

**NOMINATIONS OF MR. DAVID McQUEEN LANEY
TO BE A MEMBER OF THE REFORM BOARD
(AMTRAK) AND MR. ROGER P. NOBER TO BE
COMMISSIONER OF THE SURFACE
TRANSPORTATION BOARD**

HEARING

BEFORE THE

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

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 5, 2002

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COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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C O N T E N T S

Hearing held on September 5, 2002	Page 1
Statement of Senator Breaux	1
Statement of Senator Dorgan	4
Statement of Senator Hutchison	3
Statement of Senator Wyden	6

WITNESSES

Baucus, Hon. Max, U.S. Senator from Montana	2
Nober, Roger P., Nominee to be Commissioner of the Surface Transportation Board	8
Prepared statement	9
Biographical information	10
Laney, David M., Nominee to be a Member of the Reform Board (Amtrak)	16
Prepared statement	17
Biographical information	17
Petri, Hon. Tom, U.S. Representative from Wisconsin	3
Warner, John W., U.S. Senator from Virginia	2

APPENDIX

Burns, Hon. Conrad, U.S. Senator from Montana, prepared statement	31
Response to Written Questions Submitted by Hon. Ernest F. Hollings to: David McQueen Laney	34
Response to Written Questions Submitted by Hon. John McCain to: David McQueen Laney	32
Roger P. Nober	34
Response to Written Questions Submitted by Hon. Conrad Burns to: Roger P. Nober	36

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LANEY TO BE A MEMBER OF THE REFORM
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THURSDAY, SEPTEMBER 5, 2002

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

The Committee met, pursuant to notice, at 2:30 p.m. in room SR-253, Russell Senate Office Building, Hon. John B. Breaux, presiding.

**OPENING STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

The CHAIRMAN. The hearing will come to order.

This afternoon, the Commerce Committee will hear from two nominees to become board members of the Surface Transportation Board, as well as the Amtrak Reform Board.

I will ask the candidates to please take their seats at the witness table, in which case we will do both of them consecutively.

I am very pleased to welcome and also recommend Mr. Roger Nober and Mr. David Laney to our Committee. I think the two candidates present good credentials in transportation, law, education and politics. As a veteran of the House Transportation and Infrastructure Committee, Mr. Nober's knowledge and background will serve him well as he moves through the confirmation process and into his new role as a Surface Transportation Board member. As former Chair of the Texas Transportation Commission, Mr. Laney is up to the task of serving on the Amtrak Reform Board as a member.

We do not want to in any way downplay the host of challenges awaiting both of our nominees to these respective positions. We will talk about some of our concerns in a moment about both of these areas, both surface transportation and Amtrak, but I note that we have a number of our colleagues who are with us this afternoon to make comments about our nominees, and I am delighted to recognize them.

One is the Chairman of the Finance Committee, my Chairman, so I will recognize him first, because you are Chairman of my Committee and your name starts with a "B", Max Baucus. Max, welcome.

**STATEMENT OF HON. MAX BAUCUS,
U.S. SENATOR FROM MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. Thank you. We are in strong support of the nominee. Mr. Chairman, I am honored to be here today to support someone for whom I have a tremendous respect. I have worked closely with the nominee for many, many years, particularly when he was over working for Bud Schuster, and I have to tell you, I have the highest regard for him.

Last week, I sent a letter to the Committee urging the Committee to confirm Roger Nober as a member of the Surface Transportation Board, and I am very honored to be here with my colleague, who has a very deep interest in surface transportation issues, and I am just thrilled, frankly, that he will be named Chairman of that Commission by the President.

Now, why am I so pleased? Roger is from Massachusetts. I am from Montana. Roger is Republican. I am a Democrat. But in the transportation field, there is an old saying that there are no Republican bridges, there are no Democratic roads, or vice versa, and I think Roger is really proof of that. I work seamlessly with Roger's boss, as I mentioned, Bud Schuster. Roger had a great working relationship, it could not have been better, in working with my office and my staff along with Senator Warner and Congressman Tom Petri and others who are interested in surface transportation issues. It is just first class.

He has been a kindred spirit and is an outspoken defender of the Highway Trust Fund and a proponent of the importance of transportation in general. I might say, I am particularly interested because of our unique problems in Montana. We have a transportation situation that is similar to many other problems of many other states, and that is with respect to our grain growers and shippers who are having a tough time making ends meet and working out good deals with the railroads to get their products to market. Senator Burns, my colleague and a Member of this Committee, and I introduced a bill to try to deal with these problems. I know Roger is fairly sympathetic, and so I will not take any more of the Committee's time.

I commend the Committee to act very quickly and forthrightly on the nomination. I commend the President for his well-thought-out selection and, Mr. Chairman, it is with the highest regard that I support, along with my colleagues, and introduce to this Committee Roger Nober, because he is, I think, going to be a great credit, frankly, to this Nation.

The CHAIRMAN. Thank you very much, Senator Baucus and, of course, I thank our colleagues, who would be excused if they so desire, after they make their comments.

Next on Mr. Nober's behalf, Senator Warner.

**STATEMENT OF HON. JOHN W. WARNER,
U.S. SENATOR FROM VIRGINIA**

Senator WARNER. I thank you, Mr. Chairman and Members of the Committee. That was a beautiful introduction, given by my long-time friend and fellow colleague in the world of transportation and other things, Max Baucus. Out of deference to you, I am not

going to read my prepared statement, because I could not do any better, or make it any more heartfelt.

This is an incredible individual here, because I at that time was Chairman of this Subcommittee on our Committee, and Senator Baucus, Senator Chafee and I, the three of us worked as a team with your former Chairman, and you, my good friend, and we put together one of the most historic pieces of legislation that I have been privileged to work on in my 24 years in the Senate. That was TEA-21, and Roger, you did a wonderful job. I think at this point maybe we ought to ask Roger to introduce his lovely family, who are right behind him.

The CHAIRMAN. We will give him a chance just as soon as we hear from all of our colleagues. Then we will have him introduce his family. Thank you very much, Senator Warner.

Senator WARNER. Thank you very much.

The CHAIRMAN. Our friend and colleague from the other side, Tom Petri. Congressman.

**STATEMENT OF HON. TOM PETRI,
U.S. REPRESENTATIVE FROM WISCONSIN**

Mr. PETRI. Thank you. I would like to, on behalf of my colleagues, certainly in my own role as Chairman of the House Surface Transportation Subcommittee, support the candidacy of Roger Nober, who was our Subcommittee General Counsel, and then the Full Committee General Counsel, who has a distinguished academic and professional career. He is an outstanding family man and is a very bright individual with tremendous judgment. I think our country is fortunate to have a person of his caliber who is willing to serve as a member of the Board to which he is nominated, and so I would urge his thoughtful consideration.

The CHAIRMAN. You all trained him well over there.

Mr. PETRI. Yes.

The CHAIRMAN. Thank you again, and our colleagues, if they have other things they need to attend to, they certainly would be excused.

To introduce and present Mr. David Laney to be a member of the Amtrak Reform Board, our colleague on this Committee and from Texas, Senator Kay Bailey Hutchison.

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

Senator HUTCHISON. Thank you, Mr. Chairman. I appreciate your holding this hearing because I would like to see David Laney get through the Senate before the recess. We all know that Amtrak is facing many crises. It seems like every week we wake up to a new one, and I cannot think of anyone more qualified to sit on the Amtrak Board than David Laney.

David graduated from Stanford University and received his law degree from SMU, Southern Methodist University. In Dallas, he has been a managing partner of Jenkins and Gilchrist, a very prestigious national law firm, and for 12 years he also served as a gubernatorial appointee in Texas. He was appointed to the Texas Finance Commission and later to the Texas Transportation Commission.

As Chairman of the Texas Transportation Commission, he functioned basically as the CEO of the Texas Department of Transportation. That is a major state agency in Texas, with 14,000 employees and a \$5 billion annual budget. As you might know, coming from Louisiana, we have great highways in Texas and we have more of them than any other state in America, so this really has given David Laney a lot of experience in managing a big agency. I cannot think of an agency that needs management more than Amtrak.

Now, that is not to say he is going to replace the CEO, but certainly the CEO needs a lot of help from the Board and from experienced business people. I am a supporter of Amtrak and I have worked with Members of this Committee to support Amtrak, but we cannot keep putting Band-Aids on Amtrak. We need to recognize that Amtrak is a national passenger rail system that serves a vital function as one of our types of intermodal transportation. I hope that we will be able, through good people like David Gunn and like David Laney, to save Amtrak and put it on a course where it can succeed, grow, and attract the passengers that it would if it were on a solid financial footing. I think the important thing is looking for ways to assure solid financial footing in order to make it a strong national system.

You know, after 9/11, a lot of people took Amtrak, and they were looking for alternative modes of transportation to air. I think now that almost a year has passed, we know that rail should be a permanent part of our intermodal transportation system in America, and I cannot think of anyone more qualified to be helpful in that regard than David Laney. So I recommend him to you, and I hope that you can swiftly confirm him.

The CHAIRMAN. Thank you very much, Senator Hutchison, for your participation and assistance in these very important areas.

Before we hear from our two nominees and give them a chance to make an opening statement and introduce their families or associates that are with them, I would like to recognize any of our Committee Members for any comments they may have.

Senator Dorgan.

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

Senator DORGAN. Mr. Chairman, thank you very much. Let me first say that I intend to support the nomination of Mr. Laney and Mr. Nober. I think they are good candidates. I want them to do well. I am going to be pleased to vote for their confirmation on the floor of the U.S. Senate.

I want to say one other thing, just as a prelude. I would not put a hold on their nominations and will not do that. I believe that these positions are important. We need these people confirmed. We have, since last September, had an opening on the Democratic seat on the Federal Communications Commission, the FCC. There was a name advanced for that last November. That person is not yet confirmed, and I think it is an outrage. I say to those who hold these things up that we need that rural voice on the Federal Communications Commission, and we need it now, but I am not going to hold up other nominations because of it. I think it is unfair and

would not do that. But I say to my colleagues who do hold up these nominations, we need that person on the FCC right now. Jonathan Adelstein has been nominated. His nomination is before the Senate. This thing has been open a year. It is an outrage and a shame. Mr. Chairman, I hope you will agree with me that—and this is not anything we have been involved in—we need to find our colleagues on the Senate who are holding these up, and say to them that we are not going to hold your nominations up; and we do not expect you to hold ours up.

Now, having said all that, Mr. Laney, the Amtrak issue is a very important issue to me and to many Members of the U.S. Senate, and I am a strong believer in having a national rail passenger system. I want to be working with all the folks who are interested in that. The two of you would be on the board, as I understand it, so I am pleased to support your nomination.

Mr. Nober, I want to make a comment to you, a couple of comments, because it is therapeutic for me, and I think it is important for you. Linda Morgan is the former Chairman of the Surface Transportation Board. You were one of the people instrumental in actually abolishing the ICC, an agency that I said was dead from the neck up for at least a decade, or perhaps more, in the creation of the Surface Transportation Board, which you now aspire to lead. Linda Morgan, I think I indicated this to her, the one action they took that symbolically and also substantively was very important, and took some guts was to establish a moratorium on mergers. They used some authority that some people question to do that, but we have a massive problem in rail transportation in a state like North Dakota.

