KEYNOTE ADDRESS TO ICC CENTENNIAL CELEBRATION, April 3, 1987

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MR. MILLER: My appearing here today reminds me of the fellow who gave a particularly well-received speech and was paid many compliments afterwards. One well-wisher, an elderly lady who was prone to excitement, declared, "That was the most *superfluous* speech I ever heard!"

The speaker, being brought up to mind his manners, replied, "Why thank you, Ma'am. Maybe I should have it published *posthumously*."

To which she said, "Oh, by all means! In fact, the sooner the better!"

I tell this story, because I hope what I have to say on this occasion will be *significant* rather than *superfluous*. I am, as many of you know, a rather odd choice to be keynote speaker at the ICC's centennial birthday bash. If I am not the Grinch who stole Christmas, I am at least the Grouch — the curmudgeonly economics professor — who would have preferred that the ICC had long since gone to that Great Administrative Hearing in the Sky.

It was therefore very gracious of you to invite me, and I would like to be a good guest. I hope I can deliver my message today without dampening the festivities.

The Interstate Commerce Commission is, of course, the federal government's oldest independent regulatory agency. Established in 1887, it became the prototype for the agencies that followed. And, in many ways, its story is the most romantic of them all.

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The ICC is one of the earliest instances we can point to where the federal government intervened directly in the economy to protect the economically weak from the economically strong. As most history books tell the tale, the ICC was created to save America's farmers from discriminatory and oppressive rate structures imposed on them by the great railroad monopolies. It is a dramatic episode that inspired writers of fiction as well as historians.

Some of you may have heard of Frank Norris' classic muckraking novel, *The Octopus*, in which Norris championed the California wheat-growers against the mighty Southern Pacific Railroad. In an unforgettable scene from that novel, a farmer who is being overcharged outrageously for shipment of some new plows turns to a railroad executive and storms:

> What next? My God, why don't you break into our houses at night? Why don't you steal the watch out of my pocket, steal the horses out of harness, hold us up with a shotgun? Yes, stand and deliver, your money or your life.

Such were the authentic passions that gave birth to the ICC. And it was not just the farmers who were complaining. Shippers, small merchants, passengers, and others all had their respective grievances. So Congress was moved to act.

The only trouble with this version of the story is that it posits an enlightened and liberal government stepping in to curb the depredations of greedy and unprincipled monopolists. It suggests that the free market, which ought to have prevented — or at least moderated — these abuses through vigorous competition had somehow failed in its duty.

But this is not what, in fact, happened.

Yes, there were railroad monopolies in those days — more on that in just a minute — and yes, they were guilty of forcing discriminatory and often unfairly high rate structures on many segments of the public. But these monopolies were created by more *government action* rather than *market inaction*. Moreover, the strongest demands for government intervention came from the railroads themselves — who sought protection from the forces of competition.

In the second half of the Nineteenth Century, it was widely recognized that extending railroad lines would tie the country together and generally increase prosperity. So government at all levels — local, state, and national — offered incentives and lavish subsidies to the railroads to expand. Loans, guarantees, bond issues, and land grants to railroads were common. The cost advantage over possible competitors, plus the obvious economies of scale characterizing the technology, made these commercial enterprises formidable indeed.

What followed was predictable. Railroad companies engaged in discriminatory pricing — they overcharged wherever they could exert mo-

nopoly power. There ensued a public outcry against these abuses. In areas where railroads competed, price wars were common, despite the best efforts of railroad owners to cartelize the industry and bring such practices to an end. Aware that it would become more and more difficult to suppress competitive forces in the future, and faced with incipient regulatory activity at the state level, the railroad magnates finally cast their lot with the notion of a benevolent Washington regulator which would grant shippers some "rights," but would also preempt the "excesses" of state regulators, and bring some sense of "order" out of "competitive chaos."

And that's how railroad monopolies emerged — as the unintended consequence of government's good intentions. But this was not the end of the story, because economic regulation by government invariably produces economic consequences of its own. In other words, a government regulator does not always behave as its initial supporters envisioned.

