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Subgroup/Office of Origin: Domestic Policy Council

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Subseries:

OA/ID Number: 12974

FolderID:

Folder Title:

Disability - ADA [Americans with Disabilities Act] - Transportation

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facsimile transmittal

To: Cynthia Dailard **Fax:** 456-7431
From: John Day **Date:** 09/18/98
Re: Proposed Rollout for OTRB **Pages:** 11 (+ cover)
ADA Rule

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The following pages contain materials relating to the proposed White House rollout event for the Department of Transportation's ADA Final Rule for "over-the-road-buses." Included are the scheduling proposal submitted by the DOT Public Affairs office; an internal DOT memo recommending a White House announcement to the Secretary's Chief of Staff; and letters in support of this rule from Justin Dart, Jr., disability community leader and Presidential Medal of Freedom recipient; Senators Kennedy and Harkin and Representatives Hoyer and Owens, co-authors of the ADA; and Marca Bristo, Chairperson of the National Council on Disability.

We would also like to suggest Chief of Staff Erskine Bowles as a possible participant, in the event that the President or Vice President are not available.

If you have any questions or need additional information, please contact me at 202/366-1671, or Matt Welbes at 202/366-1668.

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SCHEDULING PROPOSAL TODAY'S DATE 9/16/98

☐ **ACCEPT** ☐ **REGRET** ☐ **PENDING**

SCHEDULING OFFICE USE ONLY

TO: Stephanie Streett, Director of Presidential Scheduling

FROM: Thurgood Marshall, Jr., Secretary to the Cabinet

REQUEST: Presidential announcement of a new federal requirement that "over-the-road buses" (OTRBs) comply with the Americans with Disabilities Act.(ADA).

PURPOSE: Announcement/rollout of the Department of Transportation's final ADA rule on the accessibility of over-the-road buses (OTRBs)

BACKGROUND: This rule applies ADA requirements to the last major part of the nation's passenger transportation system that remains inaccessible. The rule requires nondiscriminatory bus service and the use of accessible buses. It also avoids unreasonable burdens on small business.

OTRB companies include nationwide intercity bus lines (e.g., Greyhound), local and regional carriers, and charter/tour bus companies. They do not include municipal transit bus authorities.

The main points of the rule are the following:

- New OTRBs used for fixed-route service must be accessible (i.e., have wheelchair lifts and securement locations).
- Large fixed-route carriers (like Greyhound) must make sure that half their buses are accessible by 2006 and all are accessible by 2012.
- Fixed-route carriers must provide interim service in accessible buses on 48 hours' advance notice until their fleets are fully accessible.
- Charter/tour companies must provide 48-hour advance notice service in accessible buses.
- Bus companies that fail to provide timely advance notice service in accessible buses must compensate the passengers who requested it.
- A number of provisions of the rule limit burdens on small business. For example, small fixed-route companies do not have a

deadline to make their fleets accessible. Small companies that operate mostly charter/tour service with a small amount of fixed-route service can meet all requirements through 48-hour advance notice service.

- The estimated annual cost of compliance with the rule is \$22-30 million gross, with an estimated net cost (after subtracting revenue from new passengers who can use accessible buses) of \$15-26 million. TEA-21 authorized financial assistance that can help defray some of these costs.

The rule is controversial: the bus industry (especially Greyhound) and its unions, as well some members of Congress, have opposed providing accessible bus service, primarily on cost grounds.

The issuance of this rule is an opportunity to emphasize the Administration's commitment to civil rights for all Americans and our desire to uphold important principles on a complex and contested issue.

NOTE: This rule is subject to a Federal court order to expedite publication. The earliest possible date for an event is therefore needed.

PREVIOUS PARTICIPATION: The White House has not previously participated publicly in this rulemaking, but has strongly supported the ADA and disability-related initiatives.

DATE AND TIME: September 22, 23, 24, or 25

BRIEFING TIME: 1/2 hour

LOCATTION: The White House Roosevelt Room or another location readily accessible to individuals with disabilities

PARTICIPANTS: The President or Vice-President, Mrs. Clinton or Mrs. Gore Secretary of Transportation Slater, and a representative of the disability community.

OUTLINE OF EVENT: Secretary Slater: brief welcome, acknowledgement, and introductory remarks of disability community representative

Disability community representative: remarks and introduction of the President (or representative)

The President (or representative): remarks

REMARKS REQUIRED: For the President or Vice-President and Secretary
Of Transportation

MEDIA COVERAGE: Expect substantial national coverage from major
newspapers and television and radio networks.