You and I had a long visit about this yesterday, but we have testimony from people who tell us about what is happening with rail rates, it is an outrage, and we need help from the Surface Transportation Board. I am going to vote for you. You have a great background. You have a reputation of working in a bipartisan way to solve problems. If you do not have authority to solve problems, I want you to come to us and tell us what authority you need and let us work with you to get you that authority.

It is not fair for farmers in North Dakota or grain elevators in North Dakota to pay \$2,400 to ship a carload of wheat that the same shippers over in Minneapolis will pay \$1,000 to ship for the same distance from Minneapolis to Chicago versus Bismarck-Minneapolis. That is not fair. That is price fixing, and \$100 million is taken out of the hides of my constituents by railroads that are fixing prices. That is according to our own Public Service Commission. That is not me, and I could go on and on. I went on and on with you yesterday. This is not your fault, but it is your charge to help us fix it, and I hope you aspire to this job to help us solve some problems.

Railroads are fine. I like the railroads, I just do not like their pricing strategy. I do not think this notion of having free and fair and open competition, this system of capitalism of ours, is working. We do not have competition in most areas of North Dakota with respect to railroads, we have a monopoly. They say, "Here is our price and here is where we will stop. If you want to get on, get on

at that point and put your products on. If you do not like it, tough luck, find some other avenue of transportation."

I am not willing, and neither are my colleagues, Senator Rockefeller and others, to sit idly by and say that is all right. It is not all right as far as I am concerned. It is not all right for our farmers, our Main Street business people, or our country grain elevators.

Having said all that—and you need to hear that, because you will hear a lot from myself and others on this Subcommittee and Full Committee about it—I will be happy to support your nomination, and I expect that is your family behind you. I cannot stay for the entire proceeding today because of another commitment, but are those your two sons?

Mr. NOBER. Yes, sir, and my wife, Jane.

Senator DORGAN. I know the Chairman will ask you to introduce them more formally, but it is nice to see your family with you as well. Thank you very much, and Mr. Laney, thank you.

The CHAIRMAN. Thank you.

Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you, Senator Breaux. I appreciate your scheduling this in a timely way, and just a few comments for each of our nominees, because I, too, am only going to be able to be here briefly.

Let me also say, I have only heard positive things about both of you individuals, and certainly it is my intent to support both of you, but let me just share briefly with you several concerns I have.

Mr. Laney, last April I released a General Accounting Office report showing that Amtrak's process for making route decisions is fundamentally flawed. I hope that you are familiar with the report, but I think what the *New York Times* said in summing it up is pretty clear. They said, and I will quote here: "Amtrak set out to make major changes in its trains without knowing what the changes would cost or how much business they would generate."

The General Accounting Office said not only did Amtrak make bad decisions, they simply did not do their homework. They did not get the essential information that is necessary to make informed choices, so as a result, a variety of their strategies have been derailed. Only 3 of 15 route decisions proposed in Amtrak network growth strategies have been implemented, and already one of those three routes has been abandoned. As I am sure you are aware, this is not the first time the General Accounting Office has been extremely critical of the way Amtrak goes about finding these routes.

In 1997, the General Accounting Office found that when Amtrak cuts routes in an effort to save costs, it cut routes such as the Pioneer from Chicago to Portland that, in fact, had better financial performance than other routes that Amtrak maintained. You will hear me talk at some length about this when we have debates about Amtrak.

I am prepared to make these calls on the merits, and if we want to say to the General Accounting Office, "You make calculated decisions with respect to the objective criteria for making route deci-

sions." I am for it; we will take the consequences in Oregon and everywhere else. What I am not willing to accept is the politicizing of the way these routes are made, and in the last 5 years Amtrak has basically jumped track enough times to make your head spin.

First, they thought cutting routes would be their financial salvation. That is when they made the political choice that eliminated the Pioneer route. Then, 3 years later, they decided that expanding routes would make them self-sufficient. Now, they are back to cutting routes once again. It seems to me that what is especially damaging here is that there is no predictability, certainty, or consistency. So I am anxious to hear particularly your views on what you will do to get Amtrak decisions on routes made on the merits. We can have a debate about how to do that, and whether it ought to be assigned to the General Accounting Office or whoever. But I am going to do everything in my power as a Member of this Committee to get these calls made on the merits, because I think to do otherwise just flouts any effort at rational transportation policy.

Mr. Nober, just a couple of comments. As you might gather, the wheat growers and the agricultural interests in our part of the world are very hard hit; it's been a very difficult year. They have concerns about rail-to-rail competition, how it is limiting service options and raising rates, or in some cases driving them off the rails altogether. I think what we would like to get today, and in the days ahead, is a sense of how you would balance the use of our national transportation infrastructure and the appropriate role of competition among railroads for the future.

You have got 19 short line railroads in our part of the world. Many short lines can physically interchange with both UP and BNSF, and they are prevented from determining which routing decisions are best for their customers by either economic or contractual conditions imposed by the companies, depending upon which of the Class I carriers originally sold off the branch line to the independent short lines. So in light of all the consolidation and the fact that short lines are the most immediate means by which some of the competition is brought to bear, I think we are going to be interested in knowing your views regarding the appropriateness of Class I carriers determining what route the short line carrier can offer to the customers through their methods.

But again, I have heard only positive things about both of you. I am looking forward to supporting you in the Committee and on the floor, and suffice it to say, the jobs in which you are nominated to serve are not for the faint-hearted. You are going to be busy people, and these are important issues.

I thank you, Mr. Chairman, for the chance to make some remarks.

The CHAIRMAN. Thank you, Senator Wyden. You have heard from us. It is now time for us to hear from you.

Mr. Nober, we would like to go with you first. Your family is waiting out there very patiently with two youngsters who have been behaving quite well, and having grandchildren about that age I know how difficult that is. We welcome you, and we will take your testimony first.

**STATEMENT OF ROGER P. NOBER, NOMINEE TO BE
COMMISSIONER OF THE SURFACE TRANSPORTATION BOARD**

Mr. NOBER. Thank you, Senator Breaux, Members of the Committee. I very much appreciate your taking the time to hold this hearing today and hear from me. I would like to start by introducing my family, who seem to be sitting very well, which is always a struggle. My wife Jane is there. She is in her ninth month of pregnancy with our third child, and our other two children are here, William and Benjamin. William has the white shirt, and Benjamin the blue shirt, and my parents Linda and Harris Nober are also here. Thank you very much for holding this hearing today, early in September, because it allowed my family to be here. We were nervous as to when my wife might actually give birth. She is scheduled to give birth in the next 2 weeks.

The CHAIRMAN. If she has to leave before we finish, please feel free to let her go.

[Laughter.]

Mr. NOBER. It will be a trick to get that to happen.

I am pleased to appear before this Committee today as President Bush's nominee to the Surface Transportation Board. I would like to make a very brief oral statement, and ask that my full remarks be included in the record.

I would like to take a moment to thank Senators Warner and Baucus and Congressman Petri for the kind introductions, and for taking time out of their busy schedules to come and attend this hearing. I would also like to thank Transportation Secretary Mineta and Deputy Secretary Jackson for their support. They unfortunately could not be here today.

I appear before this Committee today as President Bush's nominee to the Surface Transportation Board. The President has indicated that if I am confirmed he will designate me as Chairman. The STB is an independent agency, and the President has nominated me to implement the portion of the national transportation policy under his jurisdiction effectively, impartially, and fairly.

I am particularly pleased to be nominated to this position since, as a staff member in the House, I had the privilege to work on the legislation that created this agency back in 1995. Since then, I have continued to work closely with the Board, the Members of the House and Senate, and the Board's stakeholders on the matters that it oversees. If confirmed, I will be able to continue my many years of public service in transportation policy.

I was a staff member on the House Transportation and Infrastructure Committee for 8 years, ultimately serving as Chief Counsel. Since May of last year, I have been counselor to Deputy Secretary Jackson at DOT, where I advised him and Secretary Mineta. In performing my duties, I have always given the full consideration to the input of all parties. I have worked hard to reach consensus wherever possible in a fair and bipartisan manner, and if confirmed I would continue to do so as a member of the Board.

The STB is an independent adjudicatory body and, if confirmed, you can be sure that I will give all the issues that come before it full, fair, and impartial consideration. I would not take office with any preconceived notions but, rather, would examine each issue on its merits and strive to make the best decision possible consistent

with the facts, the law, and precedent. If I am confirmed, those who bring matters before the Board may not agree with every position that I take, but can be sure that I will give all matters thoughtful, fair, impartial and full consideration.

If confirmed, I would work closely with Congress. I worked for this institution for many years, and have the utmost respect for the letter and spirit of the laws it passes. I believe it is important to be open and accessible to all Senators and Members of Congress and their staffs. Similarly, I believe it is important to be open and accessible to the agency's stakeholders and, if confirmed, I would have an open door policy to the extent permitted.

Finally, I would like to take a minute just to recognize the accomplishments of the current Chairman of the STB, Commissioner Linda Morgan. She has led the agency for the past 8 years, and her tenure has included some trying times for that organization. I hope that if I am confirmed and appointed Chairman, I will at least be partially as effective as she has been, and I look forward to the opportunity to serve with her and Commissioner Burks, both of whom were kind enough to be in attendance today.

In closing, I hope you give me the opportunity to serve the public as a member of the STB, and I thank you for your consideration and look forward to answering any questions you might have.

[The prepared statement of Mr. Nober follows:]

PREPARED STATEMENT OF ROGER P. NOBER, NOMINEE TO BE COMMISSIONER OF THE
SURFACE TRANSPORTATION BOARD

Thank you Chairman Breaux and Ranking Member Smith. I am pleased to appear before this Committee today as President Bush's nominee to the Surface Transportation Board (STB).

I want to thank Senators Warner and Baucus and Congressman Petri for their kind introductions. I have had the honor of working with them over the past 9 years and am deeply grateful to them for their kind words. I would also like to thank Transportation Secretary Mineta and Deputy Secretary Jackson. I have had the privilege of working for them over the past 15 months and I appreciate their support for my nomination.

I would also like to express my appreciation to the Committee for holding this hearing early in September. My wife Jane is pregnant with our third child and due to deliver later this month. She is in the audience today and easy to find. By scheduling this hearing today the Committee has made it possible for her, my children, William and Benjamin, and my parents Linda and Harris Nober to all be here.

I appear before this Committee today as President Bush's nominee to the STB. The President has indicated that if I am confirmed, he would designate me as Chairman of the STB. The STB is an independent agency, and the President expects that if confirmed, I will implement the portion of the national transportation policy under its jurisdiction effectively, impartially and fairly.

I am particularly pleased that the President has nominated me to serve as a member of the STB, since, as a staff member in the House, I had the privilege to work on the legislation that created it. As all of you know, the Interstate Commerce Commission Termination Act of 1995 eliminated the ICC and created the STB. I was the lead staff member of the House Committee on Transportation and Infrastructure with respect to trucking and pipeline issues on that bill. Since then, I have continued to work closely with the Members of the Board, the Members of this Committee and the Board's stakeholders on matters under its jurisdiction.

