

CONGRESSIONAL ATTITUDES TOWARDS THE ICC: PRESENT AND FUTURE

JOHN J. FRYER

MR. FRYER: Thank you, Dan. I want to thank the Planning Committee for asking me to participate in this panel discussion.

As one of the alumni of the Interstate Commerce Commission, I consider it a great honor to be here, and I guess I have to say that about Capitol Hill also. You will note that all the panelists, after the Motor Carrier Act and the Staggers Act were passed, either left town or went downtown.

And they left me on Capitol Hill to listen to the endless oversight hearings.

The topic for the panel, "Congress and the ICC — The '80s Legislation," which, for the most part, was reform legislation, is being discussed immediately prior to a discussion on "Transportation without Regulation." It is provocative positioning of topics, one which would have been exactly in reverse a century ago.

In the 1980s, Congress essentially deregulated the airline and surface freight forwarding industries and provided for major reforms in the rail, truck and bus industries. The reduced responsibilities of the ICC also resulted in legislation which reduced the number of commissioners at the Interstate Commerce Commission from 11 to 5.

The '80s legislation, that I was personally involved with and which relates to today's program, is the Motor Carrier Act of 1980, the Household Goods Transportation Act of 1980, the Bus Regulatory Reform Act of 1982, the Coal Slurry Transportation Act, twice, the Surface Freight Forwarder Deregulation Act of 1986 and the bill to reduce the number of commissioners at the ICC from 11 to 5.

All of this legislation has been enacted Coal Slurry. Moreover, all of this legislation was agreed to by both houses of Congress, either without a conference or with a pro forma conference without a meeting of the conferees, except one. The bill to reduce the number of commissioners at the Interstate Commerce Commission from 11 to 5 required a conference and at least one or two stormy meetings of the conferees.

From a personal perspective, each reform act was easier. The Motor Carrier Act of 1980 was the most difficult to get approved. From the stormy beginnings of reform initiated by the Commission to the final floor debate in the House, debate was contentious.

In the spring of 1980 and after the Senate had passed its bill, all of the interested parties, which were many, agreed to legislation that provided for major reform. The reform theme was, less regulation and more competition, not deregulation.

The reform bill was known as a delicate balance act, and for good reason. Once agreed upon, all or rather most of the parties agreed to support the legislation, provided the Committee on Public Works could clear the bill at committee level and on the floor of the House of Representatives without amendment, not agreed to by all of the interested parties. The bill moved through committee, and the committee was able to maintain the agreement. The subsequent floor fight was long and hard-fought. There were approximately ten amendments, three of which required roll call votes.

The closest vote and the one which clearly would have destroyed the delicate balance was the vote on the one-house veto. The committee was able to defeat the amendment by a three vote margin.

It was the first time the veto amendment had been defeated by the House of Representatives. The delicate balance was retained. The House overwhelmingly approved the bill; the Senate accepted it; and the rest is history.

After that, the Household Goods Act and the Bus Regulatory Reform Act were easy to do. And last year, The Surface Freight Forwarding Deregulation Act was a snap.

The Household Goods Bill and the Freight Forwarder bills passed on unanimous consent, with the latter taking about 10 minutes to pass the House.

Plainly, the initiatives of the first seven years of the 1980's reflect a Congressional attitude of "less regulation is best". So it seems that from 1887 to 1987 we have traveled down a policy highway that appears to be headed in a full circle.

However, the Congress has not yet decided to go the last mile and close that circle. Moreover, there seems to be very little sentiment for

deregulating the railroads and, certainly, there does not seem to be an overwhelming wish to go the last mile in the areas of truck and bus deregulation.

I worked for a committee that easily cut the regulatory bond with airlines and freight forwarders. It acted upon major reforms for the truck and bus industry, and worked hard, but in vain, to facilitate more competition in the transportation of coal.

The Coal Slurry legislation was defeated by a formidable coalition, some who advocate competition in the transportation marketplace, but apparently only sometimes.

Now the committee has before it a proposal which would essentially close the book on motor carrier regulation, close down the ICC in its 101st year, and transfer the authority to regulate railroads and what remains of motor carrier regulation, which would be little, to other government agencies.

I cannot say for certain whether the proposal will eventually fall within the historical context of legislation of the 1980's, but I can tell you with reasonable certainty that motor carrier regulation will not end in 1987.

The proponents of that legislation have formed a coalition, which is the same strategy that led to enactment of the Motor Carrier Act of 1980. There is a difference now. In 1980, almost everyone supported reform, but very few advocated total deregulation when given that choice.

After seven years of reform, there are some who apparently now believe that the time has come to deregulate and they have begun their efforts to swing the Congress to their position.

