**12/26/79**

Folder Citation: Collection: Office of Staff Secretary; Series: Presidential Files; Folder: 12/26/79; Container 143

To See Complete Finding Aid:
http://www.jimmycarterlibrary.gov/library/findingaids/Staff_Secretary.pdf

## WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)

| FORM OF DOCUMENT | CORRESPONDENTS OR TITLE | DATE | RESTRICTION |
|---|---|---|---|
| memo w/att. | ~~From Owen to The President (6 pp.) re: Trade Negotiations with Mexico~~ Opened per RAC NLC-126-19-24-1-4 12/2/13 | 12/19/79 | A |
| ~~memo w/~~ | ~~From Cutler and Donovan to The President (5 pp.) re: Iran~~ OPENED 8/12/93 | ~~12/18/79~~ | ~~A~~ |

FILE LOCATION

Carter Presidential Papers- Staff Offices, Office of the Staff Sec.- Pres. Handwriting File 12/26/79 BOX 161

RESTRICTION CODES

(A) Closed by Executive Order 12356 governing access to national security information.
(B) Closed by statute or by the agency which originated the document.
(C) Closed in accordance with restrictions contained in the donor's deed of gift.

THE WHITE HOUSE
WASHINGTON

12/26/79

Brzezinski
Cutler
Donovan

The attached was returned from the President's outbox today.

Bill Simon

THE WHITE HOUSE
WASHINGTON

12/20/79

Mr. President:

Hamilton doubts this is a good idea, and suggests that it can be taken care of at the foreign policy breakfast.

Rick

~~SECRET~~SENSITIVE

THE WHITE HOUSE

WASHINGTON

December 18, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD CUTLER AND HEDLEY DONOVAN

SUBJECT: Iran

We are all aware of the danger that, whether or not the return of the hostages is promptly resolved, we face a series of domestic charges and inquiries on two central questions: "Who Lost Iran?" and "Why was the Shah Admitted for Medical Care?"

To meet these charges a task force is preparing a history and chronology of the major events in U.S.-Iranian relations since 1953, for possible use in a future White Paper, and also as a reservoir of material to use in rebutting charges as they arise.

This memorandum recommends that you also consider the appointment of a Presidential Commission of qualified and distinguished private citizens, who have had no prior responsibility for U.S.-Iranian relations, to make a study of the relationship during and since the Shah's rule, and to report their appraisal to you and the public no later than April 1980.

The role of the Commission would not be to investigate particular charges against this Administration or previous ones. Instead, its role would be to review and appraise the entire relationship, and where we ought to go from here. In performing its mission, however, the Commission of course would have to deal with the actions or omissions that give rise to the charges.

Such a Commission would have the following values:

a) When charges and countercharges are exchanged, we could point to the existence of the Commission and the fact that a balanced and impartial report on the issues will be available by April.

b) When the report is issued, it can be effectively used to rebut the more sensational charges. What the Commission says is likely to carry more weight with the public and the editorial writers than the partisan charges and countercharges from the candidates.

DECLASSIFIED
E.O. 12356, Sec. 3.4
PER 3/3/93 NSC ltr RE NR-NLC-92-172
BY NARS, DATE 7/23/93

Electrostatic Copy Made for Preservation Purpo

c) The existence of the Commission - particularly if respected senators and congressmen are included in its membership - might help to deter or offset more sensational congressional investigations and reports.

If the Commission idea wins acceptance, its announcement should be carefully timed. On the one hand, an early announcement might help to preempt the field and neutralize the charges and inquiries that may soon be launched. On the other hand, we do not want the creation of our own Commission to be seen or used as a basis for legitimizing the proposed Iranian plan to establish an "international commission" of its own, or the more recent demand that we establish an official body to investigate the Shah.

This idea has been reviewed with Cy, Harold and Zbig, who think it has merit but want to reflect further on timing and structure.

Attached is a list of possible members of the Commission.

