approval of the final EIS to the environmental Assistant Secretary. Since major projects with significant environmental impacts could not proceed without approval of a final EIS, this decision in effect gave the Assistant Secretary final authority to approve or disapprove such projects.

The EIS soon became a key element in DOT project and program decision-making, with significant effects.

To begin with, the EIS tended to become a full disclosure document. The fact that a draft had to be circulated for public and agency comment tended to lead to a less self-serving and broader analysis. As one example, the identification of the full noise impacts of urban highway projects led to mitigating actions such as the noise abatement walls now common alongside major highway projects throughout the nation; none existed before the implementation of NEPA.

The NEPA process in DOT also resulted in the expansion of the range of alternatives considered. Again using highway projects as an example, mass transit approaches such as reserved bus lanes, and traffic management approaches such as high occupancy vehicle lanes and traffic metering, were considered and adopted, which had rarely been the case before.

Both the EIS as a full disclosure document and its expansion of the range of alternatives helped support another key element of NEPA - the amelioration or avoidance of adverse impacts. Techniques included scaling down project size, avoiding sensitive environmental areas, and measures to compensate for adverse impacts. Examples include the following:

- Sec. Coleman's decision in 1976 to forbid the Concorde from flying at supersonic speeds in the U.S. eliminated the potential huge noise impact of that aircraft's sonic boom.
- The scaling back of I-66 inside the Beltway in Northern Virginia from an 8-lane highway (in some places) to four lanes, with transit, traffic management, noise abatement and other environmental enhancements, substantially reduced the highway's impacts on the dense urban community through which it passes.
- The decision was made not to build the proposed major jetport just north of the Everglades

National Park in Florida after the EIS disclosed that the airport and accompanying development would have large impacts on wetlands, including a potentially devastating impact on water supply to the Everglades. As a result, the Department of the Interior, with DOT support, obtained Congressional approval of the Big Cypress Fresh Water Preserve to protect the Park's environment.

The Social Environment. The “environment” that DOT was concerned with during these years was not only the physical environment, but also the social environment.

One effect of the EIS process on the social environment was to avoid or significantly modify projects which otherwise would have had a disproportionate adverse impact on low income or minority communities.

Beyond that, probably the most significant effect of increased consideration of the social environment was a major increase in attention to transportation for the handicapped and the elderly, which particularly impacted the Department's mass transit program. As new rapid transit systems and expansions of existing ones were undertaken, elevators in stations were included for the first time, safeguards for visually impaired persons were installed, and other measures taken to make access available and safe for persons with mobility

limitations. Efforts were undertaken to improve the accessibility of buses, and special bus services for the elderly and the mobility impaired were started and have since been expanded nationally. Dramatically improved access to air travel was also provided for persons with disabilities, based in large part on DOT/FAA initiatives subsequently implemented by the airlines.

DOT also promoted curb cuts to ease pedestrian movement for the elderly and handicapped, and promoted bicycling, particularly through the creation of special bicycle lanes, which are now widespread.

DOT also started a program to encourage improved aesthetics in transportation projects. Termed “Design, Art and Architecture in Transportation,” it provided financial incentives to encourage improvements in these areas. An example of the results is the art included in the main passenger area of Washington Reagan National Airport.

Sec. Volpe's successors in the 1970s generally continued to maintain and encourage pro-environment approaches. Perhaps more importantly, the approaches and procedures initiated in those years became institutionalized and are, even now, a standard part of transportation planning and programs.

It was a great opportunity, most rewarding, and great fun, to help get this going.

EARLY DOT: THREE ENVIRONMENTAL HISTORIES

Laurence J. Aurbach

The late 1960s and 1970s were a time of transition for US public policy, emphasizing quality of life in post World War II American urbanization. The new US Department of Transportation assumed the management of the Interstate Highway System, the greatest public works project in the history of man, and of aviation in the jet age. These monuments of human progress had some adverse impacts on the quality of life in urban America. DOT was positioned to manage this transition.

I was a delegate from California to Lady Bird Johnson's White House Conference on Natural Beauty. The Conference was prior to the identification of environmental quality as a term and umbrella for public policy. It brought together hundreds of leaders to consider policy issues beyond pollution control. In 1970 Richard Nixon established by executive order the Environmental Protection Agency and NOAA. Congress adopted new environmental legislation adding to pollution control legislation from the earlier 1960s.

I joined the Department of Transportation's new environmental office in 1970. Here are three environmental policies and results that I worked on in the 1970s during my time in DOT, that provide a sense of the time.

1. DOT Order 5610.1B, Procedures for Considering Environmental Impacts published in the Sept. 30, 1974 Federal Register. These orders provided administrative guidance for managing environmental impacts in transportation projects.

The order provided guidance in these areas:

- The National Environmental Policy Act
- Section 4(f) of the DOT Act regarding parks and historic properties
- The Clean Air Act
- The National Historic Preservation Act
- The Coastal Zone Management Act
- The Fish and Wildlife Preservation Act
- Standards as to Noise, air and water pollution
- Executive Order on protection of the cultural environment
- Executive Order on regarding flood hazards
- The Water Bank Act regarding wetlands.

The Order provided a framework for administration and environmental training programs for the highway and aviation programs so the responsible managers and engineers could manage within the legal context. For aviation, the FAA Academy in Oklahoma City adopted such a training program. FHWA also had its own training programs.

The Secretary also provided a mandate that people and public facilities would not be displaced until replacements were provided. The Uniform Relocation Act supported the policy.

NEPA Section 102(a) required a systematic, interdisciplinary approach, so that those with experience in appropriate fields would cover all impacts.

Several transportation projects with environmental issues that I dealt with included:

- I-290 through communities and Shaker Lakes, Ohio, canceled
- The Sunrise Highway extension to Montauk, NY, canceled, the end of the line for Robert Moses projects.
- The South Midtown Freeway in Kansas City, Mo, redesigned as a parkway in accordance with KC road tradition.
- The Washington Metro system was approved and built
- The Atlanta Metro system was approved and built.

I've heard little of urban freeway controversies since adoption of these procedures.

2. The Aviation Noise Abatement Policy issued Nov. 18, 1976, which recognized that 6 million people lived in areas adversely affected by aircraft noise. There had been confusion about responsibility for dealing with airport noise. The policy spelled out the responsibilities of parties to control noise. The FAA held hearing in 25 regions to get input for the policy.

Summarizing the results,

- The FAA is responsible for airspace use and management, and control of noise from its source, the aircraft.
- The airport proprietor is responsible for airport location and design subject to constitutional prohibitions on creating an undue burden on interstate commerce, discrimination, and interference with federal airspace management.
- State and local government control land use and other police powers not affecting aircraft operations.

- Pilots are captains of their ships with traditional control over operations.

The policy encouraged Airport Noise Control and Land Use Compatibility Plans where the airport operator coordinates detailed plans to minimize adverse impacts of airport noise within the proper relationship between the federal government and state and local governments. The purpose is to establish the framework for plans by airport operators, affected local jurisdictions, airports users and pilots, the FAA and citizens within the framework of effects on national and international air commerce, airspace management, and unjust discrimination.

The policy sets forth limits on federal intervention as raised by the Federalist Papers prior to adoption of the US Constitution and as taken up recently by the US Supreme Court.

3. The use of funds from canceled I-66 and I-95 to cover the District of Columbia's payment for building Metro.

Through the sixties a number of regions experienced freeway revolts. One of my DOT colleagues said the Interstate system was like a barrel of apples and we were getting to the bottom of the barrel. In the DC area, I-66 would have crossed the Potomac River at the Three Sisters islands, gone through Georgetown and under the Lincoln Memorial. Parts of the Three Sisters Bridge were carried away in Hurricane Agnes in 1972. I-95 was to cut through communities in NE Washington and Prince Georges County on the way to the Washington beltway.

Both projects were fought at the local level and abandoned. There were no plans for replacement. In 1973 Congress passed the Interstate Transfer provision. I had a chat with Comer Coppie, the DC Treasurer, at a neighborhood meeting and asked if he knew of the procedure. One lunch and several years later the \$2 billion for I-66 and I-95 was

reprogrammed to cover the District of Columbia's share of building the Metro system.

DC finances seem to be doing well now.

In the 1970s DOT managed the transition to environmental procedures as they affected transportation. I'm pleased to have had a role in the process.

THE EVOLUTION OF PROGRAMS

THE 1972 AND 1974 NATIONAL TRANSPORTATION STUDIES (NTS)

One of the first attempts of a relatively young Office of the Secretary to coordinate and assert control of the planning efforts of DOT's modal administrations

Arrigo Mongini

The Department was created as a kind of holding company for different modal administrations, each of which had its own legislative mandate, organizational structure, congressional oversight committees, and constituencies in the public and private sectors. The Office of the Secretary was the only entity with a mandate to improve the functioning of transportation in general, and it soon became clear that this was not an easy task because of the diversity of these modal interests and bureaucracies.

Of particular concern to OST was the fact that estimating of capital investment "needs" by each of the modal administrations in cooperation with the states, gave little consideration to other modes. These estimates were reported directly to Congress for consideration by different legislative committees, using engineering standards, with little economic justification and with little input from local elected officials.

Two of these modal planning efforts were the biennial National Highway Needs Studies and the National Airport System Plan, a kind of ongoing needs study. The capital grant program of UMTA was still in its infancy and was not part of a national planning program, MARAD did not join the Department until 1981, and the US Coast Guard, though part of DOT at the time, did not have a grant program.

It was decided that, the Highway Needs Study, in particular, should be put into context with other forms of transportation and carried out with input from not only state highway departments but also local elected officials. Much less effort was devoted to coordination with the National Airport System Plan and other FAA planning activities.

A small group within OST's Office of Systems Analysis, under the Assistant Secretary for Policy, was given the job of implementing the 1972 study and later the 1974 study, working with state and local planners to consider alternative levels of transportation capital investment and mixes of highway and transit investment. A manual was created for states and localities to use in reporting these alternative levels of investment by mode consistent with different levels of total federal funding. Funds were made available to the states to support this planning effort. Emphasis was on statewide planning, local input, and tradeoffs between highway and transit in the larger metro areas, and on economic considerations under different funding constraints. and ability to shift

funding between highways and transit. As might have been expected, this massive outreach effort with state and local governments was difficult to integrate with the Highway Needs Study process, which had a long history of cooperation between FHWA and state highway departments. Many of the states viewed the biennial highway needs reports to Congress as essential to maintaining and increasing their federal funding allocations for highways. One somewhat humorous example of this problem was that when FHWA was asked to delay the issuance of their manual of guidance to states for the highway needs study in order to better integrate with the NTS, the FHWA response was to print the manuals as originally intended and distribute them to the states along with gummed labels to affix to the manuals indicating they were part of the NTS.

