# CURRENT GOVERNANCE ISSUES AT AMTRAK

**(109–41)**

## HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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# CONTENTS

## TESTIMONY


| | Page |
|---|---|
| Castle, Hon. Michael N., a Representative in Congress from the State of Delaware | 12 |
| Costa, Hon. Jim, a Representative in Congress from the State of California | 13 |
| Cummings, Hon. Elijah, a Representative in Congress from the State of Maryland | 17 |
| Gunn, David, former President and CEO, Amtrak | 27 |
| Hughes, David, acting President and CEO, Amtrak | 27 |
| Laney, David M., Chairman of the Board, Amtrak | 27 |
| Lautenberg, Hon. Frank, a United States Senator from the State of New Jersey | 4 |
| Menendez, Hon. Robert, a Representative in Congress from the State of New Jersey | 15 |
| Rosen, Jeffrey A., General Counsel, U.S. Department of Transportation | 27 |
| Schumer, Hon. Charles, a United States Senator from the State of New Jersey | 10 |


## PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS


| | |
|---|---|
| Blumenauer, Hon. Earl, of Oregon | 79 |
| Brown, Hon. Corrine, of Florida | 80 |
| Costello, Hon. Jerry F., of Illinois | 87 |
| Cummings, Hon. Elijah E., of Maryland | 89 |
| Johnson, Hon. Eddie Bernice, of Texas | 112 |
| Oberstar, Hon. James L. of Minnesota | 157 |
| Young, Hon. Don, of Alaska | 186 |


## PREPARED STATEMENTS SUBMITTED BY WITNESSES


| | |
|---|---|
| Gunn, David | 97 |
| Hughes, David | 111 |
| Laney, David M | 115 |
| Rosen, Jeffrey A | 160 |


## SUBMISSIONS FOR THE RECORD


| | |
|---|---|
| Laney, David M., Chairman of the Board, Amtrak, responses to questions from Rep. Brown of Florida | 119 |
| Rosen, Jeffrey A., General Counsel, U.S. Department of Transportation: | |
| Letter to Rep. LaTourette, October 26, 2005 and attachments | 168 |
| Memorandum for Alberto Gonzales, Counsel to the President, from M. Edward Whelan III, Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, September 22, 2003 | 175 |
| Responses to questions from Rep. Brown of Florida | 181 |

# CURRENT GOVERNANCE ISSUES AT AMTRAK

**Tuesday, November 15, 2005**

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON RAILROADS, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:07 a.m., in Room 2325, Rayburn House Office Building, Hon. Steven LaTourette [chairman of the subcommittee] Presiding.

Mr. LATOURETTE. We are going to ask the subcommittee to come to order this morning. I want to welcome all of our members, our guests and our witnesses this morning.

It was originally our intention to hold a hearing on rail safety today, focusing on 10-car safety and some other things. But due to events that have occurred that the National Passenger Rail Corporation, Amtrak, within the last week, the hearing has been shifted in focus to governance at Amtrak.

I want to, first of all, indicate that we are not in the transportation infrastructure room. It is under construction, which is expected from the Transportation Infrastructure Committee, and we want to thank the Science Committee and Chairman Boehlert for making this room available for us here today. A couple of housekeeping matters, I want to ask unanimous consent for members to insert additional remarks into the record, and additional statements and materials by witnesses.

Also, we have been notified that, and we may expand this, but ask unanimous consent that members not on the Rail Subcommittee but who have indicated a desire to participate today, be permitted to do so, Mr. Baker of Louisiana and Ms. Holmes Norton of the District of Columbia, without objection.

The Chair also has an announcement to make. Pursuant to rule 6(f), paragraphs 2 through 4 the Committee on Transportation and Infrastructure, and by agreement, with the ranking minority member, the subcommittee will be following the extended questioning procedure today in today's hearing. Under that procedure, one hour of time will be allotted for extended questioning of witnesses with the hour evenly divided between the majority and the minority.

The chairman and the ranking member respectively will recognize members for use of such extended questioning time. Pursuant to the same rule, members seeking to ask questions outside of the extended question period may be recognized to ask questions under the 5-minute rule. So for members and your schedules, after the—we won't have extended questioning of our first panel, but on our second panel, because of the complex legal issues that I think we need to explore today, the Chair will control one half hour and dis-

tribute time accordingly. The ranking member will distribute one half hour. And then we will go to the 5-minute rule.

Today, we will be examining current governance issues at Amtrak, although it may come as a surprise to some, Amtrak is not a part of the government, but is a District of Columbia corporation. It has a board of directors, shareholders, articles of incorporation and bylaws. One of the Board's responsibilities is to hire Amtrak officers, including president and the CEO. Last week, the current Amtrak board—and we will come back to whether or not we have some questions about the Board—fired the CEO, Mr. David Gunn. I happen to believe that Mr. Gunn was doing a reasonable job with the hand that he was dealt.

As a matter of law, Mr. Gunn, or any other CEO, serves at the pleasure of the Board. But there are deeper issues here, whether one is a supporter or an opponent of Mr. Gunn.

The key issues we will examining today is whether Amtrak's board of directors is legally functional with the quorum required by law. That affects, among other things, the company's authority to fire Mr. Gunn and to hire a new CEO. But that is just the tip of the proverbial iceberg. There are a number of complex legal issues here which we hope to discuss. But the sad reality is, even using the quorum standards and personnel count of Amtrak and the administration, the company has been without a quorum for at least part of the time since June of 2003, nearly 2-1/2 years. The best word that I can think of for this situation is pathetic. The administration knew from day one exactly when each prior director's tenure ended, and did not make timely nominations.

The administration wears two other hats in this saga. As the optional holder of one seat on the Board and as Amtrak's preferred shareholder, that neither the Department, the transportation's legal establishment, nor Amtrak's general counsel apparently took any preventive action, except the very thin read of authorizing so-called executive committees when disaster looms.

There was a substantial period of time prior to June 2003, when the Board's full legal functioning and quorum were beyond question, and when any corporation that was not totally clueless would have done something if it had still had a fully functioning board. The quorum requirements, for example, probably could have been lowered by a joint action of the Board and the shareholders before the Board lost its quorum. Also, Amtrak's board could have rescinded a number of self-imposed restrictions requiring board action for all kinds of transactions including labor contracts. None of that was done. As a result, the damage and chaos were maximized and the company is now in a catch-22 posture, where it can't even reduce the damage from losing a quorum without first reacquiring a quorum. The situation now is such a mess that I have heard it said that you couldn't think up a hypothetical case with this loony if you tried.

Besides Amtrak's dereliction in following normal corporate procedures, we still have a denial psychology, in my opinion, by the administration. Right now, there are no nominations pending in the Senate, other than those of the two individuals now serving under claimed recess appointments. That is it. To put it another way, if all the administration's pending nominees were confirmed this

afternoon, almost none of the legal issues about the quorum head count at Amtrak would be resolved. This late in the session, the administration has left itself virtually no options other than more legally suspect recess appointments.

The saddest part of this picture is that its potential victims are people who do have control over the situation—the employees and unions who have signed labor contracts since mid 2003, the companies that do business with Amtrak, even the parties who sue Amtrak cannot be assured that when Amtrak, the corporation, signs on the dotted line, it really means anything legally.

I hope that by exploring these issues today, we will spur Amtrak and the administration first to take prompt corrective action as soon as possible, and equally important, send the message that this should never be allowed to happen again.

It is now my pleasure to yield to our distinguished ranking member, Corrine Brown of Florida.

Ms. BROWN. Thank you, Mr. Chairman. And I want to thank you for holding this important hearing. And I also want to commend you for your leadership and fairness in dealing with Amtrak. It was through your leadership, Mr. Chairman, and the leadership of Ranking Member Oberstar and other members of this subcommittee that we have been able to save Amtrak time and time again from an administration that seeks to destroy our Nation's only, intercity passenger rail system.

Now it seems that here today, we are exploring the issues surrounding Amtrak's governing board. Only this time, we are examining the Board that the administration has put in place--another group of Bush cronies, the Amtrak Board Of Directors, or as I like to call them, the Bush board. What I would like to focus on however, is not just the legal relationship between the Board and Amtrak's chief executive officer, but the board's firing of David Gunn. When it comes to the Bush administration, it seems that if you don't do a good job, you stay on the payroll. But if you do a good job and you are successful and you stand up for what is right for the American people, you get fired.

Someone needs to explain that rationale to me. Obviously, it is not going to be the two Bush board members who refused to show up at this time, or Secretary Mineta, who parades around the country blasting Amtrak, but doesn't have enough respect for the committee or the Board to have ever gone to a board meeting.

Mr. Gunn was fired because frankly, he was succeeding. And if I was going to give a grade, as a former college professor, I would give Mr. Gunn an A. And if I was going to give an F, just like the American people, I would give an F to the Board and to the Bush administration. You get an F. I reserve the balance of my time.

Mr. LATOURETTE. The gentlelady yields back. The gentleman from Florida, Mr. Mica.

Mr. MICA. Well, thank you, Mr Chairman. Thank you for holding this hearing. It does seek to clarify some questions relating to governance that we do need to resolve. I have been involved in this process for some 13 years, worked on Amtrak reform legislation, ARC legislation, that we passed.

I do believe to address the first question at hand that the Board is legally constituted. There have, in fact, been problems with the

appointments, quite frankly, political games being played, people who don't want to see reform and who don't want to see people appointed to the Board who seek or would initiate reform. So we have had sort of a standoff in the Board governance.

I think people are now tying to raise questions once that we have had a board that has taken some long overdue reform measures. And I want to commend David Laney and those who have served on the Board for making some decisions that are long overdue so that we can move both high-speed rail, long distance service forward. It is stuck in a rut. Anyone who looks at the figures is kidding themselves, if they believe otherwise.

The country needs a national rail system. Amtrak has never, under its current configuration or management, been able to take us to the next step. I believe it was in September—September 22, the Board voted to break off the Northeast Corridor, which is a monumental advance in seeking transparency. The finances of Enron, a great model compared to what we have had as Members of Congress to get any information relating to the previous finances.

Mr. Laney has helped to bring some transparency, some rationality to the organization. And if we do break out high-speed rail, we allow the private sector to develop that corridor and operate that corridor, it will serve as a model for the country, we can enhance dramatically service in that corridor and across the Nation. We can conduct long distance service as the administration has envisioned with public private partnerships and States, and expand it to States like Florida and other parts of the country where it is needed and not a Soviet-style configuration or operational mode.

So I am pleased that you are holding this hearing. I am anxious to hear from Secretary Manetta and others from the administration, I do believe the Board has taken some courageous stance. I commend David Gunn. He did a good job as far as an operational person. He took it as far as he could, but he refused to take it to the next step, which the Board has done and now people are continuing to play games and stopping the true advance of advance of high speed service, long distance service and other essential rail services to this country.

So again, I hope this hearing will shed light on where we go from today, and thank you, and yield back the balance of my time.

Mr. LATOURETTE. I thank the gentleman very much. I have been advised that the Senator Lautenberg is here, Senator Schumer should be here shortly, and with the concurrence of the ranking member, they indicated that they may have another vote over in the other body at about 10:45. So with everybody's concurrence, Senator Lautenberg, we would like to hear from you. And then we will pick it back up with Mr. Nadler after we hear from you and Senator Schumer. Welcome. And we look forward to hearing from you.

**STATEMENT OF FRANK LAUTENBERG, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Mr. Chairman and, thank you, Representative Brown, and all of you for inviting me here to hear a view that comes from the other side of the Capitol.

And I found it shocking that Mr. Gunn was fired by the Amtrak board. And it was a shock to my Senate colleagues on both sides of the aisle. Less than 2 weeks ago, the Senate voted in favor of bipartisan legislation, crafted by Senator Lott and myself, to revitalize Amtrak and move it forward.

That legislation passed the Senate by a vote of 93 to 6. And it was intimated that the payback to this Senate from the chairman of the Board of Amtrak, that that was kind of retribution for our misbehavior.

This vote was in favor of our Amtrak amendment that was in favor, was also a strong vote of confidence in the leadership of David Gunn. And that is why we were shocked to see Amtrak's hasty firing of Mr. Gunn one week later. And I hope, Mr. Chairman, that you will search for specific reasons that the Board felt it necessary to so inappropriately make this decision in terms of time and in terms of reason.

There is a hostility to Amtrak demonstrated by the administration that, frankly, I do not see shared by my Republican colleagues in the Senate. On both sides of the aisle, we want to see Amtrak succeed and continue to serve the needs of the growing number of Americans who use passenger rail.

One of the lessons that we learned on 9/11 was that our country cannot afford to rely entirely on one mode of transportation. When our aviation systems shut down that day, Amtrak was able to reunite thousands of travelers with their families. And we also saw chaotic evacuations during the recent hurricanes, motorists stuck in traffic for hours and those without cars left behind. We need more rail service to help move our citizens to safety during emergencies. And of course, congestion isn't just limited to our roads. We all have experienced flight delays, cancellations at the airport, this has impact throughout the aviation system.

The DOT has had to cap the number of flights at Chicago's O'Hare airport because of congestion. Safety is always an issue. And the number of operational errors is up some 30 percent this year over last.

People want an alternative. And Amtrak is that alternative.

Amtrak enjoyed record ridership last year with more than 25 million passengers, and about as many travelers ride the train between here and New York City as do fly. In the 35 years since Congress created Amtrak, we spent only $28 billion on passenger rail, less than a billion dollars a year. And this year alone, we have spent $36 billion on highways, 14 billion on our aviation system. And it is not a balance that we should strive to maintain.

Other nations understand the importance of rails. Unfortunately, we lag behind. A few years ago at a NATO meeting, I took a train from Paris to Brussels. 18 trains a day between the two cities. The 210-mile trip took about 85 minutes. And that is where we ought to be. The Europeans aren't smarter than we are. They simply have made a smarter investment in passenger rail. Germany, with its modern high-speed rail system, invested $9 billion in 2003 alone,and the benefits of their world class system are obvious to anyone who travels there.

And so, Mr. Chairman, what we are seeing from the Amtrak board seems to be ideology over the needs of the American people.

And we need to do better. This latest decision to fire David Gunn, an executive with remarkable credentials as a manager, and I think his record will speak for itself, it is an impudent decision.

And to respond to a statement made from one of our colleagues about the fact that David Gunn didn't do everything he was supposed to. He has got a leaky house, the roof is coming apart and everything else, and we don't want to put the money in to rehab it properly. And that is what is happening with Amtrak. They are always fixing something that is broken. The rail cars, the track systems, et cetera. And we haven't put the money in, and it is our fault. It is not Mr. Gunn's fault.

So apparently, it is not good enough to be an effective public servant anymore. This administration requires that you also have to pass a loyalty oath to the president and we see that in the current board.

Mr. Chairman, Ranking Member Brown, I hope that this hearing will help reveal to you just how badly this country needs guidance on passenger rail service. I thank you very much for the opportunity to speak and to intervene with the schedule that you have planned with your fellow colleagues.

Mr. LATOURETTE. Senator Lautenberg, we thank you very much for coming and sharing your thoughts with us and we still don't have Senator Schumer. So I will go to Mr. Nadler for his opening remarks and we will go to the Senator and proceed in regular order after that. Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman, Mr. LaTourette and Ranking Member Brown, for holding this hearing on current governance issues at Amtrak, and thank you, Senator, for coming to this side of the Capitol and sharing your thoughts.

Although, I think the title, ″Current Governance Issues at Amtrak″ is a little misleading. Now that David Gunn has been fired from Amtrak, there currently is no governance at Amtrak. I mean no disrespect to Mr. Hughes, who has been appointed active president following David Gunn's firing, but I think it is obvious what is going on here.

The Amtrak Board Of Directors has become a front for the Bush administration and other people who want to destroy Amtrak. Their goal is to dismantle the railroad. And I have never seen a situation in which the obvious goal of the Board of Directors of a corporation was to destroy the corporation.

When Mr. Gunn refused to go along with the Bush board on actions that would cripple the railroad, most notably, the spinoff of the Northeast Corridor, he was fired. The Bush board had to resort to these tactics because the administration cannot get Congress to do its bidding and break up Amtrak.

Earlier this year, the Bush Administration requested that Amtrak's funding be eliminated completely, be zeroed out and try to force it into bankruptcy. In response, the House and Senate both voted overwhelmingly to increase funding to Amtrak just showing the contempt with which the House and Senate viewed the administration's attitude toward Amtrak.

In fact, the transportation appropriations conference report, that is expected to be filed this week, contains about $1.3 billion for Amtrak, which is higher than any funding level in Amtrak's history.

In September, the Board suddenly approved a resolution to spin off the Northeast Corridor and create a new subsidiary. Suddenly out of the clear blue sky, the Senate responded last week by passing Senator Lott's Amtrak reauthorization as an amendment to the deficit reduction bill by a vote that Senator Lautenberg noted of 93 to 6.

This reauthorization bill would maintain Amtrak as is, while taking measures to enhance the railroad not to dismantle it, and again shows the attitude of Congress toward the attempts to dismantle Amtrak by this Bush board. The Bush board is trying to subvert the will of congress and the American people by destroying Amtrak through actions behind closed doors. I am sure we will hear a lot of talk today about management, about how the Board wants to move Amtrak in a new direction. We may even hear about this GAO report, which looks at the minutiae of management practices without looking at the broader context of how a railroad is run and without acknowledging Amtrak's performance results in the face of starvation funding for the last 30 years.

The record will show that 2005 was a good year for Amtrak. David Gunn saw Amtrak through some very tough times financially as well as through various Acela problems, Hurricane Katrina natural disasters on the west coast and rising diesel fuel prices.

Despite all of these challenges, ridership has increased, Amtrak is not in bankruptcy as the administration wanted it to be and, in fact, Amtrak expects its year-end available operating cash to be more than $120 million. That is a remarkable record for a chief executive officer sabotaged by his own board. David Gunn is a straight shooter who has made a number of common sense management reforms to help the railroad run more efficiently. He has almost 40 years of experience in this business. He came out of retirement 3 years ago to help Amtrak run a successful passenger service. And yet Amtrak is now being run by a board made up of persons who have virtually no experience—no experience in passenger rail.

When David voiced his concerns about some of the bad decisions the Board was making, he was fired.

In short, Mr. Gunn was fired because he would not agree with the process of FEMA-tizing Amtrak. His firing is a sign of the lengths Amtrak opponents will go in order to eliminate passenger rail service in this country. They must be called on it. This must be stopped.

I want to know what gives the Board the right to thumb its nose at Congress and to take drastic actions such as spinning off the Northeast Corridor. I want to know on what grounds David Gunn was fired. The Board issued a press release claiming that Amtrak ″needed to intensify the pace and broaden the scope of its reforms.″ exactly what reforms is the Board referring to? Is it referring to taking the railroad from a situation facing bankruptcy at the beginning of the year to $120 million surplus? Is it referring to record ridership levels? That same release mentions the strategic reform plan that the Board approved in April and says that Amtrak needs ″a leader with vision and experience to get the job done.″

Well, that strategic reform initiative that the Board approved in April does not call for spinning off the Northeast Corridor. That is why I called that initiative sudden. In fact, it states that ″such an action would be inadvisable,″ the Board's own resolution. It would seem that David Gunn is more committed to the strategic reform plan adopted by the Board than is the Board. It seems to me that it is the Board that should be replaced, not Mr. Gunn.

I find this whole situation very disturbing. Amtrak is a vital part of our national transportation system. The American people recognize that and so does Congress.

The Board apparently does not.

The Board is taking sudden drastic actions that threaten our intercity passenger service. The only entity that seems to support the Board is the Bush administration and the very small number of the Members in Congress who do not have a majority or anything close to it. The American people and the millions of people who ride Amtrak every year deserve to know the Board's motivation.

They deserve to know what will happen to Amtrak in the future. And they deserve the right to try to stop the Board's open conspiracy to support the law—I am sorry. They deserve the right to try to stop the Board's open conspiracy to subvert the law and to dismantle Amtrak.

I hope this hearing will produce some answers and ultimately shed some light on this situation so Congress can figure out how to undo the subversive work of this board and save Amtrak in the future. Thank you, Mr. Chairman. I yield back.

Mr. LATOURETTE. I thank the gentleman from New York for not only his statement, but for teaching us a new verb. FEMA-tizing. I appreciate that. Gentleman from Alabama.

Mr. NADLER. The English language must evolve.

Mr. BACHUS. I thank the chairman. This hearing today, I think, which focuses not only on Amtrak, but whether we are going to have a national passenger system, and I think anybody that travels our interstates or goes through our airports, realizes that we have to have a rail as an alternative, and as a viable alternative.

You go to Europe, I mean those of us who have been in Europe, Japan, you see what they have, and you immediately realize that we are missing that in the United States, except for the Northeast Corridor, which really is underfunded itself.

And since 1970, when the government took over the operation of our passenger rail, when it took it over, it formed, I think, the first mistake in 1970, it formed a for-profit corporation which is somewhat laughable that anybody that ever thought that passenger rail would turn a profit, when what the government took over was the rail, the freight railroads operations which were losing tens of millions of dollars a year, had dilapidated equipment and rundown infrastructure, and was competing against highways that the Federal Government, and the State governments and local governments subsidized to the tune of when you take all the governments, it is all, actually, hundreds of billions of dollars.

Senator Lautenberg mentioned that just last year, we put $14 billion into our airports, yet when the administration proposed their financial support for national rail passenger service this year,

it was zero. Which, how is rail passenger—how is a system supposed to compete with no subsidies? There is not a rail passenger system in the world that I have been able to determine that doesn't have public subsidies. None exist.

There are no other forms of transportation in the United States that aren't supported by literally billions of dollars worth of funding every year, including our waterways. We spend more money on our waterways. And they do have freight but they do have some passenger.

So we have got—I think the first thing when we start discussing this—and I know I am a supporter of this administration.

But when they talk about that Amtrak—and I just quote what they always say, that they have a poor financial picture, obviously they do because of a lack of funding for years and years. And really these funding problems are to me a safety concern.

Because we are just, you know, we could be weeks or month away from a major accident costing lives because of the lack of funding we put in an infrastructure.

The system has never turned a profit. It is never going to turn a profit. Unless, the only way it could possibly turn a profit is if tomorrow we backed away and quit funding our highways and our airports, and we simply started charging passengers for all those costs.

As for David Gunn, I think since the early 1990s, people have realized that he was probably the best man for the job. I know that in the 1990s, he was offered the job to head up Amtrak, and he refused to take it. And when he did take it in 2002, he faced a company that was on the verge of bankruptcy. And I—at least, from all apparent from what I could determine, he made great progress in the 3 years that he was there. And this April, there was a strategic reform initiative, which was announced with a lot of fanfare and lot of agreement, not only by David Gunn, but by the Board, and I thought everyone had come up with sort of a game plan in April. And then in September, we did hear about the Northeast Corridor subsidiary, which a lot of people, including myself, looked to me as if what that was is an attempt to keep the Northeast Corridor, which is by far the most important part of Amtrak, and the only part that could, that is the big revenue producer, to take that and break it off from the other parts of the system, which I think there is no one that knows anything about rail passenger service that doesn't realize that that is an attempt to kill the rest of the system, or to kill the rest of Amtrak.

And maybe that is what, maybe that is what we need to start all over, just throw out Amtrak and start all over. But whatever we have to do, we are going to have to pay for. And it is unrealistic to think that we are, that we are going to have to have rail passenger service. That ought to be apparent to all of us. The American people want it. And it is going to cost money, and it is going to cost a lot of money. It is going to cost more money have we have been putting in every day. And to continue to have a board or a chairman of Amtrak and to starve it financially, is both irresponsible and irrational.

Mr. LATOURETTE. I thank the gentleman. We are been joined by Senator Schumer, and he has the same constraints as Senator Lau-

tenberg had, and so my intention is Senator Schumer, thank you for coming to see us today. We will receive your testimony and then we will go back to the regular order and hear from Mr. Menendez. Thanks for coming.

**STATEMENT OF CHARLES SCHUMER, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY**

Senator SCHUMER. Thank you, and Mr. Chairman, first let me thank you and Ranking Member Brown, for your courtesy and the committee's leadership on this issue, which I think is appreciated by millions of people in my State and tens of millions around the country.

I am also grateful that we are joined by David Gunn, who I admire for his intelligence, experience and dedication to rail transportation in general. He did a great job as head of head of the MTA in New York City. He helped straighten that up. And now, we all hoped that he would be given the chance to do the same for Amtrak.

Mr. Chairman, it is no secret. We sit here today as a crossroads for Amtrak and the future of passenger rail service in this country. We all know that the Amtrak Board of Directors unilaterally decided to fire Mr. Gunn, claiming he was not committed to reform, which I find to be an unbelievable statement. No one has pushed reform more than David Gunn. I know it. I have called him for things in New York that he said I just can't do because he wanted to save money and he is such an on-the-merits guy. He is a brilliant manager and experienced railroad administrator who, during his tenure, worked tirelessly to defend and expand Amtrak.

Frankly, Mr. Chairman, in the railroad industry, there is no equal. He is truly the best we have. And that may be the reason the Board was so quick to get rid of him.

Now, the real reason, in my judgment, that Mr. Gunn was dismissed is the Board wants to kill Amtrak as we know it. He wants it to survive and prosper. It is that simple. David Gunn was an invaluable ally in the fight to preserve, reform and expand Amtrak. And his unjust dismissal is a crushing blow for Amtrak's hope for success and reform, the action executed in the dead of night with zero warning or consultation. I spoke to Mr. Gunn that morning. He was still unsure of what the Board would do, is a striking example of the lengths that this administration is going to go to kill Amtrak. But, Mr. Chairman, there is some little glimmer of hope on the horizon.

There are serious legal and procedural questions, surrounding the composition of the current board and its most recent actions. One of my concerns is that the Board, as it is currently comprised of only four active members, two of whom were recess appointments, may not satisfy the requirements for a quorum set forth in the Amtrak articles of incorporation, and the D.C. Business Corporation Act. Amtrak's articles of incorporation clearly state there needs to be five active and voting members on the Board to constitute a quorum.

As we all know, right now there are only four. After consulting with many legal experts, the legal questions are in need of thor-

ough examination by Congress, the Department of Transportation, and other outside legal authorities.

It is my belief that Mr. Gunn, after talking—it is my belief, Mr. Chairman, that Mr. Gunn, that the Board did not have the legal power to remove David Gunn, or, at the very least, that is called into such question that he should not be removed.

I am also concerned about a broader question, and that is whether the administration has lived up to its obligation to fill the Board with qualified and experienced leaders to guide Amtrak in the 21st century. In my estimation, it clearly has not. For more than 2 years, the Board has operated with only three or four members, and it is safe to say many of them lack the qualifications and dedication to Amtrak's future that we in Congress expected when we passed the Amtrak Reform and Accountability Act, creating the current board. Instead, we got people whose lone goal seems to be to undermine Amtrak.

In addition, I believe had the President appointed serious administrators with sufficient railroad experience, we wouldn't be confronting these legal questions and confusions. We have corporate bylaws for a reason. There are meant to be followed, not dodged, and serious people know that. I personally do not believe that a board only half filled can oversee Amtrak's operations and future effectively and fairly.

At the end of this year, the President's two recessappointments to the Board, Floyd Hall and Enrique Sosa will expire. We are calling on the President to not simply grant recess appointments to them or anyone else. So I am sending a letter, which I would ask unanimous consent being placed into the record, Mr. Chairman—

Mr. LATOURETTE. Without objection.

Senator SCHUMER. —to the President. I'm asking him to send to Congress a full list of five new nominees who will be subject to Senate advice and consent. In addition, he needs to follow the letter of the law and consult with Senator Reid on these nominations, the President cannot continue to skirt its legislative obligations when it comes to Amtrak. Year after year, the administration plays games with Amtrak's funding and management not realizing that its actions affect the daily lives of Amtrak's more than 25 million riders.

In the face of near weekly attacks, this year, both Houses of Congress, on a bipartisan basis, reaffirmed our commitment to Amtrak by reversing the President's budget request voting for 11.4 billion again. I salute this committee and you, Mr. Chairman, and Ranking Member Brown, for your leadership on that issue.

The problem is not Congress. It is not Mr. Gunn. It is not Amtrak's workers. The problem is an ideological administration and its unwillingness to fund Amtrak sufficiently, an administration that is willing to fund roads and airports but somehow is not willing to fund rail.

The bottom line is that the Board and the President's actions have put the future of Amtrak in grave danger, the firing of David Gunn was the dagger in the heart. Again, I hope the Board will reinstate Mr. Gunn as quickly as possible until the legal issues are fully resolved. They are now, at best, cloudy. There is no clear legal consensus that the Board had the power to fire Mr. Gunn.

It is no way to run a country. It is no way to run a transportation system. No business man or woman who knows how to get things done would operate in this way. Thank you, Mr. Chairman.

Mr. LATOURETTE. Senator Schumer, thank you for not only your thoughtful remarks, but coming back to where you used to work and we appreciate your participation.

Senator SCHUMER. I miss it very much. Not that I don't love the Senate.

Mr. LATOURETTE. Thank you, Senator. And in talking to Ranking Member Brown, I think that we are going to attempt to hear from our other colleagues to let them be on their way, too, and we appreciate your waiting. And Representative Castle, Mr. Castle. We thank you for coming and look forward to hearing from you.

**STATEMENT OF THE HON. MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE**

Mr. CASTLE. Well, thank you very much, Mr. Chairman and Ranking Member Brown, for holding this very important and timely hearing, and for allowing me to offer testimony. Although I am not a member of the Railroad Subcommittee, we have all worked closely on this issue over the last several years, and I appreciate this opportunity to express some of my concerns. I would also like to thank today's panel of distinguished witnesses for their presence at this hearing. As some of you may know, I co-chair the House's passenger rail caucus. Over the last several months, Mr. Rosen and Laney have been gracious enough to meet with caucus members on several occasions. Mr. Gunn and Hughes have also worked closely with our caucus. And I have been impressed by their extensive rail experience and leadership abilities.

As the members of the Railroad Subcommittee know all too well, this administration has made no secret of its intent to restructure our passenger rail system and to discontinue Amtrak's Federal operating subsidy, the lion's share, that every person in this room agrees that Amtrak continues to be in need of reform. It is also our responsibility to provide safe and reliable transportation options for the rail systems 25 million annual passengers. The Government Accountability Office's recent report highlighted the need for all of us to continue our efforts to improve Amtrak's management and oversight. Rather than constantly looking for ways to shortchange passenger rail, we should be working on a comprehensive strategy to make Amtrak the best high-speed rail system in the world.

First and foremost, I strongly believe that improving passenger rail service in this country depends on strong and experienced leadership at Amtrak. Unfortunately, in recent months, the Amtrak board has made several important decisions despite the fact that close to half of its seats remain empty. In particular, the unexpected firing of Amtrak President CEO David Gunn, someone who is widely respected for his extensive rail and transit experience, raises several questions regarding the Board's commitment to Amtrak's stability. During my seven terms in Congress, I have written numerous letters to this administration and to the past administrations pleading for the appointment of experienced and dedicated railroad people to serve on the Amtrak board.

Still, with two of the Board members' terms expiring when Congress adjourns next month, we are quickly approaching the prospect of a headless national passenger rail system and an ineffective board consisting of only two voting members. Frankly, I believe that failure to appoint a fully functioning Amtrak board is disgraceful. It stands as an enormous disadvantage for this rail system.

Members of Congress can stress the need for accountability and reform until we turn blue in the face. But in the end, what Amtrak really needs is leaders with vision who attend and participate in board meetings, and who are genuinely committed to improving passenger rail.

Currently, this board is not effectively carrying out its responsibilities. And as of today, I seriously question whether some of the individuals serving on the Amtrak board meet the standard of service that Amtrak customers deserve. Everything starts with this board. A fully functioning Amtrak Board of Directors could set the course for a new era of reliable high speed passenger rail in this country.

For this reason, this week, I will introduce legislation to restructure the Amtrak board and ensure that vacancies on the Board are filled by dedicated railroad, transportation and business professionals. Like similar provisions introduced in the Senate, my bill would empower Amtrak's president with a vote on the Board and set a deadline for President Bush to set replacements for board vacancies.

This legislation would ensure that the Board provides professional corporate leadership by expanding the number of board members from 7 to 9 and setting requirements for members with diverse regional backgrounds, bipartisan philosophies and real-life transportation expertise.

I commend Chairman LaTourette for wasting no time in convening this very important discussion. The safety and effectiveness of our Nation's transportation system is at stake, and it is imperative that we act now to ensure Amtrak remains a viable option for traveler's.

We have barely scratched the surface of passenger rail's potential. Expert leadership on the part of the Amtrak board and a strong commitment from Congress could lead to greatly expanded possibilities for our Nation's rail system.

Again, I thank the committee for the opportunity to testify. And I look forward to working with all of you in this extremely important issue. And I yield back.

Mr. LATOURETTE. I thank you, Mr. Castle, very much for not only your remarks, but for completing them in 4 minutes and 45 seconds.

The gentleman from California, Mr. Costa, we thank you for coming and look forward to hearing from you.

**STATEMENT OF THE HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. COSTA. Thank you very much, Mr. Chairman, and Ranking Member Brown, for allowing me this opportunity to testify before the subcommittee. I think it is fitting and appropriate that the sub-

committee exercise its appropriate role in oversight in what are some very important issues involving not only the near term of intercity rail in America, but the long-term important progress that we need to make if intercity rail is going to be part of a multimodal transportation system that I believe most Americans think—and I think most representatives believe that we ought to have in this country, an intercity rail system that connects our air transportation system with our highway system and our rail system.

After all, aren't the events of September 11 fresh enough in our minds to understand what happened when we found ourselves crippled under the attack of a terrorist front that left our transportation system lacking—badly lacking—and certainly emphasized the importance of a rail transportation system.

Members of the subcommittee, while I don't have the pleasure to serve with you, over the 20 years that I have served in California State legislature, I carried, I was part of 4 multi billion dollar bond measures that, in which 2 passed that provided significant funding for intercity rail transportation in California. I am also the author of the high-speed rail bond measure that is currently scheduled next year on California's ballot that will provide the first significant financing for high-speed rail in America, separate from what the Federal Government has done with the Acela line.

So that we don't believe this issue is simply a Northeast Corridor issue, or limited to transcontinental trains. California, out of the five busiest corridors in the Nation, has three of the busiest corridors. Number 2, the San Diego/Los Angeles Corridor. Number 3 is the Capital Corridor between San Jose and Sacramento, and number 5 is the San Joaquin Corridor that serves part of my constituents from Bakersfield to the Bay area.

As a matter of fact, for your information, Amtrak operates over 70 intercity trains in California today and 200 commuter trains. It operates a number of high frequency State-supported trains that annually provide 9.3 million passenger ridership.

California has stepped up to the plate. We have provided literally hundreds of millions of dollars for financing of intercity service. And in the last 3 years, David Gunn has provided tremendous, tremendous partnership and his experience as an able administrator. He has not only helped increase ridership, but he has decreased costs of operation. He has been willing to invest in capital equipment. Most recently, a couple months ago, he and I completed efforts to open a brand new Amtrak intercity rail station in my district. He has been a hands-on administrator.

And therefore, for all the reasons that have been articulated, he ought to be reinstated. I think that the efforts that this subcommittee will provide here in the ongoing days are critical. Your oversight is absolutely essential to finding out what has gone wrong.

In reality, the administration wants, I believe, to emasculate and then kill Amtrak. What will that do? It will put another unfunded mandate back on States that decide to try to continue to provide intercity rail support. We need to critically evaluate the Board's actions.

I think we must work in a bipartisan manner and return Congress to its position as an oversight body that all too often is lacking. We need to find out when the President will appoint a full Am-

trak board, and will he go through the proper process rather than recesses appointments. We should require that the people have substantive experience, and be appointed to the positions of Amtrak. We need to also examine why the Board continues to make decisions in secret unannounced, with the minutes of the meetings are not provided. We need to examine what the States' problems are going to be with this new position of the Amtrak board. What will this transfer of Amtrak service mean in terms of pension funding, labor force, liability insurance, intellectual capital, et cetera?

These are all the actions that I think this subcommittee needs to focus on, and the Congress need to focus on as we deliberate whether or not we want to have a true multi modal transportation system. Because that is what is at stake. We are not going to have high-speed rail in America if we are not able to, in fact, provide an opportunity for Amtrak to continue its progression as it has done under David Gunn's able tenure as the president of the Amtrak board.

I thank you for the opportunity to testify before you, and I want you to know that this is simply not a Northeast Corridor issue, but it is an issue that affects the entire Nation as well.

Thank you, Mr. Chairman.

Mr. LATOURETTE. Mr. Costa, we appreciate your coming to share your thoughts with us today, and based upon the expertise you had in your prior life, I think you should be a member of this committee. And I think you would enjoy it.

Mr. COSTA. I would like to.

Mr. LATOURETTE. We are going to go back to regular order now and pick it up with Mr. Menendez. By my count, we have seven more—six or seven more opening statements. And just as a courtesy to the members of our second panel, if you want to go up and use the facilities for the next 30 minutes or so, I think that is how long it is going to be before we get to these. So Mr. Menendez.

**STATEMENT OF THE HON. ROBERT MENENDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to salute you and the ranking member for pursuing this hearing. I appreciate Mr. Laney and Mr. Rosen being here today. But I am not pleased at all that Mr. Sosa and Mr. Hall have defied the wishes of the chairman and this committee and refused to appear today.

I think it is interesting that they can easily make it back to Washington in order to fire Mr. Gunn, but they can't answer a congressional request to explain themselves. I think that shows exactly how interested some of the President's board appointees are in the operation of a railroad.

This merely highlights my concerns with the way the Board has been put together and the way it has been operating.

Mr. Laney and Mr. Rosen, I want to be blunt here. I don't trust you. And I don't think this Congress can trust you. Your actions in the past few months, passing a resolution to try to spin off the Northeast Corridor, keeping that resolution secret for as long as possible, and firing Mr. Gunn, have not given me any confidence in your intentions for Amtrak or your ability to run it properly. I

am particularly concerned about what your intentions might be for the Northeast Corridor.

I cannot overemphasize the importance of the Corridor to the people of New Jersey. It is not just the millions of people who ride Amtrak each year. It is the nearly 100,000 commuters each day who rely on the Northeast Corridor to go back and forth to work. New Jersey Transit operates over 400 trains a day over the Northeast Corridor, nearly four times the number that Amtrak does. New Jersey puts out over $100,000,000 a year into the Northeast Corridor, and has put over $1.5 billion into it in the past 10 years, and yet they were not consulted. They were not even informed about your decision to create an infrastructure subsidiary.

This is one of the most densely traveled, heavily congested corridors anywhere in North America. Trains cross from New Jersey to New York every 2-1/2 minutes. And this operation requires a tremendous amount of skill.

I cannot allow anything to jeopardize the safety of the people on these trains. And yet you seem to want to play with fire.

Despite your reassuring words to me when we last met, Mr. Laney, all of your actions appear to be aimed at one goal, selling off the Northeast Corridor.

With a hand-picked board of administration loyalists and major Bush fundraisers, a secret resolution to create a Northeast Corridor subsidiary, a hasty decision to fire the company's president because he disagreed with your plan, your words are not reassuring at all.

Congress and the American people have clearly demonstrated they want no part of the administration's privatization schemes. And yet, the Board moves forward intent on enacting these so called reforms that seek to emulate the British model of separating the infrastructure from the operations, a model that has resulted in worse performance, higher government subsidies, and failed fatal crashes. And my worst fear is that you are trying to sell off the Northeast Corridor to a group of investors who will use it to get huge tax breaks from the depreciation.

This is not a toy railroad. It is a highly complex, vital national transportation asset. And unless you treat it as such, you are putting both the safety and the economic security of hundreds of thousands of people at serious risk.

Finally, I think the Board has shown an utter lack of respect for Congress. And you have eliminated any confidence we had in your ability to be good stewards of the Northeast Corridor. It has become abundantly clear that this Board's lack of experience in running a railroad is matched only by its lack of commitment to preserving rail service for both the intercity and commuter riders who depend on it.

Do changes need to be made in the way Amtrak operates? Perhaps. Do some reforms need to be enacted? Probably. But should these reforms be made by a hand-picked board of political appointees with no railroad experience who don't bother to consult the States' transit agencies, employees or passengers that depend on the corridor, who don't bother to consult with Congress about their actions? Absolutely not.

We have no alternative but to explore actions that will protect our customers and your citizens. We need to restore confidence in

the governance of Amtrak in the Northeast Corridor. We need to have a deliberative, consultative and very open public process that engages the stakeholders directly in deciding the future of rail service. We need to end the decision making in darkness. We need to find alternatives that put the Northeast Corridor firmly in accountable public hands, ensuring that the Federal Government meets its responsibility while balancing the governance between the interests of intercity and commuter services.

And I look forward to working with my colleagues to find these alternatives and will fight side by side with them to prevent the Board from pulling a fast one and dismantling Amtrak.

Mr. LATOURETTE. I thank the gentleman very much.

Ms. BROWN. Mr. Chairman, in accordance with clause 2(k)(6) of rule 11, I move that the committee receive my request to subpoena Mr. Hall and Mr. Sosa.

Mr. LATOURETTE. Well, make this observation. My understanding—

Mr. MICA. Point of order, Mr. Chairman, I would like to reserve a point of order.

Mr. LATOURETTE. Point of order is reserved.

The Chair would note that Mr. Sosa and Mr. Hall were invited to attend today's hearing. Our information is they are not going to be here. I would prefer that the gentlelady hold that in abeyance until we actually get the first panel in to see if they have arrived yet; and 2, it is my understanding of the rules of the committee and the subcommittee require for there to be a valid vote on the gentlelady's motion that we need to have a quorum of the subcommittee. There is 28 members of the subcommittee. We need to have 15 people here, which we do not, just at this moment in time.

So if the gentlelady would hold that until we get through with opening statements, and I know she has another motion, perhaps we can discuss that.

So if the gentlelady, with unanimous consent, would withdraw her motion at this moment in time, we will get back to you. Is that all right with you?

Ms. BROWN. Yes.

Mr. LATOURETTE. Mr. Cummings is next.

