REVIEW OF THE SECRETARY OF TRANSPORTATION'S DECISION ON THE SST CONCORDE

JOINT HEARING

BEFORE CERTAIN

SUBCOMMITTEES OF THE COMMITTEE ON GOVERNMENT OPERATIONS

AND THE

COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

MAY 26, 1976

Printed for the use of the Committee on Government Operations and the Committee on International Relations

U.S. GOVERNMENT PRINTING OFFICE
74-978 WASHINGTON : 1976

COMMITTEE ON GOVERNMENT OPERATIONS

JACK BROOKS, Texas, *Chairman*

L. H. FOUNTAIN, North Carolina
JOHN E. MOSS, California
DANTE B. FASCELL, Florida
WILLIAM S. MOORHEAD, Pennsylvania
WM. J. RANDALL, Missouri
BENJAMIN S. ROSENTHAL, New York
JIM WRIGHT, Texas
FERNAND J. ST GERMAIN, Rhode Island
FLOYD V. HICKS, Washington
DON FUQUA, Florida
JOHN CONYERS, Jr., Michigan
BELLA S. ABZUG, New York
JAMES V. STANTON, Ohio
LEO J. RYAN, California
CARDISS COLLINS, Illinois
JOHN L. BURTON, California
RICHARDSON PREYER, North Carolina
MICHAEL HARRINGTON, Massachusetts
ROBERT F. DRINAN, Massachusetts
EDWARD MEZVINSKY, Iowa
BARBARA JORDAN, Texas
GLENN ENGLISH, Oklahoma
ELLIOTT H. LEVITAS, Georgia
DAVID W. EVANS, Indiana
ANTHONY MOFFETT, Connecticut
ANDREW MAGUIRE, New Jersey
LES ASPIN, Wisconsin

FRANK HORTON, New York
JOHN N. ERLENBORN, Illinois
JOHN W. WYDLER, New York
CLARENCE J. BROWN, Ohio
GILBERT GUDE, Maryland
PAUL N. McCLOSKEY, Jr., California
SAM STEIGER, Arizona
GARRY BROWN, Michigan
CHARLES THONE, Nebraska
ALAN STEELMAN, Texas
JOEL PRITCHARD, Washington
EDWIN B. FORSYTHE, New Jersey
ROBERT W. KASTEN, Jr., Wisconsin
WILLIS D. GRADISON, Jr., Ohio

WILLIAM M. JONES, *General Counsel*
JOHN E. MOORE, *Staff Administrator*
WILLIAM H. COPENHAVER, *Associate Counsel*
LYNNE HIGGINBOTHAM, *Clerk*
J. P. CARLSON, *Minority Counsel*

GOVERNMENT ACTIVITIES AND TRANSPORTATION SUBCOMMITTEE

WM. J. RANDALL, Missouri, *Chairman*

CARDISS COLLINS, Illinois
GLENN ENGLISH, Oklahoma
BELLA S. ABZUG, New York
RICHARDSON PREYER, North Carolina
DAVID W. EVANS, Indiana
FLOYD V. HICKS, Washington
LES ASPIN, Wisconsin

CHARLES THONE, Nebraska
EDWIN B. FORSYTHE, New Jersey
WILLIS D. GRADISON, Jr., Ohio

EX OFFICIO

JACK BROOKS, Texas
FRANK HORTON, New York

WILLIAM G. LAWRENCE, *Staff Director*
JOHN F. TISCHLER, *Special Assistant to the Chairman*
MILES Q. ROMNEY, *Counsel*
BRUCE R. BUTTERWORTH, *Research Assistant*
MARJORIE A. EAGLE, *Clerk*
SUSAN ROLLMAN, *Clerk*
RICHARD M. TEMPERO, *Minority Professional Staff*

COMMITTEE ON INTERNATIONAL RELATIONS

THOMAS E. MORGAN, Pennsylvania, *Chairman*

CLEMENT J. ZABLOCKI, Wisconsin
WAYNE L. HAYS, Ohio
L. H. FOUNTAIN, North Carolina
DANTE B. FASCELL, Florida
CHARLES C. DIGGS, Jr., Michigan
ROBERT N. C. NIX, Pennsylvania
DONALD M. FRASER, Minnesota
BENJAMIN S. ROSENTHAL, New York
LEE H. HAMILTON, Indiana
LESTER L. WOLFF, New York
JONATHAN B. BINGHAM, New York
GUS YATRON, Pennsylvania
ROY A. TAYLOR, North Carolina
MICHAEL HARRINGTON, Massachusetts
LEO J. RYAN, California
DONALD W. RIEGLE, Jr., Michigan
CARDISS COLLINS, Illinois
STEPHEN J. SOLARZ, New York
HELEN S. MEYNER, New Jersey
DON BONKER, Washington
GERRY E. STUDDS, Massachusetts

WILLIAM S. BROOMFIELD, Michigan
EDWARD J. DERWINSKI, Illinois
PAUL FINDLEY, Illinois
JOHN H. BUCHANAN, Jr., Alabama
J. HERBERT BURKE, Florida
PIERRE S. DU PONT, Delaware
CHARLES W. WHALEN, Jr., Ohio
EDWARD G. BIESTER, Jr., Pennsylvania
LARRY WINN, Jr., Kansas
BENJAMIN A. GILMAN, New York
TENNYSON GUYER, Ohio
ROBERT J. LAGOMARSINO, California

MARIAN A. CZARNECKI, *Chief of Staff*

SUBCOMMITTEE ON FUTURE FOREIGN POLICY RESEARCH AND DEVELOPMENT

LESTER L. WOLFF, New York, *Chairman*

THOMAS E. MORGAN, Pennsylvania
CLEMENT J. ZABLOCKI, Wisconsin
WAYNE L. HAYS, Ohio
GUS YATRON, Pennsylvania

J. HERBERT BURKE, Florida
TENNYSON GUYER, Ohio

ANDREW D. DUSKIE, *Subcommittee Staff Consultant*
JAMES E. FOX, *Minority Subcommittee Staff Consultant*
ARLENE M. ATWATER, *Staff Assistant*
JOYCE LASKY SHUB, *Research Assistant*

CONTENTS

REVIEW OF THE SECRETARY OF TRANSPORTATION'S DECISION ON THE SST CONCORDE

WEDNESDAY, MAY 26, 1976

HOUSE OF REPRESENTATIVES, GOVERNMENT ACTIVITIES AND TRANSPORTATION SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS AND SUBCOMMITTEE ON FUTURE FOREIGN POLICY RESEARCH AND DEVELOPMENT OF THE COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Wm. J. Randall (chairman of the Government Activities and Transportation Subcommittee) presiding.

Members present from the Government Activities and Transportation Subcommittee: Representatives Wm. J. Randall (chairman), Bella S. Abzug, David W. Evans, Charles Thone, and Edwin B. Forsythe.

Member present from the Subcommittee on Future Foreign Policy Research and Development: Representative Lester L. Wolff (chairman).

Also present from Government Activities and Transportation Subcommittee: John F. Tischler, Special Assistant to the Chairman; William G. Lawrence, staff director; Miles Q. Romney, counsel; Bruce Butterworth, research assistant; Marjorie A. Eagle, clerk; and Richard M. Tempero, minority professional staff, Committee on Government Operations.

Also present: Representative Benjamin A. Gilman, Committee on International Relations and Chris Nelson, press aide to Representative Lester L. Wolff.

Mr. RANDALL. The joint hearing will come to order.

This is a rather unique situation so far as this chairman is concerned.

We are proceeding ahead of the foreign affairs section. We are in our quarters—we are starting out for that reason.

Mr. Secretary, it is good to have you with us this morning. You have been with us several times. You have always been a most cooperative witness.

We are continuing this series of hearings on the subject of the SST Concorde which began commercial service to the Washington area only last Monday.

When this subcommittee started holding hearings on the subject of the certification of the Concorde in July of last year, we were primarily concerned with internal matters of the Department of Trans-

portation. As time passed and much additional testimony was presented, we began to realize that foreign policy considerations were also intertwined with our domestic decisionmaking process.

For that reason, and because of the deep and dedicated involvement of Hon. Lester Wolff, chairman of the Subcommittee on Future Foreign Policy Research and Development, we are holding this joint hearing this morning.

You are aware of our continuing interest in the procedures by which your department evaluated the merits for admission of the Concorde. You are also aware of our concern that the decision has been made freely on the merits of the information concerning the Concorde and not out of any sense of political expediency.

Frankly, I had hoped that our last session with you might have served to answer all such questions.

Chairman Wolff has obtained from you numerous documents which seem to raise again substantial doubt as to the purity of the fact-gathering process. We are again concerned about improper intervention on the part of the White House.

We are again concerned with the effect of the now-famous "Nixon letters," which were described to us as not constituting any commitment.

Apparently, the British, despite their testimony to you at your January hearing, did not feel the same way. And I wonder whether they were dissuaded by either your Department or the White House.

Once again, I find it necessary to make a very pointed statement for the record. I have no interest in this matter which relates to the Concorde as an individual aircraft. I have great respect for the nations of England and France. I support the concept of commercial faster-than-sound flight. These hearings are in no way related to the monetary advantage which one airline might gain over another.

I do concern myself with the economy and efficiency of the operations of the Federal Government. I am concerned with the openness and honesty of the process of governmental decisionmaking. It frustrates me somewhat that this "affair of the Concorde" cannot be put to rest with direct answers to direct questions, but the evidence which will be discussed here today bears out that it has not.

Mr. Secretary, I know that you are as eager as I am to see the end of the controversy over your decision and to see confidence in your efforts established.

Because I know and respect you as a candid and honest man, I am also sure that you welcome the opportunity to further discuss matters affecting your department's performance.

At this time, I wish to recognize Chairman Lester Wolff who has an opening statement.

Mr. WOLFF. Thank you, Mr. Chairman.

First of all, let me thank you for not only calling this hearing but making it possible for us to have a joint hearing.

I also would like to thank the members of the subcommittee and the staff for the excellent work and investigation on the Concorde that has been done in the past year.

I would also like to take the opportunity to thank the Secretary for furnishing us with the documents.

Mr. Chairman, I know that when you spoke a moment ago, you made no reference to the Secretary in your statement, but there has been a somewhat less-than candid approach by a number of people concerned with the Concorde. That is, as you have indicated, one of the basic reasons why we have called this hearing today.

As you have said, Mr. Chairman, we are here today to hear Secretary Coleman's explanation on several key documents which have been culled from thousands of pages that the Secretary voluntarily turned over to me in April of this year.

I should explain that in an effort to pursue the future foreign policy implications of the Concorde decision, I requested on March 8 that Mr. Coleman produce any and all documents in FAA or DOT files which might bear on my concerns as chairman of the Future Foreign Policy Subcommittee of the House Committee on International Relations, since Mr. Coleman has repeatedly stressed the foreign policy aspects of his decision.

But the documents which were produced so clearly affected major areas already probed by the Randall subcommittee that, after consultation with the chairman, the present forum was arranged.

I must add in all candor, Mr. Secretary, that I find it incredible from an administrative standpoint that, upon assuming office last year and then taking over the SST decision, you did not ask your people to produce what I have asked of you and that you apparently did not ask to see a complete departmental record of what had transpired to cause all the commotion, particularly regarding the crucial diplomatic area.

We do not lay the blame upon you, sir. That is hardly the case.

But in calling this omission incredible, I take you at your word that you approached the Concorde decision with an open mind.

If you did have an open mind, that of course suggests that you might have said "no" to Concorde, if you had been aware of some of the prior decisions which had been made.

What I find specifically incredible, Mr. Secretary, is that you did not, by your account, inquire as to whether such a "no" answer might contravene any Presidential commitments or diplomatic representations, if for no other reason than to prepare counter arguments.

Reports of such Presidential commitments have been widespread since April of last year, and the documents you have released to me clearly confirm these reports.

From this, I find it equally incredible that none of your staff volunteered to you any information on the historical background of your decision, particularly if in fact there was ever the slightest possibility that you might have to make a negative decision, or one which the British and French might perceive as a violation of any commitments that had been made over the years.

Of course, if you did ask for such information and were not told the truth, then I trust that today's hearing will afford you an opportunity to redress the damage done to us all on behalf of the Concorde in the past year and a half.

The damage I refer to is not only on the environment itself, but also the integrity of the decisionmaking process which Congress ordained in the National Environmental Policy Act and other legislation which is so connected.

74-978—76—2

But perhaps hardest hit is the faith which the American people can place in the workings of their Government.

The Concorde case is one in which we have been treated to a spectacle of one misleading statement after another on the part of the plane's proponents.

For example, the British and French witnesses at your January 5 hearing were still insisting that Concorde's noise would be "broadly comparable" to that of subsonic jets, despite your public statements and the actual record of the November EIS showing Concorde would be perceived as being at least twice as loud as the Boeing 707.

Needless to say, yesterday's debacle at Dulles, where the British demonstrated a touching, but newly found concern for local sensibilities which no doubt coincidentally allowed them to dodge the noise-measuring devices which had been placed there, simply continues this tendency.

Mr. COLEMAN. Mr. Wolff——

Mr. RANDALL. Mr. Secretary, he is making an opening statement.

Mr. COLEMAN. Mr. Chairman, I do not think that any Member of Congress has the right to say a falsehood.

Mr. RANDALL. That's a question of fact.

Mr. COLEMAN. When he finds out——

Mr. RANDALL. Let this gentleman proceed with his opening statement.

You will be given ample opportunity to answer.

Proceed, Mr. Wolff.

Mr. WOLFF. The Secretary will be given ample time to answer all questions which I hope he will do. But I refuse to bow to his name calling.

Fortunately, the French were for once less concerned with subtleties and blasted off as planned. The results showed what we have been saying all along: Concorde is more than twice as loud. Indeed, it is three times as loud as the 707. The 707 is sufficiently bad to warrant the contemplated billion dollar retrofit program which I trust you are about to announce.

The Concorde case is the one in which the plane's makers took a full-page ad in the New York Times last year claiming that the EPA had found Concorde's noise to be "indistinguishable" from that of other jets.

While I will be the first to admit that EPA has been somewhat confusing in its Concorde position, Mr. Train quite accurately testified last November to the Randall subcommittee that EPA had never made any such statement on Concorde.

And so, with all respect, Mr. Secretary, the American people will have to be excused if they wonder just where the Concorde coverup ends and the truth begins.

Perhaps yesterday's flights at Dulles and today's hearing will help us to find the truth.

Also, Mr. Secretary, we have the possibility that the Federal Treasury may be opened up for billions of dollars in airport noise damage suits if the courts rule that the Port Authority of New York must give in to your recommendation that Concorde fly into JFK Airport.

Mr. RANDALL. Does the Secretary have a copy of the statement he can peruse while it's being read?

Mr. COLEMAN. No.

Yes, I have it now.

Mr. RANDALL. With all fairness, the Secretary has a copy of the statement. Your aides did have it. Let the record show that you have the statement in your hand.

Mr. WOLFF. A copy of my statement was handed to the Secretary's aide prior to the opening of the session. The documents released to me show that your predecessor, Secretary Volpe, was deeply concerned that we avoid the possibility of what he termed "many billions of dollars" at risk because of the Concorde decision. What we need to know, Mr. Secretary, is if you have decided to ignore Mr. Volpe's warning and open up the U.S. Treasury to a multibillion dollar disaster caused by the British and French. What price diplomacy, Mr. Secretary?

I hope you will answer that in your testimony.

I originally requested documents from you, Mr. Secretary, because I am particularly concerned that the so-called Nixon letters of January 19, 1973, represented a commitment on Concorde in themselves. I felt then, and your documents clearly demonstrate, that the Nixon letters represent the tip of an iceberg in the files of the executive branch which, if fully explored, would reveal depths of diplomatic involvement in the domestic decisionmaking process which clearly contravened the intent of Congress in passing the National Environmental Policy Act and related measures.

In sum, I feel that the Nixon letters represent a very dangerous precedent regarding foreign policy concerns and the domestic decisionmaking process.

The documents themselves go far toward establishing that melancholy hypothesis as fact. They show that in the fall of 1972 the FAA and the DOT were eager to get on with the work of promulgating two noise regulations—the first, a fleet noise rule; the second, a noise rule for the SST's with which the Concorde could not comply.

To get around this problem, the British and French were told that if they wanted an exemption from either rule, they could publicly apply for it and let the facts justifying such an exemption be laid out for public view. Evidently, the British and French panicked at the suggestion of such an above-board procedure and went right to the Nixon White House where they exacted the secret concessions only fully revealed last December in the Nixon letters.

Mr. RANDALL. Will the chairman withhold for 1 minute in order that we may have total and complete fairness on each side of the table.

I have asked the staff to give another copy to the Secretary's staff so they can prepare their answers.

But we are not going to have any more interruptions.

Mr. WOLFF. I thank the chairman.

For the future, as I testified at your January 5 hearing, Mr. Secretary, I am concerned that your oft-stated commitment to foreign policy considerations has set up a potentially endless series of diplomatic Pandora's boxes. I do not want to see a situation where the U.S. Government is forced to explain to Iran or Japan or India or Australia—or to any potential Concorde customer—that only Great Britain and France carry enough diplomatic clout to push Concorde

through, despite the concerns spelled out in the documents produced for us today.

Mr. Secretary, telling us as you have that a new EIS process will be necessary in the event of other foreign SST applications begs the larger questions. As both your decision and these documents make clear, the SST decision has been defined as lying somewhere among domestic environmental concerns, political concerns, and foreign policy concerns, thereby insuring that a balance will be struck which has little to do with the concerns which in the first place prompted Congress to pass environmental and noise protection laws.

Secretary Kissinger's letter to you of last October 6 seems to bear out my fears. Mr. Kissinger, after a two-page discussion of the diplomatic problems which would arise if you ruled against Concorde, concluded with this final thought:

> I hope that in making the Administration's initial decision with specific regard to the Concorde, you will find it possible to weigh carefully the concerns of these two close allies—Britain and France—together with the environmental and other criteria that you must consider.

While aspects of this letter smack of a "Memo to the File" to demonstrate concern for environmental and other matters, I wonder just what Mr. Kissinger was saying to you with the words: "the administration's initial decision with specific regard to the Concorde?" The words certainly would seem to leave the door open for foreign policy "considerations" to somehow overrule any negative decision which you might have been contemplating.

I know that this is a long statement, Mr. Secretary, and I hope that you will bear with me on it, but I have spent over 1 month now—my staff has also—examining the 1,000 pages of documents which you have supplied to us.

It is with this in mind that we try to summarize 1,000 pages in about 7 pages.

I cannot emphasize enough this matter of your reliance on foreign policy, Mr. Secretary, for if we are learning nothing else this year it is that the American people are not about to dismiss foreign affairs from their concerns and that the lesson of Vietnam appears to be a heightened awareness of the necessity of watching the executive branch very closely on foreign policy matters.

The Concorde has become a classic case study of how our Government places foreign interests ahead of our domestic needs—be they the problem of heroin trafficking from Burma or the Concorde.

Your decision says to the people of New York and to the people of this area that their concerns for the peace and tranquillity of their homes and the health of their families are rights which can be secretly bargained away, along with their tax dollars, in the name of foreign policy.

Your decision tells our people that if the French are angry because they lost out in the NATO sales game last year, they can feel better because they are winning the battle of Long Island this year.

I agree that we should recognize our debt to the French during this Bicentennial Year, but really the Concorde decision goes too far.

As for the British: Robert Morley says "we can come home. All is forgiven." I should think so, Mr. Secretary. I should think so.

Mr. Secretary, your general counsel, Mr. Ely, last week sought to dismiss these documents as merely of "historical interest" since you are

making the incredible claim of having little or no knowledge of them prior to your decision on February 4 of this year.

Even if this were so, I do not see how you can continue to claim that the "history" told by these documents portrays anything less than a veritable straitjacket binding you or any Secretary of Transportation on Concorde.

Be that as it may, even an impartial observer of the key documents we will discuss today—and we have furnished your staff with a copy of a chronological summary sheet—would see obvious contradictions on any claim that foreign policy considerations have not had an overriding influence on domestic environmental and political decisions.

