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# NOMINATIONS—JUNE

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## HEARINGS

BEFORE THE

## COMMITTEE ON COMMERCE

## UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

JUNE 21, 1976

KAY BAILEY, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD

JUNE 25, 1976

EDWARD O. VETTER, TO BE UNDER SECRETARY OF COMMERCE, DEPARTMENT OF COMMERCE; LEONARD S. MATTHEWS, TO BE ASSISTANT SECRETARY OF COMMERCE, DEPARTMENT OF COMMERCE

JUNE 29, 1976

THOMAS J. HOUSER, TO BE DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY; JOHN W. SNOW, TO BE ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

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REPORT

COURT REPORT

1. The first part of the report deals with the general situation of the country. It is a very interesting and informative study of the political and economic conditions of the country. The author has done a very thorough job of research and has presented the facts in a clear and concise manner. The report is well written and is a valuable contribution to the study of the country.

2. The second part of the report deals with the political situation. It is a very interesting and informative study of the political conditions of the country. The author has done a very thorough job of research and has presented the facts in a clear and concise manner. The report is well written and is a valuable contribution to the study of the country.

3. The third part of the report deals with the economic situation. It is a very interesting and informative study of the economic conditions of the country. The author has done a very thorough job of research and has presented the facts in a clear and concise manner. The report is well written and is a valuable contribution to the study of the country.

4. The fourth part of the report deals with the social situation. It is a very interesting and informative study of the social conditions of the country. The author has done a very thorough job of research and has presented the facts in a clear and concise manner. The report is well written and is a valuable contribution to the study of the country.

## NOMINATIONS—JUNE

MONDAY, JUNE 21, 1976

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10:05 a.m. in room 5110, Dirksen Senate Office Building, Hon. Howard W. Cannon presiding.

### OPENING STATEMENT BY SENATOR CANNON

Senator CANNON. The hearing will come to order.

Today's hearing is before the full Committee on Commerce on the nomination of Kay Bailey, Republican, of Houston, Tex., to be a member of the National Transportation Safety Board (NTSB).

Ms. Bailey's nomination was forwarded to the Senate by the President on February 24th for a term on the Board which expires in 1980.

In announcing his nomination, the President indicated that, if confirmed, he would designate Ms. Bailey as vice chairman of the NTSB.

Ms. Bailey is a native of Texas, a graduate of the University of Texas Law School, and is currently serving as a member of the House of Representatives of the Texas Legislature.

Her biography and financial statement have been presented to the committee for review. As is committee custom, the biography will be made part of the hearing record, but the financial statement will not. It will be available for inspection in the Commerce Committee offices.

[The biographical sketch follows:]

#### BIOGRAPHICAL SKETCH OF KAY BAILEY

State Representative Kay Bailey is presently serving in her second term in the Texas Legislature, where she is Vice-Chairman of the Intergovernmental Affairs Committee and Chairman of the Urban Affairs Subcommittee. Her main legislative interest has been in the area of transportation.

Representative Bailey was co-sponsor of the bill in 1975 which reorganized the Texas Highway Department. The new Texas Department of Highways and Public Transportation develops the multifaceted transportation systems for the state.

In 1975, Representative Bailey also co-sponsored the bill to fund public transportation. In 1973, she was co-author of legislation to authorize a mass transit authority for Houston, Texas.

In her legislative efforts, Representative Bailey has worked closely with the Texas Highway Department and with the major cities to strike a balance between urban-rural needs and create a full, long-range transportation system.

Representative Bailey received the meritorious service award from the Texas Good Roads Association. She was also cited for her legislative service in 1975 by the Texas Bar Association.

Representative Bailey has been appointed by Texas House Speaker Bill Clayton to the Transportation Task Force of the National Legislative Con-

ference. The Task Force meetings have studied the problems of railroads, the trucking industry, highways and airports. Representative Bailey now serves on the Board of Directors of the National Order of Women Legislators.

She graduated from the University of Texas School of Law in 1967. She has practiced law with the Houston firm of Reynolds, White, Allen, and Cook where some of her work included cases involving pipelines.

In 1974, Representative Bailey was a delegate to the White House Summit Conference on Inflation and was also a delegate to the Texas Constitutional Convention.

Her many civic activities include serving as Vice Chairman, Citizens Improvement Committee for Mass Transit Authority; Member of Multimodal Transportation Planning Committee for Gulf Coast Region; President, Texas Rape Prevention and Control Project; Member, Harris County Historical Commission and as Chairman of the State Bar Committee for Improvement of the Bar.

In 1969-71, Representative Bailey was the political correspondent for KPRC-TV (NBC affiliate in Houston, Texas) and was press secretary to Anne Armstrong in 1971.

She is 32 years old.

Senator CANNON. It is a pleasure this morning to greet my colleagues, Senators Bentsen and Tower, who are here to introduce Kay Bailey to the committee. Senator Bentsen.

Senator BENTSEN. Let me defer to my senior Senator from Texas, if I may, Mr. Chairman.

#### STATEMENT OF HON. JOHN G. TOWER, U.S. SENATOR FROM TEXAS

Senator TOWER. Thank you, my colleague, and thank you, Mr. Chairman.

I have a rather complete and comprehensive statement, but I will not detain the committee by reading it. I would like to ask that it simply be printed in full in the record at this point.

Senator CANNON. It will be made a part of the record.

Senator TOWER. Mr. Chairman, I appreciate the opportunity to appear this morning. Ms. Bailey is a young woman of unusual competence and achievement for a person of her age.

She's a native of Texas, was educated at the University of Texas in Austin as both an undergraduate and in the law school.

In terms of her professional background, she was the first woman news reporter in television in Houston.

She served as press secretary for Anne Armstrong, who is currently our Ambassador to the Court of Saint James.

She is an attorney with the Houston firm of Reynolds, White, Allen, and Cook.

As has been noted, she is a two-term member of the Texas Legislature. In that capacity, has worked with transportation, in the legislative sense, for some time.

She is the cosponsor of every transportation bill that has been passed in the Texas Legislature since 1972. She is the cosponsor of a bill which reorganized the Texas Highway Department.

She's the Texas representative to the transportation task force of the National Legislative Conference, and was appointed to that position by the Speaker of the House of Representatives in Texas. She's attended task force meetings, studied problems of railroads, trucking, highways, and airports.

She's received meritorious service awards from the Texas Good Roads Association.

She is vice chairman of the Citizens Improvement Committee for the Mass Transit Authority.

She is a member and was recently elected secretary-treasurer of the Multimodal Transportation Planning Committee for the gulf coast region.

She has been cited for her legislative work by the Texas Bar Association.

Now Ms. Bailey's experience has not been in the field of aviation. It's my observation that the Board already is adequately represented in the aviation field. I think it is important that we have air safety, and as one who spends all his weekends and much of the rest of the time on airplanes, I'm more than casually interested in aviation safety, and I think it should have great emphasis, and I think, of course, perhaps even preeminent emphasis, but at the same time far and away a greater number of people in this country die in surface accidents than die in air accidents, and far more people are injured and hurt. And I think, therefore, that surface safety in the field of transportation should be an ongoing concern of the NTSB.

And, therefore, I think someone who has peculiar orientation toward that area and an interest and a background in that field, should be considered.

I am pleased to recommend Ms. Bailey without any reservation or qualification, as a lawyer and a legislator. She is a person who can acquire a grasp in areas that she might not heretofore have a background in. Her training and experience all point in that direction, and I commend her to this committee and urge that she be given favorable consideration.

Thank you.

Senator CANNON. Thank you, Senator Tower.

[The statement follows:]

STATEMENT OF HON. JOHN TOWER, U.S. SENATOR FROM TEXAS

Mr. Chairman, I received the Chairman's kind invitation inviting me to appear before the Commerce Committee in behalf of the nomination of Kay Bailey of my state to the National Transportation Safety Board.

Although the Chairman's letter indicated my presence was not required and was strictly voluntary, I am eager to take this opportunity to speak before the committee.

Kay Bailey is a bright and able young attorney and Texas legislator and I am proud to come here today to introduce her and offer my wholehearted support.

Kay's youth lends added respect to the full professional background she brings to this post. She served as a political correspondent, the first woman news reporter on Houston television. She received the valuable tutelage of Anne Armstrong while working as her press secretary here in Washington. She has practiced law with the Houston firm of Reynolds, White, Allen, and Cook. And, since 1972, she has represented southwest Houston in the Texas legislature.

Her professional involvement in the field of transportation is also made clear by the record. The Bailey name has appeared as a sponsor of every major transportation bill since she joined the legislature. She is chairman of the Urban Affairs Subcommittee and vice-chairman of the Intergovernmental Affairs Committee, which handle transportation legislation and where she has led efforts to strike a balance between urban and rural needs to create a full, long-

range transportation system. Her legislative work has drawn such recognitions as the meritorious service award presented by the Texas Good Roads Association and she has been cited by the Texas Bar Association.

As Texas representative to the Transportation Task Force of the National Legislative Conference, Ms. Bailey has gained experience and exposure through nationwide studies of the problems of railroads, the trucking industry, highways and airports.

Her pervasive interest in transportation is further exemplified by her recent election as secretary-treasurer of the Multimodal Transportation Planning Committee for the Gulf Coast State Planning Region and as vice chairman of the Citizens Improvement Committee for Mass Transit Authority.

Indeed, it is in providing a broadened base for the safety board, that Ms. Bailey's basic strength lies:

As committee members will recall, passage of the Independent Safety Board Act of 1974 not only established the board as an independent Federal agency but expanded its responsibilities and increased its investigative authority as well. In addition to the board's established oversight of the field of aviation, the new statute calls on the Safety Board to investigate:

All highway and grade-crossing accidents which result in four or more fatalities;

All pipeline accidents in which there is a fatality or more than \$100,000 property damage; and

All railroad accidents which result in a fatality, cause damage of more than \$500,000 or involve a passenger train

Kay Bailey will bring to the Safety Board needed background in these fields of surface transportation, inasmuch as currently, three of the five members of the board, including the chairman, come from aviation backgrounds.

The added dimension Ms. Bailey will bring to the board is increasingly necessary in light of the 1974 act which demonstrates Congressional intent for the Safety Board to expand and apply the expertise and energies it has demonstrated in aviation transportation modes to surface transportation as well. In attempting to carry out this Congressional directive, the Safety Board has, in the past few months, hired additional surface transportation safety staff personnel and created a special training program for surface accident investigators. Certainly this area deserves representation on the Safety Board itself as well.

It is true that in the past, the Safety Board's investigations have been weighted toward aviation. Yet the trend appears in the other direction—not because of any cutback in aviation areas, but through an expansion of surface transportation responsibilities. Such a direction is clearly warranted when one considers that, in the past year, there were 45,600 highway fatalities alone compared to 1640 in aviation accidents. Furthermore, notwithstanding the fact that 93% of the fatal transportation accidents in the United States occurred on the highways, 85% of the personnel and funds at the safety board were directed at aviation.

Another provision of the 1974 act charges the Safety Board with developing safety recommendations for transportation facilities. Certainly this is a vital role for the Safety Board to play—aimed at preventing accidents rather than post-accident investigations. Here, the trend toward recognition of surface transportation problems is already being reflected. In 1975, the Safety Board adopted more than 200 safety recommendations—84 for aviation and 132 for surface transportation. Here, again, Ms. Bailey's background input would prove valuable.

Mr. Chairman, I would also like to bring to the committee's attention and submit for the record copies of two recent editorials from the Houston Chronicle and Houston Post. Both strongly support Kay Bailey's nomination to the National Transportation Safety Board. I think it is evident that they recognize and respect the work Kay Bailey has done for the Houston area in the Texas Legislature—and foresee her serving the nation just as ably on the Safety Board.

Mr. Chairman, I urge the committee to favorably report the nomination of Kay Bailey to the full Senate at an early date in order that her confirmation might be accomplished prior to the rush of the upcoming series of congressional recesses. The American public deserves a Transportation Safety Board working at its full potential—the safety of the American travelling public demands it.

Senator CANNON. Senator Bentsen.

STATEMENT OF HON. LLOYD M. BENTSEN, U.S. SENATOR FROM TEXAS

Senator BENTSEN. Thank you, Mr. Chairman.

And I am delighted to join with my colleague in cosponsoring Ms. Kay Bailey for the NTSB.

She's a woman of integrity, one of ability, and one of intelligence. I know of your great interest in aviation and I share that with you, Mr. Chairman.

But I'm also chairman of the Transportation Subcommittee of Public Works, where we deal with the highway system of this country, and we do have over 90 percent of our fatalities occurring in surface transportation. Now this is a field in which she's had her most intensive experience. And I'm convinced that because of her drive and her competence that she can become quite expertise in the aviation field, too, as she devotes her interest to it.

She is in a situation of being recommended by a number of people of the other political party, the Democratic Party. She has the Lieutenant Governor of Texas, who has watched her work in the legislature, and the Speaker of the Texas House of Representatives, both Democrats, joining in and recommending her.

She's an acknowledged leader in transportation matters in the Texas House of Representatives.

She's the chairman of the urban affairs subcommittee, which has jurisdiction in Texas over urban transportation, and she helped draft some mass transit legislation for the city of Houston.

She's worked on highway matters with the Texas Highway Department. The Texas Highway Department is, if you will pardon my saying so, Mr. Chairman, one of the outstanding ones in the United States. Time and time again, they are called on to lend their expertise to Federal highway issues.

I think you have a number of distinguished colleagues of hers in the State of Texas who have evidenced their interest and their concern and their belief that she would do the job with great competence and I'm very pleased to join in the recommendation.

And I have more detailed comments I'd like to introduce into the record with your permission, Mr. Chairman.

Senator CANNON. Your statement will be made a part of the record, in full.

[The statement follows:]

STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM TEXAS

It gives me great pleasure to present to this distinguished Committee the Honorable Kay Bailey of Texas as a nominee for the National Transportation Safety Board.

Representative Bailey brings to the Committee an impressive background in transportation which commends her for this important position.

Representative Bailey is an acknowledged leader in transportation matters in the Texas House of Representatives. She is the Chairman of the Urban Affairs Subcommittee, which has jurisdiction over matters of urban transportation. She has authored legislation to establish a mass transit authority for the City of Houston. She has worked on highway matters with the Texas State Highway Department and has concentrated on the need to develop a balanced transportation system, taking into account the needs of rural and urban areas.

Representative Bailey's credentials in transportation have been noted by the Lieutenant Governor of Texas and by the Speaker of the Texas House of Representatives, who has appointed her to the Transportation Task Force of the

National Legislative Conference. These distinguished Texans support her nomination for this new position, even though they are members of another political party. Their support is based solely on her strong qualifications for the National Transportation Safety Board, and I am pleased to add my own support, as a Democrat, for her nomination.

Representative Bailey's activities outside of the Texas Legislature also bear witness to her interest in and knowledge of transportation. She has recently been elected Treasurer of the Multimodal Transportation Planning Committee for the Gulf Coast Region. In addition, she is Vice Chairman of the Citizens Improvement Committee for Mass Transit Authority.

Representative Bailey's background demonstrates that she has a broad interest in all forms of transportation, and that is the key to her nomination for this position. More than 90 percent of all transportation fatalities occur in surface transportation, the field in which she has had her most intensive experience. I am convinced, however, that her drive and her competence will make her an expert in air transportation as well.

She has proved that she can accept responsibility and challenge, and I am pleased to add my voice in support of her nomination.

Senator TOWER. Mr. Chairman, in addition to the statements by Senator Bentsen and myself, I would like to ask consent that two editorials in support of Ms. Bailey from the Houston Post and Houston Chronicle be inserted in the record at this point.

Senator CANNON. They will be received and made a part of the record.

[The articles follow:]

[From the Houston Post, Mar. 6, 1976]

#### POST/COMMENTARY

#### OKAY

In her three years as Houston's District 90 representative in the Texas Legislature, Kay Bailey has left a record for competence and good sense. A graduate of the University of Texas law school, she has maintained a quiet but effective stance of Republican moderation and shown an interest in the practical problems normal to a city like Houston. Mass transit and public transportation have been among her major interests ever since her election to the House in 1972. She sponsored the first Houston mass transit bill and cosponsored the bill to create the Texas Department of Highways and Public Transportation.

President Ford made an appropriate choice in nominating Bailey to a three-year term on the National Transportation Safety Board. With its responsibility for the safety of all common carriers—airlines, railroads, ships, buses and pipelines—the board is important to the general safety of all Americans. Houston can count on Kay Bailey to take an alert and knowledgeable interest in this new phase of her public service.

[From the Houston Chronicle, Apr. 17, 1976]

#### KEEP KAY BAILEY

The Chronicle believes President Ford made a fine choice when he nominated Kay Bailey of Houston to be a member of the National Transportation Safety Board.

Bailey, a lawyer, has been an outstanding member of the Texas House of Representatives. She has served two terms and has worked conscientiously to solve urban problems. We are certain she would distinguish herself as a member of the transportation board.

However, voters in District 90 should remember that she is seeking re-election to a third term in the House in the May 1 Republican primary and should vote for her.

Bailey's nomination is subject to confirmation by a Democratic-controlled U.S. Senate. It would be unfortunate if the voters of her district should lose her services in public office should the Senate not confirm her appointment.

Senator CANNON. Ms. Bailey, we will be happy to hear from you at this point.

#### STATEMENT OF KAY BAILEY

Ms. BAILEY. Thank you, Senator Cannon.

I am very pleased to be here today as a nominee for the NTSB, both because of my background and interest in transportation safety, and also because women are now being given a chance, in greater numbers, to participate in the governing boards of our country.

I have been involved for several years in working to improve the transportation systems in Texas. My State has the most miles of highways and roads in the Nation. It ranks first in mainline rail miles, first in miles of pipeline, and first in deepwater ports. The county in which I live has the highest population living near pipelines in America.

Surface transportation has not received its full share of attention in the safety area. While it is the hardest mode in which dangers can be pinpointed, the sheer numbers of fatalities forces us to search for better solutions to this problem.

In 1975, 44,690 people died on our highways, approximately 90 percent of all transportation fatalities. As a member of the NTSB, I would work to overcome these appalling figures.

My background as a State legislator and an attorney has given me experience in adversary proceedings and dealing with complex problems from an independent position. I have been told the NTSB has the finest technical staff in the world for air crash investigation. There, also, are technical experts for all other fields of investigation.

My familiarity with the general workings of all the transportation modes will help me make the necessary decisions after hearing from all the experts of differing views, from an independent base, not from a preconceived idea obtained from work in one small segment of this vast area of responsibility.

I believe public members were put on these boards for that reason, because they would make the decisions after weighing all the facts and arguments without any prejudices.

Presently on the five-member board, three have aviation backgrounds. These three are licensed pilots. Of these, one is licensed to instruct pilots. Yet only 3 percent of the transportation fatalities are air-related.

I do not mean to downplay the importance of air safety because the potential for the greatest disasters is there without vigorous safety requirements. I will promote high standards for aviation and I will study the human factors pilots have and the problems that they have enumerated in many publications.

The Center for Auto Safety reported in its status report February 18, 1976, that it wrote President Ford urging him to appoint NTSB members who can improve the Board's performance in the field of highway safety. The letter said, "In short, highway safety is the one area most in need of a knowledgeable and vigorous advocate on the board."

This view was dramatized recently in my hometown of Houston where an ammonia truck exploded, killing 5 and injuring more than 100 persons from the fumes. The school bus accident in California is another tragic reminder that we must target safety measures in the surface transportation area.

Senator Cannon, I am not going to tell you that I am a safety expert in any transportation field. Neither was my fellow Texan, Oscar Laurel, when he came to the Board, but he turned into one of its finest members, and I believe I can do the job to your satisfaction.

I bring no prejudices to the Board. I have never worked for a regulated industry or employee group, and I make no promise to any industry or employee group, except to be fair and independent, and to give all my energy and enthusiasm to the job. I will work very hard, if confirmed to the NTSB, to carry out the mandate that you, the Congress, has given, and make travel in America safer for the public.

Senator CANNON. Thank you very much.

I assume you have had an opportunity to review the legislative history of the Independent Safety Board Act of 1974. That history indicates that the Congress intended that persons experienced in transportation safety be nominated to the Board.

Do you believe that your background and experience qualify you for that post under those restrictions?

Ms. BAILEY. Yes, Senator Cannon. I have read the bill and the background that was prepared by this committee. It is my understanding that the law requires two technical experts out of the five members and there are two technical experts to require—as the law requires.

I believe that my background in general transportation does qualify me for the Board, and I believe that public members are an asset to a board such as this.

I don't think that you can have safety experts in all the areas that the NTSB has to investigate. There are only five members on the Board and you couldn't have a technical expert in all the different modes of transportation that are involved. And I do believe that my background shows my interest and my ability in this field.

Senator CANNON. Under the terms of the Transportation Act of 1974 which created the NTSB as an independent agent, what do you believe to be the proper relationship between the Safety Board and the executive agencies, the departments in the White House?

Ms. BAILEY. Senator Cannon, it is my understanding that the NTSB is independent. And I interpret "independent" to mean a board of members who are interested in doing their jobs who will not tolerate interference from any outside forces, from the executive branch, or from any other source. And I interpret independent to mean exactly that.

Senator CANNON. Do you fully support a totally independent status of the Board and are you willing to defend it against executive action which might seek to interfere with its independence?

Ms. BAILEY. Yes, certainly.

Senator CANNON. I ask that because we have had experience with this problem in the past, and we've seen the executive branch try to impose, politically and otherwise, its influences and wishes on the

Board, and so we are very sensitive to that particular problem here in the committee.

I would like to ask you what actions, if any, you would take if, for example, Congress appropriated funds to employ 50 new safety investigators and the OMB told you you could only hire 35 for reasons of presidential budgetary restraints.

Ms. BAILEY. I would certainly defend the actions of the Board. When I'm a member of the Board and I come to you in Congress for appropriations and you give us what we ask for, I would certainly defend it.

Senator CANNON. What do you consider to be the appropriate oversight role of the congressional committee?

Ms. BAILEY. I think that when Congress creates boards and commissions for specific purposes, that it has the responsibility to come back, after a certain length of time, and see that the boards and commissions or agencies are doing what you have mandated.

Senator CANNON. Given the fact that your education and background and experience have not been in the field of transportation safety, and presumably the President had before him the names of other candidates who were qualified in those fields, why do you think that you should be confirmed to this particular position?

Ms. BAILEY. Senator Cannon, I do feel that my background has shown an ability in the field of transportation and transportation safety.

As Senator Bentsen mentioned, I coauthored the bill which reorganized the entire Texas Highway Department. Our highway department has a mandate for strict safety measures and we have a good record in Texas on that point.

Certainly there are other areas that I would like to see improved. You can always say that. But I feel my background has shown an ability in the transportation area, and I truly believe that a person with general knowledge of transportation is a necessity on the National Transportation Safety Board. I do not feel that a board of experts would necessarily be the board that would give you the best job.

Senator CANNON. Congressman Archer has arrived and we want to acknowledge his presence. Do you have any comments you desire to make, sir?

#### STATEMENT OF HON. BILL ARCHER, U.S. REPRESENTATIVE FROM THE SEVENTH DISTRICT OF TEXAS

Mr. ARCHER. Mr. Chairman, just a brief couple of remarks to say that I have known Kay Bailey for many years, have watched her performance in the political arena in Texas. She is one of the truly outstanding people that has offered herself to serve her State and her country in our State.

I have nothing but the highest regard for her mental competence, for her integrity, for her dedication, and for that reason it's a pleasure to be here and to make those comments in her behalf.

Senator CANNON. Thank you, sir.

Ms. Bailey, in the past few years, the NTSB has devoted most of its resources to accident investigation and determinations of probable cause of accidents.

On the other hand, accident prevention and safety advocacy have not been stressed. How do you see the interrelationship between these two concepts, and what changes would you make in terms of more or less emphasis on accident prevention and advocacy?

Ms. BAILEY. Senator Cannon, I have read the—again, the Independent Safety Board Act and have seen that Congress made a specific point of giving more general authority in the field of safety advocacy and investigations, and I have been very pleased to see the new chairman, Dan Todd, has highlighted that responsibility.

I think that, of course, investigations of accidents is important and necessary to keep an accident from happening in the same—for the same reasons.

But I think we can do so much affirmatively, and especially in the field of surface transportation, where we are not able to investigate as many accidents as we would like to.

I think that we can improve, by advocacy and by investigations, the safety records, and I believe that with the leadership of Chairman Todd, the Board will go in that direction.

Senator CANNON. Would you consider it your responsibility to speak out forcefully on issues of transportation safety, even where such advocacy contains or implies criticism of other agencies of Government, including the White House?

Ms. BAILEY. Yes.

Senator CANNON. Many of the Board's accident reports in the field of aviation over the years have been criticized by the professional pilots because they have often stated that pilot error is the cause of the accident. Pilots contend that such reports are not indicative of other causative factors and reflect a misunderstanding of accident investigation.

What is your response to that frequent criticism and what changes would you advocate in accident reporting in which pilot error is indicated as a causative factor?

Ms. BAILEY. I have talked to the president of the Air Line Pilots Association about these very criticisms that you state and I think they have a point, that we should look behind the words "pilot error," and look for reasons for pilot error, something that they call human factors.

When you have an airline crash, you go to the site, you look at every small part of that airplane to try to determine what went wrong with it and why, and I think that that also goes for people. I think that you can look behind the reasons that you might think the pilots were at fault and see if there was a human factor that we could correct to make the pilot error also go down just like the faulty part.

I think that it's a—certainly a valid point, and I think we can make further study into that area.

Senator CANNON. What areas of transportation safety do you believe are most in need of concentrated Board attention?

Ms. BAILEY. Well, I'd have to say, Senator Cannon, that I feel that the numbers of surface transportation accidents have to make it a main target of the Board. As I said in my opening statement, that is the hardest area in which to pinpoint causes and improve-

ments, but the sheer numbers of fatalities in this area make it necessary to go in in further depth, and I would hope that we could.

Senator CANNON. Senator Pearson.

Senator PEARSON. Ms. Bailey, I think you have come here very well prepared this morning.

Ms. BAILEY. Thank you, Senator Pearson.

Senator PEARSON. I want you to understand that nominees to boards such as this naturally are going to gain by their experience and have to face new problems with new approaches.

Many of the questions that the chairman put to you with reference to the independence of the Board relate back to an experience where there was considerable controversy as to the interference by the White House among other things, and also the dissension in the Board and among the staff.

We think by and large that much of that has been corrected, but we would want you to exercise all of those aspects of diplomacy that are necessary to make sure that that continues to be the case.

You are Republican, are you not, Ms. Bailey?

Ms. BAILEY. Yes; I am, Senator.

Senator PEARSON. Mr. Chairman, I think the record ought to show that the statutory requirements require that no more than three members of the Board be of the same political party, that the Board now stands at three Republicans, one Democrat, and one independent, and that Ms. Bailey has been nominated to succeed one of the Republican members of the Board.

The statute also requires that at least two of the five members of the Board be people with technical qualifications, by profession and otherwise, who have experience in transportation safety. If I'm not mistaken, those two requirements have been met. Am I correct on that?

Mr. GINTHER. Yes, sir.

Senator CANNON. Yes; you are correct, and I would say that—

Senator PEARSON. Perhaps you covered that before I came in.

Senator CANNON [continuing]. As far as qualifications go, you recall that this committee took the position that all five members of the Board should be technically qualified, and the House did not go along with that position. We finally settled, as a matter of compromise, on two with technical qualifications.

But this committee felt that all five members of that Board ought to have the technical qualifications.

Senator PEARSON. I thank you.

Senator CANNON. Senator Stevens.

Senator STEVENS. I'm happy to be here. I'm delighted to see this bright young woman nominated to be on this Board.

Senator CANNON. Ms. Bailey, Congress recently repealed legislation which allowed the Secretary of Transportation to levy a sanction of 10 percent of the States' highway money for failure to enforce highway safety standards. With the repeal of this sanctioning authority, how could the DOT enforce its highway safety standards?

Ms. BAILEY. Senator Cannon, if I'm not mistaken, didn't an executive—well, it seems to me that I was talking to a member of the Texas Highway Department about this, and he seemed to feel that the money

was being freed, more or less, to allow them more latitude to use the money in safety areas.

I wish I could be more specific, but he seemed to feel that before this repeal, they were not able to use any of the safety funds because they had so many other priorities.

Again, I wish I could be more specific, but I got the impression from him that he felt more money would go into the safety area.

Senator CANNON. You may want to supplement your answer to that.

Prior to the repeal of this provision, the sanction could be imposed if the State didn't enforce the highway safety standards, and now, of course, with that repeal, there is no sanction provision, as I understand it.

Is that right?

Mr. COHEN. That's true.

Senator CANNON. Staff tells me that that is generally correct.

Ms. BAILEY. All right. Perhaps I am mixing that up with the—

Senator CANNON. Pardon?

Ms. BAILEY. Perhaps I'm mixing up what you're saying with the executive orders.

Senator BENTSEN. Mr. Chairman, if I might interpose there, we still withhold 50 to 100 percent of the States' safety money, but as I recall on that categorization, we could go beyond that, beyond just the safety money, and we felt that was going too far, and we backed off of that and there are still sanctions that can be imposed. I'm chairman of that Transportation Subcommittee.

Senator CANNON. Yes; I understand. And the sanctions that can be imposed now would relate only to the—

Senator BENTSEN. Only to the safety money.

Senator CANNON [continuing]. Safety portion of the money?

Senator BENTSEN. That's right.

Senator CANNON. Only to that part of those funds?

Senator BENTSEN. That's right.

Senator CANNON. Whereas before, it would permit a 10-percent sanction against all of the highway funds?

Senator BENTSEN. Absolutely. And we felt—and the—we felt that that was so tough that it wouldn't be applied. And so we narrowed down the categorization, feeling that there might be—if there was a violent abuse of the discretion in that, that it could be imposed on that specifically.

Senator CANNON. Ms. Bailey, do you philosophically favor the mandatory helmet laws and mandatory seat belt laws, or do you oppose them, and do you see a distinction between those two types of laws?

Ms. BAILEY. By "mandatory seat belt law," do you mean mandatory that the seat belts be put into the automobile, not that they be buckled?

Senator CANNON. That require usage. Now that, of course, gets into restraint, the question of whether you can start the car without the belt buckled—

Ms. BAILEY. Yes.

Senator CANNON [continuing]. And the harness around you neck or not.

Ms. BAILEY. All right.

I do favor the motorcycle helmet law without reservation.

I certainly favor the mandatory installment of seat belts. Now, as you know, Congress repealed the ignition interlock. Whether it would be effective or even proper for us to come in and say, "Well, even though we won't do an ignition interlock, we will require that your seat belt be buckled," I don't know.

Senator CANNON. Do you think there are some areas of transportation safety in which the Board should conduct specialized studies, and, if so, have you identified any of those in your own mind?

Ms. BAILEY. Yes, certainly. I think, again, in the field of surface transportation, the most effective thing we can do is specialized studies, because we are not able to do the investigative work that would be necessary. We wouldn't have the manpower.

Also I think in the area of pipeline, with the liquefied natural gas that is now becoming available in Algeria, that's being used more in Japan than anywhere else in the world, I think that we should institute studies to make sure that we know as much about that as we possibly can before it becomes so prevalent in America. I'm sure that this will be a new source to us and it's not yet off the ground, but I think it will be and I would hope that NTSB could do studies before the fact rather than after the fact.

Senator CANNON. In your responses to the committee's prehearing questions, you indicated that cost/benefit analyses played an important role in the regulatory process. I'm wondering how a Federal agency could qualify the benefits of safety regulations. That is, how can you place the cost or the value of a life, or the value of an injury, and so on, in a cost/benefit analysis-type approach?

Ms. BAILEY. Of course, that's a very tough question. But I said in my answers that I feel any regulatory or investigative board should have all the facts at hand before it makes any decision, and I believe that these boards probably take cost into consideration, anyway, and I think that true facts concerning cost would be more helpful to the Board than surmises of the cost, and I think that when someone comes in and says plastic hoods would be prohibitive, and they never say what the actual cost really is, the Board is not making a decision on a plastic hood from the most informed position. And I, frankly, think you would have a better chance to get more safety measures if you have all of the facts before you.

And you can't put cost value on a human life, but I think if you make an informed decision, it's going to be a better decision, and I think that probably safety will be improved rather than otherwise.

Senator CANNON. Do you believe that Federal safety standards should be written in terms of performance criteria or design criteria?

Ms. BAILEY. Performance; I believe that we should not tell an industry how to do something. I have found, in my studies since I was nominated to this Board, that many times the regulations are inhibitors rather than helping promote the best possible technology, be-

cause if you write it in a design standard, if you say you have to have a 2-inch steel thickness, you might come up the next year with something much more effective than a 2-inch steel thickness for containing hazardous materials, for instance. And I think that we should allow technology to improve and keep up with that technology. So I would feel that performance standards with strict tests are the best types of regulation.

Senator CANNON. Do you have any questions?

Senator PEARSON. No.

Senator CANNON. Thank you very much. We appreciate your being here before us this morning. Thank you, gentlemen.

[The questions and answers referred to follow:]

#### QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* Under the terms of the Transportation Act of 1974 which created the NTSB as an independent agency, what do you believe to be the proper relationship between the Safety Board and the executive agencies, Departments, and the White House?

(a) Do you fully support a totally independent status for NTSB and are you willing to defend it against executive actions which seek to interfere with its independence?

(b) What actions would you take, if, for example, Congress appropriated funds to employ 50 new safety investigators and the Office of Management and Budget told you you could hire only 35 for reasons of Presidential budgetary constraints?

(c) What do you consider to be the appropriate oversight role of a congressional committee?

Answer 1. In granting independent status to the National Transportation Safety Board, I interpret the Transportation Safety Act of 1974 to mean the Board should be free from any restraints in recommending safety standards. I believe the Board should be vigorous in suggesting safety measures to all other agencies involved with transportation even if it involves criticism of any other agency, department or branch of government.

(a) Yes, I believe in a totally independent status for the National Transportation Safety Board. I am willing to defend it against any actions seeking to interfere with such independence.

(b) I would take all proper actions to persuade the Office of Management and Budget of the necessity of the additional investigators, provided of course that I felt the number requested was reasonable.

(c) I think it is appropriate and necessary for Congress to monitor the agencies and boards it has created to see that Congressional mandate is being followed and to be sure the purposes and requirements of the laws are being met.

*Question 2.* Will you make a firm commitment to this Committee that should you ever be importuned by the Executive on policy or fiscal matters to take a position dictated by the Executive that you will promptly report such activity in writing to the Chairman of this Committee?

Answer 2. If the Committee asks me to do so, I will report any improper requests by the Executive on policy or fiscal matters of the National Transportation Safety Board.

*Question 3.* As you know, current law requires that at least two members of the NTSB possess technical qualification or experience in the field of safety. Do you believe you possess such? Outline your background, training, education and experience in the area of transportation safety.

Answer 3. Since I have been in the Legislature, my main interest has been in transportation and I have worked with many different experts on the state and national levels. I have co-authored every major transportation bill that has passed in the two terms I have served in the Legislature, including the complete reorganization of the Texas Highway Department. The new Texas Department of Highways and Public Transportation has all facets of ground transportation under one umbrella. In depth research is being done to coordinate and update our transportation systems and provide highway safety. Another of my bills created a new public transportation fund, giving state aid for federal matching

funds for public transportation systems in our cities. I also sponsored the bill to authorize a Mass Transit Authority for Houston. I have participated in numerous hearings and seminars dealing with surface transportation matters. As a member of the Transportation Task Force of the National Legislative Conference, I have studied the problems of highways, railroads, airports, mass transit and vehicles of these transportation modes. I am also a member of the Multimodal Transportation Planning Committee for the Gulf Coast Region. Serving as a committee chairman in the legislature has given me the experience of presiding at hearings. I believe the members of NTSB should be strong, independent people, experienced in making tough decisions, experienced in withstanding pressure from special interest groups and experienced in hearing many different arguments and judging who is right, then acting on the decision. I believe I am qualified by my transportation, legislative and legal background.

*Question 4.* The Committee has expressed concern in recent years with the close relationships which often exist between regulators and those industries which they regulate. In several instances the Committee has been critical of and rejected nominees because of activities which indicate a less than arms-distance relationship with the regulated. As member of the NTSB, and as the nation's chief critic and investigator of transportation safety will you outline your view of the relationship between yourself and the industry which you will follow and which you will encourage your staff and colleagues to follow? Will you log all contacts between yourself and representatives of transportation companies?

*Answer 4.* I believe it is the responsibility of a member of the NTSB to listen to the views of all concerned in investigating accidents or studying ways to increase safety. After hearing from opposing industry and employee groups and from experts both inside and outside the Board, then an independent decision must be made on the steps to be taken. I would be happy to log all contacts made on Board business.

*Question 5.* In the past few years the NTSB has devoted most of its resources to accident investigation and the determinations of probable cause of accidents. On the other hand, accident prevention and safety advocacy has not been stressed. How do you see the inter-relationship between these two concepts and what changes would you make in terms of more or less emphasis on accident prevention and advocacy?

(a) Will you consider it your responsibility to speak out forcefully on issues of transportation safety, even where such advocacy contains or implies criticism of other agencies, including the White House?

*Answer 5.* I would like to see a more vigorous approach to accident prevention, especially in the surface transportation field. The vast majority of transportation fatalities occur on our highways and while it is hard to investigate individual accidents in this area, we could provide leadership in advocating safety measures for accident prevention.

(a) Yes.

