Alfred Kahn (1917–2010)

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Dr. Alfred Kahn, former Chairman of the New York Public Service Commission and the U.S. Civil Aeronautics Board, and Professor of Economics at Cornell University, passed away on December 27, 2010. Memorialized twenty-five years ago in Thomas K. McCraw's Pulitzer Prize winner, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn*, he was ninety-three.

Kahn's treatise, ***The Economics of Regulation: Principles and Institutions***, is a must-read for everyone in our field. I first encountered Kahn in 1979 when I participated in my first rate case—Northeast Utilities seeking a $131.5 million increase, reflecting the rate base-ing of its last nuclear power plant. Having lucked into his two-volume masterpiece at the local library's used book sale, I used it to struggle through the forest of foreign terms like "test year" and "rate base." Too many years later, around 1995, I finally committed to reading the entire six hundred pages: five pages a night for four months. My marked-up, highlighted copy sits near my desk, for whenever I need a pitch-perfect explanation of an economic problem—inevitably solved by Kahn forty years ago.

Candor and humor: As President Carter's inflation fighter, he warned of a "deep, deep depression" if price increases continued. The "D" word's pessimism infuriated his boss, so Kahn turned to fruit: "We're in danger of having the worst banana in forty-five years." See http://www.time.com/time/magazine/article/0,9171,919922,00.html. "He later changed that to 'kumquat' after banana companies objected." http://www.bloomberg.com/news/2010-12-28/. (The bananaists' balk reminds me of sausage makers offended by comparisons to law making; unlike law making, they assert, sausage making has quality standards, allows only one person to be in charge at a time, and forbids the inclusion of unrelated ingredients. See R. Pear, "If Only Laws Were Like Sausages," *The New York Times* (Dec. 4, 2010).)

Decency and directness: Kahn was deeply decent but did not suffer fools. During its 1995 inquiry into retail electricity competition, the Connecticut Department of Public Utility Control asked me to examine Dr. Kahn, who was testifying for the utilities. It was not a career high for me. Lawyers test witnesses' reasoning by asking hypotheticals—usually in the form of "If XYZ, then what?" Displeased with one such question—it contained an assumption he thought unrealistic—Kahn responded, "If my grandmother had wheels, she'd be a bus. So what?"

Theoretical connected to the practical: Kahn's subchapter on price discrimination praised the airlines' mid-1960s "youth fares." Access to these discounted deals depended on last-minute seat availability. Excellent idea in theory, Kahn said, but a problem in practice: "Several companies found that the marginal costs of the program were well above zero: They encountered a greater demand on the time of the agents in answering questions about the possibilities of finding standby space, greater congestion at ticket counters, and increased annoyance to regular passengers, who were often offended by the sartorial, hirsute and ablutional state, and the comportment of some of their new fellow travelers." *The Economics of Regulation,* Vol. I, p. 76 n. 28.

The youth fares—and their consequences—prompted Irwin Stelzer's post-flight letter to Chairman Kahn, complaining of "a rather odiferous and bare-footed hippy" seated next to Stelzer. Kahn's formal reply to his former student: "Many thanks for your letter. I am sure you understand that it would be inappropriate for me to rule in this matter until I have heard from the hippy. Signed: Alfred E. Kahn, Chairman." See http://www.antitrustinstitute.org/node/10267.

Three Big Ideas

Kahn had membership in that rare order of regulators appointed solely for their scholarship and intellect. In his life's work, three big ideas stand out:

We are regulators first, sector experts second. Kahn left footprints everywhere: airlines, electricity, ground transport, gas, and telecommunications. The economic principles by which to assess the necessity and value of regulatory action apply regardless of an industry's details. As he said after becoming CAB chairman: "I really don't know one plane from the other. To me, they're all marginal costs with wings." http://www.bloomberg.com/news/2010-12-28/.

Market structure decisions require facts, not faith; intellect, not ideology; flexibility, not fixed notions. His treatise declared that the "central, continuing responsibility of legislatures and regulatory commissions" is "finding the best possible mix of inevitably imperfect regulation and inevitably imperfect competition." Vol. I at p. xxxvii; Vol. II at p. 114. Some have twisted this quote back on itself, positing that "imperfect competition is better than perfect regulation"—a statement whose certainty and smugness are worlds away from Kahn's humility and fact-fixedness.

Effective regulators don't preside; they lead. Kahn would applaud those commissions of today that create their own proceedings, whether on broadband access, energy efficiency, rate design, natural gas contracting, water infrastructure, or renewable energy. He worried that

> "regulation has been a negative process, with the initiative coming from the companies themselves..."; that it "proceeds on a case-by-case basis, on issues usually framed and a record made up by contesting parties, rather than on occasions and issues formulated by the government itself in terms of its own, independent judgment of the public concern[;]" so that the "function of the regulator becomes primarily adjudicatory rather than executive or legislative[,] ... constrained by elaborate rules of evidence designed, principally, to protect the interests of the private litigants rather than for the formulation of general policy by expert bodies[;] ... [with decisions] tend[ing] often to degenerate into pragmatic, timid compromises between the contending private interests."

The Economics of Regulation, Vol. II at p. 87. More darkly, he warned that reacting rather than leading produces a downward spiral:

> "It has been a stereotype of political wisdom that the bureaucrat is ever ready to exercise authority arbitrarily. But there is the far greater danger that the second-rate, insecure personality who often finds his way into bureaucracy will become uncomfortable at having to exercise authority and will anxiously seek to placate as many interests as possible. This fear to offend, complaisance, and readiness to listen and be 'fair' and 'reasonable' clog the muscles of the will, and what begins in amiability can end in corruption."

Id. at p. 88 n. 122 (quoting L. Jaffe, "The Scandal in TV Licensing," *Harper's Magazine*, CCXV: 77 (1957)).

Alfred Kahn was a national treasure and an intellectual treasure trove. A teacher, author, regulator, and administrator, Kahn was, above all, a thinker.