Also attached is a more detailed description of the Commission's possible scope.

cc: Secretary Vance
Secretary Brown
Hamilton Jordan
Zbigniew Brzezinski

~~SECRET~~ SENSITIVE

Possible Names for Commission

William Scranton
John Gardner
Hanna Gray (President of University of Chicago and a distinguished historian)
William Saltonstall (former Headmaster of Exeter and head of the Peace Corps in Nigeria)
Bishop John Walker of Washington
William Bohen (President of Princeton)
Eric Sevareid (now retired)
James Reston (now retired except for occasional columns)
Theodore White
Professor John Hope Franklin (distinguished black historian at University of Chicago)
Lane Kirkland
William Spann (Atlanta Lawyer, former President of ABA and former Chairman of Section on Individual Rights and Responsibilities)
Irving Shapiro (if Du Pont not active in Iran)
Roger Heyns (former Chancellor at Berkeley, former President, American Council on Education)
Clifford Wharton (former President of Michigan State, former AID official)

MEMBERS OF CONGRESS

| Senators | Congressmen |
|---|---|
| Mac Mathias | Clem Zablocki |
| Gary Hart | Lee Hamilton |
| Robert Byrd | Paul Findley |
| Ted Stevens | Charles Bennett |
| Dan Inouye | Lucien Nedzi |
| Henry Bellmon | David Emery |
| Abe Ribicoff | |

DECLASSIFIED
E.O. 12356, Sec. 3.4
PER 3/3/93 NSC LTR RE NLR-NLC-92-172
BY NARS, DATE 7/28/93

~~SECRET~~-SENSITIVE

Further Details of a Proposal for a Commission to Review United States Foreign Relations with Iran since World War II.

As soon as the hostage problem is resolved one way or another, the Administration will be attacked from two sides. One line of attack will accuse the President of "losing" Iran, with grave damage to U.S. interests, by undercutting the Shah. In the other line of attack the Administration would be accused of exposing American lives to danger and precipitating a wholly unnecessary crisis by the decision to admit the Shah to the U.S. for medical treatment. Unless the Administration moves promptly to preempt the field of inquiry, Senate and Congressional committees are likely to begin independent investigations along both lines. In a year when one-third of the Senate and all of the House are running for election, the issue could become poisonously politicized.

The pro-Shah school would concentrate its fire on that limited period just before and after the Shah's departure, and particularly on the role of General Huyser, who, they allege, used threats and intimidation to prevent the Shah's generals from resisting the pro-Khomeini mobs. Had it not been for Huyser, they argue, the military would have taken over and the Khomeini forces been put down; at the very least, the Army would have retained its integrity as a power center and thus exercised a severe constraint on the Islamic groups.

Neither the pro-Shah nor anti-Shah elements can be permitted to confine the argument to the narrow time-frame of 1979. Such a restricted focus would preclude serious analysis of the nature of the Iranian revolution

DECLASSIFIED
E.O. 12356, Sec. 3.4
PER 3/3/93 NSC LTR RE MR-NLC-92-172
BY [signature] NARS, DATE 7/8/93

which involved the sudden temporary coalescence of long-building grievances that pervaded all sectors of society, finally concentrating under the banner of Islam as a flag of convenience and respectability. A responsible inquiry would seek to establish the true nature and causes of the Iranian revolution and thus put the Carter Administration's handling of its latter phases in proper perspective.

To satisfy the American people, the President should, therefore, promptly appoint a Commission composed of men and women of unquestioned integrity and objectivity who have had no previous participation in our Iranian policy. Meanwhile, Senate and House Committees would find the field at least partially preempted. If not inhibited from launching investigations of their own, they might be constrained to conduct their hearings and write reports more responsibly than if the Commission did not exist.

Obviously, there are risks in such a proceeding and in its timing. But there are greater risks in letting the pro-Shah and anti-Shah oppositions define the issues in their own terms and exclude from the argument the areas and time periods where they would themselves be vulnerable.

The President would make clear that he was seeking, through the Commission, to discover all the lessons we should draw from our experience with Iran during the last three decades and was prepared to let the chips fall where they may. It is probable that the country would regard this initiative as an act of statesmanship.

THE WHITE HOUSE
WASHINGTON

12/26/79

Askew
Brzezinski
Owen

The attached was returned from the President's outbox today.