The results of the two national transportation studies were incorporated in two reports to Congress. These reports included summaries and analyses of state and local government plans and programs under different assumptions about funding levels and intermodal funding flexibility derived from the above outreach surveys as well as the results of other analyses and models from the Office of Systems Analysis and other parts of the Department. The outreach survey showed that increased federal funding flexibility would result in very little change in modal investment allocation nationwide but that in specific cases, primarily some of the larger metropolitan areas, there would be significant shifts to transit investment. The 1972 and 1974 reports also provided a place to give encouragement to other progressive ideas, short of

specific legislative proposals that would otherwise require extensive review by OMB and the White House. Besides funding flexibility, these ideas included such things as statewide transportation planning, metropolitan planning organizations (MPOs), and increased funding for these activities, non-capital improvements to increase efficiency of existing infrastructure, priority for high occupancy vehicles, peak load/road pricing, regulatory reform, state DOTs where appropriate, and increased involvement of state and local elected officials and the general public in the transportation planning process. These ideas did not spring from the NTS, but the NTS played a part in promoting them.

The National Transportation Study effort was not repeated beyond the 1974 report to Congress and it was perhaps naïve to think that the two reports themselves had a major impact on DOT programs. However, I believe that the process of having part of OST work with FHWA and other modal administrations at the staff level and with state and local planners in a cooperative fashion was instructive to all those involved. Unlike the budget process and other administrative activities of OST which involved review of the plans of others, the NTS outreach survey was an opportunity to work with others. In retrospect, an NTS-like planning process was relatively incompatible with a DOT organized along modal lines. DOT has more or less the same structure today as in the 1970s give or take a modal administration or two, so it would be just as incompatible today. Would it work any better if DOT were organized along functional lines?

EXPANDING THE URBAN TRANSPORTATION PLANNING PROCESS:

Fifty Years On

Edward Weiner

By the time that the US DOT was established, the Federal –Aid Highway Act of 1944 had passed creating the National System of Interstate Highways, as well as the Federal-Aid Highway Act of 1956 establishing the Highway Trust Fund which provided 90 percent Federal funding for construction of the system. The two acts launched the greatest public works program in the nation’s history which would have profound economic, social and environmental impacts on the county. The acts were administered by the U.S. Bureau of Public Roads which was incorporated into the US DOT and eventually became the Federal Highway Administration.

State highways departments started building the rural segments of the system first through methods and techniques with which they were familiar. However as planning and construction moved into urban areas, it was met with resistance. From 1956 forward “freeway revolts” arose in city after city as citizens and local officials realized the impact in terms of houses taken and neighborhoods disrupted that would be required. To address these concerns, a group of engineers, planners and policymakers recognized that techniques for building highways in rural areas were not wholly appropriate for locating, designing and building freeways in urban areas. They realized the complexity of urban areas and the need to take account of building freeways through an urban fabric. Their efforts led to the creation of an urban transportation planning process suitable for developing urban Interstate

highways with the passage of the Federal-Aid Highway Act of 1962.

The Bureau of Public Roads (BPR), moved quickly to implement the urban transportation planning requirements of the FederalAid Highway Act of 1962. Through its Urban Planning Division, the BPR carried out a broad program to interpret the provisions of the act, develop planning procedures and computer programs, write procedural manuals and guides, provide technical assistance, teach training courses, and develop professional staff. The effort was aimed at developing urbanized area planning organizations, standardizing, computerizing and applying procedures largely created in the late 1950s, and disseminating knowledge of such procedures.

The Act required urbanized areas over 50,000 in population to conduct a continuing, comprehensive transportation planning process carried out cooperatively between the states and local communities as a condition for receiving Federal aid for highway projects. Instructional Memorandum 50263, published in March 1963 and later superseded by Policy and Procedure Memorandum 509 interpreted the act’s provisions related to a “continuing, comprehensive, and cooperative” (3C) planning process.

- “Cooperative” was defined to include not only cooperation between the federal, state, and local levels of government but also among the various agencies within the same level of government;
- “Continuing” referred to the need to periodically reevaluate and update a transportation plan; and,
- “Comprehensive” was defined to include the basic ten elements of a 3C planning process for which inventories and analyses were required. (Table 1)

Table 1

**TEN BASIC ELEMENTS OF A CONTINUING, COMPREHENSIVE,
COOPERATIVE (3C) PLANNING PROCESS**

1. Economic factors affecting development
2. Population
3. Land use
4. Transportation facilities including those for mass transportation
5. Travel patterns
6. Terminal and transfer facilities
7. Traffic control features
8. Zoning ordinances, subdivision regulations, building codes, etc.
9. Financial resources
10. Social and community value factors, such as preservation of open space, parks and recreational facilities; preservation of historical sites and buildings; environmental amenities; and aesthetics.

In response to the 1962 Act, states and local governments were required to sign a “Memorandum of Agreement” for carrying out the 3C planning process in their regions. A Unified Annual Work Program set out the various steps to be carrying out in each area and the organization responsible for performing each step. States and local governments had to make a major effort to organize and develop their own planning process. Few areas had an urban transportation planning process in place when the 1962 Act passed. It took time to negotiate Memorandums of Agreement, hire staff, develop work programs and begin the technical tasks to develop an urban transportation

plan. Nevertheless, by the legislated deadline of July 1, 1965, all the 224 existing urbanized areas which fell under the 1962 Act had an urban transportation planning process underway.

From these early beginnings, the urban transportation planning process expanded in a number of directions. First, the 3C planning process was essentially a highway planning process. Even though one of the basic 10 planning elements referred to transit, the procedures, analysis techniques, and software were oriented to highway planning. The Urban Mass Transportation Assistance Act of 1970 was a landmark in federal

financing for mass transportation. It provided the first longterm commitment of federal funds for transit. Until the passage of this act, federal funds for mass transportation had been limited. Some urban area planning processes gave fuller consideration to transit improvements over the years but it was not until the passage of the Urban Mass Transportation Act of 1974, that the 3C planning requirements were also applied to transit planning. By this time, the Urban Mass Transportation Administration had been transferred from the U.S. Department of Housing and Urban Development to the US DOT, later renamed the Federal Transit Administration.

In the 1970's, emphasis was placed on transportation system management techniques. They were strategies to increase capacity with low cost improvements. They included ride sharing, traffic operational improvements, increased transit services, better traveler information, and paratransit. There was increased interest in light rail transit as a lower cost alternative to heavy rail. As travel demand continued to increase, the strategy of demand management was promoted. Parking surcharges, tolling, peak hour charges, and trip reduction ordinances were implemented. The resulting changes made urban transportation planning a multimodal endeavor.

Second, the 3C planning process focused predominately on vehicle travel essentially to determine the forecast of traffic volumes to be used in the design of Interstate highways. No attention was given to non- motorized modes of travel. With the interest in sustainable communities has come a new focus on non-motorized modes of travel. The increased commitment to and investment in bicycle facilities and walking networks were designed to meet the goals for cleaner, healthier air; less congested roadways; and more healthy, livable, safe, cost-efficient communities. The Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users established the

Non-motorized Transportation Pilot Program to construct a network of non-motorized transportation infrastructure facilities, including sidewalks, bicycle lanes, and pedestrian and bicycle trails, that connect directly with transit stations, schools, residences, businesses, recreation areas, and other community activity centers.”

Consequently, the 3C planning process has evolved from a highway planning process to a full multimodal process considering the needs of vehicles and travelers bolstered by a legal and regulatory underpinning and the procedures and technical planning techniques to carry it out.

Third, the initial requirements for the 3C planning process set out by the Bureau of Public Roads were modest by today's standards. Many of the issues raised in the “freeway revolts” still needed to be addressed and the passage of time brought many new issues. Future legislation and regulations addressed the issues of the dislocation of homes and businesses, taking of property and park land and, transportation for the disadvantaged. The National Environmental Policy Act (NEPA) of 1969 required federal agencies to use a “systematic interdisciplinary” approach to projects that had an effect on the environment. The process culminated with the preparation of an Environmental Impact Statement (EIS). The Clean Air Act amendments of 1977 required the finding of conformity of transportation plans and programs with established clean air standards.

The energy embargo of the early 1970's brought the new concern of petroleum usage and added the reductions of energy consumption to the requirements on the planning process. More recently, the increase in global warming and the consequent rise of major storms has focused attention on infrastructure resiliency. Concern for environmental justice needed to be addressed in planning transportation service improvements. In addition, the desire for more livable and sustainable

communities has broadened the focus of the urban transportation planning process on such measures as traffic calming. And of course, the need for adequate financial resources has always been a concern.

As these new concerns and issues arose, changes in planning techniques and processes were introduced. These modifications sought to make the planning process more responsive and sensitive to those areas of concern. Urban areas that had the resources and technical ability were the first to develop and adopt new concepts and techniques. These new ideas were diffused by various means throughout the nation, usually with the assistance of the federal government and professional organizations. The rate at which the new concepts were accepted varied from area to area.

Fourth, the US DOT requirements for the urban transportation planning process were from the beginning addressed to how the process was carried out. The requirements specified the type of organization to carry out the process, the development of a transportation plan, transportation improvement program, and agreement among the participants on the plan and program. There was no requirement on the outcome. Whatever the State and local officials agreed to was acceptable to US DOT. That changed with the passage of several environmental laws especially the Clean Air Act amendments of 1977. This act required a finding of conformity of transportation plans and programs with established clean air standards. This Act created huge policy and analytical burdens for MPOs in non-attainment areas.

Fifth has been the evolution of participants and decision makers in the urban transportation planning process. In the early years of the Interstate program, engineers communicated to engineers. The Bureau of Public Roads issued Instructional and Policy and Procedure Memoranda to State highway engineers. Decisions on planning and

implementing highway projects was a technical decision making process. With the passage of the Federal-Aid Highway Act of 1962, decisions on highway project in urbanized areas were to be made by the states in cooperation with the local communities, i.e. local elected officials.

The Federal-Aid Highway Act of 1973 required the governors of each state to formally designate a "Metropolitan Planning Organization" for each urbanized area of over 50,000 in population as defined by the Census Bureau. This required the establishment of MPOs in state enabling legislation. Initially, the Policy Boards of MPOs included only local elected officials. But through a series of laws MPO were required to involve local transportation providers including transit agencies, airport authorities, maritime operators, rail-freight operators, Amtrak, port operators, private providers of public transportation, and others within the MPO region.

The decision making process was further democratized with the passage of the Intermodal Surface Transportation Efficiency Act of 1991. It required a federally mandated emphasis on early, proactive, and sustained citizen input into transportation decision making - with special outreach efforts targeted at traditionally underserved populations. Public involvement became a process of two-way communication between citizen and government by which transportation agencies and other officials give notice and information to the public and use public input as a factor in decision making. A new decision model emerged in which public input into the assessment of transportation needs and solutions has become a key factor in most transportation decision making.

