

**NOMINATIONS OF LINDA J. MORGAN, TO BE
A MEMBER OF THE SURFACE TRANSPORTATION BOARD; AND DR. STEPHEN D. VAN BEEK, TO BE ASSOCIATE DEPUTY SECRETARY AND DIRECTOR, OFFICE OF INTERMODALISM, AND MICHAEL J. FRAZIER, TO BE ASSISTANT SECRETARY FOR GOVERNMENT AFFAIRS, OF THE U.S. DEPARTMENT OF TRANSPORTATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 28, 1999

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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TUESDAY, SEPTEMBER 28, 1999

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10:01 a.m., in room 253, Russell Senate Office Building, Hon. Kay Bailey Hutchison presiding.

Staff members assigned to this hearing: Virginia Pounds, Republican professional staff; and Jonathan Oakman, Democratic staff assistant.

**OPENING STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Good morning. Our hearing will come to order.

The Commerce Committee meets today to examine the qualifications of three individuals, who have been nominated to serve in important transportation posts in the government.

I am pleased the President has decided to renominate Linda Morgan for another term as Chairman of the Surface Transportation Board. I think Ms. Morgan has done an excellent job in the face of difficult circumstances and issues.

I believe that Congress could help Ms. Morgan by passing an STB reauthorization and provide her guidance on some of the major issues facing the rail industry and the STB. I also think we can do that this year.

I have discussed it with Senator McCain, and he, too, desires a reauthorization. I am committed to working with him and all the affected parties so that we can get a bill out of the committee before Congress adjourns this year. I plan to sit down with the parties and Senator McCain in the near future.

I know that there are multiple views on this committee about this issue. But I think we all agree that full and fair competition is really the answer to any problems that are being experienced in the rail industry. Fostering that competition would be the best thing that we could do for our transportation industry.

Let me also welcome before the committee our other two nominees. Mr. Michael Frazier has been nominated to be Assistant Secretary for Government Affairs at the Department of Transportation. And Dr. Stephen Van Beek has been nominated to be Associate Secretary and Director of Intermodalism for the department.

I would also like to take a moment to welcome the family members and special guests of our nominees in the audience.

At this time, let me turn the podium over to the ranking member for a statement. And then I will invite the nominees and Senator Kennedy and any other Members of Congress who will be introducing the nominees today.

So, Senator Hollings, welcome.

**STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR
FROM SOUTH CAROLINA**

Senator HOLLINGS. Thank you, Madame Chairman. You have made my statement, in essence.

I support the confirmation of Michael Frazier and Dr. Van Beek. And I particularly wanted to be here—I have another conference ongoing—for the confirmation of Linda Morgan. She served as counsel for our committee for years here, and did an outstanding job. I have reviewed her statement.

The Surface Transportation Board under her guidance has done an outstanding job in my opinion, really has accelerated, handled more cases and everything else of that kind, and has given satisfaction to the shipping community that they have so long sought for.

And I know her. She is a better lawyer than me on these things. And I will leave her to her own wits with all the cross examination. But I appreciate it very, very much. I have a prepared statement that I will insert in the record.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM
SOUTH CAROLINA

I am proud to say that I have known Chairman Morgan for many years and, while she is sitting on the other side of the table, I am pleased to see her back in this room. Although we may not always agree, I have a great deal of respect for her and know that two qualities she possesses in abundance are fairness and integrity. Those qualities, coupled with her commitment to public service, make her an outstanding Chairman.

As many of you know, Linda Morgan served as counsel for the Surface Transportation Subcommittee for eight years and then as General Counsel for the Full Committee for seven years. During that time I found Linda Morgan to be one of the most intelligent and thorough professionals that I have worked with. She is smart and she cares about the issues -- I know that she is committed to her position as Chairman of the Surface Transportation Board.

Linda Morgan has served as Chairman of the Surface Transportation Board (STB) since it was created in 1995. Prior to that, she served as Chairman of the ICC. In 1995 she was responsible for implementing the changes that Congress envisioned in the Interstate Commerce Commission Termination Act. She pared down the ICC and established a new, more streamlined agency in its place, the STB.

Chairman Morgan is to be commended for her achievements and commitment to the mission of the STB. The STB operates with only 135 people, half the staff of

it predecessor, but it is charged with regulating the entire railroad industry. Among her accomplishments, Chairman Morgan has facilitated creating a more efficient process for resolving rate disputes between shippers and carriers. Under her leadership, she has helped the private sector come to agreements on short line access and agricultural services arbitration which have benefitted the entire transportation industry.

Chairman Morgan has done an outstanding job moving the agency through several different phases. She successfully transitioned the agency in 1995 from the ICC to the STB. She has seen the railroad industry through three very large merger transactions. She helped resolve the service issues in the West. And last year she ended the practice of using product and geographic competition in determining appropriate rates for shippers.

Linda Morgan has done a lot of heavy lifting during her tenure as Chairman of the STB. She has my full confidence and support and I look forward to working with her in the future.

I look forward to hearing from Michael Frazier, who is nominated to be Assistant Secretary for Governmental Affairs at the Department of Transportation. I am sure that he knows what he is getting into, but I can imagine that keeping up with Secretary Slater, the U.S. Congress and state and local elected officials will be enough to keep him very busy. There are many transportation priorities before this Committee that we will work together on: aviation, motor carrier, maritime, pipelines and hazardous materials issues to name a few. I look forward to hearing your thoughts on how we will coordinate our efforts on these matters.

Since Dr. Van Beek has spent several years at the Department of Transportation already, he seems well qualified for his position as Associate Deputy Secretary and Director of Intermodalism. I have a great interest in this office since my state has many modes of transportation which are critical to the survival and growth of the manufacturing industry. Intermodal traffic is the largest growth segment of the transportation industry and one that certainly merits a comprehensive review and the focus of the office which you have been nominated to lead. I look forward to hearing how you will strengthen the nation's ability to compete in the global economy and obtain the optimum yield for the nation's transportation system.

I appreciate all three of the nominees appearing here before us today and look forward to working with them.

Thank you.

Senator HUTCHISON. Thank you, Senator Hollings.

Senator Rockefeller, would you like to make a statement?

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. I would, Madame Chairman. I do not really have an opening statement, but I have some comments.

Obviously, we are going to have all three witnesses before us. I am going to focus on Linda Morgan for the chairmanship and where we are today and where I think we are going on railroad issues. Ms. Morgan knows I have been very outspoken in my views about the railroad industry and what I consider to be their inexcusable and really destructive pattern of behavior in terms of competition in key segments of our national rail system.

As you know, Madame Chairman, together with Senators Dorgan, Burns and Senator Roberts and Breaux and others in this committee, including the chairman herself in other iterations, we have expressed a lot of interest in curing some of these, what I consider, outrageous behavior on the part of the railroads.

I have introduced a bill. It addresses some of these egregious practices. I am serious about the bill. It is a good bill. It is an important bill. It proposes a solution to the bottleneck issue, which is enormous. It codifies the market dominance aspect that the STB made earlier.

It emphasizes competition as our rail policy. It eliminates the rail revenue adequacy task, which is silly and beneath all of us. As I say, it is an important bill.

I have invited feedback from the railroads. I have invited compromise from the railroads. I have had an absolute open door policy to the railroads. And in spite of my frustration with them, I might say, and in spite of the fact that they have made a very large issue in my home state of West Virginia, where I remember everything and forget nothing, of saying that I am trying to take jobs away from West Virginians and cause safety problems, which further angers me and further causes me to—in my motivation, rather than what they should be doing, which is to improve rail competition and the economy of West Virginia.

As you might predict, the railroads have refused my overtures. I have met with executives of various levels, of various kinds. They refuse that there is even a problem, almost laughing at me, at the situation, at the problems that I bring up. And, of course, they refuse to come to the table.

In fact, many of them refuse to acknowledge that there even, as I said, is a problem around. They sort of enjoy the sparring, it seems to me, sort of verbal competition, no concern about the economic consequences in our chemical industry, coal industry and other industries at all.

And all of this, Madame Chairman, despite all of the testimony brought before Ms. Morgan, before the STB, before this committee by many of us on many occasions, the series of GAO studies, which were absolutely devastating to the railroad industry, absolutely devastating.

They ignore that, showed that some 70 percent of shippers view the current system as fundamentally flawed, not to speak of the intimidation, which is a routine part of their practice.

In any event, I am obviously very committed to making some changes in this industry. And I would like to see us take up and demand an STB authorization bill this year. I recognize the high caliber and the deep nature of the lobbyists that this very small group of class A railroads has assembled. Usually when we have these meetings, it is the fullest hearing of any of our sessions.

But we need to debate, Madame Chairman, in this committee this year the tough issues about railroad competition. We cannot avoid that. We need to talk about STB's serious underfunding and understaffing. We need to talk about STB's undermining of collective bargaining rights. And we need to look at a variety of other things.

Now, Ms. Morgan knows that I have had my differences with her. And yes, I would probably prefer to see somebody else as chairman of the STB. But I honestly believe that the real problem does not lie with her, but it relies with the law, which is us, which is this committee to begin with. She has made that clear in the past, and I will have questions for her about this.

But I want to take up my bill. I want to take up your bill. And I want to do it this year. And there are some very ugly rumors going around here, some of which have been published, that the leadership of the full committee on both sides is talking about an

effort to attach a clean, multi-year STB reauthorization bill to an omnibus budget bill at the close of the session.

That would be, in plain terms, a breaking of the word that I had with the chairman of the committee and the ranking member of the committee.

They had agreed to prevent this kind of deal from happening in conversations that some of us have had with them earlier in the year, last year and again earlier this year. Both of them committed to allow us the opportunity, both of us, the opportunity to bring amendments to an STB bill during committee authorization this year.

I want to say publicly I would be very troubled and would be inclined to be more mischievous and obnoxious on the floor if there was a back room or a stealthy deal to circumvent this word to this member and other members of this committee. And I hope that the chairman will work with me and with Senator Dorgan and others to make sure that this does not happen.

I thank the chairman.

Senator HUTCHISON. Thank you, Senator Rockefeller. I would just respond by saying that I think it is very important that we have a reauthorization. And I do not think a reauthorization that does not address the issues and concerns that have been brought forward since the emersion of the STB would not be in anyone's best interest. I think it is important that we address those concerns.

I think it is important that we come to terms so that we assure a healthy rail system in our country and assure that shippers have access to competition and fair pricing.

So I very much want that to happen. I have spoken to Senator McCain about it. Even though we differ on substance, he has said that we will be able to bring forward his bill and then have the ability to amend. And that is fair.

So as long as we have the ability to discuss it, offer our amendments, let the majority rule, that is the process. So that is what I am pushing. And I hope very much for that to happen this year.

I ask unanimous consent that Senator McCain's statement be put in the record. Without objection, it will be.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

As Chairman of the Committee, I would like to thank Senator Hutchison for chairing today's hearing on several pending nominations. I also want to take this opportunity to express my strong support for the reconfirmation of Linda Morgan to serve as a member, and Chairman, of the Surface Transportation Board (STB).

Ms. Morgan's extensive professional experience and impressive qualifications have been invaluable to the Board. Throughout her tenure, she has consistently worked to enforce the transportation policies and public interest standards as established by law. Ms. Morgan further deserves our commendation for the leadership she demonstrated in managing the closure of the Interstate Commerce Commission (ICC) and the establishment of the STB. That was no small feat. We owe thanks to both Chairman Morgan and her very dedicated and capable staff.

Since its creation, the STB has made tremendous strides. It has dealt with some of the most challenging rail transportation matters that have arisen in many years, including the very difficult service crisis in the West. It has also managed to reduce the backlog of pending cases which it inherited from the former ICC. I can think of no other federal entity that has carried out such a vast work load with such a limited level of resources.

Many critical transportation decisions and responsibilities remain before the STB and these challenges are not expected to diminish. The achievements already attained by the Board are greatly attributed to Chairman Morgan's tireless dedication and commitment. Therefore, in my judgement, Linda Morgan's reconfirmation as Chairman of the STB should be a top priority. The American citizens would be well served by Ms. Morgan's reappointment. We need more forward-thinking and committed individuals like Linda to serve in the federal government.

It is my intent for the Committee to act swiftly on her confirmation.

Senator HUTCHISON. Senator Breaux, did you have an opening statement?

Senator BREAUX. Good morning.

Senator HUTCHISON. The best opening statement of the day. Thank you.

[Laughter.]

Senator HUTCHISON. With that, I would like to ask Senator Kennedy and Congresswoman Lofgren to come forward. If there are any other Members of Congress wishing to introduce nominees, I would ask them to come forward at this time. And then after their statements, I will call the nominees, and we will proceed.

Senator Kennedy, I welcome you to the committee. And as you can see, our committee is just easy going—

Senator KENNEDY. Thank you very much, Madame Chairman.

Senator HUTCHISON. —just like judiciary, just what you are used to.

Senator KENNEDY. I thought the Human Resource Committee and the Judiciary Committee were the only committees where we had differences.

Senator HUTCHISON. Right.

Senator KENNEDY. It is good to see that Senator Rockefeller is in good spirits here this morning.

[Laughter.]

Senator HUTCHISON. Mischievous and devious, I think is what he said.

[Laughter.]

**STATEMENT OF HON. EDWARD M. KENNEDY, U.S. SENATOR
FROM MASSACHUSETTS**

Senator KENNEDY. Madame Chairman, I know we have a full agenda here, but I wanted to take this opportunity to bring to the attention of this committee really an outstanding public servant, someone who has been a long and dear friend of mine, and someone who has had a very distinguished life of commitment in terms of public service. And that is Mike Frazier, who has been nominated by the President with the support of the Secretary to be Assistant Secretary of Transportation in the area of Intergovernmental Affairs.

Michael Frazier worked in my office for a number of years, starting in 1985. And in 1986, when we had the real debate here in the Congress of the United States on the issue of apartheid, in which I was very active with a number of other members of the Senate, Mike Frazier was one of the very strong and effective staff members whose knowledge about the situation and whose help and assistance in the development of legislative strategy were absolutely invaluable, not only working with one side of the aisle, but working on both sides of the aisle.

It was at that time when I became enormously impressed with his ability. Since that time, he has been involved in a number of different areas of important responsibilities, serving as Senator Moseley-Braun's chief of staff, where he gained experience in terms of management techniques and budgetary factors.

Over the period of recent years, he has worked very effectively as Deputy Assistant to the Assistant Secretary in the area of inter-governmental affairs.

He has a broad and wide understanding, I believe, of local government, of state government, as well as a broad experience in terms of the functioning of the House and the Senate. He also has experience in the Department of Transportation.

I find him diligent. I find him hardworking. I find him absolutely trustworthy. And I find him strongly committed to the best in terms of public service.

I think we are very lucky to have him as a nominee. I know he will do an outstanding job in this position, if approved by this committee.

I know his mother is here today. I know she will be recognized by Christine Cooper and the Cook family and the Qualter family and a number of other friends. I know how proud they are of Mike Frazier for all that he has represented in terms of someone who has been a loving son and devoted to his mother and members of his family. He is really an extraordinary individual.

I have the highest recommendation for him. Many times we are in situations where we make representations and appear before committees on the basis of individuals we have some knowledge of or some awareness of. But today is a very special privilege and a real pleasure because of my very, very high regard for him. I know he will do an outstanding job. I would hope the committee would consider him favorably.

Senator HUTCHISON. Thank you, Senator Kennedy. I certainly appreciate your taking the time to come on behalf of your friend and colleague, Mr. Frazier.

Representative Zoe Lofgren for Dr. Van Beek.

**STATEMENT OF HON. ZOE LOFGREN, U.S. REPRESENTATIVE
FROM CALIFORNIA**

Ms. LOFGREN. Thank you, Madame Chairman, members of the committee. I am pleased to be here today to talk about someone I have known for years and whom I respect a great deal. That is Stephen Van Beek.

Following his graduation with a bachelor of arts degree in political science from the University of California Santa Barbara, Steve served as a legislative assistant in the House of Representatives from 1983 to 1986. He then returned to study at the University of Virginia, earning both a master's degree and a doctorate in government and foreign affairs.

Afterwards, he taught as a professor of political science at San Jose State University, a position from which he is currently on leave. It was there, while teaching at that fine university in the heart of my district, that we met.

Steve's knowledge of and experience in public administration and transportation is impressive by any standard.

While at San Jose State, he taught and wrote about the American political system in transportation. He has published more than a dozen studies and articles and was also a research associate at the Norman Manetta International Institute of Surface Transportation Policy Studies, where he participated in studies on transit policy and transportation education.

He has already proven himself as a capable administrator at the Department of Transportation in the Research and Special Program Administration (RSPA), where he has served as Special Assistant and Deputy Administrator for Modal Administration.

As chief operating officer responsible for 870 employees and a \$300 million budget, he shaped the RSPA's strategic plan, research and technology strategies, emergency preparedness and response activities, and new regulations for the pipeline and hazardous material safety programs.

Also as a member of the Secretary's management council at the Department of Transportation, he has been a leader in establishing a quality award process and championing a management development process for the future of the DOT. He played a strong role in strengthening ties with minorities serving institutions, colleges and universities.

His distinguished career inside the educational world and within government demonstrates his strong ability to serve as the senior advisor and representative of the Department of Transportation. I know absolutely that he would be an asset to our government at the Department of Transportation in the position of Associate Deputy Secretary.

I am so pleased that the President has recognized him with this nomination. I hope that you will advise that the Senate should consent to his nomination. I would further add that Steve is someone with whom you will enjoy working. He is responsive, smart, and public spirited. Indeed I think we are lucky that he is willing to take time out of his academic career to serve in the public sector for this short period of time.

Thank you very much for listening to me this morning.

Senator BURNS [PRESIDING]. We thank you for your statement today. Since the chairman has jumped up and run away—what did she do, get scared or what?

[Laughter.]

Well, let me see. I guess I am about the only Marine up here, right? The odds are about right.

[Laughter.]

Senator BURNS. I think—Senator Dorgan, I understand that you have come late, and I just got here. Do you have an opening statement that you would like to give at this time, before we call the witnesses?

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, I will just briefly mention that I am interested in a number of issues. I specifically will want to ask Linda Morgan a couple of questions about the Rail Shipper Protection Act and the issues related to the overcharging of consumers and shippers in my State of North Dakota and around the

country. She well knows my concern about that and the concern of a number of us who have introduced legislation.

I was going to inquire, and I understand Senator Rockefeller has inquired, about the opportunity to offer amendments to the Surface Transportation Board reauthorization, about the opportunity to get a hearing on the piece of legislation that you have worked with us on, the Rail Shipper Protection Act.

These are very important issues. We have not made as much headway as we should and as we will. So we need the opportunity, and a hearing is one opportunity. The ability to amend the STB Reauthorization Act is another.

And one other opportunity, of course, is with the renomination of Linda Morgan to hope and expect that we will also have a very aggressive administrator and commissioner to work on these issues.

But I will ask Linda Morgan some questions about that. My understanding is that the response to the request for hearings on the Rail Shipper Protection Act has been positive and that we will be able to expect to have a hearing on that, which I think will be a positive development.

Senator BURNS. That is correct.

Oh, you are back.

Senator HUTCHISON. Yes.

[Laughter.]

Senator HUTCHISON [presiding]. I would like to call the nominees forward. Was there someone else who wanted—were you trying to give an opening statement?

Senator BURNS. I have a little statement I would like to make, if the chairman does not mind.

Senator HUTCHISON. All right. Let me just say that we have had a period for opening statements. And then we went forward with the hearing. I will drop back for anyone who wishes to make an opening statement, but we also have the ability to question witnesses.

So with that, however—

Senator BURNS. Well, I have been since 6 o'clock making it in from Tysons Corner this morning. So—

Senator HUTCHISON. So because of that and because—

Senator BURNS. I have been on the world's largest—

Senator HUTCHISON.—these nominees are going to have the power to ease the traffic jams—

[Laughter.]

Senator HUTCHISON. So let us not make them too mad.

Well, in that case then—

Senator BURNS. Mr. Dorgan has made his statement.

Senator HUTCHISON. I see. OK.

Senator BURNS. I will submit my statement for the record.

Senator HUTCHISON. No. I understand.

Senator BURNS. And I will be very short.

Senator HUTCHISON. That is fine. Say what you would like to say, and then I will call on Senator Cleland. And then we will ask the nominees to come forward.

**STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM
MONTANA**

Senator BURNS. Madame Chairman, thank you very much. I just want to—I will have some questions for Ms. Morgan also this morning.

But anybody that thinks that the Surface Transportation Board is working on behalf of shippers right now and on behalf of the majority of people in this country, I have a little piece of land out in Montana that I will guarantee that you will get gold and silver on. It is just not working right now.

And when I come home this time, after meeting some of my shippers in Montana, which is principally agriculture, we are getting killed. And I will go back. We have some real problems in agriculture, and some of it goes right back to transportation. It goes back to 3 years. And now it is rates. Everybody is living on the backs of this producer, including our good friends that are in rail transportation.

And I realize we have to have them, but there has to be some fairness. And small shippers and big shippers alike have got to have some kind of a way to gain forum before this transportation board.

And we need to move our bill that Senator Rockefeller and I and a host of us, and Senator Dorgan, have worked on to get rid of this bottleneck and to get some equity on shippers, because we cannot continue to see this kind of a situation continue.

So I thank the chairman for holding this hearing. I have some questions for the witnesses, and I have a prepared statement that I will insert in the record.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS U.S. SENATOR FROM MONTANA

Thank you Madam Chairwoman, I would like to thank you for chairing this full committee hearing in the absence of the chairman.

Today, we will be discussing the renomination of Linda Morgan to the Surface Transportation Board. During the last couple of weeks many rumors have been reported about the intent of members regarding this nomination. I also understand this nomination is very important to the ranking member of this committee.

However, there are many questions that, although they have been responded to in past proceedings before this committee, remain unanswered.

I want answers to those questions. I want to know what the Surface Transportation Board is going to do about the excessive rates Montana's farmers pay to transport their grain to market. I want to know what the STB is going to do to make the rail rate complaint process more accessible and affordable for small shippers.

It remains a mystery to me how this body can continue to support the Surface Transportation Board's policy that has a very poor record of providing an adequate forum to the nation's small shippers.

I ask my farmers why they aren't more vocal. Their response? They have given up. Let me remind my colleagues about McCarty Farms vs. Burlington Northern. McCarty Farms was a group of Montana grain farmers that brought a class action suit against the Burlington Northern in 1980 challenging the rates charged for transporting wheat from Montana to Portland. This suit was presented to the STB's predecessor, the ICC (Interstate Commerce Commission) in 1980 and eventually awarded in the favor of Burlington Northern in 1997. And the case remains in appeal.

I would also like to say that the STB's decision on product and geographic competition was an admirable effort to discontinue railroad legal strategies but that will not have a significant impact on providing competitive rail service. In fact, Mon-

tana's rail transportation is so desperate that very few elements of S. 621 would even have an impact on my state.

I must say that I am not impressed with the actions of the STB and until I start to see the scales of justice leveled out between the shippers and railroads, I will continue to oppose the continued policies of this Board.

I have a few questions I would like to ask Mrs. Morgan in a few moments. Thank you, Madam Chairwoman.

Senator HUTCHISON. And, Senator Cleland, did you have an opening statement?

Senator CLELAND. Madame Chairman, thank you very much. I do not have an opening statement today. We are just delighted to have the witnesses with us.

Thank you very much.

Senator HUTCHISON. I would like to ask the three nominees to come forward. And as they are coming forward, I will say Senator Breaux won the award for best opening statement.

Senator BREAUX. Thank you.

[Laughter.]

Senator HUTCHISON. Before we start, I would like to ask any of the nominees whose families are with them, if they would like to take this opportunity to introduce them. They are very important to the work that you do, and they should be recognized.

Ms. MORGAN. Well, I do have my husband, Michael Karam, in the audience. And I do want to take this opportunity to thank him for all of his encouragement and patience during these last few years.

Needless to say, it seemed many times as though there was no friend in sight, but I could always count on his friendship and support. I could not have survived these last few years without him. I am grateful for that.

Senator HUTCHISON. Thank you.

Mr. Frazier.

Mr. FRAZIER. Madame Chairwoman, I do have my mother in the audience, who I would like to acknowledge during the course of my statement. So I will pass until then.

Senator HUTCHISON. Thank you.

Dr. Van Beek.

Dr. VAN BEEK. Yes. Madame Chairwoman, I would like to introduce Elizabeth Tucker Van Beek, my wife, who has been generous in her support as I have gone through this process. And she is also an ex-Senate staffer.

Senator HUTCHISON. That will win you points.

All right. Ms. Morgan.

**STATEMENT OF THE HON. LINDA J. MORGAN, NOMINEE,
MEMBER OF THE SURFACE TRANSPORTATION BOARD**

Ms. MORGAN. Yes. Well, I know that there will be many questions for me today. And I do have an oral statement. But as I see the situation here, I think what I would like to do is to ask your indulgence that I be able to insert in the record my written statement, which you already have, and my oral comments, so that I do not take up the time of the committee today, as I know there will be time spent on questions.

But I did want to spend just a couple of minutes now. First of all, I do want to recognize the presence of my two fellow board

members, Vice Chairman William Clyburn and Commissioner Wayne Burkes. I appreciate their support here today and every day, as we strive at the Board to remain committed to competence, fairness, professionalism and collegiality.

I also have some Board employees in the room. I always say that the leader is only as good as those who are led. And the Board employees are some of the finest public servants around, and I feel privileged to have had the opportunity to work with them over the last few years.

I particularly thank members of my personal staff, who are in the audience. They have had quite a challenge these last few years, but have met the challenge without skipping a beat. I did not want to miss this opportunity to thank my fellow Board members and the staff.

With that, I think I will just let the other two nominees give their oral statements, or however you want to proceed, because I know that the time is limited.

[The oral statement, prepared statement, and Biographical Information of Ms. Morgan follow:]

ORAL STATEMENT OF THE HON. LINDA J. MORGAN, NOMINEE, MEMBER OF THE
SURFACE TRANSPORTATION BOARD

Thank you for the opportunity to appear before you on the occasion of my renomination by President Clinton for a second term on the Board. I am honored that President Clinton has reappointed me, and I look forward to assisting the Committee as it considers my qualifications for reappointment.

I would like to spend a few minutes making some personal remarks and then a few minutes making some substantive remarks.

Turning to my personal remarks, a few introductions and related comments are in order.

I understand that my husband, Michael Karam, is in the audience. I thus take this opportunity to thank him for all of his encouragement and patience, particularly during the last few years. When it seemed as though there was no friend in sight, I always could count on his support. I could not have survived these last few years without him, and I am eternally grateful.

The other important family member I wish to recognize is my 14-year old daughter, Meredith, who is not here but instead is enjoying, I am sure, another challenging day in 9th Grade. I want the record to show that I could not have managed these last few years without her resilience and understanding, for which I also am eternally grateful.