RECOMMENDED BY: Secretary of Transportation

CONTACT: Steven Akey, Director of Public Affairs, or Bill Schulz, Deputy
Director of Public Affairs (202) 366-4570



Memorandum

U.S. Department
of Transportation
**Federal Transit
Administration**

Subject: Accessible Over-the-Road-Bus
Announcement at the White House

Date:

To: Jerry Malone
Chief of Staff

Reply to
Attn. of:

From: Michael A. Winter
Associate Administrator
For Budget and Policy

DATE: September 17 or 18 (tentative)
TIME: TBD
DURATION: 45 minutes
LOCATION: White House

PURPOSE: Announcement of Final Over-the-Road-Bus Accessibility Rule.

BACKGROUND:

The Department of Transportation is scheduled to release the final rule on making over-the-road-buses (OTRBs) accessible in September. The Secretary has made a public commitment to release the rule by September 15 and it is anticipated that the final rule will be released close to the scheduled date. The final rule will be notable as it is one of the last major Americans with Disabilities Act (ADA) provisions to be implemented and its issuance will be an ADA success for the Clinton Administration. Since the ADA's passage in 1990, significant work has been done to bring the OTRB rulemaking to closure and this event will commemorate the achievement.

The OTRB rulemaking was distinct from most other ADA transportation provisions. In most cases, the ADA requires new vehicles purchased or leased by private entities primarily in the business of transporting people for use in fixed-route service to be accessible. If a private entity purchases or leases the new vehicle for use in demand responsive service, the vehicles must be accessible or the entity must provide equivalent service. For OTRB's, however, the ADA required that the Congress' Office of Technology Assessment (OTA) would first study how to achieve accessibility prior to the Department's issuance of the final rule.

DOT was to issue interim rules that did not require lifts or other specific equipment to provide access (we did so as part of the Department's 1991 ADA rule). Then, a year following the OTA study, we were to issue final rules. These final rules were to define the accessibility obligations of OTRB carriers. OTA completed its study in May 1993. The Department issued an advance notice of proposed rulemaking and held a public meeting in October 1993. Following the Secretary's commitment to expedite work on the project, the Department issued a notice of proposed rulemaking in March 1998. The final rule is the culmination of this process.

In support of the Department's rulemaking, the Transportation Equity Act for the 21st century (TEA-21) establishes the Rural Transportation Accessibility Incentive Program (Sec. 3038). The program provides OTRB operators with funds for capital and training costs associated with making OTRBs accessible. Throughout the rulemaking process, the OTRB industry has claimed that accessibility could be achieved through other measures without equipping buses with lifts. The establishment of the incentive program will offset some of the costs the industry has identified and expedite implementation of the rule. The TEA-21 program authorizes \$24.3 million in funding for this provision between FY 1999 and FY 2003.

ISSUES:

The rule's release will be a major advance in implementation of the ADA. The history of this effort during the past eight years has been highlighted by bus industry positions distinctly different from the findings of the Congress' OTA report, the Department's NPRM, and the final rule. With the establishment of the Rural Transportation Accessibility Incentive Program and the pending issuance of the final rule, this event will be an opportunity to confirm the role that all attendees will have in implementing the rule.

COPY

JUSTIN DART, JR.
907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202-488-7684

Rodney E. Slater
Secretary
Department of Transportation
400 7th Street, SW, Suite 4281
Washington, DC 20590

August 29, 1998

Dear Secretary Slater:

I personally appreciate your support for people with disabilities.

Now we need your continuing leadership on the Over the Road Bus (OTRB) issue. We are counting on you to ensure the final Americans with Disabilities Act OTRB regulations will not be weakened. Any waiver will be taken as a license to ignoring serving people with disabilities. We have only to look at the industry's track record over the past six years to find proof of this.

You know the vital importance of transportation, including intercity bus transportation, for all Americans, for lower-income Americans, for rural Americans.

- 15 million, 23 percent of all rural Americans, are people with disabilities.
- Six in ten adults with disabilities rank among the lowest-incomes in this nation.
- 20% of African Americans have a disability, 12% have severe disabilities.
- 10% of Asian Americans have a disability, 5% severe disabilities.
- 15% of Hispanic Americans has a disability, eight percent severe disabilities.

What about their ability - their right - to ride?

Don't let the industry pit one ridership group versus another.