Bill Simon

MEMORANDUM

Electrostatic Copy Made
for Preservation Purposes

THE WHITE HOUSE

WASHINGTON

7269

I called Reubin to approve
J

~~CONFIDENTIAL~~

December 19, 1979

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY OWEN HO

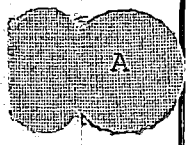
SUBJECT: Trade Negotiations with Mexico (C)

In the attached memo (Tab A) Reubin Askew describes the results of U.S. trade negotiations with Mexico. In his judgement the agreement is fair and in the best interests of the United States. I agree and recommend that you approve Reubin's request for authority to conclude the agreement. If you have any problems with this matter, Reubin and I would appreciate an opportunity to speak to you about them. (U)

The Vice President and I are working on other aspects of U.S.-Mexican relations. (C)

DECLASSIFIED
Per, Rac Project
ESDN: NLC-126-5-24-1-4
BY KS NARA, DATE 11/25/13

~~CONFIDENTIAL~~
Review on December 18, 1985


A

THE SPECIAL REPRESENTATIVE FOR
TRADE NEGOTIATIONS
WASHINGTON
20506

December 18, 1979

MEMORANDUM FOR THE PRESIDENT

FROM : Reubin O'D. Askew

SUBJECT : Trade Negotiations with Mexico

My Office has completed negotiations with Mexico on a major trade agreement which includes concessions on several hundred products totaling nearly $850 million. More important than the specific provisions of this agreement is the fact that it is a prerequisite for Mexican membership in the General Agreement on Tariffs and Trade (GATT).

The present trade situation between the United States and Mexico is not as fair as it should be to U.S. exporters. As a GATT member, the United States generally accords liberal trade treatment to Mexican products. However, because Mexico is not a GATT member, and because we have not had a bilateral trade agreement with Mexico since 1947, our exports to Mexico are subject to protective and capricious import policies by that country. Recently, Mexico has begun to liberalize these policies. Without the disciplines of GATT, though, there is nothing to prevent future Mexican administrations from reversing this liberal trend.

Consequently, an important objective of your policy toward Mexico has been their accession to GATT. Mexican entry into GATT would reduce the bilateral irritants in the trade relations between our two countries, require Mexico to exercise greater restraint in its trade policies, and generally hasten Mexican entry into the international trading community.

Currently, the Mexicans are engaged in a national debate over whether to enter GATT. This decision must be made by May. The agreement we have reached with Mexico contains concessions of the kind required of any country when it joins GATT. In fact, the agreement will not go into effect unless and until

Electrostatic Copy Made
for Preservation Purposes



Mexico becomes a GATT member. Mexico has completed similar negotiations with all its principal trading partners except the United States. Our approval of the agreement would fulfill this one remaining external prerequisite to GATT membership.

As is usually the case with our agreements with developing countries, the trade coverage of this agreement is weighted in Mexico's favor. However, without this agreement, Mexico would remain free to prohibit entry of the U.S. products the agreement covers. As a member of GATT with obligations to other GATT members, we do not have such freedom. For this reason, among others, there is more qualitative value in the Mexican concessions to the United States than in our concessions to them. This is true despite the weighted ratio in trade coverage, which, in this agreement, unlike some others, is less than two to one.

This agreement binds the Mexicans to more certainty in our mutual dealings, protects existing U.S. interests in Mexico, and provides an expanded potential for U.S. exports to one of our most important trading partners. In my view, approval of this agreement is clearly in the best interests of the United States. Therefore, I request your approval to allow me to proceed with the agreement.

Approve: ✓

Disapprove: _____

Comment: _____

cc Askew
J

Electrostatic Copy Made
for Preservation Purposes

THE SPECIAL REPRESENTATIVE FOR
TRADE NEGOTIATIONS
WASHINGTON
20506

MEMORANDUM FOR THE PRESIDENT

FROM : Reubin O'D. Askew

SUBJECT : Trade Negotiations with Mexico

My Office has completed negotiations with Mexico on a major trade agreement which includes concessions on several hundred products totaling nearly $850 million. More important than the specific provisions of this agreement is the fact that it is a prerequisite for Mexican membership in the General Agreement on Tariffs and Trade (GATT).