These documents prove my charges of last June, at the initial hearing in this series, that foreign policy has overwhelmed the FAA, the DOT, the EPA, and the State Department as these agencies wrestled with each other over what to do about aircraft noise, as well as the Concorde.

You have already made it clear that you do not agree that you virtually had your decision dictated to you by the events of the past. But I think that if you will read these documents, you can see how, prior to your involvement, the British and French were consistently able to head off potential problems by exerting sufficient diplomatic pressure to block promulgation of U.S. aircraft noise and related environmental standards.

These documents show that right up into 1975, with your arrival in Washington, whether it was a proposed fleet noise rule, or a specific SST noise rule, or an EPA recommendation on SST noise or emission standards, the British and French were invariably tipped off in sufficient time to muster their forces. In fact, one of the main impressions I got in reading these documents is that at every step of the way, the British and French have been given a more accurate and detailed view of executive branch plans than has ever been given to the Congress, let alone to the American people who will have to bear the brunt of the Concorde decision.

The success of the British and French in putting this intelligence to use is clear on the face of it: There exists at this very moment no SST noise rule, no implementation of FAR 36 noise standards on the books since 1969 and, of course, the now defunct fleet noise rule. We have had to subsist on years of promises that such rules and regulations are just around the corner—June 1st being the latest, I believe.

Mr. Secretary, this is the heart of my statement to you today: I do not see how you can fail to see that you and we have been used by those who put foreign policy ahead of our obligations to our own people. The proof is that you will repeat today the claim that the absence of an SST noise rule means that you can't apply regulations to the present generation of Concordes without facing charges of "discrimination," charges of contravening past treaty obligation, and, indeed, without opening up the entire diplomatic struggle all over again.

To repeat, Mr. Secretary, I do not see how you can ignore the fact that the absence of any enforceable SST noise and emission standards stems directly from past diplomatic pressure. These documents prove that. And, given the present triumph of diplomatic considerations, I fail to see how you can assure us today that we have no reason to fear future "foreign policy" decisions on SST's. You have set the precedent,

Mr. Secretary. Foreign governments expect to be treated as equals in all matters, and they will hardly view the SST as an exception.

To move to a brief but specific discussion of the documents in the chronological summary: The first four—memos from the White House and the DOT—show clearly that as a result of months of close coordination between United States, British, and French experts, it was determined that Concorde could not meet proposed U.S. aircraft noise standards. They also clearly state that Concorde had severe problems of fuel capacity, range, fuel fire safety, and airport flight pattern handling characteristics. These technical difficulties were spelled out for top officials up to and including the Cabinet level in virtually all agencies of the executive branch involved in any way with Concorde before you entered the Cabinet.

The first four documents, covering late 1972, show that until December 11, 1972, the DOT was solidly on record that, despite diplomatic problems, recommended SST and subsonic fleet noise rules should be promptly published in the Federal Register and promulgated for compelling domestic, political, and environmental reasons. Your predecessor, Mr. Volpe, himself signed a six-page memo recommending this course of action.

But at a December 11, 1972, White House meeting, a decision was reached overriding Secretary Volpe and the best advice of the DOT, and setting the stage for the Nixon letters the following January 19.

This Subcommittee on Government Activities and Transportation has already gone over Mr. Nixon's letters with you, Mr. Secretary, and I suspect that the members will do so again today. But from the new documents received since your December testimony, let me suggest that it is obvious that the British and French would have every reason to believe they were being told that their months of "coordination" with our people were paying off.

It is obvious that regardless of Mr. Nixon's warnings about local and congressional prerogatives, the British were claiming within 1 week of receiving them that the letters constituted a commitment by the U.S. Government that aircraft noise rules would not be applied to Concorde. Mr. Binder's memo of January 26, 1973, makes this point very clear.

And we have had subsequent confirmation of this 1973 British claim in the somewhat tangled testimony of Mr. Roger Strelow of EPA. He at one time last year was telling us that a representative of the National Security Council and a man from the State Department came to him in early 1975 to lobby against strict SST standards then in the works, because the Nixon letters could be construed as a commitment and diplomatic problems might ensue.

It does strike me that you ought to have been told the same thing at some stage, Mr. Secretary. But in any event, Mr. Strelow has subsequently decided that his visitors were not so definite as he portrayed them in his first rendition of the meeting.

Fortunately, the historical record is now clear, thanks to a DOT document you have turned over to us showing that on February 18, 1975, Mr. Strelow was ordered by the White House to hold off on proposed SST noise rules. Less than a month after receiving his marching orders, Mr. Strelow issued the so-called waiver for the first 16 Concordes which caused you, Mr. Secretary, to question him so closely at your January 5 hearing.

I might also add that the much-trumpeted British and French denials of any secret deals at your hearings are unmasked as pure sophistry by the facts as reflected in these documents. I would note that the British and French did not actually deny the deals, if you read what they actually said. They merely denied that the deals were still secret.

Since you had already released the Nixon letters to Chairman Randall, the British could testify in all truthfulness that there existed no deals which were not already a part of the public record, to quote Mr. Kaufman.

Similarly, the French could claim, as they did, that they knew of no secret deals since, of course, the deals were no longer secret.

Now, Mr. Secretary, this brings me to a very critical document: Mr. Barnum's "eyes only" memo on the Nixon letters to Secretary Volpe on January 26, 1973. I call this group of papers to your attention because it calls into question the very foundation of your claim that you were not aware of any prior commitments on Concorde.

If we accept your word on this, the only possible conclusion we can reach when analyzing your past testimony, you did not know of the Nixon letters prior to last December 12 and that prior to February 4 you had no knowledge of the documents now in our hands, is that persons in your Department having control of these documents, particularly, the Nixon letters, deliberately withheld them from you.

From your December 12 testimony, it is obvious that you were not giving us copies of the Nixon letters which Mr. John Barnum, now Deputy Secretary and then General Counsel of the Department, appended to a memo to Secretary Volpe, which explained in no uncertain terms just what Mr. Nixon's words really meant.

We will need to know, of course, why this memo and its original DOT versions of the Nixon letters were not produced in December.

Perhaps more to the point, we will need to know why Mr. Barnum could explain to his boss in January 1973, that the British were taking the Nixon letters as a commitment, but failed to inform you, Mr. Secretary, of this in 1975 when the British and French were making it abundantly clear that there was more to their diplomatic rumblings than an optimistic reading of the Chicago convention.

It does not tax the imagination to see how the British, and particularly the French, could read the Nixon letters as a general commitment promising U.S. cooperation whenever SST problems might come up at the Federal level.

While later documents show that Mr. Barnum in 1975 was speaking very frankly to the French at the Paris air show about problems with New York and other matters alluded to in the Nixon letters, I can only wish that your Deputy Secretary had been equally frank with you, Mr. Secretary. That a broad reading of the Nixon letters is possible, and not mere postulate, is shown by the use of the letters on Mr. Strelow in 1975 by the State Department and the National Security Council.

Mr. Secretary, we had a right to an honest appraisal last summer of the problems which our Government had been studying indepth since at least 1972. Instead, we got the disgraceful performances of the executive summary of the CIAP report and an EIS which was patently fraudulent and was so branded by the White House's Council on Environmental Quality, and even by the FAA's eastern regional offices in New York.

But getting the facts on Concorde has been like pulling teeth from an elephant with a pair of tweezers, Mr. Secretary. At a certain point it's tough to tell who's doing what to whom.

It is perhaps a measure of how irreversible your decision really is, Mr. Secretary, that your General Counsel can blithely tell the court of appeals, as he did last week, that the Concorde is "environmentally questionable," particularly with regard to noise. He even threw us a bone on the ozone layer.

But such candor is cynical grandstanding at this point, Mr. Secretary, since we needed it last summer when congressional legislation and public hearing testimony was being formulated, and court cases prepared, and when public and international opinion was being manipulated by the British and French free from the restraints which could have been imposed by a U.S. Government dedicated to the truth. And the truth was there, Mr. Secretary, as your documents show. All last summer, your Department, not you, was feigning ignorance of information it had been gathering since the beginning of the decade.

In a sense, I accept your contention that these documents are a history lesson, Mr. Secretary. They are a living example of how the decisionmaking process in your Department is contaminated—contaminated in this instance by foreign policy pressures withheld from public scrutiny. As these documents show, there has been no doubt in our Government as to the unacceptability of Concorde since at least 1972, but despite the doubts, diplomacy won out.

It will be interesting to see, Mr. Secretary, whether your 16-month "test series" will be allowed to terminate for anything less than an absolute disaster, as was the case with the Comet, the most horrible example to date of "diplomatic" aircraft certification.

Thank you, Mr. Chairman. That concludes my opening statement.

Mr. RANDALL. Thank you very much, Mr. Wolff.

The Chair is going to divide the time between the two subcommittees, but at this time we will recognize the gentleman from Nebraska, the ranking minority member of the subcommittee, Mr. Thone.

In accordance with the time taken by the other chairman, you may have as much time as you need.

We will then commence under the 5-minute rule.

You may proceed at your pleasure.

Mr. THONE. Thank you, Mr. Chairman.

Mr. Secretary, I again welcome you back to our Subcommittee on Government Activities and Transportation to discuss the "Concorde decision process."

As I recall, this is the third time we have asked you about aspects of this matter within the last 6 months, and we are not the only subcommittee that has looked at the decision.

I agree with Chairman Randall. I am also eager to see an end to the controversy over this decision.

Hopefully, today's discussion will accomplish that.

I might further observe that the reason you are here today is because you adhered to your belief in the need for openness, candor, and honesty in the governmental decisionmaking process.

Your announced intentions were to make a decision based on the arguments and materials presented to you at open hearings on the subject.

It is my understanding that this was unprecedented.

Further, you pledged not to allow any "commitments" to play a part in that decision unless they were made known to you and placed in the public record.

You previously testified before this subcommittee that you did, in fact, make the decision in this way.

As one member of this subcommittee, I accept your position. I do not know how you could have been fairer.

Mr. Secretary, I might add parenthetically that you are the type of quality person we need in Government.

I, for one, do not believe anyone or any interest can in any way or will at any time be able to accuse or contaminate you.

To me you reflect great ability and integrity.

About the time of the Concorde decision, it is my understanding that Congressman Wolff asked for extensive materials surrounding the subject.

They were primarily those developed prior to your taking office and ones which were not part of the public record and thus, by definition, ones which were not part of your decisionmaking process.

I understand that his request was complied with and all materials found in your files, which might relate to the matters, were released to Mr. Wolff.

Hopefully, this hearing can answer once and for all time the concerns raised regarding these materials.

The fact that you released all the materials, whether or not they might raise questions, is an exhibit of your commitment to open decisionmaking.

Should the commitment to this process have been as strong on the part of your predecessors, then this hearing might not have been necessary in the first place.

Hopefully, further decisions will be made using this process and questions of this nature will be moot.

Mr. Secretary, in one of your previous appearances, I remember you quoted a great Chief Justice of the Supreme Court, Oliver Wendell Holmes, who said: "Eloquence occasionally might give fire to reason."

I might paraphrase that a little and say partisanship, parochial interest, and grandstanding—to use the word that has been bandied around here a little this morning—can also give fire to reason.

Again, Mr. Secretary, welcome to this subcommittee.

Mr. COLEMAN. Thank you.

Mr. RANDALL. Thank you.

Mr. Secretary, you have a statement?

STATEMENT OF WILLIAM T. COLEMAN, JR., SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY DONALD T. BLISS, DEPUTY GENERAL COUNSEL

Mr. COLEMAN. I do, but before I give it I have some concerns.

I thought I was coming up here for a hearing. A hearing to me means, under the democratic process, that until those who sit in judgment have heard the evidence, they will not make up their minds.

I also say that I have heard a statement read by Mr. Wolff which has so many inaccuracies in it, that I fail to see how he could have read the documents which I supplied him.

As long as I hold office, I will make available to this subcommittee any information which I have in my files unless I am instructed by the President that it involves executive privilege or other few exceptions. I have made the information available. I do think that if you want public servants to be willing to make information available to you—particularly when the cameras or press are here--then those who receive it ought to have the restraint that we ought to have in a civilized society in order not to make statements or accusations which are utterly false.

I will demonstrate that during my testimony.

Mr. Chairman and members of these subcommittees, thank you very much for the opportunity to appear today to discuss my decision permitting British Airways and Air France to conduct limited scheduled Concorde operations to and from the United States for a trial period of up to 16 months under certain precise restrictions.

I thought I came here because you had a principal concern in the role of foreign policy considerations in the decisionmaking process concerning the Concorde, including considerations, if any, which preceded my arrival at the Department of Transportation. In order to place this matter in the proper context, I would like to outline briefly the overall framework in which I have made my decision.

As I indicated in my opinion, I perceived as relevant to my decision the following six issues:

First: Whether I was compelled by either international or domestic law to permit or prohibit the landing of the Concorde. And if I was not compelled by law to make a particular decision, what policy guidance did the law, including treaties, provide;

Second: To what extent was the United States bound under international law to accept the safety determinations of France and the United Kingdom, and had the FAA determined that the Concorde was safe;

Third: Whether I should have considered only the impact of the proposed six flights per day or should have assumed that, no matter how strictly limited my decision was, its ultimate effect would be a major expansion of SST operations;

Fourth: What were the environmental aspects of the Concorde in, inter alia, the following four categories; air quality, energy impact, climatic impact and ozone reduction, and noise and vibration;

Fifth: What benefits would accrue from Concorde operations with respect to improved international travel and communication, technological advances in aviation, and improved international relations; and

Sixth: What accommodation would best minimize any adverse costs of Concorde operations while preserving its significant benefits, or to the extent such costs and benefits could not be confidently assessed, what accommodation would put us, without significant risk to the American people, in a position to assess them.

As you can see from this list, the task of reaching a decision required serious consideration of a variety of issues, including important questions of international law and relations.

With respect to the obligations of the United States under international law, I concluded that I was not compelled by treaty or domestic law to admit the Concorde for commerical flights if I found that it would be harmful to the United States. Further, I acknowledged the obligation of the FAA with respect to accepting the certification of the British and French authorities concerning the airworthiness of the Concorde and accepted the FAA Administrator's conclusion that the Concorde could operate safely in U.S. airspace.

I beg and I hope these subcommittees will understand the distinction between our responsibility under treaties to accept the certification of a foreign government with respect to the airworthiness of a foreign aircraft which seeks to land in the United States and our airworthiness certification which is a precondition to sale of the plane to a U.S. carrier.

But even with that treaty obligation, which is clearly in the treaty, I nevertheless as a separate and distinct matter asked the FAA to determine whether the airplane was safe.

Having received that determination and placing it in my opinion as an appendix, I fail to see why I should be subject to criticism for relying upon an international treaty which was drawn in 1944 and confirmed by the Senate, and, thereafter, turning to the American Government agency which is responsible for air safety considerations to accept its judgment.

I also think it's shocking for Congressman Wolff to talk in terms of safety because there is a memorandum which indicates something about the type of system that ought to be used on the airplane within the gas tanks. There is not any commercial airplane in the United States which uses that system.

Once these issues were resolved, I addressed the question whether authorization of the proposed commercial Concorde flights was contrary to the national interest or inconsistent with any Federal statute. In so doing, I dealt at some length with environmental problems of air quality, energy efficiency, stratospheric impact, and noise; commercial and technological factors, and our relationship with Great Britain and France. It was possible to reach a number of conclusions concerning these matters, although it was impossible to reconcile them completely. Obviously, these considerations had to be weighed and balanced carefully in reaching a decision.

As you know, I concluded that it would be appropriate to establish a trial period for Concorde operations and to attach specific conditions to operations during that period. I found that there was so much on both the environmental and technological sides of the equation that we did not know and could not know without observing the Concorde in actual commercial operation in the United States, that a final decision at this time, either to admit or to bar the Concorde, would be irresponsible.

My concern about the foreign relations implications of the Concorde decision are set out in my opinion.

First: I was concerned, and I hope any Member of Congress would be concerned, whether a decision to ban the Concorde completely might be perceived as discriminatory because the United States could be charged with treating its own aircraft and other U.S. manufactured products more favorably than those of foreign countries with

respect to regulating aircraft noise and guarding against stratospheric pollution.

Second: I was concerned whether a complete and immediate ban on any commercial Concorde flight would be perceived by the British and French as an imposition of a penalty for which they were not given adequate notice.

Finally: I took into account the proposition that a prohibition of Concorde operations might be considered unfair protectionism on the grounds that the United States was unwilling to permit the British or French to enlarge their share of the international aeronautical market at the expense of the U.S. manufacturers and carriers.

It was and remains my conviction that international considerations, although not determinative, were nonetheless important and worthy of careful analysis and judgment. Because there are other important considerations as well—especially serious questions of environmental impact—it was apparent to me that the only way to address these diverse issues was to deal with them in an open and fair process that explained in some detail how each consideration was weighed and evaluated. Although there are many occasions where confidentiality in diplomatic negotiations is in the national interest, I thought that the international considerations affecting a commercial venture, such as the Concorde, could be discussed openly and on the record. For that reason, I asked the Secretary of State to submit his views in writing for the record. I also released prior to today's hearing and when the chairman of this subcommittee asked me for them, the Nixon-Heath and Nixon-Pompidou communications. I placed these documents in the record. They were available to Congressman Wolff and anybody else to read, and after holding open hearings in which foreign relations considerations were discussed, I made a decision.

And I do think, and I hope the record will show, that there was no document that any member of this subcommittee asked me for which I did not produce. I also hope the record will show that even though you may have had trouble getting the documents elsewhere in the executive branch of the Government, when the request was made of me, I used all of my efforts, and I produced for you the letters which I know Congresswoman Abzug had spent at least 5 months trying to get elsewhere. I produced them, because I believe if this society is going to regain what we need, it is very important that those documents be made available unless there is a strong reason why they should not be made available to the Congress.

As I indicated in my opinion, my decision was based entirely on my review of the environmental impact statement concerning the application of the French and British, my all-day hearing of January 5, 1976, and my subsequent review of the transcript and other written materials submitted for the record. With respect to any possible commitment or agreement, my opinion states that the United Kingdom's Minister of State for the Department of Industry and France's Director of Air Transport each testified at the public hearing that there was no expressed or implied commitment that the United States was obliged to permit the Concorde to land in the United States. It states further that no one—whether he be a Congressman, a President, a Secretary of State, or anyone else—brought to my attention any such

expressed or implied agreement. In short, my opinion was based on the record I had before me and upon a careful review and weighing of the environmental, technological, and international facts, laws, and arguments that were a part of that record.

I find it shocking that Congressman Wolff would persist in alleging a secret agreement between United States officials and the British and French to permit the Concorde to enter. I spent 25 years of my life in the pit trying cases. I do not know whether Congressman Wolff has, but I would like to read the questions I asked and then ask the press and the public whether they think it is justified for any Congressman to make a statement that I was misled.

Here are the questions that I asked the British Secretary of State at the January 5 hearing, and I've spent 25 years trying cases:

Secretary COLEMAN. Now, I take it because you are the principal political officer of your Government here, sir, it is true, is it not, that there have been no agreements between your Government and any person in the United States which say that regardless of the situation the Concorde will have an absolute right to land in the United States.

Mr. KAUFMAN. I should like to place that categorically on the record, Mr. Secretary.

Secretary COLEMAN. Well, would you place it categorically on the record? What is your answer?

Mr. KAUFMAN. I concur totally with the contention you have put to me. There are no agreements which are not public knowledge, that is, there are no agreements.

Now how any responsible Congressman can interpret that as meaning other than the clear testimony before me that there was no agreement, I fail to see.

But let's go on. I then asked the French Director of Air Transport the same question. The record shows I said as follows:

Secretary COLEMAN. Now the other question which I also asked Mr. Kaufman is: Do you know of any agreement between anyone in the United States who held a responsible governmental position and anyone in your government in which agreement it was said that regardless of the situation the Concorde would be permitted to land in the United States?

Mr. ABRAHAM. Nothing of that sort which has been made public.

Secretary COLEMAN. Well, do you know of any private agreement of any type?

Mr. ABRAHAM. I do not know of any private agreement.

Secretary COLEMAN. Thank you, sir.

Now how in good conscience anybody holding public office can say that that testimony meant that somehow there was an agreement, I fail to see.