Sixth, the urban transportation planning process for many years had been a public sector enterprise. Increasingly though, the public sector is looking to the private sector for creative, cost-saving solutions

to complex transportation problems. Private-sector involvement has increased in design-build projects, intelligent transportation systems, emergency relief, and other program areas. As Federal and State transportation funding continues to be stretched and as needs for efficient surface transportation systems continue to grow, transportation officials are looking for new ways to capture the efficiency and value provided by private industry. Federal officials are now relying on public-private partnerships to reduce traffic congestion, improve quality of the transportation system, and increase the efficiency of the operation and maintenance of the system. Although the public sector usually retains ownership of the facility, the private entity is given additional decision making responsibility for determining how the project or task will be completed or how a particular facility or system of facilities will be operated and maintained.

Seventh, the urban transportation planning process initially focused on passenger travel. Little attention was paid to freight travel. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: recognized the importance of addressing freight needs. It required states and MPOs to provide freight shippers and providers of freight transportation services with reasonable opportunities to comment on transportation plans and transportation improvement programs. At the time that the act was passed few state departments of transportation and MPOs had developed resources for engaging the private sector in planning activities. New approaches are being developed to engage the private sector in the urban transportation planning such as public-private partnerships.

Technical planning procedures evolved as the list of issues lengthened. Early travel forecasting procedures were aggregate, using zonal averages and totals to analyze vehicle traffic. This was the result of limited computer capacity and mathematical procedures. Gradually, these procedures have

become more disaggregate analyzing the movement of individual travelers and vehicles. These disaggregate procedures better reflect travel behavior and allow the analysis of a wider range of policy options. Initial highway travel analysis procedures were joined by a battery of transit analysis procedures in the early 1970s. As the years passed new procedures were developed to evaluate vehicle emissions, energy consumption, safety, noise, land use, traffic operations, ride sharing, pedestrian and bicycle options, economic development, citizen participation, environment justice, demand management, tolling, and more.

The 1962 Highway Act's urban transportation planning provisions launched a new era that marked the transition of the highway program from a rurally oriented, civil engineering based activity to a new framework that has a major urban component, was multi-modal, interdisciplinary, involved a significant role for local officials, and was unique in the federal system. The transportation planning provisions have survived the test of time and the unique legislative requirements defined simply in 1962 as continuing, comprehensive, and cooperative, remain central to the legislated planning process. No other federal program had or has since tied capital expenditures to the results of a planning process giving state and local officials veto over proposed expenditures.

Virtually every major metropolitan area in the world has a technical transportation planning process patterned after that begun in the U.S. However, no other country has replicated the mandatory nationwide urban transportation planning process, and no other country has attempted anything as ambitious as the Interstate program. No other country has devised a scheme that allows state and local officials to allocate transportation formula funds that best serves local conditions, priorities, and needs.

Modifications in the planning process took many years to evolve. As new concerns and issues arose,

changes in planning techniques and processes were introduced. These modifications sought to make the planning process more responsive and sensitive to those areas of concern. Urban areas that had the resources and technical ability were the first to develop and adopt new concepts and techniques. These new ideas were diffused by various means throughout the nation, usually with the assistance

of the federal government and professional organizations. The rate at which the new concepts were accepted varied from area to area. Technically metropolitan transportation planning as practiced today varies by the size of area, but in all instances is data driven, analytically complex and interdisciplinary.

NATIONAL TRANSPORTATION – TRENDS AND CHOICES

Alan E. Pisarski

(Hyphenated titles were in in those days)

National Transportation—Trends and Choices began with Secretary William T. Coleman (he always said call me “Bill”). There never was a more patrician gentleman than “Bill” Coleman, with his vest and gold chain with a pocket watch – someone you would never address as Bill. When he said call me Bill, one answered “yes, Mr. Secretary!”

One way to recognize the pressure that led to T&C was that Secretary Coleman had been receiving many calls from Congress for “a Plan”. I believe it was our immediate Boss, Robert Henri Binder, Assistant Secretary for Policy who said: “to Congress a plan means a map with lines on it!” That is the way that the Interstate came into existence with many lines on maps ultimately coalescing into a national map about 12 years before the 1956 Act that funded it. Coleman added the thought that he wanted a sort of cheat sheet to keep in his desk, so that when a mayor came to visit and said he needed a subway, he could slide open that desk drawer and peek at a list that had yes or no next to that city’s name.

I recall when we were given the charge to start on such a planning document as Pat Webster, the Office Director, and I came back to our offices, I said to Pat this really needs a big think before we jump in, why don’t you come over to my place and we can put our feet up and think together. Pat said yes and I waited quite a while and he never showed. I walked down the hall to his place – and he was at his desk writing (we wrote in long hand on yellow legal pads in those days) – he was on

page three of Trends and Choices! It was really good stuff, and it is part of the introduction in the book today.

Side bar: Arthur L. “Pat” Webster had been Deputy Director under retired Naval Captain Ira Dye, in the Office of Systems Analysis and Information (OSAI) in the Office of the Secretary (I was the Information part). Pat was the technical energy behind so much of what that office did. When Secretary Coleman wanted the plan, an Office of Planning was created with Pat as Director and me as Deputy. Pat was a bundle of energy always plunging ahead with great intelligence – I often thought of him as a fullback running straight ahead into and through the opposing line. Although trained as an engineer at West Point, Pat felt that economics was the comprehensive discipline that provided the logical structure we needed to employ in transportation.

The final team came to about eight of us who produced T&C with strong computing support from outside consulting firms and help from the rest of the OST and the Department. In all, my recall suggests it involved less than two years and about 2 million dollars. Much of the approach was supported by the experience of the OSAI in producing the 1972 and 1974 National Transportation Reports on national investment needs (discussed elsewhere in this series). These documents were a prodigious first multimodal effort in an agency just a few years old and were never properly appreciated. In many ways the data sets and the analytical capabilities in the OST were stronger then than now.

The 400 plus page Trends and Choices product, described as the first national transportation planning document since the Gallatin report to President Thomas Jefferson prepared by Treasury Secretary Albert Gallatin, addressed all aspects of transportation – freight and passenger,

metropolitan, intercity and international, treating demand and supply. The main theme was a focus on making decisions about the future not with detailed statements of what needed to be done or investment costs but airing the options – the trends and the choices – for a broader discussion with the Congress and the American people.

It is important to recognize that the environment for transportation decision making was far more in flux at that time than perhaps any time since. The traditional institutional regulatory regime was coming to an end. The future viability of both railroads and mass transit were serious questions. Issues of petroleum availability were critical. Environmental questions were rising. Transportation logistical questions related to national defense preparedness were of great importance.

T&C focused on 1990 and described, based on trends and forecasts, what conditions would be like in that year, absent policy intercession. It was: “bounded only by the extent of potential problems and opportunities, not by distinctions between what is typically the area of the public or private sector, or of federal or local government responsibility.” Given the period in which we were working, the first Arab Oil Crisis occurred in 1974, energy was a key concern.

One of the hallmark products of T&C, and yet at the time seemingly secondary, was the first ever set of maps showing the nation’s major transportation facilities – a National Transportation Atlas.

These maps stood for a long period as the only comprehensive DOT national-scale transportation facility maps. Since the creation of the Bureau of Transportation Statistics the maps have been updated and expanded and some are available at the BTS website. A fully comprehensive national transportation Atlas would be an immensely valuable DOT product.

The Legacy of Trends and Choices

As the T&C work continued we were drawing closer to the Presidential elections and the document began to take on something of a statement of what next steps needed to be taken as a second stage of the planning effort. In the final chapter of the document, *The Future of the Planning Effort*, we set out what we saw as the next steps, national hearings, etc., but also technical improvements in data, forecasting, modeling and impact analyses were identified. Eleven key issues were listed for the future, many of which still have relevance today. Much of this could be inferred to have the sense of planning for what would be done in a second Ford Administration which, of course, never came to pass. I must record that Secretary Coleman read every word in the document several times and wrote substantial notes in a very real hands-on effort on his part. The Secretary had massive writing skills as a product of many years in expressing legal opinions and forced us to prove any contentious statements to his satisfaction.

Because the Ford Administration didn’t get an elected term, T&C ultimately took on the flavor of a “going out the door” legacy document by the outgoing Secretary. Many such documents have had that attribute since, in the DOT. The more successful, rather, were those that could be called “coming in the door” documents that laid out the plans ahead for a new Administration. such as the 1990 *Moving America* of Secretary Skinner, led by FHWA Administrator Tom Larson and Deputy Secretary Elaine Chao.

The following Administration, under Secretary Brock Adams, a former Senator, followed two paths: one was to disparage T&C as a dead document, from that “other” administration, and despite substantial demand refused to do a second printing, that’s why copies today are so rare; second, they pursued with us options to do a T&C follow-on document for them. After about a year,

our proposals, refined proposals and re-refined proposals, largely based on that last chapter, ended in something of an impasse with the Public Affairs Office over scope and roles. At that point Pat Webster and I left DOT to join the newly created NTPSC National Transportation Policy Study Commission, chaired by E.G. “Bud” Shuster. Much of the work we had done for T&C was similarly reflected in the thinking of that Commission – the emphasis on rigorous technical content and on sound economic analysis. A year or so later when foreign government teams visited DOT to discuss national analysis and planning they were directed to our offices at the Commission as “the guys who do that kind of stuff!”

Sidebar: Brock Adams had been part of the Senate group that pushed for a Transportation Commission as a way to second guess or override the Ford Administration. When Adams became Secretary in the new Administration he told the Senate in words to the effect that it was ok, one of them was now in charge at DOT, and they did not need to bother with that Commission. The Congress indicated that they now really liked the idea of a commission anyway and elected a Republican from the House as Chair.

T&C took on the aspect of a living document in that it became very popular in the Congress and was often the bane of the Adams’ Administration, constantly being quoted and used as the basis for questions to those in the Administration who came to testify. Some years later, in a subsequent administration, I saw a copy on the FRA Administrator’s coffee table, and asked why he bothered with it and was told that he had been warned by the outgoing Adams team to read it thoroughly because Congress would be asking questions based on its findings.

The T&C approach was the model followed in 2000 by Secretary Rodney Slater who stated in his opening message in *The Changing Face of Transportation*: “Thus we build on the foundation laid down by those who have gone before us, those who carved this path in National Transportation – Trends and Choices 25 years ago”.

More recently it was echoed by Secretary Foxx’s *Beyond Traffic* document, in which he stated:

In perhaps the most definitive of these surveys, Secretary Coleman, in the 1977 study entitled “National Transportation: Trends and Choices (to the year 2000)” captured the sentiments that have guided our efforts in this work:

“National Transportation: Trends and Choices” provides a starting point for that much needed public debate. It is an agenda of national transportation issues and alternative solutions that, from the perspective of the Department of Transportation, appear to have merit. It is not intended as a plan of action, although it encompasses programs and plans that already may have the force of law at various levels of Government. It is intended to be a prospectus of what is possible, practicable, and in the public service.

