U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20590

REMARKS BY EVERETT HUTCHINSON, UNDER SECRETARY OF TRANSPORTATION, PREPARED FOR DELIVERY BEFORE THE GENERAL PRACTICE SECTION, STATE BAR OF TEXAS, DALLAS, TEXAS, JULY 6, 1967, 2:00 PM

This is the first time I have had an opportunity to meet with a Section of the Texas Bar since 1962. I am glad to be here -- both as a Texas lawyer and as Under Secretary of the new Department of Transportation. I am particularly grateful for the opportunity to meet with the General Practice Section at its first annual session. I count it an honor to be in the company of such distinguished members of the Bar.

I believe I would have been fully justified in coming here just to compliment you for your foresight in establishing the General Practice Section, which is sure to make a great contribution to the Bar and to the people of Texas, but I know you expect something more than this from me although such a compliment is richly deserved.

In the Post-Civil War days of expansion to the West, regulating a vast industry was a daring experiment. But this is the job Congress gave the Interstate Commerce Commission when it was established in 1887. This is the Eightieth Anniversary Year of the ICC, the first of the Federal regulatory agencies. This is also the Eightieth Anniversary Year of a type of adjudication called the

administrative process.

Today, the administrative process is the concern of many people -- lawyers, judges, scholars, lawmakers, housewives, and, in fact, just about everyone. My assignment this afternoon is to highlight some suggestions that may be of interest -- and hopefully useful -- to the lawyer who finds himself representing a client before one of the agencies or departments. What I will say may indeed be useful to the lawyer in his first appearance before an agency, and it is to this lawyer that my remarks are primarily aimed.

I hope the seasoned administrative advocates will stay with me in the process.

My first suggestion is that you not hesitate to associate specialized counsel in any matter involving, or likely to involve, extended litigation before an agency. This is often a wise course for the protection of your client and for your own tranquility.

Before I attempt to talk about the administrative process, I would like to say something about the new Department of Transportation.

I mentioned that the Interstate Commerce Commission was established in 1887. But there was "talk" in Congress

These are the legislative landmarks which I would place in the Top Ten. It wouldn't surprise me to discover that there were differences of opinion on this subject. I think it might be interesting to conduct a survey within the bar association and compare our respective lists.

One of the values of looking at history in this way is that we can sometimes see patterns, or traits of character in our national life, that are more or less hidden in the profusion. We can see, for example, that the G.I. Bill belongs to--not one, but two great traditions.

On the one hand, it continues our national trend of investment in human resources: the trend of the land grant colleges. On the other hand, it strikes me as being very much in the spirit of homesteading.

Our country did not make an out-and-out gift to either the settler or the veteran. Both were offered something of no value unless combined with personal effort.

I think we can also see two traditions at work in the Union Pacific Railroad Act. It illustrates our preferred pattern of national development, blending public and private investment. This we see throughout all aspects of transportation: the private sector pays for the vehicles and equipment; the public sector pays for the right-of-way and the maintenance of routes.

At the same time, the builders of the railroad were given a land grant that had little value unless/it could be sold to pieces of individual purchasers. And the States which received public lands under the Morrill Act could end up having colleges only through

"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."

Now, the five operating elements I mentioned a minute ago are, first, the Federal Aviation Administration with responsibility for aviation safety and promotion. The FAA also has responsibility for the SST program for the development of supersonic air transport capability.

Second, the Federal Highway Administration which administers the Federal-Aid Highway Program, the motor carrier safety program, and the program for highway and traffic safety.

Next, the Federal Railroad Administration has responsibility for railroad safety, the high speed ground transportation program, pipeline safety and operation of the Alaska Railroad.

Fourth, the Coast Guard whose principal peacetime activities relate to marine transportation safety, search and rescue, and research aimed at penetrating the mysteries of the depth and darkness of the oceans. As in the past,

the Coast Guard will operate as part of the Navy in time of War.

The fifth operating element within the Department which I would like to refer to is the St. Lawrence Seaway Development Corporation. Its responsibilities are in connection with the operation and maintenance of the St. Lawrence Seaway.