**STATEMENT OF THE HON. ELIJAH CUMMINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND**

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you, and certainly our ranking member for holding this hearing. And I have got to tell you, as I sit here and I listen to my colleagues on both side of the aisle, I am very—makes me feel good that we have such strong statements in support of Amtrak. And we have such strong statements in support of probably the best administrator that Amtrak has ever had. But you know what I am afraid of? Is that after all the dust settles, and everything is over, we are going to still be in the same place. I can't get President Bush to return my calls. But my Republican colleagues can.

The people that I am most concerned about are the people that I saw when I left Baltimore this morning standing on a platform at 6:00 o'clock in the morning, hard working Americans, doing the best they can with what they got, trying to get to work. And some-

times I think that we in Congress forget about the very people who send us here. They are not asking for any handouts. They are just trying to get to work.

And like many of my colleagues, I was shocked and deeply troubled to hear about the sudden firing of David Gunn. The press release issued by Amtrak announcing this decision seemed to imply that this decision was taken in response to the recent release by the Government Accountability Office of a report strongly criticizing shortcomings in Amtrak's management. I have thoroughly read that report. And while it does point to the need for Amtrak to adopt new financial management, purchasing and strategic planning systems, the report also indicates that Amtrak has been moving to address many of the most serious challenges it has faced in the last few years.

It also appears that Mr. Gunn was largely the driving force behind these efforts to clean up the problems left by previous Amtrak officials.

And on that note, I say to you, Mr. Gunn, thank you for your service.

There are so many who—I think it was Ms. Brown who said she don't understand when somebody in this day and age, with regard to this administration does a good job, they are the ones who get fired. People standing up for regular, everyday people, they are the ones who get fired.

And importantly the GAO report that I talked about a moment ago cited critical shortcomings in the oversight role exercised by the Amtrak board, which currently lacks three voting members and includes two board members who were recess appointed and have not been confirmed by the Senate. In fact, many of the actions recently taken by the Amtrak board appeared to exemplify precisely the kind of questionable oversight cited by the GAO report.

In April, for example, the Board put forward a plan to ″save Amtrak.″ Give me a break. That would essentially split the service and shift cost to the States.

Most supporters of Amtrak consider this to be an ill-conceived and short-sighted plan.

Just in case you didn't know it, States are suffering tremendously. My State has had all kinds of deficit problems. Later in the still unexplained decision made in September but released in October, the Board decided to separate the Northeast Corridor into a wholly owned subsidiary, despite having rejected that plan as recently as April, arguing that the complexities and costs of such a split outweigh its benefits.

Now it's interesting my good friend Mr. Mica said that this Board has brought in a new era of transparency. Hello. It's interesting that we who sit on this rail committee, who have to answer to our constituents, had to find out about it through the press many days after the decision has been made. If that's transparency, ladies and gentlemen, give me a break. Coming on the heels of these decisions, the board's actions in firing David Gunn may indicate that the board's true intention is to implement, to the fullest extent possible, the Bush administration's plan to liquidate Amtrak as our national rail service and turn it over to the private sector.

Amtrak, which currently serves some 25 million passengers—many of whom are my constituents—in 46 States, on an annual basis, is under attack as never before by an administration intent on derailing this service, and it's controlled by this runaway train called the Board.

I urge my colleagues, including all of my colleagues who supported the effort led by our subcommittee's Chairman and our Ranking Member, to increase funding for Amtrak in fiscal year 2006 to $1.176 billion, to recommit—I'm almost finished, Mr. Chairman—to recommit to the value of preserving Amtrak as our national intercity rail service. That means that we must fully fund Amtrak. It also means that it is time, in fact past time, to bring to a close these annual discussions about the future of Amtrak by adopting legislation that can be the basis for real reform of Amtrak.

And with that, Mr. Chairman, I yield back.

Mr. LATOURETTE. I thank the gentleman. Ms. Carson. Ms. Carson.

Ms. CARSON. Thank you very much, Mr. Chairman. I'm going to be very quick, because a lot of what I was going to say has already been said and I won't be redundant. I have been in Congress almost 10 years and there has never, in my 10 years in Congress, that I have seen an individual as reverent as the honorable Mr. David Gunn. You have individuals from both sides of the aisle who extol the virtues, the talent, the experience of a person who's got a track record that is impeccable.

My concern, Mr. Chairman and Ranking Member, is how can somebody who has no experience, no ability, come in and fire somebody who excels in what he's doing in terms of Amtrak? Amtrak, as all of you know, came to the defense of America when we were hit during 9/11. Prior to that time, Amtrak was at work. If we had not had Amtrak, this country would have continued to stand still. The person that is head of the Board, if there is such a Board, I don't know how you can take two people and fire a giant like Mr. Gunn. Two of them haven't even been confirmed. It's really a partisan Board; they are all Republicans. You have not bothered to name the Democrat members of the Board. I don't know how you can have some inexperienced, inept individuals come in and fire a person of Mr. Gunn's magnitude, who has a track record that's indisputable.

I'm going to close by reminding that when we had a hearing back in September, I asked Mr. David Laney what he thought about Mr. Gunn. Mr. Laney's quote, verbatim, was he took Amtrak—this is Mr. Laney referring to Mr. Gunn: He took Amtrak from the day he landed on the platform and is riding a ship that was listing and about to spill over. As far as I am concerned, David Gunn is a terrific operator.

That is a quote from Mr. David Laney himself when he fired Gunn because of his resistance to the strategic initiative.

I would like for the two unconfirmed Board members to come before this committee, Mr. Chairman, and explain what a strategic initiative is. Even though I am not a betting person, I can assure you they don't have the slightest idea.

So I want to thank again the Chairman and the Ranking Member for having this committee, and I personally want to give Mr. Gunn a standing ovation. I usually don't do that, especially with some Bush appointee, but you give credit where credit is due. Mr. Gunn has worked professionally with both members of the aisle in Congress, both the Democrats and Republicans. That is a rare breed for the Bush administration. And I would think that given all of the trouble that the Bush administration has, all the messups of a Michael Brown, that they would want to keep the one bright and shining star that they have. And that is Mr. David Gunn, and I applaud him. I don't apologize for him, and I hope his life does not become even more difficult because somebody from the liberal side of the aisle has given him a standing ovation.

I yield back, Mr. Chairman.

Mr. LATOURETTE. I thank the gentlelady very much. Mr. DeFazio is next.

Mr. DEFAZIO. Thank you, Mr. Chairman. Two lists of names: General Shinseki; Chairman O'Neill; economic adviser Larry Lindsay, Mike Parker, head of the Corps of Engineers; now David Gunn. Second list: Michael Brown; David Safavian; Mr. David Laney; Scooter Libby.

Now, the first list is a group of people who told the administration the truth, the truth about a pending war, the truth about underfunding investment in infrastructure in this country, or the truth about the possibility of having a national interconnected rail future for America.

The second group are all linked by one thing: They are all major campaign contributors or campaign functionaries who bring no expertise to their jobs. Mr. Brown has been outed. Mr. Safavian, the Chief Procurement Officer of the United States, who was an intern on a helicopter project at the Pentagon, highly qualified, is under indictment. Mr. Libby is under indictment. Mr. Laney has just famously participated in removing the very competent head of Amtrak for telling the truth and defying the Bush administration.

Now, government is not a fantasy camp, although apparently if you give enough money, you get to play; and there is another way, and it's as a profit center. They have done well, as have their contributors; Halliburton, on down the list.

Now I guess they're eyeing Amtrak and breaking it up as a potential profit center. To hell with the consequences. We're talking a lot about the East Coast. That's very, very important, given the population density here. But there is a West Coast, too. We have 50 million people between California, Oregon, Washington, and British Columbia. We have a vision of high-speed rail linking those areas. We have a critically oversubscribed Interstate 5 with tremendous infrastructure needs linking that area. We don't have the money, the President says, to upgrade the highway. Well, then, how about relieving some of the congestion and providing a cost-effective and fuel-efficient alternative for passengers by delivering on that vision?

Mr. Gunn had a vision to move America in that direction, to begin to catch up with Third World countries or developing countries, India and others with national rail systems. No one could ever match them. We'll never catch up with Europe there. We

couldn't compete with them, I guess. But it's something that is hated by the Bush administration. I'm not certain why they hate the rail system. I know there's old business, the Governor, former Governor of Texas, now President; there was an airline based there that thought Amtrak might compete with them before it became bigger and it doesn't worry about those things anymore. I know the President's brother came in and killed off high-speed rail in Florida. So there's some old business, but I don't think that's really what is at play. The airlines are mostly bankrupt; they can't effectively lobby those issues anymore, talk about subsidies given, how much they have received.

So I guess it's down to the fantasy camp, the political hacks, and running government as a profit center for private interest. But that does not serve the interest of the American people well. The Board should go, Mr. Gunn should be reinstated, Congress should assert its authority in this matter.

Thank you, Mr. Chairman.

Mr. LATOURETTE. I thank the gentleman from Oregon.

Ms. Johnson is next.

Ms. JOHNSON. Thank you very much, Mr. Chairman. I want to thank you and the Ranking Member for having this hearing. It appears that we were almost forced to do that. And I really do deeply regret the decision by the Amtrak Board of Directors to fire Mr. Gunn. Less than 2 months ago, this subcommittee received testimony from the Amtrak Board of Directors that spoke to the effectiveness of Mr. Gunn's leadership and managerial performance.

This has been said, but I haven't said it yet: It appears that a proven track record slashing debt and increasing ridership to a record 25.4 million passengers for a struggling rail entity are simply not enough to preserve one's security.

It appears to me that the primary reasons behind Mr. Gunn's firing lies less with his performance and more with his unwillingness to go along with the voices above, with the ultimate goal of starving Amtrak to death and getting rid of all the labor-protected employees, and carving its liquidation so that the rich can continue to get richer and the poor continue to get poorer. That has been the sign post of this administration.

I want to thank the witnesses that have come before us and those to come, and I would hope that we could get some honest responses. I wouldn't like to have this hanging out and waiting for answers the next year or so. I would hope that the witnesses would tell us the truth. I don't think you're going to take an oath; but I hope if you don't tell the truth, you'll come back under oath.

Thank you very much, Mr. Chairman.

Mr. LATOURETTE. I thank the gentlelady very much.

Ms. Holmes-Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I just want to make a couple of quick points. I want to thank you for your quick action, which I regard as a very important action of public responsibility.

Points I want to make go to congressional intent and the crisis in governance that has now been exposed. Mr. Chairman, you may remember the process, and the best recent indication of just how strong the support is for Amtrak and the way it is operating must

have been in the transportation appropriation process. I have never quite seen anything like it where subcommittees—I was one of them—gave up money, transferred money from their own accounts in order to make up for the shortfall in the appropriated amount we wanted to make for Amtrak. I mean, I got robbed blind. I'm Ranking Member of a committee, jurisdiction over GSA, except I can't really complain because I gave it up. I gave it up, as Members on both sides of the aisle kept giving it up, until we finally got enough to meet the mark.

What was that, Mr. Chairman? It was a vote of confidence in Mr. Gunn and it was a vote of confidence in the sense that we know he has given new meaning to the impossible job. We know what he has been laboring under. What is this fight about? It is about privatization, it is about going back to the future. And I say going back to the future, because you have to remember how we got Amtrak in the first place. These are private railroads. They didn't come to Congress saying, give me a handout; they threw up their hands saying, we can't do this. They threw it at us. They said, you have no railroad unless you take it over. They said, look around the world. There is no railroad that is operated by the private sector. Railroads are sustained only with heavy subsidies from the public sector. Take us, take it over.

That's how we got it. And our stewardship is a great part of the responsibility here.

But it was a vote of confidence in Mr. Gunn, because we have seen palpable improvements in the railroad. We have seen a manager making long-awaited infrastructure improvements at the same time that he has been cutting costs. It's impossible to do, my friends. But we have seen upgrades in this period when we are concerned with terrorism going on, at the same time cost cutting is going on. It is like fixing a railroad while it is moving on the track, full of passengers. That's the kind of job we say, Mr. Gunn, that's what we want to you do. Don't tell us it's impossible, don't tell us you need more money; this is all we can give you.

So Mr. Gunn was fired. He was fired for protesting destroying the corporation he had revived by spinning off its most profitable operations.

I'll be through in a second.

I just want to say that the Board may live to regret—we understand that you can fire a director who doesn't agree with the Board. The question is: What is the congressional intent? The congressional intent, through countless actions, was to keep the corporation as a public corporation and not spin it off. So who was in tune with the Congress, Mr. Gunn or the directors? What the Board has done is to open up not Mr. Gunn's tenure. You may have the power until you sue to fire him. It is the legal legitimacy of the Board itself, whether it has been operating for the last 2 years as a lawless Board. You have opened up a whole Pandora's box. The Pandora's box goes well beyond Mr. Gunn; it goes to whether or not anything this Board has done with its executive committee in the last 2 years, from settling claims, to disposing of property and developing property, whether or not all of that is up in the air. I mean, it's a lawsuit waiting to happen.

Let me tell you what I think the Board needs to do. Not fire Mr. Gunn; fire whatever counsel advised you that you could operate with this makeshift Board in the way you have and get away with it without a lawsuit or without accountability from the Congress of the United States.

Mr. Chairman, I looked at the GAO report that became the excuse for firing. The GAO report has only one sentence in it. It is a pregnant sentence about this Board, but it encapsulizes where we need to go and it is certainly not to all of the things that the corporation needs to do. For a very long time, unless there are massive subsidies, you are going to see this kind of GAO report come out.

What we need to look at is the very last line, and I would like to quote it as I yield back my time:

"accountability and oversight mechanisms that do apply, such as oversight by the Board of directors and the Federal Railroad Administration, are limited or have not been implemented effectively."

Accountability stops at the top, starts at the top. And that's where the problem has been, beginning with the Board that may well have been illegitimate in and of itself.

Thank you very much, Mr. Chairman.

Mr. LATOURETTE. I thank the gentlelady very much.

We are now ready to hear testimony from our second panel. Invited to participate this morning is David Laney, Chairman of the Board of Amtrak; Mr. Jeffery Rosen, General Counsel for the Department of Transportation and the designee of Secretary Mineta as a member of the Amtrak Board. We also invited Mr. Sosa and Mr. Hall, members of the Board of Directors of Amtrak; David Gunn, the former Chief Executive Officer of Amtrak; and Mr. David Hughes, the newly appointed acting CEO of Amtrak.

Ms. BROWN. Mr. Chairman.

Mr. LATOURETTE. The gentlelady from Florida.

Ms. BROWN. In accordance with clause 2(k)(6) of rule 11, I move that the committee receive my request to subpoena Mr. Hall and Mr. Sosa.

Mr. LATOURETTE. I appreciate that. As I now look at the table, it looks like Mr. Hall and Mr. Sosa are not here. I would tell the gentlelady that we continue to have the difficulty with an absence of a quorum.

Mr. MICA. Mr. Chairman, I continue to raise—

Mr. LATOURETTE. Gentlemen reserves a point of order. We continue to have the difficulty of not having 15 members to act on the gentlelady's request. I would tell you that counsel on our side is concerned about—because of the speed of this particular hearing, the invitations went out; I think that I would have appreciated it if Mr. Hall and Mr. Sosa, if they in fact received the invitations, would be here today. I am not averse to eventually getting to where I think the distinguished Ranking Member wants to go, but at the moment we don't have the authority under the rules to act on the gentlelady's request.

Ms. BROWN. One quick question. Can you inform me whether or not counsel sent out an invitation to those two members?

Mr. LATOURETTE. It's my understanding that letters were sent to all of the witnesses. It's further my understanding relative to those two witnesses that letters were faxed to the Amtrak offices.

Ms. NORTON. I have a question.

Mr. LATOURETTE. I'll yield in just a second. Again, going to—I'm sympathetic, let me tell the gentlelady, I'm sympathetic to her request. And I know the gentlelady has a request with regard to Secretary Mineta who is a member of the Board, we think, and the gentlelady's concern over Mr. Rosen being here as opposed to Secretary Mineta. I can indicate to the gentlelady I spoke to the Secretary; however, I am being informed—and I think that if we get down to the fact that we have to do this by the book, there aren't 15 people here, but I think that our side at this moment in time would feel more comfortable once we have a confirmation that we know, in fact, Mr. Hall and Mr. Sosa received the invitation and declined it. And too, relative to the gentlelady's second request, I would like to go over the scope, because it involves things back to 2001.

And I'd be happy to yield to the gentlelady from the District of Columbia.

Ms. NORTON. Mr. Chairman, I have a question. First of all, I want to say, inasmuch as one of the major issues here is whether or not this Board had a quorum, under D.C. Corporation laws, I'd hate to see us take any action without a quorum. That said, I'd like to know whether in issuing an invitation, you gave any notice to the two members that they would be subject to subpoena if they did not, in fact, come.

Mr. LATOURETTE. No, it was not. And that is causing some of the consternation.

Ms. NORTON. In that case, as much as I would regret, I believe fairness begins here; and I think they have to be warned, or I think that a version of due process that we would all embrace would say they should be warned that if they do not come they will be subject to subpoena, because often we have people from the administration who don't come, who don't show up, and we just let it slide. Thank you.

Mr. LATOURETTE. I appreciate the gentlelady's observations, and you have summed up the concerns of counsel on this side.

Mr. DeFazio.

Mr. DEFAZIO. I'd like to be specific about how the Chair intends to proceed. What I would suggest is that we would hopefully—what I think you're saying is confirm receipt and confirm that they declined to appear. And would it be at that point the Chairman's intention to subpoena the witnesses if they have received the invitations and they decline to appear at a future hearing, appropriately scheduled?

Mr. LATOURETTE. Here is the deal. We didn't invite Mr. Hall and Mr. Sosa because we didn't want to hear from them; we wanted to hear from them. It would be the Chair's intention to follow the due process that the gentlelady from the District of Columbia has established; and that is, confirm that they have received the information and get them to say that if you don't come to see us, we are going to subpoena you. And if they still decline, I will again call

a meeting of this subcommittee, we'll collect an appropriate quorum; and, if we have to go in that direction, will.

Ms. BROWN. I just have one question. How much time are we planning on giving them? This is a critical issue, critical to the American people and critical to the riding public. I think it is very important that we have the full testimony of the Board; in addition, in accordance with clause 2(k)(6) of rule 11, that the committee receive my request to subpoena the Secretary of Transportation, Norm Mineta, and the Department of Transportation General Counsel, Jeff Rosen, to produce within 30 days all books, records, correspondence, including electronic mail, memorandum, papers, and telephone records between the recipients and the Amtrak Board of Directors since June 28th 2001, the date that Mr. Mineta joined the Board.

Mr. LATOURETTE. And we have the same infirmity with that request that we have with the other request. What I would say is that the gentlelady and all members of the minority have my commitment that we will move with deliberate speed to resolve this issue.

Mr. MICA. Also, if this is a separate request, make a point of order that a quorum isn't present to consider that motion and reserve that point of order.

Mr. LATOURETTE. Point of order reserved.

Mr. Nadler, wish to be heard?

Mr. NADLER. Mr. Chairman, I'm a little confused about this discussion. I certainly take a back seat to a known and appreciation to due process, but a subpoena is not a penalty, a subpoena is simply a request, a demand to appear. And I see no reason not to issue a subpoena if we want someone to appear and we are not sure they will. You don't have to go through the rigmarole of asking them, making sure they got the receipt, making sure they didn't do it, making sure they are in contempt of the committee to issue a subpoena to demand to appear. It is not a penalty. It's saying show up.

Subpoena duces tecum, as suggested by the Ranking Member, to bring a lot of documents should take a little more care, because it takes time to assemble those documents and so forth. But just a subpoena to appear, if we have any doubt that they will appear, we ought to issue the subpoena.

Mr. LATOURETTE. I thank the gentleman for his comments. I will inform the subcommittee that it's the Chair's intention to proceed in the manner that he has announced, and I am advised that House counsel has a process relative to these subpoenas, that it involves, as the gentlelady from the District has indicated, notifying the person the subpoena will issue, and they require a foundation that we have attempted to invite and a decline.

There is not a quorum present. If we continue to have this discussion, we can move to consider Mr. Mica's point of order. I think everybody can count there are not 15 people here.

Ms. Norton, another observation.

Ms. NORTON. I just want to observe that in case it appears punitive, that we want to speak to members of the Board. Normally the Board chair speaks for the Board. Here we are dealing with a gov-

ernance crisis and whether or not a subcommittee of the Board is legitimate in how they are operating.

Now, the two members are recess appointments who have delegated—whose votes have delegated the operations or decisions concerning governance of the operations to get an executive committee. So here, because these members' roles are specifically in doubt, I believe this committee does need to hear from these members and not simply from the Board.

And on the question of subpoena, I agree with my friend from New York; a subpoena is a subpoena. The problem with the committee and with every committee of the House is that subpoenas are rarely given and members of the administration often don't come.

So I would ask, I would particularly ask for regular order here, since we are demanding regular order from this corporation, and it is under a cloud for not having engaged in just the kind of discussion we are having before taking action.

Mr. LATOURETTE. I thank you very much. Mr. Cummings.

Mr. CUMMINGS. Just one question. I just wanted to know so the record will be clear, did counsel get any response from these two gentlemen, Mr. Sosa and Mr. Hall? Did we get any response whatsoever?

Mr. LATOURETTE. Hang on. I am checking. My information is that from Amtrak we received information that they would probably not be with us today, but we have not heard directly from them.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. LATOURETTE. If that's resolved to everybody's satisfaction.

Ms. BROWN. It is, Mr. Chairman. Since I'm batting zero here, maybe we can do one thing that I request, is to have the panel sworn in.

Mr. LATOURETTE. It's the Chair's intention to do that before we proceed. If you gentlemen would rise.

[Witnesses sworn.]

Mr. LATOURETTE. Again, I have introduced the folks that were here and just—

Mr. MENENDEZ. A point of order. Is that an affirmative answer by all the panelists? I only heard one.

Mr. LATOURETTE. I heard people mouth "yes" or nods of the head.

Mr. MENENDEZ. So for the record, is that an affirmative answer?

Mr. LATOURETTE. I believe all have acknowledged. Thank you. I think they are all set.

Again, I want to thank those of you who did come today. For those that enjoy theater, you will notice there are nine chairs and there are some chairs missing, but we thank you for coming here today.

I think you have heard during the opening remarks of the members what their relative concerns are, and again I'd remind the members, based upon your schedules, based upon the agreement between myself and Ms. Brown, at the conclusion of the testimony of this panel there will be extended a half hour of questioning. I will control the first half hour, the gentlelady from Florida, the second half hour.

**TESTIMONY OF DAVID M. LANEY, CHAIRMAN OF THE BOARD, AMTRAK; JEFFREY A. ROSEN, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; DAVID GUNN, FORMER PRESIDENT AND CEO, AMTRAK; AND DAVID HUGHES, ACTING PRESIDENT AND CEO, AMTRAK**

Mr. LATOURETTE. Mr. Laney, thank you for coming to see us today. We look forward to hearing from you.

Mr. LANEY. Chairman LaTourette, members of the committee, my name is David Laney. I'm chairman of the Amtrak Board of Directors.

Let me mention one item just to throw a little more either clarity or confusion into the issue we're talking about. The only invitation I received—and there may have been others—but the only one I received and read was one that invited me or my designee. There may have been another or others; I don't know what the other members received. So I assumed that I would be the designee but I have not spoken with them.

Mr. LATOURETTE. I appreciate that. And we're not going to count this against your time, but I'm informed there was not only an invitation to you and/or your designee, but the others were forwarded. Again, based upon the discussion, in fairness we want to make sure everybody got one before we—not accuse them, but suggest that they didn't come to see us.

Mr. LANEY. Thank you, Chairman. I know we're here today to talk about the recent leadership change at Amtrak and I'll speak to that in a moment.

I want to talk about Amtrak's recent performance and the need for more fundamental change to put the rail service on a stronger, more financially sustainable footing. At the outset, I want to make it clear that our Board is fully committed to leveraging the full potential of intercity rail service in our national transportation mix. We want to fix Amtrak's problems and make it better. It is not our goal to destroy, dismantle, or privatize Amtrak as some have falsely or disingenuously claimed. My hope is today in going forward, we can have a spirited and open and constructive debate about the best strategy for improving Amtrak, a goal that all of us share.

Let's talk about where Amtrak stands today. As I said when I testified before this subcommittee in September on our Strategic Reform Initiative, David Gunn has helped Amtrak achieve much-needed financial and organizational stability. He has focused the railroad on repairing its core assets in the Northeastern Corridor. Today Amtrak is a better run company as a result of his leadership, and he and the employees of Amtrak deserve the credit for these very significant achievements. David leaves, as I'm sure I don't need to say for him, with much basis for him to hold his head high and be proud of what he achieved.

At the same time, however, the Amtrak Board cannot just look in our rear-view mirror and be content at the distance we have come. Huge challenges still lie ahead that Amtrak will not and cannot overcome on its present course. These urgently need our attention, our creativity, and, most of all, our concerted action.

For example, for the last 4 years, in spite of the improvements noted, Amtrak has had operating losses of nearly $500 million a year. It may very well be these losses would have been worse in

recent years without some of the actions David Gunn and the Board took together. But the critical point is that Amtrak's financial performance has not improved in the last 3 years. We have lost the same amount of money every year, and over the last 4 years Amtrak has lost $2 billion in its operations, a bottom line that is not acceptable to the Board and cannot continue indefinitely.

Second, a key indicator that Amtrak's business needs substantial reengineering is that labor costs—which is salary and related expenses including benefits—were 103 percent of passenger-related revenue in fiscal 2005. In other words, in our capital-intensive business where labor is only one element of our cost structure, the cost of Amtrak's labor force alone exceeds the revenues derived from passengers on our trains. Few, if any, businesses would survive long with such outside labor costs.

It would be nice to fix this problem through a significant boost in passengers and ticket revenue, but to get our labor costs under control more quickly and certainly, Amtrak will need to outsource certain services, replace labor in some cases with technology, change labor agreements, and take other significant steps.

Third, in three areas where Amtrak has had substantial difficulties that drive costs and losses up—food service, beverage service, long distance service and on-time performance—there is very little progress to report in any of these areas, and much remains to be done.

Fourth, Amtrak has been unable to provide a consistent high-quality level of customer service aboard its trains. The passenger experience too often is degraded by an unappealing onboard environment, dirty or under-maintained rolling stock, or arbitrary treatment of passengers by crew members.

While each Amtrak route can boast certain star trains and some stellar crew members, the overall level of Amtrak's interaction with its passengers is not where it needs to be if passengers are to assume a greater share of the Nation's transportation mix.

Finally, Amtrak has been unable to provide clear, verifiable, transparent cost information for what it operates, what it owns, and what it offers for resale to governments. State departments of transportation seeking to purchase passenger rail services for use by their citizens and visitors are unable to obtain clear cost estimates, expense breakdowns, and invoices from Amtrak. While favorably disposed to passenger rail service in principle, these public authorities too often reject funding because they are unable to justify, understand, or control costs.

With these challenges and others in mind—and there are others—the Board, with the support of management, developed a strategic plan to map out the future reforms for Amtrak that would build on progress already made. We completed this plan in April and gave testimony on it to this subcommittee in September.

As I described then, the plan advances four essential objectives. Without working through them, they are in the plan and in my testimony. But let me move forward.

This brings me to the issue of our management change. The Strategic Reform Initiative was developed with the knowledge that progress we had made to date was only a beginning and that Amtrak's present course was not sufficient to significantly improve the

railroad's performance. David Gunn participated reluctantly, and often not constructively, in the development of this plan. When it came to its implementation he became, at best, an unwilling bystander.

His resistance to the Strategic Initiative presented the Board with two problems. One, David's refusal to go in several new directions meant that Amtrak would continue on its present course: flat operating losses, unsustainable labor costs, money-losing long distance and food services, and more. Secondly, it meant that while the Amtrak Board was accountable to Congress, to the administration, and to the public for the organization's performance, our Chief Executive Officer was not accountable to anyone above him.

In the end, the Board concluded that we had no choice but to release David because neither of these outcomes was acceptable.

But let me say this was a decision of last resort, it was a decision we wish that we did not have to make, it was a decision that was not made casually or precipitously as some have suggested. On the contrary, the decision was made with care, deliberation, and objectivity and over an extended period of time. Most important, the action taken by the Board was the right decision based on David Gunn's overall performance during the past many months, and it is our final decision.

I think I will hold my remarks with respect to the Northeast Corridor until later.

Mr. LATOURETTE. I thank you, Mr. Laney.

Mr. Rosen.

Mr. ROSEN. Thank you, Mr. Chairman. Mr. Chairman and Ranking Member Brown and members of the subcommittee—

Mr. MICA. Can't hear him.

Mr. ROSEN. Can you hear me now? Okay. Thanks.

First I'd like to thank the members of the subcommittee for inviting me to be here today. In the interest of time, I ask that my written testimony be submitted for the record and I would instead like to share three brief thoughts relevant to today's hearing.

First, the 1997 Amtrak Reform Act explicitly renamed Amtrak's Board of Directors as the Reform Board of Directors. That's in the statute. Now, unfortunately, it took approximately 8 years, last April, finally, Amtrak's Board unveiled an ambitious plan to turn the company around by making a significant number of reforms. The Department of Transportation recognized this plan as a strong step in the right direction. Many Members of Congress, including some who are members of this committee, supported the plan when it was released.

The Amtrak Board sought to move ahead with the many self-reforms that are within Amtrak's own control. Now, as it turned out, the Board was unanimous in concluding that Amtrak needed a different president to fix the company. As Congress' own Government Accountability Office recently underscored, 3 more years of the same approach would have meant a $400 million increase in Amtrak's operating losses, further deterioration of infrastructure, and ridership below today's already extremely low one-half of 1 percent of the total intercity travel market. We have to go forward and not backward.

Second, Amtrak's Board, in my observation, is genuinely committed to fixing its business and improving passenger rail. Unfortunately, now that Amtrak's Board has demonstrated its seriousness about reform and improvement, there are some who have raised questions about the legitimacy of Amtrak's Board. Let me say first, it would be nonsense to think that neither Amtrak's Board nor anyone else has the authority to terminate a corporate officer. The statute is explicit that all Amtrak officers serve at the pleasure of the Board. In addition, the questions that have been raised are old, and Amtrak itself, several weeks ago, previously provided a memorandum to this subcommittee refuting them. Legally, the questions about the validity of the Board are just flat wrong.

Now, I don't have the time in my remarks today to go through all of it, although I will be happy to do that in Q and A if somebody would like me to and afford me the time.

What I will say here, suffice it to say, is that the governing statute, the Amtrak Reform and Accountability Act of 1997, explicitly provides that four of the seven members are sufficient for the Board to pursue its responsibilities; and it explicitly states that Board members are appointed, quote, ″for a term of 5 years,″ close quote, not for part of someone else's term, not for a process of which the term is only 5 years and multiple people serve it, but for a term of 5 years.

With regards to the recess appointments, it is telling that the validity of recess appointments to the Amtrak Board was unchallenged over the last 20 years, even though President Reagan made six such appointments to Amtrak's Board and notified the Senate of that. The U.S. Supreme Court killed the viability of any such legal challenge in a case called Labron vs. Amtrak in 1995.

So, as I said, for anyone who's genuinely interested in the legal issues, I would welcome the opportunity to take as much time as it takes to go through that with any of you who would like me to.

Now, moving on to my third and last observation, there are some who wrongly claim that Amtrak's president was let go because he refused to let the Board or DOT or somebody shut the company down. Now, this is ironic, because the only person to have repeatedly threatened to shut down Amtrak was Mr. Gunn himself. Neither the Board nor DOT has sought to do that.

The fact is if someone really wanted to kill Amtrak, they would do nothing. Last year's approach of spending even more money than Congress had appropriated to Amtrak is unsustainable. So, instead, Amtrak's Board crafted an ambitious reform proposal and sought action on it. Instead, DOT has worked to encourage significant reforms to the way that we handle intercity passenger rail, with the eye to improving it so that it is both more available, more economically run, and better. And this administration has called far and wide for intercity passenger rail to be improved before taxpayer dollars are used in ways that are not efficient or useful.

For too long the Amtrak debate has been about how much Federal money the Amtrak company should receive, instead of how to use that money to deliver the best possible rail service for both the taxpayers and intercity travelers alike. Sometimes the issues are surrounded by too much heat and not enough light. I hope that we will be able to focus our time today on discussing the important

work that needs to be done to save and improve intercity passenger rail. I hope we will discuss how to find ways to support Amtrak's own efforts to make meaningful and essential reforms. I hope we can examine new methods for ensuring that our investment in passenger rail goes further and is used more wisely than has been the case in the past. And ultimately I hope that the Congress will work with the administration to craft a plan to make passenger rail travel more relevant and useful for the 99.5 percent of intercity travelers that do not use Amtrak today. Thank you.

Mr. LATOURETTE. I thank you, Mr. Rosen.

Mr. Gunn, thank you for coming. We look forward to hearing from you.

Mr. GUNN. Thank you, Mr. Chairman, members of the committee, you have a copy of my testimony. Anyway, Mr. Chairman and members of the committee, thank you for inviting me. My name is David Gunn, formerly, as we all know now, President and Chief Executive Officer of Amtrak. And I will make my remarks brief and I want to make 5 points.

First, I am proud of Amtrak's accomplishments over the last 3-1/2 years. The status of the company is detailed in the attached letter to Chairman Laney dated November 9, 2005, entitled ″Year in Review.″

Amtrak has a competent, loyal workforce and has produced sound results. The financial reporting of results is timely, accurate, and public. Material weaknesses which existed in the system have been addressed, and, for example, audit adjustments have fallen from 200 million in fiscal 01 to 7 million in fiscal 04. The operating loss of funding requirement has stabilized or actually declined over the last 4 years. The net loss, including depreciation, which is what is driving the net loss, has stabilized.

The capital program is a well-defined group of multiyear projects designed to bring the existing infrastructure and equipment to a state of repair. The capital program is producing the intended results. Productivity is detailed in the attached letter. Actual cash outlays in fiscal 05 were 92 percent of budget, which means that we have invested virtually all of the money we were given for the plan purposes. Ridership has grown steadily and was at a record in fiscal 05, and currently continuing to grow. Head count has fallen from almost 25,000 in fiscal 01 to 19,177 at the end of fiscal 05.

Second, my second point, the Nation's transportation systems, air, highway, even waterways and rail are in trouble. Both freight and passenger mobility is deteriorating. Intercity rail service, passenger service in carefully selected urban corridors, offers potential relief at the lowest total cost. The current method of funding, regulating, and governing passenger rail service will not permit intercity rail service to reach its full potential.

The reforms necessary to achieve change were detailed in Amtrak's Strategic Reform Initiative issued in April of 2005. Those reforms were supported by management, including myself, and by the Board. We were on track to implement the reforms that were within our control. No other reforms have been formally promulgated by the Board.

Third, the Amtrak Board cannot unilaterally reform Amtrak. DOT cannot unilaterally reform intercity passenger rail service.

Unlocking the potential of intercity rail requires a collaborative effort between management and employees, the Amtrak Board, DOT and Congress.

Fourth, the Board structure has generally worked well, despite the lack of a full Board for quite some time. With regards to the operating and capital needs of the railroad, the Board and management have been in general agreement.

On the issue of reform, a milestone was reached when we prepared our Strategic Reform Initiative in April 2005. I was surprised last August when our general counsel received the directive from the Board chairman to create an NEC subsidiary at the September Board meeting. I was told that it was a, quote, ″fait accompli.″ this unilateral action ultimately resulted in my termination last Wednesday.

The current Board stands in contrast to the previous Board where all seats were filled and there was a true sense of collegiality and trust among the management and the Board. With the exception of the DOT representative, the Board followed an independent course.

Lastly, what is at stake today is the future of Amtrak and intercity passenger rail in the United States. What is required is some idea of what the end result we want is and a thoughtful plan to get there, and we don't know either of those. The destruction of Amtrak, which I think is possible, will ultimately devastate our most precious asset: the human capital or knowledge base required to operate high-speed passenger transportation and set back any plans for intercity passenger rail.

I consider it to have been an honor to serve as Amtrak's President and Chief Executive Officer, and I am grateful for the support shown to me by our staff and our employees. I am grateful for the support of Congress and the friendships I have with many of you in the room and your staffs in the room. Thank you and I look forward to any questions.

Mr. LATOURETTE. Thank you, Mr. Gunn.

Mr. Hughes, thank you for coming and we look forward to hearing from you.

Mr. HUGHES. Good morning, Mr. Chairman, Ranking Member Brown, members of the committee. My name is David Hughes. Until a few days ago I served as Amtrak's chief engineer. On Wednesday of last week I was asked to serve as interim President and Chief Executive Officer of Amtrak.

While I have been a member of Amtrak senior management for the past 3-1/2 years, I have been in the railroad industry for more than 30 years. Fundamentally, I believe passenger rail is an important aspect of our Nation's transportation network, and I will work to the best of my ability to continue to advance the goals and objectives of Amtrak and to provide safe and reliable passenger service for our customers.

Many of you are familiar with the Strategic Reform Initiatives discussed here today. I was directly involved in the creation of these reform initiatives and I will see to it during my tenure as President and CEO—no matter how long—Amtrak will continue to advance these policies and objectives set forth in that plan. Please rest assured that despite this time of transition, Amtrak employees

will continue to strive to maintain the highest levels of service and the safety of our passengers, and, at the same time, will endeavor to look for creative ideas to foster more competition, improve operational efficiencies and to return the railroad to a state of good repair.

The challenges are many, but given the adequate resources and continuing support of Congress, we can and will pursue to fulfill the objective of rail passenger service and remain an important transportation alternative for the American people now and in the future. Thank you.

Mr. LATOURETTE. I thank you very much, Mr. Hughes.

As I indicated before, pursuant to the agreement that the gentlelady and I have, we will now proceed to an hour of extended questioning. I'll control 30 minutes and will yield to some of my Republican colleagues, and then the gentlelady will have the same; then, at the conclusion, go back to the 5-minute rule.

A couple of people have read observations. We last had a hearing in the subcommittee on September 21st, and different people have read different observations that you made at that hearing, Mr. Laney. And I have a different one. The quote that I have from that hearing is:

"during this fiscal year, Amtrak continued to show strong results in a number of important areas. Despite everything that has happened this year Amtrak will finish FY 05 under budget and will set a new readership record. This is quite remarkable, when one keeps in mind the unforeseen Acela service interruption which caused the temporary cessation of all Acela trains earlier this spring. We responded efficiently and safely, while integrating other equipment quickly into the timetable so that no measurable impact on any ridership occurred. Now we are back to full Acela service operating this month 92 percent on time. Just recently we had to deal with the indefinite truncation of three of our long distance trains from the impacts of Hurricane Katrina."

So I think I came away from that hearing thinking that while things weren't great, Amtrak was proceeding along in a pretty good path, and that's why I think last week's news was a little startling, I guess, to some of us.

Mr. Gunn, I guess I'll let you start. I heard what you said, but prior to—and I read an interview you gave to Railway Age Magazine; and as I understand it, the Board came in and asked for your resignation and when you said no, you were released, according to the quote at least. What happened? I mean, did you have any conversations with Mr. Laney or the Board prior to this—these events of last week?

Mr. GUNN. Well, we had had conversations, obviously, prior to this week. It came as a surprise to me that I was being terminated on Wednesday. It was no surprise to me that the Board was unhappy with my taking the position that I was against separating the Northeast Corridor, but I was surprised when I was terminated.

Mr. LATOURETTE. I have an exchange of letters that went back and forth between you and Mr. Laney. Aside from what may be contained in those letters, were there ever any conversations with

the chairman of the Board relative to expressing his unhappiness with the position you were taking?

Mr. GUNN. We probably had two or three discussions where he had expressed—he had said that he couldn't defend me much longer, that sort of thing. But that would be over a specific issue where I was taking a position.

Mr. LATOURETTE. The phrase "couldn't continue to defend you." he's the chairman of the Board, so who—did you have a sense as to who he was thinking he had to defend you from?

Mr. GUNN. No, I can't tell you who. I did not ask.

Mr. LATOURETTE. Let me turn to you, Mr. Laney, because you—do you recall having such a conversation, making that observation to Mr. Gunn?

Mr. LANEY. I don't recall that conversation or that specific comment, but I know we did have interaction and issues, some initiated by David. And I was concerned on a number of occasions about his unilateral departure and tried my best, I think, to make it work for David, for the Board, and I thought was aggressive and patient in trying to keep the thing laced together as best as we could. But I hate to say it, but I don't think either—no matter what you might hear from either me or David Gunn or anyone else, ultimately not too far beneath the surface, I don't think anybody was particularly surprised.

Mr. LATOURETTE. Needs to be closer.

Mr. LANEY. I don't think anyone was particularly surprised at the action we took. They may have been surprised at the timing, but there is no timing that's particularly correct or right.

Mr. LATOURETTE. When you are talking about no one being surprised, you're talking about no one that knew what was going on inside the company. You are not suggesting, based upon your observations in September to this subcommittee, that it didn't catch others outside the company off guard, right?

Mr. LANEY. That's correct.

Mr. LATOURETTE. Mr. Rosen, I want to turn to you because I think that you have—you have sort of hit the issues that I am most interested in today. And I appreciate while you called some things ludicrous, you didn't call this issue about the quorum and the makeup of the Board ludicrous. I do recognize that they are old discussions, but I do have a little bit of time, and I'd like to go through it with you if I could.

There are two things that cause me pause with the current constitution of the Board. One goes to the issue of whether or not, if you follow the 97 statute—and I heard what you said, where you had a situation where I assume it's the administration's position that the administration has appointed Mr. Laney and the Secretary to new 5-year terms.

Mr. ROSEN. Not only the administration's position, it's what the Congressional Record—

Mr. LATOURETTE. Pull your microphone closer.

Mr. ROSEN. It's not only the administration's position but it's what the Senate in the Congressional Record reported at the time that Mr. Laney was confirmed. It's what's reflected on the appointment from the President. So I would say yes, consistent with the

statute when these appointments were made, they were for 5-year terms as set out in the statute.