It is immensely rewarding to see one’s words come back to us from a contemporary Secretary and to see the T&C document providing context for present thinking in transportation products 40 years later. Pat Webster would be proud and Secretary Coleman would smile.

OBSERVATIONS ON THE ESTABLISHMENT OF THE DEPARTMENT OF TRANSPORTATION

Kevin Heanue, BPR/FHWA 1958-1998

In 1968 I had had ten years of experience with the Bureau of Public Roads (BPR) under the Department of Commerce. My recollection is that the long term employees were positive about their new home in the Department of Transportation, but there was also a wait and see attitude. BPR had originated in the Department of Agriculture in 1896, and then bounced around in a series of agencies during the Depression and WW II. There were some bad times during this period. For example, in 1933, Congress set aside the carefully derived criteria for highway projects and turned the program into a jobs program with no state matching and no system criteria.

Jumping ahead, in 1968 BPR transitioned into FHWA with the establishment of the Department and was on a roll having, with a few hiccups, gotten off to a very good start in implementing the 1956 Highway Act's Interstate Highway System. There were, however, clouds on the horizon. In 1968, the National Environmental Policy Act (NEPA) also passed. BPR had been trying to adjust to the times, implementing the planning provisions of the 1962 Highway Act, creating interdisciplinary teams, embracing the provisions of the Uniform Relocation Act, and initiating the Traffic Operations to Increase Capacity and Safety (TOPICS) to insure that operational and safety problems were not being ignored while the Interstate System was advancing.

NEPA, in particular, presented a major challenge. While there were growing concerns in urban areas, BPR had been able to keep the program moving.

NEPA changed all that. The language of NEPA was so sweeping in regard to process and environmental concerns, that in spite of state and FHWA attempts to grandfather projects that were in various stages of development, federal courts held they had to go back to square one and meet the requirements of NEPA. Virtually every controversial Interstate project was stopped and had to go back and meet the new NEPA process requirements. There was essentially a two or five year or more gap in the advancement of most major projects. FHWA rebuilt the project development process largely on the basis of lessons learned from NEPA case law and projects began to advance.

FHWA management looked for support from the new Office of the Secretary of Transportation. It was nowhere to be found. The new OST withdrew from FHWA the authority to approve environmental documents and in the view of FHWA, became advocates of EPA positions rather than supporting FHWA, a major Departmental component. This adversarial situation continued for many years.

More broadly, as the Department evolved, there was initially a them versus us mentality. I recall Ted Holmes, a senior FHWA official and a legend in the highway program, coming back from an OST meeting irate over the fact that very young new OST staffers with little understanding of the program had tried to inform him of the errors of his and FHWA's ways.

In retrospect, the Coast Guard was always a fringe element, never integrated into the Department. They now have a new home. FAA from day one has resisted all attempts to make them fully integrated into the Department. Even today a review of their website shows few mentions of DOT. Without searching they appear to be the independent agency they once were. I believe the conceptualizers of the Department expected more. The series of "stovepipes" that were pulled together to form a

Department remain largely stovepipes. Several Secretaries tried to form a Surface Transportation Administration. All efforts died before fruition either within the Department or in Congress that was unwilling to yield Committee jurisdiction.

Throughout all this FHWA has been a dedicated participant in the development and evolution of the Department. In my 30 years with FHWA after the Department was established, I received many assignments involving cooperation with OST and the other modes. Never was I asked to frustrate a Departmental initiative.

On the fiftieth anniversary of the Department I believe the Department has been successful, but falls short of the expectations of its founders.

DEVELOPING A DATA PROGRAM AT DOT

Alan E. Pisarski

When DOT opened its doors on April 1 1967, there existed a substantial body of ad-hoc transportation statistics produced by multiple agencies throughout government. Several of the agencies, the Bureau of Public Roads and the Federal Aviation Agency came into the DOT bringing their modally focused data programs with them. With small exceptions the main body of transportation statistics, largely designed to serve regulatory reporting or administrative needs remained outside the DOT including the programs of the three regulatory agencies – the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission; the Maritime Administration, which remained in the Department of Commerce; the US Army Corps of Engineers; and, finally, the nation’s main statistical agency the Bureau of the Census. The Bureau, notably, was precluded from collecting data that might duplicate the work of the regulatory agencies. Thus the notion of an overall program of data collection was fragmented and largely independent of any sense of a comprehensive and consistent collection and reporting of transportation statistics.

The Department of Commerce had the power to collect data as part of the High Speed Ground Transportation Act of 1965. That act expired on June 30 1971 but Section 4 which empowered the Secretary of Commerce to collect and provide data was retained. A similar, but broader mandate for data collection appeared also in Section 4 of the DOT Act giving the new Secretary the power to “promote and undertake development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation.”

Fourteen months after the Department’s start a strong letter was received by the Secretary from the House Appropriations Committee indicating that no new funds would be allocated to Transportation Information Planning in the coming fiscal year because: “Last year the Committee called on the Department to ‘develop a more coherent and effective assignment of the responsibilities within the Office of the Secretary and among the administrations for Transportation Information and statistics functions’. There is no evidence that this has been done.” The letter mandated a report to the Committee to be received by Jan 1 1969.

A report entitled TRANSPORTATION INFORMATION, known popularly as the red book, was provided to the Congress in May of 1969 which laid out a five-year comprehensive transportation industry-wide data program to meet the Congress’s and the Department’s needs. I had arrived mid-way thru the production of the report, hired by Robert E. Barraclough, with whom I had worked at the Tri-State Transportation Commission in New York, both of us doing transportation data programs in different sectors. My focus had been on passenger travel behavior and his on land use statistics and the land use determinants of travel.

Barraclough was a geographer from New Zealand with an intense devotion to better transportation information. He was made Director of a new Office of Transportation Information Planning which only lasted a brief period in the vagaries of the start-up years of the Department. Recognizing that the whole concept of transportation as an entity, rather than as separate modal specialties was new, helps make the point that a big part of the data program, was designed to support the policy officers of the Department and the President in their responses to national planning and policy issues. This is unlike many other federal statistical programs focused on producing data for general public use. It was only in that much of what was done for the Secretary and his Policy Officers proved to have value to

other private and public entities that the broader mission was recognized.

The Red Book was a prodigious effort laying out a \$36 million multi-modal economic, geographic and engineering data program addressing travel behavior and investment activities. In the parlance of the book it addressed the flows of persons and goods in the nation, the channels on which the flows occur and the activities that generated the flows. Despite the Congress's demands the document fell on deaf ears in the Department and in the Congress, and the specific program was never officially ordained and no further action by Congress occurred. Whether this was a product of concern about the scale of the undertaking, or indifference to its approaches was never learned.

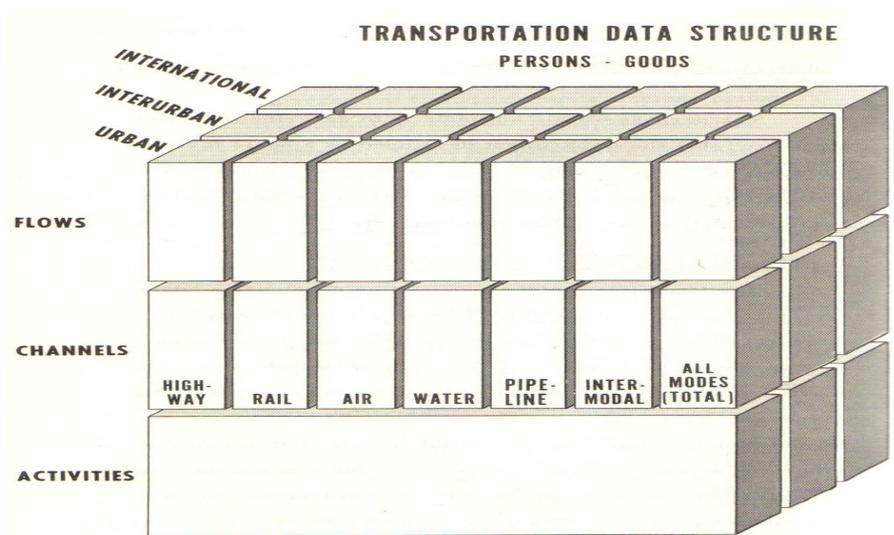


Figure 6: The transportation analysis, forecasting, planning and policy making concerns of government and industry embrace urban, interurban and international transportation by all modes. Needed activities, channels and flows data must be inter-relatable among themselves, between geographic levels (urban, interurban, international), and across all modes of transportation, for the transportation of persons and goods.

This was the beginning of long periods of intermittent indifference and action in the Department. Tracing the history briefly it went like this:

- In the move to DOT the Office of Transportation Information Planning was placed in the Office of the Assistant Secretary for Research and Technology, followed in Sept 1968 by a move to the Assistant Secretary for Policy Development, relabeled the Assistant

Secretary for Policy and International Affairs in 1969 about the time I arrived and the Red Book was written.

- In 1971 the Office was abolished, Barraclough left in frustration, and I became the Chief of the Information Division in a new Office of Systems Analysis and Information under Naval Captain Ira Dye.
- In this period the Office produced the 1972 and 1974 National Transportation Reports, a comprehensive multimodal series of documents based on state reporting. This is documented elsewhere in this series.

- By 1974 the Information Division program had been moved to the Transportation System Center in Cambridge, in a move intended to strengthen the activities of the new center, later the Volpe Center. I refused to move as did my Division staff so the program came down to the staff being reassigned, the program work being done in Boston, while I retained funding control as a Special Assistant to the Assistant Secretary for Policy. Probably the only Special Assistant ever in the Department with his own budget – in this case about \$9 million. So we had gone from an Office to a Division to a Special Assistant in about three years.

- Much of the focus of the work shifted to the Office of Transportation Planning in 1975 which produced *National Transportation – Trends and Choices* for Secretary Coleman as it developed the data support needed for the study. T&C is described elsewhere in this series.

- When Pat Webster and I left the Office of Transportation Planning, and the Office closed, the data program came down to one staff person in the Systems Analysis Office.
- A year or so later the funding of the program was zeroed out by a Congress unhappy with the Office of Policy in OST.
- No national transportation studies, which often drove statistical efforts, were mandated between 1979 and 1989
- Still, the perspectives and the transportation philosophy from the Red Book, the National Transportation Reports and Trends and Choices have guided the data collection philosophy and scope of the Department's programs since.

A vignette: When Webster and I were at the National Transportation Policy Study Commission, visitors would arrive from European government agencies a bit confused saying they went to US DOT to discuss national planning and they were told that "the guys who do that stuff" were now at the Policy Commission—probably a low point in the Department's history.

In the short period after the Red Book and the start of T&C there were important milestones in the Department's data collection activities many of which are still ongoing today.