Most Americans take it for granted that if there is too little competition in a given sector of our economy, the government must step in to protect consumers from price-gouging and other monopolistic evils. Until fairly recently, however, few Americans considered the other side of this particular coin; namely, that if competition *increases* in a regulated sphere of the economy, government ought to withdraw and let consumers enjoy the lower prices and better services that are the hallmarks of the free market. In other words, we should *deregulate*.

The problem is that regulation, once established, is very difficult to curtail or eliminate. A regulatory agency becomes a fact of life for the industries it supervises. Many industries grow comfortable within a regulated environment, and, after a while, even if they opposed it initially, they come to prefer it to the risks, uncertainties, and demands of genuine competition. Worse yet, they become adept at using the rules and procedures of the regulatory agency to forestall potential competitors.

This well-known phenomenon was wonderfully described several years ago by the late Senator James B. Allen of Alabama:

> Truckers, major airlines, drug companies, and other highly regulated lines of industries, though they may be lithe and snarling when captured, appear to grow fat and sluggish in their federal cages.
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> It is easy to forget the competitive jungle where you belong if you are forced to learn to jump through hoops, let your trainer stick his head in your mouth, and submit to similar experiences.
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> But you can take comfort in the realization that cages also can be used to prevent your natural enemies from coming in. And if, as you grow old with the man holding the whip, you find that he considers your relationship with him his most valuable asset, it can get downright cosy.

So it was with the railroads and the ICC, despite all good intentions to the contrary. The Interstate Commerce Act of 1887 was amended three

times in the ensuing 25 years, giving the ICC greater powers — including authority to fix railroad rates. The regulatory legislation, the Transportation Act of 1920, was expressly intended to increase the profitability of the railroads, as it instructed the ICC to assure that the railroads earned a "fair" return on their investment. The Act of 1920 also gave the ICC control over exit and abandonment; in essence, it gave the ICC the power to force the railroads to cross-subsidize money—losing rail services with revenues from those lines that made money.

Railroads pushed for regulation not only of their own industry but also of the trucking industry — which emerged as a serious rival during the 1920s — and inland water carriers to protect themselves from rate competition during the Great Depression. Congress enacted the Motor Carrier Act in 1935 and brought inland water carriers under the federal umbrella in 1940.

Regulation of the motor and water carrier industries reflected not just pressure from the railroads, but the precarious state of the national economy. Regulation increasingly was accepted as the best way of coping with the economic dislocations caused by the Depression. The ghost of the New Deal was to haunt transportation until late in the last decade.

Gradually, however, the shortcomings of this regulatory approach became obvious to all. Regulation constricts economic growth when price controls do not allow an industry to price its goods or services to reflect costs. Route, entry, and exit controls do not allow an industry to develop new or lower-cost service configurations in response to consumer demand. The result is an industry that is slow to introduce new service or to improve existing service.

Let's return to the railroads. Until the late 1970s, the government regulated virtually all railroad activity: entry, exit, services, safety, mergers, abandonments, and issuance of securities. And what happened to the industry between the New Deal and the end of the last decade? Railroads' share of freight traffic fell from 80 percent in 1925 to 35.8 percent in 1979. Class I railroads earned an average of 1.8 percent on equity in 1976 — less than they earned during the Depression. The loss of earnings made it impossible to maintain quality of service, which in turn made it harder for railroads to keep existing customers and attract new ones. Eight railroad bankruptcies, affecting almost a quarter of the railroad system, occurred between 1967 and 1973.

Meanwhile, regulation was hurting the motor carriers as well. Archaic rules forced truckers to take circuitous routes, needlessly restricted the types of freight they could haul, and often barred them from taking on new cargoes at their points of destination — many had to return home empty. These costly and wasteful practices were reinforced by entry restrictions that barred potential competitors. Freight rates were maintained at artifi-

cially high levels, and a lot of gasoline was burned for no good purpose during a time of grave energy shortages.