Mr. LATOURETTE. I read the letter that you sent up here on, I think, the 26th. I'm familiar with that. I'm also familiar with the observations made by the Department of Justice. But maybe you can square—maybe it's a simple answer, but as I read the statute, section 24-303 49 USC, the 97 reform act indicates there is going to be this Reform Board established that you talked about, and then there was going to be a fork in the road that occurred in 2003. The fork in the road was going to be occasioned, and that the predicate question is whether or not the corporation was still receiving Federal assistance. If they were, you go one way; if they weren't, you go a different way.

And my question is: Does that paragraph not cause you any pause? If you are right, this action was taken originally when the Reform Board was put into place, there wouldn't be a question in my mind.

Mr. ROSEN. Three observations, Mr. Chairman. First, there was a fork in the road, but not with regard to individual directors as such. There was a provision that said that if Amtrak achieved self-sufficiency by the year 2002, then the Board would cease to be the Reform Board and would revert to a more traditional corporate Board. Now, that eventuality was not realized, and the statute provides that therefore the Reform Board continues in effect as it does today.

So I don't think there is any question that from the creation of the Reform Board through today, the same mechanisms are in place for the President to appoint the Reform Board members.

Second, with regard to, then, the Reform Board, of directors, memberships and appointments, the statute did not require that they all be appointed at the same time. If it was just a magic 5-year window, you would have expected that people would have all been appointed at the same time and terminated at the same time. But that is not in the statute. It expressly contemplated appointments that would be made over time and provided—in fact, in section 24302(a)(1)— that as soon as four of them, four of the seven, were appointed, then they could assume the responsibilities of the Board.

So a second observation is that the terms of the Board members are not in the same 5-year window as the self-sufficiency requirement.

Third, then, and most importantly, I looked specifically at the text of section 24302(a)(2), which is the membership of the Reform Board, which is going to consist of seven voting members, and here is the key text, they are to be appointed by the President by and with the advice and consent of the Senate for a term of 5 years. A nominee is appointed by the President for a term of 5 years.

It does not say appointed to fill out the remainder of a 5-year window, shall serve out a term until the year 2002 arrives. Congress could have said those things, but did not. It explicitly said the appointments were for a term of 5 years.

Moreover, if you look at that against the backdrop of the prior statute, the prior statute, before 1997, had both a holdover provision such that Board terms were for individual membership, and

a provision on how to replace members on an interim basis if their term was continuing, but they were departing. This statute eliminated that, simplified it, and said you'reappointed for a term of 5 years.

So the Senate, which was half the equation in this bill, with obviously the House the other half, and then the President signing it, the Senate explicitly, with regard to Mr. Laney when he was appointed with the advice and consent of the Senate, and the Congressional Record reflected—reported that he was being appointed for a term of 5 years, those 5 years have not expired. Mr. Laney remains a correctly and appropriately appointed member of the Amtrak Reform Board of Directors.

Secretary Mineta, similar story except that it does not require the advice and consent of the Senate, but he was appointed. And I have seen a—perhaps a mistake, in terms of reporting to us, did he replace Secretary Slater? He actually did not, because Secretary Thompson had already been on the Amtrak Board at the time he became the Secretary of HHS, and since the statute does not permit anyone beyond one DOT official, or executive branch official, to be on the Reform Board, there was a period where that was Secretary Thompson. And then it was changed over to Secretary Mineta I believe it was around the first of August of 2001. But the same basic story, appointment for a term of 5 years.

There's an additional issue with the Secretary, which is one could read the statute as providing that the DOT Secretary, who, by the way, this statute explicitly authorizes to act through a designee, which in this instance is me—that the DOT Secretary upon appointment by the President can serve in excess of 5 years, but we don't need to resolve that question because 5 years have not expired.

So, in sum, I rely on the plain text of the statute. But it fits with the context of the prior statute, the context of what the Senate actually did, and with the overall structure of the '97 Reform Act.

Mr. LATOURETTE. The second thing that concerns me—and again, I read your letter of October 26, and also the Department of Justice memo—has to do with recess appointments. And Mr. Sosa and Mr. Hall are recess appointments. Is it your judgment that members of the Board of Directors of Amtrak are officers of the United States for purposes of recess appointment?

Mr. ROSEN. For purposes of the recess appointments clause and the appointment clause of the Constitution, yes. And that has been established both through tradition and custom, as I have indicated, and that President Reagan appointed six members to the Amtrak Board by recess appointments. President Bush has done two. But also, most importantly, the argument to the contrary, which at one time I think might have been a legitimate inquiry, is that Amtrak was established by Congress as a private, for-profit corporation. And so there would be a legitimate question as to whether for constitutional purposes it should be deemed a Federal instrumentality in some way. And the U.S. Supreme Court, in Lebron v. Amtrak in 1995, specifically addressed and resolved that question.

There had been some debate in the courts. The trial courts had said that it was subject to the constitutional provisions at issue there, and the Second Circuit, I think it was, Court of Appeals had

said it was not. And then the U.S. Supreme Court ruled in 1995 that although Amtrak is a corporation established by Congress, and notwithstanding, the expressed statutory text saying that it is not a Federal agency, that for constitutional purposes—and in that case in particular whether the first amendment applied—that Amtrak is subject to constitutional provisions.

And my assessment is that in light of that Supreme Court decision, the recess appointments and appointments clause of Article II of the Constitution would apply under the current structure in which the President is making the Board appointments, and Congress has been providing approximately 40 percent of the funding, and DOT owns approximately 99 percent of the stock, is the largest debt holder and is also a mortgage holder on the Northeast Corridor.

Mr. LATOURETTE. Again, I know that that is your view, and then I read the memorandum or the letter from the Department of Justice. I would assume that aside from those sources, Amtrak has requested other opinions on this matter, because I think I at least agree that some would argue that the Lebron decision skirted the issue that we are talking about relative to Federal officials, and there have been subsequent cases since.

Are you aware of Amtrak or the Board of Directors ever receiving advice to the contrary from counsel that they retained?

Mr. ROSEN. I would have to defer that question to Amtrak's own general counsel, who would be responsible for that, and who is the one who did provide you with a legal memorandum separate from the one I sent the committee. I would have to reference that question to her.

Mr. LATOURETTE. Mr. Laney, let me ask you that—this whole question about recess appointments and proper constitution of theAmtrak Board, are you—aside from the administration view and Department of Justice view, have you ever seen or been advised of legal opinions that call into question the two things Mr. Rosen and I are talking about?

Mr. LANEY. The only thing I really recall, Mr. Chairman, was the memo that was forwarded by the Amtrak general counsel to you in response to your request. I may have seen other things along the way, but mostly what I have categorized as interesting theories, but nothing that really challenges the legitimacy of the Board.

Mr. LATOURETTE. I was urged by the Chairman of this committee to have a hearing on the legal fees that Amtrak pays. And I am aware of a letter by a firm of Wilmer Cutler and Pickering that addresses this issue and went to general counsel. And I think what I will ask—and I am going to yield to Mr. Mica and then to Mr. Bachus in a little bit for continuing use of our time—but in that advice that was addressed to someone named Said Bagam, who is a former general counsel, vice president of the corporation, the Lebron decision is discussed as well as the belief that, in fact, it agrees with this whole notion that you can't have holdovers that we have talked about. But it reaches different conclusions on this issue of whether or not Board of Directors are Federal officials within the meaning of the statute.

And I still would say, Mr. Rosen, that I am troubled when just thinking about statutory construction, and in order for that, what

you have put forward relative to this what I will call a fork in the road is not the most artful term in the world, I think that that interpretation completely reads subsection B of the statute out of existence. And I know you have a contrary view, but that is what is troubling me.

But what I will ask is that to supplement this record, to provide to the committee whether or not the corporation has been advised with legal opinions or advice on this issue of recess appointments, and I will be happy to provide to you the letter that I already have in my possession.

Mr. LATOURETTE. It is now my pleasure to yield 10 minutes of my time to the gentleman from Florida Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Some of what we have heard today from members of the committee and ladies and gentlemen and our witnesses is a bunch of fog that has been created to sort of cast aspersions on the Bush administration's intention and what has taken place. In the next 9-1/2 minutes let me debunk some of that, if I may, Mr. Chairman.

First of all, Mr. Rosen—well, first of all, in 1997, I helped write the statute creating the provisions that said that if Amtrak received a Federal assistance in 2003, that the current procedures for appointment would stay in place. Mr. Gunn, to your knowledge, you're the old hand, did Amtrak receive Federal assistance in 2003? Yes or no?

Mr. GUNN. Yes.

Mr. MICA. Thank you.

Mr. Rosen, you're the general counsel. The law is very clear that if they received that, in fact, that we would continue under the same appointment procedures as originally established; is that correct?

Mr. ROSEN. That's absolutely correct.

Mr. MICA. I'm not an attorney. So it is very clear.

Now, you have heard this rhetoric about the appointments and somehow the Bush administration was trying to subvert the process. You were around, Mr. Gunn, Robert Crandall was nominated by the President to the Board October 14th, 2003; Lou Thompson—I think these are both Democrat nominees—January 26th, 2004; is that correct?

Mr. GUNN. I don't know. I know nothing about the appointment process. I am not involved in it. I didn't pay any attention to it.

Mr. MICA. I am sorry. I will go to the counsel.

Counsel, did the administration do that on those dates or approximately on those dates?

Mr. ROSEN. Yes, it did.

Mr. MICA. And what happened to those appointments?

Mr. ROSEN. Unfortunately the Senate failed to act on them.

Mr. MICA. The Senate didn't do anything with thoseappointments. So the President didn't—did not fail to submit two Democrat appointments. Why then would you appoint recess appointees if the Senate doesn't act? Now, that is a horrible thing to do, isn't it? Why did you do that?

Mr. ROSEN. In the situation that existed a year ago, the—

Mr. MICA. The Senate didn't act, so the President, in fact, made recess appointments of Mr. Floyd Hall and Mr. Enrique Sosa; is that correct?

Mr. ROSEN. That is correct, because that was important to be able to keep a quorum, among other things.

Mr. MICA. And that's a legal quorum under the definition that you just—that we just concurred was part of the original law, and again the provisions that were put in place by Congress.

Then we had the Senators—this was funny—to have the Senators up here, and everybody is questioning, oh, gee, now that they have made these decisions, finally acted, we have a Board in place, does this really constitute a quorum? But the Senate is going to run to the rescue and resolve this.

Has anybody read what the Senate proposed? And we heard this; what did it pass, 93 to 6, some phenomenal amount? The Senate solution to the Amtrak Board appointment? Page 122. Quorum; a majority of the members serving shall constitute a quorum for doing business. Is that—are you—is anyone familiar with this? Mr. Rosen, is that the language that passed the Senate?

Mr. ROSEN. In the bill tendered by Senators Lott and Lautenberg?

Mr. MICA. Yes.

Mr. ROSEN. I believe that is correct.

Mr. MICA. Mr. Chairman, this exhibit for the provisions passed by the Senate. So what situation, sir, legal counsel, does that put us in? Basically the same situation we are in now?

Mr. ROSEN. Yes, it is my view that we have a quorum.

Mr. MICA. Hey. So they have solved the problem.

And let's go to the heart of the finance plans, the great Lautenberg plan, which is about $9 billion over 6 years. Is it a little more? Is anyone familiar with the Lautenberg plan?

Mr. ROSEN. It is a higher number.

Mr. MICA. Twelve? We will go for 12-. Okay. Let's go for 12-.

Mr. Chairman, I would like to ask that the last GAO report to the Chairman of the Committee on Transportation and Infrastructure be included as part of the record.

Mr. LATOURETTE. Without objection.

Mr. MICA. On page ii it says, Amtrak's annual operating loss has grown to over a billion and projected to increase to over $1.4 billion.

Mr. Gunn, what is the current backlog cost for maintenance on Amtrak, 5-, 6 billion?

Mr. GUNN. We have an annual capital need of about 700 million to keep the existing system in its—

Mr. MICA. But we have several reports saying it is 5- to $6 billion in backlog.

Mr. GUNN. Look, I ran the railroad. I know what we have to spend, and we have to spend about 500-, $700 million a year.

Mr. MICA. But the total that has been presented to Congress, presented in the report, you have seen some of these?

Mr. GUNN. There has been a lot of numbers put forward that are much higher than you have to spend to keep it in—

Mr. MICA. You said 700 million a year.

Mr. GUNN. I think this in today's dollars—

Mr. MICA. And the current losses are about 1 point—we are subsidizing about 1.2 billion. My point is here, even if we pass the Lautenberg, and you do the simple math on it, folks, you get absolutely nowhere. You're not going to build a high-speed corridor. We have had at least two GAO reports; is that not correct, Mr. Rosen? Are you familiar with these? It says it is going to take 15- to $20 billion to make a high-speed corridor out of the Northeast Corridor. Is Congress going to get $15 billion? Never. Not based on the fact that they bungled the acquisition—the Northeast Corridor improvements.

And I don't have enough time. Can't we go through—we could go through some of these. Mr. Hughes, you're an engineer. The catenary didn't work, bungled acquisition of the Acela, probably spent as much money on legal fees as we did on capital equipment in the project. Am I close to being correct on that?

Mr. HUGHES. Well, I have the good fortune to not have presided over those, Congressman.

Mr. MICA. But again, just do the math. And the math does not work out. So you're advocating the status quo.

Mr. Laney, you had the audacity, and your Board, to step away from the status quo, and that was the breaking point. We just heard Mr. Gunn say the Board cannot reform Amtrak, that it has to take Congress.

Interestingly enough, our legal counsel told us that is not the truth, because Amtrak has the ability to do what they did to separate out the Northeast Corridor; is that not correct? Mr. Gunn? I am sorry, Mr.—

Mr. GUNN. We look alike.

Mr. MICA. Do you have the authority to do what you did?

Mr. Rosen, does he have the authority, the Board, under law, you are the general counsel, DOT—from your estimate, did they—first, they had a legally constituted board, correct?

Mr. ROSEN. Yes.

Mr. MICA. Secondly, what they did, did they have the authority to break out the Northeast Corridor? And we will add to it. Did they have the authority to dismiss Mr. Gunn.

Mr. ROSEN. Well, as to the latter, without question.

With regard to the Northeast Corridor, the only reason I am pausing is not one of legal authority, but I think there has been some misunderstanding about the step that the Board took, because it was—what I would characterize as a rather preliminary step to study both the practical impediments, the legal needs and so forth. And so since part of the study is what legal impediments exist, that is why I am pausing on giving you a conclusory answer.

Mr. MICA. Again, they are starting that process.

Mr. ROSEN. That's correct.

Mr. MICA. Even though there aren't a lot of folks here today, Mr. Laney, you will be receiving from me pages of Members of Congress whom I have gotten to sign a letter to you and your Board, dozens of Members who say—congratulate you on the action that you took in starting this process; also asking you to look at having the private sector both develop and operate that corridor. And, oh, the shudders. Labor and everyone, should they be concerned about what you're talking about, Mr. Laney, about breaking this down?

Mr. LANEY. No.

Mr. MICA. He said no. Why shouldn't they be concerned? Mr. Gunn, didn't you testify and tell me how many people you have gotten rid of in Amtrak at one of the most recent hearings?

Mr. GUNN. I gave you the head count this morning in my testimony—

Mr. MICA. How many employees—

Mr. GUNN. I will tell you. I said we went from—in '01 we had—the payroll was 24,800. And we are now down—or they are now down to about 19—

Mr. MICA. Again, my point from the people from labor, why are you stuck in this mold? You're losing your laborers. If we had—we have a chance to open the Northeast Corridor, let the private sector—Congress is never going to give you 15 to $20 billion. The private sector will do it. We might even make money in the operation of it.

Why am I interested? Because I chair the Aviation Subcommittee. LaGuardia, Newark, JFK, they are all at capacity. I was just up in Philadelphia where they are extending another runway. It is at capacity. It will be at capacity. We can build a high-speed service with the cooperation for both the development and the operation by the private sector.

Finally, we have a Board that is looking—God forbid, Mr. Laney—you're looking at it—look at the abuse you're taking for trying to get there. Imagine if you're a success, Mr. Laney, in the Northeast Corridor. How many people could be employed? Because we do this in the west coast, we do it in the central part of the United States. We need high-speed service all over.

But do you think for 1 minute that Congress is going to vote the money to give Amtrak? Do you think Congress is going to vote to give money, to put that kind of investment in? Is there a plan? The current plan, the Lautenberg-Lott, whatever the name is, does not do that.

Mr. LATOURETTE. Mr. Laney, I ask you to answer Mr. Mica's question, and then, Mr. Bachus, we have about 9-1/2 minutes left.

Mr. MICA. I was just getting started, Mr. Chairman.

Mr. LATOURETTE. Sadly, you're almost about done.

Mr. MICA. Maybe we will have a few lights go on here. But we can expand labor, couldn't we? We could expand these corridors, if you get one success, instead of just following the pattern that we have followed, and some people can't see that; is that correct, Mr. Laney?

Mr. LANEY. We need to expand.

Mr. LATOURETTE. Thank you very much.

Mr. Bachus. We have 9 minutes left.

Mr. BACHUS. Thank you.

Mr. Laney, you testified before this committee in September; is that correct?

Mr. LANEY. Yes, sir. Yes, sir.

Mr. BACHUS. And you talked about the Northeast Corridor. What you talked about at that time was the infrastructure was in need of repair and needed more operational reliability; is that correct?

Mr. LANEY. That is correct.

Mr. BACHUS. And that was the part of the strategic plan?

Mr. LANEY. Yes, sir.

Mr. BACHUS. About 2 weeks later, I think it was, you all announced that you were going to spin off the Northeast Corridor into a separate subsidy or operating unit; is that correct?

Mr. LANEY. No, that is not correct. We did announce that—as Mr. Rosen has referred to, we did announce that we would begin the process of exploring the notion of segregating the assets mainly for accounting clarity and accounting and financial management purposes into a subsidiary.

Mr. BACHUS. So I am reminded about what Mr. Mica said in the paper about that one of the reasons Mr. Gunn was fired was his opposition to spinning off the Northeast Corridor. So he is mistaken about that.

Mr. LANEY. Well, with all deference to Mr. Mica, he doesn't know why Mr. Gunn was fired. I think only the Board members do.

Mr. BACHUS. Why was he fired?

Mr. LANEY. There was a number of issues mainly centered around the impasse between our wanting to move forward—left me finish, if I may—to move forward on our strategic initiatives which are in here, and they are very clearly laid out, and a very clear road map—

Mr. BACHUS. Let me stop you. In September you testified about 2 weeks before that he was in support of the strategic initiative.

Mr. LANEY. Yes, sir. He did—

Mr. BACHUS. And you testified that it was an agreement between the Board and the president.

Mr. LANEY. That's true.

Mr. BACHUS. But 2 weeks later it wasn't true?

Mr. LANEY. I think you're talking about a management move. In a way, I am the captain of a team, and I am trying to make it work. And I am not going to stand before you in the middle of trying to work things out and criticize our president. We are trying to making it work—

Mr. BACHUS. You testified before our committee that he was in support—

Mr. LANEY. And I will testify the same thing now, and I think you heard the same thing from him this morning. He is in support of a number of the concepts of the strategic reform initiatives.

Mr. BACHUS. What was he not in support of? What part was he specifically not in support of that caused you to, as you just said, fire him?

Mr. LANEY. I think it would be a long list, and it is scattered throughout the strategic reform initiatives. He was resistant to the Board's push forward on a number of different fronts—

Mr. BACHUS. Wasn't the Northeast Corridor—you are under testimony—wasn't that a major part of it?

Mr. LANEY. That was one factor. It wasn't a major—

Mr. BACHUS. Let's talk about it. You and the administration are opposed to Federal subsidies for the railroad; is that correct?

Mr. LANEY. No.

Mr. BACHUS. You are in support of—

Mr. ROSEN. Could I speak to that, Congressman?

Mr. BACHUS. Well, I will ask you a question. Well, let me ask you this. I will ask both of you all. Are you all in support of the administration's position for zero funding for Amtrak for this last year?

Mr. ROSEN. If you recall, Congressman, the administration's position was zero for the old model, but we would support funding for a changed, reformed Amtrak, and very specifically we favor funding for infrastructure similar to what is done in aviation and highways. We do not favor—

Mr. BACHUS. What you proposed was funding for infrastructure for the northern—Northeast Corridor; is that correct?

Mr. ROSEN. More than that, we were in support of—

Mr. BACHUS. What was the amount of money proposed for the infrastructure?

Mr. ROSEN. Well, we have to separate two separate things here. We submitted a bill that was introduced—

Mr. BACHUS. Wait a minute. The administration proposes a budget—

Mr. ROSEN. Submitted both a proposal—

Mr. BACHUS. How much was proposed for Amtrak? Can you give me an answer?

Mr. ROSEN. Yes, if you let me answer. The answer was that under the old model, we would not support funding. And under the new model, we submitted legislation as to what the new model would be—

Mr. BACHUS. New model was zero, right. What you actually did, let's talk about what you did.

Is it—Mr. Laney and Mr. Rosen, was it zero? Was that the administration proposal? Either yes or no.

Mr. ROSEN. I think the question has been answered. Do you want me to repeat the entire answer?

Mr. BACHUS. No. Just was it yes or no funding?

Mr. ROSEN. The administration submitted a proposal that called for matching grants to the States—

Mr. BACHUS. All right—

Mr. ROSEN. —Northeast Corridor state of good repair and the amounts to be determined, but did not support funding for operating subsidies of the prior contract model—

Mr. BACHUS. There you go. Now, you proposed no operating subsidy; is that correct?

Mr. ROSEN. I think my answer is what I have said.

Mr. BACHUS. And that is what you said.

Mr. ROSEN. Congressman, I think you have my answer.

Mr. BACHUS. I am asking you again, is that what you said, no operating subsidies?

Mr. ROSEN. I think what I indicated to you was the administration submitted a proposal that would include matching grants to States for infrastructure, State—

Mr. BACHUS. Let me ask you this. All right. Now, I have heard Mr. Laney say, it is in his testimony, that one of the problems was the Federal subsidy; the administration has said they want to eliminate the Federal subsidies, and they proposed zero funding for Amtrak. I mean, am I in error here?

Now, I know what you proposed in the Northeast Corridor. I am aware of what—this new plan you proposed, but I am talking about

what you actually proposed. Let's go to the Northeast Corridor. But can't we be honest with each other? The administration proposed—here it is, AP story, the White House budget proposal for fiscal 2006 did not include any Amtrak funding.

Now, was the Associated press wrong or right? Did they print—that is the truth? Or is that a lie?

Mr. ROSEN. It is both accurate and incomplete.

Mr. BACHUS. Let me ask you this: What was proposed for the Northeast Corridor was for the States to subsidize the operation; is that correct?

Mr. ROSEN. No.

Mr. BACHUS. You proposed no State subsidies?

Mr. ROSEN. For the Northeast Corridor and the administration's position?

Mr. BACHUS. No. What I am saying, this new proposal that was proposed September 22nd was to turn the—was to spin it off into a separate operating subsidiary; is that correct?

Mr. LANEY. That is not even close.

Mr. BACHUS. Let me ask you this: Am I even close in saying that you wanted to substitute State subsidies for national subsidies, as was reported in the several newspapers?

Mr. LANEY. No. Would you repeat the question? I don't know if I fully understood it. I couldn't hear that one.

Mr. BACHUS. Did you propose the States to start funding the operation of Amtrak in the Northeast Corridor—the new entity?

Mr. LANEY. In connection with our proposal with respect to the NEC infrastructure?

Mr. BACHUS. Yes.

Mr. LANEY. No.

Mr. BACHUS. So you're not asking or proposing—the administration doesn't want the States to pay any money?

Mr. LANEY. Our proposal in September, and our resolution to begin to explore the notion of segregating the assets for accounting purposes, has nothing to do with State funding in that instance. All we are trying to do is understand the costs, which we don't understand—

Mr. BACHUS. So there is no intent on the administration on your part to—

Mr. LANEY. There may be a little bit of a blur between what is in our strategic plan and what is in the administration's proposal. I can speak to the plan. I think Mr. Rosen can speak to the administration's legislative proposal. But the concept, and over time, almost from anybody you ask, is that the States will begin to assume a greater share of the overall costs of passenger rail in this country, as California and Washington have already done.

Mr. BACHUS. I have read some of your speeches on this, and I thought you said you wanted the States to start sharing some of the costs.

Mr. LANEY. Just what I said. It is in our plan.

Mr. BACHUS. So you did.

Mr. LANEY. Yes.

Mr. LATOURETTE. Mr. Bachus, we have 10 seconds left. Ask your next question, and then we will yield to our friends on the other side.

Mr. BACHUS. Let me ask this final question. You have proposed under the new plan $900 million of infrastructure subsidy on the Northeast Corridor; have you not?

Mr. LANEY. You may be referring to the administration's plan, but I don't think so. But I don't know.

Mr. BACHUS. Did they propose that?

Mr. LANEY. I don't know.

Mr. ROSEN. I am not sure of the number that you are referencing to, where that is from.

Mr. BACHUS. Nine hundred million dollars. Are you aware that they have proposed an infrastructure—spending 900 million on infrastructure? So you're not aware of any proposal they have made for infrastructure improvement on the Northeast Corridor?

Mr. LANEY. No, sir. That doesn't ring a bell.

Mr. BACHUS. You both testified that the Northeast Corridor was in need of—in fact, Mr. Rosen, you said that there was a deterioration of infrastructure on the Northeast Corridor, and, Mr. Laney, your testimony says there is a need to bring the Northeast Corridor up to a state of good repair after years of underinvestment. But the administration has proposed zero funding for that; isn't that correct?

Mr. LATOURETTE. Mr. Bachus, we will ask them to ponder that question and ask you to come back when we go to another 5-minute round, if we could.

Now, to 30 minutes, under the agreement it will be controlled by the gentlelady from Florida. Because we had a clock malfunction, and we want to be fair here, the gentlelady now controls 32 minutes.

Ms. BROWN. Thank you. And I still want to hear the first 2 minutes from Mr. Gunn for any responses that you want to make before I yield 5 minutes to Mr. Nadler. But I want to give you a chance to respond.

Mr. GUNN. Just to give you my opinion of the action they took on the 22nd, They keep talking about it being a study for clarity. If you read—first of all, in the strategic plan, which the Board approved, we would have come forward to the Board with a method of reporting our expenses by business line for clarity. That is going to happen at the Board meeting this week, because we were on line to do that.

If you look at the resolution, on this separation, it says, resolved that management is authorized and directed to take all appropriate action to create the Northeast Corridor subsidiary. It is not the study.

Ms. BROWN. So are you saying that the Board action actually separated? Can you explain that?

Mr. GUNN. It was to create a subsidiary within Amtrak's control. My main concern with all of the action over separating—of creating a subsidiary is that the administration and actually the Chairman last spring was—they were trying to separate operations from maintenance.

My concern is that the corridor, whoever runs it, that it be a vertically integrated railway. And what I fear is we have reverted back to the original intent of the administration and the Chairman to separate operations from infrastructure. That is wrong. It is bad

railroading. Whether it is private, whether it is public, whether it is Amtrak or a State-controlled railroad, you want a vertically integrated railway.

Ms. BROWN. I am going to yield 5 minutes to Mr. Nadler.

Mr. NADLER. Thank you, Madam Chair. Thank you.

Mr. Gunn, when you met with the Democratic staff yesterday, you mentioned something about the Amtrak Board hiring a public relations firm to head off turmoil as a result of their creating the Northeast Corridor subsidiary, and I presume it is a result of your dismissal. Is that accurate? Can you tell us about that?

Mr. GUNN. What I said is there was a public relations firm hired. When I walked in on Wednesday morning, after I found out I was going to be terminated, I went down to the press office, and there was a public relations firm that had been hired. And they were sitting in the office and in control of public affairs.

I can't—

Mr. NADLER. Let me just ask you this: You were president up to that moment, so who hired them?

Mr. GUNN. It wasn't me. It was the Board. It had to be. I don't know. But I assume it was the Board. But I don't know the intent, because I just found them there. But it was—it sort of indicated to me something was afoot.

Mr. NADLER. Thank you.

Mr. Laney, can you enlighten us about this? First of all, who hired them? Why were they hired? What is the purpose?

Mr. LANEY. Well, sir, I think if you put yourself in my shoes, it wouldn't be very comfortable sitting and talking with all David Gunn's public information, governmental affairs folks about how we approach the announcement if we, in fact, make a decision to terminate the president of the company. So we needed to go outside, and the Board—

Mr. NADLER. In other words, you hired—the Board decided to hire this private public relations firm in order to handle publicity surrounding the dismissal of Mr. Gunn because you didn't trust your own staff to do that because they were appointed by Mr. Gunn? Is that what you're saying?

Mr. LANEY. Not exactly, but we didn't want to talk with them about it before we spoke with Mr. Gunn about it. I think that is a matter of courtesy. And we hadn't made a decision to terminate Mr. Gunn at the time we employed the outside public information firm.

Mr. NADLER. Well, wait a minute. If you hadn't fired Mr. Gunn, what would their function have been?

Mr. LANEY. There wouldn't have been any function.

Mr. NADLER. Well, you hired them for possibly no function?

Mr. LANEY. They didn't do anything for a while.

Mr. NADLER. Would you have paid them during that time period of doing nothing?

Mr. LANEY. No.

Mr. NADLER. So you hired them, in case you fired Mr. Gunn, to handle the resulting publicity?

Mr. LANEY. Yes.

Mr. NADLER. Was it a no-bid contract?

Mr. LANEY. Yes, it was.

Mr. NADLER. And how much is it costing Amtrak?

Mr. LANEY. Range of hourly fees depending on who is involved and how much work they do.

Mr. NADLER. Do you have an estimate? Is it going to cost $1 million, $100 thousand, 100 million? What are we talking about?

Mr. LANEY. Probably $25,000.

Mr. NADLER. Probably $25,000. And out of what pot of money do you pay for this?

Mr. LANEY. Well, we won't take it out of the infrastructure fund for the Northeast Corridor.

Mr. NADLER. That wasn't the question.

Mr. LANEY. We will take it out of general funds of Amtrak.

Mr. NADLER. The operating budget.

Mr. LANEY. Yes, sir.

Mr. NADLER. Which is taxpayer money?

Mr. LANEY. Yes sir. No, not all. Some of it is fare.

Mr. ROSEN. About 40 percent.

Mr. NADLER. Since this is accomplished already, how long do you think it necessary to keep an outside public relations firm hired?

Mr. LANEY. I haven't come to that conclusion yet, sir.

Mr. NADLER. Are we talking a week? A month? A year?

Mr. LANEY. I have no idea. The Board will make that call.

Mr. NADLER. Okay. I will yield back. Thank you.

Ms. BROWN. Mr. Rosen, I have a question for you. Did you, representatives of DOT, recommend to Members of the Senate during the negotiations on their Amtrak reauthorization proposal that the Amtrak Board of Directors be dismissed and that the Secretary should become the sole Board member making Amtrak its central award of DOT? Please describe that to the Board.

Mr. ROSEN. Not as you phrased it, but I do address that issue in my written testimony at the lengthy footnote on page 6, where there have been discussions with the Senate Commerce Committee staff about during the period in which Amtrak receives Federal subsidies and has this odd accountability arrangement because it is a private, for-profit company, incorporated under D.C. Law, and yet there are people who think it is a public agency and want the Department and the administration to be responsible for its progress. There is this hybrid situation.

So there have been extensive discussions with that staff, as well as others, actually, as to what is the best way to have governance in a situation where a private entity is receiving Federal subsidies, and that there needs to be accountability.

Ms. BROWN. That is enough. Let me just ask you another question. Do you think that there is a role for the Congress, you know, the House and the Senate, the people, and do you think that that is—there is a role? Because you all proposed a budget that the House and Senate, bipartisan, rejected. Do you think we have any role?

Mr. ROSEN. I think the Congress has a vital role in intercity passenger rail, and that is part of why the administration has sent proposed legislation for the period of—

Ms. BROWN. The proposed legislation that you all sent in. And I want a yes or no. You zero out the funding for Amtrak. That is a yes or no. And don't give me no lawyer's answer.

Mr. ROSEN. What is the question again?

Ms. BROWN. That is a lawyer's answer.

Did you send a proposal to the United States Congress where you zeroed out the subsidy for Amtrak? That is a yes or no.

Mr. ROSEN. Well, I think as you saw—

Ms. BROWN. You are not capable of doing a yes or no.

Mr. ROSEN. It doesn't lend itself to a yes or no answer to be accurate.

Ms. BROWN. I want a yes or no. Did you send that proposal up?

Mr. ROSEN. If you want an answer that is both accurate and complete, I can't answer it yes or no.

Ms. BROWN. No, I don't. I just want a yes or a no.

Mr. ROSEN. Well, with that proviso that you don't want—

Ms. BROWN. Lawyers are not capable of doing yes or noes, I guess.

Mr. ROSEN. Not when the question is not one susceptible to it. But the President's budget—

Ms. BROWN. Let me ask you another question because you can't answer that one. You are the Secretary's designee, Mr. Mineta; is that correct.

Mr. ROSEN. That is correct.

Ms. BROWN. In the, I guess, 5 years that he has been Secretary, he is a Board member of Amtrak; is that correct?

Mr. ROSEN. He was appointed by the President to be a Board member, but the statute explicitly provides—the statute explicitly provides for him to act through a designee—

Ms. BROWN. That is not my question. Is he a Board member? Yes or no.

Mr. ROSEN. The answer is yes, as I have explained.

Ms. BROWN. I don't need any explanation.

Mr. ROSEN. Why don't you want an explanation?

Ms. BROWN. My next question is have he ever been to a board meeting? That is a yes or no.

Mr. ROSEN. Well, he has met with the entirety of the Board members.

Ms. BROWN. No. No. No. No. You're under oath, and I asked you a question. Has he ever been to a Board meeting?

Mr. ROSEN. You are asking me personally that. Keep in mind,I have been the designee for 1 year. Secretary has been the Secretary for 5 years.

Ms. BROWN. To your knowledge, Mr. Attorney, has Mr. Mineta ever been to a board meeting? Yes or no.

Mr. ROSEN. From my understanding, he has not, nor have several past Secretaries.

Ms. BROWN. Thank you.

Mr. Gunn, what would be the effect of a zero budget that the administration sent up for Amtrak? What would be the effect, based on your 40 years of experience?

Mr. GUNN. Insolvency and liquidation of the company.

Ms. BROWN. Is that the comments that they made, that they wanted Amtrak to—

Mr. GUNN. They wanted—at the last Senate hearing that I was at, they were talking—well, Mr. Rosen talked about the benefits

of—what potential benefits of bankruptcy and—which would be the result of a zero, a zero budget.

Ms. BROWN. Mr. Menendez, do you have questions? Yes, sir.

Mr. MENENDEZ. Thank you, Congresswoman Brown.

Mr. Laney, in the Strategic Reform Initiative report issued in April of this year, on page 13 it says, infrastructure separation option. And I read from it. It says, it is important to highlight the fact that the Board and management have extensively explored a number of recommendations calling for the Northeast Corridor's infrastructure to be moved into a separate entity.

We have reviewed models for such a structural split adopted and implemented in other countries with varying degrees of success. This step in the overall reform process remains an option for continued review. We have decided for now, however, that the cost complexities and risks of such a split within Amtrak outweigh the benefits. Consequently we have concluded that separation of the Northeast Corridor assets from its operations is not advisable at this time. At this time.

And then I look at your testimony today, on page 3, and when you say on paragraph 4, amongst the strategic initiatives is the opening of intercity passenger rail to competition and private commercial participation. And then on page 4 where you go on to say that separating—what you did, which is have the Board pass a resolution that begins to move in that direction, separating the accounting and financial management of these distinct business operations, but you say it is not a prelude to an asset sale or the privatization of Amtrak; the Board supports neither at this time. At this time.

My question to you, reminding you that you are under oath, is, one, have you or any other Board member spoken to any individual or group of investors seeking to purchase the capital assets and get huge tax breaks on operating losses? Yes or no.

Mr. LANEY. I am going to have to answer like Mr. Rosen did. I have spoken to people that are adamantly opposed to it and people that are adamantly in favor of it.

Mr. MENENDEZ. So you have spoken to individuals who are interested in buying the capital assets, the infrastructure assets for the purposes of being able to achieve depreciation losses, yes?

Mr. LANEY. Now, I don't have any idea what they are after, what they are going to achieve.

Mr. MENENDEZ. Clearly you have spoken to individuals, based upon your answer, who are interested in buying the capital assets of Amtrak along the Northeast Corridor. Is that a yes?

Mr. LANEY. Yes.

Mr. MENENDEZ. Thank you. Who are those individuals?

Mr. LANEY. I don't know the names of those individuals. I don't recall. I can get them to you and get back to you.

Mr. MENENDEZ. I certainly want the committee to have those names.

Mr. LANEY. My guess is they have spoken to a number of the members of the committee as well.

Mr. MENENDEZ. Have they provided names to you of individuals who are interested in purchasing the capital assets?

Mr. LANEY. Who?

Mr. MENENDEZ. You said individuals of the committee. Have individuals of the committee approached you about individuals?

Mr. LANEY. No.

Mr. MENENDEZ. When you said you spoke to members of the committee—

Mr. LANEY. I know a number of these groups that have concepts in mind have approached a number of Members in the House and in the Senate with their concept.

Mr. MENENDEZ. And they have also approached you and members of the Board?

Mr. LANEY. I don't know about members of the Board. They have certainly approached me.

Mr. MENENDEZ. And you have had conversations with them about selling the capital assets?

Mr. LANEY. I have had conversations listening to their concepts.

Mr. MENENDEZ. Has the administration spoken to you about any individual or group of individuals to purchase the capital assets of Amtrak?

Mr. LANEY. No.

Mr. MENENDEZ. Has anyone spoken to you or have you discussed the possibility with members of the Department of Transportation about selling capital assets of Amtrak?

Mr. LANEY. No.

Mr. MENENDEZ. Now, when you continuously have the caveat ″not at this time,″ obviously those conversations have created the possibility of selling the capital asserts of Amtrak.

Mr. LANEY. Is that a question?

Mr. MENENDEZ. Yes.

Mr. LANEY. It doesn't remove it from the table.

Mr. MENENDEZ. Doesn't remove it from the table. And that is our concern.

Mr. LANEY. We don't have any plan to do that.

Mr. MENENDEZ. I know. We had no plans to separate the capital, the infrastructure, from the operating, and we moved in that direction by virtue of the Board's resolution, which no one knew about, including when you were testifying before this committee and made no mention of it.

Mr. Gunn, have you had any knowledge of conversations as it relates to the selling? You mentioned before in response to another question that you were concerned about the original intent of the Chairman and the Board about selling the capital assets of the infrastructure.

Mr. GUNN. My statement was in separating the operation from the infrastructure for operations.

Mr. MENENDEZ. Why would one do that if not to sell it?

Mr. GUNN. That is a good question. But my concern has always been that the corridor should remain a vertically integrated railway. The administration proposal clearly calls for separating and disposing of the corridor to the States or whoever, and my position has been that whatever you do with the corridor, it should remain a vertically integrated rail way so that someone is in charge of train operation and maintenance.

Mr. MENENDEZ. That is because, as it says here in the Strategic Reform Initiative, the Northeast Corridor mixes high-speed inter-

city services with freight rail services operated by several—by seven different railroads and some of the densest commuter operations. And it goes on to say that it is a highly complex rail corridor and is therefore, risky.

Mr. GUNN. And Amtrak does a good job managing it and maintaining it and running it. And you need somebody like Amtrak—you can change the name, do whatever you want—but you need somebody like Amtrak in charge.

Mr. MENENDEZ. How many years have you been in the railroad business, Mr. Gunn?

Mr. GUNN. I was on my 42nd year, if you include transit, in that mix.

Mr. MENENDEZ. And just going back to the point I asked you before, can you think of any good reason to separate the infrastructure from the operation other than to sell the infrastructure?

Mr. GUNN. No. The issue of clarity, the argument of clarity, I think, is a bogus one. The Board is going to get an accounting system at the next Board meeting which will give them clarity in terms of how Amtrak spends its money. The real risk is the confusion—you have a very—a fragile accounting system at Amtrak. It is, as GAO has pointed out, and as we would point out, it is very manual, and it has some real systems problems. We have been able to work around those.

What this will do is create not clarity, but confusion. And I think it is—there is no business reason for doing this to provide clarity. That is not—you cannot justify this other than on the basis of clarity.

Mr. MENENDEZ. Thank you, Mr. Gunn.

Mr. Laney, in your statement you mentioned that current Amtrak partners will not invest in your infrastructure. They don't have confidence that they are getting what they paid for. Well, New Jersey Transit is one of your major partners, has invested over $1 billion in the last decade, and your actions aren't giving them any confidence.

Don't you think that the Board should have consulted with your partners before you went forth on this resolution? Because I have talked to the executive director of New Jersey Transit, and he had no knowledge of what you intended to do.

Mr. LANEY. We haven't done anything. We have begun an exploration of a concept, and we have taken no action. And until we have understand all the facets and the consequences of that, we will take no action. But we have taken no action at this point.

Mr. MENENDEZ. Well, the resolution says that the management has authorized and directed to take all the appropriate actions to create the Northeast Corridor subsidiary. It seems to me a pretty definitive action. Are you seeking to be a Federal judge?

Mr. LANEY. No, sir.

Mr. MENENDEZ. You have no intentions of seeking to be a Federal judge?

Mr. LANEY. No, sir, I don't.

Mr. MENENDEZ. I just want to make sure that everybody's motives are out on the table.

Let me ask Mr. Rosen. Mr. Rosen, can you name a passenger rail service, a passenger rail service, interested in your mass transit that is profitable?

Mr. ROSEN. Yes. If we are talking above the rail, it is my understanding that there are several including—

Mr. MENENDEZ. What do you mean by above the rail? I am asking about a passenger rail service.

Mr. ROSEN. I am talking about operationally, my understanding is Japan Central, Hong Kong Railroad, and I am told there are others—

Mr. MENENDEZ. I am talking about a passenger rail service.

Mr. ROSEN. That is what I am talking about, too.

Mr. MENENDEZ. Tell me how they are successful without subsidies.