- The ICC had cancelled the Rail waybill statistic program in 1966. Given the funding available in the Department (the \$9 million) and its superior computer data processing skills in the new world of computers we used the ICC's reporting authority to reinstitute the process in 1971 which continues today.
- A national trucking survey was instituted with data program funding and FHWA staff

management – the Department's first such survey.

- National Transportation Statistics an annual report was instituted in 1971 and is an annual product today.
- The key data role of the program in the period was perhaps the two oil boycotts in 1973 and again in 1978, in which we developed the reporting systems for the White House on fuel availability and traveler behavior and responses to fuel curtailments. We also supported OMB in developing fuel allocation plans to be ready were rationing to be required. The great benefit was that the Secretary at this stage was Claude Brinegar, an oil executive and a PhD mathematical statistician, who became the real source of sound information on petroleum in the federal government. DOT's bi-weekly reports to the White House won commendations. This work was moved to the Department of Energy, created as a result of the energy concerns. Their mandated Energy Information Administration has been strongly supported and effective with their 35th Transportation Energy Data Book recently published and their annual Energy Outlook very effective information tools, perhaps a model for what DOT's data program could have been.
- A key period occurred as the regulatory agencies, which had been the center of much statistical reporting, were abolished and their data programs ended or moved to the Department. There was a tendency among private carriers to revel in the end of mandated reporting to the ICC and to resist any attempts by the Department to reinstitute those reporting systems.

Perhaps, embarrassingly enough, we might say that 1977 was the peak of national transportation statistical breadth and depth in

the federal government. With a strong Census of Transportation at the Census Bureau, now much diminished, the still viable regulatory agency carrier reporting systems, and many new modal programs operating at the DOT. Note that was 40 years ago!

We entered the 80's in perhaps a data depression where many programs expired, a few hardy programs survived with irregular reporting periods, until ISTEA and the "rosy fingered dawn" when the Bureau of Transportation Statistics was established in the DOT. Driven by a 1990 DOT Statement on Policy, a TRB report, *Data for Decisions*, and the strong interest of Senator Moynihan there seemed to be a rebirth of recognition of the need for information. Optimism was high, and many thought all would be well at last. One of the highlights of that era was the very important role that better data played in the new interest of the Department in freight planning. It was the production of freight flows and the depiction of those flows in national maps that brought a greater credence to the arguments for the need for greater focus on freight issues and concerns, often neglected in past Departmental focus. One very pertinent outcome was to show that the presumed "rust belt" was

not quite as rusty as many thought. The mapping confirmed that there was still vibrant industry activity in that region with massive regional and national freight flows.

Since then, in the second 25 years of DOT, the new BTS has worked hard and produced many valuable products which are basic to the needs of the Department for better information, as shown by the freight flow data mapping discussed just above, but has lacked resources, and like the original data program at the beginning has lacked stability, starting as an Administration with a Director confirmed by the Senate, then to an Office in a new Administration without Director Senate confirmation, and now an office in a newly formed unit in the Office of the Secretary (strangely enough with the same name as when the Transportation Information Program began, in the new Department 50 years ago).

It remains to be seen whether the Department will capitalize on the new world of big data coupled with more intensive surveying to produce the transportation data that the nation needs for massive transportation investments and regulatory policies.

THE EVOLUTION OF FREIGHT TRANSPORTATION IN THE U.S. DEPARTMENT OF TRANSPORTATION

Gary E. Maring

(with appreciation for the help and many resources and data available in the Department for this effort, particularly in the Office of Freight Transportation Management and Operations at FHWA)

Introduction

The volume of freight being transported over the nation's transportation infrastructure has grown dramatically over the last 50 years. This is largely attributable to high rates of growth in domestic and international trade. In addition, the cost of freight transportation has decreased dramatically in real terms through deregulation. Just-in-time manufacturing, e-commerce, containerization, and demand for small package service have resulted in shipments of more high-value goods that must meet tight schedules. These changes forced attention on better managing the transportation system through improved operation of both the public and private freight infrastructure and addressing key national bottleneck improvements. Transportation planning at all levels of government had to expand its focus and tools to address the emerging freight challenges and national policy was increasingly concerned with addressing intermodal freight issues to better support our domestic economy and international trade.

History of Freight Development

The Federal Highway Program in its evolution had little focus on interstate and international commerce. In the depression era, it focused primarily on getting the farmer out of the mud,

in the war years on military deployment, and after WWII responding to the suburbanization of America and the commuting challenges that posed for the highway system. My early career in transportation planning in the late 60s and 1970s was almost entirely focused on passenger transportation challenges. Penetration of the Interstate System into metropolitan areas started to cause massive dislocation issues resulting in efforts to stop freeways and favor mass transit solutions. By the early 1970s, highway planning had to expand to a multimodal focus but this was almost entirely passenger focused. The joint planning regulations issued in 1974, jointly by the Federal Highway Administration and the Urban Mass Transportation Administration, helped drive this focus. Large scale urban transportation planning tools emerged in this period to model metropolitan passenger flows and help design multimodal passenger networks to handle the commuter surge of this period. There were periodic calls for more attention to freight in the planning process; a number of urban freight studies were conducted but freight never got mainstreamed in the planning process during these early years.

A parallel development that was largely oblivious to me in my planning world was the emerging national crisis in the private freight transportation sectors, most notably the state of the nation's freight railroads and trucking in a regulated environment. This challenge led to calls for the deregulation of the commercial transportation sector. Government regulation had become out of step with the needs of commercial carriers to meet the rapid growth in domestic and international commerce. This concern resulted in a bipartisan effort in Congress and the Carter Administration to develop deregulation proposals and this focus carried on into the Reagan Administration. Four separate pieces of deregulatory legislation were enacted between 1978 and 1984. These included the Airline Deregulation Act of 1978, the Staggers Rail Act of 1980, the Motor Carrier Act of 1980,

and the 1984 Shipping Act. All employed the same basic approach of focusing on easing restrictions on market entry and exit, removing price controls, and allowing for differential services. The effect of deregulation was to remove the modal and jurisdictional barriers among freight carriers. The result was the birth of the intermodal transportation industry and dramatic growth in freight transportation with technological innovations such as cross-country double-stack rail service. Trucking, both truckload and less than truckload, grew dramatically to meet the nation's increasing logistics demands.

It was in the 1980s that I was increasingly drawn into freight issues as I was appointed as a Senior Executive in the FHWA Office of Policy. Two of the key issues that emerged were Truck Size and Weight policy responding to the need for trucking to be more productive as demand grew dramatically and Cost Allocation dealing with issues of fees paid by various passenger and freight users into the Highway Trust Fund. Milestone legislation in 1982, the Surface Transportation Assistance Act, resulted in increased user fees on all sectors with a new diesel differential fuel tax and other heavy vehicle use taxes applied to heavy trucks. Truck Size and Weight increases were enacted. At the same time the general gas tax was raised five cents and for the first-time funds were set aside for transit within the Highway Trust Fund. The 1982 Act spurred more policy studies related to freight around issues of user fees, size and weight, and economic regulation. Although the Department was already moving on trucking deregulation at the federal level much remained to be done at the State level. These efforts, working through the National Governors Association, resulted in much voluntary state deregulation but in the end some Federal preemption of State trucking regulation was needed and justified under the Constitution's Commerce Clause. Interstate and international commerce was changing dramatically and we in the Department were in a catch up 'mode'.

These developments became a major defining theme behind the federal transportation policy debates in the late 1980s that lead to the enactment of ISTEA. Several of us worked on Secretary Skinner's National Transportation Policy effort in 1990-91 which was an important precursor to the upcoming reauthorization. With the passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, transportation planners were given a mandate to consider freight transportation requirements when developing transportation plans and making investment decisions. ISTEA also marked a renewed awareness of the importance of freight transportation and an integrated, multi-modal transportation system to sustain economic growth. The preamble to the Act highlighted the linkages among economic productivity, freight and goods movement, and intermodal transportation. In part, it said: "It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner....The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner... while promoting economic development and supporting the Nation's preeminent position in international commerce.... The National Intermodal Transportation System shall include a National Highway System ... [of] roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.... The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce..." By encouraging multimodal coordination in public and private freight planning and investment in ISTEA, Congress hoped to stimulate national freight productivity that would spur trade, economic development, and international competitiveness.

Further, the truck size and weight ‘armistice’ in ISTEA along with the general improving health of freight business for all modes helped focus energies on modal cooperation rather than modal competition.

ISTEA also created the Office of Intermodalism, which became a focus for discussion of freight-oriented policies in the Department, and BTS, which started the Commodity Flow Survey and other data programs that eventually became the foundation for the Freight Analysis Framework which I discuss later. Freight policy language in ISTEA quickly raised expectations in the freight transportation sector. However, the limits on the Federal-aid funding programs made it difficult to prioritize and fund freight-specific projects, particularly when they were competing for funding with more traditional passenger oriented projects. In addition, the devolution of planning and decision-making to the state and local level and the emphasis in ISTEA on thinking and acting locally complicated freight transportation planning and project development. The perspective of state and local planners is limited by statute to the area over which they have jurisdiction. However, freight systems tend to be national or global in scope. The National Highway System designation helped address this issue, but only within the highway system and its intermodal connectors.

I was increasingly drawn into these freight issues in FHWA during the 1990s with implementation of ISTEA. As part of a major reorganization of the agency in 1999, the decision was made to create a Freight Office in FHWA for the first time and I was asked to be its new Director. Among the first things we did upon creating the Office of Freight Transportation Management and Operations in FHWA in early 2000 was to convene a private sector advisory group from the various freight modes. I worked with representatives from the Office of Intermodalism, FRA, and MARAD to reach out to all the private sector modes. This led to an increasing

number of domestic and international conferences and working groups to grapple with the trade and intermodal freight challenges that were emerging. The Chicago CREATE project was a prime example of the freight bottlenecks that began to be raised to national attention in this period. The confluence of the four domestic and two Canadian railroads along with AMTRAK and a large commuter rail system in Chicago caused huge rail bottlenecks and cross town truck drayage of containers between the Western and Eastern railroads caused much congestion on the street system. I attended one of the first meetings of the Department with private railroad representatives in 2000 in the Chicago area and viewed a 30-minute fast speed simulation of a full day of rail movements in Chicago. What popped out to me, was that the freight rail system largely shut down 3 hours in the morning and 3 hours in the afternoon to accommodate passenger rail movements. This was becoming intolerable as Chicago emerged as a national bottleneck for domestic and international trade. This was to result in a focused Federal, State, and local investment in improving the rail flows and intermodal connections in Chicago.