*Question 6.* Over the years, friction has existed between the FAA and the NTSB regarding safety recommendations from the Board relating to FAA's regulatory activities. What do you believe the Board can do to foster a sense of cooperation and mutuality of purpose between the two?

*Answer 6.* I believe a mutual understanding of the responsibilities of the two agencies and mutual respect should exist. It is the function of the NTSB to concentrate on Safety and become advocates of the recommendations deemed appropriate. The FAA has a broader responsibility, of which safety is a major, but not exclusive, part.

*Question 7.* Many of the Board's accident reports over the years have been criticized by professional pilots because they often state that "pilot error" is the cause of the accident. Pilots contend that such reports are not indicative of other causal factors and reflect a misunderstanding of accident investigation. What is your response to that frequent criticism and what changes would you advocate in accident reporting in which pilot error is indicated as a causative factor?

*Answer 7.* I believe it is the responsibility of the NTSB investigators to make in-depth analysis of all possible causes of air accidents. When fault is a mechanical or design failure, the investigators determine why the part didn't work and make recommendations to correct the malfunction. I believe the pilots feel that when a cause is said to be pilot error, not enough study is made into

the reasons for the pilot's failure and in my opinion further study into human factors would be warranted. If we can determine what factors caused the pilot not to perform properly, the recommendations made to improve that problem are just as important to air safety as our suggested remedies for mechanical or design failures.

*Question 8.* Please supply the Committee with copies of any speeches, articles, or other documents which you have written during the last 5 years relating to transportation safety.

Answer 8. Although I have participated in transportation programs, I have no prepared texts.

*Question 9.* What steps have you taken to prepare yourself to be a member of the National Transportation Safety Board?

Answer 9. Most of my time has been spent reading transportation related bills and NTSB accident reports and other material related to transportation safety.

*Question 10.* The following questions relate to the process by which you were selected to be a member of the National Transportation Safety Board:

(a) How were you selected to be nominated to serve as a member of the National Transportation Safety Board?

(b) Were any conditions, expressed or implied, attached to your nomination to be a member of the Board?

(c) Did you indicate to White House officials what basic policies and philosophy you would implement and adhere to as a member of the Board? If so, please describe.

(d) Did you initiate the contacts with the White House personnel for this nomination or were you recruited for this job?

(e) What motivated you to accept this nomination?

Answer 10. (a) I was contacted by a member of the White House Staff.

(b) None whatsoever.

(c) The White House officials did not ask me any questions concerning policies or philosophies.

(d) I believe President Ford has been making an effort to recruit qualified women into high government positions. I was contacted in that context.

(e) I feel this position is one of the most important in transportation, because NTSB must be made up of strong, independent people to make sure every possible effort is made in safety. I am intensely interested in the field and look forward to the challenge.

*Question 11.* Under section 304(b)(7) of the Transportation Safety Act of 1974, Board budget requests and legislative comments are concurrently submitted to Congress and the Office of Management and Budget. The purpose of this section is to allow Congress to receive the unfettered views of the Board on issues relating to product safety.

(a) Do you support the purpose of section 304(b)(7)?

(b) Will you be prepared to defend the Board's budget request even though it may differ from that of the President?

(c) Do you anticipate recommending any changes in the way in which the Board currently implements section 304(b)(7)?

Answer 11. (a) Yes.

(b) When I am a member of the NTSB, and participate in the budget request and therefore have first hand knowledge of the needs, I will certainly defend it totally.

(c) I am not familiar with many details of Board functioning, yet, I honestly don't know how the Board implements this section.

*Question 12.* What area(s) of transportation safety do you believe are in most need of concentrated board attention? Why?

Answer 12. Highway safety. While all modes of transportation safety are important and we must continue to maintain highest standards in all areas, highway accidents take the most lives and yet get the least attention. Since the accidents on highways are not fatal to large numbers of people at one time, I believe our efforts would be better spent on general accident prevention in this mode of transportation.

The use of pipelines is perhaps the most expanding mode of transportation and I think a special emphasis in this area is important. Since pipelines are carrying potentially hazardous materials and there are new products being introduced for pipeline transportation, we should make every effort to provide as much knowledge as possible of what is potentially dangerous before accidents occur.

Air safety will always be important because one crash can be fatal to so many. I hope we can continue to improve investigations and safety recommendations in this field.

*Question 13.* Section 304(a) (1) of the Independent Safety Board Act of 1974 defines the type of accidents which the Board is required to investigate. Do you believe the criteria spelled out in this paragraph with respect to each mode of transportation are over inconclusive or under-inclusive?

*Answer 13.* After serving on the Board I would have more experience in dealing with Section 304(a) (1). At this time the criteria spelled out appear to be sufficient.

*Question 14.* Do you have a position with respect to the National Highway Traffic Safety Administration's rulemaking proceeding on motor vehicle restraint systems (MVSS 208)? Do you believe the NHTSA should promulgate a standard requiring a passive restraint system in all motor vehicles? Why or why not?

*Answer 14.* While my initial impression of air bags is favorable, I would not want to make a commitment before having much more detail. I have not gone into great depth on other passive restraint systems. I do think this is a legitimate area of study for NTSB for possible recommendations to NHTSA, so I don't believe it would be proper to make a judgement prior to full hearing.

*Question 15.* Do you favor the enactment of mandatory seat belt laws? (a) In light of the adverse public reaction to the sequential ignition interlock, do you believe the public would accept the enactment of mandatory seat belt laws?

*Answer 15.* I feel this is in the same category as question 14.

*Question 16.* Should motor vehicles-in-use be inspected periodically to insure that they are maintained in safe operating condition?

*Answer 16.* Absolutely. A faulty motor vehicle is potentially dangerous to innocent people and it is everyone's responsibility to drive a vehicle in proper working condition. I believe government has the right to require this standard.

*Question 17.* Section 304(a) (4) of the Act authorizes the NTSB to initiate and conduct special studies and investigations on matters pertaining to safety in transportation including human injury avoidable. What types of special studies and investigations do you envision the Board undertaking?

*Answer 17.* I believe the Board should become more active in preventive measures, especially in the fields already mentioned, highway and pipeline. For instance, I would like to know what can be done in the field of alcohol-drinking drivers. In my state, approximately 60% of highway fatalities involve drinking drivers, yet the penalties are not strong enough to deter offenders. The Federal Government would have an enforcement problem, but it is an area that needs study for solutions. Certainly the passive restraint systems and mandatory vehicle inspections are areas to be studied from the standpoint of what the federal government can do. I would like to see something done to keep pipeline knowledge current with expansion from the view of the nature and behavior of substances being carried, quality of pipes, routing of lines and methods of laying the lines as well as the ongoing safety measures to insure against leaks and damage. The same applies to rail and air transportation of hazardous substances.

*Question 18.* The new Act expands the scope of involvement of the Board in marine accidents. What types of accidents and activities should the Board undertake in the marine area?

*Answer 18.* After serving on the Board, I would know more about working under Section 304(a) (1) (E), but it appears to be complete. Where a Coast Guard vessel is part of the accident, I can see a need for the NTSB to investigate.

*Question 19.* Congress soon will examine the problem of siting liquified natural gas (LNG) facilities. With respect to LNG sitings, please respond to the following:

(a) The port of Rotterdam in the Netherlands has segregated LNG facilities, due to the severe safety problems related to LNG. The LNG facilities are entirely controlled by the government. Do you believe that we should be segregating LNG facilities?

(b) Should governmental entities select LNG sites and regulate them from a systems approach or should industry be allowed to select its own sites subject to government performance or design standards?

*Answer 19.* (a) Yes, I do think LNG siting should be away from population centers to avoid safety risks.

(b) I would favor the company being allowed to select a potential site, with the power of a governing body to intervene and veto the site if it is a potential risk that would not be controllable through design standards.

*Question 20.* The number of accidents and injuries and the amount of economic loss on the Nation's railroads has continually increased since the Department of Transportation was given jurisdiction over railroad safety. What courses of action do you believe would be most effective to reverse this trend (e.g. heavier fines, more safety inspectors, reallocation of resources, etc.)?

*Answer 20.* It seems to me that the nation's railroads have been in more serious trouble, from all aspects, in the last few years. I can only say I would give full attention to railroad safety standards, especially well-maintained tracks. I believe the NTSB has the responsibility to recommend strong safety measures, and the economic considerations can then be weighed by the regulating authority.

*Question 21.* The Federal Railroad Administration performs the dual function of promoting the development of railroads and setting and enforcing safety standards for railroads. Do you perceive a "conflict of mission" in the commitment of these two functions in a single body?

*Answer 21.* It seems to me that many regulatory agencies have a dual role where they must weigh cost considerations against the necessity of particular safety measures. On the other hand, safe transport should be a selling point that encourages economic success.

*Question 22.* The Hazardous Materials Transportation Act revamped the Department of Transportation's regulatory authority with respect to hazardous materials. As a member of the Board, will you seek close NTSB scrutiny of the hazardous transportation program?

*Answer 22.* Yes, it is imperative.

*Question 23.* Do you believe that federal safety standards should be written in terms of performance requirements or design requirements? Why?

*Answer 23.* I think it depends on the type of vehicle. In air, probably designs are more rigid than in automobiles. For instance, several types of brakes might achieve the end result of safe stopping in all weather. But, in seat belts or engine parts, design might be more rigid. I think the key is a tough testing system, to assure safety performance.

*Question 24.* Do you believe federal agencies which establish mandatory safety standards should be required to prepare cost-benefit analyses of each standard before it is promulgated? Why or why not?

(a) What are the dangers, if any, of requiring such cost-benefit analyses?

*Answer 24.* I believe federal agencies with the power to regulate should have all the facts available before handing down a rule. I believe they should, therefore, know the benefits and the cost to the manufacturer *and* to the consumer.

(a) I don't see any danger in having all the knowledge available before making a decision. The only danger would be if costs were allowed to unduly influence safety requirements.

*Question 25.* What is the role of the National Transportation Safety Board in the efforts of the federal government to insure the safe transportation of people and goods?

*Answer 25.* I believe the National Transportation Safety Board should be the advocate for safety standards in the transportation field. While the regulatory boards have the duty to consider all factors before promulgating a regulation, the NTSB should look at whether it will improve safety.

Senator CANNON. The next witness this morning is Mr. Reuben Robertson, counsel to the aviation consumer action project.

#### STATEMENT OF REUBEN B. ROBERTSON, COUNSEL TO THE AVIATION CONSUMER ACTION PROJECT, WASHINGTON, D.C.

Mr. ROBERTSON. Mr. Chairman, members of the subcommittee, good morning.

My name is Reuben Robertson, and I am counsel to the aviation consumer action project. We appreciate the committee's invitation to present our views on the pending nomination of Ms. Kay Bailey of Houston to be a member of the NTSB until 1980. President Ford's an-

nouncement on February 24 also indicated that he intended to designate Ms. Bailey as vice chairman of the board for a term of 2 years.

ACAP is a nationwide, nonprofit organization whose sole function is promoting the interests of the public in safe, convenient, and economical air transportation. We have been active before the Federal courts and agencies, particularly the FAA, as an advocate for improved safety—not only for passengers as such, but also crewmembers and third persons who are or might be affected by aviation operations.

The NTSB is an agency of vital concern and importance in the overall air safety picture. Its investigations, if they are properly conducted, can bring to light actual or potential breakdowns in the safety system, and its recommendations can spell out procedures for protecting the public from possible injury.

Since its establishment over 5 years ago, ACAP has worked very closely and cooperatively with the NTSB on a variety of important air safety issues. We actively participated, for example, in the Board's hearings into the probable cause of the crash of TWA flight 514 on approach to Dulles Airport in December, 1974, and the Eastern Airlines L-1011 crash in the Florida Everglades.

In fact, to the best of my knowledge, ACAP is the only independent organization that has been formally designated or allowed to participate as a party in NTSB accident investigation hearings to be a responsible non-Government spokesman for the interests of the public.

The NTSB, like some other Federal agencies, has recently gone through a very serious crisis of confidence, and it's not unfair to call it a crisis of integrity. When this committee became aware of some of the things going on at the NTSB, it conducted an intensive investigation. The results of that probe became the basis for a strong legislative package that was signed into law in January last year, known as the Independent Safety Board Act of 1974.

The purposes of this act were clear: to strengthen the NTSB, to assure its complete independence, and to protect it from the kind of interferences that had distracted it from the optimal performance of its safety mission. Moreover, it was an explicit demand by the Congress that future nominations to the Board be made in the light of that safety mission and the need for technical competence or a record of outstanding achievement in the cause of transportation safety.

At the very least, this enactment was a strong signal to the President that such considerations would be taken into account in the Senate's review of future NTSB nominations, and indeed this has been underscored by the disapproval of the prior nominee for the vacant seat on the board.

The question has again been put squarely before the committee: whether the legislative effort and concern that led to the Independent Safety Board Act is now to be put aside, by advice and consent to the appointment of a person who has no credentials whatever in the safety field.

We wish to make clear that our opposition is based solely on Ms. Bailey's lack of experience or training in transportation safety, accident reconstruction or investigation, or related areas such as aeronautical or human factors engineering. As able and as personable an individual as she may be, and as skilled a legislator or lawyer—

and I think there was evidence this morning that she is an able lawyer—these simply are not sufficient qualifications, in our view, for NTSB membership.

The issues that have to be resolved by the NTSB can be of staggering technical complexity, as the recent TWA crash investigation so clearly demonstrated. Without the strongest technical competence and leadership at the top, the Board simply cannot get the job done as required.

And it's particularly important today, at a time when the Board is still trying to recover its prestige and influence, that new appointments be made and approved only on the basis of the outstanding safety and technical credentials.

The sense of the Senate has been clearly and emphatically expressed that the Board's membership should be made up of safety professionals, and we urge this committee to disapprove any NTSB nomination which contravenes that spirit.

Thank you, very much.

Senator CANNON. Do you think that it would be proper for the committee to take that position when the law does not require that all five members have the technical qualifications, even though, as you know, the feeling of this committee was that they should?

Mr. ROBERTSON. I not only think it's proper, but I think it's this committee's obligation under the Constitution and under the statute—because the statute does say that all the nominations are subject to senatorial advice and consent, not to that of the House, and the House conferees fully understood that when the Independent Safety Board Act was in conference. In my view what the change in the law at the conference means is that it is not an absolute legal requirement that all the nominations be made of people with experience and a full background in the technical areas. And there may be exceptional cases which this committee would want to favorably consider, where someone without those precise qualifications under the statutory definition would come up. But I think this committee, particularly at this time when the NTSB membership is going to be changing, would be acting entirely properly in insisting that we must have people with greater technical background on the Board.

Senator CANNON. Thank you.

Senator Pearson?

Senator PEARSON. I have no questions.

Senator CANNON. Senator Stevens.

Senator STEVENS. Let me see if I understand you correctly. If we had a member of this committee that served 4 years and was a lawyer, do you think that the compromise agreement we made with the House would mean that we shouldn't confirm that person?

Mr. ROBERTSON. No; just the opposite. If the committee felt the nominee were exceptionally able it would be free to report favorably.

Senator STEVENS. Well, what's the difference between service in the State legislature and service here, as far as safety aspects are concerned? She served in the State legislature, as I understand it, and worked on the highway safety laws of her State, just as we've worked on the aviation safety laws of the Nation. Why should she be disqualified by an agreement?

You seem to think that the House agreed that we would not follow the law—

Mr. ROBERTSON. I didn't say that, Senator.

Senator STEVENS [continuing]. As far as the qualifications of the people who are nominated to serve on this Board.

Mr. ROBERTSON. What the House agreed to do in the conference was a provision that all the nominations to the NTSB were to be subject to the advice and consent of the Senate, and the House conferees were well aware that this committee has the critical role in that function of advice and consent.

Senator STEVENS. The law itself requires that only two members have the particular background that you want all of them to have; isn't that correct?

Mr. ROBERTSON. I'm not saying that I seek to have all of them have that background. I think it might be a good idea. But the law doesn't require that. But under the bill as originally passed by the Senate, there could be no exceptions.

Senator STEVENS. That's not the way it passed, though.

Mr. ROBERTSON. No; that's right.

Senator STEVENS. And you say that this nomination is not in compliance with the law?

Mr. ROBERTSON. I'm not saying that at all, Senator.

Senator STEVENS. But aren't you asking us to impose something stronger than the law requires as far as this particular nominee is concerned?

Mr. ROBERTSON. That is exactly right, to impose what the Senate has already passed as its sense of what a nomination to this Board should be—people with professional backgrounds in transportation safety.

Senator STEVENS. I suggest to you if we did that, the next time we wouldn't get Senate confirmation of a nominee, because that's precisely what the House thinks we do, that is, exercise judgment beyond the strict requirements of the law as far as advice and consent is concerned.

Mr. ROBERTSON. Well, you have to pass on this nominee in terms of the job that she's to perform, as well as what the statute says about the qualifications to do it.

Senator STEVENS. But you're asking us to write into the law what was in the bill only when it passed the Senate as we give our advice and consent on this nominee. Isn't that right?

Mr. ROBERTSON. Well, with all respect, Senator Stevens, I don't think that I'm saying that. I did not suggest that the Senate should change the law. I'm saying that this Board at this particular time urgently requires people with professional background in transportation safety.

Senator STEVENS. Well, I can understand that, but with all due respect, you did say that before. You asked us to apply the judgment of the Senate to this nominee rather than the strict requirements of the law as determined by the House and Senate in conference. Now I think what—

Mr. ROBERTSON. Well, if I did imply the Senate should ignore the law, I apologize, because that's not exactly what I intended to convey.

What I'm trying to say is that the Senate has expressed its sense that professional background in transportation safety is a proper qualification for this position, and I think that it's the proper function

and proper role for this committee to apply that standard, even though it's not a statutory standard, in passing upon these early nominations to this important agency.

Senator STEVENS. Well, it's my experience that when we get some bright young women on some of these independent agencies, that their competition makes the men perform a little bit better. So I think you're missing the point.

Thank you very much, Mr. Chairman.

Senator PEARSON. Mr. Chairman, because of the exchange here and the issue developed, I think that section 303(b)(1) of the act ought to be put in the record at this time, and the pertinent part of that paragraph reads:

At any given time no less than two members of the Board shall be individuals who have been appointed on the basis of technical qualifications and professional or managerial standing in the field of accident reconstruction, safety engineering, or transportation safety.

Senator CANNON. That, of course, is now a part of the record, and quite correctly so.

But I think, if I understand the witness, he is saying that the Senate has the obligation, in its advice and consent procedure, to determine that the people are properly qualified.

The fact that two people by law are required to have technical qualifications does not mean that the other three people on the board should have no qualifications at all. And that, I think, is the distinction that the witness was making, and he was suggesting at this particular time the Board needs technically qualified people to properly carry out its job, which is a highly technical job.

Is that—

Mr. ROBERTSON. That's right, Mr. Chairman. I think we ought to retain your services to present our case because you're much more articulate than I have been this morning.

Senator CANNON. Well, that was the way the presentation came across to me.

Mr. ROBERTSON. You stated it much better than I did.

Senator STEVENS. Well, Mr. Chairman, with due respect, I remember sitting through the hearing with regard to this Board where we had such an administrative foulup down there that the people weren't getting along with one another, primarily because there was some administrative top aide, you will recall, that wasn't following the directions of the chairman and was convening the other members and a few other things.

It seems to me that this nominee has demonstrated administrative capability as a background in terms of working in the legislature, and certainly ought to understand the relationship between this Board and this committee, and I think we ought to welcome that as far as experience is concerned also.

We would be in a tough spot if we had all the members of that Board that had absolute top credentials as far as accident investigation, but didn't know how to run the railroad down there. I hope that she is able to do that as vice chairman. It is my understanding that that's to be her position, is it not, vice chairman?

Senator CANNON. That's the statement, for a 2-year term.

Senator STEVENS. So I think we've got a duty to look at it in terms of advice and consent as to the total balancing of the Board, as well as the qualifications as far as accident investigation are concerned.

Senator CANNON. I think the record should also show that at the time we came back to the floor with the conference report, I made it quite clear, if I recall correctly, that this committee would expect to exercise a higher degree of requirement than was imposed by the law with respect to only two of the members, because we wanted to insist and insure that people appointed to these technical jobs were technically qualified.

That, I believe, was what I said, substantially, on the floor of the Senate at the time the conference report was approved.

Thank you very much, Mr. Robertson.

Mr. ROBERTSON. Thank you, Senator.

Senator CANNON. The next witness is Capt. John J. O'Donnell, president, Air Line Pilots Association, International.

**STATEMENT OF CAPT. JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, WASHINGTON, D.C.; ACCOMPANIED BY DR. ROGER J. PHANEUF, DIRECTOR, ENGINEERING AND AIR SAFETY DEPARTMENT**

Captain O'DONNELL. Thank you, Mr. Chairman.

Mr. Chairman, I would like to introduce Dr. Roger Phaneuf, who is the head of the Engineering and Air Safety Department of the Air Line Pilots Association, on my right.

My name is John J. O'Donnell and I'm president of the Air Line Pilots Association, International. I appreciate the opportunity to appear before you today on behalf of the 37,000 pilots represented by ALPA to present our views on the confirmation of Ms. Kay Bailey, of Texas, to be a member and Vice Chairman of the NTSB.

Our statement also reflects the views of the Association of Flight Attendants whose 17,000 members are vitally concerned about the efforts of the NTSB in the field of cabin safety.

As you will recall, Mr. Chairman, that in January of this year, I addressed letters to you and to President Ford expressing ALPA's concern over the quality of several recent NTSB accident reports. The deficiencies of these reports, in our judgment, are directly related to the lack of professional competence and technical expertise of the members of the Board who endorsed them. I went on to state our intentions to examine the technical qualifications of future nominees for the Board and to oppose those whom we believe are lacking in professional standing in the field of transportation safety.

The basis for our emphasis on the technical qualifications of NTSB members is twofold: First, we firmly believe that the investigative role of the Board requires that the members have a working technical knowledge of the complex facets of high performance aircraft operations and of air traffic control systems and procedures.

NTSB members are active participants in accident investigations, not simply judges of probable cause based on the evidence accumulated and presented by professional staff.

Second, the Congress, by its enactment of the Transportation Safety Act of 1974, has expressed its intent that Board members possess technical qualifications.

A brief review of the legislative history of the Transportation Safety Act of 1974 serves to highlight the intent of Congress, and more particularly the intent of the U.S. Senate, concerning the qualifications of nominees for the NTSB.

Title III of the act consists of the text of a separate bill, S. 2401, entitled the "Independent Safety Board Act," which was the product of extensive oversight hearings by the Senate Aviation Subcommittee in 1973. As reported by the subcommittee, and passed by the Senate on October 7, 1974, title III, section 303(b), provides that, ". . . The President shall appoint individuals to be members to the Board upon the basis of technical qualification and professional standing in the field of accident reconstruction, safety engineering, or transportation safety."

The House-passed version of the Transportation Safety Act contained no similar provisions concerning the qualifications of NTSB members, which were not unusual since the House of Representatives has no responsibility under the Constitution to advise and consent on presidential nominations. However, during the House-Senate conference on the act, the qualifications section of title III quoted above was amended to read as follows:

At any given time, no less than two members of the Board shall be individuals who have been appointed upon the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

It is absolutely clear that the intent of this subcommittee and the U.S. Senate, which has the constitutional responsibility to consider the qualifications of Presidential nominees, and to confirm or reject their nominations, was and is that all five members of the NTSB should be technically qualified and have professional standing in the field of transportation safety. The appointment of an individual to the Board who has virtually no background in this highly complex field is a flagrant disregard of the intent of Congress and the spirit, if not the letter, of the law.

On May 6, 1976, NTSB Chairman Webster Todd presented to this subcommittee a new policy statement which outlined the direction which the Board must take to meet its responsibilities in the safety area. Chairman Todd stated that.

The Board, therefore, must maintain a standard of professionalism in accident investigation which is above reproach as well as build an analytical capability which allows it to move significantly beyond historical analysis toward the forefront of accident prevention through expanded safety consciousness.

The Chairman went on to state that:

Safety in transportation is achieved by a combination of strong leadership and correct decisions at top management levels and the conscious effort of all involved parties to insure that no preventable series of actions culminates in a catastrophic occurrence. The Board, as a catalyst for safety, is dedicated to influencing those who make the decisions and those who carry them out.

Obviously, the Board will be successful in influencing those in the transportation industry who are responsible for safety only to the extent that its members command the respect of industry leaders.

Chairman Todd has established commendable goals for the Board, and we applaud him, but he must have highly qualified professionals in the field of safety to assist him in achieving them.

Effective leadership of accident investigations requires that individual Board members possess the ability to manage a wide range of scientific disciplines to insure meaningful data collection and analysis. All too often, the lack of sufficient professional experience and technical competence has resulted in accident reports that are superficial and incomplete, and fail to identify and analyze the real causal factors.

Several recent airline accident investigations have, in our judgment, demonstrated the Board's inability to probe in depth all the relevant factors involved. ALPA has petitioned the Board to reopen the investigations into two of these accidents based on the failure to consider certain critical data. Attached to my statement are the letters which we have addressed to the Board outlining our reasons for these two petitions.

In addition, Mr. Chairman, I would like to ask your permission to submit for the record, a statement concerning the recent report of the Board on the accident of Continental Airlines flight 426 in Denver last August. I respectfully request that the captain of that flight, Capt. Bob Pries, be permitted to submit a statement for the record at an early date.

Senator CANNON. We will be glad to receive his statement.  
[The statement follows:]

STATEMENT OF CAPT. ROBERT E. PRIES, CONTINENTAL AIRLINES

I was the Captain of Continental Airlines Flight 426 which crashed off the end of the runway at Denver, Colorado Stapleton Airport on August 7, 1975. The National Transportation Safety Board determined that the crash was caused by an encounter with a severe wind shear just after takeoff. The aircraft was damaged beyond repair and some of the passengers received serious injury.

The Board, in its Safety Recommendations A-76-73 through 75 to the Federal Aviation Administration, stated that "the flightcrew's performance during the emergency evaluation did not conform to the desired or expected standards of a well trained flightcrew. Following the accident, the flightcrew evacuated the aircraft through the cockpit windows instead of manning their evacuation duty stations in the passenger cabin." The Board's Safety Recommendations were totally misleading and devoid of the pertinent facts relating to the evacuation.

First of all, the Second Officer tried to open the door which leads from the cockpit to the passenger cabin, but found it to be jammed, which would make impossible the "manning their evacuation duty stations in the passenger cabin."

The aircraft impacted the ground at about 250 mph and we were violently thrashed about as the aircraft slid to a stop on its belly. The crash forces were so great that part of the seat belt was torn from my seat and that of the First Officer. I received two crushed vertebrae and the Second Officer received a deep laceration over the eye and through the eyelid. All three cockpit crewmembers received bruises and lacerations requiring surgery.

When the aircraft came to a stop, the engines continued to run at full power, however, this was not apparent to us in the cockpit because I had used the normal engine shutdown procedures. Unknown to me, all of the cockpit instruments were dead and the controls in the engines were severed. At least one of the engines was stalling and producing an exploding sound. Large holes in the fuselage made the engine noise much louder than normal which also prevented us from recognizing these sounds. We interpreted the sounds to be the exploding and roar from fire.

Considering that we were in at least some mild form of shock, I'm not at all surprised that the Second Officer, after trying the door and hearing these loud noises, yelled "FIRE! LET'S GET . . . OUT OF HERE."

After leaving the aircraft and realizing that the engines were still running, I immediately returned, pulling myself into the cockpit, and attempted by alternative means to shut down the engines and prevent fire. Meanwhile, the First and Second Officers helped passengers from the wing and rendered all possible assistance to the passengers considering the circumstances.

Inside the cockpit, I was unable to stop the engines, but I was able to get the cockpit door open, backwards! The door had obviously been jammed. In my super adrenalized state I was able to free one Flight Attendant from a coat closet and other debris which had collapsed on her. I then assisted her and another Flight Attendant to exit the aircraft through the cockpit windows. I was the last person to leave the aircraft.

The Board cited the cockpit crew's failure to go to our evacuation stations according to procedures. In addition to failing to properly assess all of the aforementioned circumstances, the Board does not seem to understand that accidents rarely happen according to plan. Procedures do not supplant good judgement. With all 124 passengers in the aisle clamoring for the exits, how is it possible for the Second Officer to proceed to the aft cabin?

In the NTSB's Safety Recommendation A-76-76, the Board stated that "Although the available wind information indicated . . . Continental 426 used normal procedures which included a noise abatement climb profile." The inference that there is an option which may have produced different results is uninformed and misleading. All of the climb profiles are identical to 400 feet. Flight 426 did not get over 150 feet. The inference also indicates that the Board saw fit to diverge from the aircraft manufacturer's conclusion where Boeing stated that under the circumstances encountered by Flight 426, the aircraft could not sustain flight.

I don't believe that airline pilots are beyond criticism, but I do believe that unjust criticism can be very harmful. In this case, the harm is not only to Continental Airlines, my crew and myself, but to the very heart of the NTSB's goal to promote safer transportation. If the airline pilot and the airline do not have confidence in the ability and judgement of the Board, then they will pay only superficial attention to the Board's findings and recommendations. All of us in the industry do our best to promote safety on our own, but the additional thrust of the NTSB will be lost without technical competence equal to the complexity of this industry.

[The following information was subsequently received for the record:]

AIR LINE PILOTS ASSOCIATION,  
Los Angeles, Calif., July 1, 1976.

HON. HOWARD W. CANNON,  
Chairman, Committee on Commerce, Subcommittee on Aviation, U.S. Senate,  
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is supplemental to my letter of June 25, 1976 relating to the NTSB investigation of Continental Airlines Flight 426 which crashed in Denver, Colorado, on August 7, 1975.

Subsequent to writing the letter of June 25, the full NTSB report on this crash has been published. One paragraph in particular at the top of page 29 of this report is very pertinent:

"Since there was no evidence that the cockpit door was jammed or otherwise inoperable, the Safety Board believes that the flightcrew made little effort to proceed to their evacuation duty stations in the passenger cabin. Instead, the evidence indicates that the flightcrew abandoned the cockpit through the sliding windows as rapidly as possible. The Safety Board concludes that the flightcrew's performance in this respect did not conform to the standards of professional crewmembers."

The evidence proves just the opposite. Consider the following and there couldn't be any doubt:

1. The door normally opens aft into the passenger cabin but it was found in the cockpit. I opened it backwards against the door stops.
2. The coat closet which is located just aft of the cockpit door had collapsed against the back of the door. Two men were unable to move the closet after the crash.

3. All of the contents of the coat closet were heaped against the door. When I opened the door one of the Flight Attendants was literally buried under garment bags and debris.

4. The Second Officer testified that he thought he had tried the door and was unable to open it.

5. The attached letter from one of the passengers totally supports the facts that the door was jammed. The baggage compartment referred to in his letter is what I have referred to as the coat closet.

It is difficult to imagine why these facts were not brought out by the Board. I do know, however, that a Mr. LeRoy was in charge of the Human Factors Investigation on behalf of the NTSB and somehow he neglected to interview any of the cockpit crew members.

After reading the entire NTSB report, I believe that the Board's impression of the "standard of professional crews" would be the standards fashioned by a Hollywood education. After nearly unlimited physical and emotional abuse they seem to expect the flight crew to sacrifice their own lives even when it appears that they are helpless to assist the passengers. That may make good press, but frankly I won't ride with a pilot whose judgment is that far out of touch with reality.

The Board's criticism of myself, the First and Second Officer's performance during the evacuation implies among other things a selfish act of cowardice. This is particularly grating since all three of us were combat military pilots, an occupation which takes a lot more character than what the Board gave us credit for.

I can only conclude that the Board is too idealistic and far removed to recognize what it is like to go through an experience like this for real. I do not think competent aviators will concur with the Board's judgment.

Sincerely,

CAPT. ROBERT E. PRIES,  
*Continental Airlines.*

Attachment.

DENVER, COLO., June 16, 1976.

Mr. WEBSTER B. TODD, Jr.,  
*Chairman of Transportation Safety Board,*  
*Washington, D.C.*

DEAR MR. TODD: It was with dismay and surprise that I read of your board's decision to criticize the crew of Continental Airlines Flight 426 which was involved in an incident at Stapleton International in Denver on August 7, 1975. As an eye witness and passenger on that flight I must say that not only was your criticism of the flight crew unwarranted, but probably if it had not been for their expertise in handling the aborted takeoff, the ultimate results could have been worse—indeed a catastrophe.

As I told your investigators, because I was a passenger in the front cabin, I was probably the first or second person to reach the lefthand door on the aircraft through which we had all entered. It was and is still my testimony that the baggage compartment was blocking not only the main door of the aircraft but also the cockpit door and had trapped two cabin attendants against the bulkhead. It is therefore perplexing to me that you should criticize the crew for not coming directly into the first class cabin.

I realize at this particular point that my personal observations will not change your bureaucratic decision, however, I would like to publicly thank the crew for what I thought was superior performance and I, for one, appreciated the way they responded to the pressures of the day.

Sincerely,

DAVID E. BAILEY.

Captain O'DONNELL. Thank you very much, Mr. Chairman.

Some have suggested that the criteria we recommend for Board eligibility are so narrow as to exclude anyone who is not an experienced aviator. This erroneous interpretation of our position is unfortunate because it has the effect of distorting the real issue involved in NTSB appointments.

What is most important is that the Board members have broad technical background and experience in transportation safety which will enable them to provide professional leadership to accident investigations in any one of the five modes which come under the Board's jurisdiction.

We would like to suggest for your consideration three specific areas of experience which we believe should be a part of the background of any nominee for NTSB membership.

(1) Industry experience or educational background in one of the disciplines dealing with physical or life sciences would be excellent preparation for providing proper direction to the Board in terms of analytic approach to accident investigations.

(2) Operational experience in either military or commercial transportation would provide insight into the actual environment in which the accident occurs.

(3) Recent experience with the highly complex interfacing between personnel and systems within the transportation industry would provide appreciation for and understanding of the significant safety factors involved therein.

Mr. Chairman, we have thoroughly reviewed the educational and professional background of the nominee before you today, and it is our judgment that she has no experience in any of the areas enumerated above.

But the issue before this subcommittee today is far more critical than the nomination of Kay Bailey. What is at stake here is the determination of the Senate to preserve the integrity of those provisions of the Transportation Safety Act of 1974 which encourage the appointment of members to the NTSB on the basis of technical qualification and professional or management standing in the field of accident reconstruction, safety engineering, or transportation safety.

We commend you, Mr. Chairman, for your leadership in the enactment of this legislation designed to upgrade the level of technical and professional competence of the members of the NTSB. Such a law is in the public interest, and stands out as a model for other presidentially-appointed boards which must deal in technical subjects.

But the job is not finished with the passage of a law. All of us who are vitally concerned about safety in transportation must be vigilant to insure that the legislative goal of this subcommittee and the U.S. Senate is fulfilled.

This concludes my statement, and I will be pleased to respond to any questions, Mr. Chairman.

[The attachments referred to follow:]

AIR LINE PILOTS ASSOCIATION,  
Washington, D.C., May 6, 1976.

Mr. WEBSTER B. TODD,  
Chairman, National Transportation Safety Board,  
Washington, D.C.

DEAR DAN: As we have discussed, there are, on occasion, certain issues which we agreed should be called to your attention. The concerns occasioned by the information contained in the enclosed Petition for Reconsideration of the Board's probable cause findings in the PAA B-707 accident of January 30, 1974 at Pago Pago International Airport fall in that category.

The ALPA air safety representatives have alerted me to the fact that not only was the Board's effort unsatisfactory on this particular investigation, but also

that similar shortcomings are found with distressing regularity in other investigations.

Specifically, the superficial utilization of the data contained on both the flight and cockpit voice recorders regularly renders suspect both the findings and recommendations of the Board. If the Board is to be effective in the accident prevention field and do more than simply assess blame, superficiality must be eliminated from the final product. The attached Petition clearly highlights the misapplication of the recorded data and illustrates a problem which recurs with far too great a regularity.

Of even greater urgency is the almost total lack of concern for the human factors involved in accidents, such as the one in Pago Pago. Clearly, if human performance is a factor in an accident, the relevant facts are what the crew perceived as related to the actual situation. Only by exploration of these matters can there be any hope of arriving at recommendations which will prevent future accidents. Absent meaningful study in this very complex area, the Board will be unable to do more than continue to point the finger of blame. This makes it easy for the lawyers but a matter of despair for those dedicated to accident prevention. It is our hope that through your leadership we can see a major effort by both Government and the industry to explore this largely uncharted area. Please be assured of ALPA's wholehearted support in any study efforts in the human factors field.

If we can be of any assistance with regard to the information contained in the Petition, don't hesitate to call on us.

Copies of this Petition are being forwarded to each of the parties to this investigation.

Sincerely,

J. J. O'DONNELL, *President.*

AIR LINE PILOTS ASSOCIATION,  
Washington, D.C., May 21, 1976.

HON. WEBSTER B. TODD,  
*Chairman, National Transportation Safety Board,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Enclosed is a petition to the Board for modification of the probable cause or a reopening of the investigation of the Eastern Air Lines Douglas DC-9 accident which occurred near the Charlotte, North Carolina Airport on September 11, 1974.

It is disappointing to note that this petition is based on essentially the same premise as the Pago Pago petition filed on May 6, 1976. Our analysis of the Board's Charlotte Report, compared to the information which was available but apparently ignored during the formulation of the Board's position, leads to the conclusion that once again superficiality clouds both the Findings and Recommendations of the Board.

