

In the

Supreme Court of the United States

RAYMOND KASSEL ET AL.,

APPELLANTS,

v.

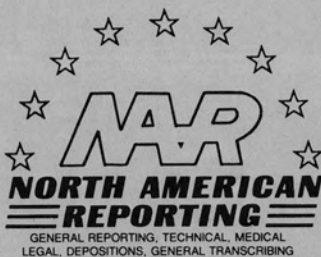
CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE,

APPELLEE.

No. 79-1320

Washington, D.C.
November 4, 1980

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IN THE SUPREME COURT OF THE UNITED STATES

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RAYMOND KASSEL ET AL.,		:
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	Appellants,	:
		:
	v.	:
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CONSOLIDATED FREIGHTWAYS CORPORA-		:
TION OF DELAWARE,		:
		:
	Appellee.	:
		:
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No. 79-1320

Washington, D.C.

Tuesday, November 4, 1980

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:01 o'clock p.m.

APPEARANCES:

MARK E. SCHANTZ, ESQ., Solicitor General of the State of Iowa, Hoover State Office Building, Des Moines, Iowa 50312; on behalf of the Appellants.

JOHN H. LEDERER, ESQ., DeWitt, Sundby, Huggett & Schumacher, S.C., 121 South Pinckney Street, Madison, Wisconsin 53703; on behalf of the Appellee.

C O N T E N T S

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ORAL ARGUMENT OF

PAGE

MARK E. SCHANTZ, ESQ.,
on behalf of the Appellants.

3

JOHN H. LEDERER, ESQ.,
on behalf of the Appellee.

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P R O C E E D I N G S

1
2 MR. CHIEF JUSTICE BURGER: We will hear arguments
3 next in Kassel v. Consolidated Freightways.

4 Mr. Solicitor General, you may elevate the lectern
5 if you wish.

6 ORAL ARGUMENT OF MARK E. SCHANTZ, ESQ.,

7 ON BEHALF OF THE APPELLANTS

8 MR. SCHANTZ: Thank you, Mr. Chief Justice, and may
9 it please the Court:

10 Iowa appeals from decisions below, holding that a
11 nondiscriminatory Iowa statute limiting the length of a twin-
12 trailer vehicle to 60 feet unconstitutionally burdens inter-
13 state commerce. At stake here, however, appears to be the
14 authority of the states to regulate vehicle lengths at all.

15 The Iowa Legislature has determined that the length
16 of vehicles should be limited in the interest of safety.
17 Implicit in that determination is a factual premise.

18 QUESTION: As a matter of fact, this is your sole
19 argument here, isn't it, Mr. Schantz? Safety?

20 MR. SCHANTZ: That's correct, Your Honor. That's
21 the sole interest of the State that is asserted in justifica-
22 tion of the statute.

23 The premise is that safety concerns increase, safety
24 concerns with motor vehicles increase as their length increases.
25 And the central issue here is the proper scope of review by a

1 federal district court of such a factual determination by a legis-
2 lature. Iowa submits the District Court misperceived its fact-
3 finding function and inappropriately substituted its judgment
4 for that of the Iowa Legislature. Rather than making a de
5 novo determination whether Iowa's 60-foot limitation promotes
6 safety, the federal court should ask only whether, on this
7 record, a reasonable legislature could believe that length
8 limitations promote highway safety.

9 Put a little differently, Iowa contends the Court should
10 not have asked, as it plainly did, does this evidence persuade
11 me as a matter of adjudicative fact that a 65-foot twin trailer
12 is significantly less safe than a 60-foot twin trailer, or a
13 55-foot semi? Rather, the Court should have asked, could a
14 reasonable legislature conclude that the length of vehicles
15 operating on highways should be limited in the interest of
16 safety? If so could a legislature then conclude that it's
17 reasonable to draw a line at 60 feet?

18 The question then is, what is the question? And we
19 think both parties agree that if Iowa's limitation is properly
20 viewed as a safety measure, Iowa should prevail. If not pro-
21 perly viewed as a safety measure, Consolidated Freightways
22 should prevail.

23 QUESTION: Mr. Solicitor, suppose Iowa made a rule
24 of difference as to whether it was raining or snowing, because
25 there is a difference?

1 MR. SCHANTZ: That's correct.

2 QUESTION: It doesn't make too much difference how
3 long a truck is in sunny weather, but in rainy weather it does
4 make a difference, doesn't it?

5 MR. SCHANTZ: We think it does make a difference in
6 sunny weather too, but one of the more critical differences
7 certainly is when the roads are bad, and they are frequently
8 bad in Iowa.

9 QUESTION: And when visibility is bad.

10 MR. SCHANTZ: Exactly. That is one of the principal
11 safety concerns here, is with visibility, is with splash and spray
12 that large trucks, long trucks, regardless of their configura-
13 tion.

14 QUESTION: Do you think then that -- let's take the
15 State of Wyoming or Colorado or some of the states with moun-
16 tains and curved highways and steep, could have a shorter
17 length than even Iowa?

18 MR. SCHANTZ: Mr. Chief Justice --

19 QUESTION: Let's say, just five feet, not -- five
20 feet shorter? I want to keep it within reason.

21 MR. SCHANTZ: I think they could, within reason.

22 QUESTION: I mean, they couldn't say, no trailer
23 trucks at all, could they?

24 MR. SCHANTZ: No twin-trailer trucks at all?
25 I don't believe so, in the face of this Court's decision in

1 the Raymond case, which our interpretation of, is a case that
2 involved discrimination against vehicles with twin-trailers.
3 So we would not say that they could promote, that they could
4 exclude twin-trailer vehicles. Indeed, they must have some
5 rational basis for treating them in any way different.

6 QUESTION: What would you say about Iowa's right to
7 fix a 50-miles-an-hour speed limit when Nebraska and all the
8 contiguous states were 60 miles an hour?

9 MR. SCHANTZ: We would strenuously argue that Iowa
10 has that authority.

11 QUESTION: What if they dropped it down to 20 miles
12 an hour?

13 MR. SCHANTZ: Well, with all line-drawing problems,
14 as Justice Holmes, the quote in our brief from Louisville Gas
15 and Electric, at some point it may be that a court should say
16 that it's not --

17 QUESTION: That would be an undue burden, you would
18 say, on interstate commerce, to say 20 miles an hour is the
19 limit for trucks?

20 MR. SCHANTZ: I would not characterize it that way.
21 I think the Court might then begin to wonder whether speed was
22 the basis -- that a concern for safety based on speed was
23 truly the basis for that determination. And if the Court
24 found that, that would be a different case.

25 QUESTION: I don't understand that. Supposing the

1 people of the state like to drive slowly and they have a
2 20-mile-an-hour speed limit for everybody in the state, not
3 just trucks, and they enact it through their legislature say-
4 ing, we think that it's pretty clear to us that if nobody goes
5 faster than 20 miles an hour, we'd have fewer deaths on the
6 highways. Why couldn't they do that?