Accordingly, along about the mid-1970s, another "reform" movement began — a movement aimed at *deregulation*, rather than regulation. In the 10 years between 1976 and 1986, there was a major reversal in transportation policy. The Railroad Revitalization and Regulatory Reform Act (1976), the amendments to the Federal Aviation Act deregulating air cargo (1977), the Airline Deregulation Act (1978), the Motor Carrier Reform Act (1980), the Staggers Rail Act (1980), the Household Goods Transportation Act (1980), and the Surface Freight Forwarder Deregulation Act (1986) all reduced or removed regulations and made more room for competition in transportation markets. This legislation was the result of bipartisan support and broad-based public coalitions, and it is eloquent evidence of how much prevailing opinions have changed in recent years.

This legislation is also eloquent evidence of how public-spirited *regulators* can bring about needed changes — even though such changes arguably were not in the *personal* interests of those involved. I have little doubt that deregulation would have won out in the end. It was an idea whose time had come. But think of the outstanding services in bringing about a Congressional commitment to deregulation, and in managing the deregulatory process, performed by Dan O'Neal, Darius Gaskins, Reese Taylor, and Heather Gradison — just at the ICC!

The Staggers Act freed a substantial portion of railroad traffic from maximum-rate regulation and allowed regulated rates to be adjusted more freely — down as well as up. The Motor Carrier Act increased rate flexibility, relaxed entry and routing restrictions, and opened up the trucking market to new entry: between 1980 and 1984 the number of regulated motor carriers increased 86 percent from 18,000 to 33,548. The savings to the United States economy from these regulatory reforms come to tens of billions of dollars annually.

Now I have no wish to be a party pooper, but it's time to ask the question: do we need the ICC any longer? Railroads and motor carriers have been deregulated to a very significant extent; do we need to spend $46 million a year so the ICC can administer the last vestiges of regulation? For example, the Commission grants between 97 and 99 percent of all permanent applications for trucking authority and processing these applications costs $4 million a year. Is this trip necessary? The Commission spends another $4 million a year processing 1.4 million trucking tariffs — fewer than 100 of which are ever challenged.

Do we still need the ICC? In reply, I quote from the testimony of former ICC Chairman Reese Taylor before the Senate Commerce Committee in 1983:

> We are engaged in an absolute sham of regulation for regulation's sake.

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It is nothing more than a monumental paper-shuffling operation, and the sooner it ends the better. There is no redeeming public benefit involved. It is absolute nonsense.

There is little left for me to say. The ICC has lived a long and eventful life. It has discharged its Congressional mandate faithfully for 100 years. It has done all the good it can; we can expect no more from it.

Perhaps history one day will describe the ICC as a century bracketed by two Reagans — Texas Congressman Reagan, who helped get the 1887 Act passed, and President Reagan who says we should now move on to a post-ICC era.

Let's not prolong the Commission's life by artificial means. Rather, let it die with dignity — and then we'll get together again for a fantastic wake!

Thank you very much.

MR. R. KAHN: Thank you very much, Jim.

We will move on to the first panel discussion. If Commissioner Minor and his panel will come up front, I will be pleased to introduce the person who will chair today's activities.

Chairing today's activities — and I probably should pause before introducing him to remind you that we do have an open house nextdoor, and coffee and Danish will be available most of the morning, tea and cookies will be available in the afternoon.

I should also remind you that largely through the effort of one of our panelists this morning, Bea Aitchison, we have cachets; we have a post office temporarily set up next door in the Interstate Commerce Commission Building, and you can have the stamp appropriately canceled with a first-day, cancellation of the stamp commemorating this anniversary.

I should also note that the activities today were appropriately recognized by the Mayor, and John, do you want to read the proclamation or shall I?

MR. CLEARY: I can do that if you wish.

MR. KAHN: You can read the proclamation. Be sure that you insist that he read to you the Mayor's proclamation, and with that I will cease and desist, at least for the time being. The best part is yet to come this evening.

The gentleman who will moderate the day's program is a former President of the Association of, then, the Interstate Commerce Commission Practitioners, someone who frequently over the years has given the Commission a hard time, a partner in the law firm of Donelan, Cleary, Wood & Maser and one of the incorporators of the ICC Centennial Planning Committee, a hard worker who helped to make possible today's activities, John M. Cleary.