The Department will take a broad look at transportation as a system and seek to find accommodation for the complex relationships that exist between interdependent modes and provide a systems-oriented approach to transportation. It will attempt to measure the social consequences of our transportation policy.

Transportation technology is advancing at such an accelerating rate that many side-effect problems are certain to be generated.

I suppose the trick is how to get some degree of intelligent control over change itself. We must become sensitive to the subtle implications of scientific and technological advances and begin channeling them in the direction most favored by society at large.

The broad objective is clear: We want transportation to make a more positive contribution to the quality of our times.

Sir Thomas Macaulay said that "...of all inventions, the alphabet and the printing press alone excepted...those inventions which have abridged distance have done most for mankind."

We hope the new Department will help abridge distance -- that it will prove to be just such an invention.

This afternoon I will try to "invent" some suggestions likely to be useful to the lawyer who finds himself in the administrative practice -- "The General Practitioner and Administrative Agency Practice" -- is a pretty broad assignment.

Most of my experience with the Federal administrative process has been as a member of the Interstate Commerce Commission on which I had the privilege of serving for more than 10 years, but as a member of the Administrative Conference of the United States in 1961-62, I was privileged to participate in an effort aimed in the direction of improving the whole sweep of agency adjudication.

In the new Department we are concerned with adjudication in a number of areas of responsibility under approximately 40 separate statutes. We are now in the process of reviewing practices and procedures under these statutes with a view to developing procedural rules to promote uniformity and simplify procedures in the several fields of adjudication.

This seems highly desirable in the interest of expediting proceedings and streamlining procedures. We want to design a set of tools that will produce a better, more useful product.

Dr. Samuel Johnson once said of the courts that "Formalities are accumulated on each other until the art of litigation requires more study than the discovery of right."

Historically, Congress has recognized, and the agencies have treated, practice and procedure as a tool of production, not an end product. Substantive and remedial provisions have been given priority over procedural formalities.

When Congress adopted the original Act to Regulate Commerce, it did not prescribe rules governing practice and procedure, but wisely left this to the ICC by language providing that:

"...the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of Justice."

Thus, the administrative process began its existence free of procedural accretions of the past and, except for the Administrative Procedure Act of 1946, and two enactments adopted by the 89th Congress,[1/] agencies generally have been left free by the Congress to adopt procedures and rules to meet the responsibilities imposed upon them. Only within comparatively recent years has it been recognized by the Congress that courts ought to have the same freedom.

1/ The Administrative Practitioners Act (P.L. 89-332) effective November 8, 1965, providing that any member of the Bar of the highest court of a State may represent a client before an agency (other than the U.S. Patent Office) by filing an appropriate declaration of his qualifications; and the Freedom of Information Act (P.L. 89-487) effective July 4, 1967, requiring agencies to make available to the public certain records and information.

The present trend, it seems to me, is in the direction of relaxing the rules of evidence in non-jury cases where the subject matter is closely parallel to that usually presented before an administrative agency. For example, in United States vs. United Shoe Machinery Corporation, 89F Supp. 349, the District Judge admitted extensive documentary evidence, a substantial part of which was hearsay, with the explanation that:

> "It is difficult to imagine any satisfactory ground for deciding that evidence which is admissible before the Federal Trade Commission is inadmissible before a judge sitting without a jury in a civil anti-trust case brought by the Government..."

It was early recognized that such restrictive concepts as those embodied in the exclusionary rules of evidence, particularly those relating to hearsay, had no proper place in proceedings before Federal regulatory agencies. The thought has been that the public interest is best served by permitting administrative agencies wide latitude in searching out the truth.

This was recognized by the Supreme Court as early as 1904 in ICC vs. Baird, 194 U.S. 25, wherein the Commission's

power to investigate business relationships between certain railroads and coal companies was in issue. In that case, the court stated that:

> "The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof."