In the spirit of that open review, I have made available to the subcommittees and to the public additional documents that were found in departmental files relating for the most part to events that preceded my arrival. These documents contain references to interagency discussions and alternatives considered. Except with respect to documents relating to events during my tenure, I was not aware of their existence until our search was completed. Although some of these documents were not covered by Chairman Wolff's request, we provided them anyway since they related to concerns expressed by his subcommittee. We also arranged to have some of these documents declassified so that they could be made public. Once again, I undertook to do that. Since they are primarily of historical interest at this point, we do not believe there was any useful purpose served in retaining their national

security classification. I hope this subcommittee will recognize and I hope the press will recognize: (1) that some of these documents go far beyond what were requested; and (2) that I made the information available freely and with the maximum cooperation and merely upon the request of a Congressman.

Your invitation to testify stated you would like to examine future implications of commercial supersonic aircraft for U.S. foreign policy.

At this point, we are faced with a great deal of uncertainty respecting the environmental and technological, as well as the international implications, of SST operations. This fact, of course, led me to conclude that a demonstration period was appropriate for the Concorde. I would like to suggest that we take this opportunity to observe carefully both the positive and negative consequences of the limited trial and then assess, much more intelligently, the appropriate role of commercial supersonic flights to and from the United States.

I do not want to speculate about those implications at this early stage. My opinion made clear that the question of continuation of permission for the six flights beyond the 16th month will be addressed without any presumption either way being created by my decision of February 4.

I am pleased to be able to report four developments since I last appeared before Mr. Randall's subcommittee.

First, as you know, the Federal Aviation Administration has instituted a High Altitude Pollution Program (HAPP) to collect and analyze data on the effects of aircraft emissions on the stratosphere. In addition, on May 5, in Paris, the United State Government concluded an agreement with Great Britain and the Republic of France to establish a joint ozone monitoring system. We believe such cooperation will be useful in obtaining information on which all parties agree as the basis for future regulation of stratospheric flights.

Second, on May 18 the FAA announced that its Dulles temporary monitoring systems were in place. The FAA will monitor airport air quality and noise levels, and NASA will monitor the effects of Concorde noise vibration. The sophisticated permanent system is being developed in cooperation with NASA and EPA and local governments in New York and Virginia. It will insure that the Concorde is given the closest scrutiny in aviation history as it begins its demonstration.

Third, on May 19, the U.S. Court of Appeals for the District of Columbia in Washington—unanimously upheld my February 4 decision to permit the Concorde demonstration. At that time every document that I have released, and which you now have before you, was also available to the litigants, and some of them used them at that hearing. Various parties had challenged the decision on the grounds that the EIS was allegedly inadequate and the documents provided to Chairman Wolff showed that my decision was somehow preordained because of our Government's dealings with Great Britain and France regarding the Concorde in 1972 and 1973. The court rejected these arguments.

I was particularly gratified that a decision which might normally be expected to take 6 weeks was made unanimously and only 3 hours following the conclusion of the argument. I also would say that at least two of the three judges who sat on this court have as great a tra-

dition for observing environmental problems and giving them close consideration and often reversing decisions of the Government as any that sit on the Federal courts today. The Chief Justice of the United States on May 22 denied a stay.

Finally, the demonstration began this Monday with the arrival of the first scheduled flight from London and Paris. I hope it will provide us with the information needed to reach the ultimate decision on the application for permanent service to and from the United States.

The fact that we have not arbitrarily banned the Concorde altogether, without the benefit of an opportunity to prove itself, does contribute to the continuing strength of the international aviation structure. It is an expression of international cooperation and good will between the United States and two of our closest allies with whom we share a substantial cultural heritage. It will help assure our allies that we seek to act without discrimination and fairly and equitably in our economic relations with them. It will be an important reaffirmation of the mutual reciprocity that has enabled the United States to benefit so substantially from the export of its aeronautical products for the past 30 years.

I hope as we conduct these hearings, that those who ask questions will have read the documents and would read the treaties, because this is a complicated matter. I do think we can either grandstand and maybe get some headlines and mislead the American people, or we can reach the true facts here.

I welcome your questions.

Mr. RANDALL. Mr. Secretary, I am jotting down those last comments which were not a part of your prepared statement.

First, let me assure you that this chairman has read every one of the documents. Very late last night, I went over every one of them again.

I assure you I have no intention to grandstand. Over the years, we have never sought any headlines.

On the other hand, the Chair is going to withhold any questions at this time and reserve the right to ask some questions a little later on.

Rather, I am going to try to establish a few ground rules at this time.

Under the rules of the House, we do operate under the 5-minute rule and will now since there are two subcommittees here.

We're going to yield at this time to the chairman of the other subcommittee. Then we will alternate back and forth between the two subcommittees.

We are going to adhere strictly to the 5-minute rule. We believe that will be fair to everybody. If there are some questions which your staff wants to come up with during the 5 minutes, then they will be given some time to prepare their answers.

We will alternate back and forth.

I think that in all fairness I will say that if anyone wants to ask unanimous consent to proceed—again under the rules of the House, where any one member can object—then the Chair will object and will adhere to the 5-minute rule.

At the time that a gentleman is in the process of answering a question, he will be permitted to answer a question without a long speech as long as what he is saying is germane to the question.

If he starts off on a speech, then we will go to another member of the subcommittee.

So, with these rules clearly understood, we will proceed.

I hope we have an accurate clock here. We are following the rules of the House. We intend to do that.

Mr. Wolff?

Mr. WOLFF. Thank you, Mr. Chairman.

Putting aside the Secretary's histrionics, I think that we should go to the questions and get some answers.

Mr. Secretary, you say that: "Except as the documents related to my tenure. I was not aware of their existence until all search was completed."

Are you telling these subcommittees and Congress that you did not request any information regarding the background which transpired prior to your accession to the secretaryship?

Mr. COLEMAN. Yes, sir. There was no reason for me to expect that there had been any such material. I never made a request.

Prior to my December 12 appearance here, Chairman Randall asked Mr. Meister of the FAA to produce a letter from Mr. Nixon to Prime Minister Heath and President Pompidou. I then started a search. I found that letter. I got permission to produce that letter. I made that letter available to the subcommittee.

Mr. WOLFF. Did you find any other letters when you were making that search? Or did you find any other information?

Mr. COLEMAN. I did not personally make this search.

To the best of my knowledge, the search was directed first to the FAA under the instruction that if there is a copy of this letter, then produce it.

The letter was not found in letter form. It was found in the form of a telegram. I felt that Chairman Randall's request certainly covered that, and I produced it.

Mr. WOLFF. With all the controversy which was existing about something like the Concorde and its effect upon international relations, do you still insist upon the answer that you had no question at all in your mind as to what prior commitments existed prior to your taking over this job?

Mr. COLEMAN. I say that I had no knowledge——

Mr. WOLFF. You had no knowledge, not even an interest in what happened before?

Mr. COLEMAN. I made a conscious decision that anything that I dealt with, dealing with this question, I would only deal with it if it were in the public record. Therefore——

Mr. WOLFF. Are all your decisions based on those things in the public record?

Mr. COLEMAN. All my decisions?

Mr. WOLFF. Yes.

Mr. COLEMAN. Not every decision.

Mr. WOLFF. Why was this decision any different?

Mr. COLEMAN. For every decision which I feel is a controversial one or will be controversial, I have made up my mind that I am going to have a public hearing and I will consider the record. That is what I have done.

When people come in to talk to me about any matter of any type, someone writes a memorandum on it for the record. I think that is the only way to conduct the public's business. That is what I am going to do.

Mr. WOLFF. That is right, the record did exist as was evidenced by the voluminous file you finally turned over to us. The record was there for you to look at but you chose not to look at that record.

Mr. COLEMAN. That is not so.

Mr. WOLFF. Is Mr. Barnum with you today?

Mr. COLEMAN. No, he is not with me today.

Mr. WOLFF. Mr. Binder?

Mr. COLEMAN. Mr. Binder is not here.

Mr. WOLFF. When we were talking to your staff, we asked if Mr. Barnum could come along.

Mr. COLEMAN. That request was never communicated to me. If you did, I would have gotten Mr. Barnum up here.

Mr. WOLFF. I think that we should have Mr. Barnum.

Mr. COLEMAN. Wait a minute. My staff says that they never got such a request from you.

Mr. WOLFF. They were not given a formal request.

Mr. COLEMAN. Wait a minute. Mr. Wolff, will you please be responsible.

Mr. WOLFF. Mr. Coleman, I am questioning you. You are not questioning me.

Do you understand you are here to answer questions of the Congress? Stop trying to cloud the issue by failing to answer the questions.

Mr. COLEMAN. Who did you ask that I have Mr. Barnum here today?

Mr. RANDALL. The reporter may have difficulty making any kind of record if we all talk at once.

The Secretary will be given ample opportunity.

Mr. COLEMAN. He made a statement that he asked me to have Mr. Barnum here. He did not ask me. Now who did you ask?

Mr. WOLFF. We informally said it would be a good idea to have Mr. Barnum here.

Regardless of that, Mr. Secretary, we will ask that Mr. Barnum appear before us in the future.

Mr. COLEMAN. Will you please tell me who you asked to have Mr. Barnum here?

Mr. WOLFF. Mr. Chairman, I ask unanimous consent to proceed for another 5 minutes?

Mr. RANDALL. The Chair indicated he would deny that until all members have had an opportunity to interrogate.

We have stated that, hopefully, this will be the end of all these hearings. I do not know whether we can get unanimous consent to proceed this afternoon.

I might say to the Secretary that there is another Member of the Congress who wants to testify following your appearance here on a matter quite germane to the Concorde.

I don't know whether we can get all that in before noon or not.

But at this time we recognize the gentlelady from New York, Ms. Abzug.

Ms. ABZUG. Thank you, Mr. Chairman.

Good morning, Mr. Secretary.

Mr. COLEMAN. Good morning.

I hope it will be a good morning.

Ms. ABZUG. Mr. Secretary, as the history of this matter indicates, it is quite correct that after 5 months of effort in which I sought to secure the Heath-Pompidou-Nixon letters, you did produce them before a hearing of our Government Activities and Transportation Subcommittee.

Subsequent to that, as the testimony here reveals, you submitted additional data and documents to Mr. Wolff.

Mr. COLEMAN. Whatever you ask me for, I give you.

Ms. ABZUG. I understand.

I am a little surprised that at the time Mr. Randall requested, as a result of our hearings, with other members of the agencies of Government the Heath-Pompidou letters that you did not submit the total record.

What is the explanation of that?

Mr. COLEMAN. I was asked if I would produce a letter from——

Ms. ABZUG. You were not requested to produce it?

Mr. COLEMAN. I was not requested.

Ms. ABZUG. On the other hand——

Mr. COLEMAN. You are a great enough trial lawyer to know that you produce what people ask you to.

Ms. ABZUG. On the other hand, you did indicate that you gave Mr. Wolff additional documents beyond what he requested.

Mr. COLEMAN. Because when his letter of request came, I instructed my General Counsel to try to collect the data that met that letter's requests.

In the course of his collecting that data, he asked for all the files. And he or somebody went through the files and there were certain documents which, if you read the request the way lawyers usually read them, would not be covered.

My General Counsel advised me, that despite the fact that they were outside the strict scope of the request, I should make them available. I followed the advice of Mr. Ely because I find him a very able lawyer, and I made them available.

Ms. ABZUG. You see, Mr. Secretary, I must say to you that having asked for the Heath-Pompidou letters from a branch of Government as well as from members of your agency and others of the executive department and having not received them, even though you produced them, it's quite a surprise to me that at that time you were not put on notice to search for the documents, which would be relevant.

I am quite surprised about that. It does not require an answer.

I will tell you what the question really is on this aspect of the testimony because I would like to get to two aspects of my concern.

Mr. COLEMAN. Will the record show that the moment Chairman Randall asked me, with all speed I produced it.

Ms. ABZUG. You produced the Heath-Pompidou letters which I had tried to get for 5 months.

Mr. COLEMAN. But you never asked me for them.

Ms. ABZUG. And the Kissinger letter.

But I say that you were put on notice then to inquire about the rest of the documentation and should have submitted it to this subcommittee.

My concern is this.

We have a serious problem here. To make certain that executive agreement, which was not in the opinion of many of us a valid agreement, without proper consent and process, can often determine policy.

We, unfortunately, have had that experience.

The Pentagon Papers revealed that we had that experience which caused us to continue the war in Vietnam beyond what it should have been or even to have entered it.

Other executive agreements which have come forward have indicated that we were involved in Angola when we should not have been involved there.

We are dealing with some serious differences of opinion.

Mr. COLEMAN. Sure.

Ms. ABZUG. There is a technology here that in the opinion of some is immature and not ready for use. Those people, with whom I agree, say that this technology is not yet ready. It may be 5 or 10 years from now before it will be able to be used without harming the public.

As a matter of fact, there has been testimony before our subcommittee which would seem to indicate that a new SST or a second-generation SST might not produce harm.

On the other hand, in the opinion of some, this does.

Mr. COLEMAN. A second marriage is always better than a first.

Ms. ABZUG. But we have to find out the impact of executive agreement on present executives.

Do you consider statements or commitments made by Government officials which were improperly made to be personal commitments? Or, are they commitments to which you, as a member of the Government, are bound?

Mr. COLEMAN. Madam Congresswoman, I do not have Secretary Kissinger's job so, therefore, I am really not the one qualified to answer.

My general feeling is that obviously the binding documents, as I understand them, are treaties and the Constitution.

Once you get away from treaties, in my thinking through the problem—and I am not speaking for the executive branch, but only for Bill Coleman—I find difficulty with other types of agreements which could be said to bind the Government.

I hasten to say that I think the bilateral agreements which we make generally are accepted as being binding. There are other agreements which are something less than a treaty. If you give me a week or two to study the problem, I will get my General Counsel to give our views as to what is binding and what is not. But I probably am closer to to your side of the issue than maybe other people in the Government are.

But I would say that in all of these documents which I have read since Chairman Wolff asked for them, I do not see that there is any type of agreement which anybody made which you could say bound any action whatsoever with respect to any Secretary of Transportation.

Mr. RANDALL. The gentleman from New York, Mr. Gilman, is recognized for 5 minutes.

Mr. GILMAN. Mr. Secretary, prior to making your decision on foreign policy, with whom did you discuss this matter in the State Department and in the executive branch?

Mr. COLEMAN. I think the State Department would be a part of the executive branch, but leaving that aside——

Mr. GILMAN. Sometimes we even question that theory.

Mr. COLEMAN. I called up Secretary Kissinger and I said that I would like to come over to see him to discuss the foreign implications of any decision I would make.

At that time, I did not know how I was going to decide the issue.

I had not had the January 5 public hearing, and I had not made up my mind.

Mr. GILMAN. I'm sorry. Did you state that you knew how you were going to decide?

Mr. COLEMAN. I said I did not. I did not know how I was going to decide.

I asked, "What, if any, are the foreign policy implications?"

When I got over to Secretary Kissinger's office—I saw him in the White House because he was still an assistant to the President for National Security Affairs as well as Secretary of State, and so I saw him in the White House—he said, after a few minutes of conversation dealing with our mutual university, he said:

"Bill, I have placed it in writing, and I will give you the letter."

He gave me the letter. That was the sum total of the discussion.

Thereafter, I made the letter public. I put it in the record. Other than that, I had no discussion whatsover with anyone dealing with any foreign implications other than a day or two before my decision when I had a discussion with the Deputy Secretary of State. He said:

I do not know how you are going to decide this, Bill, but obviously if you decide it either way and announce it in the United States, then our embassies in Great Britain and France would want to know what is in the opinion.

I refused to make available advance copies. I finally worked out a system. After I had decided and written the opinion, I put an employee of my own department—from the U.S. Coast Guard of my own department—on a plane to Great Britain and France instructing him not to deliver the document until the time which would be equivalent to the same time that I called the U.S. press in to have them read the document.

I also instructed that no one should know anything about it prior to the time that I made my decision public to the American people.

That was the sum total of any contact that I had with anybody in the State Department or anybody in the executive branch of the Government other than the President of the United States.

Twenty minutes before I announced the decision—I was up here at a hearing—and I went out to a pay booth, and I called the President of the United States. I read to him what the decision was. At that time I also had delivered to him a copy of the decision.

That is the total involvement that I had with anybody in the executive branch of the Government other than people obviously who worked in the Department of Transportation.

Mr. GILMAN. Mr. Chairman, with your permission, I would like to have the letter from Secretary Kissinger inserted in the record.

Mr. RANDALL. It may already be in the record, but——

Mr. COLEMAN. This I made public before the January hearing, and I placed it in the record.

Mr. GILMAN. Mr. Secretary, did you at any time meet with any of these gentlemen, Mr. Ruckelshaus, Mr. Rogers, Mr. Goodell, Mr. Clifford, or Aurelio, to discuss the decision prior to making the decision.

Mr. COLEMAN. No.

In fact, just to complete the record, there was one occasion when I was invited to the theater by Mr. Goodell. I did not know that he had any representation at all, and I found out another way because of a court proceeding involving a lobbyist matter.

I then called him—or had my secretary call him. I rejected the invitation. I think I ended up paying for myself to go see Katherine Hepburn.

Mr. GILMAN. Thank you, Mr. Secretary.

Mr. COLEMAN. It's been tough, because I would have liked to socialize a little more than I was able.

Mr. RANDALL. The gentleman from Nebraska, Mr. Thone.

Mr. THONE. Mr. Chairman, following your lead, I will reserve my time.

Mr. RANDALL. The gentleman from Indiana, Mr. Evans.

Mr. EVANS. I also reserve my time, Mr. Chairman.

Mr. RANDALL. The gentleman from New Jersey, Mr. Forsythe.

Mr. FORSYTHE. I have no questions.

Mr. RANDALL. The Chair will reserve his time and yield back to the gentleman from New York, Mr. Wolff.

Mr. WOLFF. Can you tell us if the Concorde meets all the safety standards for the issuance of the U.S.-type certificate?

Mr. COLEMAN. Sure. The FAA has studied that problem and they have not reached a decision on it. They do not have to reach a decision until there is a U.S. carrier which wishes to buy a Concorde.

Mr. WOLFF. Has the request for certification been made?

Mr. COLEMAN. In 1965 or 1966, a request for certification was made. As you know, at that time, U.S. carriers had options to buy the Concorde. Those options have all been canceled or expired.

The FAA has not completed a determination as to whether or not, if a U.S. air carrier wished to buy this airplane, it would meet the U.S. certification requirements.

Mr. WOLFF. Are you telling us then that any carrier, if they certify it in their own country, can bring an aircraft into the United States and compromise the safety and security of our people without having to meet the U.S. requirements?

Mr. COLEMAN. My understanding is this. Under the treaty of 1944, which is known as the Chicago Convention, article 33 thereof provides that whenever a foreign government certifies an aircraft as being airworthy, then that has to be accepted by all signators. There are certain standard procedures which they have to follow.

Despite that, sir, and despite the fact that the treaty would require the United States to accept the aircraft under those circumstances, I nevertheless ordered the FAA to make an independent determination.

I also placed as an appendix to my opinion their determination on the issues which had been raised with respect to safety.

Mr. WOLFF. I take it you have now read the White House memorandum from Mr. Flanigan relative to the fuel; fire, safety, and operating rules?

Mr. COLEMAN. Yes.

Mr. WOLFF. Section C states specifically:

> Concorde's fuel, unlike other aircraft, is at an elevated temperature during supersonic flight. Because this procedure produces increased risk of fire and explosion in the tanks and venting system in the event of accidental rupture from detached engine fan blades, for example, the FAA has issued a Special Condition Airworthiness requirement to insure an adequate level of safety.

Mr. COLEMAN. What leads you—this is part of the confusion that all these letters or documents which you think show that the United States Government was involved have caused.

At that time, the British and French were trying to make sure that whatever the FAA did would not prevent them from selling aircraft to U.S. carriers——

Mr. WOLFF. The point is, Mr. Secretary, that the FAA issued a special condition airworthiness requirement to insure an adequate level of safety.

Do you have a copy of that? Were you aware of that when you permitted this aircraft to come in?

Mr. COLEMAN. I will say it once again, and maybe it will sink in.

