

THE ICC AND THE MOTOR CARRIER ACT OF 1980

JOHN M. KINNAIRD

MR. KINNAIRD; Thank you, Dan.

Thank you. It is really great to be back here in Washington, and it's nice to look out and see a few, shall we say, old friends out there in the audience.

I have a rather unique opportunity to follow Will Ris, and I agree with about 99 percent of what Will says, but, you know, like everything else in life, there are different interpretations. Frankly, for the past several years, with all due respect to the Interstate Commerce Commission and motor transportation, the last thing that's entered my mind has been this subject.

So, out of the clear blue sky, Fritz calls me and says, "Hey, John, would you come up to Washington and talk about the Motor Carrier Act of 1980?" I thought, Lord, has it been that long?

So, Fritz says, "I want you to paint a picture." And that always reminds me of the old story about the Sunday school teacher, who is going around the class and notes a little girl drawing a picture. The Sunday school teacher says, "What are you drawing?" The little girl says, "I'm drawing a picture of the Lord." The Sunday school teacher says, "Well, I don't know how you're going to do that, for we don't know what the Lord looks like." And the little girl says, "Well, when I get through, you will."

So hopefully, when I get through, you'll have Will's views on one side and mine on the other. And while I'm talking about such a difference of opinion, I want you to know that the views which I express here, the statements that I make, are mine and mine alone. They don't reflect those of the American Trucking Association or any other groups or my staff or any other person. I'm just going to tell you the way it was as I saw it. I agree

with Will about the rockets and legislation. I do think it's 99 percent chance and 1 percent skill. I think that if it hadn't been for people like Will and Jack Fryer and other, we wouldn't have the law today.

To really get this subject in focus and move along, most of you should know that, at that time, the American Trucking Association was an umbrella organization. It had a strong grass roots organization in each state with a very politically able state trucking association. Frankly, we felt that we could take care of ourselves politically. But the problem we faced was one created by my old friend, A. Daniel O'Neal and his "radical" thinking of the late '70s vis-a-vis deregulation of the trucking industry. When you are on the banks of the Waceamaw River in South Carolina, everything seems to come into a better focus. You look at the nation's capital and realize that it attracts people who want to change things.

If you think about it, that is all we seem to get in Washington, people who want to change everything.

So I think Dan and his followers came to office and they wanted to make changes. Unfortunately, we get a lot of people who want to change purely for the sake of change. That creates problems. But I am not here to sound forth on philosophical matters. Let's just say that at the time this legislation got started, ATA was very concerned at ICC deregulating by what we called administrative fiat.

In 1986, on the Saturday before Easter Sunday, I received a phone call asking me to be at the Airport Hilton in Atlanta, Georgia at 8:00 o'clock in the morning on the Monday following Easter Sunday. Well, getting out of Washington on Easter Sunday was a pretty rough job, but I managed to do it. Got down there late that night, checked into the hotel. The next morning I, along with a group of Georgia truckers, met with then presidential candidate Jimmy Carter. He was accompanied by Stu Eizenstat. When the meeting started, Mr. Carter wanted to know what he could do to win the support of the motor carrier industry. He said he had told Stu about it, and Stu had suggested the meeting. So I asked Stu if he was familiar with what the Commission was trying to do in Washington relative to truck deregulation. Stu said, yes — that he had practiced two or three cases before the ICC and knew all about the deregulation issue. He assured us that if we supported Mr. Carter for president, the last thing in the world we had to worry about was deregulation.

I know I'm not sworn, but I'm telling you the truth. I was there. About that time, Mr. Carter, who hadn't been saying a whole lot, got up, and said, "Now, I'm very familiar with you fellows and your business. You have to have a permit. I, too, have to have a permit in my business of raising peanuts. So I know all about this general subject." He then said, "I'm not going to do anything to adversely affect my peanuts, and you can rest assured that if I'm elected president, the last thing in the world the

motor carrier industry will have to worry about is losing its operating authority or whatever Stu Eizenstat's talking about."