The present trade situation between the United States and Mexico is not as fair as it should be to U.S. exporters. As a GATT member, the United States generally accords liberal trade treatment to Mexican products. However, because Mexico is not a GATT member, and because we have not had a bilateral trade agreement with Mexico since 1947, our exports to Mexico are subject to protective and capricious import policies by that country. Recently, Mexico has begun to liberalize these policies. Without the disciplines of GATT, though, there is nothing to prevent future Mexican administrations from reversing this liberal trend.

Consequently, an important objective of your policy toward Mexico has been their accession to GATT. Mexican entry into GATT would reduce the bilateral irritants in the trade relations between our two countries, require Mexico to exercise greater restraint in its trade policies, and generally hasten Mexican entry into the international trading community.

Currently, the Mexicans are engaged in a national debate over whether to enter GATT. This decision must be made by May. The agreement we have reached with Mexico contains concessions of the kind required of any country when it joins GATT. In fact, the agreement will not go into effect unless and until

Mexico becomes a GATT member. Mexico has completed similar negotiations with all its principal trading partners except the United States. Our approval of the agreement would fulfill this one remaining external prerequisite to GATT membership.

As is usually the case with our agreements with developing countries, the trade coverage of this agreement is weighted in Mexico's favor. However, without this agreement, Mexico would remain free to prohibit entry of the U.S. products the agreement covers. As a member of GATT with obligations to other GATT members, we do not have such freedom. For this reason, among others, there is more qualitative value in the Mexican concessions to the United States than in our concessions to them. This is true despite the weighted ratio in trade coverage, which, in this agreement, unlike some others, is less than two to one.

This agreement binds the Mexicans to more certainty in our mutual dealings, protects existing U.S. interests in Mexico, and provides an expanded potential for U.S. exports to one of our most important trading partners. In my view, approval of this agreement is clearly in the best interests of the United States. Therefore, I request your approval to allow me to proceed with the agreement.

Approve: ✓

Disapprove: _____

Comment: _____

cc Brandt -
Thanks - Very
perceptive -
J

cc sent
12/31/79
m

Dec. 26, 1979

The President
The White House
Washington, DC 20000

Dear Mr. President:

The affirmative reaction to my enclosed column as it appeared in the St. Petersburg Times makes me think you might be interested in it. I expanded on the idea in a memo I sent Jody recently, if it is a subject you wish to pursue.

You are often in our thoughts and our prayers and I am pleased at the prospect of your leadership for the next four years.

Cordially,

H. Brandt Ayers

HBA: bjh
Enclosure
cc: Mr. Jody Powell
Ms. Susan Clough

Electrostatic Copy Made
for Preservation Purposes

THE WHITE HOUSE
WASHINGTON

12/31/79

stripping desk/central files--

ayers' copy has been
given to jody powell for
jlp forwarding.

=-ssc

St. Petersburg Times **editorials**

*"The policy of our paper is very simple — merely to tell the truth."*
Paul Poynter, 1875-1950 Nelson Poynter, 1903-1978

16A TUESDAY, DECEMBER 18, 1979

## guest column

# Practical men like Founding Fathers are needed to write Declaration of *Economic* Independence

□ *Our guest columnist is the publisher of the* Anniston (Ala.) Star. ■

By BRANDT AYERS

ANNISTON, Ala. — America never clearly knows where it is going until it is marching into war. But once the crisis is over, a profound confusion grips us and our goals are drowned out by a clamoring Babel of interests.

This concept was puzzling and depressing to me when I first heard it expressed as a young boy on an August afternoon in 1945 when word was flashed over the radio that Japan had surrendered.

My sister drove a college friend and me downtown to witness and be part of the victory celebration. At 10th and Wilmer, right where Hicks Tire Co. used to be, the other girl in the front seat said coldly, "The war's over; the bread lines start tomorrow."

**WHEN THE** Iranian crisis is over, President Carter will again have to struggle with the bread line issue of the economy.

The President, not naturally charismatic, today benefits from situation-charisma. Events have made him the central and indispensable actor at a time of psychic distress for the nation and physical threat to the American hostages.