Having sat through lengthy oversight hearings on the Reform Acts of the eighties, the position of the coalition is neither new nor surprising to me, nor to the members of Congress.

Thus far, there has been a reluctance to act on the part of the Congress, but before I have seen reluctance convert to advocacy and that may happen again.

Before that occurs, I would guess that the steadily increasing loud drum beat of safety that has suffered under reform, must be heeded.

Everyone on this panel who worked on regulatory reform, and we all did, knew it was a sound we would hear. We have not been disappointed.

Since economic reform was initiated, Congress has enacted comprehensive safety laws to address truck and bus safety. The safety reforms were not made simply because regulatory reform meant more trucks and buses on the highways, they were made because they, too, were needed to address the concerns that resulted from a grown-up truck and bus industry.

However, by coincidence or by cause, since regulatory reform, the safety record is not good. I don't believe the result can be explained simply by saying there are more trucks and buses on the highways, and the number of truck and bus miles has increased. The American public, in my view, will not buy that.

Nor, do I believe, will the Congress. In support of that view, I refer you to your newspapers on a daily basis and to your television sets, where there is increasing concern expressed about motor carrier safety.

There certainly is no clear, satisfactory explanation as to whether reform is the culprit. If there is a nexus, it needs to be known. In that respect, the committee has asked the Office of Technology Assessment to examine the question and to furnish the committee with the report.

Hopefully, that report will shed some light on the question and help lay the foundation for appropriate congressional action.

If there is a connection, it does not necessarily toll the death knell for deregulation. It may simply mean more and tougher safety laws.

Based upon safety questions and a lack of clear interest to deregulate on the part of the Congress, I think it's very unlikely that the 1980's will see the end of regulation in the trucking industry.

With respect to the bus industry, my view is that unless some way is found to deregulate that industry and, at the same time, preserve the state preemption aspects of the Bus Act, deregulation will not happen.

Our moderator, Dan, asked that I address some specific questions relating to regulation and the ICC.

The questions fall into the category of congressional attitudes towards the ICC and regulation, present and future.

My first question is: What is the current attitude of the Congress towards the Interstate Commerce Commission?

The only sure way to discuss a congressional attitude towards the ICC is to poll the members and take a vote, which, for obvious reasons, is an option I chose not to pursue.

However, there seems to be no overwhelming groundswell to sunset the agency. I think we can say that the Congress collectively tolerates it, and probably wants to keep it, at least for the time-being.

My second question is: Does the arm of Congress still exist?

My answer to that is: You bet it does. However, it also seems like the arm sometimes is not long enough to reach from Capitol Hill to 12th and Constitution Avenue.

The Commission's function is to regulate commerce, which is the constitutional function of the legislature. In the 50th annual report of the Interstate Commerce Commission, the following quote appeared — and notice the first two words:

"In theory, the Commission is an arm of the Congress and exercises specific powers vested in it by law to regulate interstate transportation of persons and property.

Essentially, the mission the Commission was created to carry out in detail, the general standards or rules of conduct with regard to transportation prescribed by the legislative branch of government under its constitutional power to regulate interstate commerce."

Later in the same report, the Commission says:

"The Commission is often referred to as an independent governmental agency, but in the strict meaning of the word, it is not independent. It has no power to initiate nor to determine new policies of government.

It is, in fact, an integral part of the governmental mechanism directed by a statute to perform only special duties."

Forty-three years later, when the Motor Carrier Act of 1980 was enacted, that act contained the following language: "The Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry in well-defined parameters within which it may act pursuant to congressional policy."

The statement echoed the remarks of Senator Howard Cannon, who, in his famous speech on October 22, 1979, said:

"We also expect the ICC to act within the statutory framework and respect the intent of Congress. The Congress does not expect any independent agencies to act in novel ways to achieve their own special goals; nor do we expect agencies to act in areas where we have clearly indicated Congress will address in the near future.

It is not the responsibility of the regulatory agencies to determine how the American economy should operate on a day to day basis. Such broad policy decisions will be for the Congress to decide and the agencies to implement.

If there is no misunderstanding as to our roles, I am confident that our partnership can be an effective one."

In my view, nothing has happened in the last 50 years — or in the last seven — to change that theory. However, there's a huge word in the act, or in the implementation of the act, which is "discretion".

Any agency, in attempting to administer a law exercises discretion. How that is exercised sometimes causes genuine disagreement.

The next question is: What sentiment is there on the Hill for making the Centennial the last birthday of the ICC?

Again, this is a very difficult question to answer. The current mood that I perceive is to retain the status quo. However, the Congress is not showing any strong attitudes either way. And I think that if a strong case can be made for less regulation or deregulation, the Congress will do it.

However, I must stress that I don't see that happening by the ICC's 101st nor by its 103rd birthday.