Since 1991 these companies have been required to serve people with disabilities on their buses. DOT gave them great flexibility in how they could achieve this goal, yet in all this time they have done almost nothing to try and find or execute alternate solutions to lift equipping their buses. The "service" they offer is a crime. If this is what the industry can come up with on their terms, what does this say about their judgement, their capabilities, their commitment?

Justice for All means Real Power for All,

... All Real Access to the Dream for All

And what exactly is this industry asking of their drivers and other hands-on personnel who must carry people up and down those narrow steps? Who must load 300 lb power wheelchairs? They also pay if no lifts are required.

The cost concerns raised recently are the same tired arguments I have heard for over a decade. The transit industry has spent years blaming most if not all potential problems on having to provide lifts. It is really their own mismanagement which is to blame. Many of the evil results they threatened if they were required to lift equip their buses in the 1980s came to pass without their having to install one lift. You have heard it before, this is the same song coming from different voices.

Your own department found that the costs associated with the regulations as proposed in March would only raise the price of an average \$33 ticket be about 38 cents. This is the time to stand firm against the fear mongering of the OTRB industry.

You have already made concessions to address this issue. Thanks to your leadership, this year Congress allocated funds to offset some of the costs of lift-equipping over the Road Buses. No other business has received federal financing for complying with the ADA.

The disability community has fought for the right to ride for over a decade, has gone to jail, has risked personal injury over this issue. We are counting on you.

Thanks again for your contributions to our rights.

Please let us know if there is any way we can support you.

Love,

A large, stylized handwritten signature in black ink, appearing to read 'Justin Dart'.

Justin Dart

Congress of the United States
Washington, DC 20510

September 10, 1998

Secretary Rodney E. Slater
U.S. Department of Transportation
400 7th Street, S.W.
Room 10205
Washington, D.C. 20590

Dear Secretary Slater:

As co-authors of the Americans with Disabilities Act, we were very pleased with the Department of Transportation's ("DOT") March 25, 1998 Notice of Proposed Rulemaking ("NPRM") concerning the accessibility of over-the-road buses ("OTRBs"). The NPRM reflects your deep commitment to finishing the work of implementing the ADA.

It has come to our attention that DOT remains under pressure to compromise on full accessibility for fixed-route OTRBs in the final rules. Such a compromise would run counter to the requirements of the ADA, and we strongly urge you to resist that pressure.

In 1990, Congress excluded OTRBs from certain of the ADA's nondiscrimination requirements, pending a study by the Office of Technology Assessment ("OTA"). Congress expected DOT to carefully consider OTA's recommendations in issuing OTRB regulations, and we are happy DOT concurred with those recommendations in issuing the NPRM.

We applaud your recognition in the NPRM that full accessibility "is consistent with the requirements for all other modes of transportation under the ADA." As you stated in the NPRM, "all new fixed-route transit buses; all new rapid, commuter, and intercity rail cars; and all new full-size fixed-route private buses other than OTRBs are already required to be accessible." We agree there should be no exception to this requirement for new fixed-route OTRBs. Experience has demonstrated that providing equal opportunity to Americans with disabilities is financially achievable, and of course, is the right thing to do.

Moreover, the proposed rules include a number of provisions that fairly address the OTRB industry's concerns. The rules apply only to *new* buses and do not require retrofitting. This is consistent with the ADA's general mandate that ~~although facilities may be inaccessible when it comes to the accessibility of existing facilities and vehicles, new facilities and~~ vehicles must be fully accessible. Also, the proposed rules would not take effect for a large company until the year 2000 and for a small company until 2001, and the rules would not require a large company's entire fleet to be accessible until 2012.

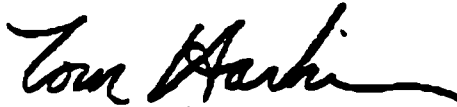
Both the OTA study and the NPRM recognized that for fixed-route OTRBs, neither an option involving boarding chairs nor one that combined a pool of buses and an advance reservation requirement for people with disabilities could be reconciled with the ADA's nondiscrimination mandate. The NPRM set forth this principle succinctly, and correctly, stating that to properly implement the ADA, "it is necessary . . . to ensure that passengers who use wheelchairs can ride, board, and disembark from OTRBs while using their own wheelchairs."