The agency must, of course, conduct its proceedings in such a manner as to afford the parties procedural due process and when a hearing is required it must be a full, fair hearing. The liberality in practice and procedure permitted the agencies carries with it a correlative duty to insure to the parties the essentials of justice and fair play. Interstate Commerce Commission vs. Louis. & Nash. R.R. 227 U.S. 93.

Now, there are substantial differences between a courtroom trial and a proceeding before a regulatory agency. In the administrative proceeding the one who ultimately decides the issues is usually not the one who sees the witnesses and hears the testimony.

Even where the one who hears the case does make the decision, the report is usually prepared weeks or months after the hearing and is based on the written transcript of what transpired at the hearing. Thus, in the adminis-

trative proceeding, the one who ultimately makes the determination does so on the basis of the written record.

From the standpoint of the trial lawyer, the development of a good written record is, therefore, vital in a presentation before a Federal agency. The written record must establish facts which lead to conclusions favorable to his client's position.

The trial techniques for developing such a record differ from those employed in the usual court trial. Proper understanding and skillful application of these techniques will aid materially, a successful presentation before a Federal agency.

There are many different types of administrative proceedings. Broadly speaking, these may be classified as rule-making, licensing, and sanction or relief. Proper trial techniques are useful in each type of proceeding.

As I have indicated, the decision in an administrative proceeding is derived from the written record weeks or months after the hearing and depends upon what the agency "finds" from reading the record. In a court trial the decision normally follows soon after the trial is concluded and the result usually depends upon what the judge has heard in court.

Therefore, the chief burden of the lawyer before an agency is to build a written record by which facts are established leading to conclusions supporting his position.

Dramatics have no place in this task.

Turning a clever phrase does not pay and psychological impressions fade quickly into dull reading on the cold record from which the finder of the facts must draw a decision. This is not to minimize the important role of the hearing officer who makes the recommended decision. This is an important stage in the disposition of a proceeding, but the hearing officer also draws his decision from the record, usually long after the hearing.

In any event, impressions gained at the hearing quickly give way to the clear facts in the written record. The chief task of the trial counsel in an agency case is to develop a record in which the facts leading to the result he desires appear clearly and concisely.

In order to better meet this responsibility, counsel, even experienced counsel, will usually find a hearing guide useful, if not indispensible. The lawyer who attempts to present his case "off-the-cuff" is likely to find himself lost at a critical point in the hearing.

There are sound reasons for preparing a hearing guide or memorandum. First of all, the agency will not find facts not of record. Counsel cannot be absolutely certain all the facts are in the record unless he is prepared to present them. The facts must be presented clearly, free of "conversation" which burdens the record he is attempting to build.

Of course, the size, style and character of the hearing guide must be the choice of counsel and will vary with the length and complexity of the proceeding. In the simplest case, the memorandum may be one or two sheets of scratch paper, but if the case is complex a more lengthy guide which may take days or weeks to prepare will be useful at the counsel table on the day of the hearing.

Perhaps the most important part of the hearing guide memorandum is that relating to the presentation of evidence -- proof.

Thorough preparation will result in the sort of written record on which the lawyer can urge with confidence the decision he seeks. Nothing should be left to the inspiration of the moment.

Other parts of the memorandum should develop (1) the opponent's probable position, (2) a notation of useful authorities, and (3) a list of questions which may arise during the hearing.

It is often possible to save time and expense by stipulations. The authenticity and identification of documents and books frequently can be stipulated. Recorded facts which can be easily verified and certain scientific data often do not require proof by orthodox methods.

In administrative proceedings, the preparation of witnesses is very important. The best approach is to talk to each witness, but if this is not possible for geographic or other reasons, correspondence can be substituted for conversation. This may not be the accepted practice in court trials, but regardless of the courtroom practice, proper preparation of the witness is essential in agency hearings. It is unethical, of course, to tell a witness what to say, but the lawyer has a duty to inform the witness concerning the subject matter of the proceeding, to find out what the witness knows about it, and to frame proper questions for the witness when he is on the stand.

It is highly desirable to advise a witness, especially one who has not testified before, concerning the proper attitude and demeanor on the witness stand.

