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STATEMENT OF UNDER SECRETARY OF TRANSPORTATION
EVERETT HUTCHINSON ON S. 518, A BILL TO AMEND THE
ADMINISTRATIVE PROCEDURE ACT, BEFORE THE SENATE
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND
PROCEDURE ON APRIL 7, 1967

My name is Everett Hutchinson and I am Under Secretary of the Department of Transportation. I have served in that capacity since February 16 of this year. From 1955 to 1965 I had the privilege of serving as a member of the Interstate Commerce Commission and was Chairman of the Commission in 1961. In 1961 and 1962 I had the pleasant duty of serving on the 11-member council of the Administrative Conference of the United States.

I appreciate the opportunity to appear before this subcommittee today to discuss the relationship of S. 518 to the operations of the Department of Transportation.

I think it would be useful to outline briefly the agencies and programs which became a part of the Department on April 1 so that you will have a better idea of the scope of our responsibilities, particularly in relation to S. 518.

The Department includes the Coast Guard and the Federal Aviation Agency with their programs of marine and aviation safety, aviation research and development, and the Federal airports program. It includes the Bureau of Public Roads and the Federal-aid highway program which it administers. The motor vehicle and highway safety programs which were

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enacted by the last Congress and which were originally the responsibility of the Commerce Department have also been transferred to the Department.

All the motor carrier, rail and pipeline safety functions of the Interstate Commerce Commission have been transferred by the Department of Transportation Act, as has the I.C.C.'s responsibility for administering the uniform time legislation.

On the effective date of the Act, the St. Lawrence Seaway Development Corporation began reporting to the Secretary of Transportation rather than to the Secretary of Commerce. A number of other transportation programs which had been administered by the Commerce Department directly have also become our responsibility. These include such varied tasks as guaranteed loans on certain commercial aircraft acquisitions, aviation war risk insurance, the high-speed ground transportation research and demonstration program, the Great Lakes Pilotage Administration, and policy and planning for emergency transportation.

From the Corps of Engineers of the Army, we have assumed responsibility under certain statutes relating to vessel anchorages, oil pollution at sea, and the location, operation, clearances and tolls of bridges over navigable waterways.

Finally, the operation and management of the lines and facilities of the Alaska Railroad have been transferred from the Department of the Interior to the Department of Transportation.

Pursuant to the Department of Transportation Act, the operational responsibility for these programs will be distributed among five modal administrations. Reporting to the Secretary will be the U. S. Coast

Guard, the Federal Aviation, Highway and Railroad Administrations, and the St. Lawrence Seaway Development Corporation.

Thus, the responsibilities of the Department will encompass a broad range of programs affecting the safety of our citizens and the efficiency of the transportation system on which they depend. Activities of the Department will touch the States and municipal governing bodies, the business community, and the personal safety and well-being of virtually all our citizens.

In our judgment, certain of the changes in the Administrative Procedure Act proposed in S. 518 will have a bearing on the programs which the Department of Transportation will administer. As I have indicated, these programs relate to the public safety in transportation, Federal financial and technical assistance in developing a more efficient national transportation system, and the coordination of all elements within that system. While the impact of S. 518 may not be as great on the Department as on some others, we asked to be heard today because the sound administration of these programs is a matter of vital public interest.

As we assume the responsibility for administering various programs, we intend to review them carefully to determine whether existing practices genuinely serve the public interest. To the best of our knowledge existing procedures have been carefully developed, and they have worked well. It is our judgment, at this time, that enactment of S. 518 as introduced may seriously inhibit accomplishment of program objectives. This applies particularly to the rulemaking process.

In the day to day discharge of our responsibilities, the Department will be engaged in a great deal of rulemaking. Predominantly this will occur in the safety area, but a significant amount of it will be related to the administration of the large Federal assistance programs such as the Federal-aid highway program, about which I will comment later. The highway and traffic safety programs which we have the duty to administer are of particular concern to us both because of the public safety crisis they are designed to relieve and because of the importance attached to this effort by the President, the Congress and the American public. Both of these programs find their principal and most important expression in the rulemaking process.

Among the several changes relating to the present section 4 rulemaking process of the Administrative Procedure Act which would result from enactment of S. 518 is the removal of the exceptions from the application of the section. Included among the present exceptions is one covering "any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." The elimination of this exception, and the resulting application of formal rulemaking, will have serious implications for the Bureau of Public Roads which has a long-standing relationship with the States as equal partners in the grant-in-aid program which finances our Interstate and other Federal-aid highways. The Bureau deals with States, not individuals, and this bill is concerned with the rights of citizens in their dealings with the Federal Government.

The Bureau implements its statutory mandate by the issuance of Policy and Procedure Memoranda and Instructional Memoranda establishing uniform procedures under which the States carry out the Federal-aid programs. These directives are communicated to the States, not individuals, and to subject thousands of such memoranda to the formal notice and comment provisions of section 4 would not benefit the public. On the contrary, since many of these directives must be adopted quickly to take advantage of changing technology and circumstances, the public interest would be adversely affected. The added expense that such procedures would entail, and the inherent delays, would not contribute to timely completion of the Interstate system or to improvements in the other Federal-aid highways.

