

STB Chairman W. Douglas Buttrey  
Remarks  
CHICAGO TRAFFIC CLUB  
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Geopolitical forces were fully engaged and commerce was flowing at an astonishing pace. Trade issues were at the top of the list for entrepreneurs even as wars and rumors of wars were the talk of the day in every capital. There was a thirst for knowledge about how differing cultures would impact the desire to establish new trading partners. New trade routes and an ever-increasing supply of new products and commodities were being demanded by consumers and producers. But the transportation providers needed additional capacity to carry larger cargoes and achieve economies of scale, and they needed better technology and better infrastructure to withstand weather conditions and to improve their operational performance. There were frequent and troubling disruptions to trade and peace caused by totalitarian despots. An overarching question was, how could all these global activities be properly secured, and who was going to pay for that?

Self-proclaimed visionaries sprang up to address these concerns and elevate them to the forefront of public debate. They announced that more reliable long-range planning and forecasting was required, and that politicians should be paying much more attention to trade and transportation issues. They warned that the way ahead was fraught with unpredictable events and possibly cataclysmic economic consequences. Sound familiar? This was the world faced by Marco Polo in the thirteenth century. Some things never change!

I want to pause for a moment here, to express my appreciation to the Chicago Traffic Club and Matt Rose for the invitation to join you tonight on this special occasion. Over the years, I have had the privilege of spending a considerable amount of time in Chicago. Like everyone else, I'm a Cubs fan. . .

and after last year, I guess I'll have to be a White Sox fan, too! When one reviews the list of distinguished individuals who have stood to address this institution, one can only be humbled and honored to be counted in that group.

As we focus on the STB's limited role in transportation regulation, I hope we can set aside personal interests and parochial viewpoints, at least for a while, to reflect on our mutual concerns in a spirit of conciliation and productive dialogue. I firmly believe that we can achieve more real progress by sitting down and talking, than by suing each other or waging rhetorical warfare in the media. Even in the contentious area of rail rates, we have an occasional bright spot of cooperative problem solving. Last summer, in the only small rate case ever to be filed, the Board's non-binding mediation process resulted in a private settlement in about three days. Some were disappointed because the case did not reach a regulatory conclusion, but I must say that I was pleased. Alternative dispute resolution is often superior to adversarial proceedings in my view, and can work if we just give it a chance.

When I go out to speak to consumers of rail service, I am often reminded of the story about Sir Winston Churchill sailing to New York to make a major address just before the attack on Pearl Harbor. He gave a splendid speech and got a standing ovation. When he returned to his seat, he was greeted by a lady who was smiling and applauding enthusiastically. She said, "Oh, Mr. Churchill, you must be thrilled that so many Americans have turned out to hear you speak." Mr. Churchill reportedly paused, then smiled and said, "Yes madam, but there would have been a lot more people here if I were being hanged." I told that story when I was in Montana at a town hall meeting filled with grain farmers, and a gentleman in the back of the room shouted, "I have a rope in my truck." I have decided to drop that story from my Western grain country speeches.

I tell that story not just because the gentleman got a big laugh — and some rather unnerving applause — but because I believe there is an important message there. Some shippers are very frustrated with rail service, and I find, as I travel around the country, that there are some very basic misconceptions about what the Board can and cannot do about rail problems. I have had rail customers say to me: “The Board could do something about my problem if it wanted to.”

That statement suggests they think the Board does not know or care about shipper concerns. I can assure you that is not true. Many rail issues concern me, but the Board cannot necessarily do anything about them, either because of the limits on our statutory authority, or because no party has brought a case before the Board, or because of natural or infrastructure limitations that have nothing to do with regulatory policy.

Because of this misunderstanding, I have begun the practice of explaining more often how the Board works. The Board is an adjudicatory body, which means that we cannot, in most cases, institute a formal proceeding on our own initiative. Some aggrieved party must file a case under our statutory jurisdiction, seeking relief that we have the authority to grant. We are like a special Federal Court for shippers and railroads.

Like a court, we are bound by the record before us and the law, which in our case is our governing statute. I am often asked: “What is your regulatory philosophy?” My stock answer is three words: “Follow the statute.” The process for confirming Supreme Court justices has recently been in the news. You have no doubt heard Senators ask nominees to elaborate on their judicial philosophy. If you listen closely to the answers, you will often hear Supreme Court nominees say they are guided by

the principle of “judicial self restraint.” Translation: “They will not legislate from the bench and they will conservatively apply Constitutional principles.” In stating my regulatory philosophy, I try to follow the example of my legal brethren who aspire to the highest court in the land. The Congress makes the policy, and the Board must very judiciously stay within the confines of the Interstate Commerce Act as modified by the Staggers Act and ICCTA.