Mr. ROSEN. Well, in the case of the Japan railroads, they, like Amtrak, were national, subsidized entities in the '70s, and then around 1986 or 1987, Japanese Government made the decision to split that up and create six—

Mr. MENENDEZ. I am not asking about the Japanese Government, Mr. Rosen. Mr. Rosen, I am asking the questions, and I don't really want to hear about the Japanese. I care about America.

I want to know—I don't know of a system that is profitable. The Washington Metro is unprofitable. The New York City subway system, the busiest mass transit in the United States, is unprofitable. Yet, you know, you have this dogged determination to say that Amtrak has to be profitable, even though the reason Amtrak came into being in the first place is because the freight rail service said, please, take it away from us so that we could have passenger rail service.

Mr. Gunn, do you know of a passenger rail service that is profitable?

Ms. BROWN. And that has to be the last question. And thank you so much.

Mr. GUNN. No. I will say this. Mr. Rosen has mentioned the Japanese railway system. After the government invested 80-, $100 billion in new tracks and rights of way, they barely cover their operating expenses.

Mr. MENENDEZ. But we won't give you—I heard earlier about from one of my colleagues—we won't give you 15. I would, but others would not.

Ms. BROWN. We spend $6 billion a month in Iraq, just for your information. And you, Mr. Rosen, mentioned something about $400 million a year. We wasted $7.2 billion to Halliburton that we don't have any, any idea of where the money went.

Mr. Cummings, 3 minutes.

Mr. ROSEN. I assume that is not an advocacy of waste.

Ms. BROWN. I called your name, and I didn't ask you any questions. I called on Mr. Cummings.

Mr. CUMMINGS. Mr. Gunn, tell us, do you think you were treated unfairly here in this firing?

Mr. GUNN. The Board has a right to fire me. I don't question that. And if they have an agenda which is obviously different than the one I have, they have the right to fire me. So is it unfair? No.

I think that—I am very concerned about the agenda that the administration and the Board has.

Mr. CUMMINGS. And what is your interpretation of that? I guess what I am trying to get to, we are not going to probably have too many chances like this to interview you again. They basically kicked you out of office. And I am not saying that to be smart. We have a limited amount of time. It is our watch. I want to make sure that the railroads stay intact. I don't want to see all these private folks come along and pick pieces of it, don't necessarily want to see the States like my State having to take—to put much more money into the railroad when they don't even have it.

But yet still they are paying taxes big time, and they subsidized all kinds of other things, but they just want to subsidize the way it works. So I want you to tell us, you know, what you see and what you would like to see.

Mr. GUNN. What happened, we had a strategic vision which we—the Board and management adopted in the spring. And contrary to what the Chairman said, that document, I had a big role in preparing that document, and I believe in that document. I did not believe in some of the other things they wanted to do.

That document, we were following that document. And that document—and the Board will get the benefits of what we have been doing at the next Board meeting, I believe, unless they change that.

What happened is that it is clear to me that I became an obstacle to a plan to, I think—basically to do away with the corporate structure in Amtrak and to implement the administration's plan for passenger rail service, which is really not a plan at all. It is a plan of just destroying the corporation and turning the Northeast Corridor over to a committee of governors and let them deal with it. I think that is what happened, and I was an obstacle. I think I was definitely an obstacle to the dismantling of Amtrak. And that is why I am sitting here as the former president. And I believe that.

Mr. CUMMINGS. And looking at this situation, I guess, in sort of hindsight, I guess there are certain things, Mr. Gunn, that all of us—we have certain principles, hopefully, that we really stand by. And I take it that you probably would have had a difficult time no matter what because the Board wanted you to go, just listening to what you just said, against some basic principles that you have about railroading, I guess. The public, I guess—

Mr. GUNN. There are two things that—one is the way you manage a corporation or a railroad. I think the attempts early on to split operations from infrastructure were wrong from a managerial operating point of view, and I believe that very strongly.

The other is I firmly believe that this Nation needs passenger rail service, and I think this dismantling Amtrak is not the right way to go. Amtrak needs reform. The reform is—I think we documented that reform in our package, which the Board approved. But obviously they have moved off that. And I think that the—I just became an obstacle to dismantling Amtrak. And I think what Amtrak right today, Amtrak is the gene pool for passenger rail—intercity passenger rail service in this country, and if isn't treated in a fairly thoughtful way, you're going to set back passenger rail service in this country decades.

Mr. CUMMINGS. Just one other question, because I know my time is limited.

A lot of those employees that Mr. Laney pretty much described as doing a terrible job—yes, you did—I mean, for the main exec to sit here and say that about the employees—I mean, I ride Amtrak all the time. I mean, how do you feel about the employees and what is the morale there now? I know you're gone, but how was it?

Mr. GUNN. I thought it was pretty good. There's no question that when you're dealing with 25 million riders, you're going to have problems, but I really think the bulk of our employees do a good job and they care about the railroad.

I have issues on work rules and all that sort of thing, but the employees I think are a first-class bunch. There's a few rotten apples, there would be under 20,000 people, among 20,000 people, but they're good.

We have actually started—we had started a fairly systematic training program where—over the last 2 years, and we have actually seen passenger complaints drop by 20 percent. I think we have made real progress and I think we are working at that issue. But our employees, by and large, are professional and they're good people and they're good railroaders. Even though I disagree with some of the work rules and things like that, they're a good bunch.

Mr. CUMMINGS. Thank you for your service, and we really appreciate it. With that, I yield back.

Ms. BROWN. Thank you.

Mr. Gunn, I have told you that I give you an ″A″ as far as your service to this country.

Mr. GUNN. Every time.

Ms. BROWN. I want to yield 4 minutes to Mr. Nadler.

Mr. NADLER. Thank you.

Mr. Laney, to what extent was Mr. Rosen or Secretary Mineta involved with the decision to fire Mr. Gunn?

Mr. LANEY. Secretary Mineta was not involved at all. Mr. Rosen was involved as every other board member was involved.

Mr. NADLER. Mr. Rosen, would you care to comment?

Mr. ROSEN. I think that's accurate, except that I did confer and consult with Secretary Mineta in order to make sure that the actions that were being contemplated were—

Mr. NADLER. Fine.

Let me ask you this, Mr. Rosen, first—well, Mr. Laney first. Who originated the idea to fire Mr. Gunn? Who first brought it up for consideration?

Mr. LANEY. First came up for consideration—

Mr. NADLER. I didn't ask when. I said, who brought it up?

Mr. LANEY. I'll tell you the context.

Mr. NADLER. Who first mentioned it?

Mr. LANEY. David Gunn.

Mr. NADLER. Strike that.

Who first recommended it? Who first recommended it, because I don't take that as a serious answer.

Mr. LANEY. That's a serious answer.

Mr. Gunn nearly left on a couple of different occasions, and it concerned us and it—

Mr. NADLER. Who first expressed that concern?

Mr. LANEY. About Mr. Gunn's departure?

Mr. NADLER. About maybe he ought to go.

Mr. LANEY. I think it was—I don't know who first among the board members. I don't know who first raised it.

Mr. NADLER. Was it among the board members?

Mr. LANEY. Oh, yes.

Mr. NADLER. I understand, Mr. Laney, that there was a telephone conversation with DOT, or that involved DOT or Secretary Mineta, during the meeting up to Mr. Gunn's dismissal; is that correct?

Mr. LANEY. I was not involved in that phone conversation. I don't know anything about—

Mr. NADLER. Mr. Rosen, do you know anything about it?

Mr. ROSEN. I don't think so, but if you could ask it again. I'm not sure if I got the question.

Mr. NADLER. I understand that there was a telephone conversation with DOT, or that involved DOT or Secretary Mineta, during the time leading up to Mr. Gunn's dismissal; is that correct?

Mr. ROSEN. The reason I paused is, as a board member, I spoke with the other board members as a group. But otherwise I think the answer is no.

Mr. NADLER. Did anyone outside the board speak on behalf of or against Mr. Gunn's firing before he was fired?

Mr. LANEY. Are you asking that of me?

Mr. NADLER. Yes.

Mr. LANEY. It was a discussion.

Mr. NADLER. I know, but did anyone express an opinion on that who wasn't on the board?

Mr. LANEY. No.

Mr. NADLER. Mr. Rosen?

Mr. ROSEN. Not to my knowledge. As I say, with the caveat that Secretary Mineta and I conferred.

Mr. NADLER. Mr. Gunn, did Mr. Laney allude to you that there were discussions with anyone outside the board regarding your position at Amtrak?

Mr. GUNN. Not that I remember, except, as I said earlier, in several occasions he said he was having trouble defending me.

Mr. NADLER. Mr. Laney, of whom were you speaking when you said—or when you said that you had tried to defend Mr. Gunn, to whom were you referring?

Mr. LANEY. Other board members.

Mr. NADLER. Thank you.

Mr. Laney, I want to follow up a little on some questions that were asked before. You testified that Mr. Gunn, that he was fired essentially because he refused or failed to do—things he refused to do in going in several new directions that the board wanted to go, in implementing the strategic plan. Is that correct?

Mr. LANEY. Let me elaborate, if I may.

Mr. NADLER. Before you elaborate, that is correct, that's what you said?

Mr. LANEY. I don't recall what I said, but it was an incomplete answer.

Mr. NADLER. I'm going to make it more complete.

Specifically what are the most important things that he didn't want to do or refused to do that you felt it necessary—that were the cause of his firing?

Mr. LANEY. I'm very reticent to go into all the detail, but I will say in general terms there were elements of our strategic agenda—

Mr. NADLER. You said that already. What were some of the elements, the most important, that he didn't want to go into, that he didn't want to do?

Mr. LANEY. We had been pushing reductions in costs from a food service, beverage service, food service, for a long period of time.

Mr. NADLER. He didn't want to do reductions in cost?

Mr. LANEY. He was not as aggressive as we thought he should be.

Do you want me to continue? I can catalog these long or short, however you would like to do it.

There are a number of areas of expense and, potentially, expense reduction or at least significant expense control relating to maintenance of our equipment, overhauls of our equipment.

Mr. NADLER. Basically, cost reductions in food service, beverage service and maintenance of equipment essentially is what you're saying?

Mr. LANEY. Cost reductions on the one hand, revenue generations on the other. There are a number of initiatives we didn't think he was being aggressive, as he should.

Mr. NADLER. Mr. Gunn, were these subjects of major dispute?

Mr. GUNN. They are now.

Mr. LATOURETTE. If I can interrupt. I'll let you answer that question then this block of time has expired.

Mr. GUNN. Basically there was never a normal boss-subordinate sitting down saying, Look, I want you to move this fast on this issue. At the board meeting—when is it, tomorrow or Thursday—they'll get a renegotiated gate gourmet contract. They'll get a proposal; I think they'll get a proposal for someone to provide food service on our trains.

We have in place already the design for the changes we have to make to the food service cars in order to provide a new type of food service at a lower cost. We have been moving very aggressively. I think it's a nonsense argument. It really is. Specious.

Mr. LATOURETTE. I thank the gentlemen. We'll now return to the 5-minute rule. I'll recognize myself for 5 minutes and move through the list of remaining members.

Mr. Laney, I want to get to something I think Mr. Nadler was talking to you about, this public relations firm. Has any part of their function, as retained, to communicate Amtrak's message to either Members of the House or the Senate?

Mr. LANEY. Yes, sir. We had public information releases going to the press, going to the Members of the House and Senate.

Mr. LATOURETTE. I bring that to your attention just not as a ″gotcha″, but again referring to the Amtrak Reform and Accountability Act of 1997. Section 414 requires—and this is where I thought Mr. Nadler was going—that if you retain a consulting firm and one of the functions of that consulting firm is to bring information which, in my mind, is lobbying the United States Congress, there are requirements set out that you notify the committee, this

committee, the name and purpose of the individual involved, the purpose of the contract and the amount and nature of their obligation.

I'd ask if you'll review with your legal counsel whether or not that meets that requirement.

Mr. Rosen, I want to get back to you. I'm concerned that the title of this hearing was "Amtrak governance." I am concerned about what happens going forward.

We have the Senate about to adjourn, we have two recess appointments, Mr. Hall and Mr. Sosa, whose terms will expire if their nominations are not acted upon, and the first question I have is: Is it your view that, should that happen, the Senate take no actions on confirming Mr. Hall and Mr. Sosa, no other nominations go before the Senate, that it can just be you and Mr. Laney to constitute an executive board, you guys can govern Amtrak?

Mr. ROSEN. Well, I don't predict that that's the hypothetical that we'll wind up confronting, but if you're asking me the legal question of would we be able to function, that was the action that the board took to protect itself in 2002 and 2003, to establish that in the absence of a quorum, an executive committee could continue to proceed so that the company would not be directionless or leadershipless.

Mr. LATOURETTE. Let me say that I guess I read that differently. The way that I read the initial act, and then there was a change from three to two by board action, is that that executive committee was to be between meetings; it wasn't in the absence. I would think it would be strange.

And, Mr. Laney, my understanding is, your background is as a corporate attorney. I would think that would be a very strange corporate structure that you could have the complete absence of a quorum if, in fact, these two recess appointments are not confirmed or people don't take their place, and two folks just—is that your belief too, Mr. Laney?

Mr. LANEY. My belief, that it's an odd corporate structure?

Mr. LATOURETTE. One that is odd. And do you agree with Mr. Rosen that the two of you, absent anyone else getting confirmed, could continue to run the corporation?

Mr. LANEY. Mr. Chairman, we play the hand we're dealt; and we have to have a functioning board, and I think we would have the authority to act.

Mr. LATOURETTE. Let me ask you this. This is the interplay of the D.C. Business Corporation Act, and my understanding is that the authorizing statute says that we're going to follow that as long as it's not inconsistent. And one of the provisions in the D.C. Business Corporation Act indicates that one way to solve this problem, because I really have to tell you I think that that would be not a good way to conduct business, but that you're going to have a shareholder election of interim directors until you can get duly qualified appointments confirmed by the Senate.

Have either of you given any thought to—again, going back to corporate governance, my understanding is, if you look at the D.C. law, the shareholders are supposed to get together for a meeting once a year. I'm told there's not been a meeting of the Amtrak shareholders for 20 years. I'm not saying it's your fault, but I think

that's unusual corporate governance, that the shareholders don't have an annual meeting and they don't have one for 20 years.

Have you given any thought—and I know that it's a hypothetical because it hasn't happened yet, but have you given any thought to having your shareholders in and getting interim directors appointed in a way consistent with the D.C. Corporation law; or, Mr. Rosen, do you think that's inconsistent with Federal law?

Mr. ROSEN. I think there is a specific problem in that Congress specifically took away the ability of the common stockholders to vote for directors in the 1981 Act and has continued that.

I think the other thing that would be difficult is, the Department of Transportation, as the holder of the preferred stock, holds in excess of 95 percent of the equity of the company and that, likewise, is nonvoting for directors after the Amtrak Reform Act of 1997.

So if we were to depart from the Federal law—they took away those voting rights—and say, we're going to have a meeting and have them vote, I presume the Department of Transportation would have over 90 percent of the votes; and I'm not sure if that's really the concept that you're raising.

Mr. LATOURETTE. Let me stop you there.

Two things: One, I'm told by counsel that this '81 provision has been repealed and the voting opportunity rights were restored, and further, that the statute indicates that the 90 percent share, whatever the DOT owns, is nonvoting.

Mr. ROSEN. All the common stock is nonvoting for directors, and in addition, the statute required that the common stockholders' stock have been redeemed. That actually has not happened, but was supposed to happen under statute, in which case while there could be new common stockholders, the existing ones were supposed to have been bought out under the Reform Act; and for reasons that others would have to explain, that hasn't occurred.

Mr. LATOURETTE. They're still stockholders, are they not?

Mr. ROSEN. There are, and it would seem anomalous that people who don't have a vote would now be asked to make decisions, unless perhaps they were going to become investors.

Mr. LATOURETTE. All right. I'm a little more confused, but I will hash this out a little later.

Ms. BROWN. You want to—where do you want me to go first?

Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. Please correct me if, during the time I had to be out, this question was asked.

We had a committee meeting here about 2 months ago, and—this question is for Mr. Laney—according to the testimony at that time, you used the words "splendid" and "terrific" to describe the performance—this is 2 months ago now—to describe the performance of the man you have just dismissed.

Mr. Gunn has done, as far as I am concerned, a splendid job. He took Amtrak from the day he landed on the platform, in effect—in 2002, I believe it was—and has righted a ship that was listing and about to spill over. As far as I'm concerned, Mr. Gunn is a terrific operator.

How could anybody go downhill so fast in 2 months, and would you explain?

Mr. LANEY. I'll be glad do. The question has been asked and answered, but I'll be glad to.

Ms. BROWN. It hasn't been answered properly.

Mr. LANEY. Yes, ma'am. I'll be delighted to answer the question, and it's not inconsistent with my perceptions of David Gunn's performance from the day he arrived for the next 12 to 18 months after his arrival.

No one has worked as closely with David Gunn, at least among, between you all and—on the committee and the board, as the board has, and no one has seen as closely as we have David Gunn's performance. But I would add, no one among you is charged with the responsibility for overseeing Amtrak, as we all assume that responsibility.

David did a terrific job and was the right man at the right time in 2002.

Ms. NORTON. And as of 2 months ago?

Mr. LANEY. As of 2 months ago he was not the right man.

Ms. NORTON. Why did you answer he had done a terrific and splendid job?

Mr. LANEY. I described the job he had done for the first 18 months to 2 years.

Ms. NORTON. You did not leverage it, and you know it, as to the first 18 months.

Mr. LANEY. No, I didn't say the first 18 months, but read the remainder of my testimony, and I think you'll see I do raise concerns about his vision of the future. I was polite about it, he was still part of the team, trying to make it work.

Ms. NORTON. He is a terrific operator, not has been.

Mr. LANEY. He is a terrific operator. He is not the strategic strong planner and implementer that we need right now.

Ms. NORTON. Would you summarize in a sentence or two the reason, particularly in light of this glowing testimony, that the board decided that Mr. Gunn should be fired?

Mr. LANEY. There's no precipitating single event.

Ms. NORTON. Let me suggest the following. In September there was a resolution passed that would have split the Northeast Corridor from the existing operations into a new subsidiary. Did Mr. Gunn agree with that resolution?

Mr. LANEY. No, he did not.

Ms. NORTON. So that, I take it, was the precipitating event.

Mr. LANEY. No, ma'am. He and I had extensive discussions and disagreements during the entire development of the strategic plan about that very issue. If that had been the issue, he would have been terminated then.

That's not the issue, and you're making too much of that particular issue. That's not the reason.

Ms. NORTON. Let me make something of the board's issue. This resolution, this September resolution, these events that I'm describing are one on top of another. Here's the September resolution that I have just described: It said, split it off into a subsidiary.

Now, that is September. Five months before that, in April, here's the board's position. Strategic and reform initiatives in FY '06 grant request which indicated—this is the board speaking—that the cost, complexities and risks of splitting the northeast oper-

ations from Amtrak's operations—and here I'm looking at your language, in particular—splitting it off into a subsidiary outweigh the benefits and are therefore inadvisable.

Now, I want to know about your turnaround now between April 2005 and September 2005. I'm trying to figure out where this board is and what is the basis for this board's decision. What was the basis for that reversal, if you will?

Mr. LATOURETTE. If I could ask you, Mr. Laney, to answer the gentlelady's question, then move on to our next member.

Mr. LANEY. There's no change at all. They're absolutely consistent. The concern we raised then is the current concern I have now, and Mr. Gunn just elaborated or articulated a few minutes ago, and that is, we are not convinced that the benefits outweigh the risks of segregating the integrated management of the Northeast Corridor infrastructure and the management of the train operations on the Northeast Corridor.

There is no change, there is absolute consistency.

Ms. NORTON. I'm sorry, I just read to you that you said that the risks—that the cost, complexities and risks of splitting the Northeast Corridor from Amtrak's operations as you now propose to do, quote, ″outweigh the benefits and are therefore inadvisable.″

Mr. LANEY. Yes, ma'am. You're reading absolutely correctly; and I agree with the way you phrased it, and there is no inconsistency between that position stated in the plan and my position now, or David Gunn's position, that is, you should not segregate the management, oversight, integration of the operation of the trains and the operation of the infrastructure.

Mr. LATOURETTE. I thank you very much.

Ms. Brown, 5 minutes.

Ms. BROWN. Thank you, Mr. Chairman.

Mr. Laney, I understand that you have directed management, subject to the final board approval, to transfer to a new subsidiary the title of all Amtrak-owned infrastructure in the Northeast Corridor. While the NEC operation would remain with Amtrak control, there is no transfer of obligations to perform services or the employees' need to fulfill those obligations. In other words, you're busting up Amtrak and explain to me what you are doing, you—I guess you and one other person.

Mr. LANEY. We have a board of four at the moment, Congresswoman.

Ms. BROWN. Illegal.

Mr. LANEY. The action we took has not directed anybody to do anything other than to lay out for us all of the implications and any reasons why we might not go forward, as well as why we should go forward. But the action, if we do it on the basis of that analysis, would be, in effect, a transfer of the assets only into a wholly owned subsidiary of Amtrak. Short of that, the segregation into a separate division within the current corporate construct is another option.

We don't know where we're going with this. We initiated the process for further focus, study and understanding; and I'll be the first to say that no one on the board and, quite honestly in my judgment, no one in Amtrak's management fully understands all

the implications of this, and we're trying to get to the bottom of that.

Ms. BROWN. I want Mr. Gunn's response to that, but before I go to Mr. Gunn, I want to hear from the attorney because, you know—

Mr. ROSEN. Well, I guess the way I'd like to address—that is, the administration's proposal—

Ms. BROWN. Is this the Bush administration?

Mr. ROSEN. Yes.

-- had provided for, in our legislative proposal—that's separate from what the board action is—but in our legislative proposal for separation of the infrastructure from the operating companies, just like airlines are separate from airports.

And one of the concepts is that the infrastructure, because of Amtrak's operating needs, periodically is deferred, the maintenance is starved, and that we need to get the infrastructure brought up to a state of good repair. And so by having them in separate baskets, if you will, you don't take from one to support the other, and so the infrastructure has to get brought up to a state of good repair.

Ms. BROWN. Did you all propose any additional funding for that? Because the last time I checked, you all just zeroed the funding of Amtrak.

Mr. ROSEN. This separation has not occurred.

Ms. BROWN. Oh.

Mr. ROSEN. Now, the second rationale, in order to complete the answer—

Ms. BROWN. Does the Congress play any role? I mean, if you give us a proposed budget and if we don't accept it, then what?

Mr. ROSEN. By definition, Congress does play a role and determines what the appropriation is, as well as enacts legislation.

Ms. BROWN. Okay. I have never—I have been elected 25 years and I have been in this Congress for 13 years; I have never seen an administration that does not respect the Congress.

Mr. ROSEN. I'm sorry, I think we do.

Ms. BROWN. This is a blatant example of it. You all are moving forward to dismount Amtrak, two people or three people or four people, but none have been confirmed by the Senate except one person—yes, yes, you and Mr. Mineta, who is a member of this body, haven't been to one single board member meeting, but he issues statements about Amtrak.

I would like Mr. Gunn to respond to the question that I initially asked.

Mr. LANEY. Do you want me to complete the earlier answer?

Ms. BROWN. No, I don't.

Mr. GUNN. I'd just say two things about this discussion, and that is that, first of all, the idea that you have to separate the Corridor to prevent funding from bleeding from capital to operating is nonsense. Our budgets are set and the way our money is appropriated is operating money, debt service and capital. And we do not fund the operation out of deferrals of capital. We do not do that. We are very rigorous about segregating the funds into the proper buckets.

The other thing is that this whole issue of creating a subsidiary, it is an enormously complicated effort which is probably going to result in lawsuits to the board from various parties; and it has no

benefit, that they aren't going to get this board meeting when they, Amtrak, prepares its accounts according to business lines that are contained in the strategic plan.

It is a specious argument to say, you need to create the subsidiary for clarity. That is absolute nonsense, in my opinion.

Ms. BROWN. Since the board was initially created—I mean, the Congress has not done the proper thing. I mean, we talk about ″a billion-five,″ but I think Congress has moved forward, both the House and the Senate, bipartisan, have moved forward in addressing some of the infrastructure needs of Amtrak.

What I find lacking is the board's response to the direction from the Congress and also, if you agree, Mr. Laney, with the GAO report that did some minor criticism of Mr. Gunn, it criticizes the board and said that you all have not done the kind of job that you are supposed to do as far as directing Amtrak.

I will give you an ″F″, you and the board.

Mr. LANEY. I suspected that.

Ms. BROWN. Yes.

Mr. LATOURETTE. If that is not a question, we are going to move on to somebody else.

Mr. DeFazio.

Mr. DEFAZIO. Mr. Chairman, I'll move quickly; five minutes isn't very long.

As I look at the documents provided, as I understand it, Mr. Laney, your prior experience with the Texas Department of Transportation—I visited the Web site—had very little to do with rail.

Do you have any other significant expertise in rail, other than your service on the board that I'm not aware of?

Mr. LANEY. No, sir.

Mr. DEFAZIO. Mr. Sosa, another member of the board, in his confirmation hearing said, he had no experience on land transportation, never ridden an Amtrak train.

Are you aware of anything else there that I might not know about?

Mr. LANEY. He was CEO of a major industrial company.

Mr. DEFAZIO. We're talking about rail here. You may think it's transferable; we don't.

Let's go to the next one. Mr. Laney or Mr. Rosen, Mr. Hall was Chairman, President, CEO—there you go, Mr. Rosen—of K-Mart, which bankrupted shortly after his retirement, he went away with $62 million and a $2 million severance package. Are you aware of any significant rail experience he has, or transportation experience, other than what K-Mart might have used for transporting goods? Passenger, we're talking about here.

Mr. LANEY. I don't know his background.

Mr. DEFAZIO. Mr. Rosen, you represented automobile interests—surface transportation, granted.

Do you have any significant experience in management or knowledge of passenger rail that we're not aware of other than your service with—as general counsel for 2 years?

Mr. ROSEN. No.

Mr. DEFAZIO. Thank you. That's good.

Mr. Gunn, 40 years, is that what I heard?

Mr. GUNN. Forty-one.

Mr. DEFAZIO. Now you said that a zero budget by the President would have left an insolvency bankruptcy; is that correct?

Mr. GUNN. Yes.

Mr. DEFAZIO. Mr. Laney, with your vast experience, you disagree, is that correct, yes or no?

Mr. LANEY. No, I don't disagree.

Mr. DEFAZIO. It would have led to bankruptcy, the President's budget?

Mr. LANEY. Zero operating budget leads to insolvency.

Mr. DEFAZIO. Mr. Rosen, you apparently feel that even though it was proposed for zero, there were other aspects that would have allowed it to succeed.

Mr. ROSEN. Yes, because the zero was a call to action.

Mr. DEFAZIO. Call to action, but if Congress would have passed it, it would have been pretty drastic action.

Mr. Gunn, you said something I couldn't follow at the end of your testimony, or answer to that previously, something about researching, or Mr. Rosen talking about the benefits of bankruptcy, you said, at a meeting?

Mr. GUNN. At the Senate testimony before an appropriations committee, he was questioned about the zero budget, and it was clear there was no money, no matter what happened in the budget, for passenger rail. And he discussed—made an analogy between rail and airlines in terms of the benefits.

Mr. DEFAZIO. So we could break the unions, among other things, and perhaps question or break contracts?

Mr. GUNN. I'll let him.

Mr. DEFAZIO. Are those the kinds of benefits, Mr. Rosen?

Mr. ROSEN. I certainly didn't say that.

Mr. DEFAZIO. It would be similar to the airline industry?

Mr. ROSEN. I think Mr. Gunn's recollection—

Mr. DEFAZIO. We'll have to look that up. I only have 5 minutes.

Now, Mr. Laney, I'm just curious, did you have any conversations, communications or directives in any form with any political appointee of the Bush administration, Department of Transportation, White House or otherwise regarding the firing of Mr. Gunn before it happened? Yes or no?

Mr. LANEY. No.

Mr. DEFAZIO. You did not. So then who first—what was your—what is your recollection of your first discussion regarding the firing of Mr. Gunn? Was it with another board member?

Mr. LANEY. Other board members.

Mr. DEFAZIO. More than one? I don't know how you operate in terms of rules of procedure, whether you can reach a conclusion before a meeting. Is that illegal?

Mr. LANEY. No.

Mr. DEFAZIO. Talk to three other board members and decide and go in and vote on it. I know how your boards work.

Mr. LANEY. What's the question?

Mr. DEFAZIO. The question is, did you discuss it with other board members before the meeting?

Mr. LANEY. Before what meeting?

Mr. DEFAZIO. When you fired him.

Mr. LANEY. Yes.

Mr. DEFAZIO. With all three?

Mr. LANEY. Occasionally with one, two or three.

Mr. DEFAZIO. You had reached a conclusion before the meeting?

Mr. LANEY. I think we had. I wasn't sure until we took a vote.

Mr. DEFAZIO. Sounds like, if you had that many conversations, now there are no quorum procedures or anything like that; so you could discuss it with others before the meeting.

Mr. LANEY. We can discuss it with one, two or three.

Mr. DEFAZIO. All right.

Then, if we can go back to the previous issue, Mr. Gunn, about the Northeast Corridor, this report—I mean, again, I'm curious at some of the answers we're getting.

The Strategic Reform Initiative seems definitive about the complexities, risks of a split, and that, regarding the Northeast Corridor, that it shouldn't go forward, but you had a major disagreement over that. Apparently, at some point the board decided to go forward despite the strategic initiatives of April; is that right?

Mr. LANEY. No, not "despite"; it's very consistent, in my judgment.

Mr. DEFAZIO. So you overcame all the complexities, and the costs, risks, and split benefits, changed from April, and your position-controlled rail operations to remain unified for purposes of safety and efficiency despite, we heard, you wanted to split off rail and operations.

So all those things changed from April to now, and then this is the report over which you are saying Mr. Gunn is not carrying out your direction?

Mr. LANEY. No, sir. The board decided not to segregate management of infrastructure from management of train operations.

Mr. DEFAZIO. So that's Mr. Rosen's position, not yours?

Mr. LANEY. That's my position. I don't know what his is.

It is Mr. Gunn's position as well. You shouldn't segregate the two.

Mr. DEFAZIO. You're familiar with how well or how poorly it has worked out in Britain and other places?

Mr. LANEY. I'm very familiar with that.

Mr. DEFAZIO. My time has expired. Thank you.

Mr. LATOURETTE. Thank you very much.

Ms. Johnson.

Ms. JOHNSON. Mr. Laney could you tell me the origin of the privatization plan?

Mr. LANEY. What privatization plan are you talking about?

Ms. JOHNSON. The one where you were going to separate the Northeast Corridor and sell off.

Mr. LANEY. There is no privatization plan.

Ms. JOHNSON. There is not a plan?

Mr. LANEY. There is no privatization plan, no, ma'am.

Ms. JOHNSON. Who were you going to sell it to, the public?

Mr. LANEY. There is no plan to sell it to anyone.

Ms. JOHNSON. Okay. Who is the Corridor task force and what is that purpose?

Mr. LANEY. The Corridor task force is a concept in that plan, the strategic initiative plan that, in effect, involves the input of all the States or users along the Northeast Corridor—commuter rail,

States, departments of transportation—so that we can have their input in developing our capital plan for the Northeast Corridor.

It's a concept that we are moving forward on and it's—in my judgment, really takes something on a de facto basis, something already done in a more informal way and makes it formal.

Ms. JOHNSON. Are these State DOT people?

Mr. LANEY. I don't know what we're actually going to use in terms of the actual composition of it, but representative users or interested stakeholders along the Northeast Corridor—States, DOT's, and commuter operations.

Ms. JOHNSON. Who is the Amtrak Reform Council?

Mr. LANEY. I can't give you the history, but the Amtrak Reform Council was a group that was he designated—I don't know the year, 1995, 1997, sorry—and it came together and worked fairly intensely for a period of time and came out with an Amtrak Reform Council proposal.

Ms. JOHNSON. Is it close to what the proposal is now?

Mr. LANEY. I think there is some similarities and somedifferences. There's some similarities and some differences between our plan and virtually every other concept that's come out with respect to Amtrak.

Ms. JOHNSON. Is that council still organized?

Mr. LANEY. I don't think so.

Ms. JOHNSON. Have you had any conversation with anybody about the future of Amtrak as it relates to reorganizing?

Mr. LANEY. Reorganizing. Pardon me?

Ms. JOHNSON. Other than the board members.

Mr. LANEY. I don't understand what you mean by reorganizing.

Ms. JOHNSON. What are you reforming then?

Mr. LANEY. Reforming, absolutely. I speak to folks about the very concepts of reform—Members of the House, Senate, members of the administration and private sector members, as well as States and other interested stakeholders who have operations around the country. So, yes, I speak or, more than that, I listen to most of those folks who have their own ideas.

Ms. JOHNSON. Who are the stakeholders? Do we have any role to play in that?

Mr. LANEY. Absolutely. We pay very close attention to what you say, what you think. You are our source of funding.

Ms. JOHNSON. Thank you very much.

Ms. BROWN. Ms. Johnson, would you yield a minute of your time to me?

Ms. JOHNSON. Yes, I yield a minute to Ms. Brown or whatever I have left.

Mr. LATOURETTE. The gentlelady has a minute-33 remaining.

Ms. BROWN. I just have a follow-up question. We're trying to get to the meat of the coconut here.

I want to know, how many proposals have you received, how many have you considered, and please describe the proposals that's being considered pertaining to the Northeast Corridor. Have you received proposals on how to operate?

And remember, you are under oath, and at some point we are going to get these records. Now would you answer that question?

Mr. LANEY. I don't know the number that I have heard. Some have been oral presentations, some have been written, but every presentation I have received I have transmitted to Amtrak. They're now in the hands of our planning department for analysis, assessment and guidance to the board.

So all I am—really, in some ways, I listen, some are very interesting, some are not. But it's a board decision, and we need the Amtrak—

Ms. BROWN. I'm not real certain about who is Amtrak management right now. Seems like the board is running Amtrak.

Did Amtrak sign a confidentiality and nondisclosure agreement with any of these proposals, and what did the agreement commit Amtrak to do?

Mr. LANEY. Yes, we have signed nondisclosure agreements with respect to a couple—I don't know how many, whether one, two or three, because they don't want proprietary information shared with the rest of the world—and the proposals are across the board, from operating our trains to operating various—not trains generally, but a specific route, to operating various amenities of the trains.

It's a wide variety of concepts, none of which may make sense, all of which may make sense. They're in the hands of our planning department right now. Let me talk about that for a second.

This is a critical piece of the puzzle in terms of this Strategic Reform Initiative plan. It is in their hands, in our planning department's hands. And one of the biggest disappointments that I had was, following with Mr. Gunn's performances, following the development of this, we created a planning department, strategic planning department for lack of a better word, to do the analysis, to begin to think through not only what is in here, but what might come to us over the transom for lack of a better description. That department, unfortunately, was relegated to not directly reporting to Mr. Gunn, who is the key for this, to move forward or not.

It was basically told to report to the head of our transportation department, not to Mr. Gunn, the operating department; and—

Ms. BROWN. I would like for Mr. Gunn to respond to this.

Mr. GUNN. The strategic planning department was created after the adoption of this reform initiative by the board and—

Ms. BROWN. Can you speak to those proposals?

Mr. GUNN. I don't see them. They go directly—I have seen some of them, but they don't send them to me; they send them around me to the planning department, so I don't know. I know a couple of them, because the head of the planning department has told me they came in.

But if there have been others, I don't see them. They go—the board sends them directly into the organization. But the planning department, the reason it's in the operating department is, the planning department is going to have the strategic control of the business lines that we have—long distance trains, corridors and so forth—and they control scheduling and equipment assignments. So there's a logic for it to be in the operating department, and that's where we put it.

And it's worked fairly well, or it had worked fairly well. I don't see all the proposals.

Mr. LATOURETTE. Thank you very much, Mr. Gunn. We're next going to move to Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you. Mr. Laney, I have a letter here signed by you, addressed to Mr. Paul Nissenbaum at Amtrak, saying:

"Dear Paul, I'm sending the enclosed unsolicited proposals to you so that you can take a look at them and, at least on a cursory basis, begin to think through the approach to assess such proposals going forward.

"I would suggest the first step is to invite them to the table in order for them to more fully work the analysis team through the proposal in more detail than might be apparent from the face of a written proposal.

"these are confidential; in fact, I have signed a confidentiality nondisclosure agreement on behalf of Amtrak regarding one of them. So it is incumbent on the team that analyzes such proposals to keep them tightly under wraps during the process, start to finish.

"also, a critical step in the process is to let the board know, when a proposal has arrived, the nature of the proposal and the progress and process of evaluating and responding to the proposal. Because there is such a built-in bias—I assume built-in because there is such a built-in bias against any such proposal ever seeing the light of day at Amtrak—it will also be an essential ingredient to the process that the final decision as to acceptance or rejection of the proposal be reserved to the board."

My first question is, what does that mean, "the final decision as to acceptance or rejection be reserved to the board"? Who else would do it? Are you saying they should be secret from Mr. Gunn, from others in the corporation?

Mr. LANEY. No, I'm not at all.

Mr. NADLER. What does that sentence mean?

Mr. LANEY. I mean, the board should have the final decision.

Mr. NADLER. That's obvious. But what does it mean since it's such a built-in bias, the essential ingredient of the process, the final decision be reserved to the board. Is that tautology?

Mr. LANEY. No, it's not.

No one, Congressman, likes change, and I don't think—nothing dislikes or resists change more than entrenched bureaucracy.

Mr. NADLER. We know lots of people won't like it, but we have a small amount of time.

What do you mean by the final decision as to acceptance or rejection must be to the board? That's obvious.

Do you mean no one else should know about it?

Mr. LANEY. A number of operating decisions are not made by the board; they're made by senior management.

Mr. NADLER. Acceptance of these proposals?

Mr. LANEY. Senior management might well have concluded.

Mr. NADLER. What were these proposals about? What kinds of proposals were these?

Mr. LANEY. I don't remember what went with that letter. Can be operating different routes, could be—Lord knows.

Mr. NADLER. I have a memo, also dated September 19th, from Mr. Gunn to you, an e-mail that says, "I understand that you have signed a confidentiality and nondisclosure agreement with either

Conex or Railway Service Corporation on behalf of Amtrak. Could we see a copy of same so we know what we are committed to?"

Question mark.

So, in other words, you were doing this behind the president's back?

Mr. LANEY. No, not exactly behind the president's back. I think he was very well aware of it, or he wouldn't have sent me that letter.

Mr. NADLER. On the contrary. Obviously he hadn't seen a copy of it before you made the commitment or he wouldn't have sent that e-mail.

Mr. LANEY. I did it independent of the president.

Mr. NADLER. Mr. Gunn, can you tell us what was going on here?

Mr. GUNN. If my memory is right, those are two proposals that individuals had to operate some of our service in conjunction with Amtrak, not just take it over, but to have—take over parts of our service in Chicago and California. It was fairly substantial and—

Mr. NADLER. You hadn't been told about this?

Mr. GUNN. I found out when a subordinate told me this happened.

Mr. NADLER. So this analysis that was going on by the board is being done behind your back, so to speak?

Mr. GUNN. We had a pretty tight chain of command, so as soon as this went to a subordinate, he told his boss, who told me, so I found out about it; but I didn't have any role in signing the confidentiality agreement.

Mr. NADLER. Do you find it unusual in terms of how a corporation acts, that that would be the case?

Mr. GUNN. Yes.

Mr. NADLER. Why do you think that was going on?

Mr. GUNN. I don't know.

Mr. NADLER. In what way was it unusual?

Mr. GUNN. If you're talking about—if you're going to have talk about contracting out Amtrak services and functions, the way you would have to do that is—because we are under Federal procurements regs is, you do an RFP; and you'd scope out what it is you want people to do and do an RFP. And you would certainly want it to go through—if you were going to do it, you would want to do it through the proper procurement process.

Mr. NADLER. Normally, the president would know about this and it wouldn't be done behind his back?

Mr. GUNN. Yes.

Mr. NADLER. If I were to suspect that what was going on here was that Mr. Laney, or maybe some other members of the board, wanted to do something that they thought that you would oppose because you might—you were opposed to this kind of privatization; and therefore, they wanted to do it to hide it from you, would you have any reason to think that I was wrong in that?

Mr. GUNN. Personally, I think it was more naivety than anything else. You're dealing with people who don't know the railroad business, and I think they actually thought that they could—that someone could walk in and radically change the economics. In other words, all the smart people work on the outside, the dumb ones all work for Amtrak; and I think there is a certain amount of that.

Mr. NADLER. I can see that. I mean, I know that that happens sometimes, smart people walk in from the outside who don't know anything about what's going on, and I have seen that before. I have seen that, I must say, in some changes of administrations where a new guy comes in maybe from a new political party, brings a whole new group of people in the agency and make all the same mistakes the old guys made 10 years ago because they don't know the institutional history. Because they figure they know and they don't know what already happened. So I can see that happening.

But my question is, even assuming that, would it not be the normal course of events that if you were thinking of a major institutional change, the president wouldn't find out from some subordinate?

Mr. LATOURETTE. We're going to ask you to answer that and move on.

Mr. GUNN. That is not the normal way of doing business. I was surprised that that happened.

Mr. LATOURETTE. I thank you.

Mr. Menendez for 5 minutes.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Laney, I heard you say to Ms. Brown that you hear what we say. I'm concerned for your health because I don't think you quite hear what we say, and I want to give you, since you are under oath, the opportunity to reconsider some of your answers to me.

Number one is you—when I asked you, did you have conversations about getting investors in the infrastructure of the Northeast Corridor, you said you didn't remember—you did, but you didn't remember any names, you're going to submit those to the committee, yet here we are signing confidentiality agreements.

Did any of those agreements involve the purchase of the assets of the Northeast Corridor?

Mr. LANEY. No, sir.

Mr. MENENDEZ. None of them?

Mr. LANEY. Not that I recall anyway.

Mr. MENENDEZ. I'll ask you to review your recollection when you go back and make sure that if there are any, that that answer be given to the committee.

Mr. LANEY. Absolutely.