Mr. WOLFF. Stop wasting our time on abjuration, answer the question. Your education and our education, I guess, are about equal.

Mr. COLEMAN. Let me give it to you.

Mr. WOLFF. I think it would be a good idea to give it to us by directly answering the questions—is the present system safe?

Mr. COLEMAN. The nitrogen inerting system to which you refer as a method to reduce the risk of fuel tank explosion is a system in which gaseous nitrogen is injected into the plane's fuel tanks and displaces the oxygen that would otherwise be present to feed a fire.

It is a controversial system and is not presently required in civilian aircraft made by U.S. manufacturers or flown by U.S. airlines.

Mr. WOLFF. We do not have a supersonic aircraft flying. I asked if the present Concorde system is safe.

Mr. COLEMAN. The FAA proposed in 1974 that it be made mandatory. Many experts responded that it was not totally effective and that, in fact, it could decrease aircraft safety, because there is a danger that nitrogen gas could escape into the aircraft——

Mr. WOLFF. We are not talking about the specific nitrogen system. What we are talking about is the safety requirements to prevent a catastrophe.

Mr. COLEMAN. The extremely cold temperature at which the nitrogen must be carried also can weaken the aircraft's structure.

Mr. WOLFF. The gentleman is not responsive. He is evading the question.

Mr. COLEMAN. More importantly, in the event of a crash where many fires occur, a nitrogen-inerting system is useless since damage to the fuel tanks will let the nitrogen out and the oxygen in.

Mr. WOLFF. This is not responsive, Mr. Chairman. I asked if the present system is safe?

Mr. RANDALL. Has the gentleman concluded?

Mr. COLEMAN. Also, I have relied upon the FAA, which is supposed to be the expert, rather than Peter Flanigan, the author of the document to which you refer, who to the best of my knowledge is a New York banker.

Mr. RANDALL. The gentlelady from New York is recognized for 5 minutes.

Ms. ABZUG. Mr. Secretary, yesterday the FAA recorded the takeoff noise of the Concorde at 129 perceived decibel level. This was reported to be in two places either 1½ or 2 times noiser than any subsonic aircraft which was recorded yesterday and far in excess of the noise level permitted at the JFK Airport.

I have two questions.

First: You noted in your Concorde decision that you could terminate the test at any time. Now, if such unacceptable noise level continued, would this be grounds for termination before the proposed 16-month period is over?

Second: Secretary Volpe's memo of December 8, 1972, notes that "Federal Fleet Noise Regulations are not to be preemptive."

Would you agree that the permissible New York Port Authority jet noise level, well below 129 decibels, would effectively prevent the Concorde's landing at JFK?

I would like to have both of those questions answered by you, Mr. Secretary.

Mr. COLEMAN. As for the second one, I would think not. My understanding is that the Concorde people claim that they can meet all of the noise standards at JFK. There has been no test to see whether they are right or wrong.

With respect——

Ms. ABZUG. Wait a minute. We now have evidence that there is a 129 decibel level. We know that that is higher than the standards provided at JFK.

What do you mean when you say that the Concorde people feel that they can beat the noise levels? By deceiving the public and taking off on another runway?

Mr. COLEMAN. They might do it in the same way that every other U.S. carrier which takes off from JFK meets the standard at JFK.

With respect——

Ms. ABZUG. In other words, they would not allow the public to know in fact the impact of the noise level? They would deceive the public as they tried to the other day here at Dulles?

Mr. COLEMAN. They did not deceive the public at all. I am prepared to tell you, point by point, what happened.

I think you ought to be somewhat concerned as a responsible public official that the information which the press got was from a mobile unit given to them a minute or 2 after the plane took off.

What happened was this. The French plane was supposed to take off to the north on another runway 01–L where there were measuring devices. It is the preferable runway to take off from in order to avoid going over communities.

At the last minute, the wind shifted and the French airplane was obliged to take off to the south. Southbound departures are usually on runway 19–L.

If you go off on 19–L, then you go over the town of Chantilly. To avoid making any noise going over the town of Chantilly, the pilot apparently left on the afterburner so that he could get up faster and then cut back when he went over Chantilly so there would be no noise problem over the community.

If you asked me, I would tell you what happened yesterday. When you find out what happened, I think, once again, you will say that there was no deception.

Ms. ABZUG. I am very alarmed because the measuring devices then give us the basis upon which you and we in the Congress can make sure we are protecting the people.

Therefore, we must have some response. We have to have those operative devices. I am very concerned to hear the suggestion that it doesn't matter.

Mr. COLEMAN. What is that?

Ms. ABZUG. I am concerned about the implied suggestion in your statement that it does not matter that they did not allow the measuring devices to be operative.

Mr. COLEMAN. The measuring device was a portable meter, one that was the least sophisticated of the measuring devices being used. The measurement was reported one minute thereafter and from a mobile unit. Apparently the Air France pilot knew he was going to cross over Chantilly, and he wanted to be much higher, so he put the power on so he could cut it back going over the town.

Mr. RANDALL. Mr. Secretary, I will have two or three questions relating to the episode out there yesterday.

We detailed our counsel out there to observe the takeoff. I wish we'd had an opportunity to do it personally, but it was impossible.

The report he gave us—I don't know whether it's been accurately gone over in the press or not, but it says that a DC–8 goes up from 109 to 112 PNdB. The 707 about 113. The Concorde yesterday went to 129.

I suggested earlier we will have a witness who was also there and a Member of Congress who wishes to testify. He has some recording device other than the usual monitors. He will be given an opportunity to do so and will proceed on the 5-minute rule.

I'm trying to be as low-key as I possibly can. I was not present, but I have a report. I have the greatest confidence in this report. It was reported to me that while the Air France Concorde may have gone up where there was monitoring equipment, we do not know about any change of wind. If there were any change of wind, it would have had to have been very sudden. We may have to hear some testimony on that from some of your FAA people.

At least it was subject to question.

If Air France went up in a certain direction, then why just a few moments later was there a change?

I don't know the exact time, but I guess it was something like 15 minutes. Do you know whether the wind changed? That's one of our questions.

And why was it that the British Airways elected or took their option not to go over the monitoring devices?

Mr. COLEMAN. I will tell you, because I am trying to be responsive, and I want to be a responsible citizen.

I checked. As of 11 in the morning, it was thought that both British Airways and Air France would go off on runway 01–L because there was a north wind.

Before the French aircraft took off, the wind shifted. As you know, you have to go off into the wind.

I think when you check with the press and check with the FAA, you will find that the measuring devices—there were 13 in place—were all positioned to measure an airplane going off from 01–L.

That is what was supposed to happen. Thereafter, the wind shifted. The French aircraft had to go off to the south. Because there was a half hour notice, the mobile units were moved over there. The French took off on 19–L and the press and mobile unit were in place.

The press and the mobile unit naturally assumed that the British airplane was going off on the same runway. When the pilot was informed that he could not go off on 01–L, he decided—and under the law he has the right to do it—to go off on 19–R.

He did that. I would like to read to you the transcript, or I can put it in the record. Do you want to hear the entire conversation? Do you have the entire conversation with the tower?

Mr. RANDALL. We have that.

Mr. COLEMAN. May I put that in the record?

Mr. RANDALL. Which one is it? The British aircraft?

Mr. COLEMAN. The British aircraft.

Mr. THONE. Mr. Chairman, I would like to hear it in toto if it is a 1-page colloquy.

Mr. COLEMAN. I think everyone agrees that for the minimum amount of noise that if there is a north wind, you would use 01–L, and if there is a south wind, you would use 19–R.

At 11 in the morning, the prevailing winds were from the north and the equipment was set up to monitor 01–L. The press were there. When the wind shifted, Air France decided to go off on 19–L.

Mr. RANDALL. Without objection, the material will be inserted in the record.

[The material follows:]

Pilot: Dulles Ground, Speed Bird 578 for start.

Ground Control: Speed Bird, 578, Dulles Ground. Start engines approved. Advise when ready to taxi.

Pilot: Roger, Sir, Willco and we shall be requesting Runway 19 Right.

Ground Control: Speed Bird 578, Roger.

Air Operations: Dulles Ground—Flight 207, could you put him on 19 Left, please?

Ground Control: Calling, Ground, say again.

Air Operations: Flight 207—all the TV and cameras are set up for 19 Left takeoff.

Ground Control: Roger.

Air Operations: Believe he requested 19 Right. Hope it was a mistake.

Air Operations: Dulles Ground. Flight 207, will you verify that runway he requested?

Ground Control: Flight 207—Speed Bird did request Runway 19 Right and it will be approved for him subject to traffic.

Air Operations: Roger. I wish you would reconsider because we've got a lot of test equipment out here on 19 Left for him to—that FAA is using.

Pilot: This is Speed Bird 578. We have listened to that conversation and we are choosing to use 19 Right and I would like this to be recorded and passed to the Chief of Air Traffic Control for the simple reason that it is preferable for community noise reasons and we are therefore doing it not in order to avoid observation or any hing else—we are doing it because that is the best thing to do.

Ground Control: Speed Bird 578, Roger.
Air Operations: Dulles Ground, Flight 207, clearance back to terminal.
Ground Control: Flight 207 approved to the Terminal. Remain in Echo 1 til T-1

Mr. COLEMAN. He had the right to do that, and that's what he did. In the morning, at 11 it was all set up one way and the wind shifted.

Mr. RANDALL. The gentleman from New York, Mr. Wolff, asks that the Chair have 1 minute. The Chair will decline at this time, but we will have some requests of the Secretary as to why there were not monitors on all of those runways.

We'll get back to that in a minute.

I recognize the gentleman from New York, Mr. Gilman.

Mr. COLEMAN. The fact is there were monitors at all runways.

Mr. GILMAN. Mr. Secretary, because of the danger of placing the Federal Government on the receiving end of the aircraft noise lawsuits presently being handled by the local airport operators, one of the significant discussions of the White House and the Department of Transportation memos of late 1972 was the question of what to do about the so-called preemption issue.

Secretary Volpe wrote in 1972 that preemption would risk "many billions of dollars," and the amount surely has gone up since then.

Are we to understand from your recommendation that you decided to permit such an onslaught of litigation and exposure to liability by standing idle while the British and French seek to force the Port Authority of New York and New Jersey to give in to your decision?

In other words, does the Federal Government now believe that it has the right to exercise preemption over the State of New York?

Mr. COLEMAN. Sir, that is a problem that we are still looking into. If I'm not tied up here too much longer, I hope by the first of June, or shortly thereafter, to announce an aviation noise policy. One of the issues will be the issue of preemption and how we will handle that problem.

I do have an outline of what I think I am going to recommend. I am still in the thought process, and I would feel more comfortable if I would not have to state it here.

Mr. GILMAN. Mr. Secretary, by the acts of the Department, are you saying that the people of New York, through the port authority, have the right to regulate the noise levels at their own airports despite the claims of the British and French that they do not have the right?

Mr. COLEMAN. That issue is in litigation in the courts in New York. I have my own views. I'm not speaking officially for the Government.

I think that it depends upon a problem of discrimination and undue burden on interstate and foreign commerce; and also upon whether or not it interferes with safety.

Mr. GILMAN. Then what is your personal view of the preemption issue?

Mr. COLEMAN. The preemption issue is a different issue. This is an issue that goes all the way back to the *Cooley* v. *Board of Port Wardens*. If there is one case in the Supreme Court, there must be 700 cases as to when a local rule can be enforced against somebody who is basically in interstate commerce. I am not trying to hedge. I think it's a close question as to whether the port authority action is constitutional.

Mr. GILMAN. I assume you have examined Mr. Volpe's prior recommendation in which he indicated that because the political and finan-

cial liability implications of Federal preemption are not fully understood, preemption should be avoided.

Then he goes on to discuss: "It is significant to note that local officials argue that if the Federal Government does exercise preemption and thus prevents local governments from taking any action to reduce aircraft noise, then the injured property owners should seek compensation from the Federal Government rather than from the local airport operator."

Mr. COLEMAN. This is a controversy which has been going on within the Federal Government and between the local operators and the Federal Government.

As I said, I hope by June 1 or shortly thereafter to come up with a policy statement on it, and indicate or at least make a recommendation to the President and to the Congress as to how I think the problem should be handled.

Mr. GILMAN. At this point, have you made a decision on preemption?

Mr. COLEMAN. I have trouble answering your question, because even though the document is in draft form, and I have not seen the latest draft, I think I know what recommendations I am going to make. So, therefore, I may be misleading if I say I have not made a decision. But I haven't made a decision which I would want to make public because I may well change my mind. I have some people in my Department who are still arguing with me about it.

Mr. GILMAN. You intend to announce your decision by June 1?

Mr. COLEMAN. Yes.

The only problem is that it does have some monetary implications. Obviously, before I can send up a recommendation to the Congress, I have to get a signoff from the OMB because of the monetary implications.

Mr. GILMAN. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. RANDALL. Mr. Thone?

Mr. THONE. Mr. Secretary, you emphasized in your statement that the FAA announced on May 18 that the Dulles monitoring systems were in place and the FAA would monitor airport air quality and noise levels and NASA would monitor the noise vibration effects.

Then you further say: "A sophisticated permanent system is being developed in cooperation with NASA and EPA and local governments in New York and Virginia."

You conclude with the statement that I notice is also in Mr. McLucas' statement: "It will insure that the Concorde is given the closest scrutiny in aviation history as it begins its demonstration."

In that May 18 release from FAA, Dr. McLucas reconfirms that there are plans to monitor every Concorde flight:

> We will keep detailed records of noise, vibration, and engine emission levels to assist in making a fair and impartial decision on whether to let the Concorde continue service to the United States after the trial period is completed. Moreover, all of this information will be made public on a regular basis to the American people, so they can participate in the decisionmaking process.

I take it from your testimony earlier this morning that you are reconfirming this policy.

Mr. COLEMAN. Yes. There are now 13 measuring devices at various points out at Dulles. They are temporary. The final system will be put in. There are five mobile units.

When this information comes in, sir, we then send it to our scientific laboratory in Cambridge, Mass. There are a lot of calculations to be done.

Then we will release the figures as to what they show.

Mr. THONE. Mr. Secretary, when can we expect the figures on yesterday's flights to be released?

Mr. COLEMAN. My understanding is, unless there is a snafu about which I don't know, that by 1 this afternoon I will have those figures. I will release them. I hope it will be at 2.

Mr. THONE. You will have them for both flights?

Mr. COLEMAN. Yes.

Mr. THONE. Thank you.

Mr. COLEMAN. As you know, Congressman Thone, we released the information with respect to the landing flights. You see, we measure them. There are 13 instruments. We then send them to Cambridge. They are calculated. Then I get them, and then I release them.

Mr. THONE. There is absolutely no problem whatsoever of noise implications during Concorde landings as I understand it, is there?

Mr. COLEMAN. The measurements show that the landing was less noisy than the 707.

Mr. THONE. Thank you.

Mr. RANDALL. Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. RANDALL. The Chair will have one or two questions.

I have discussed this with a staff member who was out there, why—maybe there are technological reasons. Maybe your engineers can answer this, but why is it that we have to wait until 5 this afternoon, or 2 as you said, to have any sort of translation? Why could we not have had that translation immediately?

Mr. COLEMAN. Immediately?

Mr. RANDALL. Yes.

Mr. COLEMAN. Because you would have what you had yesterday. From the most inaccurate of all the devices, a reading was given. The press was standing there. They gave it to them in 1 minute. You have to realize that with all these devices and with 13 around, that you have to set it up—I think it is through a calculation by computer because part of the function of the EPNdB is duration and tone.

Once you get all of these measurements, you have to send them up and get them run through the computer.

Mr. RANDALL. We do not want to nitpick, but we are talking about computers and they work pretty quickly, don't they?

Mr. COLEMAN. Yes; but the computers are in Cambridge.

Mr. RANDALL. Cambridge, Mass.?

Mr. COLEMAN. Yes.

We have a scientific lab there. I think we took it over from NASA. When NASA no longer needed it and we wanted it, we took it over. That is where we do all of this scientific work.

The information comes in. I assume it goes up there by telephone. Then it is analyzed and it comes back to me.

Mr. RANDALL. Mr. Wolff?

Mr. WOLFF. Thank you, Mr. Chairman.

Mr. Secretary, earlier you said that Mr. Flanigan was a New York banker. Would you characterize yourself then as a Philadelphia lawyer? You were adequately demonstrating that today.

The question was asked before whether or not you met with Mr. Ruckelshaus or Mr. Aurelio or Mr. Rogers.

Do you have any record of any members of your Department having met with any of these people or anyone lobbying for the SST Concorde?

Mr. COLEMAN. I have no knowledge of that whatsoever. I have 113,000 employees. I hope you do not put upon me the burden that I would know with whom they meet.

Mr. WOLFF. I'm talking about the decisionmaking people.

I wonder if you could search your records to find out?

Mr. COLEMAN. I know the decisionmaking people did not meet with any of the gentlemen. I know that.

Mr. WOLFF. Even before you search your records you know that?

Mr. COLEMAN. Yes.

Mr. WOLFF. We come back to the question of noise rules themselves.

Since 1972, there have been not only recommendations but requirements by the Secretary of Transportation that noise rules be promulgated.

In 1972, according to the records, Mr. Volpe said that the Department of Transportation or the Secretary was ready to see to it that SST and fleet noise rules go on the record.

In 1973, Mr. Nixon's letters said that the noise rule would be inapplicable to SST or any fleet rule which has ever been passed.

In 1974, the records show that there were people working on the noise rules.

In 1975, according to a memo we have here, Mr. Strelow was told to hold off on the noise rules, saying that he had to get together with Mr. Tidd and EPA is not to send an SST proposed rule to the FAA. This was a meeting that Mr. Elliott attended, Mr. Tidd, Mr. Wesler, Mr. Convisser, Mr. Strelow, Mr. Meyer, Mr. King and Dave Ortman of the State Department, Charles Cary, and Charles Foster of FAA.

Can you tell me why there has been no noise rule which has been set since 1972?

Mr. COLEMAN. Let me put this in perspective. In 1972 the FAA was talking about promulgating a fleet noise rule—and this is very important—for U.S. aircraft. The theory was that you would tell the U.S. air carriers that they could take all the planes in their fleet and, over a period of time, you would have to have a decreasing average noise level.

Mr. WOLFF. Is that the noise rule?

Mr. COLEMAN. No. The fleet noise rule——

Mr. WOLFF. Forget about it.

Mr. COLEMAN. This puts the Nixon letter in context and you have made something out of it.

Mr. WOLFF. There is also in that Nixon letter an admonition that no noise rule was to apply—no SST noise rule was to apply.

Mr. COLEMAN. No, sir. I wish you would reread the letter.

What Mr. Nixon was talking about was the fleet noise rule. What the British and French were saying was that they wanted to sell SST's to U.S. air carriers.

They understood that if we counted SST's in the fleet mix, then obviously none of the U.S. carriers would buy them because they would raise the average fleet noise level.

The FAA, on its own and having nothing to do with the Concorde, decided that the fleet noise rule did not make sense and, therefore, never promulgated it.

Moreover——

Mr. WOLFF. I would like to bring to your attention a memo from the Deputy Assistant Secretary of Policy and Internal Affairs to the Assistant Secretary of Policy and International Affairs, a secret memorandum of January 26, which you have before you.

Do you recall that the White House decided the fleet noise rule should be issued as an ANPR in a form that did not apply to Concorde?

Mr. COLEMAN. No; that did not apply to foreign operations.

Mr. WOLFF. I read to you: "Did not apply to Concorde."

It says in paragraph 2: "The FAA was instructed to revise the fleet noise rule so as to make it applicable to interstate air commerce only and not to foreign or overseas carriers."

Mr. COLEMAN. Yes.

Mr. WOLFF. He also states that he feels: "This is more of an environmental price, than we need to pay to avoid impact upon the Concorde."

Mr. COLEMAN. Yes. You know why, don't you? Do you know the difference between interstate air commerce only and foreign or overseas?

Mr. WOLFF. Yes.

Mr. COLEMAN. Do you know what the problem was?

Mr. WOLFF. I understand the problem.

Mr. COLEMAN. Would you tell me what the problem was?