I also wish to note the presence of my two fellow Board Members, Vice Chairman William Clyburn and Commissioner Wayne Burkes. I appreciate their support here today and every day as we strive at the Board to remain committed to competence, fairness, professionalism, and collegiality in our work.

There are also some Board employees in the room. I always say that a captain is only as good as the team; that a leader is only as good as those being led. The Board employees are some of the finest public servants around, and I feel privileged to have had the opportunity to work with them and to lead them over the last few years. And I particularly thank the staff members from my personal office, who have had quite a challenge in the last few years but who have nevertheless met the challenge without missing a beat. I could not have done it without the commitment of all of these employees.

I also wish to make a few personal comments to you, Senator Hollings. As I was mentally preparing myself for this hearing today, I was reminded of my first nomination hearing over 5 years ago, which you kindly chaired, and of my swearing-in ceremony at which you did the honors. While at that time I had a general understanding that I would face challenges, I had no idea how challenged I really would be.

In this regard, Senator Hollings, you need to know that not one day goes by without my feeling grateful for the 11 years I spent under your tutelage. You taught me toughness, intellectual rigor, and fairness in understanding all sides of an issue. By your example, I learned the value of responsible public service, of loyalty to pur-

pose, and of personal and professional integrity. If I have erred during my first term, it was not because you did not provide me with the necessary tools. I am eternally grateful for your good training and good example.

And finally, let me say to the other Members of this Committee that I certainly have appreciated the professional courtesy and interest of Members as we have tackled the many challenging transportation issues that have confronted all of us during the last few years. If confirmed, I look forward to our continued constructive interactions.

Now, let me turn to my substantive comments. I have submitted written testimony with attachments that I ask be included in the record in full. I will make a few additional oral remarks, focusing specifically on rail matters.

During my Chairmanship, I have faced many challenges, including the termination of the ICC and the significant restructuring that has gone on in the rail industry. This has been a period of transition, volatility and unrest in the rail sector as all elements have struggled with the changing environment. During this time, shippers have raised concerns about inadequate service, rate levels, and the complexity of the regulatory process for resolving disputes and obtaining redress. And employees have raised concerns about the negative effects of this railroad restructuring on their rights.

I believe that the Board has heard these concerns and has responded to them appropriately and to the fullest extent in accordance with the law. We have applied a common sense approach to these issues, promoting private-sector initiatives and resolution where appropriate and undertaking vigilant government oversight and action where necessary.

With respect to rate and service issues, I believe that in the past few years, we have done more to address specific shipper concerns than anyone had done in a long, long time. We have decided rate complaints promptly; we have streamlined the rate review process; we have repealed the product and geographic competition standards; and we have adopted small rate case guidelines. We have also adopted rules permitting a shipper receiving poor service to obtain the services of a new carrier.

And we have brought together large and small railroads, and railroads and their customers, to communicate commercially with each other as they have not done in years. As a result, we have seen large and small railroads work out an unprecedented agreement that sets rules for more balanced dealings; we have seen the Association of American Railroads and the National Grain and Feed Association reach groundbreaking agreements providing for arbitration or mediation to settle disputes; and we have seen the railroad industry and the shipper community getting together for regular and ongoing formal outreach sessions that would have been unheard of before.

I know that some shipper groups say that we have not done enough. However, I believe that significant steps have been taken to alter the rail environment in a positive way, and the support that we have received from shippers for what we have done testifies to that.

In addition to the broader initiatives that have been undertaken to address shipper concerns, the Board has been faced with specific matters that have affected the shipping community. Shippers of course were significantly impacted by the service crisis in the West. We vigilantly monitored the situation; we worked informally with shippers to fix specific problems; and we formally redirected operations in a focused and constructive way. In addressing this situation, the Board had to be careful not to take actions that would inadvertently harm certain shippers and regions while helping others. And we ensured that our actions did not undermine, but rather encouraged, important private-sector initiatives that facilitated and were integral to the service recovery that has occurred.

Under my Chairmanship of the Board and the ICC before that, four mergers involving large railroads have been approved, which were supported in varying degrees by the shipping community, as well as employees and various localities. To address concerns raised by those mergers, we encouraged private-sector agreements, and where agreements were not reached, we imposed many significant conditions protecting competition, the environment and safety, and employees, and providing for oversight of both competitive and operational issues. We concluded that these mergers as conditioned would not diminish competition and in fact could enhance competition, would produce transportation benefits, and were otherwise in the public interest. The Board will continue to exercise its oversight authority in accordance with these objectives.

With respect to rail labor matters, employees have raised concerns about the direction taken by the ICC starting in the mid-1980s regarding the override of collective bargaining agreements (CBAs) in connection with rail consolidations. I believe that we have acted on these concerns. Even in the face of statutory language and court precedent on CBAs not favorable to rail labor's position, I believe that the Board under my Chairmanship has worked to move the disposition of these matters in what I view as a more positive direction for rail employees. The Board's focus on narrowing what can be overridden by arbitrators in its *Carmen III* decision, the messages that it has sent in recent merger decisions regarding overrides, its use of stays in the arbitration appeals process, and its efforts to leave labor matters to private negotiation as much as possible, I believe, have all resulted in a more level playing field that has produced more privately negotiated agreements between labor and management than we have seen in recent memory.

I understand that labor concerns remain. As I suggested in my December 21 letter, to ensure that the positive trend is secured, and that consolidations found to be in the public interest can be carried out with minimal disruption to all involved, legislation would be an appropriate way for Congress to reflect an interest in preserving CBAs and the wisdom in promoting private negotiation.

In closing, let me say that I believe that my record exemplifies a focus on constructive change to address concerns that have been raised during this period of transition and unrest. Under my Chairmanship, the Board has changed in significant, and I believe positive, ways the rules applicable to shipper issues regarding rates and service. We have brought about positive change in the way in which the railroads are interacting with their customers, and in the way larger railroads are interacting with smaller railroads. We have worked to make the playing field more level between labor and management and encouraged private negotiation as the way of resolving employee issues. And we have addressed environmental and safety issues in innovative and constructive ways. I have listened to the concerns of the various segments of the rail community, as well as those of Members of this Committee, and have acted on these concerns in accordance with the law that the Board is charged with implementing.

I realize that concerns remain. I am committed to continuing the positive momentum that has been brought about by the change that has been initiated under my Chairmanship, and I will continue to look for appropriate ways to address ongoing concerns. At the same time, as I have indicated to this Committee in my December 21 letter and in prior testimony, there will be areas in which legislation will be necessary if Congress believes that the current direction is still not good enough.

During my first term, I have been committed to implementing the law as I believe Congress intended. I have had no personal or political agenda. If confirmed, I look forward to continuing to work with this Committee and interested parties on the transportation issues that confront us, particularly in hopes that we can bring more stability and certainty to the rail sector.

I would be happy to answer any questions that you may have at this time.

PREPARED STATEMENT OF THE HON. LINDA J. MORGAN, NOMINEE, MEMBER OF THE
SURFACE TRANSPORTATION BOARD

INTRODUCTION

My name is Linda J. Morgan, Chairman of the Surface Transportation Board (Board). I am appearing at the request of the Committee to discuss my renomination to the Board. I have already appeared before this Committee twice over the past two years in connection with the Board's reauthorization hearings, and have discussed at great length the issues before the Board and the accomplishments of the Board under my Chairmanship. For easy reference, I have appended as Attachments 1 and 2 the written testimony (without attachments) that I submitted for those two hearings [available in S. Hrg. 105-1062 and S. Hrg. 106-624].

This hearing is a bit different from the two recent reauthorization hearings, in that it is intended to focus more on me personally and on my record than on the Board as an institution. Nevertheless, as I have been Chairman of the Board since its creation, I have been of necessity an integral part of everything that the Board has done. Therefore, any questions that might arise in this hearing, particularly regarding rail matters, could overlap with those that have been previously addressed at the reauthorization hearings. Accordingly, this written testimony briefly reviews my approach and my record, with an emphasis on major rail issues that have been raised in connection with Board decisions.

THE TRANSITION TO THE BOARD

I was named Chairman of the Interstate Commerce Commission (ICC), the Board's predecessor, in March 1995, just as the Congressional deliberations over what was to become the ICC Termination Act of 1995 (ICCTA) were getting underway. I faced several challenges during that first year of my Chairmanship. I had to motivate the ICC's staff to continue to produce notwithstanding the uncertainty surrounding their personal futures and the future of the agency at which many of them had worked for their entire professional careers. I worked with Congress to ensure that whatever bill was ultimately passed would be workable. And I had to figure out, once the ICCTA became law, how to make the transition from the ICC to the Board on just a few days' notice between Christmas and New Year's Day. The days after the passage of the ICCTA presented many logistical challenges of their own. Fewer than half of the personnel who had worked for the ICC were retained by the Board. Yet, the case load remained heavy, and indeed increased in complexity and degree of challenge, particularly with the significant restructuring taking place in the rail industry and the focus of parties on testing the law in certain areas. We had to find ways to do more with less.

We hit the ground running, and quickly became what I believe to be a model Federal agency. We were given many rulemaking deadlines in the ICCTA, and we met each and every one of them. We revamped the old ICC regulations to reflect the new law; we streamlined the regulations that remained relevant to make them work better; and we issued new regulations so that we could move cases to resolution more quickly. And we did move cases faster, and as a result have made great strides in clearing up the docket.

Many of the cases that we have tackled at the Board—some of which had been pending at the ICC for many years, and some of which have been new—have been extremely difficult and controversial. But one of the messages that I have delivered to the Board's staff repeatedly is that parties that bring disputes to the Board want and should have the certainty of resolution and that we are here to make decisions in hard cases. Not everyone will like every decision we issue, but our job is to take the controversies that come our way, review the records carefully, and then put out decisions as expeditiously as possible that implement the law to the best of our ability. The competence of our staff and the integrity of our decisionmaking process are reflected in our record of success in court: since I became Chairman on March 24, 1995, of the several hundred ICC and Board cases decided, 134 decisions have been challenged, and only 8 of those challenges were successful, with 19 not yet decided by the courts. Fair and expeditious case resolution and the certainty and stability that come from success on appeal will continue to be objectives of mine if I am confirmed for another term at the Board.

THE BOARD'S OVERALL APPROACH TO ITS RESPONSIBILITIES
UNDER MY CHAIRMANSHIP

I believe that the Board under my leadership has been a model of "common sense government," promoting private-sector initiative and resolution where appropriate and undertaking vigilant government oversight and action where necessary. In many circumstances, private sector initiative can provide for better solutions because it can be tailored to the needs of the individual parties, can go beyond what government is able to do under the law and with its resources, and can create a dynamic in which all the parties to the initiative have been involved in its development and thus are invested in its success. And government can use its presence and its processes to encourage such results.

The work of the Board exemplifies the balance of private-sector and government action. With regard to the rail crisis in the West, for example, the Board required substantial and unprecedented operational reporting, engaged in substantial operational monitoring, and redirected operations in a focused and constructive way. The Board was successful in working on an informal basis with affected shippers to resolve service problems, and it was careful not to take actions that might have helped some shippers or regions but inadvertently hurt others. And the Board proceeded in such a way as not to undermine, but rather to encourage, important private-sector initiatives that facilitated and were integral to service recovery, such as the unprecedented creation of the joint dispatching center near Houston, TX, and the significant upgrading of infrastructure.

With the active encouragement of the Board, the National Grain and Feed Association and the Association of American Railroads recently reached groundbreaking agreements on issues of concern to agricultural shippers that provide dispute resolution procedures that are more tailored to the interests of both parties. These agreements will hopefully provide a model for other such carrier/customer agreements.

Furthermore, the Board has attempted to move in the direction of private negotiation rather than government fiat as the way of resolving employee matters, a trend which I discuss later in my testimony.

There are circumstances in which more direct government action is necessary, and in such situations, the Board has used its authority appropriately, creatively, and to the fullest extent in accordance with the law. For example, responding to the concerns of Members of this Committee, and in particular Chairman McCain and Senator Hutchison, we held extensive hearings on access and competition in the railroad industry, which resulted in a broad mix of private-sector and government initiatives, summarized in my letter to Senators McCain and Hutchison dated December 21, 1998 (December 21 letter). Those initiatives included the revision of the market dominance rules to eliminate product and geographic competition as considerations in rate cases and the adoption of formal rules providing for shipper access to a new carrier during periods of poor service. They also included the formal railroad/shipper customer service "outreach" forums (which I have attended) that are continuing to be held on a regular basis, and that have produced, for the first time, the public dissemination of performance data by the major railroads. And they included the unprecedented formal agreement between large and small railroads addressing certain access issues of concern to the smaller carriers and to various members of the shipping public, the implementation of which the Board will be closely monitoring.

In individual cases brought to it, the Board has used its authority fully as well. For example, in a case in which Amtrak sought to carry certain types of non-passenger traffic, we interpreted the statute in such a way as to bring about a private agreement between Amtrak and individual freight railroads on the matter after the Board's decision was rendered. In railroad consolidation and construction proceedings, our process has encouraged private-sector solutions with respect to environmental and other issues, but where the private parties have been unable to reach resolution, the Board has imposed conditions to remedy the concerns expressed in a way that preserves the benefits of the transaction under consideration. And with respect to the "bottleneck" rate complaint cases (involving rates for a segment of a through movement that is served by a single carrier), while shipper parties argued that the Board should have gone farther in granting rate review, the Board's decisions do provide for rate relief where there is a contract for the non-bottleneck segment, based on a pragmatic reading of the statute that is being challenged in court by the railroads.

I should note that there have been times when a more expansive reading of the statute by the Board has not been upheld. Of the handful of court cases that the Board has lost, one involved an abandonment in West Virginia that the Board disallowed in reliance on a broad view of the "public interest"; another involved a labor case in which the court found that the Board acted beyond the scope of the law by interpreting the labor protection provisions of the ICCTA as covering too broad a class of employees of class II railroads.

If confirmed, I will continue the theme of common sense government. I will continue to apply the Board's authority as necessary and appropriate, acting directly or promoting private-sector initiative.

RAIL MERGERS AND COMPETITION

One of the areas in which the Board has issued some high-profile decisions under my Chairmanship involves rail mergers. Some have said that rail mergers are inherently anti-competitive, that they cause service problems, and that we should be discouraging them. Although mergers and other changes in corporate structure have been going on in the rail industry for many years, I recognize that there has been substantial rail merger activity since the Staggers Rail Act of 1980 was passed, reflecting what has been occurring throughout the Nation's economy. In 1976, there were, by our calculations, 30 independent "class I" (larger railroad) systems; nine of those systems have since then dropped down to class II or III (smaller railroad) status because the revenue thresholds for class I status were raised substantially some years ago; two large carriers went into bankruptcy; and the remaining 19 systems have been reduced to 7 independent systems in the past 23 years. Not all of that has happened under my Chairmanship, nor has it occurred because the Board (or the ICC) has sought out mergers. When market conditions motivate two class I railroads to want to merge, our statute tells us to review the proposal presented to us, applying certain statutory standards, and to approve the merger if it is in the public interest.

On the basis of the governing statute, under my Chairmanship of the ICC and the Board, four class I rail mergers have been approved. These mergers were not

approved, however, without many significant Board-imposed competitive and other conditions. The conditions in a variety of ways provide for substantial post-merger oversight and monitoring that permit us to stay on top of both competitive and operational issues that might arise. They provide for the protection of employees and the mitigation of environmental impacts, and our recent decisions provided for the compilation of a "safety integration plan" that draws on the resources of the Board, the Federal Railroad Administration, and the involved carriers and employees. And they assure that no shipper's service options were reduced to one-carrier service as a result of a merger.

In varying degrees, these mergers have had the support of segments of the shipping public, as well as employees and various localities, and were considered by interested parties to be in the public interest. A variety of shippers actively supported the Burlington Northern/Santa Fe merger, the inherently procompetitive Conrail acquisition, and the recent Canadian National/ Illinois Central (CN/IC) merger. And the Union Pacific/Southern Pacific merger, which segments of the shipping community opposed while others supported it, was necessary, the Board believed, not only to prop up the failing Southern Pacific, but also to permit the development of a rail system in the West with enough of a presence to compete with the newly merged Burlington Northern/Santa Fe.

Some say that, while each merger, reviewed individually, might seem acceptable, the cumulative effect is that the industry is now too concentrated, and so competition must be added throughout the industry to temper this new market power. As I have testified previously, in analyzing this premise, we must carefully review proposals intended to address it. We should want to make sure that the rail system will look the way we want it to look for now and for the future. We have to be sure about the mix of shippers that will be served, about the level of rates that will be charged and the service that will be provided, about the quality and extent of the infrastructure that will exist, and about the impact on employees, and that the result in those areas is what we want. As I have also testified before, as we examine proposals for change, we must be sure that we do not take actions that, while perhaps benefitting some shippers or regions, could hurt others in an unintended way. Of course, if I am confirmed, I will faithfully implement any changes to the law that Congress might adopt.

In any event, the Board will continue its active oversight of rail service and the implementation of these four mergers. In approving these four mergers, the Board (and the ICC before that) concluded that, with all the conditions imposed, they would not diminish competition and in fact could enhance competition; would produce significant transportation benefits; and were otherwise in the public interest. The Board will continue to exercise its oversight authority in accordance with these objectives.

RAIL RATE AND SERVICE ISSUES

Since becoming Chairman of the ICC and then of the Board, I have tackled several important rail rate and service matters, and in this regard I believe that I have been responsive to shipper and other concerns in accordance with the law. In particular, I have been committed to resolving formal and informal shipper complaints expeditiously, clarifying applicable standards for resolution of formal complaints, and leveling the playing field to ensure that the formal process is not used simply to delay final resolution and that it encourages private-sector resolution where possible. I believe that my record reflects those objectives.

With respect to rate matters, the Board has established deadlines, never before in place, and procedures to expedite the decisional process, and decisions resolving large rail rate complaints have refined the standards for developing the record in these cases. Furthermore, as I have already noted, we eliminated the product and geographic competition elements from the market dominance rules, and I feel confident that this action will be upheld by the court in the appeal brought by the railroads. The "constrained market pricing" (CMP) procedure for determining whether a rate is reasonable or not is now a well accepted way of measuring rate reasonableness for larger rate cases, and of the three large rail rate cases that have been decided by the Board, the shippers won two, while the defendant railroad won one. Some new large rate cases are pending, and several others have been settled without involvement of the Board.

Although most parties agree to the use of CMP in major rate cases, not all agree as to how it should be applied. Thus, much debate over the past two years has centered on the Board's "bottleneck" decisions that I referenced earlier, which construed the statute as permitting challenges to bottleneck rates (as explained before, rates for a segment of a through movement that is served by a single carrier) only when

the shipper has a contract over the non-bottleneck segment. The court reviewing the challenge to those decisions brought by the shippers—which sought a broader interpretation of the availability of bottleneck segment rate challenges—found that the Board had correctly interpreted the existing statute. With respect to the relief granted by the Board, the appeal of the bottleneck decisions brought by the railroads—in which the railroads are asking the court to require the Board to adopt a more narrow interpretation of the availability of bottleneck segment rate challenges—is still pending before the D.C. Circuit. Two bottleneck rate challenges pursuing the rate relief provided in the Board’s bottleneck decisions are currently before the Board.

The Board at the end of 1996 adopted simplified rules for small rail rate cases. However, no such cases have been brought to date under these rules. Concerns remain that those rules are still too complex. In my December 21 letter, I explained that the Board’s rules reflect the statute and the standards that must be balanced, but I also recommended that Congress consider adopting a single benchmark test or some other simplified procedure for small rate cases to address those process concerns.

On the matter of service, as I discussed previously, the Board applied its formal and informal powers judiciously in dealing with the recent rail service crisis in the West. And it is actively monitoring and dealing with service issues in the East in connection with the implementation of the Conrail acquisition. In addition, as I also have noted, we have adopted new rules that permit a shipper to obtain the services of an alternative railroad when service is poor. Those rules, which require prior consultation among all of the involved parties to ascertain whether the problem can be readily fixed by the “incumbent” carrier, and, if not, to make sure that the proposed service will solve the problem without creating new problems, have been invoked in three cases thus far. In one, the Board granted relief; in the other, the parties worked out their concerns privately before the Board acted; and the third case is still pending. I believe that the Board can fully address service disruptions.

RAIL EMPLOYEE ISSUES

Background. Under the law, the Board becomes involved in rail employee issues as a result of its approval of various types of rail transactions. Certain significant employee issues are raised by class I consolidations. When larger railroads consolidate, the individual collective bargaining agreements (CBAs) and protective arrangements into which the merging railroads earlier entered are not always compatible. The law that the Board administers provides for imposition of the so-called *New York Dock* conditions upon such transactions. The *New York Dock* conditions have their origins in the negotiated Washington Job Protection Agreement of 1936, which sets up the framework within which consolidations are to be carried out. *New York Dock* provides (1) substantive benefits for adversely affected employees (including moving and retraining allowances, and up to 6 years of wage protections for employees dismissed or displaced as a result of the consolidation), and (2) procedures under which carriers and employees are to bargain to effectuate changes to their CBAs if necessary to carry out the transaction, with resort to arbitration and, as a last resort, limited Board review if bargaining is not successful.

When the parties go to arbitration, the arbitrator must make a determination in all areas of disagreement, including, the extent, if any, to which it is necessary to override a particular CBA where a change in a CBA is being proposed. In 1991, the Supreme Court confirmed that the law provides that agency approval of a consolidation overrides all other laws, including the carrier’s obligations under a CBA, to the extent necessary to permit implementation of the approved transaction.

Thus, among the issues that may come to arbitration are whether a particular CBA change is necessary to effectuate a transaction, and whether a particular transaction that implicates a CBA at issue is sufficiently connected to an approved transaction. Neither the arbitrator nor the Board can override “rights, privileges, or benefits.” And the Board’s review of the often fact-bound decisions made by arbitrators chosen under the auspices of the National Mediation Board with substantial experience in labor law is based on a deferential standard of review.

Labor Concerns. Certain employee interests have argued that the Board under my Chairmanship has stacked the deck against rail employees. They assert, for example: that the override of CBAs is purely an administrative remedy that the Board could readily reverse if only it chose to do so; that the Board has too broadly construed the “transactions” pursuant to which a CBA may be overridden; that the Board has too broadly construed the “necessity” of an override of a CBA; and that the Board has too narrowly construed the rights, privileges and benefits that may

not be abrogated. They have also argued that the Board has handled arbitration appeals in such a way as to favor management.

I understand the concerns of rail labor about the law concerning CBA overrides. In fact, in my December 21 letter, I suggested that Congress consider addressing these issues through legislation. Where I disagree with the arguments made by labor in this area is not with their concerns about the wisdom and propriety of CBA overrides, but rather with their argument that CBA overrides were the Board's idea, that we have caused labor concerns in this area, and that we have gone out of our way to implement the law in a way that they term as "anti-labor." It is in this vein that I feel compelled to respond. Accordingly, I make the following points concerning how the agency has implemented the existing law under my Chairmanship.

First, while I do understand the concerns of rail labor regarding CBA overrides, I do not view the override of a CBA as simply an administrative remedy that the Board could readily reverse if only it chose to do so. The 1991 Supreme Court decision (often referred to as the "*Dispatchers*" case, rendered before I arrived at the ICC) and other court decisions have made that clear. The Supreme Court pointed out that "the consolidation provisions of the Act . . . were designed to promote economy and efficiency in interstate transportation." Citing a 1939 Supreme Court opinion, it recognized that consolidations may result in dismissals and transfers, involving the loss of seniority rights. And the Court pointed out that it was for this reason that "the Act imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible." However, the Supreme Court found that, once the consolidation is approved and those labor protection requirements are met, the law ensures that obligations imposed by contracts such as CBAs, or by other laws such as the Railway Labor Act, "will not prevent the efficiencies of consolidation from being achieved." In short, given its view of the statutory scheme, the Supreme Court did not simply hold that the ICC had the "discretion" to decide whether to find that CBAs could ever be overridden, but rather stated that CBAs are to be overridden, when necessary to do so, because that is what the law and Congressional intent require. Thus, to change this overall approach and to prevent any override of a CBA would require a change in the law.

Second, with respect to "necessity," court precedent established in a 1993 D.C. Circuit decision (rendered before I came to the ICC), followed by another D.C. Circuit decision in 1994 reviewing a 1992 ICC decision, established that the necessity standard is met by a showing that override of the CBA is necessary to produce transaction-related transportation benefits beyond those resulting simply from the override itself. Moreover, the application of the standard of necessity was explicitly approved in a more recent D.C. Circuit decision, in which the court stated that it is "obvious on its face" that incompatible agreements for work crews would impede a consolidation and interfere with the ability of the merged carriers to offer "reduced rates to shippers and ultimately to consumers." Thus, the discretion with regard to the determination of necessity has been shaped by court precedent, although in its "*Carmen III*" decision, discussed later, the Board limited what could be overridden in this regard. That unappealed decision is now binding on all arbitrators in addressing CBA override issues, although, of course, legislation could codify such limitations.

Third, with respect to the transactions pursuant to which a CBA may be overridden, again court precedent in a 1994 D.C. Circuit decision (affirming an ICC decision voted on before I became a Commissioner) established that the test for determining a covered transaction is not based on the passage of time, but rather is based on a linkage to the original transaction. The court noted that carriers sometimes effectuate their consolidations gradually; that when employees are adversely affected in those instances, they are entitled to their substantial *New York Dock* protections; but that "the passage of time does not diminish a causal connection." Again, the discretion to determine a covered transaction has been shaped by court precedent. A limit on covered transactions to a particular time period following approval of the underlying consolidation would need to be adopted through legislation.

Fourth, with respect to the preservation of "rights, privileges, and benefits," the Board did rule that they include benefits such as life insurance, hospitalization and medical care, sick leave, and so forth. At the same time, the Board ruled that, in accordance with prior court precedent arising out of review of ICC decisions issued before I came to the ICC, mergers of seniority districts could not be included as "rights, privileges, and benefits." Indeed, the D.C. Circuit in a 1997 decision upheld the Board's decision, finding that under this approach, "the public interest in effectuating approved consolidations is ensured without any undue sacrifice of employee interests. In our view, this is exactly what was intended by Congress." Again, the determination of "rights, privileges, and benefits" was made in light of prior court

precedent. Of course, what is not absolutely protected as “rights, privileges and benefits” could only be overridden if necessary to implement the approved transaction, subject to the limitations of the *Carmen III* decision discussed herein.

With respect to arbitration, employee interests believe that railroads have the upper hand in the collective bargaining process, because of their perception that, during the 1980s, the ICC would always agree to break CBAs at the merging railroads’ request whenever the issue was presented to it by way of an arbitration appeal. Therefore, their sense is that railroads have no incentive to bargain in good faith over implementing agreements. I understand that concern; it is my clear impression that, prior to 1985, more agreements were bargained, while during the next several years, more were imposed by arbitration.