The NPRM also found that the proposed rules would not impose an undue financial burden on the OTRB industry. DOT calculated that the cost of accessibility for fixed-route OTRBs, spread over all passengers, would be \$0.35 per ticket. This hardly can be called a significant impact. In addition, the OTA study concluded that the effect of implementing its recommendations on both ridership and rural service would be marginal.

Finally, during debate of this year's Transportation Equity Act for the 21st Century, the OTRB industry sought relief from the NPRM from Congress. Congress responded by mandating that DOT make specified funding available to OTRB operators to help them implement the final rules. That funding, not a change in the NPRM, is the appropriate answer to the OTRB industry's concerns.

We appreciate your hard work on this matter, and hope the final regulations closely resemble the NPRM.

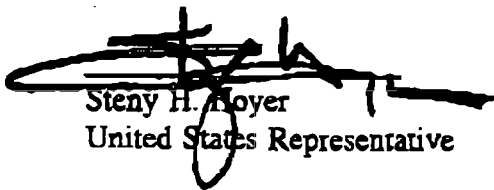
Sincerely,



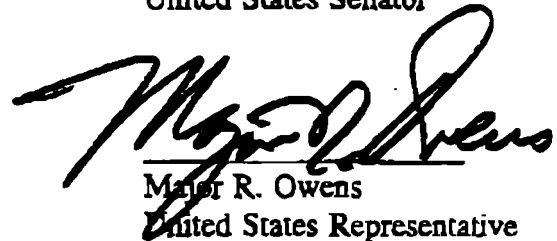
Tom Harkin
United States Senator



Edward M. Kennedy
United States Senator



Steny H. Hoyer
United States Representative



Major R. Owens
United States Representative



NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

August 28, 1998

The Honorable Rodney E. Slater
Secretary of Transportation
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Slater:

As the planned release date for the Department's new regulation on over-the-road buses (OTRB) approaches, lobbying against provisions requiring full fleet accessibility must be intensifying significantly. Transportation industry representatives are working to convince legislators and advocacy organizations serving minority groups and low income populations, especially in rural areas, that this requirement can only be met through reductions in service to rural communities and increased prices. As a result, these groups are being persuaded to support advance notice systems, pooling of accessible buses, and other partial measures as the only solutions that will not negatively impact them.

The OTRB industry is also strongly promoting a modification to the new regulation permitting transit operators to obtain a waiver to the requirement that all new buses be accessible. NCD strongly opposes any modification that provides avenues for avoiding the overall goal of full fleet accessibility within the time frames established by the regulation.

We believe the OTRB industry is pushing for solutions they believe will offset their immediate fiscal concerns without adequately considering important countervailing factors. In doing so, they are misinforming the public, setting groups against one another, and failing to show leadership in the search for solutions that are acceptable to all affected parties.

Industry advocates promote the notion that their bottom lines will be devastated and small service providers put out of business by citing a recent study that estimated the demand for accessible trips at only 13,600 annually. A separate study conducted by the Office of Technology Assessment (OTA) estimates 180,000 trips would be generated annually by people using wheelchairs in an accessible OTRB system, and another 200,000 trips by people using other mobility aids. How should the difference in these estimates be accounted for? Even if OTA's estimate is off by 50%, the number of trips generated annually by an accessible system would strengthen, not devastate the industry's profitability. A piece of the picture is missing.

Other solutions zealously promoted by industry advocates are pooling and advance notice systems. The pooling process requires inefficient practices such as running empty buses to pick-up locations, increasing labor and operating costs. Advance notice systems curtail peoples'

Rodney E. Slater
Page 2

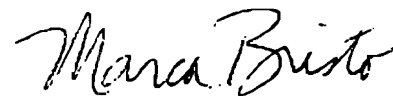
ability to travel on short notice when necessary, and drive up administrative costs. As demand increases, particularly for trips involving multiple transfers, problems coordinating the schedules of accessible equipment and stranding passengers will escalate.

These considerations alone call for a reassessment of how the industry can better address the economic impacts of full fleet accessibility. Neither reducing service and increasing prices nor denying people with disabilities full and equal access are viable solutions. The responsibility of the industry and the Department of Transportation is to promote the development of non-discriminatory, as well as economically feasible solutions.

One avenue for finding solutions may be through the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), particularly under Section 18(i). This new section is aimed in part at revitalizing links between small, isolated communities and the rest of the nation. Its provisions for assistance to intercity bus transportation offer new possibilities for state, local and private transportation providers to collaborate in meeting the intercity transportation needs of non-urbanized communities. We urge the Department to encourage collaboration and creative solutions in keeping with its strategic goal of mobility for all Americans : to "ensur[e] a transportation system that is accessible, integrated and efficient, and offers flexibility of choices."

