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## Transportation Law

John Guandolo

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# Book Review

TRANSPORTATION LAW. By John Guandolo. Dubuque, Iowa: Wm. C. Brown Company Publishers. 1973. Pp. 1159.

Flush with the success of his assaults upon General Motors<sup>1</sup> and the Federal Trade Commission,<sup>2</sup> Mr. Ralph Nader in the spring of 1969 announced that he next would study the Interstate Commerce Commission.<sup>3</sup> According to Nader, the policy of secrecy of the ICC cried out for examination, as did its regulation of the Nation's surface carriers, particularly the whole rate-making structure. "Bureaucratic secrecy is not going to be tolerated," Nader warned, and if necessary, suits will be brought under the Freedom of Information Act<sup>4</sup> to gain access to relevant materials.

At the end of the school year seven of Nader's Raiders, law students from Ivy League universities, showed up at the ICC to spend the summer of 1969. The alleged secrecy policy of the ICC soon proved to be a myth as the students freely interviewed the members and staff of the agency and their demands for files were met meticulously, if not enthusiastically. The threat to bring suit under the Freedom of Information Act was not carried out.

The students' study of the ICC ended with their vacations, and when back at school they completed writing and revising their report.<sup>5</sup> On March 16, 1970, Senator Vance Hartke convened the Subcommittee on Surface Transportation, which he chaired, to provide a forum for the report's release.<sup>6</sup> In a setting complete with klieg lights and television cameras, Nader and the students

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<sup>1</sup> R. NADER, *UNSAFE AT ANY SPEED: THE DESIGNED-IN DANGER OF THE AMERICAN AUTOMOBILE* (1965).

<sup>2</sup> R. NADER, *The Federal Trade Commission and the Consumer* (1968 mimeograph).

<sup>3</sup> N.Y. Times, June 1, 1969, § 1, at 43, col. 3.

<sup>4</sup> 5 U.S.C. § 552 (1971).

<sup>5</sup> R. FELLMETH, *THE INTERSTATE COMMERCE COMMISSION, THE PUBLIC INTEREST AND THE ICC* (1970) (originally published under the title: *SURFACE TRANSPORTATION, THE PUBLIC INTEREST AND THE ICC*).

<sup>6</sup> *Hearings on Oversight of the Interstate Commerce Commission Before the Subcomm. on Surface Transportation of the Senate Committee on Commerce*, 91st Cong., 2d Sess., ser. 91-78, at 2-34 (1970).

testified concerning the asserted intrasigence and incompetence of the ICC. Their statement was based primarily upon the final chapter of the report on the ICC and the summary of findings and conclusions said to be contained therein; this was the only portion of the report released in advance of the hearing.

The intervening years have confirmed what some suspected at the time of the study's release. The report on the ICC was so shallow in its approach and so strident in its articulation that, once its initial sensation had waned, it would prove to be relatively insignificant and largely ineffectual.<sup>7</sup> That Nader and the students did no better was an opportunity squandered because the ICC was certainly a suitable subject for study. Its procedures had been criticised widely as antiquated and cumbersome; its policies as ill-defined and unresponsive.<sup>8</sup> A report reflecting greater scholarship and objectivity might have made a valuable and lasting contribution, but such was not the case with Nader and the students'.

In the area singled out by Nader for particular study, that of rate-making by the carriers and its regulation by the ICC, the deficiencies of the report were especially evident. It failed completely to comprehend the framework of rate regulation established by the Congress that leaves the initiative for setting their price structure to the carriers themselves and assigns to the Commission the almost passive role of checking entrepreneurial excesses. Nor did the study recognize the very wide latitude enjoyed by the carriers to adjust their rates and charges to meet competitive conditions, including the competition offered by carriers of different modes of transportation. Indeed, the Nader report did not even cite, much less discuss, the decade's most important decision dealing with intermodal rate setting, the *Ingot Molds* case,<sup>9</sup> announced by the Supreme Court the year before the students' study of the ICC.

The Nader experience is recalled by Mr. John Guandolo's

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<sup>7</sup> See Goodman, *Recent Trends in Transport Rate Regulation*, 70 MICH. L. REV. 1223 (1972). (Goodman is the Assoc. Gen. Counsel for the ICC).

<sup>8</sup> See, e.g., G. HILTON, *THE TRANSPORTATION ACT OF 1958* (1969); J. LANDIS, *REPORT ON REGULATORY AGENCIES TO THE PRESIDENT-ELECT* (1960); J. MEYER, *THE ECONOMICS OF COMPETITION IN THE TRANSPORTATION INDUSTRIES* (1969); J. NELSON, *RAILROAD TRANSPORTATION AND PUBLIC POLICY* (1969).