Mr. WOLFF. I have only 5 minutes. Answer why we have no noise rule now. Unfortunately, you have a lot of time. I do not.

Would you tell me why Mr. Strelow was told not to send a proposed SST rule to the FAA?

Mr. COLEMAN. Proposed? What type of SST rule?

Mr. WOLFF. Do we have an SST rule now? Why don't we have it? That is the main question here today.

Mr. COLEMAN. You'll have to ask Mr. Strelow, because my understanding is——

Mr. WOLFF. You are the Secretary of Transportation. You have been Secretary for a year now. Why, in all this time, do we not have a noise rule?

Mr. COLEMAN. I will tell you why. Do you want to know why we don't have a rule?

It is because, like everything else that happens in the public arena today, particularly when Congressmen sometimes get involved, they deal with "facts" which are contrary to the actual facts.

Mr. WOLFF. You have not dealt with the facts. You haven't looked at the previous history. I want to know why we have no noise rules.

Mr. COLEMAN. You asked about the present SST rules.

I am not talking about a fleet noise rule. That was thought about. For at least six separate reasons, which I will put in the record and which have nothing to do with Concorde, the FAA decided not to have a fleet noise rule.

Mr. RANDALL. Without objection, the material referred to will be inserted in the record.

[The material follows:]

1. The rule was too complicated for common understanding, yet the complexity contributed little to the rule's intended purpose.
2. The complexity would have made enforcement nearly impossible.
3. Technology to reduce noise had not been fully demonstrated.
4. Costs were uncertain.
5. The schedule of replacement and retrofit the rule would have required was not coordinated with production schedules or aircraft down times.
6. The rule would have imposed an uneven economic burden on the airlines, hitting the weakest hardest.

Mr. WOLFF. We're talking about SST rules.

Mr. RANDALL. Respond please.

Mr. COLEMAN. The fact is that we do have noise rules today that apply to subsonic aircraft manufactured of new type design manufactured after 1969 and to subsonic aircraft of older type design manufactured after 1974.

The reason why they were drawn up that way was that in each period of time there was no technology which would permit you to retrofit all the old aircraft.

The statute which you have voted upon and enacted tells the FAA Administrator that in fixing a noise rule he has to consider whether it is technologically feasible, economically reasonable, and appropriate to aircraft type.

Therefore, under the statute—sir, you asked the question, and I would appreciate it if you would let me answer.

Mr. RANDALL. The Secretary may proceed, but briefly. We're trying to get an additional question in.

Mr. COLEMAN. Under the statute which we function under, you cannot impose a noise standard which is not technologically feasible and economically reasonable.

In 1974, my understanding is there was not the technology. There has been a lot of talk around which you have picked up which says that we can retrofit all these aircraft.

I must confess——

Mr. WOLFF. I'm not asking about the fleet noise rule, you are avoiding the question. I am asking about an SST rule.

Mr. COLEMAN. There is no SST noise rule, because to the best of my knowledge there is no technology which would——

Mr. WOLFF. To protect the people in this country you can find no way to promulgate a noise rule on SST's?

Mr. RANDALL. The time of the gentleman has expired and the Secretary, I believe, has responded to the question.

The Chair at this time recognizes the gentlelady from New York, Ms. Abzug.

Mr. COLEMAN. I will have to hold a press conference to tell the press these facts because you don't want to hear them.

Mr. RANDALL. The Secretary had responded to the question on the noise levels. The Chair has the notes. He said he gave six separate reasons. He said that we had a rule that was prior to 1974. You pointed to the difficulties of retrofit. You have answered it completely.

The gentlelady from New York.

Ms. ABZUG. I want to deal with that same question, but a little differently.

I have asked you questions on this subject before.

The fact is as follows:

We are talking about an SST regulation. Now we have the Concorde operating on a certain basis. The public is entitled to have an SST regulation on noise. Would you agree with that? Yes or no.

Mr. COLEMAN. My problem is that I am acting under a statute which I have sworn to uphold which says that in fixing a noise standard it has to be one which is technologically and economically possible.

Ms. ABZUG. All right.

One week after you rendered your decision in the SST Concorde case, not unknown to you that this was in preparation, the EPA proposed to the FAA an SST noise standard.

Mr. COLEMAN. That is right.

Ms. ABZUG. One week after; it is now how many weeks after your decision? And the Concorde is flying. How many weeks?

Mr. COLEMAN. I made the decision in February.

Ms. ABZUG. Why did we not have anything at all on the SST rule?

We have the question of public confidence and trust. Why did we not have an SST rule which can determine the question?

I am going to suggest to you that there are two reasons why we don't have it.

Mr. COLEMAN. Why ask me the question if you're going to give me the answer?

Ms. ABZUG. I'm going to give you a chance to refute it. This is a good way to do it.

Mr. COLEMAN. All right.

Ms. ABZUG. One is that there was an executive agreement which, unfortunately, is shadowing this whole issue and which we said would provide for the Concorde not to be subject to it.

Mr. COLEMAN. On the first one, you are 100-percent wrong.

Ms. ABZUG. The second is this.

The fact is that no SST could possibly conform to the EPA recommendation on an SST proposed noise rule. You know it, and I know it. We cannot grapple with that when we allow the data which we are supposed to be dealing with to be data which has nothing to do with being measured.

So we are creating a situation where you did not even answer my first question which is that there are unacceptable noise levels. And if there were, you could make a decision before the 16 months.

The planes are not allowing us to measure it. The Administration and the Government is not allowing an SST noise level to be adopted.

These are three very cynical things, Mr. Secretary.

I think you have responsibility to answer.

Mr. COLEMAN. I will.

Number one, the fact is that in February 1975 the EPA, for the first time, sent a recommendation over to the FAA with respect to supersonic aircraft.

That recommendation was under the Noise Control Act of 1972.

Once that is done, the proposal must be published within a set time there are a set of hearings which have to be held within a set time.

That recommendation said, that with respect to up to 16 supersonic aircraft which had already been either manufactured or planned for, that there would be six different options. The preferable option in

their view was that those aircraft would be exempt from the FAR 36 noise standards.

We published the proposal and held hearings. That was the situation when I announced my January 5 Concorde hearing in November. That was the situation until the morning of the January hearing when the EPA came in and testified that the plane should not be permitted to land.

I asked them how they squared that with their recommendation. I hope you will read their testimony because I don't think they ever did.

A week later we received a new proposal which said that you should apply FAR 36 to all Concordes, save for two which had been manufactured by 1974.

We then did what your statute requires us to do—we published the proposal and set a public hearing. The public hearing was held on April 5. It is now in the process of being decided by the FAA.

I can only act under statutes.

I would urge you to read section 611(d) of the Federal Aviation Act, I think, which you enacted. It says that any noise standard has to be one that is technologically feasible and economically reasonable.

If people demonstrated at the public hearing that you could not technologically have a noise level which is comparable to FAR 36—which was made exclusively for subsonic aircraft—then I think the Administrator has to consider that.

Mr. RANDALL. Thank you very much, Mr. Secretary.

We have a vote on the floor.

The Chair has given his word to the ranking minority member that there will be no further questions until he returns. I don't know when he will return.

We are grateful for your appearance.

We hope we have cast some illumination on some of these matters. I cannot concur with some of it.

We are grateful for your appearance.

[Recess.]

Mr. RANDALL. You are a Member of Congress, and we will be glad to hear your testimony, Mr. Scheuer.

STATEMENT OF HON. JAMES H. SCHEUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SCHEUER. You have before you the transcript of a conversation between Dulles ground traffic control and the copilot of the British Concorde.

On the principle that a picture—and a recording—is worth a thousand words, I will play for you the actual tape which was made by the FAA and which I obtained from the FAA after my visit yesterday to Dulles.

Then I will very briefly comment on what I perceive to be the purpose behind all this and the direction I hope the FAA will take in the next 16 months during the testing period.

[Conversation played.]

Mr. RANDALL. You have presented us with the transcript of the recording. We have previously inserted it in the record.

Mr. SCHEUER. I think it's clear to anyone who has listened to the conversation that the British copilot did not request a different runway because the wind had changed. He requested a different runway because there were hundreds of observers and representatives of the media there.

Moments before, these observers and media representatives had heard the ear-shattering roar of the French jet takeoff. It registered an astonishing 129 perceived noise decibels on the FAA's noise monitoring equipment.

It seems perfectly evident that the copilot of the British plane was subsequently instructed by his people to use another runway which would take him far away from the media and the major recording facilities of the FAA.

It is perfectly true that in the months ahead, pilots will not be able to play games with us. But on the day when the public media—both the press and the electronic media—were focusing on the performance of the Concorde, they did choose to play games and to deny the media a fair reading on the takeoff performance characteristics of the Concorde.

The Secretary just told us a few minutes ago that he had no explanation as to how that first Concorde could have registered 129 decibels. He told us that during the recess. He suggested that a proper reading would have been 12 points or so less than that.

It is evident to me that if the operational chiefs of the British Concorde and the copilot and pilot of the British jet felt that they could have reduced that 129 decibel reading of the French Concorde to 118 or 119, they should have done so.

As you know, an increase on the decibel scale of range 10 points signifies a doubling of the noise, so a reduction from 129 to 119 would have been a reduction of half in the effective noise registered by the Concorde.

If the British could have conceivably done that on the second takeoff, they would have. It was because they could not do it and because they did not want to add to the damaging impression made by the first takeoff that they engaged in this game playing.

I can only say, in the language of my British cousins, that they were not playing according to the Marquis of Queensbury Rules with us in our efforts to determine objectively the figures.

In terms of the decision that the Port Authority of New York and New Jersey is going to have to make, approximately 6 months from now according to its decision, the FAA should require the Concorde operators to simulate whatever flight patterns they would seek to carry out at Kennedy Airport in order legitimately to minimize the extraordinary sound impact of Concorde, particularly on takeoff. Then we could get a fair reading in the next 6 months not only as to how the Concorde is operating at Dulles, but as to what the noise and environmental and pollution effects of the Concorde would be had those takeoffs and landings occurred at Kennedy Airport.

Second, Mr. Chairman, it has come to my attention that the FAA measurements of the noise impact of jet aircraft adequately identify and analyze the high-pitched shriek and whine of the 707 and DC-8. But they do not accurately evaluate the terrifying impact of the low-pitched roar and rumble which is typical of the Concorde.

Unlike the high-pitched whine of our 707's and DC–8's, this low-pitched noise penetrates buildings, rattles dishes, and disturbs pictures on the wall. It is an absolute terrifying experience, as anybody at Dulles Airport—either at the 3½-mile listening point or at the actual flight line—could have told you yesterday.

I think it is therefore very important for the FAA to fine tune its evaluation of the raw-sound data obtained from its monitoring equipment in order to properly evaluate the Concorde's low-pitched noise as well as the high-pitched scream of our own subsonic jets.

That completes my testimony.

I want to thank the Chair for its courtesy.

Mr. RANDALL. Thank you, very much, Mr. Scheuer.

You were out there, of course, and you took down verbatim with your own recorder the portion——

Mr. SCHEUER. No, Mr. Chairman, that was furnished to me by the FAA. It is a copy of their own tapes.

I requested it with the subcommittee's counsel immediately after the takeoffs, and the FAA generously and courteously provided it.

Mr. RANDALL. You were here earlier when the Secretary was testifying.

Quite emphatically, he said that the British—which was Speed Bird 578—at the request of someone in the tower said: "I wish you would reconsider because we have a lot of test equipment on 19 left."

Speed Bird said that they were choosing 19 right.

The Secretary a little while ago said, or at least he implied—or at least that was our interpretation of his implication—that that did not make any difference. There were monitors all over the place, he said.

If you were not out there, then you may not be the best witness. We are not insisting that you answer this unless you can.

It was the understanding of those who were there that while there may be monitors on every runway, on some runways there was what we could describe as special monitoring devices or some kind of additional special equipment that was not on all the runways.

The one that the British used did not have that special equipment.

Mr. SCHEUER. That is my understanding.

In any event, I can tell you—as a licensed commercial pilot, a wartime pilot, and a flight instructor—that the pilot is in charge of the craft. He does have the right to specify the runway that he will take off from.

But this right is exercised for the safety of his craft and for the safety of the passengers.

He would have the right to do that for a change in the weather or for any other legitimate reason. If he were carrying a heavy payload, then he would have the right to pick the longest runway.

But it is unprecedented for a pilot to go against the obvious and repeated recommendations of the tower for what are transparently public relations reasons.

It is unprecedented for a pilot to so lightly request a runway different than the runway recommended to him by the tower, whose decision is supposed to be final unless the pilot knows about some extraordinary condition which would affect his craft.

I think this is a breach of etiquette. I think it is a breach of the good will and the spirit of cooperation in which we should be engaged with our French and British cousins in ascertaining the noise and environmental impact of the Concorde. I only hope that the British will, from here on in, exercise a minimum degree of courtesy and comity.

There was no legitimate reason for the British copilot to have insisted on taking off from another runway, other than pure, transparent public relations.

I deeply resent that.

Mr. WOLFF. Let me compliment the gentleman from New York for taking the time to personally check the takeoff of this aircraft.

Unfortunately, when the Concorde took off from Andrews at the time of Mr. Giscard d'Estang's visit it took off with a limited load of fuel. That is why some of the people did not notice the amount of noise that the aircraft generates.

But this performance yesterday is an education. The same procedures that they are attempting to use in New York that of making that 25-degree turn at 100 feet off the ground is an attempt to elude the monitoring devices and to give us a distorted idea of the noise that was present.

Mr. Chairman, I feel that I must comment as well on the Secretary's performance before us here today. I think his obfuscation is a continuing coverup which has been taking place for a long time on the Concorde.

I think that it is complicity by the Secretary now, which I did not consider to be existent before.

Our judgment of the offices of our Government's performance should be considered on the basis, as historically it has been determined, on malfeasance, misfeasance, and nonfeasance.

It is quite obvious that the Secretary may not have engaged in malfeasance, but certainly nonfeasance, in being derelict in his responsibility to search the records in order to find out what has existed before on a matter as controversial as this one.

It is quite obvious that he disregarded the facts which were ascertained by his predecessors by cavalierly dismissing all of the previous recommendations which had been made and disregarded the facts of the present as well by totally disregarding the strong recommendations against this aircraft made by the Environmental Protection Agency.

I feel that this is a serious dereliction of duty.

I would make the comment that I would hope that the Government Operations Committee in its wisdom, which is charged with the responsibility of overseeing the activities and the oversight activities of various of our Government agencies and the people from the executive department, will look strenuously into this question and call before it Mr. Barnum, who was conveniently left out even though counsel for this subcommittee and counsel for my subcommittee both asked Mr. Welch of the DOT, on an informal basis, to have him before the subcommittees at the time that the Secretary appeared.

Mr. Chairman, I think that the gentleman from New York, who has been a leader in this question, because his community is being directly

affected—I think he has added to the wealth of information that we have been able to gather on this situation.

I think what we have on our hands—and I've said this before and I hate to refer to Watergate because it is past history—but what I think we have on our hands is an "Airgate."

Mr. SCHEUER. Mr. Chairman, if I may just add a word.

I thank Congressman Wolff for his kind remarks.

When he said my community was affected, he was saying it in spades.

I represent all the communities around the Kennedy Airport area. They are going through this awful period of trauma while the Concorde is being tested here.

They are waiting for the other shoe to drop in 6 months, when the port authority will determine on the basis of the first 6 months of testing whether the Concorde will be allowed to come into Kennedy.

So I would hope that this oversight Committee on Government Operations and the International Relations Committee will both make sure that the FAA requires the Concorde operators to simulate the various flight paths which they would contemplate taking in and out of Kennedy Airport and monitor these flight paths so that we will be able to give the citizens of New York City and the port authority data and information on noise effects of both landing and takeoff.

This, then, they could apply directly to the one-half million people who live within a radius of a few miles of Kennedy Airport.

I can only say, in closing, that I have been a pilot for 30 years. I have never heard a noise comparable to what I heard yesterday. I have been in many airports and observed literally thousands of takeoffs and landings.

The noise level of Concorde, as you know, was about 2½ times louder than our noisiest domestic jets, the 707's and DC–8's. It was about 8 times louder than our new and quiet jets, the DC–10's, 747's, and 727's.

It is this kind of standard, the whisper jet, that can be translated into a supersonic whisper jet if we apply the technology that we have now.

This subcommittee ought to be pressuring the FAA to appy these standards to all supersonic and subsonic jet aircraft.

Again, I thank the Chair.

Mr. RANDALL. The gentleman has made a contribution to our record.

Mr. Wolff asks unanimous consent.

Mr. WOLFF. I ask unanimous consent that the documents provided here in the chronological record be made a part of the permanent record of this subcommittee.

Mr. RANDALL. The Chair has discussed this with counsel for the minority in the absence of any minority member. We are reluctant to proceed without a minority member, but does the staff believe there would be any objection?

Mr. TEMPERO. No objection.

Mr. RANDALL. Without objection, the material will be inserted in the appendix.

We will now adjourn.

[Whereupon, at 12:45 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Correspondence and Material Submitted for the Hearing

CHRONOLOGICAL SUMMARY: KEY DOCUMENTS

Flanigan memo to Cabinet, November 27, 1972

Outlines three U.S. government action options on Concorde based on lengthy discussion of previous consultations between U.S./French/British officials, experts, and interested personnel. Memo discusses at length specific technological, environmental, and political shortcomings of Concorde which would affect each of the action options under discussion. Indicates domestic U.S. political/environmental effects of passing proposed aircraft noise regulations.

Hazard (DOT Asst. Sec.) to Volpe, December 7, 1972

Preview of December 11 "Flanigan Memo" meeting, notes DOT and State Dept. says fleet noise rule must be published as "the best decision from a domestic environmental and air transportation policy standpoint."

Volpe memo to Cabinet, December 8, 1972

Recommends immediate passage of both fleet noise level regulation and supersonic aircraft noise level regulation. Recommends that the regulations be published without any specified exemptions for the Concorde. Memo personally signed by Volpe.

Volpe update stating basis for Nixon letter, December 21, 1972

Noting results of December 11 White House meeting to discuss the Flanigan memo of November 27 (as above) and Volpe memo of December 8 (as above). Established eight specific decisions on Concorde, including which of the Flanigan options to be pursued. Sets stage for Nixon letters to Heath and Pompidou of January 19, 1973: ". . . noise rules inapplicable to Concorde."

Barnum's "eyes only" on Nixon letters, January 25, 1973

States that both General Counsel (DOT) and Secretary, DOT had copies of Nixon letters one week after they were sent. Despite denials by Coleman on December 12, 1975, as to possession of such letters in his files, said files were the source of this memorandum in April, 1975.

Binder's "secret" British views of Nixon letters, January 26, 1973

Indicates that British objection to proposed fleet noise rule based on contention that rules would "violate President's letter." (Both Coleman and Representatives of Britain and France stated in 1976 that there was "no commitment implied in the Nixon letters.")

Foster's summary of White House meeting, February 18, 1975

White House orders EPA not to send the SST proposed noise rule to FAA. (This has been denied in previous testimony).

Wolff letter to Coleman requesting documents, March 8, 1976

Asking ten broad-based questions and requesting all FAA/DOT documents on Concorde.

Coleman letter to Wolff (Ely—General Counsel, DOT), April 8, 1976

States Coleman not aware of any of the above documents prior to his February 4, 1976 decision, except as already released by Coleman.

JANUARY 26, 1978.

[EYES ONLY]

Concorde.
General Counsel.

The FAA has instructions to publish an advance notice of proposed rule making (ANPRM) concerning the fleet noise level (FNL) of air carriers engaged in interstate air commerce, and expressly excluding air carriers engaged (or to the extent they are engaged) in foreign air commerce (*i.e.*, international). This rule would therefore not be applicable to Concorde insofar as the North Atlantic is concerned, and Pan Am and the other American carriers could purchase it for that and other international routes.

The British are concerned because this seems to be inconsistent with the letter the President wrote to Prime Minister Heath (and President Pompidou) in which he stated that the FNL would be "inapplicable" to the Concorde. (Copies of his two letters are attached.)

Strictly speaking, the noise rule is applicable to Concorde because flights between California and Hawaii and Alaska, or between New York and Miami, are "interstate". Thus, the rule would apply to aircraft operated by U.S. carriers on those routes, and as a practical matter would prevent carriers from using Concordes on those routes.