By way of illustration, the petition demonstrates that by diligently reading the voice recorder, it could be ascertained that the flight was conducted in a very professional manner (in contrast to the Board's inference that it was haphazard and unprofessional). Further, the flight recorder shows that the flight was handled in a precise manner up to the time that an altitude error occurred. By seizing upon the easy solution of charging the crew with inattention, the Board foreclosed the proper line of inquiry and, as a result, insured that its Report would be of little or no value in the all important area of accident prevention.

It is difficult to understand why the Board, in its transcript of the voice recorder, excluded all three references to fatigue. Even a perfunctory inquiry into the Captain's flight schedule of the preceding nine days should have alerted those making the investigation that fatigue be considered, particularly when an otherwise professional crew performance deteriorated unexplainably with the apparent misreading of the altimeter by the First Officer and the Captain's failure to catch it in his backup capacity.

The action by the Chairman of the Inquiry to exclude from the Hearing Record the FAA commissioned study on drum pointer altimeters is certainly questionable. The study demonstrates that 1,000-foot misreadings are typically induced by the instrument design. Also not mentioned in the Board's Findings was the fact that the altitude monitoring capability of the ARTS III was not utilized

and the absence of precision approach equipment on this air carrier runway may have been a contributing cause of the accident.

Once again, we must solicit your assistance in providing a more objective analysis of this accident and, in particular, we must reiterate our concern that the human factors associated with this and many other accidents represent an important subject which has been ignored in the past by the NTSB. If we continue to overlook this subject area, we most assuredly are exposed to a repetition of tragedies such as this.

For your information, we have transmitted a copy of the petition to each of the interested parties to review.

Sincerely,

J. J. O'DONNELL, *President.*

Senator CANNON. Thank you, Mr. O'Donnell.

Senator PEARSON.

Senator PEARSON. John, in all fairness, now, the criteria you have set out for technical qualifications are going to be pretty tough. This Board has jurisdiction over marine safety, rail safety, highway safety, and pipeline safety in addition to aviation safety. If we had to meet all of these kinds of industry experience, educational background, and operational experience in all of these fields, I don't think we'd get anybody to qualify for this Board.

Do you think that's an unfair question to put to you?

Captain O'DONNELL. Oh, no question from you, Senator, is unfair to me, but we feel, Senator, that the qualification—

Senator PEARSON. I know what you're trying to say, but I'm trying to say something, too. If you put these sorts of requirements down for qualification on a Board such as this, with such wide jurisdiction, moving from transportation mode to transportation mode, we really wouldn't find anybody to meet these criteria. I think it was the common denominator of opinion of the people who wrote this conference report, and agreed to it, that you have to have some technical qualifications. There isn't any question about that, but there needs to be some generalists there, too, some people with just plain good commonsense.

Captain O'DONNELL. Well, we're not commenting on the commonsense of Kay Bailey. I've met Kay Bailey and—

Senator PEARSON. No; I know you're not.

Captain O'DONNELL [continuing]. I think I announced earlier that I was very much impressed by her and—

Senator PEARSON. I understand the nature of your objection.

Captain O'DONNELL. Yes, but the only thing is, Senator, there are several other agencies within the Government for which the President sends nominations to the Senate for confirmation, and we understand that the President solicits recommendations from professional organizations such as the American Society of Safety Engineers, to make sure the nominees are technically competent in the field that's under consideration. And that is something we think that perhaps the President should take into consideration when he comes up with nominees for such a highly technical subject as transportation safety.

It was stated that only 3 percent of the accidents occur in aviation, but I would venture to say that about 80 to 90 percent of the NTSB time is spent in aviation accidents. And so our concern is, and we think the U.S. Senate expressed it in the legislation, that they wanted technically competent people. We think that the compromise between

the House and the Senate did not remove the obligation of the Senate to come up with competent people, and we think that when the law says "no less than two," it doesn't mean that all five should not be technically qualified.

Senator PEARSON. Thank you very much.

Senator CANNON. This raises an additional interesting problem as well. The predecessor for this position came to the committee initially with a very similar background to that of Ms. Bailey, having served in the legislature and having been involved in highway safety and various types of highway problems, such as Ms. Bailey has from the legislative standpoint, and in addition to that, had 5 years' experience on the Highway Safety Board of the NTSB at the time she was nominated for reappointment—or reappointed and sent to the committee. And this committee turned her down because of the qualification aspect.

I personally voted for her because I thought that she had achieved a considerable degree of experience in 5 years on the Board and added to her other background, she certainly had some technical experience.

It will be interesting to see how the committee members vote now on this particular nominee because she comes to us at this point in time with less experience in the field of transportation safety than her predecessor, whom the committee refused to confirm.

Captain O'DONNELL. Mr. Chairman, perhaps we shirked our responsibility by not appearing at those hearings. I was not here when that member was originally confirmed 5 or 6 years ago. But I think we missed our responsibility in the hearings last fall. That is the reason I wrote to you in January, because our credibility and the integrity of the system would not allow us to sit back and not insist that the nominees for the Board meet standards that you gentlemen have established and that we think are essential.

And we apologize to the committee for not being here in that last nomination.

Senator CANNON. Thank you, very much.

Captain O'DONNELL. Thank you, very much, Mr. Chairman.

Senator CANNON. That concludes the witnesses on our list today. The committee will stand in recess subject to the call of the chair.

[Whereupon, at 11:10 a.m., the hearing was adjourned, subject to the call of the Chair.]

the following the 20th and 21st of the month  
the committee will stand in recess subject to the call of the chair

[Witnessed at 11:30 a.m., the hearing was adjourned subject to  
the call of the Chair]

Senator Caswell: Just concludes the witness on our list today.  
Captain O'Donnell, thank you very much, Mr. Chairman.

Senator Caswell: Thank you very much.  
And we apologize to the committee for not being here in that last  
session.

Senator Caswell: I thank you very much.  
I know in your testimony because our committee and the industry  
and our responsibility in the hearings last fall. I think the reason  
number was originally submitted to us a year ago that I think we  
should be not repeating the same thing. I was not here when that  
provision, which the committee is looking at.

It will be interesting to see how the committee handles this now  
on this particular matter because the committee is at this point in  
time will be expected to the industry information rather than the  
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Senator O'Donnell: Mr. Chairman, perhaps I should like to see  
whether you are repeating the same thing. I was not here when that  
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Senator O'Donnell: Thank you very much, Mr. Chairman.  
Senator Caswell: Just concludes the witness on our list today.

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Senator O'Donnell: Thank you very much, Mr. Chairman.  
Senator Caswell: Just concludes the witness on our list today.

## NOMINATIONS—JUNE

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FRIDAY, JUNE 25, 1976

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C.

The committee met at 10:20 a.m., in room 5110, Dirksen Senate Office Building, Hon. Ted Stevens presiding.

### OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. I call the committee to order.

This is a hearing of the full committee on the nominations of Edward O. Vetter of Texas, to be Under Secretary of Commerce and Leonard S. Matthews of Illinois, to be Assistant Secretary of Commerce.

On June 21, this year, the President submitted Mr. Matthews nomination to succeed Travis Edwin Reed; and on June 23 the President submitted the nomination of Mr. Vetter to succeed Under Secretary Baker who has resigned.

We have statements, gentlemen, from Senator Tower and from Senator Stevenson. Both regret that they cannot be here this morning. I'm sure you can appreciate the problems of so many things going on at the same time in the Senate today. The statements of the two Senators who have endorsed and supported your nominations will be placed in the record.

[The statements follow:]

#### STATEMENT OF HON. ADLAI E. STEVENSON, U.S. SENATOR FROM ILLINOIS

I am pleased to welcome Mr. Leonard Matthews and to express my confidence in his qualifications for the position of Assistant Secretary of Commerce.

Following his graduation summa cum laude from Northwestern University, Mr. Matthews joined the Leo Burnett Company of Chicago. During the last fifteen years he has held a range of top management positions in the company, including Executive Vice President and President. He is now Vice Chairman of the Board of the parent company. It is the fourth largest advertising and marketing organization in the United States and also the fourth largest company in international advertising.

Mr. Matthews also serves as director or trustee of several civic, charitable, and educational organizations in Illinois. I am confident that this active participation in these voluntary community groups, together with his impressive business experience, will be reflected in his contributions as Assistant Secretary of Commerce.

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#### STATEMENT OF HON. JOHN TOWER, U.S. SENATOR FROM TEXAS

Mr. Chairman, I appreciate very much the opportunity to address this committee in support of the nomination of Mr. Edward O. Vetter to serve as Under Secretary of Commerce.

The Department of Commerce strives to foster, serve and promote the Nation's economic development and technological advancement through activities that encourage and assist States, regions, communities, industries, and firms.

The necessity of having top-flight executives at the helm administering these programs should be apparent. That Ed Vetter is a man of such character is apparent as well.

If I may take a moment to review Mr. Vetter's background and experience:

He graduated in engineering from the Massachusetts Institute of Technology in 1942, and I should note that he was just recently elected president of the prestigious alumni body of that institution. He then served as major in the U.S. Army from 1942 to 1946. From 1946 until 1952, he was an executive with Standard Oil of California.

Since 1952, Ed Vetter has been associated with Texas Instruments, a Dallas based firm. In 1957, he became general manager of T.I.'s industrial instrumentation division in Houston. From 1959 to 1966, he served as vice president and manager of the Materials and Controls Inc., an Attleboro, Massachusetts subsidiary. In 1966, he was named vice president for corporate development. In 1967, he became group vice president. In 1969, he added the responsibilities as president of Geophysical Service Inc., another subsidiary. He served as executive vice president and chief financial officer from 1972 until his early retirement, at 55, last November.

That a way has been found to lure Ed out of retirement to apply his energies and expertise to our Government operations is good news for all of us.

Ed Vetter comes to us from a business corporation whose goodwill and good reputation are known as far and wide as its products and services. Texas Instruments is practically trademarked by its straightforward approach, its conservatism. T.I. is not flamboyant, but it is effective.

Ed Vetter mirrors the reputation of his former employer.

As Under Secretary of Commerce, he will be an effective voice advising the Secretary and administration on Federal policy and programs affecting business segments of our country's economy. His energy background will serve him well in assisting the Secretary of Commerce, who serves as Chairman of the President's Energy Resources Council. His business background will serve him well in his responsibilities on the board of directors for the Overseas Private Investment Corporation.

I know Ed Vetter to be a man of competence and integrity. For years, I have seen the successes he has brought to private businesses. I look forward to seeing similar successes worked by him for our Government.

I urge the committee to act favorably and swiftly on his nomination.

Senator STEVENS. Senator Tower spoke to me last night personally and he also sent a letter. He is out of Washington and regrets that he cannot be with us. I have your biographical sketches and they will be placed in the record.

[The biographical sketches follow:]

#### BIOGRAPHICAL SKETCH OF EDWARD O. VETTER

Address: 5333 Walnut Hill Lane, Dallas, Texas 75229.

Date and place of birth: October 20, 1920.

Married: Mary L. Brite.

Children: Judy Vetter, 29; Sally Vetter, 25; Mrs. Mary Pat Winn, 28; and Kathleen Vetter, 21.

Education: Aquinas Institute, Rochester, New York, 1934-38; Massachusetts Institute of Technology, 1938-42, BSME granted in 1942.

\*1942-45, U.S. Army—Major.

1946-52, Standard Oil Company of California—Senior Analyst Organization and Cost Control.

1952-75, Texas Instruments Incorporated, Dallas, Tex.: 1952-57, Vice President, Geophysical Service Inc. (Subsidiary); 1957-59, General Manager, Industrial Instrumentation Division, Houston, Tex.; 1959-66, President Metals and Controls Inc. (Subsidiary), Attleboro, Mass.; 1966-72, Group Vice President, Materials & Services, Dallas, Tex.; 1972-Nov. 75, Executive Vice President and Principal Financial Officer; Nov. 75, Retired (Required by company policy for top management officers reaching age 55).

Please see asterisked item in No. 7 above.

Member: Regional Export Expansion Council, Department of Commerce.

Memberships: Massachusetts Institute of Technology—\*President, Alumni Association 1976-77; \*Member, MIT Corporation of 1973-78; Member, MIT Corporation Executive Committee 1976-78; Chairman, MIT Nuclear Engineering Department Visiting Committee 1974- ; Member, MIT Sponsored Research Visiting Committee 1972- ; Member, MIT Corporation Development Committee 1973- ; Trustee, Ursuline Academy Permanent Endowment Fund; Member, Jesuit College Preparatory School Advisory Board; Chairman, National Affairs Committee, Dallas Chamber of Commerce; Member, Executive Board International Trade Conference of Southwest; Member, Regional Export Expansion Council—Department of Commerce; Trustee, The Vetter Foundation; Director, BT Capital Corporation (SBLC); Director, Tex Brite Corporation, Dallas, Tex; and Member, Technical Advisory Committee, Federal Aviation Administration.

I propose to retain position in those marked with an asterisk above and resign from the others.

Political affiliations and memberships:

Republican—Dallas County Chairman, 1972 Committee to Reelect the President.

Over the years I have made miscellaneous small contributions to local candidates in Texas. During this time I have also served on various dinner committees for Republican candidates. I also was on the Finance Committee for Congressman Alan Steelman and State Representative Fred J. Agnich to raise various small amounts primarily through mail solicitation.

In 1971 I gave \$1,000 to the Salute to the President Dinner Committee. In 1972 I gave \$1,560 to the Dallas County Republican Committee and \$2,000 to the Republican Victory 1972 Dinner.

From the end of 1972 until 1975 I served as Trustee of Texas Instruments' Constructive Citizenship Program—a Federal Election Commission approved Political Action Committee.

My 1976 contributions to date are: Republican Party of Texas, \$1,000; Steelman for Senate Committee, \$300.

Honors and awards: None.

Published writings: None.

Qualifications:

In my 28 years in industry, 23 of them with Texas Instruments, I have gained broad experience in the many fields that are in the mainstream interest of the Commerce Department. These include International Trade, Energy Development, the Importance of High Technology Products and Services in High Employment Growth, the Infrastructure Situation in Less Developed Countries. Trade in the Mideast and East-West relationships.

In addition, my experience with Texas Instruments has given me a strong base in the area of strategic planning, resource allocation, managing technology transfer, and capital formation.

I believe this experience can be readily employed in developing positions and action directed toward those priority issues that are within the scope of the Department.

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#### BIOGRAPHICAL SKETCH OF LEONARD SARVER MATTHEWS

Address: 212 Warwick Road Kenilworth, Illinois 60043.

Date and place of birth: January 6, 1922, Glendean, Ky.

Married: Dorothy Lucille Fessler.

Children: Nancy Matthews Ulrich, 26; James Scott Matthews, 19; and Douglas Sarver Matthews, 16.

Education: Grade schools in various cities in Kentucky and Indiana, primarily Owensboro, Ky.; Roosevelt High School, East Chicago, Ind. graduated 1940; Indiana University, Bloomington, Ind. 1940-42; Northwestern University, Evanston, Illinois 1946-48 B.S. in Business Administration June 1948; and Attended Graduate School at Northwestern University 1948-50.

Employment Record: Joined Leo Burnett Co., Inc., Chicago, in June 1948 upon graduation from college. Have been with this company since 1948; held a variety of jobs including research analyst, media supervisor, VP in Charge of Media, VP in Charge of Marketing, Executive Vice President (nine Years), President—USA and Canada (3 years), President—Worldwide (2 years), Vice Chairman of the Board; from November 1942 to April 1946 I served in the

U.S. Coast Guard with the rank of Ensign. Last duty was Executive Officer of LCI-90 in the amphibious Navy force in the Philippine Theater of Operations.

Government experience: None.

Memberships: Trustee, Chicago Educational Television Association, will resign this position if confirmed; Trustee, Better Government Association, Non-partisan government watchdog group, will resign this position if confirmed; Director, Off-the-Street Club, Chicago's oldest Boy's Club, will resign this position if confirmed; Trustee, Hadley School for the Blind, Winnetka, Ill., would like to retain this position; Member, President's Council of National College of Education, Evanston, Ill., will resign this position if confirmed; Member, Dean's Council of Graduate School of Management, Northwestern University—Evanston, Ill., would like to retain this position and see no conflict of interest involved. This council is not concerned with financial holdings or fund raising. It's purpose is to advise the Dean on matters of curriculum, school standing in the academic community and other general matters; Director, Member of Executive Committee, Chicago Advertising Club, Chicago, Ill., will resign this position if confirmed; and Director and Vice Chairman, Advertising Council, New York, will resign this position if confirmed.

Political affiliations and activities: I have no precise record of past financial political contributions. However, they have been generally less than \$100 per candidate or group. Primarily they were to Republican candidates although not exclusively.

Largest political contribution ever made was \$1,000 to Nixon Campaign in 1972.

From December 1975 through June 1976 I have been consulting with Campaign '76—Media Communications, Inc., as Chairman of the Advisory Board. Campaign '76 is an in-house advertising group serving the President Ford Committee.

Honors and Awards: Academic scholarship to Indiana University awarded upon graduation from high school; elected to Beta Gamma Sigma National Honorary Society for Business Schools at the University level while at Northwestern. Beta Gamma Sigma is regarded as the business school equivalent of Phi Beta Kappa; and graduated from Northwestern University Summa Cum Laude.

Published writings: None other than a few articles written for trade journals in the advertising field—none in the past few years.

Qualifications:

For the past fifteen years I have served in a top management capacity—Executive Vice President, President, and Vice Chairman of the Leo Burnett Co., Inc., fourth largest advertising and marketing organization in the USA. This company is also the fourth largest company in the international advertising field.

The company has over 40 offices around the world, in almost every country in the Free World. I have traveled extensively to our domestic and international offices and have observed first hand a variety of business organizations, small and large, domestic and multinational. Representing the top management of our company I have had the opportunity to work with the top management of many of the world's most successful companies.

I have also had the opportunity to observe business-government relations in these countries and the attitudes of foreign governments toward the USA and other foreign multinational firms.

A part of the successful operation of our company was to know and understand the economic conditions and problems of our various clients in many countries. The differences between industrial nations and agricultural nations, their varying import/export requirements, how their balance of payment concerns related to the balance of payments for the USA have all been a part of my experience which should be helpful in carrying out my duties with the Commerce Department.

Likewise my knowledge of the marketing and advertising area in many countries should aid me in assisting the American business community in marketing their goods and services abroad.

Senator STEVENS. Do either of you have any statements which you wish to put in the record?

## STATEMENT OF EDWARD O. VETTER

Mr. VETTER. I think the only thing I'd like to say, Senator Stevens, is that on behalf of Secretary Richardson and Mr. Matthews and myself, we would like to thank Senator Magnuson and the entire Senate Commerce Committee for their very expeditious scheduling of this hearing. We appreciate that you are under a lot of schedule pressure and we also realize that with the upcoming recess you have extended yourself in a most helpful way in having this hearing here today.

Senator STEVENS. Well, I appreciate that.

Mr. Vetter, I'm told that according to the General Counsel's letter you have agreed to disqualify yourself from personal or substantial participation in any particular matter which to your knowledge affects Texas Instruments. I understand that is occasioned by the deferred compensation payments which you receive from Texas Instruments which in 1977 alone include almost 300 shares of Texas Instruments stock and more than \$20,000.

The specific question I want to ask is what do you plan to do with respect to matters indirectly affecting Texas Instruments? While I would assume that you would disqualify yourself from any responsibility with respect to making a decision on a contract on which Texas Instruments had bid, I have been told about a potential problem concerning electronic funds transfer. The Commerce Department will have to make some decisions on policy or other matters affecting EFTS and I'm told that any decision affecting EFTS would indirectly affect Texas Instruments.

How do you plan to handle these general kinds of decisionmaking and policymaking responsibilities which, while directed to very broad concerns, have a significant impact on companies such as Texas Instruments? Again, the direct question is, what do you plan to do with respect to matters indirectly affecting Texas Instruments?

Mr. VETTER. Well, I believe that one of the reasons that Secretary Richardson asked me to serve as Undersecretary of Commerce is because of my technical background and perhaps the contribution that I could make to such questions that have both an economic and technical aspect. Since Texas Instruments is involved very broadly in commerce, both internationally and domestically, and has a high technology content to its products, I would hope that I could participate in the question of electronic funds transfers or some broad technology-oriented policy questions such as that, while at the same time recognizing that TI's stake in it per se would be minimal. It so happens that they serve no products in that marketplace right now, but obviously if the decision to proceed with that kind of technology were favorable they might benefit some time in the future.

Senator STEVENS. I certainly understand, but the General Counsel's letter indicates you would disqualify yourself from personal or substantial participation in any particular matter which to your knowledge affects Texas Instruments; and the question is the indirect impact. Basically, I'm sure what the committee would like to have you say is that you would disqualify yourself if you felt or had reason to

believe that the decision or the matter in question would substantially affect Texas Instruments even though indirectly.

Mr. VETTER. Well, I think if it would substantially affect Texas Instruments indirectly I would so disqualify myself. I was just trying to differentiate between the broad questions because everything Commerce does indirectly affects Texas Instruments.

Senator STEVENS. I think that's true.

By letter dated June 24, the Department of Justice has suggested certain steps to be taken by you in order to fully avoid any conflict of interest. Are you familiar with that letter?

Mr. VETTER. I have not seen that letter.

Senator STEVENS. The committee has just been provided with this letter. I will give you a copy for your review. There is a recommendation concerning a portion of a proposed trust agreement and there's also a statement with regard to the MIT Alumni Association and the MIT investment holdings. I will give you a copy of the Department of Justice letter. After you review the letter you can respond for the record as to whether or not you will comply with the suggestions proposed by the Justice Department. I might state for the record that we have your financial statement which will be kept in the file and which will not be discussed here.

Mr. VETTER. I have read the legal statement. To the extent that what is being proposed by the Justice counsel agrees with the Commerce counter letter, I would be happy to comply. But since I have not read the Justice Department letter, if there's something additional, I would certainly like the opportunity to read it. However, I would comply with any reasonable request contained therein.

Senator STEVENS. Before we ask you if you're going to comply, you ought to read the letter. The additional recommendations don't appear to be substantial, but I do believe you should know what the Department of Justice states. The staff advises me you have been to my State, Alaska, many times and have been involved in the Alaskan scene.

Mr. VETTER. Yes; I was fortunate enough to go there in 1968 when we were doing extensive geophysical exploration and my former company is still a major seismic contractor in that State and does all the exploration work on MPR-4.

Senator STEVENS. Which one is that?

Mr. VETTER. The Geophysical Service, of which I was vice president and very proud to be so.

Senator STEVENS. They have done a good job up our way and I hope they are equally successful in their new endeavor.

If we may now go to Mr. Matthews, do you have any statement to put in the record, Mr. Matthews?

#### STATEMENT OF LEONARD S. MATTHEWS

Mr. MATTHEWS. No, Senator.

Senator STEVENS. The General Counsel noted that in order to avoid a violation of title 18 United States Code, section 208, you will not participate in any matter which directly or substantially involves Leo Burnett Co. I have the same question about indirect involvement as far as your activities are concerned, Mr. Matthews that I asked Mr. Vetter. After your confirmation you might be involved with certain policy

issues which might affect the entire advertising industry. I'm informed that Leo Burnett is one of the major agencies within that industry. If you had knowledge that there would be a substantial impact, even though indirectly, and that your involvement could give an appearance of a conflict of interest, would you disqualify yourself, as indicated by the General Counsel's letter?

Mr. MATTHEWS. Yes; anything that would be apparently even indirectly involved with or have an effect on the Leo Burnett Co., then I would not participate.

Senator STEVENS. Thank you. I am informed that you were most recently involved as chairman of the advisory board for Campaign '76 Media Communications, Inc. What are your plans with regard to that organization upon your confirmation?

Mr. MATTHEWS. I have already resigned from that position in contemplation of this Commerce assignment.

Senator STEVENS. I also have a letter dated June 24, 1976, from the Department of Justice suggesting certain steps that should be taken by you in order to fully avoid any conflict of interest. I'll just stand at ease for a little while until I can get you both a copy of the respective letters. I think you two gentlemen ought to have a chance to read those. Again, the additional recommendations do not seem to be substantial, but I think you should be given the chance to read the letters before I ask whether you intend to comply with the suggestions.

Gentlemen, have you had an opportunity to review those letters?

Mr. VETTER. Yes.

Mr. MATTHEWS. Yes.

Senator STEVENS. Mr. Vetter, have you reviewed yours?

Mr. VETTER. I have reviewed the letter and I would be quite happy to comply with the suggestions.

Senator STEVENS. And we're talking about the same letter, the letter of June 24 from the Department of Justice.

Now you have a letter dated the same date, Mr. Matthews. Is there any reason you would not wish to comply with the suggestions in that letter?

Mr. MATTHEWS. No reason.

Senator STEVENS. And you will comply with them?

Mr. MATTHEWS. Yes.

Senator STEVENS. With regard to Mr. Matthews the committee similarly has financial statements which will be kept in the file. I would also like to ask each of you this question—from time to time Congress, particularly this committee, has cause to request the appearance of members of the Departments at committee hearings. Can we presume that you will agree to appear before any or all Senate or House committees which request your presence?

Mr. VETTER. Yes.

Mr. MATTHEWS. Yes.

Senator STEVENS. I don't know if any of the other members of the committee who are not present this morning have any particular questions, but I think I should ask the staff to inquire. If any of the other Senators do have any questions you will be notified. The committee would ask you to respond in writing so that your answers could be placed in the record. I have not been informed of any additional

questions, but just to make certain, because of the conflicting and confusing schedule around here this morning the record will be kept open until Tuesday.

Gentlemen, I hope that the committee will soon act on your nominations so that you may both take your respective positions. Again, with the support which you have from the Senators in your State I would anticipate no difficulty. I don't have any general questions to ask. I think those should be saved for the times you come up here on specific issues.

So if there is no further business to come before the committee, the committee stands in recess and the record will be closed on Tuesday. Thank you, very much.

[Whereupon, at 10:40 a.m., the hearing was adjourned.]

## NOMINATIONS—JUNE

TUESDAY, JUNE 29, 1976

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D.C.

The committee met at 9:30 a.m. in room 5110, Dirksen Senate Office Building, Hon. John O. Pastore presiding.

### OPENING STATEMENT BY SENATOR PASTORE

Senator PASTORE. This hearing will come to order. I have talked to Senator Howard Baker, and he will be here very shortly. I don't think there is any reason to hold up the hearing.

Today we will consider the nomination of Thomas J. Houser to be the Director of the Office of Telecommunications Policy (OTP).

The OTP was created to advise the President and to represent the views of the executive branch on matters of national and international telecommunications policy. It was envisioned as a vehicle for establishing a partnership between the White House and the Congress in the development of an overall telecommunications policy for the Nation in order to insure that the American public will receive maximum and timely benefits from available technology.

The OTP's effectiveness in this intended role is, of necessity, dependent upon the attention and support it receives from the White House. In this regard, the office has been without an appointed Director for some 21 months now. During this period the OTP has been very fortunate, in my judgment, in having the able and competent leadership of its Acting Director, Mr. John Eger. However, such leadership is, indeed, no substitute for a Director who is appointed by the President and confirmed by the Senate.

It is, therefore, the committee's pleasure to welcome the President's nominee, Thomas J. Houser.

We are further honored this morning in having with us our illustrious colleague, and dear friend, Senator Percy, of Illinois, who will introduce the nominee.

### STATEMENT OF HON. CHARLES. H. PERCY, U.S. SENATOR FROM ILLINOIS

Senator PERCY. Thank you very much Chairman Pastore, members of the staff.

This is the third time I have had the distinct pleasure of presenting Tom Houser, my longstanding friend, to a committee of the Senate. He is now nominated by the President to be Director of the OTP.

I have known Tom Houser for a decade and a half and can speak with considerable personal knowledge of his experience and qualifications.

I wish to state with enthusiasm that Tom Houser is a distinguished and experienced public servant, whose leadership ability and background in the communications field will serve him well in the position for which he is being considered.

As you already know, Mr. Houser has had a distinguished legal career with one of our great railroads, and more than a decade ago I went to him and asked him to give up his career and help me launch a political career.

After considerable thought, he did resign from the railroad, Burlington, and devoted himself to getting me started in politics, for which I shall be everlastingly grateful. On occasion, I wonder about the decision, but for the most part I would say this has been for me a tremendously satisfying life and I hope that that contribution that he made has helped bring him into public life.

He served as Deputy Director of the Peace Corps, and served there with great distinction. He served as an FCC Commissioner; he served as a member of the FCC Advisory Council on Cable Television.

Since the OTP is the executive agency responsible for overall supervision of national communications matters, his tenure with the FCC on two occasions is of particular significance.

There is another aspect to be considered as well. During a time when public opinion about Washington is low and citizens' feelings about waste, inefficiency, and incompetence are running high, it is more important than ever for us to choose with great care the appointed top officials responsible for working with important national issues and areas of increasing public concern.

It is in this respect that Tom Houser will be able to draw upon his many fine personal qualities, not only to perform his professional assignments, but also to play a part in restoring confidence in Government.

In order to come to Washington, he leaves a recently completed home and a position with one of Chicago's prestigious law firms.

He is a decent, hardworking man, who is an expert at bringing together people of opposing viewpoints. I think he is an extraordinary administrator. Many lawyers are brilliant, able lawyers, but are not noted administrators, and I have seen Tom Houser in four different administrative capacities perform extraordinarily well. He has a way of motivating people, he can bring them into the act and make them feel that their role is an important role. He has a way of leading without driving, and he leads, I think, through inspiration. He sets an example by his own work pace, which is a prodigious one.

He is a man of integrity, openminded and fair. In sum, he will bring to this position attributes that merit confidence and respect—and he will get the job done.

Mr. Chairman, I appreciate this opportunity to express my own respect and admiration for Tom Houser, to endorse his nomination as Director of the OTP, and to urge the committee to act expeditiously to put him to work for the benefit of the Nation.

Senator PASTORE. Thank you very, very much.

We have, Mr. Houser, your biographical background, and I will ask that this be placed in the record at this juncture.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF THOMAS J. HOUSER

Address: 15214 Kishwaukee Valley Road, Woodstock, Illinois 60098.

Date of birth: June 28, 1929.

Place of birth: Chicago, Ill.

Marital status: Married the former JoAnn Ochsenhirt.

Children: Deborah, 21; Deneen, 19; David, 15.

Education: Robert Fulton Grammar School, 1935-43; Lindblom High School, 1943-47; Michigan State University, 47-48; Hanover College, 1948-51, A.B. degree in Political Science; Advance School of International Studies, work on masters degree, degree not received, 1951-52; and Northwestern University School of Law, 1956-59, Juris Doctors of Law degree.

Employment record: Montgomery-Ward, Credit Analyst, Chicago, Illinois, 1952; United States Rubber Company, Management Trainee, Chicago, Illinois, 1953-54; Association of Western Railways, Legal Department, Chicago, Illinois, 1959-61; Burlington Northern Railroad Company, Legal Department, Chicago, Illinois, 1961-65; The Chicago office of Senator Charles Percy, Legal Counsel and Staff Supervisor, Chicago, Illinois, 1967-68; Liebman, Williams, Bennett, Baird and Minow, Of Counsel, Chicago, Illinois, 1968-69; and Sidley and Austin, partner, Chicago, Illinois, 1973-76.

Government experience: Deputy Director of Peace Corp., 1969-70; Commissioner, Federal Communications Commission, 1971; Public member, U.S.I.A. Inspection Team, Yugoslavia, October 1975; Lecture tour for the State Department, Eastern Europe, April-May 1976; Legal Counsel and Assistant Treasurer, National Minority Purchasing Council, 1973-76; and Advisory Council to the F.C.C. on Cable Television, 1973.

Memberships: Membership in the Chicago, Illinois and American Bar Associations; Member and Director of the Federal Bar Association in Chicago, Illinois; Member, Beta Theta Pi, fraternity in college; Member and legal counsel for the Chicago area Boy Scouts; National Vice Chairman for National Asthma Center; Area Chairman, National Cancer Campaign Member, Chicago Committee; Member, of the Economic Club of Chicago; Member, the Union League Club of Chicago; Member, Executive Club of Chicago; and Legal counsel and Director, of TRUST, an organization dealing with inter-city problems.

Political affiliations and activities: Republican Committeeman, Wheeling Township, Cook County, 1962-66; Chairman, Executive Committee of the Cook County Central Committee, 1964-66; Campaign Chairman, Percy for Governor Committee, 1964; Campaign Chairman, Percy for Senator Committee, 1966; Campaign Chairman, Illinois Committee to Reelect the President, 1972; Lecturer for the Republican National Committee, 1967-68; and Miscellaneous contributions to Republican and non-Republican candidates totaling no more than \$500.

Honors and Awards: Tuition scholarship to Hanover College, Hanover, Indiana; Tuition scholarship to Northwestern University School of Law, Evanston, Illinois; Recipient of American Legion Award as outstanding high school graduate; Recipient of the Alumni Award as an outstanding college graduate, Hanover College; and Recipient of the Hanover College Alumni Achievement Award, 1970.

Published writings: The Fairness Doctrine, Notre Dame Law Journal, 1971; an article on the Fairness Doctrine, Business Review, March 1974; and numerous letters to the editors and various political commentaries which have appeared in the Chicago Press over the last 10 years.

Qualifications: I have observed government functions both as a private sector lawyer and as a government official and I believe this prospective is most helpful.

As a former Commissioner of the Federal Communications Commission, I believe I have reasonable understanding of the scope of problems and potential of the telecommunications industry.

As a private sector lawyer, I have served a modest number of clients before the F.C.C.

Senator PASTORE. Right now, it is your turn.

## STATEMENT OF THOMAS J. HOUSER

Mr. HOUSER. Senator, Mr. Chairman, I am very pleased to be before you this morning to have this opportunity to answer any questions that you or any other Senators may have.

I will state for the record that I did not seek this job; that the White House asked me to do it. I thought this job important enough, had enough potential to break my life, to take my family out of a lovely home and come here to do what I could.

Thank you, sir.

Senator PASTORE. At this point, I understand that the committee staff has submitted certain questions to you and that your answers have been received. I am going to ask that they be placed in the record.

[The questions and answers follow:]

## QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

*Question 1.* The Office of Telecommunications Policy (OTP) was created to advise the President and to represent the views of the Executive Branch on matters of telecommunications policy. Its effectiveness in this role is necessarily dependent upon the support and attention which it receives from the White House. If confirmed, do you believe that the OTP will have this necessary support and attention? What changes do you anticipate in the policies and organization of OTP in the months ahead? Are you satisfied with the present status of OTP as a creature of Executive Order? Do you think legislation to reconstitute OTP would be advisable? Please explain.

Answer. Based on my conversations at the White House, there appears to be genuine interest in, and support for, OTP. There exists an OTP Study Group in the White House with which I will be associated and which seeks to secure an optimal role for OTP. I am not sufficiently advised to comment on changes in policy or organizational structure. I have no views as to whether OTP is functioning with maximum efficiency via Executive Order. I would have no hesitancy to recommend statutory change if warranted by the facts.

*Question 2.* Do you believe there should be an articulated national telecommunications policy? How might such a policy be developed? What will be your policy priorities if you are confirmed?

Answer. Because of its enormous impact on our economy and society generally, I believe that an attempt should be made to formulate and articulate an openminded national telecommunications policy. Initially, I would see my policy priorities as follows: a. Spectrum management; b. formulation of international policies, both satellite and wire, due to upcoming conferences; and c. assessment of pending legislative proposals dealing with Cable, Copyright, and common carrier issues.

*Question 3.* What are your views as to the appropriate role of the OTP vis-a-vis the FCC and other governmental agencies responsible for the formulation and implementation of telecommunications policy? Please be specific for each agency. Do you anticipate any change in the relationships between OTP and other Executive Branch agencies concerned with telecommunications policy? Please explain.

Answer. To coordinate and cooperate with a view of curtailing duplication and husbanding a scarce national resource. There are a number of federal agencies which relate to OTP. DOD, HEW, Commerce, FAA, CAB in addition to FCC and State Department and Coast Guard deal in telecommunications on a regular basis. National Security is involved and I have not yet been briefed in this area. The FCC has a statutory mandate from Congress to regulate the Telecommunication industry on a day to day basis and I would work with the FCC on that principle. At this point I do not anticipate any change in relationships with other Executive Branch and regulatory bodies. The FCC has a joint responsibility with the President to intelligently allocate and manage the radio spectrum.

*Question 4.* There is, at times, a difference of opinion on particular international telecommunications issues between the FCC, the State Department, and

U.S. common carriers. What is your view of the appropriate role for OTP in the formulation and implementation of international policy?

Answer. OTP, FCC and the State Department each brings a peculiar expertise to the formulation of international telecommunications policy. I do not see the problem as one of sorting out as to whom has a superior role, but rather of finding a procedure to insure the most efficient input from each of these agencies.

*Question 5.* Because of the tremendous growth in international communications traffic, specialized systems are developing outside of the INTELSAT structure. For example, there are proposals pending for an aeronautical satellite system now in the experimental stage and for a new venture involving a maritime satellite system. What are your views as to the general approach which should be taken with regard to such matters of international facilities planning? Do you have any views on the question of the appropriate vehicle or entity for U.S. participation in such ventures?

Answer. This question is most intricate and I have not been briefed. However, I would follow an open-door experimental approach to the resolution of this important issue. The INTELSAT agreements must be considered and coordination is essential.