Mr. MENENDEZ. When I asked you, don't you think you should have talked to your stakeholders, like New Jersey Transit that pumped in a billion dollars a year, before you moved on the proposal of the separation of the physical assets, you said to me, we haven't done anything yet. That was your answer. And yet I read to you the resolution, and now I have a copy of an e-mail that you sent to Mr. Gunn, dated September 9th, 2005, where you in part say:

"let me know if you plan to protest my proposal to initiate the transfer of the physical assets of the Northeast Corridor into a separate, wholly owned Amtrak subsidiary. I don't want to be surprised and accept it to be a fait accompli in any case."

Isn't that much more than saying we haven't done anything, you were definitely moving towards a separation of the assets?

Mr. LANEY. Would you like an answer?

Mr. MENENDEZ. Yes.

Mr. LANEY. Read the rest of the resolution. We haven't taken the final action, and we're not going to until we fully understand all the implications, and the implications may stop us from going forward.

Mr. MENENDEZ. Well, the resolution goes on and says, ″everything necessary to move in that direction.″

Let me ask you this.

Mr. LANEY. Would you like me the read the remainder?

Mr. MENENDEZ. I wouldn't have enough time. I'm sure I'm capable of reading it myself.

Let me ask you this, Mr. Laney. In response to one of the other colleagues' questions, you said, We believe that keeping the integration of management and operation is essential.

Is it not possible, under the discussions that you have had, to sell the assets to a private investor and have it with an agreement that would allow for the management and operation to continue in the hands of Amtrak?

Mr. LANEY. Yes, that's possible.

Mr. MENENDEZ. It is possible. Now what guarantee would there be that an investment in the infrastructure, however, would take place under such an agreement?

Mr. LANEY. I don't know what agreement you're talking about.

Mr. MENENDEZ. The agreements, the conversations that you have been having with individuals about investors in the infrastructure of the Northeast Corridor.

Mr. LANEY. Congressman, I haven't had conversations; I have had proposals proposed to me, and I have listened and I have transferred whatever I have got into our planning department.

Mr. MENENDEZ. I'm sure you have asked questions, and you inquired in the process, so the conversation would be a fair framing of the response.

Mr. ROSEN. Congressman—

Mr. MENENDEZ. I didn't ask you a question. I would like my own time to be determined by me.

Let me ask you, Mr. Rosen, however, when you vote on the board, you're there as Secretary Mineta's representative? Yes or no.

Mr. ROSEN. Yes.

Mr. MENENDEZ. And when you vote, does the Secretary tell you how to vote? Yes or no.

Mr. ROSEN. I can't answer it yes or no because there is not a single answer. But we regularly consult, and I tend to vote—

Mr. MENENDEZ. Do you vote independently of the way the Secretary wants you to vote? Yes or no.

Mr. ROSEN. No.

Mr. MENENDEZ. So you vote as the Secretary wants you to vote.

Finally, Mr. Gunn, I'm going to give you the last word here, as I think is fitting and appropriate. You said in response to a question that the reason you believe you were fired as the president of Amtrak is because you were in the way of dismantling Amtrak.

Could you, with specificity, speak to the committee about what you viewed as the board's plan to dismantle Amtrak?

Mr. GUNN. I did say that we were making it work, and that I was—I really believe that I was an obstacle to dismantling Amtrak. There hasn't been a lot of dialogue between the board and myself

after the adoption of the strategic initiative in the spring about strategic direction. My sense of what they're doing is that they're basically following the administration plan. That's what I think they're doing.

Mr. MENENDEZ. That plan being?

Mr. GUNN. Breaking it up into separate corporations and trying to privatize the various services which won't occur in most cases because it's not a profitable business. I can't prove that, but all the indications are that that's where they're headed, particularly with this Corridor initiative.

Time will tell. We'll see whether they proceed down that road to separate—to take the company and break it into the three pieces that are in their legislative proposal and try to privatize the long distance services or just take them off.

Mr. MENENDEZ. I hope they're hearing us, Mr. Chairman, because that's not what many of us support.

Mr. LATOURETTE. Thank you very much.

I would tell the members of the panel and then our witnesses, who have been very patient to be here, I just have one question, you always say one question, I'm going to ask a couple of questions about the stock issue and time myself and however much time I take, I'll make available to the other members in turn. If I take two minutes, I'll give you 2 minutes and we'll try and wrap this thing up.

Mr. Rosen, I want to go back to you on this stock question. It's my understanding that the common stock, 38 percent was owned by BNSF, 50 percent by American Premier—53 percent, then 12 percent roughly split between Canadian Pacific and Canadian National.

Is it your view, or the administration's, those entities do not own any voting stock in the Amtrak Corporation today?

Mr. ROSEN. They don't have voting rights with regard to directors.

Mr. LATOURETTE. With regard to directors?

Mr. ROSEN. Correct.

Mr. LATOURETTE. So it's your view that they don't have—do you think that the D.C. corporation law would apply to them if one of them read about this hearing and someone owned more than 20 percent of the stocks said we should have a meeting? Do you think that they have that right?

Mr. ROSEN. I haven't specifically looked at that, but I guess I'd say I'm skeptical.

Mr. LATOURETTE. And are you skeptical because the stock was supposed to have been redeemed? How can you lose your rights if stock was supposed to be redeemed and nobody has redeemed the stocks? Don't they still have rights as shareholders.

Mr. ROSEN. I think they have a right to have their stock redeemed.

Mr. LATOURETTE. But this is—and you're obviously a lot brighter than I am, but if the Congress has directed that stock be redeemed by Amtrak, and Amtrak has never purchased the stock, how can you take away somebody's rights when you haven't paid them for it?

Mr. ROSEN. Well the key is the phrase ″take away their rights.″ it is what rights did they already have? Remember, this stock was created way back when, in the 1970s, and its rights have varied over time. And so it is a question of what rights it has or doesn't have, and whether they were altered by statute and whether that was appropriate.

Mr. LATOURETTE. And I agree with you. And I heard you say about—what you said about 1981. But we believe that in conversations with the former Amtrak general counsel when the 1981 action was repealed, the rights of the common stock shareholders was restored. And Amtrak has not purchased the stock—section 415 of the 1997 act goes on to say that whatever stock is allocated to the Department of Transportation has no voting rights. That is pretty clear.

And I guess this quandary, because I guess I am not as competent as you. I believethat the Senate will leave town for the year—and nothing disrespectful to the Senate, it is the end of the session—and Mr. Hall and Mr. Sosa will not be confirmed as members of the Board. And there appears to be no vehicle, no way to have Amtrak run—and I know we disagreed about this whole quorum issue. But if I am right, and there are some difficulties with recess appointments and there are some difficulties with continuing Mr. Laney's term and the Secretary's term under the 1997 act because of this fork in the road that we talk about in 2003, you have to recognize that that improper quorum—improper in my mind—you don't agree, I got that—but that changed this executive committee from 3 to 2, because originally there was supposed to be 3. This Board that I have suspicions about then changed it to 2.

Your policy statement in 2002-2003 says that the directors—you assign all these duties. Well, you don't have any directors to fill the slots and nobody has rescinded that.

So I am concerned and I would hope that perhaps we could have an additional dialogue outside the confines of this hearing where—because governance is the title of the hearing; governance is something that I am concerned about. And I would hope that the administration and you, Mr. Laney, would be concerned about the potential of this corporation with all the difficulties it is facing moving forward into the new year with just the two of you. And I don't consider that to be a good way to run a railroad or a corporation. And if there is something you want to say before I yield back, I would be happy to do that.

Mr. ROSEN. Only thing that I would say, Mr. Chairman, is I would be more than happy, as I said in my opening remarks, to talk further with you and any members of the committee about those issues further, because obviously our time, and everyone's time, is somewhat constrained in how much detail we can get into. And I have looked at a number of these questions before. I have looked at the stockholder one, but I am not as current on that. So I would like the opportunity to talk about that.

Mr. LATOURETTE. Then let's talk about it some other time. And I look forward to the discussion.

Mr. ROSEN. The other thing I would say, really just thinking of the Ranking Member's comments, is we think the Board has the responsibility to oversee and manage the corporate affairs. We very

much look to reach out to the stakeholders, and particularly the Members of Congress, and try to stay in touch. And I can tell you that Secretary Mineta has, and I have, and others in the department, sought to listen to and meet with a wide array of Members of Congress, and I think will continue to try to do that.

Mr. LATOURETTE. I thank you very much. And I used 4 minutes and 50 seconds, and, Mrs. Brown, I yield to you.

Ms. BROWN. I won't use all that time. I just want to say one thing. I have been on this Transportation Board since I have been here. And Mr. Mineta has been Secretary, and he was for 4 years, 5 years, 6 years—not once, well, he certainly have not been to this committee to address us about Amtrak. I would stand to be corrected. But I am truly disappointed that he has not. He issues statements around the country about Amtrak. But he himself have never come and addressed this board, this Congress. And he hasn't been to a Board meeting. You have been there. And you are saying that you talked with him. And I am sure you all discussed how you want Amtrak to move forward. Is that correct?

Mr. ROSEN. Yes.

Ms. BROWN. And so we are going with his direction, I guess, from the Bush administration.

Mr. ROSEN. Well, he is the Secretary of Transportation, and I work for him.

Ms. BROWN. Under the Bush administration.

Mr. ROSEN. Yes, of course.

Ms. BROWN. I have a list of questions that I want to submit to the record. Keep it in mind you're under oath, and I want to submit my questions based on that. And I would like, as I told you before, Mr. Laney, I would like a response to my questions in a timely fashion.

And, in closing, once again, I think that the Board is—you know, it is just like, I guess, that Mr. Brown with FEMA, missing in action. And I am just—I can't express the disappointment that I have after talking with you privately, and we discussed being bushwhacked about the proposal by, you know, the corridor; and then turn around and the firing of Mr. Gunn without any discussion with the members of the Congress on either side of the aisle. You know, this administration—and the American people are weighing in; he gets an F and this board get a zero.

In closing my time, I just want you to know, Mr. Gunn, I have the greatest amount of respect for you. And no way does this Board action do anything to demean the work that you have done for this country and for Amtrak and their employees, and you get positive stars and checks. And, you know, I love you and thank you so much for everything you have done. And you will never see me saying anything like that about a Bushappointee, you can rest assured of that.

And I yield back the balance of my time.

Mr. LATOURETTE. We are going to go around in order, because after 4 minute and 50 seconds, Mr. Nadler.

Mr. NADLER. I will yield to the gentlelady from Indiana.

Ms. CARSON. I don't want to be redundant about this, but I am still—you have a seven-member board. You have a seven-member board, you had two people that fired Mr. Gunn; is that true?

Mr. ROSEN. No, four.

Mr. CARSON. How can you have four members and only two of them beenconfirmed?

Mr. ROSEN. Two were recess appointed, and one was confirmed in the position of the Secretary of Transportation. And one was confirmed by the Senate as Board member and chairman.

Ms. CARSON. Can you tell me what about the other three? When do we expect to see them three in place?

Mr. ROSEN. I don't know if I can say prospectively. I can say in the past that there have been some nominations sent up to the Senate and we will hope that at least the ones that are pending there now will get dealt with.

Ms. CARSON. They have been sent up there, though?

Mr. ROSEN. There are two that are pending, which are the two that were recess appointed.

Ms. CARSON. What about the other three?

Mr. ROSEN. Those are currently vacant.

Ms. CARSON. Are they going to be sent up to somebody, him or some—the other three? Four plus three equals 7?

Mr. ROSEN. Correct.

Ms. CARSON. So are three going to be sent up? Are they in the works?

Mr. ROSEN. Well, I don't know that I can really address what is going to happen next. I can tell you where we are.

Ms. CARSON. Who submits the names for confirmation?

Mr. ROSEN. The President.

Ms. CARSON. Is he in the country? We need to call him.

Mr. ROSEN. I think he is actually traveling.

Ms. CARSON. He has been traveling during these vacancies. Do you recommend anybody; say, here is the person that has the expertise, they know all about the rails and trains and stuff like that, happen to be a Democrat?

Do you send up names like that?

Mr. ROSEN. I think, as Congressman Mica alluded to previously, the administration had sent up Mr. Thompson, who was a Democrat I believe, Mr. Crandall—

Ms. CARSON. He was with American Airlines, right? He was the CEO.

Mr. ROSEN. That is correct.

Ms. CARSON. Mr. Crandall.

Mr. ROSEN. Formerly; that's correct.

Ms. CARSON. So airlines and rail go together. Go ahead; who else?

Mr. ROSEN. Mr. Sosa and Mr. Hall, both of whom are retired CEOs, are the nominees who are currently pending.

Ms. CARSON. I am sure Mr. Gunn doesn't want his job back after all this rigmarole. But I was trying to understand the procedure for the next person. I am just speaking—I haven't even spoken to Mr. Gunn.

They have a saying in my neighborhood: It ain't no fun when the Reverend got a gun. So I am sure Mr. Gunn will be glad to get up out of here with all this nonsense.

I yield back Mr. Chairman.

Mr. LATOURETTE. I thank you.

Ms. Norton, we will go to you next; then Mr. Nadler, Mr. Menendez, and then we will be done.

Ms. NORTON. I just want to establish for the record, Mr. Rosen, you are the source of legal advice concerning the executive committee and quorums and legal technical questions we have been discussing here?

Mr. ROSEN. No.

Ms. NORTON. Who is?

Mr. ROSEN. I believe Amtrak's general counsel, Ms. Serfetti.

Ms. NORTON. So you don't give any of that advice and that person isn't here? The person that gave you the advice that resulted in the controversial way in which the Board has been operating was not you, who was the general counsel of Department of Transportation?

Mr. ROSEN. Right. Amtrak has its own legal department.

Ms. NORTON. You didn't pass off on that at all?

Mr. ROSEN. Let me clarify. The chairman of this committee did ask the Department of Transportation for an opinion, in addition to an opinion from Amtrak. And we both provided that. Including me.

Ms. NORTON. And so you were, in fact, a source of the legal advice with respect to the way the Board is operating executive subcommittees, quorum and all?

Mr. ROSEN. No. I am sorry. I don't mean to be difficult, but the actual advice occurred in the past, when I was not the Secretary's designee to the Board, and Ms. Serfetti was and is Amtrak's general counsel.

Ms. NORTON. You understand that the Chairman's questions, as technical as they sound, raise very serious matters for the corporation. That is to say, do you agree that the way in which the Board is organized today—sorry, operates today, with questions being raised by quorum, executive committee, could, in fact, put in legal jeopardy some of the actions of the Board? Do you understand that that question is now on the table?

Mr. ROSEN. Well, at one level, I mean, questions can always be put on the table; but I think that there are actually correct answers to them, and I think there are other legal doctrines that were not yet alluded to, such as doctrines of necessity or the fact that management cannot—

Ms. NORTON. I want to stick with the doctrine of necessity, because Mr. Laney talked about dealing with the hand he was dealt. And we should be looking at whether or not the hand you were dealt, the way in which interim Board members, if you will—whether or not we need to take some action with respect to that.

Did you or Mr. Rosen, anybody on the board, seek the advice of the Senate, or of this committee, concerning this dilemma, this rather unusual corporate dilemma, or did you simply operate within the legal confines of the Department in deciding that it was okay to operate in this way, quorum—quorums and executive committees notwithstanding, that were unprecedented?

Mr. ROSEN. Well, on pure questions of law, I am the Department's chief legal officer, and it is my job actually to do this.

Ms. NORTON. But given the fact that you were dealt a hand that Mr. Laney himself testified was difficult because you had these interim appointments, you had to proceed—

Mr. ROSEN. Well, I have to evaluate one of the—

Ms. NORTON. I am asking whether or not you brought this matter to the attention—particularly to the Senate, but even to the House?

Mr. ROSEN. Well, I had to evaluate whether the situation—

Ms. NORTON. My goodness, did you bring the matter to the attention of the Senate or of this committee or any subcommittee of the committee? I am simply asking an answer; did you bring the matter, the hand you were dealt, which you say forced you into this rather jury-built way of operating, did you bring the matter to the attention of any Member of the Senate or the House? And I haven't been among those asking for ″yes″ or ″no″ answers, but I will be darned if you can't answer whether or not you, or any officer in your knowledge, brought it to the attention of the Senate or the House. Then I don't know whether there could ever be a ″yes″ or ″no″ answer. So can you say whether you have or not, so I can go on to my next question?

Mr. ROSEN. Forgive me, but the hand we have been dealt—

Ms. NORTON. I'm just quoting Mr. Laney.

Mr. ROSEN. The issue of vacancies, that certainly has been discussed with the Senate. If the issue is some of—

Ms. NORTON. Your ability to operate with an executive committee, that may be operation—may raise legal questions, because there is a question about your quorum. I am asking if these legal matters were brought to the attention—not whether or not, you know, we have vacancies; Mr. Senator, please fill them—whether these legal matters were brought to the attention of a Senator.

I wish you would answer that question. If you continue to evade it, then, you know, I can only draw my own conclusions.

Mr. ROSEN. They have been discussed, as indicated from the Chairman having asked for opinions, which he has received.

Ms. NORTON. Let me move on. Mr. Laney, just for the record, you wrote the Congress indicating, did you not, that you supported the President's proposal for zero funding?

Mr. LANEY. No. I don't think I did.

Ms. NORTON. The record will show that you wrote the Congress in support of President Bush's proposal to eliminate the funding for Amtrak.

Mr. LANEY. I don't think the record will show that. I have never written anything like that to you, that I recall.

Ms. NORTON. So you did not write a letter supporting the President's proposed operating budget which called for zero funding?

Mr. LANEY. You can prove me wrong by showing me that letter.

Ms. NORTON. I am going to prove you wrong and move on. And I am going to then release the letter that proves you wrong, because you have been under oath now. You say no.

Mr. LANEY. I say I don't recall the letter.

Ms. NORTON. So in other words, to do so, I think you would agree, would be a violation of your fiduciary responsibility.

Mr. LANEY. To do what?

Ms. NORTON. To write a letter supporting zero funding from the Congress of the Amtrak.

Mr. LANEY. I have never supported zero funding.

Ms. NORTON. So to do so would be a violation of your fiduciary responsibility; would it or would it not?

Mr. LANEY. Well, again, a lengthier answer than that, I think you could argue that you could support it in the context of a reform—

Ms. NORTON. You could if you are doing that, of course; a private corporation may seek to reorganize. But that is not what the President said he was doing. He said zero.

I am asking you the question simply about zero budgeting. And I believe you wrote that, and I believe you said it was the right message, and I am going to therefore put that in the record and release that so I don't want to make it look like I am paying playing ″gotcha.″ I am speaking for the record. I am going to show you the letter. I don't have it before me now. I have quotes from the letter.

The Bush administration has supported stripping altogether the Northeast Corridor and turning it over to some kind of Federal-State consortium; you are aware of that?

Mr. LANEY. I am aware.

Ms. NORTON. That was the initial proposal.

Mr. LANEY. That was the administration's proposal.

Ms. NORTON. Is there any evidence of any State interest in such a consortium?

Mr. LANEY. Not to my knowledge, but I don't interact—this is not the proposal—

Ms. NORTON. It is for that reason, is it not, that you moved to the backup proposal of a virtual split by doing a—or proposing, as you now have, a subsidiary instead of the split which has no congressional—which has no congressional support, which has no support in the States, for some kind of consortium to then take the matter up?

Mr. LATOURETTE. Mr. Laney, we're going to ask you to answer this question and then we will move on to Mr. Menendez for the last 4 minutes and 50 seconds of the hearing.

Mr. LANEY. Absolutely not.

Ms. NORTON. Your answeer is not to what? I am sorry.

Mr. LANEY. That is not a backup proposal. Absolutely not.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. LATOURETTE. I thank the gentlelady.

Mr. Menendez, you have 4 minutes, 50 seconds.

Ms. NORTON. I ask just for the record—the letter which I referred to for Mr. Laney is February 17, 2005. I will get that for the record, and I will release that letter.

Mr. LATOURETTE. Without objection.

Mr. MENENDEZ. I will not take the total time. First, I want to thank you and the Ranking Member for the manner in which you have conducted this hearing. I believe that it is fair in the process, and I appreciate the Chair's pursuing this process and being fair and equitable in the way in which it has conducted the hearing. And I just want to make a closing remark.

I, as someone who has 100,000 New Jerseyans every day on Amtrak's lines, and thousands more who use it for intercity travel into other parts of the Northeast Corridor, I believe that the refusal to send appointments to the Senate for advise and consent, depending upon recess appointments of individuals who have no railroad experience whatsoever but who have a great loyalty to the administration, an administration that sets zero funding to the Congress and that has overtures by investors who care a lot about going ahead and getting great tax benefits by depreciation losses but very little interest in running a railroad, point towards a dismal future for Amtrak, unless this committee and the Congress exert their appropriate role to ensure intercity passenger service—important in the Nation's commerce, thousands of people use Amtrak to go sell their services and goods; important for individuals who seek health care in major institutions—for example, along the Northeast Corridor; important for those who travel; and important, I would say, after September 11, of having multiplicity of modes of transportation in the event of an attack upon the country.

That is what is at stake here. And, Mr. Chairman, I appreciate you pursuing those questions at this hearing.

Mr. LATOURETTE. I thank the gentleman. I want to thank all four of you. It has been a lengthy hearing.

Ms. NORTON. Could I do a point of correction, because I want to apologize to Mr. Laney?

Mr. LATOURETTE. Sure.

Ms. NORTON. Because I have this quote. This was a letter from the Board to Speaker Hastert. And, again, I want to make sure that that letter is put into—that this letter or this Board message of February 17, 2005 is put into the record. It is not ascribed to you, but it is ascribed to the Board, and I apologize. If you didn't do it, then I will make sure that when I release it, whoever did it from the Board, or the entire Board, is noted.

Thank you Mr. Chairman.

Mr. LANEY. Let me say, the Board correspondence comes through me. I still don't recall what you are referring to, so please share a copy with me when you get it.

Mr. LATOURETTE. I was going to thank you all for coming, but now I have to throw my 2 cents in. My recollection of the letter, if I have the right letter, is that the President's budget submission sends the right message relative to reform and didn't advocate zero funding. But we will let the letter speak for itself.

I want to thank you all for coming.

Mr. Gunn, regardless of the opinion different Members may have about the activities of last week, I think all of us thank you for your service to this country.

Mr. Hughes, I know you are upset we didn't ask you any questions and you had to sit there. We very much appreciate your coming before us. It has been a lengthy hearing. I want to thank all the members who participated.

And there being no further business to come before this subcommittee, we are adjourned.

[Whereupon, at 2:30 p.m., the subcommittee was adjourned.]

EARL BLUMENAUER
THIRD DISTRICT, OREGON

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**Statement for the Record**
**Hearing on Current Governance Issues at Amtrak**
**Rep. Earl Blumenauer**
**November 15, 2005**

I am greatly concerned by the recent actions taken by the Amtrak Board of Directors and the implications these decisions will have on the future of our nation's entire transportation system. It is stunning that the Amtrak Board decided to relieve David Gunn of his duties as Amtrak President. Mr. Gunn has brought an unprecedented degree of professionalism, candor, and confidence to the management of Amtrak.

Amtrak has suffered for years from conflicting goals, mixed messages, inadequate funding, and operational restrictions imposed by Congress and several administrations. Arriving at a perilous time, David Gunn turned Amtrak around, gained the confidence of everybody he worked with, and helped set the stage for Amtrak to begin reaching the goals and expectations of its most important clients - our constituents.

Three years ago Amtrak was on the brink of bankruptcy. Mr. Gunn took over the reigns and quickly got Amtrak moving in the right direction, increasing ridership, cutting the deficit per train mile in half, and finishing each year with money in the bank. Amtrak ended the 2005 fiscal year with $120 million that it can now apply to its 2006 fiscal year budget.

The Board of Directors' decision to fire Mr. Gunn comes on the heels of the Board's decision to split Amtrak's Northeast Corridor service into a separate subsidiary, a move Mr. Gunn strongly opposed. He understood that this decision was not only a reversal of the Board's position four short months ago, but one that threatens Amtrak's future prosperity. Amtrak currently enjoys a waiver of property taxes on the tracks they own in the Northeast Corridor; recent investments in track improvements there have been extremely successful. Selling these tracks to a separate entity is not in the best interest of Amtrak or its riders.

Instead of representing the interests of Amtrak and its customers, the Board's senseless dismissal of Mr. Gunn furthers the interest of an administration strongly opposed to passenger rail. This unprecedented and unnecessary blow will have detrimental effects for years to come. Furthermore, the decision may very well be illegal – only one of the four Board Members was confirmed by the Senate, a requirement clearly established in the Amtrak Reform and Accountability Act of 1997. I urge the administration and Amtrak's Board of Directors to put political differences aside to support an invaluable public service that serves over 25 million Americans each year.

Earl Blumenauer

PRINTED ON RECYCLED PAPER

STATEMENT OF
THE HONORABLE CORRINE BROWN
SUBCOMMITTEE ON RAILROADS
HEARING ON
"CURRENT GOVERNANCE ISSUES AT AMTRAK"
NOVEMBER 15, 2005 –10:00 AM

I want to thank Chairman LaTourette for holding this important hearing, and I also want to commend him for his leadership and fairness in dealing with Amtrak. It was through your leadership, Mr. Chairman, the leadership of Ranking Member Oberstar, and other members of this subcommittee that we have been able to save Amtrak time and again from an Administration that seeks to destroy our nation's

only intercity passenger rail service. Now, it seems that we are here today to explore the issues surrounding Amtrak's governing body, only this time, we are examining the body that the Administration has put in place, another group of Bush's cronies – the Amtrak Board of Directors, or as I like to call it – The Bush Board.

What I'd like to focus on, however, is not just the legal relationship between the Board

and Amtrak's Chief Executive Officer, but the Board's firing of David Gunn.

When it comes to the Bush Administration it seems that if you don't do a good job, you stay on the payroll. But, if you do your job, you succeed, and you stand up for what is right for the American people, you get fired. Someone needs to explain that rationale to me. Obviously, it's not going to be the two Bush Board members who refused to show up at this hearing today, or Secretary Mineta who parades

around the country bashing Amtrak, but doesn't have enough respect for the Committee he chaired to show up and defend his shameful assassination of Amtrak. But maybe someone else can explain it. Because let me tell you, Mr. Laney and Mr. Rosen, I know that the Administration is behind this latest bungle by the board.

Mr. Gunn was fired because – frankly – he was succeeding. The Administration thought that Amtrak wouldn't get its funding from

Congress; that the Acela crisis would break Amtrak's back; and that, in the end, the railroad would be driven to bankruptcy or broken up and sold off piecemeal to the private sector.

But that's not what happened. Instead, the House and Senate rejected the Administration's so-called reform plan. The House provided Amtrak $1.2 billion. The Senate raised the bar to $1.45 billion for Amtrak and just prior to Mr. Gunn's firing, the Senate passed a $12.2 billion Amtrak reauthorization bill, which rejected the

Administration and Bush Board "reform" proposals.

On the day you were fired Mr. Gunn, you prepared a report for Mr. Laney which stated that Amtrak expected its year-end available operating cash to be $75 million. Ridership reached a record high of 25.4 million. Capital investment is up. Costs are down, and there has been progress on the Strategic Reform Initiatives, including food and beverage service, which we can discuss later this morning. As a

former college professor, Mr. Gunn, I give you an A Plus.

I'm just sorry that I couldn't express my appreciation for you to some of your other colleagues on the Board who decided to ignore our invitation to testify today.

Thank you, Mr. Chairman. I look forward to hearing from the witnesses who did show up.

**Statement by Congressman Jerry F. Costello**
**Committee on Transportation and Infrastructure**
**Subcommittee on Railroads**
**Current Governance Issues at Amtrak**
**Tuesday, November 15, 2005**

Thank you, Mr. Chairman. I am pleased to be here today as we examine the current governance issues facing Amtrak. I would like to welcome today's witnesses.

Since coming to Congress, I have been a strong supporter of Amtrak. I believe it is important that our nation has a viable nationwide railroad system. However, Amtrak has gone through periods of great difficulty due to a variety of reasons, and is dependent on the federal government for funding to keep it operating. I believe that the federal government has a role in providing funding for Amtrak be it through operating and/or capital expense assistance. We subsidize our nation's road, transit and aviation system and it makes sense to provide funds for rail service as well. Yet, earlier this year, the Bush Administration requested that Amtrak's funding be eliminated completely, and tried to force it into a serious reorganization. To that end, the House and Senate both voted overwhelmingly to increase funding for Amtrak. In the Transportation-Treasury-HUD Appropriations Conference Report that is expected to be filed this week, Amtrak will get $1.3 billion, which is higher than any funding level in Amtrak's history.

However, I have serious concerns about the abrupt firing of David Gunn, ostensibly because he refused to go along with the Bush Administration plan to dismantle Amtrak. Under David Gunn's leadership,

Amtrak is addressing its financial situation and has tackled problems with its Acela service, Hurricane Katrina, and rising diesel fuel prices. Despite these hardships, ridership continues to increase and Amtrak has remained out of bankruptcy because of a number of common sense management reforms that have helped the railroad run efficiently. This is clearly not the time to fire an experienced manager, particularly as the Amtrak Board has virtually no practical experience in passenger rail.

I hope this hearing will bring to light under what grounds David Gunn was fired as well as pending strategic reforms referenced by the Board.

I look forward to today's hearing as we discuss the current status of Amtrak as well as its future potential.

CUMMINGS

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**
**Subcommittee on Railroads**

**Current Governance Issues at Amtrak**

**November 15, 2005**
**10:00 am**
**Room 2325, Rayburn House Office Building**

**OPENING STATEMENT**

Mr. Chairman:

Thank you very much for convening today's hearing to give us the opportunity to examine governance issues at Amtrak.

Like many of my colleagues on this subcommittee, I was shocked and deeply troubled to hear about the sudden firing last

week of David Gunn from his position as President and CEO of Amtrak.

The press release issued by Amtrak announcing this decision seemed to imply that this decision was taken in response to the recent release by the Government Accountability Office of a report strongly criticizing shortcomings in Amtrak's management systems.

I have read that report and while it does point to the need for Amtrak to adopt new financial management, purchasing, and strategic planning

systems, the report also indicates that Amtrak has been moving to address many of the most serious challenges it has faced in the last few years. It also appears that Mr. Gunn was largely the driving force behind these efforts to clean up the problems left by previous Amtrak officials.

Importantly, the GAO report also cites critical shortcomings in the oversight role exercised by the Amtrak Board – which currently lacks 3 voting members and includes 2 Board members who were recess appointments and have not been confirmed by the Senate.

In fact, many of the actions recently taken by the Amtrak Board appear to me to exemplify precisely the kind of questionable oversight cited by the GAO.

In April, for example, the Board put forward a plan to quote-unquote 'save Amtrak' that would essentially split the service and shift costs to the states. Most supporters of Amtrak consider this to be an ill-conceived and short-sighted plan.

Later, in a still-unexplained decision made in September but released in October, the Board decided to separate the Northeast Corridor into a wholly owned subsidiary, despite having rejected that plan as recently as April, arguing that the complexities and costs of such a split outweighed its benefits.

Coming on the heels of these decisions, the Board's action in firing David Gunn may indicate that the Board's true intention is to implement to the fullest extent possible the Bush Administration's plan to liquidate Amtrak as our

national rail service and turn it over to the private sector.

Amtrak, which currently serves 25 million passengers in 46 states on an annual basis, is under attack as never before by an Administration intent on derailing this service. I urge my colleagues – including all of my colleagues who supported the effort led by our Subcommittee's chairman to increase funding for Amtrak in fiscal 2006 to $1.176 billion – to recommit to the value of preserving Amtrak as our national intercity passenger rail service.

That means that we must fully fund Amtrak. It also means that it is time – in fact past time – to bring to a close these annual discussions about the future of Amtrak by adopting legislation that can be the basis for the real reform of Amtrak. I would argue that such legislation must also prevent the Board from taking arbitrary actions to undermine Amtrak or to try to shift the costs of this system to the states.

I look forward to hearing from today's witnesses. In particular, I look forward to

examining whether the Amtrak board as currently constituted is legal. Further, I look forward hearing from the Amtrak board members themselves about their justification for their recent actions.

Thank you and I yield back.

**Testimony of David L. Gunn**
**November 15, 2005**

Mr. Chairman, Members of the Committee,

My name is David L. Gunn, formerly President and CEO of Amtrak. I will make my remarks brief and I wish to make to make five points.

First. I am proud of the Amtrak's accomplishments over the last 3 1/2 years. The status of the company is detailed in the attached letter to Chairman Laney, dated November 9, 2005 entitled "Year in Review." Amtrak has a competent, loyal workforce that has produced sound results:

- The financial reporting of results is timely, accurate and public. Material weaknesses which existed in the system have been addressed—audit adjustments have fallen from $200 million in FY 01 to $7 million in FY 04.

- The operating loss or funding requirement has stabilized and actually declined over the last four years.

- The net loss, including depreciation has stabilized.

- The capital program is a well-defined group of multi-year projects designed to bring existing infrastructure and equipment to a state of good repair.

- The capital program is producing the intended results. Productivity is detailed in the attached letter. Actual cash outlays in FY 05 were 92% of budget—which means we have invested virtually all of the money we were given for the planned purposes.

- Ridership has grown steadily and was at a record level in FY 05 and is currently continuing to grow.

- Head count has fallen from 24,877 in FY 05 to 19,177 at the end of July 05,

Second. The nation's transportation systems—air, highway, waterways and rail are in trouble. Both freight and passenger mobility is

deteriorating. Intercity passenger rail service in carefully selected urban corridors offers the potential of relief at the lowest total cost.

The current method of funding, regulating and governing passenger rail service will not permit intercity rail service to reach its full potential. The reforms necessary to achieve change were detailed in Amtrak's Strategic Reform Initiative issued in April of 2005. Those reforms were supported by management and by the Board. We were on track to implement the reforms that were within our control. No other reforms have been formally promulgated by the Board.

Third. The Amtrak Board can not unilaterally reform Amtrak. DOT cannot unilaterally reform intercity passenger rail service. Unlocking the potential intercity rail requires a collaborative effort between Amtrak management and employees, the Amtrak Board, DOT and Congress.

Fourth. The Board structure has generally worked well, despite the lack of a full Board for quite some time. With regards to the operating and capital needs of the railroad, the Board and Management have been in general agreement. On the issue of reform a milestone was reached when we prepared our "Strategic Reform Initiative" in April 2005.

I was surprised in late August when our General Counsel received a directive from the Board Chairman to create a N.E.C. subsidiary. At the September Board Meeting and I was told that this was a "fait accompli." This unilateral action ultimately resulted in my termination last Wednesday.

The current Board stands on contrast to the previous Board where all seats were filled and there was a true sense of collegiality and trust among the management and the Board. With the exception of the DOT representative, the Board followed an independent course.

Lastly, what is at stake today is the future of Amtrak and intercity passenger rail in the United States.

What is required is some idea of what end result we want and a thoughtful plan to get there.

The destruction of Amtrak will ultimately devastate our most precious asset—the human capital or knowledge base required to operate

high speed passenger transportation and set back any plans for intercity rail.

I consider it an honor to have served as Amtrak's President and CEO. I am grateful for the support shown to be by my staff and our employees. I am grateful for the support of Congress and the friendships I have with many of you and your staffs here in this room.

Thank you and I look forward to any questions you may have.

NATIONAL RAILROAD PASSENGER CORPORATION
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David L. Gunn
President and Chief Executive Officer

November 9, 2005

Mr. David M. Laney
Chairman of the Board
Jackson Walker LLP
901 Main Street, Suite 6000
Dallas, TX 75202

Dear David:

**Year in Review**

I am pleased to report to you on the results of Amtrak for the Fiscal Year 2005. Hard work by our 19,177 employees, the loyal support of millions of riders and continued financial investment by the Federal Government combined to make FY05 a year of significant achievements – financially, operationally and structurally.

I have just completed a tour of our operations that has taken me from Washington to Boston, Chicago, the West Coast and to our Southern Division. While the purpose of the tour has been to personally thank and present awards to more than 100 employees for their extraordinary commitment and dedication to Amtrak, I have also used these occasions to assess the state of our railroad.

It is my personal judgment that our railroad has made significant progress toward a state-of-good-repair and that financially and operationally, we are in the best condition we have been in for several years. I don't need to remind you, this occurred in spite of some extraordinary challenges last year – natural disasters on the West Coast last winter and in the Gulf this fall, sharply escalating prices for diesel fuel and operating challenges associated with our *Acela Express* service for more than five months.

Attached to this letter are several charts that demonstrate our improvements over the past several years, but let me share with you some vital statistics for the year just ended, coupled with a preview of the year ahead.

**Financial**

It appears likely the company will have substantially outperformed expectations of a year ago when our Budget was prepared. We had expected our bottom-line, consolidated Amtrak Net Loss would be $(1,329.2) million, including charges for depreciation and interest. In fact, our loss is expected to be about $(1,206.4) million, or better than Budget by $122.8 million. This positive result is in spite of several significant financial challenges confronted during the year.

Overall ticket revenues were down $66.0 million (5.0%) from Budget. Significantly, revenues from the combined *Acela/Metroliner* service were below Budget by $83.1 million, primarily due to the temporary withdrawal of our *Acela* equipment (discussed under Operations, below.) Fortunately, this shortfall was partially offset by strong growth in our corridor trains all across the country and, in particular, our Regional service in the northeast.

Fuel, power and utility expenses were $31.8 million (16.3%) worse than our Budget. The impact would have been more severe, but for aggressive efforts to reduce consumption, coupled with our program of hedging half our expected fuel requirements; fuel hedges paid us $7.5 million during the year and cost only $0.5 million.

The most significant offsets to the financial challenges of revenue shortfall and increased fuel expense were the savings to Budget realized in Salaries, Wages and Benefits. Combined, these cost categories were $136.6 million (8.5%) better than Budget. Our total year-end headcount was 19,177, a reduction of 819 employees (4.1%) from a year ago. In four years, headcount has been reduced 5,700 or 23%. Simply stated, we are delivering more service, and better service, with fewer employees. At the same time, we have undertaken the largest capital program in recent memory.

Another significant cost savings derived from our expense charge for injury claims related to employees (FELA), passengers and others. Our independent actuaries have just now completed their assessment of our claims reserve and recommend we recognize a one-time, non-cash credit of $49.1 million, based on Amtrak's most recent five year loss history and expected future settlements of incurred claims. This credit reflects our reduced levels of employment (down 23% in four years) as well as our loss experience (FELA reported claims down 43% in four years.) While such credits may not repeat in future years, we are pleased that this year's credit reflects the operation of a safer railroad for our employees and the public at large.

Our capital program, net of third party contributions, was budgeted to be $495.7 million (including $43.0 million of carry-over projects), funded with $368.6 million from our Federal Appropriation and $127.1 million from our carry-forward cash balance. Our actual outlays (again, net of third party contributions) were $454.7 million or 92% of Budget. We are proud that we were able to invest virtually all our capital grant – the highest level in our history – and we are confident these investments will pay dividends for years to come.

We had expected our year-end available operating cash to be $75.0 million (before deducting the float of outstanding checks.) For all the reasons discussed above, it was, in fact, $121.4 million. On a book basis, our consolidated year-end cash balance (including the addition of miscellaneous non-operating accounts and deducting the float of outstanding checks) was $91.5 million.

While our outside auditors have not yet completed their review of our financial results, we fully expect their audit will reconfirm the integrity of our accounting records and show continued progress in the areas of identified material weaknesses (none in FY04), reportable conditions (just one in FY04) and net audit adjustments ($7 million last year.)

**Operational**

The operations of our railroad last year were good – especially considering the extraordinary operating challenges that we faced. Ridership reached a record 25.4 million (excluding NJT *Clocker* riders, it was 23.8 million) on 100,000 trains operated.

While ridership is principally a key indicator of customer demand, it is equally an indicator of the level of operations and service we are called upon to provide. Accordingly, I am pleased to report that our 2005 ridership of 25.4 million was a record – the third such record in as many years. A record number of customers requested our service and we are proud we were able to meet their needs. Furthermore, we met this increased demand while incurring 9% fewer customer complaints and 5% higher commendations than last year.

System-wide on-time performance (OTP) did not achieve our 2005 goal, set (aggressively!) at an overall 85%. Actual system result of 70% was about equal to last year's 71%. Of greatest significance, on the northeast corridor, where we are not dependent on freight railroad performance, the OTP for the *Acela Express* and *Metroliner* services combined was 78% or four percentage points better than last year. As we restored our *Acela Express* service over the past few months, we note, with cautious optimism, their OTP performance during September was 89%.

Last year, we undertook a major make-over of our popular *Empire Builder* service. A multi-discipline effort involving marketing, operations, mechanical, finance and others was focused to significantly upgrade the *Empire Builder* with improved equipment, amenities and services. The hope, of course, was to increase our ridership and revenue and thereby reduce our operating deficit. Although the service was not officially re-launched until August, the results were immediate and dramatic: *Empire Builder* ridership and revenue year-over-year had both been trending up by almost 10% for June through August, but in September grew by 13.8% and 22.4%, respectively.

Without doubt, the greatest operating challenge last year related to the *Acela Express*. On April 15, all twenty *Acela* trainsets, accounting for 25% of total passenger revenues, were removed from service indefinitely because of safety concerns related to brake disk failures. Within days, we quickly assembled a fleet of replacement *Metroliner* equipment to service most of the *Acela* timeslots while the brake disk failure was investigated and resolved. Limited *Acela Express* service was reintroduced in early July and full service resumed by the end of September.

During the year, we made further progress in meeting our goal of making Amtrak a safer business. For our employees, we improved on the FRA "reportable injuries per 200,000 man-hours worked" achieving a 10% improvement from last year. At the same time, Amtrak also reduced passenger injuries overall by 5%. Our commitment to environmental responsibility was evidenced by our ratings on environmental compliance audits and Facility Assessment Compliance Evaluations (FACE) assessments last year: We had only 0.6 Potential Violations (PVs per audit or assessment) compared with our Budget goal of 1.2. Finally, we note the progress of our Police and Security department. In addition to their focus on homeland security initiatives, their concentration on crimes analysis and directed patrols resulted in significant reductions in larcenies (21%) and vandalisms (52%).