As more anecdotal information about national bottlenecks emerged, the need for a data driven analytical approach became evident. The Freight Office, in cooperation with the other modes, therefore undertook development of the Freight Analysis Framework (FAF) to better understand the complex pattern of domestic and international freight flows. The initial tool integrated data from a variety of sources to help create a national picture of freight movement along major corridors connecting states and major metropolitan areas. The BTS Commodity Flow Survey increasingly became the major data source underpinning the FAF. The national freight flow maps created through the FAF quickly caught the attention of a wide audience of public and private sector freight stakeholders and helped focus national attention on key bottlenecks in the system. The FAF has become a remarkable national and state tool for freight planning and policy analysis, and more than

anything else, I believe, has enabled us to develop the proactive national and state freight policies and programs we have today. This, I think, is a big win for data and I know Alan Pisarski and Rolf Schmidt will be happy for the data plug!

The Current State of Play in Freight

Subsequent legislation incrementally increased the attention on freight in the planning process and in the Federal-aid programs, but with the implementation of the FAST Act in December 2015, Freight has finally come front and center within the Department. The Fast Act, for the first time, enacted a mainline Federally apportioned program for freight, and of course there are many other provisions detailed below by my former Freight Office in FHWA. Their briefing material highlights that FAST contains the following freight provisions:

- *Establishes a National Multimodal Freight Policy that includes national goals to guide decision-making.*
- *Requires the Development of a National Freight Strategic Plan to implement the goals of the new National Multimodal Freight Policy. The National Freight Strategic Plan will address the conditions and performance of the multimodal freight system, identify strategies and best practices to improve intermodal connectivity and performance of the national freight system, and mitigate the impacts of freight movement on communities.*
- *Creates a new discretionary freight-focused grant program that will invest \$4.5 billion over 5 years. This new program allows States, Metropolitan Planning Organizations (MPOs), local governments, tribal governments, special purpose districts and public authorities (including port authorities), and other parties to apply for funding to complete projects that*

improve safety and hold the greatest promise to eliminate freight bottlenecks and improve critical freight movements.

- *Establishes a National Highway Freight Program. The Act provides \$6.3 billion in formula funds over five years for States to invest in freight projects on the National Highway Freight Network. Up to 10 percent of these funds may be used for intermodal projects.*
- *Includes new authorities and requirements to improve project delivery and facilitate innovative finance. The FAST Act includes provisions intended to reduce the time it takes to break ground on new freight transportation projects, including by promoting best contracting practices and innovating financing and funding opportunities and by reducing uncertainty and delays with respect to environmental reviews and permitting.*
- *Focuses on freight performance including the collection of performance measures for leading U.S. maritime ports. The FAST Act requires the Bureau of Transportation Statistics (BTS) to collect and annually report performance measures for the nation's top 25 ports, as measured by three methods (total tonnage, containers, and dry bulk tonnage).*

Conclusions

As I look back over my more than 50-year career, coming at the time of the 50-year milestone for the U.S. Department of Transportation, I think we can be proud of our efforts in the Department to unleash freight transportation and help make our nation the most competitive in the world. Little did I know when I entered the Bureau of Public Roads in 1964, as a highway engineer trainee, that my career would emerge as it did; but I wouldn't trade it for anything.

THE DAY DONALD TRUMP CAME TO DOT

Jeffrey N. Shane

Eastern Airlines had been on the ropes for some time in the 1980s. In 1988, its then owners, Frank Lorenzo and his Texas Air Corporation, decided that the Eastern Shuttle – provider of hourly flights between Washington, New York, and Boston, needed to be packaged as a separate company and sold to raise much-needed cash. Lorenzo found an eager buyer in Donald Trump.

The transaction was agreed in October, a month before the election of George H. W. Bush to succeed Ronald Reagan as President. The deal was fully consummated in June of 1989. Trump paid \$365 million for the company. He reportedly invested \$20 million of his own money in the venture; the rest came from a syndicate of banks. In return he received a fleet of aging 727s and the right to use scarce takeoff and landing slots at Washington National Airport, as it was then called, and LaGuardia in New York.

Operations at National and LaGuardia had been capped since 1969 in keeping with the FAA's so-called "High Density Rule." (JFK and Chicago O'Hare were the only other airports covered by the rule; Boston was not.) It had been established as a temporary measure but the FAA had never

allowed it to expire. Beginning in 1986, the FAA allowed takeoff and landing slots to be bought and sold in a secondary market. Eastern thus could sell its entitlement to the hourly slots essential to the Shuttle's operation as part of the Shuttle deal. A significant portion of the price Donald Trump paid for the Shuttle therefore was attributable to the airport slots included in the package.

Trump refurbished the old, gas-guzzling 727s in keeping with the high-end brand he had been burnishing at every opportunity. Thick maroon carpets were installed, along with leather seats, faux marble and gold-toned fixtures in the lavatories, and an array of other heavy accoutrements. His executives knew that one essential prerequisite to financially successful airline operations was keeping unnecessary weight off the aircraft in the interest of reducing fuel consumption. To their chagrin, the company was adding significant weight to each plane with no regard to its impact on the bottom line, and at a time when fuel prices were rising. Obviously, he believed that the incremental revenues attributable to the superior quality of the product he was creating would more than justify the cost attributable to the additional weight.

President Bush took office on January 20, 1989. His choice as Secretary of Transportation was Samuel K. Skinner, a prominent Chicago lawyer. In late 1989, Secretary Skinner launched a reconsideration of the FAA's High Density Rule.

Washington National and LaGuardia were still highly congested airports, but he questioned whether the 20-year-old artificial cap was necessary. Lifting it would not affect safety because the FAA's air traffic controllers would keep aircraft appropriately separated. The Department of Transportation sought comment on the idea.

The economic value of the takeoff and landing slots at Washington National and LaGuardia was of course a function of their scarcity. If the cap were removed, slots would become more plentiful and thus less valuable. Implementing Skinner's idea, therefore, would reduce the value of the Shuttle property by millions. Moreover, an airline free-for-all at Washington and New York might well compromise the reliability of the Shuttle's hourly service and reduce its value even more.

Donald Trump wasted no time in seeking an appointment with Secretary Skinner.

I was serving at DOT as Assistant Secretary for Policy and International Affairs at the time, and I joined Secretary Skinner for the meeting, along with his counselor, Ken Quinn. Because the Secretary was finishing up an earlier meeting, I sat talking with Trump for ten minutes or so until the Secretary was available.

He could not have been more cordial or personable. He put us on a first-name basis from the start and did an effective job of previewing the arguments

he would present to the Secretary about why terminating the High Density Rule would be a bad idea – bad for the Trump Shuttle, to be sure, but also bad, he said, for the traveling public.

He was equally engaging during the meeting with Secretary Skinner. He described the airplanes he had acquired from Eastern as “junk, just junk,” and told us of the small fortune he was having to invest to bring them up to his standard. As a jet-qualified pilot himself, Skinner was extremely knowledgeable about the aviation system and asked hard questions. Trump handled them competently.

Skinner ultimately shelved the idea of repealing the High Density Rule, although it was not because of anything Donald Trump had said. The FAA, an agency Skinner held in high regard, argued that terminating slot regulation would impair the reliability of flight schedules everywhere. In effect, the agency validated what Donald Trump had said. Skinner accepted the agency's – and Trump's -- advice.

In the end, however, it didn't matter. Ownership of the Shuttle, doing poorly in the market, was ceded thereafter to the banking consortium. US Airways was brought in to run it under contract and ultimately bought the company in 1994. It lives on today – following US Airways' merger with American Airlines – as the American Shuttle. The marble and gold lavs, alas, are long gone.

THE DAY RICHARD NIXON CAME TO DOT

Jeffrey N. Shane

Shortly after his 1969 inauguration, and after his new Cabinet was fully populated, President Richard M. Nixon announced, contrary to past practice, that he would launch his administration by meeting each of his Cabinet officers in *their* offices, not his.

Pending completion of the new Department of Transportation Building at Seventh and D Streets, Southwest, the Office of the Secretary of Transportation was housed temporarily on the eighth floor of the sleek, white-marble-clad FAA Building three blocks away on Independence Avenue. The Secretary's office, now occupied by John A. Volpe, the former Massachusetts governor whom Nixon had appointed as America's second Secretary of Transportation, was on the eighth floor of the building on the south side, looking toward the Potomac and Washington National Airport (as it was then called). The General Counsel's staff was housed on the north side, looking toward the Mall. As a lowly GS-11 trial attorney, I worked from a small interior office, but my boss's view of the Capitol and the Washington Monument from his large windows was glorious. The north and south sides of the building were bisected by a long, wide hallway with elevator bays near either end.

It was exciting to think that the President would actually come to our building. I'd never seen a President in the flesh. For security reasons, however, we were told there would be no advance announcement of his arrival. I guess they thought we wouldn't notice that carpenters had been working for a week constructing, with plywood and 2x4s, a long walkway from the Independence Avenue curb in front of the building, across a

wide plaza, to the front door. The purpose, one guessed, was to protect the President as he made his way through the teeming masses that somehow materialized at the very moment of his carefully guarded and unannounced arrival. The whole business was a puzzlement, since the President would undoubtedly be driven into the underground garage in any event.

Whatever its purpose, the redundant carpentry was a pretty clear sign that the President's visit was imminent. Indeed, there was so much buzzing in the air on one particular morning that I knew this was the day.

I wasn't very efficient that morning. I took frequent strolls to a nearby soft drink machine, the better to keep an eye on the elevator bay closest to the entrance to the Secretary's suite. My persistence paid off. On one of those walks, I saw six or seven employees gathered near the elevators. They had heard that the President was in the building and were awaiting his appearance.

I walked over and joined the group. Just as I got there, the elevator doors opened and a dark-suited, crew-cut Secret Service agent with the tell-tale curly wire down his neck strode toward the Secretary's main entrance just a few feet from where we were standing. Then a second Secret Service guy. And then...the President of the United States!

Now when people see a President in a setting like that, they spontaneously applaud. It just seems like the right thing to do, and that's what our group of seven or eight employees did -- for a few seconds, at least. Nixon was in lock-step behind his Secret Service detail, striding purposefully toward the Secretary's office, and the sound of clapping obviously caught him by surprise. He paused, turned toward us, flashed a wide grin, and threw both arms skyward. Yes, he even made his trademarked "V" signs -- as though this was another campaign stop.

By the time Nixon threw up his arms, however, the applause had already stopped. We just stood there. The elevator bay was enveloped in an eerie silence. And yet there was our President, grinning at us with his arms in the air. He wasn't in Madison Square Garden; he was on the eighth floor of the FAA Building. With his arms still raised, Nixon turned around once or twice as he followed his security detail, doing a kind of pirouette into the Secretary's suite.

Nobody said anything for a few moments. We would all go home and brag to friends and family that we had been just a few feet away from the

President that day, but all of us shared the same reaction: it had been a profoundly weird moment. In retrospect, I suppose, we might have treated his oddly inappropriate response to a handful of friendly government workers as evidence of the strangeness that would become more conspicuous over time. I doubt that anyone was that prescient.

I went back to work. I never heard what transpired that day in Secretary Volpe's office.

