



DEPARTMENT OF TRANSPORTATION

NEWS

OFFICE OF THE SECRETARY

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19-DOT-71

EXCERPTS FROM REMARKS BY CHARLES D. BAKER,
ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL
AFFAIRS, BEFORE THE CASUALTY ACTUARIAL SOCIETY,
GREENBRIER HOTEL, MAY 18, 1971

Good morning ladies and gentlemen. I am delighted to be here this morning -- who was ever not happy to be at Greenbrier? But more than that, I appreciate the opportunity to tell you what I think about a very important issue -- automobile insurance. My colleague Dick Walsh has cautioned me that actuaries are the resident intellectuals of the insurance business. Be that as it may, it's clear that some of you have some good sense, obviously the Greenbrier wasn't chosen for your meeting solely because of its cultural attributes.

Your president, Richard Johe, has asked me to discuss the views of the Department of Transportation on automobile insurance reform. I will attempt to comply with that request subsequently, but first I

would like to express the Department's genuine appreciation for the help your Society gave us in conducting our recent Automobile Insurance Study. As you know we have recently completed this study and several weeks ago, submitted our recommendations for reform to Congress. Over the past three years we have worked with a number of industry, government, and academic groups in pulling together the data for this study. Some of your stalwarts such as Harold Curry, Charlie Hewitt, Stan Hughey, Paul Liscord, and Paul Simoneau deserve special mention for all their hard work on the personal injury claims survey. One of your number, Raj Ratnaswamy, made a particularly significant contribution, conducting a series of virtual tutorials for the untutored Study staff. Inasmuch as transportation is experiencing insurance-related problems in almost every mode, it's not unlikely that we'll be calling on your cooperation again in the not too distant future.

Having passed out well-deserved kudos, now let me turn to the Study itself. What did the Study show to be wrong with the present system? First, the liability insurance system has limitations in its coverage. Only those who can prove that others were at fault while they were not (or were less at fault) have a legal right to recover their full losses. What does this mean in fact? It means that in more than half the automobile accidents where someone was killed or seriously injured, no benefits were received from the tort liability system. In 10 percent of the cases nothing was received from any system of reparation.

Second, the system looks imbalanced in the way it distributes compensation losses. One would expect that the victim suffering the large economic losses would also have significant intangible losses. One would not anticipate, however, that this type of victim would have a poorer chance of being fully compensated -- particularly for his economic losses -- than the less seriously injured. Our Study indicates that this is, alas, the case. Only half the total compensable economic losses of seriously or fatally injured victims are compensated -- only one third where losses exceed \$25,000! Small economic losses fare much better -- victims suffering under \$500 damage recovered in total through the tort system four-and-one half times their economic loss. You may argue with some of the precise percentages cited here, but unless one is prepared to challenge the conclusions fundamentally, one is forced to the view that compensation is erratic.

And then there is efficiency. Unfortunately it seems that the system has a very high cost/benefit ratio. By our calculations, it costs a dollar to produce a dollar in net victim benefit. Put another way, one premium dollar out of every two does not go to the accident victims. Further not only is the system's cost efficiency in question, it appears that this benefit is poorly timed -- it's either too late or too early! Despite commendable efforts on the part of the industry to introduce "advance" or partial payment plans, the system looks to be quite slow in providing benefit payments, particularly in terms of when they are needed.

One major problem with this is that there are indications that rehabilitation suffers because slowness of payment discourages early rehabilitative efforts. In fact, the system at times places a premium on deferment of payment beyond the time when rehabilitation could be most effective. Unfortunately, the payment looks to be slowest where the need is greatest -- when victims suffer permanent impairment and disfigurement. Nor does the system encourage minimization of very large personal injury losses by the timely use of comprehensive rehabilitation programs for the seriously injured.

It is not just the victim who suffers. As it presently operates, the system places great strains on the insurance industry itself. For many companies, what once were underwriting profits, are turning to underwriting losses, and it's alleged by some that capital may actually be withdrawing from the market. Granted, the threat of capital withdrawal is not a new phenomenon, but actual withdrawal on a large scale would be. I don't think I have to point out to you people what a serious problem this would present, not simply to the industry but to the nation.

But what about the legal profession? The Bar? ATLA? The judiciary? Let me dwell on the latter! The judiciary is feeling the strain! At a time when other demands overburden our legal system, the judiciary handles more than 200,000 auto accident disputes a year -- in terms of judge time alone, more than 17 percent of the country's total judiciary resources? Thus we place high demands on our already strained courts. If there is no better alternative -- so be it -- but, as I'll note in a minute, there is!

But before that, there is another "institutional" issue. Insurer insolvencies have been concentrated among specialty insurers serving the high risk market. This has presented complex problems

for consumers, regulators, and the insurance industry in general. And the very complexity of the problem makes them so resistant to solution that they could lead to greater centralization and a loss of local initiative and freedom in insurance regulation.

So, what do we as a nation do? Nothing? I think almost everyone would agree that given the inadequacies of the present system, this is certainly no answer at all. We at DOT think that reform is clearly called for and just as clearly we are convinced that the objective of this reform should be no fault -- not just first party -- but a contract relationship between insurer and the policyholder which pays benefits when there is loss -- regardless of where the fault lies. On this, we and many in and out of the industry -- perhaps not all, but many nonetheless -- are in accord. But how best to accomplish this? Here is where the going gets complicated! As you are probably aware, there is some difference of opinion about this. Senator Hart and Congressman Moss (among others) have recently proposed legislation that empowers the Federal government to mandate Federal standards for auto insurance and, in effect, also create an insurance "czar" who will execute most insurance regulation. The Administration's approach is different and places responsibility for establishing the principles of change with the Federal government but leaves the detailed implementation as well as regulation to the States. This is the plan that Secretary Volpe presented to Congress last month.

The Department fully endorsed the no-fault approach and urged the Congress to enact a "concurrent resolution" setting forth the basic principles of a reparations system toward which the States should strive, urging them to so move with dispatch!

Why the State approach? In the first place, this Administration is very strongly committed to the belief that the functions of government should be performed and the effective decisions of government made as close to the people as possible (in this case, at the State level). Is this a bad precept? In the face of the clamor for active citizen participation in practically every important issue, I hardly think so! Given the clear call by the electorate for responsibility in the hands of local officials that the electorate can see (and get at), this proposition cannot be dismissed. But some would have us be expedient! "Rise above principle!" Well, I don't think so!

The policy seems clear enough to me! If the States can do the job, then they should. If they cannot, or will not, then Washington has a call for pre-emption, but in my view not until then!

Now, it is our belief that the insurance institution and State regulation have been held at fault for what are really intrinsic inadequacies in the reparations system itself. States regulate now and can continue to do so. Under the present system, various states and regions of the country vary in terms of limits and deductibles. There are clear reasons why this should continue. It would not be fair to impose the standards of New York City, say on Alaska or vice-versa. The States should be allowed to accommodate to their specific situations, given some overall principles for basic uniformity. Is it bad to recognize that Alaska is not New York? Hardly. Alaska is no more New York than Texas is Illinois. Broad similarity? Of course! Special differences? Who can argue that point?