An administrative proceeding often has several parties and a number of counsel -- perhaps as many as a hundred. In cases of such proportions, it is essential to organize the "legal corps" for the hearing in order to prevent the possibility of the meeting deteriorating into a battle royal. The lawyer who will conduct the examination of witnesses and speak for the client or clients on the record is, of course, the chief hearing counsel. Other counsel should be assigned (or volunteer for) duties according to special capabilities, consistent with the overall conduct of the hearing.

At the hearing, an opening statement by counsel advising the hearing officer as to the probable course of his case is usually desirable. In presenting evidence on direct, care should be taken to see that oral testimony is in clear, concise statements. Counsel should inquire, not testify. Contrary to accepted practice in the courtroom, it is usually helpful to write out questions in advance of examination of a witness. The wisdom of this approach becomes apparent upon reading the transcript of off-the-cuff questions put to a witness even by experienced counsel. Articulate questions produce the most accurate testimony and the best written record. Avoid repeating and do not leave a vague or incomplete factual statement on the record unclarified. Each item of evidence

should be checked off the hearing memorandum list as it goes into the record.

The General Rules of Practice of the Interstate Commerce Commission, 49 C.F.R. 1.1-1.102, include 13 rules (Rules 1.75 to 1.87 inclusive), specifically dealing with the introduction and receipt of evidence. These rules, which are based on the long experience of the Commission, are designed to protect the rights of the parties and I will not discuss them here. Other agencies have adopted rules of practice (including rules relating to evidence) to suit their own particular needs in meeting their responsibilities. 2/

2/ For the text of typical agency rules, see 14 C.F.R. 302.1 - 302.40 (CAB); 47 C.F.R. 1.1 - 1.427 (FCC); 18 C.F.R. 1.1 - 1.51 (FPC); 16 C.F.R. 3.1 - 3.28 (FTC); 29 C.F.R. 102.1 - 102.134 (NLRB); and 17 C.F.R. 201.1 - 201.27 (SEC). Proceedings before the National Transportation Safety Board (NTSB) will be governed by 14 C.F.R. 301.1 - 301.50 relating to air safety, and 14 C.F.R. 303.1 - 303.24 relating to accident investigation hearings.

The popular belief is that the "ordinary" rules of evidence do not apply in agency proceedings. If it is correct to say that the ordinary or usual rules of evidence are those requiring that evidence be relevant; that it be competent; and that it be material to a resolution of the issues, then the idea that the "ordinary" rules of evidence do not apply in administrative proceedings is erroneous. These rules must necessarily apply in the interest of fairness and justice in all proceedings, administrative and judicial.

Perhaps the notion that these basic rules do not apply came about as a result of resistance to the mass of formalities with which the rules have become encumbered. Metaphysical niceties and super-technicalities have no place in the administrative process, but the fundamental rules must, and do, apply as do the specific rules of evidence which various agencies have adopted to meet particular needs.

The benefits of cross-examination have been over-emphasized. For example, cross-examination can be useful in the courtroom for the purpose of creating a certain impression, but mere impressions are of little value in administrative hearings. It is very difficult to win a case on the testimony of opposing witnesses. Rebuttal

witnesses usually offer a better way to present testimony that might be sought by cross-examination.

The expert witness has a very significant role in the administrative process and presents a peculiar problem for trial counsel. Subject to certain exceptions a witness who states an opinion on any matter must qualify as an expert. The facts upon which the expert bases his opinion must be in the record of the proceeding which is in hearing. Thus, counsel has the task of putting into the record the facts which his expert witness will need when he takes the witness stand. The usual technique is to introduce into the record all the needed data and then put the expert on and ask him if he has examined the exhibits and heard the testimony of the witness. Then appropriate questions calling for the opinion of the expert are proper.

Documentary evidence is often a vital part of the record in agency proceedings and presents problems which must be kept in mind. If a record is burdened with unnecessary documentary material, for example, the vital facts often become lost and the decision is delayed while the agency attempts to distill the relevant information out of the unnecessary mass. It is important, therefore, to develop proper techniques for controlling the size of the record and at the same time put the material facts in clear focus.