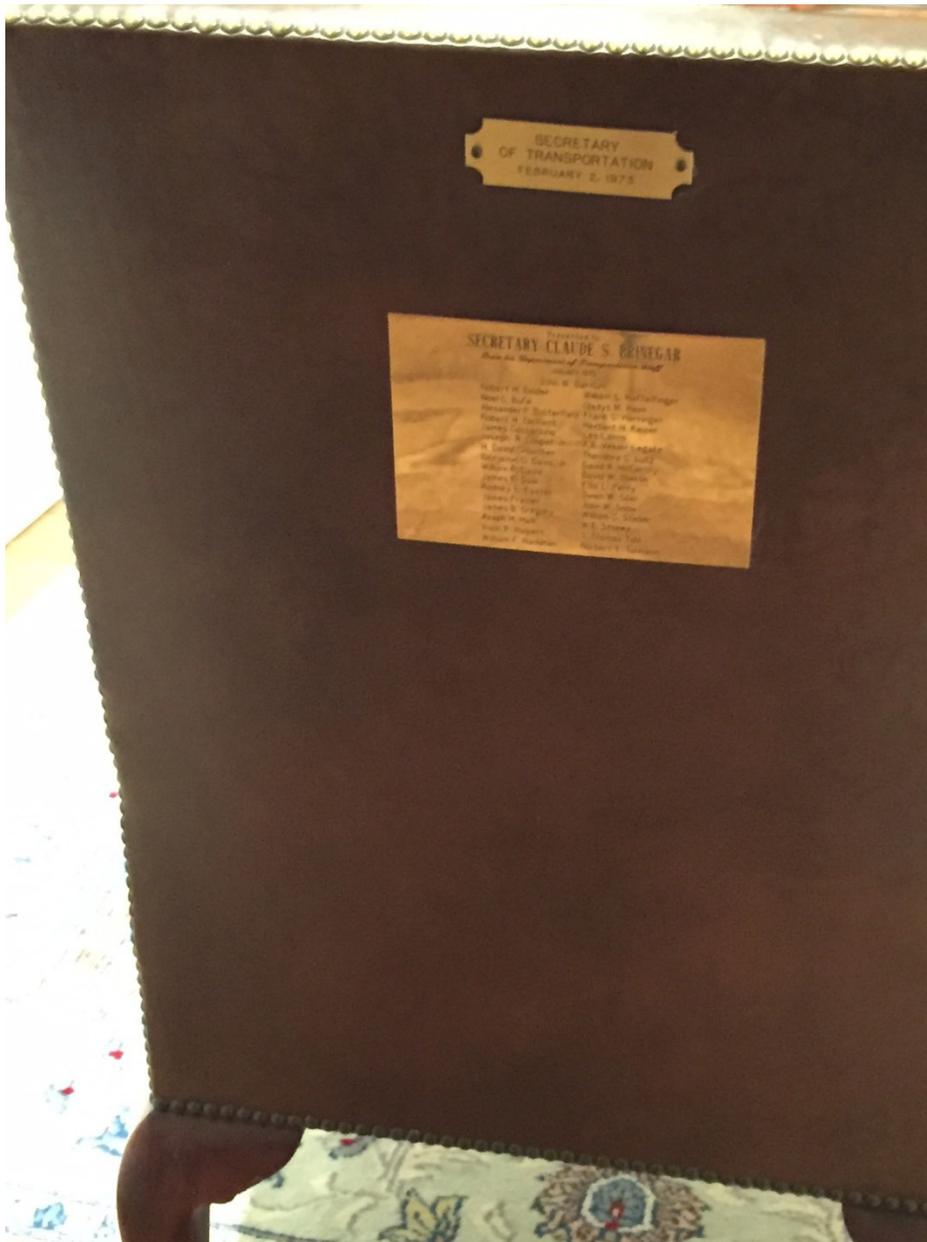
A PHOTO OP WITH SECRETARY CLAUDE S. BRINEGAR

Alan E. Pisarski

This is a brief photo review of fun moments in Secretary Brinegar's tenure, provided by the family of the Secretary.

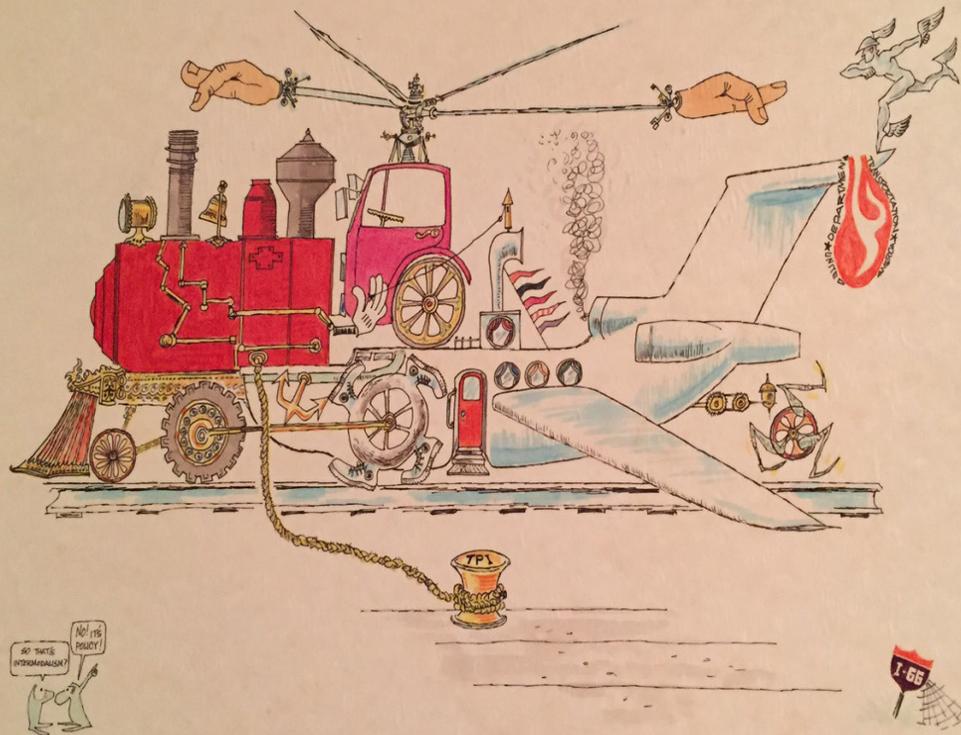


Secretary Brinegar in Cabinet meeting with President Ford



Secretary Brinegar's Cabinet chair with senior staff identified—the keen-eyed will be able to discern some of the staff members of the period.

CLAUDE BRINEGAR'S SIX ½ CRISESES



Secretary Brinegar's 6 ½ Crises – a lampoon of intermodalism at DOT with TPI (the Office of the Assistant Secretary for Policy and International Affairs, or the Terrible Pressure Institute as A/S Robert H. Binder called it, the anchor impeding progress)

CONSTITUTIONAL COMICS



APPROVED BY THE AMERICAN PETROLEUM INSTITUTE

DO YOU, CLAUDE S. BRINEGAR, SOLEMNLY SWEAR TO FAITHFULLY DISCHARGE THE DUTIES OF THE OFFICE OF SECRETARY OF TRANSPORTATION AND TO PRESERVE, PROTECT, AND DEFEND THE AIRWAYS CHANNELS, ROADBEDS, AND TURNPIKES OF THE UNITED STATES OF AMERICA AGAINST ENEMIES BOTH FOREIGN AND DOMESTIC?

I DO!

INCIDENTALLY, MR. SECRETARY, FOR WHAT IT'S WORTH, SHOULD THE PRESIDENT BECOME INCAPACITATED, AND THE VICE PRESIDENT, SPEAKER OF THE HOUSE, PRESIDENT PRO TEM OF THE SENATE, THE SECRETARY OF STATE, THE SECRETARY OF THE TREASURY, THE SECRETARY OF DEFENSE, THE ATTORNEY GENERAL, THE SECRETARY OF THE INTERIOR, THE SECRETARY OF AGRICULTURE, THE SECRETARY OF COMMERCE, THE SECRETARY OF LABOR, THE SECRETARY OF HEALTH, EDUCATION AND WELFARE, AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT ALL FOR SOME REASON BE DISQUALIFIED FROM SUCCEEDING HIM, OR THEIR OFFICES BE VACANT, YOU, AS FOURTEENTH IN THE LINE OF SUCCESSION, WOULD OF COURSE BE REQUIRED TO ASSUME THE AWESOME RESPONSIBILITIES OF THE PRESIDENCY.

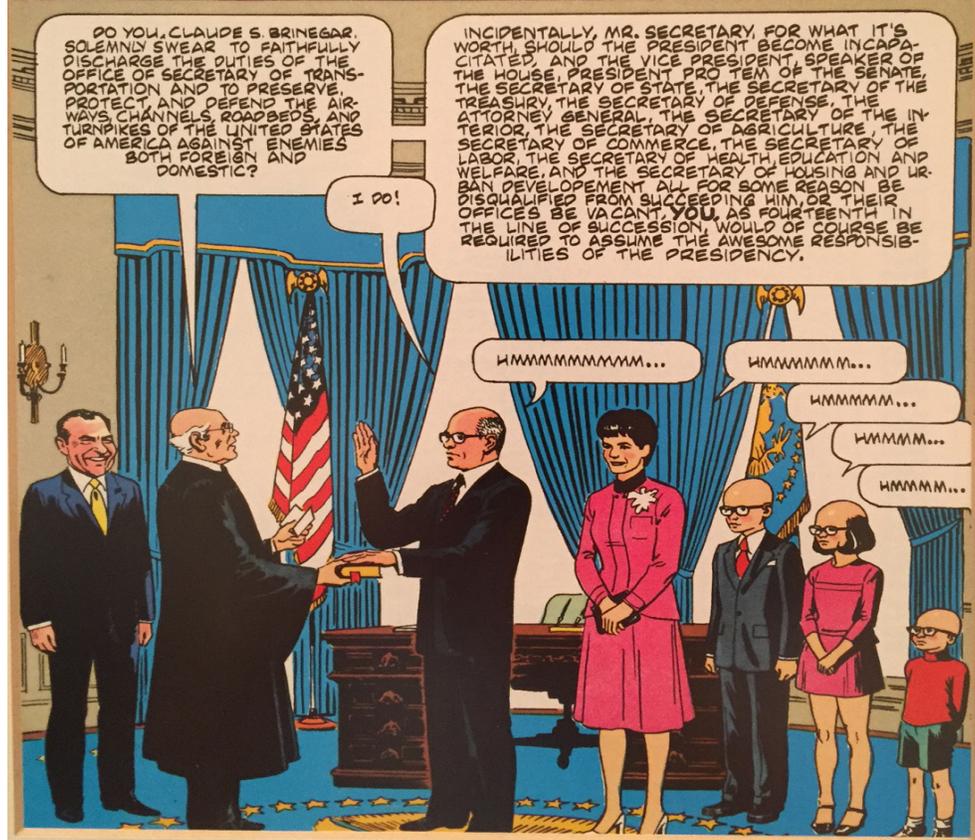
HMMMMMMMMMMMM...