Another question: Is there a different attitude towards the agency than there is towards deregulation as such?

In a word, yes.

My final question is: Has the pendulum swung back in the direction of more regulation?

Definitely not. The pendulum has not swung back. And I strongly doubt that any swing of this type will occur in the near future. Prior generations opted to regulate for a variety of reasons. Strict regulation became costly and inefficient. The moves by a new generation with different attitudes forced to change the scope of regulation, which attitudes I believe still prevail.

In my opinion, the chances for deregulation or less regulation are far more optimistic than the chances of reregulation.

As Congressional staffer, I was fortunate in having a ringside seat at the reform debate of the 1980's. It was exciting to me, and sometimes a little too exciting, during which competing advocates advanced their best ideas as to how a free economic system should work at its gut level, transportation.

After debate, the clear Congressional choice was reform and retention of the ICC in a limited manner. My guess is that the 1980s will not see a change in that choice.

In one respect, I sincerely hope my prediction is true. I say this because I'm somewhat fatalistic in my approach to events. There is some foundation for my concern, which is tied to the ICC, its age and regulatory policies.

Euphemistically, in my career I've been twice hit by a train while working on coal slurry legislation.

My real life experience has been more tied to motor carrier regulation. When the ICC was celebrating its 50th birthday, I was almost three years old. In my first attempt at childhood regulatory freedom, I fled the safety of my parents' backyard and was promptly hit by a truck as I crossed the street.

In 1962, the ICC was enjoying its 75th anniversary, and I was deciding on whether or not I should accept a job offered by Sheldon Silverman at the Interstate Commerce Commission. I was driving south on Route 22 and I was again struck by a truck.

In 1978, we were beginning work on legislation dealing with the regulatory controls of the ICC and I must confess, at that time, personally leaning towards less or no regulation, I was again hit by a truck — this time in a very serious collision.

Ladies and gentlemen, there are times when I have justifiably been accused of being dense, but I am not foolish. I finally got the message.

The message is simple. It's happy 100th Anniversary, ICC, and many happy returns of the day.

Thank you.

MR. O'NEAL: Well, thank you. Jack is our last panelist. We had talked earlier about having interchange among the group, because we thought there might be some differences of opinion. But we are flat out of time.

And John Cleary is not going to allow me to engage in any more of this, so I want to thank all of the panelists, Jan and Will and John and Jack. And. . .yes, Will wants me to announce that if anybody wants a ride home, Jack will give them a ride. No problem.

If somebody will look at the rearview mirror for him, that's. . .

All right. Thank you very much. We've enjoyed ourselves. I hope you've enjoyed this presentation.

Mr. CLEARY: As we're kind of shifting here, we're going to keep moving along. But Fritz has just asked me to remind all of you that — I don't want to encourage you to leave the room now, but on the way home after the session this afternoon, you might want to make sure you stop by the hearing rooms. Hearing Room A for the display of the memorabilia from the ICC; and then Hearing Room B for coffee and punch, cookies to fortify yourself between this session and this evening, when I hope many of us will be there for dinner.

I think we are just about ready to begin, now that we have our audio visuals in place. As you're coming to your seats, I will repeat a little line that I heard last night from George Will, who is usually informative while being witty.

He was talking about deficit problems, etc. . . . And the concept of the economics that are interesting in this town and that are accepted in this town. And it drew him to quote Cardinal Wosley, who was advising someone who was going to go in with an idea to Henry VIII.

And Cardinal Wosley, being very wise, said: "Be very careful about what you put in his head, because it's sometimes very hard to get out."

And I don't if that's where we are in the area of deregulation, but I think this last panel was very stimulating and I particularly found of interest and amusement the sort of inside talk that John Kinard gave us. And that's what we're hoping for in this day of reminiscence and thoughts on the anniversary of the Interstate Commerce Commission.

It's particularly again a pleasure to be able to introduce the moderator for the next panel, who will then introduce the individual members. I think you can see this is an outstanding pair that we have this afternoon of panel members. We are truly honored again to have another former Commissioner, Commissioner Marcus Alexis, who is presently serving as

the Dean of the College of Business Administration of the University of Illinois at Chicago.

He received his bachelor of arts from Brooklyn College of Arts; a Ph.D. from the University of Minnesota, and has been an instructor and then professor at various colleges and universities, including the University of Minnesota, McAllister College, DePaul, the University of Rochester, Northwestern and a lecturer at the University of California at Berkeley.

Commissioner Alexis was appointed to the Interstate Commerce Commission in 1979, where he served as a Commissioner, Vice-Chairman, and acting Chairman.

So it is a pleasure that I can introduce to you the moderator for our fourth panel today, Commissioner Marcus Alexis.