7 MR. SCHANTZ: I think if they truly did it consis-
8 tently, Your Honor, they could --

9 QUESTION: Well, presumably they would if they had
10 a 20-mile-an-hour speed limit and everybody obeyed it.

11 MR. SCHANTZ: If they had a 20-mile-an-hour speed
12 limit --

13 QUESTION: And I don't understand why you can't make
14 the same argument on a 25-foot truck length too. They're
15 probably safer than 65-foot trucks.

16 MR. SCHANTZ: I think that's probably correct, Your
17 Honor.

18 QUESTION: Well, can't the state just adopt a 25-foot
19 truck length? I don't understand.

20 MR. SCHANTZ: Well, I would be --

21 QUESTION: It has safety, it certainly has safety
22 concerns associated with it.

23 MR. SCHANTZ: That's correct. That's correct. We
24 would defend that.

25 QUESTION: Certainly one reason you might not want

1 to adopt it is that trucks would in that event avoid Iowa, and
2 Iowa merchants and so forth get profit from trucks of 55-foot
3 length coming through Iowa.

4 QUESTION: That's a reason why they might not want
5 to do it, but I'm assuming the legislature decides, we'd rather
6 have safety than the business brought to us by 30-foot trucks.

7 MR. SCHANTZ: That's correct, Your Honor, and I
8 think that reveals an important point about what's going on in
9 this kind of line-drawing. It is really a question of how
10 much safety at what cost. It may even be hard to identify a
11 precise increment that you get from adjusting a line five feet.

12 QUESTION: that has echoes of the recent "benzene"
13 case, does it not?

14 MR. SCHANTZ: I can't address myself to that, Your
15 Honor.

16 QUESTION: Well, what -- let's hear it test it out
17 further. Suppose they said, no trucks at all. Suppose the
18 Amish took over control of the State, populated the State with
19 a majority, and the Legislature was overwhelmingly Amish, and
20 they said, no trucks, just horses and buggies. Because they're
21 safer. They can demonstrate on the record that if you just
22 have horses and buggies on the highways, you have fewer acci-
23 dents and fewer deaths. Is there a point, in other words,
24 when there is an undue burden, an unreasonable burden on
25 interstate commerce, independent of whether this helped or

1 hurt the local merchants?

2 MR. SCHANTZ: Let me say two things. First, it's
3 not critical to our case that there be some limit. We would
4 be prepared to concede that for argument. I think, though, it's
5 a fully defensible position, to say that insofar as the
6 record shows that the State is truly motivated by safety and
7 that that's a rational concern, that this Court need not in-
8 tervene under undue burdens on commerce grounds. For one
9 thing, if because the decision to reject that is a legislative
10 type decision, how much safety at what cost, and in that --

11 QUESTION: Do you really want to add, "at what
12 cost"? Because I would think it's consistent with your argu-
13 ment to say, as long as they're interested in safety, and
14 that they're entitled to decide how much safety, and that's the
15 end of it. Isn't that your judgment?

16 MR. SCHANTZ: No, to be clear, I think any safety
17 regulation could be stricter, or a state could invest more
18 resources.

19 QUESTION: So you think there has to be a cost --
20 at what cost? There has to be a balance in it?

21 MR. SCHANTZ: Yes, I do.

22 QUESTION: You mean, in short, the safety, the bur-
23 dens of the safety -- the burdens that safety imposes could be
24 too much burden?

25 MR. SCHANTZ: On the contrary, Your Honor, it is

1 just because it is a policy question of how much safety at
2 what cost, that we believe this Court should leave that ques-
3 tion to a legislature. And in the event that the states get
4 it terribly wrong, if Iowa were to get it terribly wrong --
5 which it hasn't in this case, we submit -- Congress is there
6 to substitute its judgment on that question of policy.

7 QUESTION: But Mr. Schantz, before you get to
8 Congress, could the State ever be terribly wrong if it had an
9 expert who was willing to get on the witness stand and say, I
10 think there is a probability that this different regulation
11 will save one human life?

12 QUESTION: I'd certainly be willing to defend that
13 proposition and I --

14 QUESTION: Regardless of the cost impact on commerce?

15 MR. SCHANTZ: That's right. That's right.

16 QUESTION: Are you asking us to overrule the Wisconsin case?

17 MR. SCHANTZ: No, we're not, Your Honor, for two
18 reasons. One is that Iowa did not default in defense of its
19 length regulation, and I think that the Court's questions
20 reflect that. This Court is persuaded that as a general matter
21 length is related to safety. And we think the record supports
22 the proposition that a legislature could reasonably find that.

23 QUESTION: Well, there was a two-week trial in this
24 case, wasn't there, before Judge Stewart?

25 MR. SCHANTZ: Yes, and a very long period of depositions,

1 Your Honor.

2 QUESTION: Perhaps it's irrelevant, but does the
3 right to travel possibly enter into this total picture? Does
4 the power of a state legislature go so far that it can impose
5 limits which would be clearly barriers to the right to travel?

6 MR. SCHANTZ: Well, I think the right to travel
7 cases, primarily, at least, involve the rights of persons to
8 travel and not the right of carriers to transport --

9 QUESTION: But can a state say, if you want to travel
10 through this state, you have to either walk or ride horseback?
11 I think, as I understood it, that was the Chief Justice's
12 question.

13 MR. SCHANTZ: In principle, as silly as it sounds,
14 I think as a matter of Commerce Clause jurisprudence that is
15 not a bad position. Congress is going to come along and tell
16 us, now come on, Iowa, you've got to get into the twentieth
17 century, if we tried to do that.

18 QUESTION: Well, to get to a more current issue,
19 could Iowa ban all trucks which were carrying nuclear waste
20 or hazardous waste from passing through it?

21 MR. SCHANTZ: Not from passing through it, because
22 I think that would be a direct, probably would be a direct
23 regulation of interstate commerce, Your Honor.

24 QUESTION: Well, but it's a safety. It would --
25 safety, safety, safety.

1 MR. SCHANTZ: Yes, and I think the state can do a
2 lot of things that are reasonable to restrict.

3 QUESTION: Well, I know, but a state here says,
4 instead of saying all nuclear waste trucks stay out, all trucks
5 over 60 feet stay out.

6 MR. SCHANTZ: That's right, Your Honor.

7 QUESTION: That's pretty direct, isn't it?

8 MR. SCHANTZ: It's not a barrier in that sense, in
9 that --

10 QUESTION: I'm afraid it is, that there are no trucks
11 of that length allowed in the state, no matter what they're
12 carrying.

13 MR. SCHANTZ: But the nuclear waste would not get
14 through. In this case the freight can go through Iowa. It's
15 not a barrier in that sense. And in fact, many general commod-
16 ity carriers --

17 QUESTION: I know, but the trucks can't go.

18 MR. SCHANTZ: That particular truck can't go through,
19 and if the limit were raised to 100 feet, Your Honor, that
20 would still mean that a 108-foot truck can't go through, so I
21 think we're still basically talking about a question of line-
22 drawing by the Legislature.