Agency Approach. Since I have been Chairman of the ICC and the Board, I have attempted to make the playing field more level in this entire area. As I have already noted, by the time I arrived at the ICC, court precedent in addition to the 1991 Supreme Court decision dealing with the override of CBAs had already established standards with respect to the definition of necessity and the standard for determining the necessary nexus to the approved transaction. Even given this precedent, the Board has worked to move away from the breaking of CBAs, has taken action to limit overrides in the decisions that it has rendered, and has encouraged private negotiation as a preferred way of resolving related issues.

Indeed, in its landmark 1998 *Carmen III* decision already referenced, the Board specifically held that the authority of arbitrators to override CBAs is limited to that which was exercised by arbitrators during the years 1940-1980, a period marked by peaceful relationships between rail labor and rail management with regard to mergers. Responding to the concerns of rail labor that CBA overrides were more expansive starting in the 1980s, this decision thus restores the pre-1980 way of handling CBA overrides. In connection with its approval of the Conrail transaction and the CN/IC merger, the Board expressly confirmed, as requested by rail labor, that approval of a transaction did not indicate approval of any of the CBA overrides that the applicants may have indicated are necessary, and it admonished the carriers to bargain in good faith with their employees with respect to necessary changes to CBAs. I am aware that certain rail labor interests have cited an arbitration award by Arbitrator Fredenberger in connection with the Conrail transaction as evidence that the *Carmen III* decision was not favorable to employees because, while purporting to rely on *Carmen III*, he did not limit the override of a CBA accordingly. But I should note that, after the Fredenberger Award was appealed to the Board, the involved railroads reached an agreement with the Brotherhood of Maintenance of Way Employees (BMWE) and the International Association of Machinists and Aerospace Workers (IAM) rather than risk having the Board reverse the award. Thus, the matter was resolved through negotiation among the parties, and, as a result, the Fredenberger Award cannot be used as an indication of how the Board will implement its *Carmen III* decision.

Moreover, while the Board has generally deferred to the expertise of arbitrators, it has reversed arbitrators’ decisions or otherwise used the appeal process with favorable results for labor. In one case, the Board granted a United Transportation Union (UTU) appeal as it pertained to health benefits; in another arbitration appeal brought by a railroad, the Board supported the Transportation Communications International Union’s position that dismissed employees do not forfeit their dismissal allowances if they refuse to accept a recall to work that would require them to relocate to a location that would require a change of residence. In other cases, the Board has stayed arbitration awards for the following reasons: to provide time for consideration of labor appeals (at the request of the American Train Dispatchers); or to provide time for the parties to negotiate further (at the request of UTU and the Brotherhood of Locomotive Engineers, in two related cases, and BMWE in another case). The disputes impacted by those stays were ultimately settled by the parties, except for the American Train Dispatchers case, which remains the subject of a stay at the union’s request due to safety concerns. In another arbitration review case (involving BMWE and a smaller railroad), the Board issued three separate decisions favorable to labor.

The Board has specifically placed emphasis on negotiation as the preferred way of resolving labor implementation matters, which is consistent with the tenor of the Railway Labor Act. In connection with the four mergers approved under my Chairmanship, many if not most employees were covered by negotiated rather than imposed agreements. Some employee interests have said that they have entered into unsatisfactory agreements only to avoid arbitrations that would have left them in even worse positions. But in connection with the recent Conrail transaction, the Board’s action on appeal in staying the Fredenberger Award, referenced earlier, was credited by the representative of one of the major unions as “enabling the parties

to reach agreement.” And in supporting for the first time ever a merger of two class I railroads in the recent CN/IC merger, the BMWWE stated that the implementing agreement it negotiated with the applicants should serve as a guide as to how the *New York Dock* implementing process should work. Thus, the focus on leveling the playing field has resulted in negotiated agreements viewed more favorably by labor interests.

Even in the face of court precedent on CBAs not favorable to rail labor’s position, I believe that the Board under my Chairmanship has worked to move the disposition of these matters in what could be characterized as a more positive direction for rail employees. The Board’s focus on narrowing what can be overridden by arbitrators in its *Carmen III* decision, the messages that it has sent in recent merger decisions regarding overrides, its use of stays in the arbitration appeals process, and its efforts to leave labor matters to private negotiation as much as possible, I believe, have all resulted in a more level playing field that has produced more privately negotiated agreements between labor and management than we have seen in recent memory. However, to ensure that this trend is secured, and that consolidations found to be in the public interest can be carried out with minimal disruption to all involved, legislation would be an appropriate way for Congress to reflect an interest in preserving CBAs and the wisdom in promoting private negotiation. As I have indicated before in my December 21 letter, I understand the concerns of labor regarding the existing law and court precedent on CBA overrides, and have indicated that legislative relief would be necessary to fully address these concerns.

CONCLUSION

Under my Chairmanship, the Board, pursuant to Congressional directive in eliminating the ICC, has been a model of doing more with less in a common sense way—of putting its limited resources to the most efficient use in handling its caseload expeditiously and resolving complex matters before it in an effective and responsible manner in accordance with the ICCTA. The Board has approached its work with fairness, balancing the many varied and often conflicting interests under the statute in reaching its decisions on the record.

During the hearings before this Committee in the recent past, not all of the Members of the Committee have agreed with my position as to the law governing each of the several difficult issues that come before the Board. I have heard the concerns raised, I have understood them, and I have not ignored them. At the same time, I have made decisions that I believe have been appropriate based on the records compiled and the mandates of the existing law. There may be areas in which certain Members of this Committee would like to see legislative changes, and indeed I have recommended in my December 21 letter changes that Congress could consider, particularly with respect to small rail rate cases and rail labor matters. However, until the law is changed, I will continue to implement current law as I believe Congress intended, using my existing authority fully and fairly, in accordance with the goals of common sense government and the decisional directions that I have outlined. If confirmed, I look forward to continuing to work with the Committee, other Members of Congress, and all other interested parties as we tackle the many important transportation issues that confront us.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.) Morgan, Linda Joan.
2. Position to which nominated: Member, Surface Transportation Board, with Presidential Redesignation as Chairman Once Confirmed.
3. Date of nomination: August 5, 1999.
4. Address: (List current place of residence and office addresses.)
Residence: 6206 Newburn Drive, Bethesda, MD 20816-1134;
Office: Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20423.
5. Date and place of birth: May 19, 1952, in Chester County, PA.
6. Marital status: (Include maiden name of wife or husband’s name.) Married to Michael E. Karam.
7. Names and ages of children: (Include stepchildren and children from previous marriages.) Meredith Lyn Morgan Karam, 14 years old.
8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.) Harvard University’s John F. Kennedy School of Government, August 1991, Program for Senior Managers in Government; Georgetown University Law Center, 8/73-5/76, JD; Vassar College, 9/69-5/73, AB, Hispanic Studies; and The Sidwell Friends School, 5/59-6/69, High School Diploma.

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.) 1/96-present, Chairman, Surface Transportation Board; 4/94-1 2/95, Member, Vice Chairman, and Chairman, Interstate Commerce Commission; 1/87-4/94, U.S. Senate Committee on Commerce, Science, and Transportation, General Counsel; 10/78-12/86, U.S. Senate Committee on Commerce, Science; and Transportation, Democratic Staff Counsel; 9/76-10/78, Welch & Morgan, Attorney/Associate; 6/74-1/76, Georgetown University Law Center, Research Assistant for Professor of Administrative and Antitrust Law, and Tutorial Program Coordinator and Student Assistant, Office of the Dean; and Summer of 1974 and 1975, Bowl America, Part Time Administrative Work (5-10 hours/week).

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) None.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.) None.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.) Civic: President, Board of Directors, Sumner Square Condominium, 1982-85, elected but nonpaying position which involved operating the condominium and interacting with local governmental entities on issues of importance to the community.

Co-President and Co-Vice President, Board of Directors, Wood Acres Citizens Association, 1990-92, elected but nonpaying positions which involved coordination of neighborhood activities and interaction with local governmental entities on issues of importance to the neighborhood.

In addition, I have held various volunteer positions in connection with my daughter's school, and before that with the Senate Day Care Center.

Professional: Member, D.C. Bar; Member, Women's Bar Association; Member, American Bar Association; Member, Women's Transportation Seminar.

Other: At various times throughout the last 30 years, I have served in various alumni fundraising positions for my high school, college, and law school.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

(a) None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have been a registered Democrat all my adult life.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

Linda J. Morgan

5/97 Citizens Committee for Ernest F. Hollings \$1,000

8/98 Citizens Committee for Ernest F. Hollings \$1,000

Michael E. Karam

9/98 Citizens Committee for Ernest F. Hollings \$1,000

9/98 Citizens for a Competitive America \$1,000

Joint Checking Account Contributions

11/92 Democratic National Committee Federal Account \$1,000

10/95 Democratic National Committee Federal Account \$5,000

10/98 Citizens for a Competitive America \$5,000

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.) Georgetown University Law Center Alumna of the Year Award, 1999; Women's Transportation Seminar's Woman of the Year Award, 1998; One of *The Washington Post's* Five People in Business to Watch in 1998; Cooperstown Conference Award for Contributions to the Rail Sector, 1994; One of the Outstanding Young Women in America, 1980; Georgetown University Law Center Award for Most Outstanding Student Contribution, 1976; Athlete of the Year/President of the Student Athletic Association, Vassar College, 1972-1973, and Cum Laude Graduate, Sidwell Friends School, 1969.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None. During law school, in my capacity as a Research Assistant to a professor, I did research for, and worked on draft parts of, articles on administrative and antitrust law that were later published under his name. In my staff positions with the Senate Commerce

Committee, I worked on statements and articles submitted by Members whom I staffed. During my service at the ICC and more recently at the Board, I have issued several commenting opinions in decisions on which I have voted, and I have submitted two letters to the editor in my capacity as Chairman of the Board—one on the computer advancements at the Board and the other clarifying the Board's actions in dealing with the recent rail service problems in the West and the recent acquisition of Conrail in the East.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. During my tenure at the ICC and the Board, I have given numerous speeches. I write my own speeches and talk primarily from my notes, and I do not put my speeches on the Board's web site nor do I formally or widely circulate them. Also during my tenure at the ICC and the Board, I have presented statements at oral arguments and voting conferences. In addition, I have submitted formal written testimony to Committees in both the Senate and the House during this period, and as referenced in the previous question, I have voted on numerous decisions and have submitted commenting opinions in certain of them.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I was President Clinton's first nominee to the ICC. He then designated me as ICC Chairman, in which capacity I managed the closure of the ICC in accordance with his directive and that of Congress. I was designated by the President as Chairman of the Board, the ICC's smaller successor, in which capacity I have managed the agency during a period of dramatic change in the rail industry. Throughout my time at the ICC and the Board, I have remained committed to this Administration's articulated goal of common sense government.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My 15 years in various staff counsel positions with the Senate Commerce Committee, including staff responsibility for many relevant surface transportation issues, and my 5 years at the ICC and the Board, particularly as Chairman, clearly provide me with the necessary qualifications for this particular appointment.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Not applicable.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? Not applicable.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None of which I am aware.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. As staff counsel to the Senate Commerce Committee, I was involved of necessity in the passage of legislation. During my 5 years at the ICC and the Board, I have been called upon by Members of Congress for my expertise and counsel, including testimony before relevant Congressional Committees, related to the legislation that eliminated the ICC and created the Board, bills reauthorizing the Board and pro-

viding appropriations, and proposals to amend the law that the Board implements. And as a Member and Chairman of the ICC and the Board, I have necessarily been involved in the administration and execution of law and public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) During the 5 years that I have served at the ICC and the Board, I have conducted myself with the utmost integrity. I would continue to approach my work in that way. If there are any conflicts of interest that might prevent me from performing my adjudicatory responsibilities impartially and ethically, I will recuse myself from deliberations on any matters that would be so affected.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I am not aware of anything else in this regard that should be considered in connection with my nomination.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated. My legal education, my 15 years in various staff counsel positions with the Senate Commerce Committee, including staff responsibility for many relevant surface transportation issues, and my 5 years at the ICC and the Board, particularly as Chairman, all provide the qualifications necessary for the position for which I have been nominated.

2. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? None that I can think of. Given the many challenges that I have faced during my 5 years at the ICC and the Board, I believe that I have acquired and honed the skills necessary to successfully carry out the position for which I have been nominated.

3. Why do you wish to serve in the position for which you have been nominated? I have spent 20 years in public service, and continue to believe that public service is an honorable profession and one in which I can continue to contribute in a positive way. In addition, I would like the opportunity to continue to advance the positive initiatives that I have undertaken during my 5 years at the ICC and the Board particularly with respect to the furtherance of both common sense government and the appropriate balance among the interests of the various constituencies associated

with the rail sector. Given the dramatic changes that have taken place in recent years particularly in that sector, a steady, conscientious, attentive and common sense regulatory hand at the helm of the Board is critical, and I believe that I can provide the needed leadership to that end.

4. What goals have you established for your first two years in this position, if confirmed? During my last 5 years at the ICC and the Board, I have been committed to common sense government. Two goals for the next two years relate to that objective. One is to continue to strive for efficient, expeditious and fair decisionmaking, and the rendering of decisions that withstand judicial challenge. The other is to continue to strive for the appropriate balance between private sector initiative and resolution and governmental oversight and action. Both goals would continue to be pursued in the context of the spirit of the law that the Board implements.

I also want to continue to foster improved and more productive relationships among rail shippers, rail carriers, rail employees and other affected interests. Under my chairmanship, for example, the Board has taken several initiatives to improve commercial communication between railroads and their customers, to establish better mechanisms for dispute resolution between railroads and their customers whether at the Board or privately, to ensure more balanced dealings between larger and smaller railroads, to promote private-sector negotiation of employee concerns, and to further safety and the environmental interests of state and local communities. In accordance with the law, if confirmed I would be committed to continuing the positive momentum begun by those initiatives.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. As my record over the last 5 years at the ICC and the Board reflects, I believe that government as a general rule should facilitate appropriate market-based initiatives and private-sector solutions to problems, intervening when the private sector is unable to provide a suitable resolution. The Board is principally an adjudicatory agency, and therefore, many of the cases that we handle either must come to us before certain market-based commercial transactions can be effectuated, or they involve situations where private-sector resolution has not proven possible. Nevertheless, even within the framework of the Board's mission, there are ways in which private-sector initiative and resolution can and should be encouraged and promoted. Private-sector initiative can provide for better solutions because it can be tailored to the needs of the involved parties, can go beyond what government is able to do under the law, and can create a dynamic in which all the parties to the initiative have been involved in its development and thus are invested in its success.

As an example, during the western rail service emergency of 1997 and 1999, the Board required substantial reporting and conducted significant oversight, but it intervened operationally in a focused and restrained way, allowing the involved railroads, with the active involvement of employees, to work as much as possible through their operational issues themselves. The Board's restraint, in my view, permitted a more rapid and comprehensive service recovery than the Government could have produced through more direct and expansive intervention.

As another example, several legal issues arose in connection with the recent Conrail transaction. Although the Board promptly and fairly resolved all questions that remained before it, as it has done in other cases the Board strongly encouraged the acquiring railroads to enter into privately negotiated settlements that advanced competition and resolved labor and environmental issues. I believe that the agreements that were worked out in response to the Board's prodding were superior to those that the Government could have imposed under the law.

Finally, various interests that appear before the Board have, with the Board's strong encouragement, entered into private-sector dispute resolution programs. The large railroads have reached a "Railroad Industry Agreement" with their smaller railroad connections, and the railroads and the National Grain and Feed Association have entered into agreements under which certain disputes are to be resolved through mandatory arbitration. These industry-wide agreements can provide effective means by which parties can resolve their differences in the private sector without any governmental involvement.

On the other hand, there are circumstances when the marketplace is imperfect and where the playing field is not level. It is in these situations that government intervention is necessary, to ensure that disputes can be resolved fairly and that the interests of all involved can be appropriately balanced.

Accordingly, when it has been involved with dispute resolution, the Board, I believe, has been vigilant in implementing the law fairly and expeditiously. For example, the Board has been committed to moving rail rate complaints to resolution,

issuing deadlines and simplified procedures for various cases. Where rail rates are reasonable, the Board has allowed them to stand, but where they are not, the Board has set them aside and afforded shippers full relief. While concern has been raised that the Board's rail "bottleneck" rate decisions did not go far enough to protect shippers, I do believe that the Board's decisions were creative in providing certain bottleneck rate regulatory relief within the confines of existing law. The Board has focused on leveling the playing field by eliminating product and geographic competition from "market dominance" rules that apply to maximum rate cases. And it has promulgated specific regulations dealing with situations involving inadequate rail service.

The record of the ICC and the Board under my leadership, I believe, clearly stands as a model of good government. If the marketplace and the private sector are able to achieve the public interest goals reflected in a particular governmental program, then those goals are better met without governmental involvement. At the same time, if the marketplace is imperfect, then governmental action is appropriate in accordance with the policies established in the applicable law.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The Board is responsible for economic regulatory oversight of surface transportation in accordance with the laws that it implements. It is principally an adjudicative body that resolves disputes and handles other matters, based largely on a written record, to advance the policies embodied in the law. Its responsibilities involve primarily rail issues, although it has certain other responsibilities relating to motor carriers, pipelines, and noncontiguous domestic water trade.

In carrying out its regulatory responsibilities, the Board must act independently and balance many oftentimes competing public interest objectives, reflected in the law, that involve carriers, shippers, employees, state and local communities, and other affected interests. The decisions that the Board issues are often controversial, but one of our most important missions, I believe, is to tackle the hard cases and move them to resolution.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years? There continues to be strong support for retaining an independent forum in the form of the Board to adjudicate the matters now brought to it. Any changes relating to the Board and its mission would likely come by way of substantive changes to the law that the Board implements, particularly with respect to railroads. Certain of the changes being proposed raise fundamental questions about the current law. These proposed changes principally reflect a view that the current regulatory scheme does not provide for the appropriate balance among the interests of the carriers, shippers and employees. Certain parties have expressed the position that, particularly in view of the recent consolidations in the rail industry, there is not enough rail-to-rail competition and thus that rates are not as low as they could be and service is not as good as it should be. In addition, concern has been expressed that those aggrieved by what they perceive to be inadequate service or unreasonably high rates do not always have real and sufficient access to regulatory relief. And rail employees have expressed the view that, in the context of railroad consolidations, their rights with respect to collective bargaining agreements are not protected as fully as they should be. The parties that have expressed these concerns have sought legislative changes that would alter the law that the Board implements and that could accordingly change the Board's mission.

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the board/commission and why? Notwithstanding the questions that have been raised about what the Board's mission should be, and despite the Board's more limited resources, I believe that the Board has fulfilled the mission reflected in the law that it implements. With strong leadership and focus, the Board should continue to be able to pursue this mission. However, the Board continues to be faced with uncertainty and controversy surrounding its reauthorization, its mission and the law that it implements. Depending on the Board's membership and leadership, this uncertainty and controversy can have a negative impact on the Board's ability to function. As long as the Board is not reauthorized and the law remains at issue, the Board will be challenged to continue to make decisions fairly and independently, even in the face of political uncertainty. Additionally, if the debates about the law persist indefinitely, the Board will continue to be challenged to focus on what it believes its mission to be as reflected in the law, despite a variety of divergent messages from individual Members of Congress. Finally, this debate, if left unresolved, could challenge the Board with more regulatory contention reflected in cases brought to the Board, as parties try to argue

their view of policy before the Board while the Board's mission is still being debated in Congress. In general, the Board will continue to be challenged to adjudicate matters independently and on the written record in a manner that reflects what it believes Congress intended with the current law until Congress affirmatively and clearly expresses its position on the various legislative issues that have been raised.

9. In further reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years? As I have already indicated, I believe that, even with limited resources and in the face of much pressure, controversy, and disagreement among certain Members of Congress as to its mission, the Board has been able to achieve the objectives reflected in the existing law that it implements.

10. Who are the stakeholders in the work of this agency? The stakeholders cut across a broad spectrum of our Nation's economy. They include shippers, carriers, employees, and communities and individuals throughout the country. They also include Congress, as well as the Administration and other Federal agencies.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten. Obviously, the policies that the Board implements and the individual decisions that it issues will affect the various stakeholders. But all of the stakeholders have a right to influence those policies and decisions by participating formally in any proceeding before the Board. The Board typically decides matters based on the entire written record before it and must not be partial to any one stakeholder. With particular respect to the Administration, the Board as an independent agency must be careful to afford Administration representatives appropriate regard as parties along with the other parties. With respect to Congress, the Board, as a creation of Congress, must be prepared to explain its actions in the context of the law that the Board implements, but it also must consider Congressional views on pending matters in the same manner as it considers the views of other parties.

12. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe in a team and consensus building approach to reaching decisions. Thus, in my 4 years as Chairman of the ICC and then of the Board, and before that as General Counsel for the Senate Commerce Committee, I have been committed to seeking out the views of involved staff and have worked at coming to a final resolution that reflects those views as much as possible. While my management style is one of mutual respect for a divergence of views, equality among employees in their importance to the finished product, and expansive inclusion during the deliberative process, I also feel strongly that deliberations must be brought to a conclusion, decisions must be rendered expeditiously, and the one who is in charge has ultimate responsibility to make the necessary decisions and must assume that responsibility fully. No employee complaints have been brought against me personally; in fact, I believe that you would find that those who have worked for me and with me would comment favorably on their experience.

13. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. During my 15 years in various staff counsel positions with the Senate Commerce Committee, I developed an appreciation for having a good working relationship with Congress and believe that during my 5 years at the ICC and the Board I have built on my experience and have developed a good working relationship with Congress.

14. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board/commission comply with the spirit of the laws passed by Congress. During my 5 years at the ICC and the Board, I have strived to ensure that my decisions and the Board's decisions are in compliance with the spirit of the laws that the agency implements. While I recognize that there have been legitimate differences of opinion in this regard, they are just that, and I do believe that no one could reasonably disagree with the good faith efforts and commitment to uphold the spirit of the law that the Board has shown, which is confirmed by the success experienced by the ICC and the Board in having their decisions upheld by the courts. I will continue to be committed to this end if confirmed for another term.

15. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Congress must consider reauthorizing the Board as a priority. The Board was affirmatively created by Congress and needed to be reauthorized last year. The Board has implemented the law as Congress intended in creating the Board; has tackled many difficult issues with fairness, professionalism, and resolve; has been a model of good government; and continues to perform an important function. The uncer-

tainty associated with not having a reauthorization can have a negative impact on the retention of qualified staff, and on the decision-making process. Apart from the reauthorization issue, there are pending proposals to amend the law that the Board implements. I believe that it is important for Congress to decide on these proposals, sooner rather than later, one way or the other so as to provide the needed certainty and predictability for the Board and the transportation community with respect to the regulatory rules of the road for the future.

16. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president. A Board member is an independent adjudicator and must make decisions in pending matters based on the record and free of bias or political influence from any quarter. At the same time, there are certain general good government policies, such as the streamlining of governmental processes, that an independent Board can and should pursue voluntarily in accordance with Administration policy.

Senator HUTCHISON. Yes. I would like to ask each one to give opening statements first up to 5 minutes. And then we will open it for questions.

So, Mr. Frazier.

STATEMENT OF MICHAEL J. FRAZIER, NOMINEE, ASSISTANT SECRETARY FOR GOVERNMENTAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. FRAZIER. Thank you, Madame Chairwoman and members of the committee. It is an honor to appear before you today as you consider my nomination to be Assistant Secretary for Governmental Affairs of the Department of transportation.

I am pleased that Secretary Slater has recommended me to President Clinton for this position and that the President has sent my nomination forward to this committee. I am deeply honored to serve President Clinton and am gratified to serve the American people.

Let me take a moment to express my deepest appreciation to Senator Kennedy, not only for his gracious introduction but also for his invaluable support for the past two decades. He has taught me to believe in the principle, "To whom much is given, much is required."

From the time Senator Kennedy invited me to join his staff in 1985 as a legislative assistant until my departure in 1992, he reminded me that those who serve the American public at the highest levels have a special obligation to preserve the values of this country and to advance the goals of truth, integrity, justice and responsibility for all Americans. I will not forget his kindness nor his support.

Senator Kennedy, I thank you.

Also, let me take the opportunity to introduce my mother, Mrs. Christine Cooper, who has been an indomitable source of strength, inspiration and support all of my life. I have asked her here today because it is an honor to my family, as well as myself, to be considered for this office.

I am also accompanied today by several of my dearest friends from Pennsylvania, as well as from here in Washington, D.C. I have no doubt that they will help me to ensure that I honor my commitment to this committee, to the President and to Secretary Slater to deliver honest, dedicated, compassionate and efficient service to the American people during the balance of this administration.

Madame Chairwoman, as you know, the Department of Transportation has enormous responsibilities that touch the fabric of American life. Indeed, the Department must strive to ensure that American citizens can travel the nation's transit, waterways, highways, railways and air routes into the next millennium with confidence, efficiency and safety; that businesses can transport their products to domestic and international destinations in a manner that promotes economic development and fiscal responsibility; that the Nation will invest in transportation infrastructure and technology to maintain the United States at the pinnacle of international economic leadership for generations to come; that state and local governments can rely upon the Department of Transportation for guidance, leadership and responsiveness to the individual local needs; and that the American public can rest assured that American transportation policy during this administration will reflect our national commitment to hold our environment in trust for our children and the generations who follow them.

During my brief tenure with the Department of Transportation, I have been impressed by Secretary Slater's dedication to ensuring that transportation services are delivered to the American people in a safe, efficient and responsible manner, recognizing that these objectives may only be accomplished by the interplay between public and private partnerships, between national and local governments, and by the interdependence of the executive and legislative branches of the Federal Government.

If confirmed as Assistant Secretary for Governmental Affairs, I would welcome the responsibility of assisting Secretary Slater in achieving those objectives.

Indeed, in nearly 10 years of working on Capitol Hill, initially with Senator Kennedy and later as chief of staff to Senator Moseley-Braun, I learned to appreciate the need for a close working relationship between the public and private sectors, the various levels of government, between the White House and the Congress and, as I learned more recently, especially between the Department of Transportation and this committee.

Moreover, I offer to you, Madame Chairwoman, my solemn commitment to work closely with this committee in an open, frank and collegial manner to carry out the transportation policies of this nation for the benefit of your constituents and the American people as a whole.

For these reasons, if I am confirmed, I am confident that my service to this country will honor the decisions of the President, Secretary Slater and the U.S. Senate to the best of my abilities during the balance of this administration.

Madame Chairwoman, I thank you and the committee for your time today. If I might aid your deliberations by responding to any questions you might have, I am happy to do so.

Thank you.

[The prepared statement and Biographical Information of Mr. Frazier follow:]

PREPARED STATEMENT OF MICHAEL J. FRAZIER, NOMINEE, ASSISTANT SECRETARY FOR
GOVERNMENT AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Thank you, Madame Chairwoman and Members of the Committee. It is an honor to appear before you today as you consider my nomination to be Assistant Secretary for Governmental Affairs of the Department of Transportation. I am pleased that Secretary Slater has recommended me to President Clinton for this position, and that the President has sent my nomination forward to this Committee. I am deeply honored to serve President Clinton and I am gratified to serve the American people.