*Question 6.* As the economies of the world are drawn together, communications is one sector of the U.S. economy that continues to have a dominant role. OTP has recently taken a number of initiatives to insure U.S. leadership. Specifically, OTP has made an effort to strengthen the U.S. position in the ITU, OECD and most recently has embarked on an effort to coordinate joint concerns with nations in the Pacific Basin and Latin America. Have you had an opportunity to formulate any opinions on the appropriate role for the U.S. in international telecommunications?

Answer. Based on my experience as Deputy Director of the Peace Corps, and recognizing the superior role of U.S. technology, it would be my opinion that the U.S. cannot afford anything other than a leadership role.

*Question 7.* The OTP has advocated and supported legislative proposals for extensive de-regulation of cable television. What are your views in this area?

Answer. Because of pending copyright legislation and the changing needs of society, the future role of cable television as part of the telecommunications industry is unsettled and is being tested in various areas. Any change in cable regulation has to be carefully weighed in its impact on the economy and free broadcasting including UHF considerations. Possibly congressional action in copyright will help resolve the problem of the relationship between over the air broadcasting and future development of cable television.

*Question 8.* The OTP has been an advocate of competition in common carrier services in terminal equipment. What are your views on this subject? The Acting Director of OTP recently criticized legislation pending before the Congress which would alter current regulatory policy of telecommunications common carriers. Do you anticipate any changes in the position of OTP with respect to this legislation? Please explain. Your former law firm, Sidley and Austin, has represented and continues to represent AT&T. Does or will this have any bearing or influence on your views on these matters?

Answer. In answering the question I would like to state that while serving on the FCC, I voted for the entry of specialized carriers, served as Chairman of the FBX Interconnect Committee and voted for competition in the Computer Services Proceeding. I have not had any opportunity to study pending legislation re common carriers and can only state my belief that, if carefully and selectively done, competition can be substituted for regulation. National Policy has been to favor competition. We should however, always have fore-knowledge of the economic and social impact of proposed changes. With respect to my association with Sidley & Austin I would state as follows: a. I have severed my relationship; b. my former partner, Newton Minow served many notable broadcaster clients while I served as an FCC Commissioner yet I don't believe there was any criticism of my being pro-broadcast; and c. I had no role in AT&T legal work at Sidley & Austin and can assure that I will be free of improper influence.

*Question 9.* As you know, the frequency spectrum is a little understood but very important natural resource. What is your view regarding the necessity of establishing priorities between government and the private sector affecting use of the spectrum? Do you have any views on the various proposals before the FCC to drop in additional channels in the VHF portion of the spectrum? Are you aware of the complaints concerning interference with television reception and the in-

creasing demand for spectrum, by citizens band operators? Do you have any views as to possible solutions to these problems?

Answer. There is a limited amount of frequency space available for allocation, therefore, it is mandatory that we assess the needs based on objective factual data. With respect to the drop-in issue, I understand this matter is under review, at the FCC, and that the FCC has several reservations re this OTP proposal. It would be my view that the future of UHF is a major consideration as well as technical interference issues. I have no position on these proposals at this time. While serving on the FCC, I came to the conclusion that the FCC was losing control over citizen band operators. This phase of CB radio is a regulatory body issue and I am aware that the FCC has commenced better enforcement procedures. As to additional frequency space for CB radio, it must meet the "need" test that I outlined above.

*Question 10.* One of the OTP's chief responsibilities is to formulate policies and coordinate operations for the Federal Government's own communications systems. Do you have any views as to general principles which should be applied in meeting this responsibility? In this regard, the U.S. Government is the largest single user of telecommunications in the world with an estimated \$50 billion investment and \$10 billion annual expenditure. Do you see any problem areas of unnecessary duplication or overlap and any role for the OTP with respect thereto?

Answer. This is an operational question and I feel that one needs some experience in order to answer adequately. However, there may be some excessive duplication, largely caused by political considerations and it is my goal to reduce or eliminate federal duplication.

*Question 11.* Since the Federal Government's extensive use and purchase of communications has a significant impact on the private telecommunications industry, what, in your judgment, is the appropriate role of the Government with regard to encouraging innovation in the private sector?

Answer. I would support and encourage innovation in the private sector, especially when such innovation would result in a conservation of valuable spectrum, improves quality of communications services and reduces cost.

*Question 12.* The OTP has supported a system of Federal funding for public broadcasting which will insure that local stations and programing decisions are insulated from extraneous interference or control. Are you in agreement with this philosophy?

Answer. Having served over three years as a trustee on the Board of WTTW in Chicago, I am very interested in the growth of public broadcasting. The same principles that apply to commercial broadcasting should generally apply to public broadcasting. Public broadcasting should enjoy freedom of expression and should be essentially free of programming regulations.

*Question 13.* The issue of the impact of telecommunications technology on privacy is of growing concern. What are your views on the current governmental efforts to deal with this issue?

Answer. I strongly support current government attempts to protect the privacy of our citizens in both their personal lives and in their economic transactions. As our government grows more pervasive in the lives of our citizens, it earns a special burden of protecting, wherever possible, right of freedom and privacy.

Senator PASTORE. On the question of matters which might raise possible conflicts of interest, I understand that the OTP and the Justice Department have submitted opinions to the committee which indicate that there are certain items that might create a situation of conflict of interest; your directorships and some of the assets that you own. I understand that you will dispose of these if you are confirmed.

Mr. HOUSER. It is true, Mr. Chairman, I own stock in one communications company that will be sold immediately upon confirmation. And, I serve on five boards of directors, all of which I will resign from. That is five business corporation boards of directors. I also serve on some other boards which I will also resign from.

[The letters follow:]

OFFICE OF TELECOMMUNICATIONS POLICY,  
EXECUTIVE OFFICE OF THE PRESIDENT,  
Washington, D.C., June 23, 1976.

Hon. WARREN G. MAGNUSON,  
Chairman, Senate Committee on Commerce, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: Pursuant to your request of June 14, 1976, I have reviewed the personal history and financial statements of Mr. Thomas Houser, enclosed herewith, for any conflict of interest or other legal barrier to his serving in the position of Director, Office of Telecommunications Policy, Executive Office of the President.

The applicable statutes, regulations and provisions governing such matters are found in Chapter 11 of the Criminal Code, 18 U.S.C. 201-224, Chapter II, Part 202 of the regulations of the Office of Telecommunications Policy, 47 CFR Sections 202.735-1-26, and Section 3(c) of Reorganization Plan No. 1 of 1970 which established the Office of Telecommunications Policy.

Specifically, Section 208 of Title 18 states in pertinent part:

"... whoever being an officer or employee of the executive branch of the United States government ... participates personally and substantially as a government officer or employee ... in a ... particular matter in which to his knowledge, he, his spouse, minor child, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest ... shall be in violation of the criminal code.

Executive Order No. 11222, May 8, 1965, 30 F.R. 6469 and Title 47, Part 202 of the Code of Federal Regulations set forth the standards of conduct for officers and employees of the Office of Telecommunications Policy, Executive Office of the President. Of particular interest therein is § 202.735-8 "Conflicts of Interest" which is similar to Section 203 of E.O. 11222 and which states:

(a) A conflict of interest may exist whenever an employee has a substantial personal or private interest in a matter which involves his duties and responsibilities as an employee. ... It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance that his official position might be used to his private advantage."

Finally, Reorganization Plan No. 1 of 1970 which established the Office of Telecommunications Policy provides at Section 3(c) that: "No person shall while holding office as Director or Deputy Director engage in any other business, vocation, or employment."

Mr. Houser has stated that (i) upon assuming the duties of the office of Director of the Office of Telecommunications Policy he will have severed all connections with his present employer, business firms, association or organization; (ii) he has no plans after completion of government service to resume employment, affiliation or practice with his previous employer, business firm, association or organization, and that no person has made a commitment to employ his services in any capacity at such time; and (iii) that all relationships with present and former clients in the communications field have been terminated.

Mr. Houser has further stated that his only investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest for him in the position to which he has been nominated include investments in two communications companies, a directorship in one of those companies, directorships in two state banks, a federal savings and loan association, and the Martin E. Janis Company, a public relations firm. He has represented that, if confirmed, he will resign the directorships and dispose of all stock in the communications companies, and that he will also resign the directorships of the three financial institutions, if necessary.

In recent months, OTP has been studying policy issues respecting the development and ownership of electronic funds transfer systems (EFT). In that this work has been very general in nature and has concentrated primarily on the role of the Federal Reserve Bank in EFT, the appearance or possibility of any conflict existing through the continuation of Mr. Houser's directorships with the financial institutions is, in my opinion, exceedingly remote and speculative at present.

EFT is, however a nascent and evolving service, and it is uncertain what future policy role this office may be required to fulfill. There exists a possibility, therefore, that some future conflict may emerge. Moreover, as noted above, Sec-

tion 3(c) of Reorganization Plan No. 1 specifically prohibits the Director from engaging in any other "business, vocation, or employment." In that Mr. Houser is called upon to counsel these financial institutions, as well as the Martin E. Janis Company, in his capacity as a director on their governing boards, and is reimbursed therefore, such activity would appear to be encompassed within the prohibition of Section 3(c). In light of the foregoing, it is my opinion that Mr. Houser should resign as a member of the board of the Schaumburg State Bank, Barrington State Bank, Skokie Savings and Loan and the Martin E. Janis Company. Mr. Houser has indicated his willingness to comply with these conditions.

Finally, Mr. Houser has identified two community public service organizations—the Chicago area Boy Scouts and TRUST, an organization dealing with intercity problems—to which he has contributed his services as legal counsel. Although there is obviously no question of potential conflict with respect to these activities, it would appear that the services are rendered pursuant to Mr. Houser's vocation, the practice of law, and that the provisions of Section 3(c) are therefore applicable to these offices as well. It is our understanding that, if confirmed, Mr. Houser will resign his position as legal counsel and Director of TRUST, and that he will either resign as legal counsel for the Chicago area Boy Scouts or will continue his relationship with that organization in an inactive capacity only, rendering no legal services during his tenure as Director of the Office of Telecommunications Policy.

It is my opinion that upon compliance with these representations, Mr. Houser will not be engaged in any other "business, vocation, or employment" within the proscription of Section 3(c) of Reorganization Plan No. 1, and that no conflict of interest will exist, or appear to exist, that would bar Mr. Houser from serving as the director of this office. It is my further opinion that insofar as is revealed by the information contained in the enclosed documents, there exists no legal barrier to his assuming that position.

Sincerely,

ROBERT W. ROSS,  
*Acting General Counsel.*

DEPARTMENT OF JUSTICE,  
*Washington, D.C., June 24, 1976.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: We have been advised that your Committee wishes the opinion of this department concerning potential problems under the Federal conflict of interest laws or other legal impediments to the service of Mr. Thomas J. Houser as Director of the Office of Telecommunications Policy (OTP), the position for which he has been nominated. We are pleased to respond.

The significant conflict of interest statute involved is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that an officer or employee of the Executive branch may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor children, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest, unless the officer or employee first obtains an appropriate exemption pursuant to 18 U.S.C. § 208(b). We have reviewed the personal and financial data that Mr. Houser has submitted to your Committee in light of this provision and Reorganization Plan No. 1 of 1970, 84 Stat. 2083, which established OTP.

Mr. Houser serves as a director of Liberty Communications, Inc., the Barrington State Bank, the Schaumburg State Bank, Skokie Federal Savings and Loan, and the Martin E. Janis Company, a public relations firm. He has in the past received director's fees ranging from \$300 to \$2400 per year for his service on these Boards.

Mr. Houser states in his response to the Committee's questionnaire that he will definitely resign as a director of Liberty Communications if he is confirmed and that he will also resign as a director of the two banks and the savings and loan association if your Committee concludes that this would be desirable in order to avoid potential conflict of interest problems. In this connection, we note that section 3(c) of Reorganization Plan No. 1 of 1970 provides that the Director of OTP may not "engage in any other business, vocation, or employment." We have been informed by the Office of General Counsel of several independent

regulatory commissions that comparable provisions in their governing statutes pertaining to members of those commissions are administratively construed to prohibit service on the board of directors of a business corporation on the theory that such service constitutes engaging in a business. See, e.g., 15 U.S.C. § 41; 47 U.S.C. § 154(b); 49 U.S.C. § 11. We believe that this is a reasonable construction of these statutes and that section 3(c) of the reorganization plan involved here should be interpreted in the same manner. Accordingly, it will in our view be necessary for Mr. Houser to resign as a director of all five corporations in which he currently serves, including the Martin E. Janis Company. We have been informed by the Office of the General Counsel of OTP that Mr. Houser has stated that he will resign from these directorships.

We also note that Mr. Houser serves as a director of the Federal Bar Association in Chicago, National Vice Chairman of the National Asthma Center, Area Chairman for the National Cancer Campaign, and a director of TRUST, an organization dealing with intercity problems. In our opinion, positions in organizations of this type do not constitute engaging in a "business, vocation, or employment" within the meaning of the reorganization plan, at least where the involvement does not require a significant expenditure of time.

However, Mr. Houser also states in his questionnaire that he is legal counsel to the Chicago area Boy Scouts and to TRUST, the organization mentioned above. We are of the opinion that serving as legal counsel for these organizations, even without compensation, should be viewed as engaging in a vocation and is therefore prohibited by section 3(c) of the reorganization plan. It is our understanding that if he is confirmed, Mr. Houser will resign his position as a director and legal counsel of TRUST and will render no legal services to the Chicago area Boy Scouts while he is Director of OTP.

In the financial statement dated February 23 that was submitted to your Committee, Mr. Houser lists assets belonging to him and his wife which consist of shares in a Keogh Retirement Plan, Liberty Communications, Inc., Gregg Communications, Inc., and the Schaumburg State Bank, as well as several life insurance policies, notes and mortgages receivable, a number of parcels of real estate, certain personal property, and \$47,250 in a partnership account with the law firm of Sidley and Austin.<sup>1</sup>

In his response to your Committee's questionnaire, which was completed after the financial statement just mentioned, Mr. Houser states that he has severed his relationship as a partner with Sidley and Austin and that he has no arrangement for reemployment with that firm. We assume that Mr. Houser withdrew the \$47,250 in his partnership account when he severed his relationship with the firm. If he has not done so, he would in our view have a "financial interest" in any particular matter at OTP in which Sidley and Austin is representing an interested party. In such a case, Mr. Houser would be required by 18 U.S.C. § 208(a) to disqualify himself or to seek an appropriate exemption under section 208(b).

Of the remaining assets listed in the financial statement, only the \$2500 worth of stock in the Schaumburg State Bank would appear to have any realistic potential for giving rise to a financial interest under 18 U.S.C. 208(a) in particular matters coming before Mr. Houser as Director of OTP. This might arise as a result of the work of OTP in assessing policy issues involved in the development of electronic funds transfer systems. We understand that OTP's work in this area thus far has been limited to a consideration of whether the Federal Reserve Board or the private sector should control these systems and what provisions should be made to protect the privacy of the users of the systems. It is possible that such broad policy questions do not constitute "particular matters" requiring Mr. Houser's disqualification on the ground that their resolution might have a "direct and predictable effect upon the financial interests covered by the section." Federal Personnel Manual, Chapter 735, Appendix C, at page 4. But if it should appear that a decision on these or other policy questions could have an identifiable impact on the financial condition or prospect of financial institutions in the private sector generally, or small state-chartered banks or the Schaumburg State Bank in particular, it would be necessary for Mr. Houser to

<sup>1</sup> In section B(1) of his response to your Committee's request for information, Mr. Houser states that the enclosed financial statement reflects his present net worth, but does not expressly state whether it also fully reflects the net worth of his wife and minor children, whose assets are attributed to him under 18 U.S.C. § 208(a). If Mrs. Houser or the minor children own any additional assets, the principles outlined in this letter would be applicable to those assets as well.

disqualify himself or seek an appropriate exemption under 18 U.S.C. § 208 (b). The same options would be available if a financial interest in a particular matter should arise by virtue of the ownership of the other assets listed in the financial statement or the option to purchase 2000 shares in the Martin E. Janis Company, which is listed in section B(3) of Mr. Houser's response to your Committee's questionnaire.

Finally, it appears that the stock option just mentioned was granted in connection with Mr. Houser's past service on the board of directors of the Martin E. Janis Company without any reference to his federal employment. Therefore, the retention or exercise of the option would not, in our view, raise any problems under 18 U.S.C. § 209.

We are not aware of any other conflict of interest problems or legal barriers involved in the service of Mr. Houser in the position to which he has been nominated.

Sincerely,

LEON ULMAN,  
*Deputy Assistant Attorney General,  
Office of Legal Counsel.*

Senator PASTORE. You have been on the FCC and now you are being appointed to the OTP?

Let me ask you:

How do you measure the relationship between the two?

How do you see the function of one as against the function of the other?

Mr. HOUSER. I view the FCC as a statutory agent for the Congress, to regulate the telecommunications industry on a day-by-day basis, and to participate in the policymaking decisions through their specific decisions.

I don't know that—in fact, I was unaware when I sat at the FCC whether or not they had a solid ongoing, full-time policymaking operation. I am rather skeptical about that.

I do, however, believe that they make policy through their various decisions.

I think the difference between that kind of operation and the operation in OTP is to get out in front of where the industry is today and try to look into the future, try to see where problems are developing, and to call those problems to the attention, not only of the FCC but to the Congress and the President.

I see that as a major, largely research function, with an eye to the future.

Also, as you know, OTP does have a management function and that is in the day-to-day regulation of the spectrum allocated to the Government. I am not sure that is consistent with what I consider an optimal role for OTP.

Senator PASTORE. Do you think it is the function of OTP to supersede any decision that is made administratively by the FCC, which is an arm of the Congress?

Mr. HOUSER. No. I think OTP should be free to disagree. Certainly what OTP does is not binding on the FCC. I don't see any way in which they can supersede.

Senator PASTORE. I know, but you have the power and authority of the White House behind you.

Mr. HOUSER. Well, we hope that we have the power of the White House behind us.

Senator PASTORE. Well, I mean as a matter of influence on the decisions, the free decisions of the FCC. Do you think that is proper?

Mr. HOUSER. When I sat on the Commission, Mr. Chairman, at no time did I have the White House—

Senator PASTORE. The FCC is an agency of the Congress created in order to administer the communications policy of the United States of America. That policy is usually initiated in large form by statutory law which is passed by the Congress and approved by the President.

While it is true that the OTP has a lot to do in advising the President, and also in formulating what the Executive feels is the policy, do you think it is within your function to tell the FCC that once they have made an administrative decision that they should change it, or that it is wrong?

Mr. HOUSER. I am trying to say, "No, sir."

The answer is, no.

Senator PASTORE. I would like to get that clear on the record, because the OTP was never created to supersede the FCC.

We are moving, naturally toward a one-world concept insofar as communications are concerned, and there are many, many international and domestic problems. I was always a great advocate and a great proponent of the OTP. The only trouble was that we had one man that was appointed—an expert in the field—who from the time that he was sworn in until the time he finally resigned had never sat down and talked with the President once, never been invited to talk to the President once.

As a matter of fact, he was actually acting on his own. And it was never intended by the Congress that the OTP function in that way.

Now, on this matter of an international communications policy, you know we don't have one.

Mr. HOUSER. We don't have a consistent one, I believe.

Senator PASTORE. That is right.

Are you going to make it your business, if you are confirmed and sworn in, to make sure that we do have an international policy on communications?

Mr. HOUSER. You just articulated very well, Mr. Chairman, the limitations on the power of my office. I cannot assure that, but I can assure you I will work toward that end.

Senator PASTORE. The point is that all these negotiations have to be undertaken by State Department diplomacy. You know that.

And the big question here is, are we going to allow our country to hold the short end of the stick. The United States was the pioneer in the area of satellite technology. As you well know, we are still talking about the basic issues of domestic and international satellite communications. This is a wide field. I would hope that if you are confirmed, you would make it your business to get some of these problems resolved. I don't want you to do it today, but I think you ought to give it serious thought.

Mr. HOUSER. Mr. Chairman, your staff got into that matter in one of their questions.

It is my feeling that given the ultimate leadership of the United States in technology and electronic technology, there really can be no justification for a second role in international policy.

Senator PASTORE. Now I regret very much that this other matter has to be brought up in public, but inasmuch as the letter was sent to me, I think I have a responsibility to do so, so that the air will be cleared once and for all.

On the date May 12, 1976, I received the following letter:

HON. JOHN PASTORE,  
Chairman, Subcommittee on Communications, Commerce Committee, United States Senate, Washington, D.C.

Dear Senator Pastore: In last Friday's issue of the *Washington Post*, I noticed with interest, John Carmody's article on proposed names to be submitted to the Senate by the White House for confirmation. One was for the opening of Director of the OTP, and Thomas J. Houser of Chicago was named.

The Subcommittee on Communications should be aware as they consider this nomination that Houser was involved in misrepresentation in a land scheme in New Mexico and in other real estate enterprises. You will note from the attached information that he had an interest in Game Garden Ranch—property which was involved in the New Mexico land fraud swindles in 1965-67 era. He sold me 10 of the 80 acres he held in the ranch at a price ten times its worth, I am told by Ed Staffel, investigator of the New Mexico Attorney General's Land Fraud Division. He misrepresented the land as having accessible water, trees and vegetation—all of which proved to be untrue. When I was able to visit the property myself and discuss the matter with Mr. Staffel, I became aware that Houser, an attorney, had failed to provide me with a title commitment for an owner's title insurance policy (which is the evidence of good title) and an affidavit of title. I brought this to the attention of Houser and Mr. Trienen, Chairman of the Executive Committee of Sidley and Austin of Chicago, and requested the return of my money. Sidley and Austin negotiated the release and return of my funds.

Because of this experience with Houser, I do not feel that a person with this type background should be in a policymaking position, and I respectfully request your consideration of the information included with this letter.

If there is any other information I might provide, please call me at (number omitted) during the day; (number omitted) is my residence phone number.

Sincerely, Rita M. Skelton.

Senator PASTORE. Now, I must say that this letter disturbed me when I received it. I have already discussed this matter with Mr. Percy. He is familiar with it. I believe that Mr. Percy said that he knew Miss Skelton. I had the staff call Miss Skelton on the phone to advise her of the hearing today. And we wrote her a letter informing her of today's hearing, and I want to put that letter in the record.

Now let me ask, is Rita Skelton in this room?

[No response.]

Is Rita Skelton here?

[No response.]

There is no answer in the affirmative, and I want the record to show that.

This is the letter she received:

Dear Miss Skelton: This is to confirm our telephone conversation of Friday, June 25th, 1976 in which, at Senator John O. Pastore's direction, I advised you that the hearings on the nomination of Mr. Thomas J. Houser to become Director of the OTP have been scheduled for Tuesday, June 29th, 1976 at 9:30 a.m. in Room 5110 of the Dirksen Senate Office Building.

The public is invited to attend.

Sincerely,

JOSEPH R. FOGARTY,  
Communications Counsel.

Senator PASTORE. And the letter was dated June 25. And this was following the telephone call.

I will ask again, is Rita M. Skelton in the room?

[No response.]

Again there is no answer, and I conclude that she is not in the room.

Now, Mr. Houser, you have heard this letter. Will you give us your side of the story.

Mr. HOUSER. Let me begin my response. Mr. Chairman, by clarifying whether or not you have received Mr. Percy's letter on this matter, Senator Percy's letter? Have you seen it, Mr. Chairman?

Senator PASTORE. I haven't seen it yet, but they tell me that there is one here. We have a letter here of June 24, signed by Senator Percy. I will read it into the record.

Dear Mr. Chairman: Because of commitments in Illinois, I will not be able to attend your Subcommittee's hearing on the nomination of Tom Houser to be Director of the OTP. Therefore, I wanted to take this opportunity to confirm our conversation earlier this week.

Both my staff and I have looked into the accusations made against Mr. Houser by Miss Rita Skelton in her letter to you of May 12, and I am fully satisfied that there was no wrongdoing on Mr. Houser's part.

As I state in my formal testimony, I highly recommend Tom Houser for the post to which the President has nominated him.

Sincerely,

CHARLES PERCY.

Mr. HOUSER. May I ask, Mr. Chairman, whether or not you have received a letter from the White House?

Senator PASTORE. Yes; I have.

Mr. HOUSER. Thank you.

Making my response, let me initially point out that Miss Rita Skelton is not a stranger, but a friend of some 10 years' standing. On numerous occasions she attended parties at my home, and on a number of occasions, she was the only guest.

Senator PASTORE. Before you go on, I think I should read the letter just referred to into the record: The White House, Washington, June 24, 1976.

Dear Mr. Chairman: Pursuant to your request, the office of the Counsel to the President has reviewed the allegations made by Rita M. Skelton in a letter to you dated May 12, 1976. These allegations challenge the suitability for appointment of Thomas J. Houser, the President's nominee to be Director of the OTP.

Mr. Kenneth Lazarus of this office and I have reviewed the various documents presented by Miss Skelton and have questioned Mr. Houser at length—

These documents, incidentally, I furnished to the White House.

Regarding the several real estate transactions at issue. Based upon this review, we have concluded that Mr. Houser committed no impropriety in these circumstances.

I trust this satisfies your request.

Sincerely,

EDWARD C. SCHMULTS,  
*Deputy Counsel to the President.*

You may proceed.

Mr. HOUSER. Thank you, sir.

I started to point out that Miss Skelton was no stranger to myself and my family. She worked initially in Senator Percy's first campaign in 1964 in Illinois; she was in my home on a number of social occasions. In fact, she was a guest in my home when she was the only guest.

I have some evidence here sir, to the fact that she was not coerced—  
Senator PASTORE. She was what?

Mr. HOUSER. She was not coerced, pressured or seduced into buying the land, and I would like to submit to you for your information, a letter that I wrote to her under date of December 13, 1973. And if you would like, I will read it into the record.

Senator PASTORE. Please.

Dear Rita, Thank you for your note inquiring about New Mexico properties. If you take time to investigate, you will learn that property in Colorado, anywhere near a ski area could run \$4- to \$5000 an acre. On farmland on the periphery of a ski recreation area, an acre would run \$1- and \$2000 an acre.

Fortunately, New Mexico remains a sleeping giant, equally beautiful to Colorado, perhaps five years away from all-out pressure on real estate. My best guess is that real estate in the attractive areas of New Mexico is running about \$800 to \$1000 per acre.

I am not in a rush to sell my property located outside of Taos, but if you are really interested I would be willing to sell you, as an old friend, to sell 10 acres of my land for \$6,500 or \$650 an acre.

Within one half hour drive of Taos, there are five very fine ski areas located in the Sangre de Cristo Mountains, which are part of the Rocky Mountains.

My parcel of land is about ten miles west of Taos and offers a very lovely view of the mountains, and of course, fine access to the recreation area.

I look forward to hearing from you soon.

Meantime, all best wishes for a Merry Christmas and a happy holiday.

Senator PASTORE. The initiative and order for this transaction were instituted by Miss Skelton?

Mr. HOUSER. This came up in a conversation one day in my home, and she expressed her interest, so then she wrote to me about it. And I wrote this letter in response.

I also now want to point out that when I sold this land to her, it was not a private, special, or secret price. I had listed the property in New Mexico for \$5,000 for the 10 acres, at the time she bought it, and that is what I charged her, \$5,000 for 10 acres. And I have a copy of the original listing agreement, which was executed on October 12, 1973, and I will make this available for your inspection.

Senator PASTORE. We will make it part of the record.<sup>1</sup>

Mr. HOUSER. At the time I sold the land to her, I urged her to go out to see it and I told her at that time to the best of my recollection, that if she didn't enjoy that 10 acres, she could have any other 10 acres in the parcel up there.

She also complains, in her letter, that there are no trees on the property.

As I recall, Game Garden Ranch, which was a development where I bought my 80 acres, is comprised of two sections which I think amounts to about 720 acres of land. I don't know where she was on Game Garden Ranch, but I can assure you that on my 80 acres, the southern 40 acres is an open grazing land, but the northern 40 is composed of heavily wooded pinion, pine, and ponderosa trees.

She may not have been looking at my land when she concluded that there were no trees. There were trees on my property and there were trees in many other areas on Game Garden Ranch.

Senator PASTORE. Were you familiar with this property or was this something that you had acquired without visiting?

Mr. HOUSER. No, I visited first.

<sup>1</sup> See p. 59.

I think I had been to the property two or three times. But I saw it first before I bought the 80 acres.

In October of last fall, Mr. Chairman, I was in Yugoslavia for a month as the public member of the five-member inspection team operating on behalf of the U.S. Information Agency. It was at that time that Miss Skelton became very unhappy with her investment in this land in Taos, N. Mex. And in my absence, she contacted one or two of my partners.

When I came back they made me aware of that, and that night I called her and asked her what she was unhappy about.

And she said that I was in breach of contract because I had failed at closing to provide her with evidence of good title on the land.

I tried to point out with her that there was a distinction between the execution of the contract and the closing. I told her the closing would take place if and when she completed her monthly payments and if at that time I did not provide her with good evidence of title, she was entitled to her money back.

And as your counsel can tell you, sir, in the contract it has a specific date for closing, which is February 1978. So Miss Skelton did not understand the difference between the execution of the contract and closing. I tried to explain this to her, but she was unhappy. I even offered to show her the type of policy which I had on the 80 acres.

It is significant at this point, sir, to point out that when she complained to me about that title policy, she never raised an issue about the price of the land. The first time I heard these allegations was in her letter to you.

I have owned this land for almost 8 years now, and I have never heard any allegations about a scandal up there.

With respect to the price on the property, when I bought the property in 1968, the price depended on what kind of acreage you would buy. If you bought 160 acres, you paid so much per acre; if you bought 100 acres, you paid so much more; 80 acres—I bought my land, 80 acres at \$125 an acre, and at that time if I bought 10 acres, it was at \$225 an acre.

I held the property for over 5 years, when I sold it to her.

And moreover, the realtors that I listed the property with, I discussed the property with them and they thought it was a fair property and moreover, sir, I have been skiing in that area, and I bought land in that area and I know how prices were moving. As a matter of fact, in the summer of 1973, I bought land at a development called Bacca Grande Development in Colorado. It is a subdivision of the Arizona and Colorado Land Co. And I bought a lot that was somewhere between a half acre and two-thirds of an acre, and paid \$5,500 for that lot.

In January of 1974, shortly before I sold this land to Rita, I was out skiing in the Taos area, and discovered the Bacca Grande Angel Land Development, about 25 miles east of Taos. I liked that area more, and transferred my interest in the Colorado development to the New Mexico development.

In that period of time, my investment had increased over \$2,000. And the lot that I finally paid off was worth \$9,500.

So I was aware of the fact that land was moving. I based my price on discussions with the realtors and what I had originally paid for my land 5 years ago.

Senator PASTORE. You had a contract for sale of real estate—  
Mr. HOUSER. Which was submitted to you.

Senator PASTORE [continuing]. Which you know is enforceable both by the buyer and the seller?

Mr. HOUSER. Right.

Senator PASTORE. When she became dissatisfied, you offered to give her her money back.

Mr. HOUSER. That is right.

Senator PASTORE. Now the law was on your side in enforcing this contract if everything was in order. Why did you pay her any interest?

Mr. HOUSER. She insisted on it. When she talked to my partners, and when I talked to her that night—it is not my intention to criticize Miss Skelton in any way in making this explanation, but I think it can be brought out that she is an emotional person. In talking to my partners, in talking to myself, she was unreasonable, almost irrational, and sounded very unhappy. And my partners and I both felt there was no point in pushing her, to give her her money back, and she insisted on the interest.

Senator PASTORE. And that is the reason why you paid it?

Mr. HOUSER. On her insistence, yes, to get the matter behind us.

Let me go on.

She alleged in her letter that there is no water on the property, Mr. Chairman. And I have two letters here, which suggest that she is wrong.

One of the brokers I listed the property with—and incidentally, I ought to mention a second listing was for \$6,000 an acre and the first listing was for \$5,000 an acre and she was sold the land for \$5,000—for 10 acres, excuse me.

One of the brokers writes me, and I will make this a part of the record:

The county has your property classified as irrigated. Do you know the source of irrigation water, and what water rights go into the land?

The county had decided this land was irrigated.

Another broker wrote me, Mr. Charles Dunham Brooks, who I understand at one time was a partner with Mr. Mitchell, who was an outstanding Democrat years ago, wrote:

I ran into Menyhert—

Menyhert was the director of Game Garden Ranch, the development.

While at Game Garden he tells me the wells along the region on the west of the access is 500 feet and producing.

So I have reason to believe—

Senator PASTORE. May we have copies of those letters to be placed in the record?

Mr. HOUSER. Yes.

And I have already touched upon the issue of timber.

Finally, sir, in making my case and based on the evidence I have now, after I was apprised of Miss Skelton's allegations, I called Mr.

Brooks, who I had the property listed with prior to the time Miss Skelton bought the land, and asked him to write a letter to me commenting on what took place at the time he listed the property.

And this is what he said: This letter was written June 25, 1976.

Dear Mr. Houser: In October 1973, you requested that I list and sell for you ten acres of undeveloped land here in Taos County, northwest of the town in a developing area known as Game Garden Ranch.

I informed you that I did not list properties sight unseen. Now I will make an inspection as soon as possible, communicating with you thereafter.

I proceeded to Game Garden shortly after writing you. I located your holding from a plat you had given me, augmented by a map of the area.

After going over the acreage on foot, and talking to Mr. Menyhart, the developer of Game Garden Ranch, I rated the property at a figure of \$500 and entered into an exclusive right of sale listing contract with you at that figure.

That ties into the listing agreement with Mr. Brooks, which was to sell the property at \$5,000 for the 10 acres. So I had his input in arriving at this price.

In sum, sir, I would like to share with you three points. All Miss Skelton has produced, is a letter of allegations with not one iota of proof.

She has alleged that I have made misrepresentations with respect to the land. As a lawyer, it is my understanding you can misrepresent by withholding from the buyer, information that you know, or deliberately misrepresenting something that you know.

I have tried to show you that I have not done that and there is no evidence that I have. The price was one reached by input from the local realtor, that I owned land in the area, that I have been in the area, that I was aware of the increase in prices.

I also produced evidence of water on the property.

I want you to know, sir, that after hearing of her allegations, I twice reached Miss Skelton on the phone and asked to sit down and talk with her and try to explain my side of these allegations. But she was not at all interested in doing that.

As my financial record shows, Mr. Chairman, I am very strongly and heavily into real estate. I believe in it as an investment, and I want you to know that only Miss Skelton has raised any questions about my integrity.

Finally, sir, I would suggest my belief that Miss Skelton's problem is, she does not understand investment, she does not understand risk, and she most certainly does not understand real estate. And with that, I will close my comments.

[The letters and documents submitted by the witness follow:]

CHARLES DUNHAM BROOKS, REALTOR,  
TAOS, N. MEX., October 12, 1973.

MR. THOMAS J. HOUSER,  
Sidley & Austin,  
Chicago, Ill.

DEAR MR. HOUSER: I was able to get into the property and to your holdings yesterday by Jeep—despite the resultant mud from the previous day's unseasonable and prolonged storm.

Accordingly, the listing agreement is enclosed for your signature.

Your Deed from Menyhart shows you as sole Grantee in 1968. However if you are married, Mrs. Houser should sign the agreement as well as yourself. If you are unmarried, would you kindly insert the words, "as his sole property" under your signature; or, if married and you took title, alone, please do the same.

I ran into Menyhart while at the Game Garden. He tells me the well along the ridge on the west of the access road is 500' and producing. The well he is drilling out in the open, east of the road is down 800', but had caved and was being re-opened. However, I did not gather water depth had yet been determined.

Menyhart stated he is getting in more gravel presently—something much to be desired as with winter coming, access for showing is going to be difficult if this year is anything like last, weatherwise.

Menyhart told me the map you sent is to a scale of 500' = 1 inch. This gives your north parcel (as well as the other three) a north-south dept of 625'. I presume the parcels sold are to run the depth of this parcel. This would give each 5-acres a frontage on the road of just under 350 feet. Please indicate if this meets with your approval.

On the alternate forms of financing shown on the Agreement, please give me your preference as to Contract or Mortgage.

Sincerely yours,

CHARLES D. BROOKS.

UNITED FARM AGENCY,  
TAOS, N. MEX., March 13, 1974.

Mr. THOMAS J. HOUSER,  
One First National Plaza,  
Chicago, Ill.

DEAR Mr. HOUSER: We would certainly be interested in listing your property in the Game Garden Ranch. We are familiar with this general area. The Country has your property classified as irrigated, do you know the source of irrigation water and what water rights go with the land? Aspects of advertising would depend on the features of the property.

Please fill in the enclosed listing agreement as fully as possible. We'll need the legal description, your price, down payment, and the rate of interest you would charge (7% would be attractive), and the period of time you would be willing to carry a real estate contract (10-15 years).

Sign on the back of the last two pages and return the agreement. We will complete it and send you your copy. A map of your property and how to get to it should accompany the listing agreement.

Thank you for your reply. We will get to work selling your property as soon as we receive the signed agreement.

Yours truly,

ED DEVLIN.