23 I'd like to return to the question of how Raymond is
24 distinguishable here. The evidence is one very critical dis-
25 tinction, I think. The other distinction has to do with the

1 statutory framework of Wisconsin. Wisconsin's legal framework,
2 I think, differed in critical respects from Iowa. One looks
3 back at the Raymond case and the way that the legislation is set
4 forth. In Wisconsin Consolidated Freightways could not oper-
5 ate a 40-foot twin, or a 55-foot twin. And it was somewhat
6 irrelevant that the twin they wanted to operate was 65 feet
7 in length as far as the law was concerned.

8 QUESTION: Because the law provided what?

9 MR. SCHANTZ: The law said, there was a general stat-
10 ute that said, that was referred to, that semis could operate
11 at 55 feet without a permit. Semis beyond that length could
12 not operate. That was the length limitation for the semi-
13 trailer configuration. Now, the twins were advantaged and
14 disadvantaged in comparison with that. There was another stat-
15 ute that said, you can get a permit from their DOT to run
16 100-foot trailer trains.

17 QUESTION: Trains; trailer trains. Which would be
18 double bottom.

19 MR. SCHANTZ: Which was the regulation that applied
20 to twin trailers or triples or how many ever additional you
21 added on. So the Legislature said, if you get a permit from
22 the DOT, 100 feet is okay. The DOT then adopted some regula-
23 tions limiting the use of trailer trains to garbage trucks,
24 raw milk, and empty trailers -- empty vehicles in transit, I
25 believe. And so it was really because of their configuration

1 that Wisconsin did not allow those trucks.

2 Now, the question of length got into it partly be-
3 cause of the way the lawsuit was defended, but it wasn't that
4 statute which was challenged by Consolidated Freightways. All
5 of their evidence was comparative safety, between the twin-
6 trailer configuration and the semi-trailer configuration.
7 Most of their burden claim focused on the cost savings, the
8 interlining, the cost of dock handling that would be asso-
9 ciated with the configuration of the vehicle as opposed to
10 its length.

11 QUESTION: Mr. Solicitor, you're going to comment
12 and give us your assurance about your border cities exemption?

13 MR. SCHANTZ: Your Honor, the border cities exemption
14 -- the border cities provision -- I don't want to quibble about
15 words, but I'm not sure it's an exemption, it's a classifica-
16 tion addressed to what we think is a different situation.

17 QUESTION: I asked that at this time because of your
18 reference to the Raymond case and its structure. And here you
19 have a structure too of some kind.

20 MR. SCHANTZ: We think that is another difference be-
21 tween this case and the Raymond case. Iowa does have a series
22 of length provisions, rather than one. We have one for semis;
23 at this time it was 55 feet; it's now been increased to 60.
24 For twin trailers, it was 60 feet; for buses it was 40 feet.
25 For vehicle carriers it was 65 feet; for livestock carriers

1 it was for 60 feet. And for vehicles going in and out of
2 border cities, those border cities which passed a local ordi-
3 nance, they could borrow the limit of the adjacent state.

4 QUESTION: Well, counsel, following up on Justice
5 Blackmun's question, Iowa is somewhat peculiarly situated with
6 respect to border cities, isn't it, in that being bounded by
7 the Mississippi on one side and the Missouri on the other, you
8 have Dubuque, Clinton, Davenport, Keokuk, Fort Madison on the
9 Mississippi side?

10 QUESTION: Council Bluffs.

11 MR. SCHANTZ: Council Bluffs on the Missouri side,
12 yes.

13 QUESTION: Sioux City and Council Bluffs on the
14 other, so that a remarkable percentage of the population
15 lives in identifiable border cities.

16 MR. SCHANTZ: I don't think the record reflects that
17 precisely, Your Honor, but that would by no means be a major-
18 ity of the population of Iowa. Several of the larger cities --
19 Des Moines is three times larger than any other city, and it's
20 pretty much right in the middle. Cedar Rapids; Waterloo.

21 QUESTION: Compared to Wisconsin?

22 MR. SCHANTZ: I think more of the population in
23 Wisconsin is inland; yes, Your Honor.

24 QUESTION: Well, are other kinds of trucks permitted
25 to exceed this length limit too?

1 MR. SCHANTZ: Yes, it doesn't have anything to do
2 with twins versus semis. You can run larger livestock carriers
3 and insofar as the record discloses the history of that, it is
4 basically that for many years the length limitations were not
5 enforced.

6 QUESTION: The livestock trucks run all over the
7 state.

8 MR. SCHANTZ: Sixty-foot livestock trucks, which is
9 the same limitation for twin-trailers. We don't give the live-
10 stock trailers any special break.

11 QUESTION: While we're on geography, is it relevant
12 to this case and the problems of the case that Iowa is some-
13 thing of a crossroads in a sense, at least one of the main
14 crossroads for east-west traffic and north-south traffic?

15 MR. SCHANTZ: From Consolidated Freightways' point
16 of view, frankly, I'm sure it is relevant, just as Pennsylvania
17 being between Boston and New York on interstate highways.

18 QUESTION: Iowa is pretty big to detour if you're
19 going from Minnesota or Winnipeg down down to New Orleans,
20 isn't it?

21 MR. SCHANTZ: That's a significant -- we would not
22 suggest that's an insignificant detour. But we would suggest --

23 QUESTION: Would you suggest, perhaps, it just
24 relates to the pain that they're suffering, not to the consti-
25 tutional issue?

1 MR. SCHANTZ: Exactly, Your Honor. Because we don't
2 think that because Georgia is not on a major route between two
3 states that allow longer trucks that they are entitled to have
4 a different rule than Iowa. So we think the Court must address,
5 really, ultimately, the general question of whether the states
6 are going to be free to adopt reasonable length limitations.

7 QUESTION: Mr. Solicitor, did you argue the case in
8 the 8th Circuit?

9 MR. SCHANTZ: No, I did not, Your Honor.

10 QUESTION: I wonder if you have any comment about
11 Judge Henley's obvious suffering dubitante about the full
12 crew law.

13 MR. SCHANTZ: We think that -- well, perhaps that
14 didn't completely describe our argument. We think that the
15 insight in that dubitante opinion is very much what we are
16 arguing for.

17 QUESTION: And he shouldn't just have been dubitante.

18 MR. SCHANTZ: We think it would have justified a
19 full dissent, Your Honor. Because I think when we separate
20 the questions of whether length is generally related to safety,
21 which was really the kind of question that was addressed in
22 the Brotherhood case -- and I've also called it the Firemen
23 case, and I apologize for that -- the Brotherhood of Locomotive
24 Enginemen and Firemen, the question the Court asked there was,
25 is the number of people on a crew generally related to the

1 safety of the operation of the train? And I think it was
2 clear from the opinion that the Court didn't think it was much
3 related, but they thought that, it could reasonably be thought
4 that it was. And the Court did not think a federal court
5 should decide whether you had four crew members or five.