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Also, let me take the opportunity to introduce my mother, Mrs. Christine Cooper, who has been an indomitable source of strength, inspiration and support all of my life. I have asked her here today because it is an honor to my family, as well as myself, to be considered for this office. I am also accompanied today by several of my dearest friends from Pennsylvania as well as from here in Washington, D.C. I have no doubt that they will help me to ensure that I honor my commitment to this Committee, to the President and to Secretary Slater to deliver honest, dedicated, compassionate and efficient service to the American people during the balance of this Administration.

Madame Chairwoman, as you know, the Department of Transportation has enormous responsibilities that touch the fabric of American life. Indeed, the Department must strive to ensure that American citizens can travel the Nation’s transit, waterways, highways, railways and air routes into the next millennium with confidence, efficiency and safety; that businesses can transport their products to domestic and international destinations in a manner that promotes economic development and fiscal responsibility; that the Nation will invest in transportation infrastructure and technology to maintain the United States at the pinnacle of international economic leadership for generations to come; that State and local governments can rely upon the Department of Transportation for guidance, leadership and responsiveness to their individual local needs; and that the American public can rest assured that American transportation policy during this Administration will reflect our national commitment to hold our environment in trust for our children and the generations who follow them.

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Moreover, I offer to you, Madame Chairwoman, my solemn commitment to work closely with this Committee in an open, frank and collegial manner to carry out the transportation policies of this Nation for the benefit of your constituents and the American people as a whole. For these reasons, if I am confirmed, I am confident that my service to this Country will honor the decisions of the President, Secretary Slater and this Committee, to the best of my abilities, during the balance of this Administration. Madame Chairwoman, I thank you and the Committee for your time today. If I might aid your deliberations by responding to any questions you might have, I am happy to do so.

A. BIOGRAPHICAL INFORMATION

1. Name: Michael James Frazier

2. Position to which nominated: Assistant Secretary for Governmental Affairs
United States Department of Transportation

3. Date of nomination: August 3, 1999

4. Address: Residence: 7620 Old Georgetown Road, #117 Bethesda, Maryland,
20814. Office: 400 7th Street, S.W., Room 10408 Washington, D.C., 20590

5. Date and place of birth: August 3, 1956 Somerset, Pennsylvania

6. Marital status: Divorced

7. Names and ages of children: None

8. Education: Central Connecticut State College, 1976-1979 Bachelor of Arts, Political Science, May 1979

9. Employment record: Perry-White Associates, Computer Personnel Placement Service, Waltham, Massachusetts, June, 1979 - December, 1979; Kennedy for president, 1980 Field Organizer, Washington, D.C., December, 1979 - August, 1980; Carter/Mondale for President, 1980, Field Organizer, Washington, D.C., August, 1980 - November, 1980; Office of the Mayor, Special Assistant, Washington, D.C., February, 1981 - March, 1982; Marion Barry for Mayor Campaign, Field Organizer, Washington, D.C., March, 1982 - November, 1982; Mondale for President, 1984, Advance/Field Organizer, Washington, D.C., February, 1983 - November, 1984; Fund for a Democratic Majority, Political Action Committee, Field Organizer, Washington, D.C., January, 1985 - July, 1985; United States Senate, Office of Senator Edward M. Kennedy, Legislative Assistant, Washington, D.C., July, 1985 - January, 1993; United States Senate, Office of Senator Carol Moseley-Braun, Chief of Staff, Washington, D.C., January, 1993 - December, 1993; United States Department of Commerce, Consultant/Office of the Secretary, Washington, D.C.; January 1994 - December 1994; United States Department of Commerce, Deputy Assistant Secretary for Intergovernmental Affairs, Washington, D.C., January, 1995 - June, 1998; L.Clinton/Gore 1996 General Campaign, State Director, Pennsylvania, August, 1996 - November, 1996; United States Department of Transportation, Deputy Assistant Secretary for Governmental Affairs, Washington, D.C., June, 1998 - present.

10. Government experience: Mayor Sharon Pratt Kelly Transition Team Transition Team Leader, Washington, D.C., November, 1990 - January, 1991.

11. Business relationships: None.

12. Memberships: None.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate. None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. Clinton/Gore 1996 Campaign, State Director/Pennsylvania, August, 1996 - November, 1996.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. None.

14. Honors and awards: None.

15. Published writings: None.

16. Speeches: None.

17. Selection:

A. I believe I have been chosen for this position because of my service in the Clinton Administration since 1994. I also believe that I have proven my capabilities to Secretary Rodney Slater since joining the Department of Transportation in June of 1998. I am most appreciative of this recognition, and if confirmed, I will do everything in my power to justify the confidence shown in me.

B. I believe my staff experience with two United States Senators from 1985 through 1993, as well as my tenure as Deputy Assistant Secretary at both the Transportation and Commerce Departments have served to prepare me well for the position for which I have been nominated.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? None.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If confirmed, I would hope to serve until the end of this Administration.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. As legislative assistant to Senator Kennedy, I worked on a wide variety of issues. I worked specifically on the Fair Housing Act of 1989 and the Americans with Disabilities Act. While here at the Department of Transportation and serving in an acting capacity since December of 1998, I have worked on legislation concerning DOT FY 2000 appropriations, FAA reauthorization, motor carrier safety, rail safety, and various other legislative matters.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. Please refer to the Deputy General Counsel opinion letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. My intention is to work closely with the Department's Office of General Counsel to ensure that regulations issued by the Department comply with the spirit of enacted laws. The Office of Governmental Affairs will also continue to work closely with the Congress to apprise members and staff of important regulatory developments.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department of Transportation is a visionary and vigilant Department leading the way to transportation excellence in the 21st century. The **mission** is to serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future. The **strategic goals** are - *Safety*: Promote the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage; *Mobility*: Shape America's future by ensuring a transportation system that is accessible, integrated and efficient, and offers flexibility of choices; *Economic Growth and Trade*: Advance America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation; *Human and Natural Environment*: Protect and enhance communities and the natural environment affected by transportation; *National Security*: Advance the nation's vital security interests in support of national strategies such as the National Security Strategy and National Drug Control Strategy by ensuring that the transportation system is secure and available for defense mobility and that our borders are safe from illegal intrusion.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated.

I believe my past experience in the legislative branch has been enormously helpful in teaching me the legislative process and the related skills necessary to perform the job for which I have been nominated. I also believe that my experiences at both the Department of Commerce and here at Transportation have given me insight into the balance needed between the executive and legislative branches.

2. Why do you wish to serve in the position for which you have been nominated?

First, I am proud that Secretary Slater has developed an appreciation for my abilities and has chosen me to carry out the Department's legislative initiatives and strategies. Second, I am equally proud of the fact that President Clinton has concurred with Secretary Slater's decision and is giving me such an outstanding opportunity to serve him and the American people. I cannot think of a better way to continue my role in public service.

3. What goals have you established for your first two years in this position, if confirmed?

In the remaining 16 months of the Clinton Administration, my only goal is to do the best job that I am capable of to show both the Secretary and the President that they made the right choice.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Patience may be the skill I most lack. Continued self awareness may be the best vehicle for improving that skill. It is most likely there are other skills that need improvement as well, but I believe I am fully capable of doing this job given the opportunity.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe the role of Government is to help those who are not in a position to help themselves. That means equal opportunity for all in getting an education, the ability to compete for employment, to guarantee equal access for the physically challenged, etc. The government's role in the private sector should be to primarily guarantee equal opportunity, individual employment rights, and help American corporate interests compete in markets around the world. Society's problems can be left to the private sector only when the private sector proves itself free from discrimination or barriers both in the board room as well as the workplace. Applicable standards for Government intervention in the private sector may best be done on a case by case basis.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives.

The Department's primary goal and objective, along with Congress, is to develop and promote the safest and most efficient transportation system possible. Our mission is to have the safest skies, surface transportation systems and waterways in

our nation's history. But, it is also important to find ways to provide economical and expedited movement of goods to markets worldwide.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years.

Over the next five years, we are likely to face increased air passenger travel and cargo shipments. These likely increases are why it is so critically important to begin our FAA modernization program now so that we can begin to address our anticipated delays and safety concerns. We can likely anticipate increased highway use as well and therefore it is our mission to find ways to make highway travel safer yet somehow less congested.

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why?

I am not certain that any outside forces actually exist in keeping DOT from reaching its mission, however, there is always the possibility of the unforeseen, such as, a lack of cohesion between management and labor or budgetary constraints. Concerning the top three challenges this agency faces, I believe the amount of time left in this Administration to fulfill its mission is the biggest challenge. The second biggest challenge is to be able to fulfill our mission under difficult budget restraints. Third, the difficulty of an agency this size to work in unison in fulfilling our mission.

9. In further reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

I believe the Department has, in fact, done a good job in accomplishing its mission. The number of aviation related deaths over the last year has declined dramatically. The aviation industry continues to develop new technology to improve air service for both passengers and cargo. The number of passengers flying continues to increase at a record pace. The Administration has successfully negotiated thirty-five "open skies" agreements with foreign governments opening the way for increased services for U.S. carriers. The Administration has begun a thoughtful "safe skies" program to bring along underdeveloped foreign aviation partners to a higher standard of aviation safety decreasing the risk of aviation related fatalities. We have significantly increased seatbelt use through our "Buckle Up America Program", which at the same time has decreased the number of automobile related fatalities. We have successfully decreased drunk driving through an aggressive incentive program designed to work in partnership with the States. These are just some of a number of examples of how this agency has achieved its mission thus far.

10. Who are the stakeholders in the work of this agency?

The American public in general, but more specifically, State and local governments, industry, labor, safety groups, environmentalists and others with an interest in transportation.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten.

If confirmed, I will make every effort to work with all stakeholders to develop the best transportation policy possible.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

I would, to the best of my ability, work in concert with the Office of General Counsel and the Office of Inspector General to insure that DOT is adhering to all rules of law set forth by Congress.

(b) What experience do you have in managing a large organization?

As former Chief of Staff for former Senator Carol Moseley-Braun, I hired and managed a staff of fifty nine people. Also, while serving as State Director of the Clinton/Gore Pennsylvania Campaign, I supervised a staff of forty-seven people. Lastly, while serving as Acting Assistant Secretary since December 1, 1998, I have been supervising a staff of twenty-three in this office.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

Performance goals are beneficial in assessing strengths and weaknesses within an organization in two ways. First, they give a reasonable assessment, in most cases, regarding personnel. Second, they give some assessment, over a period of time, as to whether goals are realistic and/or achievable.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

Congress' role in assessing performance goal achievement should be decided on a case by case basis. Agencies have different track records in achieving stated goals and therefore should be judged on those records. In fact, in a recent study released jointly by GAO and the Senate Governmental Affairs Committee, the Department of Transportation was lauded for having the best performance plan in Government.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

My performance should be judged on a variety of factors including accessibility to Members of Congress and their staffs' timely responses to Congressional questions before the Department, supplying witnesses and testimony for Congressional hearings, adequate grant notification to Congressional offices, and practicing sound judgment when giving advice to other officers of the Department.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

My own personal philosophy of supervisor/employee relationships does not necessarily relate to any one known model, but instead it is more of a composite of what I have experienced over the course of my professional career in Washington, D.C. I believe that every supervisor should have an open door policy for all of his/her employees. I believe it is important to lay out your expectations early on as a supervisor and to let your employees know that they will be meritously judged based on those expectations.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

I believe that I have a good working relationship with Congress. My experience here at the DOT in both capacities as the Deputy Assistant Secretary and Acting Assistant Secretary have given me excellent opportunities to build what I would consider solid working relationships with both Members and staff on a range of issues. My time spent working in the Senate (eight years) for Senators Kennedy and Moseley-Braun, were invaluable in teaching me the legislative process as well as affording me the opportunity to build work-related relationships.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I believe that the Inspector General of this agency commands and deserves the utmost respect of all DOT employees. I believe it is important for the Inspector General to maintain as much independence from other DOT officers and offices as his job requires. If the Inspector General were doing any type of audit or investigation, which in any way, would require my participation, I would treat that action with the utmost seriousness and attention.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

If the Committee or others were to call into question regulations issued by this Department, I would, to the best of my ability, work to find the answer to that question.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

DOT's top legislative priorities are as follows: A fully funded FY 2000 budget, FAA reauthorization, rail and motor carrier safety legislation and Surface Transportation Board reauthorization.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.

Yes. The criteria for discretionary funds are, in fact, determined not by this office, but by the mode responsible for the actual funding. The role of this office is to insure that members of Congress who are recipients of discretionary funds are properly notified and given the opportunity to release that information to their constituents. If, in fact, there is some question about DOT's discretionary spending, I would be willing to help find the answers to whatever concerns there are.

Senator HUTCHISON. Thank you, Mr. Frazier. Dr. Van Beek.

STATEMENT OF DR. STEPHEN D. VAN BEEK, NOMINEE, ASSOCIATE DEPUTY SECRETARY AND DIRECTOR, OFFICE OF INTERMODALISM, U.S. DEPARTMENT OF TRANSPORTATION

Dr. VAN BEEK. Madame Chairwoman, Senator Hollings, members of the committee, let me first thank Representative Lofgren for coming and speaking on my behalf today. I genuinely appreciate it, as I appreciate the support of Senator Dianne Feinstein, who I know could not be here today.

First, I want to thank you for convening this hearing today to consider my nomination to the position of Associate Deputy Secretary of Transportation and Director of the Office of Intermodalism.

My professional life has been dedicated to public service. And should the Senate honor me with confirmation to the position, I pledge to you that I will carry out the responsibilities entrusted to me in an ethical and professional manner, which justifies your, President Clinton's and Secretary Slater's confidence.

As you know, the Associate Deputy Secretary is charged with helping the Secretary and Deputy Secretary of the Department provide leadership to the Department's agenda and management concerns. In this capacity, the position acts as a senior policy advisor to the Secretary with a special emphasis on issues that cut across modal boundaries. These include safety, environment protection, mobility, technological innovation and security.

As the Director of Intermodalism, the position is an important voice in articulating the needs of all transportation users, including those in the intermodal community. Government policy needs to promote the seamless operation of the nation's transportation system, so that the Department, Congress and American citizens receive the optimal yield on their transportation investments.

In order to accomplish these ends, I will work with the Department's leadership, including Secretary Rodney Slater, Members of Congress, the states, industry and other stakeholders to advocate an intermodal systems perspective of our transportation network and make it a reality in departmental programs and initiatives.

The Department and Congress have together made great progress in supporting an intermodal transportation system. Thanks to the innovative provisions of recent authorizations, such as ISTEA and TEA-21, more intermodal projects are eligible for support, and many have been funded, promising significant gains in both the passenger and freight sectors.

But there is more to be done to improve services, performance, safety and economy for all modes and combination of modes. Future changes, whether in demographics on the passenger's side or the projected increases in trade on the freight side, will require further adaptability of the transportation system. If the system is to be responsive to these changes, increases in capacity must be predicted and built into the policy and investment decisions of the Department.

To accomplish these goals, one priority will be to build upon Secretary Slater's ONE DOT management initiative that has improve teamwork among the different modal administrations and offices in the Department, using such mechanisms as the Secretary's Safety and Policy Councils.

These tools are essential for implementing priority initiatives, such as the development of the 21st Century Marine Transportation System, MTS, an initiative which will involve extensive interactions with stakeholder groups and DOT modal administrations, such as the Maritime Administration, the United States Coast Guard, and the surface modes which transport maritime commerce to and from the interior of the United States.

For the MTS to be successful, we must make transportation connections responsive to the demands which will be placed upon them. These demands will be significant indeed, given forecasts that marine trade will double in the next 20 years.

With the increase in international land and sea trade, international ports and border crossings pose special challenges of administrative complexity and national standards.

To deal with these potential choke-points and to promote the free flow of freight generally, the Department and the state transportation agencies are addressing the border crossing and trade corridor provisions of TEA-21.

In addition, in conjunction with other Federal agencies, we are examining how to use innovative technologies, such as intelligent transportation system and electronic manifests, to streamline clearance processes at border crossings.

Another personal priority of mine is to address key intermodal projects in the ten Federal regions which will enhance regional mobility. Among many others, these include the Alameda Corridor, the Salt Lake City Olympics, and the Miami Intermodal Center. Other sponsors of intermodal projects, seeking to emulate these innovative solutions, will have my office as a departmental point of contact and lead in providing assistance on these initiatives.

On these and other initiatives, I look forward to working with the professionals in the Office of Intermodalism to advance the nation's transportation system. I especially look forward to working with Congress and intermodal stakeholders to tackle these issues and resolve outstanding challenges.

Once again, thank you for the opportunity to appear before you today. I also would be happy to answer any questions you might have.

[The prepared statement and Biographical Information of Dr. Van Beek follow:]

PREPARED STATEMENT OF DR. STEPHEN D. VAN BEEK, NOMINEE, ASSOCIATE DEPUTY SECRETARY AND DIRECTOR, OFFICE OF INTERMODALISM, U.S. DEPARTMENT OF TRANSPORTATION

Madam Chairwoman, Senator Hollings, members of the Committee:

I want to thank you for convening this hearing today to consider my nomination to the position of Associate Deputy Secretary of Transportation and Director of the Office of Intermodalism. My professional life has been dedicated to public service and should the Senate honor me with confirmation to the position, I pledge to you that I will carry out the responsibilities entrusted to me in an ethical and professional manner which fully justifies your and President Clinton's confidence.

As you know, the Associate Deputy Secretary is charged with helping the Secretary and Deputy Secretary provide leadership to the Department of Transportation's agenda and management concerns. In this capacity, the position acts as a senior policy advisor to the Secretary with a special emphasis on issues that cut across modal boundaries. These issues include safety, environmental protection, mobility, technological innovation and security.

As the Director of Intermodalism, the position is an important voice in articulating the needs of all transportation users, including those in the intermodal community. Since the creation of the Office of Intermodalism by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), this position has included the responsibility of ensuring that government policy promotes the seamless operation of the Nation's transportation system so that the Department, Congress, and American citizens receive the optimum yield for their transportation investments.

In order to accomplish these ends, I will work with the Department's leadership, including Secretary Rodney Slater, members of Congress, the states, industry, and other stakeholders to advocate an intermodal, systems perspective of our transportation network and make it a reality in departmental programs and initiatives.

Secretary Slater has been a leader in expanding our vision about what transportation means for our nation. He has challenged us to help create additional economic opportunity by increasing accessibility to transportation, to consider how we can enhance the environment and the livability of communities, and to establish a climate for innovation as we work with public and private partners to insure that new technologies are developed and deployed in the transportation system.

As Deputy Administrator of the Research and Special Programs Administration (RSPA), I have had the opportunity to work on these and many other intermodal initiatives of the Department. These include response to man-made and natural disasters, hazardous materials transportation, university programs, and research and technology issues. In addition, I have had direct responsibility for the Volpe National Transportation Systems Center, a leading government center supporting transportation programs of the Department, states, and other transportation organizations.

Five years ago the National Commission on Intermodal Transportation issued its report to Congress stressing the benefits of intermodalism and the need for DOT leadership in developing a consistent intermodal policy. Congress reaffirmed this need when it passed the Transportation Efficiency Act of the 21st Century (TEA-21). Potential benefits of intermodalism include lowering transportation costs, increasing economic productivity and efficiency, reducing the burden on over-stressed infrastructure, generating higher returns from public and private investments, improving accessibility for under-served populations, and reducing energy consumption and contributing to improved air quality and environmental conditions.

The Commission found that while the private sector had adopted an intermodal perspective, the public institutions were not evolving as swiftly as necessary to keep up with new developments and look for intermodal solutions to transportation problems. In short, all levels of transportation agencies—federal, state and local—must stay in touch with the intermodal transportation community to make sure that decision-making, public infrastructure and management practices are adapting to and complimenting user needs.

The Department and Congress have together made progress in supporting an intermodal transportation system. Thanks to innovative provisions of ISTEA and TEA-21 more intermodal projects are eligible for support and many have been funded, promising significant gains in both the passenger and freight sectors.

But there is more to be done to improve services, performance, safety, and economy for all modes and combinations of modes. Future changes, whether in demographics on the passenger side, or the projected increases in trade on the freight side, will require further adaptability of the transportation system. If the system is to be responsive to these changes, increases in capacity must be predicted and built into policy and investment decisions of the Department.

To accomplish these goals, one priority will be to build upon Secretary Slater's ONE DOT management initiative that has improved teamwork among the different modal administrations and offices in the Department, using such mechanisms as the Secretary's Safety and Policy Councils.

These tools are essential for implementing priority initiatives such as the development of the 21st Century Marine Transportation System (MTS), an initiative which has, and will, involve extensive interactions with stakeholder groups and DOT modal administrations such as the Maritime Administration, the U.S. Coast Guard, and the surface modes which transport maritime commerce to and from the interior to the United States. For the MTS to be successful, we must make transportation connections responsive to the demands which will be placed upon them. These demands will be significant indeed given forecasts that marine trade will double in the next twenty years.

With the increase in international land and sea trade, international ports and border crossings pose special challenges of administrative complexity and national standards. To deal with these potential choke-points and to promote the free flow of freight generally, the Department and the state transportation agencies are ad-

addressing the border crossing and trade corridor provisions of TEA-21. We will continue to advance innovative projects to advance intermodalism. I will also lead the Department's efforts to work with other federal agencies, such as the U.S. Customs Service and its counterparts, to identify potential means of streamlining clearance processes through the use of compatible databases and electronic manifests.

Another personal priority is to address key intermodal projects in the ten federal regions which will enhance regional mobility. Among many others, these include the Alameda Corridor, the Salt Lake City Olympics, and the Miami Intermodal Center. Other sponsors of intermodal projects, seeking to emulate these innovative solutions will have my office as a departmental point-of-contact and lead in providing assistance on their initiatives. The office's organizational structure supports this by giving its transportation specialists regional responsibility for following projects and establishing working relationships with state agencies, Metropolitan Transportation Organizations (MPOs), and private industry.

The tools for achieving a truly intermodal transportation system include promoting, advancing, and deploying technology, creating innovative financing tools, and expanding research and education initiatives. New applications of technologies whether in logistics, collision avoidance systems, or location technologies such as Global Positioning Satellites, offer promises of new efficiencies, capacities and services. Only by working multimodally and intermodally can the full promise of these technologies be realized.

I will continue efforts of the Department to use innovative financing to further intermodal connections and linkages. The Office of Intermodalism was instrumental in devising a funding strategy for the Alameda Corridor project, and supports TEA-21's innovative financing provisions in the Transportation Infrastructure Finance and Innovative Act (TIFIA) and the Railroad Rehabilitation and Improvement Financing program (RRIF). These programs use federal funds as leverage to encourage the use of private investment capital. The ultimate aim of innovative finance should be to establish a climate whereby federal funds are but one resource of many available to create transportation infrastructure.

Having come from the university environment and having had direct responsibility for university programs at RSPA, I believe we can expand DOT's education efforts to focus more attention on the intermodal components of the transportation system. Topics for more research and education include rail and highway grade crossing safety; automated equipment identification; vehicle location systems; safety performance standards; high-speed rail technology; multimodal revenue accounting and ticketing systems; and transit information networks. Already the Office of Intermodalism has sponsored, and will continue to develop, intermodal training materials for transportation professionals at all levels of the transportation sector. On these and other initiatives, I look forward to working with the professionals in the Office of Intermodalism to advance the nation's transportation system.

I especially look forward to working with Congress and intermodal stakeholders to tackle these issues and resolve outstanding challenges.

Once again, thank you for the opportunity to appear before you today. I would be happy to answer any questions.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.) Stephen Dart Van Beek (Steve).

2. Position to which nominated: Associate Deputy Secretary, U.S. Department of Transportation.

3. Date of nomination: August 2, 1999.

4. Address: (List current place of residence and office addresses.) Residence: 1631½ 19th Street, Apt. B, N.W., Washington, D.C. 20009; Office: Research and Special Programs Administration, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

5. Date and place of birth: November 9, 1961, Washington, D.C.

6. Marital status: (Include maiden name of wife or husband's ame.) Married, Elizabeth Tucker Van Beek, maiden name: Tucker

7. Names and ages of children: (Include stepchildren and children from previous marriages.) I have no children.

8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.) University of Virginia (1986-1991), Ph.D. Government and Foreign Affairs, 1991; University of Virginia (1986-1991). M.A. Government and Foreign Affairs, 1988; University of California Santa Barbara (1980-1983), B.A. Political Science, 1983; University of Maryland College Park

(1979-1980), no degree; Albert Einstein Senior High School, Kensington MD (1976-1979), Diploma 1979.

9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Full-Time Positions; Deputy Administrator, Research and Special Programs Administration (RSPA), Department of Transportation, Washington, D.C. (August 1998-present); Special Assistant to the Administrator, RSPA, U.S. DOT, Washington, D.C. (February 1998-August 1998); Assistant/Associate Professor of Political Science, San Jose State University (August 1990 to January 1998). Also served as Assistant to the Academic Vice President (1993 to 1995); Assistant Chair of the Department of Political Science (1995 to 1997). I am currently on professional leave as a professor from this assignment. Lecturer, Department of Politics, Washington and Lee University, Lexington VA (April 1990 to June 1990); Teaching Assistant, University of Virginia, Charlottesville VA (Fall and Spring Semesters between August 1987 and June 1989); Consultant, Democratic Congressional Campaign Committee, Washington, D.C. (May 1986 to August 1986); Legislative Assistant/Staff Assistant, Representative Tony Coelho, Washington, D.C. (September 1983 to May 1986).

Part-Time Positions; Research Associate, Norman Y. Mineta International Institute of Surface Transportation Policy; Studies (non-profit entity of San Jose State University), (August 1995 to January 1998); Teacher-Consultant, Working Partnerships USA, AFL-CIO, (January 1997 to December 1997); Visiting Professor, De Anza Community College, Cupertino, CA, (1993 and 1995); Temporary Work, Manpower Inc., Charlottesville VA (May 1987 to August 1987).

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) Member, Santa Clara County Charter Review Commission (California), (September 1997 to January 1998). I resigned after my acceptance of the DOT position. Member, Mayor's Blue-Ribbon Panel on Ethics (San Jose, California), (September 1997 to December 1997).

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution) (listed above).

Research Associate, Norman Y. Mineta International Institute of Surface Transportation Policy; Studies (non-profit entity of San Jose State University), (August 1995 to January 1998); Teacher-Consultant, Working Partnerships USA, AFL-CIO, (January 1997 to December 1997).

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Previous Memberships:

California Faculty Association (served as a member, and as a member of the statewide political/legislative action committee); American Political Science Association; Western Political Science Association; Midwest Political Science Association; Research Committee of Legislative Specialists (International Political Science Association); Pacific Islands Political Science Association; California Studies Association; Phi Kappa Phi Honor Society.