I am committed to public service, and if you confirm me as a Member of the STB, you will allow me to continue my many years of public service in transportation policy. I was a staff member for the House Committee on Transportation and Infrastructure for 8 years, ultimately serving as Chief Counsel of that Committee. Since May of 2001, I have served as Counselor to Deputy Secretary Michael Jackson at the Department of Transportation where I have advised him and Secretary Mineta, particularly on the broad range of policy issues facing the Department since the September 11 terrorist attacks. In these positions, I have been deeply involved in

transportation policy matters of all types. In performing my Congressional duties, I always gave full consideration to the input of all parties on issues and worked hard to reach consensus wherever possible in a fair, bi-partisan manner. If anything, my time in the Executive Branch has reinforced the importance of the vital transportation policy issues facing the STB and the need to work on them in a fair, bipartisan manner.

The STB is an independent, adjudicatory body, and its Members must be open minded, impartial and fair with respect to the decisions they make. If I am confirmed to be a Member of the STB, I will give all of the issues that come before it full, fair and impartial consideration. I would not take office with any preconceived notions about the outcome of any particular issue, but rather would examine each matter on its merits and strive to make the best decision possible consistent with the facts, the law and precedent. If I am confirmed, those who bring matters before the Board may be sure that I will give all matters thoughtful, fair, impartial and careful consideration.

Finally, I would like to make clear that if confirmed, I would continue to work closely with the Congress and all stakeholders in the agency. I worked for the Congress for many years, and have the utmost respect for the letter and the spirit of the laws passed by this institution. I recognize the need to work closely with the Members of the House and Senate, and if I am confirmed, all Senators can be sure that I will be open and accessible to them and their staffs.

Similarly, I believe it is important to be open and accessible to the agency's stakeholders, and if confirmed, I would have an open door policy to the extent permitted.

In closing, I hope I will have the opportunity to continue to serve the public as a Member of the STB. I thank you for your consideration and look forward to answering any questions you might have.

A. BIOGRAPHICAL INFORMATION

1. Name: Roger P. Nober.
2. Position to which nominated: Member, Surface Transportation Board.
3. Date of nomination: July 18, 2002.
4. Address: (Information not released to the public).
5. Date and place of birth: September 19, 1964, Syracuse, NY.
6. Marital status: Married, October 13, 1991 to Jane C. Nober.
7. Names and ages of children: William H. Nober, 6; Benjamin E. Nober, 3; Child due September, 2002.
8. Education: High School: Amherst Regional High School, Amherst, Massachusetts, Attended 9/79-6/82, Diploma awarded June, 1982; College: Haverford College, Haverford, PA, Attended 9/82-5/86, B.A. in Economics awarded May, 1986; Law School: Harvard Law School, Cambridge, MA, Attended 9/86-6/89, J.D. awarded June, 1989.
9. Employment record: 5/01-present: Counselor to the Deputy Secretary of Transportation, United States Department of Transportation, 400 Seventh Street, SW., Washington, DC. 20590; 7/93-5/01: Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC. 20515, Chief Counsel, 1/01-5/01, General Counsel, 1/97-12/00, Counsel, Subcommittee on Surface Transportation, 1/95-12/96; Minority Counsel, Subcommittee on Surface Transportation, 7/93-12/94 11/91-5/93, Skadden, Arps, Slate, Meagher & Flom 6/89-8/89, 4 Times Square; 6/88-8/88 New York, NY 10036, Associate, 11/91-5/93 Summer Associate, 6/88-8/88; 6/89-8/89 9/89-8/91, Law Clerk, Chambers of Judge David N. Edelstein (deceased), U.S. District Judge, United States District Court for the Southern District of New York, 1/89-5/89; Sophomore Tutor in Economics; 1/88-5/88 Harvard University Department of Economics, Cambridge, MA, 5/87-8/87, Dunnells, Duvall, Bennett & Porter (now dissolved), Washington, DC., Summer Associate.
10. Government experience: (beyond that in question 9). None.
11. Business relationships: None.
12. Memberships: Massachusetts Bar; New York Bar.
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. Contributing Author, Republican Platform, Transportation Section, 2000; Transportation Committee, Dole for President Campaign, 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: Note: *Federal Highways and Environmental Litigation: Toward a Theory of Public Choice and Administrative Reaction* 27 Harv. J. on Legis. 229 (1990).

16. Speeches: All speeches I have given in the past 5 years have been in my capacity as an official representing the Committee on Transportation and Infrastructure or the U.S. Department of Transportation. I have always spoken from notes, not from a prepared text.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? I believe I was selected by the President to be a Board Member of the Surface Transportation Board (STB) for several reasons: that the President was confident I would make honest and fair decisions in the matters that come before the agency; that I share the President's philosophy with respect to the matters that are expected to come before the STB; that the other Board Members, the Congress, the STB's stakeholders and the public would share his confidence in my ability to do so; and my experience in surface transportation matters, particularly those under the jurisdiction of the STB.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? I am qualified to be a Member of the STB because of my background as a lawyer in the private sector and my experience in all three branches of government.

Most pertinently, for the past 9 years I have been involved in setting and implementing surface transportation policy. My work during my 8 years of service on the House Transportation & Infrastructure Committee and the past year at the Department of Transportation has involved the STB and the matters that come before the agency. The STB was created by Congress on January 1, 1996 as part of the Interstate Commerce Commission Termination Act of 1995, which among its many provisions eliminated the ICC and created the STB as its successor agency. In 1995, I was the Counsel for the Subcommittee on Surface Transportation, and was the primary House staff person responsible for the motor carrier and pipeline portions of that bill. In working on that legislation, I gained an understanding of the STB's jurisdiction, statutory framework, mission and administrative structure, as well as perspective on Congress' intent in creating the agency. Since the passage of the legislation creating the STB, I have continued to work with stakeholders, the Congress and the STB on legal, policy and administrative matters within its jurisdiction.

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? My present employer is the United States Department of Transportation. While decisionally independent, the Surface Transportation Board is administratively housed within the U.S. Department of Transportation and the Board Members are employees of the U.S. Department of Transportation.

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. I have no such commitments.

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 have no such plans, commitments or agreements.

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. I have no such arrangements or dealings.

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. Please see the attached letter from the Designated Agency Ethics Officer of the STB.

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. I have no such business relationships, dealings or financial transactions.

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. In my positions with the Committee on Transportation and Infrastructure and at the Department of Transportation, I have been involved in the consideration of much of the transportation legislation that has been enacted since 1993.

My express duties have been to advance the views of the Ranking Republican Member, the Chairman or the President and Secretary with respect to such legislation.

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 see the attached letter from the Designated Agency Ethics Officer of the STB.

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? In 1989, I was a party along with four others in a civil action in small claims court in Cambridge, Massachusetts regarding a security deposit on rental property. At that time, small claims court in Massachusetts had a jurisdictional limit of \$1500. I was one of four renters of residential property who sublet the property to others during the summer of 1988. During the time that the property was occupied by the sublessors; water damage occurred to the kitchen floor. The Judge determined that while the sublessors had caused the damage, the security deposit had not been properly kept and thus I along with the four others ultimately paid the landlord for the damage.

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. In 1999, I was called by the Committee on Standards of Official Conduct of the U.S. House of Representatives to be a witness as part of its investigation into the activities of Congressman Bud Shuster. I was one of approximately 75 individuals, including several employees of the Committee on Transportation & Infrastructure, called before the Committee on Standards of Official Conduct. I was called because of my position as General Counsel to the Transportation and Infrastructure Committee, and the questions asked of me related to the Transportation and Infrastructure Committee's consideration of certain legislative matters. No questions were raised about me personally or any of my actions. The Ethics Committee issued its Investigative Report in the matter involving Congressman Shuster on October 4, 2000. That Report is available on the website of the Committee on Standards of Official Conduct of the U.S. House of Representatives, www.house.gov/ethics. I am not referred to in the Report.

E. RELATIONSHIP WITH COMMITTEE

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

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? I will do so to the best of my ability.

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.

As a former employee of the Congress who participated in drafting numerous bills, I believe that the executive branch has an obligation to follow both the letter and the spirit of the statutes passed by Congress when implementing and interpreting laws. If I am confirmed as a Member of the STB, I will to the best of my ability ensure that all regulations issued by the STB comply with both the letter and spirit of the laws passed by Congress. In cases where that intent is not clear, I would seek the guidance of the Congress.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The STB was created as the successor agency to the Interstate Commerce Commission and was established on January 1, 1996. It was created as part of the Interstate Commerce Commission Termination Act of 1995 (ICC Termination Act). Congress intended that the STB be a decisionally independent body that was administratively housed within the U.S. Department of Transportation.

The ICC Termination Act was one of a series of acts of Congress deregulating various segments of the surface transportation industry regulated by the ICC. These included deregulation of interstate trucking (1980, 1994 and 1995), intrastate trucking (1994), intercity busses (1982 and 1994) and railroads (1980 and 1995). As the modes within the jurisdiction of the ICC were deregulated, Congress began considering whether to continue the agency at all. In the ICC Termination Act, Congress reviewed each of the remaining functions of the ICC and determined that certain functions needed to be continued by a decisionally independent agency. Congress created the STB and vested it with these functions.

With respect to railroads, the STB's jurisdiction includes rate and service issues, mergers, line sales, revenue adequacy, line construction and abandonments, and certain labor matters pertaining to these rail matters. With respect to trucking, these include approval for certain collective activities including antitrust immunity, activities of the moving industry and movements by truck and over water to non-contiguous U.S. States and possessions, including Alaska, Hawaii and Puerto Rico. With respect to intercity busses, its jurisdiction includes structural, financial and operational matters. Finally, the STB also has jurisdiction over economic regulation of certain pipeline matters not covered by the Federal Energy Regulatory Commission.

The major operational objective facing the STB is to continue its tradition of independence and excellence in decisionmaking. As an agency that has risen from the termination of another, it has adapted to best serve its customers and achieve its mission of making independent, fact-based decisions grounded in precedent.

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 qualifies you for the position for which you have been nominated? My background as a lawyer who has worked in the private sector and all three branches of government has provided me with the substantive policy, political, administrative and management experience to qualify me for a position as a Member of the Surface Transportation Board.

I graduated from Harvard Law School, where I wrote and taught about transportation policy. My experience in the Judicial Branch occurred following law school, where I was a law clerk on a busy trial court, the United States District Court for the Southern District of New York. I worked on the full range of criminal and civil cases, including one of the largest civil cases in the country. Following my clerkship, I was associated with a large law firm headquartered in New York, where I was part of the litigation department and had experience with commercial disputes.

While at the Committee on Transportation and Infrastructure and at the Department of Transportation, I have focused on setting and implementing transportation policy and while at DOT, the management of transportation agencies. My duties at the Committee included responsibility for substantive policy expertise and developing legislation on all matters within the jurisdiction of the Committee, including railroad, motor carrier and pipeline matters. My duties entailed meeting with the agencies that administer the programs under the Committee's jurisdiction and stakeholders in those programs, as well as communicating with Members of the Committee, the House of Representatives and the Senate. I also worked closely with Members and staff of both parties.

Since joining DOT, I have worked extensively with the Secretary, the Deputy Secretary, and the White House, as well as the various operating agencies that com-

prise DOT in developing and implementing policy. I have learned about the management challenges in large organizations and the circumstances which govern the development and execution of policy and the management of agencies in the Executive Branch. I have also gained experience with respect to the Department's adjudicatory functions, a function often exercised by the STB.