The effort of trial counsel in this respect should be to offer out of his own material only that evidence which is actually relevant and insist on the same approach by opposing counsel.

In the ordinary agency proceeding there are certain necessary facts to be proved. Facts not actually in dispute require little proof. But when there is an actual clash of facts, the question of the amount of proof often is a matter of what evidence is available. It is also a matter of legal judgment. In short, the question in such situations is very similar to that in a court trial. Clashes of proof cannot always be anticipated and therefore must be met as they occur.

When the hearing in a proceeding apparently is going to continue for several days or more and the record is going to be lengthy, it is important that counsel keep a concise, accurate account of what has gone into the record and where it can be found. It is surprising how often questions arise concerning what has been said about a particular matter after the hearing has been in progress for several days. An appropriate topical card index of the record in an extended hearing can be kept current with a minimum of effort and will be a valuable resource in a long, complex administrative proceeding.

Oral argument upon the issues at the close of the hearing is usually not of much value. However, briefs are often useful and must be developed with great care. In addition, the proof usually can be put into clearer focus by a brief closing statement augmenting the opening statement -- one looking ahead at the evidence and the other reviewing it.

The resourceful lawyer goes to the hearing in an agency proceeding prepared to present every scrap of evidence necessary to justify findings of fact supporting his theory of the case, and leaves the hearing with all this evidence in a written record free of unnecessary mass or bulk.

If my suggestions seem a bit general, I am sure you will agree that when one faces as many general practitioners as I see here this afternoon, it is better to be generally right than specifically wrong.

Thank you.

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REMARKS BY EVERETT HUTCHINSON, UNDER SECRETARY OF TRANSPORTATION, PREPARED FOR DELIVERY BEFORE THE SEATTLE ROTARY CLUB, SEATTLE, WASHINGTON, 12 NOON, JULY 26, 1967

First, let me say how very pleased I am to be your guest today. I am glad to be here -- both as Under Secretary of the new Department of Transportation and as a former Rotarian.

It is always a pleasure to visit Seattle -- a great city whose tremendous industrial growth has never tarnished its Western hospitality. And from a transportation standpoint, few cities in America better exemplify the nation's growth and expansion. From the early days when windjammers sailed into Elliott Bay for lumber, and carried trade to the seven seas, until the era of the steamships, Seattle has been an important catalyst to the expansion of world commerce.

It is significant, indeed, that three of the most advanced programs within the Department of Transportation relate directly to the City of Seattle. I speak of the Supersonic Transport being built by Boeing, the urban transportation development, and the merchant marine renewal

program recently recommended by Secretary Boyd.

Seattle has demonstrated transportation leadership time and again by helping to elect Warren Magnuson to the United States Senate. Maggie certainly has a well earned reputation as one of America's most aggressive champions of transportation of, by and for the people.

Transportation today has a lot going for it -- millions of trucks, ships, and automobiles and Senator Magnuson. Maggie never -- never stops working for transportation. He has helped forge legislation in every area of transportation from the high speed rail project to the supersonic transport. Maggie and Senator Jackson have been at the forefront of transportation progress in the Nation -- and here in their own State of Washington -- for many years. They still are.

It is the latter accomplishment -- the SST -- that I would like to briefly discuss with you today.

The supersonic transport marks the beginning of what I believe is a new era on the transportation frontier. We see it coming on every hand -- the nuclear ship, the high speed train that will offer new dimensions in passenger comfort, the turbine and possibly the electric car, containerized freight handling, and supersonic air travel. All these technological advances stand at the threshold of accepted commercial use. Some will take longer than others to adapt to our environmental conditions -- but all are on the way.

The SST will be the finest and fastest commercial transport flying by the mid-1970's. It will be capable of carrying more than 280 passengers at speeds up to 1,800 miles per hour. Its 4,000 mile nonstop flying range will put every foreign country within arm's reach of the United States.

Yet, criticism persists -- not so much about the airplane itself, although some of the technology going into it is very advanced -- but about why we are building it and why the Government is involved. I would like to take some of these questions and provide the answers.