These memoranda are not adjudicatory in nature, and do not, in any real sense, prescribe policy guidance as to individual citizens or groups of citizens. The most common situation in which an individual or group has an interest in being heard is in connection with selection of a highway route. Section 128 of Title 23, United States Code, requires each State highway department to afford an opportunity for public hearing before locating an Interstate highway or deciding that a Federal-aid highway will bypass or go through a municipality. This procedure is specifically designed to give interested citizens the right to express objections to a route. The States must certify compliance with this requirement when a specific project is presented to the Secretary for approval. The memoranda to which I previously referred establish general procedures for projects which have previously been subject to public scrutiny.

A similar potential for delay could occur in the process by which the uniform standards governing highway safety grants to the States are established pursuant to the Highway Safety Act of 1966. The Secretary is required to promulgate uniform performance standards to which State safety programs must conform if the State is to be eligible for Federal matching funds to strengthen its highway safety programs. Under the provisions of section 402(e) of Title 23, United States Code, these standards are to be developed "in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate." At the same time, by removing the exception from section 4 of the Administrative Procedure Act relating to grants, S. 518 would impose formal rulemaking requirements on the development of standards for highway safety grants. And this would be the result notwithstanding the fact that the Federal Government deals directly with the States rather than with individuals, and the fact that the Highway Safety Act specifically provides for consultation with public and private groups whose only concern is the safety of the public at large. In our judgment, where the Department deals with the States directly in highway construction directives and safety standards, an exception from the application of section 4 should be maintained.

Another example of an area in which the removal of the exception relating to public property, loans, grants, benefits or contracts

would have an adverse effect is the aviation war risk insurance program which is administered pursuant to Title XIII of the Federal Aviation Act. Presently, the rules and regulations covering the program are contained in a General Order which is revised from time to time. Under this program, the Secretary may, with the approval of the President, write war risk insurance for United States air carriers when commercial war risk insurance is not available on reasonable terms and conditions. Both premium and non-premium insurance may be provided and currently the great bulk of the coverage is of the non-premium type. Claims under non-premium coverage are paid, pursuant to agreements of indemnification between the Secretary of Transportation and the Secretary of Defense and the Secretary of State which are also approved by the President. This program is vital to the national security because it provides essential insurance for commercial air carriers operating under Government contract throughout the world, particularly into Viet Nam. At this time, the contingent liability of the Federal Government for aircraft alone is approximately 1-1/2 billion dollars; for liability coverage the figure is substantially higher. The matters treated in the General Order, covering the issuance and the provisions of the policies, concern the Federal agencies involved and the commercial air carriers. These are not matters in which policy is developed or programs structured on the basis of evidentiary submissions, which are generally the contribution drawn from public comment. To require full-scale rulemaking for changes in this General Order would serve no useful purpose, and would delay the issuance of amended orders in a situation in which prompt action is most important.

This program as presently administered provides a good example of existing procedures well suited to the needs of the program. Enactment of the proposals in S. 518 would represent a retreat rather than an advance.

One of the purposes of S. 518 is to provide procedural devices for the protection of the rights of parties. Section 4(c)(1) of the bill provides that the agency "shall afford interested persons an opportunity to participate in rulemaking through the submission of written data, views, or arguments with an opportunity to present the same orally unless the agency determines that oral argument is inappropriate or unwarranted." This provision could have serious implications for the motor vehicle safety program, the heart of which is the establishment of performance standards for new vehicles. Interested persons, to protect themselves, would routinely ask to present views orally. Denial of a request for oral presentation would probably be subject to court review on a finding that such oral presentation is "inappropriate or unwarranted" and the question of whether such review could be obtained while the standard-setting proceeding is pending would certainly be litigated. This innovation would tend to delay proceedings which, because of the delicate lead-time requirements of the automobile industry, require precise and predictable timetables. The provision for oral presentation ought to be permissive, not mandatory. As to the motor vehicle safety standards about which I am speaking, the basic legislation, of course, provides for oral argument in appropriate cases.

We are concerned also about the administration of the uniform time legislation in this respect. This is a difficult program to administer. It requires that the needs and desires of the States be met, within the Federal framework of maximum practicable standardization as to daylight time and responsive establishment of time zones. Often, there is deep division of sentiment among the citizens of a single state. In a very real sense, every citizen of a particular state is a person interested in the outcome of these proceedings. To require opportunity for oral presentation in these matters, with the burden on the Department to make a specific finding disallowing it, could only complicate the problem. Moreover, the type of material which we would expect to receive can be adequately presented in printed form. Again, we urge that oral hearings be authorized where justified rather than required except where unwarranted.

The bill, S. 318, would classify as adjudications many proceedings not so treated at this time, and section 5(b) specifies certain requirements applicable to informal adjudications. While they do not necessarily involve adversary hearings, the requirements would include notice and some type of formal procedures. An exception is provided for "initial determinations with respect to public property, loans, grants, benefits, contracts, insitations, tests, or elections." Presumably the inclusion of the word "initial" would exclude from the exception subsequent informal adjudications involving the same matter and the same parties.