CHARLES DUNHAM BROOKS, REALTOR

P. O. BOX 536  
 TAOS, NEW MEXICO 87571  
 AC 505-758-4558



Name	Thomas J. Houser			Total Price	\$5,000.00
Address	One 1st Natl. Plaza, Chicago 60670			Mortgage	None
Legal Desc.	Legal description to be furnished Buyer at sale by Seller.			Down Payment	1/3 cash
Br	Br	Br		Terms	Balance over 2 yrs. on Contract or Note & 1st mortgage with interest at 7 1/2 %/annum.
BR	Bath	LR		Taxes	
DR	Kit	Util		Insurance	
Den	Gar	Other		Builder	
Extras	) 1 parcel of 10 A. or a 2-parcel sale @ 5 A. each.			Zoning	Restrictions in Seller's Deed, 11/21/68 to govern
Sq Ft	Lot Size			Restrictions	
Age	Condition			Deed	
Const.	Map			to govern	
Roof	Heating				
Wash RI	Dryer RI				
Util	Sewer or Cesspool				
Price Includes:					

Remarks Parcel or parcels sold are to front on east-west road along face of Seller's most northerly 20acre parcel; as shown on map provided Selling Agent, 9/18/73. Seller warrants Title Insurance is obtainable; but at Buyer's expense.

In consideration of the REALTOR'S agreement to list and/or advertise and/or offer for sale or exchange the above property, I/We hereby grant REALTOR an Exclusive-Right-of-Sale Listing Contract thereon, for a period of 180 days from date; at the above price and terms or upon alternate price and terms acceptable to Me/Us. If REALTOR, or any other person, procures a Buyer, I/We will pay a commission of 10 % plus N. M. Sales Tax on full commission. REALTOR is authorized to accept deposit of earnest money. In case such is forfeited, it shall be divided equally between Seller and REALTOR with the latter's share limited to his normal commission on the agreed price. If the property is sold within 90 days after expiration hereof to any person to whom REALTOR offered the property during the life hereof, I/We will pay REALTOR commission as above.

~~THIS CONTRACT IS VOID WHEREBY THE SELLER HAS OBTAINED A TITLE INSURANCE POLICY FOR THE PROPERTY DESCRIBED HEREIN AND THE PURCHASER SHALL BE RESPONSIBLE FOR OBTAINING A TITLE INSURANCE POLICY FOR THE PROPERTY DESCRIBED HEREIN. UPON ACCEPTANCE OF THIS BY THE PURCHASER, OWNER SHALL CONVEY BY STATUTORY WARRANTY DEED.~~

RECEIPT OF A COPY HEREOF IS HEREBY ACKNOWLEDGED

Owner *Thomas J. Houser*  
 as my sole property  
 Owner *Charles Dunham Brooks*

Dated October 12, 1973

REALTOR *Charles Dunham Brooks*

DECEMBER 13, 1973.

MISS RITA M. SKELTON,  
1255 A Stone Ridge Drive,  
Columbus, Ohio

DEAR RITA: Thank you for your note inquiring about New Mexico property.

If you take time to investigate you will learn that property in Colorado anywhere near a ski area could run \$4,000-\$5,000 an acre. On farm land on the periphery of a ski/recreation area an acre would run \$1,000 and \$2,000 an acre. Fortunately, New Mexico remains a sleeping giant equally beautiful to Colorado and perhaps five years away from all out pressure on real estate. My best guess is that real estate in the attractive areas of New Mexico is running about \$800-\$1,000 per acre.

I am not in a rush to sell my property located outside of Taos but if you are really interested I would be willing, as an old friend, to sell you 10 acres of my land for \$6,500 or \$650 an acre. Within a ½ hour drive of Taos there are five very fine ski areas located in the Sangre Di Cristo Mountains which are a part of the Rocky Mountains. My parcel of land is about 10 miles west of Taos and offers a very lovely view of the mountains and of course, fine access to the recreational area.

Look forward to hearing from you soon. Meantime, all best wishes for a Merry Christmas and happy holidays.

Sincerely,

TOM.

CHARLES DUNHAM BROOKS, REALTOR,  
Taos, N. Mex., June 25, 1976.

MR. THOMAS J. HOUSER,  
c/o Sidley & Austin, Washington, D.C.

DEAR MR. HOUSER: In October, 1973 you requested I list and sell for you 10 acres of undeveloped land here in Taos County; northwest of the Town in a developing area known as Game Garden Ranch.

I informed you that I did not list property sight unseen, but that I would make an inspection as soon as possible—communicating with thereafter.

I proceeded to Game Garden shortly after writing you. I located your holding from the plat you had given me, augmented by a map of the area.

After going over the acreage on foot and talking to Mr. Menyert, the developer of Game Garden Ranch, I rated the property at a figure of \$500.00 and entered into an Exclusive-Right-of-Sale Listing Contract with you at that figure.

Sincerely yours,

CHARLES D. BROOKS.

**Farm, Ranch or Acreage  
Special Listing Agreement  
United Farm Agency**

**LOCAL AGENCY**

2600, N. W. 116 1110

Listing No.

158

Acres

10 acres

Price

10,000

Down Payment

1,000

Equip't Price

Equip't Down Pymt.

Photo?

attached

Expires:

4-30-75

1. Owner THOMAS J. HOUSER Phone 312-329-564

2. Address 19 N. HICKORY City WILMINGTON State IL Zip 60604

3. Address of property 2600, N. W. 116 1110 County ?

4. LEGAL DESCRIPTION See attached

5. \_\_\_\_\_

6. How Zoned HOMELAND TYPE OF PROPERTY VACANT

7. Borders what road \_\_\_\_\_ Ft. Frontage \_\_\_\_\_ Type Surface \_\_\_\_\_ Nearest town \_\_\_\_\_ Miles \_\_\_\_\_

8. U. S. Hwy. No. \_\_\_\_\_ Nearest city \_\_\_\_\_ Miles \_\_\_\_\_

9. State Hwy. No. \_\_\_\_\_ MILEAGE TO: Store \_\_\_\_\_ Church \_\_\_\_\_

10. County \_\_\_\_\_ Gr. school \_\_\_\_\_ High school \_\_\_\_\_

11. Other LOCAL 3,000+ DIRT College YU Hardtop Hwy. \_\_\_\_\_

W	F	Borders (name)	Ft. Frontage
A	E	Creek	
T	O	River	
E	N	Lake	
E	T	Ocean	

13. If not on creek, river, lake or ocean, give name and mileage to nearest \_\_\_\_\_

14. None - see property & maps

15. Special features of Location None - see location and vicinity

16. None Elevation 7,750

17. Total DEEDED ACREAGE 90 Terrain hilly rolling

18. Acreage tillable 40 acres Now under cultivation ? Irrigated ? Bottom NO

19. Acreage now in crops (kind) NONE Irrigated pasture ?

20. Best use for land Recreation Total livestock capacity ?

21. Acreage native pasture 40 Improved pasture NONE Irrigated pasture ?

22. Source of irrigation water ?

23. All other water sources ?

24. Fences (type, condition, acreage under, etc.) NONE

25. Acreage woodland 25 Estimate amount timber, value and kind None, Pines & Ponderosa

26. Fruit and nut trees (kind & no.) NONE

27. Gov't crop allotments NONE

28. LEASED ACREAGE NONE Describe type, capacity, cost, duration, etc. \_\_\_\_\_

29. \_\_\_\_\_

30. GRAZING PERMITS (Give full details) ?

31. Cross INCOME from property last year \$ NONE Source of income \_\_\_\_\_

32. HOUSE: Type construction NONE Architectural style \_\_\_\_\_ No. stories \_\_\_\_\_ Age \_\_\_\_\_

33. Value \$ \_\_\_\_\_ Condition outside \_\_\_\_\_ Cond. inside \_\_\_\_\_ Sq. ft. floor space \_\_\_\_\_ Insulated? \_\_\_\_\_

34. Rooms \_\_\_\_\_ Bedrooms \_\_\_\_\_ Baths \_\_\_\_\_ Basement? \_\_\_\_\_ Type of central heat \_\_\_\_\_ Type floors \_\_\_\_\_

35. Electricity in? \_\_\_\_\_ Available? \_\_\_\_\_ Phone in? \_\_\_\_\_ Available? \_\_\_\_\_ Method of sewage disposal \_\_\_\_\_

36. Fireplace? \_\_\_\_\_ House occupied by \_\_\_\_\_ SPECIAL FEATURES OF HOUSE (Paneling, built-ins, etc.) \_\_\_\_\_

37. \_\_\_\_\_

38. Describe homeste (VIEW, lawn, plantings, etc.) \_\_\_\_\_

39. LIST AND DESCRIBE IN DETAIL ALL OTHER BUILDINGS \_\_\_\_\_

40. \_\_\_\_\_

41. \_\_\_\_\_

42. \_\_\_\_\_

43. \_\_\_\_\_

44. \_\_\_\_\_

45. Real estate TAXES last year \$ 4.85 Irrigation water cost last yr. \$ NONE INSURANCE on buildings \$ \_\_\_\_\_

46. Describe easements or restrictions see location & description All mineral, oil, gas rights incl. NONE

47. Existing mortgage or contract balance \$ \_\_\_\_\_ Interest \_\_\_\_\_ \$ Years to run \_\_\_\_\_ Can it remain? \_\_\_\_\_

48. \_\_\_\_\_

49. Owner's REASON FOR SELLING NEED FOR FUNDS POSSESSION date AT EXECUTION OF CONTR.

50. Any personal property included? NO Itemized on? ( ) Page 2 or ( ) Attached Personal Property Form PF-1

51. PRICE, including commission, but WITHOUT personal property \$ 6,000 Down pymt. \$ 1,000

52. Terms on balance: Balance due 5 or 10 days Interest ?

53. PRICE, including commission and any personal property listed \$ same Down pymt. \$ \_\_\_\_\_

54. Terms on balance: \_\_\_\_\_ Interest \_\_\_\_\_

55. Seller:  Is a creditor;  Is not a creditor. Seller will provide:  Abstract of title;  Title insurance

LIST ALL PERSONAL PROPERTY INCLUDED ON PAGE 2,  
OR ON PERSONAL PROPERTY FORM PF-1

IF LISTED BEFORE GIVE YOUR  
OLD LISTING NUMBER HERE

## PERSONAL PROPERTY

ALL ITEMS LISTED ABOVE ARE INCLUDED AT PRICE STATED ON PAGE 1

To the UNITED FARM AGENCY:

(A) I represent that this description is correct, that I have the legal right to sell the property described herein and that I can and will duly furnish a good and sufficient warranty deed and abstract showing a merchantable title (or grant deed and title insurance policy) to said property when sold.

(B) You are employed to procure a purchaser, ready, willing and able to buy said property at the price and terms as stated herein or as otherwise subsequently authorized by me, and to accept and give receipt for any money or deposits received in connection with the sale of said property.

(C) I agree to pay you forthwith as commission 10% of the selling price, when a purchaser is procured through you, or your representative, at the stated price and terms, or at any other price and terms acceptable to me.

(D) If the property described herein is sold, during the term of this agreement, to a purchaser procured through my own efforts, or through any broker, agent, person or organization other than you, I will immediately pay you one-half the amount of commission provided in clause (C) above.

(E) The term "Sale" as used herein shall be deemed to include a sale or exchange.

(F) In the event there is a forfeiture of funds deposited or payment of funds as liquidated damages by a purchaser, one-third of so forfeited or paid funds are to be retained by me, the balance shall be paid to you as commission.

(G) This contract shall remain in effect for a period of one year, and when terminated there shall be no charge for expenses, commission, or otherwise against me. However, if within six months after the expiration of this contract, I sell said property to a purchaser procured through you, or your representative, I will forthwith pay the full commission as provided in clause (C) above.

(H) I acknowledge that the listing of this property, and your endeavor to procure a purchaser for same, shall constitute a good and sufficient consideration for this agreement; that I have read the agreement and understand the contents thereof; that I have received an exact copy of same; and that no conditions or agreements exist other than those contained herein.

ACCEPTED: UNITED FARM AGENCY

By

*E. J. Skelton*  
Local Representative

*Thomas J. Houser*

Signatures of Owners

(REMOVE CARBON BEFORE SIGNING.)

Dated this 27th day of April, 1974

**IMPORTANT**

TO OUR REPRESENTATIVE: Be sure this agreement is filled out as fully as possible, signed by the authorized parties and yourself, and properly dated.

Senator PASTORE. Any questions?

Senator PERCY. Mr. Chairman, I think that I might just make a few comments.

I was rather shocked when you showed me originally the letter from Miss Skelton. Miss Skelton did work on my gubernatorial campaign, a valued employee in the office. And through my campaign met Tom Houser, who was campaign director. He had come on after a tragic automobile accident that my first campaign manager had, under the circumstances that I explained. He resigned his position with Burlington and came on to help.

After I saw the letter of allegation, and you gave me a copy of it, I called Miss Skelton. I had not realized that Miss Skelton had kept up a continuing friendship with Mr. and Mrs. Houser. That is property, as I understand it, is in the joint names of JoAnn and Tom Houser.

But, she said that, "Yes, she had kept up the friendship with him," and that as I understood it, the purpose was to invest in a long-term appreciation possibility.

I have not had any close relationship with Rita Skelton since she left the campaign. I have seen her on occasion at a social function. But, the minute that you gave me this letter, I called a lawyer into my office, Hannah Sistare, who has dealt in real estate. She is a fine lawyer and a legislative assistant to me.

And I asked her to make an objective study of this letter. She would know that I would lean over backward, and Tom Houser would know—would lean over backward in a case like this. If there had been a mistake in judgment, if there had been misrepresentation, I would want to know about it and you would want to know about it.

Her objective analysis of it was that there had been none. She understood real estate and she has dealt with real estate matters. The record was perfectly clear that this was a question of a contract sale, the decision was made. Miss Skelton later didn't want the property and the money was given back.

I then called Howard Trienens, chairman of the executive committee of Sidley & Austin. I have known Mr. Trienens for a number of years, because I have unsuccessfully tried to get him to put his name forward as a Federal judge, and he simply has not been able to. His responsibilities to his law firm have been too great.

He said this matter came to his attention at a time when Mr. Houser was in Europe. He had looked into the matter and that when Tom Houser came back, they talked it over and simply decided that the best way to settle it would be to accede to her request and give her her money back plus interest.

It is an unusual thing to provide the money plus interest, but I think they wanted to go the final mile in it, and they would have no chance that she would have any further concern over the matter.

But, Mr. Trienens said, in his judgment, there was absolutely nothing wrong with it. As he looked into it, the matter stood right on the record as it was, and as Mr. Houser has described it.

I can only report one other thing, and I would really have to turn to Hannah Sistare as my counsel in this matter. A letter did come in from Miss Skelton of complaint about her present Government position. Allegations were made there and she asked my office to do something on it, even though she is no longer a constituent in Illinois, but as a long-time friend going back to my original campaign.

I am not really familiar with the details of the case. Miss Sistare looked into it carefully at that time, she is in the room, if the committee would feel that this is a matter that would be germane to it, I am certain that she would be happy to come testify.

But it did involve a situation where she felt she was somehow being persecuted. And it possibly does reveal an emotional concern on Rita Skelton's part, who is a fine person, a valued friend of both of us. And this matter is a matter of deep regret. But I can assure the committee, if there had been any impropriety, if there had been any misrepresentation. I would have been the first one to ask the White House to withdraw his name.

I have talked to the White House about it. I have asked them to make just as objective, independent, study as I did on their own, using all their resources they have available. We want to know what the circumstances were.

And the White House has provided to you the same form of letter that I have. We simply cannot find any basis for the allegations.

Senator PASTORE. I must say that this is an unusual situation. But, I did receive this letter, and the only way I thought was the right way to handle the matter was to air it out publicly and to afford here an opportunity to discuss it. All this will, of course, be submitted to the committee to act on as a whole and to determine just what direction to take.

Senator BAKER. Mr. Chairman?

Senator PASTORE. Senator Baker.

Senator BAKER. Mr. Chairman, you have handled the questions raised by Miss Skelton in a highly appropriate way. I agree with you

that this is an unusual situation. Although it is obviously unpleasant to go into this matter in detail in the long term, I believe it will be to Mr. Houser's benefit, as well as to that of his sponsors, and the efficiency of the OTP. I have listened carefully to the presentation today and have read the relevant material, including Miss Skelton's letter. As far as I am concerned, we have heard enough on this subject and I am ready to proceed to other matters.

Mr. Chairman, I understand that a list of questions, prepared by the staff was submitted to Mr. Houser, and that he has supplied his answers for the record.

Senator PASTORE. They are in the record.

Is that all?

Senator BAKER. One last question, if I may, on that general subject. Mr. Houser, I have long felt that the OTP had a significant role to play in the formulation of national telecommunications policy and in spectrum management. The President's unique responsibility for bringing coherence to this field requires something similar to OTP. For that reason, I have stoutly resisted any effort to submerge OTP in other agencies or departments, and have sought to keep it as an arm of Presidential activity in the White House.

As a nominee for the position of Director of this Office do you have any doubt in your mind that OTP does serve a useful function and that it should remain as an independent office available to advise the President on communications?

Mr. HOUSER. None, whatsoever, sir. The last time I looked, the telecommunications industry was responsible for 40 percent of our gross national product.

Senator BAKER. You will find, Mr. Houser, in your files, if and when you assume this job, considerable correspondence from me on this subject both with the President and your predecessor. I commend those letters to you. In closing, I want to say that OTP has been fortunate to have John Eger as Acting Director during a difficult period but I am confident you will perform your duties with distinction.

Mr. HOUSER. Thank you, sir.

Senator PASTORE. Is there anyone in this room who wants to testify for this nomination?

[No response.]

Senator PASTORE. Is there anybody in this room who wants to testify against this nomination?

[No response.]

Senator PASTORE. The Chair hears none. We therefore will recess and take this under advisement.

Senator PERCY. Mr. Chairman, I am sure Mr. Houser would not say this on his own behalf, but this nomination came to him—I wasn't involved in it at all. I was rather surprised that he accepted.

Senator PASTORE. I still can't figure that out.

Senator PERCY. He just finished a house, he has a fine law practice, he is resigning from his law firm, he has to leave his home, he is down here, his income is stopped.

I would simply hope that we could move forward on this with dispatch.

Senator PASTORE. Thank you, we will adjourn.

[Whereupon, at 10:20 a.m., the hearing in the above-entitled matter was adjourned.]

## NOMINATIONS—JUNE

TUESDAY, JUNE 29, 1976

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 11:15 a.m. in room 5110, Dirksen Senate Office Building, Hon. Vance Hartke, presiding.

### OPENING STATEMENT BY SENATOR HARTKE

Senator HARTKE. May we please come to order.

This morning the committee will consider the nomination of John Snow to be Administrator of the National Highway Traffic Safety Administration. If confirmed, Mr. Snow would serve as Administrator at the pleasure of the Secretary of Transportation.

As is the committee's custom, Mr. Snow has completed a detailed biographical and financial questionnaire. The financial statement is available for public inspection at the committee's public information room, and the biography will be placed in the record.

Additionally, Mr. Snow was asked to respond to a series of questions designed to explore his philosophy and views with respect to regulation in general, and motor vehicle safety regulation in particular. Those responses will be printed at the conclusion of the hearing record<sup>1</sup> and will form a basis for my questions today.

Our format this morning will be as follows:

First, Mr. Snow will be given an opportunity to make a statement, should he so desire, and I have a series of questions to which I will request his response.

Second, we will have two public witnesses, Mr. Nader and Mr. Ditlow, who will present their statements to the committee.

Finally, Mr. Snow will be given an opportunity to respond to issues raised in the statements of Mr. Nader and Mr. Ditlow.

A statement of Senator Randolph, chairman of the Public Works Committee, will be included as part of the record at this time.

[The biographical sketch and statement follow:]

#### BIOGRAPHICAL SKETCH OF JOHN W. SNOW

Address: 3226 Klinge Road, N.W., Washington, D.C. 20008.

Date and place of birth: August 2, 1939; Toledo, Ohio.

Married June 11, 1964 to Frederica Wheeler—divorced July 1973; married August 30, 1973 to Carolyn Kalk.

Children: Bradley Dean Snow, born 1965 and Ian Kendall Snow, born 1969.

Education: George Washington University, Sept. 1964–August 1967, J.D.; University of Virginia, Sept. 1962–Aug. 1964, Ph.D (1965); University of Toledo,

<sup>1</sup> See p. 94.

Feb. 1959–June 1962, B.A.; Kenyon College, Gambier, Ohio, Sept. 1957–Jan. 1959, none; Gilmour Academy, Cleveland, Ohio, Sept. 1955–June 1957; and Central Catholic, Toledo, Ohio, Sept. 1953–June 1955.

Employment Record: Deputy Under Secretary, U.S. Department of Transportation, Washington, D.C., May 1, 1975 to present; Acting Assistant Secretary for Congressional and Intergovernmental Affairs, U.S. Department of Transportation, Washington, D.C., Sept. 1974–December 1975; Deputy Assistant Secretary for Policy, Plans and International Affairs, U.S. Department of Transportation, Washington, D.C., Sept. 1974–April 1975 (Acting Sept. 1973–Sept. 1974); Assistant General Counsel, Legislation, U.S. Department of Transportation, Washington, D.C. May 1973–Sept. 1973; Deputy Assistant General Counsel, U.S. Department of Transportation, Washington, D.C. June 1972–May 1973; Attorney (Associate) Law Firm of Wheeler and Wheeler, Washington, D.C., August 1967–April 1972; Assistant Professor (Economics), University of Maryland, College Park, Md. Sept. 1965–June 1968; Labor Economist, Manpower and Training Office, U.S. Department of Labor, Washington, D.C., Sept. 1964–July 1965; Instructor, Institute for Defense Analyses, teaching micro-economics theory course for M.A. candidates, Summer 1966; and Instructor, University of Virginia, teaching American and European Economic History, Summer 1964.

Part Time: Lecturer in Economics, University of Maryland, Sept. 1968–June 1974; and Professorial Lecturer in Law, George Washington University Law School, Fall term, 1972, 1973, 1974.

Government Experience: United States Department of Transportation, Washington, D.C., June 1972 to present; and Lecturer, U.S. Army Logistics Center, Fall 1968–Spring 1970. Made Honorary Member of the faculty, Dec. 3, 1968.

Membership: American Bar Association, Chicago, Illinois 1967 to present—no office; American Economics Association, Chicago, Illinois, 1965 to present—no office; D.C. Bar Association, Washington, D.C. 1967 to present—no office; Interstate Commerce Commission Practitioners Association, Washington, D.C., 1965 to present—no office; University Club, 1968 to present; Chevy Chase Club, 1966 to present; City Tavern Club, 1971 to 1975; Capitol Hill Club, June 1976; and Delta Tau Delta.

Political affiliations and activities: Hospitality Adviser for the Inaugural Ball, 1969 (Washington Hilton Hotel); D.C. Young Republicans, 1968; and Republican Party.

Honors and Awards: National Defense Education Act Fellowship in Political Economy, 1962–1964, University of Virginia (accepted); Fellowship in Economics, 1962, Harvard University (declined); Fellowship in Economics, 1962, University of Wisconsin (declined); Dissertation Fellowship Award from U.S. Department of Labor 1964–1965; Order of Coif, Phi Alpha Theta, Phi Kappa Phi, Omicron Delta Epsilon; Outstanding Teaching Award, University of Maryland 1966; and Secretary's Meritorious Service Award 1974.

Qualifications: My qualifications include a broad familiarity with regulatory issues; training in relevant disciplines, law, economics, and statistical analysis; general familiarity with the activities of the National Highway Traffic Safety Administration; and, I trust, the confidence and respect of Secretary Coleman and Deputy Secretary Barnum. In addition, I will bring to the position a commitment to the goal of highway safety and the integrity to analyze the issues with an open mind and be guided by the facts and evidence.

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STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM WEST VIRGINIA

Today the Senate Commerce Committee is considering the nomination of John W. Snow to be Administrator of the National Highway and Traffic Safety Administration.

The Public Works and Commerce Committees share jurisdiction over the activities of this agency of the Department of Transportation. I am therefore gratified for this opportunity to share some of our thoughts on the important subject of highway safety. Highways have played an important part in the development of our country over the last two hundred years. The United States is the most mobile Nation in history and most Americans enjoy unlimited personal mobility. Highways make it possible for farmers to get seed to the farm and produce to the market. Highways enable families to get their children to schools, wives to shopping centers, and the entire group to cultural, religious, and medical facilities.

Our highways move more goods and people than any other country more quickly, more efficiently and most important—more safely.

This is possible because of a number of reasons—but one certainly is the caliber of people and organizations who are committed to making our highway safer—both the highway itself and the vehicles traveling on those roads.

But a commitment to safety is not enough. Since the introduction of the car to the American public, more than two million citizens have died in accidents resulting from automobile use.

Congress has responded to this startling statistic. In the Highway Safety Act of 1966 we established standards for construction of highways and maintenance of vehicles to assure driver and passengers using the roads could do so safely. The Highway Safety Act of 1973 expanded and furthered the implementation of a nationwide auto safety program that continued to reduce our accident, injury, and death toll. Last year, nearly 10,000 lives were saved due to the reduction of the speed limit to 55 miles per hour. Traffic fatalities continued to decline in May of this year dropping almost 3 percent below the level of May 1975 from 3,945 to 3,840.

With these measures in force, the death toll on our highways last year still totaled approximately 45,000 lives. There is much more that can and will be done. Mr. Snow and I exchanged views on this subject last week. I am sure that he will strive to interrelate the safety programs under National Highway Safety Administration with those controlled by the Federal Highway Administration including design improvements, traffic engineering, and pedestrian and bicycle safety. I hope that he will actively participate in the re-evaluation of the highway safety standards which the Congress asked the Department of Transportation to study in the Federal-Aid Act of 1976.

What are some of the areas that we must retain a strong and ongoing interest in with regard to highway safety? We must develop a national data center making sure that accident, injury, and other safety information going into Washington in an organized format can find its way back to the States in an aggregated, useful fashion quickly. We must encourage the increased usage of passenger restraint systems. We must maintain a firm commitment to speed reduction and abolition of alcohol consumption while behind the wheel, and back both measures with strong enforcement plus speedy administrative and judicial adjudication. Maintenance of vehicles must be encouraged through periodic but consistent inspections.

Driver education on all types of vehicles both in public and private use should be included in appropriate training programs. Finally we must also seek solutions to make streets safer not only for the driver but the pedestrian, bicyclist and motorcycle user who also share the highways of our country.

Without a concentrated and sincere continuing effort in highway safety traffic deaths will again begin to rise. I hope Mr. Snow, the Public Works and Commerce Committees, and the Congress a whole will jointly and cooperatively participate in the campaign to reduce highway fatalities and injuries.

Senator HARTKE. Mr. Snow?

#### STATEMENT OF JOHN W. SNOW

Mr. SNOW. Good morning Senator. Thank you very much for the opportunity to make an opening statement.

The only opening statement I wish to make is to thank the committee for the expeditious scheduling of this hearing, and to the staff for the expeditious transmittal of the thoughtful and extensive set of questions which I have responded to.

Senator HARTKE. That's it?

Well, while I know you personally, the purpose of this hearing is to inform the full Senate of your intentions as Administrator if confirmed. However, you have submitted responses to the committee's questions and that will give us a good indication of where you stand on the important issues facing the NHTSA.

We will proceed then.

You have considerable experience with the aviation industry. Isn't it generally true that the aviation safety is far more tightly regulated than the motor vehicle is for safety?

Mr. SNOW. I believe that to be the case, yes, indeed.

Senator HARTKE. Do you believe that this high degree of regulation has made a major contribution to the apparently good safety record of the aviation industry?

Mr. SNOW. Absolutely.

Senator HARTKE. All right.

Is there any reason why the lesson of the aviation industry, then, should not be transferred to the motor vehicle industry?

Mr. SNOW. Well, Senator, I think the lessons in the sense of requiring high safety standards certainly should be translated.

We have an excellent safety record in the United States in the aviation field, and I don't believe on the basis of what I know now, that our motor vehicle safety record approaches that. So in that sense, I agree.

The mechanics of how to translate that higher degree of safety which we find in the aviation field into the reality of the motor vehicle field, of course is a question which has to be faced.

I think the legislation which the Administrator, through the delegation of the Secretary, administers, the Motor Vehicle Safety Act, the Safety Act itself, and the Consumer Protection Act are all important legislations which provide direction and guidance and lead to enhance the improved safety on the Nation's highways.

I don't, at this time, have a conception in my mind, of how precisely the excellent record we have in the Federal aviation area can be translated into comparable kinds of results in the motor vehicle area, except to fulfill the intent of Congress and their legislation, which the National Highway Traffic Administration administers.

Senator HARTKE. In your responses, you state that:

We should recognize that the marketplace does provide some incentives for the production of safety and we should rely on marketplace incentives to the maximum extent appropriate.

I wonder if you would expand on this statement, particularly citing examples of such marketplace incentives and explaining how these incentives may impact the Federal motor vehicle safety program in the future, if you were to be confirmed as NHTSA Administrator?

Mr. SNOW. Well, Senator, what I had in mind there is that the automobile companies and the truck manufacturers and the bus manufacturers, have some incentive to produce safety, because if they don't produce safe motor vehicles, they won't be able to market their product effectively in the marketplace.

Senator HARTKE. Do you have any evidence to substantiate that? Do people buy cars because of their safety features or because of their cost and appearances?

Mr. SNOW. Well, I think primarily, Senator, given the general uniformity of safety among motor types as perceived by the public, they buy on grounds other than safety. But, if safety were to be heavily marketed as a motor vehicle characteristic, if a vehicle were to be produced which could survive at 40-miles-per-hour crashes—I understand there are 35-miles-per-hour crashes, as I understand, that Datsun is in the process of preparing, I think that becomes marketable.

And I think the same group of the public would buy them. But I don't believe that we can rely totally on the marketplace to achieve an optimum or appropriate level of safety.

Senator HARTKE. In other words, when you speak of these incentives, what you mean is that there is no market for safety unless there is buyer acceptance.

Mr. SNOW. Yes.

Senator HARTKE. Anything else?

Mr. SNOW. Well primarily buyer acceptance. And I would hope sellers finding it to their advantage to market aspects of safety such as Datsun marketing the crashworthy vehicle, such as Volkswagen in the Rabbit series marketing the passive restraint system.

I think that is healthy and I would like to see that encouraged.

Senator HARTKE. In one of your responses, you make the statement that:

NHTSA's motor vehicle safety role is to encourage the industry to adopt safety features ..."

And you go on to say:

Where the industry is not responsive and a regulation will achieve effectively a significant goal, the agency should intervene with mandatory standards.

Can you cite any examples where the industry, has on its own initiative, adopted safety features and thereby made Government regulations unnecessary?

Mr. SNOW. Senator, it is my understanding that the early standards, Series 100 Standards, were in effect, a mandating and making uniform technology which was available on a number of automobiles in the period 1960, 1965, and 1970, so that the marketplace itself did produce not as widely and not as uniformly as desired, but did make available a significant amount of safety in selected versions and varieties of automobiles.

Senator HARTKE. But weren't those items really the result of the GSA standards which preceded the act itself?

Mr. SNOW. I think in part they may have been. It is not my understanding totally.

Senator HARTKE. Do you mean to suggest that mandatory standards should be implemented only when everything else fails?

Mr. SNOW. No.

I would apply rule of reason. If a safety technology is available, component or device is available, which would effectively advance the statutory purpose, meet the test of reasonableness, practicability, stated in objective terms and so on, and deals with an unreasonable risk and mandating what appears to be a reasonable way to achieve that objective, I would have no compunction to mandate it.

Senator HARTKE. You indicated in your responses to the prehearing questions that you have "general doubts about the appropriateness" of Government-mandated bumper standards, except to the extent that such regulations avoid the diversity of State standards.

And you go on to argue that "we should be concerned about automobile costs" since automobiles are important in our lives.

What do you mean by that statement?

Mr. SNOW. Senator, what I mean there is that I think the consumer's best protection is information and a good competitive marketplace.

And I am aware of the bumper problem. I have looked into that and been informed that the motor vehicle companies themselves—at least some of them—now acknowledge that they reduced the bumper standards below an appropriate level. The bumper standards appear to be an area in which such loss reduction legislation was justified.

My answer is that I question the universality or generalization of the principle, but where we identify a particular problem such as inadequate production of this or that, that we automatically jump to Government mandating that it be produced.

I think our best resolve, our best hope is to have a good competitive marketplace operating. My understanding of the Motor Vehicle Information and Cost Savings Act, if I pronounced it right, is that it is not primarily a safety statute, it is primarily a consumer protection statute. And I would certainly make a distinction there.

My understanding as to the bumper standards is that it is not safety related. It is primarily consumer-protection related.

Senator HARTKE. When you consider automobile costs, do you consider the total cost of automobile ownership or just the original purchase price?

Mr. SNOW. I would think the total cost.

Senator HARTKE. To that end, don't the bumper standards then represent a savings in insurance premiums, which exceed the cost of the initial purchase and the maintenance of the bumper systems?

Would that make economic sense to you?

Mr. SNOW. Yes; it would if those lower premiums came about. I don't know the specifics.

Senator HARTKE. Are you not aware that they have brought about lower premiums, or are you saying that they have not brought about lower premiums?

In other words, are you taking insurance premiums into account when you speak about total automobile costs?

Mr. SNOW. Total costs, taking into account insurance costs, operating costs and so on, yes.

And I would think that a benefit of the standard would be a reduction of insurance premiums. I would hope that would come about.

But, looked at the other way, Senator, the question arises in my mind, why weren't the bumpers put there in the first place?

Senator HARTKE. Why weren't they?

Mr. SNOW. I am not sure.

If the bumpers really would justify lower premiums, why wasn't the incentive of lower premiums offered to "incentivize" the system to produce the bumpers in the first place?

I don't have the answers to those questions.

Senator HARTKE. You don't have the answers to those questions?

Mr. SNOW. I don't have the full answers, no.

Senator HARTKE. Well, don't you think a reasonable answer is that the manufacturer and the seller of the automobile sell at the original price regardless of higher insurance premiums? Why else would we have to mandate certain provisions?

Isn't it a fact that everyone looks at the original cost, do they not?

Mr. SNOW. I think there is a tendency to do that.

It is a natural psychological kind of tendency to behave that way, I agree.

Senator HARTKE. Have you ever heard of an ad saying, "Come on in and buy our car, we will reduce your premium costs?"

Mr. SNOW. No; I haven't.

Senator HARTKE. I haven't either.

Mr. SNOW. It did distress me though.

I think one way to encourage safety—

Senator HARTKE. Then I come back to your original statement—you have general doubts about the appropriateness of Government-mandated bumper standards, and that we should concern ourselves about automobile costs.

In other words, what I am really asking you is if you really, sincerely in your own mind believe that these changes are going to be made without Government standards?

Evidently you have said that you think they can be, or should be, one or the other, or both, right?

Mr. SNOW. Right.

Senator, I read that legislation with great interest, and I noticed that title I deals with bumper standards and mandates some action.

Title II, if I interpret it properly, encourages inquiry into other areas for loss deduction standards, reflecting in my mind, at least, the judgment of the Congress at the time of the enactment of that legislation, that we didn't know enough about other areas in which loss reduction standards might make good sense. And therefore they weren't mandated.

I'm only saying that I think that what lies behind the legislation itself, that we should be cautious in mandating loss reduction standards. I think we should look to the marketplace, the incentives in the insurance industry, the incentives in the production of automobiles to produce good bumpers and good roofs and good components.

Senator HARTKE. What is the difference with respect to loss reduction standards for the future given the track record of the industry on bumper standards in the past?

I'm interested in your general economic philosophy which I believe is similar to President Ford's economic adviser—Alan Greenspan.

Mr. SNOW. I do, Senator. I do have a belief that competitive markets are an important component of what protects consumers in this country, and competitive markets are the best protection consumers have.

I recognize they didn't always work well, and we need Government intervention as well.

Senator HARTKE. Let me ask you, John, isn't it true that you really think the Government ought to get out of—

Mr. SNOW. Out of what?

Senator HARTKE. Everything.

Don't you really take the viewpoint that the Government should cut back its regulatory system and that Government employees should be applying new efforts elsewhere?

Mr. SNOW. No; I'm not sure that I have ever said that.

Senator HARTKE. You are not sure?

Mr. SNOW. I sometimes think it would be good if every once in a while Government employees might wonder about that question, the accuracy of continuing their present job.

No, I am not talking about rolling the clock back.

I am talking about the area of motor carrier, railroad and aviation, and barge lines and those industries that I have worked with you on in terms of changing the regulatory system.

You know, I am convinced that reduced Government regulation is going to improve the performance of those industries.

Senator HARTKE. But that is such a nice phrase, when you say that, one of the real achievements in the aviation industry has not been reduced regulation, but the amount of regulation.

In other words, I know that I am running contrary to popular trends when I oppose this idea of reduced regulation which you have been promoting at the White House. I understand that. But I seriously question your conclusion because it is based on the theory, that reduced regulation will improve competition, and the net result will be a benefit to the people.

Yet you said earlier in response to my question on aviation, that the aviation industry has an admirable record due primarily to the fact that they are far more regulated in the field of safety. Now you are saying that one of the things that we should do is to try to have less regulation in the automobile industry.

Mr. SNOW. No; I am talking about less economic regulation of aviation, while retaining the existing FAA safety regulatory scheme.

I have testified to that effect on numerous occasions. In no way is what we are proposing in the aviation economic regulatory field, to denigrate safety.

Senator HARTKE. You indicate in your prehearing responses that cost-benefit analysis is: "One consideration in determining whether the proposed standard is 'practicable and appropriate'."

How do you support this belief?

Mr. SNOW. I think that cost-benefit analysis is a tool available to making firm decisions about the standards to be mandated. I do not feel that the Administrator or the Secretary is in any sense a slave to cost-benefit analysis or that cost-benefit analysis has reached such a state of refinement that it can always inform the judgment well.

I have great reservations about the data to support and the analytical methodology of cost-benefit analysis. But I do feel that it is something which can help to inform decisionmaking.