**Capital Investment**

FY05 was another year of significant reinvestment moving us closer to the goal of state-of-good-repair for our physical assets and management information systems. In total, we invested $454.7 million of Federal and Amtrak funds plus an additional $174.6 million of third party capital.

Investment in our railroad infrastructure continues to account for the largest portion of our capital dollars...$210 million of Federal and Amtrak funds and $165 million of third party capital. Forty percent of this combined investment was in track, ties, ballast and the like. Electric traction, bridges/culverts/tunnels and communication investments accounted for another 33%. The remaining investments were in programs such as fire and life safety.

The measurable physical results of our engineering capital investment program last year are impressive; almost 200,000 new ties (three-fourths of which were concrete); 75 miles of new rail; 74 miles of catenary hardware; 104 turnouts replaced; and 44 track miles of automatic block signals. Improvements were also made to 14 stations, 13 electric substations and 18 undergrade bridges. The Capital Production schedule attached to this letter states similar statistics for three earlier years and our Budget for next year.

Next to infrastructure, our next largest group of investments was earmarked for our fleet. $198 million of Federal and Amtrak funds were invested in improvements and overhauls of our passenger car and locomotive fleet.

The measurable physical results of our mechanical capital investments in the fleet were the remanufacture and/or heavy overhaul of passenger cars, including: 124 Amfleet, 28 Horizon and 11 Surfliner units. Additionally, within our Superliner fleet, 57 cars were remanufactured and/or heavy overhauled while 23 Superliner coach-bag cars were significantly modified. We completed the rebuild of three damaged units, reducing our backlog of repair work. The overhaul of 63 diesel and 9 electric locomotives was also accomplished last year along with the overhaul of maintenance-of-way equipment. Again, the Capital Production schedule attached to this letter states similar statistics for three earlier years and our Budget for next year.

Capital investments in our business other than infrastructure and mechanical were also targeted to improving our state of good repair. Amtrak continued to address historic environmental contamination issues and invested $4.8 million for remediation projects. Our pollution prevention program included $3.4 million in projects. And, our Police and Security capital plan provided numerous security upgrades.

Capital investment efforts to improve our management information systems also progressed this year. In September, we initiated the total replacement of our Human Resource/Payroll systems with new systems scheduled to be operational by December 2006. This effort will be followed by another capital program to upgrade and replace all our financial systems.

**Debt**

We continued to operate our business last year without resorting to new debt facilities. Indeed, the company has undertaken no new debt facilities since the $100 million emergency loan from DOT on July 3, 2002.

Amtrak's consolidated debt outstanding was reduced $137.9 million (3.6%) last year, including a $17.1 million principal payment on the DOT loan of 2002.

The company continues to be in full compliance with all covenants on all its debt.

**Amtrak Strategic Reform Initiatives**

In April this year, the company presented to Congress a document setting forth Amtrak Strategic Reform Initiatives for the next five years. As you know, we embraced demanding and challenging reform initiatives that were structural, operational and legislative in nature. While it is too early to assess our progress on these initiatives, I can assure you that we have already begun to work on those initiatives that are wholly within our control.

We will begin to report our business results this year along the business lines detailed in our FY06 Grant Request – Infrastructure management, NEC operations, State corridor operations, National long distance, Ancillary business and Unallocated system support. While the current, outdated accounting and financial reporting systems are challenged by this requirement, we believe we can provide information that is timely, responsive and useful for business management, even while we build a more robust activity based accounting system.

Efforts to improve our financial performance are apparent from the discussions above and began to show first fruits in our approved Budget for FY06. Our approved Budget for federal operating support is $30 million less than our Budget for the year just ended. Much of this reduction is possible – in spite of cost increases – because of aggressive actions taken to increase revenues $100 million through innovative service, marketing and pricing strategies.

Customer satisfaction is being affirmatively addressed by the creation of a new Customer Services Department responsible for targeting improvements in the areas of customer interface such as food and beverage, on time performance and employee relations.

Many of the Strategic Reform Initiatives are longer-term and some will require legislative actions to accomplish. We await – as I am sure you do also – the presentation, debate and, hopefully, passage of a Congressional Reauthorization Bill for Amtrak.

We all hope, as our performance is judged, we will be deemed good stewards of the public trust.

Sincerely,

David L. Gunn
*President and Chief Executive Officer*

Attachments

cc: Amtrak Board of Directors
Executive Committee
Sally Bellet
Al Broadbent
Roy Deitchman
Emmett Fremaux
David Hughes
Vince Nesci
Paul Nissenbaum
Bill Schulz
Ed Walker

# Summary Operating Results
## ($ millions)

| | FY02 Actual | FY03 Actual | FY04 Actual | FY05 Un-Audited Actual | Total FY06 Board Approved Budget |
|---|---|---|---|---|---|
| Ticket Revenue (Unadjusted) | $ 1,285.7 | $ 1,213.9 | $ 1,263.4 | $ 1,248.8 | $ 1,343.9 |
| Food and Beverage | 84.1 | 78.3 | 80.4 | 78.9 | 79.2 |
| State Supported Train Revenue | 128.5 | 136.0 | 137.4 | 140.9 | 146.7 |
| Other / Adjustments to Passenger Related | (30.1) | (30.9) | (32.6) | (35.2) | (38.4) |
| Subtotal Passenger Related Revenue | 1,468.2 | 1,397.3 | 1,448.6 | 1,433.3 | 1,531.4 |
| State Capital Payments | 16.4 | 18.6 | 21.8 | 28.7 | 30.2 |
| Other Revenue | 743.7 | 658.0 | 395.0 | 421.6 | 379.1 |
| **Total Operating Revenue** | 2,228.2 | 2,074.0 | 1,865.4 | 1,883.6 | 1,940.7 |
| Salaries | 158.2 | 153.4 | 156.8 | 167.6 | 188.1 |
| Wages & Overtime | 906.0 | 877.6 | 790.1 | 788.8 | 801.8 |
| Benefits & Employee Related | 553.2 | 525.7 | 505.5 | 520.6 | 581.2 |
| Subtotal Salaries, Wages & Benefits | 1,617.4 | 1,556.7 | 1,452.4 | 1,477.1 | 1,571.0 |
| Fuel, Power, & Utilities | 175.0 | 188.6 | 184.0 | 227.5 | 252.8 |
| Other Operating Expenses | 929.8 | 830.3 | 740.0 | 678.6 | 748.4 |
| Depreciation | 501.5 | 628.2 | 573.5 | 578.7 | 570.0 |
| Interest, Net | 136.5 | 144.6 | 129.6 | 125.0 | 122.7 |
| Discontinued Operations | - | | 94.7 | 3.1 | - |
| Undefined Budget Savings | | | | | (46.3) |
| **Total Expenses** | 3,360.1 | 3,348.3 | 3,174.3 | 3,089.9 | 3,218.6 |
| **Amtrak Net Loss** | 1,131.9 | 1,274.3 | 1,308.9 | 1,206.3 | 1,278.0 |
| Less Project Costs in Operating Budget | - | 3.0 | 6.8 | 6.0 | 6.4 |
| **Loss before Adjustments** | 1,131.9 | 1,271.4 | 1,302.1 | 1,200.3 | 1,271.5 |
| Net Interest (Funded separately) | 136.5 | 144.6 | 137.8 | 125.0 | 122.7 |
| Depreciation | 501.5 | 628.2 | 573.5 | 578.7 | 570.0 |
| Asset Impairment Charge | - | | 100.7 | - | - |
| OPEB Liability Increase | 16.1 | 21.0 | 39.8 | 50.1 | 69.0 |
| State Capital Payments | (16.4) | (18.6) | (21.8) | (28.7) | (30.2) |
| Subtotal Adjustments | 637.7 | 775.2 | 830.0 | 725.2 | 731.5 |
| **Operating Loss (Funding Requirement)** | $ 494.2 | $ 496.1 | $ 472.1 | $ 475.2 | $ 540.0 |
| **Change from prior year** | n/a | 2.0 | (24.0) | (3.2) | 64.8 |

Discontinued Mail and Express Operations in FY04 are included in FY02 and FY03 revenue and expense

# Capital Program
## ($ millions)

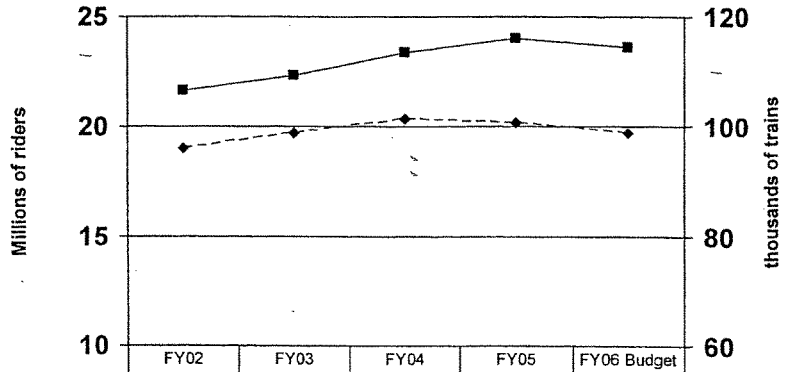
| PROJECT | FY05 Actual Federal and Internal | Third Party | All Funding Sources |
|---|---|---|---|
| Infrastructure | $210.1 | $165.1 | $375.2 |
| Fleet | 196.8 | | 196.8 |
| Amtrak Technologies | 13.6 | | 13.6 |
| Law - Real Estate | 5.2 | 8.2 | 13.4 |
| Marketing | 5.8 | | 5.8 |
| Procurement | 6.9 | | 6.9 |
| Environmental | 5.7 | | 5.7 |
| Transportation | 2.4 | | 2.4 |
| Police & Security | 1.8 | | 1.8 |
| Other | 2.6 | | 2.6 |
| Project Related Costs | 3.8 | 1.3 | 5.1 |
| | $454.7 | $174.6 | $629.3 |
| Budget | $495.7 | $200.1 | $695.8 |
| % Spent | 92% | 87% | 90% |

Third party investments include state, local, and other federal grants.

"Other Projects" include Finance, Contract Administration, and other departments

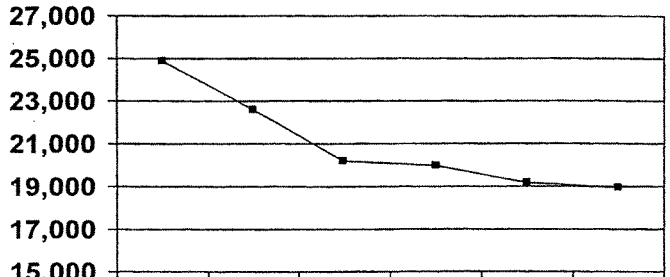
# Annual Ridership vs. Intercity Trains Operated

(excludes Commuter trains, NJT portion of the Clockers and associated riders)




| | FY02 | FY03 | FY04 | FY05 | FY06 Budget |
|---|---|---|---|---|---|
| Ridership | 21.7 | 22.3 | 23.4 | 24.0 | 23.6 |
| Trains Operated | 96.1 | 98.9 | 101.4 | 100.7 | 98.9 |

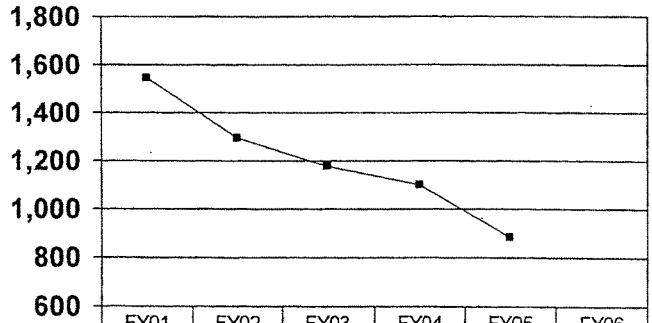
# Actual Headcount




| | 9/30 FY01 | 9/30 FY02 | 9/30 FY03 (1) | 9/30 FY04 | 7/31 FY05 (1) | 9/30 FY06 Budget |
|---|---|---|---|---|---|---|
| Headcount | 24,877 | 22,573 | 20,203 | 19,996 | 19,177 | 18,958 |
| % Decrease from Prior Yr | | 9% | 10% | 1% | 4% | 1% |

(1) 1,500 agreement employees transferred to MBTA in FY03 and 127 employees transferred to Metrolink as of June 30, 2005.
(2) FY06 Budget headcount authorized at 20,385 less current vacancy rate of 7%.

# FELA Reported Claims




| | FY01 | FY02 | FY03 | FY04 | FY05 | FY06 |
|---|---|---|---|---|---|---|
| No. Reported Claims | 1,546 | 1,297 | 1,177 | 1,101 | 885 | n/a |
| % Decrease from Prior Yr | | 16% | 9% | 6% | 20% | |

# Capital Production

| Engineering Production | FY 02 Actual | FY 03 Actual | FY 04 Actual | FY 05 Actual | FY 06 Budget |
|---|---|---|---|---|---|
| Concrete ties | 0 | 104,000 | 152,000 | 159,657 | 116,688 |
| Wood ties/Timbers | 16,000 | 49,000 | 59,000 | 45,172 | 65,560 |
| Fencing (feet) | 3,000 | 3,000 | 17,000 | 10,000 | 9,500 |
| Bridge ties replaced | 1,500 | 1,184 | 1,571 | 3,919 | 4,224 |
| Rail installed (rail miles) | 8 | 26 | 240 | 75 | 78 |
| Turnouts replaced | 37 | 52 | 115 | 104 | 84 |
| Catenary hardware (miles) | 48 | 39 | 77 | 74 | 68 |
| Automatic Block Signals (track miles) | 4 | 0 | 63 | 44 | 72 |
| Ballast renewed (track miles) | 9 | 10 | 40 | 17 | 15 |
| Substations Improved | 2 | 15 | 22 | 13 | 14 |
| Undergrade bridges improved | 17 | 33 | 17 | 18 | 25 |
| Copper signal cable (miles) | 8 | 23 | 11 | 4 | 1 |
| Interlocking improved | 16 | 3 | 6 | 6 | 4 |
| Stations improved | 13 | 15 | 4 | 14 | 12 |
| **Mechanical Production** | | | | | |
| Amfleet Cars Remanufactured / Heavy Overhauled | 17 | 20 | 114 | 124 | 103 |
| Diesel locomotive heavy overhauls | 48 | 44 | 49 | 63 | 51 |
| Superliner Cars Remanufactured / Heavy Overhauled | 0 | 0 | 39 | 57 | 137 |
| Superliner Coach Bag Modification | 0 | 0 | 0 | 23 | 2 |
| Baggage Car Heavy Overhauls | 0 | 0 | 32 | 17 | 16 |
| MOW Work Equipment Overhauls | 0 | 0 | 31 | 34 | 40 |
| Wrecks Rebuilt - Locomotives/ Cars | 6 | 22 | 29 | 3 | 1 |
| Electric Locomotives Overhauled | 0 | 7 | 7 | 9 | 8 |
| Horizon Cars Remanufactured / Heavy Overhauled | 0 | 0 | 1 | 28 | 20 |
| Surfliner Cars Remanufactured / Heavy Overhauled | 0 | 0 | 0 | 11 | 0 |
| Heritage Car Remanufacture / Heavy Overhauls | 0 | 6 | 0 | 0 | 21 |
| AEM-7 (electric engines) Remanufactured | 13 | 0 | 0 | 0 | 0 |

Some FY02 data has been estimated where units were not available.

**Testimony of David Hughes**
**Interim President and Chief Executive Officer, Amtrak**
**House Transportation and Infrastructure Committee**
**Subcommittee on Railroads**
**Hearing on Current Governance Issues at Amtrak**
**November 15, 2005**

Good morning. My name is David Hughes and up until a few days ago I served as the Chief Engineer for Amtrak. On Wednesday of last week, I accepted an offer by the Board of Directors to serve in an interim capacity as the President and Chief Executive Officer.

While I have been a member of Amtrak's senior management for the past 3½ years, I have been in the railroad industry for more than 30 years. Fundamentally, I believe that passenger rail is an important aspect of our nation's multimodal transportation network, and I will work to the best of my ability to continue to advance the goals and objectives of Amtrak to provide safe and reliable passenger rail service for our customers.

Many of you are familiar with the Strategic Reform Initiatives (SRI) that Amtrak released earlier this year. I was directly involved in the creation of these reform initiatives and I will see to it that during my tenure as President and CEO, no matter how long, Amtrak will work to advance the policy objectives set forth in the plan.

Please rest assured that despite this time of transition, Amtrak employees will continue to strive to maintain the highest levels of service and safety for our passengers. At the same time, we will endeavor to look for creative ideas to foster more competition, improve operational efficiencies, and return the railroad to a state-of-good-repair. The challenges are many, but given adequate resources and the continuing support of Congress, we can and will pursue the goals set forth in the SRI and help fulfill the objective that rail passenger service will remain an important transportation alternative for the American people now and in the future.

SENIOR DEMOCRATIC WHIP

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
*RANKING MEMBER*, SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON RAILROADS

COMMITTEE ON SCIENCE
SUBCOMMITTEE ON RESEARCH
SUBCOMMITTEE ON ENERGY

DEMOCRATIC STEERING AND POLICY COMMITTEE

CHAIR, TEXAS DEMOCRATIC DELEGATION

CONGRESSIONAL BLACK CAUCUS
CHAIR, 107TH CONGRESS

*Eddie Bernice Johnson*
Congress of the United States
30th District, Texas

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**Opening Statement for the Honorable Eddie Bernice Johnson**
**House Subcommittee on Railroads**
**"Hearing on Current Governance Issues at Amtrak"**
**Tuesday, November 15, 2005 – 2325 RHOB**

**Thank you Mr. Chairman.**

**I want to thank you and Ranking Member Brown for holding this important hearing this morning.**

**I deeply regret the recent decision by the Amtrak Board of Directors to fire David Gunn.**

**Less than two months ago, this subcommittee received testimony from Amtrak's Board of Directors that spoke to the effectiveness of Mr. Gunn's leadership and managerial performance.**



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**Yet, it appears that a proven track record, slashing debt, cutting operating expenses, and increasing ridership to a record 25.4 million passengers for a struggling rail entity are simply not enough to preserve one's job security.**

**It appears to me that the primary reasoning behind Mr. Gunn's firing lies less with his performance and more with his unwillingness to go along with the Bush Administration's ultimate goal of starving Amtrak to death and then carving it up for liquidation.**

**I want to thank our witnesses that have come before the subcommittee this morning.**

**I look forward to their testimony, as I am particularly interested in learning more about the decisions that led to Mr. Gunn's firing and the level of coordination with the White House.**

**Thank you Mr. Chairman.**

# TESTIMONY

# OF

## DAVID M. LANEY, ESQ.
## CHAIRMAN, AMTRAK BOARD OF DIRECTORS

## BEFORE THE

## SUBCOMMITTEE ON RAILROADS

## OF THE

## HOUSE COMMITTEE ON
## TRANSPORTATION AND INFRASTRUCTURE

**10:00 a.m.**
**TUESDAY, NOVEMBER 15, 2005**
**2325 RAYBURN HOUSE OFFICE BUILDING**

Chairman LaTourette, Members of the Committee: My name is David Laney. I am the Chairman of the Amtrak Board of Directors. I am also a partner at Jackson Walker, a Texas law firm, and have spent much of my career working on transportation issues, including six years as Chairman of the Texas Transportation Commission.

I know we are here today to talk about the recent leadership change at Amtrak, and I will speak to that in a moment. But I want to start off today by talking a little about Amtrak's recent performance, and the need for more fundamental change to put the rail service on a stronger, more financially sustainable track.

At the outset, I want to make it clear that our Board is 100% committed to leveraging the full potential of intercity rail service in our national transportation mix. We want to fix Amtrak's problems, and make it better. It is not our goal to destroy, dismantle or privatize Amtrak as some have falsely claimed. My hope is that today, and going forward, we can have a spirited and constructive debate about the best strategy for improving Amtrak – a goal that all of us share.

So, let's talk about where Amtrak stands today:

As I said when I testified before this subcommittee in September on our Strategic Reform Initiative, David Gunn has helped Amtrak achieve much needed financial stability. He has focused the railroad on repairing its core assets in the Northeastern Corridor. Today, Amtrak is a better run company as a result of his leadership, and he and the employees of Amtrak deserve credit for these significant achievements.

At the same time, however, the Amtrak Board cannot just look in our rear view mirror and be content at the distance we have come. Huge challenges still lie ahead that Amtrak will not and cannot overcome on its present course. These urgently need our attention, our creativity, and most of all, our concerted action.

For example:

- For the last four years, in spite of the improvements noted, Amtrak has had operating losses of nearly $500 million each year. It may be that these losses would have been worse in recent years without some of the actions that David Gunn and the Board took. But the critical point is that Amtrak's financial performance has not improved in the last three years – we've lost the same amount of money every year. And over the last four years, Amtrak has lost two billion dollars in its operations, a bottom line that is not acceptable, and cannot continue indefinitely.

- Second, a key indicator that Amtrak's business needs substantial re-engineering is the fact that labor costs (salary and related expenses including benefits) were 103% of passenger related revenue in fiscal 2005. In other words, in our capital intensive business where labor is only one element of our cost structure, the cost of Amtrak's labor force alone exceeds the revenues derived from passengers on our trains. Few, if any businesses, would survive long with such outsized labor costs. It would be nice to fix this problem through a significant boost in passengers and ticket revenue, but to get our labor costs under control more quickly and certainly, Amtrak will need to outsource services, replace labor with technology, change labor agreements or take other significant steps.

- Third, in three areas where Amtrak has substantial difficulties that drive costs and losses up – food and beverage service, long distance service, and on-time performance problems– quite honestly, there is little progress to report, and much remains to be done.

With these challenges and others in mind, the Board, with the support of management, put together a strategic plan to map out future reforms for Amtrak that would build on the progress already made. We completed this plan in April, and gave testimony on it to this committee in September. As I described then, the plan advances four essential objectives:

1. Development of passenger rail corridors based on an 80-20 federal state capital matching program, with states becoming "purchasers" of a variety of competitively bid corridor services.

2. Return of the Northeast Corridor infrastructure to a state of good repair and operational reliability

3. Preservation of our national long distance system with gradually restructured routes that will over time have to meet minimum financial performance requirements.

4. The opening of intercity passenger rail to competition and private commercial participation.

This now brings me to the issue of our management change. The Strategic Reform Initiative was developed with the knowledge that the progress we had made to date was only a beginning, and that Amtrak's present course was not sufficient to significantly improve the railroad's performance. David Gunn participated reluctantly and often not constructively in the development of this plan. When it came to its implementation, he became, at best, an unwilling bystander. His resistance to the strategic initiative presented the Board with two problems:

- One, David's refusal to go in several new directions meant that Amtrak would continue on its present course – flat operating losses, unsustainable labor costs, money losing long distance and food services and more;

- Two, it meant that while the Amtrak Board was accountable to the Congress, Administration and public for the organization's performance, our chief executive officer was accountable to no one above him.

In the end, the Board felt that we had no choice but to release David because neither of these outcomes was acceptable. But let me say, this was a decision of last resort. It was a decision we wished that we did not have to make. This decision was not made casually or precipitously as some have suggested. On the contrary, the decision was made with care, deliberation and objectivity over an extended period of time. Most importantly, the action taken by the Board was the right decision based on David Gunn's overall performance during the past many months, and it is our final decision.

Last, before I finish I'd like to address the issue of the Board's September decision to create a structural mechanism – either a wholly owned subsidiary or separate division – to more clearly separate the financial management and accounting for train operations from the infrastructure in the Northeast Corridor. Much has been said about this decision and most of this is misinformed.

Current and potential Amtrak partners will not invest in our infrastructure or underwrite our operations if they don't have confidence that they are getting what they pay for – no more, no less. This is a particular concern now when there is growing interest in bringing the Northeast Corridor up to a state of good repair after years of underinvestment. Separating the accounting and financial management of these distinct business operations is just good business. It is not a prelude to an asset sale or the privatization of Amtrak; the Board supports neither at this time which we made clear in our Strategic Reform Initiative. Finally, the Board was very clear in adopting the strategic plan that Amtrak should continue to control the management of both train operations and infrastructure on the Northeast Corridor. The complexities and risks of a different arrangement at this time simply outweigh the benefits.

That concludes my statement, Mr. Chairman. I'd be happy to answer any questions.

CONFIDENTIAL

NOVEMBER 15, 2005
SUBCOMMITTEE ON RAILROADS
HEARING ON
"CURRENT GOVERNANCE ISSUES AT AMTRAK"

RESPONSES TO QUESTIONS FROM REP. CORRINE BROWN TO:

MR. DAVID LANEY
CHAIRMAN
AMTRAK BOARD OF DIRECTORS

**Responses to Questions for the Record (QFR) to Mr. David Laney**

1. Mr. Laney, please provide the date and manner in which you and the other Amtrak Board Members were first made aware of your invitations to the Railroad Subcommittee hearing on Amtrak Governance scheduled for November 15, 2005.

   Answer: On November 9, 2005, Amtrak's Board office received by fax five letters addressed to Messrs. Hall, Sosa, Hughes, Gunn and me inviting each of us or our designees to appear at a hearing on Current Governance Issues at Amtrak on November 15, 2005. On November 10, 2005, the Assistant Corporate Secretary faxed copies of the letters to Messrs. Hall, Sosa and me.

2. Mr. Laney, in response to questions regarding the public relations firm that was hired by the Amtrak Board of Directors, please provide the following: the name of the public relations firm, the names of all the individuals at the firm that are involved in the contract and in implementing the contract obligations to Amtrak or the Amtrak Board of Directors, the date the firm was hired, the purpose for hiring the firm, the Board vote on hiring the firm, and the amount that Amtrak is paying the firm for its services. Please also provide the Subcommittee with a copy of the contract.

   Answer: The name of the public relations firm hired by the Board of Directors is Chlopak Leonard Schechter and Associates. The individual at the firm principally responsible for the assignment was Robert Chlopak; others at that firm involved included B. Phillips, J. Tramontana, J. Dau, N. Lutch, and K. Hull. The firm was hired on November 2, 2005 to assist the Board with public relations issues. Amtrak paid fees and expenses to the firm in connection with the assignment of $43,536. A copy of the agreement is attached.

3. Mr. Laney, how many times have you ridden on Amtrak trains since you were confirmed by the Senate as a member of Amtrak's Board of Directors? Please provide the dates, destinations, and purposes of the travel to the Subcommittee. Please provide the same

information to the Subcommittee for Mr. Hall and Mr. Sosa, based on the date that they were appointed to the Amtrak Board.

**Answer:** I have ridden on Amtrak trains many times during my tenure as an Amtrak Board member, principally for Amtrak purposes and occasionally, in part for other business or pleasure. The following is a list of such trips for which I have records. Several other trips on the Northeast Corridor, for which I do not have records, are not listed.

| Date | Train | ORG-DES |
|---|---|---|
| 12-19-02 | 2168 | WAS-NYP |
| 3-5-03 | 2109 | NYP-PHL |
| 3-5-03 | 2151 | PHL-WIL |
| 3-5-03 | 2163 | WIL-WAS |
| 3-9-03 | 2252 | WAS-NYP |
| 4-21-03 | 2166 | WAS-BAL |
| 4-21-03 | 85 | BAL-WAS |
| 4-23-03 | 2107 | NYP-WAS |
| 6-13-03 | 2164 | WAS-NYP |
| 7-23-03 | 2164 | WAS-NYP |
| 11-7-03 | 2164 | WAS-NYP |
| 9-29-03 | 2171 | BWI-WAS |
| 9-30-03 | 178 | WAS-BWI |
| 11-6-03 | 2112 | WAS-BWI |
| 12-11-03 | 2164 | WAS-NYP |
| 3-22-04 | 2109 | NYP-WAS |
| 4-29-04 | 2104 | WAS-NYP |
| 6-11-04 | 2110 | WAS-NYP |
| 6-30-04 | 7 | MSP-GPK |
| 9-22-04 | 2107 | NYP-WAS |
| 2-25-05 | 2166 | WAS-NYP |
| 4-7-05 | 2172 | WAS-NYP |
| 4-22-05 | 2168 | WAS-NYP |
| 5-11-05 | 2109 | NYP-WAS |
| 5-31-05 | 7 | MSP-WFH |
| 6-2-05 | 27 | WFH-PDX |
| 9-20-05 | 2107 | NYP-WAS |
| 9-23-05 | 2100 | WAS-NYP |
| 12-6-05 | 2104 | WAS-PHL |
| 1-6-06 | 29 | WAS-CHI |

I do not have information relating to Amtrak train travel for Messrs. Hall and Sosa.

4. Mr. Laney, how many times have you visited Amtrak facilities since you were confirmed by the Senate as a member of Amtrak's Board of Directors? Please provide the dates, names and locations of the facilities, and purpose of the visit(s) to the Subcommittee. Please provide the same information to the Subcommittee for Mr. Hall and Mr. Sosa, based on the date that they were appointed to the Amtrak Board.

**Answer:** I have visited numerous Amtrak facilities at the following locations. I do not have records of specific dates or all of the personnel with whom I visited, nor do I have information relating to Messr. Hall and Sosa. The Amtrak facilities I have visited include Amtrak office operations, and also includes yards, shops and maintenance facilities at the following locations:

- Boston, MA South Station
- Providence, R.I. station
- New York, NY Penn Station, operations on and off-site
- Philadelphia 30th Street Station, all operations
- Wilmington, DE, all operations
- BWI station
- Washington, D.C. Union Station, all operations on and off-site
- Chicago Union Station, all operations on and off-site
- St. Paul, MN Station
- Los Angeles, CA Union Station
- Oakland, CA station, all operations on and off-site
- Seattle, WA station
- Portland, OR station
- Whitefish, MT station
- East Glacier, MT station
- Dallas, TX Union Station
- Fort Worth, TX station
- Numerous smaller stations and related facilities

The principal purposes of the visits have been to further my understanding of Amtrak operations and review/inspect facilities and operations. A number of the visits have been incidental to either Amtrak travel or other business or personal travel. I have visited a number of the sites listed above on numerous occasions; for instance, during my term as an Amtrak Board member, I have visited Washington Union Station more than 50 times; New York Penn Station more than 25 times; Chicago, Oakland and Philadelphia stations and certain operations there each 2-4 times.

5. Mr. Laney, please provide the Subcommittee with copies of all your travel, flight, hotel, restaurant, board fees and other expenses charged by or to Amtrak since you have served on the Board. Please include all expenses, regardless of whether they were directly charged to Amtrak or submitted later on your behalf for reimbursement by Amtrak. Please provide the same information for Mr. Hall and Mr. Sosa.

   **Answer:** A summary of these is attached. I do not have the information for Messrs. Hall and Sosa.

6. Mr. Laney, have you had a conversation with any person or official within the Bush Administration at any time regarding any position or potential position within the Bush

Administration, regardless of whether that position would require a presidential appointment or Senate confirmation, within the past year?

**Answer:** No.

7. Mr. Laney, please provide the Subcommittee with copies of all the letters submitted by all Board members listing their financial holdings and recusals to avoid conflicts of interest or the appearance of conflicts of interest.

   **Answer:** Copies of the Clayton Antitrust Act forms completed by the Board members on an annual basis are attached.

8. Mr. Laney, the "Strategic and Reform Initiatives and FY06 Grant Request," unveiled in April 2005 – just months ago – stated that the costs, complexities and risks of splitting the Northeast Corridor from Amtrak's main operations "outweigh the benefits and are therefore inadvisable" and that "control of rail operations and infrastructure management should remain unified for purposes of safety and efficiency." Yet the resolution that the Board passed on September 22nd set in motion a plan to transfer title to all assets of the Northeast Corridor (NEC) infrastructure to a new, wholly owned subsidiary of Amtrak. You stated in your oral testimony that the statements contained in the "Strategic and Reform Initiatives and FY06 Grant Request" are "absolutely consistent" with the September 22nd resolution. Please explain your position further.

   **Answer:** In developing and adopting the Board resolution of September 22, 2005 to initiate the exploration of issues relating to the segregation of NEC assets to enhance our understanding of the ownership costs of such assets, the Board never contemplated a corresponding separation of management of NEC assets from management of NEC train operations. The statement contained in the Strategic Reform Initiatives to which you have referred was and is consistent with the Board's position as reflected in the September 22 resolution. It is critical that Amtrak management, the federal government and the states receive information relating to such costs that is considered credible and reliable by all interested parties.

9. Mr. Laney, please provide the Subcommittee with copies of the minutes from the Board meetings held on September 22, 2005, November 16, 2005, and December 5, 2005.

   **Answer:** The minutes for these meetings are attached

10. Mr. Laney, what is the purpose of creating a Northeast Corridor Subsidiary?

    **Answer:** As set forth in the resolution approved by the Board on September 22, 2005, the proposed subsidiary would be created "for purposes of facilitating and furthering future capital investment, financing, development, oversight and operation of the NEC Infrastructure with the intent to enhance the performance and capacity of the NEC Infrastructure for the benefit of the Corporation and all current and future users of the NEC Infrastructure". Moreover, in my letter to you dated November 3, 2005, I indicated that the Board "took this action in part to augment Amtrak's cost accounting capabilities, especially insofar as pertains to the NEC plant and operations" to provide committed stakeholders like

the Congress greater simplicity and clarity, and ultimately a better overall understanding of Amtrak.

11. Mr. Laney, Mr. Gunn stated that the Board was implementing a new cost accounting system which will give the Board and others clarity in terms of how Amtrak spends its money. Please describe what this new cost accounting system will do, and state whether the new cost accounting system will address your concerns on transparency and financial accounting of Amtrak's assets.

    **Answer:** New cost accounting systems will improve the speed, accuracy and detail of accumulating information relating to expenses (labor, materials, fuel, etc.) Perhaps more importantly, new systems will enable Amtrak to align expenses with activities (by project, by train, by route, by business line, etc.). A more thorough understanding of Amtrak's business activity costs will enable Amtrak to better measure performance and better manage its businesses. Based on an improved understanding or our costs, for instance, we may choose to expand or contract particular business services or adjust our pricing strategies. Similarly, a better understanding of our costs relative to market pricing for comparable functions could lead us either to contract out or bring in-house various business activities. In short, we will be able to spend our available dollars more wisely and effectively with enhanced cost accounting capabilities. While many of the benefits will be realized by 2008, such systems will not be fully developed, installed, debugged and fully operational until 2012. Amtrak needs enhanced cost accounting information before then.

12. Mr. Laney, under the Northeast Corridor Subsidiary as drafted in the September 22nd resolution, NEC operations would remain under Amtrak's control. However, there seems to be no transfer of the obligations to perform service, or the employees needed to fulfill those obligations. Who would maintain the infrastructure and perform the services you envision under this proposal? Is it Amtrak, or does the Board envision contracting-out some of the work on the Northeast Corridor?

    **Answer:** It was the intention of the Board that if a subsidiary were created, the obligation to maintain the infrastructure transferred to the new subsidiary would remain with Amtrak and its employees. Amtrak currently contracts out work from time to time on the NEC and would continue to do so.

13. Mr. Laney, please provide the Subcommittee with a copy of the Executive Summary, which is referenced in the resolution on the Northeast Corridor Subsidiary, and any legal guidance – either internal or external – on the implications of the Northeast Corridor Subsidiary to Amtrak.

    **Answer:** There was no Executive Summary accompanying the resolution. Amtrak management intended to attach an Executive Summary identifying with specificity the assets proposed to be transferred to the subsidiary, then determined that it was necessary first to review this issue with the Board. The reference to the Executive Summary was inadvertently left in the resolution when it should have been removed. As to legal guidance provided on this issue, such documents are privileged and confidential and may not be disclosed to third parties without waiving the attorney-client privilege. If you have any questions regarding this, please contact Amtrak's General Counsel, Alicia Serfaty.

14. Mr. Laney, please provide the Subcommittee with your views on H.R. 1713, the Passenger Rail Investment Act.

    **Answer:** Amtrak's Strategic Reform Initiatives reflect my core positions with respect to the basic elements of any legislation addressing the future of Amtrak specifically and intercity passenger rail generally. The more any proposed legislation provisions diverge from the basic tenets of Amtrak's Strategic Reform Initiatives, the less supportive I am likely to be of such provisions.

15. Mr. Laney, do you support or oppose privatizing portions of Amtrak? If you support privatizing portions of Amtrak, which portions in particular should be privatized or be considered for privatization?

    **Answer:** The term "privatization" encompasses a broad array of concepts, structures and arrangements, from the performance of any Amtrak function by non-Amtrak personnel, to consulting, to public-private partnerships, to outright transfers of assets and operations to the private sector. Regrettably, without more specificity the term "privatization" is not sufficiently descriptive for me to respond to your question.

16. Mr. Laney, please provide the Subcommittee with copies of all of the proposals submitted to Amtrak, Amtrak's Board of Directors, or individual directors for operating or managing portions of Amtrak, both on and off the Northeast Corridor. Please also indicate whether the proposals were solicited or unsolicited, and which ones Amtrak or the Board is considering.

    **Answer:** Within the past year, Amtrak and/or Amtrak Board members have received proposals from three entities -- CONNEX, Railway Services Corporation, and New Trains Leasing System -- that have expressed interest in joint ventures/undertakings for the operation of various state-supported services outside of the Northeast Corridor that are currently operated by Amtrak. Because of the confidential nature of certain information provided in these proposals, and of Amtrak's pre-decision analyses of potential business opportunities with private sector entities, Amtrak is not in a position to provide copies of proposals or details regarding its communications with their proponents, or to identify any proposals under active consideration. Should Amtrak decide to enter into such a venture, Amtrak will publicly disclose its plans.

17. Mr. Laney, you indicated at the hearing that Amtrak signed a confidentiality and non-disclosure agreement on some of the proposals. Please name which proposals those were and provide the Subcommittee with copies of each of those confidentiality and non-disclosure agreements.

    **Answer:** Amtrak signed a confidentiality and non-disclosure agreement with Railway Services Corporation. This confidentiality agreement is not subject to disclosure to third parties. If you have any questions regarding this, please contact Amtrak's General Counsel, Alicia Serfaty.

18. Mr. Laney, has any Member of Congress approached Amtrak, the Board, or you about specific individuals or groups interested in operating or managing certain portions of Amtrak?

If so, please provide the names of those Members and the names of the individuals and groups mentioned as being interested in operating or managing portions of Amtrak.

**Answer:** I have not been contacted by any Member of Congress regarding individuals or groups interested in operating or managing certain portions of Amtrak, nor am I aware of such discussions with anyone at Amtrak or other members of the Board.

19. Mr. Laney, what are the Board's rules of procedure for reaching a conclusion before a meeting? Is the Board authorized to take a vote outside of an official board meeting under those rules of procedure?

**Answer:** The rules and procedures pertaining to the Board's voting are contained in Amtrak's Bylaws. Under those Bylaws, the directors may vote outside of an official Board meeting in two instances. First, under Section 4.07, the Directors may participate in a meeting of the Board or Committee of the Board by means of conference call or other mechanism by which all participating Board members can hear one another. Second, under Section 4.12, any action that would otherwise be permitted at a meeting of the Board may be taken without a meeting if a consent in writing is signed by all of the members of the Board. In these two circumstances, a vote by the Board shall be legally valid.

20. Mr. Laney, in your oral testimony, you mention that there was a vote on the dismissal of Mr. Gunn. Please provide the Subcommittee with the date(s) of the vote, the manner in which it was held (i.e. at a meeting, during a telephone call or series of telephone calls), the location where the vote was held, the names of the Directors that were present, a tally of the final vote including how each Director voted, and a copy of the minutes taken during the meeting.

**Answer:** The decision to release Mr. Gunn from his position was made by Board conference call on November 7, 2005. All four Board members were present on the call and the vote was unanimous. A copy of the minutes of this meeting is attached.

21. Mr. Laney, in your oral testimony you stated in response to a question regarding the reasons you fired Mr. Gunn, "I think it would be a long list, and it is scattered throughout the strategic reform initiatives. He was resistant to the Board's push forward on a number of different fronts." Please provide the Subcommittee with the list of reasons why the Board fired Mr. Gunn, and which Board-driven initiatives Mr. Gunn did not support. Please also provide us with all previous draft copies and versions of the Strategic Reform Initiatives.

**Answer:** It is inappropriate for me to enumerate reasons for Mr. Gunn's dismissal as President and Chief Executive Officer of Amtrak. I did not retain my draft copies of Amtrak's Strategic Reform Initiatives once they were published in final form.

22. Mr. Laney, you stated in your oral testimony that huge challenges lie ahead that Amtrak will not and cannot overcome on its present course, and that those challenges urgently need "our attention, our creativity, and, most of all, our concerted action." Please explain what challenges you were referring to.

**Answer:** Our challenges have been thoroughly detailed for the Committee during 2004 in the combination of our Strategic Reform Initiatives, reports and statements from the

Department of Transportation's Office of Inspector General, and most recently, reports from the General Accounting Office.

23. Mr. Laney, you stated in your oral testimony that Mr. Gunn's refusal to go in several new directions meant that Amtrak would continue on its present course. What new directions were you referring to?

    **Answer:** The new directions are enumerated in detail in Amtrak's Strategic Reform Initiatives.

24. Mr. Laney, you state that the decision to fire Mr. Gunn was made with care, deliberation, and objectivity over an extended period of time, and that it was a decision of last resort. In what form was his dismissal deliberated? Were there board meetings where this came up?

    **Answer:** The dismissal of Mr. Gunn was indeed made with care, deliberation and objectivity over an extended period of time. Mr. Gunn's performance and future with Amtrak were discussed by Board members over a period of a number of months, before and after formal Board meetings and during telephone calls between Board meetings.

25. Mr. Laney, what is the purpose of the Corridor Taskforce?

    a. When was it formed? Does it exist today?

    b. Who would compose the taskforce?

    c. Did you or anyone on the Amtrak Board suggest including former members of the Amtrak Reform Council on the taskforce?