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

I have not been a candidate for any office.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

California Faculty Association. Statewide Political Action and Legislative Committee (1993 to 1997); Clinton-Gore Rapid-Response Volunteer, Victory 1996, Northern California (1996); Coordinated Campaign (South Bay Central Labor Council and Santa Clara County Democratic Party), Unpaid Advisor and Volunteer (1990 to 1996); Ken Yeager for California State Assembly, Advisor and Fundraiser (1995 and 1996); Democratic Century Club (Santa Clara County) (1993 to 1997)

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

I have not contributed \$500 to any candidate, committee or entity.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.) Member, Phi Kappa Phi Honor Society (for faculty service to San Jose State University)

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

Haas, P., S.D. Van Beek, et. al. 1997. *Capital Versus Operating Grants for Transit: Economic Impacts for California*. San Jose, Calif.: Norman Y. Mineta International Institute for Surface Transportation Policy Studies. [Mineta Institute Report, one of six team members]

Van Beek, S.D. 1997 (Editor). *Toward a Cooperative Future? Labor-Management Relations in Surface Transportation*. San Jose, Calif.: Norman Y. Mineta International Institute for Surface Transportation Policy Studies. [An edited collection of a conference session held in March 1997]

Van Beek, S.D. 18 May 1997. "Why Single-Shot Primary Favors Incumbents." *San Jose Mercury News*. [electoral reform]

Van Beek, S.D. 8 July 1996. "The Simple, Cheap, Fair Solution." *San Jose Mercury News*. [electoral reform]

Van Beek, S.D. 1995. *When the House and Senate Meet: Bicameral Resolution in Congress*. Pittsburgh, Penn.: University of Pittsburgh Press. [An analysis of congressional action on savings and loan, trade, and budget policy-making]

Van Beek, S.D. 1995 (Contributor). *C-SPAN Guide to the 1996 Election*. Washington, D.C.: C-SPAN. [A guide for college professors on using the resources of C-SPAN to follow the election]

Van Beek, S.D. 1995. "Pacific Island Governments." In the *Survey of Social Science. Government and Politics*, ed. Joseph Bessette. Pasadena, Calif.: Salem Press. [An analysis of pacific island governments, economies, and culture]

Van Beek, S.D. 1995. "Legislative Function of Government." In the *Survey of Social Science: Government and Politics*, ed. Joseph Bessette. Pasadena, Calif.: Salem Press. [An analysis of representational and progressive models of lawmaking]

Van Beek, S.D. 1995. "Elections and Democracy." In *Politics in the United States and California*, ed. Julian Foster. Dubuque, Iowa: Kendall/Hunt Publishing. [Comparison of 1992 and 1994 national and state election results]

Van Beek, S.D. 1994. "Three Efforts at Managing Crises from Franklin D. Roosevelt's White House." In the *Handbook of Bureaucracy*, ed. Ali Farazmand. New York: Marcel Dekker. [Description of crisis leadership]

Van Beek, S.D. 4 November 1993. "Spending Constraints Handcuff State Lawmakers." *San Jose Mercury News*. [legislative budgeting]

Van Beek, S.D. 18 March 1992. "Let the House and Senate Judge One Another's Ethics." *Los Angeles Times*. [congressional reform]

Butler, D.O. and S.D. Van Beek. 1990. "Why Not Swing? Measuring Electoral Change." PS: *Political Science and Politics*, 13: 178-84. [Comparative piece analyzing British and United States elections]

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I am honored to be selected by the Secretary and nominated by the President for this job. I believe I was selected because of my knowledge, education and experience in the transportation field and in public administration. In addition, my service to the Research and Special Programs Administration as Deputy Administrator has demonstrated my skills for this position.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

First my education qualifies me. My graduate and undergraduate education centered on public administration and public policy, American political institutions, and political economy. Second, I have taught and written about the American political system and transportation for seven years, involving a wide set of topics. Third, I have practical experience, serving as a legislative assistant to a member of Congress, and serving as Deputy Administrator for a modal administration with 870 employees and a \$300 million budget. Finally, many of the issues, such as technology applications and emergency transportation, and people with whom I have dealt, inside and outside of DOT, are important to the Associate Deputy Secretary position. This is significant as the Secretary has made "One DOT," unifying the disparate parts of the Department into a team focusing on systemic goals reflected by the Secretary's Strategic Plan, an important management strategy.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

I am currently on leave, uncompensated, as an Associate Professor of Political Science at San Jose State University; please refer to questions 3-5 below.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

I intend on returning to teaching at San Jose State University.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No, my current professional leave expires in December 1999. I intend on seeking an extension until January 2001.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

1. My only continuing association remains my professional leave granted by San Jose State University.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I will continue to be recused, as I have been since my employment, from any Department of Transportation business with San Jose State University. Please refer to attachment 2.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

There are none.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

I have visited the California legislature to argue on behalf of higher educational funding for the California State University system.

Since joining the Department, I have represented the agency on Year 2000 issues, hazardous materials reauthorization, pipeline safety reauthorization, and appropriation bills for RSPA.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Please refer to the Deputy General Counsel opinion letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I know of no additional information.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department, agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

I will work closely with the members and staff of the Senate Commerce Committee to ensure that there is an open line of communication between my office and the committee. I will make myself available to the committee to discuss the ways in which the Department executes laws consistent with their letter and spirit. From my experience in RSPA, I believe the Department and Administration have in place a thorough regulatory review process that ensures consistency with the intent of the law.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

The Associate Deputy Secretary is responsible for designing, planning and implementing intermodal transportation policies, procedures, and operations. This includes developing and implementing Departmental initiatives that will develop a national intermodal transportation system in the United States that moves people and freight in an energy efficient and cost-efficient manner. By working within the immediate Office of the Secretary, the Associate Deputy Secretary is empowered to examine transportation policies within the Department to ensure they are compatible with intermodal concerns and take full advantage of the public investment in transportation.

Intermodal exchange involves connections, those hubs for the transport of people and goods which involve more than one mode of transportation. There is a growing recognition that passenger terminals connecting modes such as aviation, rail, ferries, highways and transit provide an availability of choices and convenience that allow for less congestion and greater ease of travel. Similarly, major freight hubs such as seaports, airports, intermodal rail terminals, and transfer facilities provide efficiencies which improve productivity growth and strengthen the nation's ability to compete in the global economy. A key responsibility of the Associate Deputy Secretary is to develop relationships with state and local transportation officials as well as other federal agencies, with transportation responsibilities that impact the performance of transportation systems.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated.

They have provided me with managerial, policy expertise, and a full understanding of the legislative process. I have an established track record of managing organizations, demonstrated by my service to the university and my service as the Deputy Administrator of RSPA, where I have acted as the Chief Operating Officer of an agency with a diverse mission and a disparate collection of direct constituent offices. I have policy expertise, reflected by my collection of writings and teachings on public policy (including transportation) and my direct experience as a legislative assistant. In addition, I have an extensive academic background in American political institutions, with a specialization on the U.S. Congress.

2. Why do you wish to serve in the position for which you have been nominated?

I find the Associate Deputy Secretary position a challenging one to both help the Secretary and Deputy Secretary provide leadership to the Department's agenda and management, but also to be an important voice in articulating the needs of the transportation system. The many issues that cut across the different modes of transportation--such as mobility, technological innovation, and security--require that there be an office accountable for connecting modes and promoting a systemic analysis of transportation system performance. This office provides a single point of contact, for example, for those reliant on the smooth flow of freight in the nation, particularly as the role of global trade increases in the U.S. economy and requires the intermodal movement of goods across domestic and international boundaries. Where

bottlenecks in the system exist, I will employ a problem-solving approach to work with all responsible officials, both in the private and public sectors, to help improve connections to ports, airports, rail, and other facilities. In carrying out these responsibilities I will work with the different modal administrations, the DOT leadership, members of Congress, the states, industry, and other stakeholders to improve the transportation system. Congress itself, in 1991, recognized the importance of intermodalism by naming the major authorizing legislation the Intermodal Surface Transportation Efficiency Act (ISTEA) and creating the Office of Intermodalism. Advocacy for this principle remains a priority both within and outside of the Department.

3. What goals have you established for your first two years in this position, if confirmed?

My immediate goal is to meet with transportation organizations and agencies in order to understand how my position and office can be a catalyst for improving services, quality, safety and economy for all modes or combination of modes in an environmentally sound manner. I will continue to address key intermodal projects in each of the ten federal regions. Among many others, these include the Alameda Corridor, the Salt Lake City Olympics, and the Miami Intermodal Center. In addition, seeking to emulate these innovative partnerships, sponsors of other intermodal projects from across the nation are currently working to address their own transportation problems. I will be the departmental point-of-contact and lead on these initiatives.

It is also important to provide the leadership for ensuring the seamless operation of the Nation's transportation system. An intermodal perspective is required at the planning stage, before projects are built, and during the construction and implementation stages. A key duty of the position is making certain that the Department and Congress receive the optimum yield for the Nation's transportation investments. To accomplish these ends, one priority will be to build upon the teamwork established among the different modal administrations and offices at the Department, using such mechanisms as the Secretary's Safety and Policy Councils. Another priority initiative will be to facilitate development of the 21st Century Marine Transportation System (MTS), an intermodal initiative of the Secretary which involves extensive interactions with stakeholder groups and DOT modal administrations such as the Maritime Administration, the U.S. Coast Guard, and the surface modes which transport maritime commerce to and from the interior of the U.S. For the MTS to be successful, transportation connections between waterborne traffic ports and highways and aviation modes must be responsive to the new demands which will be placed upon them.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I believe I possess the requisite skills for the position. However, intermodalism is a dynamic process and I will reach out to listen to those who are the customers and operators of the intermodal transportation system. Accordingly, I will strengthen and establish contacts in the freight and passenger communities to facilitate the best decision-making possible by the Department.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe the government should play a leadership role in protecting and enhancing public goods. These are goods valued by the public, which individual private concerns cannot profitably provide. Examples include education, environmental protection, national defense, and safety and security. In these instances, government can provide the service directly, contract with a private concern and regulate it, work with states, or subsidize a service through the tax code. Generally, the more market forces can be used in the provision of a good, the more likely that public intervention will be successful. For example, the U.S. Coast Guard has the responsibility for saving lives and provides that service directly through its operational responsibilities. But much of the equipment and the vehicles it uses are produced by the private sector and many services which do not require direct provision by public employees are contracted out. Once a service can be profitably provided by the private sector, government's role should be reduced or eliminated.

I also believe that the government plays an essential role in representing U.S. interests in international arenas both to ensure that U.S. companies and workers are treated fairly in foreign markets and are able to compete on an equal basis. As intermodal transportation is a global reality, and an integral part of the U.S. econ-

omy, it is imperative that the Department take a leadership role in dealing with foreign governments by setting the agenda for intermodal transportation.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives.

The charge of the work of the Associate Deputy Secretary is to work with the Secretary and Deputy Secretary on management initiatives for the Department as well as other assignments, particularly those that require the participation of more than one mode of transportation. Examples include the innovative use of technologies such as Intelligent Transportation Systems (ITS) and the Global Positioning Satellites (GPS) which have benefits that cross modal boundaries, and security and disaster response duties which necessarily involve more than one mode of transportation.

As the Director of the Office of Intermodalism, the position requires an examination of the transportation system to ensure that it is planned and structured in a way that allows for the efficient movement of people and freight. To be successful in implementing intermodal policies, initiatives, and program strategies, extensive consultation and collaboration with the modal administrations, intermodal stakeholders, and state and local governments are required.

7. In reference to question number six, what forces are likely to result in changes to the mission of this agency over the coming five years.

I identify at least three forces that will remake the transportation system as we know it. The first is the increase in intermodal freight due to the expansion of trade and the efforts by shippers to find the most efficient way to move goods. More and more pressure will be placed on the connectors within the transportation system. For example, the movement of air cargo is anticipated to grow rapidly in the next decade and will place increasing demands on capacity issues. Accounting for over 50% of the total value of all goods imported and exported, the value of domestic air freight is expected to double. To accommodate a general increase in intermodal traffic, airports, water-based transportation, and surface modes must be tied into national, regional, state and local intermodal strategies. Second, technological innovations are offering new ways to build efficiencies into the transportation system. Whether with logistics, collision avoidance systems, or location technologies such as the Global Positioning Satellites, applications of private sector initiatives offer promises of new efficiencies, capacities, and services for the transportation system. Only by working both multimodally and intermodally can the full promise of these technologies be realized. Third, new patterns of passenger movement—suburb to suburb movement, reverse commuting, and an aging demographic profile—require intermodal solutions that allow riders and drivers to have access to transportation and the ability to move seamlessly from one mode to another. Only by addressing these challenges can the Department aid in the reduction of congestion and adverse environmental impacts which troubles many of our Nation's regions.

8. In further reference to question number six, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why?

Adapting to the new intermodal environment remains a challenge. If the passenger and freight systems are to be facilitators rather than barriers to commerce and movement, they require all concerned to have an intermodal perspective. Traditional approaches which advocate the interests of one mode need to be shifted to examine the role each mode individually plays in a transportation system that must serve a diverse set of public and private interests. While more and more participants in the system recognize the necessity of an intermodal perspective, individual budgetary demands for investments in highways and transit properties may crowd out intermodal investments. In short, the lack of an intermodal constituency vis-à-vis traditional lobbies such as those which represent highways and transit, pose a challenge for policy and budgetary decisionmaking. For example, if additional investments are required to implement the 21st Century Marine Transportation System (MTS), present-day interests may fight against future investments in port facilities or connectors, seeing them as competitors for scarce federal resources. The truth is that everyone has at least some interest in a safe, environmentally sustainable, and intermodal MTS.

The top three challenges facing the Associate Deputy Secretary and the Office of Intermodalism are:

First, shifting the transportation paradigm from a modal perspective to an intermodal one, which focuses on moving people and goods as seamlessly and as efficiently as possible. Our challenge is to highlight the benefits of an intermodal perspective and to continue to shift the Department to a "One DOT" approach and stakeholders to an "integrated transportation system" approach.

Second, facilitating the improvement of intermodal connectors. Across the nation there is a pent-up demand for addressing harbor improvements, grade-crossing conflicts, airport and port access, and special challenges such as the movement of visitors during the Salt Lake City Olympics in 2002.

Third, addressing these and other intermodal challenges will pose capacity and fiscal constraints requiring prioritization and innovative financing strategies. Prioritization can only happen with extensive communication with congressional committees, Members of Congress, state and local transportation agencies, industry, and other stakeholders. Among other sources, guidance is provided by the Secretary's Strategic Plan.

9. In further reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

The paradigm shift from a modal perspective to a transportation system perspective, shaped by intermodalism, is not yet complete. Having said that, a few important projects have been started and few major discussions about transportation have occurred that considered an intermodal perspective. Greater efficiencies are possible, however, and many regions continue to need assistance with planning and supporting connectors. Therefore, the Department needs to continue to advocate an integrated approach to transportation problems, both internally and with stakeholders.

10. Who are the stakeholders in the work of this agency?

Stakeholders include a variety of interests beginning with passengers and those providing services to them, including airport, ferry, rail, intercity bus, transit, highway and bicycle interests. Freight interests are a significant constituency, including carriers (shiplines, airfreight, railroads, highways and those moving intermodal containers) and those involved with logistics and the development of intelligent transportation systems to increase system efficiency. Stakeholders include decision-makers at the Federal, state, regional, and local levels and those engaged in transportation research and analysis at many of the Nation's universities and research centers with which the Department is a partner.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten.

Stakeholders should be valued as those with information and experience that help the Department make intelligent decisions about how we do our job. They must be seen as partners in the transportation enterprise. After gathering different perspectives and information, however, it is the Department's job to make decisions in the public interest and consistent with laws and directions passed by the Congress. We also have a responsibility to conduct ourselves fairly with regard to individual and organizational interests, ensuring no group gains an unfair advantage by virtue of their relationship with us.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

As the Associate Deputy Secretary, I share the responsibility that all Federal employees have to ensure efficient and effective management of government programs. I will ensure that the Office of Intermodalism has the internal controls and accounting systems which meet the standards of the Federal Managers' Financial Integrity Act.

(b) What experience do you have in managing a large organization? For one year I have been the Deputy Administrator of the Research and Special Programs Administration (RSPA). In addition to managing the daily operations of the agency (870 employees, \$300 million budget, with two fee-for-service organizations), I have served on the Secretary's Management Council which has management oversight responsibility for departmental management issues. I also have held significant management positions at San Jose State University, a public university in California with 28,000 students.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

I have found managing toward goals in my current position very helpful in two important respects. First, it provides information about the ultimate success of agency initiatives. A cold, hard statistic often tells more than an intricate analysis. Second, once data baselines are established, it allows an agency to manage with the information. If agency goals are not being met after the first quarter, for example,

it provides the opportunity to make adjustments of personnel, resources, or policies in the short-term.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

Given that the Department will provide performance results beginning with the end of the Fiscal Year 1999 budget, the Department's leadership will have the opportunity to work with Congress to interpret the results. Failing, meeting, or exceeding a performance goal for a particular year should begin, not end, the analysis of programs and management. Often times, a one-year piece of data is better understood as part of a trend analysis. External factors, too, need to be evaluated to determine whether they were accurately predicted when the goal was formulated. Finally, after receiving performance results and analyzing the cause of success or failure, certainly changes in public policy should be considered. These could include eliminating, privatizing, downsizing, or consolidating programs or offices, but it also may require more resources or expansion if a particular area is not being adequately addressed despite a well performing agency and management.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

As a member of the Department's senior leadership, I have the responsibility to assist in achieving the goals of the Department and Secretary. I also have the direct responsibility for fulfilling the agenda and goals listed in the above questions and answers as well as the sound management of resources made available to my Office.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I believe in empowering employees by delegating work to them, monitoring its quality and timeliness, and assessing their performance. Delegating work effectively requires constant communication between employees and supervisor. What this means in a large organization is working with senior managers to collaboratively set organizational goals and expectations. In RSPA, I have tried to align all individual performance plans with the Department and agency's strategic plans, thereby tying individual work with organizational need. Ultimately, organizations work most effectively when there is trust and loyalty among the employees. This is most often successful when there is frequent contact and a sense of shared mission. No employee complaints have been brought against me in any capacity.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

As Deputy Administrator I have worked with the Transportation Committees in each chamber as well as a great number of individual Member offices. Typically this interaction has been on our authorization legislation, both pipeline safety and hazardous materials, and the annual appropriation bills. In addition, I have traveled occasionally to announce grants and have invited Members and their staffs to participate. I also worked during the mid-1980s for former Representative Tony Coelho, where I served as a legislative assistant and worked with several committees on the House side. Included in my professional background is extensive academic work focusing on the Congress. My dissertation, published book, several papers, and teaching all centered on the work of the Congress. This has provided me with a great appreciation for our bicameral legislature.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

My responsibility is to provide all of the information necessary for the Office of Inspector General to fulfill its statutory responsibilities. Having been impressed by the analytical capability of the Office, I have also benefitted from the advice and publications of the Inspector General and will continue to support its work in any way I can.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

I will work closely with the members and staff of the Senate Commerce Committee to ensure that there is an open line of communication between my office and the committee. I will make myself available to the committee to discuss the ways in which the Department executes laws consistent with their letter and spirit. I believe the Department and Administration have in place a thorough review process that ensures consistency with the intent of the law. The key for me in working with stakeholders is to gain information about the ways in which they conduct their operations. For example, I have often made myself available for meetings and tours of

facilities to assure that I had adequate knowledge about important issues facing them. This is a view not adequately acquired by simply reviewing a proposed regulation. Once proposed regulations are put out for comment, I treat each comment we receive with respect and due consideration.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

As one of its many legislative priorities, I believe that Congress must continue to fund the Office of Intermodalism as a separate Office within the immediate Office of the Secretary to promote the intermodal policies and advance the integrated solutions to transportation needs that Congress sought in establishing the Office under ISTEA and in the TEA-21 reauthorization. The Associate Deputy Secretary, as Director of the Office of Intermodalism, is empowered by the Secretary to assemble the resources and make the commitments on behalf of the Department to address intermodal issues of importance to public officials and transportation users.

I do not think that it would be advisable to consolidate the Office of Intermodalism within the Office of the Assistant Secretary for Transportation Policy, as proposed by the House appropriations bill (H.R. 2084) and accompanying committee report (106-180). The two office functions are diverse and reflect different missions. The Office of Intermodalism carries out crosscutting Departmental intermodal initiatives at the Secretary's direction and serves as a field-oriented communications and coordination resource, in addition to formulating intermodal policy. The OST Policy Office, by comparison, has broader responsibility in matters of general transportation policy.

If the Senate should confirm me, I intend to review the organizational and operational role of the Office of Intermodalism and alternative funding sources, such as the Highway Trust Fund as proposed in the Senate appropriations bill (S. 1143) and accompanying committee report (106-55).

In addition to legislation directly impacting intermodal concerns, there are a number of legislative proposals currently before the Congress which are important to the sound functioning of the intermodal transportation system. These include the Federal Aviation Administration, the Railway Safety program, Hazardous Materials Reauthorization and the U.S. Coast Guard reauthorization.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation.

Yes. The charge I have is to implement the Congressional and Administration priorities as detailed in authorizing legislation and yearly appropriation bills. For further information, I will also refer to the President's Budget, the Secretary's Strategic Plan, and my individual performance agreement which I will negotiate with the Secretary. I am also committed to providing Members and committees of Congress with information about my office's decisions.

Senator HUTCHISON. Thank you very much, Dr. Van Beek.

I would like, if everyone is comfortable with this, to ask if there are questions of Mr. Frazier and Dr. Van Beek in our first round. And then if they wish to stay, fine, or if they wish to go. I think the focus on the STB is a little different from the other two, that are more related. So that is what I intend to do.

So I would like to start the questioning, because I am very concerned about truck safety, particularly with NAFTA and the trucks that are coming in from Mexico and Canada, and making sure that they are meeting the same safety standards that American trucks are required to meet for the safety of other people traveling on the highways.

I was very interested, Dr. Van Beek, in your opening statement regarding border crossings.

So I would like to ask first, Mr. Frazier, if you have looked at the Inspector General report that was critical of the Department's safety programs for commercial trucks coming in from Mexico especially, and Canada somewhat, and that this report cited that too few of the inspected trucks met U.S. safety standards. And, in fact,

cited at one crossing in El Paso, Texas, which receives an average of 1,300 trucks daily, only one inspector is on duty, and he can inspect 10 to 14 trucks daily. Well, I am concerned about the safety issue.

Dr. Van Beek, I am concerned about being able to get the trucks through because if we are talking about trucks that have fresh vegetables, if they meet the safety test a week later, that is not going to help consumers very much. And it is certainly not going to promote commerce.

So I would like to ask the two of you to speak to the I.G. report, Mr. Frazier; and the ease of transportation on our borders and what you think is the next step to provide safety and commerce, Dr. Van Beek.

Mr. Frazier.

Mr. FRAZIER. Thank you, Madame Chairwoman.

Yes, I am familiar with the I.G.'s report as it relates to truck safety, particularly in the border crossing area. And I believe that we have taken steps to, in our motor carrier legislation, which the Administration has put forward, deal with some of the concerns that are raised in the Inspector General's report, specifically to the issues of how we conduct inspections first and foremost, but also to deal with increased funding to pay for additional inspectors that we believe need to be placed at the border, the process in which we do this.

I think we recognize in a number of areas that we need to do more, particularly as we talk about the possibility of NAFTA moving forward.

I would also say that we feel it is very important for the states as well to make an effort to increase the number of inspectors at the border. I believe you know, Madame Chairwoman, that the State of California has done an aggressive job of hiring truck inspectors for the trucks that come across their border.

We are hopeful that New Mexico, Arizona and Texas will in some fashion be able to increase the number of inspectors on a state-wide basis as well. But I think that we have taken steps, again, in our legislation to try to deal with this issue. We realize it is a very important issue.

I will also add, that I remember when the Secretary met with you in your office not long ago, you expressed these very same interests. And we have pledged to work with you to try to figure out a way to make sure that when we do come through this situation, particularly with NAFTA, that we are able to work on this problem together.

Senator Hutchison: Well, I certainly think this is Federal issue. And I would hope that you are not going to rely on the states to pick up the burden that really is a Federal responsibility. These are trucks that go through the border states, but today they are in 24 states. They are going on the highways in 48 states in the near future. And it is a huge safety concern.

Dr. Van Beek.

Dr. VAN BEEK. Yes, Madame Chairwoman. I look forward to working with the committee on this issue increasingly, should I be confirmed.

Two areas that I am familiar with now where the Department's activities, I think, are supporting trying to reduce this choke-point in commerce right now: First is the use of intelligent transportation systems, which would help identify risky carriers or carriers that should have a very thorough inspection as they come across the border.

This would allow a sifting out or a targeting of the enforcement which Mr. Frazier has spoken to about the Secretary's position and increasing our resources there to ensure that safety is first at the border and everywhere else in the United States.

The other place is a current project that the Department is working on with the U.S. Customs Service, where I will have an important role on the ITDS program, which will create an electronic manifest and data base, which will allow the agencies to cooperate so that you are talking to each other in real time and you are sharing records and data with each other, so decisions can be made quickly and not allowing that to back up and suffering mobility with the fresh vegetables or whatever commerce may be moving across the border.

Senator HUTCHISON. Thank you.

Senator Rockefeller, do you have questions of these nominees?

Senator ROCKEFELLER. No. Although I respect them both and will vote for them both, I do not have questions.

Senator HUTCHISON. Thank you.

Senator Breaux.

Senator BREAUX. I support them both and welcome them on board.

Senator HUTCHISON. Senator Burns.

Senator BURNS. I have none.

Senator HUTCHISON. Senator Cleland.

Senator CLELAND. Senator Hutchison, I would like to thank Mr. Frazier and Secretary Slater for meeting with me and other members of the Georgia delegations on the possible assistance of the Georgia Regional Transportation Authority there in Atlanta.

It is a new approach that is an effort to deal with the growing issues of quality of life and deteriorating air quality by balancing out our transportation system in Georgia.

We want to thank the Secretary and you, Mr. Frazier, for your efforts, particularly your efforts to make sure that the Georgia Regional Transportation Authority is eligible for Federal funds to deal with our daunting transportation and air pollution problems.

So I thank you very much for that support. And it means an awful lot to us.

I would just like to move on now to a wonderful innovative program that the Department of Transportation has. The effort to award slots to communities for air service: I think it is a very innovative program.

The Department was very kind in selecting the Savannah-Hilton Head area on an experimental basis to assist communities like that in acquiring nonstop air service, in this case to O'Hare. The Savannah-Hilton Head area was the biggest and fastest growing area in America that did not have nonstop air service to Chicago O'Hare. And your Department has made that possible. And I thank you

very much for that. And I understand that maybe today will be able to make those slots permanent.

We were hoping to get another slot. And you and I have discussed this from time to time. And we hope that in the very near future the Department can expand its limited service from Savannah to O'Hare and back.