First of all, the SST is before us today because it is an idea -- a technology that is the logical next step in aviation advancement. This step could not have been thwarted

by any individual or any government -- delayed perhaps -- but never fully prevented. Around the turn of the century, a United States senator seriously proposed that the patent office be closed because everything that could be invented had been. We all know the folly of that statement well enough to know that supersonic travel was bound to come -- and it has. If we ever need any reminder of this, we can always take another look at the recent news film of the Moscow air show, or at the growing list of reservations for the Concorde, now being developed by the British and the French.

Yet, the first question we so often hear, is: Why build the SST now?

The most obvious reason -- the one every businessman can instantly realize -- is that if we don't meet our competition now, we may never be able to catch it. A more subtle reason is that America cannot afford to lose her position of leadership in world aviation any more than she can afford to waste existing aviation technology.

Britain and France are putting up $1.4 billion dollars to develop the Concorde. Thirteen airlines have already reserved 74 delivery positions. If the SST is not produced, this number will grow considerably. Currently, 113 delivery positions -- at an individual airline cost of $100,000 each -- have been ordered for the SST. In the event of a major delay or stoppage of SST production, these most certainly would be lost to the Concorde.

Another question frequently asked is: What business is this of the Government's and how do you expect to ever get your money back?

History has taught us -- as in the case of the railroads -- that there are some projects which are in the national interest, but which simply are too expensive for private business to undertake on its own. The SST is such a project. This country has the best transportation system in the world -- developed through the efforts of private free enterprise operating in an open competitive market. The Government has no intention of removing the SST from that process. There is no subsidy involved; if the SST becomes so successful that other U. S. manufacturers want to enter the market, they can. The SST will receive stiff competition from the Concorde

and perhaps the Soviet TU-144, and the Government will get back every bit of its investment plus interest.

The Federal Aviation Administration estimates a market for at least 500 planes by 1990. The Boeing estimate is slightly higher at 650. These estimates are based on the assumption that flights will be limited to overwater routes. The delivery of only 300 SST's will insure recoupment of the Government's investment and the sale of 500 will return the investment plus interest -- a $20 million dollar market.

We also hear the charge: The SST will be only a "plaything for the jet set."

Nothing could be further from the truth. The objective of the SST program is to develop an economically sound transport that can compete with the best of the subsonics at present or lower fare levels. For the 1990 time period, it is estimated that even if a fare differential of as much as 20 percent is applied, more than 60 percent of the passengers would choose supersonic travel. This passenger preference can be historically traced to the first subsonic jets, which, although operating with a surcharge, soon drove piston planes out of the first-class market.

And what about the sonic boom -- that dreaded noise that causes chickens to quit laying, and buildings to crumple? I'm being a little facetious. Of course the sonic boom is a problem. Public acceptance has never really been tested to the point where an unequivocal answer can be given as to how it will affect the SST.

Hopefully, the Concorde, which will enter service prior to the SST, can provide some pioneering revelations in this area. The thing I want to stress, however, is that the sonic boom will <u>not</u> kill the efficiency or the purposes of the SST.

Economic reports by both Boeing and the FAA, as I have already mentioned, indicate the market for overwater travel is substantial enough to profitably support the program. We must also take into account the plane itself. With its highly maneuverable swept-back wings, the SST can fly efficiently both at supersonic and subsonic speeds.

As Secretary Boyd said on nationwide television only a few weeks ago, if the SST must fly overland at subsonic speeds, it will. It is also interesting to note that on

an around-the-world trip, it would add only about 5 hours to the passengers' travel time if all overland portions have to be made at subsonic speeds.

Will the SST preclude the use of existing airports?

I doubt that many Seattle citizens would ask this question in view of the fact that the Seattle-Tacoma International Airport is one of the world's finest.

Because of air traffic growth, and the resulting airport changes that will occur in the next few years, existing international airports will not have to undergo large-scale alteration to handle the SST. Prior introduction of high capacity subsonic transports will also help in this respect.