On behalf of the National Council, I extend to you our sincerest thanks for your demonstrated leadership at the Department on transportation issues impacting the civil rights of persons with disabilities.

Best regards,



Marca Bristo
Chairperson

cc: Nancy McFadden, General Counsel
Robert Ashby, Deputy Assistant General Counsel for Regulation and Enforcement

Jonathan Young - Transportation

9/16

DOT ^{-ADA-} disability reg - signed yesterday

- Greyhound won't be in compliance
- there are small cost exceptions for small companies

DOT wants WH event to unveil soon.

Slater very supportive.

NEC - Dorothy Robyn - Transportation

- where is she on an event?
- did she work on reg?

ADAPT - Oct 31 - NOV 3 - next axn

→ here

→ it would be good to have them at event

Sally Katzen - Dep. at NEC

very keen on idea of event

Greyhound Unveils Its Plan To Serve the Disabled Fully

By ALLEN R. MYERSON

DALLAS, Sept. 8 — Greyhound Lines will formally announce plans on Wednesday that the company says will make all 4,000 stops on its nationwide bus system accessible to wheelchair users by October of next year. But groups representing those users said today that Greyhound planned to equip too few buses with lifts to deliver on the company's promises.

Wheelchair users say they depend on Greyhound, the nation's only comprehensive bus service, because many lack the money to fly and because Greyhound serves thousands of towns that the airlines do not. Greyhound must also comply with the Americans with Disabilities Act and with rules the Government is only now issuing.

Greyhound is pledging that with 48 hours notice it and its connecting partners will send buses with lifts to take wheelchair passengers to any station, three years before tentative Government regulations would require this measure.

"This proposal meets the spirit and letter of the Americans with Disabilities Act and enables us to provide appropriate, affordable transportation for all Americans," Craig Lentzsch, Greyhound's chief executive, said in an interview.

The plan involves 80 buses, or about 4 percent of Greyhound's current fleet of 2,100. But Marilyn Golden, the policy analyst for the

Disability Rights Education and Defense Fund, said that for Greyhound's plan to work, at least 15 percent of its fleet, or more than 300 buses, would require lifts.

From the number of calls to its line for the disabled, Greyhound estimates that 600 to 1,200 riders a month would benefit from the lifts, but advocates for the disabled say many more would use the service.

Wheelchair users can already arrange with two days' notice to be lifted onto buses, usually by hand, but the handicapped and the bus line agree that these options are unsatisfactory.

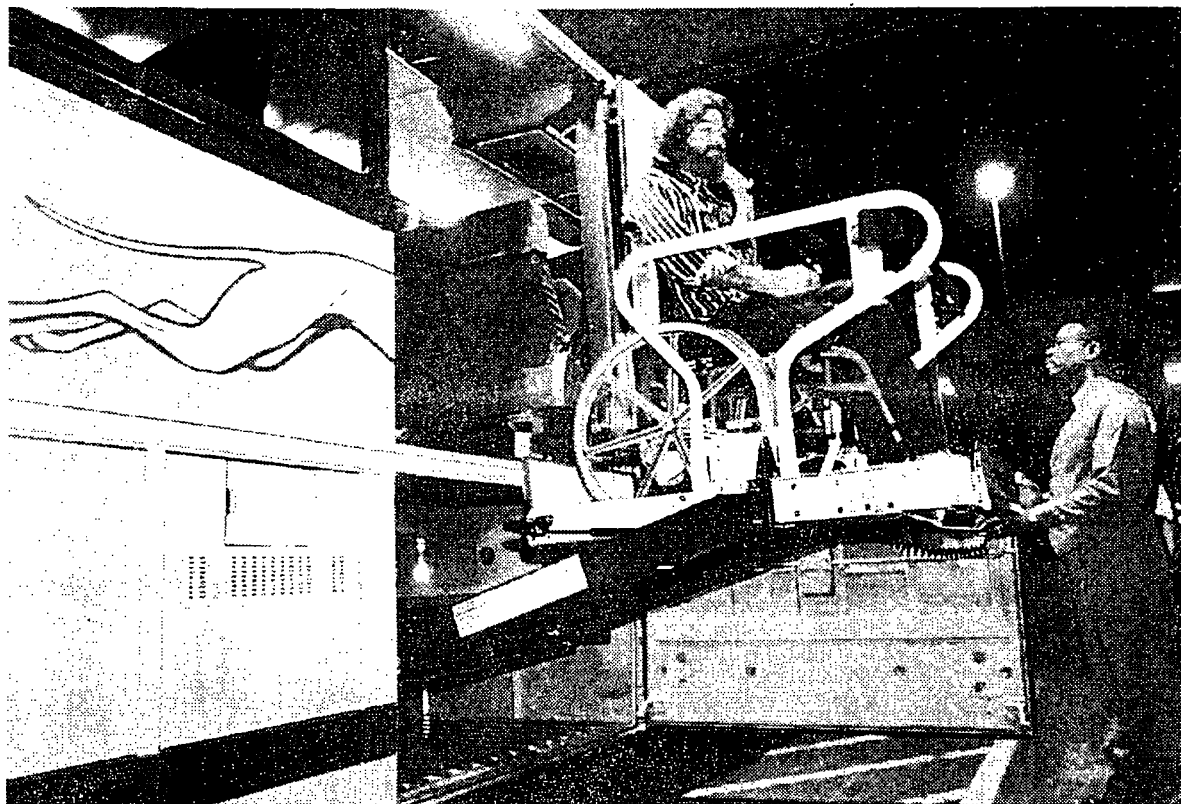
One organization reported that wheelchair users were frequently dropped, denied service or refused help in such tasks as going to the bathrooms at rest stops, though Greyhound calls these stories exaggerated or false.