Is that your hope as well, that in the very near future we can continue to march down this road and allow communities, like Savannah and Hilton Head, to expand based on the wonderful air service that you are granting those communities?

Mr. FRAZIER. Well, Senator, it is our hope that in some fashion we are able to help you in the very near future. As you know with the slot process, there are criteria that have to be followed by the Department.

But I will say that I am very aware of your request of the Department. I will make every effort to work with you to try to make that happen as quickly and efficiently as possible.

Senator CLELAND. All right. Thank you very much, Mr. Frazier. I will support you and Dr. Van Beek.

Madame Chairman, I return the program to you.

Senator HUTCHISON. Thank you.

Senator Dorgan, for Dr. Van Beek or Mr. Frazier, did you have questions?

Senator DORGAN. Let me just—I do not have a question, but I do want to say I think they are extraordinarily well qualified. I am happy to support their nomination and will be pleased to vote for confirmation.

Senator HUTCHISON. Thank you.

Senator Brownback.

Senator BROWNBACK. I do not have any questions of the nominees. I will be supporting both nominees.

Senator HUTCHISON. Thank you.

I want to say I appreciate the cooperation of the committee. I think this is merciful to the other two nominees.

[Laughter.]

Senator HUTCHISON. I do appreciate the cooperation, because I really do think that Mr. Frazier and Dr. Van Beek will be working together on one area that we have discussed, safety and ease of commerce in the intermodal system. And we will want to work very closely with you, because I think these are major issues coming forward.

I would just say if you would like to stay, you are welcome to. But if not, I think you will have a quick confirmation. And we will be pleased to support you.

Now I would like to start with Ms. Morgan and say that I want you to know that I appreciate very much that you have not taken responsibilities and rights into the STB that were not specifically given to you by Congress. I think that your approach to staying within the delegated authority has been commendable. And I thank you for that.

I think that Senator Rockefeller was correct in his opening statement, that it is the fault of Congress for not being clearer.

The STB is a relatively new agency. I think when it was created, Congress tried to cover all the bases. But I think it has been clear

that in implementation there have been a few gaps. So I think it is our responsibility to fill those gaps. And I hope we can meet that responsibility so that the STB will have the authority it needs to do the job.

My view is that we need a healthy rail industry, and we need to have fair shipping costs and rights for the people who are depending on rail for that transportation. And I think there should be a balance. And I think we need to give the power to the STB to keep that balance.

So having said that, I want to ask you to start by telling us what you believe are the key areas that you have not been able to address, that would make an impact on a strong rail industry and a fair shipping climate.

Ms. MORGAN. Let me answer that in a couple of ways. First of all, I think that the Board has gone as far as it believes it can go under the statute, based on the way we read the statute and the judicial precedent. Now—

Senator HUTCHISON. What I am asking you, though, is to tell us where the gaps are.

Ms. MORGAN. If Congress does not feel that the direction in which we have gone is enough, then legislation is necessary. The legislative proposals that have been out there in various degrees focus on opening up access, adding competition. And the way I view those proposals is that they would be a fundamental change in the statute that we administer.

So if Congress feels that the tenets of the statute that we administer now no longer work, then we would have to have legislation. And I think it would be based on the notion that we want to add competition. And we do not have a statute now that is what I would term an open-access statute.

Now the second half of your question—

Senator HUTCHISON. Let me just ask you: Do you think that competition is part of your mandate?

Ms. MORGAN. Yes, it is part of my mandate. But there are balancing—other interests that are balanced, as I implement the statute. So competition—

Senator HUTCHISON. Would you consider those—

Ms. MORGAN. —is one of the elements that we look at, but it is not the only element that we look at. So if that were the key element to be looked at, then Congress would need to change the law in order for that to be the case.

Senator HUTCHISON. Let me just ask you one other question, because I am going to have a 5-minute rule. And I think we started a couple minutes after I started.

You said in your testimony that in the last 23 years, 30 class-one railroads have been reduced to 7. Do you believe that that does continue to allow competition? And is that, in your opinion, a steady number that we can look at in the future, or do you see that dwindling as well?

Ms. MORGAN. Well, first of all, there has been a significant restructuring in the rail industry, as in other parts of economy. Obviously, we did not believe, in approving the mergers, that they were not in the public interest and that they were anticompetitive.

We approved them with significant conditions that we felt would protect competition. So we believe that those mergers were not anticompetitive.

Now, will there be more mergers? I cannot really answer that. Obviously, I would have to rule on that if another one were to come my way. And I would not want to prejudge or speculate about that. But I think we have been through a period of restructuring. And now it is time to stabilize and to solidify the restructuring that has been approved, and that has been ongoing.

Senator HUTCHISON. Thank you.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Madame Chairwoman.

Chairman Morgan, there are two areas that I want to focus on. And I will submit my other questions for the record and would hope for a response from you within a short period of time.

Competition obviously is one of them. But the one that you and I have not discussed before is the whole cram-down issue. And it is a very dramatic and rather graphic term, but I think in this case it is a very appropriate term. It is not overblown. And cram-down refers to the decisions of the STB, and most recently under your leadership, to abrogate rail employees' collective bargaining rights at a time that railroads either merge or make an acquisition.

We had recently the sale of Conrail to CSX and Norfolk Southern. The STB basically inserts—it inserted, inserts, whichever you want—its own opinion in place of actual contractual agreements that have been reached between the railroad and the labor unions.

So, for example, in West Virginia, one of the people that I have talked to, who is a senior rail employee, who would have been No. 3 on the list—and this is technical, but it makes my point—on the seniority list, which entitled him to work within ten miles of his home. All of a sudden, because of what you did, your commission did, now he is ranked 351st, which means he is entitled to work 80 miles from his home.

It is not so much the mileage, but it is the arbitrariness of the way it was done that concerns me. This happened without any requirement that rail management negotiate with its employees, even though seniority lists and duty stations are specifically bargained for in employee rights.

Now I find this to be extraordinary and outrageous. I fully support rail labor's efforts to change the law and to clarify that STB does not have the authority to toss out contract rights in merges and acquisitions.

Cram-down is an issue that I am determined to address in the bill. And people may agree or disagree with me, but that is why I think it is so important we bring it up.

So my questions of you are three. Is this similar to some of the shipper issues, in that you believe that the law has to be changed in order to fix the cram-down problem, or do you—well, no.

The second question would be: Do you support a bill like Senator Crapo's that would eliminate any authority, discretionary or otherwise, for the STB to abrogate collective bargaining agreements that have been worked through and fought for?

If you do support that concept, what are you going to do to help get it accomplished? And if you do not support that concept, how do you justify what has happened?

Ms. MORGAN. First of all, in your statement before your question, you discuss my record as it relates to collective bargaining agreements. And I understand and respect your view on that.

My written testimony goes into a little more detail about how I believe that I have not been the cause of this problem. In fact, I was faced with law and judicial precedent, and I have tried to move the matter in a more positive direction. But that is—I just wanted to make that point and then move on to your questions.

With respect to your first question, which is, does the law need to be changed in this area to better reflect the concerns of rail labor as it relates to the override of collective bargaining agreements? The answer is yes.

I have communicated that in my December 21 letter to you, Senator Hutchison, and to Senator McCain, as well as indicating that there are certain areas in which Congress would need to act to change the statutory provisions as they apply to shipper concerns. So, yes, that is the first answer.

The bill that Senator Crapo has introduced obviously goes that route. It suggests that the law does need to be changed and accordingly moves in that direction. And I think that in order to address this concern, legislation is needed. And I have already on the record indicated my support for a legislative approach to correcting this area.

Senator Rockefeller: Thank you. Now, let us get to competition, and specifically, because my time will run at the end of this question, bottleneck reform. You know very well, Chairman Morgan, that that is the issue that disturbs me the most.

Ms. MORGAN. Yes, I understand.

Senator ROCKEFELLER. We have a 15-year history on this.

Ms. MORGAN. Yes, we do.

Senator ROCKEFELLER. I simply cannot understand how or why we have created a system in which railroads are allowed to exploit bottleneck segments, which are really nothing more than local monopolies, to the extent that they are.

I have no problem with differential pricing. That is called the marketplace. What I have a problem with is allowing the railroads to use their power over bottlenecks to control prices over non-bottlenecks. I think, again, it is egregious that a railroad can refuse to quote a price, a separate price, in a bottleneck segment.

I have used this before. If I were flying to Dallas and I was going via two or three other cities, which one often does from West Virginia, I would expect to know the price of each of the segments of the flights that I was going to take. I mean, every American would. Only railroads are allowed not to have to quote a price. And that is extraordinary.

So what we have done, I think, by protecting railroads in this situation is taken local monopolies and turned them into national monopolies, particularly now that we have so few class A railroads. That is not what the Staggers Act, in my judgment, ever intended to do.

So now let me walk through the STB bottleneck decision with you and get your reaction as to how we might fix it. And I will just ask you a few questions sequentially.

First, am I correct in saying that what the STB's 1996 bottleneck decision said was that the Board would order a railroad to provide a separate rate for a bottleneck segment, if a shipper first got a contract from a competing railroad for the non-bottleneck portion of the journey?

Ms. MORGAN. I would clarify that to say that if the non-bottleneck contract would take a shipper to a new source, then the bottleneck rate would have to be automatically provided. If it was to the same source as the bottleneck carrier already served, then you would go through the competitive access rules that we have at the Board.

Senator ROCKEFELLER. All right. Does this mean that a shipper has to have an actual signed contract from the competing carrier, or would a written offer or other evidence suffice?

Ms. MORGAN. Well, this issue—we have had three bottleneck cases before us. One has recently settled. We have two pending before us now. In both of those cases, the record indicates a contract, an agreement between the parties. We have not had this issue come up, where there is some disagreement on that. I hope we will not have such an issue, but I certainly do not want to prejudge a record on that down the road.

Senator ROCKEFELLER. I thank you. Rail customers tell me that one of the reasons that the STB's approach does not have a real effect on the industry is that the major railroads are now so few, 50 or so when we started this and 4 or 5 or whatever now, is that they all benefit from the current state of play on this bottleneck question.

So none is willing really to poach on another's area or territory. It is kind of a silent acquiescence. Nobody complains; and, you know, no poaching on each other's captive customers by giving them a contract or an offer for the non-bottleneck segments.

Several shippers have told me that they have requested such contracts, and they have always been refused. Do you know of any signed contract or formal offer—perhaps signed contract is not what you want to focus on—for the non-bottleneck segments since your 1996 decision? Have any shippers approached you with such a contract and asked you to get them a rate on a bottleneck segment?

Ms. MORGAN. Well, we do have two pending cases. We had three, and one was settled.

Senator ROCKEFELLER. So far.

Ms. MORGAN. So far. That is correct. And I have heard this concern on the part of shippers. And I would just make a couple of points on that. One is—

Senator ROCKEFELLER. The answer to this point is no, not pending, but of any—since 1996 there have been none.

Ms. MORGAN. Well, if the cases are pending, the shippers obviously have contracts. And they are trying to get the bottleneck rate. And the FMC case has been the case that, as you know, involved the market dominance proceeding and what to apply and so forth. And that has been a big case in this context.

So I am not sure I—I may not be answering your question, but my understanding is—are you asking me whether there have been contracts that have been obtained and then a case following from that? The answer is yes.

Senator ROCKEFELLER. Yes. But in my question, what I said was, since your 1996 decision.

Ms. MORGAN. Yes. These cases have come to us since the 1996 decision.

Senator ROCKEFELLER. Are those the pending cases that you referred to?

Ms. MORGAN. Yes.

Senator ROCKEFELLER. So that they—

Ms. MORGAN. But they are pending since 1996.

Senator ROCKEFELLER. Yes. So technically the answer is no. And we do not know, since they are pending, what the matter will be, what the answer will finally be.

Ms. MORGAN. Well, you do not know what the answer will be from us, no.

Senator ROCKEFELLER. OK.

Ms. MORGAN. But I will say that in a separate commenting opinion on the bottleneck decision, I made it clear that the relief that we were providing was real and that we would be following along this course.

Senator ROCKEFELLER. Are these matters that have been pending for 3 years?

Ms. MORGAN. No. I cannot recall when the FMC case was actually filed. The second one that is pending has been a recent filing that we have been involved in discovery on. The FMC case, as you recall, because we had a discussion about this in March, had something to do with the market dominance proceeding and whether product and geographic competition would be reviewed in that particular case. So that came in earlier.

Senator ROCKEFELLER. I still—I ascribe to your answer a no.

Ms. MORGAN. I guess we are just not—

Senator ROCKEFELLER. But we may disagree on that—

Ms. MORGAN. I do not want to—

Senator ROCKEFELLER. —because of the word “pending.”

Senator HUTCHISON. Senator Rockefeller.

Senator ROCKEFELLER. Can I ask—

Senator HUTCHISON. Your time is up.

Senator ROCKEFELLER. Well, then, I will wait and have a second round, I hope.

Senator HUTCHISON. We will have a second round.

Senator BREAUX. Senator Dorgan.

Senator DORGAN. Thank you very much.

Let me just understand the answer you just gave to Senator Rockefeller. You indicated that these cases were pending since 1996. And then he asked you if they had been pending for 3 years, and you said no.

Ms. Morgan: Well, I cannot recall. They came in after the bottleneck decision. What I cannot recall—and I just—I will be happy to get you that information. I have a lot of cases pending, and I do not always remember exactly when they were filed. I do not recall when the FMC case was actually filed.

The Minnesota Power case has been—was filed more recently, and we have just been in a round of discovery on that and have issued decisions regarding discovery.

Senator DORGAN. But you had said they were pending since 1996. And I guess the point is: We want to get things moving. If something is spinning for 3 years, the question is: Why?

Ms. MORGAN. Let me say that my record on moving rate cases is a good one. Now—

Senator DORGAN. All right. Let me ask you about a number of other issues. You and I have talked about this. Let me describe to you a shipper's angst.

You raise wheat and you put it on a railhead in Bismarck and ship it to Minneapolis. And they charge you roughly \$2,300 for a rail car to ship to Minneapolis; or you raise wheat and you put it on a railhead in Minneapolis and ship it to Chicago, about the same distance. It is \$1,000.

Why more than double charge to the North Dakota shipper for the same distance? Lack of competition or monopoly pricing. We have a public service commission in North Dakota that say North Dakota shippers, mostly farmers, are overcharged \$100 million a year. I have just described a small circumstance of overcharging.

But do you agree with the proposition that with massive concentration in the rail industry occurring very quickly, we have less competition and, therefore, overcharging and overpricing, and something must be done? Would you agree with that?

Ms. MORGAN. I believe that the Board is there to make sure that no rate is unreasonable, in accordance with the statute that we implement. And I hope that we have done that in the cases that we have pursued.

Your example and the discussion that I had just a minute ago with Senator Rockefeller both relate to the concept, as you know, of differential pricing, which we have discussed, that is inherent in the statute that I now implement. Equalization of rates is not inherent in the statute that I implement.

So within this construct of not having an open access statute and not having a rate equalization statute, what the Board is responsible for doing is trying to make sure that no rate is unreasonable.

Now I realize that some shippers would like lower rates. I understand—you know, you and I have had this conversation. And I understand—

Senator DORGAN. Now let us assume that either you or I have that weight, and we put it on the railhead in Bismarck. And we are being charged \$2,300 a car. And we say, that is outrageous. That is piracy. We want to complain about that.

What does it cost me to file a complaint with your agency? I am just a farmer, maybe part of a group of farmers, with a country elevator. What does it cost me to file a complaint?

Ms. MORGAN. If you are a small shipper, it would be \$5,400.

Senator DORGAN. \$5,400?

Ms. MORGAN. Yes.

Senator Dorgan. How many of those complaints have been filed in the last year, two, 3 years?

Ms. MORGAN. Well, under the small rate guidelines that we have discussed, that I issued at the end of 1996, no one has filed any cases.

Senator DORGAN. No one has filed any cases?

Ms. MORGAN. We had one case that was an older case, Southwest Car Parts, which was then resolved under those guidelines. But then it was settled. So—

Senator DORGAN. No one has filed a case since 1996?

Ms. MORGAN. Not since we issued those rules, no.

Senator DORGAN. None, in all of America?

Ms. MORGAN. Not in the small rate case arena, no.

Senator DORGAN. Let me ask you what you think that means. Does that—do you think that means that everyone out there is pretty well satisfied with their rail rates, or is there something wrong with the complaint process, if no one in the country has filed a complaint?

The reason I ask you this question is—this is not on your watch, but you know that a Montana complaint, which my friend, Mr. Burns, will well recognize, I think took roughly 14 years—

Senator BURNS. Seventeen.

Senator DORGAN. Seventeen years. A Montanan had the temerity to complain about rail rates. And 17 years later, I do not know if they ever got a real answer to that.

Senator BURNS. They lost.

Senator DORGAN. But one wonders whether the process itself works at all. And I would just say to you that given the concern about rail rates and the knowledge that shippers have that they are radically overcharged—you put corn in Iowa and run it to the West Coast and run it through North Dakota, you pay less money than putting it on in North Dakota and moving it less distance. We pay more money to move it less distance.

You know, our shippers understand that that does not make sense. They are being cheated. And yet no one files a complaint. What does that say about the complaint process?

Ms. MORGAN. Well, let me say in response to that, that in my letter of December 21 to you, Madame Chairman, and to Senator McCain, I indicated that there continued to be concern about the complexity of the small rate guidelines, and that if that is the case, I suggested some sort of legislative relief to respond to those concerns, as the guidelines that we had issued, we felt, were within the parameters of the statute.

Now, with respect to processing cases, we have procedures and I believe that we have made great strides. And I have been committed to this, and I will continue to be committed to it, to processing these cases.

I know about the Montana case, and I was the one that, you know, got on top of that. I am sorry we did not get the result you would have wanted, but I did step up to the plate and get it done.

That has been a commitment of mine. It will continue to be. And I think I have tried to improve the processes of the Board. I have tried to indicate to Congress when I thought the statute needed to be changed and if concerns still remain.

And I have encouraged arbitration. For example, as to the agreement with the National Grain and Feed Association, dealing with

mandatory arbitration of certain matters with the railroads, you know, I was very active in that.

Senator DORGAN. Well, my time is up, and I do not know that I will be able to stay for another round.

But let me just make this point. The import of my question is not that all of this has happened under your watch. We have had massive concentration occurring in galloping fashion in the railroad industry. In my judgment, the complaint process is broken. It is unfathomable to me that the overcharging that is occurring in some areas is not subject to complaint. And I understand why, because this process does not work.

You indicate you work within the parameters of the statutes and so on, but we need to fix all this. We need to fix it. Our public service commission in North Dakota says we are overcharged \$100 million a year in rail overcharges. That is not fair.

We must, as a Federal agency and as a group of legislators, decide that we are going find out what is wrong and take action to fix it and do it soon. We cannot talk about this 14 more years.

Senator HUTCHISON. Senator Burns.

Senator BURNS. Thank you, Ms. Morgan. This morning I have just one question, I guess, and I would like your opinion on it. And it comes from page four of your testimony this morning.

It is the second paragraph, and I quote, "With the active encouragement of the Board, the National Grain and Feed Association and the Association of American Railroads recently reached ground-breaking agreements on issues of concern to agricultural shippers that provide dispute resolution procedures that are more tailored to the interests of both parties. These agreements will, hopefully, provide a model for other such carrier customs agreements."

I guess these agreements were made about a year ago, I am told. And I have a couple of questions. Have they worked? And I would just like a little more of an explanation on that particular issue.

Ms. MORGAN. Well, first of all, there actually have been two agreements that have been entered into. One, I believe, in the last two, 3 months, and one earlier last year. And they focus on dispute resolution of matters that come up daily between shippers and carriers. And they are favorably looked upon and are being pursued.

I would have to go to the National Grain and Feed Association to ask them specifically what cases might have been filed under that because we are not involved in that process. That is a private sector arbitration process.

But I know there was quite a bit of good feeling on the part of shippers about those two agreements. And I think it is a process that can work to remove from the regulatory process disputes that perhaps can be better handled privately so that the bigger disputes can be handled by the regulatory—

Senator BURNS. Now were these disputes based on rates, or was it based on service?

Ms. MORGAN. The agreements relate to both issues, issues such as discrimination and car supply and interchange. So I would say, as a general matter, they relate to both issues.

Senator BURNS. Well, I guess we have learned a lot since the meltdown in Houston 3 years ago, whenever we tried to -- UP and SP, you know, just got in a regular bind down there.

Of course, it involved Burlington Northern, which they tried to help out the situation. And they got some cars tied up down there. As a result, we had grain on the ground in Montana. And in fact we lost some markets.

Then the next year the Pacific Rim goes down financially. And that is our biggest export market from the northern tier states. And we have not recovered from that. So I guess there is a little bit of animosity, because everywhere I go in my country, I will tell you, in Montana—you know, Senator Dorgan was talking about, you know, you can—the disparity of shipping corn from Kansas to Portland less than you can ship wheat from North Dakota.

Well, I will tell you an instance. I do not know if it still exists today. I will have to look at it. But there was a time where we could ship wheat to North Dakota and then reassign it and ship it back to Portland cheaper than we could ship it from Montana directly to Portland. Now for those of you who flunked geography, that is going the other way to go somewhere else.

It is disparities like that that we really ought to try to address. And also, I think on that meltdown down there, I think it lends a little bit of credibility to S. 621. And we would like to get this resolved.

But those are the areas that I am concerned with. I am going to continue to be, because even as I look at the National Grain and Feed Association, do they accurately reflect the interest of the producer? That is who is getting kicked in the teeth right now, the guy on the farm. That is the person that I am going to be looking out for as this thing goes on.

So I thank the chairman for the time. I cannot make the next round, but I am going to watch this very, very closely. I guess we will have a dialog before it is all over.

I thank you for coming this morning and understanding. I think you understand. Not sure. Those first two, there is no comment.

Senator HUTCHISON. Thank you, Senator Burns.

Senator Cleland.

Senator CLELAND. Thank you, Madame Chairman.

Let me just say that this committee is absolutely fascinating to me. I am new, Ms. Morgan, on this committee and relatively new to the Senate. But every time I attend a hearing here, I learn something. It is like going to graduate school very quickly on these issues.

It is fascinating to hear the son of John D. Rockefeller, grandson of John D. Rockefeller, complain about monopolistic pricing of railroads.

[Laughter.]

Senator CLELAND [continuing]. It is a great moment in American history. My friend and colleague.

Let me just say that I am curious as to what you really do.

Ms. MORGAN. I sort of wonder about that myself.

Senator CLELAND. I understand that in the deregulation frenzy of the eighties that the Interstate Commerce Commission, which was created around the turn of the century ostensibly to iron out

these issues, particularly between businesses, that that was abolished and in its place has become the Surface Transportation Board. And we have a deregulated environment, but not really.

I mean, where are we? What do you do and what is the mission of your Board? And after 5 years, how would you change it?

Ms. MORGAN. Well, I think the mission of the Board is the subject of the discussion here today. I think, in terms of pursuing legislation, that one of the issues is what is expected of the Board.

But right now under the statute, the Board is there to allow competition where that exists and to provide protection where effective competition does not exist. So with respect to shippers that do not have competition, we are there to make sure that they are not abused and that their rates are not unreasonably high.

We also, of course, oversee restructuring in the rail industry. So we approve abandonments, line sales, mergers and so forth. And then, of course, as part of that, there is an important labor component, which we discussed earlier, that deals with the impact of that restructuring on employees and the labor protective arrangements that we impose.

Senator CLELAND. Do you see yourself as a pro-competition entity acting on behalf of the American people and on behalf of businesses, when they feel that they are unfairly charged or unfairly competed against or unfairly taken advantage of? Are you a citizens advocate? Are you an advocate for shippers? Are you an advocate for railroads? Where are you?

Ms. MORGAN. Well, I think that the Board is an entity with interests outlined in the statute that I am supposed to balance. There is shipper interest, carrier interest, employee interest, locality interest, economic interest. So I view my role as balancing—as I understand it, Congress intended several different interests in implementing the law.

Senator CLELAND. What do you do, or what does the ICC do, that you do not do?

Ms. MORGAN. Well, with respect to railroads, we pretty much do what the ICC was doing when I arrived at ICC.

Senator CLELAND. Does not the ICC set tariffs and charges and things like that? But you do not do that, do you?

Ms. MORGAN. No.

Senator CLELAND. They did, but you do not.

Ms. MORGAN. Well, back in the old days there was—you know, the ICC before 1980 was quite involved in rate setting and in route choice.

Senator CLELAND. Right.

Ms. MORGAN. But that has not been the case, obviously, since the reform legislation. But in terms of the—you know, I was first a commissioner at the ICC. So what I did at the ICC as it relates to rail matters is essentially what I do today.

Now there was some other streamlining as it relates to the trucking industry, but that is a separate matter.

Senator CLELAND. The Railway Labor Act has been around a long time. There is some feeling in the organized labor community that somehow the Surface Transportation Board has the authority to modify or cancel privately negotiated collective bargaining agreements. What is going on?

Ms. MORGAN. Well, the law, as interpreted by the Supreme Court in 1991 and further judicial decisions since that time, provides for the override of collective bargaining agreements, if necessary, to implement an approved transaction. And the Supreme Court in 1991 upheld that notion. So the Board has been involved in that implementation.

Senator CLELAND. Did the ICC have that authority before the Surface Transportation Board had that authority?

Ms. MORGAN. Well, prior to 1980, which is important perhaps to your later questions, those issues that surfaced as a result of restructuring in the rail industry were negotiated between labor and management under what was called the Washington Jobs Protection Agreement of 1936. Changes were made in agreements, but they were made privately.

Then during the 1980's, which of course preceded my time at the Commission, there was a change in direction and then subsequent cases that followed therefrom. And the Commission got a little more involved, in my view, in this whole process.

What I have tried to do, since I have joined the Commission, but more importantly the Board, is to get out of this business of overriding. We issued an important decision, the "Carmen III" decision, which limits overrides in accordance with the law.

There have been other decisions that I have rendered and processes that I have used to level the playing field more, with the result that, in the recent mergers, more agreements have been privately negotiated than before.

Senator HUTCHISON. Senator Cleland, your time is up.

Senator CLELAND. Thank you very much, Madame Chairman.

Thank you, Ms. Morgan. I would be glad to support you.

Ms. MORGAN. Thank you.

Senator HUTCHISON. I want to ask another question, and then I know Senator Rockefeller wants a second round, as well.

Senator Rockefeller started talking about the situation that I have also heard discussed, and that is the inability of shippers to even get a contract quotation by a railroad in a captive shipper situation. And I am troubled by that.

I want to make sure that railroads are not forced to use their railroad spurs at a time that would keep them from being able to use them in another way, as they see fit. I think that is a legitimate rail argument.

But on the other hand, if we require a contract in order to get a quotation, and you cannot, in reality, get one, how would you address that issue? I think that is the biggest, one of the biggest, concerns we have in trying to right something that is balanced.

Ms. MORGAN. Well, I believe that you are speaking specifically about the bottleneck situation—

Senator HUTCHISON. Yes.