His patience and resolve — the steady self-confidence of power under control — hold out to us the promise that a priceless value, American Honor, is secure. In return, we give him the gift of charisma — our voluntary loyalty and support.

**AS SOON AS** the Iranian crisis is over, however, American citizens, interest groups and the political heroes of those interests will feel again the bite of an economy gone wrong and the clamor will begin anew.

President Carter's political fortunes — and more importantly, the economic and civil health of the Republic — will require leadership that gives us confidence in the economic future.

To do so he must move decisively to the center of a comprehensive effort to mobilize the private and public sectors in search of agreed directions for our economic future, a consensus on how to get there and acceptance of the means to keep us all on the right track.

**IMPLICIT** in such a bold and inclusive effort is a rejection of the worn-out solutions of the traditional political poles: Liberals like Sen. Kennedy who believe the way to find new capital is to spend the capital we don't have, and conservatives like Gov. Reagan who believe the solution to productivity is to make American labor work longer hours for less pay.

The approach should avoid the theoretical and abstract. No presidential commissions, please; no White House commissions to offer a pretty, process-color report in an Oval Office ceremony to be filed and forgotten.

Pulling public and private sectors together in search of real solutions for our economic future requires practical and experienced people — people who lead private enterprise and people who have the power to act in government.

**THERE MIGHT** be as many as four groups reporting directly to the President described by the purpose for which they were appointed, "Working Groups." No academic economists need apply with their econometric toy-models. The Working Groups should be dominated by people from the government with labor or business experience and private sector leaders with prior government experience. They need to know what they're talking about — in a practical sense.

The four groups might include: one from business, finance, industry and labor; one from appropriate congressional committees like the Budget and Joint Economic Committee; one from senior state governors, and the final group from executive and regulatory agencies like Treasury, Labor, Federal Reserve Board, Commerce, etc.

Similar leaders sat down in the 18th century to describe our political values and goals and to set out a framework to secure our political future in a Declaration of Independence and a Constitution.

Their vision held — not because they were mystical supermen, the "Founding Fathers" — but because they were profoundly practical men. There are enough practical men in our own time to write a Declaration of Economic Independence and a framework for securing our economic future.

America needs to know where it is going in the time between the wars and crises.

THE WHITE HOUSE

WASHINGTON

FOR THE RECORD

STATEMENT MADE ON THE 22ND OF DECEMBER.
IN DECEMBER 26th FILE.

Xmitted to Stu
12-22
J

DRAFT STATEMENT ON THE WINDFALL PROFITS TAX

The House and Senate Conferees have taken important steps toward reconciling their differences on the windfall profits tax.

The basic agreement reached on revenue levels (and on how the tax should be distributed among different categories of oil) brings us closer to enactment of a windfall tax which will pay for vital investments in American alternatives to imported oil.

Progress on the tax has been painfully slow. First we were promised action by October, then by Thanksgiving, and then by Christmas. Although the Congress made progress before it adjourned, we still do not have a windfall profits tax in law.

When I announced my decision to phase out controls on domestic crude oil last April, I made clear that the windfall profits tax was an essential companion to decontrol. The schedule was carefully set to encourage American energy production and to give the Congress plenty of time to act on the tax. It is my present intention to continue the necessary general decontrol schedule, but

I ~~am today acting to~~ will postpone further increases in the price allowed for marginal wells until a satisfactory ~~the~~ windfall profits tax is on my desk. ~~The price for about one-fifth of the production from these smaller wells was scheduled to rise on January 1.~~ Additional decisions will be made as necessary to coordinate decontrol the rate of decontrol with the decisions made by Congress on the windfall profits tax.

Electrostatic Copy Made
for Preservation Purposes

It must be clear that the costs of delay are high. I am determined that the Amrican public will be protected with a windfall profits tax which is fair and which provides the funds we need to invest in our energy future. ~~The action I am taking today will send a clear message to all that The costs of delay are high.~~

~~I expect~~ The Conference Committee and their staff ~~to~~ will continue work on the tax between now and the start of the new Congressional session to ensure that precious time is not lost. It is also critical that the Conferees on the Energy Mobilization Board and the Energy Security Corporation ~~keep their shoulders to the wheel~~ complete their work without further delay. We must not dissipate our opportunities for action ~~the next month in total inaction while our hostages remain in Iran~~ during this time of crisis. The eyes of the world are focused on us to see if we meet our energy challenges. What Congress does over the next few weeks ~~and months~~ will decide insure whether this country will meet its challenge.