2. Why do you wish to serve in the position for which you have been nominated? I wish to serve on the STB for many reasons. First, I would like the opportunity to serve the President as a Member of the Board and represent his general philosophy on the matters that will come before it. Second, I look forward to continuing to use my policy expertise in surface transportation matters. Third, I would like the opportunity to further work with the current Board Members, the expert staff at the STB and the stakeholders in the matters under the jurisdiction of the STB. And finally, since I was involved in the creation of the STB and the termination of the ICC, I would like the opportunity to serve on the Board and help it continue its high level of independence and professionalism.

3. What goals have you established for your first 2 years in this position, if confirmed? My major goal is to work with the existing Board Members to further the work done by them since the creation of the STB to establish and maintain its independence and excellence in decisionmaking.

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 will need to work to further develop my organizational management skills, and have been working here at DOT to become more involved in management, in addition to policy issues.

5. Who are the stakeholders in the work of this agency? The primary work of the Board relates to railroads, and so the stakeholders in the rail area include large, medium and small (Class 1, 2 and 3) freight railroads, railroad workers, rail shippers, operators of passenger railroads and the communities dependent upon railroads. With respect to its motor carrier and pipeline functions, the stakeholders include trucking companies, household goods carriers, shippers using motor carriers, operators of bus lines, shippers, and operators of solid material pipelines.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 5? As a member of an adjudicatory body, a Board Member must remain independent from the influence of any particular stakeholder. However, I believe it is important to be accessible to stakeholders, and I would make being open and accessible to all parts of the stakeholder community a high priority.

7. 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? Since the STB is administratively housed within DOT and its budget functions are performed there, I would work with DOT's Assistant Secretary for Budget and Chief Financial Officer to ensure that the STB's management and accounting controls meet the standards set by the Congress in the Government Performance and Review Act (GPRA) and by the President's Management Agenda.

(b) What experience do you have in managing a large organization? For the past year, I have been the Counselor to the Deputy Secretary of Transportation, who is the Chief Operating Officer of DOT. In this position, I have worked with him and on his behalf on numerous management matters at the Department.

8. 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. Government agencies, like all large organizations, should set identifiable performance goals so that the members of the agency, the rest of the Administration, the Congress, its customers and the public can measure the organization's performance. Perhaps most importantly, GPRA's requirements help ensure that an agency's annual budget supports its identified performance goals, thereby helping ensure that resources are devoted to the agency's most important missions. Properly constructed, performance goals help focus the organization on its core mission, as reflected by those goals. Regular reporting on goals and the progress made in achieving them helps keeps the organization focused on its priorities.

(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, in its oversight capacity, must measure whether government organizations have achieved

their goals. Congress has a range of options for improving the performance of agencies that consistently fail to meet their goals, including closer oversight over their budgets—such as erecting strict controls over spending authority or earmarking funds for specific purposes, passing reauthorization legislation to restructure the organization or eliminate obstacles to achieving performance goals, or calling for management changes and reforms. However, identifying measurable performance metrics can be difficult for government agencies, since the mission of such agencies cannot always be measured in the same manner as private sector companies. Thus measuring performance only on whether a set of performance metrics have been achieved may not fully reveal whether the organization is performing adequately.

The STB itself is an example of the kinds of action Congress may take when it believes changes are needed in an agency. The STB is a new organization that was created when its predecessor agency, the ICC, was eliminated. In the course of the transition from the ICC to the STB, many of its programs and responsibilities were eliminated and others streamlined and reformed. Its staff was significantly downsized, and some functions previously performed by the ICC were transferred to DOT or privatized.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed? I would look to ensure that the agency continues to resolve the matters before it in a fair and expeditious manner, that its rulemakings continue to be completed in a timely manner, and that the organization continues to perform in a professional manner.

9. 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 that qualified, experienced employees should be trusted to perform their duties in a highly professional manner. I try to give latitude to employees to use their best professional judgment to perform their duties. No employee has ever brought any complaints against me.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. As a former employee of Congress, I have a long and close working relationship with Congress and Congressional Committees.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. As an administrative part of DOT, the STB has no Inspector General of its own and instead is overseen by the Inspector General of DOT. The proper relationship between the head of a part of DOT and the Department's Inspector General is to work closely to monitor agency performance and evaluate its programs and personnel for waste, fraud or abuse.

12. 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. As a former employee of the Congress who participated in drafting numerous bills, I feel strongly that the executive branch has an obligation to follow both the letter and the spirit of the statutes passed by Congress when implementing, and interpreting laws. If I am confirmed as a Member of the STB, that I will ensure to the best of my ability that all regulations issued by the STB comply with both the letter and spirit of the laws passed by Congress. In cases where that intent is not clear, I would seek the guidance of the Congress.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. In my personal view, with respect to matters under the jurisdiction of the STB, the most, important matter for Congress to take up is the reauthorization of the STB. Its predecessor agency, the ICC, had a permanent authorization, which did not facilitate a regular review of its programs and laws. As a result, pressure built to make major changes and the agency was ultimately eliminated. One reform included in the ICC Termination Act was to set the authorization for the STB for a term of 3 years, to ensure that its programs and laws would receive regular oversight. The STB's authorization expired at the end of fiscal year 1998, and it has continued unauthorized since then.

14. 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 timeframe for their implementation. Yes. I would work with DOT to submit annual budgets that reflect the need and workload of the STB.

The CHAIRMAN. Thank you, Mr. Nober, very much.
Next, Mr. Laney, welcome.

**STATEMENT OF DAVID M. LANEY, NOMINEE TO BE A MEMBER
OF THE REFORM BOARD (AMTRAK)**

Mr. LANEY. Thank you, Senator. Let me begin by introducing my wife, who has apparently been told not to sit in the first row, Eleanor Laney. She is four rows back in a probably more protected position with respect to Amtrak than I am.

It is a pleasure to be here, Senator Breaux, and I appreciate the opportunity to appear, and my comments will be very brief. It is an honor to appear before you as President Bush's nominee to the Amtrak Reform Board. Although I think at this point, after visiting with a number of transportation colleagues throughout the industry, many of them have concluded that I must have committed some punishable offense, but I do not think that I would be the one sitting here had you already ironed out all the challenges now facing Amtrak. I am delighted to step into the position that I am currently considered for, if in fact, I am confirmed.

As you know, the challenges of Amtrak have mounted steadily during the last year, and even since my nomination in the spring. Those challenges are only partially passenger transportation challenges such as performance, reliability, levels of service, perceived safety issues, and competitiveness with other modes. To a much greater extent, those challenges are those endemic to virtually any faltering business, issues relating to organization, management, operations, financial management and performance, funding, and information management, internally and externally.

Except in this context, those challenges are aggravated, as all of you well know, by a number of contractual and statutory constraints that limit Amtrak's management maneuverability considerably. Despite my transportation expertise, it is those challenges that are most likely the reasons for my nomination, and the principal ingredients of my interest in serving as a member of the Amtrak Reform Board should this Committee approve and the Senate confirm my nomination.

I should add with particular emphasis, however, that my perceptions and understanding of Amtrak, its operations, and its challenges are not the product of any information provided to me by Amtrak itself. To date, I have received no information from Amtrak.

Aside from the challenges facing Amtrak, I am also here because I believe that there is an important role for intercity passenger rail within our overall transportation policy framework. I believe that it will become increasingly valuable to mobility and economic opportunity throughout our country in light of projected population growth and inevitable declines in highway and airport capacity and levels of service.

Handled properly, your challenge, that of the Administration, and that of the Amtrak Reform Board, is to set the foundation from which we might begin to shape the pattern of redevelopment of intercity passenger rail in this country for decades. It is difficult to project with any certainty, at this point, the role that Amtrak might ultimately play in a staged revitalization of intercity passenger rail, but it has to be the point from which we begin. I look forward to your questions, and I would add again, though, that I have very little first-hand knowledge of Amtrak operations or Am-

trak Board activities, other than what has appeared or is available through newspapers and public sources.

I want to thank Senator Hutchison for her recommendation and her support as well as the current Administration, and particularly President Bush. Should the Committee approve and the Senate confirm my nomination, I look forward to serving and working with you closely and other Members of the Committee, and I will be happy now to answer any questions you might have.

[The prepared statement of Mr. Laney follows:]

PREPARED STATEMENT OF DAVID M. LANEY, NOMINEE TO BE A MEMBER OF THE REFORM BOARD (AMTRAK)

Good afternoon, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear today, and my comments will be brief.

It is an honor to appear before you as President Bush's nominee to the Amtrak Reform Board. Although I am convinced that some of my colleagues throughout the transportation industry have no doubt concluded that I must have committed a punishable offense. On the contrary, had you and the Amtrak Board ironed away all the challenges now facing Amtrak, I doubt I would be the one sitting here before you today.

As you know, the challenges of Amtrak have mounted steadily during the last year, and even since my nomination in the spring. Those challenges are only partially passenger transportation challenges, such as: performance reliability; levels of service; perceived safety; competitiveness with other modes.

To a much greater extent, the challenges are those endemic to virtually any faltering business: issues relating to: organization; management; operations; financial management and performance; funding; information management, internally and externally.

Except in this context, those challenges are aggravated, as you well know, by a number of contractual and statutory constraints that limit Amtrak's management maneuverability.

Despite my transportation experience, it is those challenges that are most likely the reasons for my nomination and principal ingredients of my interest in serving as a member of the Amtrak Reform Board, should this Committee approve and the Senate confirm my nomination.

I should add, with particular emphasis, however, that my perceptions and understanding of Amtrak, its operations and its challenges are not the product of any information provided to me by Amtrak itself. To date, I have received no information from Amtrak.

Aside from the challenges facing Amtrak, I am also here because I believe that there is an important role for inter-city passenger rail within our overall transportation policy framework. I believe that it will become increasingly valuable to mobility and economic opportunity throughout the United States in light of projected population growth and inevitable declines in highway and airport capacity and levels of service. Handled properly, your challenge, that of the administration, and that of the Amtrak Reform Board, is to set the foundation from which we might begin to shape the pattern of redevelopment of inter-city passenger rail in this country for decades. It is difficult to project with any certainty at this point the role that Amtrak might ultimately play in a staged revitalization of inter-city passenger rail, but it has to be the point from which we begin.

I look forward to your questions, but please understand again that I have very little first-hand knowledge of Amtrak operations or Amtrak Board activities other than what has been available through newspapers.

Thank you for the opportunity to make this statement. Should the Committee approve and the Senate confirm my nomination, Mr. Chairman, I look forward to serving, and to working with you and other members of the Committee. And I will be happy now to answer any questions you might have.

A. BIOGRAPHICAL INFORMATION

1. Name: David M. Laney.
2. Position to which nominated: Amtrak Reform Board, Member.
3. Date of Nomination: April 30, 2002.
4. Address: Office: 2445 Ross Avenue, Suite 3200 Dallas, Texas 75202.