I believe that the States will act, and act quickly. One State has already enacted a no-fault plan and at last count, 27 others had either submitted proposals or were thinking about doing so. And of course, if they don't move, it is certain that in some form the Federal government will. And can we all learn from the movements in the several States? I went to Harvard and yet even so I am not prepared to lay claim to all knowledge! As these fundamental changes come into play we can all learn!

In recent weeks there's been a lot of flak in the media concerning the various parties and proposals involved in the insurance reform controversy. There are those who fear that the predominance of the legal profession in the State legislatures will hinder any effective reform at that level, and others who feel that Federal pre-emption of State regulation of insurance is a clear violation of States' rights. One very vocal critic of the Administration position, my sometime colleague and former Deputy, Richard Barber, has had some rather pithy comments about the Department's position. So be it, public airing is good for all of us -- even public hot airing!

Gentlemen, we are moving toward no fault! Everyone -- the beleaguered legal profession and its courts, the consuming public, and the insurance industry itself -- stands to benefit! And I believe that the States can and will step up to the challenge! When the tumult and the shouting dies, the lawyers and the actuaries depart -- we'll see a new march forward in the vital industry we know as insurance.



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REMARKS BY CHARLES D. BAKER, ASSISTANT SECRETARY
FOR POLICY AND INTERNATIONAL AFFAIRS, BEFORE THE
NATIONAL TANK CARRIERS, INC., SAN FRANCISCO,
CALIFORNIA, MAY 25, 1971

Good morning gentlemen, it is a pleasure to be here, to return to one of my favorite cities, San Francisco, particularly when it enables me to see such old friends as Frank Grimm and get to know better some new friends like Austin Sutherland.

Several weeks ago I asked Austin and Clif Harvison about an appropriate topic for this morning's speech. They said just about anything would do as long as it was controversial. "Wake people up! Tell them something that matters!" recommended Austin. At that point I told Austin about the last time I spoke to a trucking group here in the Hilton--the Private Carrier Conference, some 18 months ago. I had chosen what I thought was an appropriate

topic, changes -- regulatory and otherwise -- which might bring a large return to common carriage. Well I got out of the hotel alive (barely!). Now I'm older but no less game, so I'll give it a go again.

What's controversial? I don't have to move too far away from the Department of Transportation to find a wide range of sticky issues. There are the Bureau of Motor Carrier Safety regulations, the regulations issued by our Office of Hazardous Materials, or the safety standards developed by Doug Toms and his gunners in the National Highway Traffic Safety Administration. I am sure there's not one of you in the room here who hasn't at one time or another been dissatisfied with something one of these organizations has done! Recent developments in the Highway Program often raise the blood pressure of the over-the-road carriers -- cutbacks in construction authorizations and the trend toward opening up the Trust Fund for highway related programs like safety and beautification.

The Ash Council proposals vis-a-vis reorganization of the regulatory commissions have caused some rather vocal and not always favorable comment from all sorts of carriers. Size and weight is no Sunday picnic issue and the "where the heck is the trucking administration in DOT?" question can raise a lot of hackles. I think I could find something to alienate almost everyone fairly easily!

Well, let me start with the last issue and work south. Where's the Federal Trucking Administration in DOT? Gentlemen, you are looking at it. I'm it, or him, or what have you. The FAA executes our aviation programs, but I'm concerned with aviation policy. Our Federal Rail Administration carries out the railroad programs, but my concern is railroad policy. Frank Turner builds (or helps build) roads, but highway policy is my game, and so forth --! What does this add up to? Simply this! My office is explicitly and vitally concerned with transportation policy as it affects the people who make this country hum -- specifically you guys, the common carriers! So if you like what's going on - slap me on the back. If you don't I'm the villain you are looking for.

Now let's talk about something of real concern -- to you and me -- regulation! I'm sorry Commissioner Tuggle of the ICC got here before me, because I have spoken in tandem with Dale Hardin on several occasions recently and we are learning to coordinate our acts. (Dale and Charlie are the Republican version of Rowan and Martin.)

What's bugging us about regulation as it stands? I think the first question to ask is "Are we happy with national transportation as it presently exists?" Some of you may answer that question in the affirmative and if so, you can leave right now. But I for one am unhappy on several grounds. The railroads are certainly not a healthy industry and air transportation is also under some strain. Trucking is in better shape, but I think it's fair to say that there are some limitations on the earnings and general reinvestment capability being seen here as well. Maritime? Enough said! In fact, the only parts of the industry with a decent ROI are the shallow draft and pipeline segments -- the least regulated incidently.

And what does the future hold? Increased demand up to 50 percent or more in the next decade -- all this for a transportation system already creaking at the seams. From where I stand the transportation industry is in bad shape and change is needed. The Interstate Commerce Act was great stuff in its day. So was John L. Sullivan! But the Act, like John L., could use some updating! I submit that if regulation were working well, we wouldn't have all these problems. Some perhaps, but not the situation we have today. We'd have a transportation system more nearly equal to what the nation needs. But we don't have the kind of system we want and in my view regulation is one of the reasons why!

Okay, let's assume that maybe a relook at the venerable old Act is in order. What are the options available? On the one hand, we have my good friend Dick McLaren's sweep-the-boards clean approach. On the other we have your friend and mine Bill "DOT is wierd" Bresnahan who feels (strongly) that no change is the best change! Where do I stand? Somewhere in the middle! (What you western types call between the rock and the hard place without trying to decide who in that duo is the rock). I think clearly some changes are called for. For example, I find plenty of evidence that we should give significant consideration to the whole question of rate-making flexibility. I think both entry and exit warrant reexamination.

Entry is hardly a major problem with the railroads (only in Texas), but exit or abandonment certainly is. The whole structure of our transportation industry has changed over the past 30 years and yet the railroad route system has remained basically the same. Would trucks pick up in the long run if the railroads dropped some of their excess plant? Good question!

What about entry? It's hard to say precisely how easy it is now. There is certainly some de facto coming and going in service regardless of what the certificates say. Nonetheless, opponents of easier entry say that open entry would mean almost certain chaos and long-term service loss to shippers. To the extent true, this is certainly to be avoided. But how? Do we retain fitness requirements? On the other hand, do we want less commodity restriction or fewer geographic limitations?

What about intermodal ownership? I think DOT invented the word intermodal -- what does it imply? Certainly of relevance here is the question of what's happening to through freight transportation. Is it time we started thinking in terms of integrated transportation companies? Can firms now provide the kind of service that shippers want or are the laws and regulatory processes inappropriate? Price flexibility? Revisions in entry and exit "rules"? Intermodal ownership? How are we doing Austin? Enough to keep the conversation lively?