At typical airports, the SST will be suitable for normal parking -- parallel, canted, or nose-in. The four post main landing gears, with conventional four wheel trucks, allow the SST to operate from the same runway strengths as today's long-range jets.

The last question I want to mention is most often asked by those who feel the money would be better spent on creating jobs for the unemployed and more opportunities for those with technical skills. I could not agree more that these are pressing needs, but here I have to ask a question: What better way is there to fulfill these needs than through our basic free enterprise system -- through jobs created by private enterprise, for private enterprise.

During the prototype program, the airframe and engine manufacturers and their first level of suppliers will employ some 28,000 people at the peak period. The production program could employ as many as 60,000 at its peak.

Additional jobs will be created for thousands of workers by the other levels of subcontracting and related businesses and will spread outward to industries other than aerospace. Indeed, workers in nearly every state in the Union will benefit from the SST program.

It must be evident that I take great pride in the supersonic transport program and I know the people of Seattle do too.

It is very understandable that the city with the floating bridge -- one of the engineering wonders of the world -- should also be the birthplace of the SST.

Thank you.

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REMARKS BY EVERETT HUTCHINSON, UNDER SECRETARY OF TRANSPORTATION, PREPARED FOR DELIVERY BEFORE THE ORDER OF AHEPA NATIONAL CONVENTION, 8:30 P.M., AUGUST 24, 1967, STATLER-HILTON HOTEL, DALLAS, TEXAS.

The culture of the United States has been greatly enhanced by our Greek-American citizens, and I am delighted to have been extended the high honor of addressing this distinguished group which is representative of all Americans of Greek descent.

The Hellenistic influence you have brought us has permeated our political and social structure in many ways. We, in this democracy of ours, are reminded of the first democracy which existed in Athens; of the origin of the English world "politics" which derives from the Greek "polis," or city-state; of the American style of individualism, preceded 2000 years ago by a Greek civilization in which men had an instinct for and took pride in strong individual beliefs; and, finally, of welding together here in this country a spirit of nationalism throughout a vast land area which the Greeks had successfully built centuries before in a great peninsula and island area.

The sea was the highway of the ancient Greeks and so it was natural that Greece became a seafaring nation. Transportation was the lifeline of the early democracy and provided the means through which the colonies and islands were held together for the development of trade, commerce, literature, philosophy, art, and architecture.

The Greeks have always honored learning and, assuming that my audience tonight is receptive in this tradition, I would like to tell you about the new Department of Transportation, established by Congress and the President in 1966 to aid transportation in doing for our generation what it did for the early Greeks -- improve our way of life.

We want transportation to make a more positive contribution to the quality of our times.

The basic concepts on which the Department was created are: First, that the transportation system of this nation is a free private enterprise system and must remain so. The Federal dollar involvement in transportation has been, is and must always be dwarfed by the private investment. Second, that the purpose of the new Department is not to extend or increase Federal authority or bureaucracy. We are neither a new spigot on the Federal treasury nor a new source of paper and paper shufflers. I mention this because, although the Department's history and first actions have demonstrated this, charges to the contrary have already been made and will undoubtedly increase.

The fact is that President Johnson has accomplished something that only one other President -- George Washington -- was able to accomplish. That is to have created two new executive level departments. This is notable, not because the nation needs more Federal employees or because the people demand extended Federal control -- but because the establishment of these departments reflects two of the most prevalent desires of the American people. The first is the overwhelming preference for urban or urban-oriented living and the second is the demand for mobility.

Obviously two such major characteristics of a nation are going to generate an equivalent share of the problems. That is where government, and specifically the two new departments, come in. Confining myself to my own area of responsibility, I would like to outline for you the kind of thinking and the method of approach that is basic to what the Department of Transportation is trying to do.

I believe this has great significance for people such as yourselves because if our goal can be summed up in one word, that word would be "involvement" -- involvement of not just the Federal government in transportation problems, but involvement of private industry, of state and local government, of the academic community, of national and local groups, and involvement, basically, of the citizen.