5. Date and place of birth: January 19, 1949, Dallas, Texas.
6. Marital status: Married. Eleanor Watkins Laney.
7. Names and ages of children: Margaret Preston Laney, 19; Virginia McQueen Laney, 16.
8. Education: St. Marks School 1956–1967, high school diploma; Stanford University 1967–1971, A.B., Honors (1971); Brown University 1973–1974; SMU Law School 1974–1977, J.D. (1977).
9. Employment record: Texas Transportation Commission, Austin, Texas 1995–2001, Chairman, Member; Jenkins & Gilchrist, Dallas, Texas 1977–Present, Lawyer; Strasburger & Price, Dallas, Texas 1976 (Summer), Law Clerk; Jenkins & Gilchrist, Dallas, Texas 1976 (Summer), Law Clerk; Judge Robert Porter, District Judge, Northern District, Dallas, Texas 1975 (Summer), Law Clerk; Judge Charles E. Long, State District Judge 134th District Court, Dallas, Texas 1974 (summer), Law Clerk; Volunteers in Asia, Staff—Palo Alto, California, Taichung, Taiwan 1971–1973; Chung Hsing National University, Assistant Professor (Literature), Taichung, Taiwan 1972–1973; YMCA, Language Instructor, Taichung Taiwan 1971–1972.
10. Government experience: Finance Commission of Texas 1989–1995; Texas Transportation Commission 1995–2001.
11. Business relationships: (Current Positions) Jenkins & Gilchrist, Shareholder; Stanford University, Trustee; Chair, Audit Committee; Laney Investments, Ltd., General Partner (family investments); L Management, LLC, Manager (general partner, Laney Investments, Ltd.); Moroney Farm, Ltd., General Partner (family investment); Southwest Medical Foundation, Trustee; Dallas Chamber of Commerce, Chairman, State Affairs Committee; SMU Law School Advisory Board, Member.
12. Memberships: (Current Memberships; no offices held); American Bar Association; Texas Bar Association; Dallas Bar Association; Texas Bar Foundation; Dallas Bar Foundation; Crescent Club; Dallas Country Club; Dallas Assembly; Stanford Alumni Association; Dallas Committee on Foreign Relations.
13. Political affiliations and activities: (a) None. (b) None. (c) See Schedule A–13, attached.
14. Honors and awards: None.
15. Published writings: None.
16. Speeches: None (relevant to the position for which I have been nominated).
17. Selection: (a) Although the reasons for my nomination by the President have not been expressly stated to me, I assume that the combination of my legal, management, leadership, government, and transportation experience, together with the confidence the President developed in my abilities during my performance as Texas Commissioner of Transportation (while he was Governor of Texas), contribute in combination to my nomination. (b) The experience and abilities referred to in 17(a) above qualify me for appointment.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business association or business organizations if you are confirmed by the Senate? To the extent necessary to eliminate any conflict of interest, I will discontinue business relationships. I am not currently aware of any need to do so.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your services with the government? If so, explain. I intend to continue my current position with Jenkins & Gilchrist; the position for which I have been nominated is part-time and non-compensatory.
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. Salaried shareholder in the law firm of Jenkins & Gilchrist. Retirement plan (deferred compensation and 401K Plan) benefits available upon my retirement.
2. Indicate any investments, obligations, liabilities, or other relationships with 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 Texas Commissioner of Transportation, I visited with a number of Members of Congress and testified before House and Senate Committees in connection with the reauthorization of ISTEA.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. I am not aware of any actual or potential conflicts that currently exist. In the event I encounter any conflict of interest, I will promptly disclose it to the Amtrak office of general counsel, and with their guidance promptly resolve the conflict to their satisfaction. The nature of my response will depend on the nature of the conflict and general counsel guidance.

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 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. Our law firm is occasionally involved as a party in interest in civil litigation. I was Chairman and President of the law firm from 1990 until early 2002, and in that capacity, or in the capacity as a shareholder in the firm, I have sometimes been named as a party in interest in litigation, along with the firm and other officers or shareholders.

The Texas Department of Transportation and the Texas Transportation Commission are regularly named as parties in interest in litigation. In my capacity as Chairman of the Texas Transportation Commission, I was routinely named as a party in interest in litigation brought against TxDOT.

I was the principal shareholder and Chairman of the Board of a company named Just Brakes Corporation and numerous operating subsidiaries in the early 1990s. The company and its affiliates were involved in the auto repair business. That company and certain of its affiliates were occasionally involved as parties in interest in civil litigation. The companies were ultimately liquidated and sold through an insolvency proceeding. I was named in litigation brought against the law firm and two of its shareholders (based on an alleged conflicts of interest) brought by three ex-employees of the Company; the litigation was dismissed on summary judgment.

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.

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 experience as a lawyer (corporate and financial law), in management and leadership positions with my law firm (managing partner, 1990–2002; management committee 1986–1990), in appointed state government positions since 1989, specifically the Texas Finance Commission, 1989–1995 (state chartered bank and savings and loan oversight) and Texas Transportation Commission 1995–2001 (including 5 years as Chairman, overseeing the Texas Department of Transportation), and my familiarity with operational and financial risk management issues (current Chair of the Audit Committee, Stanford University), together with the skills developed through such experience, qualified me 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.

3. Why do you wish to serve in the position for which you have been nominated? I hope to bring a constructive voice and perspective to bear in addressing the range of challenges currently confronting AMTRAK.

4. What goals have you established for your first 2 years in this position, if confirmed? I do not have enough information regarding AMTRAK or knowledge of the position to have established goals for my first 2 years in the position.

5. Who are the stakeholders in the work of this agency? The stakeholders are numerous. They include the administration, Congress, taxpayers, states, cities, the traveling public (including businesses whose employees commute via AMTRAK), mail and freight services, employees and unions, the armed services, and various transportation and rail product and service providers.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in questions No. 10? I view my role, if confirmed, as a fiduciary whose charge is the oversight of AMTRAK in a manner that best serves the long-term interests of AMTRAK, its viability as a national rail passenger system, and its various stakeholders.

7. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? My philosophy of supervisor/employee relationships is one of mutual respect built upon expectations of trust, reliability and performance. Performance expectations should be high and must be reasonable. In my 11 years as managing partner of my law firm, I was named in one employment complaint brought against the firm (all Board members were named, of which I was one).

8. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. No currently active working relationships. As Texas Commissioner of Transportation, I spoke with a number of Members of Congress and testified before Senate and House Committees in connection with the reauthorization of ISTEA.

9. 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. To assure compliance with the spirit of the laws passed by Congress, I will rely principally on my own interpretations, as well as on the guidance and staff and the AMTRAK office of general counsel.

10. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. In my view, the legislative priorities are the development of a clearly defined national passenger rail policy that provides not only for the preservation, but for a staged redevelopment of AMTRAK as a financially sound and operationally successful national rail passenger system.

11. 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. Particularly in the context of challenges currently confronting AMTRAK, the views of the President and his Administration and those of Congress in the development of solutions are both of critical importance if we hope to preserve and ultimately reinvigorate a national passenger rail system. Ultimately, however, I envision the role of a voting member of an independent board or commission to be one of independent analysis and judgment.

The CHAIRMAN. Thank you very much, both of you, for your statements.

Let us start with Mr. Nober with regard to some of our Surface Transportation Board issues. You are aware, Mr. Nober, of the

hearings we have had on this side with regard to shippers and rail carriers and the untimeliness of the process which shippers have to go through to make a case on being captive shippers and the prices they have to pay.

I am delighted to have received a letter from the current Chairman, Linda Morgan, saying that they have issued a proposed rule-making which would do two things. First, it would require non-binding mediation before a large rail case, complaint case could be filed. Now, the proposal deals with discovery to try to shorten the timeframe apparently, and then they have proposals on the smaller rate cases, rail rate cases dealing with the amount of the filing fee.

I understand the filing fees in the smaller cases could be as high as \$1,000. The proposal is to set it at \$150. I had suggested at the Committee that these cases that take these long, long periods of time need to be somehow shortened. We also need to consider arbitration or mediation as a process of forcing the parties, if you will, to sit down and try to reach an agreement on what is a fair and equitable charge for the goods that they carry. This proposal, which I am sure you are familiar with, seems to go a long way toward addressing some of the concerns. I was wondering, could you give the Committee your thoughts on the proposals?

Mr. NOBER. Well, Senator, I saw the proposal yesterday, as did you. I certainly support any efforts that the Board would take to remove procedural barriers to large and small shippers being able to reach resolutions on their concerns. While the merits of the cases they bring need to be looked at on the one hand, it seems the most common complaints—and I have had a chance to read your hearing transcripts and attend part of that last hearing—focused on the procedural problems that shippers had undergone.

Now, the current Board looked at the issue and came up with a number of good ideas. I would be reluctant to comment on which specific ones I would support or not support, not being a member of the Board yet, but I certainly support any efforts which come up that would be accepted, and would help reduce some of the procedural barriers to large and small shippers being able to bring cases.

The CHAIRMAN. I think most of us in Congress would not support the Congress, for instance, setting the rates. This is something that we are not capable of doing, nor should we be doing it. But in the absence of competition, many of these captive shipper cases, it seems to me from what I heard at the hearing, was that the rate of filing cases took so long it was a mechanism used by the railroads to keep things in limbo for such a long period of time that many of the shippers didn't have the time, the effort, the money, the lawyers, to be able to get a speedy resolution. The concept is, "Look, we want you all to sit down at the table and work it out," and give them the authority to do that.

Can you comment on just the concept of arbitration? You said you support the tools that would shorten the process. Do you think arbitration could be one of those tools, or do you have some problems with that as a concept?

Mr. NOBER. Certainly I think in other contexts, in surface transportation and in other industries, mandatory arbitration has helped resolve disputes, especially those between companies and

organizations that have ongoing relationships with one another. I think it has been an effective tool in other areas.

Now, whether or not I would expressly support mandating arbitration in every circumstance, I certainly cannot say right now. I would take a strong look at it. I believe alternative dispute resolution has an important place in helping to facilitate and resolve these disputes. It is particularly important for the small shippers who, as you have said, do not have the time, the money, and the ability to hire lawyers and spend many years bringing cases.

The CHAIRMAN. I am glad to hear you say that. I think we had suggested, and again I had suggested, that the rail carriers and some of the shipper groups actually try to get together to work out a process in which they could agree. Then, if necessary, it could be brought back to Congress to implement it legislatively in order to give more authority to the Surface Transportation Board to enact it. Do you think that is a worthwhile effort?

I mean, we just say look, railroad, sit down with the shipper organizations and see if you cannot reach an agreement, otherwise we are going to be forced to jump into it, maybe with the wrong solution to your problems. Otherwise, come up with some answers for us.

Mr. NOBER. Senator, I certainly think that the parties being able to work out, among themselves, a procedure for resolving disputes is by far the preferable way to do it. They are the most intelligent about their businesses. They know the problems that they face, and they know the solutions that would best work for them. As a regulator, I would always hope that having the parties work out their differences, rather than bring them to a government agency, would be the way to resolve things. Therefore, I certainly commend you for asking them that they do that, and I understand that they are taking that charge very seriously.

The CHAIRMAN. Well, I hope they are, because it was a very sincere request, and we are going to be following up to see what progress they are making. I am a big believer in competition in all industries, but in order to have competition you have to have competitors, and if you do not have competitors, then you have regulation.