I am, by nature, a true believer in deregulation, and that the least regulation is the best regulation. Consequently, being a regulator sometimes feels for me like wearing my shoes on the wrong foot. The Staggers Act, which began the process of freight railroad deregulation, calls upon the agency to balance the interests of shippers and railroads. Webster’s definition of “balance” is to bring things into equilibrium. That can be a tall order! Nowadays, I hear a lot of talk about balancing the playing field, but I have never met a business person who really wants a level playing field. Adam Smith would roll over in his grave if he heard that statement coming from any self-respecting businessman in America. What that statement really means is. . . “Take that other guy’s advantage away from him and give it to me by government fiat. I will be a better steward of the public interest than that other guy.” Well, I don’t think the law expects the Board to arbitrarily take an advantage from one party and give it to another. However, the Board must, when called upon to do so, determine what is or is not a “reasonable” advantage. The law does not talk about what is fair, but instead, what is “reasonable.”

The late 70's and early 80's ushered in sweeping deregulation legislation in the transportation field. I had the privilege of serving as Republican Counsel to the Senate Committee on Commerce during the late 70's when most of the deregulation legislation was developed. During that time, the Congress deregulated cargo airlines, passenger airlines, well-head natural gas prices, and interstate

trucking. And, of course, Congress passed the Staggers Act. Like democracy itself, the Staggers Act is an experiment in free market economics – but because of the nature of railroading, the experiment is limited in scope. The deregulation of freight railroads is not complete. The Board remains as a regulatory backstop in situations where Congress determined that market forces may not work freely.

Staggers has had a huge and positive impact, but the world continues to change at an ever increasing pace. Today there are new challenges that were not dreamed of in 1980, related to infrastructure and constrained capacity. That's particularly evident here in Chicago, the crossroads of the Nation's rail system. So for us at the Board, and for you, there will be bends and twists in the road. In the new world of re-engineering and innovation, those who can adapt to the changing global marketplace will likely do well; those who try to hold on to the past may not.

The Board must be receptive to change, too. I'm a strong believer in precedent, but what was good precedent in 1955 may not make good sense today. So if you ask me whether future Boards will follow and affirm every precedent, the answer is, probably not. It is inconceivable to think that old wineskins can hold new wine. It was not true in ages past and it is not true today. Anyone who watches our docket knows that the Board has a lot of ongoing matters on its plate right now. For instance, railroad fuel surcharges, changes in the notice required for class exemptions, paper barriers, and changes to the way we handle large rate cases and small railroad abandonments, are all being considered. We are actively trying to bring our processes up-to-date in the areas we regulate. And, all these initiatives have been launched since January when I became Chairman.

Consider this, when you think about change — the Supreme Court of the United States has reversed itself over 200 times in its history. More than 80% of those reversals were on questions of Constitutional interpretation. Decisions concerning the rights of the criminally accused, the power of eminent domain, and the right of personal privacy, to name just a few, are examples of landmark changes that have taken place in our lifetimes. To think that the transportation sector is immune from change is simply out of touch with reality.

Someone has come up with a new word which has slipped into the lexicon of Washington, DC. The word is: “Plan-B-dextrous.” The definition goes something like this: “the ability to develop and quickly implement alternative methods — in other words, a ‘Plan B’ — to achieve one’s goals in a dynamic and rapidly changing environment.” Railroads must be “Plan-B-dextrous” today. There must be sustained efforts to find a way to continually increase the ability to carry more goods, faster, for more people. And, there must be sustained efforts to re-engineer supply chains to take into consideration the limitations of finite infrastructure.

I think about speed a lot, but when I think about speed I don’t just think about trains. I think about jet aircraft, and about NASCAR racing. NASCAR just loves speed. And as you can see in NASCAR time trials, one car at a time can go really fast, but the more cars you put on a track, with its limited space, the harder it is to maintain those speeds safely. When those drivers try to go too fast on a crowded track, we see those accidents that, perverse at it sounds, draw so many spectators. Well, it’s the same principle for the railroads. Their increased demand and limited infrastructure results in congestion. NASCAR may not know it, but they are trying to do what some people want the railroads

to do, and that is please all their fans by trying to create more speed with more cars on a finite infrastructure. Not, in my book, a recipe for success.