6 And a similar point was made in the concurring opinion in Ray
7 v. Atlantic Richfield, where the question of the size of oil
8 tankers came up, 120,000 deadweight ton limit. The oil com-
9 panies had 150,000 deadweight ton tankers they wanted to use.
10 The Court didn't really address, implied that this is for the
11 legislature, where you draw the line. Could you reasonably
12 think that the size of tankers is related to safety and envi-
13 ronmental concerns? In the opinion Justice Marshall stated
14 the evidence was in conflict and therefore, it's a safety
15 regulation, and when you get into that safety generally
16 prevails.

17 QUESTION: Suppose you read the opinion below as
18 saying, well, we understand what the right standard is. We
19 should ask whether a reasonable legislature could possibly have
20 thought this was related to safety, namely, limiting to 60 feet
21 rather than 65, or 55 rather than 65. And so, applying that
22 standard we find that there is no relation to safety, and that
23 a reasonable legislature was just away off base; it was irra-
24 tional. It's permitted to go that far, I suppose?

25 MR. SCHANTZ: I think if Consolidated Freightways

1 could demonstrate it.

2 QUESTION: Is the Court permitted to go that far?
3 That's the proper standard, I understand from you.

4 MR. SCHANTZ: Absolutely. If the Court can say that
5 no reasonable legislature could believe that length was
6 related to safety -- ?

7 QUESTION: No, no, no; that no reasonable legislature
8 could believe that its length limit is any safer than
9 Missouri's.

10 MR. SCHANTZ: That five feet makes a --

11 QUESTION: Any difference. Suppose the Court
12 concludes that just no reasonable legislature could possibly
13 think this. They just got blown over by something.

14 MR. SCHANTZ: Well, that was really the point I was
15 addressing, Your Honor. I think to ask the question that way,
16 which is really the way the Court asked it, I think, is to ask
17 the wrong question. A reasonable legislature --

18 QUESTION: I don't blame you for taking that tack,
19 but here the Court did say that Iowa's limit as
20 compared with Missouri's has no relation to safety.

21 MR. SCHANTZ: The trial court said specifically,
22 little if any difference, five feet of length. And the Court
23 of Appeals said, applied a clearly erroneous standard, which
24 we think is wrong, they should review that question of consti-
25 tutional fact on the whole record, and asked whether or not --

1 let me start over. It seems to me that a reasonable legisla-
2 ture could believe that length is related to safety, could also
3 believe that five feet does not make very much difference,
4 and still think, we've got to draw the line here somewhere.

5 QUESTION: Well, are you just disagreeing with their
6 judgment? Are you saying they really asked the wrong question?

7 QUESTION: They really asked the wrong question;
8 that's your point?

9 MR. SCHANTZ: They really asked the wrong question,
10 and if you ask the right question, I think it's clear that a
11 legislature could believe length is related to safety.

12 QUESTION: Well, isn't it also clear that if you ask
13 what you say is the right question the District Court would
14 have come up the other way? Because the District Court said
15 he was convinced that the Freightways had shown him convinc-
16 ingly but not overwhelmingly that there was no relation.

17 MR. SCHANTZ: That statement, Your Honor, plus the
18 fact that the District Court called for preemption by Congress.
19 It asked Congress to set a 65-foot limit. The only rational
20 grounds, I think, for the Court calling for that is the Court's
21 belief that on that record, as a general matter, length is re-
22 lated to safety. So we think that to focus on five feet is to
23 slice the salami too thin.

24 QUESTION: So, the Court shouldn't be able to ask
25 if five feet makes any difference?

1 MR. SCHANTZ: Not five feet within a reasonable
2 general range; no, Your Honor. Maybe I wasn't clear. I think
3 that is our position, and I think that's exactly what -- whe-
4 ther night turns to day at 6 or 6:15, to use Justice Holmes'
5 example, is not a question that a court can find judicially
6 manageable standards to answer.

7 QUESTION: Well, are you then saying that when it
8 comes down to slicing it that thin, the phrase you used, then
9 it's for a legislative body, not for a judicial body?

10 MR. SCHANTZ: Exactly. Because it is that kind of
11 basic choice between a policy choice of values, cost, and
12 safety, that is hard to defend at an intellectual level. And
13 the Court, of course, I think must find standards that can be
14 distinguished and developed at an intellectual level.

15 QUESTION: Mr. Schantz, I'm still a little troubled
16 by your explanation of the Raymond case. You say that's not a
17 length case and this is a length case. Well, why in consti-
18 tutional terms is it different if the state that says, well,
19 I think semis should be regulated in one way and twins in
20 another? Why isn't this the same kind of safety judgment?

21 MR. SCHANTZ: It is the same kind of safety judgment.
22 It is the same kind of question. And I read Raymond to say
23 that on that record, on that record, a reasonable legislature
24 could not believe that the configuration of vehicles, that
25 having a different trailer, two trailers rather than one,

1 makes a safety difference. The Court was careful to point out
2 that had Wisconsin tried to defend that, they might have been
3 able to show that. But they didn't. They defaulted. That's
4 the relevancy.

5 QUESTION: But you would think they could reenact
6 the same statute, just put a little different legislative his-
7 tory in and then they'd be okay?

8 MR. SCHANTZ: Well, no, because -- not the same
9 statute. They can reenact a length limitation that is appli-
10 cable to twin-trailers and if it doesn't discriminate between twin-
11 trailers and semis, I see no reason why they shouldn't.

12 QUESTION: I don't know why they can't discriminate
13 between twin-trailers and semis if they should happen to think
14 one is safer than the other.

15 MR. SCHANTZ: Well, because -- perhaps they could
16 relitigate that point --

17 QUESTION: And if it's a rational judgment.

18 MR. SCHANTZ: It has to be a rational judgment.
19 And this the Court has said, we're going to let the carriers
20 try and prove to us that it's totally irrational. And what I
21 think Raymond means is that in that case they did, as with
22 respect to the variable of configuration but not with respect
23 to length.

24 With the Court's permission, I'd like to leave re-
25 maining time for rebuttal.

1 MR. CHIEF JUSTICE BURGER: Very well. Mr. Lederer.

2 ORAL ARGUMENT OF JOHN H. LEDERER, ESQ.,

3 ON BEHALF OF THE APPELLEE

4 MR. LEDERER: Mr. Chief Justice, may it please the
5 Court:

6 QUESTION: Let me -- before it interrupts your line of
7 argument -- ask you this: suppose in an evidentiary hearing it
8 developed that a significant number of accidents on the road
9 by over-the-road trucks of whatever size, but the large ones,
10 is the result of drivers going to sleep or otherwise having
11 some problems. And therefore the state would require that
12 any truck going through that state has got to have dual con-
13 trols and two operators, the way they do in airplanes. Do
14 you think that's carrying it --

15 MR. LEDERER: If in point of fact drivers falling
16 asleep were causing accidents, I think that would be a per-
17 fectly legitimate state regulation. I am in agreement with
18 my brother Mr. Schantz, if a state regulation promotes safety,
19 if in fact it promotes safety, I think in general, absent
20 discrimination, that regulation should be upheld.