So much for the issues and questions. Let me tell you what I think about it. And perhaps here an old family story is appropriate. My great grandfather was a preacher and not long ago one in the family was going over some old family papers and found some of his sermons. One struck me as real food for thought because it had in the margin: "Argument weak here! Yell like hell!" Hopefully, I can keep my voice down and present some facts and logic. Let's see. First off, I think certainly some increased flexibility in pricing or rate-making is required. A couple of months ago I testified before Senator Howard Cannon's Aviation Subcommittee that the Department favored a "zone of reasonableness", within which the airlines ought to have some independent authority to go up and down. Generally, I have the same view vis-a-vis the surface carriers. Why? Very simple. Regulated carriers are now constrained in responding to market and cost changes and the strains are showing. Innovation in pricing can be the subject of endless hearings while shippers wait and fume. And, of course, the application of rate regulation varies widely from 100 percent regulated rail to 80 percent unregulated barge. The most generous thing one can say about that aspect of regulation is that it is out of balance. But just taking off the wraps could well throw the baby out with the bath water. Some control should be exercised. For example:

- Rates should not be preferential or discriminatory.
- Where a shipper faces essentially monopolistic service, the ICC should be empowered to establish rate maximums.

- On the other side of the coin, I don't think a carrier should be allowed to set rates below variable cost or something similar. Lower rates mean either predatory pricing or "cross subsidy" and I'm against both!
- Additionally, I think rate freedom should be introduced gradually so that carriers and users have time to adapt to a new structure.

So much for rate-making. I'd also favor some revision in the regulations governing entry and exit. I mentioned earlier that rail system mileage has diminished only slightly since 1940 even though the rail share of the market has decreased and the highway and pipeline systems have been greatly expanded -- plus the fact that rail passenger service is now a minor factor. Much of the rail in existence is light-density branch line although the railroads' major efficiency advantage lies in the long-haul movements. It is interesting to note that the rail carriers in greatest difficulty have substantial amounts of branch line relative to main line, whereas this is decidedly less true of the strong carriers. Abandonment of some of this excess plant would enable railroad management to concentrate resources where they are most efficient. Again, however, there should be some restrictions. Carriers must be able to prove that the line is unprofitable and a suitable time period must elapse between announcement of intention and actual fact to allow the shippers and other carriers to adjust. Now as a legal matter, abandonment procedures sound just about like that now. As a matter of fact, the process is something of a mess, as much due to lack of abandonment criteria as anything else.

Closely related to revision of exit rules and more flexible pricing is the question of entry. With abandonment of light-density branch line and as rail rates become more cost related there would be an increased demand for (substitute) trucking service. Present restrictions on the supply of service don't wash very well here. In some of the most rapidly growing markets new carriers have been kept out and existing carriers have been less than adequate in responding to changes in traffic demand. Witness the growth in private carriage. Many large shippers have had to acquire their own (or contract) carriage -- regardless of the apparently increased expense.

However, having said all this, I still do not advocate "decontrol period". I think the ICC should continue but modify its certification process. Fit, willing, and able are certainly appropriate requirements for common carrier applicants, but I think less well of concerns about the adverse effect of potential new carriers on the traffic of existing carriers, unless real disruption of service would be the end result. Where that is the likely case, entry should be handled judiciously.

Intermodal ownership? At this point in time it's about as popular and as politically feasible as the waterway user charges which the Executive has been sending to the Hill "every year since Millard Fillmore." In truth, I think intermodal or common ownership will come. I think it must come if shippers are to be truly served. However, I think the need is only just starting to arise. The railroads have a lot of house cleaning to do before they get into the barge or truck business. And so I look for this to be an issue in five or ten years, but not now.

Now what does all this mean to you? It could mean more price competition and it would mean rates will be more in line with cost -- up and down -- than "value of service" as they are now in many modes and movements. Overall, the cost of doing business should drop as load factors increase and empty back hauls decrease. There would be no more cross subsidization of unprofitable routes with profitable ones or of cross shipper subsidy.

Traffic distribution could change. With the railroads able to raise and lower their rates according to cost and with some relaxation of abandonment restrictions, they would probably pick up some traffic they do not now have and lose some of the traffic they now haul. Probably trucks would become somewhat more specialized. Two years ago when I spoke to the private carriers, I surfaced the proposition that increasing pricing flexibility might well dampen the trend to private carriage because shippers would find it cheaper to ship commercially. It wasn't as popular an idea as I had anticipated, but let's face it, change of any kind gets viewed with suspicion.

But make no mistake, change of some kind is coming. I hope that everyone in this room and the transportation community at large will face up to this fact. The ways that we have done business in the past -- however successful they were -- simply are not adequate

today. I hope change follows the lines I just mentioned. Absent such "reform" I think there is a real prospect of nationalization -- or at the very least heavy subsidy of railroads. And I would like to point out that historically nationalization of the transportation industry has not been limited to the railroads. France nationalized its railroads in 1936 and very soon afterwards, the trucking industry as well. England did the same thing in 1946, and Canada nationalized part of its rail and trucking system as early as 1919.

Today the United States has the only really private transportation system in the world and I for one would like to keep it that way. It is not 1890 any longer, and the town bully -- the railroad -- is in trouble. It is not 1936 and trucking is now a \$20 billion industry. It is not 1940 and the Arkansas-Vertigas River Project is now a fact!

Change is in order, change is coming. But I think we need to recognize that evolution is invariably more successful than revolution. There is much that we don't know. I think we want to be very careful that whatever changes we make will allow the kinds of adjustments both with the carrier industry and the nation at large that will allow us to reap the benefits rather than suffer the chaos of hysterical change.

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STATEMENT OF CHARLES D. BAKER, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION BEFORE THE U.S. SENATE SELECT COMMITTEE ON SMALL BUSINESS REGARDING THE HIJACKING AND THEFT PROBLEM IN THE TRUCKING INDUSTRY, TUESDAY, JUNE 8, 1971

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear before this Committee to discuss the Department of Transportation's views on the scope of the cargo theft problem in the trucking industry, and to offer some recommendations for an appropriate governmental response to this serious matter.

The Committee, and you in particular, Mr. Chairman, should be complimented for your efforts to focus national attention on this parasite within our transportation industry. It is indeed appropriate that the truck security hearings initiated by this Committee on June 25, 1970, have been continued and that hearings have also been scheduled on the problem of cargo theft and pilferage as it relates to the railroad industry.

In my statement today, in addition to being responsive to the items covered in your letter inviting the Department to testify, I wish to assure this Committee of our Department's deep concern over this problem and to relate some of our current and contemplated activities in combating it.

Let me begin, Mr. Chairman, by briefly discussing the Department's posture with respect to crime in transportation generally. As you are aware, one of the Department's primary missions is to coordinate Federal transportation policies and programs and relate these to the operations of the transportation industries. To the extent these programs and the transportation industries are adversely affected by criminal activities, our

mission is accordingly affected. No one can deny that criminal activities resulting in cargo losses, estimated for 1970 between 1 and 1-1/2 billion dollars, have an adverse economic impact upon the transportation industry and an even more devastating effect upon the small businessman who is less able to absorb or pass on these losses.

Within the Department, and the Administration generally, there is an ever increasing awareness and concern about the gravity of this transportation crime problem, which has long been shared by you and the members of this Committee, Mr. Chairman. Secretary Volpe has announced his personal concern and is currently marshaling the Department's resources to actively assist other interested and concerned government agencies in bankrupting organized crime's billion-dollar crime enterprise.

