



ARC

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The following opinion piece by Frank Wilner appeared in the Argus Rail Business newsletter on August 27, 2007.

Frank Wilner, an economist and a former chief of staff at the STB, is director of public relations for the United Transportation Union. He is the author of four books on rail public policy issues. Wilner's views as expressed are his own and are included to provide Wilner's unique insights into the rail industry.

Shippers justified in STB perception

Justice is said to be blind — except to the facts — and rightly so. Were the public to perceive judges had a favorable bias toward an industry that subsequently hired them away from the courts, anarchy would follow.

So what's going on at the STB and its predecessor Interstate Commerce Commission (ICC), where shipper perception is that the agency exhibits a favorable bias toward railroads?

- Regulators say the perception is incorrect. But consider the facts creating the perception:
- The previous two chairmen of the STB were hired by the railroads they regulated. Linda Morgan became UP principal outside legal counsel at Covington & Burling, filling a vacancy created when UP hired her predecessor to head its law department in Omaha. Meanwhile, Roger Nober departed the STB to become outside legal counsel to BNSF (and other railroads) at the firm of Steptoe & Johnson; and, one year later, was hired directly by BNSF to head its law department in Ft. Worth.
- CSX hired former STB member Jake Simmons as a consultant.
- The Association of American Railroads (AAR) hired former STB member William Clyburn as a consultant.
- CSX hired former ICC chairman Reese Taylor as a consultant.
- BNSF predecessor Burlington Northern hired former ICC member Betty Jo Christian as outside counsel.
- BNSF predecessor Burlington Northern hired former ICC Chairman Darius Gaskins to head its marketing department, and later elected him chief executive.
- Shortline railroad holding company RailTex elected former ICC Chairman Heather Gradison to its board of directors.
- AAR hired former ICC member Karen Phillips, now a CN lobbyist. Senior STB/ICC senior staff members also have been offered lucrative employment by railroads.
- NS hired Nober's chief of staff, John Scheib, who formerly was outside counsel to UP.

- AAR hired Simmons's attorney-adviser Dennis Starkes.
- NS hired Simmons's chief of staff, Rick Crawford.
- BNSF predecessor Santa Fe Railway hired ICC Secretary Sidney Strickland.
- UP predecessor Southern Pacific hired ICC congressional relations officer Alex Jordan.
- The AAR hired ICC department head Alan Fitzwater, subsequently a Burlington Northern lobbyist.
- The AAR hired ICC acting secretary Nancy Wilson. The STB, meanwhile, has hired numerous railroad officials to senior positions.
- STB chief economist William Huneke, and STB economists William Brennan and Randy Resor, are former Association of American Railroads employees. Also, STB economist Michael Boyles previously was employed by a consulting firm performing economic evidentiary work for railroads in rate reasonableness cases decided by the STB.
- Current STB member Douglas Buttrey appointed as his chief of staff, Alice Saylor, a former senior officer of the American Short Line and Regional Railroads Association, and previously a railroad lawyer.
- Current STB Chairman Charles Nottingham hired as his chief legal adviser, Scott Zimmerman, who had been outside regulatory counsel for NS.
- Senior STB attorney Ray Atkins is a former lawyer with UP's outside law firm, Covington & Burling.

Not for more than half a century has someone with a shipper background been confirmed by the Senate to the ICC/STB. That was Rupert Murphy, nominated by President Eisenhower in 1955. The lone STB senior employee in recent years with shipper experience, Gerald Fauth, departed four years ago. None of this is meant to suggest there has been—or is—any wrongdoing at the STB or its ICC predecessor. It is meant to explain why shippers perceive a bias in decision making, and why Congress is advancing legislation to force the STB to protect shippers from rail monopoly power as promised by the Staggers Rail Act of 1980.