We can and must send a strong and accurate signal ~~to the OPEC nations~~ that we, the American people, are determined to cut our dependence on imported oil. The windfall profits tax, the Energy Mobilization Board and the Energy Security Corporation are critical to this effort, and we will not shirk our duty.

Electrostatic Copy Made
for Preservation Purposes

THE WHITE HOUSE

WASHINGTON

December 21, 1979

MEMORANDUM FOR THE PRESIDENT

FROM STU EIZENSTAT

SUJBECT WINDFALL PROFITS TAX STATEMENT

Since our discussions yesterday, several factors concerning your statement on the windfall tax have been raised. I thought you should be aware of the pros and the cons which are set out below. A draft statement, which includes announcement of action to delay decontrol of the remaining 20% of marginal wells until the tax passes, is attached.

Arguments for a statement

- Your key legislative advisors on this issue feel that it is essential to help keep the revenue agreement reached on Thursday intact.
- It keeps needed pressure on the independents and their Congressional champions by making clear that they are going to have to bear at least some of the tax burden. It reminds these groups that you have the power to prevent full decontrol for them through September, 1981.
- It sends a strong signal to the Conferees and the oil state Members that delay beyond a reasonable time for staff to work out language is unacceptable and may prove very costly to them.
- It provides a foil for Conferees with heavy independent producer constituencies by having the Administration take some of the blame for taxing indpendents. (This is helpful politically even though the majors are likely to be able to muster enough votes to keep the independents from getting off scott free.)

Arguments against a statement

- The press will probably play Thursday's conference action as a victory for the Administration. A statement which is critical of the pace (and implicitly critical of the substance) of conference action will take the edge off an otherwise favorable perception.
- We will take considerable heat from the independent producers for actions which the Conference may have to take anyway, given heavy pressure from the majors. Some may try to argue that the Administration is defending the majors at the expense of the independents.

- o It runs some risks to the dollar, although these are mitigated by maintaining the basic decontrol schedule. Prompt notice and explanation of the statement should be given to our allies and key financial organizations (and to Congressional leaders).

John Sawhill, on behalf of DOE, opposes the deferral of control on marginal wells. He believes that we already have won a real victory and are getting credit for it. This action now will seem incongruous, he points out, in light of announcement to be made today to raise heavy oil, for decontrol, from 16 degrees to 20 degrees. Charlie Schultze also opposes the deferral of decontrol for the reasons stated above.

While Eliot Cutler, Kitty Schirmer and I share the above concerns about the statement Secretary Miller, his key legislative aide, Gene Godley, and Frank Moore believe a statement should be given. Since Gene and Frank have been closest to this issue, I defer (with continued concern) to their judgment.

Attachment

cc: Secretary Miller
Undersecretary Sawhill(for Secretary Duncan)
Jody Powell
Frank Moore
Charlie Schultze
Henry Owen

ALL OF US AGREE THAT YOU SHOULD NOT MAKE A STATEMENT UNTIL THE CONFEREES COMPLETE THEIR ACTION TODAY.

2/26/79

Jordan
Moore
Kraft

The attached was returned from the President's outbox today.

Bill Simon

Electrostatic Copy Made
for Preservation Purposes

None
ok
T

12/21/79

TO: PRESIDENT CARTER

FROM: HAMILTON JORDAN AND TIM KRAFT TK

Chris Clauser is presently Eagleton's campaign manager and one of the best political organizers in the country. We have been trying unsuccessfully to get him to give us three weeks to work a very important area in Iowa - Fort Dodge.

It is the evaluation of everyone who is familiar with Missouri that Eagleton is in good shape and that it will not even hurt him minimally to lose Chris for three weeks. Among outside political talents, he is our top choice to go in and work. EAgleton has helped us a lot to date and might welcome a personal call and request from you. We consider it very important. If you get permission from Eagleton to approach Clauser, I (Hamilton) will contact him.