So the truckers all came out of the meeting starry-eyed. They asked me what I thought, and I said, "Well, I've been around politics most of my adult life, and I just take all this under advisement." Then ATA has its annual convention.

Burt Lance showed up. He was Mr. Carter's right-hand man at that time. He met with our leadership and with my staff. He again assured us that, if we would support Mr. Carter instead of Mr. Ford, we had absolutely nothing to worry about.

So most of the motor carriers supported Mr. Carter, in spite of the fact that Mr. Ford had been our friend for many, many years.

And we'll let that story rest right there.

Now we all know that things change, whether change is warranted or not. We all know that political commitments and promises and things of that nature are often subjects of tremendous misunderstanding, and particularly after the fact — I guess one should say after the election. So I wasn't really surprised. I was somewhat disappointed that a man of that character, having been governor of the Great State of Georgia, reneged on his pre-election statements. The deregulation drums continued to beat and the Carter Administration continued to march to that beat.

The posture of the trucking industry at this time was one that politically we felt could handle the situation. We were concerned about Dan and the ICC. Then started the legislative process. Now, I don't want to bore you, so I won't go into all the details. Senator Kennedy got into the act, asserted his jurisdiction, and Senator Cannon became concerned. We worked with Senator Cannon, shot down Senator Kennedy, and then we got Senator Danny Inouye to introduce bills for ATA. Next, the Teamsters got into the act and had their bill introduced. As I recall, ATA had bills introduced in the House as well as the Senate.

Then somewhere along came the facts that Will referred to — Chairman Cannon assured the President that he would have a bill by June of 1980, and then told the ICC to cease and desist on all of that questionable deregulation activity that was being done.

Somewhere, Senator Packwood entered the scene, and if my memory is not too good, I hope, in light of the recent lapse of memory in the Great Nation's Capital — I will be forgiven!

Now I differ a little bit with Will about Senator Cannon's attitude along about this period, because he had made some speeches that we thought were rather promising, particularly with respect to rate deregulation. In fact, with his permission, we had quotes from his speeches in our PR program. Well, then the phone rang one night, and it was the ATA presi-

dent, Bennett Whitlock. He said, "John, I think the ballgame just went down the tube." And I said, "What do you mean, Bennett?" And then he told me about that situation which developed when a group of our "friends," those people that inhabit that great marble edifice up on the Senate side of Capitol Hill, the Teamsters Union got into the act. He told me what the newspapers had to say about the Teamsters and the alleged illegal activities vis-a-vis Chairman Cannon.

Frankly, we knew right then that enacting proper legislation was going to be very difficult. We felt that Senator Cannon was going to be locked into a pretty tight position on the other side.

Now other people have stated such was not the case. As I said at the beginning of my talk, the thoughts I express are my own. Thus, I do want to say that Senator Cannon, throughout this whole legislative exercise, was as fair as he could be, but the Teamsters' activity did muddy the water. Suffice it to say that Senator Cannon was no Fritz Hollings. I think we will all agree on that.

The legislation started on the Senate side, and ultimately we went to markup before the Senate Commerce Committee. ATA had a number of very able state association managers and truck operators who had been talling and twisting arms of all the members of the Senate Commerce Committee. We had counted our votes, and we felt pretty good. Well, the markup started, and it went very well at first, and then we started losing. We didn't lose by a whole lot, but we lost like 9 to 8, and then we'd lose by about two votes.

Well, I am in the back end of the room where the committee was meeting, and I am trying to, as "legally" as possible, signal to various members of the Senate how they should vote. You know, it looks rather bad, if you are standing there and openly saying, "Don't do that."

But communication wasn't at its greatest, to say the least. We came out of markup in not very good shape. We talked to some of those senators who had not followed the commitments that we thought we had. And again, we got into this old rat race that if they say that the lapse of presidential memory here a few months ago is anything new, I got news for the press. It's been going on for a long, long time!