As a further step in our efforts in this regard, the Department of Transportation and the Transportation Association of America are co-sponsoring later this month a conference on the "Cargo Security Crisis", which is designed to elicit and hopefully clarify the varied viewpoints regarding the respective roles of government and industry and define the extent and need for government-industry coordination. We also anticipate that the conference will produce clear guidance with respect to the nature and extent of governmental action necessary to complement the corrective and preventive actions of the private sector upon whom the prime burden rests. We are especially pleased to note that the Chairman of this Committee has accepted our invitation to address the conference on June 18. In addition, our tentative program includes speakers from all the interested federal agencies, several State and local governments, the major transportation associations, labor unions, shipper

and retailer associations, and speakers from the insurance industry. Mr. Chairman, we would like to provide for the record a copy of our conference press release and agenda.

In addition, the Department is currently working on the development of an action program geared to meet the challenge posed by the growing incidence of loss and theft of cargo carried by all transportation modes. We presently have under review several plans for the establishment of an organizational framework within the Department which would be the focal point of our efforts in cargo transportation security. We contemplate that such an office would have the primary information on this subject between other Federal, State, and local government agencies, and affected carriers, users, and investors in the various modes. We are also considering other appropriate measures that our Department could properly undertake in this area pursuant to our legislative mandate, such as research and development activities and the development through joint government-industry cooperation of standard cargo security guidelines. We would hope in the not too distant future to officially announce our program.

At this time I will turn to the problem of theft, pilferage, and hijacking as it relates specifically to the trucking industry. This problem is a many-faceted proposition which defies simple solution. Employment and security procedures of the truckers, practices of shippers, unions, and the insurance industry, the interstate nature of the traffic and the concomitant multiplicity of jurisdictions and law enforcement agencies involved are but a few of the complicating factors which increase the difficulty of effectively combating this growing problem.

Unfortunately, Mr. Chairman, I am not in a position, due to the lack of meaningful statistics in this area, to document precisely the magnitude of the losses resulting from theft and hijacking in the trucking industry. The various federal agencies are just beginning the job of pulling together the kinds of data necessary to define the scope of this problem. For example, we do not now have the information which would enable us to list losses from theft or pilferage by commodities and their dollar value, or to pinpoint the prevalent locations where these losses occur and the manner by which they occur. I am afraid that even these efforts to collect data at the federal level might fall short of what we need, considering that in 1969, of the \$62.7 billion in freight revenues of the trucking industry, only \$13.5 billion were received by ICC certificated carriers; \$18.64 billion in revenues were received by non-regulated carriers in intra-state commerce; and \$30.43 billion in revenues were received by local carriers. As you can see, less than one-quarter of the total revenues were generated by federally regulated truckers.

Until recently, the motor carrier industry and government at all levels have been slow to meet the challenge of the realities of crime in transportation. Industry, recognizing that cargo losses are now becoming critical to its economic survival, has moved ahead with a number of actions and activities to increase the security of cargoes with which they have been entrusted for common carriage. For example, security officers are now appearing at the management level in the major trucking firms. The Trucking Industry Committee on Theft and Hijacking (TICOTH), which was established in 1969, is now actively working with and encouraging the 51 State organizations which

comprise the American Trucking Association in programs which will increase cargo security across the Nation.

National guidelines, standards or regulations in the field of cargo security are virtually nonexistent. Upon their apprehension, the swift and effective prosecution of the thieves behind this problem is not being accomplished in many parts of the country. Assistance to the motor carrier industry in pre-employment screening is also lacking.

In general, the efforts of industry and the Federal and State and local governments in this area have been uncoordinated and to a great extent ineffective in the face of a very sophisticated and organized criminal element which has recently moved into the transportation industry.

What I have said so far could equally be said for any of the modes of transportation, and it is offered primarily to suggest that there is no panacea for eliminating this destructive element from the transportation industry. Only the combined efforts and cooperation of all involved will reap meaningful results. This is particularly applicable to the trucking industry, which is the most critically affected mode of transportation. Your previously stated estimate, Mr. Chairman, which we have no basis to dispute, that the annual losses in the trucking industry from theft and pilferage approaches \$700 million, indicates quite dramatically that the trucking industry bears the brunt of this "billion-dollar crime enterprise".

This is cited not to indict the trucking industry, but merely to emphasize the need for concerted effort in this particular area. The nature of the trucking industry with its high volume, many interfaces, and multiple handling situations makes it particularly vulnerable to criminal activities.

In our opinion, the presently available statistical data relating to truck theft losses is extremely incomplete and inadequate for purposes of estimating the future impact of such losses. We do believe, however, that these losses will continue to grow and a reliable indicator of this projection would be information related to the amounts and premium costs of insurance carried by the trucking industry. The Department has not compiled this information, but we believe that the industry would provide it for the Committee's consideration, if it is so desired.

Mr. Chairman, let me now briefly recommend several actions which we feel should be appropriately taken at this time. They are not listed in any order of priority, and each is important in addressing one or more facets of the truck cargo security problem. We recommend that:

- (1) All interested parties attend the Cargo Security Conference and interchange information and views with the various government, industry, labor, and shipper groups represented on the program.
- (2) All interested government and industry representatives acquaint themselves with the activities of TICOTH, which was formed about three years ago under the auspices of the American Trucking Association. The Department of Transportation endorses the objectives of TICOTH and is willing to provide a coordinating role in this respect.
- (3) Special attention be given to effective means of alerting top management in industry of the theft problem and the need for effective security measures. In this connection,

the Department of Transportation and the Law Enforcement Assistance Administration of the Department of Justice have under consideration the preparation of a deskbook or manual for general distribution. It is anticipated that once the details are confirmed and the manual is produced, it will be placed in the hands of top-level management to make them more aware of the gravity of the situation and methods of prevention. Time to top management is a valuable asset. Consequently, it is not expected that these decision-makers will be able to read the volumes that could be written regarding cargo thefts. Therefore, the emphasis on the manual will be brevity, conciseness, and appeal.

- (4) Establishment of voluntary physical security guidelines developed in cooperation with industry.
- (5) The Interstate Commerce Commission be encouraged, as an initial step, to complete its rule-making procedures for data collection from motor carriers. With regard to the need for uniform loss reporting systems, the Department is preparing a report stating its perception of the problems in present reporting systems and its recommendations for development of better systems. Clearly, the need is for the development of a reporting system by ICC that is compatible with those of the other regulatory agencies so that motor freight loss data can be

usefully merged with like data from air, water, and other ground modes. Further, these systems should be structured to provide the comprehensive loss statistics required to even begin to solve this problem.

- (6) The Interstate Commerce Commission also be encouraged to assume jurisdiction over loss and damage claims practices of motor carriers by early action in Ex Parte 263, in which this Department has intervened.

(A copy of our pleadings is submitted for the record.)

The Department in its pleadings urged ICC to assume jurisdiction to regulate, and to act to encourage the arbitration of loss and damage disputes. We also submit for the record a Freight Loss and Damage Study prepared by the Department of Transportation dated February 1971, copies of which have been distributed to several members of this Committee.