While S. 318 provides that there would be no difficulty in establishing procedures under section 5(b) to safeguard the rights of the

parties and allow for proper dispatch of business, this section poses serious problems in respect of the aviation war risk insurance program. The Department is regularly required to issue amendments to its insurance policies as changed circumstances occur, and frequently they must be expeditiously accomplished. This most often occurs in connection with the extension of insurance coverage to new military contracts, redetermination of sums insured including reevaluation of aircraft for insurance purposes, and the like. The request for change may come only when takeoff of the aircraft is imminent. If our defense airlift is not to be impeded, endorsements must be issued as quickly as possible. As we understand S. 518, such amendments would be informal adjudications subject to section 5(b). We are convinced that it is essential that this activity not be subject to procedures which might prevent prompt action. It would seem that this problem could be solved by deleting the word "initial" from the section 5(b) exception.

One other word on the proposal to revise section 5. We assume that statutes now in effect which provide specific procedures for accomplishing certain actions and are designed to control over those contained in the Administrative Procedure Act, would not be superseded by enactment of S. 518. I have in mind, for example, the Highway Beautification Act of 1965. That Act adds section 131 to Title 23 of the United States Code. Section 131(1) sets forth the procedure to be followed in the event the Secretary seeks to withhold ten percent of a State's Federal-aid highway

funds for failure of the State to comply with the requirements of the beautification act. The legislative history of the Act shows that the reason for inclusion of the detailed withholding provisions was the understanding of the Congress that the Administrative Procedure Act would not be applicable and that it was necessary to write specific provisions for the protection of the States. The Highway Beautification Act is a relatively new one and there has been no occasion to test section 131(1). While we do not believe enactment of this bill is intended to make the Administrative Procedure Act provisions controlling over the specific procedural provisions of existing statutes, we suggest that the legislative history of S. 518 should clearly reflect this.

The last provision of S. 518 to which I wish to address myself in any detail is section 6. Under section 5(b) there are certain actions involved in the vehicle safety program which would constitute informal adjudications, for example, the compromise of civil penalties. Section 6(e) would seem to require the issuance of subpoenas in informal adjudications virtually on an automatic basis whether or not there is a showing of relevance to the issues involved. We believe the provisions in the bill should be modified to provide that subpoenas in informal adjudications may be issued upon a showing of general relevance and reasonable scope of the evidence sought, the applicable test under section 6(c) of the present statute.

My remarks thus far have been directed to particular problems that will confront the Department of Transportation in the operation of

certain programs if S. 518 is enacted. I am not suggesting that any one of these problems will immobilize the Department, but taken cumulatively they will impair the efficiency of our work and add to the cost of performing it.

The bill as presently drafted would impose a burden of delay far out of proportion to the contribution it would make in the protection of the rights of the individual citizen. This kind of burden -- that of excessive procedural requirements -- has an interesting parallel in the Nation's transportation system. Among the deficiencies in that system which led the President to propose and the Congress to create the Department of Transportation is the existence of a host of "paper barriers" to the smooth flow of people and goods. Where different transportation modes or functions meet, we too often find unnecessary, outmoded, or artificial obstacles. Sometimes the barriers are technological, but often they are procedural. We have yet to develop effective means for reducing the mass of paper work that today delays international cargo shipments, for example. Better methods have to be found to insure that our vital highways and airports will unify and enhance our urban areas. In this effort we are too often faced with complex problems of cooperation among several political subdivisions, characterized by repetitive administrative practices.

This is not the fault of the statutes which govern administrative procedures. The point is simply that great care must be exercised to

insure that the bill under consideration does not, in the interest of providing devices designed to benefit individuals, operate in a fashion adverse to the right of the public generally to enjoy a more efficient transportation system.

One of the prime missions of the Department of Transportation is to provide a better climate for coordination in order to evolve a transportation system worthy of the world's most technologically advanced nation.

I do not mean to imply that the Federal Government is not now making an effective contribution in this area. The transportation regulatory agencies have long been concerned with promoting a healthy balance between the needs of the carriers and the needs of the public, and the most serious single problem facing the Interstate Commerce Commission, Civil Aeronautics Board, and Federal Maritime Commission today is the quest for ways to speedily and fairly discharge the duties which the Congress has entrusted to them. This is a matter with which I have had considerable personal experience, but you have heard from representatives of the regulatory agencies and I will not burden the record with repetitive testimony.

The regulatory agencies have made considerable progress in recent years in streamlining procedures and practices and reducing backlogs. This process must continue. The Department of Transportation would like to joint with the agencies in expressing concern over certain of

the provisions of S. 518, particularly the change in classification of many functions from "rulemaking" to "adjudication". This would have the effect, among other things, of transforming much rate regulation from rulemaking into adjudication.

We question the advisability of requiring rulemaking proceedings before an agency may issue a general legal interpretation or statement of policy. This would be the result when section 4 of S. 518 is read in connection with the definition of "rule" contained in section 2.