Greyhound, which is based in Dallas, now has about 20 buses with lifts.

"It's fair to say we're not particularly wheelchair friendly right now," Mr. Lentzsch said.

Groups representing the disabled have made Greyhound a target, saying it has been tardy and lax in complying with the Disabilities Act. "Greyhound has resisted the letter and spirit of the act since long before it was passed," Ms. Golden said.

In August last year, demonstrators blocked Greyhound buses and



Mark Graham for The New York Times

A Greyhound driver, Ralph Jackson Jr., right, used a lift yesterday for Thomas Thompson in Dallas. A company plan to make all of its stops accessible to wheelchair users drew skepticism from some advocates.

disrupted ticket sales at several major bus stations, including the Port Authority terminal in Manhattan. "At least Rosa Parks could get on the bus," demonstrators sang, referring to civil rights figure from Montgomery, Ala.

Under the Transportation Department's proposed rules to enforce the Disabilities Act, Grey-

hound and other major bus lines would have to equip half their fleets with lifts by 2006, and their entire fleets by 2012.

Greyhound has said that too few wheelchair users ride its buses to justify the \$30,000 expense of adding each lift.

Groups representing the disabled blame the Department of Transpor-

tation for delaying rules that would have required bus companies to comply with the 1990 act sooner. The department is now under a court order to issue its rules this month, Greyhound says. Michael Winter, the Federal Transit Administration's policy chief, refused to comment on whether Greyhound's plans would comply with its rules.

Guilty Plea Is Made In Killing at Casino

LAS VEGAS, Nev., Sept. 8 (AP) — A 19-year-old California man pleaded guilty here today to murder in the killing of a 7-year-old girl in a casino restroom last year.

The man, Jeremy Strohmeyer, avoided the death penalty by agreeing to spend the rest of his life in prison. He admitted to kidnapping, molesting and strangling the girl, Sherrice Iverson, on May 27, 1997, in the Primadonna Casino in Primm, near the California border 40 miles south-southwest of here.

Mr. Strohmeyer could have faced the death penalty if convicted, although during jury selection, several jurors said they would be reluctant to impose it. Opening statements in his trial were to have begun this morning.

Mr. Strohmeyer answered, "Yes, your honor," to a series of questions asked by Judge Myron Leavitt of Clark County Superior Court, describing the crime step-by-step. Mr. Strohmeyer pleaded guilty to murder and sexual assault counts.

The judge asked several times whether Mr. Strohmeyer understood the consequences of his plea, that he would never be released from prison. Mr. Strohmeyer said he did. He said he had discussed his decision with his parents and lawyers and decided to change his plea of not guilty. Sentencing is scheduled for Oct. 14.

The case drew widespread attention by focusing on the safety of children in casinos and on the fact that David Cash Jr., Mr. Strohmeyer's friend from high school, said he had seen the crime in progress but did nothing to stop it.