

the Commission that the train is an undue financial burden on the railroad and that people are not using it. So there is enough there on which to issue a simple order.

Apparently they have to do the same work in reviewing the file before stating their intention not to investigate as they would to write up and issue an order after hearing that would permit the railroad to discontinue its passenger trains.

Insofar as judicial challenge is concerned, I understand there is an objection from the Department of Transportation. The Department doesn't like the appellate aspects of S. 2711 because they might cause delay. Mr. Tierney objects to those aspects of S. 2711 also because the Commission would have to defend its orders when they are judicially challenged.

As I said, there have only been 32 nonhearing cases and if all had been appealed in 9 years there would not be very many hours required to defend them. Nor would there be much of a delay because presumably the Commission would not act irrationally in these cases. They would only do this in those cases in which they were convinced that the railroad had made its case and it couldn't be really seriously challenged.

What would happen? The public, if they wanted to challenge it, would have to go to a three-judge Federal district court and get a temporary restraining order. The court, in looking at the case, would have to decide, if they were to issue a temporary restraining order, that the plaintiffs in the case had a pretty good chance, a relatively good chance, of succeeding, and that the Commission had abused its discretion.

Such a temporary restraining order would be a virtually impossible thing to get. So I would guess out of the 32 cases, maybe one would have gotten a temporary restraining order, or maybe two. But that is about all. There wouldn't have been much of a delay. You wouldn't have many people involved in this thing. It wouldn't be much of an administrative burden on the Commission at all.

In addition, I am still not convinced that it is in the public interest to deprive the public of the right of appeal, particularly in a situation where the railroad has such a right built into the statute and the public doesn't. I think as a lawyer, the public should have that right.

Insofar as the circumstances surrounding the Santa Fe train discontinuances are concerned, some people have said that this is kind of a tempest in a teapot, that these trains would have come off anyhow. I don't disagree with that. The trains probably would have come off. But that type of argument misses the point because we are here dealing with the interpretation of a statute by an agency charged with administering the statute and the agency has interpreted it so that the agency is removed from the scene. They have nothing to do with it once the law is violated.

If this committee should decide to report out a bill, of course, I don't know whether you will take the same tack that apparently the Senate Commerce Committee has; that is, to report out this S. 2711 which then passed the Senate by consent, and then go back later this year and look at the other bills which have been in the Senate committee and decide maybe to report one of those out.

We have some very vital problems and issues involved before the Senate committee and we hope to bring them up at the proper time