- (7) Special attention be given to the documentation of motor carrier shipments from the cargo security standpoint, the primary purpose being to reduce to a minimum the publication for general useage of information describing contents and value of shipments. This recommendation results from the belief that present methods of cargo identification, packaging, and invoicing lend themselves to theft and pilferage. Consequently, present industry practices must be reviewed from the standpoint of how they may best be utilized to maintain security and control over goods in transit.

- (8) The Interstate Commerce Commission authorize and encourage joint discussions between the carriers leading to the establishment of better security practices. Joint industry action to establish security practices is particularly important in the trucking industry due to its various interfaces.
- (9) Emphasis should be placed upon methods, procedures, and techniques which would better assist enforcement agencies at all levels of government to effectuate swift and effective actions against offenders. Quite often, enforcement agencies are thwarted in their efforts to apprehend and convict suspected criminals due to deficiencies in evidentiary matters. These deficiencies may not result, if industry is made aware of the type of evidence and the best methods of acquiring such evidence needed to sustain a conviction.
- (10) Special attention should be given to pre-employment screening from the standpoint of cargo security. Consideration should be given to methods designed to facilitate the flow of information regarding prospective employees which would enable industry to screen out those posing a potential threat to security.

In conclusion, I wish to reiterate that there is no single solution to this very complex problem of cargo theft in our transportation industries. It is important, however, that at this time both industry and government acknowledge the problem and the need for coordinated and

concentrated efforts. The Department of Transportation stands ready to assume a primary responsibility in coordinating the Federal Government's responsibilities in this endeavor. The recommendations which I have outlined mark only the beginning. We will expand upon these recommendations at the upcoming Cargo Security Conference, and I am confident that together with the other interested agencies of the Federal Government, and industry and the shipping public, we will succeed in driving the organized criminal element from this field. Overnight success cannot be expected, but our commitment to a long-range coordinated program to combat this problem will assure its reduction to one of minor economic proportions.

This concludes my prepared statement, Mr. Chairman, and I will be happy to answer any questions which you and the Committee may have.



DEPARTMENT OF TRANSPORTATION

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OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20590

27-DOT-71

EXCERPTS FROM REMARKS MADE BY ASSISTANT SECRETARY
FOR POLICY AND INTERNATIONAL AFFAIRS CHARLES D. BAKER
BEFORE THE BOARD OF DIRECTORS OF THE IRREGULAR ROUTE
COMMON CARRIERS, WASHINGTON, D. C., JUNE 14, 1971

Irregular route common carriers represent over two-thirds of the total regulated truckers. In short, they represent a major segment of transportation. Your Conference, and its 600 members, while statistically a small percentage of the total irregular operators, is the principal focus for this type of operation. Who is in your Conference? Well, your twenty largest members have an aggregate revenue of \$663 million (or about 12 percent of the total revenues of the regulated industry); your five largest members, about \$290 million! Just by way of looking, who are these five?

North American, by far the largest carrier in your Conference is, interestingly enough, a wholly owned subsidiary of PepsiCo, Inc. In 1970 it carried approximately 516 million ton miles of freight, 100 percent of this household goods. Mason Dixon Lines stands in the number two position, accounting for approximately 804 million ton miles of general freight and \$56 million in revenues. It is a closely held

corporation with a number of companies in common control. Midwest Emery Freight Lines is certificated to carry a number of commodities, but half its revenue is accounted for by refrigerated (solid) products. This company is wholly owned by Rentar Industries, Inc., and owns or controls in common with Rentar a number of trucking related activities.

Bowman like Midwest is certificated to carry a variety of commodities. About three-fourths of its total revenues fall into the general freight category with iron and steel products accounting for 15 percent of its volume. The concern is family owned. Finally, Arkansas Best Freight is owned by Arkansas Best Corporation, which among other things controls the Arkansas Bandag Corp., Data-Tronics Corp, and the National Bank of Commerce of Dallas. In 1970 it carried 769 million ton miles of general freight and brought in \$46 million in revenue.

But what makes an irregular route carrier different?

Whereas regular route carriers generally have ICC authority to operate from point A to B to C on a stated route and (usually) 10 miles to either side, the irregular routes are authorized to run from one area to another (e.g., several counties or States) through a gateway to a comparable situation on the other end, but not restricted to a certain route. I understand, however, that just to confuse the issue beginning back in 1964 the ICC allowed certain irregular route common carriers to acquire regular route authority--primarily to resolve the problem created by the tendency of certain among you to become regular in character. I also gather that although you handle some general commodities (in truckload quantities) most of you are certificated by commodity, on occasion, however, getting into LTL movements as long as you restricted such activity to the commodities for which you are certificated. In sum, gentlemen, you are a mixed, varied and intriguing bag.

So much for how you look to me. What are the problems and issues that concern us?

Well, the big problem very simply stated is that the transportation industry is in bad shape. The railroads certainly aren't healthy and air transportation is also under a strain. Maritime? Enough said. The trucking industry generally is in better shape, but even so there are some limitations on earnings and general reinvestment capability here as well. In fact, the only parts of the industry with a decent ROI are the shallow draft and pipeline segments--the least regulated incidentally.

Is the future any better? Well, there will be increased demand of up to 50 percent or more over the next decade! But, this has to be accommodated by a transportation system already operating under severe strain! In short, the strain may get worse and quite frankly it's my opinion that if government in general and regulation in particular were working well, we wouldn't have all these problems. We would have a system more nearly equal to what the Nation needs. On this issue, more in a minute.

Now one thing to really worry about is that because the rail industry as a whole is in such bad shape, there is a very real prospect of nationalization--or at least very heavy subsidy--of the railroads. And what does this mean? As far as I know there is no nationalized railroad which breaks even, let alone makes a profit. They all cost their taxpayers a lot of money. In Germany, the operating deficit of the national railroad is partially subsidized with a tax on truck freight. (How does that one grab you?) The Japanese National Railroad has lost \$2 billion since 1964 and has an accumulated debt of \$1.6 billion. Beginning April 1, automobile dealers and users have been asked to contribute \$8 million in new taxes for fiscal year '71. Frankly, I don't think any of us want to see that happen in this country. And I should point out here that historically nationalization of the transportation industry has not been limited to the railroads. England nationalized much of both the railroads and trucking industry in 1946 just after the War, and Canada nationalized parts of the rail and trucking system as early as 1919. Nationalization is not just a poor answer, it is no answer. So let's be realistic about things.

I think we all agree that the transportation industry is in trouble, that change of some sort is needed. And the issue I'd like to discuss here is regulation. There are several approaches available. On the one hand, we have the Dick McLaren "sweep the boards clean" approach. Bill Bresnahan has a slightly different view, less prone to change.

Me? I fall somewhere in between. I find plenty of evidence that we should give significant consideration to the whole question of rate-making flexibility. I also think that both exit and entry warrant reexamination. Entry is hardly a problem with the railroads, but exit is. (The structure of this country's transportation system has changed radically over the past 30 years, but the railroad route system has remained basically the same.) It's hard to say precisely how easy entry is now. Certainly there is some de facto coming and going in service despite what the

certificates say. Nonetheless opponents of open entry say it would mean almost certain chaos and long-term service loss to shippers. If this is true, how do we avoid it? Fitness requirements? Do we want less commodity restriction or fewer geographic limitations?