    **Answer:** The referenced "Corridor Task Force" was one approach Amtrak considered to facilitate and foster competition in connection with the operation of state-supported corridor trains. It was contemplated that the task force, if formed, would include representatives of Amtrak, FRA, states, and the private sector; however other than the representatives from Amtrak (Paul Nissenbaum) and from FRA (Mark Yachmetz), no specific names were discussed. The task forced has not yet been created. Rather, in accord with the provisions of Amtrak's FY2006 appropriation, Amtrak anticipates working with the FRA to develop an RFP for a pilot project to develop competition in the provision of services required for the operation of state supported services.

26. Mr. Laney, what is the Legislative Policy Committee resolution that the Board is considering?

    d. Who would be the members of the committee?

    e. What is the purpose of the committee?

    **Answer:** The Legislative Policy Committee resolution considered by the Board on September 22, 2005, was intended to establish a Board committee to assist with developing legislative policy and providing information and commentary to the Board in connection with the development of Amtrak's legislative policy positions. It was contemplated that the members

of the Board and Amtrak's President would be members of the Committee. Because additional modifications to the resolution were requested by the Board members during the September 22 meeting, the resolution was not adopted at that meeting. The concepts embodied in the draft resolution are already being carried out. A copy of the most recent draft of the resolution is attached.

27. Mr. Laney, please provide the Subcommittee with a copy of the memo from Wilmer, Cutler & Pickering, which was referenced by Chairman LaTourette. Please also provide a copy of the memo that Amtrak's General Counsel recently prepared at the request of Chairman LaTourette.

    **Answer:** The memorandum prepared by Wilmer, Cutler & Pickering is a privileged and confidential memorandum from Amtrak's outside attorneys that may not be released to third parties without waiving the attorney-client privilege. If you have any questions regarding this, please contact Amtrak's General Counsel, Alicia Serfaty. The memorandum prepared by Amtrak's General Counsel at the request of Chairman LaTourette is attached.

28. Mr. Laney, in the Government Accountability Office's (GAO) most recent report on Amtrak's Management, GAO criticizes Amtrak for not having a mission statement, a strategic planning process, strategic goals, a performance-based approach, and a cost containment plan. Do you believe these criticisms are valid?

    f. If so, were you aware of these "deficiencies" before the GAO issued its report?

    g. What actions did the Board take to address the "deficiencies" outlined by GAO?

    **Answer:** Many of the GAO Report criticisms of Amtrak are valid and valuable. Others Amtrak had either addressed or begun to address before the GAO Report was issued. Generally speaking, I welcomed the GAO report and considered its findings very helpful.

    a. The Board and Amtrak management were aware of a number of the issues raised in the GAO report before it was issued.

    b. Board actions taken to address issues raised in the GAO report are reflected in Board minutes and in Amtrak's Strategic Reform Initiatives, which is currently undergoing revision and elaboration by the Board and Amtrak management.

29. Did you believe that the directors received adequate information from Amtrak to carry out your responsibilities? If not, what steps did you take to obtain better information?

    **Answer:** Generally speaking, Board members have received sufficient information from Amtrak management to make informed decisions and to carry out their responsibilities as directors of Amtrak. In instances where Board members have concluded that there was insufficient information, or needed additional or supplemental information, the Board has routinely asked management to provide additional information prior to making any decisions.

Attachments:

Attachment 1 – Agreement with Chlopak Leonard Schechter and Associates
Attachment 2 – Summary of Expenses for David M. Laney
Attachment 3 – Board conflict of interest forms
Attachment 4 – Minutes from the 9/22/05, 11/16/05 and 12/5/05 Board meetings
Attachment 5 – Minutes from the 11/7/05 Board meeting
Attachment 6 – Draft Legislative Policy Committee Resolution
Attachment 7 – Memorandum Prepared By Amtrak General Counsel dated October 18, 2005 in response to Chairman LaTourette inquiry on Board

# ATTACHMENT 1

November 2, 2005

David M. Laney
Chairman
National Railroad Passenger Corporation
c/o Jackson Walker
901 Main Street
Suite 6000
Dallas, TX 75202

Dear David:

This letter is designed to serve as an agreement between us as we begin working together on your strategic communications issues. We look forward to working with you on this project, and further developing the scope of work to be performed in the weeks ahead.

This letter sets forth the terms of our 'Agreement':

1. Effective November 2, 2005, the National Railroad Passenger Corporation (hereafter, Amtrak) will retain the professional services of Chlopak, Leonard, Schechter and Associates, Inc. (hereafter, "CLS") as communications counselors.

2. During the period of this agreement, CLS will work closely with Amtrak to provide strategic advice and counsel, create and produce communications materials as needed, distribute materials to and interface with the media, and provide communication services as directed by the client.

3. In consideration for the above described services, the Client agrees to compensate CLS on an hourly basis at the hourly rates described below, which are guaranteed through December 31, 2006. Fees shall be invoiced and are payable within 30 days.

| | |
|---|---|
| Partners | $450/hour |
| Senior VP | $375/hour |
| Managing Director | $295/hour |
| Managing Associate | $240/hour |
| Senior Associate | $190/hour |
| Associate | $135/hour |

4. CLS will treat all documents as confidential. In the process of providing to Amtrak the services encompassed by this contract, CLS may receive or may otherwise obtain

confidential information, the disclosure of which beyond Amtrak, its authorized agents, and CLS, is not authorized. CLS will not disclose or use any confidential information, in any form, for any purpose except with Amtrak's prior authorization. Information that is or becomes available in the public domain through no fault of CLS or any of CLS's employees, or is not acquired by CLS or CLS's employees from Amtrak or from sources known by CLS or CLS's employees to be in breach of a confidentiality agreement with Amtrak, will not be deemed confidential information that is subject to the provisions of this paragraph. This provision will survive beyond the conclusion or termination of this contract.

5. CLS will be entitled to bill all reasonable out-of-pocket expenses each month. Fax service is provided for a fee of $.75 per page and copy service is provided for a fee of $.25 per page. Telephone service is provided at-cost, plus applicable taxes and administrative fees.

6. CLS will bill all collateral material, advertising production, and outsourced services at cost, plus a 17.65% management fee. CLS shall be entitled to receive a 50% deposit, in advance, for all approved collateral material and production expenses. For advertising placement, CLS will charge a commission based on the standard industry rate of 15%.

7. Amtrak will indemnify and hold harmless CLS, its partners, principals, agents and employees (hereinafter "Indemnified Parties") from and against any losses, damages, claims, liabilities and expenses (including, without limitation, as a result of third party demands, legal proceedings or law suits, or requests or subpoenas served on any Indemnified Party for information, reports, data, or releases), including reasonable attorneys fees and expenses, suffered by Indemnified Parties as a result of the services rendered by Indemnified Parties in the course of this engagement or as a result of Indemnified Party's reasonable use of, or reasonable reliance upon, any information or materials (whether or not in writing) furnished or approved by Amtrak or its specifically authorized representatives for use by any Indemnified Party, whether or not any Indemnified Party prepares or participates in the preparation of such materials, provided however, that this provision shall not apply to any losses suffered by Indemnified Parties that are determined in a final judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Indemnified Party seeking indemnification hereunder. This provision shall survive the termination of this agreement and shall continue to bind both parties.

8. Amtrak agrees it will not offer employment to, or employ, a CLS employee for its own or another's benefit, either directly or through affiliates, subsidiaries, agents, sub-contractors or other related parties, either while the employee is employed by CLS, or for a period of one year after the employee ceases to be employed by CLS. This obligation shall remain in effect during the life of this agreement and for one year after the end of this agreement. CLS agrees to be bound by an identical obligation

with regard to employees of Amtrak. In the event that this provision may be deemed to be counter to employment laws, and one party to this agreement directly or indirectly employs an employee of the other, the employing party agrees to pay the other, simultaneously with such employment, an amount equal to 1.5 times the employee's total annual compensation in respect of the prior calendar year.

9. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have duly been given if delivered personally or mailed, first class mail, postage prepaid, return receipt requested, or by any other express delivery technique calling for receipted delivery, as follows:

If to CLS:

Chlopak, Leonard, Schechter and Associates, Inc.
Attn: Robert Chlopak
1850 M Street, NW
Suite 550
Washington, DC 20036
(202) 289-5900
Fax: (202) 289-4141

If to Amtrak:

National Railroad Passenger Corporation
Attn: David M. Laney
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

(202) 906-3740
Fax: (202) 906-2921

or to such other address as either party shall have specified by notice in writing to the other party. All such notices, requests, demands and communications shall be deemed to have been received on the date of delivery or on the next business day if sent by a nationally recognized overnight courier service.

10. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter contained herein.

11. This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia.

12. The terms and conditions of this contract may not be altered, changed or amended except by mutual written agreement of Amtrak and CLS or as otherwise expressly provided for in this agreement.

13. This agreement may be terminated without cause by either CLS or Amtrak upon receiving written notification at least 30 days prior to the intended date of termination, providing all fees and expenses have been paid in full through the 30 day termination period. Upon the termination of this Agreement, this Agreement shall cease to have any further effect (except as pertains to the provisions of this Agreement which specifically survive its termination).

Your signature and return to us of an original copy of this letter shall constitute acceptance of the terms defined herein.

Once again, thank you for this opportunity and your confidence in CLS. We look forward to working with you.

Sincerely,

Robert Chlopak — 11/7/05
Date

Robert Chlopak
President and CEO
Chlopak, Leonard, Schechter and
Associates, Inc.

Accepted:

David M. Laney — 11/7/05
Date

David M. Laney
Chairman
National Railroad Passenger Corporation

# ATTACHMENT 2

AMTRAK

# Certificate of Compliance

I certify that I have reviewed Amtrak's Conflict of Interest Policy (P/I 1.3.0) as of this date; I am in compliance with it except to the extent described below:

| | |
|---|---|
| Signature | Date 10/14/05 |
| Name (printed) ENRIQUE J SOSA | Employee I.D. No. |
| Title Director | Department Corporate |

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity** | Name and Relationship of Holder (if other than Employee) | Name of Business | Nature of Interest of Relationship*** |
|---|---|---|---|
| | | | |
| | NONE | | |
| | | | |
| | | | |

☑ Nothing to Report

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.

** If a subsidiary, report name or parent entity as well.

*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

Employees should submit this form to:

Your Local Human Resources Office
National Railroad Passenger Corporation

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1194 (03/05)

Amtrak is a registered service mark of the National Railroad Passenger Corporation

AMTRAK

**Clayton Antitrust Act Statement**

| | | | |
|---|---|---|---|
| Name ENRIQUE J SOSA | Position with Amtrak Director | | |
| Address 430 GRAND Bay Dr #1002 | | | |
| City Key Biscayne, FL | | State FL | Zip 33149 |
| Correct as of: | | | |

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
| | | |
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| | | |
| NONE | | |
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| | | |
| | | |

Signature: _____ Date: 10/14/05

Employees should submit this form to:

Vice President – Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1195 (03/04)
Amtrak is a registered service mark of the National Railroad Passenger Corporation

**Amtrak®**

## Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| ENRIQUE SOSA | Director |
| Address 430 GRAND BAY DR #1002 MIAMI BISCAYNE, FL 33149 | |

Correct as of:

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
| | | |
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| | | |
| | NONE | |
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| | | |

Signature: [illegible] Date: 9/22/04

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1195 (10/00)

**Amtrak®**

# Certificate of Compliance

I certify that I have reviewed Amtrak's Conflict of Interest Policy (PERS-21) and as of this date, I am in compliance with it except to the extent described below:

Signature: [signature] Date: 9/22/04

Name (printed): ENRIQUE SOSA Department:

Title: Director

**Outside Interest Questionnaire**

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity ** | Name and Relationship of Holder (if other than Employee) | Nature of the Business | Nature of Interest or Relationship*** |
|---|---|---|---|
| | | | |
| NONE | | | |
| | | | |
| | | | |

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.
** If a subsidiary, report name or parent entity as well.
*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1194 (10/00)

10/14 '05 10:39 NO.737 02/03

AMTRAK

**Clayton Antitrust Act Statement**

| Name | Position with Amtrak |
|---|---|
| FLOYD HALL | DIRECTOR |
| Address: 190 UPPER MTN AV | |
| City: MONTCLAIR | State: N.J. Zip: 07042 |

Correct as of: 10/14/05

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
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| | | |

NONE

Signature: Floyd Hall

Date: 10/14/05

Employees should submit this form to:

Vice President – Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1195 (03/04)

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10/14 '05 10:39 NO.737 03/03

AMTRAK

## Certificate of Compliance

I certify that I have reviewed Amtrak's Conflict of Interest Policy (P/I 1.3.0) as of this date; I am in compliance with it except to the extent described below:

| Signature | Date |
|---|---|
| | 10/14/05 |

| Name (printed) | Employee I.D. No. |
|---|---|
| | |

| Title | Department |
|---|---|
| | |

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity** | Name and Relationship of Holder (if other than Employee) | Name of Business | Nature of Interest of Relationship*** |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

☐ Nothing to Report

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.

** If a subsidiary, report name or parent entity as well.

*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

Employees should submit this form to:

Your Local Human Resources Office
National Railroad Passenger Corporation

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1194 (03/05)

Amtrak is a registered service mark of the National Railroad Passenger Corporation

**Amtrak®**

# Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| Floyd Hall | DIRECTOR |
| Address | |

Correct as of: 9-22-04

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
| NONE. | | |
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| | | |

Signature: [signature] Date: 9-22-04

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1195 (10/00)

**Amtrak®** **Certificate of Compliance**

certify that I have reviewed Amtrak's Conflict of Interest Policy (PERS-21) and as of this date, I am in compliance with it except to the extent described below:

| | |
|---|---|
| [signature] | 9-22-04 |
| Signature | Date |
| FRED HAAL | |
| Name (printed) | Department |
| | |
| Title | |

**Outside Interest Questionnaire**

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity ** | Name and Relationship of Holder (if other than Employee) | Nature of the Business | Nature of Interest or Relationship*** |
|---|---|---|---|
| NONE | | | |
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* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.
** If a subsidiary, report name or parent entity as well.
*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

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National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1194 (10/00)

AMTRAK

# Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| DAVID LANEY | Chairman, Board of Directors |
| Address: 5343 Wenonah | |
| City: Dallas | State: TX / Zip: 75209 |

Correct as of: 10/17/05

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

None.

| Position | Corporation | Nature of Business |
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Signature: _____ Date: 10/17/05

Employees should submit this form to:

Vice President – Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1195 (03/04)

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AMTRAK

# Certificate of Compliance

I certify that I have reviewed Amtrak's Conflict of Interest Policy (P/I 1.3.0) as of this date; I am in compliance with it except to the extent described below:

| Signature | Date |
|---|---|
| [signature] | 10/17/05 |

| Name (printed) | Employee I.D. No. |
|---|---|
| DAVID M. LANEY | |

| Title | Department |
|---|---|
| Chair, Board of Directors | |

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity** | Name and Relationship of Holder (if other than Employee) | Name of Business | Nature of Interest of Relationship*** |
|---|---|---|---|
| * Jackson Walker, LLP | D. Laney | Jackson Walker LLP | Partner |
| | | | |
| | | | |
| | | | |

☐ Nothing to Report

Note: Has done business in the past. I am not aware of any current business.

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.

** If a subsidiary, report name or parent entity as well.

*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

Employees should submit this form to:

Your Local Human Resources Office
National Railroad Passenger Corporation

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NRPC 1194 (03/05)

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**Amtrak®** **Certificate of Compliance**

I certify that I have reviewed Amtrak's Conflict of Interest Policy (PERS-21) and as of this date, I am in compliance with it except to the extent described below:

| | |
|---|---|
| [signature] | 1/30/04 |
| Signature | Date |
| David M. Laney | Board of Directors |
| Name (printed) | Department |
| Chair, Board of Directors | |
| Title | |

**Outside Interest Questionnaire**

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity ** | Name and Relationship of Holder (if other than Employee) | Nature of the Business | Nature of Interest or Relationship*** |
|---|---|---|---|
| Jackson Walker LLP | | Law | Legal Representation |
| Parsons | | Engineering | Consultant on Texas Highway Dept. Matters |
| | | | |
| | | | |

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** If a subsidiary, report name or parent entity as well.
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National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

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Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1194 (10/00)

**Amtrak®**

## Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| DAVID M. LANEY | Chmn, Bd of Directors |
| Address: 901 Main St., Suite 6000 Dallas, TX. 75202 | |

Correct as of: 1/30/04

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
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Signature: [signature] Date: 1/30/04

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1195 (10/00)

**Amtrak®**

# Certificate of Compliance

. certify that I have reviewed Amtrak's Conflict of Interest Policy (PERS-21) and as of this date, I am in compliance with it except to the extent described below:

| | |
|---|---|
| Signature | May 4, 2002<br>Date |
| Norman Y. Mineta<br>Name (printed) | U.S. Department of Transportation<br>Department |
| Director<br>Title | |

**Outside Interest Questionnaire**

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity ** | Name and Relationship of Holder (if other than Employee) | Nature of the Business | Nature of Interest or Relationship*** |
|---|---|---|---|
| Pennsylvania Station Redevelopment Corporation | N/A | Redevelopment of James A. Farley Post Office | Director |
| Union Station Redevelopment Corporation | N/A | Redevelopment of Union Station | Director |
| | | | |
| | | | |

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.
** If a subsidiary, report name or parent entity as well.
*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

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National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1194 (10/00)

**Amtrak®**

# Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| Norman Y. Mineta | Director, Representing DOT |
| Address U.S. Department of Transportation<br>400 7th Street, S.W.<br>Washington, D.C. 20590 | |

Correct as of: May 4, 2002

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
| Director | Pennsylvania Station Redevelopment Corporation, Pursuant to Pub. Law 105-178 | Redevelopment of James A. Farley Post Office, NY, NY |
| | | |
| Director | Union Station Redevelopment Corporation, Pursuant to Pub. Law 105-178 | Redevelopment of Union Station Washington, D.C. |
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| | | |

Signature

May 4, 2002
Date

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1195 (10/00)

**Amtrak®** **Certificate of Compliance**

I certify that I have reviewed Amtrak's Conflict of Interest Policy (PERS-21) and as of this date, I am in compliance with it except to the extent described below:
to the extent applicable to Amtrak's Board of Directors,

Signature: [signature] Date: JAN. 3, 2003

Name (printed): Norman Y. Mineta Department: U.S. Department of Transportation

Title: Director

**Outside Interest Questionnaire**

Please describe below all entities in which either you, a household member or a dependent has a significant financial interest*, a position, or other relationship with an entity or person that is: 1) a potential or actual competitor to Amtrak; 2) is doing or seeking to do business with Amtrak; or 3) is in a position or relationship with Amtrak that would create an actual or apparent conflict. Any change or additions to such relationships or interests after the date of execution of this form should be communicated immediately to your department head.

| Name of Outside Person or Entity ** | Name and Relationship of Holder (if other than Employee) | Nature of the Business | Nature of Interest or Relationship*** |
|---|---|---|---|
| Pennsylvania Station Redevelopment Corporation | N/A | Redevelopment of James A. Farley Post Office | Director |
| | | | |
| Union Station Redevelopment Corporation | N/A | Redevelopment of Union Station | Director |
| | | | |

* In the case of publicly held corporations substantial interest means stock ownership in excess of 1% of outstanding shares.
** If a subsidiary, report name or parent entity as well.
*** Indicate whether stockholder, officer, director, partner, creditor, employee or other. There is no need to indicate number of shares of stock held or value of the interest.

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60 Massachusetts Avenue, NE
Washington, D.C. 20002

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Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1194 (10/00)

**Amtrak®**

# Clayton Antitrust Act Statement

| Name | Position with Amtrak |
|---|---|
| Norman Y. Mineta | Director, Representing DOT |
| Address U.S. Department of Transportation<br>400 7th Street, S.W.<br>Washington, D.C. 20590 | |

Correct as of:

I have listed below all positions I hold as an officer or director of any railroad, airline, bus line or other corporation (excluding Amtrak and its subsidiaries) that deals with passenger transportation, express package and/or mail service, communications, real estate, or railroad-related business generally. An officer means one chosen or elected by the Board of Directors of the corporation.

| Position | Corporation | Nature of Business |
|---|---|---|
| Director | Pennsylvania Station Redevelopment Corporation, Pursuant to Pub. Law 105-178 | Redevelopment of James A. Farley Post Office, NY, NY |
| | | |
| Director | Union Station Redevelopment Corporation, Pursuant to Pub. Law 105-178 | Redevelopment of Union Station Washington, D.C. |
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Signature

January 3, 2003
Date

Employees should submit this form to:

Vice President - Human Resources
National Railroad Passenger Corporation
50 Massachusetts Avenue, NE
Washington, D.C. 20002

Board members should submit this form to:

Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, D.C. 20002

White - Return Yellow - Retain

NRPC 1195 (10/00)

# ATTACHMENT 3

DRAFT

**RESOLUTION ESTABLISHING AMTRAK BOARD OF DIRECTORS' LEGISLATIVE POLICY COMMITTEE**

WHEREAS, The Board of Directors desires to provide direction in the development and communication of Amtrak's federal legislative strategy and policy objectives so as to ensure their alignment with the philosophy and objectives of the Board; and

WHEREAS, To further such purposes the Board deems it desirable to establish the Legislative Policy Committee of the Board; therefore, be it

RESOLVED That the Board of Directors establishes the Board Legislative Policy Committee to develop and provide direction for legislative policy positions of Amtrak on behalf of the Board; and

FURTHER RESOLVED, That Amtrak Board members David M. Laney, Floyd Hall, Enrique Sosa, Jeffrey A. Rosen and David Gunn will be the members of the Legislative Policy Committee and any two members of the Committee may act on behalf of the committee when expedited action is required; and

FURTHER RESOLVED, That the General Counsel and Corporate Secretary shall prepare a charter for this committee to be presented to the Board of Directors for review and approval at the next regularly scheduled Board meeting; and

FURTHER RESOLVED, That the Board Legislative Policy Committee will meet at least monthly and the Vice President of Government Affairs may report on activities of the Government Affairs Office and develop and coordinate strategies, goals, policy positions and significant legislative policy communications; and

FURTHER RESOLVED, That the Vice President Government Affairs will continue to provide regular weekly reports to the Legislative Policy Committee of significant communications with government officials and the substance thereof;

FURTHER RESOLVED, That the Vice President of Government Affairs will, working through members of Amtrak's Management Executive Committee, endeavor to coordinate activities and communications of Amtrak relating to legislative policy positions of Amtrak carried out through any office of Amtrak so as to further general consistency with the goals and objectives of the Legislative Policy Committee, and will assist the Legislative Policy Committee in identifying, clarifying and resolving any inconsistencies or uncertainties in legislative policy positions taken or to be taken by Amtrak.

Revised 9-22-05 with David Laney's comments

# ATTACHMENT 4

October 18, 2005

## AMTRAK'S BOARD OF DIRECTORS

The following is a brief outline of the history of Amtrak's Board composition and structure since the Amtrak Reform and Accountability Act of 1997, P.L. 105-134 (the "ARAA") was enacted into law on December 2, 1997. The ARAA amended the Rail Passenger Services Act, 49 U.S.C. 24301, *et seq.* ("RPSA"), which is Amtrak's governing statute.

### I. Key Statutory and Amtrak Bylaw Provisions

There are several key statutory and Amtrak bylaw provisions affecting Amtrak's corporate governance:

- RPSA, as most recently amended by Congress in 1997, states that Amtrak shall be managed as a for-profit corporation, subject to the District of Columbia Business Corporation Act (the "D.C. Act") to the extent consistent with the RPSA. 49 U.S. Code 24301(a) and (e) and 29 D.C. Code 101.01 *et seq.*

- The RPSA also states that Amtrak shall have a board of directors consisting of seven voting members appointed by the President, subject to Senate confirmation. 49 U. S. Code 24302(a). Because Amtrak failed to achieve the goal of operating self-sufficiency in fiscal year 2003, the 1997 provisions governing appointment of directors by the President continue in effect. 49 U.S. Code 24302(b).

- Unlike the pre-1997 provisions of the RPSA, the appointment of a member to fill a vacancy occurring before the end of a term of an Amtrak board member is not limited to the unexpired term of the member they are appointed to succeed. Compare Section 411(a) of the Amtrak Reform and Accountability Act of 1997 (the "ARAA") with 49 U.S.C. 24302(e) as adopted in 1994.

- The D. C. Act states that a corporation's business and affairs shall be managed by a board of directors, and the number of directors required to transact the corporation's business is a quorum consisting of a majority of the number of directors prescribed in the applicable governing document. For Amtrak, this means four of the seven voting members prescribed in the RPSA. 29 D. C. Code 101.32 and .36. However, the board may delegate all its powers to an executive committee consisting of two or more directors. 29 D.C. Code 101.37.

- Article IV, Board of Directors, Section 4.08 of Amtrak's Bylaws, state "A majority of the total number of Directors with voting powers fixed by statute shall constitute a quorum for the purpose of conducting the business of the Board. Except as otherwise specifically provided by statute, the Articles of Incorporation, or these Bylaws, the acts of a majority of the Directors with voting

powers present at a meeting at which a quorum exists shall be the acts of the Board of Directors." Presently, there are 4 duly appointed Board members and therefore the current Board meets the requirements of the Bylaws for a quorum, as 4 constitutes a majority of the 7 Board members called for in 49 U.S.C. § 24302(a).

- Article V, Committees, Section 5.01 Executive Committee of Amtrak's Bylaws also authorize the creation of an Executive Committee. The provision states, "The Board of Directors, by resolution adopted by a majority of the Directors with voting powers then in office may designate two or more Directors to constitute an Executive Committee, to have and exercise, consistent with applicable law, all of authority of the Board of Directors in the management of the business and affairs of the Corporation. One of the members of the Executive Committee shall be the Secretary of Transportation or his designee."

**II. Appointments to Amtrak's Board through 2002**

Section 411(a) of the ARAA replaced Amtrak's 1997 board structure with the current board consisting of seven voting members appointed by the President for a term of five years, subject to confirmation by the Senate. (The Secretary of Transportation can be and was appointed as one of the seven but without Senate confirmation.) 49 U.S.C. 24302 (a)(2). In June 1998, President Clinton appointed then Secretary Rodney Slater to the board and, following Senate confirmation, Governors Michael Dukakis and Tommy Thompson and Mayor John Robert Smith. The appointment of the first four members – a quorum -- in June 1998 satisfied the statutory condition requiring that the newly established board assume its responsibilities before July 1, 1998. The former Amtrak board was thereupon dissolved. 49 U.S.C. 24302(a)(1) and section 411(b) of the ARAA. Three other members were appointed in 1998 and 1999 following Senate confirmation as follows: Governor Linwood Holton and Ms. Amy Rosen, September 25, 1998, and Ms. Sylvia De Leon, August 9, 1999.

Secretary Mineta was appointed to replace Secretary Slater in June 2001. Further, after Governor Thompson resigned in May 2001, President Bush nominated, and the Senate confirmed, Mr. David Laney as a member of Amtrak's board. Mr. Laney was appointed by the President in November 2002 for a five-year term.

**III. Creation of an Executive Committee of the Board and Additional Appointments in 2003 and 2004**

In 2003, the terms of four Amtrak board members were to expire: Governor Dukakis and Mayor Smith in June and Ms. Rosen and Governor Holton in September. Because of the possibility that the Board could be without a quorum of four directors, in September 2003 – prior to the expiration of the terms

of Ms. Rosen and Governor Holton, the Board: (1) amended Section 5.01 of Amtrak's Bylaws to conform to D.C. law and permit an executive committee of two members (the prior Section 5.01 required that an executive committee have three members); and (2) adopted resolutions creating an executive committee of two or more members authorized to exercise all powers of the Board with respect to Amtrak. These resolutions were adopted unanimously by Ms. De Leon, Governor Holton, Mr. Laney, Ms. Rosen, and the Secretary's representative. Initially, the board designated Mr. Laney, Ms. De Leon, and Secretary Mineta as members of the executive committee. (A copy of these resolutions is attached.)

In July 2004, the President appointed Mr. Floyd Hall to be a member of Amtrak's board, without Senate confirmation while the Senate was in recess. Immediately after this appointment, the board amended the resolutions with respect to the executive committee that had been adopted in September 2003. Mr. Hall was appointed to the executive committee in lieu of Ms. De Leon, whose term on the board was to expire in August 2004. Further, in the event of a vacancy in the executive committee, the remaining two members were authorized to exercise the powers of that committee. These resolutions were unanimously adopted by Ms. De Leon, Mr. Laney, Mr. Hall, and the Secretary's representative. (A copy is also attached).

In August 2004, the President appointed Mr. Enrique Sosa to Amtrak's board, again without Senate confirmation while the Senate was in recess. Since the appointment of Mr. Sosa, the Amtrak Board has functioned with a quorum of four.

**STATEMENT OF**
**THE HONORABLE JAMES L. OBERSTAR**
**SUBCOMMITTEE ON RAILROADS**
**HEARING ON**
**"CURRENT GOVERNANCE ISSUES AT AMTRAK"**
**NOVEMBER 15, 2005 – 10 AM**

- Mr. Chairman, I want to thank you and Ranking Democratic Member Brown for holding this important hearing today.

- Like many other members of this Committee, I was shocked and dismayed that the four members of the Amtrak Board – surreptitiously and without any advance warning to the Congress – fired Amtrak President and CEO David Gunn last Thursday.

- I look forward with great curiosity to hear the Board's explanation for its abrupt dismissal of Mr. Gunn.

- I am disappointed that even though all four Board members were asked to appear at this hearing, only 2 members thought the hearing sufficiently important that they are in attendance today. The Board's dismissal of Mr. Gunn was done by a unanimous vote of the Board's four members. I believe that this issue is serious enough that we need to hear from each Board member.

- I also look forward to discussing today whether the Board as currently constituted has the legal authority to take this action.

- In just three short years, David Gunn has put Amtrak on the right track.

- In fact, just a couple of months ago, Mr. Laney was also singing the praises of David Gunn. At a hearing of this Subcommittee on September 21, 2005, Mr. Laney said: "Mr. Gunn has done, as far as I am concerned, a splendid job. He took Amtrak from the day he landed on the platform, in effect … and has righted a ship that was listing and about to spill over, as far as I am concerned. And David Gunn is a terrific operator… ."

- In May 2002, when David Gunn joined Amtrak, the railroad was facing a cash crisis and required immediate assistance to avoid insolvency and to address the immense backlog of deferred maintenance. Mr. Gunn

immediately instituted numerous changes to the company and began internal reforms designed to control costs and restore the credibility that had been lost among taxpayers and stakeholders.

- He began re-establishment of a capital reinvestment program to bring the railroad to a state of good repair – a program that had been all but eliminated by Fiscal Year 2002, under previous Amtrak management. In spite of the challenges inherent in ramping up such a program from essentially nothing and with less federal funding than needed to meet the plan, Mr. Gunn had made steady progress in rebuilding plants and equipment.

- In fact, according to the Amtrak Board itself, since 2002, when David Gunn first arrived, Amtrak has:

  - implemented new accounting and financial reporting systems;
  - reduced personnel by almost 5,000;
  - developed a detailed and prioritized five-year capital plan focused on restoring the Northeast Corridor to necessary levels of reliability and safety, and on restoration of an aging fleet of rolling stock used throughout the system;
  - terminated the mail and express operation;
  - eliminated or truncated three long-distance routes;
  - increased ridership from 22.5 million in 2000 to a record 25.1 million in 2004; and
  - contained Amtrak's cash-operating requirement at or below $570 million.

- Just recently, Mr. Gunn completed a tour of Amtrak's operations that took him across the country from Washington to Boston, Chicago, the West Coast, and Amtrak's Southern Division. Upon his return, Mr. Gunn reported to the Board that in his judgment "our railroad has made significant progress toward a state-of-good-repair and that financially and operationally, we are in the best condition we have been in for several years." This occurred in spite of some extraordinary challenges this past year – from operating challenges associated with Amtrak's Acela Express service to natural disasters on the West Coast and in New Orleans.

- The fact is that David Gunn's successes are clear. Of course there is room for improvement. Amtrak's problems were decades in the making and Mr. Gunn has only been at the helm making improvements for three years.

- We know that a railroad's problems cannot be turned around overnight. In France, which now has a world-class passenger rail system and the high-speed Train a Grande Vitesse (TGV), it took decades to build the system to what it is today.

- For decades, the Societe nationale des chemins de fer francais (SNCF), dubbed the Societe national du cafouillis francais, or the National Society of Screw-Ups by its clientele, tried everything to keep its head above water: line closings, limited stops, limited service, changing leadership, sweeping reforms, and nothing worked. By 1969, the SNCF's annual deficit had reached more than 5 billion francs, and public and federal sentiment was waning.

- It wasn't until Japan unveiled its high-speed train, the Shinkansen, in 1964, and the Railways started receiving a steady, dedicated funding stream from the French government, that things started to change.

- Today, France has a safe, clean, efficient passenger rail system that eases congestion by getting people off the roads. And it is subsidized by the federal government.

- In contrast, the Bush Administration recommended that funding for Amtrak be "zeroed-out" in Fiscal Year 2006. If you look at this climate in which Mr. Gunn was operating, his successes are made even more impressive.

- In light of these successes, one has to question why, now that Amtrak is steadily improving, does the Board want to get rid of the person most responsible for these improvements?

- I believe the results speak for themselves, and I believe the Amtrak Board's actions were a grave mistake, a disservice to the Nation's taxpayers, and a blow to Amtrak itself.

- I urge the Board to reconsider its decision.

Statement of
The Honorable Jeffrey A. Rosen
General Counsel, U.S. Department of Transportation
Before the
Committee on Transportation and Infrastructure
Subcommittee on Railroads
House of Representatives
November 15, 2005

Mr. Chairman, Ranking Member Brown, and members of the Subcommittee, I am pleased to appear before you to again underscore the need for reform of intercity passenger rail service. As I have testified previously, the Administration wants to save and improve intercity passenger rail.

Introduction

As you know, Amtrak is a private, for-profit business corporation—having been established as such by Congress. As with any business corporation, Amtrak is governed by a Board of Directors. As in any business corporation, it is emphatically the role of the Board of Directors to hold management accountable, and to demand positive results.

In this regard, it is indeed telling that Congress' own experts at the GAO ten days ago identified more than 150 pages of "Systemic Problems" with "Amtrak Management", and called for greater management accountability at Amtrak. See "Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability" (GAO-06-145, November 4, 2005). Nor was the GAO the first or only observer to identify these major, ongoing problems. See, e.g., DOT Inspector General, "Report on Analysis of Cost Savings on Amtrak's Long-Distance Services" (July 22,

2005); Joseph Vranich, "End of the Line: The Failure of Amtrak and The Future of America's Passenger Trains" (AEI; December 2004).

Corroborating what others have observed, the GAO Report on "Amtrak Management" that was released ten days ago highlights the systemic and wide-ranging problems that have existed at Amtrak in recent years, and a senior management refusal to address them:

> • **"The [Amtrak] president said that Amtrak's management team has identified the problems "as only we can" and has developed an approach that "works best for us." He said that the strategic planning mechanisms we recommend or that government agencies adopt may not be in line with those followed by Amtrak, but the goals are the same. He reiterated that to him, while process is important, results are what matter. GAO agrees that results matter, but, overall, results are not improving."** (page 21)
>
> • **"Overall, the president said that he was not convinced that GAO's recommendations would produce the results GAO expects.... Basically, he said that "the results speak for themselves." GAO believes that, although improvements have been made, the overall results have not been satisfactory. During the last 3 fiscal years, Amtrak's operating losses have increased to over $1 billion annually, and such losses are projected to increase about 40 percent by 2009. In addition, GAO found systemic problems in all five areas that it reviewed and found that Amtrak faces major challenges in instituting and strengthening its basic business systems."** (pages 19-20)
>
> • **"The views reflected in the comments of Amtrak's president that steady incremental improvements are the best approach for addressing Amtrak's problems do not appear consistent with the magnitude of changes discussed in Amtrak's April 2005 strategic reform initiatives."** (page 20)

A Look Back at Amtrak's Board of Directors Over Time

When Amtrak was formed under the Rail Passenger Service Act of 1970, Congress expected Amtrak to capitalize upon the efficiencies of pulling together the various freight railroads' passenger service operations and to thereby swiftly wean itself from

transitional Federal subsidies. With this in mind, Amtrak was purposefully created as a *for-profit* private corporation with a Board of Directors suited for that purpose.

A corporation's Board of Directors is responsible for setting overall corporate policy and strategy, hiring management, holding management accountable, and being accountable to the stockholders. Management, on the other hand, is responsible for implementing the goals and strategy set by the Board and providing knowledgeable, accurate information and professional advice to the Board. It is not the role of senior management to ignore the Board, evade the Board's direction, or to devote large amounts of time seeking to ask Congress to countermand the Board.

**The Rail Passenger Service Act of 1970, P.L. 91-518,** authorized a 15-member board, having eight members appointed by the President with the advice and consent of the Senate for four-year terms, one of whom would be the Secretary and one a consumer representative; three members elected annually by the common stockholders; and four members elected annually by preferred stockholders (when preferred stock is issued). That Board launched the corporation as a nationwide business, but instead of fulfilling its actual purpose, it also set Amtrak's course down the path of dependence on ever-increasing Federal subsidies.

**The Amtrak Improvement Act of 1973, P.L. 93-146,** authorized a 17 member board including the Secretary of Transportation, nine members appointed by the President with the advice and consent of the Senate with no more than five from the same political party,

and three members to serve as consumer representatives; three members elected annually by the common stockholders; and four members elected annually by the preferred stockholders (when preferred stock is issued).

**The Amtrak Improvement Act of 1976, P.L. 94-555,** made the Corporation's President an *ex officio* member of the Board of Directors and reduced the Presidential appointees from nine to eight.

Unfortunately, the changes made to the Board of Directors in 1973 and 1976 made no difference in the performance of Amtrak as a business. Passengers continued to complain that service was inadequate, and the financial performance of the company went from bad to worse. So much so that, by 1981, Amtrak persuaded Congress on a one-time basis to have the federal taxpayers take over responsibility for approximately $1 billion in Amtrak debt and interest in exchange for giving the Government preferred stock of equal par value.

**The Amtrak Improvement Act of 1981, P.L. 97-35,** established a new structure for the Board of Directors, to be comprised of nine members including the Secretary of Transportation (represented by FRA Administrator or General Counsel), the Corporation's president, three members appointed by the President with the advice and consent of the Senate of which no more than two could be from the same political party (one chosen from a Railway Labor Executives Association list, one Governor, and one business representative with an interest in rail transportation); two members selected by

the President from a list prepared by commuter authorities; and two members selected annually by the preferred stockholders (preferred stock first issued to the Secretary of Transportation after the 1981 Act in exchange for past guaranteed debt and future Federal grants). ***The common stockholders lost their board seats at this time.*** It was obvious that the role of the original stockholders had changed dramatically from when Amtrak began, as the company's losses were so great and it was so deeply in debt it could go forward only through either forgiveness of the federally-guaranteed debt or through bankruptcy.

Unfortunately, even this change in the Board of Directors and the company's financial structure was ineffectual: Amtrak went back to spending substantially more than it earned--with no end in sight, and with no one held accountable for the results. During the 1980's, the Executive Branch proposed eliminating subsidies to Amtrak, but Congress instead continued to accept Amtrak's poor overall performance and its lack of accountability.

**The Amtrak Reform and Accountability Act of 1997, P.L.** 105-134, was supposed to change all that. By 1997, Congress determined that something drastic had to be done to fix Amtrak's business practices, deliver value to customers, and wean Amtrak from federal subsidies. Congress set up a new framework that removed restrictions on Amtrak, and looked to the company to reform itself. The Amtrak Reform and Accountability Act of 1997 established a new structure for a *Reform Board of Directors* comprised of only seven members appointed by the President with the advice and consent

of the Senate, of which "at least 4 members" are needed to act as the Board. 49 U.S.C. § 24302(a). Each member is appointed "for a term of 5 years." The key difference between this Board of Directors and its predecessors is that its members are to have qualifications, professional standing and demonstrated expertise and not to be representatives of rail labor or management or Federal or Amtrak employees. [1]

The 1997 Amtrak Reform Act contemplated that Amtrak's Board would step in to require Amtrak management to fix the business' many problems, under a legal dictate that operating subsidies end in 2002, with dramatic consequences if that was not met. In creating this business-oriented board, and anticipating an end to federal operating subsidies, Congress eliminated the DOT-selected Directors representing the preferred stock and removed the provision making the Secretary a member *ex officio* . Indeed, early in this Administration, the Secretary of Transportation was not represented on the Amtrak Board at all, and the then-Board and management were not accountable to DOT. Unfortunately, the Board members in the 1990's were unable to accomplish what the Act required. This Committee is all too familiar with what Amtrak management did in response: Amtrak claimed to be on the "glide path" to self-sufficiency when, in fact, it was on the glide path to bankruptcy. Instead of needing no federal operating subsidies by

[1] S. 1516, which is pending in the Senate, would change the Amtrak Reform Board from the present business-oriented model back to a more politicized Board, akin to some of the earlier formulas, by expanding it from seven to nine members, no more than four of whom can be from the same political party. Nominees would be selected in consultation with the leadership of the House and Senate, and an attempt would be made to provide geographic balance. Such a change would appear to reduce accountability rather than improve it, and would be inferior to the current Reform Board model. One suggestion has been that it could be better to have the Department of Transportation, as the holder of (a) more than 99 percent of the equity in the corporation, (b) the largest debt holder, and (c) the mortgage holder on the Northeast Corridor, have majority control of the Board so long as the Federal taxpayers continue to subsidize Amtrak. This approach would improve accountability, but such a framework would only be appropriate on a transitional basis until Amtrak can become financially stable and cease to receive Federal operating subsidies. The key principle is that Amtrak needs to be run as a business, and its Board needs to hold Amtrak management accountable for that.

2002, as the statute directed, Amtrak needed both desperate measures to hold off bankruptcy and record levels of operating subsidies from the federal Treasury. Amtrak's management failed to fix the problems, and the Reform Board of Directors appointed in the late 1990's did not reform Amtrak.