THE WHITE HOUSE
WASHINGTON

12/20/79

Mr. President:

Hamilton requests that you discuss this case with him and Frank Moore before making a final decision.

Rick

THE WHITE HOUSE

WASHINGTON

December 20, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT Stu

SUBJECT: Pan American Merger

The CAB has issued an order transferring National Airlines' operating authority to Pan American but has deleted National's Miami-London route from the authority transferred. The Board has started a second proceeding to determine whether Pan Am or some other carrier should receive the Miami-London route, which is quite lucrative. The Board's order in the merger case is now before you and will become effective if no action is taken by Monday, December 24. The sole issue for decision is whether you should attempt to modify the CAB's action to award the Miami-London route to Pan Am.

I recommend that you permit the Board's order to stand.

Background

Prior to passage of the Airline Deregulation Act, the President had virtually unlimited authority to alter any CAB decision affecting international routes. Such decisions could not become effective until the President approved them, and in controversial cases the review process frequently went on for months. If the President chose to modify an order and direct the Board to take other action, he could do so, and there were no statutory constraints on the exercise of the President's authority.

In part because of Nixon's abuses of the review process, Congress in the Airline Deregulation Act attempted to circumscribe the President's discretion. Instead of an unlimited period in which to approve or disapprove a decision, the President now has 60 days to act; if he does not disapprove an order within that time, it automatically becomes effective. In addition, the statute specifies that the President's right of disapproval shall be exercised "solely upon the basis of foreign relations or national defense considerations which are within the President's jurisdiction, but not upon the basis of economic or carrier selection considerations." The President must set forth his reasons for any disapproval in a public document, to the extent national security permits.

There are undoubtedly cases in which economic or carrier selection considerations significantly impinge upon foreign relations, and the statute should not be read to bar Presidential disapproval in such instances. Nevertheless, Congress clearly intended to limit the practice of justifying politically inspired changes in carrier selection with a blithe assertion of "foreign economic policy."

This Case

There are two basic options: (1) to take no action, thereby permitting all aspects of the Board's order to become effective, or (2) to attempt to give the Miami-London route to Pan Am by disapproving the order and directing the CAB to submit a new decision which approves the merger and which includes that route in the merged authority.

The CAB excluded the Miami-London route from the transfer because of a belief that granting the route to Pan Am would be anti-competitive, since Pan Am already flies from seven of the fourteen U.S. gateways to London. None of the commenting agencies (Justice, State, DOT, and OMB) question the Board's analysis.

There is considerable congressional mail recommending that Pan Am be given the route, especially from New York, New Jersey (the entire delegations), Louisiana and Texas. Florida is split: some members support Pan Am on this issue, while others would like Eastern to pick up the route.

You could attempt to award Miami-London to Pan Am, but there are risks:

1) The Foreign Policy Rationale. A foreign policy justification is required as the predicate for disturbing the Board's action. It is possible, although not easy, to devise this rationale. National now flies into Heathrow Airport from Miami. Pan Am and TWA are the other two U.S. carriers now utilizing Heathrow. Great Britain is attempting to divert all other U.S. carriers to the new Gatwick Airport, and State has suggested that the British may attempt to do this with National's replacement on the Miami-London route. Since British Airways, which also flies Miami-London, uses Heathrow--and because Heathrow is seen as a more desirable airport, largely because it has better connections to Europe--a U.S. carrier on the Miami-London route could be placed at a competitive disadvantage if it had to land at Gatwick. You could determine that it is in the best interest of the United States to avoid this dispute by giving the Miami-

London route to Pan Am, which already has Heathrow rights. (TWA, the other carrier with such landing rights, has no feeder service into Miami and would probably not be an appropriate choice.)

But this argument has some deficiencies. State has simply suggested a problem--it has not opposed the Board's order--and DOT does not believe the problem raises a significant foreign policy concern. The U.S. position is that the Bermuda II agreement requires Britain to permit National's successor, whoever it is, to land at Heathrow. DOT and CAB, and probably State as well, would oppose intimating to the British that we share their position concerning Heathrow. Finally, it is not necessary to give Pan Am the Miami-London route at this time to preserve our access to Heathrow. The CAB's decision requires Pan Am to operate the route on an interim basis pending final carrier selection; at that time, if we considered the Heathrow issue a problem, we could probably order the route transferred to Pan Am.