Intermodal or common ownership? Certainly of relevance here is the question of what's happening to through transportation. Should we start thinking in terms of integrated transportation companies? And if we should, are the laws and regulatory processes inappropriate for the kinds of service shippers want?

What parts of all this are you guys worried about? Economic regulation and exemptions therefrom? Abandonment of nonessential facilities and service? I think so. Like me you are concerned about rate-making, particularly below cost rates. Government rate-making as embodied in Section 22 of the ICC Act is definitely of interest. Entry controls? Sure! All these are issues that the trucking industry reacts to--sometimes violently.

So, what are the relevant DOT policies? First, we are all for equity among the various modes--who isn't? I believe that this can better be achieved by letting the market (rather than regulation) make more of the decisions about which mode or operator is most appropriate. Discrimination of any kind is frowned on these days, so it's not surprising that we at the Department are against geographic or shipper discrimination. Closely related to this issue is the question of unfair advantage to the public sector raised by Section 22 of the ICC Act. Unfair advantage, when and where it exists, is a no-no!

What is the policy on competition? Competition is good! But not destructive competition. I'm frankly less concerned about competition that hurts an individual carrier, but we must avoid competition that ultimately destroys availability of service. The issue of intermodal ownership aside, we surely stand behind the facilitation of through rates and joint movements. I believe that management should be allowed sufficient pricing discretion to meet changing market demands, changing costs. At the same time, however, we must protect carriers from predatory pricing and shippers from discriminatory pricing.

Facilitation of supply to meet demand and to be responsive to emerging situations has certain implications vis-a-vis exit and entry. If restrictions on exit are relaxed, it may follow that they should be as well on entry to meet the increased demand for substitute (trucking) service. Finally, like you and everyone else who is wise and good, our primary concern is to maintain a healthy, profitable, private common carrier transportation system.

How do all these policy concerns translate into some of the specific things I think we must seek in the regulation field if the kind of transportation system we all want is to survive? First off, I think some increased flexibility in pricing or rate-making is definitely required. Several months ago I testified before Senator Howard Cannon's Aviation Subcommittee that the Department favored a "zone of reasonableness" within which the airlines ought to have some independent authority to go up and down. Generally, I have the same view vis-a-vis the surface carriers. Regulated carriers are now constrained in responding to market and cost changes and the strains are showing. Innovation in pricing can be the subject of endless hearings while shippers wait and fume. And, of course, the application of rate regulation varies widely from 100 percent regulated rail to 80 percent unregulated barge. The most generous thing one can say about that aspect of regulation is that it is out of balance. But just taking off the wraps could well throw the baby out with the bath water. Some control should be exercised. For example:

- Rates should not be preferential or discriminatory,
- Where a shipper faces essentially monopolistic service, the ICC should be empowered to establish rate maximums.
- On the other side of the coin, I don't think a carrier should be allowed to set rates below variable cost (or something similar). (Lower rates mean either predatory pricing or "cross subsidy" and I'm against both!)
- Additionally, I think rate freedom should be introduced gradually so that carriers and users have time to adapt to a new structure.

So much for rate-making. I also favor some revision in the regulations governing exit. Much of the rail in existence is light-density branch line although the railroads' major efficiency advantage lies in the long-haul movements. Abandonment of some of this excess plant would enable railroad management to concentrate resources where they are most efficient--a boon to themselves and the shippers who use them. Again, however, there should be some restrictions. Carriers should be able to prove that the line is unprofitable and a suitable time period should elapse between announcement of intention and actual fact to allow the shippers and other carriers to adjust. Now, as a legal matter, abandonment procedures sound just about like that now. As a matter of fact, the process is something of a mess, as much due to lack of abandonment criteria as anything else.

Entry? Frankly, I'm not sure about this one. I do think that with abandonment of light-density branch line and as rail rates become more cost related there will be an increased demand for (substitute) trucking service.

Of several things I am sure, however. I do not advocate "decontrol" period. "Fit, willing, and able" are certainly appropriate requirements for common carriage applicants. I also am concerned about potential adverse effect of new carriers on total service available to shippers due to excessive competition.

At this point in time intermodal ownership is about as popular and politically feasible as the waterway user charges which the Executive Branch has been sending to the Hill "every year since Millard Fillmore." In truth, I think intermodal or common ownership will come. I think the need is only just starting to arise, but the railroads have a lot of house cleaning to do before they get into the barge or truck business. And so I look for this to be an issue in five or ten years, but not now.

Gentlemen, change of some kind is coming. I hope that everyone in this room and the transportation community at large will face up to this fact. The ways that we have done business in the past--however successful they were back then--simply are not adequate today. I hope change follows the lines I just mentioned because, absent such reform, I think there is a real prospect of nationalization. Today the United States has the only really private transportation system in the world and I for one would like to keep it that way.

Change is in order, change is coming. But I think we need to recognize that evolution is invariably more successful than revolution. There is much that we don't know. I think we want to be very careful that whatever changes we make will allow the kinds of adjustments both with the carrier industry and the Nation at large that will allow us to reap the benefits rather than suffer the chaos of hysterical change.



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28-DOT-71

EXCERPTS FROM REMARKS BY ASSISTANT SECRETARY FOR
POLICY AND INTERNATIONAL AFFAIRS, CHARLES D. BAKER,
BEFORE THE INSURANCE INFORMATION INSTITUTE,
WASHINGTON, D. C., JUNE 23, 1971

Gentlemen, I am delighted to be "playing the Insurance Information Institute" once again--in this business I am not often afforded the opportunity of a return engagement. My meeting with your group at just about this time last year marked my "baptism by fire," or at the very least my initiation into the insurance racket. A lot has happened since that time, and it seems hardly possible that not long before that my familiarity with the industry was limited to my home-owners and auto insurance policies. Last year I gave you some indication of the preliminary findings of the Automobile Insurance Study conducted by the Department of Transportation. Now it is twenty-three volumes and a number of Hill appearances later.

Over the past year the subject of automobile insurance reform and all parties to it--the insurance industry; the legal profession; Federal, State, and local government--have received much publicity, not all of it favorable. But let's get something straight. Whatever "they" say in the heat of battle, insurance agents and insurance companies are not evil people. The automobile insurance industry provides a great social benefit. Each year you pay out millions of dollars in property damage and personal injury claims, staving off financial disaster for many. I for one cannot imagine what we would do without you. I have seen very few proponents of doing away with the system entirely!

So it's not the concept of automobile insurance we're questioning but the system, that is, the total fabric within which consumer, company, state regulator--you name it--operate.

Just what is wrong? The findings of our 23-volume study indicate that:

- The existing system ill serves the accident victim, the insuring public, and society at large.
- It is inefficient, grossly expensive, incomplete, and slow.
- It allocates benefits poorly and very unevenly, discourages the use of rehabilitative techniques, and over burdens the courts and legal system.
- It does little, if anything, to minimize crash losses.

The real challenge before us is not to throw the baby out with the bath water. How do we keep what is good about the present system and at the same time revise what is not so good? And above all, how do we get where we want to go from here?