Ms. MORGAN. —which is the crux of that problem. I believe that your bill, Senator Rockefeller, would essentially direct that a railroad provide a rate and a route upon demand of the shipper, which is not what our bottleneck decision says.

Now our bottleneck decision is based—

Senator HUTCHISON. That is not what is in my bill. My bill is more—

Ms. MORGAN. Well, your bill goes beyond the bottleneck decision, but I do not believe as far as that.

Senator HUTCHISON. Because it really codifies what you have done, but does try to determine that the rail can set the timing. But I am concerned that if, in reality, the railroads will not give quotations without contracts, that that is a bar.

Ms. MORGAN. Well, as I—I appreciate that. What I was starting to say was that in our bottleneck decision we balanced several different interests in the law. The Staggers Act does provide for rate and route initiative on the part of railroads, which was a big part of the reform in 1980. Prior to that, the ICC had directed routes and had established rates.

The whole view was to move away from that so that the railroads would, in the marketplace, have the ability to direct routing and rates. And there are also some other provisions with this in mind, which I will not go into.

But we balanced that against other provisions in the law and came up with, as you know, relief, which is now pending in the D.C. Circuit—we may or may not win that case—providing for shipper relief in the situation where there is a non-bottleneck contract. And we discussed that earlier.

Senator HUTCHISON. Are there any other legal challenges to the rule, to your rule?

Ms. MORGAN. Well, as you know, there were two parts to the bottleneck decision. The one did not go as far as the shippers would have liked. The other went further than the railroads would have liked.

On the shipper end, that was on appeal in the 8th Circuit. We did win that. But then the provision providing for shipper relief is pending in the D.C. Circuit. We have filed a brief in that case, and argument is in November.

Senator HUTCHISON. So we are basically getting it from both ends.

Ms. MORGAN. So we could win that or not.

Senator HUTCHISON. What is the current legal status of the Board's decision to eliminate product and geographic considerations?

Ms. MORGAN. We had a petition for reconsideration before us, which we denied. So that case is now on appeal in court.

Senator HUTCHISON. Let me just ask you, in looking at the bills that have been introduced, you have, I am sure, seen the Burns/Rockefeller bill, you have seen mine and you have seen Senator McCain's, I would like to ask you to comment if you think there is a good approach in any of those bills. If so, if you would point out which ones would be a positive. Or secondly, if there is something that all of us have missed, that you think would not be a balancing of the competing interests, would you state that?

Ms. MORGAN. Well, just by way of summary, as between your two bills, I think there is language that would elevate competition in the rail transportation policy. There are bottleneck provisions, slightly different in each bill. There are provisions dealing with market dominance, which of course the Board has taken care of. At least we are on appeal, in any event.

Then finally, if I recall, there are some small shipper provisions in each of the bills. I believe yours provides for arbitration. And if I recall correctly, there is one bill that provides a statutory revenue to variable cost ratio above which a rate would be found unreasonable. I think that summarizes the bills.

Getting back to something I said earlier, obviously if competition is elevated and bottleneck relief is provided beyond where the Board has provided it, that is in my view a change in the policy, in the statute. And if that is the direction in which Congress wants to go, then that is the decision of Congress. But that is a fundamental change.

In terms of how that will impact the rail system and so forth, I think that is something we have discussed previously. And I am sure you will have further study on that.

On small shippers, I did recommend in my letter to you that something perhaps be done in that area. And I have had conversations on that subject. So I—

Senator HUTCHISON. That is the other thing. I understand that you are not going to take a position on policy. But the small shipper issue, obviously we have tried to deal with it in both of our bills to varying degrees. Are you doing anything else that would streamline or make more open the ability for small shippers to come to you with this agreement?

A \$5,400 fee is pretty high for a real small shipper, just a farmer, I think. Are you looking at anything else that would open your access for a small shipper, other than what you are doing now?

Ms. MORGAN. Well, let me answer that in two ways. First of all, with respect to the fees—and obviously this has been a discussion that I have had with members previously—the user fee process is not my idea. This is something that has come through the appropriations process. As you may know, the Administration has suggested that the Board be totally funded by user fees.

If I could be funded straight out of appropriated funds, that would be fine. The fees are not my idea. This is something I have had to come up with in order to meet the revenue needs. I do need the money that I am getting now. And I cannot afford to have that number reduced.

Now in that context, we have tried to be responsive when it comes to special needs of individuals who want to file before us. And we have kept down some fees below what the cost of actually processing some of these cases is. In fact, the DOT Inspector General was concerned about some of the fees that they felt were lower than the cost of taking care of those cases.

So I understand your concern along those lines. Now with respect to small rate cases and processing those, of course the market dominance decision applies across the Board to all rate cases, and discovery rules and procedures. We have applied procedures to large cases, because we have not had any small ones. But certainly, if we had small ones, streamlining of the process would certainly be a way we would go. And we have also put deadlines on both types of cases.

So we have done what I consider to be a significant amount in trying to streamline. I will continue to focus on ways to improve the process and to streamline access to the regulatory process. This

has been a commitment that I have made previously. And I will continue, if confirmed, to do that.

Senator HUTCHISON. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Madame Chairperson.

Chairman Morgan, I want to actually make two unrelated comments. In answering a question, you, just recently in this last round, from our chairwoman, used the word "on appeal." And that occurs to me as a very, very important phrase, that virtually anything that is going to be done -- and this is one of the problems that you face.

This is why I think this is not about Linda Morgan, but it is about us and the way we do law in this committee and this Congress. The railroads are going to take everything, everything, on appeal, and they will keep it there for years and years and years. And you said that. I mean, you have done something, and it is on appeal. And I suspect you say that a great deal, and I suspect it is very frustrating to you.

Actually, I want to also, Madame Chairperson, reflect on something, on a joke that Max Cleland said. My great-grandfather was a master at rebates, and a monopolist he certainly was. And I have often said those four railroads would be only one, were he still living. But there is a little difference. And that is the rebates he forced from the railroads.

My interpretation of the current situation is that the railroads are allocating to themselves rebates. It has nothing to do with the shipper, which is what my great-grandfather did. But they are giving to themselves the rebates because of a whole series of things.

He also indicated that the ICC, what was the difference between the ICC and you. And what failed to be made clear was that the ICC kind of, if it was a captive shipping situation, they went ahead and protected the shipper. Under the new situation, somebody has to bring a case, a reasonableness case.

One of the problems is that in order to bring that, case one, you have to pay \$54,500 to be able to bring it, if it is not a small shipper, but a regular shipper. Second, it is going to take forever.

Third, as the GAO report pointed out—I forget whether it was 65 or 70 or 75 percent of them—believe that there is no point in bringing them, because they will never win. So they do not bring them. So the whole sort of system is skewered to discourage captive shippers from helping themselves.

With respect to again that problem, let me just assume for the moment that a shipper cannot get the railroads to compete for a non-bottleneck segment. Make that assumption. And that they do not want the railroads to poach on each other's captive customers. So they will not even get in the game.

My question to you would be: What can a shipper do? Can a shipper have any remedies with you? Does the shipper have any options? Can the shipper go to court? What can a shipper do?

Ms. MORGAN. Well, in that particular circumstance the shipper could pursue competitive access, which I know is controversial, but that is—that is a remedy at the Board. And shippers would argue anticompetitive conduct in that circumstance.

Senator ROCKEFELLER. But they would have to go through this what I have just described.

Ms. MORGAN. They would have to file a case. That is correct.

Senator ROCKEFELLER. So very, very few have, because of reasons that I have just described, all of which, it would seem to me, would make you want to, as you have been—this is to your credit—encourage this committee and this Congress to change the law, so that some of these things do not raise their heads, and that competition can flow more easily. And I will give you credit for saying that we have to change the law.

I also am not sure how far you would push that. But you have been, I think, forthright, at least, on that part.

Ms. MORGAN. May I just say, for the record, shippers do win some cases that come to us.

Senator ROCKEFELLER. There have been a couple.

Ms. MORGAN. So I do not want the record to reflect that they never win, because that is not the case.

Senator ROCKEFELLER. Yes. I am just thinking, you know, of the thousands of people from Montana and Texas and West Virginia, thousands of people that would want to, if they could. The word goes around, do not do it, it will not work. And I think that is correct.

One last question on this. If you could decide the bottleneck decision today and you were hampered in no way by precedent, by law, by circumstance, it was just Chairman Morgan and her commissioners, or just Chairman Morgan, and you are unrestrained by judicial precedent, you are unrestrained by Staggers, and you had that option, would you opt for opening bottlenecks? Would that be your instinct, to increase competition, if you could write the law for us?

A subset of that question, obviously, which you may want to answer first, is: Are you not very troubled by the anti-competitive effects of bottlenecks?

Ms. MORGAN. Well, let me go through that with a couple of points. The first point I am going to make, which I think we have talked about previously, is that in any comment that I make to any answer to any question, I never want to be viewed as prejudging a situation that could come.

If Congress changes the law and presents me with a situation, something similar to what you have just described, I do not want to have answered in such a way that parties feel that I would not come to the table willing to implement the law fairly and unbiasedly. So let me just say that first of all.

Second of all, I think your description of the situation obviously goes to the heart of whether we agree that it is anticompetitive in the context of the way we want to regulate railroads. I know it appears that way, but I think what we need to ask ourselves is what areas do we want to regulate differently from the way we are regulating now.

One of the underpinnings of the current law is that there will be captive shippers and that we do not have an open access statute. To change that and to go in a different direction, of course, is what this debate that we are having is all about. And that is fundamental, and that raises, obviously, as you and I have discussed previously, serious questions about what it will mean down the road.

I think your comment earlier about how you are not sure how far I would go, I think what I have tried to share with everyone here is that when you make fundamental changes, there may be consequences. And we just need to understand what those are. And I am prepared to work with you through that process.

But I feel obligated to at least say that there are some questions that I think we all collectively need to answer as we proceed ahead with changes.

Senator ROCKEFELLER. I expected that.

Do I have a last one? OK.

This just has to do with revenue adequacy. And we have been through this so many times before. It is the most absurd. It is not the most damaging compared to bottlenecks, but it is the most absurd, I think. The STB's annual survey came out, I guess it was, last week. And every major railroad but one was found to be revenue inadequate in 1989.

Now, traffic world is a big deal in that world. And they point out how ridiculous that is, given that in 1998, three examples, lenders gave CSX and Norfolk Southern \$10 billion in cash to buy Conrail; two, Burlington Northern CEO told his stockholders that 1998 was a record-breaking year "no matter what measure was used," including a 20 percent increase in their dividends; and three, so many investors approached Union Pacific last year to buy into a \$1.5 billion bond issue that the railroad had to turn people away.

Gus Owens used to say that this ought to be repealed. I think it is one of the most self-evident changes that needs to be made. And if you want to comment on that, I would be happy.

Ms. MORGAN. Well, I indicated in my December 21 letter that the revenue adequacy determination required by Congress could be eliminated. We do not really apply it specifically in any particular case.

But I also offered up in that letter that, if Congress did not want to eliminate that finding, that requirement that we determine revenue adequacy, the issue of how we determine it is controversial. And I suggested that a panel of experts come together and determine what would be the right way of determining revenue adequacy.

Now as a general matter, I think that, in any regulatory scheme that we decide on, the financial health of the industry is important. And we need to understand what that health is and have some general idea about it as we regulate it, along with the other interests that we need to pay attention to—shippers, employees, and so forth.

But I understand what you have said, and I have indicated in my letter a way Congress could go on this, but also indicating that as a general matter we continue to need to have some understanding of what the financial health of the industry is.

Senator HUTCHISON. Thank you, Senator Rockefeller. I want to say that I do agree that financial health of the industry should be a factor. I would hope that we could promote competition. But the last thing we want is not to have that as a factor, as a safety net. Now how we get there, I think perhaps there could be a fairer basis that would be looked at by a panel of experts.

But I just think balance is the important factor here. And I hope we can strike that balance. And I hope we can do it this year.

With that, if there is no further comment, I will adjourn this hearing and look forward to continuing to work with you, Chairman Morgan. I think you are doing a terrific job, and I hope we can give you a law that will make it even easier for you to make the right decisions. Thank you.

Ms. MORGAN. Thank you.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR
FROM HAWAII

Madam Chairwoman. First of all, I'd like to thank you for your leadership in convening this hearing to consider these nominations. The three nominees we are considering today will play a vital role in shaping our nation's transportation policy. Intermodalism and transportation issues are critical to the continued economic growth that our country is experiencing. The professionals before us are veterans of both the Hill and the Administration—they are clearly well qualified for the positions they have been nominated for. I look forward to hearing from them.

Linda Morgan has already served as the Chairman of the ICC and following the sunset of that agency, as Chairman of the Surface Transportation Board (STB). I have known and respected Linda Morgan for many years and I believe that she has served with great enthusiasm and commitment during her first term as Chairman of the STB.

The magnitude of the job we require the STB to do is staggering and under the leadership of Chairman Linda Morgan the STB has had some notable successes. I commend her for efforts in leading the STB from its creation as an agency. It was no easy task to pare down an agency, and create a new one in its place. She also has helped to eliminate the rail crisis in the Western United States, and has spearheaded the initiative to review the regulatory structure as it pertains to railroad service and railroad rate cases.

I do not to claim that nothing more needs to be done, rather, I want my colleagues and to know that I appreciate how far Chairman Morgan has come in helping the Board fulfill its mission.

Mister Frazier in his capacity as Assistant Secretary of Governmental Affairs will be charged with working with all of us and our staff on a regular basis—surely that will be a challenge. I have no doubts that he can handle such a role given his experiences in the past. I look forward to hearing of your plans and goals as we consider your appointment to this position.

The Associate Deputy Secretary and Director of Intermodalism is a position which I have a great deal of interest in, Dr. Van Beek. As you know, my state relies heavily on multiple modes of transportation for not only commerce, but to ensure its existence. I am particularly interested in your ideas about enhancing federal intermodal transportation policy.

To all of the nominees here today, thank you for your attendance and I look forward to working with you in the future.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
MICHAEL J. FRAZIER

Question 1. You are replacing Steve Palmer, who watched carefully the needs of South Carolina. As you know, notice to all of our offices is critical. You also will play a crucial role in negotiations with the House on the aviation bill. Do you see a way to take the Airport and Airway Trust Fund off budget, or at least spend what is in the Trust Fund on key safety and capacity projects?

Answer. As has been communicated to Congress, the Administration strongly opposes off-budget treatment of the Airport and Airway Trust Fund. At some point in the future, it may be possible to spend down the balances of the trust fund, but unless reasonable offsets are found, that is not possible under the discretionary caps without jeopardizing the funding of other necessary federal programs. The President's Budget has proposed what we consider to be adequate funding for aviation safety and capacity projects, particularly when viewed in conjunction with our proposal to raise the cap on Passenger Facility Charges. As we saw in 1996, when aviation taxes lapsed and trust fund balances plummeted, it is important to keep some balances in the trust fund.

Question 2. What are the major initiatives that DOT will be pushing in the coming year?

Answer. During the coming year, DOT's top transportation priorities (beyond a fully funded DOT budget) are reauthorization of critical transportation programs and agencies such as the Federal Aviation Administration, Coast Guard and the Surface Transportation Board; and building upon Secretary Slater's commitment to safety, thereby reducing deaths and injuries across the modes through securing passage of strong motor carrier safety, rail safety, and hazardous materials legislation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
STEPHEN D. VAN BEEK

Question 1. During your tenure at DOT, both in your capacity as Deputy Administrator of Research and Special Programs (RSPA) and as Special Assistant to the Administrator, what do you consider your greatest accomplishment or contribution?

Answer. I believe that the enhancement of RSPA's transportation emergency response capabilities is my greatest accomplishment. I worked hard to make sure that RSPA could support the Emergency Response Plan issued by the Federal Emergency Management Agency (FEMA) to address natural and man-made disasters. RSPA's Office of Emergency Transportation (OET) plays a key role in assuring that federal assets are pre-positioned and available during and after disasters to help those coping with the consequences of a severe event. In the last 18 months, we built up capacity to address emergencies through staffing and planning. This has served us well in working with FEMA and the states on the recent transportation emergencies caused by severe hurricanes such as Georges, Mitch and Floyd. In addition, the Office has played key roles in the Department's efforts on Year 2000 contingency planning and its development of procedures for Continuity of Operations and Continuity of Government functions required by Presidential Decision Directives.

Question 2. As Deputy Administrator, what were your highest priorities? What goals did you establish in that position and to what extent were those goals achieved?

Answer. Working with the Administrator of RSPA, I had the lead responsibility for management issues in the agency, including the development of RSPA's Strategic and Performance Plans, evaluating senior leadership, and reorganizing the agency to better reflect our changing responsibilities. In addition, addressing Year 2000 issues was a top priority, both internally with RSPA's own systems (all of which are compliant), and externally working with stakeholders and the President's office to support federal sector working groups. Implementation of the Transportation Equity Act for the Twenty-First Century (TEA-21) was an important priority, particularly with the Office of Pipeline Safety where we have initiated, with congressional support, efforts at preventing third-party damage to the underground infrastructure -- through supporting One-Call programs of the states, launching a national education campaign on damage prevention, and producing a well-received study of best practices. We have also awarded grants to each of the 33 University Transportation Centers authorized in TEA-21 and assured that their educational and research agendas meet national transportation goals. Lastly, RSPA has moved forward on several safety-critical rule-makings for hazardous materials transportation and oil and gas pipelines.

Question 3. The Office of Intermodalism is responsible for providing the Secretary and the heads of each DOT Operating Administration with information and recommendations on projects, programs, and policies involving or affecting more than one mode of transportation. How will your previous work experience enable you to successfully fulfill the responsibilities of the Associate Deputy Secretary and Director of Intermodalism?

Answer. My experience with DOT as RSPA Deputy Administrator has provided direct experience both with offices within the Department as well as with external stakeholders who are interested in intermodal issues, including members of Congress, state, and private sector representatives. RSPA performs many multi-modal functions such as university research, preparation and response to natural and man made disasters, and the development of hazardous material regulations. As Deputy Administrator, I also sit on the Secretary's Management Council, a senior leadership team examining management issues for the Department. My academic training and experience also provided me with experience with a wide variety of issues important to public policy and public administration.

Question 4. If confirmed, what policies would you initiate to promote efficient intermodal freight and passenger transportation throughout the United States? How should the Office of Intermodalism coordinate federal policy on intermodal freight transportation? Likewise, how should the Office of Intermodalism coordinate federal policy on intermodal passenger transportation?

Answer. Should the Senate honor me with confirmation, I would advance our country's intermodal freight and passenger transportation through program development, planning and investments that enhance transportation access and capacity, and through cooperative and innovative partnerships with our stakeholders in State and local government, industry and others. Intermodalism uses modal choice and innovation as an evolving and dynamic solution to transportation challenges. To coordinate federal policy on intermodal freight transportation, I would lead a Department group including FHWA, FRA, FAA, USCG, and the Maritime Administration and rely on input from other federal agencies, such as the Department of Defense, and industry. One of the goals of this group should be to advocate for better recognition of the importance freight transportation plays to the economic health of the United States. Similarly, with federal policy on intermodal passenger transportation, I would participate in efforts to examine current and future needs of the system and its users, and lead DOT efforts to fashion policy recommendations for addressing critical needs. This would be done in consultation with DOT operating administrations, advocacy groups, public officials and members of Congress.

Question 5. In your opinion, what do you see as the major role for the federal government in promoting intermodalism? What are the appropriate state, local, and private roles in promoting intermodalism?

Answer. A major role for the federal government is to take and advocate a systems perspective of the nation's transportation network to make sure that it operates in a seamless fashion, enabling American citizens to receive the optimum yield for their transportation investments. This requires a focus on improving the connectors for both passenger (e.g. terminals) and freight (e.g. ports) movement, as well as ensuring that the various modes of transportation are working together. When the National Commission on Intermodal Transportation released its report to Congress five years ago, it emphasized that public institutions were not responding quickly enough to keep up with new developments which required intermodal solutions. This requires that the federal government provide leadership and work with the states and local governments to ensure that decision-making and management practices are complementary and focused on user needs. It also requires assessing the needs of industry by working with both the shipping and the carrier organizations.

Question 6. What strategic initiatives will you undertake to improve interagency cooperation at the Department of Transportation?

Answer. I would continue to build upon Secretary Slater's ONE DOT management initiative that has improved teamwork among the different modal administrations and offices in the Department, and use mechanisms such as the Secretary's Safety and Policy Councils. In addition, the Department will be forming intermodal groups to deal with policy initiatives such as the Marine Transportation System and freight issues.

Question 7. In your opinion, are state Departments of Transportation and metropolitan planning organizations expending their transportation dollars on improving regional intermodal transportation facilities? What should the U.S. DOT do, if anything, to broaden state involvement in enhancing intermodal facilities?

Answer. State Departments of Transportation and metropolitan planning organizations (MPOs) are doing a better job of investing in intermodal transportation facilities to address regional transportation needs, but much work remains to be done. For example, more improvements are needed to upgrade the NHS intermodal connector projects that serve as vital links to join segments of our national transportation system. The short length (2 miles or less) and generally low project cost of these NHS connectors does not reflect their significant role in enhancing movements of people and goods. Other regional needs could be met by intermodal projects that are quite costly—ones that exceed the funding that is typically available to MPOs and transportation agencies. The Office of Intermodalism is a principal member of the ONE DOT credit programs working group that is implementing the loan provisions of the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs. Office staff and other working group members assisted sponsors of potential TIFIA projects in preparing applications for FY 1999 loans, and a number of the projects selected have intermodal functions. Office staff will work with financial advisors to evaluate

future applications for TIFIA credit assistance and help DOT negotiate the terms of the assistance for those projects selected.

TECHNOLOGY QUESTIONS

Question 1. What role do you believe the Office of Intermodalism should play in expanding the Department of Transportation's research and technology development activities?

Answer. I believe that the Office of Intermodalism should play a leadership role within the Department to advance transportation research and technology to shape a safe, fast, efficient, accessible and convenient transportation system for the 21st century. To do this, we must rely upon strategic planning, world-class research, better exchange of information on useful technological innovations, partnerships, research and education and training. The Office of Intermodalism would work with the National Science and Technology Council (NSTC) on Technology and DOT's Research and Technology Coordinating Council to implement the Department's Transportation R&D Plan and pursue a common set of performance measures for R&D that is consistent with DOT strategic goals. The Office of Intermodalism would also ensure that its contributions to strategic plans for R&D support the priorities identified in the DOT Strategic and Performance Plans, the annual OMB/OSTP R&D priorities guidance, the DOT Transportation R&D Plan, and the NSTC Transportation Technology and National Strategic Research Plans.

The Office of Intermodalism would also work with other Federal agencies, state and local governments, industry and academia to move technology into the market place more efficiently and effectively. We would lead or participate in major multi-agency, multi-modal partnerships for the National Science and Technology Council (NSTC) and the Department. We would lead or participate in major multi-agency, multi-modal partnerships such as the Intermodal Freight Technology Core Group and the International Trade Data Systems Office on behalf of the NTSC and the Department.

Question 2. What is your view on Intelligent Transportation Systems (ITS) technology and what role do you foresee for ITS in the area of intermodalism?

Answer. DOT believes that operational deployments are needed to test concepts for a national ITS architecture and greater harmonization of tracking technologies and electronic data interchange (EDI) standards in the intermodal freight arena. Federal initiatives are essential to convene the public and private interests that have a stake in transportation improvements in intermodal transport by providing both financial resources and the forum for operational deployments. DOT believes that sharing information through linked ITS systems can facilitate movements of intermodal freight by identifying and bypassing transportation bottlenecks, and eliminating stops for vehicle and cargo documentation that increase operating costs and contribute to congestion. It is important to note that these transportation system improvements will not just benefit the intermodal freight industry or even the freight industry at-large; these operational improvements benefit all transportation users -- both passengers and freight. Given my experience as RSPA Deputy Administrator, I would also strive to ensure that the technologies applicable to multiple modes, such as Global Positioning Satellites and Fuel Cells, are fully exploited to address outstanding transportation challenges.

MARITIME QUESTIONS

Question 1. Our nation's maritime transportation system is facing increasing demands from users as the role of maritime changes in an era of increased intermodalism. This includes increased demands on our nation's waterways and associated infrastructure. What role should the federal government take in port maintenance and development, maintenance of locks, dams and bridges, and the development of navigational aids?

Answer. Except for the Coast Guard's roles regarding navigational aids, DOT's statutory authority for port infrastructure is limited to landside access issues. Congress has given the U.S. Army Corps of Engineers, along with local and state port authorities the responsibility for waterside infrastructure. However, DOT programs and planning processes have had some success in increasing awareness and cooperation among diverse maritime interests such as in the Alameda Corridor in California, Washington State's Freight Strategic Mobility Investment Board, and the eight States working in the Gulf Rivers Intermodal Partnership.

Additionally, the Administration has submitted legislation to address the issue of funding and maintenance of our harbors and channels. H.R. 1947, the Harbor Services Fund Act of 1999, was introduced by Representatives Shuster and Oberstar on May 26, 1999. The bill seeks to ensure necessary harbor channel capabilities for our

Nation's waterborne commerce through the establishment of user fees. The proposed Harbor Services Fee is intended to approximate the harbor benefits and services received, and would be imposed on the commercial vessel and not the cargo. The fee structure is based on the harbor services required and benefits received by four different categories of commercial vessels.

Question 2. What role does our maritime transportation system play in intermodal transportation and what can be done to improve its integration into our intermodal system?

Answer. As the world's leading maritime and trading nation, the United States relies on an efficient and effective maritime transportation system to maintain its role as a global power. More than 95 percent of our international trade moves through the Nation's ports and waterways. More than 2 billion metric tons of domestic and international commerce moves on the water, and 134 million passengers travel annually by ferries. Furthermore, our maritime transportation system supports military deployment, commercial fishing, and recreational uses. Last September, under the leadership of Secretary Slater, the Department released A Report To Congress on An Assessment of The U.S. Marine Transportation System. A highlight of the assessment is that integral to the Marine Transportation System (MTS) are inland rail, highway and pipeline intermodal connections that permit freight and passengers to reach the marine facilities. The report provides a blueprint for the Nation's maritime transportation system and its integration into our intermodal system. The report calls for strategic areas of action including the creation of a National Advisory Council to advise on MTS issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
MICHAEL J. FRAZIER

Question 1. During your tenure as a Deputy Assistant Secretary for Governmental Affairs at DOT, what do you consider your greatest accomplishment or contribution? What were your highest priorities? What goals did you establish in that position and to what extent were those goals achieved?

Answer. Before coming to the Department of Transportation, I had minimal experience relating to transportation. As Deputy Assistant Secretary, my biggest accomplishment was in learning about transportation issues, the Department, and the concerns of the various stakeholder groups.

My priorities included assisting Secretary Slater and the Assistant Secretary of Governmental Affairs in promoting the Department's commitment to safety, mobility, and economic growth. My goals included improving relationships with the Congress, state and local governments and transportation interests and providing a high level of responsiveness.