I mention this because it seems to me that there has been a tendency in the country lately towards divorce -- not divorce "Italian Style" or "American Style" as the movies say, but divorce public style whereby the citizen talks about "the government" as if it were some distant foreign body causing an occasional annoyance but certainly nothing to be owned up to.

Such thinking is indeed unfortunate because certainly the world has never seen a government that is today more of, by and for the people. This is not just a rhetorical paraphrase; it means that the past 35 years of growth of the Federal government has resulted in not only great progress and social and economic achievement, but also has resulted in a limit that has been reached.

We are at a time when the problems of the day can no longer be solved merely by passing a new law, starting a new program, or increasing the field of activity of the Federal government.

At this point in time, any further expenditure of effort, dollars or energy on the part of the Federal government is going to mean a substitution for effort, dollars and energy that should be coming from either other levels of government or from private industry.

State and local governments are not doing as much as they can or should be doing. This relates both to the field of enforcing regulations and laws and to involvements in the planning and decision-making process that must necessarily precede commitment of Federal funds. The answers to the nation's most pressing transportation problems are not all going to come from Washington -- the ideas, the dollars and the efforts required must come from all concerned. We have no magic wand that will solve the plight of the New Haven Railroad; we cannot eliminate traffic fatalities merely by issuing safety standards; we cannot relieve airport congestion by just granting more requests for Federal funds. These are the types of things that are going to involve a lot of hard work and hard decisions on the part of all concerned -- not just the Department of Transportation. Our job is to mobilize that total effort to attack such problems and to plan not only for their relief but for a system that will not generate such problems.

In mounting this kind of effort, it is imperative that priorities be established. The greatest need and therefore the greatest problems are tied to the cities. Commuter traffic, urban freeways, efficient and economic movement of commerce, high speed and safe movement of inter-city traffic whether by air, rail or highway -- these are the things requiring the most time and attention.

One of your ancestors, Aristotle, said that "man is by nature a political animal." In the next fifteen months in this country, man will be busily proving that truism -- from Athens, Illinois, to Sparta, Georgia, and from Corinth, New York, to Mount Olympus, Washington.

In the coming campaign we will hear a great deal about the war in the jungles -- one in Asia, the other against poverty. Some want more effort in one and less in the other. Others want just the reverse. One thing is abundantly clear and has been made so over and over again -- in both wars this Administration is going to honor its commitments.

About twenty years ago, a man who is an active member of this organization taught us a thing or two about honoring commitments. When the people of Greece were struggling aginst Communist aggression, that man honored a commitment that helped turn the tide. I think we would all do well in this country to remember and emulate the many honored commitments of Harry S. Truman.

President Truman is fond of saying that the epitaph he liked the most, and the one he hoped would be given him, was one he saw on a Missouri tombstone. It said, simply, "He done his damndest." That is what I believe we are now doing and what we must continue to do. To do anything less will result in history judging us harshly.

On the domestic side, it means following up on the efforts already begun, not only in the field of transportation but in housing, in protection of rights, in the war on crime, in education, and all the other problems which some vocal critics believe will just go away if they starve for lack of funds. A coalition that can laugh away a program to exterminate rats in urban slums is capable of giving similar treatment to any other crucial program.

Our job, as I see it, is to make sure that such people are in and stay in the minority. If the programs that are so desperately needed fail, the blame must also be put on those of us who must make the case for their passage. If we cannot mobilize the effort to convince those who must vote on these programs, it can he asked how can we mobilize the effort to carry out any of the programs?

The answer to that question lies with you, as part of that effort, just as much as it lies with those of us in the Department of Transportatinn or any other government agency charged with responsibility for the needed programs of the day. If the urgent problems we face reach the crisis stage, the final question will not be "what happened?" but "what didn't happen?" and "where were those who said they cared?"

To honor the commitment that we as a nation have made is no small task. No one has said it will be easy; no one has said it will be cheap; and no one has said it will be quick.

These are the things that I sincerely hope the coming months of rhetoric will not obscure. With your help, with your involvement, they will not.

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