It seems that many are very concerned about the reduction of competition over the years through consolidations and mergers in the railroad industry. What role do you think you will have as Chairman of the Surface Transportation Board to guarantee to the American public that we have competition in order to have a system that works in a free market atmosphere, as opposed to having the government regulate the rail industry?

If we only have one telephone company, or we only end up with one airline, or we only end up with one oil and gas company, we are not going to have competition. Then you are going to have government regulation. So what role do you think the Board has in trying to preserve competition by preserving the competitors who provide that competition?

Mr. NOBER. Well, Senator, I think that the Board certainly plays a central role in reviewing any consolidation in the rail industry, and that was one of the primary reasons why Congress decided to keep a Board in place at all.

Last year, the Board came out with new guidelines that it would use to evaluate mergers, and I think that those lay out some very difficult hurdles for any merger to beat, one of which is not just that it would preserve competition, but the merger would have to demonstrate the ways that it would enhance competition.

The CHAIRMAN. Do you support those proposals by the Board?

Mr. NOBER. They certainly are well settled, and appear to be well accepted among all the parties to the rail industry, so I certainly, while I am again reluctant to expressly take a position on any one particular matter, I think the merger guidelines have been an important step forward in the way that the Board looks at mergers.

The CHAIRMAN. Would you think additional work in that area needs to be done, or do you think that what is on the table now is sufficient?

Mr. NOBER. Senator, I would have to get to the Board and see whether or not those guidelines were sufficient, or whether or not any enhancements or modifications need to be made. They were just issued last year, so I think that in general they seem to capture a lot of the concerns that were out there. I commend the Board for issuing those guidelines, and certainly would take a close look at the standards by which mergers are looked at and whether or not any changes need to be made.

The CHAIRMAN. I take it we have not had any consolidation or mergers since those rules were adopted.

Mr. NOBER. Senator, I am not sure. I thought there might have been one small merger, but I am not 100 percent certain. I would need to check on that.

The CHAIRMAN. Thank you very much, Mr. Nober.

Mr. Laney, I was just wondering whether you supported President Bush or opposed him in order to get this nomination.

[Laughter.]

Mr. LANEY. Can I get back to you on that, Senator?

The CHAIRMAN. I jokingly asked that question because of the fact that this is not a cream-puff appointment. This is one that is going to require a great deal of effort and time and thought by the people on the Amtrak Board in order to resolve what some would argue are irresolvable issues, and you have a very divided political climate.

There are some Members of Congress that I suspect would just as soon Amtrak go away. Others would take the opposite position and say that whatever revenues they need to continue to operate, the government would provide those revenues. So I mean, you've got some very strongly held opinions which are vastly different. You have got a system that is not working as most people would like it to work by any standard of measurement.

So I mean, you point out that you do not have any experience in this area, and it may be that we need smart, intelligent people who do not have preconceived notions about what the answer is to come in and serve, to take a fresh approach and a fresh look at it, and then come up with recommendations.

I once told President Clinton that the next time he appointed a commission, appoint really smart, intelligent people who know nothing about the subject matter so they can come to the table with an open mind and listen to the arguments on various sides.

I think that can be very helpful. But at the same time, not knowing the history of this can also be problematic as far as the learning curve.

Now, can you tell the Committee a little bit about how you envision what your job is going to be, knowing that this is not similar to what you have done in the past?

Mr. LANEY. I will give it a shot, Senator. I do not think it is that far away from our transportation experience. There was some considerable, but nothing like what I'm about to step into, experience in terms of the interrelationship between highway, general aviation and rail, but principally freight rail, not passenger rail. In terms of the role and the learning curve, I realize there is a learning curve, and that frankly does not intimidate me, and does not particularly concern me.

I do come with very little preconceived notion, and I think that is an advantage. In terms of where we go from here, it depends a lot on where we can go, and that sounds a little circular. On the other hand, without some level of credibility that has not existed, at least in recent years and in recent months, then we are not going to have much of a partner in Congress or in the Administration.

There have been a number of unfortunate mishaps of one sort or another with respect to Amtrak recently, but there have been some very positive steps taken, at least that is my impression from a distance. One of those steps is the employment of David Gunn, which I think is a very positive statement by the Board and by Amtrak. I think, as least so far, there is a fairly significant step-up in credibility, or at least the potential for credibility that might not have been there just a few months ago. I think he has only been on the job 3 or 4 months.

We have got a long way to go. I do not know the dynamics of the Board. I do not know what the Board's conception is of its role. I think I bring to bear more corporate and private sector experience with respect to the interrelationship between Board and management. I do not know if this Board sees itself more in an operating role or not, but I do not see myself in that role.

I do see myself as a critical analytical sounding Board for management, and I think I can play a very positive, constructive role with respect to the Board, its dynamics, and with respect to the management and its dynamics.

I do understand the transportation industry relatively well, and I understand the potential for the role that passenger rail can play. We are a long way from that potential. During my term, whatever the length of that term might be, we at least have the opportunity to begin moving in a direction that can ultimately prove very constructive. A direction that may ultimately help close the gaps between those who oppose and those who support Amtrak, perhaps to bring those groups a little more closely together.

The CHAIRMAN. I have one final question. You are the President's appointee. How free are you going to be to disagree with the Administration's recommendations either made by the President or by Secretary of Transportation Norm Mineta with regard to Amtrak? For instance, they are recommending about \$521 million for Amtrak's operation for the next fiscal year. I think Amtrak has stated

that is probably less than half of what they feel they really need. The question is, as a Board member who has been appointed by the President, how free are you going to be to make independent decisions and independent recommendations which are contrary to the Administration?

Mr. LANEY. I think my response is that the history that I have had working for then-Governor Bush, as the Chairman of the Department of Transportation in Texas, was such that I think he and his team then, and I believe now, trust my judgment, trust the direction that I believe a particular issue ought to go. If they disagree, or if I disagree, I think they will respect the position I take and hear me out, and I think oftentimes I can be fairly persuasive, sometimes not.

I look at this Chairmanship as an independent position, and I think they view it as an independent position. It will not be long before I know more about Amtrak and the intricacies of the operation than probably anybody in the Administration or the Department of Transportation. Therefore, I think after a period of time there will be a level of trust. No doubt there will be disagreements, and how they are ultimately resolved I do not know.

The CHAIRMAN. Well, I would hope you would take that philosophy into your service on the Board and become a person who really wants to find a way to help make it work, and not to shut it down, as some perhaps would argue.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman. I think your questions were excellent, Mr. Chairman, and highlighted a number of important issues.

Mr. Laney, to begin with you, are you familiar at all with this General Accounting Office report?

Mr. LANEY. No, sir, I am not.

Senator WYDEN. Well, I would urge you, and I will make sure you have a copy, to look at it, because it is really scathing in terms of its criticism of how Amtrak goes about making decisions. I will just read you a couple of sections of it.

They said with respect to the network growth strategy that Amtrak was proceeding in a speculative way. They said, and I quote here: "There is no empirical basis for the revenue estimates." They said again, and I will quote, "Amtrak did not obtain a full understanding of freight railroad concerns." The list just goes on and on in that kind of vein.

I would like to begin by seeing if you agree with my judgment that it is time for a shift in Amtrak policy so that decisions are based on objective criteria. We can have a debate about what those objective criteria ought to be, and I think that is an appropriate thing to discuss, but I want us to go there as a public policy goal, to set out objective criteria. Do you agree with that judgment?

Mr. LANEY. What I bring to bear in this role, if confirmed, is my experience in the private sector and in the public sector. Objective performance criteria, and there is even some room for flexibility with those criteria, are enormously powerful in moving an organization from one point to another. I trust them if they are carefully thought out, and I support them if they are carefully thought out. I do not know what GAO had in mind, but I have been a party to

the development of various performance criteria, and objective criteria, in virtually every operation I have been involved in. To the extent an organization can be moved forward, those types of criteria can help a lot.

So generally speaking, yes. There are some situations where they do not apply that well.

Senator WYDEN. I think that is fair, and I am going to interpret that as a yes, with exactly the kind of qualification that is appropriate. I think that is a very reasonable orientation, and something on which we ought to have a debate.

What I am concerned about is the politicizing of these routes, as we have seen again and again. In our part of the world there is enormous frustration. We have communities in rural Oregon that have done everything except hold bake sales in order to fund Amtrak service. They have agreed, for example, to levy per capita assessments on their constituents, so they understand that this is not the transportation policy of yesteryear where we are just going to heave money every which way and hope some of it works. I think that is a thoughtful answer and a constructive one.

In the Amtrak markup that we considered earlier in the year, I sponsored an amendment to require that Amtrak's Board of Directors and top management comply with the same ethical standards as federal officials and employees. My concern has been that there has been a double standard, and particularly at Amtrak, a kind of revolving door which favors the East Coast of the United States, frankly, where people go back and forth on various parts of the East Coast of the United States, and it certainly gives the appearance, at a minimum, of having a bias in favor of those East Coast routes.

I was able to get that into the markup of the Hollings-Breaux legislation that we considered earlier this year. It stands ready to come before the Senate floor, and I would be interested in your position as to whether the same sort of ethical standards that are required of federal officials and employees ought to apply in the positions at Amtrak.

Mr. LANEY. Senator, if you do not mind my asking for a little clarification, this is a revolving door conflict of interest?

Senator WYDEN. Yes. I was concerned particularly that the head of Amtrak essentially spent all of his time in New Jersey, then went to the regional office, then went to the head of Amtrak, and now is back in New Jersey. He certainly at the time was making decisions that involved routing as it related to the East Coast of the United States. As a result of that, I did a review of the statutes in this area, and I found that there were not the same ethical requirements for officials on these Amtrak positions as there were for other federal officials.

So on a unanimous basis this Committee agreed to the amendment that I have just described this afternoon, and that is something I feel strongly about. It is only fair that you have a chance to read it, but I would be interested in knowing as a general principle whether you think the same ethical strictures that apply to federal officials generally should apply in positions like the one in which you are being considered.

Mr. LANEY. Well, frankly, I am surprised to hear that the same ethical principles do not apply.

Senator WYDEN. I was very surprised as well.

Mr. LANEY. I assumed they did.

Now, when you talk about the movement of the head of Amtrak, I presume you are talking about predecessors to David Gunn. Regardless, most of the expertise in this area is a product of the concentration of passenger rail in the Northeast, no question about that. Therefore, I am not surprised to see someone come to work for Amtrak and go back to work in some of the Northeast quadrant's rail operations. That does not surprise me. It does not particularly concern me, either, because I think we are after the most effective expertise, ultimately, that we can attract to Amtrak in moving this forward.

I am surprised, and I do not have an answer for you other than to say, generally speaking, I cannot conceive of a basis for a difference in terms of ethical rules applicable to government employees versus Amtrak officials. There may be some reasons, but I am not aware of them.

Senator WYDEN. I appreciate that, and I was pretty flabbergasted when I reviewed the statutes as well. By getting unanimous support for the amendment in the Committee, I made it clear that I am not accusing anybody of any crimes or anything of the sort. I have no quarrel with the proposition that there is a lot of expertise in the Northeast part of the United States. But when these routes are being made, people are negotiating about aspects of routing that can affect their future employment, certainly it gives the appearance of impropriety. That is why the Commerce Committee adopted this change that I proposed.

