At this point in time, the two discontinuance cases were proceeding in the same manner as hundreds of others before them. However, on the morning of October 20, 1967, I received a telephone call from the National Legislative Representative of the Brotherhood of Railroad Trainmen, Mr. Al H. Chesser, who informed me that trains 3 and 4 and trains 7 and 8 had been discontinued. He stated that train 3 on its way from Kansas City to Gallup had been discontinued in Amarillo, Texas, on October 19, at approximately 7:35 P.M. CST; that train 4 had also been discontinued on October 19; that train 8, scheduled to leave Los Angeles at 12:30 A.M. on October 20, was cancelled and the crew who reported for duty on the evening of October 19 was informed they would not be taking out train No. 8; and, train No. 7 was discontinued in the early morning of October 20.

I was quite surprised at this information since, to my knowledge, it was the first time in the nine-year history of Section 13a that a railroad had discontinued a train prior to the expiration of the 30-day notice required under Section 13a(1). I immediately telephoned the Interstate Commerce Commission and discovered that on October 18, 1967, Mr. E. S. Marsh, Chairman of the Board and Chief Executive Officer of the Santa Fe, had sent telegrams to each member of the Interstate Commerce Commission and to the Secretary of the Commission but had not furnished copies of those telegrams to Mr. Beattie or to anyone else. The telegram concerning trains 7 and 8 stated that the Santa Fe was losing $10,000 per day operating these trains and characterized that loss as "an outright waste in cost of transportation". Mr. Marsh went on to state that there was no justification for continuing the operation of the trains to November 9 (he undoubtedly meant November 10, the posted discontinuance date) and stated that while he recognized the existence of "a technical question" as to his obligation to continue the operation of the trains until the posted discontinuance date "we propose to [annul trains 7 and 8 for the remainder of this period] unless we are required by insistence of regulatory authority to continue * * * for no other reason than technical compliance with procedural provisions". He closed his telegram by saying "we would appreciate the benefit of Commission direction in this regard as to whether *you will insist* on this operation pending consideration of application on which we urge prompt handling". In short, Mr. Marsh was informing the Commission that he was fully aware of the requirements of the law but that he was going to violate those requirements unless the Commission, in response to his telegram, insisted he obey them. A copy of the telegram regarding trains 7 and 8 is attached as Exhibit 3. The telegram regarding trains 3 and 4 was identical.

As I noted above, the Association was not furnished with copies of these telegrams, therefore, we had no opportunity to reply to them. Had we been afforded such an opportunity we could have pointed out that according to Mr. Marsh's own allegations in his Statement filed with the Commission on trains 7 and 8 in Finance Docket No. 24774, his losses on those trains were not $10,000 per day—even conceding that the Santa Fe lost all of the revenue from the mail, which they did not—but were only $5,475 per day or about half the loss claimed in his telegram. Exhibit K to the Santa Fe Statement in Finance Docket No. 24774 indicates that the operation of the passenger trains 7 and 8, without allowing credit for any mail revenue, would cause an out-of-pocket annual deficit of $2,098,565 annually. If we divide 365 into that figure, we find his daily loss to be $5,475. Indeed, even if we add to the loss of trains 7 and 8, the alleged loss on trains 3 and 4 we could only add another $2,518 daily loss, or a total loss of $7,993 for the four trains. Exhibit K to the Santa Fe Statement in Finance Docket No. 24772 shows a loss of $919,230. The combined loss of the two trains then, falls far short of what Mr. Marsh informed the Commission was the loss on trains 7 and 8 alone. But because we did not know of the existence of this telegram, we were in no position to reply to it.

There is, however, a much more important point to which we would have replied had we had the opportunity. That point involves Mr. Marsh's characterization of his obedience to statutory requirements as "technical compliance with procedural provisions" and his patent intention to violate those statutory requirements unless the Interstate Commerce Commission insisted that he obey them.

As I mentioned a moment ago, this telegram is dated October 18, 1967. On the afternoon of October 19, 1967, the Commission took the unique and unusual action of issuing a press release to the effect that on the following day it was going to issue a notice in these two cases indicating that it would do nothing in either of them. And, the following day, October 20, 1967, it issued notices that in each of these cases it had "concluded not to enter upon an investigation of the proposed discontinuance". But the Santa Fe had not waited for that notice to be