Our answer is that the stated concern of the British (and French) was that Pan Am and the other American carriers be able to purchase Concordes for use on the North Atlantic, and the rule we have written will permit that. Our second answer is that writing the rule in the fashion we have done, rather than writing a rule that would expressly not apply to SSTs, is less likely to result in Congressional action banning SSTs altogether.

The White House staff thinks that we should be very firm on the present ANPRM and that we should publish it promptly. A copy of the ANPRM is also attached hereto.

Dick Skully of the FAA is invited to your 3:30 meeting with Secretary Walker. He participated in drafting this ANPRM, but he is not privy to anything more than the ANPRM. You and I have the only copies of the President's letters. Although Bob Binder knows that such a letter was to be sent.

The Right Honorable EDWARD HEATH, M.D.E., M.P.,
Prime Minister,
London, England.

DEAR MR. PRIME MINISTER: I welcome your recent letter concerning the problems which the Concorde may face in conforming to proposed Federal regulations on excessive aircraft noise. This is, as we both recognize, an issue of major importance with both domestic and international ramifications.

I can assure you that my Administration will make every effort to see that the Concorde is treated fairly in all aspects of the United States governmental regulations, so that it can compete for sales in this country on its merits. As a consequence of this policy, the Federal Aviation Administration will issue its proposed fleet noise rule in a form which will make it inapplicable to the Concorde. I have also directed officials of my Administration to continue to work with representatives of the British and French governments in order to determine whether a United States supersonic aircraft noise standard can be developed that will meet our domestic requirements without damaging the prospects of the Concorde.

You have noted, Mr. Prime Minister, that many aspects of the regulation of civil aviation are in this country outside the jurisdiction of the executive branch of our Federal Government. You must know that the Federal Government's power to influence these aspects, particularly with regard to state and local jurisdictions, is limited. On the other hand, my Administration is committed to principles of non-interference with free and private commerce and non-discriminatory formulation and application of Federal regulations. We will act in keeping with these principles to assure equitable treatment for the Concorde, bearing in mind that it, as well as all supersonic aircraft, raises unprecedented problems of environmental and social costs.

With warm personal regards.

Sincerely,

His Excellence GEORGE POMPIDOU,
President of the French Republic,
Paris, France

DEAR MR. PRESIDENT: As you know, I have followed the progress of the Concorde for many years. Therefore, I particularly welcome your recent letter discussing its prospects and the problems which it may face in conforming to certain proposed Federal regulations on excessive aircraft noise.

This Administration is committed to the principle that governments should minimize interference with commercial transaction whether the purchases be private parties or other governments and to the principle of non-discriminatory formulation and application of Federal regulations. Accordingly, I am sure that the United States officials will make every effort to see that the Concorde can compete on its merits for sales in this country.

You must know, Mr. President, that many aspects of regulation of civil aviation are outside the jurisdiction and control of the executive branch of our Federal Government. The Congress, the Civil Aeronautics Board at the Federal level, as well as state and local governments, have substantial powers in this field. I can assure you, however, that to the extent that noise and other regulations are within the purview of the Federal Government, my Administration will assure equitable treatment for the Concorde. In keeping with this policy, the Federal Aviation Administration will issue its proposed fleet noise rule in a form which will make it inapplicable to the Concorde. I have also directed officials of my Administration to continue to work with representatives of the French and British governments in order to determine whether a United States supersonic aircraft noise standard can be developed which will meet our domestic requirements without inhibiting the prospects of the Concorde.

With warm personal regards.

Sincerely,

[SECRET]

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
January 26, 1973.

Subject: Summary of status of Concorde problem.
From: Deputy Assistant Secretary for Policy and International Affairs.
To: Assistant Secretary for Policy and International Affairs.

You will recall our original policy recommendation to the Secretary was that the FAA NPRM be issued to apply to Concorde, allowing the British and French to argue why it should not (copy of memorandum attached). You will also recall that at the meeting with the British and French they had already furnished FAA with reasons why the noise rules should not apply to Concorde, and FAA indicated that there were sufficient arguments presented to exclude the Concorde if a policy decision were made to do so. And finally, you will recall that the White House decided that the fleet noise rules should be issued as an ANPRM in a form that did not apply to Concorde.

Recent events have taken the following course:

1. When it was likely that the Pan Am Board might vote this week on the Concorde options, and would likely vote "no," TGC and the White House decided that it was important to make our revised fleet noise rule public before the Board voted. In the meantime, the President wrote to Prime Minister Heath and the French stating that our rule would not apply to the Concorde.

2. The FAA was instructed to revise the fleet rule so as to make is applicable to interstate air commerce only and not to foreign or overseas (ANPRM attached).

When I learned of this approach I questioned it on the ground that it excluded from the rule all subsonic operations in foreign commerce (i.e., Pan Am, TWA, Flying Tiger, etc.). I felt this was more of an environmental price than we need to pay to avoid impact on the Concorde. TGC reported that the White House also wanted to avoid impact on TWA because of the cost retrofit of those airlines' subsonic planes. I secured agreement from White House and TGC to drum up economic analysis of that impact, but before this could be completed,

TGC advised that the revised rule as described had to be published to beat the timing of the Pan Am meeting.

After the rule was sent to the Federal Register (and private copies may have been furnished to the British and Pan Am and TWA, etc.), the British objected on the ground that a domestic rule would apply to domestic operations of the Concorde and thus would violate the President's letter. The views of the French have not yet been received on this point. Barnum advises that the White House is willing to take the heat from the British and French concerning this domestic applicability to Concorde operations.

ALTERNATIVES

1. Let the revised ANPRM be published maintaining the revised domestic/foreign distinction. The White House is apparently willing and it is already at the Federal Register. Barnum has deferred the publication by one day, and feels he cannot hold it up any longer.

2. Further revise the ANPRM to make it unapplicable to domestic operations of the Concorde. This apparently is what the British seek. Barnum may try this.

3. Prepare a wholly new fleet noise rule which applies to certain engines and not others, thereby excluding those engines used by supersonic planes. This would more clearly focus on the subsonic/supersonic distinction than does the domestic/foreign approach, but would avoid any hassle with the British about the meaning of the President's letter, and would also apply to all subsonic foreign operations thus improving its environmental posture.

RECOMMENDATION

That we accept what appears inevitable and allow Alternatives 1 or 2 to occur. The Federal Register process is too far down the track to reverse it now, according to Barnum's best judgment. The resulting proposed rule will not be a good one from an environmental aspect, and ICAO may not move to fill the foreign void that the proposed rule could create. However, this Department could subsequently publish a further revised noise rule along the lines of Alternative 3. By that time, the airlines would probably have made their judgment about Concorde, and thus remove some of the highly charged commercial and political overtones, now present. Of course, all these choices could be rendered moot by some movement in Congress to bar all supersonic flights. It is an arguable political question whether such Congressional action will more likely be provoked by Alternative 1 or 2 as compared with 3.

ROBERT HENRI BINDER.

Attachments.

MINUTES OF MEETING, FEBRUARY 18, 1975.

Attendees: White House—David Elliott; OST—Tom Tidd, John Wesler, Marty Convisser; EPA—Roger Strelow, Al Meyer, etc.; State Department—Don King, Dave Ortman; and FAA—Charles Cary, Charles Foster.

The meeting was to discuss international implications of EPA draft SST noise standards proposal. If the proposal is forwarded to FAA, it must be published in the Federal Register within 30 days of receipt, and FAA must hold hearings. Mr. Elliott was quite concerned about possible foreign policy impacts which may not have been surfaced. The major discussions dealt with the fact that EPA's proposed standards could restore production of Concorde to those currently in production, i.e., some 16 airplanes, since all future aircraft would have to meet FAR 36 or the flights would be restricted if flown into the United States.

It was pointed out several times by Mr. Tidd that the proposal is inconsistent by trying to regulate numbers of aircraft being manufactured while at the same time regulating the number of operations at given airports. Mr. Strelow stated that since the Concorde manufacturers had known that EPA was going to propose such a rule that they had a few years to get ready for it by reducing the noise and therefore their future production lines could be modified. He considered this to be fair and equitable. No one present agreed with him; unless it was the other EPA people. Mr. King suggested maybe a more reasonable approach would be to permit Concorde production according to the grandfather

clause through 1988 since it would be at least that long before a new SST, meeting FAR 36, could be developed and introduced.

Mr. Meyer stated that anything weaker than the present EPA paper proposed by EPA or FAA could result in 24-hour action by Congress promulgating a rule banning all SST's from the United States.

Mr. Elliott mentioned the French had indicated that we had waited five years after FAR 36 was issued before requiring production of the JT3D and JT8D to meet the regulations. To propose anything more stringent for the Concorde would be discriminatory.

In a discussion dealing with EPA responsibility under the Noise Control Act, EPA read a paragraph from the Noise Control Act stating EPA's health and welfare authority. I stated I would be pleased to receive a proposal that covered health and welfare considerations in any recommended regulation they submitted to us. I further stated we had never received any assessment of health and welfare considerations from EPA on any proposal we had received. We have received much on technology, costs, operations, etc., but nothing on health and welfare. Particularly I would like to see EPA's health and welfare considerations of 10 Concorde, 20 Concorde, 50 Concorde or 100 Concorde operations at any given airport. Al Meyer agreed that this was their responsibility but they had not submitted anything that made an analysis of health and welfare effects. Meyer stated there was no way to show health and welfare effects, it was a political and emotional issue and their proposals had to be based upon the controversy, discussions and actions that they were subjected to.

Meeting closed with Elliott stating he would get together with Strelow and Tidd and decide the next step. Until then, EPA is not to send the SST proposed rule to FAA.

After the meeting, Tom Tidd called and stated he had been informed EPA had sent copies of the proposal to 50 members on the Hill and that DOT would not submit specific comments to OMB.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 8, 1976.

Hon. WILLIAM T. COLEMAN, Jr.,
Secretary of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: Based on an understanding between Mr. Chris Nelson of my personal staff, Roger W. Hooker, Jr., Assistant Secretary of Transportation for Congressional and Intergovernmental Affairs, and Barclay Webber, Assistant General Counsel of Legislation, this letter will supersede my letter of February 5, 1976 in which, on behalf of the Subcommittee on Future Foreign Policy, House Committee on International Relations, I requested certain materials within the possession of your Department relating to commercial supersonic transport.

Specifically, the Subcommittee will pursue two related points—first, the future implications of commercial supersonic aircraft for U.S. foreign policy; and second, the prior foreign policy agreements or understandings which have become part of the SST decision-making process. In that connection, I hereby request that the Department of Transportation supply the Subcommittee, to the extent it has them, copies or accounts, as appropriate, of the following:

1. Written or oral communications indicating the purpose of FAA Administrator Shaffer's April 1971 visit to London and whether the assurances he made there to British officials were made pursuant to direction of higher authority.

2. Written or oral communications indicating any DOT or FAA involvement with U.S. Ambassador to France, Arthur Watson, making assurances to France in 1971 that the Concorde would be allowed to land in New York.

3. A memorandum John Ehrlichman sent to William Magruder in 1971 discussing the future of the SST program.

4. President Nixon's January 1973 letters to the British and French leaders respecting Governmental regulation affecting the Concorde, and any written or oral communications stemming from those letters sent to the Department or the FAA by the White House, the State Department, or the National Security Council pursuant to those letters.

5. Statements made to EPA in 1973 or thereafter by OMB or the Department of State, suggesting that emission standards should not be issued which would preclude Concorde operations into the United States, and any communications indicating FAA involvement in the making of those statements.

6. FAA documents subsequent to 1969 (FAR 36) with respect to restricting the promulgation of noise regulations that might preclude Concorde operations.

7. Written or oral communications indicating the purpose of FAA Administrator Butterfield's July 1974 telegram to the Chairman of the British Aircraft Corporation and whether the message was sent pursuant to the direction of higher authority.

8. Written or oral communications during 1975 between the Department and the National Security Council or the Department of State respecting the communication to EPA of the suggestion that commitments respecting the Concorde had already been made to such a degree that it would be inappropriate for EPA to promulgate rules resulting in the Concorde not being allowed into the United States, and any communications during 1975 to EPA from the Department making the same point.

9. The background and effect (if any) of the October 1975 letter from Secretary Kissinger to you respecting your impending decision on the Concorde.

10. Any communications subsequent to your taking office regarding foreign policy considerations involved in the Concorde decision between you or the Department and any other U.S. Government agency, or any foreign government, agent or representative, pursuant to your decision.

Sincerely,

LESTER L. WOLFF,

Chairman, Subcommittee on Future Foreign Policy, House Committee on International Relations.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 8, 1976.

HON. LESTER L. WOLFF,
Chairman, Subcommittee on Future Foreign Policy, Committee on International Relations, House of Representatives, Washington, D.C.

DEAR MR. WOLFF: Secretary Coleman has asked me to respond to your request of March 8 that we provide various documents relating to this Department's actions with respect to the Concorde. As Secretary Coleman has previously testified before the Congress, in reaching his decision to permit a sixteen month demonstration period of limited Concorde operations he restricted himself entirely to the public record. That record, the public docket he established November 13, 1975, was formally identified for the litigation now before the United States Court of Appeals for the District of Columbia in *Environmental Defense Fund* v. *William T. Coleman, Jr.* A copy of the index to the record is enclosed. The docket has at all times been available to the public, and has been used quite extensively by the parties opposed to Concorde service.

From November 13, when he released the FAA's final environmental impact statement, announced the January 5 public hearing, and established the public docket until after the announcement of his February 4 decision, the Secretary did not meet with anyone on any issue concerning the Concorde other than Department of Transportation employees except for a few press interviews that were limited to a discussion of the process. All written materials related to Concorde admission received between November 13 and January 13 were included in the docket and made available for review by the public and parties involved in the decisionmaking process. The Secretary made clear to Departmental officials and other interested parties that he would consider only matters that were on the record, that he was not interested in nor did he deem relevant to his decision any arguments, statements or facts that were not made a part of that record, that his decision would be based entirely on the merits, and that his reasons would be fully explained in a written opinion. And indeed the Secretary has not yet reviewed or heard summaries of the documents relating to events prior to his tenure which we are providing you today.

We have since the Secretary's February 4 decision received extensive requests for documents related to the Concorde, and the Office of the General Counsel has been responsible for responding. The Secretary has directed me, in carrying out this responsibility, to be completely forthcoming, not to assert any privileges available to us, and in general to read all requests for information about Concorde liberally and thus not withhold any documents bearing on the expressed interest of your subcommittee even if they are not squarely within the terms of your request.

We have directed a thorough search of all Department files in which there is any reasonable possibility that Concorde documents could be found. Those files

were searched several times in an effort to find every document that might shed light on issues of concern to your subcommittee.

With the permission of the Office of the Counsel to the President and the State Department, relevant documents have been declassified so that they may be made available publicly. You will see that we have included a number of documents that were not covered in your request but which nonetheless seemed relevant to the issues in which you have expressed interest. I want to make clear, however, that we have not gone beyond the Department's files in searching for documents.

With respect to your particular requests, I can report the following:

1. None of the documents we have found relating to former Federal Aviation Administrator Shaffer's April 1971 trip to London suggest any direction from higher authority was involved.

2. Our only document related to Ambassador Watson's 1971 discussions with the French is a State Department cable cleared by the FAA.

3. We have been unable to find any memorandum from John Ehrlichman to William Magruder of the Department's SST office.

4. President Nixon's January 1973 letters to the late President Pompidou of France and former Prime Minister Heath of the United Kingdom, which were publicly released last December, reflected decisions already reached by the Administration. Although you asked only for "communications stemming from those letters", we have also provided documents describing the developments that led to them.

5. We found some copies of State Department classified cables concerning the EPA SST air quality emissions standards. Since that rulemaking did not directly involve this Department, we have not asked the State Department to declassify those cables and suggest that if you are interested in this issue, you consult EPA.

6. We have construed broadly your request for "FAA documents with respect to restricting the promulgation of noise regulations that might preclude Concorde operations" to include any such documents found in Department files, regardless of their origin. Most of the documents we are providing you on this issue did not, in fact, originate in the FAA.

7. We have not found any records respecting former Federal Aviation Administrator Butterfield's July 1974 telegram to the Chairman of the British Aircraft Corporation.

8. We have also been unable to find evidence of any communications to EPA of the suggestion that commitments respecting the Concorde had been made and that the recommendation for promulgation by the EPA of rules that would ban Concorde operations would for that reason be inappropriate.

9. Secretary Kissinger's letter to Secretary Coleman of October 6, 1975, was prompted by a meeting the two had on that date at which Secretary Coleman asked Secretary Kissinger for the State Department's written advice on the foreign policy implications of the pending Concorde decision. That meeting was brief, and the sum total of Secretary Kissinger's advice is contained in the letter, which speaks for itself. The Legal Adviser of the State Department also provided a legal memorandum for the record.

10. We have also provided correspondence between the Secretary and other U.S. officials and foreign governments pursuant to the decision as you requested.

We have not undertaken to provide copies of documents from our public rulemaking dockets. I would suggest you send a member of your staff to the FAA Chief Counsel's office to review them, particularly those for Notices 70-33 and 73-32, the advanced notices of proposed rulemaking for an SST noise rule and a fleet noise rule, respectively. The FAA will promptly copy any documents of interest to him.

We have been as responsive as possible to your request, but if you are dissatisfied on any count, please do not hesitate to write or call me. Because your request asks for documents that may have been prepared as early as 1969, I certainly cannot assure you that every memorandum or letter written by or to a Department official has been located. I can assure you that we have approached our search with an unprecedented diligence and desire to make available information that will be responsive to the interests reflected by your request, whether or not the information was strictly within the terms of the request.

I will not pretend that we are entirely untroubled by the release of documents that purport to represent the views of foreign citizens that may have been given in the belief they would be kept confidential. Neither do we generally believe it is sound administrative practice to release internal policy recommendations;

as you know, this conviction is supported by Congress and underlies the fifth exemption of the Freedom of Information Act. Nonetheless, in the spirit of open debate that the Secretary has established for the Concorde issue, we have decided to make all this information available for public scrutiny. On this issue, we believe the benefits of open government require an honest and objective review of historical facts—even though those historical facts necessarily, since he was not aware of them, had no bearing on the Secretary's decision of February 4. For this reason, we intend to make these documents available to the public and hereby provide them to you.

Sincerely,

JOHN HART ELY.

Enclosure.

[The Washington Post, Saturday, Apr. 10, 1976]

U.S. GRANTED '72 EXEMPTION TO CONCORDE

(By Douglas B. Feaver)

The Nixon administration eliminated two proposed noise rules in 1972 that would have virtually prohibited U.S. airlines from purchasing the Concorde supersonic jet transports, according to confidential documents released yesterday by the Department of Transportation.

The effect of that action was to leave the U.S. market open for the Anglo-French Concorde. It also set the stage for President Nixon's now-public letters to the leaders of Britain and France promising that U.S. rules would not "discriminate" against the European plane.

The exemption for Concorde, however, was in direct opposition to the recommendation of then Transportation Secretary John Volpe. In a memorandum dated three days before a White House meeting on Concorde, Volpe said that two noise rules proposed by the Federal Aviation Administration "should be published as soon as possible. . . without any specified exemption for the Concorde."

The White House action and Volpe's memorandum are but part of a foot-thick stack of Concorde-related documents that the Transportation Department released yesterday at the request of Rep. Lester Wolff (D-N.Y.).

Because of the time it will take to digest the documents, Wolff said, his House International Affairs subcommittee postponed its hearings with Transportation Secretary William T. Coleman Jr. from next Tuesday until sometime in May.

Coleman ruled Feb. 24 that the Concorde can provide passenger service to Dulles International Airport here and Kennedy Airport in New York for a 16-month trial period while environmental tests are made. British Airways and Air France plan to start service here May 24. Service to New York is tied up in court.

The documents released yesterday are certain to provide fodder for those on Capitol Hill and elsewhere who believe that Coleman's decision was foreordained in the Nixon years.