21 QUESTION: Who decides whether in fact it promotes
22 safety, the courts or the legislature?

23 MR. LEDERER: I think that is a factual determination
24 that has to be made by the Court. And there are several rea-
25 sons for that.

1 QUESTION: Well, if the state says that 13 percent
2 of the accidents occurred because of drivers going to sleep
3 or other malfunctioning of the driving and therefore dual con-
4 trols will protect that, does that bring it under the McGowan,
5 v. Maryland rational basis, or not, in your view?

6 MR. LEDERER: At this Court we're not dealing with
7 the Equal Protection Clause and we're not dealing with the
8 Fourteenth Amendment and due process. We're dealing with the
9 Commerce clause. And I think the test under the Commerce
10 clause has to be different than the test that's applied under
11 the Fourteenth Amendment. The rational relationship test is
12 an inappropriate test under the Commerce Clause. And the
13 reason basically is because under the Commerce Clause you have
14 a direct conflict between the state government and the interest
15 of the national government. In that situation you can't turn
16 to the state and say that the state should be the arbiter of
17 that conflict, and so long as there is any rational relation-
18 ship whatsoever we will defer to the state.

19 In this case I think the thing that perhaps is most
20 important, because, as I say, I'm in agreement with Mr. Schantz,
21 if the Iowa regulation promoted safety, we wouldn't be here.
22 But the record in this case is conclusive. The Iowa regula-
23 tion does not --

24 QUESTION: Mr. Lederer, you say the record is conclu-
25 sive. And you cite in your brief at least three times the

1 Brotherhood case, which says that the district court's
2 responsibility for making "findings of fact certainly does
3 not authorize it to resolve conflicts in the evidence against
4 the legislature's conclusion, or even to reject the legisla-
5 tive judgment on the basis that without convincing statistics
6 in the record in support of the legislative viewpoint consti-
7 tutes nothing more than what the district court in this case"
8 -- that is, the Brotherhood case -- "said was pure speculation."

9 MR. LEDERER: I think you have to draw a careful line
10 between two things. I do not think it is in the province of
11 the federal courts to determine that if there is a slight
12 advance in safety, the economic burden outweighs that slight
13 advance. The decision of how much safety is a political deci-
14 sion, and that's a decision that has to be reached by a legis-
15 lature, be it state or federal.

16 What this Court can determine -- not this Court, but
17 the federal court, the trial court can determine the factual
18 case, the factual question of, does it promote safety at all?
19 That is a factual question and susceptible of proof.

20 QUESTION: But Judge Stewart then, in effect, found
21 against you, because he said the evidence in your favor was
22 convincing but not overwhelming.

23 MR. LEDERER: Well, no, he didn't quite say "not
24 overwhelming." He said, "the evidence, convincingly if not
25 overwhelmingly." He also, in other places in the opinion,

1 referred to it as "clear," and referred to it as conclusive.

2 QUESTION: But there were witnesses from both sides
3 and he had to pick one side or the other to believe, didn't he?

4 MR. LEDERER: That's correct. But I don't think
5 that this case can be distinguished from Raymond on the
6 ground that in Raymond the state defaulted and here the state
7 was able, not to default, but through the vigor of its counsel,
8 to find some expert witnesses, no matter how questionable their
9 expertise, and no matter how contradicted their testimony was
10 by other witnesses, and no matter how restricted their testi-
11 mony was; and to say that's the difference upon which a
12 Commerce Clause case ought to be decided one way or the other.

13 QUESTION: Well, I should think Consolidated would
14 have its own bevy of witnesses that it could produce on these
15 occasions too, to say that there's no effect on safety.

16 MR. LEDERER: That's right. I think -- you know,
17 first we have the question, of course, the trial court has to
18 determine the evidence. I think, though, that --

19 QUESTION: Does it try the statute literally? You
20 say that's to determine the evidence.

21 MR. LEDERER: I think there's a distinction that has
22 to be made here between two types of statutes. If you have a
23 situation such as we have in Iowa, in Iowa if the 65-foot twin
24 trailer vehicle, the vehicle itself, is unsafe, then Iowa's
25 regulation promotes safety. If the 65-foot twin trailer vehicle

1 is safe, then the effect of Iowa's regulation is to cause
2 accidents, injuries, and deaths that need not occur, because
3 Iowa increases the hazard to the interstate traffic by forcing
4 it to go around the State.

5 QUESTION: Or having more vehicles on the road in
6 Iowa.

7 MR. LEDERER: Or having more vehicles on the road
8 in Iowa if, rather than running your twin trailers around the
9 State, you choose to run semis through the State. In that
10 situation it seems to me that the trial court has to determine
11 what the evidence is, whether the regulation does promote safety or
12 does not promote safety. And I distinguish that case from a second
13 case in which you have a regulation by the state which might promote
14 safety but if it's ineffective causes nothing other than eco-
15 nomic burden. In that case I think perhaps the courts would
16 be fully justified in giving an extremely strong presumption
17 of validity to the state regulation.

18 QUESTION: Well, doesn't the Brotherhood case say
19 that, that the district court has no authority to resolve evi-
20 dentiary conclusions one way or the other against the judgment
21 of the legislature?

22 MR. LEDERER: To an extent the Brotherhood case does
23 say that. But the Brotherhood case can be distinguished on the
24 basis that what the Court was addressing was not so much the
25 question of whether the train crew promoted safety or didn't

1 promote safety. What the trial court did that it should not
2 have done was determine that that advance in safety, no matter
3 how slight, was outweighed by the economic burden. There's
4 a suggestion in the opinion in Brotherhood, and more specifi-
5 cally in the trial court's opinion; in the three-judge panel's
6 opinion you find a strong suggestion that in Brotherhood the
7 trial court found that there maybe was some increase in safety,
8 it just wasn't very much. And given the fact that it wasn't
9 very much and the burden was great, it ought to be rejected.

10 We don't suggest that that's the proper test. What
11 we suggest is on the record in this case. There is no promo-
12 tion in safety; in fact, what's happening is because that
13 65-foot twin-trailer vehicle is safe, what's happening is
14 that unnecessary accidents, injuries, and fatalities
15 are occurring.

16 QUESTION: Are you then defending squarely the Court
17 of Appeals decision or not?

18 MR. LEDERER: Yes, Your Honor.

19 QUESTION: And its rationale?

20 MR. LEDERER: Yes, I will --

21 QUESTION: You're embroidering it a little bit,
22 aren't you?

23 MR. LEDERER: I'm embroidering it a little bit.
24 I disagree slightly with the Court of Appeals, and I think in
25 the brief we did make the argument that it didn't have to

1 distinguish --

2 QUESTION: Yes. You didn't make this argument that
3 you just made, in the Court of Appeals?

4 MR. LEDERER: Not in its full form, Your Honor.

5 QUESTION: All right. Then, let me ask you another
6 question. Suppose the District Court had resolved the case
7 the other way on the facts and had said that, gee, we have a
8 range of experts here, we've got five on this side and five
9 on that side. And suppose it decided to just pick the other
10 side? Do you think the Court of Appeals would have reversed?