Another danger of "judicializing" the administrative process relates to the extent of the application of the separation of functions requirements in adjudications. Section 5(a)(6) would change the application and scope of this requirement. By broadening the definition of "adjudication", narrowing the definition of "rulemaking", and eliminating the exceptions now in section 5(c) (which include initial licensing and the validity or application of rates) a very large percentage of the business of the regulatory agencies would be subject to the separation requirements. This would prohibit, among other things, the consultation by a presiding officer with agency employees for technical advice. We believe that such separation requirements should be confined to matters of an accusatory nature and not be extended to presently excepted areas, such as initial licensing and rate matters.

The observations I made earlier about the adverse effect which the broad subpoena and deposition provisions of section 6 would have on the

operations of the Department of Transportation apply at least as strongly to the operations of the regulatory agencies. These provisions have a real potential for abuse of the public interest and offer only limited benefits for parties to a proceeding.

Finally, and briefly, I know the relationship of S. 518 to the procurement process had been described in great detail, particularly by the witness for the Department of Defense. I would merely like to point out that the Coast Guard and Federal Aviation Administration are engaged in contracting and procurement activities on a substantial scale and the bill would adversely affect us in the same manner, though not to the same extent, as it would the defense establishment.

Thank you. I will be glad to answer any questions the Subcommittee may have.

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FROM: OFFICE OF THE SECRETARY, DEPARTMENT OF
TRANSPORTATION, WASHINGTON, D. C. 20590

FOR RELEASE:

7:30 p.m., APRIL 10, 1967

REMARKS BY EVERETT HUTCHINSON, UNDERSECRETARY OF
TRANSPORTATION, PREPARED FOR DELIVERY AT THE
AGRICULTURAL POLICY INSTITUTE OF NORTH CAROLINA STATE
UNIVERSITY AT RALEIGH, NORTH CAROLINA, MONDAY,
APRIL 10, 1967

THE TRANSPORTATION DEPARTMENT -- ITS CHALLENGES AND GOALS

The most common manifestation of life is movement and from the beginning the story of America is one of mobility. Our first President was the most widely traveled man in the colonies and transportation has been at the heart of our growth and progress since the time of George Washington.

It is not surprising, therefore, for a regional transportation conference such as this to attract an impressive assembly of interests such as we have here this evening -- educators, leaders from all levels of government, leaders in agriculture, in manufacturing, and in the service industries, leaders from the different transportation modes, from trade associations, and from industrial development groups.

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As President Johnson pointed out recently, transportation is America's biggest industry. It employs more than 2.5 million people. It accounts for one-fifth of our total national output. All of us have a vital stake in the future of our transportation system.

Last year, more than 90 million motor vehicles raced over some 3 million miles of paved highways and streets. Nearly 100,000 airplanes flew more than one billion miles and 1.5 trillion ton-miles of cargo moved over our railways, highways, and waterways.

These are impressive figures. But they do not even begin to convey the importance of our transportation system to an economy whose every activity, whose every enterprise, depends directly or indirectly upon the availability of fast, efficient, and economical means for moving millions of people and products from one place to another -- between home and office, between factory and outlet, between home office and branch office. Nor do they begin to suggest the immense influence -- direct and indirect -- that transportation has upon our social and physical environment, and even upon our personal lives.

To help cope with the problems and challenges posed by this vast and vital aspect of our national life, the new Department of

Transportation was created. The Department -- which officially opened its doors just ten days ago, on April 1 -- brings together more than 30 Federal transportation functions, involving nearly 100,000 employees and an annual budget of about \$6 billion.

Significant transfers to the new Department and which now constitute its principal elements include:

1. The Federal Aviation Agency, with its broad responsibilities for overseeing our air commerce -- encouraging its development, insuring its safety, assisting in the improvement, installation, and operation of its facilities, and the like.
2. The Bureau of Public Roads, which is charged with the overall supervision of our Federal - Aid Highway Programs, in cooperation, where appropriate, with other Federal agencies and the several states.
3. The United States Coast Guard -- the nation's oldest sea-going service -- whose primary mission is to insure the safety and security of our shores, our waterways, and our seas. The Coast Guard will function as an agency within the Department of Transportation, but during war or national emergency it will operate as part of the Navy.

4. The St. Lawrence Seaway Development Corporation, which is responsible for the construction, maintenance, and operation of a deepwater navigation works in the International Rapids section of St. Lawrence River, together with necessary dredging in the Thousand Islands section. The Corporation is organized to be self-supporting through tolls assessed shippers using the seaway facilities.

5. The Office of High-Speed Ground Transportation, which is responsible for planning and carrying out a program of research, development, and demonstration in the field of high-speed ground transport.

6. The rail, motor, and pipeline safety functions of the ICC and the air safety functions of the CAB.

The Federal regulatory agencies in the field of transportation -- the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission -- will retain their independence, in keeping with the conviction shared by the Administration, the Congress and the country generally that these agencies can most effectively and impartially fulfill their quasi-judicial functions outside the new Department. At the same time, because the decisions of these agencies on mergers, rates and other matters have such an impact upon our entire transportation system -- and upon the public which it serves -- the Department is authorized to appear as a party in major regulatory proceedings. We fully intend to exercise that authority and, wherever appropriate, to represent the public interest in agency proceedings.