The image of NASCAR pileups reminds me of my visit to the infamous railroad four-way-stop here in Chicago, which would be a railroad demolition derby but for the extensive countermeasures that the railroads have put in place. I was anxious to see this railroad relic and could hardly believe my eyes when I actually saw it. It is a perfect example of what happens when our institutions fail. For those of you who have not seen this technological marvel, it is eight active rail lines that cross each other at 90 degree angles. In other words, an eight-lane four-way STOP on mainline railroad track. Please understand, this is not a YIELD or TURN RIGHT ON RED intersection, it is a mandatory STOP! And it does not just affect railroad traffic — it affects traffic on the streets of Chicago, as well. Infrastructure bottlenecks like these also affect traffic from Long Beach to Miami Beach, and from Montreal to Monterey.

The railroads have worked hard and spent millions trying to convince government that a project to improve the workability of this intersection and others is worthy of Federal assistance — hence, the CREATE project. I applaud the efforts of the railroads and Mayor Daley and the City of Chicago for trying to deal with this matter. It is a real shame that the CREATE project was not fully funded in the last highway bill. But there is a lesson here. People are beginning to recognize that some railroad improvements — those with a significant public benefit — will need some Federal help. Indeed, it seems like the U.S. Congress may be ready to give serious consideration to enacting an investment tax credit for rail infrastructure expansion. Still, do not put all your eggs in the Federal basket, because for your project, it could be empty. With that sad story in mind, let's look at a different model.

Hats off to Kansas and Missouri for their participation in the financing arrangements leading to the construction of the two rail flyovers in Kansas City. I have been over both the flyovers and can attest to their immense contribution to efficiency of rail operations in the area. Also, hats off to Pennsylvania for stepping up to the plate and committing significant state funding year after year, for more than 20 years now, for infrastructure improvements on short line and regional railroads serving Pennsylvania businesses. Other states have similar proactive rail funding programs, as well. Hats off also to the visionary and critical development of the Joint Line into the Powder River Basin of Eastern Wyoming more than two decades ago. PRB coal helps keep us warm in winter, cool in summer, and keeps factory assembly lines and hospital operating rooms in business. The efficient movement of coal is essential to the economic health and national security of this country. The Board will use its authority, at least as long as I am there, to do whatever is within its power to do, to facilitate a steady supply of coal to the Nation's power grid.

The efficient and timely movement of this Nation's grain harvests is also critical. The true strength of this Nation is not so much tied to the number of Super Tomcat fighter jets or Tomahawk missiles we can launch as it is to the fact that we can feed ourselves and still have enormous amounts of food commodities to export. But there are service problems in our grain growing regions, which I have seen first-hand. There are periodic shortages in power units, grain cars, and employees. Rail infrastructure needs to catch up to demand in the grain sector and that will take time. But there's no free lunch. The only way that is going to happen is if the service can generate sufficient revenues to make it profitable. Railroads and shippers need to work together on this issue. I also think that short line operators can play a more useful role in supplementing Class I service for ag shippers.

No discussion of rail issues would be complete without a reference to our friends in the investment analyst community, which brings me to my final story of the evening. The captain of a cruise ship sailing in Alaskan waters was approached by one of his passengers on deck who exclaimed about the beauty of the snow covered mountains that seemed to rise from the water's edge up into the clouds. The passenger went on and on about the beautiful mountains and then turned to the captain and said: "I just love being in the mountains. How high up are we here?" The moral of the story is that it is important to know with some precision where you are at all times. You may appear to be near the mountain tops, when you are pretty close to sea level. A few good quarterly reports for the railroads should not be interpreted as being on the mountain tops when they have really just made it up to the main deck. There is a lot more sailing yet to be done.

I am troubled by what I believe to be the general shortsightedness of analysts and amused by their apparent desire to substitute their judgment for the judgment of seasoned railroad management. It is as if they are not satisfied with counting the money in the till every 15 minutes, they want to tell the railroads how and when to spend their money as well. If the railroads hadn't largely ignored them several years ago and made necessary investments in infrastructure and other critical areas, where would we be today? Railroads are just now beginning to recover from years of losses and deferred maintenance. They need to be given a chance to return reasonable amounts of their earnings back into the infrastructure in order to meet future traffic demands.

When Marco Polo left the Mongol kingdom of the great Kublai Khan to return to his beloved Venice, the Great Khan reportedly gave him a small golden tablet which was the equivalent of a royal

passport. The engraving said that the tablet entitled Marco Polo to any horses, lodging, food and guides he might require, and that failure to be hospitable to him and his party would mean certain death. The President didn't give me one of those tablets when I was sworn in — so I'm still watching out for the guys with ropes.

THANK YOU, it has been a pleasure for me to be here. Enjoy the rest of your evening!