HMMMMMM...

HMMMMMM...

HMMMM...

HMMMM...



Secretary Brinegar, on the cover of the Mad Comics issue, playing on his idea of working his way to President by removing all of his predecessors as the 14th in the chain of Presidential succession—note his bald children. I recall it all began with the Secretary being driven around Washington in Truck 1, and wondering what it would be like to have command of Air Force 1.



*Secretary Brinegar awarding me, for staying out of trouble as I recall
(note I had enough hair for both of us)*

ALAN AND THE CAT—AN ENCOUNTER WITH ALAN DEAN

Robert L. Calhoun

When DOT moved into the Nassif Building, in addition to the usual problems in a new space, we had a problem—a big one. If you worked late, it was possible to see them running around the halls. The exterminators fought the rats floor by floor until the tenth floor but the rats seemed to be winning.

At that time, I was the Acting Director of the Office of Policy Review (TPI-20) which was located next door to the Office of the Assistant Secretary for Administration (TAD), headed by Alan Dean. Unlike the other Assistant Secretaries which required the consent of the Senate, the Administrative Secretary was appointed by the Secretary with the approval of the President and had to come from the career service. (still true). Alan Dean had come to DOT from the FAA with Alan Boyd as his mentor. By all accounts, he was a talented and able administrator and had some hand in the drafting of the original DOT legislation. He was also a stickler, enforcing the many internal rules that govern an agency as, for example, having the “wrong” furniture in your office---I was charged with having a rug and a sofa that only a GS-17 could have while being only a GS-15 (long story about that)

One of the minor activities overseen by TAD was something called the “imprest fund” which was a kind of an in-house store for staff to acquire small quantities of office supplies and the like by requisition without going through the regular procurement process. One day, a member of my staff brought in a requisition. In addition to some requests for supplies, there was a request for “one cat”. Upon raising my eyebrows, I was informed

that the rats were still a problem and that the cat request was prompted by one jumping out of a file cabinet and seriously scaring one of the staff who threatened to quit. I pointed out that “nothing good would come from this” but the staff person (don’t remember a name) promoting this said it would get attention to the issue. So I signed it. And indeed it did!

A few days later, Alan Dean himself walks into my office, requisition in hand, and asked if that is my signature. Upon acknowledging that was, he stated “Do you know how much trouble you caused.” Apparently, someone actually undertook to order a cat. I explained our problem with the rats and suggested that TADs efforts might better be directed to dealing with problem rather fussing a staff trying to bring a problem to the attention of management while having a little fun. He walked out in a bit of a huff but I noticed over the next several weeks some exterminators at work.

BIOGRAPHIES

Laurence J. Aurbach wrote “The Urban Freeway Manifesto” published 1970 in *The Urban Lawyer* by the ABA (American Bar Association) Press. He then served in the Office of Environment and Urban Systems in the Office of the Secretary 1970-1975 and the environmental office of the Federal Aviation Administration 1975-1978. He was chair of the Urban Environment Committee of the ABA 1970-3 and chair of the ABA Section of State and Local Government Law 1985-6.

Charles D. Baker was DOT’s Deputy Under Secretary of Transportation and later Assistant Secretary for Policy in the early years of the Department 1969-1971. He later served as Under Secretary of Health and Human Services in 1984-85 under President Reagan. In his private career he was President of Harbridge House, a consulting firm and Professor at Northeastern University. His son, “a successful government worker” is Governor of Massachusetts.

John W. Barnum After an early career in finance and military service John Barnum graduated from Yale law school and practiced law for several years, specializing in anti-trust law. In 1971 he joined US DOT as General Counsel and then Undersecretary. In 1974 thru 1977 he served as Deputy Secretary. Following his DOT service he became a Resident Fellow at the American Enterprise Institute for Public Policy Research and thereafter practiced law until his retirement in 2013.

Eric Beshers graduated from Harvard College with a degree in history in 1958 and received his M.A. in Economics from George Washington University in 1961. In the academic year 1966-67, while employed by the Small Business Administration, he had an additional year of graduate economic study at the University of Maryland under the President’s Program in Systematic Analysis—part

of President Johnson’s effort to inject more rigorous analysis into the budget process. He joined the Office of the Secretary of Transportation in 1967 and served there until 1986, as Deputy Director, Office of Economics, 1976-1986. He worked on the legislation that addressed the Penn Central, and other rail, bankruptcies and restructured the northeastern rail system. He is now senior transport economist with ICF Consulting and continues to work on rail economics and policy issues as well as a wide range of other transport questions.

Ambassador **Donald T. Bliss** (Retired) served as Special Assistant to the Secretary (S-3), Deputy General Counsel and Acting General Counsel to the Department of Transportation. He was Bill Coleman’s law partner for 30 years.

Robert L. Calhoun was an early staffer in the Office of the Secretary Policy Office. He later went on to serve on the Alexandria City Council and as a Senator in the Virginia State Senate and to practice law.

Martin Convisser transferred to DOT from the Bureau of the Budget (OMB predecessor agency) in the Fall of 1967 to help establish DOT’s Planning-Programming-Budgeting (PPB) system. In 1970, he took on the newly created job (in the Office of the Secretary) of Director of the Office of Environmental Policy (not its exact title at the time), and served in that capacity until 1981. This piece for the 50th anniversary compendium is based on his work in that position. In 1981, he became Director of the Office of Industry Policy, and left DOT and the government in 1984.

Steven Ditmeyer graduated from M.I.T. in 1963 and received his M.A. in Economics from Yale University in 1965. After military service, Ditmeyer joined the Commerce Department’s Office of High Speed Ground Transportation, which was merged into the Federal Railroad Administration when the Department of Transportation was created in 1966.

He later worked as a transportation economist at the World Bank with project assignments in Turkey and North Africa. Joining the Carter Administration in 1967, Ditmeyer helped develop the legislative package for railroad deregulation while serving as Associate Administrator for Policy at the Federal Railroad Administration. He left that position to work for Burlington Northern Railway on research and technology matters and later for a locomotive manufacturer in the private sector before returning to FRA as head of R&D. Ditmeyer held the Department of Transportation faculty chair at the Industrial College of the Armed Forces, and has taught in the Michigan State Railway Management Program.

Robert Gallamore graduated from Wesleyan University in Connecticut in 1963 with high honors in general scholarship and distinction in government. He received a Master of Public Administration degree in 1965 and a Joint Ph.D. Degree in Political Economy and Government from Harvard University in 1968. Gallamore worked for the Department of Transportation in the Office of the Secretary, as Associate Administrator for Planning of the Urban Mass Transportation Administration, and as Deputy Administrator of the Federal Railroad Administration, a position in which he led the Carter Administration's proposals that were the foundation for the Staggers Rail Act of 1980; he received the rank of Meritorious Executive in the Senior Executive Service for these efforts. Gallamore held executive positions with Union Pacific Corporation in New York City and UP Railroad in Omaha before becoming Director of the Transportation Center at Northwestern University and Professor in the Kellogg School of Management. He has also taught in the Michigan State Railway Management Program.

Gary E. Maring held positions in transport planning, systems management, operations and technology, freight, data management, and policy. Senior Executive in FHWA offices of Policy and

Operations, with special assignments such as Deputy Director National Transportation Policy Team 1990-1991. Created new Freight Office in FHWA which was to significantly influence national freight policy and legislation. A major innovation was creation of the Freight Analysis Framework which continues to be the Department's foremost tool for analyzing multimodal freight operations, plans, and policies.

Arrigo Mongini was a branch chief in the Office of Systems Analysis under the Assistant Secretary for Policy during the period of the NTS. He was in charge of running the NTS and drafting the two reports to Congress and worked on other analytical studies, including the startup of Amtrak. He later went to work under Massachusetts DOT on loan from USDOT, where he became head of the Central Transportation Planning Staff of the Boston MPO and also Assistant Budget Director for the MBTA. On returning to USDOT he was Deputy Director of the Northeast Corridor Improvement Project in FRA, and later Deputy Associate Administrator for Railroad Development, where he worked on Amtrak oversight and studies of high speed rail and maglev projects.

Alan Pisarski led the transportation statistical program of the Department for many of its early years and has remained close to its goals and purposes since as a researcher and consultant. As Deputy Director of the Office of Transportation Planning he helped prepare National Transportation—Trends and Choices focusing on the segments of the document regarding passenger travel.

Jeffrey N. Shane had five separate tours of duty at DOT, spread over 40 years. Starting as a trial attorney under Secretary Alan Boyd one year after the Department's creation, he then became Special Assistant to the General Counsel. In 1979, he was appointed Assistant General Counsel for International Law. He was later appointed Deputy

Assistant Secretary for Policy and International Affairs, then transferred to the State Department as Deputy Assistant Secretary for Transportation Affairs (and chief U.S. aviation negotiator), and later returned to DOT as Assistant Secretary for Policy and International Affairs. After practicing law for nearly a decade, he returned to the Department for a final seven-year stint, first as Associate Deputy Secretary and then as DOT's first Under Secretary for Policy. He currently serves as General Counsel at the International Air Transport Association.

S. Fred Singer <singer@sepp.org> is professor emeritus at the University of Virginia and director of the Science & Environmental Policy Project. His specialty is atmospheric and space physics. An expert in remote sensing and satellites, he served as the founding director of the US Weather Satellite Service and, more recently, as vice chair of the US National Advisory Committee on Oceans & Atmosphere. He devised the satellite instrument used to track ozone. In 1987 Professor Singer was named Chief Scientist of the US DOT.

John W. Snow: After an extraordinary tenure at DOT, from 1972 to 1977, in which he held the offices of Assistant General Counsel, Deputy Assistant Secretary for Policy, Plans and International Affairs, Assistant Secretary for Governmental Affairs, Deputy Undersecretary, and Administrator of the National Highway Traffic Safety Administration reflecting the immense regard the Secretarial Officers of the Department had for his skills; and a career in railroading where he engaged in the merger that created the CSX railroad ultimately becoming President and Chief Operating Officer of CSX Corporation, he completed his Governmental service rising to the position of 73rd US Secretary of the Treasury under George W Bush.

Ed Weiner joined the Urban Planning Division of the U.S. Bureau of Public Roads in 1964 at the height of the creation of the urban transportation planning process. After seven years, he moved to the Office of the Secretary's Policy Office where he worked for almost 40 years. His comprehensive study of the Urban Transportation Planning Process is not in its 5th printing. As a member of the Urban Planning Division under the direction of Graland Marple, Ed and his colleagues were responsible for conducting research, providing technical assistance and lecturing in the two-week Travel Forecasting Course. They created requirements for and the technical procedures that created the 3C planning process. Since Ed grew up in New York, it was decided that he would be the transit specialist. He wrote the first report covering a number of modal split models.