The Maritime Administration will remain outside the Transportation Department. This is regretable. It is no more possible to exclude the maritime area from our prime policy concerns than it is to conceive of a transportation system without water transport. And so we look forward, in the interests of the maritime industry, as well as of the nation as

a whole, to the early inclusion in the new Department of this important part of our transportation capability.

Finally, the new Department will cooperate with the Department of Housing and Urban Development in fashioning programs and policies to improve our urban transportation system. In addition to maintaining close and constant coordination, the two Departments will, within the year, recommend to the President and the Congress, "the logical and efficient organization and location of urban mass transportation functions in the Executive Branch".

One of the prime goals of the new Department is to help insure for America, in the words of President Johnson, "a coordinated transportation system that permits travellers and goods to move conveniently and efficiently from one means of transportation to another, using the best characteristics of each".

To reach that goal will require that the new Department, in the words of President Johnson, "coordinate the principal existing programs that promote transportation in America; bring new technology to a total transportation system, by promoting research and development in cooperation with private industry; improve safety in every means of transportation; encourage private enterprise to take full and prompt advantage of new technological opportunities; encourage high-quality, low-cost service to the public; conduct systems analyses and planning, to strengthen the weakest part of today's system; and develop investment

criteria and standards, and analytical techniques to assist all levels of government and industry in their transportation investments".

All of us recognize that ours is the best transportation system in the world. But we also recognize that we must assess the adequacy of our system -- not against the inadequacies of others -- but by its ability to meet the massive and mounting transportation needs of a society far more complex than any elsewhere in the world.

Already our transportation needs are beginning to outrun our ability to meet them -- and in the days and decades ahead, those needs will expand at an accelerating pace.

Indeed, those needs will grow at a more rapid rate than the economy that creates them. In 1941, as one observer has pointed out, it took 3,800 ton-miles of transportation service to supply each of us with our food, fuel, and other necessities. In 1960, it took 60% more service to meet our needs -- or 8,900 ton-miles for each man, woman and child in America. It has been estimated that, if the trends of the past five years continue, each of us will need 10,600 ton-miles of service annually by the end of this decade -- and 16,000 ton-miles by the end of the next decade.

To meet the challenge posed by the prospect of unprecedented growth in our transportation needs -- and to solve the already acute problems presented by the rapid growth of those needs in the recent past -- will require that we enlist all of our relevant resources, public and private -- local, regional and national -- in an unprecedented effort to improve our total transportation system.

It will require that we look at our transportation system as a whole, that we see it for what it has, in fact, become -- no longer a series of separate and self-contained enterprises, but a single interdependent system.

In the new Department of Transportation we have, for the first time, an instrument that will enable us to develop a coherent national approach to our transportation problems -- that will furnish a single national focus and framework within which we can better understand and cope with the complex technical, economic, and social relationships that make up our transportation system.

Such an approach requires, first of all, that we have available what we do not yet have -- current, accurate, and abundant data on every facet of our transportation system

as well as on its broader economic and social impact.

One of the most basic tasks of the new Department will be to develop that kind of data, without which neither government nor industry can undertake the intelligent, informed planning essential to cope with the complex challenges that lie ahead.

It requires, secondly, new techniques and technologies that promise to strengthen our total transportation system. The new Department will cooperate closely with private industry and with state and local governments to encourage and assist this kind of effort on a far broader scale than we have witnessed in the past -- and, where appropriate, will bear its share of the cost of ventures, such as the high-speed rail demonstration project now underway.

Finally, it requires that we re-evaluate both our public and private transportation investments and activities on a continuing basis according to the latest techniques of cost-benefit and systems analysis. We have made great strides in recent years in pioneering and perfecting these techniques -- both within government and in private industry -- and how skillful we are in employing them will do much to determine how successful we are in improving the efficiency and effectiveness of our transportation system.

President Johnson has said that, "No function of the new Department -- no responsibility of its Secretary -- will be more important than safety."

Each of the efforts that I have described -- to improve transport data, to encourage new technology, and to employ the systems approach -- will immediately enhance our ability to develop effective safety standards and programs. The National Highway Safety Act of 1966, and its companion measure, the National Traffic and Motor Vehicle Safety Act, represent a significant advance in our efforts to develop a total approach toward one of the most important aspects of transportation.

These measures are, indeed, important prototypes of the kind of systematic and inclusive approach we intend to employ in trying to insure greater coordination in other phases of transportation in this country.

We recognize that, in safety as in every other phase of transportation, the problems before us will admit of no sudden or easy solution. We recognize also that these problems will not stand still, but will mount and multiply as our economy, and the transportation system that serves it, continue to grow in size and complexity.

But we are convinced, as well, that the new Department of Transportation enables us, for the first time, to bring to bear upon these problems vast national resources -- public and private.

And I can assure you that we, in the new Department, will do all we can as rapidly as we can, to harness those resources and mount a cohesive national effort to assure for America a transportation system equal to its needs.