11 MR. LEDERER: No, I do not.

12 QUESTION: Well then, how can you possibly say that
13 no rational legislature could have decided that there was a safe-
14 ty factor involved here if the District Court on the evidence be-
15 fore it could have come out the other way and withstood an appeal?

16 MR. LEDERER: I think the difficulty is, are we
17 looking at the hypothesis of what the Legislature could believe
18 or are we looking at what the facts are?

19 QUESTION: Well, the facts are -- those aren't always
20 -- that depends on what a district judge finds, that here's a
21 -- you just can't go around and recognize facts, like -- they
22 don't grow on trees. Here are these witnesses saying what the
23 facts are, and there are five on one side and five on another.
24 And if you tell me that the district judge would have been sus-
25 tained either way he decided on that evidence, I don't know

1 how you can say the Legislature's judgment should not be ac-
2 cepted.

3 MR. LEDERER: I'm sorry, Mr. Justice White, I believe
4 I misunderstood your question. Had Judge Stewart on the evi-
5 dence in this case --

6 QUESTION: Yes.

7 MR. LEDERER: -- held the other way, I think we
8 could have met the clearly erroneous standard. I do not --

9 QUESTION: You don't think the Court of Appeals --

10 MR. LEDERER: -- think that there was sufficient evi-
11 dence for the State to be able to sustain its case even under
12 the right standard for appellate review. This case is
13 one-sided.

14 QUESTION: Of course, it isn't "clearly erroneous."
15 I'm not sure that's the clearly erroneous standard that's
16 applicable in that case. Taking the U.S. Gypsum case at 333
17 U.S. which I think lays down the basic clearly erroneous test,
18 it's that while there is some evidence to support the trial
19 court, the preponderance is heavily against. Would you be
20 satisfied to settle for that?

21 MR. LEDERER: I think perhaps it would be best to
22 reach it this way. Returning to the initial question of, well,
23 suppose the Legislature had a rational basis, you know, what
24 the Legislature could believe can justify many things in a
25 Commerce Clause case. I don't think the question should be,

1 what could the Legislature believe. In fact, the evidence in
2 this case -- and we have a very curious record, because we had
3 the Governor as a witness for the defense -- the evidence in
4 this case shows that the Legislature did not believe that the
5 65-foot twin-trailer vehicle was an unsafe vehicle. The
6 Legislature in Iowa passed a bill that would permit 65-foot
7 twin-trailers. That bill was vetoed by the Governor. The
8 Governor stated in his veto message the reasons for the veto.
9 There is nowhere in that message -- and the Governor stated on
10 the witness stand that that message stated all of the signifi-
11 cant reasons for the veto -- there is nowhere in that veto
12 message, the suggestion that 65-foot twin trailers are less
13 safe than 55-foot semis. There is --

14 QUESTION: But that's not the enactment of the stat-
15 ute. That's subsequent legislative history. When was the
16 60-foot limitation enacted?

17 MR. LEDERER: I believe in 1963.

18 QUESTION: So this is a 17-year-old statute. Was it
19 unconstitutional when it was enacted?

20 MR. LEDERER: No.

21 QUESTION: When did it become unconstitutional?

22 MR. LEDERER: I think it became unconstitutional --
23 and I shouldn't so quickly say, no -- sometime around 1963.

24 QUESTION: When the neighboring states moved to
25 65 feet, that made the Iowa statute unconstitutional.

1 MR. LEDERER: I think when the neighboring states
2 went to 65 feet, far more pertinently; when 65 feet became the
3 national standard --

4 QUESTION: Well, whatever -- Iowa had a constitu-
5 tional duty to step into line. Is that your point?

6 MR. LEDERER: I think that's correct.

7 QUESTION: Whenever it --

8 MR. LEDERER: Given the fact that the 65-foot twin-
9 trailer is a vehicle as safe as the 55-foot semi --

10 QUESTION: What's your authority for saying the
11 65-foot trailer is the national standard?

12 MR. LEDERER: Your Honor, there is a Society of
13 Automotive Engineers standard for interchange, there's exten-
14 sive testimony in this case that no other vehicle other than
15 the 65-foot twin-trailer used in general commodity carriage
16 can be interchanged. The Iowa Twin Trailer Study -- Iowa con-
17 ducted an extensive study of the safety of these 65-foot twin-
18 trailers, and came to the conclusion that they're safe. That
19 study also came to the conclusion that only the 65-foot length
20 could be interchanged, in other words operated --

21 QUESTION: You're not talking about an Act of
22 Congress or of any governmental body, you're simply talking
23 about the practicality of --

24 MR. LEDERER: Practicalities, that's right.

25 QUESTION: You're urging that a burden upon

1 interstate commerce arose at some point?

2 MR. LEDERER: That's correct. That's correct, and
3 when it arose was when the 65-foot twin-trailer became the
4 standard vehicle.

5 QUESTION: Well, but Mr. Lederer, supposing that the
6 safety evidence all showed that as of whatever date it was,
7 everybody was satisfied 65 feet was just as safe as 50 feet,
8 but they also realized 50 feet was a little more dangerous
9 than 40 feet. Could they have, instead of going up to 65,
10 said, we think we'll be very safe in Iowa if you cut every-
11 thing back to 40 feet. Why couldn't they have done that?

12 MR. LEDERER: I think that would present a far more
13 difficult question than does this case. I think it would be
14 a serious question whether Iowa --

15 QUESTION: Are you saying that they had a constitu-
16 tional duty to lengthen, to increase the permissible length,
17 even though the 60-foot length could be demonstrated to be
18 safer than, say, a 35-foot length or a 40-foot length?

19 MR. LEDERER: I'm sorry. What I'm saying --

20 QUESTION: Isn't there a difference between saying
21 that the difference between 60 and 65 feet is zero, but that
22 doesn't mean 60 feet has no relevance to safety.

23 MR. LEDERER: That's correct. Sixty feet may well
24 have a relevance to safety, but what Iowa has shown by its
25 legislation is that Iowa accepts as a reasonable standard of

1 safety the 55-foot semi-trailer, which is, you know, the most
2 common vehicle, and the 60-foot twin, which is a highly uncom-
3 monvehicle. We have shown on the facts, clearly, conclusively,
4 that the 65-foot twin is as safe as either one of those
5 vehicles. Now Iowa does pick up a very significant safety
6 advantage by prohibiting the 65-foot twin.

7 QUESTION: Well, is it a difference whether that
8 kind of evidence persuades a district judge or persuades a
9 state legislature?