In short, assuring access to Heathrow is not a strong basis for reversing the CAB's exclusion of the Miami-London route from the merger.

2) The Effectiveness of Presidential Action. An attempt to direct the CAB to approve the merger but to award the Miami-London route to Pan Am may not have the intended result. The Board emphatically stated in its decision that deletion of the route was essential to its approval of the merger, and it may have the legal authority to reconsider the entire merger if directed to include Miami-London in the package. The bulk of the merger involves domestic routes which are beyond the President's authority to affect, and the Board could probably undo at least the domestic component of the merger. If the Board carried out its expressed intent to reconsider the entire merger, there could be a messy confrontation, with the Board possibly having substantial Congressional and editorial support in a situation which we would have limited power to control.

To conclude, the practical effect of a Presidential disapproval is far from clear, and litigation is a likely result.

3) Bad Precedent. If you reverse the Board in this case, where foreign policy considerations are attenuated, there will be open season every time the Board issues a controversial international route order in the future.

4) Adverse Congressional Reaction and Threat to the President's Review Authority. As noted above, before passage of the Airline Deregulation Act there was considerable sentiment to eliminate the President's international air route authority. A decision overturning the Board here could anger Senator Cannon and others sufficiently to cause them to reopen this question. While the Act ultimately only narrowed, rather than abolished, the President's review authority, Congress believed it had accomplished a major change. If we interpret the Act otherwise, a renewed attack on that authority is likely.

5) Other Hill Fallout. If the issue is blown up as an example of politically motivated Presidential interference in regulation, the result could jeopardize our efforts to show that Presidential supervision of the regulatory process is more principled than legislative veto, and to keep restrictions on Presidential regulatory oversight out of the regulatory reform bill.

Recommendation

Because of the risks outlined above--and because the Board appears to be correct on the merits--I recommend that you permit the Board's order to become effective. We have prepared the attached letter to Marvin Cohen which announces your decision but which also has some language which may help to mollify Pan Am's supporters on the Hill.

Lloyd Cutler is disqualified from participating in this decision. Joe Onek, his deputy, is acting for Lloyd and concurs.

_____Approve Board's Order (recommended)

_____Disapprove

THE WHITE HOUSE

WASHINGTON

December 22, 1979

To Chairman Marvin Cohen

I have reviewed the following orders proposed by the Civil Aeronautics Board:

Pan American Acquisition of, Control of, and Merger with National
Docket 33283
and
Texas International-National Acquisition Case
Docket 33112

I do not intend to disapprove the Board's orders within the 60 days allowed by statute.

In these orders, the Board approved the acquisition of National Airlines by Pan American World Airways. However, the Board deleted from the authority granted the merged airline the right now held by National, to provide service between Miami and London. Instead, the Board has initiated a separate proceeding to select a successor to National to operate the Miami-London route.

Under the Airline Deregulation Act of 1978, the President is given 60 days following a CAB decision such as this affecting international routes to review the decision. The President may disapprove a Board decision "solely upon the basis of foreign relations or national defense considerations . . . but not upon the basis of economic or carrier selection considerations."

Questions have been raised about that portion of the Board's decision deleting the Miami-London route from the transferred authority. I do not

find sufficiently compelling foreign relations or national defense considerations to disturb the Board's decision on this issue or any other issue. I note that Pan American is one of several applicants for the Miami-London route in a proceeding now under consideration by the Board. I also note that the Board's opinion here underscores the right of the United States to assure any American carrier serving Miami-London complete competitive equality with any British carrier providing similar service, a right which must be assured in the final disposition of this matter.

To assure the opportunity for judicial review of the Board's action, I note that no foreign relations or national defense consideration underlies my action here.

Sincerely,

Jimmy Carter

The Honorable Marvin S. Cohen
Chairman
Civil Aeronautics Board
Washington, D.C. 20428