I appreciate your answers, and just a couple of questions for you, if I might, Mr. Nober. I think Senator Breaux covered very well the question of competition among railroads, and I thought your answers were helpful there.

On the question of Class I carriers, and this touches particularly on the short line railroad issue, what are your thoughts regarding the appropriateness of Class I carriers determining what the route of a short line carrier can offer the customers through the methods that I essentially described in my opening statement?

Mr. NOBER. Well, Senator, I first would like to say that I think short line railroads provide a very critical link in the rail transportation network. They run routes that Class I carriers do not want to run anymore, or have chosen not to operate for whatever reason, and provide service to shippers that otherwise would not have it. Consequently, anything we can do to maintain a healthy and vibrant short line system I think is very important, and is a very important job of the Board's.

People have said from time to time that when Class I carriers have sold their short lines, they have included conditions that have made it difficult for short lines to operate in the most effective manner. That is the kind of subject that, if I were on the Board, would need to be looked at and determined on a case-by-case basis. The Board reviews those sales on a case-by-case basis.

Senator WYDEN. The other question I had is, the small volume shippers are generally exasperated about the process.

They look at the existing rate complaint process and say, it is complicated and almost too uncertain to be of any real value. I gather that nobody has ever even filed a case, not one, under the STB small rate case guidelines. I would be interested in knowing whether you share some of these concerns, and what you think you might be able to do to alleviate the concern of the small shipper as it relates to resolving rail disputes.

Mr. NOBER. Well, Senator, certainly I think looking at the process by which small shippers are able to file complaints at the Board would be one of the highest priorities I would have if I were confirmed and went down there. The Board has taken some steps recently, just yesterday, to try to ease some of the problems. They reduced the filing fees, and hope to reduce some of the procedures.

As I said, I certainly support any steps that can be taken that would be reasonable, and that would help reduce the process. When I got down there, I certainly would look at the steps they've taken and any others that could be found to try to resolve this.

Senator WYDEN. I appreciate that. Again, like the ethical discussion I was having with Mr. Laney, I was pretty amazed that nobody had ever filed a case under the STB small rate case area because it seemed so complicated. I think we have just got to do better than that.

Mr. Chairman, I share your view. I think these are two fine people, and difficult policy issues. I will be supporting both of you in the Committee and on the floor, and I hope both of those actions will take place very quickly.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wyden. I would just follow up.

Mr. Laney, I notice you mentioned you look forward to working and cooperating with management through Amtrak. Also, I am sure you mean working with labor as well. It is management and labor together, not just one side, but both sides. They are both integral parts of it.

Another thing, Senator Wyden, I wanted to mention an area we are both very interested in, which is seniors in this country. One of our staff had an opportunity to take Amtrak from the West Coast all the way to the East Coast as a fact-finding mission, and one of the things that he reported back was the extensive use of Amtrak by seniors, which is really interesting.

They have a lot of disposable time on their hands because of retirement, and they enjoy the ability to move around on the train, as opposed to being confined on an airplane, and the opportunity to sit down and have a meal.

I really think that perhaps that is something that Amtrak can really consider in their marketing efforts. Amtrak can be very attractive to the senior population, which is the fastest-growing population in our country. The 77 million Baby Boomers will soon to be retiring and are becoming older Americans. That seems like a real opportunity for Amtrak to engage not just the commuters on the East Coast corridor, but seniors throughout this country who like the type of service that an Amtrak could provide. I would just encourage you all to take a look at that.

Gentlemen, you have got a lot of support. We hopefully will be able to bring your confirmation to the floor of the Senate as quickly as possible before you leave, and good luck to both of you. We look forward to working with you.

The hearing will stand adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

APPENDIX

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

Mr. Chairman, this Committee has spent a great deal of time talking about rail competitiveness issues over the last several years, and we've had frequent discussions with the current STB chairman and other commissioners about how rail policy has been applied to the detriment of rail-to-rail competition. Unfortunately, despite these discussions, the STB still has done little to alleviate our concerns about the rail industry's monopoly power and how that power is being abused.

In fact, recent decisions would indicate that the Board is instead moving in a direction that would further weaken the ability of captive rail customers to prevail in a rate case—which is about the only form of relief currently available.

I have felt for some time that Congress must redirect federal freight rail policy by legislatively requiring various forms of rail-to-rail competition and providing for a more simplified and time efficient dispute resolution process such as final offer arbitration. That's why I introduced S. 2245, the Railroad Competition, Arbitration and Service Act of 2002, and I am also a co-sponsor of S. 1103 the Railroad Competition Act of 2001.

But while the legislative debate continues and is carried over into the 108th Congress, I certainly hope that Mr. Nober—should he be confirmed as the new Chairman of the STB—will pay more attention to the needs of the rail customer community the STB is supposed to be protecting than his predecessors have done. Frankly, if I had reason to believe that he would not take a new approach, I would be tempted to oppose his nomination.

However, since we have been hoping to install a new STB Chairman for more than a year now, my constituents would not benefit were I to simply use this nomination to make a point. So instead, I strongly caution Mr. Nober to take a more aggressive stance in support of bringing rail-to-rail competition to bear on the rail industry.

Although there may be some limitations on what the Board can do independent of congressional action, most observers accept that the competing tensions of the statute—the need to maximize competition while maintaining revenue adequacy—leave a great deal of room for discretion. For example, such discretion could be applied to things such as the availability of segment, or “bottleneck” rates, or the ability of a rail customer to gain competitive access through switching in a terminal area.

The rail industry is no longer fragile and unable to stand additional competition as it was in the late 1970s. According to the fact books produced by the Association of American Railroads, the average annual return on net investment in the railroad industry was just: 2.3 percent in the 5 years prior to the Staggers Act (1976–1980) compared to an annual average of approximately 7.5 percent 20 years later (1996–2000), or nearly a threefold increase. Similarly, return on equity increased nearly threefold, from an average annual figure of 3.5 percent during the 5-year period prior to Staggers, to 9.5 percent in the 5-year period 20 years later.

Furthermore, evidence shows that competition among railroads works—and does so without harming the industry's financial picture. Here in the U.S., competitive access through trackage rights was imposed over 4,000 miles of the UP/SP track, and both the UP and BNSF have testified before Congress that they're working well. Shared asset areas were adopted in a few terminal areas as part of the Conrail split without negative consequences. And our neighbors to the north have demonstrated that similar policies promoting competition can work well without causing financial harm.

The future success of railroading must be based on meeting the changing needs of a growing customer base. Yet without competition, this future will not be realized.

Mr. Nober, upon confirmation, I urge you to use your position as STB Chairman to help shape the railroad industry into one that offers competitive services to all of its customers. I also encourage you to modify the STB's regulatory approach to one that encourages intermodal and intramodal competition while offering streamlined and cost-effective relief to rail users that are not benefiting from such competition.

Not only will such an approach help shape the ultimate outcome of the pro-competitive policy changes my colleagues and I are supporting, but it also will prepare railroads for their evolution from a monopoly into an increasingly competitive businesses.

Thank you, Mr. Chairman.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO DAVID MCQUEEN LANEY

Question 1. Mr. Laney, as a nominee to serve on the Amtrak Board, how familiar are you with Amtrak's current financial and operational situation? What do you see as Amtrak's fundamental problems and how do you hope to address them?

Answer. My familiarity with Amtrak's current financial and operational situation is cursory at best, principally a product of newspaper reports. Amtrak's fundamental problems are credibility on the one hand, and lack of any clearly defined position within the overall framework of national transportation policy on the other. There are, of course, fundamental organizational, management, labor, operational, and financial problems as well.

Question 2. What do you consider to be the appropriate role of the Amtrak Board of Directors? Do you see yourself as taking an active role in determining the future of Amtrak? Who do you believe you represent in your capacity as a Board member?

Answer. The roles of the Amtrak Board of Directors are numerous; in general terms, they include hiring, firing and compensating the chief executive officer, and providing oversight of the performance of management against established performance criteria, usually in the form of a strategic business plan developed and adopted by the Board. I do see myself as taking an active role in shaping the future of Amtrak. There are a number of constituencies I view the Board as representing, but the principal constituencies are Congress, the Administration and current and potential passenger rail users.

Question 3. As you may be aware, since the current Board was appointed in 1998, Amtrak's debt load has quadrupled to over \$4 billion. Further, Amtrak's new President, David Gunn, has publicly stated that Amtrak officials were not providing Congress or the American taxpayers with factual information in regard to it being on the so-called "glidepath to self-sufficiency. It is my belief that the Board has utterly failed in meeting its fiduciary responsibilities."

Answer. I do not have information sufficient to conclude that the "Board has utterly failed in meeting its fiduciary responsibilities." From a distance, the apparent lack of adequate financial information or lack of adequate disclosure of such information, or both, is troublesome.

Question 4. Given your considerable legal expertise, under what circumstances do you consider it appropriate to demand that a board of directors resign?

Answer. Malfeasance or criminal activity on the part of all Board members could lead to a demand that an entire Board of directors resign. Nonetheless, it is extraordinarily rare that the resignation of an entire Board of Directors of any business would be in the best interests of that business or any parties interested in the stability and continuity of that business.

Question 5. What is your view of the Administration's proposal announced by Secretary Mineta in June for reforming Amtrak?

Answer. Regarding my view of the Administration's proposal announced by Secretary Mineta, I should first say that without a more detailed understanding of Amtrak organization, finances, and operations, I am not in a position to judge with any real comfort. On the other hand, I did find elements of the proposal—which I presume mirrors the ARC proposal—to be intriguing possibilities.

Question 6. What do you believe is the appropriate role of the states in intercity passenger rail service in terms of service planning, oversight, and, perhaps most importantly, funding?

Answer. The role of the states in intercity passenger rail service in terms of service planning, oversight and funding is evolving, and almost certainly will, and should, become more actively participatory. Principal issues relating to that evolution of the states' roles include uniformity of approach and service quality from state to state, coordination of state activity, and the pace, method and terms by

which state roles evolve. That process cannot begin effectively, in my judgment, until Amtrak's core operations and relations among Amtrak, Congress and the Administration are stabilized.

Question 7. I believe Amtrak operates three routes in Texas: the Sunset Limited, the Texas Eagle and the Heartland Flyer. The Sunset Limited lost \$347 per passenger in fiscal year 2001 and the Texas Eagle lost \$258 per passenger. Do you think this kind of subsidy is warranted? How do you believe decisions should be made to add, reduce or eliminate train service?

Answer. I do not know what absolute level of subsidy is warranted; but I do believe that some level of subsidy is probably unavoidable. I am a bit wary of singling out and judging any route on a stand-alone basis based solely upon its per passenger expense level. As for decisions to add, reduce or eliminate train service, I do not know the criteria currently utilized by Amtrak management, or the criteria that should be considered. I don't know the rationale by which any particular route has been added or eliminated, so I don't believe I am in a position to speak to the appropriate criteria for Amtrak's route selection.

Question 8. As you may be aware, earlier this summer Amtrak threatened to shut down its entire system unless it received additional and immediate assistance from the federal government. While I had no doubts about the urgency of the financial situation, I question why Mr. Gunn threatened to shut down commuter trains operated by Amtrak on a contractual basis, and to shut down all operations on the Northeast Corridor, including freight and commuter service. The threat of a halt in service had commuter authorities scrambling and, to me, demonstrated why Amtrak should not control the Northeast Corridor infrastructure.