Several basic principles had considerable impact on the complexion of our recommendations. First off, we are far more concerned about bent people than we are about bent metal. In other words, our initial major concern is with medical expenses, income loss, rehabilitation, and the like rather than with repairing the dents in Freddy's fender or replacing Matilda's sexy little sports car!

Second, States and localities are at least as important as Washington, D. C. Why? This Administration is very strongly committed to the belief that functions of government should be performed and the effective decisions of government made as close to the people as possible. Is this a bad precept? In the face of the clamor for active citizen participation in practically every important issue, I hardly think so. And automobile insurance is certainly a very important issue. Given the clear call by the electorate for responsibility in the hands of local officials that it can see (and get its hands on), this proposition cannot be dismissed. So if the States can do the job, they should. If they cannot or will not, Washington has a call for pre-emption--but only then!

It is my belief that the insurance institution and State regulation have been held at fault for what are really intrinsic inadequacies in the reparations system itself. States regulate now and can continue to do so. Under the present system, various states and regions of the country vary in terms of limits and deductibles. There are clear reasons why this should continue. It would not be fair to impose the standards of New York City, say, on Alaska or vice-versa. The States should be allowed to accommodate to their specific situations, given some overall principles for basic uniformity. Is it bad to recognize that Alaska is not New York? Hardly. Alaska is no more New York than Texas is Illinois. Broad similarity? Of course! Special differences? Who can argue that point?

I went to Harvard and even I am willing to admit on some occasions that I don't know everything. I think this is a situation where none of us experts know all the answers--and I think we can learn a lot from the movements in the States. As these fundamental changes come into play, we can all learn from our mistakes.

Cost savings would sure be great--insurance rates have risen rapidly over the past decade. But cost savings should not in themselves be the primary motivation for reform of the system. Of far more importance is the improvement such a move would bring to the social system as a whole. (We just may, however, resort to the cost savings pitch to sell the idea--we "pols" are pretty realistic about what will sell with the public!)

Where does all this leave us? Well, first, we have recommended that:

- The States should begin promptly to shift to a first-party, no fault compensation system for automobile accident victims.

- This can and should be done in such a way that we can reverse ourselves, if the actual performance of the new system doesn't meet our expectations.
- Recovery for "general" or intangible damages should be drastically limited and carefully circumscribed.
- Relevant institutions, public and private, and citizens who man them, should be given adequate time to plan for, to adapt to, and to assess the performance of such new systems.
- The change should take place at the State level, but there should be general national goals or principles toward which the States will be moving.

We will be working very closely with the States and the industry in the immediate future and will be back to Congress with our views in 1973--which incidentally will be the beginning of Richard Nixon's second term.

What's my prediction? I believe that the States can and will step up to the challenge. In the past year, three States have already done so and at last count 25 others had either submitted proposals or were thinking about doing so. The Department is in the process of developing model legislation which will provide the individual States a framework within which to work and some motivation for action. I personally think the prospects are very good. I urge you who have played such an active and vital role in this business to stay with it--or as they say in the trade, Uncle Sam will get you.



DEPARTMENT OF TRANSPORTATION

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WASHINGTON, D.C. 20590

29-DOT-71

EXCERPTS FROM REMARKS BY ASSISTANT SECRETARY FOR
POLICY AND INTERNATIONAL AFFAIRS, CHARLES D. BAKER,
BEFORE THE ASSOCIATION OF ICC PRACTITIONERS,
WASHINGTON, D. C., JUNE 24, 1971

Good morning ladies and gentlemen. I am delighted to have the opportunity to be here today and to give you my views on the general subject of "Transportation Policy and Regulation in Changing Times." This is a subject I have addressed many times over the past year--in a number of ways and with a variety of groups and people. Almost all of these people have recognized that times are changing--that's the easy part of the equation. There's less unanimity vis-a-vis the policy and regulation aspect of the question. The question before us I think is "Are we in the transportation industry going to accommodate to these changes--and if so, how?"

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What's really bugging us about regulation as it stands? I think the first question to ask is "Are we happy with national transportation as it presently exists?" I for one am unhappy on several grounds. The railroads are certainly not a healthy industry and air transportation is also under some strain. Trucking is in better shape, but I think it's fair to say that there are some limitations on the earnings and general reinvestment capability being seen here as well. Maritime? Enough said! In fact, the only parts of the industry with a decent ROI are the shallow draft and pipeline segments--the least regulated incidentally.

The carriers are certainly an important concern, but the fellows I'm most worried about are the shippers/consumers of transportation services.

Over the past four years, general rail rate increases have aggregated 33 percent. Is the shipper/consumer getting more for his money? I think not. Box car shortages and poor service have long been an issue, but in recent years service problems have certainly become exacerbated. Our wizards estimate that only one railroad shipment in three reaches its destination on time. And that's not considered good service by any measure I know! I don't think the cross subsidy engendered by the existing (distorted) rate structure much benefits the shipper or consumer either. Some shippers pay high rates and in effect are "subsidizing" others who pay low rates. Nor has there been any significant new technology in the trucking or rail industry over the past several decades. Trucks still have environmental and safety problems and very little rail has been electrified. The AAR's TRAIN is great in theory, but unfortunately remains just that.

What does the future hold? Increased demand up to 50 percent or more in the next decade--all this for a transportation system already creaking at the seams. From where I stand the transportation industry is in bad shape and change is needed. The Interstate Commerce Act was great stuff in its day, but so was John L. Sullivan! Perhaps the Act, like John L., could use some updating! I submit that if regulation were working well, we wouldn't have all these problems. Some perhaps, but not the situation we have today. We'd have a transportation system more nearly equal to what the nation needs. But we don't have the kind of system we want and in my view regulation is one of the reasons why!

Over the past 20 years the railroad share of the total freight ton miles has decreased from 56 to 41 percent of the total whereas that

carried by trucks has increased from 16 to 21 percent, by pipeline from 12 to 22 percent, by inland water from 5 to 10 percent. One would expect a similar trend in share of revenues but such is not the case. The rail share of the total has declined from 65 to 44 percent of the total, but the trucking share has increased from 28 to 49 percent, significantly more than its share of the total freight. I could go on with other indicators, but any way you slice it, the railroad figures are grim.

Now one thing to really worry about is that because the rail industry as a whole is in such bad shape, there is a very real prospect of nationalization--or at the least a very heavy subsidy--of the railroads. What does this mean? As far as I know there is no nationalized railroad which breaks even, let alone makes a profit. They all cost their taxpayers a lot of money. In Germany, the operating deficit of the national railroad is partially subsidized with a tax on truck freight. The Japanese National Railroad has lost \$2 billion since 1964 and has an accumulated debt of \$1.6 billion. Beginning April 1, automobile dealers and users have been asked to contribute \$8 million in new taxes for FY-1971. Frankly, I don't think any of us want to see that happen in this country. And I should point out here that historically nationalization of the transportation industry has not been limited to the railroads. France nationalized its railroads in 1936. England nationalized its railroads in 1946 and some intercity trucking as well, and Canada nationalized parts of its rail and trucking system as early as 1919.