Coleman has said on many occasions that he made his decision entirely on the basis of the public record. In a letter to Rep. Wolff, Coleman's general counsel, John Hart Ely, said that Coleman "has not yet reviewed or heard summaries of the documents relating to events prior to his tenure which we are providing you today." Coleman took office March 7, 1975.

In addition to the memos on noise rules, the documents also contain a number of references to questions about the safety of the plane—many of which have been discussed in the most recent debates.

One that has escaped public attention, however, concerns the Concorde's fuel tanks and the susceptibility of the fuel or its fumes to explosion. Tanks on U.S. jets are vented, and a rule under consideration would require use of an inert gas in tanks to prevent fuel explosions.

Concorde has a somewhat different venting system for its fuel from the one used in more conventional jets, and there is no way to make the fumes inert. Such questions would have to be resolved, according to an FAA spokesman if a U.S. airline were to purchase Concorde and seek FAA certification. As long as the plane is operated only by foreign carriers, however, the FAA accepts the foreign certification.

But noise has been the central concern from the beginning. The documents show that an Anglo-French team was invited in 1972 to review proposed U.S. noise rules before they were made public. There was clear concern that their impact would close the Concorde to U.S. sales.

Peter M. Flanigan, a longtime Nixon deputy and a special assistant to the President, circulated a memorandum in November, 1972, citing two proposed FAA noise rules.

One, called the fleet noise rule, would have required airlines to progressively reduce their total noise. The penalty, for flying the Concorde would have been prohibitive.

The other would have extended the existing noise rules for subsonic jets to supersonic jets. Concorde is conceded by everyone, including its makers, to be incapable of meeting the present U.S. noise rule for subsonics.

Volpe, in his memo two weeks later, said the two rules "clearly have significant international repercussions. However, they were developed to deal with domestic issues which we believe appropriately should be given priority consideration . . ." He proposed that both rules go forward, without exemption for Concorde.

But the minutes of a White House meeting on Dec. 11, 1972, chaired by Flanigan, state tersely that those present "unanimously approved" redrafting the fleet noise rule to exempt the Concorde and delay the extension of existing noise rules to supersonics.

The fleet noise rule was publicly proposed in April, 1973, and died a natural death in the hearing process. The extension of the existing rules to supersonics has never been proposed in that form.

THE WHITE HOUSE,
Washington, November 27, 1972.

Memorandum for: The Secretary of State; the Secretary of the Treasury; the Secretary of Commerce; the Secretary of Transportation; Assistant to the President for National Security Affairs; Assistant to the President for Domestic Affairs.

Attached is a memorandum describing the problems connected with the certification of the Concorde for use in the U.S. and presenting three optional courses of action. I trust you will be able to attend a Senior Review Group meeting to discuss these options in the Roosevelt Room on Monday, December 11, at 3:30 P.M.

PETER M. FLANIGAN.

PROBLEMS AFFECTING THE USE OF THE CONCORDE IN THE UNITED STATES

There are a number of problems facing the Administration with the expected entry into service of the Anglo-French *Concorde* in 1975. On the one hand there will be very strong pressures from the British and French governments to gain approval of the *Concorde* by the U.S. Government. On the other we anticipate increasing Congressional and public pressures to ban the *Concorde* because it does not and probably cannot meet U.S. environmental standards, particularly with respect to noise.

A summary of the more important problems and anticipated U.S. actions which will impact on the *Concorde* follows (these problems are outlined in more detail in Tabs A through H.)

The distinction between certification and use should be borne in mind in considering the effects of anticipated U.S. government actions on the *Concorde*. In order for U.S. airlines to operate this aircraft, it must be issued a type certificate by the Federal Aviation Administration. Actions such as establishing noise standards for civil supersonic aircraft bear only on type certification and will determine whether the *Concorde* can be sold to U.S. airlines. On the other hand there are actions such as setting fare levels and operating procedures which will affect the use of the aircraft in the U.S. by foreign air lines, even if type certification is not granted. Finally, there are actions such as the application of engine emission standards which will affect both certification and use.

A prompt decision is needed as to whether the FAA should issue a Notice of Proposed Rule Making in regard to the fleet noise levels of U.S. airlines.

A. The FAA is anxious to release immediately a notice of proposed rule making (NPRM) which would progressively reduce the average level of noise in U.S. airline fleets until all aircraft meet current standards. Given the high

noise level of the *Concorde*, this rule on fleet noise would discourage possible U.S. purchases of the aircraft. Because certain states have taken action on noise standards due to the alleged failure of the Federal Government to establish such standards, FAA feels under great pressure to release this NPRM immediately. This rule itself would affect only U.S. purchasers of the *Concorde* and would not prevent its operation in U.S. airspace by foreign operators.

B. The FAA also has ready for publication an NPRM which requires that SST's meet the subsonic noise standards of FAA Part 36. Since the *Concorde* will not meet this standard, the British and French will undoubtedly request an exemption. Such request of course will meet with opposition from environmentalists and a high level decision will undoubtedly be required. This rule by itself would affect only U.S. purchasers of the *Concorde* and would not prevent its operation in U.S. airspace by foreign operators.

C. The *Concorde* will have difficulty meeting an FAA safety requirement on fueling-inerting for type certification and rules governing operation of aircraft in U.S. airspace.

D. The Environmental Protection Agency (EPA) has developed a rule governing engine emissions which *Concorde* may not be able to meet. This rule is being reviewed by the OMB because of its possible economic impact on certain U.S. aircraft.

E. There is a possibility of direct Congressional action through legislation to prohibit the operation in U.S. airspace of any SST which does not meet current subsonic noise standards. The President would be under great pressure from the environmentalists to sign such a bill which the British and French would consider an unfriendly act.

F. The CAB insists that the fares established for the *Concorde* be economic and cover costs. This could mean a *Concorde* fare so high that few people would utilize it.

G. Notwithstanding any Federal action regarding *Concorde*, U.S. airport operators could well decide simply to ban the aircraft because of local reaction.

H. There is public and Congressional concern that commercial operation of civil supersonic transports would adversely affect the environment.

We feel the Administration is faced with three major options: (1) to seek actively to support the *Concorde*, (2) to proceed vigorously with U.S. environmental standards and insist that the *Concorde* must comply; and (3) to take an essentially hands-off attitude allowing matters to work themselves out without intervention by the White House. (We point out that Administration decisions may well be inhibited or preempted by Congressional action or local airport authority rules).

Option 1

Notify the British and French of the problems facing the *Concorde* in the U.S. and indicate that the Administration is prepared to do what is possible to admit the aircraft.

Under Option 1, FAA would postpone a final rule on noise type certification standards for civil supersonic aircraft (the fleet noise rule could be published, however). The *Concorde's* certification and use would be treated as a unique situation meriting special consideration in respect to U.S. regulations governing supersonic aircraft and where possible, waivers or exemptions would be accorded and when and where necessary to allow the aircraft to operate in this country. Actions on problems affecting the *Concorde* would be taken on a case-by-case basis as they arose, with consideration given where possible to postponement of actions which would, in effect, bar the aircraft. U.S. airlines may well decide on economic grounds not to purchase the *Concorde*, which would render U.S. actions on certification of the aircraft moot.

Advantages

(a) Would counteract British and French suspicions that U.S. seeks to bar *Concorde* for commercial advantage.

(b) Would permit the investigation of novel solutions to problem of *Concorde* noise, including the use of airports such as Bangor, Maine, where noise may not be a crucial problem.

(c) Would permit the U.S. to have some bargaining leverage with the British and French for a period of time.

Disadvantages

(a) Congress could take initiative and legislatively bar *Concorde* from the U.S.

(b) President could be subject to domestic criticism that Administration favored British and French at expense of legitimate U.S. environmental interest.

Option 2

Proceed vigorously with U.S. environmental standards and insist that the *Concorde* must comply.

In implementing Option 2 we would inform the French and British that the *Concorde* does not appear to be able to meet the U.S. environmental standards which will apply to the aircraft in the areas of noise and engine emissions and we are not in a position to waive these standards for the *Concorde*. FAA would issue the NPRM on noise type certification requirements as well as the fleet noise NPRM and proceed expeditiously to a final rule.

Advantages

(a) Would be applauded by environmentalists.

(b) Would lessen legislative initiatives to regulate or bar SSTs, thus giving the Administration more flexibility in dealing later on with advanced SST's (including U.S.).

Disadvantages

(a) Would provoke strong reaction from British and French possibly including higher European Economic Community tariffs and additional preferences to European aircraft over U.S.-manufactured transports.

Option 3

Permit the various problems to work themselves out without intervention by the White House.

Under Option 3 the British and French would simply be informed of the various difficulties in the U.S. facing the *Concorde*. They would be advised that the responsible U.S. agencies are examining these difficulties and will keep in touch with the British and French on developments. The questions on certification, noise levels, and engine emissions would be decided on their merits and the British and French would be given every opportunity to present their case for the *Concorde*. FAA would issue the NPRM on supersonic noise levels and act on any resulting application for a waiver.

Advantage

(a) Would avoid domestic criticism that the President has been influenced by British and French.

(b) Would put British and French on notice of problems facing *Concorde* in U.S.

Disadvantage

(a) Might result in stringent regulations for SST use which would preclude not only *Concorde*, but any future U.S. SST from being operated in this country.

(b) Would result in strong reaction, and possible retaliation by British and French should the *Concorde* be kept out.

Section A—Fleet noise rule

1. The *Concorde's* noise problem may be divided into two critical areas—sonic boom and noise in the vicinity of airports. Sonic boom is now disposed of under a rule to be issued shortly by the Federal Aviation Administration (FAA) which will prohibit any flight in U.S. airspace which produces a sonic boom on the ground. The current principal focus on noise problems is therefore largely concerned with noise in the vicinity of airports i.e. noise levels at takeoff, landing and on the ground. This kind of noise has two aspects with respect to possible U.S. actions: first, the *Concorde* will have to meet certain FAA requirements affecting its use by U.S. airlines; second, the *Concorde* may have to meet other tests such as local airport noise standards before it can be operated in the U.S. by foreign airlines. This section deals with the impact on the *Concorde* of a rule on the average noise levels of the U.S. airline fleets now under consideration by the FAA.

2. The FAA had earlier proposed rules which would apply Part 36 noise standards to aircraft manufactured under older type certificates in 1974, and would require retro-fit of existing subsonic aircraft to meet the established noise standards. The possibility of early retirement from service of older and noisier subsonic aircraft has also been suggested. In any case, the FAA seeks to have all U.S. carriers' subsonic aircraft at Part 36 noise levels by 1979. In furtherance of this objective, the FAA plans to issue a Notice of Proposed Rule Making (NPRM) on fleet noise levels which would establish an average noise limit for all aircraft being operated by U.S. air carriers. The rule is intended to discourage the use of noisier aircraft and encourage U.S. air carriers to use quieter types. Under the fleet noise concept, the U.S. air carriers would have to improve progressively the average noise levels of their fleet thus putting pressure on older and noisier aircraft. This rule would not by itself bar U.S. airlines purchase of the *Concorde* but it would certainly discourage such purchase. Therefore, Anglo-French objections are likely.

3. As explained in Section G, at least one state has already moved in the direction of establishing noise standards. Aside from the legal questions involved in such actions, the FAA is very anxious to move toward establishing noise standards quickly in order to demonstrate that the Federal Government is taking appropriate action, thus eliminating the need for state or local regulations.

4. The British and French are likely to request that any *Concorde* in U.S. fleets be exempted from the application of this rule.

Section B—Aircraft noise type certificate

1. Every aircraft utilized by U.S. airlines requires, inter alia, a type certificate certifying it meets established FAA noise standards, unless an exemption is granted.

2. FAA issued an Advance Notice of Proposed Rule Making on noise certification standards for civil supersonic aircraft on August 6, 1970. A Notice of Proposed Rule Making is now ready to be issued. It would apply the noise limits prescribed for new subsonic aircraft in Part 36 of the Federal Aviation Regulations to civil supersonic aircraft. Given Congressional and public concern over aircraft noise, the FAA does not believe that noise levels for civil supersonic aircraft can be set at levels higher than that previously established for subsonic aircraft. The Departments of Housing and Urban Development and Health, Education and Welfare concur in this view.

3. If the FAA believes an Environmental Impact Statement is required (the Council on Environmental Quality believes such a statement would be desirable), an additional 120 days would be required before the rule could be effective. The rule would apply to *all* civil supersonic aircraft used by U.S. airlines, including the *Concorde*, as well as any future U.S.-manufactured SST.

4. The Noise Control Act of 1972 will not delay the processing of this rule to a conclusion. However, unless the FAA determines that no "substantial noise abatement can be achieved by prescribing standards and regulations", the act would prohibit FAA issuance of an original type certificate for the *Concorde*, unless the agency has prescribed standards and regulations applicable to that aircraft. Further, the Act provides that no exemption from any noise standard or regulation may be granted by the FAA without prior consultation with the Environmental Protection Agency, unless the FAA determines that safety in air commerce or air transportation requires that the exemption be granted before EPA can be consulted.

5. The British have acknowledged that the *Concorde* will not meet subsonic aircraft noise levels, and have informally asked for, in effect, an exemption for the *Concorde*. The FAA will consider if such an exemption is justified. The British and French, in pressing their case for exempting the *Concorde* from the anticipated U.S. standards for civil supersonic aircraft, are likely to claim the following:

(a) In its regulation on civil supersonic aircraft noise type certification standards, the FAA did not give sufficient weight that the rule be "economically reasonable, technologically practicable, and appropriate for the particular type of aircraft . . . . to which it will apply", as required by the Federal Aviation Act, as amended, and the Environmental Noise Act of 1972. The *Concorde* has been made as quiet as possible under this criteria, and therefore merits exemption, or application of a different noise standard.

(b) The *Concorde* when it enters service, will be no noisier than existing older subsonic aircraft types, such as the Boeing 707 or the Douglas DC–8.

(c) Neither U.S. nor International Civil Aviation Organization (ICAO) subsonic noise standards were applied to earlier models of the Boeing 747 and the *Concorde* should be treated in similar fashion. In support of this position, the French and British will point out that application for U.S. certification of the *Concorde* was made in 1965, prior to the establishment of any noise standards in the U.S. or in ICAO, and it would be unfair to apply noise standards retroactively.

Section C—Fuel system fire safety and operating rules

1. *Concorde's* fuel is at elevated temperatures during supersonic flight. Because this produces increased risk of fire and explosion in the tanks and venting system in the event of accidental rupture from detached engine fan blades, for example, the FAA has issued a Special Condition Airworthiness requirement to ensure an adequate level of safety. Although the Special condition does not specify a nitrogen-inerting fuel system, such a system appears to be the only practicable means of compliance. Unless the Concorde's manufacturers can suggest an alternate method of compliance, they would be required to install a nitrogen-inerting system at an estimated cost for all *Concordes* of approximately 25 million dollars. Installation of a nitrogen-inerting system would probably result in the loss of one to two seat payload capacity. Meetings are being held between FAA and the manufacturer's technical personnel on this problem, which must be resolved prior to certification.

2. Fuel reserve standards have not been adopted by the International Civil Aviation Organization nor has the FAA developed a special regulation which would apply to commercial supersonic operations, although there are fuel reserve standards for subsonic aircraft. If no change is made in subsonic standards to accommodate the high-fuel consumption characteristics of supersonic aircraft, the *Concorde* would suffer severe economic impact, since the high-fuel reserves required would reduce payload. The French and British have asked FAA for an exemption from U.S. standard operating procedures to permit the *Concorde* to arrive at U.S. airports with less than the normal fuel reserves, contingent on the aircraft being given preferential landing treatment to avoid normal holding patterns. Further testing is required before this problem can be resolved.

Section D—Engine emissions

1. There is some question as to whether there is sufficient technical information available to establish appropriate emission standards for aircraft engines. A draft Notice of Proposed Rule Making establishing standards for aircraft engine emissions has been prepared by the Environmental Protection Agency and forwarded to the Office of Management and Budget for approval. The proposed rule would apply to non-particulate emissions (carbon monoxide, nitric oxides, etc.) and FAA would be required to apply these standards through the certification process to *all* aircraft engines. The economic impact of compliance on U.S. subsonic aircraft has been estimated at between 100 and 600 million dollars.

2. FAA's preliminary assessment is that the *Concorde* engines will not meet the engine emission standards as presently drafted primarily because high-bypass jet engines were used as a basis for setting the percentage of emissions permitted under the rule. If the proposed rule is adopted, and in the absence of a waiver for the *Concorde's* engines, there is the possibility of a denial of U.S. type certification for the aircraft.

Section E—Possible congressional action

1. Last October Congress almost legislated a ban on the *Concorde* and, given the strong public and Congressional feeling by both Democrats and Republicans, even the overriding of a Presidential veto would not be impossible. The Senate voted 62–17 to require civil supersonic aircraft to meet Part 36 noise levels as a condition for landing anywhere in the U.S. This provision was finally dropped at Congressman Staggers insistence on the need for hearings, but the principal sponsor of the Noise Control Act of 1972, Senator Tunney, stated on the floor of the Senate just before passage of the legislation that, "It is my expectation and the Senate's clear intention that such standards be proposed and implemented for supersonic transports under the provisions of this bill before such aircraft are in commercial service." Such a course would effectively bar the *Concorde* from the U.S.

2. Concern about possible adverse environmental effects from the commercial operation of civil supersonic aircraft was a factor in Congressional termination of the U.S. SST program. Legislation was introduced but not passed in the 92nd Congress which would prohibit commercial SST operations unless they are found to be environmentally acceptable on the basis of objective scientific study.

Section F—Rates and fares

1. The Civil Aeronautics Board has informed Concorde representatives and potential operators who have inquired that they will have to charge a premium rate, perhaps as much as 50% above first class. The CAB is not disposed to allow an operator of a mixed fleet to cross-subsidize by allowing subsonic operations to pay for any losses due to an uneconomic fare level for supersonic operations. The exact amount of the premium cannot be determined until the CAB receives firm figures on the seat-mile operating costs of the aircraft. In November 1971, the French partner in the Concorde project, Aerospatiale, computed the cost per seat-kilometer mile over a 6,000 kilometer stage length at 2.78 cents compared to 1.7 cents for the Boeing 747 over a comparable distance.

2. A high fare level could make Concorde operations non-competitive vis-a-vis subsonic aircraft and, with corresponding low load factors, not economically viable.

Section G—State, local and proprietor regulation

1. The question of whether local jurisdictions can restrict the use of airports for noise considerations as an exercise of their police power will be decided in the current session of the U.S. Supreme Court in the case of *Lockheed Air Terminal, Inc.* v. *City of Burbank*. The issue in this case is whether the City of Burbank can enforce a curfew on operations at a privately-owned airport. To date, the Federal Courts have generally held local ordinances of this type invalid due to the pervasiveness of Federal regulation, direct conflict with Federal regulation, or because an unreasonable burden on interstate commerce resulted.

2. The Burbank case, however, will not touch directly on the question of whether State laws relating to aircraft noise may restrict the use of airports within their jurisdiction. Noise regulations established pursuant to a California statute will become effective December 1, 1972. There are indications that enforcement of these regulations could result in the elimination of half of the flights presently operating to Los Angeles International Airport. However, Senate Report 1160 on the Noise Control Act of 1972 stated that, "States and local governments are pre-empted from establishing or enforcing noise emission standards for aircraft unless such standards are identical to standards prescribed under this bill". Whether State regulations may be applied in the absence of Federal regulations is not clear.

3. Whether the Federal Government should pre-empt State, local and proprietors rules on aircraft noise involves much broader policy questions than the admission of the *Concorde*. One significant aspect is potential liability for damage from aircraft noise. The advisability of such a pre-emption is currently under study by the Department of Transportation.

4. The right of local airport operators, acting as proprietors, to establish reasonable requirements as to the permissible level of noise which can be created by aircraft using the airport has not been questioned to date. The Department of Transportation has argued that the Federal Government is in no position to require an airport operator to accept service by aircraft which do not meet the proprietor's noise standards. Congressional concurrence in this view is reflected in Senate Report 1353 on legislation enacted in 1968 authorizing FAA to make rules for the control and abatement of aircraft noise and sonic boom. This report stated, "The proposed legislation will not affect the rights of a State or local public agency, *as the proprietor of an airport* [italics added], from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport". Most recently, the Senate report on the Noise Control Act referred to in para. 2 above in regard to pre-emption of State and local enforcement of noise standards also noted that, "This does not address responsibilities or powers of airport operators and no provision of the bill is intended to alter in any way the relationship between the authority of the Federal Government and that of State and local governments that existed with respect to matters covered by Section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill."

