

August 4, 1970

FOR JOHN D. EHRLICHMAN

I have three thoughts for topics which the Domestic Affairs Council might take up to some consequence, given what are likely to be the political and economic constraints of the next four or five years.

(1) A Complete Reordering of the Regulatory Function.

By and large I think it would have to be said that the regulatory commissions have failed. A governmental device that goes back to the late 19th Century has simply not worked.

The regulatory commissions are the equivalent in their field of program-oriented government. Regulate the railroads. Regulate the stock market. Regulate the utilities. Regulate the radio stations. None is policy oriented. None is concerned with transportation policy, investment policy, communications policy, or whatever.

In part this is a legacy of government by lawyers, who do dearly love to make rules. We need to counter this with the thinking of economists, who first taught us to conceive of whole systems and the interrelations of elements within the system. I think we can even go beyond this to what I have been talking about as policy-oriented government.

I expect we had better try. A muckraking movement is abroad which asserts that the regulatory commissions have failed because they are corrupt. We have enough of this kind of paranoia already. As best I can tell they are not corrupt, simply inadequately conceived. (I can imagine how the former directors of Penn-Central might respond

to the assertion that the railroad industry runs the ICC. The simple fact is that the staff and the legacy of past decisions run the ICC.)

Efforts have been made to do this, without much success. But the last such effort was by Dean Landis for the incoming Kennedy administration, and it was not really a big push. I think with your passion for information and order, we might just get somewhere. Remember, though, be lawyerlike without being litigation minded.

(2) Redirecting the Highway Trust Fund.

This is a must. The basic fact is that the Interstate System is about to be finished, but the money keeps rolling in. Unless it can be redirected it will simply go on financing more Interstate System.

The Department of Transportation can't do this itself. We need to be a government-wide effort, which for one thing will face up to the enormous impact highways have on the entire social system. No need to discuss the sins of the past. The question is what will we do next?

What we should do next, of course, is to use the Trust Fund to finance a national transportation policy, directed to establishing a "balanced" system. Most Federal interventions in transportation over the past century have had the effect of biasing the system toward one mode of transportation or another.

(3) A National Growth Policy.

The President is committed to this, but there is as yet no formal effort underway to reduce the general concept to specifics. This can and should be done, and of all the things you might come up with, none is more appropriate to the Council.

The discussion of regional commissions is, of course, the beginning of a discussion of national growth policy, but should, if you agree with me, be made explicitly so.

I would, for example, give close attention to the possibility of centralizing all planning grants now given out by the Federal government, and also of establishing some general overview of the "comprehensive state plans" for this which were mandated in every second statute enacted in the 1960's.

Most especially, I would like to see the administration seize the initiative in interpreting the 1970 Census returns. These are already upon us. Brown expects some pretty major information by December or so. We should be the ones to say what it all adds up to.

(John Price is, I suspect, eager to take this one on.)

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A year ago you indicated you did not think we should take up the question of no-fault automobile insurance, and the general clogging of the courts. I think you are wrong there, but assume you have not changed your mind. Frankly, and personally, I cannot understand why anyone thinks any of the legislation we have put forward on the subject of crime will have any effect. Believe me, it won't. The one course open to government is to see that the court system is such that persons charged with a crime are immediately tried, swiftly convicted or released, and if convicted sent to prisons where some effort is made to see that they do not become more criminogenic as a result of the prison experience. I know of nothing that could happen to a man in prison that would improve him, but we might be able to prevent the experience from making him worse. In the meantime, elemental psychology tells you that if you want to deter behavior you punish it inexorably and immediately. One is tempted to amusement that a big smart society can't seem to figure that out. Also to a certain amount of despair.

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