Today's Amtrak Reform Board of Directors

It is noteworthy, amidst this sad business history, that the current Reform Board of Directors appears to be the first one on which all four of the Directors met the statutory qualifications set for them.[2] This business-oriented Reform Board has demanded improvements at Amtrak in financial transparency and management accountability, and retained KPMG to assist the Audit Committee of the Board. This Board of Directors last April also approved a Strategic Reform Initiative plan to improve Amtrak (http://www.amtrak.com/pdf/strategic06.pdf) and is monitoring Amtrak management's progress in carrying out those parts that are in Amtrak's own control.

This Reform Board of Directors has indicated that it means to achieve meaningful improvements in Amtrak's business, and not turn a blind eye to the company's continuing and worsening business failings. Since 2002, Amtrak's revenues have been declining; it loses more than $100 million subsidizing food and beverage service on trains; its labor costs have continued to exceed its ticket sales; its on-time performance on

[2] During this Subcommittee's Hearing on September 21, 2005, the Chairman asked both Amtrak and DOT to provide legal opinions about Amtrak's corporate governance for the record. Both Amtrak and DOT reported that Amtrak's Board of Directors is validly constituted, has a legal quorum, and is fully empowered to take the full range of actions entrusted to a corporate board under applicable law. *Copies of those are attached hereto, [along with other applicable legal precedent].* It is noteworthy that no private parties to date have questioned or challenged this conclusion, no court has differed with it, and it is unclear that anyone else has shared these concerns.

many routes is terrible; its huge per-passenger subsidies exceed those of any other form of transportation, and are both economically extreme and unfair; and its routes and customer service remain insufficiently responsive to market needs.

The current Reform Board of Directors, as set forth in the Amtrak Reform and Accountability Act of 1997, has a demonstrated commitment to fixing Amtrak's business, in a business-oriented and economically sound way. Media reports suggest that there are some who prefer the 1960's approach, and oppose all change to Amtrak, but that approach is not viable in the near-term nor the long-term, any more than it would be for an airline or an intercity bus company. Despite good intentions, that approach would eventually lead to the demise of intercity passenger rail. By contrast, the Administration seeks to save and improve intercity passenger rail. Accordingly, the Administration supports efforts of the Amtrak Reform Board of Directors to reform and improve Amtrak's business. Moreover, while the Amtrak Board is doing its part, Congress can contribute to this goal by moving forward with H.R. 1713, or comparable legislation that embodies the same principles and objectives of Amtrak reform.

Thank you for this opportunity to share our observations regarding the continuing need for Amtrak reform, and the role of Amtrak's corporate Board of Directors in setting the company's direction.

**U.S. Department of Transportation**
Office of the Secretary of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

OCTOBER 26, 2005

The Honorable Steve LaTourette
Chairman
Subcommittee on Railroads
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman LaTourette:

This letter responds to your request for an opinion from the Department of Transportation concerning the Amtrak Board of Directors. I am aware that you have previously received a memorandum from Amtrak itself on this subject, which provides a chronology and analysis indicating that the Amtrak Board of Directors is validly constituted, has a legal quorum, and is fully empowered to take the full range of actions entrusted to a corporate board under the applicable law. I concur in that assessment.

The Amtrak Reform and Accountability Act of 1997 ("ARAA") amended Part C of Subtitle V of title 49, 49 U.S.C. § 24301 et seq., which is Amtrak's governing statute. Chapter 234 of title 49 states that Amtrak shall be operated and managed as a for-profit corporation. 49 U.S.C. § 24301(a)(2). The statute further provides that the District of Columbia Business Corporations Act ("D. C. Act"), to the extent consistent with the Amtrak governing statute, shall also apply to Amtrak. 49 U.S.C. § 24301(e) and D. C. Code § 29-101.01 et seq.

Chapter 243 of title 49 states that Amtrak shall have a board of directors consisting of 7 voting members appointed by the President with the advice and consent of the Senate, for a term of 5 years (except that the Secretary of Transportation does not need separate Senate approval). 49 U.S.C. § 24302(a)(2). The statute further provides that, if Amtrak failed to achieve operating self-sufficiency in fiscal year 2003, then the Board members shall continue to be selected in accordance with the procedures of the current statute. 49 U.S.C. § 24302(b)(1). Because Amtrak received Federal assistance in 2003 and receives Federal assistance currently, the procedures of the current statute apply.

The D. C. Act states that a corporation's business and affairs shall be managed by a board of directors, and the number of directors required to transact the corporation's business is a quorum consisting of a majority of the number of directors prescribed in the applicable governing document. For Amtrak, this means 4 of the 7 voting members of the Board prescribed in Chapter 243 of title 49, as *amended* by ARAA. D. C. Code § 29-101.32 and 101.36. When ARAA created the original Amtrak Reform Board

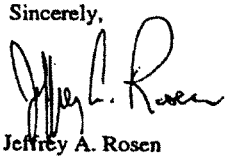
consisting of 7 voting members, Congress specifically stated that the Reform Board shall assume the responsibilities of the Board by a certain date in 1998, or as soon thereafter as at least 4 members had been appointed and qualified. 49 U.S.C. § 24302(a)(1).

In addition, the Bylaws of Amtrak in Article IV, Board of Directors, Section 4.08, specifically address the issue of what constitutes a quorum for the purpose of conducting the business of the Board. The provision states "A majority of the total number of Directors with voting powers fixed by statute shall constitute a quorum for the purpose of conducting the business of the Board. Except as otherwise specifically provided by statute, the Articles of Incorporation, or these Bylaws, the acts of a majority of the Directors with voting powers present at a meeting at which a quorum exists shall be the acts of the Board of Directors." Presently, there are 4 duly appointed Board members and therefore the current Board meets the requirements of the Bylaws for a quorum, as 4 constitutes a majority of the 7 Board members called for by 49 U.S.C. § 24302(a)(2). The Board may delegate all its powers to an executive committee consisting of two or more directors, which shall have and may exercise all of the authority of the Board. D. C. Code § 29-101.37.

The Bylaws of Amtrak in Article 5, Committees, Section 5.01, Executive Committee, also authorize the creation of an Executive Committee. The provision states, "The Board of Directors, by resolution adopted by a majority of the Directors with voting powers then in office may designate two or more Directors to constitute an Executive Committee, to have and exercise, consistent with applicable law, all of authority of the Board of Directors in the management of the business and affairs of the Corporation. One of the members of the Executive Committee shall be the Secretary of Transportation or his designee."

Simply put, the Amtrak Board of Directors is validly constituted, has a legal quorum, and is fully empowered to take the full range of actions entrusted to a corporate board under the applicable law. If you have any further questions, please feel free to contact me at (202) 366-4702.

Sincerely,



Jeffrey A. Rosen

cc: David M. Laney, Chairman, Amtrak Board of Directors

October 18, 2005

**AMTRAK'S BOARD OF DIRECTORS**

The following is a brief outline of the history of Amtrak's Board composition and structure since the Amtrak Reform and Accountability Act of 1997, P.L. 105-134 (the "ARAA") was enacted into law on December 2, 1997. The ARAA amended the Rail Passenger Services Act, 49 U.S.C. 24301, *et seq.* ("RPSA"), which is Amtrak's governing statute.

**I. Key Statutory and Amtrak Bylaw Provisions**

There are several key statutory and Amtrak bylaw provisions affecting Amtrak's corporate governance:

- RPSA, as most recently amended by Congress in 1997, states that Amtrak shall be managed as a for-profit corporation, subject to the District of Columbia Business Corporation Act (the "D.C. Act") to the extent consistent with the RPSA. 49 U.S. Code 24301(a) and (e) and 29 D.C. Code 101.01 *et seq.*

- The RPSA also states that Amtrak shall have a board of directors consisting of seven voting members appointed by the President, subject to Senate confirmation. 49 U. S. Code 24302(a). Because Amtrak failed to achieve the goal of operating self-sufficiency in fiscal year 2003, the 1997 provisions governing appointment of directors by the President continue in effect. 49 U.S. Code 24302(b).

- Unlike the pre-1997 provisions of the RPSA, the appointment of a member to fill a vacancy occurring before the end of a term of an Amtrak board member is not limited to the unexpired term of the member they are appointed to succeed. Compare Section 411(a) of the Amtrak Reform and Accountability Act of 1997 (the "ARAA") with 49 U.S.C. 24302(e) as adopted in 1994.

- The D. C. Act states that a corporation's business and affairs shall be managed by a board of directors, and the number of directors required to transact the corporation's business is a quorum consisting of a majority of the number of directors prescribed in the applicable governing document. For Amtrak, this means four of the seven voting members prescribed in the RPSA. 29 D. C. Code 101.32 and .36. However, the board may delegate all its powers to an executive committee consisting of two or more directors. 29 D.C. Code 101.37.

- Article IV, Board of Directors, Section 4.08 of Amtrak's Bylaws, state "A majority of the total number of Directors with voting powers fixed by statute shall constitute a quorum for the purpose of conducting the business of the Board. Except as otherwise specifically provided by statute, the Articles of Incorporation, or these Bylaws, the acts of a majority of the Directors with voting

powers present at a meeting at which a quorum exists shall be the acts of the Board of Directors." Presently, there are 4 duly appointed Board members and therefore the current Board meets the requirements of the Bylaws for a quorum, as 4 constitutes a majority of the 7 Board members called for in 49 U.S.C. § 24302(a).

- Article V, Committees, Section 5.01 Executive Committee of Amtrak's Bylaws also authorize the creation of an Executive Committee. The provision states, "The Board of Directors, by resolution adopted by a majority of the Directors with voting powers then in office may designate two or more Directors to constitute an Executive Committee, to have and exercise, consistent with applicable law, all of authority of the Board of Directors in the management of the business and affairs of the Corporation. One of the members of the Executive Committee shall be the Secretary of Transportation or his designee."

**II. Appointments to Amtrak's Board through 2002**

Section 411(a) of the ARAA replaced Amtrak's 1997 board structure with the current board consisting of seven voting members appointed by the President for a term of five years, subject to confirmation by the Senate. (The Secretary of Transportation can be and was appointed as one of the seven but without Senate confirmation.) 49 U.S.C. 24302 (a)(2). In June 1998, President Clinton appointed then Secretary Rodney Slater to the board and, following Senate confirmation, Governors Michael Dukakis and Tommy Thompson and Mayor John Robert Smith. The appointment of the first four members – a quorum – in June 1998 satisfied the statutory condition requiring that the newly established board assume its responsibilities before July 1, 1998. The former Amtrak board was thereupon dissolved. 49 U.S.C. 24302(a)(1) and section 411(b) of the ARAA. Three other members were appointed in 1998 and 1999 following Senate confirmation as follows: Governor Linwood Holton and Ms. Amy Rosen, September 25, 1998, and Ms. Sylvia De Leon, August 9, 1999.

Secretary Mineta was appointed to replace Secretary Slater in June 2001. Further, after Governor Thompson resigned in May 2001, President Bush nominated, and the Senate confirmed, Mr. David Laney as a member of Amtrak's board. Mr. Laney was appointed by the President in November 2002 for a five-year term.

**III. Creation of an Executive Committee of the Board and Additional Appointments in 2003 and 2004**

In 2003, the terms of four Amtrak board members were to expire: Governor Dukakis and Mayor Smith in June and Ms. Rosen and Governor Holton in September. Because of the possibility that the Board could be without a quorum of four directors, in September 2003 – prior to the expiration of the terms

of Ms. Rosen and Governor Holton, the Board: (1) amended Section 5.01 of Amtrak's Bylaws to conform to D.C. law and permit an executive committee of two members (the prior Section 5.01 required that an executive committee have three members); and (2) adopted resolutions creating an executive committee of two or more members authorized to exercise all powers of the Board with respect to Amtrak. These resolutions were adopted unanimously by Ms. De Leon, Governor Holton, Mr. Laney, Ms. Rosen, and the Secretary's representative. Initially, the board designated Mr. Laney, Ms. De Leon, and Secretary Mineta as members of the executive committee. (A copy of these resolutions is attached.)

In July 2004, the President appointed Mr. Floyd Hall to be a member of Amtrak's board, without Senate confirmation while the Senate was in recess. Immediately after this appointment, the board amended the resolutions with respect to the executive committee that had been adopted in September 2003. Mr. Hall was appointed to the executive committee in lieu of Ms. De Leon, whose term on the board was to expire in August 2004. Further, in the event of a vacancy in the executive committee, the remaining two members were authorized to exercise the powers of that committee. These resolutions were unanimously adopted by Ms. De Leon, Mr. Laney, Mr. Hall, and the Secretary's representative. (A copy is also attached).

In August 2004, the President appointed Mr. Enrique Sosa to Amtrak's board, again without Senate confirmation while the Senate was in recess. Since the appointment of Mr. Sosa, the Amtrak Board has functioned with a quorum of four.

**RESOLUTIONS AMENDING SECTION 5.01 OF THE BYLAWS AND DESIGNATING AN EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS**

WHEREAS, Section 5.01 of Amtrak's Bylaws currently permits the Board to designate an Executive Committee comprised of three or more members, one of which must be the Secretary of Transportation or his designee, and the Executive Committee may, consistent with applicable law, exercise all of the authority of the Board of Directors in the management of the business and affairs of the Corporation in between meetings of the Board of Directors; and

WHEREAS, District of Columbia law permits a Board of Directors to designate an Executive Committee of as few as two members to "exercise all the authority of the Board of Directors in the management of the business and affairs of the Corporation"; and

WHEREAS, The Board has determined that it is in the best interests of the Company to designate an Executive Committee of the Board of Directors to have and exercise the authority of the Board; therefore, be it

RESOLVED, That the first sentence of Section 5.01 of Amtrak's Bylaws is amended to conform to District of Columbia law by permitting designation of two Directors to serve on an Executive Committee and by eliminating the language regarding the Executive Committee exercise of authority "in between meetings of the Board of Directors." The new first sentence of Section 5.01 shall read as follows: "The Board of Directors, by resolution adopted by a majority of the Directors with voting powers then in office, may designate two or more Directors to constitute an Executive Committee, to have and exercise, consistent with applicable law, all of the authority of the Board of Directors in the management of the business and affairs of the Corporation"; and

FURTHER RESOLVED, That an Executive Committee of the Board shall be established with the following members: David Laney, Chairman; Sylvia de Leon, Vice Chairman; and the Secretary of Transportation or his designee. In the event that one of these three members is unable to serve, the remaining two members shall constitute the Executive Committee and exercise all the powers thereof.

National Railroad Passenger Corporation
Board of Directors
Adopted September 24, 2003

**RESOLUTIONS DESIGNATING AN EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS**

WHEREAS, Section 5.01 of Amtrak's Bylaws, in accordance with D.C. law, currently permits the Amtrak Board of Directors ("the Board") to designate an Executive Committee comprised of two or more members, one of which must be the Secretary of Transportation or his designee and this Executive Committee may, consistent with applicable law, exercise the full authority of the Board in the management of the business and affairs of the Corporation; and

WHEREAS, By Resolution adopted September 24, 2003, the Board established an Executive Committee comprised of the following members: David Laney, Chairman, Sylvia de Leon, Vice Chairman, and the Secretary of Transportation or his designee; and

WHEREAS, The term of Sylvia de Leon as a Member of the Board is scheduled to expire on August 8, 2004; and

WHEREAS, The Board has determined that it is in the best interests of the Corporation to reconstitute the membership of such Executive Committee of the Board to have and exercise the authority of the Board; therefore, be it

RESOLVED, An Executive Committee of the Board is reestablished with the following members: David Laney, Chairman, Floyd Hall and the Secretary of Transportation or his designee; and be it

FURTHER RESOLVED, That in the event that one of these three members resigns or otherwise leaves or vacates his or her position as a Member of the Board, the remaining two members shall constitute the Executive Committee and exercise all the powers thereof; and be it

FURTHER RESOLVED, That in the event that any member of the Executive Committee designated by these Resolutions resigns or otherwise leaves or vacates his or her position as a Member of the Board, and a new member is appointed to the Board, that individual shall assume the vacated position on the Executive Committee and the Committee shall remain in effect.

National Railroad Passenger Corporation
Board of Directors
Adopted July 22, 2004

**U.S. Department of Justice**

Office of Legal Counsel

Office of the Assistant Attorney General

*Washington, D.C. 20530*

September 22, 2003

**MEMORANDUM FOR ALBERTO R. GONZALES**
**COUNSEL TO THE PRESIDENT**

*Re: Amtrak Board of Directors*

You have asked for our opinion whether a member of Amtrak's Reform Board whose statutory term has expired may hold over in office until a successor is appointed. We believe that he may not. You have also asked whether the President may remove a member without cause. We believe that the President has that power.

I.

Under the Amtrak Reform and Accountability Act of 1997, Pub. L. No. 105-134, 111 Stat. 2570 (1997) ("Amtrak Act" or "Act"), Amtrak is a rail carrier "operated and managed as a for-profit corporation." 49 U.S.C. § 24301(a)(1), (2) (2000). It is under the direction of a "Reform Board," which "consist[s] of 7 voting members appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years." *Id.* § 24302(a). Under the Act, it "is not a department, agency, or instrumentality of the United States Government," *id.* § 24301(a)(3), and "to the extent consistent with [the Act], the District of Columbia Business Corporation Act (D.C. Code sec. 29-301 et seq.) appl[ies]," *id.* § 24301(e).

The Act does not provide that a member of the Reform Board may hold over after his five-year term expires. We believe, therefore, that when a member's term expires, he may no longer sit on the Reform Board:

> By the common law, as well as by the statutes of the United States, and the laws of most states, when the term of office to which one is elected or appointed expires, his power to perform its duties ceases. This is the general rule.
>
> The term of office of a district attorney of the United States is fixed by statute at four years. When this four years comes round, his right or power to perform the duties of the office is at an end, as completely as if he had never held the office.

*Badger v. United States*, 93 U.S. 599, 601 (1876) (citation omitted). As the Supreme Court similarly stated in *United States v. Eckford's Executors*, 42 U.S. (1 How.) 250, 258 (1843), "[a]t the end of [the statutory] term, the office becomes vacant, and must be filled by a new appointment."

The executive branch recognizes the same rule. The opinions of our Office have followed it. *See* Memorandum for John P. Schmitz, Deputy Counsel to the President, from John C. Harrison, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Expiration of the Term of the Chairman of the Federal Reserve System* at 1 (July 5, 1991) (Because "[t]here is no statutory provision allowing the Chairman to hold over upon the expiration of his term," "that office will become vacant when Mr. Greenspan's term as Chairman expires"); *Federal Reserve Board – Vacancy With the Office of the Chairman – Status of the Vice Chairman (12 U.S.C. § 242, 244)*, 2 Op. O.L.C. 394, 395 (1978) ("Because the incumbent is not entitled to continue to exercise his powers absent reappointment, a vacancy in the position results."). And a long line of prior opinions by the Attorneys General reached the same conclusion. *See Reappointment of the District of Columbia Rent Commissioners*, 33 Op. Att'y Gen. 43, 44 (1921) ("The general rule is that where Congress has not authorized an officer to hold over, his incumbency must be deemed to cease at the end of his term, though no appointment of a successor may then have been made."); *Interstate Commerce Commission – Term of Office*, 25 Op. Att'y Gen. 332, 332-33 (1905); *Chiefs of Bureaus in the Navy Department*, 17 Op. Att'y Gen. 648, 649 (1884); *Liability on Sureties on Official Bond*, 15 Op. Att'y Gen. 214, 214-15 (1877); *Resignation of Office*, 14 Op. Att'y Gen. 259, 261-62 (1873); *Secretary of New Mexico*, 12 Op. Att'y Gen. 130 (1867); *Tenure of Navy Agents*, 11 Op. Att'y Gen. 286, 286-87 (1865) (overruling *Naval Officers Hold Over till Successors Are Qualified*, 2 Op. Att'y Gen. 713 (1835)).

We are aware of only one argument for the position that, in the circumstances here, this rule should not apply. The District of Columbia Business Corporation Act ("D.C. Business Corporation Act") provides that "[e]ach director [of a for-profit corporation] shall hold office for the term for which elected or until a successor shall have been elected and qualified." D.C. Code Ann. § 29-101.33 (2001). The Act establishing Amtrak makes the D.C. Business Corporation Act applicable "to the extent consistent with" the Amtrak Act, 49 U.S.C. § 24301(e), and, according to the argument, it would be consistent with the Amtrak Act for the members of the Reform Board, having served their statutory terms, to hold over under the provision of District of Columbia law.[1]

We believe that this argument would be mistaken. In order to determine whether, and to what extent, a provision of the D.C. Business Corporation Act is "consistent with" the Amtrak

[1] The Amtrak statute actually refers to "D.C. Code § 29-301 et seq.," and although that citation at one time would have referred to provisions about for-profit corporations, the citation now refers to the provisions governing non-profit corporations. *See* D.C. Code § 29-301, note (2001) (referring to 1981 edition). The provision of District of Columbia law governing for-profit corporations, by its terms, does not fit the situation of Amtrak's Board of Directors. That provision states that a director may continue to serve "until a successor shall have been elected and qualified." D.C. Code § 29.101.33 (2001). Amtrak's Board of Directors, however, is appointed, not elected. The provision on non-profit corporations, by contrast, uses the language "until his successor shall have been elected or appointed." D.C. Code § 29.301.19(c). We find it unnecessary to attempt to resolve which part of the District of Columbia law of corporations – the part governing for-profit corporations or the part governing non-profits – applies to Amtrak "to the extent consistent with" the Amtrak Act, because, as we explain below, the holdover rights under each are not consistent with the Amtrak Act.

Act, we must first determine what the Amtrak Act, standing alone, means and must then ascertain whether the provision of the D.C. Business Corporation Act supplements – or instead conflicts with – that meaning. In view of the well-established principle that an appointee may not continue past his term unless the statute provides for him to hold over, we believe that the Amtrak Act's specification of a simple five-year term affirmatively excludes the existence of holdover rights. Congress passed the Act against the background of the longstanding interpretation on holdover rights, and "we may presume 'that our elected representatives, like other citizens, know the law.'" *Compensation Programs v. Perini North River Assocs.*, 459 U.S. 297, 319 (1983) (quoting *Cannon v. University of Chicago*, 441 U.S. 677, 696-97 (1979)). *See also Edelman v. Lynchburg College*, 535 U.S. 106, 117 (2002) ("Congress being presumed to have known of this settled judicial treatment"). Furthermore, the federal statute at one time expressly allowed a director to hold over after his term had ended, until a new director was selected, *see* 49 U.S.C. § 24302(a)(2)-(4) (1994), but Congress later deleted this provision, *compare* Pub. L. No. 103-272, § 1(e), 108 Stat. 745, 906 (1994), *with* Pub. L. No. 105-134, § 411(a), 111 Stat. 2570, 2588 (1997). The holdover rights under the D.C. Business Corporation Act therefore do not fill in a term that the Amtrak Act leaves open, but instead conflict with that statute's rejection of holdover rights.

In *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 385 (1995), where the Supreme Court held that Amtrak is part of the federal government for purposes of the First Amendment but ordinarily is treated, for statutory purposes, as a corporation under the laws of the District of Columbia, the Court noted that the statutory provisions governing Amtrak are nevertheless contrary to District of Columbia law "with respect to many matters of structure and power, including the manner of selecting the company's board of directors." The Court listed, as an instance where the federal statute conflicts with District of Columbia law, the provision that, at the time, set a four-year term for a director. *Id.* So, too, the provision of the Act that now sets a simple five-year term is inconsistent with, and therefore is not supplemented by, District of Columbia law.

II.

We believe that the President, even without cause, may remove a member of Amtrak's Reform Board. As a general matter, the power of appointment "carrie[s] with it the power of removal." *Myers v. United States*, 272 U.S. 52, 119 (1926). This "rule of constitutional and statutory construction" recognizes that "those in charge of and responsible for administering functions of government who select their executive subordinates, need in meeting their responsibility to have the power to remove those whom they appoint." *Id. See also Sampson v. Murray*, 415 U.S. 61, 70 n.17 (1974); *Keim v. United States*, 177 U.S. 290, 293-94 (1900); *Ex Parte Hennen*, 38 U.S. (13 Pet.) 230, 259 (1839). The power of removal aids the President in carrying out his constitutional duty to exercise "the executive Power" and "take Care that the Laws be faithfully executed." U.S. Const. art. II, §§ 1, 3. *See Morrison v. Olson*, 487 U.S. 654, 689-90 (1988).

This structural principle, we believe, applies to Amtrak. Although for statutory purposes Amtrak "is not a department, agency, or instrumentality of the United States Government," 49 U.S.C. § 24301(a)(3), the Supreme Court in *Lebron* held, in the context of claims that Amtrak had violated the First Amendment, that it is "an agency of the Government, for purposes of the constitutional obligations of the Government . . . when the [Government] has specifically created that corporation for the furtherance of governmental objectives, and not merely holds some shares but controls the operation of the corporation through its appointees." 513 U.S. at 399. Applying *Lebron*, our Office has concluded that "[w]e can conceive of no principled basis for distinguishing between the status of a federal entity vis-a-vis constitutional obligations relating to individual rights and vis-a-vis the structural obligations that the Constitution imposes on federal entities." *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 148 n.70 (1996) (citation omitted) ("*Constitutional Separation of Powers*"). A fundamental element of executive-branch structure is that presidential appointees are subject to removal by the President.

Congress provided no express restriction against removal, without cause, of members of the Reform Board. Because the removal power is a principal means by which the President carries out the executive power and takes care that the laws be faithfully executed, we do not believe that any restriction on the President's removal authority should be inferred. *See Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991) ("When Congress decides purposefully to enact legislation restricting or regulating presidential action, it must make its intent clear.").

To be sure, in *Wiener v. United States*, 357 U.S. 349 (1958), the Supreme Court did infer a tenure protection from statutory silence. There, the Court held that the President could not remove, without cause, a member of the War Claims Commission, "an adjudicating body with all the paraphernalia by which legal claims are put to the test of proof, with finality of determination 'not subject to review by any other official of the United States or by any court by mandamus or otherwise.'" *Id.* at 354-55 (citation omitted). The Court reasoned that the "intrinsic judicial character of the task with which the Commission was charged" could not be squared with tenure at the pleasure of the President.[2] *Id.* The Amtrak Reform Board runs a business; it is not an adjudicatory body. Consequently, there is no ground for inferring any tenure protection for the Reform Board's members under the reasoning of *Wiener*.

In *Constitutional Separation of Powers*, we analyzed the cases about removal restrictions and concluded that "[i]n situations in which Congress does not enact express removal limitations, . . . the executive branch should resist any further application of the *Wiener* rationale, under which a court may infer the existence of a for-cause limit on presidential removal, except with respect to officers whose only functions are adjudicatory." 20 Op. O.L.C. at 170 (footnote

[2] Although the Court's later decision in *Morrison v. Olson*, 487 U.S. 654 (1988), stated that an officer's function is only one consideration in deciding whether an express statutory protection of tenure is constitutional, *id.* at 691, the Court in *Morrison* did not address the role of an officer's function when tenure protection might be inferred from statutory silence.

omitted). However, even if we were to concede that removal restrictions sometimes may be inferred for officers whose duties are not wholly adjudicatory, such as the members of the "independent" regulatory commissions, the Reform Board lacks some critical characteristics of the multi-member boards whose members the lower courts have assumed to be tenure-protected despite the absence of any express statutory limit on removal. The members of the Reform Board do not serve staggered terms; they are not subject to political balance requirements, although the President is to consult with both the majority and minority leaders in making his selections; and they do not engage in regulation through agency adjudication and rulemaking.[3] *Cf. Federal Election Commission v. NRA Political Victory Fund*, 6 F.3d 821, 826 (D.C. Cir. 1993) (the Federal Election Commission was "likely correct" that "the President can remove the commissioners only for good cause, which limitation is implied by the Commission's structure and mission as well as the commissioners' terms"); *SEC v. Blinder, Robinson & Co.*, 855 F.2d 677, 681 (10th Cir. 1988) ("[F]or purposes of this case, we accept appellants' assertion in their brief, that it is commonly understood that the President may remove a commissioner [of the Securities and Exchange Commission] only for 'inefficiency, neglect of duty, or malfeasance in office.'"). Even if the independent regulatory commissions are taken as a model, no tenure protection could be found here.

Nevertheless, in *Lebron*, the Supreme Court suggested that the President might not be able to remove Amtrak's directors at all:

> [Amtrak] is established and organized under federal law for the very purpose of pursuing federal governmental objectives, under the direction and control of federal governmental appointees. It is in that respect no different from the so-called independent regulatory agencies such as the Federal Communications Commission and the Securities and Exchange Commission, which are run by Presidential appointees with fixed terms. It is true that the directors of Amtrak, unlike commissioners of the independent regulatory agencies, are not, by the explicit terms of the statute, removable by the President for cause, and are not impeachable by Congress. But any reduction in the immediate accountability for Amtrak directors vis-a-vis regulatory commissioners seems to us of minor consequence for present purposes – especially since, by the very terms of the chartering Act, Congress's "right to repeal, alter, or amend this chapter at any time is expressly reserved."

513 U.S. at 398 (citation omitted). The Court's discussion of the President's control over Amtrak's directors, we believe, was dictum. It was not essential to the conclusion in *Lebron* because the Court found that the government exercises control over Amtrak *even if* the President

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[3] Furthermore, the President is authorized to appoint to the Reform Board the Secretary of Transportation, 49 U.S.C. § 24302(a)(2)(ii), an official who plainly may be removed by the President without cause, and we understand that, in the practical application of this provision, the Secretary is taken to serve on the Reform Board only as long as he holds the office of Secretary.

has less authority than over the independent regulatory agencies. Further, the passage starts from incorrect premises and arrives at an incorrect conclusion. The commissioners of the Federal Communications Commission and the Securities and Exchange Commission are not "by the explicit terms of the statute[s], removable by the President for cause." In each case the statute is silent on removal. *See* 15 U.S.C. § 78d(a) (2000); 47 U.S.C. §154(a), (c) (2000). Thus, in each case, the President's power follows from the general principles that we have set out above and not from an explicit statutory grant of power. The power of *Congress* to revoke Amtrak's charter, moreover, while relevant to whether Amtrak is part of the government for constitutional purposes, does not enable the *President* to carry out his constitutional responsibilities. To discharge those responsibilities, the President needs the power of removal, and he has that power even in the absence of a statutory provision that confers it upon him.

Please let us know if we may be of further assistance.

M. Edward Whelan III

M. Edward Whelan III
Acting Assistant Attorney General

**Responses to Questions for the Record (QFR) to Mr. Jeffrey A. Rosen, General Counsel, Department of Transportation**

1. Mr. Rosen, what was DOT's involvement in the proposal to create a Northeast Corridor Subsidiary? Please include in your answer any involvement by Secretary Mineta in his capacity as a Member of the Amtrak Board.

   **Answer:** As Secretary Mineta's representative on the Amtrak Board of Directors, I consulted with other Board members and Amtrak Management in the adoption of the Board resolution of September 22, 2005 to initiate the exploration of issues relating to the segregation of Northeast Corridor assets to better understand the costs of such assets.

2. What was the involvement of members of the Executive Branch apart from DOT in the proposal to create a Northeast Corridor Subsidiary?

   **Answer:** The members of the Executive Branch apart from DOT had no involvement in the Board proposal to create a Northeast Corridor Subsidiary.

   However, the Administration's proposal reflected in H.R. 1713 calls for separation of the NEC infrastructure, so the Administration's policy is a matter of public record.

3. Mr. Rosen, what was DOT's involvement in the dismissal of former Amtrak President and CEO David Gunn? Please include in your answer any involvement by Secretary Mineta in his capacity as a Member of the Amtrak Board.

   **Answer:** As Secretary Mineta's representative on the Amtrak Board, I consulted with other Board members on the dismissal of Mr. Gunn. I consulted Secretary Mineta before voting with the other Board members to release Mr. Gunn.

4. What was the involvement of members of the Executive Branch apart from DOT in the dismissal of former Amtrak President and CEO David Gunn?

   **Answer**: The members of the Executive Branch apart from DOT had no involvement in the dismissal of David Gunn. The decision to join the unanimous Board vote was made by me, in consultation with Secretary Mineta. I informed various individuals within DOT and elsewhere of this decision.

5. Mr. Rosen, you mentioned in your oral testimony that you conferred and consulted with Secretary Mineta on the Board's impending decision to fire Mr. Gunn. Who at DOT was involved in that discussion, and when did it take place?

   **Answer:** That is correct. The discussions took place at DOT during the days preceding the November 7, 2005 Board meeting. Please also see my responses to

various questions on this topic during the House Transportation and Infrastructure Committee's hearing on November 15, 2005.

6. Mr. Rosen, as Secretary Mineta's designee, how did you vote on the Board's decision to hire a public relations firm to deal with the dismissal of Mr. Gunn?

   **Answer:** As Mr. Laney, Chairman of the Amtrak Board, testified at the Railroad Subcommittee hearing on November, 15, 2005, he made the decision to hire the public relations firm to help address inquiries concerning the release of Mr. Gunn. I supported his decision to do so. Given the media interest connected with the Subcommittee's hearing, that decision appears to have been warranted.

7. Mr. Rosen, how many times has Secretary Mineta ridden Amtrak trains since he has served on Amtrak's Board of Directors? Please provide the dates, destinations, and purposes of the travel to the Subcommittee. Please provide the same information for yourself, dating back to when you first served as the Secretary's designee on the Board.

   **Answer:** Secretary Mineta has ridden Amtrak and several other domestic and foreign intercity passenger rail service providers during his tenure on the Amtrak Board of Directors. Based on available records and recollection, the following is a list of those trips:

| Date | Trip | Purpose |
|---|---|---|
| October 1, 2001 | Baltimore-Washington Intl Airport Rail Station to Philadelphia, PA | To observe Amtrak operations |
| March 23, 2002 | Baltimore-Washington Intl Airport Rail Station to Philadelphia, PA | To observe Amtrak operations |
| April 25, 2002 | Glenview Station, Glenview, IL to Milwaukee, WI | To observe Amtrak operations |
| November 8, 2002 | New York Penn Station to New Carrollton Station, MD | To observe Amtrak operations |
| March 23, 2004 | New York Penn Station to Baltimore-Washington Intl Airport Rail Station | To observe Amtrak operations and deliver remarks |
| March 31, 2005 | San Jose and San Francisco | To examine how local officials are taking steps to to grow ridership, cut costs and improve service. |
| | | To observe passenger rail operation in Japan. |

| | | |
|---|---|---|
| April 12, 2005 | Tokyo to Nagoya, Japan | |
| June 5, 2005 | New York Penn Station to New Carrollton, MD Train Station | To observe Amtrak operations |
| July 5, 2005 | Anchorage Railroad Depot to Ted Stevens Airport | To observe the Alaska Railroad's operations and deliver remarks |
| February 13, 2006 | Washington Union Station to Philadelphia, PA | To observe Amtrak operations and deliver remarks |

During the past decade, I have traveled on Amtrak on numerous occasions as a passenger. But I have not ridden Amtrak during the last year in which I have served as Secretary Mineta's designee to the Amtrak Board of Directors. However, I have ridden one other intercity passenger rail service provider during that time period.

8. Mr. Rosen, how many times has Secretary Mineta visited Amtrak facilities since he has been on the Board? Please provide the dates, names and locations of the facilities, and the purpose of the visit(s) to the Subcommittee. Please provide the same information for yourself, dating back to when you first served as the Secretary's designee on the Board.

   **Answer:** Secretary Mineta has visited numerous Amtrak facilities during his tenure on the Amtrak Board of Directors. Examples of these visits include:

| Date | Facilities | Purpose |
|---|---|---|
| October 21, 2003 | Washington, DC Union Station | To observe Amtrak operations and present a DOT Award for Heroism |
| February 14, 2005 | Union Station, Chicago, IL | To observe Amtrak operations and deliver remarks |
| February 22, 2005 | Charlotte Amtrak Station, Charlotte, NC | To observe Amtrak operations and deliver remarks |
| March 10, 2005 | St. Louis Train Station, St. Louis, MO | To observe Amtrak operations and deliver remarks |
| March 24, 2005 | Detroit Amtrak Station, Detroit, MI | To observe Amtrak operations and deliver remarks |
| May 18, 2005 | Mobile Amtrak Station, Mobile, AL | To observe Amtrak operations and deliver remarks |

I have visited Amtrak facilities across the Northeast Corridor during my personal and professional travels. Several of these visits occurred during my time as Secretary Mineta's designee to the Amtrak Board of Directors. In addition to attending Board meetings at Amtrak's headquarters in Washington, DC, I visited other Amtrak facilities during my time as the Secretary's designee to the Amtrak Board of Directors. These facilities include:

| Date | Facilities | Purpose |
|---|---|---|
| February 14, 2005 | Union Station, Chicago, IL | To observe Amtrak operations and assist Secretary Mineta |
| February 22, 2005 | Charlotte Amtrak Station, Charlotte, NC | To observe Amtrak operations and assist Secretary Mineta |
| March 10, 2005 | St. Louis Train Station, St. Louis, MO | To observe Amtrak operations and assist Secretary Mineta |

9. Mr. Rosen, do you or Secretary Mineta submit or charge certain expenses, such as travel, flights, hotels, restaurant charges, board fees and other expenses to Amtrak in relation to your duties on the Board? If so, please provide copies of all those expenses, regardless of whether they were directly charged to Amtrak or submitted later on your or the Secretary's behalf for reimbursement by Amtrak.

   **Answer:** Although Board members generally are entitled to reimbursement for Board-related expenses, neither Secretary Mineta nor I submit or charge expenses relating to our duties on the Board of Directors to Amtrak.

10. Mr. Rosen, please provide the Subcommittee with copies of all letters submitted by you to DOT and the Amtrak Board listing his financial holdings and recusals to avoid conflicts of interest or the appearance of conflicts of interest.

    **Answer:** I have complied with all Office of Government Ethics provisions. In addition, I have abstained or recused myself from issues that involve potential conflicts of interest during my service as Secretary Mineta's designee to the Amtrak Board of Directors and as General Counsel to the United States Department of Transportation. In this regard, Amtrak's corporate minutes reflect those instances where I abstained from votes.

11. Mr. Rosen, the Government Accountability Office (GAO) criticizes the Amtrak Board for not having a full complement of members since July 2003. What does the Administration plan on doing about the three vacancies? What does the

Administration plan on doing about Mr. Hall and Mr. Sosa, whose appointments expire at the end of this congressional session? Does the Administration intend to re-nominate them or re-recess appoint them?

**Answer:** The Administration submitted a full slate of Amtrak Board nominees on October 14, 2003. Unfortunately, the United States Senate did not act to confirm any of the Administration's nominations.

The Administration intends to fill all of the vacancies on the Amtrak Board of Directors with dedicated and qualified individuals. In this regard, the Administration re-recess appointed Mr. Hall and Mr. Sosa on January 4, 2006 and intends to submit nominations for the remaining vacancies in the next few months.

12. Mr. Laney, in the GAO's most recent report on Amtrak's Management, GAO criticizes Amtrak for not having a mission statement, a strategic planning process, strategic goals, a performance-based approach, and a cost containment plan. Do you believe these criticisms are valid? If so, were you aware of these "deficiencies" before the GAO issued its report?

    **Answer:** This question is addressed to Mr. Laney. However, the Administration's comments on the GAO Report are contained in the Report itself. The GAO Report contains a number of valuable insights that Congress should consider in reform legislation for Amtrak.

13. Did you believe that the directors received adequate information from Amtrak to carry out your responsibilities? If not, what steps did you take to obtain better information?

    **Answer:** In general, the Board of Directors receives enough information to satisfy their duties and make informed decisions about the welfare of Amtrak. However, during 2005, on some occasions it was necessary to seek information from sources other than the CEO. In the circumstances where directors required additional information, they succeeded in doing so.

    I welcome the Subcommittee's interest in Amtrak reform, and look forward to its continuing support for the Board's efforts to improve the company.

**STATEMENT OF HONORABLE DON YOUNG**
**RAILROAD SUBCOMMITTEE HEARING ON**
**CURRENT GOVERNANCE ISSUES AT AMTRAK**
**NOVEMBER 15, 2005**

**THANK YOU, MR. CHAIRMAN. I COMMEND YOU FOR CALLING THIS TIMELY HEARING ON THE CONTINUING DISARRAY AT AMTRAK AND THE RECENT FIRING OF AMTRAK'S PRESIDENT, MR. DAVID GUNN.**

**I AM SURE TODAY'S HEARING WILL REFLECT A RANGE OF OPINIONS ON THE MERIT OF MR. GUNN'S TIME AT AMTRAK.**

**IN MANY WAYS, THAT REFLECTS CONTINUING DISAGREEMENTS ON THE PROPER DIRECTION FOR AMTRAK AS A PASSENGER RAILROAD.**

**WHAT IS FAR MORE DISTURBING TO ME THAN THE FATE OF ANY PARTICULAR EXECUTIVE IS THE LACK OF LEADERSHIP OF AMTRAK.**

**ONE OF MY BIGGEST CONCERNS ABOUT AMTRAK IS THE LACK OF A CLEAR AND LEGALLY DEFENSIBLE QUORUM ON ITS BOARD OF DIRECTORS.**

**I BELIEVE THAT THE QUORUM ISSUE MUST BE RESOLVED AND SHOULD NOT BE A MATTER OF INTERPRETATION.**

**THE FAILURE TO ADDRESS THIS ISSUE HAS CREATED A LEGAL CLOUD OVER ALMOST ANY MAJOR ACTION THAT AMTRAK TAKES. FOR EXAMPLE, HOW DOES ANYONE BENEFIT FROM A SITUATION WHERE EVEN THE RECENT LABOR CONTRACTS OF THE EMPLOYEES MAY BE SUBJECT TO LEGAL ATTACK.**

**I HOPE THIS HEARING WILL GIVE US SOME ANSWERS. THIS IS A CORPORATION THAT APPARENTLY HAS IGNORED THE LAW MANDATING AT LEAST ONE ANNUAL SHAREHOLDER MEETING.**

**CLEARLY, THERE IS A REAL CONCERN THAT AMTRAK HAS NOT OPERATED UNDER EVEN BASIC RULES RELATED TO CORPORATE GOVERNANCE.**

**THANK YOU, MR. CHAIRMAN. I LOOK FORWARD TO A MOST INFORMATIVE AND EDUCATIONAL HEARING.**

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