5. If the present situation in regard to pre-emption remains unchanged, an important factor in the use of the *Concorde* in the U.S. will be its acceptability to local airport operators. Officials of the Port of New York Authority have indicated that local public sensitivity to aircraft noise would make it extremely difficult to allow *Concordes* to use New York area airports. However, there may be airports in less populous areas, such as Bangor, Maine, which could admit the *Concorde* with less difficulty. In the case of Bangor, however, extensive feeder service would be required. Further, diversion to Bangor could make transatlantic *Concorde* service, insofar as New York passengers are concerned, noncompetitive with existing direct service to New York by subsonic aircraft. However, it is possible other non-noise-sensitive airports could be located.

Section II—Environmental Effect

1. There is considerable Congressional and public concern that extensive commerical supersonic operations could induce changes in the stratosphere that would result in health hazards such as higher incidence of skin cancer or climatic changes.

2. It has not been clearly and scientifically established that the effects of SST operations in the stratosphere would, or would not, damage the environment. A report entitled "Environmental Aspects of the Supersonic Transport" issued in May 1972, by the Panel on Supersonic Transport Environmental Research to the Department of Commerce Technical Advisory Board recommended additional research in certain critical areas to secure the necessary data to make an objective determination. Additional research is underway under the Department of Transportation's Climatic Impact Assessment Program with some results expected by 1974.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., Dec. 7, 1972.

Subject: Issuance of FAA NPRM's on aircraft noise and the relationship of their issuance to the Concorde.
From: Assistant Secretary for Policy and International Affairs.
To: The Secretary:

Peter Flanigan has called a Senior Review Group meeting on Monday, December 11 @ 3:30 p.m., to discuss options facing the U.S. Government concerning the issuance of the FAA's aircraft noise NPRM's and the question of the Anglo-French Concorde.

The memorandum distributed by Peter Flanigan to the Senior Review Group is attached at Tab A. We have prepared a memorandum for you to transmit to the Senior Review Group before the meeting. This memorandum, reflecting coordination with FAA, TST, TEU and TGC, is attached at Tab B.

In summary, the paper prepared for transmission to the Senior Review Group recommends that the NPRM's be published promptly, without exception for the Concorde. The paper stresses that these are proposed rules, that the British and French will be afforded an opportunity to argue for an exception from the rules for the Concorde, and that the decision on the final rule is not necessary now. It notes that the publication of the proposed rules without exception for the Concorde will result in French and British objections, but it argues that it is the best decision from a domestic environmental and air transportation policy standpoint.

We understand that the State Department agrees with our recommendation as to the course of action to be pursued.

Recommendation: That you sign the memorandum at Tab B.

JOHN L. HAZARD.

Attachment.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., December 8, 1972.

Memorandum for: The Secretary of State; The Secretary of the Treasury; The Secretary of Commerce; Assistant to the President for National Security Affairs; Assistant to the President for Domestic Affairs; Assistant to the President for International Economic Affairs.

This memorandum states the position of the Department of Transportation on the questions raised in the memorandum dealing with U.S. aircraft noise regu-

lation and the Anglo-French Concorde which was distributed by Peter Flanigan on November 27th. As was explained in that paper, a decision is needed with regard to two Notices of Proposed Rulemaking (NPRM's) on aircraft noise regulation which the Federal Aviation Administration proposes to publish. Because of potential impact on the sales of the Concorde to U.S. airlines, these NPRM's clearly have significant international repercussions. However, they were developed to deal with the pressing domestic issue of aircraft noise and should be given major consideration in the review of this matter.

The recommendations of the Department of Transportation are as follows:

(1) Both NPRM's—i.e., the one dealing with fleet noise levels (FNL) and the one dealing with supersonic aircraft—should be published as soon as possible with the stated qualification that these proposed regulations are not intended to establish Federal preemption over all state/local regulation of aircraft noise.

(2) The NPRM's should be published without any specified exemption for the Concorde. Significantly, these are proposed rules, not final ones. The French and British should be notified that they have an opportunity to seek an exemption for the Concorde either before or after the final regulations are promulgated. As discusssed below, factors other than FAA noise regulations may adversely affect airline purchases of the Concorde and make the issuance of the final FAA regulations far less contentious vis-a-vis the Concorde.

1. THE NPRM'S SHOULD BE PUBLISHED PROMPTLY

The proposed regulations are part of a broad-gauged program to abate aircraft noise.

The Federal Aviation Administration issued a rule on November 3, 1969, which adopted a new Part 36 of the Federal Aviation Regulations that prescribed stricter aircraft noise standards for new subsonic turbojet aircraft. This regulation has set an upper limit on aviation noise, and the subsequent new aircraft (B-747, DC-10, L-1011) are substantially quieter than their predecessors (B-707, 727, 737, DC-9, etc.). Despite this, there are a large number of older noisier aircraft still in the airline fleets which act as a major irritant in the vicinity of our nation's airports.

The first of the NPRM's in question, that dealing with fleet noise reduction, is designed (1) to prevent airlines from purchasing additional noisy aircraft; (2) supplement and serve as an impetus to the development of uniform international agreements and standards concerning aircraft noise; and (3) reduce the noise exposure problem at the major airports by the accelerated introduction of additional new, quieter aircraft, and the phase-out of the older models or the retrofitting of older jet aircraft with noise reduction equipment. It would accomplish this by freezing the current level of each airline fleet's noise, and implement a phased regulatory program which would require each air carrier aircraft to comply with Part 36 noise standards by the end of 1978.

This regulation would complement other recent noise abatement resources. In addition to aircraft noise standards, uniform noise abatement takeoff and landing procedures were instituted this summer at the Nation's airports. These procedures help to reduce the noise impact on the ground while maintaining the flight safety. Another proposed regulation was recently issued that would require all newly produced aircraft with existing type certificates to comply with Part 36. This proposal would place a lid on the noise levels of the first generation jet aircraft still in production and compliment the fleet noise proposal's goal of effecting an overall decrease in air carrier aircraft noise levels.

The second NPRM under consideration would extend current subsonic aircraft noise standards to supersonic transport aircraft. This proposal is based on the concept that the public should benefit from uniform maximum aircraft noise levels. It would require all aircraft, subsonic or supersonic, to be subject to the same minimum noise standards, and results from an Advanced Notice of Proposed Rulemaking issued on August 4, 1970, requesting public participation in the determination of the appropriateness of this action. Overall response to this proposal was decidedly in favor of such a rule. It should also be noted that the noise standards now proposed for supersonic aircraft are the same as the standards which were proposed for the U.S. SST.

As indicated above, we believe that these NPRM's should be issued with the explicit qualification that the proposed regulations are not intended to establish Federal preemption over all state/local regulation of aircraft noise. Exposure to noise is a very localized phenomenon with many local consequences, and we

believe, consistent with the philosophy of the New Federalism, that it should be dealt with on the local level. Because the full political and financial liability implications of Federal preemption are not fully understood, it should be avoided for the time being. For example, property loss damages nationwide resulting from aircraft noise have been estimated by some to add up to many billions of dollars. The Supreme Court held in 1962 that the liability for any taking of property due to excessive aircraft noise rested with the airport operator. While it is not certain that Federal preemption will necessarily lead to Federal liability, it is significant to note that local officials have argued that, if the Federal Government exercises preemption and thus prevents local governments from taking any action to reduce aircraft noise, the injured property owners should seek compensation from the Federal Government rather than from the airport operator. These are among the issues which the Noise Control Act of 1972 assigns to the EPA for a nine-month study, and we intend to work with the EPA in the analysis of these questions.

We have requested that the Solicitor General argue against Federal preemption of aircraft noise regulation in the case now before the Supreme Court involving the airport curfew imposed by the City of Burbank. The case is discussed in the memorandum circulated by Peter Flanigan. We also intend to become involved in the legal action now pending with regard to the new California airport noise exposure regulations, and to request that the Government's case rest upon the paramount Federal interest in avoiding an undue constraint or burden upon interstate and foreign commerce (and, if necessary, safety), not upon Federal preemption.

In the absence of Federal preemption, state and local regulation of aircraft noise can be expected. The Burbank curfew and the California regulations are examples. The New York Port Authority already has a regulation prohibiting aircraft which exceed certain noise levels (which would prohibit the Concorde). Other special local rules barring the landing of supersonic aircraft (such as foreign-owned SST's to which the proposed FAA rules would not apply) could be further examples. The publication and issuance of the NPRM's may persuade some states and localities that additional aircraft noise regulation is not necessary; but, until the EPA study is completed and the desirability of more comprehensive Federal regulation is evaluated, the Federal Government must actively follow on a case-by-case basis all state and local action in the area of aircraft noise exposure regulation to prevent undue burdens on interstate commerce.

II. THE NPRM'S SHOULD BE PUBLISHED WITHOUT ANY SPECIFIED EXCEPTION FOR THE CONCORDE

Keeping in mind that we are recommending the publication of a *proposed* rule, and not the adoption of a final one, we believe the NPRM's should not reflect an exception for the Concorde. Britain and France should be afforded an opportunity to seek an exception during the rulemaking process, as should any other nation or airline, waiver of the final rule could also be sought. But from a transportation policy standpoint, we recommend that the Federal Government not decide now whether to exempt the Concorde from otherwise applicable Federal aircraft noise regulations. (Avoiding a firm Federal decision now vis-a-vis Concorde is essentially Option 3 as described in the memorandum distributed by Peter Flanigan. The other two options require a firm, public decision on the Concorde now—one pro, the other con.)

Advantages

1. Publishing the FAA NPRM's without exception for the Concorde defers a potentially difficult Federal decision until it must be made, raising the distinct possibility that other developments may make the eventual issuance of the NPRM's far less contentious vis-a-vis the Concorde. For example, as described in the memorandum circulated by Peter Flanigan, the Concorde faces potential problems resulting from Government actions other than the FAA NPRM's: aircraft engine emission requirement (publicly announced by the EPA on December 5), FAA fuel reserve and fire safety requirements, possible high fare requirements of the CAB reflecting higher costs, state or local opposition to SST landings and takeoffs, and a possible Congressional ban against SST's.

2. It defers a final decision on the NPRM's until the American airlines, which represent a potential market for the Concorde decide whether to exercise their option based on the aggregate of the present circumstances, including their

estimates of the economic performance (costs and demand) of Concorde operation. Six U.S. airlines (Pan Am, Continental, Braniff, American, Eastern and TWA) hold options on 32 Concordes to be exercised in March 1973. A general decision not to buy the Concorde will lessen the significance of subsequent Federal action which restricts the operations of the plane.

3. Issuing the NPRM's without exceptions for the Concorde should help discourage Congressional initiatives, thus leaving flexibility to deal on a case-by-case basis with the Concorde, the Russian TU-144, or future SST's including those of U.S. manufacture.

4. It should be applauded by environmentalists and avoid the domestic criticism that the Administration favored the British and French at the expense of legitimate environmental interests.

Disadvantages

The absence of an exemption in the NPRM's for the Concorde will be clear notice that the Concorde may be barred for U.S. airline ownership and operation. The British and French appear to be gravely concerned that such action by the FAA will heavily and adversely affect the decision of U.S. airlines to exercise their options in March 1973. Thus, appeals to the President from the highest levels of the British and French Governments may be provoked.

JOHN A. VOLPE.

THE UNDER SECRETARY OF TRANSPORTATION,
Washington, D.C., December 27, 1972.

Memorandum for: The Secretary.
Subject: Concorde noise problems.

Attached (TAB A) is a memorandum from Peter Flanigan documenting the course of action agreed to at a December 11, 1972 meeting at the White House.

Strong letters to the President from President Pompidou and Prime Minister Heath were received during the week of December 11. While we do not have copies, they essentially express British and French concern about the impact of the proposed noise NPRM's on the Concorde. They have not been replied to as yet, but I understand they will indicate our intentions as outlined in paragraphs numbered 1 and 2 of Flanigan's memorandum.

On December 20th, we met with a high level Anglo-French team here at DOT, as we had previously agreed. (Roster of participants attached, TAB B). At the outset of the meeting, we explained the extent and nature of current U.S. environmentalist concerns and the foreseen impact of the new Noise Control Act, advised them we were prepared to exchange technical (not political) information on the NPRM's and the Concorde, and informed them that, by law, we were required to place a summary of the substantive points discussed during the meeting in the NPRM's official docket, which would be made available to the public when the NPRM's were issued. (The Anglo-French team have agreed to provide us with a draft report, which, subject to our concurrence, will be placed in the docket).

Predictably, the Concorde team then proceeded to recite a number of technical and procedural points arguing in favor of issuance of a proposed NPRM on SST noise which incorporated an exception for the Concorde, granted on the basis utilized for the early models of the Boeing 747: i.e., an application for a type certificate for the 747 was made before FAR 36 was issued.

In response to a direct question, we informed them that we did not expect that a noise NPRM would be promulgated before mid-January because of the need, under the new Noise Act, to receive EPA's initial comments. (They are expected to be cursory: EPA will indicate interest and reserve the right to comment further.)

The tone of our meeting was cordial; as was the case with separate meetings the Concorde team leaders held the following day with Secretary Rogers, Peter Flanigan, and me. I understand that essentially the same points were made with Flanigan and Rogers as with me: they indicated the extent of their concern with the possible negative impacts of the proposed rules on the Concorde.

The next step will be the President's replies to Heath and Pompidou. I will keep you informed as significant developments occur.

JAMES M. BEGGS.

THE WHITE HOUSE,
Washington, D.C., December 19, 1972.

Memorandum for: The Secretary of State; The Secretary of the Treasury; The Secretary of Commerce; The Secretary of Transportation; Assistant to the President for National Security Affairs; Assistant to the President for Domestic Affairs.

Attached is a set of minutes of the meeting held on December 11, 1972 which dealt with problems connected with the certification of the Concorde for use in the United States.

PETER M. FLANIGAN.

MINUTES OF REVIEW GROUP DISCUSSION OF PROBLEMS CONNECTED WITH CERTIFICATION OF THE CONCORDE FOR USE IN THE UNITED STATES

ROOSEVELT ROOM, THE WHITE HOUSE, DECEMBER 11, 1972, 3:30–5 P.M.

Attending were: Secretary Rogers, Under Secretary Volker, Under Secretary Beggs, Assistant Secretary Gibson, Assistant Secretary Hazard, Mr. Barnum, Mr. Rein, Mr. Sonnenfeldt, Mr. Gunning and Mr. Flanigan.

Mr. Flanigan had circulated prior to the meeting as a basis for the discussion a memorandum titled "Problems Affecting the Use Of The Concorde In the United States". The Secretary of Transportation also circulated before the meeting a memorandum setting forth the DOT recommendations on issues set forth in the memorandum circulated by Mr. Flanigan.

The meeting opened, after a statement by Mr. Flanigan, with comments by Secretary Rogers on the nature of the Concorde problems and the importance of the Concorde to the British and French governments. Mr. Beggs then gave a description of the history and status of FAA rule-making proceedings which affect the Concorde: the fleet noise rule and the adoption of noise standards for supersonic aircraft. He pointed out that no publication had been made on the fleet noise rule whereas a proposed rule to apply subsonic noise standards (FAR 36) to supersonic aircraft had been published in 1970. He also indicated that Boeing 747s built after the promulgation of FAR 36 had been exempted from its terms until later models were able to comply and that those exempted 747s and many other aircraft (such as the Boeing 707) built before adoption of FAR 36 do not comply with those noise standards and have not been required to be retrofitted to do so.

The meeting then dealt with eight specific issues affecting the Concorde.

The following decisions were unanimously approved after individual discussion:

1. *Fleet noise rule.*—DOT will redraft the advanced notice of the proposed rule on consultation with Mr. Rein so as to exempt the Concorde, directly or indirectly from its terms. This draft will be delivered to the White House so that the timing of its release can be coordinated properly with other foreign policy considerations.

2. *Supersonic noise standards.*—At the time that the advanced notice of the proposed fleet noise rule is released an announcement will be made that once comments on it are received, NPRM's will be published simultaneously with respect both to the fleet noise rule and the supersonic noise standards. A joint environmental impact statement on the two rules will also be filed when the NPRM's are published.

3. *Fuel system safety and operating rules.*—The question of a nitrogen inerting system for the Concorde fuel tanks is a technical safety question and will be left to the judgment of the FAA. Messrs. Barnum and Rein will look into whether the U.S. can impose nitrogen inerting system requirements on airplanes flown into the U.S. by non-U.S. flag carriers.

Unless the FAA argues strongly that the special operating procedures requested for the Concorde are also safety problems, we will attempt to be cooperative on this issue, particularly if the Concorde is limited to landing at Dulles (and possibly a few other airports).

4. *Engine emissions.*—EPA is to publish an NPRM on December 12 with respect to airplane engine emissions. It was reported that the standards would be effective for planes built after 1975 with exemptions possibly through 1978. Since the British and French have not viewed this proceeding with great alarm, and in light of the possibility of exemptions until 1979, the Administration will

take no action on this subject. However, Mr. Rein will brief the British and French representatives on the impact of the proposed rule on the Concorde.

5. *Possible congressional action against Concorde.*—This will be faced on an issue by issue basis. If the British and French want to know of general attitude toward anti-Concorde legislation, they should be cited to our opposition to the Cranston Amendment this fall.

6. *Rates and fares.*—This is completely within the province of the CAB. Thus the Administration will not become involved in questions of ticket prices for the Concorde.

7. *State, local and proprietor regulations.*—DOT presently asserts that it has the legal authority to preempt state and local noise regulations although there is some law and argument to the contrary. The Administration will not now seek to make federal noise regulations preempt state and local noise regulations. It is noted in this regard that Britain and France plan to make only one airport in each country available to the Concorde.

8. *Environmental effect.*—DOT has studies underway on possible environmental effects of the Concorde. These studies will be continued. In addition to the foregoing, it was agreed that DOT would provide Mr. Flanigan with estimates of the economic impact of the fleet noise rule and the EPA engine mission standards on U.S. airlines.

COMPOSITION OF UNITED KINGDOM, FRENCH, UNITED STATES TEAMS DISCUSSION OF PROPOSED DOT NOISE, NPRM, WEDNESDAY, DECEMBER 20

U.S. DEPARTMENT OF TRANSPORTATION

John W. Barnum, General Counsel
Anne-Marie Melaugh, Office of the General Counsel
Robert H. Binder, Deputy Assistant Secretary, Office for Policy and International Affairs
Robert L. Paulin, Chief, Regulatory Policy and Standards Division, Office of Noise Abatement, Office for Systems Development and Technology
Martin Convisser, Director, Office of Environmental Quality, Office of the Assistant Secretary for Environment and Urban Systems
Charles O. Cary, Director, Office of International Aviation Affairs, Federal Aviation Administration
Richard P. Skully, Director, Office of Environmental Quality, Federal Aviation Administration
Ronald Pulling, Acting Associate Administrator for Plans, Federal Aviation Administration
Richard B. Griffin, Jr., Special Assistant to the Under Secretary

DEPARTMENT OF STATE

John Meadows, Director, Office of Aviation

ENVIRONMENTAL PROTECTION AGENCY

Dr. Al Meyer, Deputy Assistant Administrator for Noise Control Programs

OFFICE OF SOIENCE AND TECHNOLOLGY

Dr. David D. Elliott, Advisor, Space and Aeronautical Affairs

UNITED KINGDOM

James A. Hamilton, Deputy Secretary, Department of Trade and Industry
James Barnes, Under Secretary, Department of Trade and Industry
Phillips Jones, Director General, Concorde
Geoffrey C. Lowe, Counselor (Civil Aviation), British Embassy

FRANCE

Bernard Lathiere, Director of Air Transport, Secretariat General a l'Aviation Civile
Ing. General Roger Mognard, Vice Chairman of Concorde and Airbus
Claude Abraham, Assistant Director of Air Transport
Leonce Lansalot-Basou, Counselor (Transport), Embassy of France

○