Now the support for that view, Senator, lies in a number of things. I think it underpins in part, the legislative history of the act. The act talks about reducing unreasonable risks. Then it goes on to say, not every risk, but unreasonable risks. Then it goes on to say, we should do so by issuing minimum standards which are practicable, reasonable, and appropriate to the motor vehicle type in question.

I think those words "reasonable" and "practicable" carry with them the connotation that the Administrator is to carefully analyze the alternatives available to him to advance the safety objective. In that analysis, looking at the benefits and looking at the costs, seem to me entirely appropriate. In fact, as I read, I think it is the *H. & H. Tire* case in DOT, and I have been reading a lot of cases—it is a brand new field for me—as I read the *H. & H. Tire* case, the *H. & H. Tire* case says that it is appropriate to use cost-benefit analysis to help inform the decision. And the failure to take into account effects of the standard on industry, the cost of the standard, can fatally—fatally affect the judicial review of the standard.

So I think it is reasonable, Senator. I intend to use it as appropriate, with all the limitations inherent in cost-benefit analysis. I teach cost-benefit analysis, and I am aware that there are enormous limitations to its use. There is no substitute for good judgment.

Senator HARTKE. What is the cost of the loss of one human life?

Mr. SNOW. I think it is priceless.

Senator HARTKE. What?

Mr. SNOW. I think life is priceless, so it is very hard to apply.

Senator HARTKE. How many people were killed last year on the highways?

Mr. SNOW. About 46,000.

Senator HARTKE. 46,000 times priceless, right?

How can you calculate this in a cost-benefit analysis?

Mr. SNOW. Senator—

Senator HARTKE. See, what I am trying to come up with, look, I went through this—I was here when the law was written.

Mr. SNOW. I have read your statements in the Legislative History.

Senator HARTKE. I am trying to find out if you have a cost estimate on human life at the Department of Transportation right now?

Mr. SNOW. No; I don't think so. I have inquired.

Senator HARTKE. Isn't it about \$220,000 per life?

Mr. SNOW. Senator, I think—

Senator HARTKE. Isn't that what human life is valued by DOT at the present time?

Mr. SNOW. I don't know, I would say definitely not.

Senator HARTKE. What I am asking you, is there not at this time an established rate for human life in DOT?

Mr. SNOW. Not that I am aware of, Senator.

I am honestly answering you that. I am aware that there are some calculations of expenditures people would take to protect their lives, and there are some calculations of the loss of revenue and loss of earnings discounted over life; the calculations of that sort have been made. But I don't think they have ever been elevated to the point of being the decision calculus. I don't think they have ever been regarded as a true valuation of human life.

Senator HARTKE. This was the basis of the argument which was presented back when the law was first put into effect.

I think there are some things which absolutely defy making a definite cost-benefit analysis when you include accident and human life and pain and suffering and everything else.

Mr. SNOW. Senator, let me say how I think it can be useful.

Suppose there are safety benefits to be realized from three alternatives. We recognize that the alternatives address a real problem, a serious problem, a problem which is technologically resolvable. But the alternatives have different costs associated with them.

I think in that kind of context, comparing the alternatives in terms of their cost effectiveness is entirely appropriate and I would hope that NHTSA does it and would continue to do it. I think it is appropriate.

Senator HARTKE. Have you considered how effective the industry is in telling the public how Government regulation has increased the price of automobiles absolutely to the point where people can no longer afford them? Do you believe that?

Mr. SNOW. No.

Senator HARTKE. Well, thank goodness.

If I could show that film made by one of the auto manufacturers so you could see how unreliable it is. If you would take the reliability of that film and consider it in relation to their sales promotion, you would be very hesitant to buy a vehicle from them.

That wasn't directed at you, John, it was right straight over your head to some sitting in the audience.

You point out in your answers that cost estimates of implementing the NHTSA's performance standards creates a conservative bias in estimating the cost of standards.

I want you to explain what you mean by this, and how it would have any impact on your decisionmaking process?

Mr. SNOW. Senator, I think it is conservative in the sense that NHTSA identifies the existence of one design which will meet the standards.

NHTSA does not hold themselves out as the experts on how to minimize costs. They don't have the resources, and they don't have the range of knowledge and so on that the industry does.

I would assume that the industry would be able to beat, on average, the design which NHTSA is able to identify, and I therefore would feel there is an inherent conservative bias in those cost estimates. That is that the industry can meet that design standard at a lower cost than the one by NHTSA.

Senator HARTKE. In recent months, automobile makers have urged the repeal of several NHTSA motor vehicle safety standards including head restraints, side door crash protection, and the 5-miles-per-hour bumpers to name a few.

Are there any motor vehicle safety standards currently in effect which you plan to evaluate for possible revision or repeal?

Mr. SNOW. No.

Senator HARTKE. As part of his hearing on restraint systems, Secretary Coleman has indicated that he wants to receive information on the costs of various restraint alternatives. I think there is no better source of cost information for restraint systems than the suppliers themselves. However, they have exhibited in the past an unwillingness to come forward with this information voluntarily.

Do you believe the Department should subpoena this information from suppliers if they fail to make the information available voluntarily?

Mr. SNOW. The rulemaking of that significance, where the data is so crucial to the ultimate decision, the data is not forthcoming voluntarily, I think it would be entirely appropriate to seek it through subpoena powers.

Senator HARTKE. On your responses you state that you do not contemplate publishing a long-range program plan for NHTSA. You also state that NHTSA should have a general program plan, although issuance would not be a high priority.

Do you plan to publish a long-term program plan for NHTSA rulemaking activities?

Mr. SNOW. It is my understanding in effect, that NHTSA has such a plan; that they have a 5-year plan and that it is available. That is what I have been informed.

My concern is, in ginning up some large-scale planning effort which would lay out in concrete terms specific steps to be taken at certain times along the path, I can see that is potentially a misallocation of sources in creating expectations that are not realized and then putting false reliances and so on.

Senator HARTKE. Is that necessarily true?

In other words, as long as you maintain this flexibility which you say that you want, isn't it better for Government and for industry both to have some type of understanding as to the general long-range direction at NHTSA, and then modify as you proceed?

Mr. SNOW. Yes, Senator. It is my understanding that that exists.

If it doesn't, then, of course, I think it is something that should be looked at and action taken on it. But it is my understanding that there is that general awareness on the part of industry today. If there isn't, I will certainly look into it and take appropriate action.

Senator HARTKE. In your responses to our prehearing questions, you stated that while the Secretary of Transportation has ultimate authority with regard to rulemaking proceedings, that you anticipate he will look to NHTSA as the agency primarily responsible for resolving rulemaking issues. You further state: "I would not have accepted the nomination if I felt otherwise." Yet, the Secretary has indicated that in one area at least he was going to make the final decision on the restraint systems.

Mr. SNOW. I don't see a basic conflict there for this reason:

The restraint system in question is, without any doubt, one of the most important, if not the single most important decision ever made by any Secretary of Transportation. It is an enormously complex and controversial issue which will affect the lives of American people for generations to come.

Senator HARTKE. And the outcome of that issue may save lives for generations to come.

Mr. SNOW. And may save the lives of thousands of people.

Senator HARTKE. And may give them a chance to die of cancer instead of an automobile accident.

Mr. SNOW. Some, that's right.

So I think that the Secretary is taking on himself the role of final rule issue in this case.

Senator HARTKE. Is he taking it upon himself, or is he being directed from the White House?

Mr. SNOW. I think it is being done entirely on his own motion.

Senator HARTKE. You don't think he is getting advice?

Mr. SNOW. No; I do not. No; I do not.

I think I understand the Secretary's point of view on this Senator. I have been a member of his policy group, the senior official from the Department advising on policy, he has got a deep commitment on the rule that the process has to be open and on major decisions we need to have the benefit of public participation.

And he is convinced that it is critical to the quality of decisions that are made and to the success of Government, we have widescale public participation. He is doing all he can to encourage that and to make this an open process.

Senator HARTKE. Let me ask, are you against the airbags?

Mr. SNOW. I am not categorically against airbags; no.

Senator HARTKE. Are you not categorically against airbags?

Mr. SNOW. I think the issue of whether or not the Secretary should issue—DOT should issue an airbag standard, or one of the other four options, is precisely the question which is in rulemaking at this very time. And I would be reluctant to go into a discussion of my views on the specifics of the rulemaking action. I am not sure it would be appropriate.

I can say that I regard the airbag as a very promising highway safety device based on what I know about it as a potential for saving thousands of lives. My understanding is—I may be bordering on review of evidence, which I shouldn't be doing here—my understanding is that only if seatbelt usage approximates the 72- to 80-percent level, that the lifesaving quality of seatbelts approximate the lifesaving quality of airbags. Airbags would save approximately 11,000 lives a year, and that seatbelt usage at the 70-percent level would save about 11,000 lives a year as well.

The seatbelts have some advantages vis-a-vis the airbag on the low side, because the airbag doesn't deploy except at speeds above 12 miles an hour, so that on an injury basis the seatbelt usage may be regarded as superior.

But unless we can get people to wear their seatbelts, the airbag has the advantage of being more effective.

I think to comment beyond that might be inappropriate. I have not reviewed the record and I hope to review the record, and I would be involved in advising the Secretary on the final decision.

Senator HARTKE. Let me ask you, are you in favor of the mandatory requiring of helmets by motorcycle riders?

Mr. SNOW. Senator, I drive a motorcycle and I wear a helmet. I don't regard the sanction, which existed under section 402 of the Highway Safety Act, as an effective sanction. And, therefore, in policy group meetings in which we discussed that issue. I advised the Secretary it was not a matter which I felt he ought to make a fighting cause.

No doubt about the fact that wearing helmets saves lives.

Senator HARTKE. Should States require mandatory use of helmets?

Mr. SNOW. I think most States do require them, and the question I addressed was whether or not the States should be deprived of their highway safety moneys if they don't mandate them.

We got an answer from Congress on that one recently taking away the sanction on the helmet.

Senator HARTKE. Do you oppose the interlock system for safety belts?

Mr. SNOW. No; I don't oppose it.

Senator HARTKE. You're just not in favor of it?

Mr. SNOW. I think it was unfortunate—it was an unfortunate development in the sense that it produced such strong public reaction.

It was an unfortunate choice of a way to advance the cause of safety. I think it may well have set us back somewhat.

Senator HARTKE. What I am saying is, that I understand your argument but I understand the other arguments, too. And the difficulty is that you're not really in favor of airbags, you're not really in favor

of interlock, you're not really in favor of wearing helmets and you're generally in favor of doing something.

What is that something?

Mr. SNOW. Senator, my view is it would be inappropriate for me to spell out my views on this 208 matter, since they are pending in rulemaking right now.

It may appear to you, it may lead to a view that I am biased, it may well lead to a view that it undercuts the credibility of the agency with respect to the action it finally takes. I hope to review 208 matters on the basis of the record and to take an action which the record indicates is the most appropriate one to take.

As I indicated, if the record supports airbags, I will be for airbags.

SENATOR HARTKE. Wait a minute. What does the "record supports" mean? Does that mean that you are going to have the type of outburst we had by the public, and, I think, accurately reflected on the floor of the Senate and the House. I listened to the stories about how grocery bags sitting on the seat interfered with the man's right to go ahead and die. I thought that was rather peculiar cost-benefit ratio, I have to admit.

Is that the type of review that you are going to look for?

How are you going to review this?

Mr. SNOW. Senator, I think we will review it pursuant to the statutory criteria of unreasonable risk, practicable, reasonable, and stated in objective terms appropriate to the motor vehicles in question.

One problem I have now, Senator, in taking a definitive view on anything, even independent of the 208 rulemaking matter, is the fact that not being fully informed on these issues, I would be an inadequate advocate for whatever position I took.

Senator HARTKE. Let me put it in the Secretary's words and I think this is the heart of the issue. He says that prescribing safety standards is to protect the public "against unreasonable risk of death or injury to persons in the event accidents do occur." He further says: "An individual's decision not to wear a safety belt should assume to be the act of a reasonable person so that he does not give rise to an unreasonable risk."

Do you agree with that?

Mr. SNOW. Senator, I think the portion of the Secretary's paper that you are reading from is the part in which he is saying that one point of view is that since a large segment of the public is not wearing seatbelts, therefore, since that is a voluntary decision, perhaps an uninformed decision, that the public is making a judgment—at least 70 percent of the public is making a judgment that not wearing a seatbelt does not produce an unreasonable risk.

He goes on in the next sentence to state the other argument, which is that since there is available a technology or a legal requirement which would save 11,000 lives a year, and reduce injuries very substantially, that from a public policy point of view, it does constitute an unreasonable risk.

I don't think the Secretary can be characterized as adopting either position, but rather, as I read that document, he is stating both positions.

My own view is that that is the only thing which is appropriate for him to do at this time, since it is a rulemaking matter.

Senator HARTKE. Well, would you agree with what I quoted, or do you disagree with the argument that it is a reasonable assumption of an unreasonable risk?

Mr. SNOW. Senator, I think that is one of the germane issues in the 208 rulemaking, and I don't see how I can answer your question without showing a predisposition on the basis—on an inappropriate basis.

And I don't mean to duck it, I just want to be able to make a recommendation on the 208 matter and not have myself called into question for having prejudged issues, or for having a bias or predisposition on the issues.

Senator HARTKE. I hear you. But I think that the problem with this law and most safety laws is that it is not precise as to what point the Government should intervene and establish a safety standard.

Or, in other words, do we take the position that a man has the right to go ahead and present not only an unreasonable risk to himself, but to anyone else on the highway; as well as to his family, his wife and his children?

Is it right, for example, for a man to continue taking an unreasonable risk when he knows that if he did not take the risk he very definitely could continue as a very viable part of society.

What a wonderful Bicentennial celebration it could be if you could get everybody to buckle seatbelts over the Fourth of July. You know, if the President wanted to make a proclamation that would really have meaning, he would insist that every person who is not wearing a seatbelt be stopped, and told, "You know, sir, I'd appreciate it if you would button up your seatbelt. Even if you don't give a damn about yourself, at least I know that you have got somebody who loves you."

Mr. SNOW. Senator, I certainly agree with the sentiments.

Senator HARTKE. Would you recommend that?

Mr. SNOW. I certainly think that anything which will make people aware of seatbelts, such as that—

Senator HARTKE. If I tell you you gained 5 extra delegates in the national convention, would you recommend that?

Mr. SNOW. I was pleased by the actions the Congress took in issuing the proclamation on highway safety, which I read with great interest. It didn't go that far, though.

Senator HARTKE. In your financial statement, which is available for public inspection, among your assets are 3.3 percent interest in Washington Investors.

I understand that asset does not now present a conflict in interest, but there is a potential future conflict. I understand you have plans to divest yourself of the holdings in Washington Investors should you be confirmed. Is that right?

Mr. SNOW. Yes, sir, Senator.

Senator HARTKE. Now the committee has received a letter from the Department of Justice regarding your financial holdings.

Have you seen that letter?

Mr. SNOW. Yes; I have, sir.

Senator HARTKE. The Department is of the opinion that while no steps are necessary at this time to avoid any potential conflict of inter-

est, it is possible that in the future there may be a conflict with respect to your holdings in Continental Capital and your childrens' holdings in their trust fund.

Do you agree to follow the procedures outlined in parts there pursuant to 18 U.S.C. 208 should such conflict exist?

Mr. SNOW. Yes; I do, Senator.

Senator HARTKE. OK, John, you can temporarily step aside.

Mr. SNOW. Thank you, Senator.

Senator HARTKE. Mr. Ralph Nader and Mr. Clarence Ditlow, I understand, you are together.

I might ask a question, if it is appropriate. In view of the fact that Mr. Snow has indicated that we have moved forward with good speed in holding these hearings, is it unsafe at any speed to consider this nomination?

#### STATEMENTS OF CLARENCE DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY; AND RALPH NADER

Mr. NADER. I think only he can answer that in the next 6 months. I think Mr. Ditlow has a brief statement to make, and I will make some comments.

Mr. DITLOW. Senator Hartke, I have a prepared statement that I ask to be inserted in the record.

Senator HARTKE. Will you speak up, please?

Mr. DITLOW. Yes.

The Center for Auto Safety would like to be able to endorse Mr. Snow's nomination. Unfortunately we cannot, since there is nothing in his background that particularly qualifies him for the position.

Rather than being a direct criticism of Mr. Snow, this is a criticism of the Ford administration which has such a callous disregard for vehicle safety and human life that it will not nominate an individual with a strong vehicle safety background.

In this situation we can only examine the pressing issues before the NHTSA to determine what the public health and safety requires and find out where Mr. Snow stands on the issues.

Before discussing the specific criteria which the next NHTSA Administrator should meet, we must fully understand the public health problem which motor vehicle accidents present, and the safety measures taken to reduce the accident toll.

In 1974 the total cost arising from motor vehicle accidents was \$19.3 billion in the United States. Now from 1966, before the passage of the National Traffic and Motor Vehicle Safety Act to the present time, there has been a significant reduction in deaths and injuries on highways as a result of that act.

We estimate from 1966-73 the last year recorded for 55-miles-an-hour speed limit, there was an approximate saving of 20,000 lives over what would have happened without the safety standards. With the addition of the 55-miles-an-hour speed limits the savings goes up to about 30,000 lives in 1975 and many, many hundreds of thousands of injuries.

A good NHTSA Administrator must have a basic knowledge of the field and work related experience. It is impossible for anyone without

these qualifications to be more than a caretaker for the last 7 months of the present Ford administration.

In the area of regulatory reform, he or she must distinguish between economic deregulation and continued health and safety regulation. But the Administrator must recognize the need for increased efficiency within the agency and its programs. Too many of the agency's divisions are producing too little so that dead wood is available for pruning.

Present motor vehicle safety standards are woefully in need of strengthening and revision. With the delays in revising old standards and promulgating new ones, few significant changes have been made in motor vehicle safety standards in the 1970's.

The only important new requirements for 1976 cars over those for 1969 cars involve slightly more protective bumpers, increased roof and side door strength, safety switches for power windows, windshield mounting to prevent ejection of passengers in a crash, and reduced flammability of interiors.

The most significant safety feature which can be implemented is the airbags, and I think I will go into that briefly. Mr. Nader will discuss that also.

Despite improvements in auto safety, there is clearly still mass carnage on the highways. And with the shift to smaller cars to improve fuel economy, the death rate will begin to climb again. All the factors being equal, the occupant of a small car involved in an accident is far more likely to suffer death or serious injury than the occupant of a large car. The 10,000 lives saved at 55 m.p.h. may disappear. The higher death rate can only be avoided if more advanced safety features are incorporated in the new cars as soon as possible.

Now the airbag is the most modern and effective safety system and it is also the most opposed by the automobile industry. According to the DOT's most conservative estimate, use of airbags in all cars in a 30-miles-an-hour crash, would save 11,000 lives and 620,000 injuries annually.

According to John DeLorean, the shift to smaller cars will cause an additional 69,000 lives lost in the next 10 years, if airbags are not installed.

The next NHTSA Administrator must make passive restraints a priority that is next to none. The auto industry has already used every tactic, including political pressure at the highest levels of the executive branch to secure effectively 8 years of delay in mandating passive restraints from initially the 1972 model year to the 1980 model year. Only a good administrator will have the courage and resolve to stop the years of delay and consequent deaths and injuries.

Another significant area is pedestrian protection. A good NHTSA Administrator can find safety areas that not only will significantly reduce accidental deaths and injuries, but also may lower vehicle costs.

A safety standard eliminating deadly exterior protrusions is but one example of highly cost effective means of reducing the traffic toll. There is absolutely no utilitarian purpose served by an \$8 hood ornament that can spear an unsuspecting child. Here in the District of Columbia last year, a motorcyclist was recently awarded \$250,000 for

permanently crippling injuries sustained when a Mercury veered into him with a spearlike parking light component puncturing his leg to the bone. An exterior protrusion standard would prevent such injury with possibly a cost savings to the car buyer.

In the area of safety defects. The beneficial effects of even the most advanced vehicle safety standards can be sharply decreased if the manufacturers are permitted to build defective vehicles. To the severe detriment of the public safety, the DMV has permitted its defect investigation and remedy function to atrophy as revealed by a recent center study of the NHTSA's Office of Defects Investigation (ODI). The next administrator must revitalize this moribund unit.

For example, the investigations went from an average pendency of 3.2 months in the first 19 months of the ODI's investigation to 28.7 months in the most recent period.

The public health and welfare impact of deferred investigations is exacerbated by the fact that most investigations are into even older cars. To the extent that the defects exist in these vehicles, delays in investigations unnecessarily subject the public to possible death and injury. Now under section 154 of the Motor Vehicle Safety Act, many consumers with cars up to model year 1968 could be left without a remedy even where a defect is found in these older investigations.

According to the GAO, only a small fraction of owners will pay for a remedy where the manufacturer refuses to repair for free, as is now the manufacturer's option after 8 years.

In recreational and related vehicles. The popularity of pickup trucks, recreational vehicles, vans, and motorcycles has grown dramatically over the past few years. These vehicles are currently subject to few of the Federal Motor Vehicle Safety Standards. The next NHTSA Administrator should make it one of his or her primary goals to apply the current safety standards and to develop new standards specifically for these vehicles to insure that their occupants are given the same level of protection as that provided in passenger cars.

The next NHTSA Administrator must also look to the research and development functions of the agency. The GAO has criticized the NHTSA's failure to use the research findings.

A high priority of a good administrator must be to forge a close working relationship between the agency's research office and the program offices. Said action would help eliminate the delays in revising old and issuing new safety standards. Good administration in this and the standards areas would make 8-year delays—such as occurred with tire quality grading and used car standards—things of the past.

One of the most significant and underutilized features of the 1966 Traffic Safety Act is the experimental safety vehicle (ESV) program. This was a feature of the original 1966 act. Unfortunately, only the small foreign companies appear to have taken the ESV program seriously. They may very well not do that in the future since the technology has not been required by the standards.

The entire thrust of the ESV program is to establish feasible, advanced levels of auto safety engineering, suitable for mass production, to permit faster implementation of safety standards and voluntary adoption of this technology by the auto companies. Any Government safety standards program can be stalled by the regulated industry simply stating it is not feasible to meet the proposed standards.

Unless the Government can show that a safe vehicle can be built, the pace of safety progress will be controlled by the industry and the purpose of the law defeated.

Consumer information has just been a terrible situation within the NHTSA. The agency up until 1972 simply did not require consumer information to be made available to the public. The 1972 Motor Vehicle Information and Cost Savings Act required the NHTSA to develop readily available, readable information on the crashworthiness and injury mitigating ability of the various automobiles and trucks on the market. The second features were informing consumers on repairability, damagability, crashworthiness and insurance cost fade away.

However, the present administration of the NHTSA has been letting some of the deadlines within this slip away.

We recommend that Mr. Snow turn his attention to these priority items if he were nominated. If he is unable to support these items, then I do not think that he would make a good administrator.

Mr. NADER. Mr. Chairman, the question of Mr. Snow's nomination to head the auto safety agency has to involve the question of his relationship with the Secretary of Transportation, Mr. Coleman.

Mr. Coleman has now indicated to the public that after spending the first 15 months in his job as Secretary of Transportation on railroads and SST, Concorde-type deliberations, that he is about to turn his attention to the auto safety situation.

It is illustrative of other Secretaries of Transportation, except Mr. Volpe, how auto safety always seems to get the last priority in terms of claim on their time.

Right after he took office, we met with Secretary Coleman in March 1975 to discuss a number of issues including the need for a speedy decision on mandating passive restraints for new cars. At the meeting, there was Dr. James Gregory, Mr. Snow's predecessor and a number of other people.

Upon hearing Dr. Gregory's statement about the airbag, Mr. Coleman noted that his statement reminded him of the Supreme Court's requirement in *Brown v. Board of Education*, to "Proceed with all deliberate speed," in integrating schools. And that he, Mr. Coleman, would not tolerate similar delays in the NHTSA's decisionmaking on passive restraints.

Well, he has. He has tolerated delays, he has not given us attention to this problem, he has otherwise been occupied by the Concorde decision.

And if it is technological philosophy that he is fascinated with, we can show him that the airbag inflates faster than the Concorde flies.

Mr. Coleman is increasingly troubling to those of us in the auto safety movement for the kinds of statements that he has been making. He is, indeed, an open Secretary of Transportation, although we have been trying to get a meeting with him for a number of weeks. He certainly has been more accessible than any other Cabinet Secretaries. But it disturbed me to learn from the newspapers that he gave his first signal about delaying the airbag decision before the most notorious forum in the United States, the Economic Club of Detroit.

The Economic Club of Detroit is dominated by the auto industry and other major corporations in that area.

If any member of any administration wants to signal an anticonsumer posture, he would accept an invitation to address the Economic Club of Detroit. And Mr. Coleman, on May 24, 1976, did not disappoint the Economic Club of Detroit.

In his printed speech, he made the following statement, which he has not substantiated:

As an aside I must note that I have seen few signs of comfort in the auto industry with the regulations you have to live with as the result of foolish congressional misdirection. So I presume that you are in accord with our regulatory reform proposals.

I think the chairman might want to ask Mr. Coleman what he meant by "foolish congressional misdirection." And don't let him evade the question by saying he was talking about economic regulation, because the auto industry is not economically regulated. That statement has to refer to the auto safety policy led by the congressional initiative in the last few years.

In his statement indicating that he was going to have another hearing on the airbag on August 3, his statement released to the public on June 9, 1976, he indicated that one of the issues to be addressed was "the appropriate role of the Federal Government in prescribing motor vehicle safety standards."

I submit that he is still not satisfied with the explicit expression of motor vehicle safety in the Federal laws. I don't think that this issue is an appropriate one to be considered in the August prehearing on passive restraint systems. Indeed it indicates that Mr. Coleman wants to question administratively what has been established legislatively in the auto safety laws.

These are indications that he is going through an education process that is 15 months later than it should have been, and that it is being conducted at a frightful cost in human lives, which could be saved if the airbag decision was implemented when it should have been under his aegis, if not under earlier Secretaries of Transportation.

In 1971, I happened to meet Edward Cole, the president of General Motors at a function here in Washington. And suitably provoked by my enthusiasm for the airbag, he announced that they would be on 1973 General Motors cars. He was quite clear that the airbag was ready to be deployed.

Well, there are some airbags on some GM cars, optional, and very little promoted, of course, and now they are going to phase out the optional airbags in GM cars at the end of this year.

Senator HARTKE. Do you have the report on those accidents in those airbag cars?

Mr. NADER. We have them. The System of Highway Safety has a greater collection of them. They have saved lives. Recently a doctor was hit headon by a bus in Kansas City, and walked away. They have prevented injuries and they have performed with remarkable reliability.

That is quite remarkable for an early test of the technology as well.

Well, not only is GM phasing out its optional airbag offering, but the airbag will not be standard equipment, or equivalent passive restraint systems will not be standard equipment until 1980 cars at the earliest.

The Government proposed the first installation for 1972 cars. We have an 8-year delay. Every day that airbags are not on cars, 30 lives are lost, every day; over 700,000 injuries a year.

Now if Mr. Coleman took this as his high priority, he would have started educating himself right when he came into office. Instead, he is beginning the process at the present time. That is extremely deplorable, and is going to shape the ability of Mr. Snow, if he is approved by the Senate, confirmed by the Senate, to operate.

So I would ask you to ask Mr. Snow how is he going to deal with Secretary Coleman as he goes about implementing his duties under the auto safety law.

The second point, I think, that should be emphasized, is that the motor vehicle experimental safety program, a terrifically innovative idea in the 1966 law, has been subject to delays, low priority, and almost scuttling. Although it has been shown that VW and Datsun have come up with some very interesting small-weight vehicle safety projects, where they are not, in effect saying to the expectant public that people have to choose between efficiency of fuel consumption and safety. They have come up with cars.

Datsun has shown a vehicle that is under 2,500 pounds, which is protective at 50-miles-an-hour barrier collisions. It is a remarkable performance. And that was done over 2 years ago. We haven't heard much of it since.

Unless the DOT raises its motor vehicle experimental safety program to a high level of visibility and support, it is going to disintegrate, if it hasn't already.

The foreign manufacturers thought Washington was serious and they went to work a few years ago to develop experimental safety vehicles.

The domestic manufacturers' belief that Washington could be taken care of, particularly the Nixon administration, a not unreasonable expectation, and they didn't go to work.

And now the foreign manufacturers are saying, well, this was like a false alarm. Cool it, folks. We don't have to really be serious. This on again, off again situation, this kind of delay, also hurts suppliers of safety equipment as Mr. Shaeffer, vice president of Allstate noted in one of his letters to the DOT. He says:

One further comment about present air cushion lap belt systems with the multi-year delays in finalizing standard 208, research and development of advanced and improved airbags have been brought to a virtual halt. Suppliers have been bugged so many times by these delays, they cannot be blamed for being gunshy.

So that you retard innovation with this kind of institutional insincerity and delay on the part of the Department of Transportation.

I think the question should be asked of Mr. Snow, about whether he has evaluated the dismal performance of the motor vehicle experimental safety program from the point of view of the DOT, whether he intends to do something about it in the 6 months or so that he has to prove his mettle.

Third, as Mr. Ditlow pointed out, in the last 5 or 6 years, there has almost been a standstill in the auto safety standards performance issuance area.

Mr. Toms put all his eggs in one basket here, the airbag, and avoided paying much attention to other safety standards that should have been issued or strengthened.

And Mr. Gregory also seemed to have been occupied with the airbag.

And it is important, I think, for us to hear from Mr. Snow whether he agrees with us that there has been very little progress under the auto safety laws in the last 5 or 6 years.

By the way, Mr. Chairman, the three prior directors of the auto safety agency, Dr. William Haddon, Mr. Doug Toms, and Dr. James Gregory, are strongly for the airbag. Strongly for the airbag. So not only do you have administrative support for the airbag which doesn't seem to be quite as intensively shared upstairs in the DOT, you also have a proven operating technological system that already, in the last 2½ years, has met the standards that are being proposed for passive restraint systems for 1979 or 1980 vehicles.

So there is no question about whether these standards can be met, they have been met by cars on the highway now that have saved lives.

Third, the economic consequence of the passive restraint system is very, very impressive indeed, because as we see with volume production the unit costs go down and it is nonsense for Government agencies to compare the auto industry's cost estimates, when they know very well from suppliers and other research people such as the DeLorean estimate, that the airbag is exceedingly cost-benefit productive and far less expensive than what the auto companies are trying to make it out to be.

Another question which might be asked of Mr. Snow is whether he thinks the influence of the auto industry has been excessive or harmful on the DOT, particularly the auto safety agency. And whether he thinks that the auto industry has conducted itself in an improper way in frequently going to the White House in order to get the White House to influence off-the-record the Department of Transportation in its activities on auto safety standards.

I refer particularly to the congressional hearing record before Congressman John Moss on the airbag and the way the White House, at the behest of the auto industry, interfered with the Secretary of Transportation Volpe, a fact that can be confirmed by asking Mr. Douglas Toms to come up here and testify, because he observed it to his dismay as well.

I think also there might be a question on a rather ambiguous philosophical expression—I say “ambiguous” to give Mr. Snow the benefit of the doubt as to how he interprets the auto safety law.

He said in one of his statements where the industry “is not responsive and a regulation will achieve effectively significant goals, the agency should intervene with mandatory standards.”

He also said elsewhere, “where this fails to reach desired safety goals mandatory intervention which effectively achieves these goals would be in order.”

I think he was referring to both the marketplace and the voluntary adoption of safety standards.

I don't think the law foresees such a process of leisurely options. I think what the law expects the Government to do is determine if there

is an unreasonable risk, whether there is a practicable reasonable way to deal with it, to deal with it in a mandatory fashion. You can delay 5 to 10 years with this kind of philosophy if indeed it starts with every new Administrator, and it doesn't inherit, and therefore discount some of the delays of the Administrator's predecessor.

I would like to make one comment on the array of forces for the airbag. This is one of the unique examples in the history of the consumer movement where you have sizable corporations siding with the consumers on this issue, which is challenging another large major industry.

I am referring to the auto insurance industry which almost unanimously is for the rapid adoption without further delay of the passive restraint system. And I would like to have introduced in the record two letters by Mr. Shaeffer, the vice president and general counsel of Allstate, to Secretary Coleman, as well as several other DOT officials, for two reasons.

One, as an interesting accumulation of evidence for the airbag, and second, it has an interesting accumulation of a rare commodity of corporate courage, the kind of corporate courage that takes on another unscrupulous industry headon and rebuts its stupefyingly stupid responses.

Mr. Shaeffer for example stated that while the auto companies are saying that the airbag would add unduly to the weight of the vehicle, Ford Motor Co., ads for the Granada show how much quieter the ride is in the 1976 Granada compared to the 1975 Granada. And, quoting Donald Shaeffer:

And why does Ford say it is quieter? Because they proudly assert they have added 100 pounds of sound insulation to the 1976 model. The airbag system in 1976 Volvos in our fleet weigh about 28 pounds. Ford objects to adding airbags for a safe ride partly on the basis of added weight. Yet brags about adding 100 pounds for a quiet ride. Where are our priorities?

And at the end of his statement he says to Mr. Hamilton Herman, from the DOT, he says:

In conclusion the last airbag cars available as options are being phased out in the 1976 model year. The public is left without a safety option. If the government fails to require a passive restraint as standard equipment, the public will be refused the opportunity of even a limited election and the concerted effort of the auto manufacturers to kill this great invention will have been successful. It is like discovering Pasteurization and nobody will boil the damn milk, a national disgrace.

He has also pointed out how many thousands of lives and hundreds of thousands of injuries this proven safety feature will save, and I submit there is something wrong in our society when a proven, massively significant safety system is able to be delayed, driven into the ground, and possibly scuttled by a government that is indentured to the automotive industry.

This is something that is hard to characterize even in the words of outrageous and cynical behavior on the part of the Nixon and Ford administrations.

Perhaps we need to do in the Congress and in the White House, what Mr. James Tigh, of the British Safety Council, is doing to support occupational health and safety.

He has a bell on his premises and it rings every time there is a worker death to remind his workers and any other industry representatives that walk into his offices that this is not mere statistical cold-blood calculations; somebody is paying the penalty every hour, the final penalty for the cynical and cowardly performance of these Government agencies, departments, and officials.

And I have no hesitation at all in characterizing the Secretary of Transportation's position in further delaying once again this proven passive restraint system and the standard that would put it into operation to save lives all over the country, as an administration position of extreme cowardice. It really boils down to whether Secretary Coleman has the moral courage to stand up to these giant corporations and the White House that has serviced them so faithfully in the last few years.

That is the issue. It is not economics, it is not engineering, it is not administrative feasibility.

It is whether William P. Coleman has the guts to stand up to General Motors as he had the guts to stand up on civil rights years ago.

Thank you, Mr. Chairman.

Senator HARTKE. All right, we will recess and I will come right back. I have to go vote.

[The statement follows:]

STATEMENT OF CLARENCE M. DITLOW III, DIRECTOR, CENTER FOR AUTO SAFETY

Mr. Chairman and members of the Committee, thank you for the invitation to testify on the nomination of John A. Snow as the Administrator of the National Highway Traffic Safety Administration (NHTSA). I am the director of the Center for Auto Safety, a non-profit organization founded by Consumers Union and Ralph Nader in 1970. Now independent of its founders, the Center works mainly to improve vehicle and highway safety.

Before discussing the specific criteria which the next NHTSA Administrator should meet, we must fully understand the public health problem which motor vehicle accidents present and the safety measures taken to reduce the accident toll. On our nation's highways, an accident involving injury occurs every 18 seconds while one involving death occurs every 11 minutes. In 1974, the total cost arising from motor vehicle accidents was \$19.3 billion in the U.S. This cost figure includes \$6.0 billion in wage loss, \$1.7 billion in medical expense, \$5.1 billion in insurance administration cost, and \$6.5 billion in property damage from moving motor vehicle accidents.<sup>1</sup>

Enormous as the highway traffic toll is, it would be even larger but for the passage of the National Traffic and Motor Vehicle Act in 1966 and the imposition of vehicle safety standards in 1968. In 1966, the death rate per 100 million miles travelled was 5.7. Even though only a few of the original safety standards have been updated, the death rate dropped to 4.2 deaths per 100 million miles in 1973. With the imposition of the 55 mph speed limit, the fatality rate per 100 million miles dropped to 3.6 and 3.5 in 1974 and 1975 respectively. If the auto safety standards had not been imposed and the traffic death rate had remained at the 1966 level of 5.7, then in 1973 some 74,613 individuals would have died in traffic crashes instead of the actual toll of 55,511. The difference of 19,102 lives, along with hundreds of thousands of serious injuries prevented or diminished, is directly attributable to the safety standards.<sup>2</sup> When the effect of the 55 mph speed limit is factored in, the savings in lives goes up to about 30,000 in 1975.

<sup>1</sup> National Safety Council, *Accident Facts* (5, 40) (1975).

<sup>2</sup> The greater safety of interstate highways as compared to other roads cannot account for the decrease in death rate since the death rate on interstates also decreased significantly from 1968 to 1973 with the phase-in of vehicles meeting the safety standards. In addition some 23,500 miles of the interstate system was already completed in 1966 with only an additional 10,400 being added by 1973.

## GENERAL

A good NHTSA Administrator must have a basic knowledge of the field and work related experience. It is impossible for anyone without these qualifications to be more than a caretaker for the last seven months of the present Ford Administration. In the area of regulatory reform, he or she must distinguish between economic deregulation and continued health and safety regulation. But the Administrator must recognize the need for increased efficiency within the agency and its program. Too many of the agency's divisions are producing too little so that dead wood is available for pruning.