<sup>9</sup> *American Commercial Lines, Inc. v. Louisville & Nashville R. Co.*, 392 U.S. 571 (1968).

treatise entitled *Transportation Law*. That is not to say that his writing is devoid of scholarship and objectivity. Rather, like the Nader report on the ICC, Mr. Guandolo's book invites speculation as to how much more valuable a work it might have been if greater effort had gone into its preparation and more care taken in its editing.

To be sure Mr. Guandolo's text occupies what would otherwise be a gaping hole in legal literature. It was first offered by him in 1965 to meet the need for a one-volume essay on contemporary transportation law. In the interim no other work has dealt as comprehensively with the subject, and Mr. Guandolo's book continues to make a worthwhile contribution for this, if for no other reason.

The second edition of Mr. Guandolo's book, like the first, deals with the activities and procedures of the ICC, Civil Aeronautics Board and Federal Maritime Commission and the principal statutory provisions administered by them, notably those of the Interstate Commerce Act,<sup>10</sup> Federal Aviation Act<sup>11</sup> and Shipping Act of 1916,<sup>12</sup> respectively. Because of the greater length of time that the ICC has been in existence, its broader jurisdiction and the heavier case load disposed of by it, the body of transportation law that this agency has generated is considerably larger than that which has derived from the CAB and FMC, and, consequently, much more of the book concentrates on the former rather than the latter.

The second edition enlarges upon the first. It numbers over three hundred more pages and includes five new chapters, covering material not canvassed in the earlier edition, as, for example, that dealing with the National Environmental Policy Act of '69.<sup>13</sup> Other chapters, most notably the one on certificates of public convenience and necessity of motor carriers, have been expanded.

The second edition, however, does not significantly revise the first; the preponderance of the text is taken intact from the earlier edition. In some instances this means that intervening develop-

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<sup>10</sup> 49 U.S.C. §§ 1 *et seq.* (1971).

<sup>11</sup> 49 U.S.C. §§ 1301 *et seq.* (1971).

<sup>12</sup> 46 U.S.C. §§ 801 *et seq.* (1971).

<sup>13</sup> 42 U.S.C. §§ 4321 *et seq.* (1971).

ments pertinent to the subject have not been included. Thus, for example, in the discussion of certificates for railroads there is no mention of the *Lake Calumet Harbor* case,<sup>14</sup> and in the discussion dealing with mergers of railroads there is not even a reference to the *Penn-Central Merger*<sup>15</sup> or *New Haven Inclusion*<sup>16</sup> cases. These decisions of the Supreme Court at the very least are more recent expressions of principles of law that may have been covered by Mr. Guandolo, but additionally they, in themselves, warranted discussion.

In other instances Mr. Guandolo's reliance upon his prior writings has resulted in his offering once again material that is less than adequate to begin with. For example, it almost defies belief that he would have a chapter on private truck transportation that would not cite and much less discuss the *Brooks*<sup>17</sup> and *Schenley*<sup>18</sup> cases that are the very foundation upon which the entire law of proprietary transportation has been structured.

Other deficiencies are minor but they nevertheless rankle. Thus, the book lacks a table of cases, and its citations to court cases are incomplete.

The Nader report on the ICC left unfulfilled the need for a serious study devoted to the agency. In much the same way Mr. Guandolo's book only partially satisfied the goal its author himself set for an all inclusive treatise on transportation law. That it is not more successful in achieving its purpose is no less regrettable than was the failure of the Nader effort. Certainly, at a time when the solutions to the pressing problems of the Nation's surface carriers are being sought in legislative revisions,<sup>19</sup> the need is greater than ever for understanding what the law permits the carriers and the role it assigns the ICC in their regulation. Only

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<sup>14</sup> *Illinois Central R. Co. v. Norfolk & Western Ry. Co.*, 385 U.S. 57 (1966).

<sup>15</sup> *Penn-Central and N. & W. Inclusion Cases*, 389 U.S. 486 (1968).

<sup>16</sup> *New Haven Inclusion Cases*, 399 U.S. 392 (1970).

<sup>17</sup> *Brooks Transp. Co. v. United States*, 93 F. Supp. 517 (E.D. Va. 1950), *aff'd mem.*, 340 U.S. 925 (1951).

<sup>18</sup> *Schenley Distillers Corp. Contract Carrier Application*, 48 M.C.C. 405 (1948).

<sup>19</sup> See, e.g., *Hearings on Surface Transportation Legislation Before the Subcomm. on Surface Transportation of the Senate Committee on Commerce*, 92d Cong., 1st Sess., ser. 92-71, at 11-56 (1971) (Text of S. 2362; debates of S. 2362 at 148 *et seq.*; Text of S. 2842 at 72-127).

fragmentary insight into these matters is offered by Mr. Guandolo's book.

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