Question 2. During the past nine months that you have been Acting Assistant Secretary for Governmental Affairs at DOT, what do you consider your greatest accomplishment or contribution? What were your highest priorities? What goals did you establish in that position and to what extent were those goals achieved?

Answer. While serving as Acting Assistant Secretary for Governmental Affairs, I was instrumental in promoting and securing support for major transportation initiatives and legislative proposals. I have worked closely with Secretary Slater and others in the Administration in coordinating DOT efforts and providing technical assistance to Capitol Hill on FAA reauthorization legislation. I have played a key role in negotiations with the conferees and their staff in addressing issues to help secure passage of reauthorization legislation.

As truck and bus safety are of paramount importance, I have also worked to help craft legislation that meaningfully addresses motor carrier safety issues.

Question 3. Recognizing the limited time period left in this Administration, could you identify for the Committee the top three transportation priorities for the administration during the next year?

Answer. Beyond a fully funded DOT budget, DOT's top transportation priorities are reauthorization of critical transportation programs and agencies such as the Federal Aviation Administration, Coast Guard and the Surface Transportation Board; and building upon Secretary Slater's commitment to safety, thereby reducing deaths and injuries across the modes through securing passage of strong motor carrier safety, rail safety, and hazardous materials legislation.

Question 4. If confirmed, what initiatives will you undertake to improve inter-agency cooperation at the DOT?

Answer. I am committed to Secretary Slater's ONE DOT initiative, which seeks to bring an intermodal approach to transportation decisionmaking. If I am fortunate enough to be confirmed, I will work to establish a better integration of efforts within the Office of the Secretary (OST) and between OST and the modes. I have already established a framework for representatives of OST and the modal governmental affairs offices to meet and work together on issues of importance.

NAFTA/TRUCK SAFETY

Question 1. As you probably know, last December the DOT Inspector General issued a critical report on the Department's safety program for commercial trucks at the U.S. borders. The report cited that "far too few" trucks were being inspected and "too few" of the inspected Mexican trucks met U.S. safety standards. More recently, the IG reported that Mexican trucks were found traveling widely throughout the United States. Mexican carriers were found in 24 states beyond the border, including New York, Florida, Washington, Montana, North Dakota, Colorado, Iowa, South Dakota, and Wyoming.

(a) What is your view regarding the Administration's preparedness to fulfill the cross-border traffic requirements of NAFTA and more important, what is the Department doing in response to the report that Mexican trucks are already traveling throughout the U.S.?

(b) What specific actions has the Department taken to address the shortcomings identified by the Inspector General and what future initiatives are planned?

(c) Given that the border states were scheduled to open almost 4 years ago, why has it taken so long for the Department to take these actions?

(d) Under NAFTA, Mexican trucks are scheduled to have access to the contiguous 48 states in 2000? What are the chances the ratified treaty's schedule will be met?

Answer. (a) DOT believes it has made substantial progress in addressing the safety concerns associated with cross-border transportation. However, it recognizes that additional improvements are needed. In light of the support extended by Congress in this effort and the additional resources made available in TEA-21 for safety related projects, I believe DOT will be able to fully implement the safety initiatives that it has put in place and ensure that cross-border operations do not present an undue safety risk to the American public. DOT and the Inspector General's findings that trucks are already traveling throughout the U.S. reaffirm that a more aggressive enforcement program is needed to make certain the Mexican trucks are properly registered and do not operate outside the scope of their registration. It should be noted that there are several types of exemptions in law for Mexican-based carriers to operate within the United States.

However, carriers found to be in violation are currently subject to civil penalties and loss of operating privileges.

DOT is considering a variety of other enforcement options that may be available to encourage greater compliance. Since the majority of the States do not have authority to enforce federal registration requirements, enforcement remains a federal responsibility. DOT supports legislation that would allow it to deny entry to all carriers that are not properly registered and to place vehicles out-of-service if they are found to be operating outside the scope of their registration authority.

(b) The Department agrees with the Inspector General recommendations and is taking steps to implement them as follows:

- The Department has hired an additional 27 Federal inspectors for ports of entry in Texas. This will supplement the existing DOT staff of 13 (10 in Texas and 3 in Arizona) and will complement the enforcement activities of the four border States.

The Department is strengthening partnerships with the border States in border enforcement activities. TEA-21 provides for a 5 percent takedown from the Motor Carrier Safety Assistance Program for border enforcement activities (\$25 million from FY 1999 through FY 2001). In FY 1999, \$4.5 million was made available for this purpose. Since 1995 we have provided the southern border States with over \$10 million in additional grants.

- The Department is also encouraging the border States to apply for a share of the discretionary funds available in the TEA-21 for new border infrastructure and corridor planning to build inspection stations at key locations.
- The Department expects to publish new operating authority application procedures to address the NAFTA traffic that will be operating beyond the commercial zones. This includes an identification number to ensure that only those carriers with authority to operate beyond the commercial zones are so identified.
- The Department expects to establish a NAFTA Program Director to coordinate all our NAFTA activities.

- The Department continues to play a very active role in the coordination of Federal and State border activities.

In all border enforcement activities, the Department's approach is to create multiple points within the system where unsafe vehicles and carriers can be identified before problems occur. This system begins with the application process, makes use of Mexican oversight and information systems, continues with inspections at the ports of entry, and includes additional checks with roadside inspections in the interior of border States.

(c) Since December 1995, when the Administration made the decision for safety reasons to postpone implementation of NAFTA's truck access and investment provisions, DOT has worked with the States, the Commercial Vehicle Safety Alliance (CVSA), the International Association of Chiefs of Police (IACP) and Mexico to improve the safety infrastructure on both sides of the U.S.-Mexico border. During this time DOT's view has been that the most effective means to ensure safe cross-border operations is through continued strengthening of the long-standing Federal-State partnership created by the Motor Carrier Safety Assistance Program (MCSAP). Since 1984, federal funds received by the states under MCSAP have been instrumental in improving highway safety and increasing uniformity in the enforcement of motor carrier safety regulations throughout the country. While much more remains to be done, over the years DOT has been using this successful partnership to effectively address both the border and national safety issues.

(d) While the United States and Mexico have been working for some time on truck safety issues and much has been accomplished, additional work remains to be done. In light of this, no decision has been taken with respect to when Mexican commercial truck vehicles may be allowed more liberalized access into the United States.

Question 2. The Transportation Equity Act for the 21st Century, TEA-21, included a provision directing the Secretary to conduct a review of the qualifications of any foreign motor carrier who has applied to operate in the U.S. but whose application has not been processed due to the current operating moratorium. The Secretary was required to report his findings to the Committee *120 days* after enactment (October 6, 1998), yet, to date, the Secretary has failed to meet this statutory directive.

(a) Given that you have served at the Department since the law was enacted, when can the Committee expect to receive this long-awaited report? Let me point out that back in April, this same question was asked of Mr. Conti and we were told "the report is in the final stages of preparation and approval." But again, we have received nothing.

(b) If confirmed, what, if any, initiatives will you take to strengthen the Department's commitment to meeting statutory requirements, carrying out timely rulemakings, and improving responsiveness to Congressional inquiries?

Answer. (a) The report is currently in the Office of the Secretary for concurrence, and I will make it a priority to get the report issued quickly in final form.

(b) I pledge to work closely with those offices that have the major responsibilities for meeting statutory requirements and carrying out timely rulemakings. Since my arrival at the Department, I have made it a top priority to increase overall responsiveness to the Congress. I will continue to make that a top area of emphasis.

Question 3. TEA-21 further provides that one year after enactment, most Federal Motor Carrier Safety Regulations would apply to all commercial vans carrying more than 8 passengers except to the extent that DOT, after a rulemaking proceeding, provides for exemptions. As you know, there have been a number of deadly accidents involving these vans-the so-called "camionetas," particularly in the border states of Texas and Arizona. DOT failed to issue an implementing rule by the June 9, 1999 deadline and is not enforcing the law in this regard.

Let me remind you that the Department was directed to address this van safety issue 4 years ago as part of the ICC Termination Act of 1995. The TEA-21 provision was included out of frustration over the lack of action by the Department to regulate these vehicles. Yet, DOT is still not regulating these potentially deadly vehicles, and instead, has actually "exempted" the entire class of vehicles from regulation until further notice.

When can we expect DOT to uphold the law and require these van operations to comply with our federal safety regulations?

Answer. On September 3, 1999, the Department's Office of Motor Carrier Safety (OMCS) issued (1) an interim final rule that amends the definition of "commercial motor vehicle" (CMV) to include vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation, but temporarily exempts the operators of such vehicles from the Federal Motor Carrier Safety Regulations (FMCSRs); and (2) an NPRM that would propose to learn more about operational

safety of small passenger-carrying CMVs by requiring operators of these vehicles to file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register.

Additionally, I am aware of a provision concerning this issue in S. 1501, the Motor Carrier Safety Improvement Act of 1999, which you introduced on August 5. I understand the serious concerns about the extended length of time it has taken to address this issue. I promise to work with the various offices in the Department, which have responsibility for this issue and with the Committee to move more expeditiously on this important issue.

MARITIME QUESTIONS

Question 1. In recent years, we have experienced a serious decline in the number of American-flagged carriers in the international maritime trade. In your view, what can and should be done to improve the competitiveness of American-flagged carriers engaged in the international trade?

Answer. The differences between U.S. and foreign standards-of-living, taxes, business and labor practices, public safety, and environmental protection contribute to higher production costs in the United States, relative to other nations. These disparities make it more difficult for U.S.-flag companies, and the national-flag lines of other advanced economies, to compete internationally.

While we cannot eliminate these differences, we can seek to ensure the availability of a U.S.-flag fleet and related transportation infrastructure that is committed to support Department of Defense sealift requirements and our Nation's economic security. The most effective means to accomplish this objective is to continue full funding of the Maritime Security Program.

In addition, we are working to reduce or eliminate trade barriers that restrict U.S.-flag carriers' access to foreign markets. Our strategies include negotiating agreements, understandings and arrangements to reduce barriers that restrict U.S.-flag carrier access to foreign transportation markets, add to costs, limit revenues, and impede efficient operations of the U.S. maritime industry in international trade. An example of this effort is the new maritime agreement with Brazil that was signed on October 20, 1999. This agreement achieved the removal of several discriminatory practices that had burdened the operations of U.S. carriers serving the Brazil trade.

Question 2. There is a growing concern that the rise in international organized crime, rogue states and terrorism pose a serious threat to our nation's maritime transportation system. What should be done to insure the safety of our maritime transportation system and prevent costly cargo losses?

Answer. We must be aware that, while there is a need to invoke safeguards to protect against the array of security threats, there should also be a balance with the rising demands for efficient/uninterrupted maritime transportation system operations to service projected growth in passenger and cargo movements.

The Presidential Interagency Commission on Crime and Security in U.S. Seaports (established in April 1999) will heighten national awareness of security issues in the areas of cargo crimes, smuggling, and terrorism. It will develop a coordinated inter-agency approach to port security, which addresses seaport organized crime and terrorism. The Commission will be addressing security awareness, system transparency, public and private sector coordination, and international cooperation. A goal of the Commission is to provide recommendations for improvements in security. A final report is due in Spring 2000.

The Department of Transportation plays a major role in the Commission. The Maritime Administrator serves as one of the three co-chairs and the Commandant of the U.S. Coast Guard is a member of the Commission. Under their leadership, the critical issues related to cargo and other seaport crime, smuggling, and terrorism will be considered by the Presidential Commission.

Question 3. In a report to Congress earlier this month, Secretary Slater stopped short of providing detailed recommendations on how port maintenance and development should be funded. What is the Administration's view on how port maintenance and development, including dredging, should be funded?

Answer. My understanding is that the purpose of the report was not to solve the funding issue. The Task Force recognized that funding is at the core of many issues relating to the Marine Transportation System (MTS). While a consensus could not be reached on all funding issues, the Task Force recommended a four-step process to gain a better understanding of MTS funding. This process included:

- Coordinating Federal funding processes.
- Defining existing MTS funding mechanisms (public and private).

- Forecasting future demands on the MTS.
- Exploring innovative funding mechanisms.

With respect to funding channel improvements and maintenance, the Administration believes that user fees are a proper approach to ensuring that the U.S. has the necessary harbor channel capabilities to handle our nation's waterborne commerce. As you know, the Administration submitted legislation to address the issue of funding the development and maintenance of our harbors and channels. The Administration's bill, Harbor Services Fund Act of 1999 (H.R. 1947), was introduced by Congressmen Shuster and Oberstar (by request) on May 26, 1999. AVIATION QUESTIONS

Question 1. What will you do to ensure that the DOT complies with deadlines set by congressional committees for information or reports?

Answer. As I stated in Question 2(b) under "NAFTA/TRUCK SAFETY," a high level of responsiveness has been and will continue to be a major emphasis area in this office. I will also continue to work closely with the various offices within the Department which have the lead responsibility for reports to Congress and ensure that deadlines are closely adhered to.

Question 2. It appears as if "open skies" negotiations with the United Kingdom have stalled. What is DOT doing to open up the restricted UK market?

Answer. The Department shares your frustration with the British unwillingness to eliminate the restrictions in the U.S.-U.K. Air Services Agreement. During informal discussions with the British on October 18-19, U.S. representatives began exploring the U.K. offer to open up all-cargo operations, while also emphasizing our continuing interest in liberalizing the passenger regime.

Establishing new opportunities for U.S. carriers and U.S. cities for U.K. services remains our international aviation priority. We are continuing to assess all options for changing this unsatisfactory aviation relationship.

Question 3. Some observers of the FAA believe that the agency has difficulty controlling the costs of many of its programs, particularly those that involve acquisition of major air traffic control modernization systems. What role does DOT play in ensuring that the FAA spends taxpayer dollars wisely? Should DOT shoulder any of the criticism when the FAA makes mistakes?

Answer. Spending taxpayer dollars wisely is a high priority for the Department of Transportation, and the Office of the Secretary (OST) does have the responsibility to set overall policy for agency management. To keep abreast of major programs, we ask that project status reports be submitted to OST that describe these programs and progress against baseline cost and schedule goals. When FAA is not meeting those goals, we meet to discuss the problems and FAA's intended solutions. With the management freedoms provided by the Congress, only FAA can implement the needed changes to solve programmatic problems, but establishing a healthy dialogue concerning management issues is beneficial to both FAA and OST.

Question 4. The DOT has been without an Assistant Secretary for Aviation and International Affairs for quite some time, and the department just lost one of the key deputies in that office who had a great deal of expertise and institutional knowledge. There are many important international issues, however, that need attention. When can the Congress expect to receive a nomination for that Assistant Secretary position?

Answer. The Department expects that a nomination will be forwarded in the near future.

Question 4a. What is the current status of efforts to get the European Union to withdraw its discriminatory rule restricting the use of hushkitted and re-engined aircraft? What role is DOT playing in those efforts?

Answer. U.S. officials, including those from DOT, have continued to meet with EU officials at various levels to resolve this issue. To date, the Commission has remained unwilling to agree to proposing withdrawal, and as yet has not produced a credible alternative to withdrawal of the rule. DOT has been deeply involved in these efforts.

Question 5. If the President is presented with an FAA reauthorization bill that provides budgetary firewalls for FAA spending, will the Secretary advise him to veto the bill?

Answer. The Administration would strongly oppose a proposal to create a discretionary budget category (a.k.a. firewall) for a specific program. A firewall would provide the FAA with a guaranteed funding stream without providing incentives to use those funds efficiently.

Question 6. The Transportation Research Council recently issued a congressionally-ordered report on domestic airline competition. The members of the committee that prepared the report apparently differed on the extent to which the DOT should formally police anti-competitive practices in the industry. But all members agreed that the DOT should do what it can to increase airline competition, and it made numerous recommendations. What is the DOT's response to this report: What actions, if any, are being taken to implement its specific recommendations? Are there any conclusions or recommendations with which the DOT disagrees?

Answer. I am glad to make available to you a copy of the Department's response, which was submitted to Congress on October 21.

The Department, at Secretary Slater's direction, has already undertaken a number of actions that are consistent with the recommendations of the TRB, as follows:

- DOT has just released a major study "*Airport Business Practices and Their Impact on Airline Competition*," which deals with the critical importance of airport access.
- DOT has proposed legislation that would eliminate over time the slot restrictions at JFK, LaGuardia, and O'Hare.
- DOT is currently conducting a study of the Department's Computer Reservation System rules that will encompass consideration of the TRB's recommendations regarding changes in the airline distribution system and the multiple listing of code share services.

The Department's attached response to the TRB report noted that some of the TRB's recommendations would require legislation, some were worthy of further study, some would be difficult to implement, and some did not appear to be necessary. The Department agrees with the TRB that the Department has an important role to play in promoting competition in the airline industry, shares the TRB's vision that "preserving and expanding opportunities for competition should remain the principal goals of aviation economic policy," and agrees with the TRB on the lack of adequate competition in some markets and the importance of providing travelers with viable competition that will produce lower fares and better service.

Question 7. Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998, P.L. No. 105-66, 111 Stat. 1425, 1447 (October 27, 1997) ("the Shelby Amendment") authorizes carriers at Love Field to operate nonstop flights to Mississippi, Alabama, and Kansas. Do you agree that federal law is clear as to the type of flights that can be operated under this statute?

Answer. Yes. In December 1998, the Department issued an order stating that the Shelby Amendment expressly allows airlines to operate nonstop flights from Love Field to points in Kansas, Mississippi, and Alabama, using any kind of aircraft. Order 98-12-27 (December 22, 1998), affirmed on reconsideration, Order 99-4-13 (April 13, 1999). The Department simultaneously held that it had the authority to interpret the federal statutes that apply to Love Field services and that govern Dallas' authority to limit Love Field operations. Order 98-12-28 (December 22, 1998), affirmed on reconsideration, Order 99-4-14 (April 13, 1999).

Question 8. Do you agree that local authorities do not have authority to limit and/or bar such nonstop services to those states?

Answer. The Department's orders stated that federal law does not allow the City of Dallas, the owner of Love Field, to bar airlines from operating the kind of services authorized by the Shelby Amendment, notwithstanding claims by the City of Fort Worth that Dallas' contractual obligations to Fort Worth require Dallas to prohibit those services (and certain services authorized by section 29 of the International Air Transportation Competition Act of 1979, 94 Stat. 35, 48-49 (1980), known as the Wright Amendment). While airport owners like Dallas have legitimate management needs allowing them to impose reasonable regulations for airport operations, as the Department stated, federal law prohibits them from engaging in route regulation.

Question 9. Do you recognize that under the Airline Deregulation Act, control over airline routes is entirely a federal issue, which cannot be limited by state and local parties' agreements?

Answer. The Department's order stated that 49 U.S.C. 41713(b), a provision enacted by the Airline Deregulation Act, preempts state and local governments from regulating airline routes. The Department recognized that a state or local government operating an airport may exercise its proprietary rights. The Department noted that the courts had upheld a perimeter rule imposed at LaGuardia Airport by the Port Authority of New York and New Jersey on the ground that the Port Authority's demonstrated need to alleviate severe congestion problems at LaGuardia justified its adoption of the perimeter rule. Virtually no other airport operated by a state or local government has adopted a perimeter rule, and neither the courts

nor the Department have upheld any such rule. The Department determined that there was no justification for Dallas' imposition of any perimeter rule at Love Field or any other restriction that would prevent airlines from operating the types of service authorized by the Wright and Shelby Amendments.

Question 10. Is it not true that airport funding grants awarded to airport proprietors are dependent upon airport proprietors' actions that demonstrate *nondiscriminatory* behavior and that such actions are in compliance with all federal aviation requirements?

Answer. In accepting a grant, each airport operator is required to provide assurances to the FAA that the airport will be operated in accordance with a number of Federal requirements, including the requirement to make the airport available for public use on reasonable conditions and without unjust discrimination. The FAA enforces those assurances through its grant compliance program, with sanctions that include withholding of grant funds.

Question 11. There is a lawsuit before the Fifth Circuit Court of Appeals that questions the authority of the Department of Transportation to address discriminatory actions involving the regulation of routes. Can we expect that the Department will continue to aggressively pursue this litigation to ensure that decisions that pertain to interstate commerce are made at the federal level?

Answer. In the Fifth Circuit Court of Appeals litigation, Fort Worth, American Airlines, and the Dallas-Fort Worth International Airport Board are challenging the Department's December 1998 and April 1999 orders on Love Field service. They contend that the Department did not have the authority to issue its interpretation of the federal statutes applicable to Love Field service and that Dallas may bar airlines from operating Love Field services authorized by the Shelby Amendment or the Wright Amendment. The Department believes that its conclusions are correct. I understand that the Department will continue to defend its decision in that litigation and will enforce that decision against Dallas if the city violates its obligations under the federal statutes interpreted by that order.

Question 12. Do you agree with independent studies that show that competition, particularly from low fare carriers, increases passenger loads and results in significant consumer savings?

Answer. In 1996, the Department released a study, *The Low Cost Airline Service Revolution*, that showed that at that time low-fare competition was saving consumers \$6.3 billion annually. The effects of low-fare competition are tremendous. When a low-fare carrier enters a market for the first time traffic often doubles or triples, and average fares decline by 50 percent to two-thirds.

Low-fare airlines serve a demand sector that is greatly underserved when only the large network airlines serve a market. This means in the absence of low-fare service, literally millions of consumers who would like to travel by air are not able to do so. The presence of low-fare service promotes substantial economic growth to the benefit of local communities, travel related industries, and the aerospace industry.

Question 13. A recent draft FAA/DOT report on airport practices and competition emphasized how important new entrants are to competition and fares and notes that the lack of facilities keeps new entrants out of airports. Do you agree that DOT should take immediate steps to eliminate barriers to entry?

Answer. The Department issued its final report on this subject, "Airport Business Practices and Their Impact on Airline Competition," on October 21. The report sets out a number of steps that the DOT and the FAA can and will undertake today to improve airline competition. In particular, the DOT/FAA will:

Encourage airports to adopt a set of "best practices", as appropriate for the airport, as cited in FAA/DOT report "Airport Business Practices and Their Impact on Airline Competition."

Designate the Assistant Secretary of Aviation and International Affairs as DOT's "competition advocate" for promoting competitive access to airports.

Ensure that airports meet their legal obligation to provide reasonable access in support of competition and provide training and guidance to field offices and airports for assistance in meeting this goal.

Ensure that passenger facility charge applications for terminal projects include the required explanation for any competitive limitation at the airport before approving terminal development projects.

Provide AIP funding only for airport master plans that include a description of competitive effects resulting from the addition of gates or related facilities.

Implement a new database that will provide current information on various aspects of PFC projects, including the number of terminal gates, ticket counters, baggage carousels built or renovated, the net increase in those facilities and their re-

spective funding source (PFC or non-PFC), and the types of air carriers to which the facilities are or will be leased and the specific terms that apply.

Conduct a public outreach effort to explain how the PFC program can enhance airline competition.

Encourage airports to establish a "terminal use monitoring program" before any PFC applications are approved for terminal projects.

Require airport operators to (1) resolve new entrant access complaints within a reasonable period, and (2) clearly specify and publish what is required for a new entrant to acquire a gate and for an incumbent carrier to expand.

Question 14. Do you agree that noise at high-density airports is significantly lower than it's ever been and is likely to continue to decrease with the phase out of Stage 2 aircraft and the introduction of even quieter aircraft?

Answer. Yes, for the most part. The key factors that determine the direction and extent of the airport noise exposure change are the aircraft fleet mix and operational growth rate. Those airports that are capacity constrained and have a high proportion of Stage 2 aircraft should show the greatest reduction in both noise contour area and number of people impacted. Absent any new regulation, FAA would anticipate that, on average, the reduction in noise contours will level off after 2000. The reason for this is that as aviation continues to grow, the natural replacement of older aircraft by newer (quieter) airplanes compensates for the greater numbers of aircraft flying.

Question 15. Isn't it difficult for a carrier to compete in important East-West and North-South markets when it cannot operate at LaGuardia and Reagan National?

Answer. I believe that it is vital that air carriers have adequate access to all airports within their base of operations. Large cities in particular provide substantial traffic to support a carrier's operations. For example, AirTran's service between Atlanta and New York is an important source of feed for its operations beyond Atlanta.

And it is also important for a carrier to be able to meet a traveler's needs, particularly business travelers' needs, for service to important business centers such as New York and Washington. LaGuardia and Reagan National are the airports preferred by business travelers in the New York City and Washington metropolitan areas. Unfortunately, entry in some highly constrained airports is difficult. This problem is felt most acutely by the smaller, new entrant carriers, although Southwest has operated successfully without serving slot-controlled airports.

Question 16. The Transportation Research Board's report entitled "*Entry and Competition in the U.S. Airline Industry: Issues and Opportunities*" calls on the federal government to take actions to increase domestic airline competition. In particular, it notes that slots and perimeter rules make it extremely difficult for new entrant and low fare carriers to get into important airports. Do you agree with the TRB report that slots and perimeter rules should be modified in order to open important markets to new entrant and low fare carriers? If not, please explain in detail why not?

Answer. We agree with the TRB report that the High Density "slots" Rule has outlived its usefulness and has become an impediment to competition, especially for new entrants. For this reason, Secretary Slater proposed legislation to terminate the slots rule by 2004 at New York LaGuardia and Kennedy Airports and Chicago O'Hare, with earlier elimination of the slot restrictions at those cities for the new generation of very quiet regional jets.

As you know, in recent years the Department has used its slot exemption authority to allow low-fare airlines access to these three slot constrained airports, most recently granting JetBlue 75 slot exemptions at JFK to be phased in over a 3-year period. Regarding the TRB's recommendation regarding the perimeter rules, we noted that any modification to the rules should be addressed by Congress.

Question 17. Can you explain why more slots have been given to foreign carriers at high density airports than to new entrants? How many permanent slots at LaGuardia and National have been given to new entrants in the last five years?

Answer. U.S. and foreign air carriers can gain access to the High Density Rule (HDR) airports in three ways: (1) the allocation of international slots (seasonally) by the FAA; (2) the open market pursuant to the "buy/sell rule"; and (3) slot exemptions granted by the Secretary of Transportation.

FAA regulations provide that if an international slot is not available to accommodate an international request from a foreign air carrier that has the right to serve O'Hare International Airport, a domestic slot will be withdrawn from a domestic carrier for allocation. Due to a statutory cap on the number of slots that may be withdrawn from domestic carriers and allocated for international requests, the U.S.

continues to provide access to O'Hare through the grant of exemptions by the Secretary. In return, U.S. carriers have received market access to foreign markets that would otherwise be unavailable.

In 1994, Congress gave the Secretary the authority to grant exemptions for certain operations at LaGuardia, JFK, and O'Hare airports. Since that time, 30 permanent slot exemptions have been granted to new entrant carriers at LaGuardia Airport. The Secretary has no statutory authority to grant slot exemptions that would increase the total number of operations at Reagan National Airport.