## SAFETY STANDARDS

Present motor vehicle safety standards are woefully in need of strengthening and revision. With the delays in revising old standards and promulgating new ones, few significant changes have been made in motor vehicle safety standards in the seventies. The only important new requirements for 1976 cars over those for 1969 cars involve slightly more protective bumpers, increased roof and side door strength, safety switches for power windows, windshield mounting to prevent ejection of passengers in a crash and reduced flammability of interiors.

Safety features that would save many lives but have not been required in new motor vehicles include passive restraints that can save at least 11,600 lives and 620,000 injuries annually according to the National Highway Traffic Safety Administration (NHTSA).<sup>3</sup> Other significant safety omissions include pedestrian protection from sharp exterior protrusions, upgrading of fuel systems to prevent thousands of deaths and disfiguring injuries in crash fires, and strengthening of front seats to prevent collapse in rear end collisions. Such collapses, particularly in the case of Volkswagen rear end collisions, can hurl front seat occupants through the rear windows.<sup>4</sup>

A particularly egregious example of an inately weak safety standard is FMVSS 103 (Windshield Defrosting and Defogging Systems). This requires only the front windshield be defogged after thirty minutes with no requirements for side or rear windows. Yet research has shown that most winter trips are started and completed before the thirty minute timeframe has elapsed.

## SMALL CARS AND INJURY RATES

Despite the improvements in auto safety, there is clearly still mass carnage on the highways. And with the shift to smaller cars to improve fuel economy, the death rate will begin to climb again. All the factors being equal, the occupant of a small car involved in an accident is far more likely to suffer death or serious injury than the occupant of a large car.<sup>5</sup> Federal Energy Administration studies show that vehicle size will be significantly reduced within the near future due to reductions of engine size and vehicle weight as well as due to model mix shift. For example, one study with extensive auto industry input showed that 58 and 73 percent of all cars sold in 1980 and 1985 respectively would be compacts and subcompacts. By 1985, the large car market would be reduced from its present 30 percent to 3 percent.<sup>5</sup>

The higher death rate can be avoided only if more advanced safety features are incorporated into new cars as soon as possible. But the most effective modern safety system, the air bag is also the most opposed by the auto industry. The concept of the air bag is simple; in a collision, air bags inflate within 30 milliseconds inside the vehicle so that the occupants collide against the bag instead of metal or glass. According to the Department of Transportation most conservative estimates, use of air bags in all cars in a 30 mph frontal barrier crash would

<sup>3</sup> Department of Transportation "Amendment to 'Analysis of Effects of Proposed Changes to Passenger Car Requirements of MVSS 208'" (December 1974). The original "Analysis" issued by the Department in August 1974 estimated passive restraints would save 15,600 lives and 1,000,000 injuries annually.

<sup>4</sup> The Volkswagen ejector seat phenomenon is graphically described by the Center for Auto Safety in *Small—On Safety* 37-44 (1972).

<sup>5a</sup> This is clearly shown in the extensive accident investigation work of the University of North Carolina's Highway Safety Research Center reported in "Driver Injury in Automobile Accidents Involving Certain Car Models (1974).

<sup>5</sup> Energy and Environmental Analysis, Inc., "Gasoline Consumption Model" 23 (July 1975).

save 11,600 lives and 620,000 injuries annually.<sup>6</sup> The shift to smaller cars will cause an additional 69,000 lives lost in the next 10 years if air bags are not installed in all cars sold to the public after 1977 according to a study prepared for Allstate Insurance Company by John Z. DeLorean, former Vice-President of General Motors.<sup>7</sup>

The next NHTSA Administrator must make passive restraints a priority item that is next to none. The auto industry has already used every tactic including political pressure at the highest levels of the Executive Branch to secure effectively eight years of delay in mandating passive restraints from initially the 1972 model year to the 1980 model year. Only a good Administrator will have the courage and resolve to stop the years of delay and consequent deaths and injuries.

#### PEDESTRIAN PROTECTION

A good NHTSA Administrator can find safety areas that not only will significantly reduce accidental deaths and injuries but also may lower vehicle costs. A safety standard eliminating deadly exterior protrusions is but one example of highly cost effective means of reducing the traffic toll. There is absolutely no utilitarian purpose served by an \$8.00 hood ornament that can spear an unsuspecting child. Here in the District of Columbia, a motorcyclist was recently awarded \$250,000 for permanently crippling injuries sustained when a Mercury veered into him with a spear-like parking light component puncturing his leg to the bone.<sup>8</sup> An exterior protrusion standard would prevent such injury with possibly a cost savings to the car buyer.

The exterior protrusion problem is all the worse because the NHTSA has long been aware of the injuries and deaths caused thereby but has done nothing to effectively alleviate it. An initial proposal on December 28, 1967, to provide pedestrian protection has been ignored and the standard never issued. Each year there are about nine to ten thousand pedestrian fatalities (about 18 percent of all motor vehicle fatalities) and four to five hundred thousand pedestrian injuries. Many of these injuries occur or are aggravated because of sharp protrusions and edges on automobiles. Most of the casualties are incurred at low-speed impacts; a flat or smooth automobile surface could minimize the severity of injury. Furthermore, producing a smooth outside surface would cost the manufacturer less than the fins, ornaments, and clever like edges that commonly bedeck cars.

#### SAFETY DEFECTS

The beneficial effects of even the most advanced vehicle safety standards can be sharply decreased if the manufacturers are permitted to build defective vehicles. To the severe detriment of the public safety, NHTSA has permitted its defect investigation and remedy function to atrophy as revealed by a recent Center study of the NHTSA's Office of Defects Investigation (ODI).<sup>9</sup> NHTSA's next Administrator must revitalize this moribund unit.

From the initiation of the first defect investigation on October 27, 1964,<sup>10</sup> investigatory action by ODI has slowed to a snail's pace. The first 19 months of defects investigation (October 27, 1967) through May 1969) resulted in the completion of 111 investigations with an average pendency of 3.2 months. The second 19 months of investigation (June 1967 through December 1970) resulted in the completion of only 72 defect investigations with an almost doubled average pendency of 5.8 months.

Since the NHTSA might well have some time to reach a steady state in its investigation the more than three years that lapsed during the above mentioned first two 19 month periods should suffice for learning and stabilization. Unfortunately, during the third 19 month period (January 1971 through September

<sup>6</sup> Department of Transportation, "Amendment to 'Analysis of Effects of Proposed Changes to Passenger Car Requirements of MVSS 208'" (December 1974). The original "Analysis" issued by the Department in August 1974 estimated passive restraints would save 15,600 lives and 1,000,000 injuries annually.

<sup>7</sup> John Z. DeLorean Corp., "Occupant Restraint System Expenditure/Benefit Study" (September 1975).

<sup>8</sup> *Knippen v. Ford Motor Co.*, Civil Action No. 1725-72 (D.D.C. 1975).

<sup>9</sup> A copy of the study, first presented to the NHTSA's Motor Vehicle Safety Advisory Council on Jan. 28, 1976, is submitted for the hearing record.

<sup>10</sup> This investigation, IR-001, into hydraulic hose failure in the windshield wiper system on 1967 Lincoln Continentals was assigned to an inactive status without the finding of a defect as have been the majority of its successor investigations.

1972) the average pendency for the 100 investigations that ODI completed was 10.0 months. During the 19 month period from October 1972 through April 1974, ODI managed to complete only 38 investigations with the startling high pendency of 19.8 months. In the latest 19 month period (May 1974 through November 1975), ODI crept almost to a stop with 27 completed investigations at an average pendency of more than two years per case or 28.7 months. The results for all the periods are as shown below :

Period	Number completed investigations	Average pendency (months)
November 1967 to May 1969 .....	111	3.2
June 1969 to December 1970 .....	72	5.8
January 1971 to September 1972 .....	100	10.0
October 1972 to April 1974 .....	38	19.8
May 1974 to November 1975 .....	27	28.7

The public health and welfare impact of deferred investigations is exacerbated by the fact that most investigations are into even older cars. To the extent that the defects exist in these vehicles, delays in investigations unnecessarily subject the public to possible death and injury. Since manufacturers can legally refuse to recall vehicles older than eight years under Section 154 of the Motor Vehicle Safety Act, many consumers with cars up to model year 1968 could be left without a remedy even where a defect is found in these older investigations. According to the General Accounting Office, only a small fraction of owners will pay for a remedy where the manufacturer refuses to repair for free.<sup>11</sup>

#### RECREATIONAL AND RELATED VEHICLES

The popularity of pickup trucks, recreational vehicles, vans and motorcycles has grown dramatically over the past few years. These vehicles are currently subject to few of the Federal Motor Vehicle Safety Standards. The next NHTSA Administrator should make it one of his or her primary goals to apply the current safety standards and to develop new standards specifically for these vehicles to insure that their occupants are given the same level of protection as that provided in passenger cars. (Motorcycles may well be exceptional in not being capable of giving such protection.)

#### Research and development

Millions of dollars of NHTSA research funds have been wasted because the agency's other programs do not utilize the research findings. In a September 16, 1974, report the General Accounting Office found :

The Safety Administration did not promptly use research contractors' findings to develop safety standards or to contract for additional research when considered necessary.

For example, research undertaken since June, 1968, to improve the safety standard for rearview mirrors has not yet provided the necessary basis for rulemaking. Also, development of an improved standard for fuel systems took close to 7 years.

[A]dequate evaluations of research reports . . . require analyses of research contractors' final reports to point out the data and conclusions which are sound and which can be used to support rulemaking. Several analyses GAO reviewed were little more than summaries of the contractors' findings and contained few constructive recommendations on rulemaking.

A high priority of a good Administrator must be to forge a close working relationship between the agency's research office and the program offices. Said action would help eliminate the delays in revising old and issuing new safety standards. Good administration in this and the standards areas would make

<sup>11</sup> In recalls where the owners were forced to pay for the repair themselves the General Accounting Office found that only a minute 0.6 percent of the entire vehicle population with the defect was corrected. Eliminating those vehicle owners who did not receive notification, only 16 percent of the vehicle population actually receiving notification was corrected. General Accounting Office. "The Auto Safety Program: Identifying Defects and Recalling Vehicles" 5-6 (Feb. 11, 1975).

eight year delays (such as occurred with tire quality grading and used car standards) things of the past.

#### *Experimental safety vehicle*

One of the most significant and underutilized features of the 1966 Traffic Safety Act is the experimental safety vehicle (ESV) program. The entire thrust of the ESV program is to establish feasible, advanced levels of auto safety engineering, suitable for mass production, to permit faster implementation of safety standards and voluntary adoption of this technology by the auto companies. Any government safety standards program can be stalled by the regulated industry simply stating it is not feasible to meet the proposed standards. Unless the government can show that a safe vehicle can be built, the pace of safety progress will be controlled by the industry and the purpose of the law defeated.

Unfortunately, only the small foreign companies appear to have taken the ESV program seriously. These companies and their governments reportedly spent hundreds of millions of dollars to develop light-weight ESV's whose occupants could survive frontal barrier crashes up to 50 miles per hour. Features from these ESV's are now showing up in new model imports. In stark contrast, the domestic manufacturers made tank-like ESV's in a futile effort to persuade the NHTSA and the public that attractive and practical ESV's could not be made.

With this program entering a new phase, development of research safety vehicles (RSV's) that cannot be dinosaurs, the next NHTSA Administrator should push this program hard to develop advanced technological features which can then be required for all new cars through upgraded safety standards.

#### *Consumer Information*

The implementation of Title II of the Motor Vehicle Information and Cost Savings Act of 1972 must be one of the major concerns of the new administrator. If safety is to play a major role in the marketplace, consumers must be armed with readily available and readable information concerning the crashworthiness and injury mitigating ability of the various automobiles and trucks on the market. Information of this nature will allow the consumer to make an informed choice and will provide a nongovernmental incentive prodding the auto manufacturers to develop safe and more fuel efficient automobiles.

Although the dismal failure of the agency's prior consumer information program led to passage of the 1972 Act, the agency appears ready to let the new program's requirement of informing consumers on repairability, damagability, crashworthiness and insurance cost fade away. The new NHTSA Administrator should examine the actions of EPA and FEA in providing consumers information on auto fuel economy and costs for the 1977 models. Not only will each car be labeled but the dealers must have available in adequate quantity for all new car purchasers comparative booklets on all new cars' fuel economy.

#### *Conclusion*

The Center for Auto Safety would like to be able to endorse Mr. Snow's nomination. Unfortunately, we cannot since there is nothing in his background that particularly qualifies him for the position. Rather than being a direct criticism of Mr. Snow, this is a criticism of the Ford Administration which has such a callous disregard for vehicle safety and human life that it will not nominate an individual with a strong vehicle safety background.

[Recess.]

Senator HARTKE. Mr. Snow, do you want to go back to the witness table?

Mr. SNOW. Thank you, Senator, for a chance to comment on Mr. Ditlow's and Mr. Nader's respective statements.

First of all, with respect to Mr. Ditlow's statement about the qualifications for a prospective Administrator, I thought he well stated some of the key ingredients.

Certainly the Administrator must have a commitment to safety. I think I have that.

Certainly he must distinguish between economic regulation and safety regulation, and I think I have that. Make that distinction clear. Certainly he must not shy away from taking mandatory actions, where private sector actions are not appropriate to advance an objective of the statutes, where mandatory actions will realize the objectives, they should be taken.

I have no compunction about that. In fact, that is my reading of the intent of the National Traffic and Motor Vehicle Safety Act of 1966 and its subsequent amendments.

Certainly if there is deadwood in NHTSA, it should be proved. I am not aware of it, I will look into it. Certainly if the agency is not moving adequately on the vehicle—effective vehicle program, it should do so.

Let me make it clear that on the passive restraints, I regard that not only as NHTSA's No. 1 priority, but as the Department's No. 1 priority. I think it is the No. 1 priority and it is receiving the attention which the No. 1 priority item ought to receive.

Another qualification, I think, and this came up in Mr. Nader's comments, is what is Snow's relationship to the Secretary?

I think an important qualification, at least an important enhancement of the role of the Administrator is to have a close working relationship with the Secretary and to be an individual that the Secretary respects and whose advice he will listen to and whose recommendations he will listen to.

I think the Secretary holds me in quite high regard and I am quite confident that my recommendations to him will be given the highest consideration.

Therefore, I expect that the decisions that come out of 208 will reflect strong input from me and it is for that reason that I have shied away from making comments on the pending rulemaking. I think for that reason it has been appropriate.

Now Mr. Nader commented on the fact that we haven't moved faster on the 208 matter, passive restraint matter.

Certainly that is regrettable. But to call your attention, Senator, to the fact that 1 year ago when John Barnum and Secretary Coleman and members of this committee were deeply involved in the issues of the crisis besetting the Northeast railroads, the widespread plant deterioration in the rest of the country and the need for railroad regulatory reform, and that was a crisis too. I think the Congress under your leadership responded to it very appropriately.

It was a very important item, it was an item which the Secretary inherited.

I don't think you can question Secretary Coleman's courage, he is a man of the utmost courage. He doesn't shy from making the hard decision, he doesn't shrink from anyone. I have seen him even confront you from time to time right in this hearing room.

Let me try and put in perspective what I think underlies his concerns on the need to make himself the decisionmaker, the key decisionmaker in the 208 matter.

It is as I said, a decision of enormous social, economic, and political consequences. And as you know, under amendments to the Safety Act, I think it was in 1974 in connection with the interlock issue, the issue

of passive restraints are not ultimately for the Secretary or the NHTSA Administrator to decide, it is ultimately for the Congress. The Secretary is well aware of the political environment in which he operates, and the need to build broad-based support for whatever action he takes.

I have no hesitation in saying he will take the action which he thinks best serves the public interest in safety. And when he does so he realizes that ultimately it is going to be a decision which must be ratified here in the Congress and I think that concerns him.

Mr. Nader raised the question about the Secretary repealing the statute in effect by stating one of the issues was an inquiry into the appropriate role of the Federal Government in prescribing motor vehicle and safety standards.

Far from repealing the Motor Vehicle Safety Act, the Secretary, I think, in his thoughtful statement on the issues, points out the need to look at the question carefully of what constitutes an unreasonable risk.

He also points out the need to have widespread public participation in the docket to reflect the consumer point of view, the public point of view.

Therefore, I think that a careful reading of what he said under the rubric of appropriate role of Federal Government indicates that he is following clearly the statutory intent.

Finally, I should say as I read Mr. Ditlow, he would like the next Administrator, the future Administrator, to be an outspoken advocate of the airbag position.

I may well eventually become an outspoken advocate of the airbag position if that is the option which best advances the public purpose under the statute, I will be an advocate for it. But that depends upon a careful review of the record, and I don't think it is appropriate to put a prerequisite on the selection—on the appointment of the Administrator that he sign off on one of the options in that 208 docket.

I would invite Mr. Ditlow, I would invite Mr. Nader to participate in that proceeding and to make their views known. They are forceful and effective advocates and their views will be welcome.

Thank you.

Senator HARTKE. All right.

I have never understood the industry's reluctance in this field. Frankly, it baffles me that industry is so fearful and spends so much time, energy, and money in trying to propagandize against the Government.

I have told them that to the extent that they can produce safety, I would use any influence in the committee to help them avoid any charges of antitrust activity, pollution or anything else as long as they were strong in heart. I would hope that you would do that as well.

I have no doubt that you are going to be confirmed. I do share Mr. Nader's great concern about the reluctance here on the part of the auto industry to produce some type of passive restraint system.

If this were a problem involving cost or technology it would be another issue. But I think that the problem is due to attitudes which have been expressed by the Secretary, for example, in which the idea

seems to be that doing less is better, doing nothing is perfect, killing more people is no concern.

And there is a growing attitude in the country that one of the reasons that there is such a disenchantment with Government is that the violence that we have gone through in this Nation is of such a magnitude that the individual feels he no longer has any opportunity to deal with it. He therefore turns away.

And, of course, one of the most violent instruments we have is the automobile. I don't say that disrespectfully, it is an escape mechanism that is a part of our lifestyle.

It would appear to me that instead of the automobile industry and the DOT being fearful of making those types of changes which could really make it possible for the whole question of morality and non-violence to be looked upon in a spirit of enthusiasm and respect. There is a great danger in this country that we might destroy the whole system simply by being afraid to move in a definitive way toward solving some of these very important problems.

Now, as you well know, if somebody walked through the streets of Washington shooting as many people as we kill in automobiles each week he would create a headline news attraction.

It has been repeatedly said, that unless you witness an accident directly, the lurid details are quickly hidden from public view, and taken as quickly as possible to the morgue or the hospital. The family is neglected and soon forgotten.

So, I look upon it this way, John: Here you have a chance to do something for humanity.

You may not have the sentiment to get the job done.

Mr. SNOW. Senator, I am commenting on the notion I am being caretaker—I don't anticipate being caretaker. I intend to provide firm leadership and advance the safety goals.

I know you are an advocate, an outspoken advocate, and I hope that a year from now, whenever it is, we can both—6 months from now, 4 months from now, whatever time it is, we can both be working to assure congressional approval of the action which is taken in the Department to advance safety under the 208 rulemaking.

Senator HARTKE. Knowing you, I have no doubt about your capacity.

Mr. SNOW. Thank you.

Senator HARTKE. My concern is one of whether the restraint system will be placed on you instead of on the cars. All right, these hearings are adjourned.

[The following information was referred to on p. 65:]

#### PERSONAL BACKGROUND AND EMPLOYMENT HISTORY

*Question 1.* Complete the attached questionnaire regarding your personal finances and background.

Answer. The completed questionnaire regarding my personal finances and background is attached.

*Question 2.* Please supply the Committee with copies of any speeches, articles or other documents which you have written during the last 5 years relating to motor vehicle or highway safety, safety regulation in general, regulation or de-regulation by the federal government, regulatory reform, loss reduction standards, fuel economy standards, the relationship between government and business

with respect to safety regulation, fuel economy standards, or loss reduction standards, or your regulatory philosophy.

Answer. Copies are attached. Please note that I have given many speeches and written many letters, etc., during the last five years about regulatory reform. Certain of these speeches were not reduced to writing. I have tried to include any matter that was significant or that dealt with the question of safety regulation. I would be happy to include any other item the Committee might request.

Question 3. Please indicate the nature and extent of your experience and background with (a) regulation in general; (b) safety regulation; and (c) motor vehicle safety regulation.

#### A. FIELD REGULATION

Answer. I have a fairly extensive experience and background in the field of regulation. Since my days as an undergraduate student of economics, I have had a substantial interest in the general issue of government regulation. This interest took sharper focus during the period when I was doing graduate work in economics at the University of Virginia where I did a considerable amount of reading and study on the subject. After entering Law School at George Washington University I continued my interest in the field and concentrated on Administrative Law courses. While attending Law School, and for a number of years thereafter, I also held a position on the Economics Faculty at the University of Maryland and taught several courses dealing with government regulation of industry. It was at this time that I began to write articles on the subject and, over the last ten years have published a number of articles and given a number of speeches on the general subject of government regulation of industry and many on the issue of transportation regulation.

After graduating from Law School, I joined a Washington law firm whose practice was largely concentrated in the administrative law area, primarily before the Interstate Commerce Commission, and to a lesser extent, before the Federal Communications Commission.

For the first year after joining the Department in June 1972, my primary responsibility involved representing the Department's interests and position in regulatory proceedings before the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. I subsequently became the Assistant General Counsel for Legislation, and in that capacity was responsible for preparation and final review of all Department of Transportation legislation and testimony by Department witnesses before Congressional Committees. In this capacity I acquired a broad familiarity with a number of the Department's regulatory functions and regulatory activities. In the subsequent positions I have held in the Department, Deputy Assistant Secretary for Policy, Plans and International Affairs, Acting Assistant Secretary for Congressional and Intergovernmental Affairs, and Deputy Under Secretary, I have been deeply involved in a variety of regulatory issues, with primary emphasis upon economic regulation but with a fairly wide exposure to safety regulation as well.

As Deputy Assistant Secretary for Policy, Plans and International Affairs, I was responsible for directing the Department's regulatory research program. I supervised the Department's filings before regulatory agencies and assisted in the formulation of Departmental regulatory policy toward the railroad, aviation and motor carrier industries.

In my capacity as Acting Assistant Secretary for Congressional and Intergovernmental Affairs, I worked closely with elements of the Department, such as the National Highway Traffic Safety Administration, the Federal Railroad Administration, the Federal Highway Administration, and the Federal Aviation Administration, and the Congress on a variety of regulatory issues, including highway safety issues, such as mandatory speed limits, hazardous materials, truck size and weights, ignition interlock, and passive restraints.

Since becoming the Deputy Under Secretary in May of 1975, my primary responsibility has been developing the Administration's transportation regulatory reform program, the Railroad Revitalization Act, the Aviation Act of 1975, and the Motor Carrier Reform Act, and coordinating the presentation of this legislation to Congress.

I also served as a member of the Domestic Council Review Group on Regulatory Reform which has been coordinating the President's regulatory reform program. In addition, I am a member of the Secretary's so-called "Policy Group" made up of the Secretary and several senior members of the Department which

meets weekly to advise the Secretary on basic policy matters. In this capacity as well as in my service on the Domestic Council Review Group, I have developed a fairly broad familiarity with regulatory issues including safety and motor vehicle safety issues.

Finally, for a period of three years, 1972-1975, I was a member of the Graduate Faculty of George Washington Law School and taught a law course, "Public Economic Policy and The Law". This course examined a number of important regulatory issues.

#### B. SAFETY REGULATION

As indicated from the foregoing, my experience with economic regulation is considerably greater than my experience with safety regulation, but I do have some background in the safety areas as well. I have written at least two articles directly on the subject of safety regulation and have read fairly widely in the literature on the economics of safety and safety regulation. The Department of Transportation has a broad and far-reaching responsibility in a number of areas, and over the course of the last four years I have developed a good familiarity with the Department's safety regulatory function, including the National Highway Traffic Safety Administration's regulatory function. I have worked closely on a number of safety issues such as the motor vehicle size and weights legislation, the ignition interlock and passive restraints question in the Congress, and in developing the Administration's program to lessen economic regulation of the motor carrier and air carrier industries, I have carefully considered the effects on safety.

#### C. MOTOR VEHICLE SAFETY REGULATION

In my various capacities in the Department I have acquired a broad familiarity with the National Highway Traffic Safety Administration's programs and with motor carrier safety regulation. But I do not pretend to be an expert in the field. While serving as Acting Assistant Secretary for Congressional and Inter-governmental Affairs, I was actively involved in Congressional consideration of several important highway safety issues, such as the ignition interlock and mandatory speed limit of 55 miles per hour.

*Question 4.* In addition to your qualifications enumerated above, what additional experience and background characteristics qualify you to serve as Administrator of the National Highway Traffic Safety Administration?

Answer. I would hope to bring to the position a capacity for hard work, perseverance, the ability to think issues through carefully and make honest recommendations and hard decisions on the basis of the best evidence available, and my interpretation and reading of that evidence. Most important, I will bring to the position a deep commitment to the objectives of highway safety.

*Question 5.* To what extent do you believe your activities at the Department of Transportation advocating deregulation of the commercial aviation industry are applicable to the tasks you will face should you be confirmed as NHTSA Administrator?

Answer. The issue of economic regulation and safety regulation are substantially different. In the area of economic regulation of transportation we have found that the present level of regulation causes substantial wastes and inefficiencies for which there is no justification. The passenger and freight segments of the aviation and motor carrier industries are essentially competitive in character and would perform considerably better than they do now in a less regulated, more competitive environment. In other words, as far as economic performance is concerned, the market place works fairly well or at least it would work well if the present system of economic regulation allowed it to do so.

The situation is quite different with respect to the basic question of safety. Here we cannot place the same degree of reliance on the market place to assure an adequate and appropriate level of output. Operation of motor vehicles poses the problem of costs and dangers being imposed upon unconsenting third parties—a problem with which the market place can deal with only partially. In addition, consumer information may be inadequate to make properly informed judgments. In the field of safety regulation, we also face the broad issue of social goals which society may decide to pursue even though this in effect means overriding the decisions of the market place. Government regulation is desirable and necessary to assure that safety goals are achieved.

However, we should recognize that the market place does provide some incentives for the production of safety and we should rely on market place incentives to the maximum extent appropriate. In developing the Department's legislation to lessen economic regulation of rail, air and motor carriers, we have been careful to point out that safety and economic regulation are separate and that we are not lessening safety regulation of these industries. The Department has so stated before Congress on several occasions, as have I. On the other hand, my activities at the Department as an advocate for lessened economic regulation have significantly increased my awareness of the regulatory process and the abuse of regulatory process and procedures. The difficulties inherent in the regulatory process occur both in the economic and safety areas. I have also learned a great deal more about Congress and the desirability of working closely on matters of mutual interest.

*Question 6.* What steps have you taken to prepare yourself for the job of Administrator of the National Highway Traffic Safety Administration?

Answer. I have had numerous conversations with Dr. Gregory to obtain the benefit of his advice, insights, and wide knowledge. Also, with his full cooperation and support, a number of briefing and issue papers were developed by his staff for my information. (During this process, I have worked through a single staff Associate Administrator to avoid any premature involvement in the NHTSA program issues.)

I have studied each of the basic laws which NHTSA is responsible for administering, and I have reviewed numerous documents, including:

Recent NHTSA annual reports.

NHTSA's fiscal year 1977 budget.

Selected congressional hearings.

Key agency documents relating to both the Federal Motor Vehicle Safety Standards and the Highway Safety Standards.

*Question 7.* What contacts with the NHTSA have you had during your tenure at the Department of Transportation?

Answer. I have had close contacts with a number of people in the NHTSA on a number of issues through the years. Jim Gregory is a close personal friend as is Jim Schultz, who was the Chief Counsel, and the late Larry Schneider, who preceded Jim Schultz as Chief Counsel. During my tenure as Assistant General Counsel for Legislation, I worked closely with the National Highway Traffic Safety Administration on several issues including H.R. 5529, Motor Vehicle Safety Legislation, and H.R. 4187, School Bus Safety Activities. I cleared the testimony for then Secretary Brinegar regarding motor vehicle safety legislation and for James E. Wilson, Acting Administrator, NHTSA, on school bus safety activities. In addition, I worked very closely with NHTSA during my tenure as Acting Assistant Secretary for Congressional and Intergovernmental Affairs. During this period I had almost daily briefings from the NHTSA Congressional Liaison Officer, Jim Cromwell, and worked closely with NHTSA on several important program and legislative matters, including Congressional consideration of the ignition interlock and passive restraint issues, which occupied a considerable amount of my time.

*Question 8.* Is there any issue currently under consideration by the NHTSA from which you would have to disqualify yourself? If so, please specify.

Answer. No. There is no issue currently under consideration by the NHTSA from which I would have to disqualify myself.

#### NOMINATION PROCESS

*Question 1.* Describe the process by which you were selected to be nominated to serve as Administrator of the National Highway Traffic Safety Administration.

Answer. I am not aware of the process by which I was selected to be nominated to serve as Administrator of the National Highway Traffic Safety Administration, except to say that I had several conversations with Secretary Coleman regarding the subject and that, subsequently, I received a telephone call from the Personnel Office of the White House and met at the Old Executive Office Building with several people from that Office. I was informed that my name was under consideration and thereafter learned that the President intended to send my name forward.

*Question 2.* Did you actively seek nomination to this position?

Answer. No, I did not actively seek nomination to the position but, upon learning of the Secretary's interest in having me serve in this position and the

possibility that I would be nominated for the position, I have looked forward eagerly to undertaking the assignment.

*Question 3.* Were any conditions, expressed or implied, attached to your nomination to be Administrator?

Answer. No. There were no conditions, expressed or implied, attached to my nomination to be Administrator.

*Question 4.* Did you indicate to any official of the Executive Office of the President or of the Department of Transportation the basic policies and philosophy you would implement and adhere to as Administrator?

Answer. No, I did not indicate to any official the basic policies or philosophies which I would implement or adhere to as Administrator, but my basic views and philosophies on regulation are well known to the White House personnel.

*Question 5.* (a) What motivated you to accept this nomination?

(b) In view of the fact that there are only 7 months left in President Ford's term of office, do you view your role as NHTSA Administrator essentially as a caretaker?

(c) If not, what do you hope to accomplish during your term as Administrator?

Answer. a. I was motivated to accept the nomination by the challenge of heading a major agency with a critically important and expanding function.

b. Definitely not.

c. During my term as Administrator I would hope to see the capacity of the National Highway Traffic Safety Administration to fulfill its vitally important role strengthened. I would hope to see the issue of passive restraints resolved as effectively and quickly as possible. I would hope to see the energy program implemented effectively and put on a sound organizational basis. I would hope that the National Highway Traffic Safety Administration could develop a better understanding of the cause and effects relationships in highway accidents, and undertake a careful review of the safety programs to see how they can be strengthened.

#### REGULATORY PHILOSOPHY

*Question 1.* What do you consider to be the mission of the National Highway Traffic Safety Administration? Define the relationship between this mission and the role of industry in the area of motor vehicle and highway safety, loss reduction characteristics of motor vehicles, and fuel economy.

Answer. The major mission of the NHTSA is to take appropriate steps to bring about reduction in fatalities and a reduction in injuries and property loss experienced by the motoring public. In addition, NHTSA has broad and important consumer responsibilities under the Motor Vehicle and Cost Saving Act. Finally, pursuant to a delegation by the Secretary, the Administration has been given the mission of implementing the Fuel Economy provision of Title V of the Cost Saving Act to bring about a greater efficiency with respect to motor vehicle fuel consumption. As I visualize it, the major role of the motor vehicle industry is to produce the types and quantities of automobiles and motor vehicles that the public desires at competitive prices which enable the firms to attract capital and pay dividends. Public desires are influenced by a number of factors including considerations of fuel costs and efficiency, consideration of operating costs, safety attributes, and the cost, comfort, style and total price. NHTSA's motor vehicle safety role is to encourage the industry to adopt safety features and to undertake research which will lead to the development and adoption of safety features on automobiles to reduce safety risks. Where the industry is not responsive, and a regulation will achieve effectively a significant goal, the agency should intervene with mandatory standards.

*Question 2.* (a) Do you subscribe to NHTSA's goal of further substantial reduction in the annual toll of injury and death on our nations highways (45,000 deaths and in excess of 2 million serious injuries per year)?

(b) To what extent do you believe that continuation of NHTSA's program of mandatory vehicle safety standards applying to vehicle and equipment manufacturers is an important element of a program for achieving this goal?

(c) Would you prefer to leave achievement of this goal primarily to state level programs?

Answer. a. Yes.

b. I regard the continuation of the NHTSA's program of mandatory vehicle safety standards applying to vehicle and equipment manufacturers as an important element of a program to achieve the goal of a further substantial reduction in highway injuries and deaths. I would see the mandatory intervention as a

natural counterpart to private actions and to NHTSA's other actions providing incentives for advancing highway safety. I would use the incentives of the market place where possible. Where this fails to reach desired safety goals, mandatory intervention which effectively achieves these goals would be in order.

c. I want to involve the States as much as possible as partners in the highway safety mission, but I do not believe that mandatory regulation of motor vehicle safety should be left to the individual fifty States. The cost associated with the lack of uniformity would be enormous and intolerable. Regarding the State and community highway safety program which is also critical to the achievement of the NHTSA mission, I believe the management of the program should be left largely to the States. I consider the Federal role to be principally program and hardware (where applicable) development and demonstration, and persuasion.

*Question 3.* (a) Under what circumstances, if any, is a competitive market-place unable to yield solutions commensurate with the public interest?

(b) In such circumstances, do you believe it is the function of government to take appropriate steps, including standards setting, to yield such solutions?

Answer. a. The market place is unable to yield solutions commensurate with the public interest in a variety of circumstances. For example, the market place frequently does not work in the public interest in the absence of competitive market conditions, where external costs imposed on society are not reflected in the cost of producing goods, or where the product being produced involves high risks to the public and is so complex that consumers are unable to make intelligent choices.

b. Yes, in cases where the workings of the market place do not produce results in the public interest, governmental intervention is clearly justified.

*Question 4.* (a) To what extent, if any, do you believe competition in the motor vehicle industry enhances the safety of motor vehicles?

(b) Do you believe that if the automobile industry were more competitive, safety might play a larger role allocating industry sales?

(c) It has been argued that the European automobile industry is more competitive than the U.S. industry. The European automobile industry, however, is not subject to as rigorous a safety regulatory program as American cars and it is argued that as a result (with several notable exceptions), the European cars sold in Europe do not achieve as high a level of safety as the American cars. Do you agree with the above premises, and if so, would it be fair to conclude that competition itself is not sufficient as a safety-promoting device?

Answer a. I believe that competition in the motor vehicle industry is desirable from the point of view of enhancing the safety of motor vehicles, but even in a fully competitive motor vehicle industry, I believe that government intervention either in the form of standards or information dissemination would be justified because of the reasons discussed in 3 above such as the uninsured or uncompensated costs which motor vehicles create for innocent third parties and the consumer information problem.

b. Yes.

c. On a personal basis, I have been impressed with some of the innovative features offered by certain of the imported cars prior to their being mandated here but I recognize that other cars are sold in Europe which fall far short of United States standards. I have no doubt that competition by itself is not sufficient to guarantee realization of socially desired safety goals. I would hope to give the question of competition and its relationship to safety and fuel economy careful study during my tenure as NHTSA Administrator if I am confirmed. At this time I simply am not in a position to agree or disagree with the premises stated in the question.

*Question 5.* The National Traffic and Motor Vehicle Safety Act of 1966, prescribes certain criteria which must be met for issuing federal motor vehicle safety standards, namely that safety standards (a) meet the need for motor vehicle safety, (b) are reasonable and practicable (c) are stated in objective terms, and (d) are suited for particular types of motor vehicles.

(a) Are there other criteria which you believe the NHTSA should establish before proceeding with the issuance of a standard?

(b) What role does cost-benefit analysis play in issuing motor vehicle safety standards?

(c) What is your view of the current state of the art of benefit/cost analysis as applied in the area of safety regulation?

(d) If you would utilize cost-benefit analysis, how would you assign the cost of implementing a standard since motor vehicle safety standards, by law, are written in terms of performance criteria?

(e) The NHTSA has assigned a "value" to injuries and death on the benefit side of cost-benefit analysis. Do you believe it is possible to quantify the benefits of safety regulation?

Answer. a. On their face the criteria set forth appear to be both reasonable and appropriate. At this time I am not aware of any other criteria which NHTSA should establish before the issuance of a standard. Of course in addition to the criteria set forth in the Act, the requirements of the Administrative Procedure Act and the National Environmental Protection Act must be adhered to in the conduct of rule making.

b. I regard the cost-benefit analysis as one consideration in determining whether the proposed standard is "practicable and appropriate".

c. I believe that it would be irresponsible for any Administrator not to consider the benefits and costs of proposed actions. I do not know how an Administrator could think through the issues clearly and carefully without looking at benefits and costs. On the other hand, I do not view cost-benefit analysis as providing some inflexible formula that will in itself yield an answer. I have long been involved with cost-benefit analysis and I recognize the limitation in its use, particularly as applied to areas such as safety. Benefit-cost analysis is no substitute for good judgment but it can help to inform good judgment.

d. Even though standards are written in terms of performance criteria, I understand that in the process of developing a rule, the National Highway Traffic Safety Administration assures itself that at least one design is feasible which will meet the required performance. The cost estimates are based upon this design which the NHTSA has identified. I believe that it is reasonable to assume that this process creates a conservative bias in estimating cost since presumably the industry in most cases will be able to improve upon the design identified by NHTSA.

e. NHTSA has not assigned a "value" to injuries and death. Only a few of the more quantifiable losses to society resulting from injuries and fatalities have been calculated. These losses, such as medical and hospital costs, legal and insurance expenses, employment losses, etc., are combined and sometimes used as a proxy measure of benefits.