At a minimum, shouldn't we expect Amtrak to have a contingency plan in place to prevent this kind of calamitous situation from recurring? Would you be willing to commit to working with Amtrak and the DOT Secretary to develop such a plan?

Answer. I do not know all of the circumstances that led to Mr. Gunn's "shut down" announcement, nor am I aware of all the effects the threatened shut down had on commuter and freight operations throughout the Northeast Corridor. I would like to think that approach could be avoided in the future, and I would certainly be willing to work with Amtrak and DOT to develop an alternative approach in dealing with any comparable situation should it occur.

Question 9. In a normal business, the consequences of not meeting a company's business plan include a lower stock price, cost-containment measures, reductions in service, salary freezes, and the elimination of bonuses. Amtrak has consistently failed to meet its business plan, but the only real consequence has been to increase the financial burden on the American taxpayers. What consequences should apply to Amtrak? Wouldn't the introduction of competition help motivate Amtrak to operate more efficiently and follow through on its business plan?

Answer. If Amtrak were a normal business, by now it would have failed. Of course, it is not a normal business. But it is a business that could use a realistic and viable business plan, and the greatest discipline for virtually any business operation is competition or the threat of competition.

Question 10. Amtrak (i.e., the taxpayers) funds most of the capital costs of the Northeast Corridor even though most of the trains on the corridor are commuter, not Amtrak trains. The current capital backlog on the corridor is estimated to be about \$5 billion and there is an annual need for \$1 billion in capital to maintain the corridor. Yet the commuter authorities using the Corridor reimburse Amtrak only for their incremental costs. In fiscal year 2001, this amounted to less than \$100 million. Given Amtrak's financial problems, would you support a reevaluation of the allocation of the capital costs on the Northeast Corridor to more accurately reflect usage?

Answer. Deferred and current capital investment needs must be credibly identified, prioritized and covered to preserve the value of the NEC infrastructure asset for Amtrak, for any Amtrak successor(s), and for reasons of current safety and service reliability. Recovering a greater percentage of those costs currently borne by Amtrak seems appropriate, even essential considering Amtrak's current circumstances. I should add, however, that I do not know why Amtrak bears such a seemingly disproportionate share of these costs, and what reasons there might be to continue such an allocation. I am a bit uncomfortable in making any absolute assertion without a more complete understanding of how the current situation occurred.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS
TO DAVID MCQUEEN LANEY

Question 1. Amtrak has a number of challenges facing it as we debate in Congress its future and the future of passenger rail in this country. What tools do you feel Amtrak needs to address these challenges and succeed in its mission to operate a "national rail passenger transportation system?"

Answer. First, passenger rail as a concept needs consensus support as an essential element of our national transportation policy, whether or not that concept is tied to Amtrak itself. Amtrak itself will have to be the starting point for any revitalization of passenger rail as an element of our national transportation policy, and it will need adequate and predictable levels of funding, ideally from permanent, dedicated sources. Such funding will likely not be available until Amtrak itself reestablishes its own credibility with Congress and the Administration, which in turn will require a viable and realistic strategic plan by which Amtrak's progress and performance can be measured.

Question 2. The Administration has proposed funding Amtrak with \$521 million for fiscal year 2003, which is less than half of what Amtrak has stated it will need to continue operations. What do you think about the Administration's proposal? Isn't this basically a bankruptcy declaration for the railroad?

Answer. I do not believe that the Administration wants to see Amtrak bankrupt. As I understand it, the \$521 million is roughly the level of actual funding Amtrak has received for years. Although I have not spoken with Administration officials on this issue, I would like to think that there could be flexibility in that number as long as Amtrak's management develops a credible alternative budget proposal in the context of an overall plan acceptable to the Administration by which progress could be measured.

Question 3. In your experience as Chairman of the Texas Transportation Commission, how much money do states like Texas have in their transportation budgets for passenger rail service? Do you feel federal funding is essential to maintain intercity passenger rail service?

Answer. Texas had virtually no money in these transportation budgets for passenger rail service; I am not familiar with other states' transportation budgets. Assuming most states are similarly situated in terms of their transportation budgets, federal funding is essential to maintain intercity passenger rail service. I could envision the states assuming a more participatory role over time.

Question 4. The state of Texas made a \$5.6 million loan to Amtrak in 1997 for the Texas Eagle; the loan was paid back early in full, but only after, I understand, the state required every town along the route to co-sign the loan. As Chairman of the Texas Transportation Commission, what was your role in the loan transaction?

Answer. As Chairman of the Texas Transportation Commission, I oversaw the development of the loan structure and terms, worked with the state legislature and Governor's office, and ultimately approved the loan.

Question 5. Are you familiar with S. 1991, the National Defense Rail Act, which this Committee reported out earlier this year by a vote of 20-3? If so, do you have any comments about the legislation, and how important do you feel it is that Congress make passenger rail a priority?

Answer. I have reviewed summaries of S. 1991, although I am not yet intimately familiar with it or in a position to comment on the substance of the legislation. I do believe that Amtrak is at a pivotal juncture, which provides Congress with a unique opportunity to clarify passenger rail as an important and permanent element of our national transportation policy.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO ROGER P. NOBER

Question 1. What do you consider to be the most important issue facing the STB?

Answer. I believe that the most important and continuing challenge for the Board is to continue to serve as a fair, impartial and efficient forum to adjudicate the issues that Congress has vested with it. While I do not believe that it would be appropriate for me to discuss particular issues that may come before the Board, I do believe there are several general areas that merit mention. For example, there appears to be a significant divide between railroads and certain of their customers with respect to rates and service issues, and there also appears to be ongoing concern about the possibility of future rail mergers.

Question 2. You have a unique perspective on the STB since you helped formulate the legislation that created the Board. What do you consider to have been the biggest accomplishments of the Board since it was established and do you believe there

are changes that should be made—through either legislation or regulation—to improve its effectiveness?

Answer. I am particularly pleased to have been nominated by the President to this position because I helped formulate the legislation that created the Board. It is an agency that has faced significant challenges in the past and I look forward to the opportunity to help guide it into the future.

I believe the biggest accomplishment for the Board has been its handling of matters vested in it by Congress—successes which are reflected in its work product, its favorable record in the reviewing courts, and its encouragement of private-sector resolutions. Of course, the Board must constantly review its processes to ensure that its law is being administered appropriately and effectively and that they reflect the ever-evolving surface transportation marketplace. If confirmed, I would work to ensure that the Board continued to do so.

I believe it is important to work closely with Congress, and if I confirmed I would work closely with Congress on any legislative changes that it believes might be necessary or appropriate. And if Congress should conclude that legislative changes are necessary or appropriate, the Board should be prepared to implement the changes and administer the revised law in an effective manner.

Question 3. What do you consider will be your primary role as Chairman of the STB? Who do you believe you represent in this position?

Answer. The Chairman and the other Board members must implement the law and represent the public interest, which embraces and must take into account all those affected by the Board's actions. The Chairman also has a significant management role as well, and I believe that a primary role of the Chairman is to manage and lead the agency, as well as to work to establish the overall agenda for the Board. The Chairman should ensure that the Board's docket of cases is handled efficiently and effectively in accordance with the statute.

Question 4. What is your view of the consolidation that has taken place in the rail industry over the past 20 years? Have the recent mergers produced their forecasted benefits?

Answer. I understand there is significant concern about the increased consolidation in the rail industry over the past two decades. This concern is similar to the concerns expressed about consolidation in other transportation modes, as well. The STB has been vested with the authority to review each merger in the railroad industry. Each transaction must be looked at on its own merits and reviewed according to the facts and the law.

Question 5a. As you know, the Board was directed to issue new guidelines for small rate cases as part of the ICC Termination Act, and it published simplified guidelines for use in small rate cases in 1996. I understand that not a single case has been filed under the new procedures. Why do you believe that is? After all, we often hear that small shippers are dissatisfied with rail rates. Doesn't this indicate to you that perhaps the guidelines need more work?

Answer. I understand that many small shippers remain dissatisfied with the procedures for consideration of small rate cases at the Board. If confirmed, one of my priorities would be to look very carefully at this issue to determine the extent and merits of the problem and whether there are any regulatory measures the Board could take to address these concerns in a fair and equitable manner.

Question 5b. Is this an issue that Congress needs to address?

Answer. If these issues could not be addressed further through regulatory action, then the Congress may wish to address it statutorily.

Question 5c. If confirmed, what will you do to address this issue?

Answer. As I have indicated, if confirmed I would continue to see if there is anything more that the Board could do in this area and assist Congress as appropriate in any legislative examination of the issue that it might wish to pursue.

Question 6. As you know, some shippers support open access to create competition between railroads and force rates down. Do you think the current statute and regulations with respect to maximum rates sufficiently protect shippers from abusive rates?

Answer. I understand that this is an issue that some shippers would like to see the Board take further action on. However, I also understand that parties are seeking to clarify and refine the rate standards and processes in several pending cases before the Board. I do not believe that it would be appropriate for me to comment on the issues raised in the pending cases. I can assure you, however, that I would give those cases careful attention if I am confirmed.

Question 7. What is your view on the use of arbitration to settle rate disputes? When do you think the use of arbitration is appropriate?

Answer. I am aware that alternative dispute resolution (ADR) has been used in other areas with success and I believe that ADR should be encouraged for settling

rate disputes. If confirmed, I would look carefully at the use of ADR for settling rate cases and work with all of the parties to address the issues its expanded use raises.

Question 8. Legislation has been introduced in the House to give the Board authority to order directed service in the event of an Amtrak shut-down. The Board would be able to order continued maintenance, signaling, and dispatching on the Northeast Corridor. It would also be able to order the continuation of commuter services around the country. What is your view of this proposal?

Answer. Since I have not yet been confirmed, I do not believe it appropriate to comment in detail on legislative proposals pending in Congress that affect the Board. However, I believe that the Board has the expertise to handle these matters, if the Congress determines that vesting the Board with such authority is necessary. But, of course, cooperation among the parties would also be required.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CONRAD R. BURNS
TO ROGER P. NOBER

Question 1. How does the Board's new segmented stand-alone cost test help smaller shippers who already feel they have no regulatory recourse?

Answer. Both of these questions relate to substantive issues contained in the decision issued by the Board on August 20, 2002, in STB Docket No. 42054, *PPL Montana, LLC v. The Burlington Northern and Santa Fe Railway Company*. It is my understanding from the Board that PPL Montana, the complainant in that case, has requested and received from the Board an extension of time, until September 30, 2002, in which to file a petition for Board reconsideration of that decision. Thus, it appears that the Board will be called upon to reconsider its decision and issue a ruling on that request for reconsideration.

Question 2. Is it appropriate for the STB to administratively deregulate rail rates on branch lines, as the PPL Montana decision appears to do?

Answer. I do not believe that it would be appropriate for me to comment on any case that is currently before the Board or that is likely to come before me if I am confirmed as a Board member. Therefore, I do not believe it is appropriate for me to comment on the aspects of these decisions that you have raised at this time.