10 MR. LEDERER: I think the problem is quite simple.
11 The Iowa Legislature has acted wisely in this case. Sixty-five
12 foot twins are are as safe as 55-foot semis. Nonetheless,
13 from the perspective of Iowa, the Iowa Legislature has acted
14 properly. Sixty-five foot twins are very limited-purpose
15 vehicles. They are used for large general commodity carriage,
16 interstate carriage. Iowa is not a large manufacturing state;
17 such manufactories as it does have are located generally along
18 the borders; certainly there are some in Des Moines and other
19 cities, but the borders are industrialized. What they do by
20 prohibiting 65-foot twin-trailers is they prohibit interstate
21 through traffic. It has no benefit to Iowa. It's merely
22 passing through Iowa because Iowa is the geographic location
23 where the best east-west route lies. By prohibiting 65-foot
24 twin trailers Iowa gets rid of that traffic. It's of no
25 benefit to the State and it achieves fewer accidents in Iowa,

1 because it's reduced traffic generally, and advantages for the
2 Iowa motorist because it's reduced traffic generally -- that, I
3 would assert, and I think, you know, the Governor's veto mes-
4 sage certainly suggests it, is the principal reason why the
5 Iowa Legislature has retained their 60-foot twin-trailer limit,
6 particularly since the border city exemption removes much of
7 the political pressure in the state for 65-foot twins. The re-
8 sult is that Iowa is shifting to other states and to interstate
9 connerce in general, not only shifting the safety burden, but
10 also increasing it. Because you have to go around the State
11 and that's a longer trip, a significantly longer trip.

12 The result is, is that there are fewer accidents in
13 Iowa and more accidents on the route around Iowa than there
14 would be otherwise, and in fact far more, because the route
15 around Iowa is largely two-lane highway, whereas the route
16 through Iowa is on I-80, which is an interstate highway.

17 QUESTION: Someone might reasonably argue that the
18 cure for that is for the other states to copy Iowa.

19 MR. LEDERER: Well, it would not so long as you
20 accept the assumption -- and it's not an assumption in this
21 case, it's proved -- that the 65-foot twin-trailers are as
22 safe as 55-foot semis. You have the exact same problem. Iowa
23 suggests, why don't we run 55-foot semis through the State?
24 Aside from the problems in the rest of the system, you'd have
25 to run more trucks to carry the same amount of cargo,

1 and if you run more trucks through that's going to mean more
2 accidents.

3 QUESTION: Well, isn't there a certain domino theory
4 to your argument? If you can persuade Minnesota to enact a
5 law allowing a 100-foot trailer, then you've got an argument
6 that Iowa's burdening interstate commerce by not allowing a
7 100-foot trailer?

8 MR. LEDERER: I don't -- early in the process I
9 think you could argue, yes, it's a domino problem. But we're
10 past that early point in this case. Sixty-five foot twin
11 trailers are a widely accepted standard everywhere in the
12 country except the east coast. There's a map in the appendix
13 that lays out which states permit them and which don't. Those
14 states that don't permit them are all east coast states,
15 generally contiguous, with some minor exceptions. Iowa sits
16 in the middle of a region and is the only state that prohibits
17 65-foot twins, and because of its geographic location astride
18 Interstate 80 is a crucial state.

19 QUESTION: Your argument would say that all of the
20 13 eastern states, or however many they be, could be forced to
21 accept 65-foot twins too since presumably they're as safe in
22 the east as they are in Iowa.

23 MR. LEDERER: I think the safety question would be
24 the same. I think you'd have some problems with the burden on
25 interstate commerce. The burden that Iowa imposes is as large

1 as it is in large part simply because of Iowa's geographic
2 relationship. It's in the middle of routes that are run with
3 65-foot twins because all the states around Iowa permit
4 65-foot twins, because it's on the major transcontinental
5 east-west route. What's passing through Iowa are shipments
6 from Chicato to Los Angeles, from the industrial midwest out
7 to the west coast and back.

8 QUESTION: Well, then, you'd really have a stronger
9 case than the Raymond in Wisconsin, which is not on that
10 route.

11 MR. LEDERER: That's correct. Wisconsin was on a
12 route, but certainly in terms of importance I-80 is probably
13 a more important route than that through Wisconsin.

14 QUESTION: Well, suppose Iowa just said, we have too
15 many cars and trucks on our roads and we're just going to
16 ration travel, and they just by lot reduced the number of
17 trucks on their roads by half, in order to promote safety?

18 MR. LEDERER: If two conditions were met, one --

19 QUESTION: Nondiscriminatory; yes.

20 MR. LEDERER: -- nondiscriminatory.

21 QUESTION: That would be hard, I grant you, in my
22 example.

23 MR. LEDERER: And two, that there truly was a prob-
24 lem on the roads. One of the pieces of evidence in this
25 case --

1 QUESTION: Well, there's always a problem on the
2 road. Too many accidents.

3 MR. LEDERER: The evidence in this case shows very
4 clearly that Interstate 80 through Iowa is at present not an
5 interstate highway that's reaching the saturation point that
6 you see around this city, for example. There's a level of
7 service study, there are traffic and engineering studies which
8 show that there's more capacity on Interstate 80 and the
9 presence or absence of the twin-trailer traffic on that highway
10 is not going to make a difference.

11 QUESTION: Well, aren't you attacking the -- the
12 statute surely applies to trailers on local roads?

13 MR. LEDERER: We're not attacking the statute as it
14 prohibits 65-foot twin-trailers on local roads.
15 The burden in this case comes from the fact that what Iowa is
16 doing is stopping interstate through traffic, that through
17 traffic goes on the interstates. The voyages would be entirely
18 on the interstates.

19 QUESTION: Why aren't you attacking it on -- inso-
20 far as it applies to local roads?

21 MR. LEDERER: We simply would not be able to show a
22 significant interstate burden.

23 QUESTION: Why not?

24 MR. LEDERER: Because --

25 QUESTION: Aren't there any goods delivered into the

1 interior of Iowa of goods from out of state?

2 MR. LEDERER: Not in significant volume and not by
3 my client, Your Honor.

4 QUESTION: Well, how about Maytag washing machines
5 in Newton, Iowa?

6 MR. LEDERER: Perhaps some understanding of the way
7 the general commodity system functions -- normally, pickup and
8 delivery of goods is made in Consolidated's system by what's
9 called the short semi or broken-down double. It's half of a
10 twin-trailer, short semi truck. That's legal --

11 QUESTION: So your terminals are along I-80?

12 MR. LEDERER: That's correct. However, I should
13 to be perhaps fair state that there's simply not very much
14 traffic going into or out of the interior of Iowa. Iowa is
15 not a heavy industrial state. Most of the goods that are
16 shipped in twin trailers are manufactured goods.

17 QUESTION: Mr. Lederer, your argument based on the
18 Governor's veto message that the real purpose of the legisla-
19 tion is to divert traffic around Iowa would support the argu-
20 ment that there is purposeful discrimination against interstate
21 commerce, in effect?

