

**PANEL: CONGRESS AND THE ICC —
THE '80s LEGISLATION**

JOHN J. FRYER; JANICE M. ROSENAK; JOHN M. KINNAIRD;
AND WILLIAM K. RIS, JR.
MODERATOR: A. DANIEL O'NEAL

MR. O'NEAL: Thank you, John.

We have, I think, an interesting group of people here to talk about the ICC and relationships with the Congress, and we are going to focus on 1980s legislation, but we think that it is appropriate and helpful in understanding what happened in that legislation to look back at a little bit of history without redoing what the panel on history did so well this morning.

I was just handed here a few minutes ago by Jack Fryer the latest legislation affecting the ICC. It is a joint resolution passed by both houses of Congress. I am not going to read the whole thing, but I will read the RESOLVED part to let you know that Congress still knows that there is an ICC, and it doesn't always say bad things about the ICC. It goes this way:

"RESOLVED by the Senate and House of Representatives, the United States of America, in Congress assembled, that April 3rd, 1987 is designated as Interstate Commerce Commission Day. The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities to recognize the 100th anniversary of the establishment of the Interstate Commerce Commission."

So that is the latest legislation in quite a bit of history of legislation in just the last few years.

The other panels that you have heard and one that you will hear later today discussing such issues as whether there should be an ICC, the legal functioning of the agency have concentrated on looking at the agency's history. We are taking a little different tack, although we want to spend a little time on history. We will spend less time on the organic

questions of why or whether there ought to be an agency and what it ought to do and concentrate more on the evolving interplay between this important regulatory agency and the Congress.

From my perspective, the foundation for what happened with legislation in the 1980s definitely came from action within the Interstate Commerce Commission.

I can remember very well my first introduction to the agency. I was up on the Hill with the Senate Commerce Committee and had just taken over as Staff Counsel to the Subcommittee on Surface Transportation. We had a brand new subcommittee Chairman, Vance Hartke, who was quite aggressive, and he wanted to make some marks, and one of the first things we decided to do was have an oversight hearing on the Interstate Commerce Commission, and as far as I know, it was the first one that had been held by the Senate at least — the House had done it, but the Senate had not done it for at least 25 or 30 years.

It was at that time that I began to realize just how important and valuable and how excellent the staff and other people and Commissioners at the ICC could often be. The person who instructed me at that time on the Interstate Commerce Commission helped a lot in helping me draft the tons of questions that we threw at the agency was Bob Calhoun.

I don't know if he ever told the Commissioners the role he played in drafting these questions, but we had a lot of questions. We had the entire membership of the Commission up before the Congress, before the Senate committee, and we went on with questions from the Chairman of the committee for several — well, at least two days.

It was quite an experience for everybody, and I remember one of the things that happened kind of a result of that was that it seemed to me maybe the next legislative session the ICC sent up something like 19 or 20 bills for the Congress to look at, and I went through these bills and thought after giving them some analysis that there was hardly anything in any of these bills that the Interstate Commerce Commission could not do itself, and I had the bad judgment of saying that to a reporter and it showed up in the press, and I was very embarrassed by the whole thing, and I had to personally apologize to George Stafford.

But we had a view, I think, on the Hill at that time that the agency could be doing a lot more than it was doing.

And then in the 1970s, and I would say one of the first important acts that got the Commission going was George Stafford appointing a blue ribbon committee. Ed Reedy was the Chairman. I saw Ed here this morning. I think Bob Burke was on the committee. They came back with a number of recommendations that were eventually adopted by the agency.

When I became Chairman, I appointed George Chandler the head of

a task force, and he came in with 39 recommendations, most of which were adopted by the agency.

Most of these changes, in other words, came from within. The good ideas, the best ideas really, for changing regulation, in my judgment at least, came from inside the agency, came from really dedicated and excellent people who worked in this agency.

As Jack Fryer can relate, if he will — I don't know if he wants to — we later had — and I guess Will can, too — when I was still here, we got the message from the Hill that we had gone too far and that the ICC, having gone 180 degrees from where it had been, Congress went 180 degrees and said you got to stop this, we are going to do it ourselves.

Everyone up here, at least the five of us involved in this panel, share a somewhat common background. We have all worked in a regulatory agency. We have all worked on Capitol Hill, either as a private individual or as staff members. We have all had a variety of governmental experience, in other words, and I think that brings kind of a unique perspective to the subject matter we are going to try to address today.

I am going to be a little old-fashioned maybe, and I am going to introduce the lady on the panel first. For most of you, I don't think I need to spend a lot of time introducing her, because I think most of you know Jan Rosenak.

She and John Kinnaird have moved to places in the world that are hard to pronounce and to spell, and I guess it is because in their retirement they don't want people finding them. I am not sure.

But Jan now lives in Tesuque, Tesuque, New Mexico, which is somewhere near Santa Fe. She characterizes herself as a transportation consultant, and she certainly has the credentials for that. When she left the government, she was Director of the Office of Legislation and Governmental Affairs. She had been Legislative Counsel since 1981.

Before that she was on Capitol Hill as Transportation Counsel for the Senate Commerce Committee during the critical years between September 1979 and September 1981 and during this period worked extensively on the Staggers Rail Act and Conrail legislation. So she was right at the heart of the activity up on Capitol Hill.

And then before that, she worked here at the Interstate Commerce Commission. She was the head of the Rates Division in the Office of Proceedings. She knew everything about rates. She was one of the best advocates within the agency.

She also had been an administrative law judge. She worked for Commissioner John Bush. She worked for Commissioner Howard Friese. She has extensive experience, as I say, and without any further on Jan,

although there is much more to say, I would like to introduce Jan Rosenak.