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FROM: OFFICE OF THE SECRETARY, DEPARTMENT OF
TRANSPORTATION, WASHINGTON, D. C. 20590

FOR RELEASE: P.M.'s WEDNESDAY, APRIL 26, 1967

REMARKS BY EVERETT HUTCHINSON, UNDER SECRETARY OF
TRANSPORTATION, BEFORE THE KANSAS CITY AND ST. JOSEPH
CHAPTERS OF ICC PRACTITIONERS AND TRAFFIC CLUBS OF
KANSAS CITY AND ST. JOSEPH, ST. JOSEPH, MISSOURI, APRIL 26,
1967

I am delighted to be in the home territory of my good friend Bill Hull. He is a dedicated, hard working Congressman whose leadership is respected by everyone in Washington.

I'd like to share some personal impressions with you -- observations on the remarkable rate of technological change which, in part, is responsible for the formation of the Department of Transportation. This fantastic rate of change remains as a principal challenge confronting the new Department.

Your history here in "St. Joe" illustrates the point. During the late 1850's the question of the best route for the overland mail to California was a topic of great interest in the Far West.

John Butterfield began his famous overland mail operation following a circuitous southern route. The mail made it from Missouri to California in 22 days.

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In the past, we generally have accepted change as progress. Space in this country was so vast that any foreshortening was welcomed despite its cost. Indeed, many costs were not perceived. Spoilation, congestion, and noise were not adequately foreseen. Only now are we gaining some appreciation of the cumulative products of countless incremental changes that have followed, one after another, in ever more rapid succession.

Our immediate problem is how to get some degree of intelligent control over change itself -- how to become sensitive to the subtle implications of technological change and to begin channeling it in the direction, and for the purposes, favored by society at large.

Historically, we took a fragmented approach. We created a new Federal agency to deal with the problems of each mode of transportation as it came along. In stop gap fashion we dug a new well for water to put out each fire.

I'm not being critical. The system has worked tolerably well in the past. No one could have foreseen the complexities of ever more rapid technological change. It made little sense to build a fire department until the outlines of a city began to take form.

The formation, first, of the Department of Housing and Urban Development, then the Department of Transportation, in little over a year's time, represents a political achievement unique in the history of the republic. It is an enduring testimonial to President Johnson's leadership.

The new Department represents a congressional decision "to centralize in one Cabinet-level department the responsibility for leadership in the development, direction and coordination of the principal transportation policies, functions, and operations of the Federal Government."

We officially opened our doors on April 1 as the fifth largest enterprise in the Federal Government, with upwards of 92,000 employees and an annual budget close to \$6 billion. Four billion dollars of this comes from the Highway Trust Fund brought into the Department by the Bureau of Public Roads.

The major portion of our employees are represented by two components -- the Federal Aviation Agency, now called the Federal Aviation Administration, with 44,000 people, and the U. S. Coast Guard which employs 41,000.

About thirty existing transportation programs have been brought together for the first time, charging the new Department with broad safety and promotional responsibility.

Our job under the able leadership of Alan Boyd, the dynamic first Secretary of Transportation, is to take the broad look, not only at the complex relationships between interdependent modes, but also at the social consequences of our transportation policy.

Of course, we all can take justifiable pride in the American transportation system. It is the best system ever made available to any people, anywhere in the world, at anytime since the beginning of mankind. As impressive an achievement as this is, however, it no longer can stand as the test of adequacy. Measured against constantly expanding demand, this accomplishment leaves much work to be done to improve an already good system.

In the words of President Johnson, "In a nation that spans a continent, transportation is the web of union." We shall do our best to rationalize and strengthen this web. With your help, we shall continue to make it a socially responsible instrument for transforming man's finest dreams into reality.

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REMARKS OF
EVERETT HUTCHINSON
UNDER SECRETARY OF TRANSPORTATION
AT THE BAY AREA COUNCIL, THE FAIRMONT, SAN FRANCISCO
7:00 P.M., APRIL 28, 1967

FROM AN ADDRESS PREPARED FOR DELIVERY BY THE SECRETARY ALAN S. BOYD

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Plato said that -- "All things which are, or have been or will be, exist either by nature, or by art, or by chance."

I am here by chance...

These words of Plato have led me to speculate on the accidents of history that gave birth to our nation along the East Coast, with some original States that are actually smaller than your San Francisco Bay area.

If by chance our continent had been settled from west to east, all of New England would probably be one State. And California might now be divided into six or seven separate States.

Under those circumstances, San Francisco, not New York, might now be the biggest city in America.

I am aware of considerable local sentiment that San Francisco has always been the best. And I must say, if the group sponsoring this splendid dinner continues its very sound planning and developmental effort, all other regions of America may have to concede that point by the end of this century.

I have looked forward to this evening with the Bay Area Council as an opportunity for a discussion of the environment of transportation.

The transportation environment in the United States is unlike that of any other nation in the world. Moreover, it is unlike any other set of circumstances in the United States.

I'm reminded of the public service advertisement I saw recently in a Washington, D. C. bus. There was a picture of a computer brain, and underneath it the question, "What will you do when this circuit learns your job?"