Okay, let's assume that maybe a relook at the venerable old Act is in order. What are the options available? On the one hand, we have my old friend Dick McLaren's sweep-the-boards clean approach. On the other we have Bill Bresnahan who is somewhat less favorably disposed to change. I stand somewhere in the middle. I think clearly some changes are called for. For example, I find plenty of evidence that we should give significant consideration to the whole question of rate-making flexibility, and I think both entry and exit warrant reexamination.

Entry is hardly a major problem with the railroads (only in Texas), but exit or abandonment certainly is. The whole structure of our transportation industry has changed over the past 30 years, and yet the railroad route system has remained basically the same. Would trucks pick up in the long run if the railroads dropped some of their excess plant? Good question!

What about entry? It's hard to say precisely how easy it is now. There is certainly some de facto coming and going in service regardless of what the certificates say. What are the criteria for approval of applications? As I see it, over the past several decades a new operation has been allowed if:

- it would serve a useful public service responsive to a public demand or need;
- this purpose could not be served as well by existing lines or carriers;
- it can be served by the applicant without endangering or impairing the operations of existing carriers contrary to public interest; and
- the applicant is fit, willing, and able.

Opponents of easier entry say that open entry would mean almost certain chaos and long-term service loss to shippers. To the extent true, this is certainly to be avoided. But how? Do we retain fitness requirements? On the other hand, do we want less commodity restriction or fewer geographic limitations?

What about intermodal (or common) ownership? I think DOT invented the word intermodal--what does it imply? Certainly of relevance here is the question of what's happening to through freight transportation. Is it time we started thinking in terms of integrated transportation companies? Can firms now provide the kind of service that shippers want or are the laws and regulatory processes inappropriate?

So much for the issues and questions. Let me tell you what I think about it. First off, I think certainly some increased flexibility in pricing or rate-making is required. A couple of months ago I testified before Senator Howard Cannon's Aviation Subcommittee that the Department favored a "zone of reasonableness" within which the airlines ought to have some independent authority to go up and down. Generally, I have the same view vis-a-vis the surface carriers. Why? Very simple. Regulated carriers are now constrained in responding to market and cost changes and the strains are showing. Innovation in pricing can be the subject of endless hearings while shippers wait and fume. And of course, the application of rate regulation varies widely from 100 percent regulated rail to 80 percent unregulated barge. The

most generous thing one can say about that aspect of regulation is that it is out of balance. But just taking off the wraps could well throw the baby out with the bath water. Some control should be exercised. For example:

- Rates should not be preferential or discriminatory.
- Where a shipper faces essentially monopolistic service, the ICC should be empowered to establish rate maximums.
- On the other side of the coin, I don't think a carrier should be allowed to set rates below variable cost or something similar. (Lower rates mean either predatory pricing or "cross subsidy" and I'm against both!)
- Hidden (but real) cross subsidy from a distorted rate structure is a thing to be abhorred.
- Additionally, I think rate freedom should be introduced gradually so that carriers and users have time to adapt to a new structure.

So much for rate-making. I'd also favor some revision in the regulations governing exit. I mentioned earlier that rail system mileage has diminished only slightly since 1940 even though the rail share of the market has decreased and the highway and pipeline systems have been greatly expanded--plus the fact that rail passenger service is now a minor factor. Much of the rail in existence is light-density branch line although the railroads' major efficiency advantage lies in the long-haul movements. It is interesting to note that the rail carriers in greatest difficulty have substantial amounts of branch line relative to main line, whereas this is decidedly less true of the strong carriers. Abandonment of some of this excess plant would enable railroad management to concentrate resources where they are most efficient. Again, however, there should be some restrictions. Carriers must be able to prove that the line is unprofitable and a suitable time period must elapse between announcement of intention and actual fact to allow the shippers and other carriers to adjust. Now, as a legal matter, abandonment procedures sound just about like that now. As a matter of fact, the process is something of a mess, as much due to lack of abandonment criteria as anything else.

Closely related to revision of exit rules and more flexible pricing is the question of entry. With abandonment of light-density branch

line and as rail rates become more cost related there should be an increased demand for (substitute) trucking service. Restrictions on the supply of service don't wash very well here. Just how restricted is entry? As I mentioned, I'm not altogether sure, although in some growing markets new carrier entry appears to have been restrained and existing carriers have been less than adequate in responding to changes in traffic demand. Witness the growth in private carriage. Many large shippers have had to acquire their own (or contract) carriage--regardless of the apparently increased expense.

However, having said all this, I still do not advocate "decontrol period." I think the ICC should continue but perhaps modify its certification process. Fit, willing, and able are certainly appropriate requirements for common carrier applicants, although I think less well of overriding concerns about the adverse effect of potential new carriers on the traffic of existing carriers if the existing carriers are not cutting the mustard. Real disruption of service resulting from "over entry" is unquestionably a major issue. Where that is the likely case, entry should be handled judiciously. And as implied I'd like to think about special cases such as the rail abandonment situation.

Intermodal ownership? At this point in time, it's about as popular and as politically feasible as the waterway user charges which the Executive has been sending to the Hill "every year since Millard Fillmore." In truth, I think intermodal or common ownership will come. I think it must come if shippers are to be truly served. However, I think the need is only just starting to arise. The railroads have a lot of house cleaning to do before they get into the barge or truck business. And so I look for this to be an issue in five or ten years, but not now.

Now what does all this mean? It could mean more price competition and it would mean rates will be more in line with cost--up and down--than "value of service" as they are now in many modes and movements. Overall the cost of doing business should drop as load factors increase and empty back hauls decrease. There would be less cross subsidization of unprofitable routes with profitable ones or of cross shipper subsidy.

Traffic distribution could change. With the railroads able to raise and lower their rates according to cost and with some relaxation of abandonment restrictions, they would probably pick up some traffic they do not now have and lose some of the traffic they now haul. Probably trucks would become somewhat more specialized.

Two years ago when I spoke to the private carriers, I surfaced the proposition that increasing pricing flexibility might well dampen the trend to private carriage because shippers would find it cheaper to ship commercially. It wasn't as popular an idea as I had anticipated, but let's face it, change of any kind gets viewed with suspicion.

But make no mistake, change of some kind is coming. The shipper/consumer deserves it. The transportation industry desperately needs it, if it is to recover and grow. In short, the nation needs it now! I hope that everyone in this room and the transportation community at large will face up to this fact. The ways that we have done business in the past--however successful they were--simply are not adequate today. I hope change follows the lines I have mentioned. Absent such "reform" I think there is a real prospect of nationalization.

Today the United States has the only really private transportation system in the world and I for one would like to keep it that way. It is not 1890 any longer, and the town bully--the railroad-- is in trouble. It is not 1936 and trucking is now a \$20 billion industry. It is not 1940 and the Arkansas-Verigas River Project is now a fact!

Change is in order, and it is coming. But I think we need to recognize that evolution is invariably more successful than revolution. There is much that we don't know. I think we want to be very careful that whatever changes we make will allow the kinds of adjustments both with the carrier industry and the nation at large that will allow us to reap the benefits rather than suffer the chaos of hysterical change.