You know, I've spent all my adult life either practicing law or practicing politics, and I have heard all these songs before. I just didn't think it would be played at that time and perhaps I was naive. Will and his group had the votes, and we just didn't know it.

So, we came out of that Senate Commerce Committee markup wounded, to say the least. We met. We had a committee called the Strong Committee, and it represented all phases of for-hire and private regulated and unregulated motor carriage. The Committee decided there

was not going to be a bill. We were going to kill the bill and let the ICC possibly destroy the industry while we took our chances with the courts. We hoped that time would permit us to get to court and convince the court of our position before we were terminated by the ICC.

About that time, I got a phone call — I don't remember whether it was Will or who on the Senate staff. They called and said they would like to have lunch, and we went to lunch. And they said, "We want a bill." They thought we could work out an accord. We agreed to go back to our people and talk to them. Will, in his remarks, was talking about how legislation is enacted. This will prove his point. Our people decided that they, too, would rather have a bill hopefully to put an end to all this deregulation effort. We then went to the House side and talked to Biz Johnson, who was then Chairman of the House Public Works Committee, to Jim Howard, who then was Chairman of the Subcommittee, to Jack Fryer, and others. What we were trying to do — and I think we all did it — we were trying to sell a package. I think Jack is going to talk about, and I certainly won't go into that.

You ought to bear in mind that 1980 was an election year. Election year makes a big difference politically. ATA felt that, in spite of what Will says about airline deregulation, a numbers of members of Congress were having second thoughts about having voted to deregulate the airlines. Frankly, ATA could have killed any regulatory reform legislation. In fact, when the bill came out of the House committee, we had to work very hard to get enough votes for it to pass.

One or two other things. There was one group of shippers which supported us. There were numerous groups of shippers which opposed us. When you are in the trade association business, you've got to always have an issue to sell to your membership. So there were a number of trade associations on the Hill that didn't have a great deal of activity. When this issue of possible deregulation of the trucking industry arose, it seemed that every Tom, Dick and Harry was against us. I felt like those fellows at the Alamo, to tell you the truth.

But anyway, we were able to get the bill enacted into law.

Now, as I said earlier, the thoughts that I have attempted to express here are my own. Several of the members of the panel wrote the exact language of the bill, and they witnessed its passage, and they may or may not agree with my version of the events. As a former practicing attorney, I learned a long time ago that whenever two people see the same events, they can always differ as to what took place, so I beg the indulgence of the members of the panel, if, in their opinion, I have erred. Throughout all of this, we in the motor carrier industry were assured by the Carter Administration that, once the intent of Congress was established by this bill, the

Carter Administration would see to it that the ICC would follow the intent of Congress as set forth in the Motor Carrier Act of 1980.

Now as to whether or not that transpired, I will leave that up to your good judgment.

It's been nice being here. Thank you.

MR. O'NEAL: Well, John, that was a very interesting perspective, and I think you lived up to your reputation as being a person who can disagree without being disagreeable. You gave us a really good idea of how it looked from your side.

The next and last speaker is the only one of the group who is still working on Capitol Hill. He went to Capitol Hill from the Interstate Commerce Commission back in 1975. He had been at the ICC before that for about 12 years. That is when I first met Jack. He was, I guess, one of the first of a whole series of people who went from the Commission up to the Hill and worked on the staff on both sides and who played a major role, as he did, in much of the deregulation legislation that was passed in 1980.

Jack is the — his title is Counsel to the Surface Transportation — let's see, Counsel, Surface Transportation and Regulation. He is on the staff of the House Public Works Committee. The title, you know, really doesn't mean that much. Jack is the key person on the House side, if you want to talk about the regulation of motor carriers and a few other things that he does there.

Jack graduated from the Georgetown University Law School.

I am very pleased to introduce Jack Fryer.