Alongside it, a passenger had scrawled the appropriate answer: "Become a circuit-breaker."

Unfortunately, our great metropolitan centers aren't allowed to make a comic response to questions about their civic future. For most central cities, transportation is a sheer survival question.

You and I pay for our transportation in an intricate way. We have evolved, in our society, a special technique of combining public and private investment. One not only complements the other; in some cases, one actually makes the other possible.

This blending of private and public money has helped produce a national transportation system superior to that of any other country. But one of the minor drawbacks of our uniquely American approach is that it tends to obscure the real cost.

Almost all of the 94 million cars and trucks in America are privately owned, but the highways and streets are publicly maintained.

All of the nation's barges and towboats are private property, but the canals and rivers are kept navigable by the Corps of Engineers.

All U. S. airlines are competing private enterprises, but all the major airports are publicly maintained, and the air routes are assigned by a Federal agency.

America's ocean-going vessels are privately owned, except for some military supply ships, but the great harbors and ports are a public investment; and the U. S. Coast Guard keeps watch over icebergs and other hazards of the sea.

Exclusive of mass transit and military, almost all transport vehicles in this country are private property.

The routes over which these vehicles operate are public property.

That is the rule.

One major exception is the railroad right of way. Historically, of course, most of the railroad rights-of-way originated in public land grants.

So, the pattern is clear. Our government has provided basic route support for each of the emerging transportation technologies.

That is pretty much the way it has been for over a century and a half.

Now, obviously these modes would have been able to operate on some basis without the public contribution. But not on the present scale, and probably not at the current level of mechanical refinement.

For the lump-sum investments required for highways and harbors and canals and jet airports are beyond the usual means of private companies.

Considering other expenditure priorities, they are also, at times, beyond the means of the U. S. Government.

The total transportation investment in America, by private firms and individuals, and by all government jurisdictions combined (local, State and Federal), is of the magnitude of \$425 billion.

Broadly viewed, there are three major elements which shape the American transportation environment.

One is our basic freedom of movement, our mobility. This is a political right as well as a social value, and it supports the reality of a mass market over a vast territory, free of Old World barriers to travel and commerce. We have an unbelievable amount of movement in America. For example, in 1965, our cars, buses, trucks, trains and aircraft made over 107 billion trips.

The second important element in the transport environment is our system of private ownership and competitive free enterprise.

This is a very profound and pervasive style in our society. Through somewhat blurred in the operations of the carriers themselves, it is forcefully displayed by transportation users as well as transport equipment manufacturers.

The third major influence on our transportation environment is the intervening authority of government.

I have already touched on the classic partnership that exists between public and private investment.

You can view this as a form of subsidy. But the power to give or withhold a franchise or license, and the power to set operating rules and standards, is far more a fundamental role.

The interaction of these elements over a period of time, produces a very complex landscape of transportation institutions. Regulatory agencies are perhaps the most prominent features on this landscape. Each has an individual profile.

The Interstate Commerce Commission is primarily involved in economic regulation, protecting the public, and parts of the transportation industry itself, from abuses of economic power.

The Civil Aeronautics Board has that responsibility plus an assignment to promote portions of the aviation industry. The Federal Maritime Commission is also involved in economic regulation, but responsibility for industry promotion rests with a nonregulatory agency, the Maritime Administration.

Quite prominent on the transportation landscape have been the government agencies, like the Maritime Administration, the U. S. Coast Guard, the St. Lawrence Seaway Development Corporation, and the Corps of Engineers, which maintain different facets of what is broadly a single transportation mode.

Then there are literally scores of other Federal transportation offices, boards, activities and jurisdictions which are less visible to the public, and vary in size and scope, but which -- depending on where you stand -- may have enormous importance. I'm thinking now of the Alaska Railroad, and Great Lakes Pilotage, and Highway Beautification, and Motor Vehicle Safety Standards, and on and on.

Of course, the largest, and I would like to feel the most significant, feature on the transportation landscape is now the Department of Transportation itself. It was created by an act of great determination and imagination on the part of President Johnson and the 89th Congress. In brief, this act placed the Bureau of Public Roads, the Federal Aviation Agency, the Coast Guard, and most other transportation activities of the Federal Government under one jurisdiction.

They were united in one Department because the nation had finally realized that all forms of transportation are interdependent. We see that some modes depend on one another directly; that a majority compete with one another; but that all have an effect on one another.

For that reason, no single mode of transportation can hope to make much further progress, entirely by itself. There has to be some degree of coordination, some serious thought about the total transportation system. Otherwise, we would end up multiplying existing transportation problems.

The Department of Transportation's mission is to formulate and recommend to the President, national transportation policies that will best serve the public interest. We are working for transportation progress. We are trying to arrive at a transportation system for this nation that is fast, safe, efficient, convenient and economical. And one that will also preserve community values and the natural beauty of the countryside.

Policy is of course an abstract term, unlikely to generate much public interest. But the public can always recognize when transportation service is good or bad. Bad service is a civic disaster.

The public understands that the social costs of transportation are being paid.

Air pollution, traffic congestion, traffic accidents, noise, dirt, ugliness, disruption of neighborhoods...