22 MR. LEDERER: Yes, sir.

23 QUESTION: I can't remember, did the District Court
24 make any findings that would establish that?

25 MR. LEDERER: The District Court made a curious

1 finding. The District Court found the Iowa legislation to be
2 nondiscriminatory because it promoted what the District Court
3 found to be the state goal of diverting traffic around Iowa.
4 The District Court then went on to say, that goal has at least
5 the aura of protectionism to it. So the District Court speci-
6 fically found that there was no discrimination in the numerous
7 exemptions.

8 QUESTION: What you're saying is that the facts that
9 it found really demonstrate discrimination?

10 MR. LEDERER: The facts that it found really demon-
11 strated discrimination.

12 I think the -- I don't suggest that this Court
13 should consider the Governor's veto message, or even the
14 legislative history. And there's perhaps another item to the
15 legislative history, is after the Governor vetoed the 65-foot
16 twin-trailer bill, the Legislature then passed the bill for
17 the border city exemptions, and the Governor in his veto
18 message said specifically, I wouldn't have any objection for
19 goods going to or from Iowa. I just want to get rid of the
20 through traffic.

21 But the Legislature then passed the border cities
22 exemption. It also delegated to the Transportation Commission
23 the power to permit 65-foot twin trailers. The Transportation
24 Commission had an extensive factual study that was prepared by
25 the Iowa Department of Transportation and it was intended to

1 be a comprehensive study of all the aspects of 65-foot twin-
2 trailers. That study found that there weren't any safety
3 differences to the disadvantage of 65-foot twin trailers.
4 The vehicles were safe. The Transportation Commission then
5 legalized 65-foot twin trailers in the State on almost all the
6 primary roads in the State, including the interstates.

7 QUESTION: Would the Legislature have the right to
8 disbelieve that, or regard it as contrary to the collective
9 experience and observation of all of the legislators?

10 MR. LEDERER: If we were dealing with a statute that
11 only affected Iowa and if the question before the Court was,
12 did the Iowa Legislature act wisely? Yes, of course. Under
13 due process, under equal protection, the Iowa Legislature could
14 do such a thing. But we're not here on due process or equal
15 protection. What's happening here is the Iowa Legislature
16 is making a determination that distinguishes between interstate
17 through traffic and local traffic, but it's making a determina-
18 tion that benefits Iowa. Unquestionably it is a wise decision
19 from Iowa's point of view. If the Iowa Legislature has made an
20 error of fact, it is a grossly unwise decision from the national
21 point of view, because what it has done is harm the safety of
22 interstate commerce as well as imposing an economic burden.
23 In that situation you cannot defer to the Iowa Legislature's
24 factual judgment.

25 QUESTION: Would you say the same thing if they

1 reduced the speed limit from 55, some sort of a national limit
2 that we have, to 45 or 50, on a showing that this would
3 reduce the number of accidents but it obviously would increase
4 the cost?

5 MR. LEDERER: If all it did was increase the cost
6 and it reduced the number of accidents, I think the Iowa
7 Legislature would have acted properly and we could not win the
8 case under the Commerce Clause. I do not think that this
9 Court, under the Commerce Clause, should be in the position of
10 balancing on the one hand increases in safety and on the other
11 hand economic burden. Perhaps it's --

12 QUESTION: I take it you think -- what relevance to
13 this case do you think the Pike case has? Any?

14 MR. LEDERER: I think the Pike case is relevant in
15 that it establishes the overriding general test to be applied.
16 We have here --

17 QUESTION: And a nondiscriminatory burden should
18 serve some substantial state interest, is that it?

19 MR. LEDERER: I think -- yes; correct. I think the
20 difference is that there has to be a corollary when you're
21 dealing with safety. If what's being promoted at the local
22 level is safety and all that's being harmed at the national
23 level is economics, if it's just dollars, I don't think this
24 Court should then step in and override the State Legislature.

25 QUESTION: Balance safety against dollars?

1 So you just don't -- you don't think if safety is on the one
2 hand and only dollars on the other, Pike is irrelevant?

3 MR. LEDERER: That's a political decision. That's
4 right. And it should be made by a legislature. The situa-
5 tion --

6 QUESTION: Haven't you come pretty close to
7 describing this case?

8 MR. LEDERER: No, Your Honor. The situation here is
9 not that. On the one hand we have clear, convincing, and
10 conclusive proof that the vehicle is safe. So we're not
11 dealing with the case where the regulation promotes safety
12 at least directly, in other words, by prohibiting a hazardous
13 vehicle. The vehicle is not hazardous. Mr. Justice Marshall
14 earlier referred to increased splash and spray. The vehicle,
15 for instance, because of the difference in its running gear,
16 puts out 20 percent less splash and spray than semis. The
17 vehicle itself --

18 QUESTION: I will remember that the next time I
19 pass one on the road.

20 MR. LEDERER: Your Honor, if you pass a twin-trailer,
21 it will be less. There's quite conclusive proof of that, so
22 we're not dealing with a case of a regulation which promotes
23 safety directly. There's a second level though here. If
24 that vehicle is safe, what we're dealing with in terms of
25 burden is an economic burden, yes. But also a safety burden.

1 Iowa's legislation makes it more hazardous to conduct inter-
2 state commerce. Regardless of what Consolidated does, whether
3 it runs its goods at 55-foot semis, 60-foot twins, or runs
4 them around the State in 65-foot twins, or shuttles them
5 through the State in broken-down twins, that commerce is more
6 hazardous. So you have a case where on the one hand you're
7 promoting state's safety interest solely by reducing traffic,
8 because the vehicle itself is safe. And on the other hand
9 you're increasing the hazard of interstate commerce.

10 QUESTION: I don't understand your increasing hazard
11 argument when the statute was enacted in 1963 and remained
12 unchanged. It's the industry that changed. The law didn't
13 change in Iowa. So I don't see how you can say Iowa has
14 increased the hazard.

15 MR. LEDERER: I could express it differently. Iowa
16 has prevented the industry in the area around Iowa from being
17 able to conduct operations as safely as technological advances
18 would permit.

19 QUESTION: You mean to amend the law? The trucking
20 lobby has been unsuccessful in getting the law amended.

21 MR. LEDERER: For a very clear reason. Sixty-five foot
22 twin-trailers are principally interstate through trucks.
23 Local interests don't have a strong interest in twin-trailers.
24 To the extent that they do the border city exemption substan-
25 tially lessens that political pressure. I thank the Court.

1 MR. CHIEF JUSTICE BURGER: Thank you. Do you
2 have anything further?

3 MR. SCHANTZ: Unless the Court has further ques-
4 tions.

5 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
6 The case is submitted.

7 (Whereupon, at 2:59 o'clock p.m., the case in the
8 above-entitled matter was submitted.)

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North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1320

Raymond Kassel et al.,

v.

Consolidated Freightways Corporation
of Delaware

and that these pages constitute the original transcript of the proceedings for the records of the Court.

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