There are many other losses associated with injuries and fatalities such as grief and sorrow, pain and suffering, and loss of companionship which are more difficult if not impossible to quantify. These losses to individuals and to society may far outweigh those which have been quantified.

The benefits to society of any safety program should normally be greater than its costs. However, given our inability to fully and precisely measure in quantitative terms all of the benefits and costs of a safety program, I believe that the results of benefit-cost analysis should be used only as an aid to decision-making and not as the sole criterion. While I do not think that it is possible to quantify precisely the benefits of safety regulation (and question that it ever will be) and while I recognize the inherent problems in attempting to do so, I believe that a reasonable effort should be made to quantify safety benefits to improve the decision-making process.

*Question 6.* The National Traffic and Motor Vehicle Safety Act authorizes the Secretary to subpoena cost information from manufacturers. Under what circumstances would you exercise such authority?

Answer. I feel that these powers should be exercised whenever necessary to assure that the cost information is accurate and valid.

*Question 7.* When the House was considering the National Traffic and Motor Vehicle Safety Act, it specifically rejected proposed language to require that motor vehicle safety standards "... embody devices and techniques that are available or can be made available in a reasonable time and at costs commensurate with the benefit to be achieved." On May 1, 1976, Secretary Coleman issued new requirements for cost impact evaluations.

(a) Do you believe these requirements conform with the intent of Congress in passing the 1966 Act?

(b) Do you believe this new set of requirements will be of benefit to the NHTSA regulatory effort? Will it impose any undue burdens on the regulatory process?

Answer. a. I believe that Secretary Coleman's requirements are consistent with the intent of Congress in passing the 1966 Act. In fact, I understand that they

represent essentially a formalization of the practices which NHTSA has been following for some time. I feel that such a systematic consideration of the consequences of proposed rules conforms to the Congressional intent by considering whether the standards are reasonable and whether they are appropriate for implementing the Vehicle Safety Act and by ensuring that the standards actually meet a safety need and are economically and technologically practicable.

b. Yes, I believe the new set of requirements will be of benefit to the NHTSA regulatory effort although as indicated above, it is my understanding that NHTSA has undertaken such analysis and followed such guidelines for a considerable period of time. The requirements issued by Secretary Coleman will be of benefit in a variety of ways: by ensuring that costs and benefits (where available) are looked at carefully, by putting added emphasis on doing so and thereby generally adding to the rigor of the analysis, by helping to establish priorities between rule makings, and by assisting in the selection of the means to accomplish the chosen safety goal. I do not think that the new requirements will impose any undue burdens upon the regulatory process as for all practical purposes the NHTSA has been following the requirements already.

*Question 8.* The same regulatory reform policies issued by Secretary Coleman provided that for those regulations which are potentially costly or controversial, the head of the originating administration, in this case NHTSA, shall provide the Secretary with an "information memorandum" at least thirty days prior to publication of the notice of proposed rulemaking in the Federal Register. The information memorandum shall explain briefly the rationale for the regulation and alternatives considered. In addition, it shall also summarize the anticipated positions of interested parties, assess consumers' interests, etc.

(a) Do you believe it would be appropriate for NHTSA a matter of course to forward copies of this memorandum to the relevant House and Senate Committees and Subcommittees concurrent with its transmittal to the Secretary of Transportation?

(b) Does the requirement of an information memorandum, as defined in this notice, make it possible that rulemaking proposed by NHTSA could be terminated on the basis of anticipated positions of interested parties, prior to NHTSA's actual receipt of their views?

Answer. a. I personally would have no objection to providing copies of the subject memorandum to the relevant House and Senate subcommittee at the time the decision is made to issue or not to issue the subject notice of proposed rule making. But I do not feel it would be appropriate to transmit such memorandum concurrent to transmittal to the Secretary. The memorandum is designed to present relevant information to the Secretary regarding the possibility, and only the possibility, of a possible regulatory action. By making the memorandum available to the various committees there will be a tendency to politicize the decision whether to take the action or not.

b. No. The reference to anticipated positions is designed simply to provide the Secretary with a full array of information about possible impacts of the proposed rule and what positions the various interested parties might take in the proceeding. This is relevant information for the Secretary to possess since he normally faces many inquiries with respect to an important notice of proposed rule making. There is value in having the Secretary knowledgeable as to positions which parties are expected to take and as to those inquiries which he will receive. This will help to avoid premature and possibly inappropriate actions or statements on the issues involved by the Office of the Secretary.

*Question 9.* (a) Do you believe it is inevitable that motor vehicle safety will suffer with the implementation of fuel economy standards?

(b) If so, how do you contemplate balancing the continuing need for improvements in motor vehicles safety with the competing needs for fuel economy and resources conservation?

Answer. a. and b. I share the concern which prompts the question. I have heard competing arguments and cannot yet resolve the issue in my own mind. I regard it as an issue of major importance and I am concerned that motor vehicle safety not be impaired as a consequence of the implementation of fuel economy standards. If, after careful study, it is determined that motor vehicle safety will be seriously impaired, it will be necessary to reevaluate our position on fuel economy and take appropriate action to ensure that safety is not impaired.

*Question 10.* The President's Council on Wage and Price Stability has urged the rollback of several NHTSA standards including the 5 mph-bumper loss reduc-

tion requirements. After considering the issue, NHTSA chose not to rollback the standard. Would NHTSA under your leadership continue the independence of judgment displayed in some instances under the current NHTSA leadership, with respect to the Council's recommendations?

Answer. I am not fully informed on the differences between the President's Council on Wage and Price Stability and the National Highway Traffic Safety Administration. It is my general understanding, however, that the differences involve principally the benefit-cost analyses and, more specifically, how rigorous these analyses need be to exercise a judgment regarding the reasonableness of a standard. I would carefully consider the Council's view as well as all others in arriving at a decision. I have worked with the Council on several occasions and have a great deal of respect for its members. I have not always agreed with their position, however, and I would not hesitate to exercise that same independence of judgment regarding National Highway Traffic Safety Administration matters.

*Question 11.* There is a fast-growing industry in various types of vehicles other than automobiles (trucks, recreation vehicles, motorcycles, etc.) The industries involved in this market are often considerably smaller and less sophisticated than the major auto makers. How can the public interest in vehicle safety be met while preserving the small business aspects of this industry?

Answer. I am well aware and concerned by the fact that well-intentioned regulation often has uneven effects upon large firms who can bear the cost and small firms who find compliance burdensome. I would hope to give this issue very careful consideration. I am aware that Section 123 of the National Traffic and Motor Vehicle Safety Act enables the agency to grant exemptions from certain safety standards for these small volume manufacturers, extending up to 3 years, if they demonstrate that compliance would cause them substantial economic hardship. Thus, the exemption provision enables the agency to give small volume manufacturers additional lead time to bring their vehicles into compliance.

*Question 12.* The President recently signed into law the Federal Aid Highway Act of 1976 which among other provisions, stripped the Secretary of his former power to hold up to 10% of highway construction money for noncompliance with the Highway Safety Program Standards issued by NHTSA, under the Highway Safety Act of 1966.

(a) Do you believe that the states should be allowed to proceed at their own pace and in the exercise of their own best judgment in areas covered by the Highway Safety Program Standards (including motorcycle helmet laws, mandatory seat belts use laws, periodic motor vehicle inspection, elimination of permanent and fixed obstacles in the recovery area along the roadside, etc.)?

(b) Would it be your recommendation that this power be restored to the Secretary? If not, are there other approaches to achieving widespread State adoption of the Highway Safety Program Standards that you would endorse?

Answer. (a) We believe that the States should be provided with more flexibility than they have had to advance highway safety programs. The 1976 Highway Act clarified the Secretary's authority to allow States to place greater emphasis on those standards that address the most serious problems in each State. I regard this as a major improvement in the program. That is not to say State programs should not be carefully reviewed or that in every case the judgment of the State should take priority over the Department's judgment. What we will be looking for is results, and we strongly believe that the provision of this additional flexibility will produce results.

(b) During debate on the 1976 Highway Act, the Administration objected to the elimination of the Secretary's authority to withhold ten percent of a State's highway construction funds for noncompliance with highway safety program standards. However, I am not convinced that an inflexible ten percent penalty was workable. That penalty had been considered so severe that it had never been imposed on any State since the inception of the program. In the Administration's highway safety proposal, we had requested amendments authorizing an adjustable penalty ranging between five and ten percent of a State's construction funding depending upon the severity of their noncompliance. I for one do not believe that the loss of this penalty will seriously impede the implementation of the highway safety program. On the other hand, I do intend to carefully monitor the performance of the States and, if it is found that penalties linked to highway construction funding are necessary, I will request them.

*Question 13.* In the case of *Chrysler v. Department of Transportation*, the United States Court of Appeals for the Eighth Circuit, held that the Department of Transportation, under the National Traffic and Motor Vehicle Safety Act "is empowered to issue safety standards which require improvements in existing technology or which require the development of new technology, and it does not limit it to issuing standards based solely on devices already fully developed." Do you believe that this is an appropriate technique to advance the state of the art of motor vehicle consumer product safety technology?

Answer. Yes, I believe that this is an appropriate technique to advance the state of the art of motor vehicle consumer product safety technology.

*Question 14.* A recent budget request of the Consumer Product Safety Commission contends that it would be possible to abolish the CPSC or establish a maintenance level of operation during the early 1980's.

(a) Do you believe that the role of the NHTSA with regard to motor vehicle safety standards is finite?

(b) If so, at what point in time do you believe the NHTSA's mission will be completed? Are we approaching the minimum level of highway deaths and injuries consistent with our use of automobiles?

Answer. a. and b. Yes, I believe it is finite in the sense that as progress is made in realizing our national highway safety goals, some point will be reached where further reduction will not be practical, but that, unfortunately, is far into the unforeseeable future as the level of accidents and fatalities is subject to considerable improvement in reduction. Finally, some level of maintenance will always be required because changes in technology will constantly lead to requirements for new interpretations and/or modifications to the standards. In addition, changes in the accident environment could make major modifications to the standards appropriate.

*Question 15.* What do you consider to be the major successes of the NHTSA in implementing the National Traffic and Motor Vehicle Safety Act?

Answer. A number of standards can be considered a major success from my present perspective. I feel that the dashboard, steering column, seat belts and brake standards have been of major significance in advancing highway safety. In addition, the National Highway Traffic Safety Administration deserves praise for having adopted effective procedures for its rule making actions.

*Question 16.* What shortcomings do you see in the NHTSA's record in implementing the National Traffic and Motor Vehicle Safety Act?

Answer. I am not aware of the National Highway Traffic Safety Administration's shortcomings in implementing the Act, but I will be constantly alert and will not hesitate to take any corrective action I deem appropriate.

*Question 17.* Are there any amendments to the National Traffic and Motor Vehicle Safety Act which you consider to be necessary to insure a viable motor vehicle safety program?

Answer. At this time I am not aware of any amendments to the National Traffic and Motor Vehicle Safety Act which are necessary to assure a viable safety program. If I find any shortcomings, I will not hesitate to make appropriate recommendations to the Congress.

*Question 18.* The NHTSA has been participating in an interagency study of Motor Vehicle Goals Beyond 1980.

(a) Do you believe that the findings and recommendations of the report of this study are sound? If not, in what way do you believe that they are deficient?

(b) Will you be guided by the findings and recommendations of this study in setting policy and designing programs for the agency?

(c) Will you initiate the drafting of a long-range program plan for the NHTSA to provide the basis for a public debate of the activities and policies of the agency?

Answer. a. The interagency study of Motor Vehicle Goals Beyond 1980 is still undergoing revision and I am familiar with the study only in a general sense. The findings and conclusions of which I am aware indicate that with phased implementation and joint government-industry development programs, simultaneous improvements in safety, emissions, noise and fuel economy are not only feasible but can occur with relatively minor effects on our economy, life style, national employment, and industrial strength and stability.

b. I would expect to participate in the study and to have a significant input with respect to the findings and recommendations of the study. Therefore, I trust that the findings and recommendations will be sound and will be based on the best available evidence and well considered. As such, I would certainly find the

findings and recommendations useful in setting policy and designing programs for the agency.

c. Hopefully this study will be one basis for long-range program planning for NHTSA. (In addition, it should complement NHTSA's own internal multi-year planning effort.) I do not contemplate publishing any other long-range program plan for NHTSA.

*Question 19.* Which programs of the agency do you believe should be curtailed or eliminated and why? (Indicate where legislative changes would be necessary for such action.)

*Answer.* At this time I would not suggest that any program of the agency be curtailed or eliminated. However, I believe that as Administrator, I will have the responsibility to carefully review all major programs, to assure that they are effectively advancing the goal of highway safety in an efficient and practical way. If in the course of this review I determine that any programs are not fulfilling their objective in an effective way, I will take appropriate action to see that the program is either strengthened where appropriate, curtailed or eliminated, where appropriate.

*Question 20.* What would be your basic objectives as Administrator of the National Highway Traffic Safety Administration?

*Answer.* I feel that my basic objective as Administrator will be to advance the cause of highway safety. In addition, I intend to see that the Energy Policy and Conservation Act is effectively implemented to advance the goal of fuel economy. (Please see answer to question 5(c) under "Nomination Process").

*Question 21.* While you have argued forcefully in the past that many of our economic regulatory programs should be dismantled, does the same deregulation argument apply to our safety regulatory program?

*Answer.* No. I make clear distinction between economic regulation and safety regulation. I believe that much of our existing economic regulation of transportation is inappropriate to the underlying economic realities. I believe that the current system of economic regulation is leading to significant wastes and inefficiencies, denying competent people the opportunity to participate in the industry, holding rates or fares higher than they otherwise would be, and denying the buying public the range of price and service options which would be available in a more competitive, less regulated environment. I am also concerned that the regulatory process before the transportation regulatory agencies has involved abuse of procedural fair process and even denied fair procedural process to parties.

I have carefully reviewed the arguments against lessening economic regulation of transportation and have concluded that the arguments are generally without significant merit, and that on balance, the benefits of a less regulated, more competitive environment far outweigh any risks or costs associated with the change to such a regulatory environment. I am therefore deeply committed to the view that economic regulation of transportation should be reduced.

I look at the issue of safety regulation in a fundamentally different light. In this case the market place cannot necessarily be relied on to produce an appropriate level of safety. Private individuals may over-estimate the costs of producing safety or underestimate the social benefits of safety. Producers of vehicles may underestimate the public desire for safety or the broader social interests served by safety. Private firms may not have sufficient incentive to produce a socially appropriate level of safety. Also there may be market imperfections which adversely affect the production of safety. These imperfections result from the fact that some of the beneficiaries of increased safety are not directly involved in the decisions to make safety items available to the American people, nor can they directly affect purchase decisions. And it is not clear that their interests are properly represented indirectly through insurance carried by automobile users. In addition, significant gaps in consumer information, knowledge or ability to discern risks may exist.

Safety under a variety of circumstances has the characteristics of public good and therefore a governmental role is appropriate and necessary to protect and advance the public interest. Thus, the basic issues in economic regulation of industries like trucking, and safety regulation of the motor vehicle industry, are considerably different. In the area of safety, I believe that we should utilize the market as much as possible but I also firmly believe that significant government intervention and regulation is necessary to achieve our safety goals. This is not to deny the need for careful scrutiny of safety regulation to assure that it is

effective in advancing the socially desirable safety objective, that it does so in a reasonable and practicable way, that alternative ways to achieve the objective have been considered, that a clear connection exists between the safety rule issued and the objective, that a statistical and analytical base exists to assure that the rule is soundly conceived. Thus, I will not be an advocate for safety deregulation as I have been for motor carrier and air deregulation. I will be an advocate for a good, effective and reasonable government role in assuring that the American people receive the protection of appropriate safety regulations as required by NHTSA's statutory mandate and that they receive the benefits of safety education.

#### NHTSA AND ITS REGULATORY PROCESS

*Question 1.* (a) How do you plan to fill the various vacant positions in the NHTSA such as the positions of Chief Counsel, Director of Research and Development, and Deputy Administrator?

(b) Do you believe that talented and capable people can be recruited for these positions in the period before the general elections?

(c) Where would you go to recruit people for these positions (that is, to what institutions would you go, and what kinds of backgrounds would you seek for candidates for these positions)?

(d) Do you have candidates in mind for these positions that you have reason to believe would be interested in these positions?

Answer. (a) I assign very high priority to filling these positions as well as those required to discharge National Highway Traffic Safety Administration fuel economy responsibilities. The filling of vacant positions which report directly to the Administrator will be one of my very highest priorities. For each vacancy, I will be seeking the best available qualified person.

(b) Yes. Obviously, the filling of non-career positions (Deputy Administrator and Chief Counsel) may be more difficult than positions in the Career Service. If I cannot attract the quality person that I believe each of these positions must have, the position will remain vacant until such time as I can identify and attract the top flight talent needed.

(c) My primary source will probably be the National Highway Traffic Safety Administration and other elements of the Department of Transportation, and the Federal Government. Dr. Gregory has recently nominated a National Highway Traffic Safety Administration official with a rich background in both research and motor vehicle rule making to be Associate Administrator for Research and Development. I wholeheartedly support this choice.

As regards the Chief Counsel, I believe the candidates should have a strong background in administrative law, preferably with working experience with a regulatory agency. Experience in both standards development and enforcement would be desirable. Personal attributes and skills are extremely important in this position. Being an outstanding lawyer is not enough. He must be an effective manager and leader, who attracts, retains, and inspires able attorneys and who wins confidence and respect among his peers and superiors.

The Deputy Administrator's primary strengths must be in the area of managerial skills. I intend to use the Deputy as my alter ego and, therefore, it is vital that he or she is able to get things done through others. While not essential, it would be desirable if the Deputy had knowledge and experience in a regulatory program and/or a Federal grant program. Experience in State government would also be a very distinct asset.

(d) No, with the exception of the position of Associate Administrator for Research and Development. As stated above, I fully support the candidate recently nominated to the Secretary by Dr. Gregory for that position.

*Question 2.* In your view is it primarily the responsibility of NHTSA or of the Office of Secretary to resolve major rulemaking questions such as the passive restraint issue?

Answer. While under the applicable statutes the Secretary has the authority to make the decision with respect to rule making questions such as the passive restraint issue, I believe that the Secretary will look to the National Highway Traffic Safety Administration as the agency primarily responsible for resolving such issues. I would not have accepted the nomination if I felt otherwise.

*Question 3.* It is generally conceded that regardless of the merits of the truck and bus air brake standard (MVSS 121), the NHTSA has had serious difficulties in its rule making on this standard and the industry has also had difficulties

in meeting the standard (both technological and managerial). What is your analysis of the reasons for these problems and what would you do to ensure that such problems do not arise in future rule making activities?

Answer. It is my understanding that the air brake standard is the first major motor vehicle safety standard applicable to the truck, bus, and trailer manufacturing industries. Truck and trailer manufacturing is widely dispersed, particularly because most trucks are constructed in two stages, involving many small final-stage manufacturers throughout the country. Also, I understand that braking standards involve rather sophisticated "dynamic transfer" behavior of the vehicle which cannot be reduced to simple "add-on" hardware solutions. These factors may not have been fully appreciated when the rule was issued five years ago, but I have no doubt that the agency and the industry have adopted attitudes that reflect these realities of truck-type regulation.

It appears from the extensive rule making which occurred following issuance of Standard No. 121 that the government and the industry may have both underestimated these and other difficulties in implementing the standard. I feel that many of the more serious questions raised with regard to the standard (e.g. the "safety need" justification, the stringency of the requirements and their practicability) could have been resolved earlier in the rule making period if procedures like those of the new DOT guidelines had forced the agency's assumptions onto the public record at an earlier date.

I believe that strong and realistic adherence to the procedures now in place, particularly the DOT guidelines, would help prevent a repetition of the disruptions which accompanied implementation of Standard No. 121. While I feel that NHTSA did a competent analysis of the issues in promulgating the 121 standard, the problems associated with implementing rules need even more careful and thorough analysis in the future.

*Question 4.* Do you believe that the uncertainties in Federal rule making are necessary or desirable? If not, what would you do to minimize such uncertainty?

Answer. Since the rule making process involves weighing conflicting points of view and balancing a range of competing considerations, it is inevitable that some uncertainties will exist regarding the outcome. This is not desirable but it is inevitable. Every effort should be made to minimize the uncertainties by careful prior analysis to narrow the range of options under consideration to those which have the highest probability of success. I also think we should minimize the duration of the uncertainties and that we should try to make our decisions within the shortest period of time that is consistent with good judgment.

*Question 5.* How would you change the method of promulgating standards in terms of obtaining better industry and public input?

Answer. While I am a strong believer in industry and public input to our standard setting, I am not aware of any serious problems in this regard. I do plan to carefully review the process and make any changes indicated.

*Question 6.* How would you change the method of generating technical data related to meeting motor vehicle safety standards (research and development, vehicle design, the tooling cycle, uncertainties in the performance of equipment designed to meet the standards, data collection on the effect of safety standards on automobile safety, and so on)?

Answer. I have no present plans to change the method of generating technical data related to meeting motor vehicle safety standards. I am not aware of any major problems with the way such data is generated today, but if this is a matter of concern to the Committee, I will be happy to review and take any corrective action deemed appropriate.

*Question 7.* Do you believe that the data supporting the current motor vehicle safety standards is adequate to justify these standards? If not, what additional data do you believe should be collected or analyzed?

Answer. I am not aware of any inadequacies in the data used to justify the current standards. I am committed to the principle that we should use the best data that can reasonably be brought to bear on the issues and of course such data shall be supplemented by well-informed judgments. If this matter is of concern to the Committee, I will be pleased to look into it and take any appropriate steps.

*Question 8.* Will you seek to address a long-standing problem with internal NHTSA operations, namely the divisive hostilities which have existed between Motor Vehicle Programs on the one hand and Research and Development on the other, particularly at the leadership level?

Answer. I am not aware of the specifics of the problem referred to in this question, but I will certainly look into the matter. My sense of good management is one that people of competence and strength should occupy the top management positions in the agency, and two that the offices should be able to work together. To the extent that professional differences do in fact exist, I would want to be fully advised as to the respective views in the agency and I would expect that it would be my responsibility to resolve these differences. Some professional differences are inevitable and desirable. Their resolution leads to fully informed and competent decisions.

*Question 9.* Will you attempt to make use of private groups such as the American Automobile Association, the National Safety Council, the Center for Auto Safety, the Highway Users Federation for Safety and Mobility, the Insurance Institute for Highway Safety, Physicians for Auto Safety, and others to contribute to a national program to improve highway safety and to increase the national dialogue on the subject? How will you do so?

Answer. I would like to have available the best information on the issues before the agency and will encourage presentation of views of private groups such as the ones listed as well as public groups. It is my understanding that most of these groups are presently quite active in many of our rule making actions. I will carefully consider their views and encourage their future participation.

*Question 10.* What are your plans, if any, for strengthening public participation in NHTSA rulemaking? Specifically do you believe it would be appropriate for NHTSA to seek legislation to allow it to offer financial assistance to public interest groups seeking to participate in NHTSA rulemaking, along the lines of the Federal Trade Commission's recently launched efforts?

Answer. I regard public participation in the National Highway Traffic Safety Administration's rule making as essential to the decision making process. Public participation is critical to informed decisions. At this time I am simply not familiar enough with the National Highway Traffic Administration's rule making activities to know whether public participation is in need of being strengthened or not. There may be merit in providing financial assistance to public interest groups seeking to participate before Federal agencies, but I am not now in a position to make any specific proposal on how to effectuate this goal effectively given the diversity of the "public interest", and other problems. I see a great number of issues that would need to be resolved in any decision to provide financial assistance to public interest groups, and before any such proposal is adopted it is essential to give it very hard and careful thought.

*Question 11.* Do you plan to adopt strict guidelines for yourself regarding ex-parte contacts, as has the current NHTSA Administrator, Dr. James Gregory? Do you intend to encourage high standards in the area with regard to other NHTSA officials?

Answer. Yes. I intend to adopt strict guidelines for myself regarding ex-parte contacts as had Dr. Gregory. I will also require and insist upon the same high standards with regard to other National Highway Traffic Safety Administration officials.

#### RESTRAINT SYSTEMS

*Question 1.* (a) Do you believe that the states should be required to promulgate mandatory safety belt use laws? Why or why not?

(b) If so, do you believe it is politically feasible for states to adopt such laws?

(c) How would you insure that all states actually pass such legislation? What incentives, if any, should be offered to the states to promote mandatory seat belt laws?

Answer. The issues set forth in this question are presently the subject of rule making and therefore I do not feel that it would be appropriate for me as the principal adviser to the Secretary on these issues to provide detailed answers to this question at this time. I will keep an open mind on all of these issues and will base any recommendations on the record and evidence developed in the rule making proceeding.

*Question 2.* If you do not believe that the States should or would adopt mandatory seat belt laws, what steps would you take to protect vehicle occupants from injuries resulting from the "second collision."

Answer. The issues set forth in this question are presently the subject of rule making and therefore I do not feel that it would be appropriate for me as the principal adviser to the Secretary on these issues to provide detailed answers to

this question at this time. I will keep an open mind on all of these issues and will base any recommendations on the record and evidence developed in the rule making proceeding.

*Question 3.* (a) Do you favor the promulgation of a passive occupant restraint standard for motor vehicles?

(b) If so, do you favor an effective date in the late 1970's or early 1980's? If not, do you favor its promulgation now with a later effective date?

(c) Do you believe that a considerable amount of additional development, demonstration, or data collection is necessary before promulgation of a passive restraint standard should be considered?

(d) Do you believe that we should continue the existing motor vehicle safety standard 208 in its present form for the indefinite future? If so, why?

Answer. The issues set forth in this question are presently the subject of rule making and therefore I do not feel that it would be appropriate for me as the principal adviser to the Secretary on these issues to provide detailed answers to this question at this time. I will keep an open mind on all of these issues and will base any recommendations on the record and evidence developed in the rule making proceeding.

*Question 4.* Would NHTSA under your leadership, continue to regard the resolution of the restraint system controversy, as a matter of top priority?

Answer. Yes. Under my leadership NHTSA would continue to regard the resolution of the restraint system controversy, as a matter of top priority?

*Question 5.* (a) Do you believe that the Federal government should continue to require states to have motorcycle helmet use laws? If not, why not?

(b) Are there other approaches you would take to achieving a higher level of motorcycle safety?

Answer. (a) I have a motorcycle and have a motorcycle driver's license and I always wear my helmet whenever I drive the motorcycle. I believe in the value of the use of a motorcycle helmet as a device to reduce motorcycle injuries. When this issue arose in this Department I expressed my doubts about the appropriateness of the Federal Government mandating motorcycle helmet use and withdrawing Federal funds in such instance. However, if I am confirmed as the National Highway Traffic Safety Administrator, I would intend to confront the issue with an open mind and make any judgments based upon a careful review of all the relevant facts.

In any event, the 1976 Highway Safety Act removed the Secretary's authority to require the States to impose mandatory helmet use laws.

(b) I believe that other successful approaches to achieve a higher level of motorcycle safety would include vehicle safety standards and motorcycle driver education.

#### FUEL ECONOMY STANDARDS

*Question 1.* Do you support mandatory fuel economy standards as provided in title V of the Motor Vehicle Information and Cost Savings Act, specifically the required 20.0 miles per gallon average fuel economy by 1980 and 27.5 miles per gallon by 1985?

Answer. While I am not an expert on the Energy Policy and Conservation Act I did review the legislation when it was being considered by the Congress. I had some reservations regarding its efficacy. However, I believe deeply in the goal of the need for greater fuel conservation. An important way to achieve this objective is by making more fuel efficient automobiles available to the American people. I intend to do my utmost to administer the provisions of Title V in accord with the expressed intent of the Congress. In so doing, the National Highway Traffic Safety Administration will be called upon to perform comprehensive and detailed analyses of the tradeoffs between fuel economy and other important societal goals such as safety, environmental quality, and standard of living. If, through these analyses, we develop substantive information which indicates that the statutorily required mpg levels (20 for 1980; 27.5 for 1985) are not practicable, I would so inform Congress.

In my judgment, the crucial issue here is the requirement to be cognizant of the mutual interdependence of the several regulated qualities of the automobile. Because of this interdependence, all regulatory activities must be closely coordinated.

*Question 2.* Within the next two years title V of the Motor Vehicle Information and Cost Savings Act requires much of the Secretary of Transportation. If the Secretary delegates the administration of the program to the National Highway

Traffic Safety Administration, how do you envision NHTSA will be organized in order to effectively administer the program in accordance with the timetables specified in the statute? Of particular interest are the significant number of rulemaking proceedings required; the review of fuel economy standards required by January 15, 1977; setting 1981-1985 passenger automobile standards by July 1, 1977; and setting non-passenger automobile fuel economy standards early next year.

Answer. Pursuant to action recently taken by the Secretary, the authority to administer Title V of the Motor Vehicle Information and Cost Savings Act has been delegated to the National Safety Traffic Safety Administration. I certainly agree that this delegation will require a significant amount of hard work and careful organization to complete effectively. I have already given a considerable amount of attention to the structure of a new office that will be responsible for implementing the new program. It would be my intention to administer the program along lines parallel to the ongoing Federal Motor Vehicle Safety and Highway Safety programs. It would be managed by an Automotive Fuel Economy Program office whose charter would parallel those of the existing Motor Vehicle (Safety) and Highway Safety program offices. Legal, R&D, administrative, planning and evaluation support would be provided by appropriate expansion of existing National Highway Traffic Safety Administration offices responsible for the respective functions.

Work is underway in the National Highway Traffic Safety Administration with respect to the various rule making dates referred to and I am confident that we will be able to meet these dates effectively.

I intend to devote a great deal of personal attention to the fuel economy program to assure an orderly and expeditious transition from the current ad hoc administrative arrangement to a programmatically sound operating scheme functionally and organizationally complementary to the ongoing National Traffic Safety Administration program.

*Question 3.* What mechanisms do you envision to appropriately coordinate the program with the Environmental Protection Agency, which also has considerable responsibility under the statute?

Answer. The National Highway Traffic Safety Administration's Automotive Fuel Economy Working Group has already established informal working arrangements with the Environmental Protection Agency (and, to a lesser degree, with Federal Energy Administration and Federal Trade Commission) to coordinate regulatory proposals and facilitate the interchange of necessary data. Because of the complexity and importance of the matters requiring DOT-EPA coordination, however, it is apparent that more formal and definitive arrangements are required. For the short term, the Working Group is developing specific data requests and coordination agreements for formal transmission to EPA on an issue-by-issue basis. For the longer term, efforts are being initiated to develop a comprehensive Memorandum of Understanding precisely delineating areas of respective responsibility, specific program requirements and time tables for accomplishment, and standardized procedures for early review and coordination of rule making proposals and key technical publications.

#### OTHER NHTSA SAFETY RELATED ACTIVITIES

*Question 1.* The "Program Plan for Motor Vehicle Safety Standards," the basic planning document for NHTSA's safety standards efforts, has not been updated since 1971.

(a) Do you believe NHTSA should have such a program plan? Why or why not?

(b) If so, will you make it a priority to issue such a plan?

Answer. (a) Yes. I believe that the National Highway Traffic Safety Administration should have a general program plan indicating the agency's areas of major interest, priorities, and likely areas of involvement. On the other hand, I recognize the difficulties in trying to develop a program plan which sets out precisely what steps will be taken at particular time intervals. I don't know that public discussions of such a plan is either practicable or desirable. I am concerned that the public issuance and ensuing debate would divert needed resources from more immediate concerns.

(b) For the reasons stated in (a), I cannot say at this time that I would make issuance of such a plan a top priority. Before committing to do so I would need to have a better understanding of the issues involved.

*Question 2.* The number and duration of pending defect investigations in the NHTSA has continued to increase. This results in unnecessary uncertainty for both owners of vehicles under investigation and manufacturers of such vehicles. How do you plan to deal with this problem and do you plan any additional activities or changes in the defect investigation program or in the compliance assurance program?

Answer. I am aware of the criticism that the number and duration of pending defect investigations is causing unnecessary uncertainty for both owners of vehicles under investigation and the manufacturer of such vehicles. I am not at this time in a position to assess the seriousness of this problem and I have not yet formulated any plan to deal with it. I will carefully examine this issue and if I determine that it does require corrective action, I will undertake appropriate plans to deal with it. I do not at this time have any plans for changes in the defect investigation program or in the compliance assurance program.

*Question 3.* The Research Safety Vehicle Program is beginning to produce prototype vehicles.

(a) How do you believe that the technology of these vehicles can be best translated into production vehicles?

(b) Do you think that demonstration of the technology of safety is sufficient, or are more active government programs necessary to encourage the adoption of advanced safety designs and equipment developed in the RSV program?

Answer. (a) The voluntary use of technology demonstrated by the vehicle safety research program is the fastest way of translating technology into production vehicles. To the extent that the features demonstrated reduce vehicle weight, reduce vehicle costs or have market appeal, they will be adopted voluntarily.

(b) However, when the research program generates results which are not adopted voluntarily by the industry, these results will provide the basis for rule making proceedings to establish standards.

*Question 4.* Pedestrian safety has been relatively neglected at the NHTSA. Do you believe that this problem is amenable to solution? If so, what approaches do you believe would be most likely to reduce pedestrian injuries and fatalities?

Answer. I am not aware that pedestrian safety has been neglected in the National Highway Traffic Safety Administration. I am concerned about the large number of pedestrian deaths on the highways annually. I will certainly devote attention to this issue if I am confirmed as Administrator, but I have not formulated any approaches to the problem.

*Question 6.* Alcohol involvement in automobile accidents continues to be a major factor.

(a) Do you believe that the NHTSA has the authority necessary to make a significant improvement in this area?

(b) Do you believe that any program could reduce the involvement of alcohol in automobile accidents without major changes in the society's use of alcohol and of automobiles? If so, what;

(c) How will you approach this problem?

Answer. (a) I am aware of the statistics that show that alcohol use is a major contributing factor in automobile accidents. I am also aware that the National Highway Traffic Safety Administration has made a significant effort in this area. I simply do not know at this time whether it has the requisite authority to make further improvement in this area. Under the highway safety program the Administration does have the authority to require the enforcement of alcohol safety programs and can withhold funding if these programs are not advanced by the States. (Currently there is a one-year moratorium on the use of this sanction pending the complete review of all the existing highway safety programs.)

(b) However, the overriding question is whether we can make significant improvements in the alcohol/automobile accident problem without attacking the more fundamental problems that society faces in the use of alcohol. There is evidence that strong enforcement programs by the States can effectively reduce the number of accidents.

(c) I intend to give this issue a top priority if I am confirmed as Administrator as I feel it has tremendous potential for reducing highway accidents and fatalities. The required review of the highway safety standards will carefully focus on this question.

## MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

*Question 1.* Title I of the Motor Vehicle Information and Cost Savings Act requires the promulgation of loss reduction standards for bumper systems. Do you believe it is the proper role of the federal government to issue such standards?

Answer. Personally I have general doubts about the effectiveness and appropriateness of regulation in areas such as this. Automobiles are very important in the lives of many, many individuals and I think we should be concerned about automobile costs. As a part of this we should carefully consider any mandatory regulation which raises the cost of the automobile, especially if it is not directly related to safety or energy efficiency. In this particular case, however, I understand that Federal regulation was required to avoid a diversity of state standards. As I have mentioned before, I believe that Federal regulation to avoid disruptive and costly effects of diverse State regulation is appropriate. Of course, as Administrator I would intend to fully and carefully respect the intent of Congress as to any statutes which the Administrator is responsible for administering.

*Question 2.* Title II of the Motor Vehicle Information and Cost Savings Act requires the development and dissemination of consumer information on vehicle safety, durability, repairability, and so on. This program has not yet been implemented, and at present the progress toward its implementation is slow.

(a) Do you believe that a consumer information program can improve the level of safety on the highways?

(b) Can this program, if implemented, supplement the need for some of the motor vehicle safety standards? If so, in what areas?

Answer. a. Yes. I believe that a genuinely effective consumer information program can improve the level of highway safety. Within available resources, I will do my best to ensure an effective consumer information program.

b. Yes. I think it can supplement the need for some of the motor vehicle safety standards but I cannot at this time identify the specific areas. I believe it will be very much a trial and error process.

*Question 3.* (a) Do you believe in periodic motor vehicle inspections?

(b) Should the federal government require the States to maintain motor vehicle in use inspection programs?

(c) If so, what mechanism to promote such inspections should be used?

(d) Do you believe this inspection program should be conducted by the State or by privately owned inspection stations (i.e. gas stations, dealerships) who would perform the inspection on behalf of the State?

Answer. a. Yes. I believe in periodic motor vehicle inspections.

b., c., and d. While I believe that periodic motor vehicle inspection is desirable from the point of view of highway safety, I have not formulated an approach to the specific mechanism through which such inspections should be carried out. In this connection I have serious reservations about the potential conflict of interest inherent in privately-owned inspection stations which also do repair work. But the alternatives are also troublesome. I do not have a fixed view on any of the issues raised in these questions.

[Whereupon, at 1 p.m., the hearings were adjourned.]

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[Whichever of the following was indicated]