Unfortunately, these are also a part of America's transportation environment. They are the part which all of us want to eliminate or minimize.

In fact, President Johnson's instructions to the new Department of Transportation, on the occasion of its formal activation on the first day of this month, were to give the highest priority to solution of the social problems generated by transportation. Especially in matters of safety.

I don't think there is any adequate way within the bounds of decorum for me to express our eagerness to get on with that particular job.

But these problems are just not soluble in one bucket of water. We cannot eliminate pollution, congestion, accidents, and all the rest, with a sweeping gesture. These evils are intertwined with vital community interests; and must be disengaged with the least possible injury to society.

Any city can dispose of such problems very quickly. For example, by forbidding trucks and automobiles on city streets. A lot of people and a lot of industry might choose to move elsewhere. The city might die, in fact, before electric cars became feasible for local use. But the original problem would no longer exist.

I think the point is pretty obvious. We have to push hard for every transportation improvement which is reasonable to expect. We can even afford to be somewhat unreasonable in such demands, because America is a land that hates to call any job impossible. Yet we do have to accept certain limitations. Transportation, as I said, is a \$425 billion investment; it has a lot of inertia. We can make progress with patience and persuasion.

But, progress is not going to be achieved by the power of Federal spending alone. The \$6 billion your national government is investing in transportation annually doesn't represent much leverage alongside the \$425 billion figure. As a matter of fact, State and local governments, combined, are spending twice as much on transportation as the Federal government.

Furthermore, within the existing framework of Federal grant-in-aid programs, the Federal Government lacks authority to invest in transportation route facilities without State and local cooperation. I mean this quite literally. No administrator in the Department of Transportation can force a project on any State or municipality.

In the highway field, the quality of a Federally-financed project is rarely any better than the quality of local and State plans.

Urban highway designs do not originate in Washington, D. C. They are drawn up by State and city engineers. Afterwards, they are submitted to the Federal Highway Administration for approval.

Our highway agency, like every other Federal agency, is governed by standards as well as financial constraints. These often lead to suggestions for modification of plans; but usually in minor details only, since the State and city engineers are professionals who thoroughly understand government specifications.

These suggestions, when they are made, reflect our Highway Administration's preference -- not for the most economical solution, necessarily, but for the best feasible solution.

Unless it is a matter of meeting minimum construction standards, no locality has to accept our modifications as a condition of approval. If a State or local jurisdiction wants to stick with its own plans, the Federal Highway Administration follows this permissive policy:

Where the local plans cost no more to execute than our agency's recommendation, we participate to the full financial extent allowed by law. But where the local plans cost substantially more to execute than our own "best feasible" version, then the Federal share remains what it would have been to construct the Federal version, and the community is asked to absorb the extra cost.

I feel obliged to go into this matter because several problems of this nature have arisen in connection with the Embarcadero Freeway and the Crystal Springs Reservoir highway.

Secretary Boyd's instructions to the Federal Highway Administrator are in the closest possible accord with Mr. Bridwell's own sentiments, and those of our staff in the San Francisco area, which are to work with your city and State officials to achieve a satisfactory resolution of all such problems.

Now -- there are, of course, other transportation needs in the Bay Area which demand attention, for which the Department of Transportation may be able to provide assistance. We invite your specific proposals to improve this area's mobility.

Having budget problems of our own, these days, I am more than ever impressed with the need to search out economical alternatives. In the words of a Congressman I deeply admire, George Mahon, we must try ... "to look at all demands objectively with the attitude that not everything is essential or indispensable. For with public money hardly ever in sufficient abundance to cover all that is desirable, a first and foremost function is the allocation of resources among competing demands -- setting priorities of purpose and amount."

I have no doubt that your group is deeply involved in the question of priorities for the Bay Area; and that the transportation study you are making will give full consideration to these questions. This is a way of asking yourselves what kind of a community you would like the Bay Area to become --- and how soon.

It seems obvious that in the life of an urban center ~~the~~ non- decision is a very crucial form of decision. It is a decision to let prevailing trends run their course, and have whatever effect they will on community life.

For the forces of mobility in this country are almost irresistible.

Those 107 billion trips each year ... that \$425 billion momentum.

Unless transportation is channeled, unless the forces of mobility are harnessed to intelligent purposes, made to serve the best interests of society, that dynamism can tear a community apart.

I think your community is to be congratulated on its support of the Bay Area Rapid Transit District. The advanced concepts embodied in BART will, I am confident, be integrated into the transportation systems of other great metropolitan centers.

Obviously, such undertakings require enormous capital. There must be priorities. No community can accomplish everything it wishes to accomplish, simultaneously. But by thoughtful assignment of those projects in orderly sequence, we can, in time, achieve our realistic objectives.

Tonight is one of those rare occasions when the leaders of a great community are assembled in one room, and the future lies within arm's reach.

You are the history makers.

You have the power of decision.

The progress and well-being of the Bay Area depends, to a profound degree, on your goals, and on the quality of your taste and judgment.

With patience and well-conceived policy, you can shape the destiny of your community.